IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	Criminal No.03-84
vs.	)	
LARRY STROPES	)	ORDER
Defendant.	)	

Before the Court is Defendant Larry Stropes' motion to suppress under *Franks v. Delaware* and motion to suppress under Title 18 U.S.C. § 3109, filed on July 7, 2003 and July 11, 2003, respectively.

I. BACKGROUND

On December 18, 2002, Cedar County deputies investigated a burglary at the residence of Buford Blakely in Lowden, Iowa. When they arrived, deputies noticed evidence of rummaging, but no forced entry. Several items were stolen from Buford Blakely's residence, including several firearms. Buford Blakely identified his cousin, Elvin Blakely (Elvin), as a possible suspect in the burglary. Elvin, who had just been released from jail, previously lived with Buford. Buford told the deputies that Elvin had asked him for money earlier that day.

Cedar County deputies confirmed that Elvin Blakely had recently bonded out of the Muscatine

County jail. An NCIC check showed that Elvin Blakely was arrested on November 10, 2002 for interference with official acts, going armed with intent, and manufacturing/possessing a controlled substance. No disposition or conviction was noted.

On December 19, 2002, Muscatine police officers received a report of a suspicious subject carrying a shotgun case. The officers responded and located the subject, later identified as Elvin Blakely. Elvin was carrying a black gun case and a blue bag. After arresting him, the officers searched the gun case and found a Charles Daly 12-gauge shotgun, a Westerfield .22 caliber rifle, and a Stevens16-gauge shotgun. These three guns were identified as stolen from Buford Blakely. Blakely denied knowing the name of the subject who provided him the guns.

At approximately 9:15 p.m., the officers contacted Detective Quinn ("Quinn") of the Muscatine Police Department. Officers informed Quinn that Elvin had been arrested and found in possession of stolen items. An hour later, Quinn met with Elvin. Elvin's behavior during the meeting is in dispute. According to defendant:

> [Elvin] Blakley had been sound asleep at the start of the interrogation and it was hard to wake him." After a few minutes, the detective asked Blakely if he had been drinking, because his speech was slurred and hard to hear. Blakely denied drinking, but said that he had taken some pills and was tired.[1]

Defendant's Memorandum In Support Of Motion To Suppress Under *Franks v. Delaware*, at 5.

After reading his Miranda warnings, Quinn asked Elvin about a car stereo theft that had previously taken place in Muscatine. Elvin denied involvement in the crime, but stated that he saw

[1] The government's statement of facts does not include any account of these facts. For the reasons explained below, resolution of this dispute is unnecessary.

Nathan Phillips with parts of the stolen stereo. Quinn had previously investigated the stereo theft and believed Elvin was lying about his involvement in that crime.

Quinn then asked Elvin about the stolen firearms found in his possession that evening. Initially, Elvin stated that he purchased the firearms for $200.00 from an unknown male at his girlfriend's residence in a trailer park. Elvin later changed his story, claiming that he bought the guns from a known burglar. Eventually, Elvin stated that he wanted to "cut a deal." Defendant's Memorandum In Support Of Motion To Suppress Under *Franks v. Delaware*, at 5. Quinn replied "that [Elvin] was in a tight spot and had to clear that up first before they could deal."[2] *Id.* As the interrogation proceeded, Elvin stated that Nathan Philips stole the guns and brought them to him. Once again, Quinn expressed disbelief in Elvin's rendition of the events and instructed him to be honest. Elvin finally admitted that he had gone with Nathan Phillips to Buford Blakely's residence and stole some firearms. Elvin also told Quinn that he had given several of the firearms and a compound bow to defendant as repayment for a drug debt.[3]

Quinn contacted Deputy Fitch of the Cedar County Sheriff's Department to interview Elvin about the burglary. Upon arrival, Quinn briefed Deputy Fitch about what Elvin had said earlier in the evening. Deputy Fitch then conducted a recorded interview with Elvin. Elvin admitted that he went into

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[2] In the beginning of the interrogation, Quinn repeatedly challenged the veracity of Elvin's statements and instructed him to be truthful. In his brief, defendant intimates that at some point during Quinn's interview, Quinn questioned defendant's "ability to sort fact from fiction." Defendant's Memorandum, at 6.

[3] Quinn's interview with Elvin Blakely was recorded on a digital audio recorder. The recording stops at approximately 12:30 a.m, but includes the details mentioned above. *See* Defendant's Memorandum, at 6. Quinn believes the batteries expired due to the length of the interview.

Buford Blakely's residence with Nathan Phillips, ransacked it, and stole several firearms. Elvin again admitted that he distributed some of the firearms to defendant.

At approximately 1:15 a.m., Quinn contacted Muscatine Drug Task Force Officer Jeff Jirak. Quinn briefed Jirak on his interview with Elvin. He relayed that Elvin initially gave a false story about the Buford Blakely burglary, but later admitted that he stole firearms and gave them to defendant to pay off a drug debt. Quinn then obtained and provided to Jirak a handwritten notarized statement from Elvin, in which Elvin again admitted stealing several guns from Buford Blakely and giving some of them to defendant in exchange for a drug debt. Quinn provided Jirak with reports from Cedar County concerning the burglary and a report of his interview with Buford Blakely.

