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Attorney for Defendant, Jeremy Stone

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

JEREMY STONE; KERI ANN STONE,
Defendants.

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:
: **MEMORANDUM IN SUPPORT OF**
: **MOTION TO QUASH SEARCH**
: **WARRANT AND TO SUPPRESS**
: **EVIDENCE**

: Case No. 2:14-cr-0009 cv

: Judge Clark Waddoups

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Defendant, Jeremy Stone, submits the following memorandum in support of his motion to quash the warrant for the search of his home. Defendant contends that allegations in the Affidavit are false. Further, allegations in the Affidavit materially misrepresent the nature of the evidence in support of the warrant. Finally, the allegations fail to support a finding of probable cause for the search.

The officer's reliance on false or suspect allegations shows a reckless disregard for the truth. In *Franks v. Delaware*, the Supreme Court commands that the Defendant receive an evidentiary hearing if the Defendant meets certain tests. *Franks*, 438 U.S. 154, 171 (1978). First, the Defendant must allege that the officer's application for a search warrant was made in reckless disregard for the truth. *Id.* Second, the Defendant should give the court a sworn statement supporting the position that the officer's affidavit was false or made in reckless disregard for the truth. *Id.* The Defendant's affidavit is filed herewith. Finally, if the above two steps are met, when the subject matter of the alleged falsity is set aside, there must be enough facts left in the search warrant affidavit to give a magistrate probable cause to issue a warrant. *Id.* See, also *United States v. Muhammad*, 928 F.2d 1461 (7th Cir. 1991). If there are not, the warrant and fruits thereof must be quashed.

To satisfy the first test, Defendant asserts that the officer acted in reckless disregard of the truth. The officer's Affidavit was apparently based solely on information received from someone in Brazil. Agent Brimm has no personal knowledge of the facts of this matter. The officer took no action to insure that the information given to him by third parties was anything more than a "reckless or prevaricating tale." *Jones v. United States*, 362 U.S. 257, 270 (1960). The affidavit for the search warrant asserts detailed facts which are false and then makes conclusory statements about matters of which the officer has no personal knowledge, without any supporting evidence. The reliance of Agent Brimm upon the investigations of an unknown foreign national is akin to reliance upon an informant. The law is clear. "Where an informant's

tip is the source of information, the affidavit must recite ‘some of the underlying circumstances from which the informant concluded’ that relevant evidence might be discovered, and ‘some of the underlying circumstances from which the officer concluded that the informant . . . was “credible” or his information was “reliable”.’” *Franks* at 165; citing *Aguilar v. Texas*, 378 U.S. 108, 114-115 (1964). Here, the officer should be required to produce some underlying circumstance to support the claims of the “Brazilian government” or “officials” or “investigators” cited in the Affidavit. The Agent has none.

To determine an informant’s credibility, the courts consider a number of factors. One is whether the affidavit for the search warrant alleges that the informant has a “track record” establishing credibility. A “track record” that has led to arrests and convictions supports the credibility of a confidential informant. (See, *McCray v. Illinois*, 386 U.S. 300 (1967) (Informant gave information about narcotics activities 15 of 16 times in the past resulting in numerous arrests and convictions.) By analogy, in the present case, the affidavit ought to allege that there is a prior history with the “investigator” and that there is some reason to believe the Brazilian data. However, the affidavit does not describe any such corroboration. All the putative corroboration consists of more conclusory material from the Brazilians. The affidavit indicates no reason to accept information received from the Brazilian investigation. The affidavit does not even clarify specifically who supplied information to the Affiant, or why this person is reliable or what qualifications he/she has.

The Supreme Court has said that other sources of information concerning a Defendant's allegedly illegal activity, in addition to an informant's word, raise the level of the reliability of that informant, when assessing the constitutionality of a search warrant. *Jones*, at 271. In the present case, the only allegations of Defendant committing an illegal act are from uncorroborated claims of unknown persons at the time of the Affidavit, had apparently provided very limited information for the U.S. authorities as to their investigation. The Brazilian reports are not reliable. The Affidavit provides no information explaining why the Brazilian allegations should be deemed reliable.

The second requirement for granting a *Franks* hearing is that the Defendant challenges the allegations in the Affidavit. In the present case, Defendant has filed an affidavit himself. According to his affidavit, critical statements in the Agent's affidavit are false.

Since the two preliminary tests are met, the remaining test, as articulated by the Supreme Court, is to excise all unreliable material facts to see if sufficient facts remain to establish probable cause. *Franks* at 171; *Muhammad* at 1465-1466. After excising the information in the officer's affidavit which was supplied by the "Government of Brazil," or which is clearly mere unsupported conjecture, or which Defendant has sworn are false, insufficient facts remain to support a finding of probable cause.

