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VIRLYNN TINNELL
CLERK SUPERIOR COURT
BY: C Beale DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,)	NO. CR-2007-743
)	
Plaintiff,)	OPPOSITION TO REQUEST FOR
vs.)	HEARING TO DETERMINE
)	WHETHER DEFENDANT IS
WARREN STEED JEFFS,)	ENTITLED TO AN EVIDENTIARY
)	HEARING ON MOTION TO SUPPRESS
)	
Defendant.)	[Hon. Steven F. Conn]
)	

The defendant, Warren Jeffs, by and through counsel undersigned, hereby opposes the State's attempt to deny him an evidentiary hearing in connection with his Motion to Suppress Evidence Obtained in Unlawful Searches of FLDS Property. The State has requested a hearing to determine whether the defendant is entitled to an evidentiary hearing pursuant to the procedures set forth in *Franks v.*

1 *Delaware*, 438 U.S. 154 (1978). However, the State neglects the fact that there are
2 many issues raised in the motion to suppress that do not relate to any alleged
3 *Franks* violation and for which the defendant is clearly entitled to an evidentiary
4 hearing pursuant to Rule 16.2 of the Arizona Rules of Criminal Procedure. In any
5 event, the defendant has clearly met and exceeded the prerequisites for a *Franks*
6 hearing due to the blatant nature of the *Franks* violation involved in the present
7 case. The State's attempt to deny the defendant his right to an evidentiary hearing
8 should be denied for the reasons set forth in the attached Memorandum of Points
9 and Authorities.
10
11

12
13 RESPECTFULLY SUBMITTED this 9 day of January, 2009.

14 WRIGHT STANISH & WINCKLER

PICCARRETA DAVIS PC

15
16 By 

17 Richard A. Wright
18 Attorney for Warren Jeffs

By 

19 Michael L. Piccarreta
20 Jefferson Keenan
21 Attorneys for Warren Jeffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. The Defendant Is Entitled To An Evidentiary Hearing Regarding His Motion To Suppress Under Rule 16.2 Of The Arizona Rules Of Criminal Procedure.

The easiest reason for this Court to deny the State's request for a hearing to determine whether defendant is entitled to an evidentiary hearing based on *Franks* is the fact that the defendant is entitled to an evidentiary hearing on his motion to

1 suppress, regardless of any claims of *Franks* violations.

2 Rule 16.2 of the Arizona Rules of Criminal Procedure governs the
3 procedure for judicial determinations of a defendant's motion to suppress evidence
4 obtained by the State in criminal proceedings. To begin with:
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6 Rule 16.2, which provides the "[p]rocedure on pretrial motions to
7 suppress evidence," requires the Court to inform unrepresented
8 defendants whenever a constitutional issue arises concerning the
9 acquisition of evidence that may warrant an evidentiary hearing. See
10 Ariz.R.Crim.P. 16.2(a). And the rule establishes that it is the
11 prosecutor's burden at such a hearing to prove "the lawfulness in all
12 respects of the acquisition of all evidence" the State intends to use at
13 trial. Ariz.R.Crim.P. 16.2(b).

14 *State v. Bejarano*, __ Ariz. __, __ P.3d __, 2008 WL 5205421 at *4 (Ct.App.Div.
15 II, December 12, 2008) [emphasis added].

16 Under circumstances such as those in the present case, the defendant is only
17 required to make a *prima facie* showing that the evidence should be suppressed.
18 The State is apparently unaware that the Arizona Supreme Court has stated that a
19 "Defendant may fulfill this burden of going forward by bringing to the court's
20 attention – through argument, legal theory or testimony – the defects in the State's
21 argument." *State v. Hocker*, 113 Ariz. 450, 455, n. 11, 556 P.2d 784, 789 n. 11
22 (1976), *disapproved on other grounds*, *State v. Jarzab*, 123 Ariz. 308, 311, 599
23 P.2d 761, 764 (1979).¹

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¹ The State erroneously claims that "the defendant has done no more than make a [sic] conclusory assertions supported only by the arguments in the pleadings." [Request for Hearing, p. 2]. Even if the State's claim were true, it would be sufficient to satisfy the defendant's burden under *Hocker*.

