

FILED ff
TIME 11:08 A.M.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

JAN 23 2009

IN AND FOR THE COUNTY OF MOHAVE

VIRLYNN TINNELL
CLERK SUPERIOR COURT
BY: [Signature] DEPUTY

HONORABLE STEVEN F. CONN
DIVISION 3
DATE: JAN. 20, 2009

SC*
VIRLYNN TINNELL, CLERK

COURT NOTICE/ORDER/RULING

STATE OF ARIZONA,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

No. CR-2007-0743 & CR-2007-0953

The State has filed a Request for Hearing and Oral Argument Pursuant to Franks v. Delaware. The Defendant has filed an opposition to Request for Hearing to Determine Whether Defendant is Entitled to an Evidentiary Hearing on Motion to Suppress. The latter pleading refers to, among other things, "the upcoming evidentiary hearing on defendant's Motion to Suppress".

The Court continues to be perplexed as to what exactly is the intent of the State regarding the Texas search. Although the State has not formally committed itself in any binding manner to the proposition that it will not use any evidence obtained in the Texas search, that was certainly their position advanced orally at the last hearing on October 28, 2008, and in writing in their response to the defense motion to suppress. The Court does not know whether they have changed that position or whether they are concerned that they will have to answer a defense allegation that evidence they feel was obtained independently from the Texas search was actually obtained as a result of that search. The Court is aware that

the State's position may have been solidified in one way or another by discovery proceedings which have taken place since the last hearing. The Court also wonders whether the State's position depends on which prosecutor is filing a certain pleading, but that is probably none of the Court's business.

It would appear that both parties are now acknowledging that the defense motion to suppress evidence seized in the Texas search will have to be ruled on. That motion raises several different issues, only one of which is the Franks v. Delaware issue. It is hard to imagine that the Court could rule on all those issues without having some sort of evidentiary hearing requiring the testimony of Texas law enforcement officers. Admittedly, some of the issues, such as whether there was probable cause for the issuance of the search warrant, would require nothing more than an analysis of the four corners of the search warrant and the accompanying affidavit. However, it is unlikely that the Court could rule on an issue such as whether the officers exceeded the permissible scope of the search warrant without having evidence presented regarding the scope of their actual search.

The State's most recent pleading almost seems to suggest that the Court will eventually address the defense motion to suppress in a piecemeal fashion, having separate evidentiary hearings and/or oral argument on each distinct issue raised in the motion until all issues are resolved. That seems highly unlikely. Assuming that a hearing is going to be held on the defense motion, an assumption that now seems increasingly warranted by the tenor of the most recent pleadings, the Court's desire will be to have a single hearing at which either party may present any evidence it feels relevant to the issues raised in the defense motion. The Court sees little advantage in having out-of-state witnesses make multiple trips to Mohave County when one would be sufficient. Depending on the State's intent regarding

evidence seized in the Texas search, and, of course, on the Court's ruling on the motion to suppress, some of those witnesses may have to be making multiple trips to Mohave County anyway.

The Defendant has the burden of proof under Franks v. Delaware. It will therefore be the Defendant's obligation, not the State's, to "subpoena several witnesses to travel from the State of Texas to testify". The Court sees no justification or necessity based either on the law or facts applicable to this case or on a desire to manage this case more efficiently in having a preliminary hearing at which counsel can argue the question of whether an evidentiary hearing on the Franks v. Delaware should be held.

IT IS ORDERED denying the State's Request for Hearing and Oral Argument Pursuant to Franks v. Delaware.

At the last hearing on October 28, 2008, the Court suggested the possibility of setting some sort of status hearing to make sure that this case remained on a track toward an eventual resolution. The Court was assured at that time that it was not necessary to do so and that counsel would keep this case moving forward. The Court has no reason to question that assessment and is aware of recent discovery that has been undertaken. The Court is concerned, however, that it appears likely that at some time in the future it is going to have to schedule a potentially complex evidentiary hearing to resolve the Defendant's motion to suppress evidence seized in the Texas search. The Court is amenable to allowing counsel to investigate fully the applicable issues that will have to be addressed at that hearing and recognizes from experience that interviewing witnesses before an evidentiary hearing will enable that hearing to be limited to the issues relevant to the motion to suppress rather than being a pretrial interview which the Court is forced to preside over. The Court

would like the parties to be thinking about the logistics of the anticipated evidentiary hearing sooner rather than later.

IT IS ORDERED directing counsel to advise the Court in writing, by stipulation if possible, by no later than February 27, 2009, how they wish to proceed on the Defendant's motion to suppress. The Court does not particularly care whether it is advised that counsel want to hold off on scheduling the hearing, that counsel want a hearing set, that counsel agree which issues need to be addressed at a hearing, that counsel agree what witnesses will be testifying, that counsel agree how long the hearing will take or even that counsel agree to schedule the hearing on a certain date.

IT IS ORDERED directing the Clerk to bring this file to the Court's attention by no later than March 4, 2009. *BL*

The Court at that time will be inclined to adopt any stipulation reached by counsel, within reason. If no agreement has been reached, and the Court does not by any means rule out the likelihood that counsel will be unable to agree, it will be the Court's intent to set this matter for an evidentiary hearing and oral argument on the Defendant's motion to suppress. The Court will be inclined to schedule that hearing as it would a jury trial. In other words, the hearing would start on a Tuesday at 9:30 a.m. and proceed on a daily basis running 9:30 a.m. to 4:30 p.m. with an hour for lunch until the hearing was completed. The Court would clear its calendar to enable it to complete the hearing. If the hearing were unable to be completed in one week it would resume the following Tuesday. In scheduling the hearing the Court would seek input from counsel as to a time that would be convenient to their schedules and would set the hearing far enough off to secure the attendance of any necessary witnesses.

cc:

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