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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 STATE OF ARIZONA,
10 Plaintiff,

No CR 2007-0743 & CR 2007-0953

11 vs

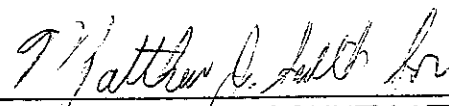
**RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE
OBTAINED IN SEARCHES OF FLDS
PROPERTY**

12 **WARREN STEED JEFFS,**
13 Defendant

14 THE STATE OF ARIZONA, by the Mohave County Attorney, hereby responds
15 opposing the Defendant's Motions to Suppress Evidence Obtained in Searches of FLDS
16 Property. As the issues raised under both cause numbers are identical, the State
17 combines both responses in this document. The State requests that the present motion
18 be denied in its entirety. Given the numerous Constitutional issues raised in the
19 defendant's motion, the State requests a page limit extension to 31 pages. This
20 response is supported by the following memorandum

21 RESPECTFULLY SUBMITTED THIS 26th DAY OF SEPTEMBER, 2008.

22 MATTHEW J. SMITH
MOHAVE COUNTY ATTORNEY

23
24 By 
25 SPECIAL DEPUTY COUNTY ATTORNEY
26 TIMOTHY P. LINNINS

1 MEMORANDUM

2 I. FACTS

3 On April 3, 2008, Texas Ranger Leslie Brooks Long ("Ranger Long"), a certified
4 peace officer employed by the Texas Department of Public Safety, presented an
5 affidavit for a search and arrest warrant¹ to be executed at the Yearning for Zion Ranch
6 ("YFZ Ranch") in Schleicher County.² The Court reviewed the affidavit, and after due
7 consideration signed a search and arrest warrant.³ A team of Texas peace officers,
8 including Ranger Long, executed warrant M-08-001-S at the YFZ Ranch beginning on
9 April 3, 2008.

10 On April 6, 2008, Ranger Long presented an affidavit for a second search
11 warrant to be executed at the YFZ Ranch.⁴ The Court reviewed the affidavit, and after
12 due consideration signed a second search warrant.⁵ A team of Texas peace officers,
13 including Ranger Long, executed warrant M-08-002-S at the YFZ Ranch beginning on
14 April 6, 2008.

15 On April 10, 2008, Ranger Long filed initial returns for both executed warrants
16 with the Court. The Court then authorized law enforcement authorities to move the
17 property seized, pursuant to the warrants, to Tom Green County for safekeeping and
18 storage.

19 _____
20 ¹ The defendant claims there is some evidence that Ranger Long may have "judge
21 shopped." This assertion is either due to ignorance of the Texas Judicial System or a
22 failure to accurately investigate and present the facts of this case to the Court. The
23 judge alluded to by the defendant was a magistrate in a limited jurisdiction court. The
24 magistrate, as is the normal practice his jurisdiction, correctly deferred to the District
25 Court Judge

26 ² Defendant's Exhibit 1.

³ Defendant's Exhibit 1.

⁴ Defendant's Exhibit 2.

⁵ Defendant's Exhibit 2.

1 **II. ARGUMENT**

2 **A. The Defendant Lacks Standing And The Issues Surrounding The Texas**
3 **Search Warrants Are Not Ripe For Review. So, The Defendant's Present Motion**
4 **To Suppress Is Not Amenable To Judicial Process.**

5 "The Constitution does not extend the 'judicial Power' to any legal question,
6 wherever and however presented, but only to those legal questions presented in
7 'Cases' and 'Controversies.'"⁶ "A claim is not 'amenable to ... the judicial process,' when
8 it is filed too early (making it unripe), when it is filed too late (making it moot) or when
9 the claimant lacks a sufficiently concrete and redressable interest in the dispute
(depriving the plaintiff of standing)."⁷

10 The defendant's case implicates two of these doctrines – ripeness and standing.
11 Accordingly, for the reasons set forth in the following paragraphs, this Court need not
12 entertain the present motion nor hear evidence and testimony concerning the Texas
13 search warrants and searches.

14 **1. The Defendant Seeks To Suppress Evidence That Is Only Relevant To**
15 **The Ongoing Investigation And Possible Charges In The Future. Thus, The**
16 **Defendant Filed His Motion Too Early – Making The Motion To Suppress**
17 **Unripe.**

18 The United States Supreme Court has explained: "The ripeness doctrine is
19 'drawn both from Article III limitations on judicial power and from prudential reasons for
20 refusing to exercise jurisdiction ...'"⁸ The doctrine serves to "avoid[] ... premature
21

22 ⁶ *Warshak v. United States*, 532 F.3d 521, 525 (6th Circ. 2008); *citing* U.S. Const. art.
23 III, § 2

24 ⁷ *Id*; *citing Steel Co v. Citizens for a Better Env't*, 523 U.S. 83, 102, 118 S.Ct. 1003,
140 L.Ed.2d 210 (1998)

25 ⁸ *National Park Hospitality Ass'n v. Department of Interior*, 538 U.S. 803, 807, 123 S.Ct.
26 2026, 2030 (2003).

1 adjudication of legal questions and to prevent courts from entangling themselves in
2 abstract debates that may turn out differently in different settings ”⁹

3 The defendant seeks suppression of evidence that is either not relevant to the
4 current charges or that the State does not intend to use in the prosecution of the
5 charges. In CR 2007-0743, the defendant faces charges for two counts of sexual
6 conduct with a minor that occurred in Colorado City, Arizona between May 1, 2002 and
7 September 15, 2002. In CR 2007-0953, the defendant faces two counts of sexual
8 conduct with a minor that occurred in Colorado City, Arizona between August 1, 2003
9 and September 30, 2003. While the State did disclose two marriage certificates from
10 the YFZ Ranch to the defense, the State does not need these documents in the present
11 cases and will not use these documents in the present cases.

12 So, the defendant’s motion rests entirely upon the State’s ongoing investigation
13 and charges that could be filed in the future. “A claim is not ripe for adjudication if it
14 rests upon ‘contingent future events that may not occur as anticipated, or indeed may
15 not occur at all.’” ¹⁰ Consequently, the relevance to the evidence defendant’s motion
16 seeks to suppress is contingent upon the State’s ability to pursue charges in another
17 case under another cause number. For these reasons, the defendant’s claim is not ripe
18 for adjudication by this Court under these cause numbers.

19 **2. The Defendant Cannot Establish Standing To Challenge The Search At**
20 **The YFZ. Accordingly, This Court Must Not Consider The Motion To**
21 **Suppress.**

22 On any motion challenging a search warrant, the Court first considers whether
23 the defendant has standing to challenge a warrant or its execution. “A defendant

24 ⁹ *Id.* at 807, 123 S.Ct. 2026.

25 ¹⁰ *Texas v. United States*, 523 U.S. 296, 300, 118 S.Ct. 1257, 1259 (1998); *See also*
26 *Winkle v City of Tucson*, 190 Ariz. 413, 949 P.2d 502 (1997).

1 cannot assert a privacy interest on behalf of someone else.”¹¹ “Indeed, a defendant
2 charged with a crime ... can only claim the benefits of the exclusionary rule if his or her
3 own Fourth Amendment rights have been violated.”¹²

4 The defendant recognizes he must establish his standing to challenge the
5 search.¹³ However, his motion fails to adequately demonstrate his standing.

