NO. _____

In the
Supreme Court of the United States

HENRY H. HOWE,

Petitioner,

v.

STEVEN GILPIN, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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October 11, 2023

QUESTIONS PRESENTED

This Court has made clear that in cases where a search or arrest warrant affidavit is based on an informant's report, probable cause determinations are informed by a "totality of the circumstances" analysis where reliability, veracity, and basis of knowledge are all highly relevant considerations. *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)).

Within the context of this *Gates* analysis, Circuit Courts have emphasized that a search or arrest warrant affidavit's "complete omission of information regarding [a confidential informant's (CI's)] credibility may be "insurmountable", and that such an omission may undermine the deference (courts) would otherwise give to the decision of the magistrate to issue the (search or arrest) warrant." See, e.g., *United States v. Glover*, 755 F.3d 811, 816 (7th Cir. 2014) Although in general, no one factor necessarily dooms a search warrant, in cases that "test the sufficiency of affidavits for warrants obtained based on informants," information about the informant's credibility or potential bias "is crucial." *Id.*

The first question presented is:

Whether complete omission from an arrest warrant of a primary confidential informant's multiple prior Rule 609 [F.R.Evid.] "dishonesty and false statement" convictions actually known to the law enforcement warrant affiant – convictions for Theft-False Representation, Theft By Swindle, Bigamy, "Theft More Than $35,000", Aggravated Forgery, and Check Forgery – is an omission which causes the warrant to be invalid if the warrant-issuing judge's

probable cause determination was based on an affidavit with the omitted information exhibiting reckless disregard for the truth on the part of the law enforcement affiant.

The second question presented is:

Whether a law enforcement arrest warrant affiant's actual knowledge of a primary confidential informant's self-reported multiple prior Rule 609 [F.R.Evid.] "dishonesty and false statement" convictions creates a duty for that law enforcement warrant affiant to conduct further background investigation – at least including a check of the confidential informant's criminal history -- before presenting a warrant affidavit to a prospective warrant-issuing judge or magistrate.

Currently, there is a conflict in decisional authority between at least two Circuit Courts, relative to this issue. See, *Howe v. Gilpin, et al.*, 65 F.4th 975, 981 (8th Cir. 2023)[(this case) "An agent does not 'violate a clearly established constitutional right by omitting information from a warrant application that he does not actually know, even if the reason is his own reckless investigation." *Hartman v. Bowles,* 39 F.4th 544, 545 (8th Cir. 2022)."]; and compare to *United States v. Tanguay*, 787 F.3d 44, 53 (1st Cir. 2015)[" All that is required to trigger an officer's duty of further inquiry is her knowledge of an obvious and unexplored reason to doubt the truthfulness of the allegations. (*citation omitted*). When confronted with such a red flag, the officer should look into the matter even if she does not believe that what she will discover is likely to vitiate probable cause. After all, the officer

is the only party who, in this context, has the tools to undertake any meaningful investigative work. The trigger for further investigation may function even when the officer's obvious reason only serves to diminish her confidence to some modest degree."].

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Henry H. Howe is not a corporate person or entity described within Supreme Court Rule 29.6. Rather, Mr. Howe is a now-82-year-old, actively licensed, sole practitioner attorney at law, living and working in the City of Grand Forks, North Dakota.

Respondent Steven Gilpin was a Special Agent of the North Dakota Bureau of Criminal Investigation (BCI), and a member of the Grand Forks Narcotics Task Force (GNTF), and supervised the investigation in this case.

Respondent Scott Kraft was a Special Agent of the North Dakota Bureau of Criminal Investigation (BCI) and participated in the investigation of this case.

Respondent Delicia Glaze served as a member of the Grands Forks Narcotics Task Force during the operative events of this case.

Respondent Barbara L. Whelan, during the operative events of this case, served as State's Attorney for Walsh County, North Dakota.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the District of North Dakota, Eastern Division, and the United States Court of Appeals for the Eighth Circuit.

- *Henry Howe v. Steven Gilpin, et al.*, File No. 20-13, United States District Court for the District of North Dakota, Eastern Division, Order granting summary judgment entered March 28, 2022, *Howe v. Gilpin et al.*, 2022 WL 1295832 (D.N.D. March 28, 2022). **Copy of this document is included at Appendix B.**

- *Henry Howe v. Steven Gilpin, et al.*, File No. 23-1860, United States Court of Appeals for the Eighth Circuit, Opinion filed April 20, 2023, *Howe v. Gilpin, et al.*, 65 F.4th 975 (8th Cir. 2023), affirming the decision of the District Court, Petition for Rehearing and for Rehearing En Banc denied on July 13, 2023. **Copy of this document is included at Appendix A.**

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The opinion of the United States Court of Appeals in this case is available at *Howe v. Gilpin, et al.*, 65 F.4th 975 (8th Cir. 2023). The Order denying the appellants' Petition for Rehearing and for Rehearing En Banc is available at *Howe v. Gilpin, et al.*, 2023 WL 4511509 (8th Cir. July 13, 2023).

The decision of the District Court in this case is unpublished, but it is available at *Howe v. Gilpin et al.*, 2022 WL 1295832 (D.N.D. March 28, 2022).

There are no other related cases.

JURISDICTION

The instant case is a federal civil rights action, brought pursuant to the enabling statute of 42 U.S.C § 1983.

This case was commenced in the United States District Court for the District of North Dakota, Eastern Division, Case No. 3:20-CV-00013-DMT, on January 29, 2020.

On March 28, 2022, the District Court entered an Order granting support judgment in favor of the defendants therein. That Order is available at *Howe v. Gilpin et al.*, 2022 WL 1295832 (D.N.D. March 28, 2022). Judgment was entered by the District Court on the same day of March 28, 2022.

A Notice of Appeal from that District Court Judgment to the United States Court of Appeals for the Eighth Circuit was filed by the Petitioners herein on April 26, 2022.

An opinion by a Panel of the United States Corut of Appeals for the Eighth Circuit was filed on April 20, 2023, affirming the Judgment of the District Court. That Opinion is available at *Howe v. Gilpin, et al.*, 65 F.4th 975 (8th Cir. 2023).

A Petition for Rehearing and for Rehearing En Banc was filed on June 5, 2023 by Petitioner Henry H. Howe. By Order entered on July 11, 2023, the petitioner's Petition for Rehearing and for Rehearing En Banc was denied by the Court. The Eighth Circuit's Mandate was issued on July 20, 2023.

