

IN THE IOWA DISTRICT COURT FOR JEFFERSON COUNTY

STATE OF IOWA  v.  WILLARD NOBLE CHAIDEN MILLER,  Defendant.	Plaintiff,    Defendant.	NO. FECR005143  RESISTANCE TO MOTION FOR FRANKS HEARING
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COMES NOW the State of Iowa, by and through Chauncey T. Moulding, Jefferson County Attorney and Scott Brown, Assistant Attorney General, and for its Resistance to the Motion for *Franks* Hearing, states as follows:

1. The defendant is charged with Murder in the First Degree and is currently set for trial on March 23, 2023.

2. The defendant has filed a "Motion for *Franks* Hearing" requesting that the Court make a finding of a substantial preliminary showing in two regards: that a false statement was knowingly included by the affiant in the warrant affidavit and make a preliminary showing that the alleged false statement was necessary to the finding of probable cause. The warrants put at issue by the defendant's motion were issued November 4 and 5, 2021.

3. The Court must first make a finding that the defendant has made a substantial preliminary showing of a *Franks* violation and, if so, hold a hearing at the defendant's request. This particular procedure is cited in the defendant's motion at paragraph six (6) and again in paragraph fourteen (14). The State agrees with the view that this is a bifurcated proceeding. The Court has not yet made any finding concerning a *Franks* violation. It is the State's position that the hearing on the preliminary showing be separate from any evidentiary hearing on a *Franks* claim. See *Franks v. Delaware*, 438 U.S. 154, 171 (1978); *State v. Groff*, 323 N.W.2d 204, 209 (Iowa 1982).

Preliminary Showing  
Pertinent Facts

The investigation into the disappearance and death of Nohema Graber revealed that on November 2, 2021, at approximately 4:00 PM, Graber arrived at Chautauqua Park near Fairfield to do her daily walk. The walk was a routine for Graber, which she conducted almost every day after school at the same time and place. Graber's van was observed leaving the park at around 4:42 PM. Shortly after the van was observed on Glasgow Road driving southbound. The van was then seen on Middle Glasgow Road just after 5:00 PM, and a witness described two males in the front seats. The same witness, a few minutes later, saw two thin white males walking along Middle Glasgow Road. Investigators located Graber's van at the end of Middle Glasgow Road approximately a half mile from where the two white males were observed walking. Additionally, another witness told investigators he was contacted by Goodale at approximately 5:00 PM on November 2, 2021, and asked if he could pick up Goodale and Miller on Middle Glasgow Road. The witness said he picked them up and has identified them as Jeremy Goodale and Willard Miller.

Investigators also discovered Miller had a meeting with Graber on the afternoon of November 2, 2021, to discuss his poor grade in Graber's Spanish class. The poor grade is believed to be the motive behind the murder of Graber which directly connects Miller. Miller was interviewed by investigators and described the frustrations he had with the way Graber taught Spanish. Miller voiced his frustration over Graber hurting his grade point average and thought she was doing that to other students also. He described Graber as an "asshole." Miller went on to state to investigators he knew Graber drove a Honda van. When asked if he had any involvement in the disappearance of Graber, Miller denied any knowledge. Miller later stated he had knowledge of everything but did not participate. Miller also claimed that he was forced by the real killers to provide his wheelbarrow to help move the body, and that he helped drive Graber's van. He also stated at one point that a roving group of masked kids made him help.

4. It is in this full context of the investigation that the State requests the Court apply the criteria for a *Franks* request.

Legal Precedents and Case Law

5. It is the State's position that the process for establishing a *Franks* violation is bifurcated. The first step for the Court to determine is whether the defendant has made a substantial preliminary showing as to both of the following:

a. That a false statement was knowingly and intentionally included by the affiant in the affidavit; and

b. That the alleged false statement was necessary to the finding of probable cause.

See *Franks v. Delaware*, 438 U.S. 154, 171 (1978); *State v. Groff*, 323 N.W.2d 204, 209 (Iowa 1982).