6 First, as of the date of this filing, the State of Arizona has not charged the
7 defendant with any crimes arising from evidence seized during the execution of the
8 search warrants at the YFZ Ranch. This obviates standing to raise the issues the
9 defendant asserts in his motion to dismiss.¹⁴

10 Second, the defendant asserts that as the leader of the FLDS, he controls all of
11 the church structures, all property and items within the structures, and people allowed to
12 enter the church property and structures. However, this assertion of control and
13 leadership is somewhat perplexing given the defendant’s residency status and
14 statements over the last three years. From June 7, 2005 until August 28, 2006, the
15 defendant was a fugitive from justice, attempting to avoid arrest for felony charges in
16 both Arizona and Utah. He spent most of his time traveling throughout the United
17 States to “condemn” states as unsuitable for the FLDS.

18 On August 28, 2006, a Nevada State Trooper arrested the defendant near Las
19 Vegas. After his arrest, the defendant remained in custody, pending charges in
20 Washington County, Utah. The defendant’s Utah trial concluded with his conviction on
21 September 27, 2007. During his incarceration in the Washington County Jail, the
22

23 ¹¹ *United States v. Salvucci*, 448 U.S. 83, 85 (1980).

24 ¹² *Id.*

25 ¹³ Defendant’s Motion at Page 7, Ln. 6 – Page 9, Ln. 8.

26 ¹⁴ *E.g.*, *Keehn v. United States*, 2007 WL 3293316 (E.D. Cal. Nov. 6, 2007). *See also*,
United States v. Lingenfelter, 997 F.2d 632 (9th Cir. 1993).

1 defendant relinquished his leadership of the FLDS.¹⁵ After his conviction for two counts
2 of sexual assault as an accomplice, the State of Utah incarcerated the defendant in the
3 Utah Department of Corrections, where he remained until his transport and
4 incarceration at the Mohave County Jail on February 26, 2008.

5 The defendant's transient status while trying to avoid prosecution and
6 incarceration shows that he has not resided at the YFZ Ranch in over two years and left
7 the ranch for long periods of time during his time as a fugitive. Additionally, since the
8 defendant relinquished his role as leader of the FLDS while in Utah custody, he cannot
9 now assert that he was in control of the YFZ Ranch as the leader of the FLDS at the
10 time of the search on April 6, 2008. "It is settled law that one has no standing to
11 complain of a search or seizure of property he has voluntarily abandoned."¹⁶

12 Third, even if the Court finds that the defendant was the leader of the FLDS, the
13 defendant attached no documentation or proof concerning FLDS ownership of the YFZ
14 Ranch. According to Schleicher County property records, YFZ Ranch, LLC, owns the
15 YFZ Ranch, having purchased the ranch property in 2003.¹⁷ If, as the defendant
16 suggests in his motion, "[t]he FLDS maintains several places of religious worship and
17 church administration (including a temple and temple annex) on the Yearning for Zion
18 (YFZ) Ranch property,"¹⁸ then the defendant should have provided the Court with

19
20 ¹⁵ See State's Exhibit A.

21 ¹⁶ *United States v. Colbert*, 474 F.2d 174(5th Cir. 1973); *See, e. g., Abel v. United*
22 *States*, 362 U.S. 217, 240-241(1960); *Hester v. United States*, 265 U.S. 57 (1924);
23 *Parman v. United States*, 399 F.2d 559, *cert. denied* 393 U.S. 858 (1968); *Coleman v.*
24 *Maxwell*, 387 F.2d 134 (6th Cir. 1968), *cert. denied* 393 U.S. 1007 (1968), *reh. denied*
394 U.S. 912 (1968); *Feguer v. United States*, 302 F.2d 214, 248-249 (8th Cir. 1962),
cert. denied, 371 U.S. 872 (1962).

25 ¹⁷ See State's Exhibit B.

26 ¹⁸ Defendant's Motion at Page 4, Ln. 22 – Page 5, Ln. 2

1 documentation and affidavits sufficient to demonstrate that the ranch property – and
2 YFZ Ranch, LLC – were owned and controlled by the FLDS at all relevant times.¹⁹

3 Finally, even if the defendant did not relinquish leadership of the FLDS, he would
4 not have standing to raise a constitutional claim concerning the warrants or seizures
5 without showing that the FLDS has a legitimate expectation of privacy in particular
6 property, including a right in the premises searched and property taken from the
7 premises. The Fourth Amendment establishes a personal right that the individual
8 claiming to have been aggrieved by police conduct must invoke.²⁰ “Fourth Amendment
9 rights are personal rights which, like some other constitutional rights, may not be
10 vicariously asserted.”²¹

11 To support the defendant’s position that his personal Fourth Amendment rights
12 should be extended to encompass every individual person and structure at the YFZ
13 Ranch, the defendant relies on *National Association for Advancement of Colored*
14 *People v. State of Alabama ex rel Patterson*²² (*Patterson*) and *United States v.*
15 *Comprehensive Drug Testing, Inc.*²³ (*CDT*). His reliance is misplaced.

16 The *Patterson* Court addressed the issue of whether Alabama, consistent with
17 the Due Process Clause of the Fourteenth Amendment, could compel the NAACP to

18 _____
19 ¹⁹ Because a claimed aggrieved party has greater access to relevant evidence as to
20 whether he has a legitimate expectation of privacy in a place searched by police, it is
21 the claimed aggrieved party’s burden to prove facts establishing a legitimate
22 expectation of privacy, for the purpose of his challenge to a search. *Green v. State*, 971
23 S.W.2d 639, 642 (Tex. App. – Houston [14th Dist.] 1998, *pet. ref’d*); See also, *United*
24 *States v. Lingenfelter*, 997 F.2d 632 (9th Cir. 1993).

25 ²⁰ *Rakas v. Illinois*, 439 U.S. 128, 139 (1978) (noting that issue of standing involves two
26 inquiries: first, whether defendant has alleged an “injury in fact”; and second, “whether
the proponent is asserting his own legal rights and interests rather than basing his claim
for relief upon the rights of third parties”).

²¹ *Alderman v. United States*, 394 U.S. 165, 174 (1969).

²² 357 U.S. 449 (1958)

²³ 513 F.3d 1085 (9th Cir. 2008).

1 reveal to the State's Attorney General the names and addresses of all its Alabama
2 members and agents, without regard to their positions or functions in the Association
3 Although the Court found that the NAACP could assert the privacy rights of its members
4 and deny the disclosure of the information, *Patterson* is not on point with the
5 defendant's case. First, the defendant's assertion that the Court must view the search
6 in the context of the defendant's exercise of his First Amendment rights is contrary to
7 Arizona case law. In upholding the conviction of an FLDS member for sexual abuse of
8 a minor, the Arizona Court of Appeals recently held: "The United States Supreme Court
9 has declined to extend the protection of the Free Exercise Clause of the First
10 Amendment to the practice of polygamy."²⁴

11 Second, in finding that the NAACP could assert the rights of its individual
12 members, the Court reasoned that the constitutional rights of the persons who were not
13 immediately before the Court could not be effectively vindicated except through an
14 appropriate representative before the Court.²⁵ In *Patterson*, the NAACP sought to
15 protect the names of its members from the court ordered production. Forcing the
16 members to come forward to assert their own personal rights of privacy and freedom of
17 association would have defeated those personal rights.²⁶

18 In the defendant's case, the individual members who have been charged with
19 crimes can assert their rights personally through motions in their individual cases,
20 challenging the validity of the search warrants. Those members who have not been
21 charged have no standing to assert those rights. Accordingly, the factors allowing the
22 NAACP to assert its members rights are not present in the defendant's case.