First of all, the officer who signed the search warrant affidavit has no personal knowledge of the facts to support the search, (except an observation from the street of Defendant's home and of a child playing in the driveway). An analysis of the contents of the affidavit is as follows:

1. The Affidavit commences with a statement of the qualifications of John Brimm, a Special Agent with the Federal Bureau of Investigation. He states that he has experience as a law enforcement officer in money laundering, violent crime and drug trafficking. He has worked as a member of the Utah County Major Crimes Task Force. He has worked as an agent for Title 3 investigations (wire taps), Organized Crime Drug Enforcement Task Force cases and has served search warrants, arrest warrants and assisted on various white collar criminal investigations. It is important to note that absolutely none of these qualifications render him specially qualified to investigate the case at hand. This case does not involve drugs, organized crime or wiretaps.

2. It is alleged in the instant prosecution that the Defendant somehow received a "stolen" white snake, who used to reside in a zoo in Rio de Janeiro, Brazil, and that Defendant somehow caused this particular white snake to be "stolen" from the zoo, and transported to his home in Lindon, Utah, all allegedly in violation of several federal laws. Agent Brimm does not assert in his Affidavit that he has any training, education, or talent whatsoever in understanding Brazilian law, Brazilian wildlife, identifying species of snakes, identifying the subspecies of boa constrictors, comparing individual members of boa constrictor species to each other, identifying the sex of boa constrictors, or the genome of boa constrictors, identifying color variants in boa

constrictors, identifying which genetic traits of boa constrictors are recessive, dominant, or co-dominant to other genetic traits in boa constrictors, identifying boa constrictors by photographic comparisons, investigating wildlife trafficking, the laws of wildlife importation, enforcement of “the Lacey Act”, that he understands the language of Portuguese, is capable to conduct analysis of “meta data” in photographs, in video recordings, or in other electronic records, the enforcement of treaties between the United States and Brazil regarding wildlife, or that he can identify which species are native to Brazil (as opposed to native to another nation.) Essentially, Agent Brimm, for purposes of this case, has exactly the training, experience and understanding of any certified law enforcement officer within the United States, and no more.

3. In paragraph 2 of his Affidavit, Agent Brimm describes the premises to be searched. This description provides no probable cause as a basis for the search.

4. Paragraph 3 of the Affidavit states the conclusion, without supporting evidence, that there are facts that will be described to support a finding of probable cause that, within the structures of the Defendant’s residence, there will be found evidence of criminal conduct. This paragraph, however, provides no statement of facts supporting this legal conclusion.

5. Paragraphs numbers 4, 5, 6 and 7 merely recite the law, with the exception of paragraph 6, which purports also to state or imply the following facts: “That the country of origin” of the single snake in question is Brazil; and that no CITES permit has been surrendered upon import to the United States with regard to a “live” “wild caught” boa constrictor from

Brazil. There is no basis, however, stated for the affiant agent to have knowledge of these facts. Specifically, the agent can adduce no evidence nor specialized training or skill to indicate why he would be able to opine that a particular snake was from Brazil, or that it was “wild caught,” or indeed whether or not CITES permits have ever been issued. Moreover, it is critical to note that the Agent, later in the Affidavit, admits that the Defendant did obtain CITES permits and import live snakes from Guyana.

6. Paragraph 7 of the Affidavit recites the law of the Endangered Species Act. It states no probable cause for a search.

7. Paragraph 8 of the Affidavit states facts alleged both about Defendant, Jeremy Stone, and his commercial import/export license, and states as a fact that there are no known declarations by anyone for import into the United States of a “live” or “wild caught” boa constrictor originating from Brazil. This paragraph fails to state the factual basis upon which this Affiant can aver from personal knowledge anything about declarations by any importer or exporter. In particular, the Affiant does not state the basis of his opinion that the snake in issue is “wild caught” and/or that it originated from Brazil. The Affiant simply assumes these facts to be true. He fails to point out in this paragraph that Defendant did declare importation of hundreds of live wild-caught snakes from Guyana.

8. Paragraph 9 of the Affidavit merely describes the statute, Title 18 United States Code Section 545, and does not state any basis to find probable cause to search the Stone residence.

9. Paragraph 10 begins to describe what the government asserts to be the “facts of case” in support of the Search Warrant. This paragraph declares that Agent Brimm is stating the following facts within the Affidavit of his own personal knowledge, or by information gained through his “training and experience,” or based upon information gained from “other law enforcement officers working with me on this investigation.” As will be demonstrated below, almost nothing contained in the Affidavit is stated based upon the officer’s “own personal knowledge”. As to the claim that the information is stated based upon information gained through his “training and experience,” his training and experience have to do with drug trafficking, organized crime investigations, and generalized law enforcement activity (such as serving search warrants.) It is evident from a review of the Affidavit that the Agent’s “training and experience” provide no basis whatsoever for any of the contents of the Affidavit material to the consideration of probable cause.

