IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATHAN J. MORRIS and
VERENA L. OUSLEY,

Defendants.

REPORT AND
RECOMMENDATION

15-cr-139-jdp

REPORT

Before the court for report and recommendation is defendant Nathan Morris's motion (dkt. 26) to quash the state search warrant, which co-defendant Verena Ousley has joined, *see* dkt. 27. The court held a *Franks* hearing[1] on April 8, 2016 (*see* transcript, dkt. 44 and exhibits, dkts. 26-1 to 26-9, dkt. 43-1 and dkt. 48) and allowed the parties to file post-hearing briefs (dkts. 46, 49 and 50) to supplement their pre-hearing briefs (dkts. 31 and 32).

In the next few sections I find facts, including credibility determinations based on the search warrant affiant's testimony at the *Franks* hearing. Applying the law to these facts leads to the conclusion that there was no *Franks* violation. Although there were misstatements in and omissions from the search warrant affidavit, the totality of circumstances established at the *Franks* hearing show that the affiant did not include material misstatements and he did not omit material facts from his warrant application with the intent to mislead the state court judge who issued the warrant. In other words, Task Force Detective Peter Grimyser did not act with deliberate or reckless disregard for the truth. The warrant is amply supported by probable cause. I am recommending that the court deny defendants' motion to suppress.

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[1] *Franks v. Delaware*, 438 U.S. 154 (1978).

The Search Warrant Application

Defendants have attached to their suppression motion a copy of the July 28, 2015 affidavit (a "complaint" in state court) in support of the challenged no-knock search warrant issued by the state. *See* dkt. 26-1. The affidavit speaks for itself, but I synopsize it at length:

The affiant is Detective Peter Grimyser, who has been a member of the University of Wisconsin-Madison Police Department since 1999 and a member of the Dane County Narcotics Task Force (the Task Force) since June 2013. The residence to be searched is 4401 Britta Parkway, Apt. 4, Madison, Wisconsin, located on the second floor of a two-story, four apartment building on Madison's southwest side. The search is for drugs, drug-related records, paraphernalia and proceeds.

Det. Grimyser begins his probable cause recitation by outlining his extensive training and experience in drug investigations. As a result of his training and experience, Det. Grimyser offers 24 boilerplate paragraphs explaining how drug traffickers generally run their businesses.

Descending into the particulars of this investigation, Det. Grimyser introduces CI 440 on page 5 of his affidavit. Det. Grimyser reports that "CI 440 has previously worked for the [Task Force] and has provided truthful and reliable information in the past."[2]

On Friday, July 24, 2015, Det. Grimyser put CI 440 to work as a Task Force informant to help build a case against "St. Louis," from whom CI 440 had buying crack, heroin and marijuana for about a year. CI 440 had a phone number for St. Louis that CI 440 used to text

[2] As a heads-up, by joining these two statements with an "and" while omitting directly related impeachment of CI 440, Det. Grimyser made both a misstatement and omission in one sentence. The operative questions are whether this turns out to be material, and whether Det. Grimyser did this deliberately or recklessly.

and call St. Louis for drugs. CI 440 reported that "St. Louis" lived at 4401 Britta Parkway in an upstairs apartment. CI 440 gave the details of Morris's family situation: he lived with his girlfriend, who had one child with St. Louis and other children of her own. CI 440 gave a detailed physical description of the girlfriend and reported that she also was known to be an escort. Looking at jail booking photos, CI 440 identified a photo of Nathan Morris as St. Louis and identified a photo of Verena Ousley as his girlfriend. State DOT records showed that Morris and Ousley both listed their home address as 4401 Britta Parkway, Apt. 4.

CI 440 reported that Morris sold drugs with a number of other people, including "Red" and his girlfriend, who lived in Apt. 3 across the hall from Morris. CI 440 gave detailed physical descriptions of both people. From jail booking photos, CI 440 identified "Red" as William Busch and his girlfriend as Dominique Burks. Police reports of an April 12, 2015 drug trafficking arrest of Busch and Burks listed their address as 4401 Britta Parkway, Apt. 3.

On July 24, 2015, Det. Grimyser directed CI 440 to call Morris's cell phone (number 414-699-8896) to arrange a drug purchase. Morris did not pick up CI 440's calls, but the Task Force decided to attempt the purchase anyway. Task Force agents searched CI 440's person and his vehicle to check for drugs and money; they did not find any. CI 440 was given $200 in pre-recorded bills. An undercover agent drove CI 440 in CI 440's car to 4401 Britta and dropped him off. Task Force agents, including Det. Grimyser, watched as CI 440 approached the front door of the building and wave to the second floor. An unknown man let CI 440 into the building.

Surveillance agents watched as CI 440 exited the building a few minutes later and returned to his car, in which the undercover agent was waiting. They drove to a safe rendezvous

spot and met up with Det. Grimyser, who searched the car and CI 440's person. Other than a baggie of bagged rocks of cocaine base that CI 440 turned over, Det. Grimyser found no other drugs and no money. Subsequent testing and weighing at the Task Force office confirmed that Morris had provided 10 baggie corners that held a total of 2.6 grams of a substance that contained cocaine HCl and cocaine base.

CI 440 reported that Morris sold him the cocaine base in the bedroom of Apt. 4. Morris had two baggies that each contained about an ounce block of cocaine base, as well as knotted baggie corners containing smaller amounts of cocaine base in a larger bag on the bed, along with a digital scale. Morris reached into this bag to retrieve the cocaine base he sold to CI 440 in exchange for the $200 in prerecorded buy money. CI 440 noticed and reported video surveillance cameras in the apartment windows facing the street and in the hallway leading to the second floor; there was a video monitor in Morris's living room and another in the bedroom, from which Morris could monitor what was happening in and around the apartment building.

After CI 440's purchase, the unknown man ushered him out of the apartment. CI 440 shared his belief that this man was carrying a firearm in the waistband of his pants.

At some point, CI 440 reported that he had been in Morris's apartment on several previous occasions, and while there had observed these things: black tar heroin; white heroin; ten to twelve Mason jars in the kitchen, each containing a different strain of marijuana; a machine pistol (Uzi or Tech 9 style) with an extended magazine in the kitchen; and a shotgun in the bedroom. According to CI 440, Morris hung around with several other guys and they all carried pistols.

Three days later, on Monday, July 27, 2015, the Task Force directed CI 440 to text Morris at cell phone #414-699-8896 to arrange a purchase of cocaine base and marijuana. Task Force agents searched CI 440 and his car to ensure neither held any contraband or cash, then gave CI 440 $300 in pre-recorded currency. An undercover agent drove CI 440's car to 4401 Britta Parkway and dropped off CI 440. CI 440 approached the common front door where an unknown man let him in. While CI 440 was still in the building, he called Det. Grimyser to report that they had run out of plastic bags and needed to go buy another box. Surveillance agents (including Det. Grimyser) watched as an unknown man in a striped shirt left 4401 Britta, walked across the street to the BP gas station / convenience store, returning shortly with a bag. Soon after, CI 440 left 4401 Britta and drove with the undercover agent to the rendezvous.