The United States Supreme Court has jurisdiction over the instant case through a Petition for Writ of Certiorari by virtue of 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. The Respondents' arrest warrant in this case never informed the warrant-issuing judge of multiple self-reported Rule 609 "dishonesty and false statement" convictions of confidential informant (CI) Steven Harold Anderson – the person who was the sole source of information for the warrant affidavit which related to Petitioner attorney Henry H. Howe and his incorrect charging with AA Felony Conspiracy to Commit Murder.

The respondents used an individual named Steven Harold Anderson to provide virtually all inculpatory information about Petitioner attorney Henry H. Howe in this case.

As of January 24, 2014 — the time that GFNTF members (Respondents) Delicia Glaze and Steve Gilpin approved Anderson to work as confidential informant CI-14-2995 in this case[1] – Anderson was

[1] See, the "Personal History Report, Office of Attorney General, Bureau of Criminal Investigation (BCI). Informant Submission.", this document was used with confidential informant Steven Harold Anderson, dated and signed by Task Force Officer (TFO) Delicia Glaze on January 24, 2014, and by BCI Special Agent (and GFNTF member) Steve Gilpin on January 24, 2014, and

being actively prosecuted in two separate felony cases venued in Grand Forks County (theft) and in Cass County (issuing check without sufficient funds) respectively.[2]

In Steven Harold Anderson's January 24, 2014, BCI "Personal History Report" **[8th Cir. App. 56-57]** signed by Anderson on a form filled out by GFNTF Officer Delicia Glaze in her handwriting, the following "Prior Criminal Record" of Steven Harold Anderson was self-reported by Anderson: Aggravated Forgery, Bigamy, Check Forgery, Theft-False Representation, Theft by Swindle, and "Theft More Than $35,000. **Copy of this document is included at Appendix E.**

Petitioner Henry H. Howe was charged with AA Felony Conspiracy to Commit Murder by Barbara L. Whelan on January 30, 2014 – some ten (10) days after Respondents Delicia Glaze and Steve Gilpin had approved and signed up Steven Harold Anderson as a confidential informant (CI-14-2995) in connection with the GFNTF's investigative targeting of Mr. Howe in the instant case, and (6) six days after the BCI

later by Gilpin again on February 3, 2014. **(8th Cir. App. 56-57). Copy of this document is included at Appendix E.**

[2] See, the, Register of Actions and Criminal Judgment in *State of North Dakota v. Steven Harold Anderson*, Grand Forks County Case No. 18-2013-CR-00632 and Register of Actions and Criminal Judgment in *State of North Dakota v. Steven Harold Anderson*, Cass County Case No. 09-2013-CR-01127**. (8th Cir. App. 64-67, 68-71).**

"Personal History Report" was co-signed by Steven Anderson and Glaze.

In deposition testimony given in this case, Respondent Walsh County State's Attorney Whelan admitted that she had not performed a "Triple I" or any other comprehensive criminal record check on Steven Harold Anderson prior to charging Mr. Howe with AA Felony Conspiracy to Commit Murder – despite the fact that Mr. Anderson had expressly described a criminal history which included crimes involving "dishonesty and false statement", "theft by swindle", "theft by false representation", and other such offenses on Mr. Anderson's "Personal History Report" [See, Footnote 1, *supra*, 8th Cir. App. 56-57][3]

The following exchange in this regard occurred at Ms. Whelan's deposition between Ms. Whelan and examining counsel for Petitioner Henry H. Howe:

> **Q.** You did a Triple I report (on Steven Harold Anderson) after you charged Mr. Howe, and some months after you charged him?
>
> **A.** Yeah. I wish I could remember the exact date, but it was sometime in March, I think …
>
> **Q.** Prior to charging Mr. Howe with AA Felony conspiracy to murder, to commit murder, you did not have any access to

[3] Transcript of Deposition of Barbara L. Whelan, reported in the instant litigation on July 20, 2021. **(8th Cir. App.153, at 170:16-21, 172:7-11).**

any criminal history for Mr. Anderson, correct?

A. Correct.[4]

The "Triple I" report to which Whelan was referring to was not ordered by her until March of 2014 – more than a month after she had charged Henry H. Howe with AA Felony Conspiracy to Commit Murder. Whelan then created her own chart containing Steven Harold Anderson's "Criminal History" from the "Triple I" report information, and Ms. Whelan disclosed that criminal history to Mr. Howe's defense counsel in the State of North Dakota v. Henry H. Howe case.[5]

This "Criminal History" prepared by Whelan about Steven Harold Anderson disclosed many more felony convictions -- a majority of which were Rule 609 "dishonesty and false statement" convictions.[6]

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[4] Transcript of Deposition of Barbara L. Whelan, reported in the instant litigation on July 20, 2021**. (8th Cir. App.153, at 170:16-21, 172:7-11).**

[5] Transcript of Deposition of Barbara L. Whelan, reported in the instant litigation on July 20, 2021. **(8th Cir. App. 152-153, at 169:7-172:5).**

[6] "Criminal History" for Steven Harold Anderson, prepared by Walsh County State's Attorney Barbara L. Whelan, in March of 2014. (**8th Cir. App. 189-194, at 1-6). Copy of this document is included at Appendix F.**

See, also, Rule 609 of the Federal Rules of Evidence, which provides, in pertinent part, as follows:

Among the many prior offenses of Steven Harold Anderson's listed in this "Criminal History" document prepared by Barbara L. Whelan are felony offenses reported from Becker County, Minnesota, and Sarpy County, Nebraska – jurisdictions in which Steven Harold Anderson had previously made false claims about murder for hire" plots -- strikingly similar to the claim which Steven Harold Anderson fabricated about Henry Howe in the instant case.

> **Rule 609 Impeachment by Evidence of a Criminal Conviction**
>
> (a) IN GENERAL. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction: …
>
> (2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.

Rule 609 of the North Dakota Rules of Evidence – which would have been applicable to the Respondents in this case – provides, in pertinent part, as follows:

> **RULE 609. IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION**
>
> **(a) In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction: …
>
> (2) for any crime regardless of the punishment, the evidence must be admitted if the elements of the crime required proving, or the witness's admitting, a dishonest act or false statement.

