

YAVAPAI COUNTY ATTORNEY'S OFFICE
Firm No. 00048700
Joshua I. Fisher, SBN 024890
Deputy County Attorney
255 East Gurley Street
Prescott, AZ 86301
(928) 771-3344
ycao@yavapai.us

Attorneys for STATE OF ARIZONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

ANTHONY JAMES RICHARDS,

Defendant.

CAUSE NO. P1300CR201600476

**STATE'S RESPONSE TO
DEFENDANT'S REQUEST FOR
FRANKS HEARING**

Assigned to Hon. Debra Phelan

1 The State of Arizona, by and through Sheila Polk, Yavapai County Attorney, and
2 her deputy undersigned, respectfully responds to Defendant's request for Franks Hearing
3 as set forth below.

4 **FACTS**

5 In April 2007, Larry Powers disappeared. Powers and Defendant Richards were
6 long-time acquaintances and business partners who had gone in on purchasing a mining
7 claim together near Bagdad, Arizona. Witnesses would not describe them as really being
8 friends and would say there was often tension between the two. Powers maintained a
9 residence in Murphys, California, and Defendant was primarily living in Christmas City,
10 Oregon.

11 Larry Powers was known as a very frugal man who lived minimally and agonized
12 over spending any money. He lived on a limited income from rental properties and an

1 inheritance. His would spend minimally with his credit card and rarely carry over a
2 balance month to month. He as a sister named Joan Shattuck who although not very close
3 to LP, did most of the work to keep this case going.

4 Powers had numerous friends and relatives that he was in frequent contact with,
5 and in the weeks prior to leaving for Arizona to do mining with Defendant, he expressed
6 to at least two friends that he was growing scared of Richards. Powers confided in friend
7 Bard Lanette, that if something happened to him, that they should look at Richards. Part
8 of this business venture included buying a shaker table- is a \$2,000 piece of equipment
9 used in mining. Powers worried over buying it as it was expensive, and he was frugal,
10 but felt that it was needed. He was also supposed to split the purchase of a 5th wheel
11 trailer from Dean Knight & Diane Jenson with Defendant.

12 In early April of 2007, Powers and Richards arrived in Bagdad for mining trip. At
13 that time there was a zero-dollar balance on Power's credit card. On April 9th, Powers
14 purchased the shaker table for \$1,895.00, along with some additional mining equipment
15 from mining stores in Salome and Wickenburg. The purchase of some mining equipment
16 from Lisa Tucker at from Online Prospectors Club is the last confirmed sighting of Larry
17 Powers.

18 Defendant is seen around the mining communities and camps in the days after
19 April 9th, but Powers is reported seen again by anyone other than the Defendant.
20 Richards offers to give the newly purchased shaker table to Diane Jenson and Dean
21 Knight as a \$1000.00 down payment for a 5th wheel trailer that Defendant has long been
22 interested in buying. Defendant claimed that it wasn't working properly and Powers had
23 approved giving it away. Facts which stood in stark contrast to Powers reputation for
24 being frugal, given the table was purchased just days prior for double the cost Richards

1 bargained it away for, and no attempt was ever made to return it.

2 Between April 13th and 15th, Diane Jenson has contacts with Defendant and
3 reportedly overhears him talking to others. She hears Richards say that if someone fell
4 down a vertical mine shaft, that the body would never be found. During this time, Diane
5 Jenson asks Richards about Powers whereabouts. Defendant claims that a day or so prior,
6 he and Powers had got into a fight, and he took Powers' gun from him, then tied up the
7 victim and left him in the desert. Diane Jenson again later asked Defendant about Powers
8 after having not seeing him. Defendant then claimed that he put Powers on a bus headed
9 to California.

10 After April 15th, the victim's credit card is used repeatedly leaving the Bagdad
11 area, following a path to Murphy's, CA, and then being used en route to Oregon where
12 the defendant still resided. The purchases made all appeared to benefit Richards. While in
13 Murphys, radio control airplane supplies, including fuel, were ordered using the victim's
14 credit card and delivered to the victim's home. Glen Croshaw, who lives nearby to
15 Murphys, reported during this time, the defendant stayed with him, and he was present
16 when the defendant actually ordered the radio controlled airplane supplies. Croshaw
17 never saw the victim during this time, which Defendant later contradicts by stating that
18 Powers was present when the order was made.