After agents searched CI 440 and his car for contraband or money, CI 440 turned over the cocaine base and marijuana that he had just bought. Subsequent testing confirmed that CI 440 had received 2.2 grams of a substance containing cocaine HCl and cocaine base, along with 7.1 grams of marijuana.

CI 440 reported that he had attempted to call Morris but got his voice mail. The striped-shirt man–whom CI 440 described physically–let CI 440 into the building and escorted him up to Morris's apartment. Morris wasn't there, but Verena Ousley was. She and the striped shirt man resumed bagging cocaine base into "thirty" bags (½ gram of cocaine base for $30) at the kitchen table, with Ousley filling and knotting each baggie, followed by the striped shirt man weighing each on a digital scale. CI 440 told Ousley he wanted to buy $200 of cocaine base and $100 of marijuana. Ousley responded that they were out of baggies. The striped shirt man left to get the baggies; that's when CI 440 called Grimyser with the update. While the striped shirt

man was gone, CI 440 paid Ousley, who counted the money and stashed it in her bra. The striped shirt man returned, weighed out CI 440's cocaine base, bagged it and gave to CI 440. Ousley took some marijuana from a Mason jar, bagged it and gave it to CI 440, telling him it was "girl scout" marijuana.[3] Subsequent testing confirmed that the items bought by CI 440 actually were cocaine base and marijuana.

In his affidavit, Det. Grimyser then asserted that

> Your complainant believes the information provided by CI 440 to be truthful as statements made by CI 440 are against CI 440's penal interests.

This addition was handwritten into this paragraph, and countersigned by the issuing judge:

> Your complainant has found CI 440 to provide truthful and reliable information independent of this investigation, and because much of the information has been corroborated by law enforcement.
>
> Dkt. 26-1 at 10 (CM/ECF pagination).

On July 28, 2015, Det. Grimyser interviewed the building owner (Douglas Dubes), who confirmed that Morris and Ousley both lived in Apt. 4 at 4401 Britta Parkway, although Morris is not on the lease. Dubes also confirmed that Dominique Burks lived in Apt. 3.

Dane County Circuit Judge Amy Smith required Det. Grimyser to add some handwritten material to his typed affidavit, then issued the requested warrant at 11:21 a.m. on July 28, 2015. *See* dkt. 26-1 at 10 & 11. Task Force agents, assisted by the Madison Police Department's

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[3] A popular strain of marijuana more commonly referred to as "Girl Scout Cookies." *See, e.g.,* http://www.medicaljane.com/review/girl-scout-cookies-strain-review/("A huge hit with cannabis connoisseurs since it hit the scene a few years ago.") *See also United States v. Samadzada*, 15-cr-54-wmc-7, dkt. 85-2 at 4 (police report of a marijuana dealer's October 15, 2015 text message offering to sell two ounces of "girl scout skittles" marijuana, "all huge buds, zero shake.") This report was presented at a revocation hearing over which I presided, so this court has pre-existing, on-the-record knowledge of "girl scout" marijuana.

SWAT team, executed the warrant on July 29, 2015. Agents found and seized the cocaine base and the handgun that undergird the charges in Counts 4 and 5 of the indictment, *see* dkt. 3 at 2-3.

Defendants' Request for a *Franks* hearing

After reviewing the government's Rule 16 disclosures in this case, Morris filed (and Ousley joined) a motion to quash the search warrant, claiming that Det. Grimyser had deliberately withheld from his search warrant affidavit information that impeached CI 440's credibility. *See* dkt. 26. After criticizing Det. Grimyser's vague statements intended to demonstrate CI 440's credibility, defendants allege eight intentional omissions from Det. Grimyser's affidavit that they contend are material:

> 1. CI 440 hadn't worked as an informant for the Task Force for over 17 years.
>
> 2. CI had been deactivated as an informant seventeen years earlier because he was deemed to be unreliable for failing to follow protocol in a specific investigation.
>
> 3. Det. Grimyser didn't request that CI 440 be reactivated as a confidential informant until the day before the first controlled buy targeting Morris.
>
> 4. Dane County Task Force Supervisor Jason Ostrenga approved reactivation of CI 440 on the basis of the 17 year time gap and the reports from the Dodge County Task Force's reports that CI 440 had worked two targets to positive conclusions while raising no concerns, but there are no details in Det. Grimyser's affidavit as to when or what CI 440 did that would establish his reliability.
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> 5. Det. Grimyser did not reveal that he had characterized CI 440's motivation to help the Task Force as "mercenary" and he did not reveal that CI 440 had two pending cases: OWI-5th, and a charge of forgery/worthless checks/theft/resisting/obstructing.

> 6. At CI 440's debriefing following the July 27 controlled buy, Det. Grimyser learned that CI 440 had used his cell phone to arrange another drug buy on July 27. It is not clear [*to the defendants*] whether this is a side-deal in violation of CI 440's duties as an informant.
>
> 7. CI 440 got paid for his work following the July 27 controlled buy.
>
> 8. CI 440 had a lengthy criminal history dating back to 1992 that included several convictions that bore upon his truthfulness.
>
> Dkt. 26 at 4-6.

According to defendants, the search warrant application was based entirely on the alleged observations of an informant who had proven himself unreliable in the past, which caused Det. Grimyser intentionally to omit all of this information because he knew that including these facts would have caused the court to deny his warrant application. *Id.* at 6.

The government responded in opposition to holding a *Franks* hearing and in opposition to the motion to quash the warrant (dkt. 31), followed by defendants' reply brief (dkt. 32). The court granted defendants' request to hold a *Franks* hearing (dkt. 39).

The *Franks* Hearing

On April 8, 2016, the court held a *Franks* hearing. Det. Grimyser was the only witness. The hearing transcript is in the record at dkt. 44 (sealed). Both sides offered exhibits and the court accepted them all into evidence. Having heard and seen Det. Grimyser testify, having judged his credibility, and having considered all of the exhibits submitted by the parties–including the undercover audio recordings that CI 440 made but that Det. Grimyser did not mention in his warrant affidavit–I find these facts:

Det. Grimyser confirmed his background and training as set forth in his warrant affidavit, adding that he has been the affiant for about 120 state search warrant applications, about 20 of which were in drug investigations. Det. Grimyser has never written an affidavit in support of a search warrant request to a federal court. Det. Grimyser has received training on how to write a search warrant affidavit, but none of his training flagged any differences between what was required in a federal search warrant affidavit as opposed to what the state required.

Although Nathan Morris was on the Task Force's radar, the instant investigation began by happenstance. In the summer of 2015, an investigator with the Drug Task Force in Iowa County (which borders Dane County to the west) contacted Det. Grimyser to report that Iowa County had arrested a Dane County man on drug charges. The arrested target wanted to explore becoming an informant for Dane County in exchange for consideration on his Iowa County charges. Det. Grimyser met with this arrested target and confirmed his situation; the arrested target ultimately decided that he didn't want to be a snitch.

Some time after that, the same investigator from Iowa County contacted Det. Grimyser again to report that the informant who had worked the case wanted to do more work as an informant and was aware of an investigative target in Dane County. The Iowa County investigator reported that this informant had made a couple of undercover cocaine base purchases in Dodgeville from the arrested target, which had resulted in that target's arrest. Det. Grimyser was able to corroborate the reliability of this informant's work by talking to the arrested target while that person was mulling whether to become an informant himself.

Det. Grimyser met with Iowa County's informant, who proffered that he had been buying crack and marijuana for about a year from a guy called "St. Louis" who lived with his

girlfriend in the left-side second-floor apartment at 4401 Britta Parkway in Madison. The informant proffered further that a guy called "Red" lived with his girlfriend across the hall from St. Louis and sold drugs along with St. Louis. St. Louis already was on the Dane County Task Force's radar as a suspected drug trafficker. So, Det. Grimyser checked state and local criminal records along with Wisconsin DOT records; he learned that Nathan Morris–whose criminal record listed his nickname as "St. Louis"–lived at 4401 Britta Parkway, Apt. 4, as did Verena Ousley, who was identified in government records as Morris's girlfriend. Det. Grimyser showed booking photos of Morris and Ousley to the Iowa County informant, who identified them as "St. Louis" and his girlfriend. Through the same photo ID process, the informant identified William Bush and Dominique Burks as the couple who lived across the hall from Morris and Ousley in Apt. 3 and whom the informant knew as "Red" and his girlfriend.

In light of this information, on July 21, 2015 Det. Grimyser met with the Iowa County informant to tell him that the Dane County Task Force was interested in signing him up as an informant. In response, the informant volunteered that he had worked as an informant for the Dane County Task Force in the past. Det. Grimyser checked the Task Force's "Confidential Informant Log" and learned that this man had been signed up as a confidential informant 17 years earlier. Det. Grimyser located this handwritten note in the file:

> _____[4]
> was deactivated as an informant for
> The DCNGTF on 6-17-98
> He was deemed to be unreliable Ref Case # 98-600 50
> Sgt. Brian Ackeret

See dkt. 48-3

[4] The informant's name is redacted from the exhibit filed with the court. The informant's name is revealed in the hearing transcript and in various hearing exhibits, which is why they are sealed.

Concerned, Det. Grimyser contacted Sgt. Ackeret (now Captain Ackeret) about his note; he responded that his memory of this incident was foggy but that the informant had *not* been responsible for stealing money or drugs. This would have been Det. Grimyser's main concern, since these are "the two big no-nos within the drug task force . . . because it would potentially compromise an investigation." (Tr., dkt. 44 at 17). Det. Grimyser did not attempt to locate the file for Case # 98-600 50 because he was aware that the City of Madison had changed its record management systems several times since then, so he believed that he would no longer be able to locate and access the file. Det. Grimyser also checked the informant's rap sheet for criminal history and any pending charges. The informant had both. (*See* dkts. 26-6, 26-7 and 26-9, all sealed).

Det. Grimyser remained confident that he could monitor and control this informant tightly enough to prevent the informant from jeopardizing the integrity of the Morris investigation. Specific control techniques Det. Grimyser intended to employ included partnering the informant with an undercover law enforcement agent; wiring the informant with a hidden recording device; photocopying the Task Force money used during the undercover drug buy; and conducting live surveillance of the transaction, along with videorecording it.

At some point during the process of debriefing and vetting of the Iowa County informant, Det. Grimyser talked to his bosses–Sgt. Jason Ostrenga and Lt. Jason Freedman–about whether the Dane County Task Force should sign up this informant. They weighed the pros and cons: "St. Louis" was a viable target, having already appeared on the Task Force's radar. The informant had been deemed untrustworthy by Dane County 17 years earlier, but the information available was that he had not mishandled money or drugs. Fast forward to the

Summer of 2015: the Iowa County Task Force had used this same informant successfully in its recent investigation, and that Task Force had voiced no concerns about his trustworthiness; in fact, they had recommended him to Dane County. The Dane County Task Force decided to move forward with this informant and to attempt a controlled drug buy from Morris, but to keep the informant under tight control in order to protect the integrity of the investigation. Thus, Iowa County's informant became Dane County Task Force informant CI 440. Task Force Lt. Jason Freedman entered this handwritten note:

> 7/23/15
> C.I. 440 _____ is
> OK to be reactivated on a case by case
> basis:
> 1) Deactivation is 17 yrs ago
> 2) C.I. 440 worked reliably & successfully with Dodge County TskF[5] & worked two Of their targets to positive conclusion
> 3) Dodge Co advised they had no concerns w/ his behaviors.
> Lt. Jason Freedman
> 2780

See dkt. 26-4.

The Task Force's plan was to have CI 440 perform a controlled buy of drugs from Morris. The Task Force would hide an audio recording device on CI 440, provide him with prerecorded currency, assign an undercover agent to drive him to the buy location, and position agents near 4401 Britta Court to conduct surveillance and to videorecord what they saw.

[5] At the *Franks* hearing, Det. Grimyser explained that Lt. Freedman had named the wrong county: the informant had worked in Dodgeville, but Dodgeville is not in Dodge County, it is in Iowa County. The informant had worked with the Iowa County Drug Task Force.

The Task Force first used CI 440 on Thursday, July 23, 2015. Det. Grimyser instructed CI 440 to contact Morris to set up a drug purchase. CI 440 used his cell phone to contact Morris and they set up a buy for the next day, Friday, July 24. Det. Grimyser verified that CI 440 had called Morris by photographing CI 440's cell phone call log.

On July 24, 2015, Det. Grimyser searched CI 440 to ensure that did not possess any drugs, paraphernalia or cash. He did not perform a cavity search or look inside CI 440's underwear, since in Det. Grimyser's view this would violate state law and he did not deem it necessary. Agents searched CI 440's car (actually it was his girlfriend's car, with which Morris already was familiar) in the same manner. An undercover officer was partnered with CI 440 to drive him to Morris's residence. Morris did not answer when CI 440 called his cell phone that day, but Det. Grimyser decided to send him over anyway. Det. Grimyser gave CI 440 $200 in recorded cash and agents provided CI 440 with a disguised recording device. Surveillance agents took up positions around 4401 Britta Parkway in order to watch and videorecord what happened. An undercover officer drove CI 440 in his girlfriend's car to the four-flat at 4401 Britta Parkway, dropped him off and drove away. CI 440 waved toward a second story window to the left of the entry then was let into the building. He was back out just a few minutes later.

