STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. YORSC-CR-12-2049

Rec'd 12/10/12 gr

STATE OF MAINE	)	
	)	**DEFENDANT STRONG'S RENEWED**
v.	)	**MOTION TO DISMISS**
	)	**FOR DISCOVERY VIOLATIONS**
MARK W. STRONG, SR.	)	

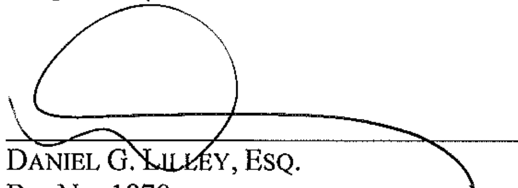
NOW COMES the Defendant Mark W. Strong, Sr., by and through undersigned counsel, and once more moves this Honorable Court to dismiss the charges pending against him, with prejudice, based on the State's failure to comply with its discovery obligations as follows:

1. On November 9, 2012, Justice Mills ordered that the State provide Defendant Strong with *all remaining discovery* by November 26, 2012.
2. As of December 6, 2012, the State has not turned over all items as ordered.
3. Maine Rule of Criminal Procedure 16(d) provides for the sanction of dismissing criminal charges with prejudice for noncompliance with discovery obligations by the State.

WHEREFORE, the Defendant respectfully requests that this Honorable Court sanction the State for its noncompliance by dismissing all charges against Defendant Strong with prejudice.

DATED in Portland, Maine, on this 6th Day of December, 2012.

Respectfully submitted,



DANIEL G. LILLEY, ESQ.
Bar No. 1870

Attorneys for Defendant
DANIEL G. LILLEY LAW OFFICES, P.A.
39 Portland Pier
P.O. Box 4803
Portland, ME 04112-4803
(207) 774-6206

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. YORSC-CR-12-2049

STATE OF MAINE	)	**ORDER ON**
	)	**DEFENDANT STRONG'S RENEWED**
v.	)	**MOTION TO DISMISS**
	)	**FOR DISCOVERY VIOLATIONS**
MARK W. STRONG, SR.	)	

Defendant Strong's Motion to Dismiss All Charges with Prejudice based on continuing discovery violations by the State is hereby GRANTED / DENIED.

DATE:

____
JUSTICE MILLS, SUPERIOR COURT

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
DOCKET NO. YORSC-CR-12-2049

Rec'd 12/10/12 JR

STATE OF MAINE	)	DEFENDANT STRONG'S
	)	MOTION TO SUPPRESS AND
v.	)	DISMISS WITH PREJUDICE,
	)	WITH INCORPORATED
MARK W. STRONG, SR.	)	MEMORANDUM OF LAW

NOW COMES Defendant Mark W. Strong, Sr., by and through undersigned counsel, and submits this Memorandum in support of his Motion to Suppress and Dismiss, pursuant to M.R. Crim. P. 12(b) and 41A.

Defendant Strong hereby moves this Honorable Court to suppress any and all evidence seized as a result of the multiple search warrants issued against Defendant Strong, as the warrants lacked probable cause and were based on uncorroborated and unsubstantiated hearsay, rumor, and innuendo.

Additionally, the affidavits upon which the applications for these search warrants were based are Constitutionally defective: the law enforcement officer who swore to the facts' reliability did so with reckless disregard for their truth, thereby misleading the Court to the facts' authenticity. Defendant Strong hereby requests a *Franks* hearing to investigate the recklessness by which the investigating officer presented misleading information to the Court.

Further, because all evidence seized from Defendant Strong should be suppressed, Defendant Strong moves for dismissal, with prejudice, of all charges against him and requests that all property that was seized be returned to him immediately.

LEGAL STANDARDS

Officer Presby caused the Court to sign the initial search warrant against Defendant Wright and her property, which was so lacking in probable cause as to render it facially invalid. All subsequent search warrants predicated upon evidence gleaned from the initial invalid warrant are "fruits of a poisonous tree" and should be suppressed. Defendant Strong challenges the probable cause determination of the warrants issued against him, which stem from the initial invalid warrant against Defendant Wright.