Jirak drafted a warrant application to search defendant's residence for stolen firearms. *See* Defendant's Memorandum, Addendum A (First Search Warrant With Attachments). The first three paragraphs of Jirak's narrative describe Elvin's involvement in a burglary and possessing firearms. *Id.* The fourth paragraph describes Elvin's confession and implication of defendant. *Id.* The fifth paragraph provides the following: "Blakely stated that Stropes came out to [Elvin Blakey's] residence . . . and retrieved the known stolen items. Blakely describes Stropes['] residence as being located near Scott's Outdoors in Muscatine[,] Iowa." *Id.* The final paragraphs state that officers verified that defendant resided at 1714 Miles Avenue, which is in the general area of Scott's Outdoors convenience store. *Id.* Elvin's sworn statement was included in the search warrant application. *Id.*

The search warrant application does not indicate that Elvin initially lied to the officers about the

stolen firearms, and it does not mention Elvin's criminal record.[4]

Officer Jirak presented the warrant application to a state magistrate judge. After getting the search warrant signed, he contacted state narcotics officers to assist in the execution of the warrant. Upon entering the residence,[5] officers found defendant on a bed in a dark bedroom. Quinn read defendant his Miranda rights. Thereafter, defendant admitted that he had received nine firearms, which he believed were stolen, from Elvin Blakely. While Quinn was interrogating defendant, other officers found marijuana and methamphetamine. The search was stopped and a second search warrant was obtained to include a search for drugs and evidence of drug trafficking.

While waiting for the second search warrant, Quinn asked defendant for consent to search the residence. Defendant signed a written consent to search. Quinn then searched the garage and found 12 long guns, 6 of which were identified as stolen from Buford Blakey's residence. Quinn did not move or seize the guns at that time.

After the second search warrant was signed, the search of defendant's residence continued. Officers seized 12 guns and approximately 200 grams of a substance appearing to be methamphetamine.

II. APPLICABLE LAW

[4] At the time the search warrant was requested, Elvin was facing the following criminal charges: interference with official acts, going armed with intent, and possession with intent to deliver a controlled substance. The police were aware of these charges. Defendant's Memorandum, at 7.

[5] The government and defendant dispute whether the officers knocked and announced prior to entering defendant's residence. A hearing will be held on this issue, but for now, the Court notes that this fact is not relevant to defendant's *Franks* challenge.

A. 18 U.S.C. § 3109 & Federal Rule of Criminal Procedure 41

Defendant alleges that the search warrants were executed in violation of Federal Rules of Criminal Procedure 41 and 18 U.S.C. § 3109. When there is no federal involvement in a particular search, federal standards do not apply. *U.S. v. Goodson*, 165 F.3d 610, 614 (8th Cir. 1999) (where "a state court judge issued the warrant based on a state officer's application[,] and state law enforcement officials executed the warrant[,]" the search is not subject to "federal standards"). "Nothing in the record indicates that federal officers participated in the initial entry and search of [defendant's] residence. *Id.* (quoting *United States v. Murphy*, 69 F.3d 237, 242 (8th Cir. 1995), *cert. denied*, 516 U.S. 1153 (1996). To the contrary, the record reveals that no federal officers assisted in the drafting or execution of the search warrant. The Court therefore finds that 18 U.S.C. § 3109 and Federal Rule of Civil Procedure 41 are inapplicable.

B. Fourth Amendment

Defendant also argues that the forcible entry into his home violated his Fourth Amendment rights. *See* Defendant's Motion To Suppress Under Title 18 U.S.C. § 3109. The record is unclear as to whether officers "knocked and announced" prior to forcing entry into defendant's residence. A hearing will be required on this issue. The parties are instructed to contact the chambers of United States Magistrate Judge Thomas Shields to schedule the hearing.

C. *Franks* Violation

Defendant argues that the fruits of the search of his residence should be suppressed, because Jirak omitted critical information in the search warrant application in violation of the Fourth Amendment. *See Franks v. Delaware*, 438 U.S. 154, 164-65 (1978) (search warrant obtained through officer's

intentionally or recklessly false statements is unreasonable under the Fourth Amendment). To be entitled to a *Franks* hearing, the defendant must make a substantial showing that the affiant was purposely untruthful with regard to a material fact in the application for the warrant, or acted with reckless disregard for the truth. *U.S. v. Hollis*, 245 F.3d 671, 673 (8th Cir. 2001) (citing Franks *v. Delaware*, 438 U.S. 154, 170-71)). If the test is satisfied, and if the alleged false statement or omission was necessary to the finding of probable cause, then the defendant is entitled to a hearing. *Franks*, 438 U.S. at 171-72. To prevail at the hearing, the defendant must show that probable cause would have been lacking if the affiant had not included the false statement in, or omitted information from, the warrant application. *Id.*

The search warrant application did not contain all the relevant information known to officer Jirak at the time he applied for it. Jirak did not mention that: (1) Elvin initially spoke with slurred speech and admitted to taking pills earlier in the evening; (2) Elvin initially lied to the officers about the stolen firearms, (3) criminal charges were pending against Elvin, including a charge of interference with official acts; and (4) that at some point during Elvin's interrogation, Quinn questioned his ability to sort fact from fiction.[6] For the reasons that follow, the Court finds that these omissions do not entitle defendant to a *Franks* hearing.