1 It is thus the established practice in Arizona courts that the Court holds an
2 evidentiary hearing “[w]henver an issue concerning the constitutionality of the
3 use of specific evidence against a defendant arises before trial....” Rule 16.2(a),
4 Arizona Rules of Criminal Procedure. An allegation of a *Franks* violation is not
5 necessary to obtain an evidentiary hearing although, of course, that issue will be
6 involved in some cases. Once the defendant has made the required *prima facie*,
7 the state bears the burden of proving that the evidence was lawfully obtained.
8 Therefore, the State can avoid an evidentiary hearing in this matter only if it
9 willing to concede the unconstitutionality of the search because the State will not
10 have met its burden.
11

12 The principle constitutional issues (there are many sub-issues) that must be
13 addressed at the upcoming hearing are:
14

- 15 • Overbreadth of the warrants
- 16 • Whether the search actually conducted exceeded the permissible scope of
17 the warrants
- 18 • Whether law enforcement officers acted with reckless disregard as to the
19 false information in the search warrant affidavits
- 20 • Whether, under the totality of circumstances, the information from the
21 unknown caller provided probable cause for the issuance of the warrants
- 22 • Whether, under the totality of circumstances, the information from the
23 unknown caller provided probable cause for the issuance of the warrants
- 24 • Whether the exposure of Arizona law enforcement officials to the illegally
25 seized evidence has tainted the present proceedings

26 In his motion to suppress, the defendant has presented evidence and
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1 argument with regard to all of these issues which he is now able to supplement
2 after the Rule 15 interviews of the Texas law enforcement officials.² The State
3 now bears the burden of proving the legality of the searches and seizures with
4 respect to all of these areas, only one of which involves allegations of *Franks*
5 violations.
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8 Accordingly, under the well established procedures in Arizona courts, if the
9 State wishes to defend the constitutionality of the searches and seizures in any of
10 these non-*Franks* areas, the Texas law enforcement officials will be required to
11 testify at the upcoming evidentiary hearing on defendant's Motion to Suppress,
12 regardless of whether they committed any *Franks* violations.
13

14 II. The Defendant Clearly Met And Exceeded The Prerequisites For A Hearing
15 Under *Franks v. Delaware*.

16 The State's attempt to deny defendant his right to an evidentiary hearing is
17 yet another example of the "Texas two step" previously referred to by the
18 defendant. However, this time the "two step" is more literal. The first step was to
19 obstruct the truth finding process during the Rule 15 interviews of the Texas law
20 enforcement authorities by blocking inquiries into their failure to investigate the
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24 ² For example, both Schleicher County Sheriff Doran and Texas Ranger Sgt. (now Lt.) Long
25 were aware that there were multiple residences on the nearly 1,700 acre FLDS premises, and
26 they searched all of them anyway. [Doran Interview, December 18, 2008, p. 6; Long
27 Interview, December 18, 2008, p. 50]. The defendant has also produced evidence showing
28 that Texas law enforcement officials refused to obey the dictates of the warrant under whose
authority they were purportedly acting by seizing DNA samples, bucal swabs, blood samples,
and pubic hair, that the magistrate had expressly struck from the warrant.

