

1 The defendant, Warren Jeffs, by and through his counsel undersigned,
2 hereby respectfully renews his request for an evidentiary hearing on his motion
3 to suppress evidence obtained in unlawful searches of the FLDS property. This
4 request is based on the legal reasoning and authorities set forth in the attached
5 Memorandum of Points and Authorities.
6

7
8 RESPECTFULLY SUBMITTED this 16th day of November, 2009.

9 WRIGHT STANISH & WINCKLER

 PICCARRETA DAVIS PC

10 By 

 By 

11 Richard A. Wright
12 Attorney for Warren Jeffs

 Michael L. Piccarreta
 Jefferson Keenan
 Attorneys for Warren Jeffs

13
14 MEMORANDUM OF POINTS AND AUTHORITIES

15 I. STATEMENT OF FACTS

16 The defendant, Warren Jeffs, has moved to suppress evidence that was
17 obtained in the unlawful raid of the property belonging to the Fundamentalist
18 Church of Jesus Christ of Latter Day Saints (FLDS) and its members in the
19 state of Texas. It is undisputed that the case investigator for the Mohave
20 County Attorney's Office and at least one and perhaps both prosecutors have
21 been exposed to voluminous materials seized in the Texas raid. In previous
22 proceedings before this Court, counsel for Mr. Jeffs expressed misgivings
23 about the ability to obtain a full and fair hearing concerning the Texas raid in
24 the Texas courts. Those misgivings have now been borne out as the Texas
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1 judge who authorized the issuance of the warrant, District Judge Barbara
2 Walther, has, not surprisingly, now affirmed herself and affirmed the validity of
3 the search conducted under the warrant.
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5 This Court should be advised that the district judge in Texas is the same
6 judge that approved the removal of all 468 children on the Yearning For Zion
7 Ranch from their parents without a meaningful hearing after the raid. Her
8 orders were reversed by the Texas Court of Appeals, *In Re Steed*, 2008 WL
9 2132014 (Tex. App. 2008), and the Texas Supreme Court, *In Re Texas*
10 *Department of Family and Protective Services*, 255 S.W.3d 613 (Tex. 2008).
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13 The Texas Court of Appeals summarized the proceedings as follows:

14 The evidence is that the Department went to the Yearning For
15 Zion Ranch to investigate a distress call from a 16 year-old girl.
16 After interviewing a number of children, they concluded that there
17 were five minors who were or had been pregnant and that the
18 belief system of the community allowed minor females to marry
19 and bear children. They then removed all of the children in the
20 community (including infants) from their homes and ultimately
21 separated the children from their parents. This record does not
22 reflect any reasonable effort on the part of the Department to
ascertain if some measure short of removal and/or separation from
parents would have eliminated the risk the Department perceived
with respect to any of the children of Relators.

23 Slip Op. at *4.¹ The department did not have the legal authority to remove the
24 children (including infants) from their parents and the district judge erred in
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26 _____
27 ¹ In a footnote, the court noted that: "The authenticity of this call is in doubt. Department
28 investigators did not locate the caller on the ranch." *Id.* at n. 12.

1 authorizing those actions. “Consequently, the district court abused its
2 discretion in failing to return the Relators’ children to the Relators.” *Id., aff’d*,
3 255 S.W.3d 613 (Tex. 2008).
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5 Just as the district court abused its discretion in its ruling regarding
6 removal of the children, the district court clearly erred in the issuance of the
7 warrant and now again in affirming the validity of the warrant she previously
8 approved. Notably, the district court’s order does not contain any factual
9 findings about the false information set forth in the affidavits in support of the
10 warrant, i.e. that the purported caller did not exist and her alleged abuser was
11 not there and had not been in Texas in decades. He was actually in the state of
12 Arizona and in contact with his probation officer. Essentially, the entire basis
13 for the district court’s ruling was the fact that the district court believed Texas
14 Ranger Brooks Long when he stated that he believed the caller was a real
15 victim and that Ranger Long did not subjectively entertain doubts about
16 probable cause.² [See Findings of Fact and Conclusions of Law, ¶¶ 34-35, 58,
17 attached hereto as Exhibit A]. The district court obviously applied the wrong
18 standard because law enforcement officials will always state that they believe
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24 ² Under the Texas court’s theory, the dumber, lazier, less curious and more close-minded the
25 law enforcement officer, the greater likelihood of subsequent judicial approval over his or her
26 inept and tainted investigation. The Texas court’s ruling gives new meaning and approval for
27 the officer who is seldom right but always certain of his opinion. Perhaps this is the norm and
28 acceptable in Texas but it is not and should not be acceptable in Arizona.