Maine's Constitution, reaffirming the protections established by the Fourth Amendment of the United States Constitution, prohibits unreasonable searches: "The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issues without a special designation of the place to be searched, and the person or thing to be seized, *nor without probable cause*—supported by oath or affirmation." Me. Const. art. I § 5 (emphasis added). To be valid, a search warrant must be issued by a neutral and detached judicial officer, contain probable cause supported by an oath or affirmation, and state with particularity the place to be searched or items to be seized. M.R. Crim. P. 41(c). Probable cause exists where the facts and circumstances shown are sufficient to justify an ordinary prudential and cautious person in believing there is a reasonable basis for the search. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). The requirement of probable cause protects "citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime." *Brinegar v. United States*, 338 U.S. 160 (1949). A law enforcement officer's mere conclusions, statements of belief, or opinions will *not* suffice to establish probable cause. *See, e.g.*, *Illinois v. Gates*, 462 U.S. 213, 239 (1983).

Two questions are presented for the Court's consideration. First, this Court must determine whether the uncorroborated hearsay that served as the basis of Officer Presby's application for these search warrants, evaluated under the "totality of the circumstances" analysis, established probable cause. Second, this Court must evaluate whether Officer Presby's misrepresentations and omissions of material facts to the Court demonstrated her reckless disregard for the truth of these statements and determine whether the remaining non-misrepresentations alone established probable cause to support the execution of these warrants.

When hearsay is the only information provided in the warrant affidavit, hearsay is insufficient to establish probable cause. *State v. Sweatt*, 427 A.2d 940 (Me. 1981). In *Sweatt*, the Law Court held that where an officer's affidavit relied solely on the hearsay of an informant, "the affidavit was required to show affirmatively that the hearsay information concerning the alleged [criminal act] was *reliable*." *Id.* at 948 (emphasis added). In *Sweatt*, an officer applied for a search warrant to search various properties owned or used by a gem cutter to find tourmaline that was allegedly stolen. 427 A.2d at 948. The affidavit included statements made to the swearing officer by a confidential informant. *Id.* The affidavit contained *no* statements about the informant's credibility or reliability, and the affidavit did not at all rely on the affiant's personal knowledge or observations of the stolen gems. *Id.* The Court accordingly upheld the Superior's granting of a motion to suppress. *Id.*

In determining whether probable cause exists, the magistrate applies the "totality of the circumstances" test adopted by the United States Supreme Court in *Illinois v. Gates*, which requires a "practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be

found in a particular place." *State v. Higgins*, 2002 ME 77, ¶ 20, 796 A.2d 50, 56. The *Gates* Court determined that the trustworthiness of hearsay for purposes of establishing probable cause can be demonstrated in a number ways, including (1) whether that informant has provided accurate information in the past; (2) whether independent police investigation has corroborated the informant's information; (3) whether some basis for the informant's knowledge is provided; or (4) whether the informant predicts conduct by the suspect that is not easily predicted. 462 U.S. at 227. Only when hearsay is corroborated by law enforcement investigation can it ever be deemed sufficient to form the basis of probable cause. *State v. Knowlton*, 429 A.2d 529, 533 (Me. 1985).

The Law Court in recent years has clarified its position related to the *Gates* test in the case of *State v. Rabon*, 2007 ME 113, 943 A.2d 268. The Law Court in *Rabon* emphasized that *Gates* required "something more" to establish police corroboration of an anonymous informant's tip. *Id.* at 277. In making a determination as to whether the anonymous informant tip was sufficient, the Law Court analyzed three areas in the context of *Gates*'s "totality of the circumstances" analysis: (1) the reliability and basis of knowledge of the informant; (2) the informant's claims regarding the defendants' criminal activity; and (3) the reports of other information concerning the defendants. *Id.* at 277. The Law Court indicated that the "something more" required by *Gates* is usually supplied by police corroboration of the informant's tips. *Id.* at 279. The Law Court held that "in *every* search warrant we have addressed since *Gates*, the affidavit included information depicting contextually suspicious or overtly criminal activity by a suspect who was observed by someone in addition to or other than an anonymous or confidential informant." *Id.* at 279 (emphasis added). The Law Court thus held that mere partial corroboration of facts would not salvage "the otherwise unsupported claims of criminal activity

by the [defendants] made by an informant for whom the warrant affidavit provides *no information* concerning the informant's reliability or basis of knowledge." *Id.* at 281 (emphasis added).

