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

UNITED STATES OF AMERICA,

Plaintiff, ORDER

v.

07-CR-63-C

GARY PRIDEAUX-WENTZ,

Defendant.

On July 6, 2007, defendant filed a motion to quash the search warrant and suppress evidence. Defendant requested a *Franks* hearing[1] on his motion and moved for submission of the alleged contraband images to the court for review in conjunction with the suppression motion. *See* dkts. 8-10. On July 9, 2007, the government filed a letter objecting to holding a *Franks* hearing and asking for a telephonic hearing prior to the July 11, 2007 motions hearing. *See* dkt. 11. There is no need to hold a telephonic hearing to discuss this matter further. Having carefully considered Prideaux-Wentz's voluminous submissions in support of his motion, I conclude that Prideaux-Wentz has not crossed the high threshold that would entitle him to a *Franks* hearing.

Most of Prideaux-Wentz's observations and assertions regarding the content of FBI Agent Paulson's affidavit are support for Prideaux-Wentz's argument that there was no probable cause to support the warrant. The parties can expand upon and argue these observations and assertions in post-hearing briefing without the need to take evidence. A few of Prideaux-Wentz's observations and assertions challenge the manner in which Agent Paulson presented information,

---

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

alleging unfair spinning or omissions by means of failure to present all available information that could provide a more accurate context for the information actually presented.

Prideaux-Wentz's *Franks* challenges, even considered jointly, do not constitute the required substantial preliminary showing that: (1) the challenged search warrant affidavit contained false material statements or omitted material facts; (2) Agent Paulson made the false statement(s) or omitted the material fact(s) intentionally or with reckless disregard for the truth; and (3) these false statements/omitted facts were necessary to support the court's finding of probable cause. *See Franks*, 438 U.S. at 155-56. "These elements are hard to prove and thus *Franks* hearings are rarely held." *United States v. Swanson*, 210 F.3d 788 (7th cir. 2000).

Even if this court were to accept, *arguendo*, the premise that Agent Paulson "should have known" certain facts that Prideaux-Wentz deems important, this would establish negligence, not recklessness. *See United States v. Ladish Malting Co.,* 135 F.3d 484, 487-88 (7th Cir. 1998). Accordingly, any failure to provide the court with information that he did not have cannot be deemed reckless or intentional. A failure to investigate more thoroughly or a failure to provide the court with more information that might better illuminate the situation is, at most, negligence. " A little negligence–actually even a lot of negligence–does not the need for a *Franks* hearing make." *Swanson*, 210 F.3d at 790-91. Rather, Prideaux-Wentz must make a substantial preliminary showing that the claimed omissions were intentional, and that they were in fact material. *Id.* at 790. In order to prove deliberate falsehood or reckless disregard a defendant must offer direct evidence of the affiant's state of mind or inferential evidence that the affiant had obvious reasons for omitting facts. *United States v. Souffront*, 338 F.3d 809 (7th Cir. 2003).

As the Court stated in *Franks*,

> Our reluctance . . . to extend the rule of exclusion beyond instances of deliberate misstatements, and those of reckless disregard, leaves a broad field where the magistrate is the sole protection of a citizen's Fourth Amendment rights, namely, in instances where police have been merely negligent in checking or recording the facts relevant to a probable-cause determination.

438 U.S. at 170.

Put another way, *Franks* hearings are necessary to ensure that a defendant is protected "where a Fourth Amendment violation has been substantial and deliberate." *Id.* at 171. Prideaux-Wentz's submissions, despite their depth and breadth, do not come close to meeting this standard. This is not to say that his motion to quash lacks merit; that is an issue the court will decide after briefing. However, Prideaux-Wentz is not entitled to a *Franks* hearing in an attempt to bolster his arguments challenging probable cause.

We can discuss this matter further at the pretrial motion hearing if the parties wish, but regardless of the outcome of that discussion, we will not be taking evidence on July 11.

Entered this 9th day of July, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge