IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 24-2030

JQC No. 23-132

IN THE MATTER OF:
DAVID JAMES HANSON,
JUDICIAL MAGISTRATE
FIRST JUDICIAL DISTRICT

ON APPLICATION OF THE IOWA COMMISSION ON JUDICIAL QUALIFICATIONS

APPELLEE'S BRIEF

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ARGUMENT I

A MAGISTRATE BEARS THE DUTY TO EVALUATE A WARRANT REQUEST FOR TRUTHFULLNESS, NO STANDARD OF JUDICIAL CONDUCT REQUIRE A MAGISTRATE TO AUTOMATICALLY APPROVE ARREST WARRANTS WHEN THE COMPLAINING WITNESS MAKES UNCORROBORATED ALLEGATIONS THAT CONTRADICT REASON AND NORMAL EXPERIENCE.

"By what standard?" should I set my judicial conduct and be evaluated, I asked the Judicial Qualification Commission during the video interview that body conducted with me. The question went unanswered. I conclude that no written standard exists beyond the generalities of Rule 51 and its components. So for that reason I do not resist anything the Commission and this Court says – they are automatically right in whatever they think. I shall not complain that the Commission is wrong. All I can do is attempt to explain my reasoning.

"By what standard" do I evaluate complaint allegations when an arrest warrant is sought? I asked myself, when in 2022 when as a new magistrate I received the complaint affidavit that gave rise to this proceeding. That question, too, appeared to have no ready answer. I conducted research. I concluded that Iowa Courts must follow a Fourth Amendment analysis, using a search-warrant analogy, to determine witness truthfulness and probable cause for the police to act.

Iowa Code section 808.3(1) requires a search warrant applicant provide the "magistrate a written application, supported by the person's oath or affirmation, which includes facts, information and circumstances tending to establish sufficient grounds for granting the application, and the probable cause for believing that the grounds exist." Subsection (2) further requires the magistrate to rate the application so as to "establish the credibility of the informant or the credibility of the information given by the informant."

The complaint before me did not name the informant, who was the complaining witness. Nor did it offer any substantive corroboration of key facts he alleged. No other witness reports were offered. No physical evidence was adduced. The officer appeared to have simply taken notes on what the complainant claimed happened, thereby regurgitated the complainant's claims. The complaint alleged that a 17 year old girl committed a Class C felony. In the complainant's allegations I smelled lies. So I sought guidance from the Code and cases, as to how to evaluate the affidavit.

The Iowa Supreme Court, I learned, allows post hoc impeachment challenges to a complaint and its affidavit. Challenges to these may invalidate arrest warrants. See *Christenson v. Ramaeker*, 366 N.W. 905, 912 (Iowa 1985). A defendant's challenges must "successfully meet the *Franks* standard for

impeaching" a complaint and affidavit. The magistrate, I concluded, should use the same standards when conducting his independent probable cause evaluation.

Christenson refers to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). *Franks* involved challenges to search warrants rather than arrest warrants. But, relevantly, the U.S. Supreme Court had much to say about magistrate review of warrant applications. And under *Christenson* I found those observations to govern my duties as a magistrate called upon to evaluate the "truthfulness" of an affidavit in support of any warrant application, including one for arrest. I found *Franks* instructive.

> "In deciding today that, in certain circumstances, a challenge to a warrant's veracity must be permitted, we derive our ground from language of the Warrant Clause itself, which surely takes the affiant's good faith as its premise: "[N]o Warrants shall issue, but upon probable cause, supported by Oath or affirmation . . ." . [Citation:] "[W]hen the Fourth Amendment demands a factual showing sufficient to comprise 'probable cause,' the obvious assumption is that there will be a *truthful* showing" (emphasis in original). This does not mean "truthful" in the sense that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay and upon information received from informants, as well as upon information within the affiant's own knowledge that sometimes must be garnered hastily. But surely it is to be "truthful" in the sense that the information put forth is believed or appropriately accepted by the affiant as true. It is established law, see [Citations], that a warrant affidavit must set forth particular facts and circumstances underlying the existence of probable cause,

> so as to allow the magistrate to make an independent evaluation of the matter. If 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, whose identity need not be disclosed, . . . was 'credible' or his information 'reliable.' " [Citation]. Because it is the magistrate who must determine independently whether there is probable cause, [Citations], it would be an unthinkable imposition upon his authority if a warrant affidavit, revealed after the fact to contain a deliberately or reckless false statement, were to stand beyond impeachment."