1 they had probable cause or they would not have submitted the warrant and
2 affidavit to the court. The real issue is Ranger Long's recklessness and his
3 disregard for the obvious [except to him] possibility that the call that instigated
4 the raid was a hoax. The district court's ruling also ignored the fact that failure
5 to conduct any meaningful investigation into the call, in itself, undermines any
6 purported showing of probable cause.
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9 The defendant now renews his request for an evidentiary hearing on his
10 motion to suppress evidence obtained in unlawful searches of FLDS property
11 because his constitutional claims have not received a full and fair hearing in a
12 neutral forum and requests that this Court be the first uninvolved neutral court
13 to visit the legality of the search. Unfortunately, unlike Las Vegas, what
14 happens in Texas cannot always stay in Texas.
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17 II. DISCUSSION

18 The defendant is entitled to a full and fair evidentiary hearing at which
19 his numerous constitutional claims can be evaluated in a neutral forum.
20 Moreover, the defendant is entitled to an evidentiary hearing because the
21 district court's ruling in Texas is obviously not binding on this Court.³ See
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25 ³ Accordingly, the defendant will not catalog here the numerous factual and legal errors in the
26 Texas district court's ruling. This request is limited to pointing out a few areas in which an
27 evidentiary hearing would assist this Court in evaluating the defendant's constitutional
28 claims.

1 generally, 6 W. LaFave, *Search and Seizure* § 11.2(g) (Fourth Edition 2004).

2 This Court is entitled to make its own evaluation of the evidence, including but
3 not limited to, critical determinations of witness' credibility.
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5 A. This Court Should Conduct An Evidentiary Hearing So That The
6 Defendant May Have His Constitutional Claims Adjudicated In A
7 Fair And Impartial Forum.

8 Although the Arizona courts have apparently not expressly ruled on the
9 issue,⁴ it is clearly problematic when the same judge who issues a warrant is
10 asked to rule on the validity of the search:
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12 Here, the issuing and reviewing judges are one and the same. The
13 problem created by this scenario is patently obvious. Not only
14 *might* a reasonable person harbor doubts about the impartiality of
15 the judge in the situation, we find that any reasonable person
16 *should* have such doubts.

17 *Brent v. State*, 929 So.2d 952, 955 (Miss. App. 2005), *rev. denied*, 929 So.2d
18 923 (2006) [emphasis in original].⁵

19 The proceedings in Texas simply placed Judge Walther in a position to
20 "affirm" herself, and she predictably did so. The defendant is entitled to have
21 his claims evaluated in a neutral forum, and this Court is entitled to take a look
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23 ⁴ In *State v. Turney*, 134 Ariz. 238, 239 n. 1, 655 P.2d 358, 359 n. 1 (App. 1982), the court
24 took pains to point out that "both sides specifically agreed" to the procedure wherein the
25 "judge who presided at the hearing on the motion to suppress was the same judge who had
26 issued the warrant."

27 ⁵ Counsel cannot recall any time in his 35 years of practice where the Arizona judge who
28 issued the warrant later ruled upon the warrant's validity in the subsequent criminal case.
Counsel is not saying it has never happened in Arizona, but simply that it would be a unique
event in his experience.

1 at the evidence for itself.

2 B. The District Court In Texas Employed The Wrong Legal
3 Standards In Ruling On The Validity Of The Search Warrant And
4 This Court Is Entitled To Examine The Evidence Anew Under The
5 Appropriate Legal Standards.

6 As noted above, the principal basis for the district court's ruling
7 upholding the search was the fact that the court believed that Ranger Long
8 believed that he had probable cause. Obviously, the critical inquiry is not
9 whether the affiant believed he had probable cause, or even if he really, really
10 believed he did. The critical determination is whether Ranger Long was
11 reckless about the hoax phone call that formed the basis for the raid under the
12 principles set forth in *Franks v. Delaware*, 438 U.S. 154 (1978) and *State v.*
13 *Buccini*, 167 Ariz. 550, 810 P.2d 178 (1991). Recklessness is defined as a
14 "conscious (and sometimes deliberate) disregard for or indifference to" a
15 particular risk⁶ -- in the present case, the risk that the call was a hoax. Under
16 *Franks*, reckless disregard for the truth may be "proved inferentially 'from
17 circumstances evincing 'obvious reasons to doubt the veracity' of the
18 allegations.'" 2 W. LaFave, *Search and Seizure* § 4.4(b), p. 535 (Fourth Edition
19 2004) [citations omitted].