The first such example occurred in 2003 in Becker County, Minnesota, where Steven Harold Anderson — who was housed at the Becker County Jail — had approached authorities about that which Anderson claimed was a "murder for hire plot".[7]

As he did in the instant case, Anderson had served as an "confidential informant, relative to that alleged scheme.

In fact, Steven Harold Anderson had made up essentially the same stories as he did regarding attorney Petitioner Henry H. Howe in the instant case. In this Becker County, Minnesota, case, Anderson (referred to as "the Confidential Informant") told of scenarios supposedly laid out by other persons he was accusing which "included having the bodies dumped in Red Lake, having dead bodies thrown into bogs and eaten by crayfish, and having dead bodies thrown into hog pens and eaten by pigs."[8] Not coincidentally, Steven Harold Anderson even made up stories about a criminal defense attorney in the Becker County case being involved in a murder for hire plot involved in that jurisdiction. As one portion of the investigative report stated:

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[7] Transcript of Deposition of Private Investigator Charles "Chuck" Anderson, of Moorhead, Minnesota, reported in this litigation on June 23, 2021. **(8th Cir. App. 351-352, 261-272, 274).**

[8] Transcript of Deposition of Private Investigator Charles "Chuck" Anderson, of Moorhead, Minnesota, reported June 23, 2021. **(8th Cir. App. 281).**

> The Confidential Informant (Steven Harold Anderson) explained that (Les) ANDERSON indicated to the Confidential Informant that (Les) ANDERSON had been engaging in conversation concerning the death of the Confidential Informant with his attorney, SIMON GEORGE. (Les) ANDERSON indicated that GEORGE had advised (Les) ANDERSON that the crayfish would eat up the remains if the body were dumped into a bog.[9] . . .
>
> The Confidential Informant (Steven Harold Anderson) advised S/A Baumann that LES ANDERSON had made arrangements to bond out in order to meet with the "hit man" and make the necessary arrangements with the "Hit Man". The Confidential Informant explained that LES ANDERSON advised the Confidential Informant that ANDERSON had been instructed not to bond out by his attorney. The Confidential Informant added that ANDERSON'S attorney, SIMON GEORGE, may be the individual who meets with the "hit man" to provide the requested documentation and the funds for the "hit".[10] (*Capitalization in original text*).

In the end, Steven Harold Anderson's allegations in Becker County, Minnesota, about an a

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[9] *Id.*

[10] Transcript of Deposition of Private Investigator Charles "Chuck" Anderson, of Moorhead, Minnesota, reported in this litigation on June 23, 2021. **(8th Cir. App. 300).**

"murder for hire" plot were found to be completely false. *Id.* In correspondence dated May 28, 2003, declining prosecution in that case, Becker County Attorney Joseph A. Evans stated as follows:

> May 28, 2003
>
> Re: Murder for Hire Investigation
>
> Dear Special Agent Baumann:
>
> I have reviewed the investigative file you presented to me in connection with the above matter. I have also reviewed your report dated May 12, 2003, relative to your conversation with Kevin Heinonen. After careful review, I am of the opinion that there is insufficient evidence to bring criminal charges in this case. As you pointed out in your letter to me dated April 24, 2003, Steve Anderson appears to have led and/or dominated the conversations and seemingly forced the initiation of the relevant conversations upon (Lesley Todd) Anderson and Heinonen.
>
> More importantly, in order to sustain a conviction for conspiracy, an overt act must be proven. In this case, I do not believe that there is any overt act in furtherance of the conspiracy. Therefore, I do not believe that criminal charges are warranted.[11]

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[11] Transcript of Deposition of Private Investigator Charles "Chuck" Anderson, of Moorhead, Minnesota, reported in this litigation on June 23, 2021. **(8th Cir. App. 274, 351-352).**

In the instant case, BCI Special Agent (Defendant) Steve Gilpin observed in a report regarding the January 24, 2014 "wire" recorded conversation involving Henry Howe, Howe's client Paul Lysengen and Steven Harold Anderson (CI-14-2995) that, "(d)uring the meeting with HENRY HOWE, the CI (Steven Harold Anderson) did a_lot of the speaking to HENRY HOWE", just as the Becker County Attorney observed in the correspondence above that, "Steven Anderson appears to have lead and/or dominated the conversations and seemingly forced the initiation of the relevant conversations" in the instant case,." (*Bold, underlined emphasis added*).[12]

Steven Harold Anderson "surfaced" within the context of State v. Howe, *supra*, during the pendency of two felony theft cases in which Anderson was a defendant.[13] At his sentencing hearing in the Grand Forks County District Court case on November 10, 2014, on Class B Felony Theft charges, Assistant State's Attorney Meredith Larson represented as follows to the sentencing judge, who responded accordingly:

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[12] *Id.*

[13] See, the, Register of Actions and Criminal Judgment in *State of North Dakota v. Steven Harold Anderson*, Grand Forks County Case No. 18-2013-CR-00632 and Register of Actions and Criminal Judgment in *State of North Dakota v. Steven Harold Anderson*, Cass County Case No. 09-2013-CR-01127**. (8th Cir. App. 64-67, 68-71).**

MS. LARSON: (U)pon review of the file and speaking with (Assistant State's Attorney Hayley) Wamstad, it's very apparent to the State – and I assume the Court has knowledge of this – that Mr. Anderson is a career con artist.

On the face, this case could maybe seem like just a very large bad check case. However, when you review his record, he has been committing offenses of this nature since the 90s, and, really nothing has deterred him, including substantial jail and prison sentences.

Our community is not safe with Mr. Anderson here. He swindles people anytime he has an opportunity to do so. And in the PSI [Presentence Investigation Report], he really does not accept responsibility for doing this intentionally. He has an excuse for it.

The last conviction and sentence he received in Minnesota he actually had to be transferred from that correctional facility, because he was manipulating so many of their staff that they had to remove him from there.

> So, Mr. Anderson is a big problem to our community and our state. And we believe that the recommendation that I provided to the Court is appropriate, given his history …
>
> THE COURT: Ms. Larson misspoke just a little bit in her presentation, Mr. Anderson. She said you'd been engaged in this type of misconduct since the 90s. Theft, theft, theft, and so forth – that actually goes back to 1972.
>
> STEVEN ANDERSON: Correct, Your Honor.[14]

Put simply, Steven Harold Anderson was blindly relied upon, and his false information was recklessly used, by all four of the Respondents to provide the central factual basis for attempted "probable cause" to charge Petitioner attorney Henry Howe — who had no criminal record[15] — with AA Felony Conspiracy to Commit Murder.