24 ²⁴ *State v. Fischer*, --- P 3d ----, 2008 WL 2971520 (Ct. App. 2008)

25 ²⁵ *Patterson*, 357 U.S. at 459

26 ²⁶ *See Id.*

1 In *CDT*, the Court found that the Major League Baseball Players Association
2 satisfied each prong of the test for asserting its members rights. First, the Players
3 Association's sole purpose was to represent the interests of all MLB players, each one
4 of whom could certainly sue in his own right to seek return of his own drug testing
5 records. Second, the interests sought to be protected – the players' privacy interests in
6 their drug testing records – were related to the organization's sole purpose. And, third,
7 the Players Association sought only the return of the players' drug testing information
8 and specimens.

9 The FLDS leadership has never had, as its sole purpose, the representation of
10 the interests of individual members of the FLDS.²⁷ Further, the individual members of
11 the FLDS present at the YFZ Ranch at the time of the search, who have not been
12 charged with crimes, do not have standing to challenge the search and search warrants.
13 Accordingly, *CDT* has no application to the present case.

14 However, the defendant's case is on point with *Alderman v. United States*.²⁸ In
15 *Alderman*, the Government convicted the defendant of conspiring to transmit murderous
16 threats in interstate commerce. In his petition for rehearing the defendant alleged he
17 recently discovered that the Government electronically surveilled one of the co-
18 defendant's places of business. In finding that the defendant did not have standing to
19 challenge the evidence, the Court explained:

20 ²⁷ To the contrary, the interests of the individual members are subordinate to the
21 interests of the FLDS leadership. On numerous occasions, the leaders of the FLDS,
22 without due process of law, have seized homes, taken wives and children from
23 husbands and fathers, ordered children into marriages with elderly men, and
24 excommunicated members who have put the interests of their families and themselves
25 before the interests of the FLDS. The defendant cites to no instance where the FLDS
26 leadership has taken steps to further the legal interests of individual members in any
legal setting, other than the present attempt to prohibit the State from using the seized
evidence in the prosecution of Warren Jeffs. The only interests advanced by the FLDS
leadership are the interests of the FLDS leadership.

²⁸ 394 U.S. 165 (1969).

1 None of the special circumstances which prompted *NAACP v Alabama*
2 (*citation omitted*) and *Barrows v. Jackson* (*citation omitted*) are present
3 here. There is no necessity to exclude evidence against one defendant in
4 order to protect the rights of another. No rights of the victim of an illegal
5 search are at stake when the evidence is offered against some other
6 party. The victim can and very probably will object for himself when and if
7 it becomes important for him to do so.²⁹

8 The defendant's current charges are independent of the Texas search warrants
9 The defendant was not a resident at the YFZ Ranch on April 6, 2008 and relinquished
10 his leadership of the FLDS years before the search at the ranch. The defendant
11 provided nothing to show ownership of the YFZ Ranch which would establish his
12 expectation of privacy at the ranch. And, finally, the defendant cannot assert the Fourth
13 Amendment Rights of those present at the ranch on April 6, 2008. So, the defendant
14 does not have standing to challenge the validity of the Texas search and search
15 warrants.

16 **B. Regardless Of Ripeness And Standing, The Defendant's Claims That**
17 **The Search Warrants Were Overbroad And Authorized A General Search Have No**
18 **Merit.**

19 The defendant seeks suppression on the grounds that the search warrant
20 affidavits "were overbroad"³⁰ and the officers "seized items that were not particularly
21 described in the warrant."³¹ A review of the affidavits proves this accusation specious.
22 The search warrant affidavits lay out facts constituting probable cause for the offenses
23 of sexual assault of a child (both warrants) and bigamy (second warrant), and each
24 affidavit sets forth a sufficiently specific description of the property to be searched and
25 the items to be seized

26 ²⁹ *Id.* at 174

³⁰ Defendant's Motion at Page 9, Ln. 12.

³¹ Defendant's Motion at Page 12, Ln. 6 – Ln. 7.

1 1. The Affidavits And Warrants Complied With The Controlling Law.

2 a. Warrant M-08-001-S

3 In the first affidavit, Ranger Long recites, among other things, that:

4 (1) On March 29 and 30, 2008, a caller, who identified herself as

5 with the "maiden" name of _____, made multiple telephone calls to the

6 Family Shelter Crisis Hotline in San Angelo;

7 (2) The caller identified her date of birth as

8 (3) The caller, who occasionally cried during the calls, stated she was sixteen
9 years old, pregnant, and had an eight-month-old baby;

10 (4) The caller stated she lived with her baby and the father of her baby at the
11 YFZ Ranch;

12 (5) The caller stated she had lived at the YFZ Ranch from the age of thirteen;

13 (6) The caller stated her "husband's" name was Dale Barlow, and that he was
14 49 years old;

15 (7) The caller stated Dale Barlow was physically and sexually abusive to her,
16 and that the abuse was continuing;

17 (8) The caller stated that her parents do not live at the YFZ Ranch;

18 (9) According to the caller's representations, she was trapped on the ranch,
19 and not allowed to leave;

20 (10) On March 29, 2008, the caller stated she could not talk very loud because
21 she would get into trouble if anyone found out that she called;

22 (11) The caller represented that a guard was posted at a guard tower to
23 prevent her from leaving;

24 (12) The caller advised she had been thinking of ways to escape the ranch with
25 her baby;

1 (13) The caller expressed fear of being caught leaving the ranch and said that
2 if she was caught trying to leave, she would be locked in her room and not allowed to
3 eat as punishment for her disobedience;

4 (14) He (Ranger Long) had been on the YFZ Ranch, and had observed a
5 raised structure that he believed to be a guard tower;

6 (15) He (Ranger Long) observed the ranch as having a single address, 2420
7 County Road 300 (Rudd Road), and as having a single gated entrance; and

8 (16) According to the caller's representations, he (Ranger Long) believed she
9 (the caller) would have been, at most, fifteen years old when her first child was
10 conceived by her "husband" Dale Barlow.