20 In the present case, there were earmarks of a hoax all over the purported
21 distress calls. Even Flora Jessop, who is not a trained law enforcement officer
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1 and certainly no friend to the FLDS, saw obvious reasons to believe the call
2 was a hoax and she expressed these concerns to Sheriff Doran. [Interview of
3 Flora Jessop, January 28, 2009, p. 17]. Flora Jessop is a self-avowed public
4 opponent of the FLDS and defendant Warren Jeffs. However, even Ms. Jessop
5 was particularly concerned about the time that had elapsed between calls from
6 the unknown caller, indicating that there was no real danger and no real desire
7 to leave.
8

9
10 FJ: Well, when a call goes on as long as these calls went on,
11 there's a big possibility that it's nothing but a crank.

12 MP: And why do you say that? Just experience?

13
14 FJ: Just experience and because, if the child was absolutely in
15 that kind of danger as she was expressing that she was in,
16 she....I believe that she would have stepped out faster but it
just kept going in circles.

17 [*Id.*, p. 20]. She added:

18 I can tell you that if the Texas people would have contacted
19 anyone, who knows the FLDS, prior to that raid, they would have
20 learned that their primary suspect in this case never resided in
Texas.

21 [*Id.*].

22 These are just a couple of examples of the numerous earmarks of hoax
23 that surrounded the call that initiated the raid on the FLDS property. Many
24 others will be developed at the evidentiary hearing on this matter so that the
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27 ⁶ *Black's Law Dictionary* (9th Edition 2009).
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1 Court can make its own determinations about the evidence and whether there
2 were “obvious reasons to doubt the veracity” of the information from the caller.
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4 C. The District Court In Texas Made No Factual Findings Or
5 Conclusions Of Law On Whether The Failure To Conduct A
6 Proper Investigation Invalidated The Purported Showing Of
7 Probable Cause.

8 The district court in Texas made no specific factual findings concerning
9 the efforts, or more accurately, the lack thereof, by Texas law enforcement
10 officials to verify the information from the unknown caller. However, the
11 failure to conduct a proper investigation into information acquired from an
12 unknown person can, in itself, invalidate a purported showing of probable
13 cause. For example, in *United States v. Leake*, 998 F.2d 1359 (6th Cir. 1993), a
14 detective received a tip from an unknown person, a worker at a house, about
15 alleged illegal activity. After noting the possibility of “anonymous calls from
16 tipsters apparently motivated by spite or a grudge,” the court held:
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19 Ultimately this case demonstrates the importance of taking
20 sufficient time to verify an anonymous tip before a warrant is
21 requested. Detective Murphy’s investigation of the caller’s
22 information was inadequate. More police work was needed. The
23 supporting affidavit was too vague and Detective Murphy’s
24 limited two-night surveillance was insufficient to verify important
25 elements of the anonymous caller’s information. We think the
26 district court correctly rejected the warrant, and correctly found
27 that there was no probable cause for its issuance.
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1 *Id.* at 1365.⁷

2 In the present case, the evidence shows that numerous law enforcement
3 agencies had already discussed conducting a raid on the FLDS property in
4 Texas. When they were provided an excuse for such a raid, they were not about
5 to ruin it through even minimal investigation. On this issue, too, this Court is
6 entitled to examine the evidence for itself to make its own factual
7 determinations about whether the failure of the Texas authorities to properly
8 investigate (or even investigate) the hoax call invalidated the purported
9 showing of probable cause. An investigator of the level of Barney Fife would
10 have recognized the call as a hoax if he had spent an hour or two of proper
11 investigation. It was apparently determined that in Texas the better practice was
12 to gather an armada to raid and search the premises than spend a couple hours
13 to uncover the hoax.

14 These are just a few areas in which this Court would benefit from
15 conducting its own evidentiary hearing to determine the validity of the issues
16 raised in the defendant's motion to suppress. There are numerous other areas,
17 such as whether the warrant authorized a general search, and whether the Texas
18 authorities were really looking for a 16 year old girl or her alleged abuser when
19 they opened safes, filing cabinets, and rifled through sacred church records.

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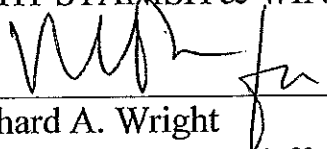
⁷ The court also held that the search was not saved by the good faith exception in *United*
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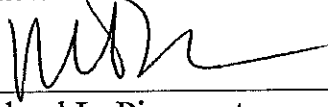
1 The defendant is entitled to have these and the other numerous issues raised in
2 his motion to suppress fully and fairly adjudicated in these proceedings.

