UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 17-CR-160

RONALD H. VAN DEN HEUVEL,

Defendant.

RESPONSE TO DEFENDANT'S SECOND MOTION TO SUPPRESS PHYSICAL EVIDENCE/*FRANKS*

The United States of America, by and through its attorneys, Matthew D. Krueger, United States Attorney for the Eastern District of Wisconsin, Adam H. Ptashkin, Assistant United States Attorney, and BeLinda I. Mathie, Special Assistant United States Attorney for said district, respectfully responds to defendant Ronald H. Van Den Heuvel's Second Motion to Suppress Physical Evidence/*Franks* (Doc. 79) and the accompanying Memorandum in Support (Doc. 80). Under Seventh Circuit law, the Court should deny the defendant's request for a *Franks* hearing because the defendant has failed to provide a substantial preliminary showing of an intentional false statement or reckless disregard for the truth. While the defendant provides evidence that one statement in the affidavit is factually incorrect, there are no facts, and only conclusory statements, to support a showing of an intentional false statement or reckless disregard for the truth.

However, even if a *Franks* hearing is held and the defendant presents evidence in an attempt to meet his burden, the affiant will vehemently testify that she did not intentionally mislead the state court judge that signed the search warrant and did not act with a reckless

disregard for the truth. Therefore, the Court should deny the defendant's request for a *Franks* hearing.

I. The Law of the *Franks* Hearings

The Seventh Circuit has stated that a court is only required to hold a *Franks* hearing if a defendant:

> can make a substantial preliminary showing that: (1) the warrant affidavit contained false statements, (2) these false statements were made intentionally or with reckless disregard for the truth, and (3) the false statements were material to the finding of probable cause.

United States v. Mullins, 803 F.3d 858, 861–62 (7th Cir. 2015) (citing *United States v. Williams,* 718 F.3d 644, 647 (7th Cir.2013)); *Franks v. Delaware*, 438 U.S. 154, 171 (1978) (stating "the challenger's attack must be more than conclusory . . . those allegations must be accompanied by an offer of proof."). The Seventh Circuit has also stated "The standard is not whether the affidavit contains a false statement, but whether the affiant knew or should have known that a statement was false." *United States v. Schultz*, 586 F.3d 526, 531 (7th Cir. 2009) (citing *United States v. Jones,* 208 F.3d 603 (7th Cir. 2000)).

If a *Franks* hearing is held, the defendant must prove by a preponderance of the evidence that the affidavit contained false statements that were made intentionally or with a reckless disregard for the truth, and that if the intentionally false statements are deleted the remaining application does not establish probable cause. *United States v. Mullins*, 803 F.3d 858, 862 (7th Cir. 2015) (citing *Franks,* 438 U.S. at 156).

II. The Defendant's Failure to Provide a Substantial Preliminary Showing of an Intentional False Statement or Reckless Disregard for the Truth

The defendant's Memorandum in Support focuses on two alleged inaccuracies in the affidavit. First, the feasibility of Green Box's technology, and second, the failure to realize a

property had been put up for sale (Doc. 80 at 2, 4). If a *Franks* hearing is held, the affiant will testify there was not a reckless disregard for the truth and she did not intentionally lie to the state court judge or intentionally omit material information from the affidavit.

In regards to the Green Box technology, the affidavit correctly states the Green Box technology was not fully functioning when the defendant informed investors it was fully functioning. The defendant's Memorandum in Support and exhibits provide no evidence the technology was "fully functioning." Regardless of whether or not the Green Box technology hypothetically could have produced the desired results in the future, probable cause was established by the defendant's false representations about the status of Green Box's business operations and the functionality of the technology.

The Defendant's Memorandum in Support argues that investors, several companies, the Wisconsin Economic Development Corporation ("WEDC") and the entity that issues tax exempt bonds in Michigan must have believed the technology was feasible. However, that does not mean the affiant lied or was reckless when she stated it was false for the defendant to claim "the Green Box process is a fully functioning process." As the defendant notes, the affidavit did not claim it was scientifically impossible for the Green Box technology to become viable. Doc 80. at 4. While investors and government entities may have theorized that the process could function properly, Green Box's technology never did function as predicted by the defendant. Again, the affiant's statement that the technology was not fully functioning is factually correct. The hypothetical feasibility of Green Box is irrelevant to a determination of probable cause.

Relatedly, the defendant's Memorandum in Support implicitly argues it was an intentional material omission to not discuss documents in the defendant's applications for WEDC funding, Michigan tax exempt bonds, and EB5 funding that support the scientific

feasibility of the Green Box technology. Doc. 80 at 5-7. However, again, the affiant did not claim the technology was not feasible and the hypothetical feasibility of the technology was irrelevant to a determination of probable cause. The affidavit correctly states the defendant made false claims about the current status of Green Box to raise money from investors to fund his personal expenses. These facts establish probable cause.

As the defendant highlights, the affidavit's statement that the Perini building was never up for sale was inaccurate. *Id*. at 2-3. However, the defendant is not able to make a substantial preliminary showing that the affiant lied or was reckless when she failed to learn that the building had been marketed for sale. As part of drafting a lengthy affidavit that describes a complex fraud scheme, the affiant was not reckless for failing to interview the owner of the real estate, or find a small local commercial real estate broker's marketing materials.

Moreover, the affidavit established probable cause even without the facts about the Perini building. The affidavit details numerous fraudulent actions by the defendant, including granting Dr. Araujo a security interest in business equipment, and then providing a security interest in the same equipment to later investors, and misstating the status of Green Box's operations. The affidavit states the defendant's fraudulent statements resulted in Dr. Araujo investing $600,000 in Green Box, and that the defendant used the majority of this money for personal expenses.

Amongst other facts, the affidavit also discusses foreign investor money raised through the EB5 program that the defendant misused for personal expenses including alimony payments and Green Bay Packers tickets. The affidavit establishes probable cause that the defendant operated an investment fraud scheme through Green Box as it details some of the defendant's material false representations about Green Box, and the defendant's use of investor money for personal expenses. The unintentionally inaccurate statement about the Perini building was

merely one of many facts in the affidavit that details the defendant's false representations to investors. The remaining facts in the affidavit establish probable cause.

III. Conclusion

The United States respectfully submits that the Court should deny the defendant's request for a *Franks* hearing. There are no intentional false statements or a reckless disregard for the truth displayed in the search warrant affidavit. Any inaccurate facts in the affidavit are the result of an unintentional mistake. The defendant has produced no evidence of the affiant's mindset that proves she had a reckless disregard for the truth or intentionally made a false statement.

Respectfully submitted this 20th day of August, 2018.

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