10. Finally, with regard to paragraph 10 of the Affidavit, the Agent asserts that his information in support of his Search Warrant Affidavit also comes from “the other law enforcement officers working with me on this investigation.” (Emphasis added.) He fails to explain, however, who those law enforcement officers are. Defendant asserts it is clear from the remainder of the Affidavit that almost none of the factual allegations contained in the Affidavit in support of the Search Warrant are based upon observations of any trained law enforcement officers working within the United States of America for any recognized law enforcement agency, including federal, state, local or tribal police. Defendant asserts that it is evident from

the remainder of the Affidavit that virtually all of the material in the Affidavit has, as its source, an “investigation” conducted by someone in Brazil, who was not “working with” Agent Brimm at all. The sworn statement of Brimm that the Affidavit arises from observations of officers “working with” him is simply false. There is nothing explaining the unknown person’s qualifications to act as a law enforcement agent within the United States of America. There is nothing to show what would qualify him (or her) to render an opinion necessary to overcome the Defendant’s Fourth Amendment rights to be free from a government search of his residence.

11. It would have been material to the issuing magistrate’s consideration of the Search Warrant, had Agent Brimm truthfully stated to the magistrate the identity and qualifications (or lack thereof) of the “other law enforcement officers” upon whom Agent Brimm was relying for his factual statements, and the fact that these agents never “worked with” Brimm or any other U.S. police officer or agent.

12. Paragraph 11 of the Affidavit states correctly that on June 18, 2013, the government of Brazil requested the assistance of the United State to locate and seize a “leucistic boa constrictor.” Agent Brimm correctly states at this point in the Affidavit that the claim that a U.S. citizen had unlawfully purchased a leucistic boa constrictor from the Niteroi Zoo in Brazil and unlawfully smuggled it into the United States is a mere allegation. It is important to note that paragraph 11 asserts allegations only, without stating any factual basis therefore. Paragraph 11 goes on to state the mere unsupported legal conclusion that there is “probable cause to believe Jeremy Stone unlawfully obtained this snake” and “that he would have in his possession records

of this illegal act.” There is no statement of any fact or source from which to form a conclusion of probable cause that these allegations are true.

13. Paragraph 12 of the Affidavit states that, “according to the investigation conducted by the federal police in Brazil” Jeremy Stone is the main target of their investigation and that there is an arrest order in Brazil against Mr. Stone. Again, this provides a statement that Mr. Stone is accused of something, without stating one single fact that would give rise to a conclusion that the foreign government is right, and that there is probable cause for the search.

14. Paragraph 13 of the Affidavit begins to recite a lengthy series of alleged facts, without Agent Brimm producing any information as to why he has personal knowledge of these facts, or why the source of these alleged facts is sufficiently reliable to satisfy a finding of probable cause. These “facts,” asserted without attribution by Agent Brimm, include the following:

a) That in 2006 a military fire fighter in Brazil found a young leucistic boa constrictor in the jungle near Rio de Janeiro, Brazil. (It should be noted that a popular media news report contemporaneous with the finding of the white boa constrictor in Rio de Janeiro in 2006 states that the boa constrictor was located on a “rooftop” in Rio de Janeiro. A snake found loose on a rooftop in an urban area is arguably just as likely to be an escaped captive-bred specimen as to be a wild animal.)

b) Paragraph 13 goes on to give a lengthy report about what it means for an animal to have the leucistic trait. There is no basis in Agent Brimm's training and qualification for him to express these scientific conclusions, and he does not attribute these scientific "facts" to any source, let alone a reliable source, to support these conclusions.

c) Paragraph 13 goes on to state that a leucistic boa is "extremely rare" and that "this particular boa constrictor" (presumably referring to the boa constrictor found by fire fighters in or near Re de Janeiro in 2006) "is the only known specimen in the world." Agent Brimm provides no basis in his own training or experience, nor does he credit any source at all for these highly detailed scientific claims.

d) Paragraph 13 goes on to state that "this boa" (presumably meaning the boa constrictor located in or near Rio de Janeiro in 2006) is "extremely valuable" in its own right, and also because of its ability to produce offspring with the genetic trait to produce similar leucistic boas. Agent Brimm has no personal knowledge nor training to qualify him to opine as to the retail value of any snake, or as to the retail value of the offspring of "the boa," and he fails to attribute either the basis of his information or the reliability of that source in this statement.

e) Paragraph 13 goes on to state that, in 2012, "Brazil" (suggesting someone unknown within a country of hundreds of millions of people) reviewed Defendant's website, which revealed "a number of offspring from the leucistic boa being sold for \$12,000.00 to \$35,000.00." This statement fails to identify who viewed the website, other than it was reviewed by "Brazil."