3
4 III. CONCLUSION

5 The Texas district court's ruling is not binding on this Court. This Court
6 is entitled to conduct its own independent examination of the evidence and
7 provide a full and fair hearing on the defendant's constitutional claims,
8 especially considering that the Texas district court applied the wrong legal
9 standards and failed to fully and fairly address the issues raised regarding the
10 illegal raid of the FLDS property. For the foregoing reasons, and for the
11 reasons previously urged in prior proceedings, the defendant, Warren Jeffs, by
12 and through his undersigned attorney, hereby respectfully renews his request
13 for an evidentiary hearing on his motion to suppress evidence obtained in
14 unlawful searches of FLDS property.
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18 RESPECTFULLY SUBMITTED this 16th day of November, 2009.

19
20 WRIGHT STANISH & WINCKLER
21 By 
22 Richard A. Wright
23 Attorney for Warren Jeffs

24
25 PICCARRETA DAVIS PC
26 By 
27 Michael L. Piccarreta
28 Jefferson Keenan
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States v. Leon, 468 U.S. 897 (1984). *Id.* at 1367.

1 Original of the foregoing mailed
2 this 16th day of November, 2009, to:

3 Clerk of Mohave County Superior Court
4 401 East Spring Street
5 Kingman, AZ 86401

6 Copy of the foregoing emailed
7 this 16th day of November, 2009, to:

8 Hon. Steven F. Conn
9 Mohave County Superior Court
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EXHIBIT A

CAUSE NO. 999


STATE OF TEXAS § IN THE 51ST JUDICIAL
 §
VS. § DISTRICT COURT OF
 §
RAYMOND MERRIL JESSOP § SCHLEICHER COUNTY, TEXAS

ORDER

On May 13, 2009 through May 16, 2009, the Court conducted a hearing on Motions to Suppress filed in Schleicher County Cause Nos. 991, 992, 993, 994, 995, 998, 999, 1000, 1001, 1002, 1003, 1004, 1013, 1014, 1015, 1016, 1018, 1019, and 1020. The hearing on the Motions to Suppress in these cases was consolidated by the Court, upon the agreement of the parties in the above-listed cases. The Defendants had filed several different Motions to Suppress in these matters and the Court considered all of these Motions at this hearing.

The hearing consisted not only of argument of counsel, but also testimony from witnesses, the admission of affidavits and other documentary evidence. The Court after considering the pleadings, the testimony, the arguments, and briefs of counsel Orders that Defendant's Motions to Suppress should be denied.

Signed this the OCT - 2 2009 day of ~~September~~ 2009.


Barbara Lane Walther, District Judge
51st Judicial District Court

CAUSE NO. 999

STATE OF TEXAS

VS.

RAYMOND MERRIL JESSOP

§
§
§
§
§

IN THE 51ST JUDICIAL

DISTRICT COURT OF

SCHLEICHER COUNTY, TEXAS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On May 13, 2009 through May 16, 2009, the Court conducted a hearing on Motions to Suppress filed in Schleicher County Cause Nos. 991, 992, 993, 994, 995, 998, 999, 1000, 1001, 1002, 1003, 1004, 1013, 1014, 1015, 1016, 1018, 1019, and 1020. The hearings on the Motions to Suppress in these cases were consolidated by the Court, upon the agreement of the parties in the above-listed cases. The Defendants had filed several different Motions to Suppress in these matters and the Court considered all of these Motions at this hearing.

The hearing consisted not only of argument of counsel, but also live testimony from eleven witnesses and the admission of affidavits and documentary evidence.

The Court enters the following findings of fact and conclusions of law with respect to all Motions to Suppress.

FINDINGS OF FACT

1. The Motions to Suppress and the hearing concerned two search warrants, which were issued under Cause Nos. M-08-001-S and M-08-002-S.
2. The Court finds that the Search and Arrest Warrant Cause No. M-08-001-S was issued after a probable cause affidavit for search and arrest warrant had been presented by Texas Ranger ~~Leslie Brooks Long~~ (hereinafter referred to as Ranger Long) to the issuing magistrate.
3. The Court finds that Warrant M-08-001-S was issued on April 3, 2008, at 5:50 p.m. Entry onto the YFZ Ranch premises was made pursuant to the warrant at approximately 9:00 p.m. on April 3, 2008.
4. The Court finds that the Search Warrant Cause No. M-08-002-S was issued after a probable cause affidavit for a search warrant had been presented by Ranger Long to the

issuing magistrate.