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[14] Transcript of Sentencing Hearing reported November 10, 2014, in *State of North Dakota v. Steven Harold Anderson*, Grand Forks County Case No. 18-2013-CR-00632. **(8th Cir. App. 474-475, 477-478, at 4:13-5:10, 7:22-8:2).**

[15] Transcript of Proceedings, Bond Hearing, January 30, 2014, *State of North Dakota v. Henry Howe*, Walsh County Case No. 50-2014-CR-44. **(8th Cir. App. 19, at 9:3-4).**

B. Steven Harold Anderson provided false and misleading information which related to Henry H. Howe – and literally "drove" all of the content of the Arrest Warrant Affidavit which mentioned Mr. Howe – only two (2) of the thirteen (13) paragraphs of the document.

Of the eighteen (18) paragraphs in TFO Delisia Glaze's Arrest Warrant Affidavit, only two (2) paragraphs contain allegations against attorney Henry H. Howe – Paragraph 12 and Paragraph 13.[16]

Task Force Officer (TFO) Glaze acknowledged in her deposition testimony in this case that all of the content of Paragraph 12 came from hearsay narrative exclusively provided by Steven Harold Anderson -- "off-wire" and unrecorded in any manner – being TFO Glaze's "paraphrase" of what Steven Harold Anderson allegedly said to her.[17]

TFO Glaze also acknowledged in her deposition testimony that the content of Paragraph 13 of the Arrest Warrant Affidavit was her paraphrase of the

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[16] "Affidavit of Delicia Glaze in Support of Felony Complaint/Information" filed January 30, 2014, in *State of North Dakota v. Henry H. Howe*, Walsh County File No. 50-2014-CR-44, *State of North Dakota v. Paul Francis Lysengen*, File No. 50-2014-CR-45, and *State of North Dakota v. Wesley Wayne Smith*, File No. 50-2014-CR-46. **(8th Cir. App. 586-592, at 1-7). Copy of this document is included at Appendix G.**

[17] Transcript of Deposition of Delicia Glaze. **(8th Cir. App. 497, at 51:8-11).**

"wire" recording of the January 24, 2014, meeting at the Howe's Law Office. The only qualification to TFO Glaze's acknowledgment was the limited language of Paragraph 13 included within quotation marks which are direct quotes taken by TFO Glaze from the recording.[18] See, Paragraphs 12 and 13 in "Affidavit of Delicia Glaze in Support of Felony Complaint/Information" filed on January 30, 2014, in *State of North Dakota v. Henry H. Howe.*[19]

Under a straightforward reading of the relevant excerpts from the "wire" recording of the January 24, 2014, meeting at the Howe Law Office – both audio recording itself and the complete transcript of that recording **[8th Cir. App. 553-584, at 1-32]** presented under Rule 1006 Fed. R. Evid. as well as the overall context and surrounding circumstances — there was nothing unusual about Henry Howe's hypothetical comments about what happens in a case when a key witness does not appear for trial.

Respondent Barbara L. Whelan was engaged in the following exchange with Petitioner's counsel at her deposition in this case:

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[18] Transcript of Deposition of Delicia Glaze. **(8th Cir. App. 497, at 51:16-52:20).**

[19] "Affidavit of Delicia Glaze in Support of Felony Complaint/Information" filed January 30, 2014, in *State of North Dakota v. Henry H. Howe*, Walsh County File No. 50-2014-CR-44, *State of North Dakota v. Paul Francis Lysengen*, File No. 50-2014-CR-45, and *State of North Dakota v. Wesley Wayne Smith*, File No. 50-2014-CR-46. **(8th Cir. App. 590-591, at 5-6.) Copy of this document is included at Appendix G.**

Q. As a lawyer, as a prosecutor, you know that if certain witnesses don't show up, you don't have a case?

A. Do I know that as a lawyer? Yes, I do.

Q. A lawyer, whether you be a defense lawyer earlier in your career or a prosecutor later in your career, correct?

A. There are certainly times that if you have a witness that does not show up, that's a problem for your case . . .

Q. But let's – if that witness, not due to any nefarious plots, decides not to appear . . . then you have a weakened case or no case, right?

A. You could.[20]

Respondent State's Attorney Barbara L. Whelan herself never had a transcript made of the "wire" audio recording of this January 24, 2014, meeting during her participation in the investigation of Henry Howe — before she charged Howe with AA Felony Conspiracy to Commit Murder – or afterwards.[21]

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[20] Transcript of Deposition of Barbara L. Whelan. **(8th Cir. App. 165, at 219:16-25, 220:16-22).**

[21] Transcript of Deposition of Barbara L. Whelan. **(8th Cir. App. 157, at 186:3-6).**

Neither did Respondent Whelan ever ask TFO Glaze "whether Mr. Anderson was a credible informant".[22]

All this, despite the fact that Ms. Whelan was working with TFO Glaze on the arrest warrant affidavit and in performing that task, was meeting with Ms. Glaze, "discuss(ing) the case", "discuss(ing) the facts", and ultimately producing the arrest warrant affidavit in Ms. Whelan's office.[23]

TFO Glaze testified at her deposition in this case that from January 14, 2014, when she first met Steven Harold Anderson, through January 30, 2014, when she filed her "Affidavit in Support of the Felony Complaint/Information" in which Henry Howe was charged with AA Felony Conspiracy to Commit Murder, Glaze was in regular contact with Respondent Walsh County State's Attorney Barbara L. Whelan, maintaining a regular dialogue with Ms. Whelan about the case.[24]

In contrast, the Minnesota prosecution recognized Steven Harold Anderson as "appears to have led and/or dominated the conversations and seemingly forced the initiation of the relevant conversations", the respondents chose to proceed to

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[22] *Id.,* Transcript of Deposition of Barbara L. Whelan**. (8th Cir. App. 145, at 139:7-11).**

[23] *Id.*, Transcript of Deposition of Barbara L. Whelan, reported in the instant litigation on July 20, 2021. **(8th Cir. App. 144-145, at 137:8-139:6).**

[24] Transcript of Deposition of Delicia Glaze. **(8th Cir. App. 493, at 34:7-10, 34:22-35:7, 36:6-24).**

prosecute the petitioner, attorney Henry H. Howe. See, Footnote 11, *supra*.

