

STATE OF INDIANA) IN THE CARROLL CIRCUIT COURT
)ss:
COUNTY OF CARROLL) CAUSE NO. 08C01-2210-MR-000001

STATE OF INDIANA)
)
vs.)
)
RICHARD M. ALLEN)

SUPPLEMENTAL MOTION FOR FRANKS HEARING

Comes now the Accused, Richard M. Allen, by and through Counsel, Andrew J. Baldwin, and Bradley A. Rozzi, and having previously filed his Motion for Franks Hearing on the 18th day of September, 2023, now files this Supplemental Motion which includes a more detailed analysis of the legal standards associated with the Franks process. In support of said Supplemental Motion, Defendant Allen states as follows:

1. On the 18th day of September, 2023, Defendant Allen filed his Motion for Franks Hearing. In Paragraph “8” of said Motion, Defendant Allen made general references to the “preliminary showing,” required prior to the admission of Franks evidence at a suppression hearing. However, Defendant Allen now realizes that he did not articulate, in detail, the actual burden of proof associated with said preliminary showing;

2. “To mandate an evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically, the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained.” *Franks v. Delaware*, 438 U.S.171 (1978);

3. The question becomes, what exactly is the burden of proof associated with the *preliminary showing*? In *People v. Lucente*, 506 N.E.2d 1269 (1987), the Illinois Supreme Court addressed the issue of the burden of proof related to the preliminary

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showing. In pertinent part, the Court stated as follows: “Franks expressly states that in order to prevail at the hearing the Defendant must prove his claim of perjury by a preponderance of the evidence. If the preponderance standard is to apply at the hearing, it follows logically that the threshold requirement must be something less. Thus, the precise standard lies somewhere between mere denial, on the one hand, and proof by preponderance on the other. Put another way, the preliminary burden must be sufficiently rigorous to preclude automatic hearings in every case, but not so onerous as to be unachievable.” *Id at 1276-1277*. Therefore, Allen’s burden could be akin to the well recognized burden of *reasonable suspicion*, the lowest of the standards employed in the criminal justice system;

4. The purpose of the “substantial preliminary showing” requirement is to discourage abuse of the hearing process and to enable spurious claims to “wash out at an early stage.” *Franks v. Delaware*, (1978) 438 U.S. 154, 170. At its very foundation, the preliminary showing requirement is intended to discourage litigants from utilizing the suppression process as a means of seeking an additional opportunity to cross-examine the State’s witnesses. Hence, the rule requires that Defendant assert more than basic allegations. Instead, Defendant must offer up Affidavits and other supporting documents to prove up Defendant’s claims that State actors engaged in conduct that demonstrated intentional or reckless disregard for the truth;

5. In *People v. Lucente*, the Defendant was charged with Possession of a Controlled Substance with the intent to deliver. *Id. At 1271*. The Defendant’s arrest was driven by a Chicago police officer’s execution and submission of a Complaint for a Search Warrant. *Id.* The Complaint was based on evidence provided by a “reliable” and unnamed informant that the Officer claimed to have worked with on numerous occasions prior to filing the Complaint. *Id.* The informant claimed to have visited Defendant’s apartment and purchased marijuana while inside. *Id.* The Complaint also, in detail, articulated the reasons why the Officer found the unnamed informant to be reliable. *Id.* Based upon the Officer’s sworn statements, a warrant was issued and drugs were recovered in the Defendant’s residence. *Id.* This recovery led to the Defendant’s arrest and filing of formal charges;

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6. The Defendant responded by claiming that he had an alibi. *Id.* Attached to his Franks filing, the Defendant included several affidavits, signed by Defendant's family members, indicating that he (Defendant) was at another location at the time the unnamed informant claimed to have rendezvoused with him at his home. *Id.* Despite the fact that all affidavits offered by the Defendant were statements from family members and therefore, somewhat self-serving, the Court still found that the Defendant met the threshold requirements to offer up the Franks evidence at the suppression hearing. *Id. At 1278.* This is to say, that the very nature of an affidavit and its inherent indicia of accountability and accuracy was enough to overcome the relatively low standard of proof required to make the preliminary showing, required by Franks.

7. In this case, Defendant Allen has done far more than offer up self-serving Affidavits. In fact, the bulk of supporting documentation in Defendant Allen's offering includes, but is not limited to, Affidavits from law enforcement officers working the case, sworn deposition statements from law enforcement officers, numerous police reports, and audio and video of witness statements taken by law enforcement officers during the investigation. The veracity of the supporting material offered up by Defendant Allen is far more reliable, on its foundation, than self-serving affidavits offered up by the Defendant in People v. Lucente. Therefore, it stands to reason that Defendant Allen would likewise, meet the requisite burden of proof for the preliminary showing such that his Franks evidence should be admissible at the suppression hearing;

8. The relatively low legal threshold was also demonstrated in the case of People v. Zymantas. 547 N.E.2d 536, (Appellate Court of IL, 1st Dist. 5th Div. 1989). In this case, a police officer sought out a search warrant for Defendant's home. *Id. at 537.* The officer alleged, under oath, that he had received information from a reliable informant that said informant placed sports wagers (illegal sports gambling) with Defendant through a specific phone number, registered in Defendant's name. *Id.* The officer further swore that he confirmed with the phone company (Illinois Bell) that the phone was in fact, registered in Defendant's name. *Id.* In response, Defendant filed a request for a Franks hearing alleging, through his own affidavit, that the phone number

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was not registered in his name and attached an Illinois Bell telephone bill showing that the number was not registered to Defendant. *Id. at 539*. The Court found that the affidavit and single supporting document was enough to meet the preliminary showing and therefore, the Defendant was entitled to a hearing.

9. Again, Defendant offers up a self-serving affidavit supported by a corroborating business record and met his burden as it relates to a preliminary showing. Defendant Allen's memo and attachments amount to far more. Allen offered up dozens of pages of police reports from various law enforcement officers, all of which focus on individuals other than himself (Allen), that could have committed these crimes. Deposition transcripts from law enforcement officers that contain testimony acknowledging that others may have committed these crimes. And finally, both written and recorded statements of witnesses on or near the trail on the day in question, who articulated facts entirely inconsistent with those offered up by Sheriff Liggett in his Affidavit supporting the search warrant.

10. Assuming that the necessary threshold showing has been made so that a hearing must be held, the next question revolves around who has the burden of proof and what exactly, is the legal standard at the suppression hearing. *Franks* holds that "the allegation of perjury or reckless disregard [must be] established by the Defendant by a preponderance of the evidence." *Franks v. Delaware* (1978) 438 U.S. 154, 170. This standard and the circumstances surrounding evidentiary showing are referenced in Paragraphs #6 - #10 of Defendant Allen's Motion for Franks Hearing previously filed with this Court.

Respectfully Submitted,


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Attorney for Defendant

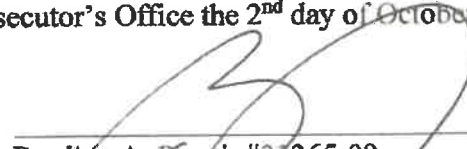

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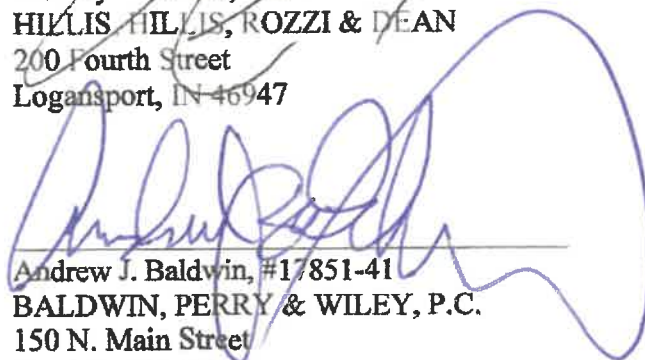
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CERTIFICATE OF SERVICE

I certify that I have served a copy of this document by the County e-filing system upon the Carroll County Prosecutor's Office the 2nd day of October, 2023.



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