

A P P E N D I X

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10176
Non-Argument Calendar

D.C. Docket No. 1:17-cr-20299-FAM-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD JOHNSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(April 9, 2019)

Before ED CARNES, Chief Judge, WILSON, and HULL, Circuit Judges.

PER CURIAM:

Richard Johnson was convicted of conspiracy to possess with intent to distribute a controlled substance within 1,000 feet of a school, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), (b)(2), 846, and 860(a); possession with intent to distribute a controlled substance within 1,000 feet of a school, in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 841(a)(1), (b)(1)(C), (b)(2), and 860(a); and maintaining a premises within 1,000 feet of a school for the purpose of distributing a controlled substance, in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 856(a)(1) and 860(a). He argues that the district court erred when it denied his motion to suppress evidence because: (1) his arrest was not based on probable cause; (2) the police improperly searched his home before obtaining a warrant; and (3) the search warrant that was later issued was invalid because it was based on intentional and reckless misrepresentations and omissions of facts, which required a Franks hearing. He also argues that his sentence is procedurally and substantively unreasonable.

I.

Detective Onassis Perdomo surveilled Johnson's home throughout December 2016 and January 2017 after receiving an anonymous tip that narcotics were being sold at Johnson's address. On multiple occasions Perdomo observed different individuals make quick hand-to-hand transactions with Johnson through his front door or bedroom window. Perdomo testified that he had seen this type of

transaction “thousands of times” but could not see exactly what was being exchanged.

On January 11 and January 17, 2017, Perdomo directed controlled drug buys with a confidential informant (CI). On both of those occasions Perdomo observed the CI make a hand-to-hand transaction with Johnson, retrieved drugs from the CI, and performed testing that indicated that the drugs were cocaine.

On January 19 Perdomo surveilled the house with Detectives Anibal Wagner and Juan Gonzalez. He saw Johnson exit his front door and give a paper bag to a young girl. When Wagner and Gonzalez approached Johnson he yelled “they’re jumping, they’re jumping.” Wagner knew that this was a slang term used to indicate the presence of plainclothes officers and believed Johnson was trying to alert someone inside the house. He approached the bedroom window next to Johnson’s front door and saw what appeared to be a firearm and several small baggies filled with cocaine. Wagner approached the open front door and yelled, “Police, come out with your hands up.” Wagner saw a man later identified as Ricardo Jackson walk past the front door with his back toward Wagner. He ordered Jackson to stop and put his hands up, but Jackson did not comply. Wagner detained Jackson and conducted a protective sweep of the house. Meanwhile Gonzalez arrested Johnson and discovered that the paper bag he had handed to the girl contained only perfume. Gonzalez searched Johnson and found two Altoid

tins containing several bags of cocaine. Perdomo then obtained a search warrant and found additional narcotics and drug paraphernalia inside the house.

Before trial Johnson moved to suppress evidence seized from his person and his residence. He argued that a Franks hearing was necessary because the warrant application contained misleading information. But he did not challenge the existence of probable cause for his arrest or the protective sweep of his home conducted before the issuance of the search warrant. Johnson also filed a motion to compel the disclosure of the CI's identity. The district court conducted an in camera hearing with the CI. After speaking with the CI ex parte at the hearing, the court concluded that there was no need for a Franks hearing and denied both of Johnson's motions. Johnson was then convicted after a two-day trial.

The Presentence Investigation Report set Johnson's base offense level at 20. The PSR documented an extensive criminal history including 30 criminal charges and over a dozen convictions from 1981 through 2017. But only one conviction was scored in calculating Johnson's criminal history category of II. The resulting guidelines range was 37 to 46 months. The district court determined that an upward variance was appropriate due to Johnson's extensive unscored criminal history and the need to provide adequate deterrence and protect the public from future crimes that Johnson might commit. The court also emphasized the proximity of the transactions to a local elementary school. After considering the

statements of both parties, the advisory guidelines range, and the 18 U.S.C. § 3553(a) factors, the court sentenced Johnson to three concurrent 15-year sentences.

II.

Johnson first contends that the district court abused its discretion in failing to suppress evidence because his arrest was not supported by probable cause. Johnson did not assert below that his arrest was not supported by probable cause, but moved to suppress evidence based solely on alleged deficiencies in the search warrant Perdomo executed. Because this argument is raised for the first time on appeal, we review it for plain error. See United States v. Johnson, 777 F.3d 1270, 1277 (11th Cir. 2015). Under plain-error review, we may reverse the district court where (1) an error occurred; (2) the error is plain; (3) the error affects substantial rights; and (4) the error seriously affects the integrity of a judicial proceeding.