REASONS FOR GRANTING THE PETITION

A. Respondents' omission from the Arrest Warrant Affidavit of any mention of informant Steven Harold Anderson's record of Rule 609 "dishonesty and false statement" convictions — substantial adverse information about informant Anderson's credibility which was actually known to the Respondents -- is sufficient alone to render the affidavit probable cause-deficient because this information was crucial to the judicial officer's findings of probable cause or the lack thereof.

In Steven Harold Anderson's January 24, 2014, BCI "Personal History Report" signed by Anderson on a form filled out by GNTF Officer Delicia Glaze in her handwriting, the following "Prior Criminal Record" of Steven Harold Anderson is identified: Aggravated Forgery, Bigamy, Check Forgery, Theft-False Representation, Theft By Swindle, and "Theft More Than $35,000.[25]

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[25] Certainly, the crimes of "Theft by Swindle" and "Theft by False Representation" are crimes which involve "dishonesty and false statement" for the purposes of Rule 609 of either the North Dakota Rules of Evidence or Rule 609 of the Federal Rules of Evidence. Additionally, it is clear that "passing a bad check" comes within the purview of Rule 609 because it "involves both dishonesty and a false statement." *Kartman v. Markle*, 2015 U.S. Dist. LEXIS 83857; 2015 WL 3952639 (D.W.Va. June 29, 2015);

It should be noted that Rule 609 of the North Dakota Rules of Evidence — which is similar to Rule 609 of the Federal Rules of Evidence — provides, in pertinent part, as follows:

Rule 609: Impeachment by Evidence of Criminal Conviction:

> **(a)** In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction: …
>
> (2) for any crime regardless of the punishment, the evidence must be admitted if the elements of the crime required proving, or the witness's admitting, a dishonest act or false statement. *(Bold, underlined emphasis added)*

As is undisputed in this case, although confidential informant Steven Harold Anderson had a dominant role in providing the false information which was incorporated into Paragraphs 12 and 13 of

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citing *United States v. Collier*, 527 F.3d 695, 700 (8th Cir. 2008); *United States v. Mucci*, 630 F.2d 737, 743 (10th Cir. 1980); *Wagner v. Firestone Tire & Rubber Co.*, 890 F.2d 652, 655 n.3 (3d Cir. 1989) (noting that prior convictions for passing bad checks involved dishonest activity, and were thus admissible under Rule 609(a)(2) for impeachment purposes); *see United States v. Rogers*, 853 F.2d 249, 252 (4th Cir. 1988) (finding that evidence of a conviction for passing a bad check under North Carolina law was admissible under Rule 609, when the statutes used "with intent to cheat and defraud another" language and maintained a knowledge of insufficient funds element).

the Delicia Glaze Arrest Warrant Affidavit, and Glaze and the other three Defendants who "worked together" with Glaze knew — as of January 24, 2014 – the day they signed Anderson up as "CI-14-2995" — of a significant number of Anderson's previous crimes involving "dishonesty and false statement", no mention is made in the Glaze Affidavit about "CI-14-2995's (Steven H. Anderson) history of crimes involving dishonesty and false statement – so the judicial officer issuing the Arrest Warrant in this case had no knowledge of Steven Harold Anderson's substantial history of convictions for crimes of this nature.[26]

The Seventh Circuit applied the well-established test of *Illinois v. Gates*, 462 U.S. 213 1983) within the context of a law enforcement officer's omission from a probable cause affidavit of substantial adverse information about an informant's credibility in *United States v. Glover*, 755 F.3d 811, 820 (7th Cir. 2014), as that Circuit Court held as follows:

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[26] "Personal History Report, Office of Attorney General, Bureau of Criminal Investigation (BCI). Informant Submission.", this document was used with confidential informant Steven Harold Anderson, dated and signed by Task Force Officer (TFO) Delicia Glaze on January 24, 2014, and by BCI Special Agent (and GFNTF member) Steve Gilpin on January 24, 2014, and later by Gilpin again on February 3, 2014. **(8th Cir. App. 56-57).** See, also, **[8th Cir. App 189-194, at 1-6]**, "Criminal History" for Steven Harold Anderson, prepared by Walsh County State's Attorney Barbara L. Whelan, in March of 2014. **Copy of this document is included at Appendix E.**

> The district court did not show that it considered whether the credibility omissions themselves, even in the absence of more direct evidence of the officer's state of mind, provide sufficient circumstantial evidence to support a reasonable and thus permissible inference of reckless disregard for the truth. We hold that they do. Although we credit the officer for having Doe appear at the probable cause hearing, that fact does not undermine the inference of recklessness arising from the withheld information. To hold otherwise would place a substantial burden on magistrates to double-check the availability or lack of all relevant information every time an informant appears. An officer's omission from the probable cause affidavit of known and substantial adverse information about the informant's credibility is sufficient to support a reasonable inference of recklessness, requiring that Glover's request for a *Franks* hearing be granted.

755 F.3d at 820.

It should be emphasized that in the instant case, the "known and substantial adverse information" was of a specific type – Steven Harold Anderson's prior record of convictions – including felony convictions – for "Rule 609 crimes" – those involving "dishonesty and false statement" which under that rule requires for actual impeachment of a

witness's credibility of any witness in civil or criminal proceedings.[27]

Furthermore, the sole and exclusive role which the Defendants permitted informant Steven Harold Anderson (CI-14-2995) to play in the criminal charging of Henry H. Howe in the underlying criminal case cannot be overestimated.

Gilpin stated that the sequence of events that led to the charging of Henry H. Howe with AA Felony Conspiracy to Commit Murder began on January 14, 2014, as "(t)hat's when it was first detected."[28] At his deposition in this case, Gilpin was involved in the following exchange with Petitioner's counsel:

> **Q.** It's fair to say that this investigation, or at least the investigation as it related to Mr. Howe, was initiated as a result of information that came from to the task

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[27] The special place that the law of Rule 609 prescribes for actual impeachment of a witness's prior record of convictions for the particular crimes which involve "dishonesty and false statement" alone distinguishes the facts of the instant case from the line of previous Eighth Circuit decisions in which the Court has stated that the failure to include an informant's garden variety criminal history does not of itself cause the affidavit to have been presented with reckless disregard for the truth, where the informant's information has been "partially corroborated or his general credibility is otherwise not significant to the probable cause inquiry." See, *e.g., United States v. Carnahan*, 684 F. 3d 732, 735 (8th Cir. 2012).