11 **b. Warrant M-08-002-S**

12 In Exhibit B, the second affidavit, Ranger Long recites, among other things, that:

13 (1) On April 5, 2008, while conducting the search of the YFZ Ranch pursuant
14 to Warrant M-08-001-S, he (Ranger Long) heard multiple residents refer to a large
15 building as a "temple;"

16 (2) While inside the "temple" he (Ranger Long) observed multiple locked
17 safes, locked desk drawers, locked vaults, multiple computers, and beds;

18 (3) While inside the "temple," he (Ranger Long) observed a bed with bed
19 linens that appeared disturbed as if the bed had been used, and a strand of hair that
20 appeared to belong to a female;

21 (4) During the search, he (Ranger Long) observed a building similar in
22 appearance to the "temple," but smaller in size and built away from the "temple" (the
23 "Temple Annex");

24 (5) While inside the Temple Annex, he (Ranger Long) observed multiple
25 safes, a computer, and computer peripherals;

1 (6) He (Ranger Long) spoke with Tina Martinez, an employee with the Texas
2 Department of Protective and Family Services, who had interviewed a child who
3 identified herself as _____, age fifteen;

4 (7) _____ told Tina Martinez that she knew a child named
5 _____ who was sixteen years old, was spiritually united (married), had a baby, was
6 currently pregnant, and was residing at the YFZ Ranch;

7 (8) Tina Martinez advised Ranger Long that she had interviewed a child who
8 appeared to be approximately sixteen years old, and that the child identified herself as
9 _____;

10 (9) Tina Martinez told Ranger Long that, after she asked _____ how
11 old she was _____ looked at Leroy Jessop. Leroy Jessop then told
12 "You are eighteen," after which _____ advised she was eighteen;
13 reported that she had a baby that was ten months old; reported that she was spiritually
14 married to Leroy Jessop, who was approximately thirty-three years old, and reported
15 that she was the fourth wife of Leroy Jessop, who was still married to three other wives;

16 (10) Tina Martinez told Ranger Long that she had interviewed another child
17 who identified herself as _____ with a date of birth of _____ who
18 reported that she had a son named _____, born _____ and that the
19 father of _____ was Jackson Jessop, who was thirty-six years old;

20 (11) Tina Martinez told Ranger Long that she had interviewed another child
21 who identified herself as _____ with a date of birth of _____
22 who reported that she had a daughter named _____, born _____
23 _____ and a daughter named _____, born _____

24 (12) He (Ranger Long) spoke with Ruby Gutierrez, another employee with the
25 Texas Department of Protective and Family Services, who told him that she had
26 interviewed a child who identified herself as _____ and that _____ had

1 reported to her that [REDACTED] was a resident of the YFZ Ranch, was sixteen, and
2 had been spiritually united (married) to Joseph Jeffs, who was approximately forty years
3 old;

4 (13) He (Ranger Long) spoke with Rebecca Baxter, another employee with the
5 Texas Department of Protective and Family Services, and that she told him (Ranger
6 Long) that she had interviewed a child who identified herself as [REDACTED]
7 and that [REDACTED] had reported to her that she was sixteen years old, that
8 she was pregnant and due to give birth in June 2008, and that she was married to
9 Nathan Jessop, who was married to another woman;

10 (14) Rebecca Baxter also told him (Ranger Long) that she had interviewed
11 another female who appeared to be approximately sixteen years old and who identified
12 herself as [REDACTED] and that [REDACTED] advised Rebecca Baxter
13 that she did not know her own age, but that she had given birth to a child who was two
14 years old, and that she was currently pregnant again;

15 (15) Rebecca Baxter also told him (Ranger Long) that she had interviewed a
16 female who identified herself as [REDACTED] age eight, and that [REDACTED] advised
17 her (Rebecca Baxter) that [REDACTED] had four children, was under sixteen
18 years of age, and was spiritually married to Richard Jessop Barlow. [REDACTED]
19 further advised Rebecca Baxter that Richard Jessop Barlow was her father and that her
20 mother, [REDACTED]; was her father's first wife, that [REDACTED] was her
21 father's second wife, and that both of her father's wives were alive and married to her
22 father; and

23 (16) While executing Warrant M-08-001-S, he (Ranger Long) personally
24 observed a document indicating marriages between one man and over twenty wives, all
25 of whom resided at the YFZ Ranch, with no record of divorce or death of a spouse
26 found

1 **c. Sections 22.011 and 25.01 of the Texas Penal Code**

2 As the affidavits correctly recite, the sexual assault of a child is an offense under
3 Texas law³² Under the statute, a person commits an offense if the person “intentionally
4 or knowingly causes the penetration of the anus or sexual organ of a child by any
5 means.”³³ “Child” is defined as “a person younger than seventeen who is not the
6 spouse of the actor.”³⁴ “Spouse” is defined as “a person who is legally married to
7 another.”³⁵ Under Texas law, the general age requirement for a legal marriage is
8 eighteen.³⁶ An exception to this general age requirement can arise with a specific form
9 of written parental consent acknowledged before and filed with the appropriate county
10 clerk, but such consent can be provided only if the person to be married is sixteen years
11 of age or older.³⁷

12 As the second affidavit correctly recites, bigamy is an offense under Texas law.³⁸
13 Under the statute, a person commits an offense if the person “is legally married” and
14 “purports to marry or does marry a person other than his spouse in this state, or any
15 other state or foreign country, under circumstances that would, but for the actor’s prior
16 marriage, constitute a marriage,”³⁹ or “lives with a person other than his spouse in this
17
18

19 ³² TEX. PENAL CODE § 22.011

20 ³³ *Id.* § 22.011(a)(2)(A)

21 ³⁴ *Id.* § 22.011(c)(1)

22 ³⁵ *Id.* § 22.011(c)(2)

23 ³⁶ TEX. FAM. CODE § 2.101

24 ³⁷ *Id.* § 2.102(a).

25 ³⁸ TEX. PENAL CODE § 25.01.

26 ³⁹ *Id.* § 25.01(a)(1)(A).

1 state under the appearance of being married,”⁴⁰ “Under the appearance of being
2 married” is defined as “holding out that the parties are married with cohabitation and an
3 intent to be married by either party.”⁴¹

4 **2. As the Warrants particularly Described the place to be searched and the**
5 **items to be seized, the warrants were not overbroad.**

6 The defendant argues the affidavits lack probable cause and a particularized
7 description of the place to be searched. This argument misconstrues both the language
8 of the warrants and the relevant law. The search warrant affidavits are supported by
9 probable cause and set forth facts and adequately describe the premises to be
10 searched for the alleged victim, the alleged perpetrator, and evidence of the offenses of
11 sexual assault of a child and bigamy

12 The constitutional standard for determining whether probable cause exists in an
13 affidavit for a search warrant is whether there are sufficient facts, coupled with
14 inferences from those facts, to establish a fair probability that evidence of a particular
15 crime will likely be found at the specific location.⁴² The Texas Code of Criminal
16 Procedure incorporates the requirements that a search warrant affidavit set forth
17 “substantial facts establishing probable cause” and “specifically described property or
18 items to be searched for”⁴³ The Code also incorporates a requirement that a search
19 warrant “identify, as near as may be, that which is to be seized and name or describe,
20 as near as may be, the person, place, or thing to be searched.”⁴⁴

21 ⁴⁰ *Id.* § 25.01(a)(1)(B).

22 ⁴¹ *Id.* § 25.01(b).

23 ⁴² *Illinois v. Gates*, 462 U.S. 213, 238 (1983) (abrogating *Aguilar v. Texas*, 378 U.S. 108
24 (1984)).

25 ⁴³ TEX. CODE CRIM. PROC. art. 18.01(b).