Criminal defendants are entitled to an evidentiary hearing as to the accuracy of an affidavit submitted in support of a search warrant when they can make a preliminary showing that: (1) the affidavit to obtain a warrant included intentional or knowing misstatements or misstatements made in reckless disregard for the truth, and (2) the misstatements were necessary for a finding of probable cause. *State v. Hamel*, 634 A.2d 1272, 1273 (Me. 1993), *citing Franks v. Delaware*, 438 U.S. 154 (1978). The same rules apply if "the overall falsity of the affidavit arises out of the deliberate omission of facts negatory of probable cause." *State v. Rand*, 430 A.2d 808, 821 (Me. 1981). If the allegation of perjury or reckless disregard is established by a preponderance of the evidence, and, with the affidavits' false material set to one side, the remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded. *Franks*, 438 U.S. at 156. A substantial preliminary showing may be established by sworn statements, through material obtained through discovery, or submission of otherwise reliable statements. *State v. Van Sickle*, 580 A.2d 691, 693 (Me. 1990); *State v. White*, 391 A.2d 291, 294 (Me. 1978).

FACTS AND ANALYSIS

The affidavits in support of the search warrants against Defendant Strong are utterly devoid of probable cause, rendering them facially invalid. Officer Presby never made an independent investigation into the reliability of the anonymous sources who served as the basis for her affidavits, nor did she or any other law enforcement officer corroborate these informants' hearsay by personal observation. Officer Presby misled the Court when she presented these

hollow facts for consideration, as they were not part of an ongoing investigation nor were other exculpatory facts presented to the Court. Officer Presby alleged the following facts in support of the initial warrant, and repeated them verbatim in every subsequent warrant against both Defendant Wright and Defendant Strong. A close examination of these facts as alleged, as well as their bases, follows.[1]

On February 10, 2012, Kennebunk Police Officer Audra Presby presented an application for a search warrant, pursuant to M.R. Crim. P. 41, to the District Court, which the Court granted. See Exhibit A, at page 4216. This initial search warrant listed the places and person to be searched as: 8 York Street, Kennebunk, Maine; 1 High Street, Kennebunk, Maine, Suite #7; Alexis Wright; Alexis Wright's listed residences (32 Baird Lane, Wells, Maine, and 158 Loop Road, Wells, Maine); and Alexis Wright's motor vehicle, a 2006 Toyota 4Runner. Exhibit A, at page 4216-17.[2] Officer Presby attested that "[u]nless specifically identified as to its source, the information contained in this affidavit is known to me personally or has been related to me by other law enforcement officers." Exhibit A, at p. 4216. As we will see below, none of the information Officer Presby relayed to the Court was "known to [her] personally" and its mere "relation" to her by fellow law enforcement does not automatically give it authenticity or weight.

[1] Officer Presby's recitation of "property and article(s) to be searched for" is strange and further demonstrates the lack of care and attention that went into her application for these search warrants. In her recitation, she requested "[c]omputer records or data that are evidence of the crime of a violation of a protection from Abuse order, Burglary, and Domestic Violence Assault . . . ." Exhibit A, at p. 4214. Officer Presby had no basis to assert these allegations but they were included by her in her formal application to the Court. Officer Presby also requested to seize "[s]ums of money possessed, used, or intended for the purpose of facilitating the engagement of prostitution including, but not limited to any currency described by serial number herein (see attached currency serial numbers)." Exhibit A, at p. 4214. No such serial numbers were attached to this affidavit and application.

[2] As a result of the execution of the search warrant and subsequent seizures, on February 29, 2012, Officer Presby applied for a Court Order approving the issuance of a release of Defendant Wright's telephone records with AT&T Wireless, which order was granted on March 5, 2012, by Superior Court Justice Paul Fritzsche. Exhibit B at p. 2907-2911. On February 29, 2012, Officer Presby applied to the Court for an order for the release of Defendant Wright's bank records from TD Bank. Exhibit C at p. 2912-14. On March 20, 2012, Officer Presby applied for and was granted an order for the release of Defendant Wright's bank records at Gorham Savings Bank. Exhibit D at p. 2940-42. The factual basis, as sworn to by Officer Presby, is identical for each of these applications.

This is a blatantly misleading statement that lends undeserved and unfounded authenticity to Officer Presby's affidavit.