5. The Court finds that the Search Warrant M-08-002-S was issued on April 6, 2008 at 10:12 p.m. Peace officers began to execute the warrant at the YFZ Ranch following its issuance.
6. The Court finds that the Department of Family and Protective Services (hereinafter referred to as the "Department" or as "DFPS") on April 3, 2008, filed a Petition For Orders in Aid of Investigation of a Report of Child Abuse or Neglect, and that the subjects of said petition were, _____ and an unnamed baby girl.
7. The Court finds that a district judge signed an Order for Investigation of Child Abuse dated April 3, 2008.
8. The Court finds that the Department on April 6, 2008, filed a second Petition For Orders in Aid of Investigation of a Report of Child Abuse or Neglect, and that the subjects of said petition were the children located at the YFZ Ranch.
9. The Court finds that an Order for Investigation of Child Abuse dated April 6, 2008, was signed by a district judge.
10. That Defendants' Joint Consolidated Motion to Suppress filed on April 14, 2009, contains an attached Exhibit 15 which consist of the Petition for Order in Aid of Investigation of a Report of Child Abuse or Neglect that was filed with the Court on April 3, 2008, however affidavit in support of that Petition is not the affidavit that was attached to Defendants' Exhibit 15. The Court has included as Attachment "A" a true and correct copy of the April 3, 2008, Petition, the correct copy of the supporting affidavit, and a copy of the Order signed by the Court.
11. The Court has included as Attachment "B" to this Finding of Fact a true and correct copy of the Petition for Order in Aid of Investigation of a Report of Child Abuse or Neglect that was filed with the Court on April 6, 2008, the correct copy of the supporting affidavit, and a copy of the Order signed by the Court.

12. The Defendants did not testify at the hearing on the motions to suppress, but instead chose to produce affidavits to support their claims of standing. These affidavits were considered by the Court, along with other evidence related to standing, pursuant to Tex. Code Crim. Proc. art. 28.01.
13. The Court finds that the property that was the subject of the two search warrants is a 1691 acre ranch and improvements located thereon.

14. The Court finds that said property at the time of the searches was owned by YFZ Land, LLC. The Court finds that the YFZ Land, LLC is listed as a Texas limited liability company, whose listed president is David S. Allred.
15. The Court finds that located on the YFZ Ranch property there are numerous structures, including a number of structures that could be used for residential purposes, several that could be used by residents in the practice of their religion, some structures that relate to

education of the children, and some structures that relate to various ongoing business activities.

16. The court finds that residents of the YFZ Ranch are members of the Fundamentalist Church of Jesus Christ Latter Day Saints (hereinafter referred to as FLDS)
 17. The Court finds that none of the unpaved roads within the YFZ Ranch property had names.
 18. The Court finds that there were no numbers or names on the buildings located on the YFZ Ranch, including the residential structures.
 19. The Court finds that there was no evidence presented that any of the residential or other structures were owned in whole or in part by any of the individual Defendants, nor that any of the Defendants otherwise controlled any of the structures owned by the YFZ Ranch, LLC through leases, contracts, or any other written agreements.
 20. The court finds that the parcels owned by YFZ Ranch, LLC that comprise the entire YFZ Ranch property were listed as whole parcels on the Schleicher County property tax records, and the property had not been subdivided to reflect any individual ownership or other individual control by any of the Defendants.
 21. The Court finds that the affidavits introduced by Defendants to support their standing do not assert nor do they identify any specific or unique structure as being their home but rather that the statements assert that they reside at the YFZ Ranch.
 22. The Court finds that Ranger Long truthfully stated in his probable cause affidavit in support of Search and Arrest Warrant No. M-08-001-S, that he had been on the YFZ Ranch property on several occasions and that he had observed that access to the property was controlled by a locked gate, a manned guard house, high observation points, and a barbed-wire fence are truthful.
-
23. The Court finds that Ranger Long received a call from the Schleicher County Sheriff's Department, informing him that a female had placed a series of outcry calls to the New Bridge Family Shelter Crisis Hotline. She stated that she is a 16-year-old female, that she lives on the YFZ Ranch, that Dale Evans Barlow is her husband, that she is pregnant, that she has an eight-month-old child, and that she is the subject of ongoing sexual and physical abuse.
 24. The Court finds that the Schleicher County Sheriff's Department provided Ranger Long with information that Dale Evans Barlow had been convicted in Arizona for the offense of conspiracy to commit sexual conduct with a minor.
 25. The Court finds that Ranger Long met with Sheriff Doran, who provided him with the family shelter's intake sheets and their call logs.
 26. The Court finds that on April 2, 2008, Ranger Long reviewed unsigned copies of affidavits from the family shelter workers who took the calls from a female that claimed to