26 ⁴⁴ *Id.* art. 18.04

1 Under the constitutional standard and the Texas Code of Criminal Procedure, the
2 description of the property to be searched is necessarily intertwined with the criminal
3 activity alleged to have occurred.⁴⁵ Under the Code, the sworn affidavit must set forth
4 sufficient facts to establish probable cause that: (1) a specific offense has been
5 committed, (2) the specifically described property or items that are to be searched for or
6 seized constitute evidence of that offense or evidence that a particular person
7 committed that offense, and (3) the property or items constituting evidence to be
8 searched for or seized are located at or on the particular person, place, or thing to be
9 searched.⁴⁶ The relevant Arizona statute provides requirements almost identical to the
10 Texas Code, stating: "No search warrant shall be issued except on probable cause,
11 supported by affidavit, naming or describing the person and particularly describing the
12 property to be seized and the place to be searched."⁴⁷ In short, "[a]n affidavit must
13 allege substantial facts establishing probable cause to believe that the items would be
14 found at the identified place."⁴⁸

15 On a later challenge to a search warrant affidavit, a court applies a common-
16 sense and realistic interpretation to the material contained within the four corners of the
17 affidavits.⁴⁹ Under this four-corners analysis, both affidavits set forth facts establishing
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19 ⁴⁵ *Id.* art. 18 01(c).

20 ⁴⁶ *Id.*

21 ⁴⁷ A.R.S. § 13-3913.

22 ⁴⁸ *Massey v. State*, 933 S.W.2d 141, 148 (Tex. Crim. App. 1996); *See also, State v.*
23 *Warren*, 121 Ariz. 306, 589 P.2d 1338 (Ct. App. 1979).

24 ⁴⁹ *Hankins v. State*, 132 S.W.3d 380, 388 (Tex. Crim. App.), *cert. denied*, 543 U.S. 944
25 (2004); *see also Dancy v. State*, 728 S.W.2d 772, 781 (Tex. Crim. App.), *cert. denied*,
26 484 U.S. 975 (1987); *Doescher v. State*, 578 S.W.2d 385, 387 (Tex. Crim. App. 1978)
(holding that court reviews the four corners of the affidavit to determine the existence of
probable cause to search the identified locations); *United States v. Stanert*, 762 F.2d
775 (9th Cir. 1985) (holding that in reviewing the validity of a search warrant, a court is

1 probable cause on each element of sexual assault of a child (both warrants) and bigamy
2 (second warrant), and properly allege a particular description of the property to be
3 searched.

4 The probable cause to support the first affidavit, as set forth in detail above,
5 concerns allegations that a sixteen-year-old girl was currently being physically and
6 sexually abused by a forty-nine-year-old man, and that he had impregnated her at the
7 age of fifteen. As this affidavit concerns these repeated reports of sexual assault on
8 one victim, the search warrant affidavit (and the search warrant itself) are limited to this
9 one alleged victim and perpetrator, as well as evidence specifically related to that
10 reported crime.

11 The following property was to be searched for:

- 12 (1) Records or other information relating to the birth of a child or
13 children of
- 14 (2) Prenatal information or records relating to any pregnancy of
- 15 (3) Records or information relating to the age and true identity of
- 16 (4) Records or information relating to any marriage and true identity of
17 to any party;
- 18 (5) Records or information relating to any marriage of DALE BARLOW
19 to any party;
- 20 (6) Any photographs including, but not limited to, family portraits, which
21 show, her child, and DALE BARLOW together, or
22 any combination thereof;
- 23 (7) Any computer or any electronic storage medium; including, but not
24 limited to zip drives, storage drives, thumb drives, external hard
25 drives, CD's, DVD's; videos, videotapes and digital photographs;

26 limited to the information and circumstances contained within the four corners of the
underlying affidavit).

1 (8) Any family bible or books showing the marriages or births of
2 children in reference to the marriage or union between
and DALE BARLOW; and

3 (9) Any medical records, documents or files related to
4 and the birth of her child and or her pregnancy; including
any documents related to any medical treatment

5 The first warrant not only limits the scope of the materials to be seized to the
6 reported ongoing criminal activity, but also defines the places to be searched for the
7 victim and evidence of that crime. When courts examine descriptions of a place to be
8 searched to determine a search warrant's scope, they follow a common-sense and
9 practical approach, not a "Procrustean" or overly technical one.⁵⁰

10 In the facts leading to the execution of the warrant, the caller stated she lived at
11 the YFZ Ranch that she could not escape from the ranch, that she lived with her
12 "husband" (Dale Barlow), and that there was a guard shack that prevented her escape
13 from the premises. Ranger Long had personally observed such a guard shack at what
14 he personally knew to be the YFZ Ranch. Ranger Long personally knew the YFZ
15 Ranch to be located at 2420 County Road 300 (Rudd Road) in Eldorado. Ranger Long
16 knew from his personal visits to the YFZ Ranch that there were multiple structures,
17 buildings, and locations where the claimed victim of the crime, her child, and evidence
18 of the claimed sexual assault could be located. Ranger Long specifically set forth all of
19 these facts in the first affidavit, including a detailed description of what type of property
20 was to be searched for and where it was to be found.⁵¹ In the absence of more specific

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22 ⁵⁰ *Ker v. State of California*, 374 U.S. 23, 33 (1963); *Long v. State*, 132 S.W.3d 443, 448
(Tex. Crim. App. 2004).

23 ⁵¹ *See State v. Anderson*, 917 S.W.2d 92, 96-97 (Tex. App. – Houston 1996, *pet. ref'd*)
24 (holding that search warrant affidavit was sufficient to provide probable cause to search
25 defendant's residence for evidence of aggravated sexual assault; affidavit was based on
26 report of victim, stated that specific offense had been committed by defendant, stated
that search was for pubic hair, body fluid stains, fingerprints, fabric fibers, and handgun,
making it clear that particular person committed offense, and stated that items were
located in place to be searched).

1 information from the caller on her location within the YFZ Ranch, it was reasonable to
2 include "all buildings, medical facilities, structures, places and vehicles on said premises
3 and within the curtilage" of the Ranch. The claimed victim, and evidence concerning the
4 physical and sexual abuse alleged by the crisis hotline caller, could logically have been
5 located at any place on the ranch in which she claimed to be held captive. Such a
6 description of the premises to be searched for the rescue of a claimed victim and for
7 evidence of a crime -- a gated ranch and the structures and vehicles located on it --
8 passes constitutional muster. A warrant authorizing a search of an entire ranch is valid
9 as long as probable cause existed to search the entire ranch.⁵² Furthermore, with
10 respect to property descriptions, "[a]ll that is required is that there be sufficient
11 definiteness to enable the officer to locate the property and distinguish it from other
12 places in the community."⁵³ The affidavit amply describes the YFZ Ranch's location, in
13 a manner in which there is no danger that other premises could or would be searched
14 pursuant to the warrant. It is reasonable to assume that sufficient definiteness exists
15 when the property's physical address along with a detailed description of that property
16 was included in the affidavits.⁵⁴

17 Additionally, Ranger Long had probable cause to believe that additional YFZ
18 Ranch residents could possibly be involved in aiding the alleged offender in "trapping"

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20 ⁵² *E.g.*, *United States v. Langston*, 970 F.2d 692, 703 (10th Cir. 1992) (holding warrant
21 valid for search of 2,160-acre ranch), *cert. denied*, 506 U.S. 965, 979, 986 (1992), 507
22 U.S. 1040 (1993); *United States v. Alexander*, 761 F.2d 1294, 1301 (9th Cir. 1985)
23 (holding warrant valid for search of 40-acre ranch).