The undercover officer picked up CI 440 and drove him to the prearranged rendezvous spot. Task Force Agents searched CI 440 again; he had nothing on him except the drugs he reported having bought from Morris. CI 440 reported that Morris had disabled his doorbell, so CI 440 waved at the surveillance camera that Morris and Ousley had attached outside the building on the second story. An unknown man let CI 440 into the building, took him up to the apartment and searched him. CI 440 wandered back to the threshold of a room where

Morris was on a bed packaging cocaine base. CI 440 asked for $200 of cocaine base and Morris sold it to him. Morris held up two bags for CI 440 to view, describing them as "two onions," that is, two ounces of cocaine base.

On July 26, 2015, Det. Grimyser directed CI 440 to contact Morris to arrange another $200 purchase of cocaine base for July 27. In order to confirm that CI 440 actually had done this, Det. Grimyser checked his cell phone and photographed both the call history and the text messages between CI 440 and Morris. On July 27, 2015, surveillance agents positioned themselves near 4401 Britta Parkway and photographed the exterior, including the security camera posted outside the upper left window. Task Force agents searched CI 440, determined that he was not caching drugs, paraphernalia or cash, provided him with a hidden recording device and gave him $300 with which to buy $200 of cocaine base and $100 of marijuana. An undercover officer drove him to 4401 Britta Parkway where he obtained entry.

Surveillance agents watched (and recorded) as an unknown man in a green-and-white striped shirt exited the building.[6] About then, CI 440 texted Det. Grimyser from inside the building to report that they had run out of plastic bags and needed to go buy some in order to complete the drug sale. Surveillance agents watched the unknown man enter a nearby gas station/convenience store, then return to 4401 Britta carrying a plastic shopping bag. Shortly after, CI 440 exited the building and was taken by the undercover agent to the rendezvous spot.

CI 440 reported that the man in the striped shirt was the man who had let CI 440 into the building and escorted him upstairs. This time CI 440 was not searched by the man in the

[6] By the time the government presented this case for indictment, it had identified this man as David Morris. *See* grand jury transcript, dkt. 43-1 (sealed) at 13.

striped shirt, but he was required to show what was in his pockets. The man in the striped shirt went into the kitchen in Morris's apartment where he helped Virena Ousley bag cocaine base. CI 440 announced that he needed to buy $200 of cocaine base and $100 of marijuana. The response was that they were out of baggies and they needed to get more. The man in the striped shirt left to buy the baggies. While he was gone, CI 440 gave Ousley his $300, which she placed in her bra. The man in the striped shirt returned with some more baggies, so they bagged up CI 440's cocaine base and gave him his marijuana.

At some point, Det. Grimyser listened to the audio recordings of the transactions made by CI 440 with the covert recording device. He concluded that the conversations discernable on these recordings were consistent with CI 440's accounts of what had occurred.

After the two drug purchases, Det. Grimyser contacted the building's landlord, Douglas Dubes. Dubes reported that Virena Ousley had signed the lease for, and was living in Apt. 4 at 4401 Britta Parkway. Dubes reported that Ousley's boyfriend, Nathan Morris, lived there with her, but Morris was not on the lease. (Dubes also confirmed that Dominique Burkes lived in Apt. 3 with her sister and her mother.) Other tenants had complained to Dubes about short-term drug activity associated with Apt. 4. Dubes told Det. Grimyser that he was aware that a surveillance camera aimed at the front of the building had been installed outside of Apt. 4. Dubes asked Ousley about it; she explained that she had installed the camera to be able to watch her children in the park, but according to Dubes, the camera was not pointed toward the park.

At the *Franks* hearing, all three attorneys asked Det. Grimyser explain why he had said certain things and omitted certain other information from his search warrant affidavit.

Det. Grimyser is not familiar with any federal requirements for search warrant affidavits that might be different from state requirements. His training on how to write a warrant application did not distinguish between the two, and all of the search warrants he has written and helped execute have been issued by state courts except for one that was federal. In the federal case, all he did was provide his reports, because the property to be searched actually was in California. An assistant United States attorney in this district drafted the affidavit from Det. Grimyser's documents then sent the draft affidavit to the actual affiant in California.

At the *Franks* hearing, Det. Grimyser was asked about his affidavit statement that he "has found CI 440 to provide truthful and reliable information independent of this investigation and because much of the information has been corroborated by law enforcement." Det. Grimyser based the first statement on the reports from the Iowa County Drug Task Force, for whom CI 440 had worked with positive results, namely the arrest of a suspect who actually toyed with the notion of becoming an informant himself. Iowa County recommended CI 440 to Dane County, thereby vouching for his effectiveness and reliability. As for the second part of this phrase, Det. Grimyser was able to verify CI 440's preliminary reports about "St. Louis" and "Red" through public records and through their landlord (Dubes), who verified residence information for Apts. 3 and 4, corroborated CI 440's reports of Morris and Ousley's installation and use of a video surveillance system, but also reported tenant complaints about drug traffic through Apt. 4. Det. Grimyser was able to corroborate CI 440's reports of his two drug purchases from Morris and Ousley in Apt. 4 by means of these tight controls that the Task Force had imposed for exactly this purpose: pre-buy searches of CI 440 and his vehicle, use of an undercover officer to taxi him to and from 4401 Britta Parkway, the visual and videorecorded surveillance of the exterior of

the building, and the use of a disguised recording device to record CI 440's conversations with Morris and Ousley. Det. Grimyser had no reason to doubt CI 440's statements about what occurred once he walked into the building "because we had audio recordings so we could hear what was going on during the buys." (Tr., dkt. 44, at 33).

Copies of these audio recordings were admitted at the *Franks* hearing. Static and music obscure much of what is said, but what can be heard during even a casual listen supports and corroborates CI 440's oral reports, which in turn bolsters Det. Grimyser's conclusion that CI 440 was reliable. For example, on the recording of the July 27, 2015 controlled purchase, CI 440 can be heard talking with a man in the apartment whom he calls "Louie." At 19:00-19:11 on the audio of the July 27, 2015 controlled buy, CI 440 can be heard asking "what kind is it?" The response by a female voice is: "That's girl scout." The woman then asks CI 440 if he has seen the new car that "St. Louis" bought her yesterday? They chat casually about that, corroborating CI 440's claim that he was acquainted with the family.