United States v. Schultz, 565 F.3d 1353, 1356–57 (11th Cir. 2009) (*per curiam*). “An error is not plain unless it is contrary to explicit statutory provisions or to on-point precedent in this Court or the Supreme Court.” Id. at 1357.

“For probable cause to exist, . . . an arrest must be objectively reasonable based on the totality of the circumstances.” United States v. Street, 472 F.3d 1298, 1305 (11th Cir. 2006) (quotation marks omitted). “This standard is met when the facts and circumstances within the officer’s knowledge, of which he or she has

reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed . . . an offense.” Id. (quotation marks omitted). An uncorroborated tip is insufficient, standing alone, to establish probable cause. United States v. Rollins, 699 F.2d 530, 533 (11th Cir. 1983). “However, if independent investigation by government agents yields information consistent with and corroborative of the informer’s tip, the warrantless arrest is legal.” United States v. Worthington, 544 F.2d 1275, 1279 (5th Cir. 1977). “The observation of unusual activity for which there is no legitimate, logical explanation can be the basis for probable cause.” United States v. Alexander, 559 F.2d 1339, 1343 (5th Cir. 1977).

The district court did not plainly err in finding that there was probable cause for Johnson’s arrest. Perdomo conducted two controlled buys that tested positive for cocaine and observed multiple hand-to-hand transactions outside of Johnson’s home before arresting him. Based on this knowledge a reasonable person could have believed that the exchange Perdomo observed prior to Johnson’s arrest was a narcotics transaction.

Johnson argues that probable cause did not exist because the paper bag that Perdomo initially believed to contain narcotics in fact contained only perfume and also because the CI was unreliable and could identify Johnson only by a nickname. Neither of these arguments is persuasive. While Perdomo incorrectly suspected

that the paper bag contained narcotics, Perdomo had trustworthy information that Johnson had recently sold narcotics outside his home and under these circumstances a prudent person could reasonably believe that Johnson was engaging in another narcotics transaction.

Johnson also argues that Perdomo's controlled buys were not a reliable source of information because the CI could identify Johnson only by a nickname, relying heavily on Wong Sun v. United States, 371 U.S. 471 (1963). In Wong Sun, the Supreme Court held that a tip regarding a suspect's nickname from a confidential informant, whose reliability had not been verified, could not later support probable cause for arrest. Id. at 480–82. The Supreme Court noted that the narcotics agents who acted on the confidential informant's tip had no reason to equate the given nickname with the suspect later apprehended. Id. at 480–81. That is far from the situation here where law enforcement verified that the transaction occurred at Johnson's address before the arrest and where the district court conducted an in camera hearing with the CI to verify his credibility. We "afford substantial deference to the factfinder's credibility determinations" and so cannot conclude that the district court plainly erred in finding that probable cause for Johnson's arrest existed. Lewis, 674 F.3d at 1303.

III.

Johnson next argues that his Fourth Amendment rights were violated when the police conducted a protective sweep of his residence prior to obtaining a search warrant. Because Johnson did not assert below that the protective sweep violated his Fourth Amendment rights we review this claim only for plain error. See Johnson, 777 F.3d at 1274.

Warrantless searches and seizures inside a person's home are presumptively unreasonable. United States v. Franklin, 694 F.3d 1, 7 (11th Cir. 2012). But even without a warrant, officers may conduct a "protective sweep," which "is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others." United States v. Timmann, 741 F.3d 1170, 1181 (11th Cir. 2013) (quotation marks omitted). A protective sweep is reasonable under the Fourth Amendment "when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene." Maryland v. Buie, 494 U.S. 325, 337 (1990).

The district court did not plainly err in declining to suppress evidence due to the search of Johnson's home prior to the issuance of the warrant because the police had a reasonable belief that a suspect still inside Johnson's home could pose a danger. Johnson yelled "they're jumping, they're jumping," which would lead a

reasonable person under the circumstances to believe he was trying to alert someone inside his home that law enforcement was present. And Wagner saw what appeared to be narcotics and a firearm through the front window,¹ as well as an unidentified person through the front door who refused to comply with his orders. A reasonable and experienced police officer could easily believe under these circumstances that a potentially dangerous suspect was present in the house.

IV.

Johnson next argues that the district court abused its discretion in failing to hold a Franks hearing to determine whether the search warrant for his home was invalid.

We review for abuse of discretion the denial of a Franks hearing. See United States v. Votrobek, 847 F.3d 1335, 1342 (11th Cir. 2017). We “will not overturn a district court’s decision that omissions or misrepresentations in a warrant affidavit were not reckless or intentional unless clearly erroneous.” Id.

In Franks, the Supreme Court held that the Fourth Amendment requires a district court to hold a hearing when a defendant makes a substantial preliminary showing that: (1) a warrant affiant made intentionally false or recklessly

¹ Johnson argues in his reply brief that it was illegal for Wagner to look through his window, but he failed to make this argument in his initial brief so we do not consider it. See United States v. Britt, 437 F.3d 1103, 1104 (11th Cir. 2006) (*per curiam*).

misleading statements (or omissions); and (2) those statements, or omissions, were necessary to the finding of probable cause. Franks v. Delaware, 438 U.S. 154, 155–56 (1978). The defendant must (1) allege deliberate falsehood or reckless disregard for the truth; (2) specifically point to the allegedly false portions of the warrant affidavit; and (3) provide an offer of proof, including sworn affidavits or otherwise reliable witness statements, or satisfactorily explain the absence of such evidence. Id. at 171. If, upon such a showing, the content in the affidavit remains sufficient to support a finding of probable cause, then no hearing is required. Id. at 171–72.

Johnson argues that the warrant affidavit contained recklessly misleading statements because the government omitted alleged inconsistencies involving the controlled buys and failed to mention that Johnson’s arrest was triggered by the exchange of a bag containing only perfume. But Johnson has provided only unsupported and conclusory statements regarding the alleged “irregularities” in the controlled buys that Perdomo observed. This falls far short of the “offer of proof” Johnson must produce to show that Perdomo made statements in the warrant affidavit with “reckless disregard for the truth.” Id. And Perdomo’s omission of the fact that the transaction that triggered the arrest involved only a perfume bottle was not an omission that was necessary to show probable cause, which was

established via Perdomo's surveillance of Johnson. So we cannot say that the district court abused its discretion in failing to hold a Franks hearing.

V.

Lastly, Johnson argues that his sentence was procedurally and substantively unreasonable.

We review the reasonableness of a sentence under a deferential abuse of discretion standard. Gall v. United States, 552 U.S. 38, 40 (2007). We use a two-step process to review a sentence's reasonableness. Id. at 51. First, we must confirm that the district court committed no significant procedural error. Id. A sentence may be procedurally unreasonable if the sentencing court fails to consider the 18 U.S.C. § 3553(a) factors or fails to adequately explain the sentence. Id. But we do not require a district court to state on the record that it has explicitly considered each of the § 3553(a) factors and will consider it sufficient where the district court acknowledges that it considered the defendant's arguments and the § 3553(a) factors. United States v. Dorman, 488 F.3d 936, 938 (11th Cir.). The district court must explain its decision to impose a variance from the Guidelines, providing a justification that is "sufficiently compelling to support the degree of variance." United States v. Irey, 612 F.3d 1160, 1196 (11th Cir. 2010) (*en banc*) (quotation marks omitted).

After reviewing for procedural reasonableness, we consider the substantive reasonableness of a sentence. Gall, 552 U.S. at 51. We examine the totality of the circumstances to determine whether the statutory factors in § 3553(a) support the sentence in question. United States v. Gonzalez, 550 F.3d 1319, 1324 (11th Cir. 2008) (per curiam).

The district court's sentence must be "sufficient, but not greater than necessary, to comply with the purposes" listed in § 3553(a)(2), including the need for the sentence to reflect the seriousness of the offense and to promote respect for the law, the need for adequate deterrence, and the need to protect the public. 18 U.S.C. § 3553(a)(2). The weight given to any specific § 3553(a) factor is committed to the sound discretion of the district court. United States v. Clay, 483 F.3d 739, 743 (11th Cir. 2007).

Johnson argues that his sentence was procedurally unreasonable because the reasons articulated by the district court to justify its upward variance were "not an adequate explanation for the size of the variance." But the district court was extremely thorough in explaining why it was making the variance. It emphasized Johnson's extensive criminal history and the need to deter Johnson from future criminal conduct; the fact that Johnson's criminal activity occurred in close proximity to an elementary school; and its concern that Johnson was likely to reoffend because of his long criminal history, age, and drug addiction.

Johnson also argues that his sentence was substantively unreasonable because the district court placed too great of an emphasis on these factors and not enough emphasis on mitigating factors such as Johnson's health problems and issues with his family. But the record clearly shows that the district court thoroughly considered several § 3553(a) factors. That Johnson disagrees with the weight the court assigned to particular factors is immaterial because this is within the discretion of the court. *Id.* So we cannot say that the district court abused its discretion in varying upward from the Guidelines range.

AFFIRMED.

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UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA

v.