24 ⁵³ *Etchieson v. State*, 574 S.W.2d 753, 759 (Tex. Crim. App. 1978), *cert. denied*, 440
25 U.S. 936 (1979).

26 ⁵⁴ *Alexander*, 761 F.2d at 1301 (citing *United States v. Whitten*, 706 F.2d 1000, 1008
(9th Cir. 1983), *cert. denied*, 465 U.S. 1100 (1984)); *United States v. Gilman*, 684 F.2d
616, 618 (9th Cir. 1982) (holding that warrant is valid when it authorizes the search of a
street address with several dwellings if the defendants are in control of the whole
premises, if the dwellings are occupied in common, or if the entire property is suspect).

1 the victim on the premises. Such a belief, based on the caller's representations, was
2 yet another reasonable basis on which to believe that the victim could be located
3 anywhere on the Ranch. The caller stated that she was residing with the offender at the
4 YFZ Ranch and that *they* would not let her leave. The caller indicated that she would
5 get into trouble if *anyone* found out she had called. The caller stated that a guard was
6 posted on the Ranch in a guard tower near the gate, which prevented her from leaving.
7 The idea that the ranch inhabitants operated under a single chain of command was
8 reinforced by Ranger Long's own experience of having been told by Merrill Jessop that
9 he (Merrill Jessop) was the "authority" at the YFZ Ranch, and having observed residents
10 seek authorization from Merrill Jessop to speak to law enforcement. These additional
11 facts provided Ranger Long with probable cause to believe that the residents of the
12 ranch could be acting in concert with the claimed assaulter.

13 The second affidavit included facts above and beyond the first affidavit and was
14 based on observations made by law enforcement and government officials during the
15 execution of the first warrant. Such observations established probable cause to believe
16 that victims, suspects, and evidence of the crimes of sexual assault and bigamy could
17 be located in temples, temple annexes, places of worship, vaults, safes, lockboxes, and
18 locked drawers.

19 With respect to the defendant's challenges to the premises and property
20 descriptions in the warrants, the Fourth Amendment requires that search warrants may
21 not issue except those "particularly describing the places to be searched."⁵⁵ The
22 warrant must describe the place to be searched with sufficient particularity so that the
23 executing officer can locate and identify it with reasonable effort.⁵⁶ For example, the

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25 ⁵⁵ U.S. CONST. AMEND. IV

26 ⁵⁶ *E.g., Langston*, 970 F.2d at 703-704 (holding that requisite specificity of the description differs for rural and urban areas and depends heavily on the facts of each

1 *Langston* court determined the warrant sufficiently identified the ranch "headquarters
2 area," the name of the ranch, and a geographical description of the headquarters area,
3 along with a general description of the structures at the site. Such a description
4 enabled the searching party to locate the area to be searched with a reasonable effort.⁵⁷

5 Ranger Long's affidavits describe the location as follows:

6 The YFZ Ranch, located at 2420 County Road 300 (Rudd Road),
7 Eldorado, Texas 76936; if driving from Schleicher County Courthouse or
8 Schleicher County Sheriff's Office, proceed North on U S. Highway 277,
9 travel approximately eight tenths (8) of a mile to County Road 300 (Rudd
10 Road), turn northeast on County Road 300 (Rudd Road) and travel
11 approximately 4 miles to the gate of the YFZ Ranch; the gate is a metal
12 double gate and one side is damaged; the gate is located on the north
13 side of the road.

14 The ranch covers approximately 1691.11 acres and contains
15 multiple residential structures, buildings, medical facilities, and other
16 places, structures and vehicles where persons and property sought may
17 be.

18 Said suspected place and premises includes all buildings, medical
19 facilities, structures, places and vehicles on said premises and within the
20 curtilage of said Suspected Place, which are found to be under the control
21 of the Suspected Party named below and in, on, or around which the
22 persons who are the object of the search may reasonable be found.

23 Ranger Long's affidavits particularly describe the place to be searched by stating
24 the place's name (the YFZ Ranch), the place's address – a single address, 2420
25 County Road 300 (Rudd Road), Eldorado, Texas 76936 – and a description of step-by-
26 step instructions on how to locate the ranch. He further set forth the size of the place to
be searched as well as identifying structures on the place. Ranger Long's description
enabled law enforcement to locate the YFZ Ranch, along with the property to be
searched, with reasonable effort

case); *United States v. Rios*, 611 F.2d 1335, 1347 (10th Cir. 1979) (warrant authorizing
a search of the entire ranch could have been valid as long as probable cause existed to
search the entire ranch); *Alexander*, 761 F.2d at 1301 (probable cause sufficient to
warrant search of 40-acre ranch).

57 970 F.2d at 704.
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1 Additionally, even though the affidavits do contain descriptions of specific
2 premises on the YFZ Ranch for search and possible seizure, well-established case law
3 provides that a property description of a structure is sufficient to allow searches of other
4 structures within the curtilage of the property on which the structure sits, as well as
5 vehicles located on the described premises.⁵⁸

6 Given the totality of circumstances and entirety of the evidence presented in the
7 search warrant affidavit at issue, the Texas Court did not abuse its discretion when it
8 authorized the search warrants in this case. As required by statute, Ranger Long set
9 forth sufficient facts to establish probable cause that the crimes of a sexual assault of a
10 child and bigamy had been committed, and that specifically described property or items,
11 namely documents and electronic data, evidence relevant to those offenses, could be
12 found at the YFZ Ranch. This Court correctly reviewed the four corners of the search
13 warrant affidavits in question. After due consideration, this Court correctly issued
14 search warrants based on the facts presented in the affidavits.⁵⁹

15 Such detailed factual allegations as to potential crimes and the location of victims
16 and evidence of those crimes satisfy the "four-corners" probable cause analysis. An
17 appellate court reviews the sufficiency of the evidence regarding the search warrant
18
19

20 ⁵⁸ See, e.g., *United States v. Moore*, 743 F.2d 254 (5th Cir.1984); *Davila v. State*, 871
21 S.W.2d 806, 814 (Tex. App. – Corpus Christi 1994, pet. ref'd); *Hughes v. State*, 843
22 S.W.2d 591, 594-595 (Tex. Crim. App. 1992) (search warrant for premises includes
23 vehicles on the premises); *McGlothlin v. State*, 705 S.W.2d 851, 856 (Tex. App. – Fort
24 Worth 1986) (search warrant for premises includes barn 125 feet from house), *rev'd on
25 other grounds*, 749 S.W.2d 856 (Tex. Crim. App. 1988); *Cantu v. State*, 557 S.W.2d
26 107, 108 (Tex. Crim. App. 1977) (search warrant for premises includes chicken coop,
100-125 feet from house, surrounded by common fencing with house); *Riojas v. State*,
530 S.W.2d 298, 303 (Tex. Crim. App. 1975) (search warrant for premises includes
shed within curtilage).

⁵⁹ TEX. CODE CRIM. PROC. art. 18.01(c).