Officer Presby wrote, "On March 5, 2011, Alexis S. Wright, DBA: Pura Vida Studio applied for and was granted a Building Permit to operate through the Town of Kennebunk Code Enforcement Office. The complete description of work to be performed at this 2500 square foot location was labeled and coded as: Personal Services and Dance Studio. Town of Kennebunk Code Enforcement Officer Paul Demers signed the building permit # 100072, date approved March 17, 2010." Exhibit A at p. 4218. Nothing alleged in this initial "fact" or "circumstance" would support a showing of probable cause, as this fact does nothing to demonstrate any criminality on the part of Defendant Wright. Officer Presby's statement, in fact, demonstrates the opposite: that Defendant Wright lawfully obtained a building permit to renovate her dance studio space. Officer Presby also made a material omission to the Court: that Defendant Wright was operating a legitimate dance studio and leading Zumba classes and events in that space. Intentional and material omissions such as this serve to establish the showing that Officer Presby made her statements with reckless disregard for their truth.

Officer Presby next wrote, "On or about the month of September 2011 the Kennebunk Police Department (KPD) began receiving anonymous phone calls from concerned citizens alerting them about possible suspicious [sic] occurring at the location of 8 York Street, the Pura Vida/ZUMBA studio." Exhibit A, a p. 4218. These anonymous reports, without more, amount to *nothing*; there are no indicia of reliability of the anonymous informants or an attestation to the basis of their knowledge. Officer Presby next wrote, presumably as a continuation of the previous alleged fact, "Anonymous individuals spoke to Police Department administrative officials, Lieutenant Daniel Jones and Chief Robert MacKenzie, advising they had been 'hearing

rumors of possible prostitution and criminal activities involving a female associated with Pura Vida Studio/ZUMBA.' The name of the suspect given was that of 'Alexis Wright, the studio owner and ZUMBA instructor.'" Exhibit A, at p. 4218. Anonymous informants and "rumors" around town, even though reported to law enforcement, are unsubstantiated and unreliable hearsay, functionally and legally equivalent to whispers on the playground. They cannot serve as the basis for a probable cause determination. A magistrate cannot find probable cause unless it is based on "something more substantial than a casual rumor . . . or an accusation based merely on an individual's general reputation." *Spinelli*, 393 U.S. at 416. Additionally, there is no time frame articulated in this "fact," other than "September of 2011," raising the issue of staleness. *See, e.g.*, *State v. Crowley*, 1998 ME 187, 714 A.2d 834. Further, citizen informants must be disinterested observers in order to be considered automatically credible. *Sweatt*, 427 A.2d 940. Officer Presby never identified or attempted to identify these anonymous informants, nor is there any record in the discovery provided thus far that would substantiate these reports, including phone or dispatch logs, written reports, or officer notes. There is a serious question as to whether these reports ever existed at all. When the identities of all of these informants remain anonymous, it is impossible for a magistrate to be able to evaluate the credibility and disinterestedness of each of these individual informants, which should cast serious doubt as to their veracity and reliability, or, when viewed beside the other misrepresentations or omissions, their existence at all.

Officer Presby continued, "On several occasions, Lieutenant Daniel Jones advised me that he spoke with Toppings Pizza employees located at 8 York Street, who reported they had witnessed many different motor vehicles driving behind the back of the building at all hours of the day and night. Employees stated to Lieutenant Daniel Jones that they observed several

males, occasionally dressed in sports jackets and various business dress attire, entering the rear entrance of the [sic] Pura Vida, and then exit a short time later. Employees also stated that various types [sic] motor vehicles would park in the rear of the parking lot. A male would exit the motor vehicle, enter the studio, and then leave after approximately 30 minutes to one hour." Exhibit A, at p. 4218. Once more, Officer Presby presents no time frame for these reports, nor did any law enforcement officer, including Lieutenant Jones, confirm the identities of these anonymous informants. The Court cannot assume the disinterestedness, reliability, credibility, and basis of knowledge of these informants because law enforcement did *nothing* to establish these characteristics nor did law enforcement attempt to corroborate *any* of these statements with independent investigation. The information provided itself is not probative, as there is no basis to determine whether the traffic pattern described was any different than what it always has been, or that Defendant Wright was even in the building at the unknown times these unknown pizza parlor employees saw the unknown traffic. Officer Presby's use of a ranking law enforcement officer's name is a blatant attempt to inject some substance or credibility into these anonymous informants' reports without her, or any other officer, actually doing any investigative work, which is further evidence of her misleading the Court via her affidavits.