Det. Grimyser was asked why he did not include in his search warrant affidavit the fact that the Dane County Task Force had deactivated CI 440 as an informant in 1998 because he was unreliable. Det. Grimyser responded that didn't know what he was supposed to do because neither he nor anyone else on the Task Force ever had confronted a situation where they were seeking to reactivate an informant who had been deactivated, labeling it "unchartered territory" [*sic*]. Det. Grimyser explained that, having discussed the matter with his supervisors, he felt

confident that the Task Force would be able to independently verify and corroborate what the CI told them, through the audio recordings, video recordings and talking with the landlord.[7]

Det. Grimyser was asked why he did not disclose in his warrant affidavit that CI 440 had two pending criminal charges. (OWI-5th and misdemeanor theft/worthless checks, *see* dkts. 26-6 & 26-7, both sealed). Det. Grimyser explained that the main reason was to protect the informant. Det. Grimyser explained that as a general matter, it was not commonplace for Task Force agents to include in their search warrant applications information about a confidential informant's pending criminal charges; in fact, in his review of other agents' search warrant affidavits, he had never seen an affiant disclose the pending charges of a confidential informant.

Det. Grimyser further explained that he actually had told CI 440 that CI 440 could not work off the charges pending against him, apparently in Iowa County. CI 440 responded that he was expecting to go to prison on his pending charges, probably within the next month or so. CI 440 already had his deal in place with the Iowa County prosecutors, so the Dane County Task Force was not going to pay him or let him work off those charges by helping against Morris.

Apart from this, Task Force policy was that certain categories of criminal charges–including OWI charges–could not be worked off, period. CI 440 was facing an OWI charge. Presumably Det. Grimyser would have discussed these topics with CI 440 at or near the time they went through the written "Dane County Narcotics Task Force Statement of Understanding," a pre-printed contract between the Task Force and an informant. (Dkt. 26-8,

[7] Near the end of his two hours of *Franks* hearing testimony, Det. Grimyser conceded that because this was a unique, unusual circumstance, it was "something that maybe a judge should know about because it's so unusual." Tr., dkt. 44, at 87. That being so, Det. Grimyser did not intend to mislead Judge Smith by omitting this information because he genuinely believed that CI 440 was reliable and truthful during his undercover work against Morris and Ousley.

sealed). Paragraph 5 of the form states that any cooperation an informant provides will be brought to the attention of the appropriate prosecutor's office. Det. Grimyser stated that this paragraph did not apply to CI 440 because he was not actually working off charges, but that he did not cross out Paragraph 5 or otherwise document this understanding in writing because it seemed clear enough to him and to CI 440 from their discussion that it was inapplicable.

Det. Grimyser next explained that he had not included in his warrant affidavit a report of CI 440's criminal record because he never had done this before in any of his 20 previous warrant applications, and it was not commonplace for any Task Force agent to disclose informant criminal records in search warrant affidavits. The fear was that disclosing this information could allow other people to deduce the informant's identity. In Det. Grimyser's experience, after a search warrant is executed and unsealed, defendants often will obtain the search warrant affidavits, look for any indication of the CI's criminal record, then search CCAP[8] for the names of the people they suspect are the CI in their case, and see if they can match them up. No prosecutor ever has told Det. Grimyser that he is supposed to include an informant's criminal record in his warrant affidavits. Det. Grimyser's understanding is that state courts do not require this information in search warrant affidavits.

Det. Grimyser admitted that he had given CI 440 twenty dollars during the investigation but had not revealed this payment in his search warrant affidavit. Det. Grimyser explained that this was an expense payment, not a payment for cooperation. Cooperators who asked to be paid for their assistance usually got at least $40, up to $100 for their help. Det. Grimyser noted that

[8] CCAP is the "Consolidated Court Automation Program," Wisconsin's searchable data base of criminal records.

CI 440 already had his deal in place with Iowa County, so the Dane County Task Force did not intend to pay him for his help. But when CI 440 asked for reimbursement of what it cost him to drive back and forth from Dodgeville to Madison (about 45 miles each way) for the two controlled buys, Det. Grimyser gave him twenty bucks to offset his gas costs.

Det. Grimyser was asked to explain the statement in one his reports–which he did not include in his search warrant affidavit–that on July 25 he had noticed calls on CI 440's phone to Nathan Morris, whom CI 440 had listed as "Bill" in CI 440's cell phone to hide his identity. Det. Grimyser wanted to know what was going on; CI 440 explained that he had called Morris to arrange another drug buy on July 27, 2015. This was not a hidden side-deal with Morris, it was a call to set up the controlled buy on July 27.

Although Det. Grimyser had reported in search warrant affidavit that CI 440 had been buying drugs from "St. Louis" for a year, he did not specifically characterize CI 440 as a drug user. At the *Franks* hearing, he was asked why not. Det. Grimyser responded that in drug investigations, he usually *does* report when an informant is a drug user because this is a plus for his probable cause showing. Drug use bolsters the informant's credibility in terms of his ability to meet with suspected drug dealers and buy drugs from them. In this case, Det. Grimyser simply failed to include this information about CI 440.[9] Det. Grimyser stated that when the Task Force knows its informant is a drug user, Task Force agents will informally try to see if the

[9] Earlier in his testimony, Det. Grimyser explained that he was under time pressure to prepare the warrant application and present it to a judge quickly due to intra-department scheduling concerns. The Madison Police Department requires that its 20 to 30 member SWAT team participate in the execution of search warrants in investigations of this nature. When Det. Grimyser notified MPD that he would be seeking a warrant, the date picked for executing the warrant (if the court issued it) was July 29, 2015, two days after CI 440's July 27, 2015 drug purchase. Although he could have asked to reschedule if necessary, Det. Grimyser hurried to get in front of a judge on July 28 so that he wouldn't have to.

informant appears to be under the influence prior to a buy, but they do not perform drug tests on their informants.

Det. Grimyser was asked about entries on a form he had filled out for CI 440 titled "Dane County Narcotics Task Force CI Checklist." (Dkt. 26-3). Task Force protocol requires this form to be completed. Det. Grimyser completed CI 440's form on July 23, 2015, the day before the first controlled buy. Item 4 on the checklist required Det. Grimyser to obtain CI 440's criminal history, which he did. Det. Grimyser was aware that CI 440's criminal history began in 1993 and included earlier convictions for forgery, theft, burglary, "resisting/ obstructing," and controlled substance possession/distribution and OWI (3rd). Det. Grimyser deemed this to be a lengthy criminal history and he shared it with his supervisors, but neither Det. Grimyser nor his supervisors were particularly concerned about CI 440's past convictions when deciding whether to use CI 440 as an informant. Det. Grimyser did not see the theft or obstruction convictions as impediments, and he viewed CI 440's criminal record in general as a benefit, because it made it more likely that he would be able to buy drugs in decent quantities from the investigative target.

On another Task Force form titled "C.I. Identification and Background" (dkt. 26-5), there is a line for reporting the informant's motivation for becoming an informant. For CI 440, Det. Grimyser wrote "mercenary." Det. Grimyser explained that this was his term, not CI 440's, and that to him, it meant a person who was self-motivated to be an informant against someone they knew well, as opposed to someone who was attempting to work off charges or seeking revenge against the investigative target. Det. Grimyser denied that CI 440 was seeking money in exchange for being an informant against Morris.

Det. Grimyser was asked what he meant when he hand-wrote onto his warrant application (in Judge Smith's presence) "Your complainant has found CI 440 to provide truthful and reliable information independent of this investigation and because much of the information has been corroborated by law enforcement." Det. Grimyser responded that the only information actually independent of the Morris/Ousley investigation was the Iowa County Task Force report, but that what he also had in mind when he used the word "independent" was information that was obtained independently of CI 440, such as the audio and video recordings, documents showing who lived in apartment 4 "and all the other things that I explained earlier." Tr. (Dkt. 44) at 78. Misunderstanding the question posed, Det. Grimyser at first explained that:

> Well, I mean, what I'm saying here in this statement, that I found him to be reliable, is based on the totality of the things that we did in the investigation from the buys and things like that.
>
> Dkt. 44 at 78.

The Court's Credibility Finding

Although some of Detective Grimyser's decisions regarding the content of his warrant affidavit were incorrect when held to federal standards, his explanations as to how and why he made those decision were guileless and believable. Having heard and seen him testify, and having considered his testimony against all the evidence in the record, I find that Det. Grimyser did not deliberately or recklessly misstate or mischaracterize any information included in his affidavit, and he did not deliberately or recklessly omit any information from this affidavit with the intent to, or for the purpose of misleading Judge Smith, who reviewed this affidavit and then issued the requested search warrant. Det. Grimyser believed he had probable cause to support

the requested search warrant and he did not believe–and still does not believe–that he withheld any information from Judge Smith that she would have wanted to know when making her probable cause determination. Det. Grimyser intended to follow the rules and he intended to provide Judge Smith with the information she was entitled to, and he believes that he did so.

Analysis

If police officers obtain a search warrant by deliberately or recklessly providing the issuing court with false, material information, the search warrant is invalid. *United States v. McMurtrey*, 704 F.3d 502, 504 (7th Cir. 2013), citing *Franks v. Delaware*, 438 U.S. 154. Here, the eight concerns raised by the defendants in their request for a *Franks* hearing were sufficiently serious and specific to justify bringing in Det. Grimyser to explain himself. Having obtained their hearing, defendants must prove falsity or recklessness (as well as materiality) by a preponderance of the evidence. Following the hearing, the court reconsiders the search warrant affidavit, this time eliminating any deliberately or recklessly false statements and incorporating any such omitted material facts, to determine whether there still is probable cause supporting the challenged warrant. *United States v. McMurtrey*, 704 F.3d at 509, citations omitted; *see also United States v. Williams*, 718 F.3d 644, 650 (7th Cir. 2013)(defendant must show by a preponderance of the evidence that the affidavit contained false statements or omissions made with deliberate or reckless disregard for the truth and that without these statements or omissions the remaining affidavit would be insufficient to establish probable cause).

In the *Franks* context, the adverbs "deliberately" and "recklessly" are defined to require specific intent. As the court noted in *McMurtrey*,

> If the defendant's theory is that the police deliberately or recklessly omitted information so as to mislead the magistrate, the standard is even more demanding. As the Fourth Circuit has explained, a police officer applying for a search warrant must always select, deliberately, which information about an investigation to give the judge and which information to leave out. . . . As a result, a defendant basing a *Franks* challenge on omissions must show that a material omission was designed to mislead or was made in reckless disregard of whether it would mislead.
>
> 704 F.3d at 511, n.5, citing *United States v. Tate*, 524 F.3d 449, 455 (4th Cir. 2008).

The court explained in *Williams* that

> An affiant acts with reckless disregard for the truth when he in fact entertains serious doubts as to the truth of his allegations. This is a subjective inquiry that focuses on the officer's state of mind. A showing of reckless disregard requires more than a showing of negligence and may be proved from circumstances showing obvious reasons for the affiant to doubt the truth of the allegations. In reviewing for clear error, our task is to determine, whether, based on the totality of circumstances, it was reasonable for the district court to conclude that law enforcement did not doubt the truth of the affidavit.
>
> * * *
>
> [B]ecause officers must always make deliberate decisions about what to include and omit from a warrant application, a *Franks* violation based on an omission requires a showing that the material information was omitted deliberately or recklessly *to mislead* the issuing magistrate.
>
> 718 F.3d at 650, emphasis in original; citations and footnote omitted.

In determining the affiant's state of mind in *Williams,* the court noted that while it was troubled by the officers' errors, it was persuaded that the officers had not deliberately or recklessly disregarded the truth because "the police were rushing to draft an application for a

warrant and hastily omitted both favorable and unfavorable evidence from the affidavit." *Id.* The court continued:

> We take particular note of the officers' omission of the information from the monitored calls between Bell and Williams. That information was clearly sufficient to establish probable cause for the warrant, yet it was omitted. That omission provides a reasonable basis to believe that the police did not intend to mislead.
>
> 718 F.3d at 650. To the same effect:
>
> The conclusion that [the affiant's] false statement–along with the other problems with the affidavit–was more likely negligent than reckless is further supported by the strong evidence the police omitted from the affidavit. Evidence from the *Franks* hearing shows that the police had good reason to believe that there were drugs at Williams' residence. Williams told Bell in a monitored telephone call that ten pounds of marijuana were on the way to his apartment. The police omitted this information in part because they had to prepare the warrant with great haste . . ..
>
> It is true that the monitored telephone call may not be considered in the probable cause determination itself because it was omitted from the warrant affidavit. Yet this information supports the reasonableness of the district court's conclusion that [the affiant] acted with hasty negligence rather than reckless disregard for the truth. The fact that time pressure led the police to exclude significantly favorable and unfavorable evidence from the warrant application supports the inference that the police acted negligently rather than recklessly or deceptively.
>
> *Id.* at 651-52.

Let's start there. Lt. Freedman of the Dane County Task Force accepted CI 440 back into the fold as a CI on Thursday, July 23, 2015. CI 440 arranged and made his first drug purchase from Morris in Apt. 4 the next day, Friday, July 24, 2015, and he audio-recorded it. CI 440 made a second drug purchase, from Ousley on Monday, July 27, and he audio-recorded it. After this– but before obtaining the warrant–Det. Grimyser met with the landlord (Douglas

Dubes) and Dubes not only confirmed that Morris and Ousley lived in Apt. 4, he also reported that other tenants had complained to him about short-term drug activity at Apt. 4, and that Ousley had provided him with a patently false explanation for why she had put a surveillance camera outside the window pointing toward the building entrance. Det. Grimyser completed his warrant affidavit after that and presented it to Judge Smith on Tuesday morning, July 28, 2015, so that the Task Force could keep the July 29, 2015 warrant execution date on which MPD's large SWAT team was relying.