1 affidavit using the "totality of the circumstances" standard of review⁶⁰ Appellate courts
2 lend great deference to the trial court's findings and will not disturb these findings on
3 appeal, absent an abuse of discretion⁶¹ Appellate courts do not conduct a *de novo*
4 determination of probable cause; rather, they must decide whether the evidence viewed
5 as a whole provided a substantial basis for the magistrate's finding of probable cause.⁶²
6 "[E]ven in close cases we give great deference to a magistrate's determination of
7 probable cause to encourage police officers to use the warrant process rather than
8 making a warrantless search and later attempting to justify their actions by invoking
9 some exception to the warrant requirement."⁶³

10 **C. Given That The Officers Did Not Deliberately, Nor With Reckless**
11 **Disregard For The Truth, Include False Information, Probable Cause Supported**
12 **The Warrants And The Search.**

12 The defendant invokes *Franks v. Delaware* in support of his motion to suppress.
13 However, the defendant cannot meet even the basic requirements to justify a *Franks*
14 evidentiary hearing. Under *Franks*, there is a "presumption of validity with respect to the
15 affidavit supporting the search warrant."⁶⁴ Any effort to obtain an evidentiary hearing to
16 go beyond the four corners of the affidavit is appropriate only under very limited
17 circumstances that are absent from the defendant's motion.

18 To mandate an evidentiary hearing, the challenger's attack must be more
19 than conclusory and must be supported by more than a mere desire to
20 cross-examine. There must be allegations of deliberate falsehood or of

20 ⁶⁰ *Eisenhauer v State*, 754 S.W.2d 159, 164 (Tex. Crim. App. 1988), *cert. denied*, 488
21 U.S. 848 (1988); *See also, State v. Killian*, 158 Ariz. 585, &64 P.2d 346 (1988)

22 ⁶¹ *Gates*, 462 U.S. at 236; *Swearingen v. State*, 143 S.W.3d 808, 810-11 (Tex. Crim.
23 App. 2004); *Black v. State*, 776 S.W.2d 700, 701 (Tex. App. – Dallas 1989, *pet. ref'd*).

23 ⁶² *Gates*, 462 U.S. at 238; *Eisenhauer*, 754 S.W.2d at 164.

24 ⁶³ *United States v. Peacock*, 761 F.2d 1313, 1315 (9th Cir.), *cert. denied*, 474 U.S. 847
25 (1985) *Rodriguez v. State*, 232 S.W.3d 55, 59-60 (Tex. Crim. App. 2007).

26 ⁶⁴ *Franks*, 438 U.S. at 171 – 172.

1 reckless disregard for the truth, and those allegations must be
2 accompanied by an offer of proof. They should point out specifically the
3 portion of the warrant affidavit that is claimed to be false; and they should
4 be accompanied by a statement of supporting reasons. Affidavits or
5 sworn or other reliable statements of witnesses should be furnished, or
6 their absence satisfactorily explained. Allegations of negligence or
7 innocent mistake are insufficient. The deliberate falsity or reckless
8 disregard whose impeachment is permitted today is only that of the affiant,
9 not of any nongovernmental informant. Finally, if these requirements are
10 met, and if, when material that is the subject of the alleged falsity or
11 reckless disregard is set to one side, there remains sufficient content in
12 the warrant affidavit to support a finding of probable cause, no hearing is
13 required. On the other hand, if the remaining content is insufficient, the
14 defendant is entitled, under the Fourth and Fourteenth Amendments, to
15 his hearing. Whether he will prevail at that hearing is, of course, another
16 issue.⁶⁵

17 Arizona and Texas courts have followed the clear dictates of *Franks* that place a
18 high threshold for parties seeking a *Franks* evidentiary hearing. According to these
19 decisions, in order to obtain a *Franks* evidentiary hearing, a defendant must:

20 (1) allege deliberate falsehood or reckless disregard for the truth by the
21 affiant, specifically pointing out the portion of the affidavit claimed to be
22 false; (2) accompany these allegations with an offer of proof stating the
23 supporting reasons; and (3) show that when the portion of the affidavit
24 alleged to be false is excised from the affidavit, the remaining content is
25 insufficient to support the issuance of the warrant.⁶⁶

26 The defendant cannot allege "deliberate falsehood" at all, but rather attempts to
allege "reckless disregard for the truth," because Ranger Long's affidavit stated: "Affiant
further believes, based on the information provided by the caller, that DALE BARLOW is
currently located at the Suspected Place and Premises."⁶⁷ The defendant contends that
if Ranger Long had contacted Arizona probation authorities, he may have determined
that Dale Barlow was located in Arizona, rather than at the YFZ Ranch, as had been

⁶⁵ *Id.* (footnotes omitted).

⁶⁶ See, *State v. Crowley*, 202 Ariz. 80, 41 P.3d 618 (Ct. App. 2002); *State v. Carter*, 145 Ariz. 101, 700 P.2d 488 (1985), (holding that merely innocent or negligent mistakes in an affidavit will not satisfy the first prong of the *Franks* test); *Cates v. State*, 120 S.W.3d 352, 356 (Tex. Crim. App. 2003); *Ramsey v. State*, 579 S.W.2d 920, 922-23 (Tex. Crim. App. 1979).

⁶⁷ Warrant Affidavit M-08-001-S at 3

1 indicated to the New Bridge Family Shelter in multiple conversations with the caller
2 referred to in Ranger Long's affidavit.

3 This challenge to the first affidavit does not rise to the level of a Franks "reckless
4 disregard" challenge, for a number of reasons. First, this challenge is wholly
5 unsupported by a legitimate offer of proof. The defendant offers no proof, nor could he,
6 that Ranger Long had information available to him at the time the search warrant
7 affidavit was sworn, on April 3, that the caller was misrepresenting anything in her
8 multiple calls to the crisis hotline, much less Dale Barlow's whereabouts. "To prove
9 reckless disregard, a defendant must show that the affiant in fact entertained serious
10 doubts about the truth of his allegations."⁶⁸ Likewise, information uncovered about the
11 caller in the days and weeks after the affidavit was sworn is of no use. What controls is
12 what the affiant knew at the time the affidavit was sworn. Probable cause sufficient to
13 support a search warrant exists if facts contained within the four corners of the warrant,
14 along with reasonable inferences drawn from those facts, justify a magistrate's
15 conclusion that a warrant should issue.⁶⁹

16 Second, the defendant cannot argue that the information provided by the caller to
17 the New Bridge Family Shelter hotline number, and then provided to Ranger Long, did
18 not constitute probable cause to believe that Dale Barlow (regardless of his Arizona
19 probation status) could be at the YFZ Ranch. As Ranger Long recites, the caller stated
20 to the hotline representatives that Dale Barlow was there. The defendant's efforts to
21 impeach the veracity of this representation by the caller, by suggesting that other types
22 of investigation may have proved it false, are mere efforts to suggest a failure on the
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24 ⁶⁸ See *State v. Poland*, 132 Ariz. 269, 279, 645 P.2d 784, 794 (1982); see also *United States v. Davis*, 617 F.2d 677 (D.C. Cir. 1979)

25 ⁶⁹ *Carroll v. State*, 911 S.W.2d 210 (Tex. App. – Austin 1995, no pet.); *United States v. Stanert*, 762 F.2d 775 (9th Cir. 1985)

1 part of the affiant for not checking out other possible sources prior to swearing out the
2 warrant. As a Texas court of appeals has held, "Where the victim or eye witness to the
3 offense is the direct source of the information conveyed to the magistrate via a police
4 officer, neither facts independently corroborative of the occurrence nor the basis for the
5 claimed reliability of the eye witness need be recited."⁷⁰

6 In the case before this Court, the claimed victim reported abuse to the New
7 Bridge Family Shelter, whose representatives conveyed that information to Ranger
8 Long. Second-guessing of the affiant's manner of having conducted the investigation,
9 as of the time a search warrant affidavit was sworn in support of a search and rescue
10 mission, does not constitute a proper *Franks* challenge. The Arizona Supreme Court
11 has made it clear that "reckless disregard for the truth" is not to be confused with
12 allegations of mere negligence in checking or recording the facts relevant to a probable-
13 cause determination.⁷¹

14 Third, the defendant's argument ignores unique characteristics of the group
15 Texas authorities had to investigate. The name Barlow is not exactly rare in the FLDS
16 community. Further, the Dale Barlow on probation in Arizona was not the only Barlow
17 who came up during the investigation. At one point, investigator Gary Engles of the
18 Mohave County Attorney's Office also followed up on a person by the name of Dell
19 Barlow. Accordingly, the fact that a Dale Barlow was on probation in Arizona in no way
20 undermines the veracity of Ranger Long's assertions in the affidavit.