Officer Presby next wrote, "On the morning of Thursday, December 22, 2011, Maine Drug Enforcement Agency (MDEA) Resident Agent placed a telephone call to 'Lydia,' aka Alexis Wright. The telephone call was audio recorded and during the audio recorded telephone call the agent asked to book at 10:45 appointment. The woman identified as Lydia agreed to engage in unspecified sexual conduct for money with the agent." Exhibit A, a p. 4219. Officer Presby offers no explanation for how "Lydia" was confirmed to be the alter ego of Defendant Wright. There is no voice analysis or reference to phone records or websites that would have

helped to confirm that identity. Officer Presby's assertion to the Court regarding "Lydia's" identity was not supported by the evidence and was purposely misleading. Further, law enforcement yet again failed to corroborate and follow-through by actually showing up for this alleged meeting. The MDEA phone call, even when viewed in context, proves nothing and cannot serve as a basis for probable cause for a warrant effectuated nearly two months later against Defendant Wright. It certainly cannot serve as a basis for probable cause against Defendant Strong more than seven months later.

The next three paragraphs, as written by Officer Presby, concern the statement of Christopher West, the owner and landlord of an office building located at 1 High Street in Kennebunk. West was not part of Officer Presby's alleged months'-long investigation (of which there is little to no record): he came to the station himself. Exhibit A, at p. 4219. Though West is named, the "owner of Total Look Hair Salon," who reported to West that she had observed men arriving at the location, hearing "a lot of moaning and groaning" is still an anonymous informant, whose basis of knowledge and reliability was never corroborated by Officer Presby or the Kennebunk Police Department. Exhibit A, at p. 4219. Further, this unnamed informant's information is uncorroborated double hearsay, not supported by either West's or any law enforcement officer's independent corroboration. West's observation of a massage table and camcorder in Defendant Wright's office does not support a search warrant seeking evidence of promotion of prostitution. West's internet search of Defendant Wright—which, again, law enforcement did not do themselves—from which he found and viewed an allegedly pornographic video of Defendant Wright performing a sexual act on herself, supposedly in the High Street office space, does not support a finding of probable cause that any illegal activities were being conducted by Defendant Wright or on those premises. Pornography involving adults is not

illegal and is not indicative of prostitution. Officer Presby did not conduct an internet search of Defendant Wright's name, nor did she view any video of Defendant Wright herself. West's statements, including what he himself observed, fail to establish a nexus "between the item[s] to be seized and criminal behavior." *Warden v. Hayden*, 387 U.S. 294, 307 (1967). No such nexus can be established on these paltry and ambiguous alleged facts.

On February 14, 2012, the search warrant was executed at the above-referenced locations by the Kennebunk Police Department. "Multiple computers, cameras, telephones, camcorders, handwritten and computer generated client ledgers, sex toys and other such items relating to pornography and prostitution were seized." Exhibit B at p. 2911; Exhibit A at p. 4211-12. The fruits of this illegal search serve as the basis for information added by Officer Presby in her subsequent applications for search warrants.

On April 24, 2012, Officer Presby applied for and was granted an order for the release of Defendant Mark Strong's telephone records via Verizon Wireless. Exhibit E at p. 2944-46. Officer Presby, on the same day, applied for and was granted an order for the release of Defendant Strong's phone records with U.S. Cellular. Exhibit F at p. 2952-54. On May 4, 2012, Officer Presby applied for and was granted an order for a search warrant for all subscriber records for Defendant Strong and Carl Taylor from InforMe records. Exhibit G at p. 2936-39. Additional search warrants were applied for and granted on May 22, 2012, for InforMe information for Defendant Strong, business partners, Statewide Investigations, and Priism. Exhibit H at p. 3004-10, 3011-15.

In her April 24, 2012, applications for the two search warrants for Defendant Strong's phone records, Officer Presby alleged the exact facts as listed in her initial warrant application, but added to them with the following statements:

- On February 14, 2012, the Kennebunk Police Department executed a search warrant [sic] two business addresses for Alexis Wright . . . and the residence of Alexis Wright . . . . Multiple computers, hard drives, cameras, telephones, camcorders, handwritten and computer generated client ledgers, and other such items relating to pornography and prostitution were seized. Exhibit E, at p. 2945.
- During the execution of this warrant, this Affiant recovered evidence relating to the crimes of Engaging in Prostitution, Promotion of Prostitution and Solicitation of Prostitution. This affiant recovered several electronic articles that were seized and have been forensically examined by Saco Police Department Forensic crime analyst, Detective Frederick Williams. Exhibit E, at p. 2945.
- An analysis of the electronic data showed the existence of several electronic client ledgers. . . . As part of this investigation, this Affiant viewed hours of video recordings of many of the sexual acts described in the electronic ledgers. . . . Among the electronic data recovered were several online State of Maine tax return forms that Alexis Wright submitted through Turbo Tax. A review of the ledger and key shows that the fees the acts would have generated would amount to approximately $150,000. . . . Exhibit E, at p. 2945.