RICHARD JOHNSON

JUDGMENT IN A CRIMINAL CASE

Case Number: 17-20299-CR-MORENO
USM Number: 14764-104

Counsel For Defendant: D'Arsey Houlihan, AYPD
Counsel For The United States: Franklin Monsour
Court Reporter: Gilda Pastor-Hernandez

The defendant was found guilty on Counts 12,3 of the indictment.

The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
21 U.S.C. § 860(a)	Conspiracy to possess with intent to distribute a mixture and substance containing a detectable amount of cocaine base ("crack cocaine"), cocaine, and tramadol hydrochloride with 1,000 feet of a school	01/19/2017	1
21 U.S.C. § 860(a)	Possession with intent to distribute a mixture and substance containing a detectable amount of cocaine base ("crack cocaine"), cocaine and tramadol hydrochloride within 1,000 feet of a school	01/19/2017	2
21 U.S.C. § 856(a)(1)	Maintaining a drug involved premises	01/19/2017	3

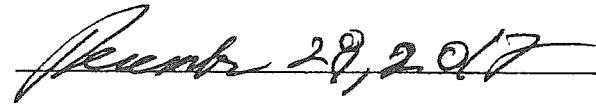
The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: 12/28/2017


Federico A. Moreno
United States District Judge

Date:

Dec 28, 2017

DEFENDANT: RICHARD JOHNSON
CASE NUMBER: 17-20299-CR-MORENO

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **180 MONTHS(15 years)**.

Count 1 and 2 - 15 years (both counts to run CONCURRENT)

Count 3 - 15 years(to run CONCURRENT to Counts 1 and 2).

The court makes the following recommendations to the Bureau of Prisons:

DRUG TREATMENT PROGRAM

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL.

DEPUTY UNITED STATES MARSHAL

200

DEFENDANT: RICHARD JOHNSON
CASE NUMBER: 17-20299-CR-MORENO

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **SIX (6) years. (Count 1&2-6 years; Count 3-3 years(CONCURRENT).**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.



DEFENDANT: RICHARD JOHNSON
CASE NUMBER: 17-20299-CR-MORENO

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$300.00	\$0.00	\$0.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

** Assessment due immediately unless otherwise ordered by the Court.



DEFENDANT: RICHARD JOHNSON
CASE NUMBER: 17-20299-CR-MORENO

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$300.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)</u>		

The Government shall file a preliminary order of forfeiture within 3 days.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NUMBER 17-20299-CR-MORENO

4 UNITED STATES OF AMERICA,

5 Plaintiff,

Courtroom 13-3

6 || VS.

Miami, Florida

7 RICHARD JOHNSON and
RICARDO JACKSON,

December 28, 2017

Defendants.

**SENTENCING PROCEEDINGS
BEFORE THE HONORABLE FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

FOR THE GOVERNMENT: **FRANKLIN G. MONSOUR, JR., AUSA**
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21 FOR DEFENDANT JACKSON: RODERICK D. VEREEN, ESQ.
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786-391-1751

Fax: 786-409-3113

1 REPORTED BY:

2 **GILDA PASTOR-HERNANDEZ, RPR, FPR**
3 Official United States Court Reporter
4 Wilkie D. Ferguson Jr. US Courthouse
5 400 North Miami Avenue - Suite 13-3
6 Miami, Florida 33128 305.523.5118
7 gphofficialreporter@gmail.com
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1 (The following proceedings were held at 10:22 a.m.):

2 THE COURT: 17-20299-Criminal, United States of America
3 versus Richard Johnson and Ricardo Jackson.

4 On behalf of the Government.

5 MR. MONSOUR: Good morning, Your Honor. Franklin
6 Monsour for the United States.

7 THE COURT: On behalf of Ricardo Jackson.

8 MR. VEREEN: Good morning, Your Honor. Roderick Vereen
9 on behalf of Ricardo Jackson.

10 THE COURT: On behalf of Richard Johnson.

11 MR. HOULIHAN: Good morning, Your Honor. D'Arsey
12 Houlihan, Assistant Federal Defender, on behalf of Mr. Johnson.

13 THE COURT: Okay. The interpreters, I was going to
14 tell you if you want to get coffee, because the cafe closes at
15 10:30, if you want to do that.

16 (There was a brief discussion off the record.)

17 THE COURT: Johnson and Jackson. Okay. Let's start
18 with Richard Johnson, please. Mr. Johnson.

19 DEFENDANT JOHNSON: Yes, sir.

20 THE COURT: Okay. We're going to let you come forward.

21 Mr. Jackson is seated next to his lawyer, Mr. Vereen.

22 | Mr. Johnson is standing to the right of his lawyer,

23 Mr. Houlihan.

24 Mr. Johnson, I've read and reviewed the Presentence
25 Investigation Report prepared by the probation officer. I

1 didn't give her a chance to state her name. I'm sorry.