The burden to make this preliminary showing is heavy:

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 sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient.

*Franks*, 438 U.S. at 171. Even if this showing is made, the defendant's claim must be denied without evidentiary hearing "if, when material that is the subject of the alleged falsity or disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause." *Id.*

6. The defendant has not made a showing that can survive this test.

Argument

7. The false statement that is alleged by the defendant in his motion comes from the statement in Deputy Rysdam's affidavit that the source of the information identifying Miller as involved in the death of Nohema Graber was from a Snapchat conversation between a juvenile witness and Goodale. The juvenile witness provided photos of the Snapchat conversation that he had preserved that identify Goodale's admissions that he acted in concert with another person to bring about Graber's death.

8. The juvenile witness was interviewed by law enforcement. In that conversation with law enforcement, the juvenile witness shares the Snapchat information from Goodale. The juvenile witness also identifies Goodale as making statements that implicate both Goodale and Miller by name. In fact, the source of the connection between Miller by name that is found in the warrant comes from the interview of the juvenile witness. In other words, the information in the affidavit is accurate concerning the connection between Miller and Goodale and their involvement in Graber's death.

9. For purposes of a *Franks* analysis, the source of the information connecting Miller being on Snapchat should be taken in conjunction with the information the juvenile witness is providing to law enforcement in his interview. Doing so allows the Court to make a determination concerning whether or not Deputy Rysdam knowingly provided false information or acted with reckless disregard for the truth.

10. It is clear when viewing the information from both the interview and the Snapchat the "he" in the Snapchat is Miller. There can be no other valid non-speculative claim that it is anyone other than Miller. What is critical to the finding of probable cause in the warrant is that Goodale made statements implicating himself and Miller. Whether the officer indicated those statements were sourced from Snapchat or from an individual repeating them in an interview is of no consequence to the finding of probable cause for the warrant and, as a result, precludes the defendant from establishing a preliminary finding concerning an alleged *Franks* violation. Even if the specific source of the information was removed from the affidavit, the information provided remains accurate and sufficient and the warrants would have issued. At worst, the information implicating Miller by name in a Snapchat rather than directly from an interview should be viewed as an innocent mistake.

11. There is no evidence that Deputy Rysdam made any statement in the affidavit knowing that the information was false or that he or any other officer acted with reckless disregard for the truth.

12. As to paragraphs 12 (a) through (j), an officer applying for a search warrant "is not required to present all inculpatory and exculpatory evidence to the magistrate," only that evidence which would support a finding of probable cause ... Omissions of fact

constitute misrepresentations only if the omitted facts “cast doubt on the existence of probable cause.” *State v. Green*, 540 N.W.2d 649 (Iowa 1995). In the defendant’s motion he provides nothing more than a “wish list” of what he believes could have rounded out the affidavit. The affidavit includes sufficient information to support a finding of probable cause and the defendant cannot complain that he wishes other evidence had been included.

13. The State will respond individually to each of the allegations in paragraph 12 of the defendant’s motion.

a. Goodale clearly implicates a second person in the Snapchat conversation. Putting this together with other evidence including Miller’s statement to law enforcement, it is clear that the other person is the Defendant Miller. Hence there was no deception by Deputy Rysdam or any other officer in providing the information that was included in the probable cause affidavit.

b. The two juveniles that were interviewed are not confidential informants. Both amount to a citizen informant providing information to police. An informant’s reliability is satisfactorily established by showing that he is a “citizen informant.” “Reliability of a citizen informant may be shown ‘by the very nature of the circumstances under which the incriminating information became known’ ... [N]o greater showing of reliability is required.” *State v. Post*, 286 N.W.2d 195 (Iowa 1979). The term “citizen informant” usually denotes one who is a crime victim or witness. Although their information is generally presumed to be reliable, this is not a per se rule. A common-sense analysis of the totality of the circumstances must still be used to assess reliability of the information. *State v. Niehaus*, 452 N.W.2d 184 (Iowa 1990); *State v. Peck*, 517 N.W.2d 230 (Iowa Ct. App. 1994).