There is no reason given to rely upon the report. This statement alleges, without any factual basis, that a leucistic boa constrictor seen on a website in 2012, was the same leucistic boa constrictor as had been found by fire fighters in or near Rio de Janeiro in 2006. Agent Brimm offers no personal knowledge to explain why this fact would be true, and offers the magistrate no description of his source for this allegation, nor any basis why that source should be considered reliable, or has a “track record.” Further, Agent Brimm’s statements are false, in that a review of the website indicates that boa constrictors were being offered for sale for \$12,000.00 to \$35,000.00. Agent Brimm failed to inform the magistrate that he has no information regarding an actual closed sale at this price range.

f) Paragraph 13 goes on to state that “a boa constrictor this rare” would be valued in excess of \$100,000.00, again, without any basis in personal knowledge or training of the Affiant, and again without stating the source for this conclusion. Agent Brimm seems to suggest without proof that the boa constrictor depicted upon Defendant Stone’s website in 2012 was the same as the boa constrictor found by fire fighters in Rio de Janeiro in 2006. Further, the agent, without any training or experience to support his opinion and without attributing the source for his allegation, asserts a value for a snake allegedly seen upon Stone’s website.

g) Next, Agent Brimm asserts that the “Brazilian government” claims that the leucistic boa found in 2006 had a value estimated at \$350,000.00 to \$1,000,000.00, all according to discussions on internet forums. The Brazilian government is a vast conglomeration of people. Agent Brimm fails to state in his Affidavit the actual source of his claim that the “Brazilian

government” determined any particular value for the snake located in Brazil in 2006, and fails to state a basis for the reliability of any such opinion. Brimm certainly has no qualifications to appraise a snake on his own.

h) Most troubling is the agent’s assertion in paragraph 13 that a magistrate in a court of law in the United States of America should rely upon “discussions on internet forums” as a factual basis to find probable cause to search a private residence. Defendant would point out that almost anything can be found upon “internet forums.” It can be demonstrated on internet forums that aliens landed in Roswell, New Mexico, and are now inhabiting a United States military base in Nevada. It can be demonstrated from internet forums that the Holocaust never took place. One can find “evidence” on internet forums that the earth is flat, that the earth ended on December 21, 2012 and that Elvis Presley, Marilyn Monroe and President John Kennedy are all alive and living together on an island. This statement of an FBI agent that he is relying on internet chat rooms provides no basis for probable cause to believe anything, and is frankly quite disturbing.

i) The conclusion of paragraph 13 states that, when “the snake” was brought to “the zoo” in Brazil, it was the only known leucistic boa constrictor to exist. The agent seems to assert, without any personal knowledge, and without any statement showing the source of this conclusion, that the boa constrictor possessed by Mr. Stone was the same as the one found in Rio de Janeiro in 2006. There is absolutely no factual nor scientific basis stated for the Agent’s

conclusion that the snake found in 2006 was “the only known leucistic boa constrictor to exist.” Brimm certainly has no qualifications to render this opinion or to state this fact.

15. Paragraph 14 of the Affidavit continues deliberately to attempt to confuse the magistrate, as to the demonstrable facts regarding “the boa constrictor.” Paragraph 14 refers to the snake located in Brazil in 2006 as “this boa.” It states that “the snake” was forwarded to the Niteroi Zoo near Rio de Janeiro and was placed on display, without adducing any probable cause to believe that the snake on display at the Niteroi Zoo was “this snake” which is the subject of the Indictment here. Paragraph 14 then goes on to admit that the next relevant event occurs “several years later.” There is no accounting for the fate of the Rio snake during the lapse in time. Paragraph 14 further confirms that “Brazilian officials” were informed “several years” after “the snake” was located in 2006 that “the snake” had died. Without describing any expert or factual basis whatsoever, paragraph 14 then concludes that persons are somehow required to keep evidence of a snake’s death, and that failure to keep evidence of a zoo animal’s death in the nation of Brazil is suspicious activity. Agent Brimm has no experience or training to state this opinion. Paragraph 14 then asserts, without any basis to support the suspicion, that “Brazilian officials” suspected that “the snake” (presumably the 2006 Rio snake) had been stolen or sold illegally. However, nothing is stated in paragraph 14 to have caused the magistrate to understand either why the Brazilian officials held this opinion or why the officials’ opinion on this subject would be reliable, or why the Brazilian officials’ conclusions that the snake in the Niteroi Zoo had been stolen or sold illegally are anything more than a mere hunch.

16. Finally, paragraph 14 continues with an explanation that some unidentified “officials” operating at an unknown time conducted and undescribed investigation of the Niteroi Zoo, during which they “learned of the irregularities” which allegedly indicated that the previous zoo director had illegally sold hundreds of animals from the zoo over the course of 22 years for her financial benefit. There is nothing in this paragraph to indicate who these officials are or why these unidentified “Brazilian investigators” should be believed. It is not even indicated whether these “investigators” were private or public officials, nor is their training and expertise in investigation described, nor is it indicated what evidence they reviewed nor that they had any factual basis for a conclusion that there were “irregularities” at the zoo. Most critically, paragraph 14 of the Affidavit does not explain how “irregularities” at the Niteroi Zoo “several years” after 2006 have anything to do with the Defendant or the issues in this case. The contents of this paragraph do not provide probable cause to believe that any crime was committed for which evidence would be available in the home of Jeremy Stone in Lindon, Utah.