[28] *Id.,* Transcript of Deposition of Steven Gilpin. **(8th Cir. App. 84, at 42:20-43:5, 44:11-17).**

> force by a, from a gentleman named Steven Harold Anderson?
>
> **A.** The initial information did.[29]

TFO Glaze also testified that Steven Harold Anderson, "was my only CI (confidential informant) in this … case that dealt with conspiracy to commit murder, so I don't know if I would call him my key one, but he was the only one."[30]

In her deposition testimony given in this case, TFO Glaze was unsure if she had ordered or received any criminal record background check relating to Steven Harold Anderson. Glaze further stated that she did not see any criminal background check report relating to Steven Harold Anderson in her file that she reviewed in preparation for her deposition.[31] TFO Glaze acknowledged at her deposition that she was aware of Steven Harold Anderson's pending felony charges:

> **Q.** All right. And you were aware that Mr. Anderson was, at least he was charged with in Grand Forks County, related to, essentially, theft and basically scamming?

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[29] *Id.,* Transcript of Deposition of Steven Gilpin. **(8th Cir. App. 81, at 33:22-24).**

[30] Transcript of Deposition of Delicia Glaze. **(8th Cir. App. 496, at 47:4-16).**

[31] *Id.*, Transcript of Deposition of Delicia Glaze. **(8th Cir. App. 497, 498-499, at 52:21-53:16, 54:21-58:16).**

A. Yes.

There existed no other evidence of which the Respondents were in possession — and certainly none was included in the Delicia Glaze Arrest Warrant Affidavit — which served to specifically corroborate informant Steven Harold Anderson's accusatory information concerning Henry H. Howe — information which was included in only two (2) of the eighteen (18) paragraphs of the Arrest Warrant Affidavit.[32]

However, the appellate court below incorrectly concluded that, "a corrected affidavit disclosing Anderson's prior fraud-related crimes of which Glaze was aware still would have provided the issuing judicial officer probable cause to issue the arrest

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[32] The Respondents claim that the information contained in their Arrest Warrant was sufficiently reliable under a "totality of the circumstances" analysis. Specifically, the Respondents assert that because Anderson had provided law enforcement with accurate information about other events that had nothing to do with Howe, that this automatically gave Anderson sufficient credibility to be reasonably believed relative to the stories he was telling about Howe. See, *e.g.,* the Eighth Circuit Brief of Appellees Delicia Glaze and Barbara L. Whelan at pages 30-31; and Brief of Appellees Steven Gilpin and Scott Kraft, at pages 29-33. The Respondents also claim that because they had personally met and interviewed Steven Harold Anderson on January 14, 2014, this fact also gave them justification to believe and accept at face value Anderson's stories about Mr. Howe.

Notably, Minnesota prosecutor properly recognized Steven Harold Anderson for who he was and documented the fact that Anderson "appears to have led and/or dominated the conversations and seemingly forced the initiation of the relevant conversations". See, Footnote 11, *supra*.

warrant." *Howe v. Gilpin*, 65 F.4th 975, 980 (8th Cir. 2023).

While the Eighth Circuit observed that, "(o)mitted information must be clearly critical to the finding of probable cause", the Court erroneously failed to recognize its own Eighth Circuit precedent of *United States v. Conant*, 799 F.3d 1195, 1200 (8th Cir. 2015), where the Court held that, "information about the informant's credibility or potential bias is crucial".

The panel's corresponding conclusion that "information about (Steven Harold Anderson's) credibility was thus "immaterial" was thus incorrect. *Howe v. Gilpin*, *supra*, 65 F.4th at 980.

Furthermore, the practical significance of the prosecution's omission of any information concerning Steven Harold Anderson's lack of credibility was borne out in this case when Respondent Barbara L. Whelan filed a motion to dismiss all charges against attorney Henry H. Howe the very day before a preliminary hearing was scheduled to take place.[33]

Tragically, respondent Whelan's dismissal of the wrongfully commenced prosecution of Mr. Howe came too late. Immediately after his arrest, attorney Henry Howe was suspended from the practice of law, with his entire caseload being transferred to a trustee by an *ex parte* state court order the same day, which

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[33] See, "Motion to Dismiss", filed May 8, 2014, in *State of North Dakota v. Henry Howe*. **(8th Cir. App. 42, 43-45, at 1, 1-3.)**

eviscerated Howe's legal practice and permanently damaged his professional reputation and personal life.

Confidential Informant Steven Harold Anderson was "activated" in the criminal investigation of attorney Henry H. Howe in connection with an underlying case by Respondent Special Agent Steve Gilpin, of the North Dakota Bureau of Criminal Investigation (BCI), who served as "Coordinator" of the Grand Forks Narcotics Task Force (GFNTF).[34]

Gilpin explained at his deposition that the sequence of events that led to the charging of Henry Howe with AA Felony Conspiracy to Commit Murder began on January 14, 2014, as "(t)hat's when it was first detected."[35] At his deposition in this case, Gilpin was involved in the following exchange with Petitioner's counsel:

> **Q.** It's fair to say that this investigation, or at least the investigation as it related to Mr. Howe, was initiated as a result of information that came from to the task force by a, from a gentleman named Steven Harold Anderson?