c. Neither of the juveniles were involved in the death of Graber, had any prior knowledge of the plan to kill her, did not participate in any way in her death or have any other criminal liability. The associate referenced in the affidavit is a single person who had direct contact with Goodale about his and Miller’s involvement in the death of Graber. Although both juvenile witnesses were interviewed, it is clear that they provided a

majority of the information to law enforcement concerning Goodale and Miller included in the warrant affidavits.

d. Whether or not the witnesses were interviewed together or separately does not cast doubt on their veracity. It may be a factor the Court can utilize in determining their credibility but is not dispositive concerning the veracity of the information they provide nor renders the warrant suppressible.

e. Whether or not the juvenile witnesses were at or near Chautauqua Park is of no consequence. There is no evidence that would suggest they are involved in the death of Graber. The park is a public space and open to anyone who wants to utilize the park.

f. The State is unaware as to why or how the time of the photos of the Snapchat has anything to do with the issues presented by the defendant. The defense wishes to utilize the information contained in the conversation to its benefit but here claims that there is something suspicious about when and where the photos were taken.

g. The steps law enforcement took to verify the information in the Snapchat is to review and document the conversation. Photos of the Snapchat were provided to law enforcement along with information from an interview. The Snapchat conversation has the name Goodale included on the screen. The juvenile who was having the conversation with Goodale identifies him and indicates he was having a conversation with Goodale. There is nothing law enforcement did or did not do to mislead the Judge who issued the warrants. The information law enforcement obtained identified the conversation on Snapchat as coming from Goodale. The information is also consistent with other information learned during the investigation.

h. There was no material omission or statement from law enforcement that was misleading to the issuing Judge as it related to the content of the Snapchat conversation. Other than indicating that Goodale used the name "Willard" the content of the information on Snapchat is not misleading.

i. Concerning the location of the vehicle coming from the juvenile witness, it is clear the information is accurate. Whether the information was from a Snapchat conversation or directly from Goodale, it is clear that it was from Goodale.

j. Speculation that others could have been involved is of no consequence to the issuance of the warrant or would form any basis that law enforcement was intentionally misleading or omitted material information from the reviewing judge's consideration of the warrant.

k. Characterizing the statement that the juvenile witness provided law enforcement that a different male was involved is a stretch. It is clear from other evidence that Miller was the person with Goodale when Graber was murdered. Miller's own statements put him with Goodale and Graber. Other evidence also implicates Miller directly in her death and provided a basis that he conspired with Goodale to bring about her death.

14. As discussed in paragraph 13(b) of this resistance, the State does not view the information provided by law enforcement as information provided by a confidential informant. Neither witness stood to gain anything monetarily or substantively by providing information to law enforcement. Both should be viewed as citizen informants. Whether they were named or not is of no consequence to the Court's decision concerning this motion.

#### Conclusion

15. Preliminarily the Court needs to consider and issue an order that there is a "substantial preliminary showing" that a false statement was knowingly included by the affiant in the warrant affidavit or that the officer acted with reckless disregard for the truth in supplying information in the warrant affidavit, and that the alleged false statement was necessary to the finding of probable cause. It is the State's position that the Court can consider this issue based upon the pleadings filed to date supplemented with the police interview and deposition of the juvenile witness.

16. If the Court makes the finding there has been no substantial preliminary finding the motion should be overruled. If, however, the Court articulates a substantial preliminary showing a second hearing will be required where witnesses will need to be called including the juvenile witness.

WHEREFORE the State requests the Court deny the Motion for a Frank's Hearing based upon the lack of a "substantial preliminary showing" of a *Franks* violation.

Respectfully Submitted,

/s/ Chauncey T. Moulding

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A handwritten signature in blue ink, appearing to read "Scott Brown", is written over a light blue rectangular background.

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