17. Paragraph 15 of the Affidavit states that “in 2012, Defendant, Stone, began to exhibit a leucistic boa constrictor on his website, www.boaconstrictor.com. “The Affidavit then states the frankly absurd observation that a boa constrictor exhibited on one website “bears very similar characteristics” to another animal of the same species. This tautological statement (that a boa constrictor looked very similar to a boa constrictor) provides nothing that would establish probable cause to search the home of the Defendant. This statement is no more probative than

saying an African lion in the Salt Lake City Zoo had “very similar characteristics” to an African lion in the San Diego Zoo.

18. Paragraph 15 goes on to declare that “Brazilian forensic analysis” compared pictures and videos allegedly posted by Stone to his website, to photographs and videos taken of the captured leucistic boa constrictor found in Rio de Janeiro in 2006. The Affidavit fails to disclose who the “Brazilian” is who conducted such “forensic analysis.” The Affidavit fails to disclose what this “forensic analysis” was, or what kind of photo comparison forensics is accepted in any scientific community. It fails to express why this “Brazilian” is a reliable source of information, or what training, education or experience this “Brazilian” would have to qualify him or her to make this “forensic analysis” and to draw this conclusion. The Affidavit then states that this “Brazilian” forensic investigator has arrived at the same tautological conclusion - - that a boa constrictor looked like a boa constrictor.

19. At last, the Affidavit boldly declares as fact the utterly unsupported conclusion of an unknown “Brazilian,” that the snake from the Niteroi Zoo in 2006 is the same snake as one depicted in a video six years later, upon the Defendant’s website. The Affidavit fails to describe at all what kind of technology or “forensics” were used to make this comparison and to reach this conclusion. The Affidavit fails to state what assumptions were made or what computer enhancements were used, to compare a snakes through photographs and videos through a six year aging process, and to determine that one snake is the same as a snake in another photo. Indeed, counsel asserts that the Affiant cannot demonstrate a technology which has been

accepted in the courts, or which is generally accepted the scientific community, which could compare photographs of one animal to alleged photos of the same animal six years later, and to conclude with accuracy whether the animal is the same individual member of the species. Yet, based upon the unidentified and unreliable “Brazilian forensic analysis”, the Affiant states that this “science” (and not a particular scientist) determined that the boa constrictor on Defendant’s website was the same as the boa constrictor who lived in the Niteroi Zoo, six years earlier.

20. Paragraph 16 of the Affidavit states that the “investigation conducted in Brazil” (without stating the name of this investigator/informant, nor why this individual is reliable,) revealed that Stone was in Rio de Janeiro in February 2007. The Affidavit then states that “Brazilian officials” (without identifying who these officials are, or how many of them there are, or what they have done to investigate, or why they are reliable) states that Stone attempted to purchase “the snake” from the zoo director of the Niteroi Zoo and that he was told “apparently by the zoo director” that it would be illegal for him to purchase the snake. This paragraph does not provide probable cause to search the residence of the Defendant. His visit to Brazil in 2007 does not explain the appearance of a snake on his website in 2012 nor provide probable cause to believe that the two snakes are the same. In fact, this paragraph seems to provide probable cause for the proposition that the Defendant did not take the snake from the Niteroi Zoo, because apparently both someone at the zoo and the Defendant reached the conclusion that it would be “illegal”. The Affidavit provides no linkage between the Defendant’s alleged visit to Brazil in 2007, and his apparent possession of a boa constrictor some five years later.

21. Paragraph 17 of the Affidavit again references the findings of “Brazilian authorities,” without identifying who the “Brazilian authorities” may be, or why they should be deemed reliable by the Court. Paragraph 17 does not suggest whether the “Brazilian authorities” are police, or government officials, or concerned citizens on a committee. Paragraph 17 goes on to state that United States records demonstrate Stone departed Port of Spain, Trinidad and arrived in Ft. Lauderdale, Florida, on January 29, 2009. Then, without any basis in fact whatsoever, paragraph 17 concludes: “There is probable cause to believe that STONE chose to leave Brazil via its border with Guyana, to avoid a more stringent examination by border enforcement and customs agent at the airport in Rio de Janeiro with the intent of smuggling this snake and possibly other animals out of Brazil.” The Affiant repeats that there is probable cause, apparently hoping that if these words are repeated often enough, even without any supporting facts, probable cause will eventually materialize.