1 possibility that the calls from the unknown caller were a hoax, as evidenced by the
2 ease with which it was determined to be a hoax when authorities actually bothered
3 to try.³ The second step, after blocking defendant's efforts to develop this specific
4 information, was to file the present motion seeking to deny the defendant an
5 evidentiary hearing by decrying the lack of specific information and claiming that
6 "defendant has done no more than make a [sic] conclusory assertions supported
7 only by the arguments in the pleadings." [Request for Hearing, p. 2]. The State
8 first denies the defendant the ability to further develop specific factual
9 information, and then complains about the lack of specific factual information.
10 Thus, the "two step" is complete.
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14 The State's efforts to obstruct and impede the truth finding process relating
15 to the illegal raid of the FLDS property in Texas will be the subject of a separate
16 motion for sanctions including striking the State's response to the motion to
17 suppress.⁴ However, for the purposes of the present motion, defendant submits
18 that the State's tactics are transparent: the State has blocked inquiry into the
19 illegal actions of the Texas law enforcement officials during the Rule 15
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24 ³ Although the State's response neglects to mention it, there is no dispute that the affidavit
25 was a lie: There was no such ' ; and she was not being abused by ' ;
26 ' . The only real question is whether the Texas authorities can plausibly explain why
27 they ignored all the earmarks of this hoax. Perhaps it is obvious why the State of Texas
28 (with the full acquiescence of the State of Arizona) refused to allow any questions on the
subject.

1 interviews, and is now trying to keep the same facts from being developed before
2 this Court at the upcoming evidentiary hearing on this matter. No law
3 enforcement agency should be able to shield its unconstitutional conduct from
4 judicial scrutiny in this manner. The State's request must be denied.
5

6 It is difficult to conceive of a more blatant example of reckless disregard for
7 the truth or falsity of information that is set forth in a search warrant affidavit.
8 This reckless disregard is revealed by the fact that, under the totality of the
9 circumstances, there were obvious reasons to further investigate the claims of the
10 unknown caller. For example, Sgt. Long of the Texas Rangers personally attended
11 a press conference staged by outspoken anti-FLDS advocate Flora Jessop at which
12 she inveighed against the FLDS and its beliefs and practices. After the press
13 conference, Sgt. Long had a face to face interview with Flora Jessop and asked her
14 specifically if she had any information about criminal activity by members of the
15 FLDS. Flora Jessop assured Sgt. Long that she had such information but Sgt.
16 Long determined that there was no substance to Flora Jessop's allegations. In his
17 words, no "meat and potatoes."
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22 She had, she said a lot of things but there was never meat
23 and potatoes that we as investigators in the State of Texas
24 could say there was a violation of law happening out there
25 or that a victim existed like what she was saying.

26 ⁴ The defendant is also in the process of preparing his reply to the arguments raised in the
27 State's response to his motion to suppress based upon information gathered in the recently
28 completed Rule 15 interviews.

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2 [Long Interview, p. 40].

3 Obviously, if enemies of the FLDS are willing to make unsubstantiated
4 claims of criminal activity in a face to face interview, any reasonable law
5 enforcement official would recognize the possibility that similar accusations
6 would come from an unknown caller who was hostile to the FLDS. The fact that
7 the Texas law enforcement officials included the unknown caller's allegations in
8 the search warrant as if they were true and without even minimal investigation is
9 reckless disregard for the truth at its finest (or worst). After personally
10 experiencing face to face baseless accusations, the Texas law enforcement
11 authorities did nothing to determine whether the allegations from the unknown
12 caller were also baseless allegations from an enemy of the FLDS. Thus, the
13 defendant has presented and will present (based on the Rule 15 interviews)
14 evidence showing that, under the totality of the circumstances, the Texas law
15 enforcement authorities did nothing to establish the veracity, reliability, or
16 credibility of the information provided from the unknown caller.
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22 This failure to grasp the basic fundamentals of police investigation is simply
23 incomprehensible, especially in light of the actions of all of the other agencies who
24 received similar unsubstantiated, anonymous allegations against members of the
25 FLDS. For the same reason, this is not a matter of hindsight being "20/20." These
26 other agencies were competent enough to determine that further investigation was
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1 necessary at the time, rather than running off to secure a search warrant and
2 making arrangements for 152 officers to conduct a raid with a SWAT team, an
3 armored personnel carrier, an unmanned drone, and a helicopter.
4