A review of these alleged facts would contribute nothing to a probable cause determination that would compel a Court to issue a search warrant against Defendant Strong. This evidence is also tainted by the illegality of the initial search warrant and should be excluded.

Officer Presby then attested to the following:

- Throughout the videos, this Affiant observed Alexis Wright on the telephone prior to a clients' arrival or on Skype via video chat with Mark W. Strong, Sr. Further, this

Affiant observed that every sexual act was either videotaped or sent via Skype to Mark W. Strong, Sr. This Affiant through her investigation has established that Mark W. Strong, Sr., had a significant business connection to these illegal acts. Specifically, this Affiant has recovered many documents establishing the financial link between Mark Strong, Sr. and Alexis Wright, such as postal receipts sent to Mark W. Strong, Sr., insurance documents and bank records. Exhibit E at p. 2945-46.

- Alexis Wright's phone records indicate the multiple telephone calls made from Alexis Wright to Mark W. Strong, Sr. Exhibit E, at p. 2946.

Here, the lack of follow-through by this investigator becomes glaring: Officer Presby makes several conclusory statements without providing the Court with any sense of how she actually determined these "facts." How did she determine that Defendant Wright was speaking with Defendant Strong on these videos she viewed? Was a voice analysis conducted? Did Officer Presby compare any video images of Defendant Strong with say, for example, his BMV photograph? Further, Officer Presby's vague statement concerning "many documents establishing the financial link" between the Defendants falls flat: Officer Presby made absolutely no attempt to articulate what financial link she was able to establish and how with any degree of detail that would rise to the level of probable cause. The definitive way in which she presents these vague statements demonstrates her attempts to mislead the Court into believing that a true and complete investigation led Officer Presby to these conclusions. As evidenced by the appallingly inept and lazy investigation that preceded the execution of the initial search against Defendant Wright, nothing could be further from the truth.

The May 4, 2012, and May 22, 2012, applications for search warrants, in which Officer Presby is requesting records concerning Defendant Strong's alleged activity with InforME, relies

on the same alleged facts detailed above, but added the information that Defendant Strong is a licensed private investigator and that Officer Presby had reason to believe that Defendant Strong was utilizing this service to "run" Defendant Wright's clients' names through the Bureau of Motor Vehicles database. Exhibit G, at p. 2938. Officer Presby also does not explain how she was able to confirm that it was in fact Defendant Strong to whom Defendant Wright was speaking or from whom she was requesting this information. Conclusory statements do not support probable cause.

On July 9, 2012, Officer Presby applied for and was granted an arrest warrant for Defendant Strong on a single count of Promotion of Prostitution, in violation of 17-A M.R.S. § 853 (2011). Exhibit I p. 3023-28. According to Officer Presby's affidavit, her probable cause was based on the same information she alleged in Defendant Wright's initial search warrant as well as a cursory analysis of property seized as a result of that initial search warrant in addition to subsequent search warrants. Exhibit I at p. 3025-26. Also on July 9, 2012, Officer Presby applied for and was granted a search warrant for Defendant Strong's property at 446 Main Street, Thomaston; 53 Knox Street, Thomaston; Mark Strong personally; and four motor vehicles. Exhibit J at p. 3029-50, 3072. Police seized a variety of Defendant Strong's property, including computers, cell phones, and sundry media. Exhibit K at p. 3074, 4195-200. Officer Presby's affidavits in support of her July 9, 2012, applications for arrest and search warrants against Defendant Strong and his property suffer from similar defects. See Exhibits I and J. In addition to the information detailed *supra*, Officer Presby included information that does not support probable cause for the Promotion of Prostitution, namely, the consensual sexual relationship between Defendant Strong and Defendant Wright. Exhibit I, at p. 3025-26. In addition to the obvious defect that Officer Presby made no attempt in either of these affidavits to legitimize the

need to search all of Defendant Strong's properties and vehicles, as no evidence had been generated to lead to that conclusion that any evidence, contraband, or fruits would be found in Thomaston, the alleged facts as presented here do not rise to the level of probable cause necessary to allow for a search and seizure of Defendant Strong and his property, as inventoried in Exhibit K, at p. 3074, 4195-4200. All fruits of these illegal searches must be suppressed.[3]