22. As to the last sentence of paragraph 17, it is obvious from Agent Brimm’s qualifications that he has absolutely no expertise that would allow him to state whether there is or is not probable cause to believe that anyone crossed any borders with any country, or why they did so, other than possibly the border of the United States. Nor is he qualified to opine about the quality of border enforcement and customs agents at the airport in Rio de Janeiro as compared to another location in Brazil. This claim is merely a conclusory claim of what the Government wishes to prove. There are so many problems with this sentence of the Affidavit that it is hard to know where to begin. The sentence references “this snake,” again as though the

Affidavit had already proven that a snake located in Rio de Janeiro in 2006 was the same snake as appeared in Lindon, Utah in 2012, some six years later. The sentence fails to address the evidence stated earlier in the Affidavit that the owner of the Niteroi Zoo claimed the snake which had been in that zoo had died. Most problematic are facts alleged in paragraphs 19 through 22 of the Affidavit that contradict the claim Defendant was “avoiding” Rio de Janeiro. The Affiant clearly claims that Stone and his sister attempted to board an airliner, to go to the United States, yet he fails to mention that this episode occurred in Manaus, Brazil rather than Rio de Janeiro. If border agents are especially strict in Rio de Janeiro, and are more lax elsewhere, and if Jeremy Stone traveled to Guyana to avoid authorities, then it is impossible to explain, consistent with the Affiant’s theory, why the Defendant and his sister were sitting on a flight in Manaus, Brazil on January 18, 2009, ready to fly directly to Atlanta, Georgia. Though Stone actually did attempt to fly out of the city of Manaus, the agent in paragraph 17 tosses off the suggestion that Stone really initially wanted to fly out of the Rio de Janeiro Airport. The distance between Manaus and Rio de Janeiro is thousands of miles. In other words, the agent tosses off the suggestion of stringent custom agents at Rio de Janeiro just for atmosphere to sweeten his Affidavit, without ever stating as fact that the Defendant was even near the city of Rio de Janeiro at any since he visited the Niteroi Zoo in 2007.

23. In paragraph 18 of the Affidavit, the Affiant asserts that the Defendant, between January 29, 2009 and July 7, 2009 imported four separate shipments of reptiles to the United States from the nation of Guyana. These shipments allegedly contained 324 snakes, of which

137 were allegedly live boa constrictors. What the agent failed to describe in paragraph 18 is that there would be nothing illegal about Defendant shipping live boa constrictors from the nation of Guyana to the United States of America. What the agent fails to describe is that all of these snakes were shipped under CITES licenses. What the agent failed to state is that there are no laws within the nation of Guyana prohibiting the capture and exportation of live boa constrictors from Guyana. What the Affidavit fails to explain is that the range of the species “boa constrictor” is from nearly the southern tip of South America well into Mexico. Boa constrictors may be found in numerous nations other than Brazil, including Guyana. The agent failed to point out that it is just as likely to assume that this Defendant obtained boa constrictors lawfully in Guyana and imported them lawfully from Guyana to the United States, complying with the “Lacey Act” and with the laws of Guyana. The entirely lawful conduct described by the Affiant in paragraph 18 does not provide probable cause to search the home of the Defendant in Lindon, Utah. It provides a basis for a finding of “not guilty.”

24. Paragraph 19 of the Affidavit describes a set of circumstances that allegedly occurred at an airport in Brazil. It is interesting to note the Affiant failed to state at which Brazilian airport these events occurred. This failure to state the identity of the airport is likely a deliberate failure to provide significant material information to the magistrate regarding the request for a warrant because to do so would have demonstrated the contradiction in the agent’s argument when paragraph 19 is compared to the false allegations contained in paragraph 17.

25. The Defendant, as set forth in his own affidavit, attempted to depart the nation of Brazil on or about January 18, 2009, in the company of his sister, Keri Ann Stone, at the Manaus Airport, thousands of miles from Rio de Janeiro. The Agent was not present for the events which occurred at the Manaus Airport and there is no reason from the Affidavit to believe that he has either personal knowledge, or that he has information from any reliable source about these events. The agent fails to disclose his sources and fails to explain why his sources should be deemed reliable. The source for the “facts” set forth in paragraphs 19 through 21 of the Affiant’s Affidavit is “the authorities.” The Affidavit does not even say which nation “the authorities” are from, let alone what agency they are with, whether it is governmental or private agency, or what training and experience the authorities may have. The Affidavit does not state what documents have been reviewed by Brimm or how he learned any of this. It does not give any other reason to believe the contents of paragraphs 19 through 21. These paragraphs are artfully worded in the passive tense, to avoid explaining who acquired all of this information.

26. As to paragraphs 19 through 21 of the Affidavit, the veracity of those “facts” is seriously in question, given the Affidavit of the Defendant.

27. At paragraph 22 of the Affidavit, Agent Brimm asserts that a photo taken by Stone was reviewed by “Brazilian law enforcement” and that “meta data shows it was taken on April 9, 2009 in Guyana.” The Affiant does not say that he has seen this photograph. He does not say that he has conducted the forensic testing that would support this conclusion about the “meta data” in some photograph. The agent does not say who in “Brazilian law enforcement” reviewed

the photograph or conducted the forensic testing thereof, nor why that person has the qualifications to assess the “meta data” within the photograph, nor why the testing performed is reliable and accepted within the scientific community.

