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6 IN THE THURSTON COUNTY DISTRICT COURT
7 FOR THE COUNTY OF THURSTON

8 THE STATE OF WASHINGTON,

9 Plaintiff

10 v.

11 CAROLYN LATTIN & DEBBIE LATTIN,

12 Defendant

No. 17-M000154, 17-M000155

MOTION TO SUPPRESS SEARCH
WARRANT ISSUED JUNE 14TH, 2017

13 COMES NOW the Defendants, Carolyn Lattin and Debbie Lattin, by and through their
14 undersigned attorney Justin Kover, to offer this Motion to Suppress Search Warrant Issued June
15 14th, 2017 for the consideration of the parties, and of the Court.

16 The Defendants move the Court to suppress the search warrant granted by the Honorable
17 Judge Carol Murphy on June 14th, 2017 because there is no probable cause to sustain it, and to
18 find that all supposed evidence gleaned from that warrant's issue to be Fruit of the Poisonous
19 Tree as described in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920), so that it
20 may not be considered.

21 I. INTRODUCTION

22 The search warrant issued by Judge Murphy in this case on June 14th, 2017 (the Warrant)
23 must fail for a lack of probable cause. When Deputy Nastansky testified to Judge Murphy as
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1 affiant in support of the Warrant she offered material falsehoods regarding her experience with
2 goats. Further, Deputy Nastansky omitted the material fact that every previous complaint
3 regarding the goats she mentioned to Judge Murphy had been determined to be unfounded, yet
4 this fact made it into her report. Finally, Deputy Nastansky omitted the material fact that the
5 veterinarian offices she contacted indicated to her that they may or may not have records of
6 treatment for animals that were not brought to and seen at their offices; she then represented to
7 Judge Murphy that such records conclusively do not exist. That representation was proven false
8 on June 20th, 2017 when she served the second warrant on the Lattin family.

9 The Defendants can make a showing of fact that material falsehoods were included in the
10 affidavit, and that material omissions were made with deliberate or reckless regard for the truth,
11 so the Warrant must be invalidated according to Washington law.

12 II. AUTHORITY

13 The State of Washington has adopted the standard set forth in *Franks v. Delaware*, 438 U.S.
14 154 (1978). See *State v. Cord*, 103 Wn.2d 361 (1985); *State v. Garrison*, 118 Wn.2d 870 (1992);
15 *State v. Chenoweth*, 160 Wn.2d 454 (2007).

16 Where Defendant makes a substantial preliminary showing that a false statement knowingly
17 and intentionally, or with reckless disregard for the truth, was included by the affiant in the
18 warrant affidavit, and if the allegedly false statement is necessary to the finding of probable
19 cause, the Fourth Amendment requires that a hearing be held at the defendant's request. *Franks*,
20 438 U.S. at 155-56.

21 The *Franks* test for material misrepresentations applies to allegations of material omissions.
22 *Cord*, 103 Wn.2d at 367.

23 The *Franks* opinion is clear that there must be allegations of deliberate falsehood [or
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1 deliberate omission) or of a reckless disregard of the truth. Allegations must be accompanied by
2 an offer of proof. Also, allegations of negligence of innocent mistake or insufficient. *Franks*,
3 438 U.S. at 171; *State v. Seagull*, 95 Wn.2d 898, 908 (1981).

4 If these requirements are not met the inquiry ends. If these requirements are met, and the
5 false representation or omitted material is relevant to establishment of probable cause, the
6 affidavit must be examined. If relevant false representations are the basis of attack, they are set
7 aside. If it is a matter of deliberate or reckless omission, those omitted matters are considered as
8 part of the affidavit. If the affidavit with the matter deleted or inserted, as appropriate, remains
9 sufficient to support a finding of probable cause, the suppression motion fails and no hearing is
10 required. However, if the altered content is insufficient, defendant is entitled to an evidentiary
11 hearing. *Franks*, 438 U.S. at 171-172; *State v. Cord*, *supra*.

12 III. ARGUMENT

13 **A. The Warrant must be invalidated because material falsehoods were included in**
14 **the affidavit to Judge Murphy, or there were deliberate or reckless omissions of**
15 **material information from the Warrant which are necessary to a finding of**
16 **probable cause.**

17 1. The Affidavit in support of the Warrant contains material falsehoods regarding
18 Deputy Nastansky's experience with goats.

19 Deputy Nastansky makes varied statements about her experience with goats between the
20 affidavit and her initial report, and the experience she does claim to possess resulted in the
21 separation of unweaned babies from their mothers.

22 In the affidavit in support of the Warrant, Deputy Nastansky states to the Honorable Judge
23 Carol Murphy that she has "owned goats since 1993, so nearly twenty-five years personally."
24 See *Police Report at pg. 000308, ln. 28-29*. Deputy Nastansky indicated to Judge Murphy that
she had a strong familiarity with goat care. See *Id. at pg. 000309 ln. 23-25*. However, in her

1 report the next day Deputy Nastansky back-pedals. She states the next day that she has
2 “personally owned goats on and off for 23 years.” See *Id. at pg. 000261*, ¶ 2. Deputy Nastansky
3 indicates not just that she has less experience than she represented to Judge Murphy, but also that
4 she still has even less experience than she still maintains she has.