2 THE PROBATION OFFICER: Good morning, Your Honor.

3 Demesha Edwards on behalf of U.S. Probation.

4 THE COURT: Thank you for being here.

5 I've read the report and I assume, Mr. Johnson, you
6 have read the report and also your lawyer's request regarding
7 the sentencing. Is that true?

8 DEFENDANT JOHNSON: Yes, sir.

9 THE COURT: Okay. As you all know, the first
10 obligation of the Court is to properly calculate the guidelines.
11 In this particular case the probation officer says it's an
12 adjusted offense level 22, Criminal History Category II, though
13 I would say it's probably, in my view, II-plus because of all
14 the cases on Pages 9 through 12, including a criminal -- 9
15 through 19 actually, but 9 through 12 we have old cases that
16 have not been counted. The guideline range, according to the
17 probation officer, is 46 to 57 months and the probation officer
18 recommends the low end of the guidelines.

19 Any objections to the calculation of the guidelines
20 from the Government?

21 MR. MONSOUR: Your Honor, I've been alerted by
22 probation that there was a miscalculation. I will let probation
23 handle that.

24 THE COURT: Okay.

25 THE PROBATION OFFICER: Yes, Your Honor, in paragraph

1 29 --

2 THE COURT: You can do it sitting down if you want,
3 whatever you want, whatever is easier for you.

4 THE PROBATION OFFICER: Thank you, Your Honor. In
5 paragraph 29 of the PSI, Mr. Johnson received a two-level
6 enhancement under 2D1.1(b)(12), however, as reflected in
7 paragraph 28, the applicable guideline is 2D1.2, so the
8 two-level enhancement would not apply.

9 THE COURT: Government agrees?

10 MR. MONSOUR: Yes, Your Honor.

11 THE COURT: Defense agrees?

12 MR. HOUЛИHAN: Yes, Judge.

13 THE COURT: All right. I'll take those two levels off.
14 Now, instead of 22, we have 20, with a Criminal History Category
15 II-plus, in my view plus. Now we're talking about 37 to 46
16 months.

17 Any objections to the calculation or the Presentence
18 Investigation Report, from the Government?

19 MR. MONSOUR: No, Your Honor.

20 THE COURT: From the defense?

21 MR. HOUлиHAN: No, Your Honor.

22 THE COURT: All right. I'll adopt those guidelines.
23 Then I have to decide where within the guidelines or above the
24 guidelines I should sentence the defendant.

25 Mr. Houlihan, what do you want to say about all the

1 priors that he has for which he has not received any points?

2 Paragraph 38, he was only 16, strong arm robbery, where
3 he got four years in State prison as a youthful offender I
4 suspect based upon the age, followed by two years' probation.
5 He was released from State prison and then he got six months
6 community control. Zero points for that.

7 Then possession of cocaine. He was selling crack
8 cocaine in 1986, when he was 21 years old. Zero points for
9 that. And then in 1987, burglary with assault or battery, he
10 got six months' probation, zero points. 1987, age 22, burglary,
11 six months' probation, concurrent with the other case. August
12 27, 1989, possession of marijuana, loitering and prowling, zero
13 points, suspended entry of sentence and community service.

14 Paragraph 43, trespassing, two days, credit time
15 served. Paragraph 44, battery on a law enforcement, by now he
16 is 26, tampering with physical evidence, resisting an officer
17 with violence; and what's important about that case is they're
18 outstanding bench warrants. They found a white powder and he
19 inserted it.

20 Possession of cocaine in 1991, 366 days, regarding
21 narcotics sales on Northwest 24th Avenue and 50th Street, zero
22 points.

23 1992, every year, possession of cocaine with intent to
24 distribute. This time it was in Georgia. Then 1994, he finally
25 gets three points for aggravated battery with a deadly weapon.

1 I think that those offenses are consistent with the
2 fact that he was maintaining a premises for distributing cocaine
3 near a school and it justifies an upward variance decision by
4 the Court. What do you say?

5 MR. HOULIHAN: Judge, I would say that those priors
6 are -- I mean, even if you -- this one incident that qualifies
7 for three criminal history points, it happened 23 years ago.

8 THE COURT: But he keeps on selling drugs. What did he
9 do in this case? What did the jury find?

10 MR. HOULIHAN: The jury found that he sold narcotics.

11 THE COURT: Near where?

12 MR. HOULIHAN: In his home.

13 THE COURT: And where was his home? He was maintaining
14 a premises for the distribution of drugs, all kinds of drugs.