5 Contrary to the State's claims, the defendant has provided additional
6 specific factual information about the Texas authorities' reckless disregard
7 respecting this hoax and has shown the ease with which the hoax could have been
8 discovered. Exhibit 3 to Defendant's Motion to Suppress is an unsealed Colorado
9 arrest warrant and affidavit that shows that Texas authorities were well aware of
10 the fact that two telephones utilized to make the numerous calls to the "Crisis
11 Hotline" in San Angelo, Texas, were registered to telephone numbers outside the
12 State of Texas. Texas authorities were immediately able to determine that these
13 telephone numbers were associated with an individual who had made numerous
14 "false reports of sexual abuse to the police and other agencies." [Exhibit 3,
15 attachment A, p. 5].
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20 The defendant has also established a *Franks* violation via material
21 omissions in the affidavit in support of the second search warrant, i.e., the failure
22 to advise the Magistrate that Sheriff Doran actually spoke to the suspected
23 perpetrator, _____ in Arizona by cell phone, confirming his driver's
24 license number and the fact that he was in Arizona, and further learned that the
25 _____ they were looking for was not at the YFZ Ranch. These facts, under
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1 the totality of the circumstances, obviously severely undercut the credibility of the
2 information provided from the unknown caller and mandated further investigation.
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4 In addition, these “material omissions” were obviously essential to the
5 determination of whether there was probable cause to believe that _____
6 _____ was “located” on the YFZ Ranch and posed “an immediate risk of
7 physical or sexual abuse” of _____, as had been previously averred to the
8 Magistrate under oath. It is undisputed that the Texas authorities knew these facts
9 yet did not return to the magistrate with this information that completely undercut
10 the initial showing of probable cause and also omitted these facts from the second
11 search warrant affidavit. Contrary to the State’s assertions, these are
12 uncontradicted, specific facts that support defendant’s claim of a *Franks* violation.
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15 All of these factual circumstances, taken collectively or individually,
16 display a reckless disregard for the truth as they constitute “obvious circumstances
17 that impeach the credibility of the information in the affidavit.” *State v. Carter*,
18 145 Ariz. 101, 109, 700 P.2d 488, 496 (1985) [citing *United States v. Davis*, 617
19 F.2d 677, 694 (D.C. Cir. 1979)]. See also *State v. Poland*, 132 Ariz. 269, 279, 645
20 P.2d 784, 794 (1982) [reckless disregard can be proven by “obvious reasons to
21 doubt the veracity of the informant”] [quoting *Davis, supra*].
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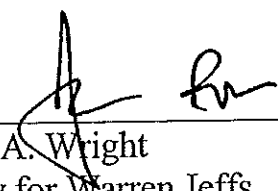
25 Accordingly, the defendant has clearly exceeded any requirements
26 necessary to obtain a hearing pursuant to *Franks v. Delaware* inasmuch as he has
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1 alleged reckless disregard for the truth and specifically pointed out the portions of
2 the affidavit claimed to be false (everything in the affidavit except for the affiant's
3 qualifications), made a detailed offer of proof in his motion to suppress stating the
4 supporting reasons, and has shown clearly that, without the false information,
5 there was no probable cause for the warrant. In any event, the defendant is entitled
6 to an evidentiary hearing on the numerous additional constitutional issues he has
7 raised, including but not limited to *Franks*, and the State's attempt to deny his
8 right to an evidentiary hearing must be denied.
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12 RESPECTFULLY SUBMITTED this 9th day of January, 2009.

13 WRIGHT STANISH & WINCKLER

PICCARRETA DAVIS PC

14
15 By  _____
16 Richard A. Wright
17 Attorney for Warren Jeffs

18
19 By  _____
20 Michael L. Piccarreta
21 Jefferson Keenan
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Copy of the foregoing mailed
this 9th day of January, 2009, to:

Clerk of Mohave County Superior Court
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Copy of the foregoing faxed and mailed
this 9th day of January, 2009, to:

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