Whether because of the need for speed or his confidence that he already had rock-solid probable cause, Det. Grimyser did *not* include in his affidavit the landlord's corroborative information about drug activity in Apt. 4, and he did *not* report to Judge Smith that there were audio recordings of the two drug buys that corroborated and illuminated all of the other information in the affidavit. Ousley's recorded statements from July 27, 2015 were enough in isolation to provide probable cause for Judge Smith to issue the search warrant on July 28. The recordings indisputably supported Det. Grimyser's conclusion that CI 440 had told him the truth when recounting what happened during the two controlled buys in Apt. 4. With evidence this direct, it would not have mattered if the Task Force had plucked CI 440 from the ice of Dante's ninth circle to make these controlled buys because his recording of Ousley's own words during her drug sale rendered his personal credibility irrelevant.

This is as good a place as any to note the irrelevance of defendants' lengthy dissection of the mechanics of how the Task Force executed CI 440's two controlled buys in Apt. 4. Second-guessing the Task Force's methodology doesn't change what's on the audio recordings. Defendants asked for a *Franks* hearing and they got one. Now it is their burden to prove that

Det. Grimyser deliberately or recklessly intended to mislead Judge Smith by submitting an affidavit whose truth he doubted. They cannot meet this burden by arguing that Det. Grimyser should have stuck his hand into CI 440's underwear, or that no one actually saw CI 440 climb the alcove stairs and enter Apt. 4. Det. Grimyser was confident that his leash on CI 440 was tight enough and that the drug buys occurred as CI 440 reported them. In short, Det. Grimyser did not doubt the truth of his affidavit, and his confidence was justified by the facts known to him.

Of course, because Det. Grimyser did not tell Judge Smith about the recordings or transcribe any of it in his affidavit, this evidence is irrelevant to the probable cause determination. But, as the court noted in *Williams*, quoted above, Det. Grimyser's knowledge of the supportive but unused evidence strongly supports the court's finding that Det. Grimyser had no intention of misleading the court into issuing a warrant for which he believed he lacked probable cause. Det. Grimyser knew that Ousley had sold CI 440 marijuana (and cocaine base) in Apt. 4 on July 27, 2015 because he heard her do it on the audio recording.

This segues to the court's analysis of some of the omissions from Det. Grimyser's affidavit flagged by the defendants. Det. Grimyser not only freely admitted that he did not include CI 440's criminal record in his affidavit, he stated that he has *never* done this in over 100 warrant applications and opined that this was not a prudent thing to do. We know that this also is the view of the police in Alton, Illinois, *see United States v. Musgraves*, ___ F.3d ___, Case No. 15-2371, Slip Op. at 6, 2016 WL 4011172 at *4 (7th Cir. July 27, 2016),[10] and for all we know,

[10] "In [Sgt. Brantley's] experience, no judge in the county had ever asked him to provide any information impeaching the credibility of an affiant or to put that information in his search warrant requests."

that is the view of all state court judges in Wisconsin. My quick-and-dirty search of Wisconsin state case law did not reveal any opinion equivalent to the Seventh Circuit's recent raising of the bar in *United States v. Glover*, 755 F.3d 811, 816 (7th Cir. 2014)("information about the informant's credibility or potential bias is critical").

Defendants point to Det. Grimyser's omission of CI 440's criminal record and other impeaching information as another example supporting this judicial officer's frequent criticism of shoddy state search warrant affidavits, *see, e.g., United States v. Mykytiuk*, 402 F.3d 773, 778 (7th Cir. 2005), but what happened here is different. Usually what this court encounters is warrant applications by state agents to state courts that are granted despite the clear lack of probable cause. This case is closer to Chief Judge Wood's observation in *Mykytiuk* that some suppression motions "may raise some federalism concerns," since state trial courts are not bound directly by decisions of the federal courts of appeals. *Id.*[11] In *Mykytiuk*, the concern was the lack of probable cause to support the warrant and how to apply the good faith doctrine. Here, the question is Det. Grimyser's state of mind when omitting CI 440's criminal record. It is clear that Det. Grimyser did not withhold this information from Judge Smith for the purpose of hiding information from her that could have been material to her probable cause determination.

This, in turn, segues to another point in *Musgraves*: the court affirmed the district court's decision that no *Franks* hearing was necessary because other information presented to the judge–including more recent information from another source and a video of the controlled buy–rendered the informant's criminal record immaterial to the probable cause determination.

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[11] The panel in *United States v. Musgraves* apparently feels differently, citing *Glover* as binding on the Alton police sergeant who was the affiant for the search warrant presented to the state court. *see* slip op. at 9, 2016 WL 4011172 at *4

Id. slip op. At 10 & n.1. To the same effect, in *United States v. Mullins,* 803 F.3d 858 (7th Cir. 2015), the court distinguished *Glover* and rejected the defendant's argument that he was entitled to a *Franks* hearing because the affiant had omitted credibility information relating to a confidential informant. *Glover* did not control because the CI had provided specific details about the suspected criminal activity occurring in Mullins's apartment and the critical details were corroborated through the officers' surveillance and firsthand observations. *Mullins*, 803 F.3d at 864-65.

As already noted, because this court *has* held a *Franks* hearing, the standard by which this court analyzes defendants' motion to suppress is more stringent than the standard the courts applied in *Musgraves* and *Mullins* when those courts determined that the defendants had not established their entitlement to a *Franks* hearing. As noted at the outset of the analysis, *supra*, this court is to redact misstatements and to insert omissions only if it finds, by a preponderance of the evidence, that they were borne of Det. Grimyser's intent to deceive the issuing court. I have *not* made this finding as to any of the omissions or purported misstatements in Det. Grimyser's warrant affidavit. To the contrary, Det. Grimyser's credible testimony at the *Franks* hearing, corroborated by the exhibits accepted into evidence, has persuaded me that Det. Grimyser had no intent to deceive Judge Smith. Det. Grimyser genuinely believed that he had handled CI 440 appropriately, that the two controlled buys really were sufficiently controlled, that his explanation of CI 440 to Judge Smith was accurate and complete, and that the other evidence he had adduced supported his warrant application. Pursuant to *Franks v. Delaware*, that's the end of the story, at least as a technical, legal matter. There is no basis to quash the warrant or to suppress any evidence.

