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VIRLYNN TINNELL
SUPERIOR COURT CLERK

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

9 STATE OF ARIZONA,

10 Plaintiff,

11 vs.

12 WARREN STEED JEFFS,

13 Defendant.

No. CR 2007-0743 & CR 2007-0953

REQUEST FOR HEARING AND
ORAL ARGUMENT PRUSUANT TO
FRANKS V. DELAWARE

14 THE STATE OF ARIZONA, by and through the Mohave County Attorney, hereby
15 requests that the Court set a hearing for oral arguments to determine whether the
16 defendant can meet his preliminary burden under *Franks v. Delaware* to mandate an
17 evidentiary hearing on the Defendant's Motion to Suppress. The State supports this
18 request in the following memorandum.

19 RESPECTFULLY SUBMITTED THIS 2nd DAY OF DECEMBER, 2008.

20 MATTHEW J. SMITH
21 MOHAVE COUNTY ATTORNEY

22
23 By


24 SPECIAL DEPUTY COUNTY ATTORNEY
TIMOTHY P. LINNINS

1 MEMORANDUM

2 The defendant invoked *Franks v. Delaware* in support of his motion to suppress.
3 Under *Franks*, there is a "presumption of validity with respect to the affidavit supporting
4 the search warrant"¹ and the defendant must meet his preliminary burden before he is
5 entitled to an evidentiary hearing. Any effort to obtain an evidentiary hearing to go
6 beyond the four corners of the affidavit is appropriate only under very limited
7 circumstances.

8 Arizona and Texas courts have followed the dictates of *Franks* that create a high
9 threshold for parties seeking an evidentiary hearing. A defendant must:

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

16 The defendant seeks an evidentiary hearing that will require the State of Arizona
17 to subpoena several witnesses to travel from the State of Texas to testify. "To mandate
18 an evidentiary hearing, the challenger's attack must be more than conclusory and must
19 be supported by more than a mere desire to cross-examine."³ Yet, as of this date, the
20 defendant has done no more than make a conclusory assertions supported only by the
21 arguments in the pleadings. As such, this Court must hold a hearing to determine
22 whether the defendant can meet his burden under *Franks*.

23 ¹ *Delaware v. Franks*, 438 U.S. 154, 171 – 172 (1978).

24 ² See, *State v. Crowley*, 202 Ariz. 80, 41 P.3d 618 (Ct. App. 2002); *State v. Carter*, 145
25 Ariz. 101, 700 P.2d 488 (1985), (holding that merely innocent or negligent mistakes in
26 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).

³ *Franks*, 438 U.S. at 171 – 172.

1 **III. CONCLUSION**

2 Based on the foregoing, the State respectfully requests that the Court set a
3 hearing to determine whether the defendant's motion to suppress warrants a full
4 evidentiary hearing.

5 RESPECTFULLY SUBMITTED THIS 23rd DAY OF DECEMBER, 2008.

6 **MATTHEW J. SMITH**
7 **MOHAVE COUNTY ATTORNEY**

8 By Matthew J. Smith for
9 **SPECIAL DEPUTY COUNTY ATTORNEY**
10 **TIMOTHY P. LINNINS**

11
12
13
14 A copy of the foregoing
15 sent this same day to:

16 **HONORABLE STEVEN F. CONN**
SUPERIOR COURT JUDGE

17 **MICHAEL L. PICCARRETA**
ATTORNEY FOR DEFENDANT

18 **RICHARD WRIGHT**
19 **ATTORNEY FOR DEFENDANT**

20 By Ben Brooks