CONCLUSION

The information provided in the warrant affidavits in the case against Defendant Strong does not even make a close case for probable cause. The basis for probable cause, as sworn to by Officer Presby, consists of rumor, unsubstantiated hearsay, and uncorroborated innuendo. These affidavits are lacking the "something more" required pursuant to the holdings of both *Gates* and *Rabon*. There is no independent police corroboration of any activity whatsoever aside from vague and conclusory statements alleging a connection between Defendant Wright and Defendant Strong.

The Kennebunk Police Department did not make *any* attempt to investigate the case against Defendant Wright until *after* they executed an illegal search warrant against her property, in stark contrast to the "investigation" Officer Presby presented to the Court. The police department, led by Officer Presby, rested on the uncorroborated hearsay of anonymous informants in each and every application for a search warrant that followed, making feeble and belated attempts to substantiate some of these rumors with vague, conclusory, and unsupported statements regarding the connection between Defendant Wright and Defendant Strong. The

[3] The State, in the meantime, made several motions to impound the initial and subsequent affidavits in support of the search warrants, citing the need to "complete the investigation." *See, e.g.*, Exhibit L at p. 3073, 3103-04. Subsequent motions to lift these impound orders have not been granted by the District Court, though inventories of items seized as a result of these warrants, as well as the facts of the affidavits themselves, have been publicized widely in the local and national media. *See, e.g.*, Exhibit A at 4207.

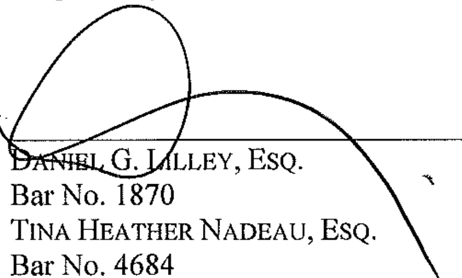
investigation, such as it was, against both defendants is markedly and undeniably flawed and has been so since its supposed inception in the fall of 2011.

The affidavits filed in support of Officer Presby's applications for search warrants represent the recklessly shoddy work that has gone into this investigation; the State should not be rewarded for Officer Presby's sloppiness and slights of hand within her sworn statements to the Court.

WHEREFORE, based on the foregoing, Defendant Strong seeks to suppress all evidence obtained from the search warrants executed against him and any other evidence obtained at any time from the illegal searches. Defendant Strong requests that this suppression motion be heard on December 12, 2012, along with all other pending motions in this case. Defendant Strong further requests a *Franks* hearing to flesh out the facts and circumstances behind this initial substantial showing of Officer Presby's reckless disregard for the truth in her affidavits to the Court. Defendant Strong further prays that this Court order the State to return to him all of the property it seized that was a result of the deficient warrants. Defendant Strong further requests that this Court dismiss, with prejudice, all counts against him as the probable cause for those counts was based on illegally obtained evidence, seized in violation of Defendant Strong's Constitutional rights.

Dated in Portland, Maine, this 6th day of December, 2012.

Respectfully submitted,



DANIEL G. LILLEY, ESQ.
Bar No. 1870
TINA HEATHER NADEAU, ESQ.
Bar No. 4684

Attorneys for Defendant Mark W. Strong, Sr.
DANIEL G. LILLEY LAW OFFICES, P.A.
39 Portland Pier
P.O. Box 4803
Portland, ME 04112-4803
(207) 774-6206

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
DOCKET NO. YORSC-CR-12-2049

STATE OF MAINE	)	**ORDER ON DEFENDANT STRONG'S MOTION TO SUPPRESS AND DISMISS WITH PREJUDICE**
v.	)	
MARK W. STRONG, SR.	)	

Following hearing, Defendant Strong's Motion to Suppress all evidence against is hereby GRANTED / DENIED. Accordingly, Defendant Strong's Motion to Dismiss With Prejudice is hereby GRANTED / DENIED.