Franks, 438 U.S. at 164-65, 98 S.Ct. at 2681. (emphasis by the Court, citations omitted).

The Judicial Qualifications Commission believes I have "Biases". The Commission is absolutely correct. I do hold strong biases. I always bias my reasoning in favor of truth and truth telling. I always bias my reasoning against lies and lying. I considered simply denying the warrant request with an unexplained statement that I found the allegations lacked sufficient corroboration. But I concluded (wrongly?) that I ought to identify the points where I found the complainant's claims unsupported and incredible.

The Commission dislikes my evaluation of the complainant's allegation according to categories of unusual of human behavior. It calls my categorization a "stereotype". This Court correctly identifies a "stereotype" as an "unconscious negative association", *Pippen v. State*, 854 N.W.2d 1, 33

(Iowa 2014) (Waterman, concurring). But more broadly a "stereotype" may also be merely a description of a "social norm". See *Id.* FN9, 854 N.W.2d at 46.

Does the Commission think I should simply accept meekly any affidavit, and rubber-stamp whatever the police seek? If so then you have the wrong man in this office and I need to be removed. Because I will not forfeit the important duty that a magistrate plays in protecting the rights of accused persons, especially in an *ex parte* situation. The magistrate protects the defendant's rights by (among other things) evaluating truthfulness of the application's claims. *Franks* confirmed me in my conclusion that I ought to reject an application if I thought the complainant's statements were untruthful. I'm not bound to believe him.

The U.S. Supreme Court requires this of me. Speaking of the specter of intentional falsification the Court state: [438 U.S. at 168-170; 98 S.Ct. at 2682-2684]:

> "First, a flat ban on impeachment of veracity could denude the probable-cause requirement of all real meaning. The requirement that a warrant not issue "but upon probable cause, supported by Oath or affirmation," would be reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile. . .
> .

> "Second, the hearing before the magistrate not always will suffice to discourage lawless or reckless misconduct. The pre-search proceeding is necessarily *ex parte* . . . The magistrate has no acquaintance with the information that may contradict the good faith and reasonable basis of the affiant's allegations . . . urgency will not always permit the magistrate to make an extended independent examination of the affiant or other witnesses."

438 U.S. at 168-170; 98 S.Ct. at 2682-2684.

Franks allowed Fourth Amendment hearing for a defendant, when he "makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause . . ." 438 U.S. at 155-156, 98 S.Ct. at 2676. "Because . . . the magistrate must determine independently whether there is probable cause" to issue a warrant, the magistrate must be alert to the fundamental veracity – or lack thereof – in the *ex parte* affidavit.

Notably, *Franks* involved a serious felony case of "rape, kidnapping and burglary" which the victim reported immediately upon occurrence. *Id.* Forcible sexual crimes are most easily investigated and proven when immediately reported. Iowa Code section 709.6 places the word of complaining witnesses in sexual crime trials upon a level field with that of "any other witness in that offense or in any other offense." Applicants are not to be penalized – but

neither do they receive any presumption of truth under Iowa law. A complainant alleging a sexual crime against a defendant forgoes most or all corroborative proof, if he does not immediately report what happened to him.

All judges should know, and fear, false accusations of sexual crimes alleged long after the supposed events. I witnessed the televised atrocities visited upon U.S. Supreme Justice nominees Clarence Thomas and Brett Cavanaugh, by women, whom effective cross examinations showed to be, telling falsehoods. I will never abet such "high tech lynchings." In the case at bat – I was called upon to issue a warrant against a 17 year old girl who engaged in sexual congress with a 15 year old boy. Only several weeks after the event did the young man allege that any illegal acts occurred. I found his allegations incredible - i.e., lies – in several respects. I stand by that finding.

ARGUMENT II

A MAGISTRATE BEARS THE DUTY TO TREAT EVERY DEFENDANT WITH JUSTICE, MERCY AND FAIRNESS, BUT NO STANDARD OF JUDICIAL CONDUCT REQUIRES THE MAGISTRATE TO FOLLOW ANY PARTICULAR SPEECH CODE OR HONOR MERE TABOOS.