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[34] Transcript of Deposition of Steven Gilpin. **(8th Cir. App. 84, at 42:20- 43:5, 44:11-17).**

[35] Transcript of Deposition of Steven Gilpin. **(8th Cir. App. 84, at 42:20-43:5, 44:11-17).**

A. The initial information did.[36]

Altogether unmentioned by the Eighth Circuit in its decision in this case is *United States v. Conant*, 799 F.3d 1195, 1200 (8th Cir. 2015), wherein the Eighth Circuit itself emphasized as follows:

> "A search warrant may be invalid if the issuing judge's probable cause determination was based on an affidavit containing false or omitted statements made knowingly and intentionally or with reckless disregard for the truth." *United States v. Reinholz*, 245 F.3d 765, 774 (8th Cir. 2001), *citing* Franks v. Delaware, 438 U.S. 154, 171, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978) …
>
> "Recklessness, however, may be inferred from the fact of omission of information from an affidavit . . . when the material omitted would have been clearly critical to the finding of probable cause." *Id.* "In general, no one factor necessarily dooms a search warrant." *United States v. Glover*, 755 F.3d 811, 816 (7th Cir. 2014). "Cases that test the sufficiency of affidavits for warrants obtained are highly fact specific, but information about the informant's credibility or potential bias is crucial." *Id.*

799 F.3d at 1200.

In *United States v. Glover*, 755 F.3d 811, 816 (7th Cir. 2014), the case cited in *United States v. Conant*, the Seventh Circuit applied the familiar

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[36] Transcript of Deposition of Steven Gilpin. **(8th Cir. App. 81, at 33:22-24).**

"totality-of-the-circumstances" test of *Illinois v. Gates*, 462 U.S. 213, 238-239 (1983), within the context of a law enforcement officer's omission from a probable cause affidavit of substantial adverse information about an informant's credibility, with that Circuit Court stating:

> The district court did not show that it considered whether the credibility omissions themselves, even in the absence of more direct evidence of the officer's state of mind, provide sufficient circumstantial evidence to support a reasonable and thus permissible inference of reckless disregard for the truth. We hold that they do. Although we credit the officer for having Doe appear at the probable cause hearing, that fact does not undermine the inference of recklessness arising from the withheld information. To hold otherwise would place a substantial burden on magistrates to double-check the availability or lack of all relevant information every time an informant appears. An officer's omission from the probable cause affidavit of known and substantial adverse information about the informant's credibility is sufficient to support a reasonable inference of recklessness, requiring that Glover's request for a *Franks* hearing be granted.

755 F.3d at 820.

The Defendants in the instant case failed to act reasonably to inform the judicial officer of material facts regarding the credibility of Steven Harold

Anderson that the Defendants should have reasonably known would negate probable cause. In *United States v. Lull*, 824 F.3d 109, 117-118 (4th Cir. 2016), a case citing the Eighth Circuit decision in *United States v. Jacobs*, 986 F.2d 1231, 1234-1235 (8th Cir. 1993), the appellate court explained as follows:

> "One way of establishing reckless disregard is by proffering 'evidence that a police officer 'failed to inform the judicial officer of facts [he] knew would negate probable cause'." *Miller*, 475 F.3d at 627 (alteration in original) (citations omitted); *see also*, *United States v. Jacobs*, 986 F.2d 1231, 1234-1235 (8th Cir. 1993) ("[T]he omission occurred at least with reckless disregard of its effect upon the affidavit… Any reasonable person would have known that this was the kind of thing the judge would wish to know."). The relevance of the omission thus comes into play: the significance — or insignificance — of a particular omission to the determination of probable cause may inform our conclusion regarding the agent's intent …
>
> We first consider the effect that the omitted information had on the reliability of the informant's information, and determine that the informant's demonstrated unreliability undermined his credibility and the veracity of his statements presented in the warrant application. Because the magistrate did not have the benefit of the omitted information concerning the informant's reliability, the informant's statements were not properly considered as a basis for probable cause. When

> these statements are excluded, we conclude that there remains insufficient information from which to find probable cause. Therefore, we conclude that the omitted information is indeed "material" under Franks. …When the information provided by the informant is removed from the affidavit, little remains.

824 F.3d at 117-118.

A court considers the totality of the circumstances when determining whether an informant's statements provide probable cause, and the credibility and reliability of the informant are important – even crucial -- factors to be considered" in this analysis. *United States v. Conant*, 799 F.3d 1195, 1200 (8th Cir. 2015) ["(I)nformation about the informant's credibility or potential bias is crucial."]; *United States v. Mays*, 993 F.3d 607, 615 (8th Cir. 2021) (citing *United States v. Lewis*, 738 F.2d 916, 922 (8th Cir. 1984) and *United States v. LaMorie*, 100 F.3d 547, 553 (8th Cir. 1996).

Where "information about the informant's credibility or potential bias is crucial"[37], the Appellees' omission of information about Confidential Informant Steven Harold Anderson's credibility – known to them by at least January 24, 2014 (six days before TFO Glaze executed her Arrest Warrant on January 30, 2014) — but not precented to the judicial officer who issued the warrant to arrest Henry H. Howe — a *Franks* violation occurred.

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[37] *United States v. Conant*, 799 F.3d 1195, 1200 (8th Cir. 2015).

B. The qualified immunity rule in the decision of the Eighth Circuit below in this 42 U.S.C. § 1983 federal civil rights action that a law enforcement officer "does not 'violate a clearly established constitutional right by omitting information from a warrant application that he does not actually know, even if the reason is his own reckless investigation" is an oppressive and inequitable rule which stands in conflict with the decisional law of at least one other circuit.[38]

In its decision below, the Eighth Circuit held, relative to the availability of the defense of qualified immunity for a law enforcement defendant in a 42

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[38] Currently, there is a conflict in decisional authority between at least two Circuit Courts, relative to this issue. See, *Howe v. Gilpin, et al.*, 65 F.4th 975, 981 (8th Cir. 2023) [(this case) "An agent does not 'violate a clearly established constitutional right by omitting information from a warrant application that he does not actually know, even if the reason is his own reckless investigation." *Hartman v. Bowles,* 39 F.4th 544, 545 (8th Cir. 2022)."]. Compare *United States v. Tanguay*, 787 F.3d 44, 53 (1st Cir. 2015) ["All that is required to trigger an officer's duty of further inquiry is her knowledge of an obvious and unexplored reason to doubt the truthfulness of the allegations. (*citation omitted*). When confronted with such a red flag, the officer should look into the matter even if she does not believe that what she will discover is likely to vitiate probable cause. After all, the officer is the only party who, in this context, has the tools to undertake any meaningful investigative work. The trigger for further investigation may function even when the officer's obvious reason only serves to diminish her confidence to some modest degree."].

U.S.C. §1983 federal civil rights action that, "(a)n agent does not 'violate a clearly established constitutional right by omitting information from a warrant application that he does not actually know, even if the reason is his own reckless investigation." *Hartman v. Bowles,* 39 F.4th 544, 545 (8th Cir. 2022)." *Howe v. Gilpin, et al.*, 65 F.4th 975, 981 (8th Cir. 2023) [(this case)].

i. The *Franks* doctrine[39] surely is implicated when a law enforcement officer is obliged to inquire further in order to dispel serious doubts about either the credibility of an informant upon whom that officer relies on or the veracity of the allegations underlying the attempted showing of probable cause.