DATE:

____
JUSTICE MILLS, SUPERIOR COURT

STATE OF MAINE
YORK, ss

SUPERIOR COURT
CRIMINAL ACTION
Docket No. CR-12-2049

STATE OF MAINE

v.

MARK W. STRONG, SR.,

Defendant

ORDER ON MOTION
TO RECONSIDER

The State, through the York County District Attorney's Office, filed a notice of joinder on October 9, 2012. The State filed no supporting memorandum. On November 2, 2012, the court conducted a telephone conference on the record with the attorneys with regard to scheduling and pending motions. The defense attorneys agreed to file any objection to the notice of joinder by 11/9/12. After discussion, the court specifically stated that when the objections to the notice of joinder were filed, the court would "take it from there." The court then asked if anyone had anything further to say or any questions. The attorneys from the York County District Attorney's Office and the Office of the Attorney General had nothing further to say and had no questions. No attorney indicated any further filing would be made.

On 11/9/12, the court ordered that the cases would be severed. On the same date, the court issued scheduling orders, which included a discovery deadline, motion deadlines, a hearing date on the motions, and the date the cases would be placed on the trial list. The scheduling order for defendant Strong provided the following: discovery deadline 11/26/12; motions due 12/6/12; motion hearing 12/12/12; and the case placed on the January 2013 trial list. The scheduling order for defendant Wright

provided the following: discovery deadline 11/26/12; motions due 3/26/13; motion hearing 4/1/13, and the case placed on the May 2013 trial list.

On 11/15/12, the State, through the York County District Attorney's Office filed a motion to reconsider joinder.[1] After telephone conference on 12/4/12, the court ordered that by 12/6/12 at 12:00 p.m., the State would provide to the court and defense attorneys evidence under seal[2] related to the motion to reconsider joinder and opposition to severance. The defense attorneys would inform the court by 12/10/12 at 10:00 a.m. whether they intended to file any written opposition to the evidence or whether counsel requested an additional conference. The defense attorneys have stated they will not file anything further and do not request a conference.

As discussed during the 11/2/12 conference, the Wright case is on a totally different time track from defendant Strong's case, at least in the opinion of defense counsel. The court agrees. The State elected to charge defendant Strong by complaint dated 7/9/12. No complaint was filed against defendant Wright. These charging decisions are important and have consequences. Indictments were returned against both defendants on 10/3/12. On 10/10/12, defendant Strong filed a request for speedy trial. Defendant Wright has not filed a motion for speedy trial.

The State's motion to reconsider is argument that should have been presented with its notice of joinder or should have been, at least, raised in the 11/2/12 scheduling conference. Based on the court's orders of 11/9/12, these cases have been on very

[1] The Attorney General's office is involved in defendant Wright's case but not defendant Strong's case. The Assistant Attorneys General did not sign this motion to reconsider.
[2] This evidence on the motion for reconsideration included a power point presentation among other exhibits. It is of concern that the State prepared a power point presentation on a motion to reconsider in a case in which the delay in producing discovery has been the subject of two court hearings and other conferences among counsel and the court prior to 12/6/12. Of further concern is the fact that disk #4, included with the State's evidence, is blank. The court assumes the references to that disk in the offer of proof appear in the power point presentation. Finally, at least one reference in the offer of proof to disk #1 is inaccurate.

different court-ordered time tracks for more than one month. As the court stated in the 11/9/12 order, "[a] delay of defendant Strong's trial or expediting defendant Wright's trial would be prejudicial."

In Zafiro, the Supreme Court stated: "[t]he risk of prejudice will vary with the facts of each case, and district courts may find prejudice in situations not discussed here. When the risk of prejudice is high, a district court is more likely to determine that separate trials are necessary, but . . . less drastic measures, such as limiting instructions, often will suffice to cure any risk of prejudice." Zafiro v. United States, 506 U.S. 534, 539 (1993). In addition to concerns addressed in the 11/9/12 order and the time factor, the number of charges pending against each defendant and the unprecedented media and public attention these cases have received support the court's decision to order separate trials.

The entry is

The State's Motion to Reconsider is denied.

Dated: December 12, 2012

Nancy Mills
Justice, Superior Court

STATE OF MAINE
YORK, ss

SUPERIOR COURT
CRIMINAL ACTION
Docket No. CR-12-2050

STATE OF MAINE

v.

ALEXIS S. WRIGHT,

Defendant

ORDER ON MOTION
TO RECONSIDER

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