Iowa Rule of Judicial Conduct 51:2.2 demands that as Magistrate I "uphold and apply the law, and . . . perform all duties of judicial office fairly and impartially." As Justice Wiggins once told me, a judicial officer "may neither fear, nor favor" any person before the Court. Nor may I disregard or discount the interests of any person before the Court including. I strive to meet these standards.

The Commission alleged that I show "bias, prejudice and harassment" in violation of Rule 51:2.3. It offers as evidence an allegation by a party (initially unnamed) that I used a slang term "wetback". (I assume I did, without thinking about it.) I do have a strong bias, in favor of law obedience and against law breaking.

The Commission turns to a general dictionary definition that indicates the word "wetback" is pejorative in nature. This I have never known, nor have I ever aimed it at any person of any known nationality. The Commission ignores this Court's own definition term "wetback" for Iowa law: an "illegal

entrant" into this country. *State v. Holliday*, 169 N.W.2d 768, 775 (Iowa 1969), citing *U.S. v. Sugden*, 226 F.2d 281 (9th Cir. 1955). The Court's definition is the one I always thought applied, and intended if used: as a slang term for a form of criminal behavior (**illegal** immigration). The U.S. government has officially employed the word, so heretofore I thought it was harmless. See "Operation Wetback" uscis.gov/about-us/our-history/explore.agency-history/post-war-years. This Court has like wise employed similar societal common slang to describe wrong doers and their actions. *Ette ex rel. Ette v. Linn-Mar Comm. Sch. Dist.*, 656 N.W.2d 62, 66 (Iowa 2002)("pickpocket"); *Kidd v. Ward*, 91 Iowa 371, 375, 59 N.W. 279 (1894)("man of the road", "sneak thief"). I never knew any problem existed.

Apparently I transgressed someone's taboo. "Taboo" is "a prohibition imposed by social usage" . . . something "banned on grounds of morality or taste or as constituting a risk." *III Websters New International Dictionary* p.2325 (1971). Obviously, a taboo is not a law. Nor is it in the judicial rules. Only social conventions of "polite usage" bar any words from everyday speech. See *State v. Leonard*, 255 Iowa 1365, 1369, 124 N.W.2d 429, 432 (1963)(defining "obscene"). The problem with elevating social conventions to taboo status is: not everyone is aware of the convention. I certainly was not

aware that a term describing criminal activity was somehow now "offensive" to someone. I don't regard a man's nationality or ethnic background as at all controlling my evaluation of him. I do care very much that our laws are obeyed. If the Commission will direct my attention to a list of such "bad words", then I will be pleased to eschew use of those words in conversation.

CONCLUSION

As I said at start: This Court has absolute power to do with me as it pleases. I do ask that the Court dismiss the Commission's complaint. The Commission desires that I be punished by suspension from office for a term, and deprived of salary. Monetary penalty I do not resist – the Court may do as it pleases. I do ask, though, even if my salary be taken, that I be allowed to continue to do all the work of my office. There is much to do! For the past two months I have spent an average 105 hours of time performing magistrate duties in Fayette County. I desire to NOT burden other First Judicial District Officers with having to take up slack in my forced absence! The Commission also wants to sentence me to reeducation: "bias training" and "anger management". My biases in favor of truth, law obedience, justice, and mercy, and my disfavor of lies and law breaking, cannot change. But as to the reeducation I will do whatever the Court orders.

COMPLIANCE CERTIFICATE

1. This Final Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because:

This Brief contains 2242 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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This Brief has been prepared in a proportionally-spaced typeface using Microsoft Office in Times New Roman size 14 font.

Dated February 28, 2025.

David James Hanson, AT0003246

CERTIFICATE OF FILING

The undersigned certifies that on the 28th day of February, 2025, the undersigned electronically filed this document using the Electronic Document Management System (EDMS).

David James Hanson, AT0003246

CERTIFICATE OF SERVICE

I certify that on February 28, 2025, I electronically filed the foregoing with the Supreme Clerk of Court using the EDMS system which will send notification of such filing to the following parties and attorneys of record:

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