The factual record of this case demonstrates that the Respondents had multiple documented "red flags" before them about key witness Steven H. Anderson's credibility in the form of multiple Rule 609 convictions for offenses involving "dishonesty and false statement" — Rule 609 convictions of which the respondents were actually aware.

Failing to even consider the significance of this "red flag" evidence relating to Steven Harold Anderson, neither the District Court nor the Eighth Circuit recognized a duty that a law enforcement

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[39] See, *Franks v. Delaware*, 438 U.S. 154, 171, 98 S. Ct. 2674, 57 L. Ed. 2d 667, 1978, as cited by the Eight Circuit in *Odom v. Kaizer*, 638 Fed. Appx. 553, 2016 U.S. App. LEXIS 4787, 2016 WL 1040434, *554 (8th Cir. March 16, 2016).

officer has to inquire further in order to dispel (objectively taken) serious doubts about either the credibility of an informant or the veracity of the allegations underlying the attempted showing of probable cause.

This was an error. In *United States v. Tanguay*, 787 F.3d 44, 46 & 51-54 (1st Cir. 2015), first explained:

> It is common ground that a police officer seeking to obtain a search warrant should include in the affidavit accompanying the warrant application any facts known to her that are material to the existence vel non of probable cause. See United States v. Stewart, 337 F.3d 103, 107 (1st Cir.), as amended (Oct. 14, 2003). Under some limited circumstances, however, the officer's duty may be broader: she may be obliged to inquire further in order to dispel serious doubts about either the credibility of an informant upon whom she relies or the veracity of the allegations underlying the attempted showing of probable cause …
>
> Material omissions from a warrant affidavit also may furnish the basis for a successful Franks challenge. See United States v. Hadfield, 918 F.2d 987, 992 (1st Cir. 1990) …
>
> **The Duty of Further Inquiry**
>
> The appellant's second claim of error raises a question of law, which engenders de novo review. See United States v. Garcia-Hernandez, 659 F.3d 108, 111 (1st Cir. 2011). This claim is premised on Nolet's omission of information not

actually known to her at the time that she prepared the warrant application, but potentially available had she inquired further. The appellant argues that Nolet was given ample reason to doubt Wiggin's veracity and that her failure to undertake a further inquiry evinced a reckless disregard for the truth. Had she undertaken such a further inquiry, his argument goes, she would have learned about a critically important fact — Wiggin's false report conviction — that would have eviscerated the showing of probable cause. . .

We have previously held that a material omission from a warrant affidavit, no less than the inclusion of a materially false statement, may furnish the basis for a successful Franks challenge when that omission was made with similar recklessness. See, e.g., Hadfield, 918 F.2d at 992 …

(R)eckless disregard for the truth may be proven either by evidence that "the affiant 'in fact entertained serious doubts as to the truth' of the allegations" contained in the affidavit, or by inference "'from circumstances evincing obvious reasons to doubt the veracity of the allegations.' "298 F.3d at 78 (quoting United States v. Williams, 737 F.2d 594, 602 (7th Cir. 1984)) …

All that is required to trigger an officer's duty of further inquiry is her knowledge of an obvious and unexplored reason to doubt the truthfulness of the allegations. See Ranney, 298

> F.3d at 78. When confronted with such a red flag, the officer should look into the matter even if she does not believe that what she will discover is likely to vitiate probable cause. After all, the officer is the only party who, in this context, has the tools to undertake any meaningful investigative work.
>
> The trigger for further investigation may function even when the officer's obvious reason only serves to diminish her confidence to some modest degree. Pieces of evidence should not be assessed in isolation: "the whole sometimes can exceed the sum of the parts, and the appropriate test focuses on the totality of the circumstances." Mariko v. Holder, 632 F.3d 1, 6-7 (1st Cir. 2011). (*Bold emphasis in original*).

787 F.3d at 51-54.

As is documented at length above, confidential informant Steven Harold Anderson had a dominant role in providing the information which was incorporated into Paragraphs 12 and 13 of Delicia Glaze's Arrest Warrant Affidavit, and Glaze and the other three Respondents who "worked together" with Glaze knew – as of January 24, 2014 – the day they signed Anderson up as "CI-14-2995" — of a significant number of Anderson's previous crimes which involved "dishonesty and false statement".[40]

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[40] "Personal History Report, Office of Attorney General, Bureau of Criminal Investigation (BCI). Informant Submission", this document was used with confidential informant Steven Harold Anderson, dated and signed by Task Force Officer (TFO) Delicia Glaze on January 24, 2014, and by BCI Special Agent (and

See, also, **8th Cir. App. 189-194, at 1-6**, "Criminal History" for Steven Harold Anderson, prepared by Walsh County State's Attorney Barbara L. Whelan, in March of 2014. **Copy of this document is included at Appendix F.**

This information must be considered within the context of Rule 609 of the Federal Rules of Evidence and the essentially identical Rule 609 of the North Dakota Rules of Evidence.[41]

Evidence Rule 609 recognizes the significance of crimes of a person's past record of crimes including proof of "a dishonest act or false statement" and the fact that triers of fact should be aware of a witness's past criminal history of such crimes when they consider sworn testimony given by such witnesses in court.

Certainly, a warrant-issuing judge deserves no less when assessing an arrest warrant and the warrant target deserves no less.

The Respondents in this case paid no attention to the clear, Rule 609-infested criminal record of informant Steven Harold Anderson – and in so doing,

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GFNTF member) Steve Gilpin on January 24, 2014, and later by Gilpin again on February 3, 2014. **(8th Cir. App. 56-57)** This document was also Exhibit 28 to the Deposition of Steve Gilpin, reported July 21, 2021. **(8th Cir. App. 73). Copy of this document is included at Appendix E.**

[41] A criminal record "does necessarily impugn one's veracity" where it "includes convictions for crimes of dishonesty." *State v. Rumney*, 867 F.2d 714, 720-721 (1st Cir. 1989).

the Respondents demonstrated a reckless disregard for the truth.

CONCLUSION

On the basis of the recitation of facts and legal authority to the Court in the instant Petition for Writ of Certiorari, it is respectfully submitted that the Supreme Court should grant Certiorari and hear this case with the two related questions set forth above.

Respectfully submitted,

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