15 MR. HOULIHAN: Judge --

16 THE COURT: Is it near a school?

17 MR. HOULIHAN: It is. Maintaining a house for
18 distribution of narcotics, I can understand why it would be a
19 crime and, of course, a concern.

20 THE COURT: Well, isn't it a crime?

21 MR. HOULIHAN: Yes, Judge.

22 THE COURT: What do you mean, you can understand why it
23 would be?

24 MR. HOULIHAN: Well, you know, it's one thing when
25 you -- I've had cases where there are individuals that had a

1 couple of -- you know, they didn't live in them, they maintained
2 separate places. One place they called the Rolex, one place
3 they called something else, and they used it to cook their crack
4 cocaine, but they lived somewhere else. And when you maintain a
5 drug house under those sort of circumstances, that sort of
6 establishes a more sophisticated business.

7 What we have here is a guy who's a drug addict, who's
8 living in his house, and he's selling, you know, nickel and dime
9 bags worth of cocaine out of his house.

10 THE COURT: Near where?

11 MR. HOULIHAN: It's near a school, Judge, but I mean --

12 THE COURT: Doesn't that matter a lot?

13 MR. HOULIHAN: Well --

14 THE COURT: It does to me.

15 MR. HOULIHAN: Listen, I understand, Judge. I mean,
16 you know, I'd love it if it weren't near a school, but I don't
17 think that there's any evidence --

18 THE COURT: He would have been found not guilty of
19 that.

20 MR. HOULIHAN: I don't believe there's any evidence to
21 demonstrate that he located his place near a school for some
22 sort of nefarious purpose, to sell to students or something of
23 that nature.

24 I think it's just, you know, accidental or happenstance
25 that he managed to find a place where he was given a room in a

1 house that he shared with other people and was able to get a
2 reduced rate by, you know, collecting rent from the other people
3 that were staying in the place and providing maintenance
4 and that sort of thing.

5 THE COURT: And selling drugs.

6 MR. HOULIHAN: That's what the jury said, yes, Judge.

7 THE COURT: And that's what I'm sentencing him for.

8 MR. HOULIHAN: No, I understand that, Judge, but this
9 is a guy that, if you look at his history --

10 THE COURT: I thought I went through it. Do you want
11 me to go through all the cases that were nol-prossed?

12 MR. HOULIHAN: Well, I think there's more to his
13 history than merely his contacts with the criminal justice
14 system, Judge.

15 THE COURT: Because there are also other cases that I
16 won't count: The dismissed burglary; the no-actioned burglary;
17 the possession of cannabis and burglary, no-actioned; the
18 nol-pros unlawful possession of cocaine; the no-actioned grand
19 theft; the tampering with physical evidence that was
20 no-actioned; the possession of cocaine that was no-actioned; the
21 possession of cocaine that was dismissed; the burglary that was
22 nol-prossed; the possession of marijuana and trespassing that
23 was dismissed; the possession of cocaine and trespassing that
24 was no-actioned, the trafficking in cocaine violation of
25 Georgia. He was acquitted of that, but I'm pointing out, he

1 definitely has -- he's seen more judges than I do at a judicial
2 conference.

3 The aggravated assault with a weapon that was
4 nol-prossed; the driving with license suspended that was
5 nol-prossed; selling cocaine within 1,000 feet from a school.

6 Now, he was released on bond on February 21, 2017. Is
7 that this case?

8 MR. MONSOUR: No, Your Honor, that's a separate case.

9 THE COURT: A separate case that's still outstanding in
10 State court, within 1,000 feet of a school in January, then
11 resisting an officer without violence. I guess these cases are
12 set for pleas in State court where he thinks -- I'll leave it up
13 to the State prosecutor to recommend whatever he thinks he
14 should or she should, and the judge to do whatever she thinks
15 she should, but if you look at the record, nothing has ever
16 happened to him, which is what he thinks, nothing will happen to
17 him. That's why I'm considering an upward variance,
18 Mr. Houlihan.

19 MR. HOULIHAN: Judge, he got 15 years in 1994.

20 THE COURT: For what? For aggravated battery with a
21 deadly weapon. That's not selling drugs.

22 MR. HOULIHAN: No, I understand that, but he's gotten
23 sentences -- he's gotten sentences before of a year, 366 in one
24 of those cases that you referred to. I think it was paragraph
25 44.

1 THE COURT: Yeah, for tampering with physical evidence
2 again. All right. So he didn't learn a lesson with that.
3 That's another reason to give him more.