5 Whatever experience Deputy Nastansky may or may not actually have, the record indicates
6 that she cannot convincingly claim to “know goats,” as she represented to Judge Murphy. No
7 one who “knows goats” would allow kids who were not yet weaned from their mothers to be
8 separated from each other, yet this is exactly what Deputy Nastansky did. See *Supplemental*
9 *Report, pg. 000319* ¶ 1. It is also notable that Deputy Nastansky, who is the lead animal cruelty
10 investigator for the Thurston County Sheriff’s Office, mistakenly believes that a male sheep is
11 called a ewe when they are actually known as a ram or a wether, depending on if they are
12 castrated or not. See *Police Report, pg. 000309, ln. 34-40*.

13 Deputy Nastansky’s testimony regarding her experience with goats is demonstrably false; the
14 record of her inconsistencies and her demonstrated lack of experience with goats indicate that
15 she made material statements to Judge Murphy which cannot be true, and when removed from
16 the affidavit as called for in *Franks v. Delaware*, 438 U.S. 154 (1978), negate the finding of
17 probable cause.

18 2. The Affidavit in support of the Warrant contains deliberate or reckless omissions of
19 material information.

20 a. *Deputy Nastansky omits that the complaints were unfounded.*

21 Deputy Nastansky’s most egregious omission regards her representation to Judge Murphy
22 that the goats have been the subject of numerous unfounded complaints over the past two years.
23 Deputy Nastansky stated to Judge Murphy in her testimony as affiant in support of the Warrant,
24 “Um, in the past two years, the goats specifically have been complained on five times in the past

1 two years. And, um, deputies were told numerous different things, that they were working with
2 veterinarians, that they were working with, um, Fish and Wildlife to try and find a remedy for the
3 hoof rot that these goats have, and they have not in the past two years at least found a remedy.”
4 See *Police Report*, pg. 000309, ln 8-12. However, Deputy Nastansky wrote in her report, “I
5 reviewed Deputy Gallagher’s call along with the history at the address for the past 2 years.
6 There have been seven complaints on the goats alone in the past 2 years. Most of the calls were
7 cleared out unfounded and indicate that the goats are receiving treatment for hoof rot.
8 Unfortunately, the information given to the other responding deputies about hoof rot came from
9 the owners, which was not always accurate information.” *Id.* at 000261, ¶ 3.

10 So not only does Deputy Nastansky omit the material fact to Judge Murphy that all
11 complaints she cited to her as probable cause were determined by her own agency to be
12 unfounded, but she also engages in wild speculation, from a cold record, on the credibility of the
13 information provided to her colleagues. It is also clear Deputy Nastansky had this knowledge
14 prior to her testimony to Judge Murphy, as outlined in her own chronology of events contained
15 in her report.

16 b. *Deputy Nastansky omits to Judge Murphy that the veterinarian offices told her the*
17 *records she sought may not exist.*

18 Deputy Nastansky makes yet another material omission to Judge Murphy regarding her
19 contact with the Deschutes Animal Clinic and Chambers Prairie Animal Clinic. Deputy
20 Nastansky indicates in her report that she made contact with both offices before she sought the
21 affidavit for the Warrant from Judge Murphy. See *Police Report*, pg. 000264, ¶ 3. Deputy
22 Nastansky wrote, “I asked the workers something to the effect of, ‘If Debbie had called asking
23 about hoof rot (or any other ailment) but not brought actually brought [sic] an animal in, would it
24 be documented?’ They said ‘maybe.’” *Id.* Deputy Nastansky states in her testimony as affiant in

1 support of the Warrant, “I spoke with both veterinarian offices. Um, the last time that a goat was
2 seen for any hoof-related issue was in 2012. Um, Debbie tells me that that’s not true, however,
3 that’s what their records show at the veterinarian offices, and she has no independent record of
4 her own to prove otherwise.” *Id. at 000309, ln 18-21.*

5 It is clear from the chronology of events outlined in Deputy Nastansky’s report that she had
6 this knowledge regarding the availability of records for treatment and/or consultation that did not
7 involve an office visit prior to her testimony as affiant in support of the Warrant. Nevertheless,
8 Deputy Nastansky chose to omit this material fact in her testimony to Judge Murphy. When the
9 material omissions mentioned *supra* are included in the affidavit as called for in *Franks v.*
10 *Delaware*, 438 U.S. 154 (1978), the finding of probable cause cannot stand.

11 *c. The falsehoods and omissions were both material and intentional.*

12 The falsehood regarding Deputy Nastansky’s experience was both material and
13 intentional. Deputy Nastansky relies on her own judgment and experience throughout her
14 report. And yet when it is time to quantify that experience she offers us differing accounts.
15 Judge Murphy asked for Deputy Nastansky’s training and experience as related to her request
16 for a reason; Judge Murphy asked the Deputy that question so she could know upon what
17 training and experience she could materially rely in determining the credibility of the probable
18 cause being offered to the Court. By exaggerating her experience, Deputy Nastansky caused
19 Judge Murphy to believe that her experience was materially stronger in her testimony as affiant
20 than she did in her police report the next day. The notion that Deputy Nastansky did not intend
21 to exaggerate her experience defies reason; indeed, if Deputy Nastansky did not intend to offer
22 two distinct time periods for her experience with goats, with such qualification that she could
23 indeed offer us a third number later, this is even worse because it means the Court will never be

1 able to trust her testimony regarding her experience, because she may unintentionally offer
2 inconsistent testimony. Deputy Nastansky did mean to exaggerate her experience to Judge
3 Murphy. She wanted that warrant, and she said what she needed to get the Warrant. Her
4 conduct speaks for itself.

5 The omission of the fact that the complaints against the Lattins were unfounded was
6 intentional because the chronology of events in Deputy Nastansky's report indicates she had the
7 knowledge that the complaints were unfounded prior to her conversation with Judge Murphy.
8 Those omissions are also material because, if Deputy Nastansky had included that information
9 in her testimony as affiant, Judge Murphy would have known that the Thurston County
10 Sheriff's Office had put eyes on those goats for a period of years and had witnessed the level of
11 veterinary care and the ongoing effort to combat hoof rot engaged in by the Defendants. But
12 Deputy Nastansky wanted that warrant, and she omitted what she needed to get the Warrant;
13 again, her conduct speaks for itself.

14 3. When the *Franks* test is applied, the affidavit in support of the Warrant lacks probable
15 cause.

16 To summarize the material falsehoods and omissions committed by Deputy Nastansky for
17 which the Defendants have made an offering of fact supported by the record in this case:

- 18 • Deputy Nastansky tells Judge Murphy she has owned goats for 25 years, then writes
19 in her report that she has owned goats "off and on" for 23 years in her report. Then
20 she separates mother goats from their babies before they are weaned. She also
21 demonstrates errors in knowledge regarding sheep.
- 22 • Deputy Nastansky tells Judge Murphy that the goats have been complained on five
23 times in the last two years, while omitting the material fact that every single
24 complaint she cited as providing probable cause had been cleared by her own agency.

- Deputy Nastansky represents that the veterinarians conclusively told her the goats were not treated for hoof rot while omitting the material fact that both offices told her such records may not even exist.

So we apply the *Franks* test by removing those material falsehoods and including those material omissions for which the Defendants have made an offering of fact. The State's probable cause statement originally looked something like this:

"I, Deputy Nastansky, who have 25 years of experience owning goats, got a report of hoof rot in goats supported by two years' worth of complaints from citizens. I talked to the two veterinarians' offices to which I was directed, and their records show no treatment of the goats since 2012."

However, with the *Franks* test applied, that statement looks more like this:

"I, Deputy Nastansky, got a report of hoof rot in goats supported by two years' worth of complaints my own office determined were unfounded. I talked to the two veterinarians' offices to which I was directed, and their records show no treatment of the goats since 2012, but they did indicate to me they may or may not have records for treatment or consultation that did not involve an office visit."

With the *Franks* test applied to the Warrant, no reasonable grounds exist for the issue of a warrant to search the Defendants' home, business, or any other property of theirs. There is certainly nothing left that would militate towards a reasonable suspicion that the Defendants were knowingly, recklessly, or with criminal negligence allowing substantial harm to come to their goats.

IV. CONCLUSION

Deputy Nastansky omitted the truth that did not suit her purpose and stretched the truth about her own experience with goats in order to paint a picture of probable cause which was not true. This Court is now faced with a potential miscarriage of justice. For whatever reasons Deputy Nastansky and her cronies at Hooved Animal Rescue of Thurston County have for doing what they have done to these innocent Defendants, the conduct of the lead animal cruelty investigator

1 does not comport with the law, set forth *supra* at II.

2 PRAYER FOR RELIEF

- 3 1. That the Court find that the Search Warrant Issued on June 14th, 2017 is invalid *nunc pro*
4 *tunc* to June 14th, 2017, and;
- 5 2. That the Court find any evidence gleaned as a result of that Warrant is Fruit of the
6 Poisonous Tree as described in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385
7 (1920), and;
- 8 3. That the cases against the Defendants are dismissed without prejudice as called for in the
9 Criminal Rules of Courts of Limited Jurisdiction, and;
- 10 4. That the State return all livestock to the Defendants immediately, and;
- 11 5. That a judgment be entered against the State, in favor of Carolyn Lattin, for attorney fees
12 in the amount of \$10,000, and;
- 13 6. That the State bear all other costs associated with this case.

14 DATED this 19th of September, 2017:

15 Respectfully submitted by:

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18 JUSTIN KOVER, WSBA #51117
19 Attorney for the Defendant
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