But let's assume, *arguendo*, that defendants' contentions had more traction following the *Franks* hearing. What would the result be if the court were to edit Det. Grimyser's affidavit to give the defendants what they say they want? The reddest flag is Det. Grimyser's statement that "CI 440 has previously worked for the [Task Force] and has provided truthful and reliable information in the past." As phrased, this statement is inaccurate. It would have been more accurate and more complete for Det. Grimyser to have said something like this:

> CI 440 worked for the Dane County Narcotics Task Force in the 1990s but was de-activated in 1998 because Sgt. Ackeret deemed him to be unreliable in a specific case, although this unreliability did not involve drugs or money. Lt. Freedman reactivated him last week on a case-by-case basis because of the time lapse and because the Iowa County Narcotics Task Force recently used him successfully with no qualms. CI 440 provided truthful and reliable information to the Iowa County Task Force earlier this year in a case that resulted in an arrest.

We also will add to the hypothetical revised affidavit CI 440's criminal record, including his pending charges plus the fact that he had worked out a plea agreement with the Iowa County D.A. before signing on with Dane County. We will include that CI 440 got $20 to pay for gas for about 180 miles of travel to and from Dodgeville, and that Det. Grimyser characterized CI 440 as "mercenary." In their briefs, defendants complain that Det. Grimyser inaccurately hand wrote into his affidavit that he had found CI 440 "to provide truthful and reliable information independent of this investigation, and because much of the information has been corroborated by law enforcement." To make this more accurate, we will delete from this sentence the phrase "independent of this investigation, and . . .". Defendants might still challenge the accuracy of this edited sentence, but as elided, it is accurate because Det. Grimyser had the corroboration provided by the covertly recorded audio tapes of the buys, the video tapes taken by undercover

agents outside the apartment during the controlled buys, all of the landlord's information, DOT's address records for Morris and Ousley, and the two controlled buys themselves, both of which resulted in the purchase of controlled substances. Then the court would ask: would an affidavit edited in this fashion still provide probable cause to issue the requested warrant? If the answer were to matter, the answer would be Yes.

Probable cause is established when, in light of the totality of the circumstances, the issuing judge can make a practical, common-sense determination that there is a fair probability that contraband or evidence of a crime will be found in a particular place. *United States v. Mullins*, 803 F.3d at 861, *citing Illinois v. Gates*, 462 U.S. 213, 238 (1983). This is a low evidentiary threshold, requiring only a probability or a substantial chance of criminal activity, not an actual showing of such activity. *United States v. Roth*, 201 F.3d 888, 893 (7th Cir. 2000), *quoting Illinois v. Gates*, 462 U.S. at 244; *see also Gutierrez v. Kermon*, 722 F.3d 1003, 1008 (7th Cir. 2013)(probable cause is a practical, common sense standard that requires only the type of fair probability on which reasonable people act). In *Mullins*, the court concluded that probable cause was supported by the totality of the circumstances, particularly the level of detail that the CI provided and the officers' corroboration of these details, which substantiated the CI's reliability. 803 F.3d at 862. Toward this end, controlled buys add great weight to an informant's tip. *Id.* at 863, quoting *United States v. McKinney*, 143 F.3d 325, 329 (7th Cir. 1998). Against this standard, there would still be probable cause supporting the warrant to search Apt. 4 even when the court edits the warrant as requested by the defendants. Yes, CI 440 had some heavy baggage, but Det. Grimyser properly accounted for all of this in his investigation, even if he neglected to do so in his warrant affidavit. He's a police officer, not a lawyer, so he got the

investigation right but got the warrant affidavit wrong. But not *that* wrong: the affidavit still establishes probable cause to search Apt. 4 when CI 440's baggage is added to it.

But this is just a hypothetical spur off of the main track. The defendants raised legitimate concerns that caused the court to hold the requested *Franks* hearing. As a result of that hearing, the court has concluded that Det. Grimyser did not make any misstatements or omit any information deliberately or recklessly. Det. Grimyser did not intend to deceive the issuing court because he genuinely believed that he had probable cause to support the requested search, and he genuinely believed that he had presented his evidence fairly and completely to the state court. There is no basis to quash the search or suppress any evidence.

RECOMMENDATION

Pursuant to 42 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny both defendants' motion to quash the search warrant and to suppress evidence.

Entered this 16th day of August, 2016.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
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August 16, 2016

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Re: United States v. Morris and Ousley
Case No. 13-cr-128-bbc

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before August 31, 2016, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by August 31, 2016, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,
/s/
Susan K. Vogel for Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures

MEMORANDUM REGARDING REPORTS AND RECOMMENDATIONS

Pursuant to 28 U.S.C. § 636(b), the district judges of this court have designated the full-time magistrate judge to submit to them proposed findings of fact and recommendations for disposition by the district judges of motions seeking:

(1) injunctive relief;
(2) judgment on the pleadings;
(3) summary judgment;
(4) to dismiss or quash an indictment or information;
(5) to suppress evidence in a criminal case;
(6) to dismiss or to permit maintenance of a class action;
(7) to dismiss for failure to state a claim upon which relief can be granted;
(8) to dismiss actions involuntarily; and
(9) applications for post-trial relief made by individuals convicted of criminal offenses.

Pursuant to § 636(b)(1)(B) and (C), the magistrate judge will conduct any necessary hearings and will file and serve a report and recommendation setting forth his proposed findings of fact and recommended disposition of each motion.

Any party may object to the magistrate judge's findings of fact and recommended disposition by filing and serving written objections not later than the date specified by the court in the report and recommendation. Any written objection must identify specifically all proposed findings of fact and all proposed conclusions of law to which the party objects and must set forth with particularity the bases for these objections. An objecting party shall serve and file a copy of the transcript of those portions of any evidentiary hearing relevant to the proposed findings or conclusions to which that party is objection. Upon a party's showing of good cause, the district judge or magistrate judge may extend the deadline for filing and serving objections.

After the time to object has passed, the clerk of court shall transmit to the district judge the magistrate judge's report and recommendation along with any objections to it.

The district judge shall review de novo those portions of the report and recommendation to which a party objects. The district judge, in his or her discretion, may review portions of the report

and recommendation to which there is no objection. The district judge may accept, reject or modify, in whole or in part, the magistrate judge's proposed findings and conclusions. The district judge, in his or her discretion, may conduct a hearing, receive additional evidence, recall witnesses, recommit the matter to the magistrate judge, or make a determination based on the record developed before the magistrate judge.

NOTE WELL: A party's failure to file timely, specific objections to the magistrate's proposed findings of fact and conclusions of law constitutes waiver of that party's right to appeal to the United States Court of Appeals. ***See United States v. Hall,*** **462 F.3d 684, 688 (7th Cir. 2006).**