4 MR. HOULIHAN: Right, and the guidelines provide a
5 sentence that's three times as long as that. I'd also point
6 out, Your Honor, that --

7 THE COURT: I don't think it's enough because they're
8 not counting all the prior convictions.

9 MR. HOULIHAN: Judge, those priors -- he has one, this
10 prior from paragraph 47, he was 29 years old when he committed
11 that offense. He's 53 now I believe. It was 23 years --

12 THE COURT: You should know better when you're in your
13 50's, right?

14 I usually give lighter sentences to young people
15 because young people do stupid things, and there's a possibility
16 of rehabilitation when you're young. 53-year-olds probably
17 don't change as much as young people. Don't you agree?

18 MR. HOULIHAN: Well, I've seen -- I feel like I'm
19 changing an awful lot the older I get.

20 THE COURT: I don't know, but I won't judge you because
21 you haven't pled guilty to anything. Neither has your client,
22 of course, but he's been found guilty by a jury.

23 MR. HOULIHAN: No, Judge, but he definitely slowed down
24 and I think you pointed out --

25 THE COURT: He slowed down because instead of

1 aggravated battery and tampering, he's just selling small
2 amounts of drugs near a school in a neighborhood, right? We
3 don't care about that neighborhood.

4 MR. HOULIHAN: Of course we do, Judge.

5 THE COURT: Then what do we do?

6 MR. HOULIHAN: There's a guideline --

7 THE COURT: But it's not enough, it's definitely not
8 enough. A little bit over three, three to five years is not
9 enough.

10 MR. HOULIHAN: Judge, he was released in 2009, and with
11 the exception of some driving offenses, he has no convictions
12 since then, you know.

13 THE COURT: Except this one that the jury found.

14 MR. HOULIHAN: Yes, of course, but, you know, that's a
15 period of, you know, seven or eight years. And again, as I
16 point out, this all sort of stems from the narcotics issues.

17 THE COURT: He's got a drug problem, right?

18 MR. HOULIHAN: Yes, Judge.

19 THE COURT: So that means as soon as he's released, he
20 will continue to have a drug problem, he'll continue to sell
21 drugs.

22 MR. HOULIHAN: Not after getting a sentence that's
23 three times as long as the prior sentences he's received for
24 this sort of activity and particularly if he's able to
25 participate in the RDAP program.

1 THE COURT: Oh, because he never got the offer of drug
2 court.

3 MR. HOULIHAN: He's gotten some treatment, but not, you
4 know, not the kind of treatment that the RDAP program can
5 provide and if he --

6 THE COURT: In prison.

7 MR. HOULIHAN: Yes, Judge.

8 THE COURT: Then I'll recommend that.

9 MR. HOULIHAN: And if he gets treatment, if he gets
10 effective treatment and he serves the sentence that's three
11 times as long as what he's gotten for these sort of offenses in
12 the past, and he is on supervised release in Federal court,
13 then, you know, he'll have an opportunity to turn himself
14 around. I mean, he's 53 years old.

15 With a sentence within the guideline range, you know,
16 we're talking about, you know, almost closing in on 60 by the
17 time he gets out and --

18 THE COURT: No, that would be seven years. You're
19 right, it's above the guidelines.

20 MR. HOULIHAN: I said closing in, and by the time he's
21 finished his supervision with a sentence like that, he would be,
22 you know, almost certainly over 60 years of age, and I think
23 that's sufficient. Given the facts and circumstances of the
24 case and Mr. Johnson's circumstances, you know, I believe it's
25 an appropriate sentence.

1 THE COURT: What say the Government? And then I'll
2 hear from the defendant.

3 MR. MONSOUR: Your Honor, the Government is
4 recommending an upward variance in this case. I apologize for
5 the late filing. I filed something this morning. It took a
6 while to go through the chain of command in my office with the
7 holidays.

8 But what we're recommending -- the reason I'm
9 recommending 78 months, for the reasons in line with what Your
10 Honor has already articulated, specifically paragraphs 44
11 through 46 of the Presentence Report. It's a 366-day sentence
12 that he received in paragraphs 44 and 45. That was for
13 possession of cocaine and battery on a law enforcement officer.
14 That's not counted. That would normally give him an extra three
15 points, and paragraph 46, the 242-day sentence for possession of
16 cocaine with intent to distribute would normally give him an
17 extra two.

18 With those five points, plus the three that he already
19 has, he would go from a Category II to a Category IV. Before
20 this morning, his range, as Your Honor noted, was 37 to 46
21 months, and so that would have become 63 to 78 months.

22 Now, with the recalculation, his sentence is down two
23 levels, but I'm still recommending a 78-month sentence for the
24 reasons that I just articulated in addition to the seriousness
25 of the offense.