28. The Agent concludes paragraph 22 by reporting that Stone imported three shipments of reptiles and spiders from Guyana in May 2009 and five shipments in July of 2009, and then states the mere assertion that these “may have been used to smuggle the snake into the United States.” The agent does not state that he has any personal knowledge that the smuggling occurred. He does not state he has spoken to any reliable witness who observed the smuggling. He cannot describe what authority or expert in smuggling from South America has arrived at this conclusion. He fails, again, to inform the court that the Defendant had valid licenses to import wildlife and, on the face of these shipments, complied with the “Lacey Act,” and with United States and Guyanese law. He also fails to inform the court that shipping live snakes or spiders from Guyana is not against the law. He fails to explain how a snake who allegedly died in Rio de Janeiro sometime between 2007 and an unknown date before 2012, nonetheless arrived alive in Guyana in 2009, to be shipped to America. Finally, and most importantly, the agent fails to report to the court that all Defendant’s shipments to the United States were inspected by U.S. federal government officials, all of whom apparently (if the Affiant is to be believed) utterly failed in their jobs and failed to notice a large white boa constrictor, over three years in age, allegedly utterly unlike any snake the officers would have seen before, worth a million dollars.

29. Paragraph 23 states merely that the Defendant, Stone, maintains a website associated with his reptile business. The paragraph contains a rambling statement, attributed to Stone, none of which contains a confession to any criminal conduct of any description. The statement does, at the bottom of page 9 of the Affidavit, confirm that Stone had observed “the boa” in the Niteroi Zoo to be a female. It also, incidentally, references that there have been rumors of “different white animals” available in the market. The statement clarifies that Stone’s white snake was male. The contents of this internet statement from Stone actually refute the statements contained previously in the Affidavit, that “the boa” found near Rio de Janeiro in 2006 was the only known leucistic boa constrictor in the world, or that “the boa” was the same as Mr. Stone’s boa. Certainly the “rumors of different white animals” asserted by Mr. Stone are at least as reliable as the “internet forums” relied upon by the government to reach other conclusions. This paragraph provides no probable cause for a search.

30. In paragraph 24 of the Affidavit, the Affiant again references “the investigators in Brazil” without identifying who these investigators are, or what their qualifications are, or what may be their record of reliability, or whether they are government or private “investigators.” These “investigators” allegedly conducted a review of photographs of the boa allegedly stolen from the Rio de Janeiro, Brazil and compared these photos to the boa constrictor displayed on Stone’s website. The Affidavit fails to describe the training or qualifications of these individuals to make such a forensic comparison, or whether there is even a scientifically accepted method to create a forensically valid comparison of snakes from photographs. Further, this paragraph of

the Affidavit states “Brazilian investigators” can find no other reference to a boa constrictor anywhere else in the world. (There is no basis in fact asserted as to why these “investigators” could actually search “the world.” And of course, there is the obvious exception of the references on Mr. Stone’s website to other white boa constrictors having been found elsewhere.)

31. In paragraph 25, the Affiant states his belief, still without having supplied any factual basis, that there is probable cause to believe Stone smuggled “the leucistic boa” into the United States (apparently referring again to the boa constrictor which had been at the Rio de Janeiro Zoo in 2006). He alleges, without any source or factual basis, that Stone did so for the sole purpose of establishing a breeding program. The paragraph then goes on repeat the post, allegedly from Mr. Stone’s website, cited already in a previous paragraph. It also goes on to cite You Tube video postings, allegedly from Jeremy Stone, and goes on to list the marketing efforts of Mr. Stone for his snake breeding business, without explaining precisely why this conduct shows probable cause to believe that any crime had been committed or that evidence of the crime would exist in the Stone’s residence. Paragraph 25 concludes by saying, “...Stone appears to be selling the offspring of the leucistic boa.” Again, the agent asserts as a proven fact there was only one white boa and the boa constrictor in the zoo in Rio de Janeiro in 2006 is the same as the boa constrictor in Lindon, Utah in 2012. However, in 25 paragraphs the Affiant has still stated no basis for such a finding.

32. In paragraph 26 of his Affidavit, the Affiant states that he believes there is probable cause to believe that Stone did illegally take possession of a leucistic boa constrictor from the

zoo director in Brazil and that he smuggled “the snake” out of Brazil. Agent Brimm states his conclusion without having given any reliable factual basis therefore. He cites further marketing materials from Jeremy Stone’s snake breeding business. These provide no probable cause to believe that a crime has been committed or that evidence of a crime existed in the Stone residence. It is not illegal to import or to breed snakes for resale. It is not illegal to market one’s wares.