- be a victim of sexual and physical abuse. The Court further finds that Ranger Long did not prepare the affidavits that were signed by the workers from the Crisis Hotline.
27. The court finds that Ranger Long interviewed the family shelter workers concerning their contacts with the caller.
 28. The Court finds that the family shelter workers confirmed that the caller, who identified herself as _____, reported, among other things, that she had been assaulted, both physically and sexually, by Dale Evans Barlow
 29. The Court finds that the family shelter workers confirmed that the caller reported, among other things, that she was the fourth of multiple "wives" of Dale Evans Barlow.
 30. The Court finds that the family shelter workers confirmed that the caller reported, among other things, that she wanted to leave the YFZ Ranch, but that she could not leave because of other persons, including her fellow "wives", would prevent her from leaving said property.
 31. The Court finds that the shelter workers believed that the telephone caller was believable, that she needed help, and that she needed to be removed from the YFZ Ranch.
 32. The Court finds that Ranger Long obtained copies of reports generated by officials with the Texas Department of Family and Protective Services prior to his presentation of his probable cause affidavit in support of M-08-001-S.
 33. The Court finds that no credible evidence was introduced that Ranger Long intentionally withheld or omitted information or recklessly misrepresented information in the probable cause affidavit in support of Warrant No. M-08-001-S that he presented to the magistrate as part of his request for search and arrest warrants.
 34. The Court finds that Ranger Long believed at the time he sought Warrant M-08-001-S that the caller was a real victim of domestic violence and sexual assault and as a result of his belief he sought the search warrant as a means of further investigation of these allegations.
 35. The Court finds that Ranger Long had probable cause at the time he sought Warrant M-08-001-S to believe that crimes, including sexual assault of a child, had occurred and were occurring on the YFZ Ranch premises.
 36. The Court finds that the reports that Ranger Long received from the family shelter workers were consistent with and corroborated by other information that Ranger Long had learned about the YFZ Ranch and the FLDS prior to March 2008.
 37. The Court finds that there is no credible evidence that Ranger Long included any deliberate falsehood in the affidavit for Warrant M-08-001-S.
 38. The Court finds that no credible evidence was introduced that Ranger Long had any information that the caller was not in fact a victim of ongoing sexual abuse at the YFZ Ranch.

39. The Court finds that no credible evidence was introduced to support the claim that Ranger Long acted in reckless disregard for the truth in preparing and presenting the search warrant affidavit for Warrant M-08-001-S.
40. The Court finds that no credible evidence was introduced to support the claim by Defendants that Ranger Long misrepresented the purpose of his requesting authorization to search the YFZ Ranch.
41. The Court finds that Ranger Long included within his probable cause affidavit a statement that he knew of "no provision under Texas law for lawful marriage at the age of fifteen." The Ranger's statement is an attempt to reach a legal conclusion and it is an incorrect statement of the law therefore for review purposes of the probable cause affidavit this statement must be removed from the affidavit.
42. The Court finds no credible evidence was introduced to support the Motion to Suppress claim that at the time that the affidavit was sworn by Ranger Long that he entertained doubts, much less serious doubts, about the truth of the allegations in the search warrant affidavit for Warrant M-08-001-S.
43. The Court finds that it was not until April 13, 2008, some ten days after the first Search and Arrest Warrant was issued, that Ranger Long learned of information suggesting that the phone calls to the family shelter workers were placed from a location other than the YFZ Ranch.
44. The Court finds that before the Search and Arrest Warrant was executed Sheriff David Doran received a cell phone communication from someone claiming to be Dale Evans Barlow. Sheriff Doran instructed the caller to contact the law enforcement where he was located within thirty minutes of said phone call. Notification of such contact within that time frame, if any, was never received by Sheriff Doran.
45. ~~The Court finds no credible evidence that the officers executing the Arrest and Search Warrant No. M-08-001-S knew that or should have known that David Evans Barlow was not on the ranch at the time of the search.~~
46. The Court finds that entry was made onto the YFZ Ranch on April 3, 2008 pursuant to Warrant M-08-001-S, and to the Order For Investigation of Child Abuse dated April 3, 2008.
47. ~~The Court finds that on April 4, 2008, a structure-by-structure search for _____, her child and Dale Evans Barlow, as well as for evidence of the alleged criminal activity as authorized by Warrant M-08-001-S, was initiated.~~
48. The Court finds that during the structure-by-structure searches, peace officers came into contact in plain view with evidence of additional criminal activity above and beyond what was alleged in the application for Warrant M-08-001-S, including evidence of multiple instances of bigamy and sexual assault of additional children.
49. The Court finds that DFPS workers pursuant to the Court Order for Investigation of Child

Abuse dated April 3, 2008, interviewed children that resided at the YFZ Ranch.