21 Fourth, the defendant's arguments fundamentally mischaracterize the nature of
22 probable cause. Search warrant affidavits do not represent the end result of a criminal
23 investigation, in which contested issues of fact are resolved by a jury in determining guilt

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25 ⁷⁰ *Anderson*, 917 S.W.2d at 96-97.

26 ⁷¹ *State v. Carter* 145 Ariz. at 109, 700 P.2d at 496.

1 or innocence. Rather, search warrant affidavits are presented in support of investigative
2 tools that are used as part of a criminal investigation to determine whether criminal
3 violations have occurred. The magistrate reviewing a probable cause affidavit
4 submitted in connection with a request for a search warrant is not required to find proof
5 beyond a reasonable doubt or by a preponderance of the evidence, but only a
6 probability that contraband or evidence of a crime will be found in a particular place.⁷²
7 “Probable cause exists when, under the totality of the circumstances, there is a ‘fair
8 probability’ that contraband or evidence of a crime will be found at the specified
9 location.”⁷³ “Probable cause” is a “flexible and nondemanding” standard.⁷⁴ The multiple
10 reports of abuse to the crisis hotline by a claimed victim, combined with the detail
11 provided, presented a sufficient basis on which to believe there was probable cause that
12 a sexual assault of a child had occurred at the YFZ Ranch.

13 Finally, the defendant cannot meet the *Franks* requirement that removing
14 allegations regarding Dale Barlow’s whereabouts would result in the absence of
15 probable cause for the affidavit for the first warrant, much less for the second.
16 Regardless of Dale Barlow’s location as of the time the warrant was sworn, the
17 information obtained from the crisis center was that the sexual and physical abuse had
18 occurred at the YFZ Ranch, and that the victim and evidence of the sexual and physical
19 abuse was there as well.

20 **D. The Officers Did Not Collect DNA From The Defendant At The Time Of**
21 **The Search. As Such, This Issue Is Irrelevant.**

22 The defendant was in custody in Kingman, Arizona when Texas authorities
23 executed valid search warrants at the YFZ Ranch. So, DNA was not collected from the

24 ⁷² *Hespeth v. State* 249 S.W.3d 732 (Tex.App.-Austin,2008).

25 ⁷³ *Rodriguez*, 232 S.W.3d at 60 (citing *Illinois v. Gates*); See also, *Crowley*, 202 Ariz. at
85, 41 P.3d at 623.

26 ⁷⁴ *Id*

1 defendant at that time.⁷⁵ Accordingly, the defendant has no standing to raise issues
2 relating to any collection of DNA evidence, be it through search warrant, official court
3 process, or by consent. The person with standing to object to such a collection is
4 obviously the person from whom the DNA sample is collected.⁷⁶ Further, as stated
5 above: "Fourth Amendment rights are personal rights which, like some other
6 constitutional rights, may not be vicariously asserted."⁷⁷

7 The defendant's motion attempts to assert the personal Fourth Amendment
8 rights of persons residing at the YFZ Ranch, including crime victims. This exact
9 maneuver was found to run afoul of *Alderman* in *People v. Zacher*.⁷⁸ The defendant in
10 *Zacher* faced charges of murder and assault. Through a motion to suppress, the
11 defendant attempted to preclude admission of DNA test results that were taken by law
12 enforcement from the victims of the crime. The defendant asserted that the DNA
13 samples were obtained without proper consent from the victims. The court found that
14 the defendant did not have standing under the Fourth Amendment to contest the search
15 and seizure of DNA from victims, because the defendant was arguing an assertion of
16 Fourth Amendment rights on behalf of another individual.⁷⁹

17
18
19 ⁷⁵ Some time later, DNA was obtained from the defendant pursuant to an Arizona
search warrant.

20 ⁷⁶ *E.g.*, *Hespeth*, 249 S.W.3d at 737 (holding that capacity to claim the protection of the
21 Fourth Amendment depends upon whether the person who claims the protection of the
22 Amendment has a legitimate expectation of privacy in the invaded place); see also
23 *Rakas*, 439 U.S. at 139 (noting that issue of standing involves two inquiries: first,
whether defendant has alleged an "injury in fact"; and second, "whether the proponent is
asserting his own legal rights and interests rather than basing his claim for relief upon
the rights of third parties").

24 ⁷⁷ *Alderman*, 394 U.S. at 174; *Martinez*, 236 S.W.3d at 367.

25 ⁷⁸ 12 Misc.3d 772, 818 N.Y.S.2d 893 (N.Y. Sup. 2006).

26 ⁷⁹ *Id.* at 773.

1 The defendant was not present at the YFZ Ranch during the execution of the
2 search warrants and was not compelled to provide DNA samples. The defendant
3 cannot assert the rights of the individuals who did provide DNA samples. So, the
4 defendant's challenge to the acquisition of DNA is moot.

5
6 **III. CONCLUSION**

7 Under the present cause numbers, the defendant faces charges unrelated to
8 evidence obtained during the YFZ Ranch search. So, the issues he asserts are not ripe
9 for review. Further, since he doesn't face charges based on the search, relinquished
10 his leadership of the FLDS, cannot show ownership or control of the YFZ Ranch, and
11 cannot legally assert the Fourth Amendment rights of the individuals residing at the
12 ranch at the time of the search, the defendant lacks standing to challenge this search.
13 Finally, the information in the warrant adequately described the property to be searched
14 and the items to be seized, and was based on information Ranger Long had no reason
15 to doubt when he included it in the affidavits. Accordingly, the State respectfully
16 requests that this Court deny the defendant's motion in its entirety.

17 RESPECTFULLY SUBMITTED THIS 26th DAY OF SEPTEMBER, 2008.

18 **MATTHEW J. SMITH**
19 **MOHAVE COUNTY ATTORNEY**

20
21 By Matthew J. Smith Jr
22 **SPECIAL DEPUTY COUNTY ATTORNEY**
23 **TIMOTHY P. LINNINS**

1 A copy of the foregoing
sent this same day to:

2
3 HONORABLE STEVEN F. CONN
SUPERIOR COURT JUDGE

4 MICHAEL L. PICCARRETA
ATTORNEY FOR DEFENDANT

5 RICHARD WRIGHT
6 ATTORNEY FOR DEFENDANT

7 By lgs

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