33. Paragraph 27 of the Affidavit states again the unsupported legal conclusion that there is probable cause to believe that Stone is maintaining records in his home which will show “the leucistic boa and its offspring” have been or are currently at his residence, again without providing any reason to believe that any boa constrictor found at the Stone residence in 2013 would be the same as the boa constrictor previously seen in the zoo in 2006 in Rio de Janeiro, Brazil. Paragraph 27 goes on to describe Stone’s snake breeding business, without describing why this business is illegal or why the existence of this lawful enterprise provides probable cause for a warrant.

34. Paragraph 28 of the Affidavit states the obvious conclusion that an individual maintaining a business and a business website likely also maintains computers for his business, and that he maintains business records within his computers. This allegation, though it is finally something actually based upon the Affiant’s training and experience as a law enforcement officer, provides no probable cause to assume that a crime had been committed or that evidence of a crime would be on the computers.

35. At paragraph 29 of the Affidavit, the agent recites “boiler plate” language asserting that, if a computer or other electronic storage medium is found upon the premises of the Stone residence, there will likely be business records upon that computer. Again, though these are facts finally actually based in the Agent’s training and expertise, they provide no basis for a finding of probable cause.

36. Paragraph 30 of the Affidavit states that the government is seeking a warrant, including eventually a warrant to review any electronic medium collected in the execution of the search. This paragraph provides no probable cause to believe that a crime had been committed or that evidence of the crime existed within the Stone residence.

37. Paragraph 31 of the Affidavit states that a search of public records shows that the residence at 278 East 70th South in Lindon, Utah matches a particular description, and is the residence of Defendant, Stone. While all of this is accurate, and is, in fact, based upon the agent’s own training in law enforcement and his own observations, it provides no probable cause for the issuance of a warrant.

38. In paragraph 32 of the Affidavit, it is asserted finally that a particular agent, other than the Affiant, conducted law enforcement activities. The Affidavit recites that Special Agent Hutchinson conducted static surveillance of the Stone residence, observed the existence of buildings at the residence, observed a door within the residence, observed satellite photographs of the residence, and observed the ventilation system of the buildings. Hutchinson observed the presence of a grey pickup truck, which he determined to belong to Defendant, Jeremy Stone,

parked at that residence. While all of this is factual, and while all of this is information actually based upon proper law enforcement techniques and attributed to an actual identified, qualified law enforcement officer, it provides no probable cause for search of the residence.

39. Paragraph 33 of the Affidavit states that Special Agent John Brimm drove by the Stone residence and also observed the residence and the buildings surrounding the residence. He observed the Defendant's truck parked at the residence. On one of his observations, he saw a small child playing in the driveway who appeared to match a description of a child of Mr. Stone. Again, while all of this is based upon the Affiant's own personal knowledge and observation, and upon good and proper law enforcement technique, it provides no probable cause whatsoever to establish that a crime had been committed or that evidence of a crime would be located within the Stone residence.

40. In paragraph 34 of the Affidavit, Agent Brimm again described his investigation, in comparing videos allegedly posted to the Stone's You Tube channel to observations Brimm made during his actual surveillance from the street of the Stone residence. Though the observations contained within paragraph 34 are personal and factual, and are based upon proper law enforcement technique, they provide absolutely no probable cause for the search of the residence.

41. Paragraph 35 states that a "seizure warrant" had been obtained from the United States District Court for the District of Columbia to seize a particular snake and the offspring thereof. This order in the District of Columbia was issued to enforce a May 20, 2013 foreign seizure

order entered in the State of Roraima of the Federative Republic of Brazil. This provides no probable cause to search the home of the Defendant.

42. Finally, the “conclusion” of the Affidavit recites, in paragraph 36, what has already been recited in numerous previous paragraphs. It states the simple bare assertion that there is probable cause to believe that, within the Stone residence, there will be located evidence of a crime. Repeating the claim does not make it so. Paragraphs 37 and 38 request that a Warrant be issued. Paragraphs 36, 37 and 38 contain no probable cause for issuance of a Search Warrant.

REQUEST FOR RELIEF

Accordingly, an evidentiary hearing is required to test the veracity of the affidavit and the sufficiency of the information which served as the basis for the search warrant.

WHEREFORE, Defendant respectfully requests this Court to grant Defendant an evidentiary hearing pursuant to *Franks v. Delaware*, prior to further briefing. In the alternative, Defendant requests the court to suppress all evidence seized pursuant to the warrant and all fruits thereof, including the questioning of Defendant and of others conducted during the search, because the Affidavit for the warrant, on its face, fails to establish probable cause for the warrant.

DATED this 29th day of May, 2014.

VanCott, Bagley, Cornwall & McCarthy

/s/ Mary C. Corporon
MARY C. CORPORON
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2014, I filed a true and correct copy of the foregoing with the Clerk of the Court using CM/ECF system, which sent notification of such filing to the following:

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/s/ Sherice Atterton