50. The Court finds that in the course of these interviews several females made statements to the DFPS workers that they were minors; that they were married to adult men that resided on the ranch; and that they were the mothers of children.
51. The Court finds that while peace officers were executing Warrant M-08-001-S and while they were assisting DFPS in carrying out the Court Order for Investigation of Child Abuse dated April 3, 2008, that the peace officers obtained information from the representatives of DFPS. This information that the officers obtained provided further evidence of criminal violations including bigamy and sexual assault of children.
52. The Court finds that as a result of the outcry statements made by several children to the DFPS workers that the Department applied to the Court for an additional Order in Aid of Investigation of a Report of Child Abuse or Neglect.
53. The Court finds that Ranger Long had probable cause at the time he sought Warrant M-08-002-S to believe that crimes, including bigamy and sexual assaults of children, had occurred and were occurring on the YFZ Ranch premises.
54. The Court finds that in support of the probable cause affidavit for Warrant M-08-002-S Ranger Long included statements made by Department workers that several individuals had identified themselves as being minors, that they were spiritually married to men that were adults, that these men were spiritually married to other women and that they had given birth to children as a result of these spiritual marriages.
55. The Court finds that no credible evidence was introduced to support the Motion to Suppress claim by Defendants that Ranger Long intentionally or knowingly included any deliberate falsehood in the search warrant affidavit for Warrant M-08-002-S.
56. The Court find no credible evidence was introduced to support the Motion to Suppress claim by Defendants that Ranger Long intentionally or knowingly or with reckless disregard for the truth omitted relevant information in his probable cause affidavits for either Warrant M-08-001-S or Warrant M-08-002-S.
57. The Court finds that no credible evidence was introduced to support the Motion to Suppress claim by Defendants that Ranger Long acted in reckless disregard for the truth in preparing and presenting the probable cause affidavits for either Warrant M-08-001-S or Warrant M-08-002-S.
58. The Court finds that no credible evidence was introduced to support the Motion to Suppress claim by Defendants that Ranger Long entertained doubts, much less serious doubts, about the truth of the allegations in the the probable cause affidavits for either Warrant M-08-001-S or Warrant M-08-002-S.
59. The Court finds that the Defendants failed to present credible evidence to support the claims made in their offer of proof in support of their Motion to Suppress that the Ranger's probable cause affidavits knowingly or intentionally contained either deliberate

falsehoods, deliberate omissions or reckless disregard for the truth by the affiant in obtaining either search and arrest warrant M-08-001-S or M-08-002-S.

60. The Court finds that during the evidentiary hearing there was no credible evidence introduced to establish the truth of the allegations contained in Defendants Joint Consolidated Motion to Suppress offer of proof that portions of of the probable cause affidavits for Warrants M-08-001-S or M-08-002-S contained a deliberate falsehood or reckless disregard for the truth.
61. The Court finds that during the evidentiary hearing on Defendants' Motion counsel for Defendants acknowledged that the picture that Defendants had attached as Exhibit 1-E of the Joint Consolidated Motion to Suppress was attached to the Motion without having been authenticated as being related to this matter. In fact, Exhibit 1-E is a photograph taken during the course of an unrelated drug arrest that occurred outside of the State of Texas. The Court further finds that defendant's attorney attempted to withdraw said photograph after they confirmed that it was not related.
62. The Court finds that Ranger Long did not deliberately or recklessly omit information from either probable cause affidavit and that if there were any unintentional omission their inclusion would not have resulted in providing the magistrate with information that would have caused a reasonable magistrate to decline to authorize Warrant M-08-001-S or Warrant M-08-002-S.
63. The Court finds that given the facts and circumstances of the YFZ Ranch property, and the nature of the allegations made by the outcry victims, the descriptions of the places to be searched in Warrants M-08-001-S and M-08-002-S were sufficiently specific.
64. The Court finds that the probable cause affidavit in support of Warrant M-08-002-S contained information supplied by a confidential informant. The Court further finds that it heard no evidence challenging the information provided by the confidential informant.

65. The Court finds no credible evidence that at the time that Ranger Long included any of the statements in his probable cause affidavit in support of Search and Arrest Warrant No. M-08-001-S that he intentionally or knowingly or recklessly misrepresented to the magistrate any relevant information nor that he withheld any relevant information from the magistrate.

66. The court finds that Defendants' offer of proof of deliberate falsehoods contained within the probable cause affidavits to support the two warrants is unsupported by credible evidence.