19 On June 25, 2007, the victim was reported missing to Calvares County Sheriff's
20 Office by his sister Joan Shattock. In the months that followed, Joan called Richards on
21 numerous occasions and recorded those phone calls. Over time, Defendant is caught in
22 repeated lies, and is constantly changing his story when confronted with contradictory
23 information. One example was when Defendant had told Diane Jenson that he had put the
24 Victim on a bus home but when confronted with the credit card charges at gas stations

1 heading out of Arizona, he then claimed that Powers was with him. His story would shift
2 every time a credit card purchase is found where D says that he now recalls that LP was
3 with him, though he keeps coming up with contradictory reasons on why LP would be
4 buying him stuff.

5 Ultimately, Defendant settles on a story of where the victim was with an
6 unidentified man when in Murphy's around April 16th, When confronted later about
7 credit card charges in Oregon, Richards maintained that the victim had showed up there
8 with this same unidentified man- a man who drove a truck with camper on the back.
9 Defendant's description of this man has varied wildly from a clean cut white guy, to
10 heavily tattooed Mexican.

11 In September of 2016 the Yavapai County Sheriff's Office did some additional
12 searches at the campsite where Defendant and Powers were staying. Utilizing a drone, a
13 disturbance was seen a couple hundred feet from one such site. They began to dig and
14 found a buried chair and tote. On January 17, 2017 YCSO returned to the dig sight and
15 found human remains. The body was tightly wrapped up, and when unwrapped three
16 bullets were found in the body (given the body's decomp, we can't tell where the bullets
17 were, but YCSO is having further exams done on the bones to see if we can tell where the
18 shots hit). Via dental records the body has been identified as that of Larry Powers.

19 **LAW AND ARGUMENT**

20 In *Franks v. Delaware*, 438 U.S. 154 (1978), the Supreme Court held that a
21 defendant may challenge the truthfulness of the factual statements in an affidavit
22 supporting a warrant. The evidence seized by reason of a warrant will be deemed
23 inadmissible if the defendant can show by a preponderance of the evidence that: (a) The
24 affiant made a false statement which was knowingly or intentionally false or which was

1 made in reckless disregard for the truth and (b) After the false statement is excised, the
2 affidavit's remaining content is insufficient to support a finding of probable cause. *Id.* at
3 171–72.

4 In order to show that an affiant acted with reckless disregard for the truth, the
5 Courts have required proof that the affiant entertained serious doubts about the truth of
6 the affidavit. *See State v. Poland*, 132 Ariz. 269, 279 (1982); *see also United States v.*
7 *Davis*, 617 F.2d 677 (D.C.Cir.1979). Proof that the affiant entertained serious doubts
8 concerning the affidavit's truth can be proven by obvious circumstances that impeach the
9 credibility of the information in the affidavit. *Id.* *See Also State v. Carter*, 145 Ariz. 101,
10 109 (1985). Merely innocent or negligent mistakes in an affidavit will not satisfy the first
11 prong of the *Franks* test. *Franks, supra* at 171.

12 Finally, assuming a defendant is able to satisfy the first prong of *Franks*, in order
13 to determine whether the remaining content of the affidavit is sufficient to support a
14 finding of probable cause, the court must analyze the affidavit by deleting the falsehoods
15 and adding the materially omitted facts. Then the court must determine if the remaining
16 portions of the affidavit provide sufficient information to support a probable cause
17 determination. *Id.* at 171-172. *See also State v. Martin*, 139 Ariz. 466 (1984).

18 In the instant case, Defendant has failed to establish that there were even any false
19 statements or material omissions made. The affidavit at issue includes mention both of
20 the unidentified man referenced by Defendant, as well as the myriad excuses offered up
21 by him to explain purchases made on the victim's credit card following the victim's
22 disappearance. The defendant's contradictory and self-serving statements were simply
23 too voluminous to include each within the affidavit. Nothing within the record suggests
24 that the failure to detail each one was in any way casting doubt upon the affiant's belief

1 in the truthfulness of the affidavit. Therefore, the State would respectfully request that
2 the Court deny Defendant's motion and request for a *Franks* hearing in this matter.

3

RESPECTFULLY SUBMITTED this 30th day of July, 2021.

Sheila Polk
Yavapai County Attorney

By: 

Joshua I. Fisher
Deputy County Attorney

COPY of the foregoing

mailed emailed hand-delivered

This 30th day of July, 2021 to:

Hon. Debra Phelan
Yavapai County Superior Court Division Pro-Tem A

Tyrone Mitchell
Attorney for Defendant

By: _____