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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 23<sup>rd</sup> DAY OF DECEMBER, 2008.

20 MATTHEW J. SMITH  
21 MOHAVE COUNTY ATTORNEY

22  
23 By Matthew J. Smith for  
SPECIAL DEPUTY COUNTY ATTORNEY  
24 TIMOTHY P. LINNINS  
25  
26

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"<sup>1</sup> 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.<sup>2</sup>

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."<sup>3</sup> 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 <sup>1</sup> *Delaware v. Franks*, 438 U.S. 154, 171 – 172 (1978).

24 <sup>2</sup> 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).

<sup>3</sup> *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 23<sup>rd</sup> 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**

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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