First, after the officers arrested Elvin for stealing firearms, Elvin admitted that he gave some of the firearms to defendant in exchange for a drug debt. In doing so, Elvin implicated himself in additional

[6] The Court notes that the first and fourth omissions listed above are not supported by the statement of facts provided by the government. Even adopting the facts as set forth by defendant in his brief, the Court finds that defendant is not entitled to a *Franks* hearing.

crimes. *See U.S. v. Tyler*, 238 F.3d 1036, 1039 (8th Cir. 2001) (statements against informant's penal interest are "presumptively credible" where informant "admitted to criminal activities beyond those of which the police already knew him to be guilty."). Elvin was not "merely trying to blame someone else for his own crimes." *Id.* The Court finds that under these circumstances, Elvin's disclosures, which were made against his penal interest, were reliable. *See id.; United States v. LaMorie*, 100 F.3d 547, 553 (8th Cir. 1996) (statements against the informant's penal interest typically "carry considerable weight").

Second, although the officers should have disclosed that Elvin had a criminal history and began his confession with denials and false explanations, these omissions were not fatal to the finding of probable cause. Magistrate judges understand that cooperators are not always *initially* cooperative, and that they often have criminal histories. *See U.S. v. Allen*, 297 F.3d 790, 795-96 (8th Cir. 2002) ("a magistrate generally would not be misled by the alleged omissions of facts . . . because informants frequently have criminal records and often supply information to the government pursuant to plea arrangements.") (quoting *United States v. Flagg*, 919 F.2d 499, 501 (8th Cir. 1990). Furthermore, despite the omission, the issuing magistrate judge was aware that Elvin was not a model citizen. The warrant application indicated that he recently had been released from jail. It also made clear that he had been arrested for carrying weapons and was found in possession of a stolen weapon. Defendant's Memorandum In Support Of Motion To Suppress Under *Franks v. Delaware*, Attachments A and B.

Third, the Court finds that the omissions relating to Elvin's cognitive abilities were not critical. There is no question Elvin was able to express coherent thoughts to the officers. Elvin's initial denials, his subsequent request to "cut a deal," and the ensuing truthful confession demonstrate that he

understood the nature of the interrogation. Elvin's lucidity is further evinced by the fact he wrote a notarized admission.

Finally, the Court notes some of Elvin's disclosures had previously been, or were later, independently corroborated by the officers. The issuing magistrate judge was aware of this corroboration. For example, the fourth paragraph of Jirak's narration stated: "Blakely describes the guns sold to defendant as two 20-gauge pump (shotguns), one bolt action Buffalo Bill and one Stevens 16-gauge (shotgun), two black powder rifles and one compound bow." *See* Defendant's Memorandum, Attachment A. Part of this disclosure was corroborated by the fact these firearms matched those Buford Blakely had reported as stolen. A list of the weapons stolen from Buford Blakely's abode was included in the warrant application. *Id.* Attachment B.

Elvin also told the officers that defendant lived near a convenience store in Muscatine, which the officers later verified. These facts were included in the search warrant application. Although standing alone this corroboration does little to bolster Elvin's credibility, it is relevant. *See U.S. v. Ramos*, 818 F.2d 1392, 1397 n. 7 (8th Cir. 1987) ("the corroboration of minor, innocent details can suffice to establish probable cause").

In summary, the Court finds that defendant has failed to show "that the alleged omission[s] would have made it impossible to find probable cause." *United States v. Mathison*, 157 F.3d 541, 548 (8th Cir. 1998). Viewing the totality of the circumstances, the Court finds there was a fair probability stolen firearms were in defendant's home. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983) (Probable cause exists if, under the totality of circumstances, there is "a fair probability that contraband or evidence of a crime will be found in a particular place"). The Court denies defendant's

motion to suppress under *Franks v. Delaware*.

III. CONCLUSION

Defendant's motion to suppress pursuant to 18 U.S.C. § 3109 and Federal Rule of Criminal Procedure 41 is denied. However, in so far as defendant's motion raises an issue as to whether officers violated defendant's Fourth Amendment rights by failing to knock and announce, the Court hereby refers the case to United States Magistrate Judge Thomas Shields for a hearing and submission of a report and recommendation. Defendant's request for a *Franks* hearing is denied.

The trial scheduled for July 28, 2003 is cancelled and will be rescheduled after the Court resolves the remaining Fourth Amendment issue.

IT IS ORDERED.

This 24th day of July, 2003.

RONALD E. LONGSTAFF, Chief Judge
United States District Court