

Experts split on if police had probable cause to search Warner's home in 2019

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NASHVILLE, Tenn. (WTVF) — As conflicting stories circulate about who knew what and when, Metro Nashville Police and the FBI are once again under the spotlight.

We now know that in August 2019, Metro Nashville Police officers stood at the door of the man who would one day terrorize the city.

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The incident report obtained by NewsChannel 5 investigators says the officers responded to a call of a woman threatening to kill herself. When they arrived, the woman claimed her boyfriend Anthony Warner was, "building bombs in the RV trailer at his residence."

Officers went to Warner's home for what defense attorney David Raybin says is known as a "knock and talk."

Warner never answered. Raybin says if he did answer and officers noticed anything to indicate bombs were being made, that would have been probable cause to search the entire property.

"Remember that he lived in Nashville for a long time, didn't have a police record of doing this type of thing. So the traditional markers of corroboration were just not there," Raybin said.

It's a delicate balancing act Raybin said, "you have a constant privacy that we all enjoy, versus the right of law enforcement to protect us from criminals."

In a press conference Wednesday, chief John Drake said:

"One of the responding officers called the Hazardous Devices Unit and relayed the substance of the call. The following day, Hazardous Devices Unit Officer Kevin Pollard began the follow-up. We know from Officer Pollard that on August 22, the narrative from the report and Warner's identifying information were sent to the Nashville FBI office to check the FBI databases and also determine whether Warner had any prior military connections."

That same day FBI officials reported they found "no records whatsoever on Warner." In the days that followed, Metro Police say officer Pollard made a routine of driving by Warner's home to find Warner and search the RV.

We know that since Warner was announced as a possible suspect, the TBI and the FBI both said that Warner was not on their radar.

Chief Drake says, "at no time was there any evidence or reasonable suspicion that a crime was being committed, and our officers had no legal basis to go into Warner's fenced-in yard or home."

When we asked former federal prosecutor Alex Little, he says more should have been done. At the Joint Terrorism Task Force, a case like this would have landed on Little's desk. After reading the narrative, he says any judge would have granted a search warrant.

“This has to be the largest law enforcement failure in Nashville history,” Little said.

At issue is not the burden of proof necessary for the search warrant, but Little says that officers should have attempted to bring this to a judge to decide its merits. Whether it was Metro Police or the FBI, Little says no one appeared willing to pursue this case any further from the beginning.

“The failure here is clear, this had to do with bias. If the color of Mr. Warner’s skin had been different, had he been Somali, had he been Kurdish, they would not have turned around and walked away,” Little said.

Little says investigators with both agencies could have made an effort to speak to neighbors to better understand Warner’s mental state in 2019. At this point, we’ve found no evidence of that taking place.

Chief Drake says, “no additional action was taken after late August and to the best of my knowledge, no other reports or information about Warner came into the police department. We had no legal basis for search warrants or subpoenas based on what we knew at the time.”