CONCLUSIONS OF LAW

1. No search warrant shall issue by a magistrate unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested.
2. No arrest warrant shall issue unless there is a finding by the issuing magistrate that the request is supported by an affidavit that sets forth sufficient information that an individual has committed some offense against the laws of the State and the warrant must specify the name of the person who is to be arrested and it must state the offense that the person is accused of having committed.
3. Arrest and Search Warrant must be issued only upon a finding by the issuing magistrate that the request is supported by an affidavit that sets forth sufficient information that would constitute probable cause to believe that a crime has been committed and that the evidence of a crime will be found at the place to be searched.
4. A Probable Cause Affidavit may be based on the affiant's personal knowledge and /or on information that the affiant has if it is from a reasonably trustworthy source.
5. On a Motion to Suppress Hearing the Court must review the sufficiency of the Probable Cause affidavit by conducting a review of the information actually contained within the "four corners" of the probable cause affidavit.
6. On a Motion to Suppress Hearing when the Defendant contests the truthfulness of the ~~Probable Cause affidavit or if the Defendant asserts that the Probable Cause Affidavit~~ contains statements that were made by the affiant with a reckless disregard for the truth, then the Court must conduct an evidentiary hearing to determine if the offer of proof made by the Defendant is correct.
7. If the Court after this evidence concludes that the Probable Cause Affidavit contains deliberate false statements, or that it was made with reckless disregard for the truth the Court shall review the Probable Cause affidavit after these statements are redacted from the affidavit.
8. The Defendant must establish the allegations that he makes in his offer of proof by a preponderance of the evidence and if he meets this burden of proof then the reviewing Court must remove those allegations from the probable cause affidavit and review the redacted affidavit to determine if probable cause remains.
9. The Court concludes as a matter of Law that the evidence that Defendants presented at the Motion to Suppress Hearing failed to prove by a preponderance of the evidence that the

Probable Cause Affidavits contained deliberate falsehoods or that they were made with a reckless disregard for the truth. The Court concludes that the Probable Cause Affidavits contained no deliberate falsehoods and that they were not made with a reckless disregard for the truth.

10. In reviewing a Probable Cause Affidavit the affidavit is not subject to attack if subsequent investigation establishes that information that the officer reasonably believed to be truthful at the time that it was sworn subsequently is determined to be false.
11. A Probable Cause Affidavit may be based upon hearsay if the affidavit contains sufficient information that would cause the affiant to believe that the information was reliable or credible and if the information would establish a valid basis for the belief that a crime had been committed and that a search of the named place could result in evidence of the crime being seized. Furthermore, if information contained within the Probable Cause Affidavit is not within the personal knowledge of the affiant, the affidavit must advise the magistrate of how the affiant acquired the information.
12. The Court concludes as a matter of law that the Probable Cause Affidavits for M—08-001-S and M-08-002-S complied with this law.
13. Based on the Court's factual determinations, the Court has determined that no *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674 (1978) violation occurred with respect to Warrant M-08-001-S or Warrant M-08-002-S.
14. The Court concludes that the "four corners" of the affidavits in question provided sufficient probable cause to enter and search the entire YFZ Ranch premises, as described in the warrants, and to seize property on the premises as described in the warrants.
15. Pursuant to the Court's factual determinations, the Court concludes that the descriptions of the places to be searched in Warrants M-08-001-S and M-08-002-S were sufficiently specific.


16. The Court finds that the offer of proof that Defendants provided to the Court in support of their request for an evidentiary hearing under *Franks* was not supported by the evidence.
17. The Court concludes that both Warrants M-08-001-S and M-08-002-S were validly issued upon appropriate probable cause, and met all applicable requisites of the Constitution of the United States of America, the Constitution and Laws of the State of Texas including the requirements of Chapter 18 of the Texas Code of Criminal Procedure and other applicable law.

18. The Court concludes that Defendants have standing to challenge the searches.
19. The Constitution of the United States of America, the Constitution of the State of Texas, and the Texas Religious Freedom Act, Tex. Civ. Practice & Remedies Code Section 110.001 *et seq* provide for the free exercise of religion.

20. The Court concludes that for the state to interfere with an individual's right to freely exercise his religion and thus by governmental action burden that individual's religious practice the state's action must be subjected to the rigid standard of strict scrutiny and the state must demonstrate a compelling governmental interest. The Court concludes that the State's action in protecting minors and enforcing the penal laws of this state complies with these requirements.

The Court concludes that based upon the above factual determinations and consideration of the applicable law, that the Defendants' Motions to Suppress Warrant M-08-001-S and M-08-002-S should be denied.

SIGNED, on this _____ day of OCT - 2, 2009.


Barbara Lane Walther, District Judge
51st Judicial District