1 If Your Honor will remember the testimony at trial, it
2 was elicited, the evidence showed close to 200 baggies of crack
3 cocaine on the table in his residence, bags of powder cocaine,
4 and on his own person 22 bags of crack cocaine and seven bags of
5 powder cocaine which matched, of course, the drugs that were in
6 the house.

7 In addition, testimony at trial showed that not only
8 was this within a thousand feet of a school, but kids were
9 walking by and riding bikes by as hand-to-hand drug deals were
10 going on. Detective Perdomo testified to that.

11 Given the seriousness of the offense, given the
12 underrepresentation of the criminal history, and also given the
13 fact that even at that sentence, even a sentence of 78 months
14 would be less than half of his last sentence, which was 15 years
15 as Your Honor has already noted, for those reasons, Your Honor,
16 the Government recommends a sentence of 78 months.

17 THE COURT: Mr. Houlihan, what do you want to add?

18 MR. HOULIHAN: Well, the Government's -- I don't know
19 if their jump from Criminal History Category II to IV would
20 still apply, but that prior that he referred to as a three-point
21 prior wouldn't be a three-point prior, it's a two-point prior.
22 366 is under 13 months. But the Government is arguing for 78
23 months, and you know, which is the high end of the guidelines as
24 they thought the guidelines were. Now they discover that the
25 guidelines are actually lower but, you know what, still 78

1 months.

2 The guidelines, even if you accepted the Government's
3 logic, which I think is flawed, to go back and count these
4 priors that are almost 30 years old, would be 51 to 63 months.
5 So we're talking about not only varying upward based on the
6 criminal history category that the Sentencing Commission -- you
7 know, the Sentencing Commission has the ability to, you know, to
8 adjust for this if they think it's appropriate and clearly they
9 did not.

10 I think a sentence at the low end of the guidelines is
11 three times as long as what he's served in the past for this
12 sort of offense, with the recommendation for drug treatment --

13 THE COURT: I don't consider the fact that he served 15
14 years before also? You don't count that one because it doesn't
15 help you.

16 MR. HOULIHAN: It's counted. It is counted.

17 THE COURT: I know, but he keeps on committing crimes.

18 MR. HOULIHAN: Judge, I understand, but that offense
19 from nearly 30 years ago was a different man, and he hasn't
20 committed that type of offense since then.

21 The sort of things that he's been involved in since
22 then, and since his release in 2009, have been drug related
23 because of his drug problem.

24 THE COURT: So because someone has a drug problem, that
25 justifies a downward variance in your view.

1 MR. HOULIHAN: No. Judge, at this point now the
2 guidelines are where they are. I'm not even asking for a
3 downward variance.

4 THE COURT: But you did before.

5 MR. HOULIHAN: Before I did, yes, because I thought
6 that it was -- I thought that the sentence was too high and I
7 thought he needed -- because one of the 3553(a) factors is that
8 the sentence affords the defendant the kind of treatment that he
9 needs and I had calculated out --

10 THE COURT: Well, the longer he's in prison, the longer
11 he'll be treated in prison and hopefully there are less drugs in
12 prison than out in the neighborhood.

13 MR. HOULIHAN: Unfortunately, that's not true, Judge,
14 because --

15 THE COURT: Because maybe we don't have a lot of homes
16 that are being maintain to dispense drugs.

17 MR. HOULIHAN: Not the second part of your sentence,
18 the first part of your sentence, that he'll receive longer
19 treatment, because the way the RDAP program works is, you don't
20 become eligible for it until the last two years of your term of
21 imprisonment.

22 THE COURT: All right.

23 MR. HOULIHAN: So if he is in, you know, for three
24 years, he gets in the program the last year. If he's in for
25 four years, he gets in the last two years of his sentence. So

1 putting him in longer will not ensure him any more treatment
2 and, frankly, I don't believe that that would be an appropriate
3 rationale for keeping him --

4 THE COURT: I just want to protect the public,
5 especially the children and the neighborhood, among other
6 factors of 3553(a).

7 What do you want to say, Mr. Johnson, before I sentence
8 you, sir?

9 DEFENDANT JOHNSON: First of all, I would like to say
10 happy holidays to you and the courts. I apologize for taking up
11 you and the court's time in this matter.

12 THE COURT: Oh, that has nothing to do with it. That's
13 what I get paid for, time. The issue is how much time you
14 should get.

15 DEFENDANT JOHNSON: And I would like to say I was
16 impressed by the way you conduct your courtroom. You made
17 everyone feel comfortable, you paid attention, you were fair to
18 both tables.

19 THE COURT: I appreciate that, but I don't think you're
20 going to say that after I sentence you, but I'll wait.

21 DEFENDANT JOHNSON: Excuse me?

22 THE COURT: I don't know if you'll say that after I
23 sentence you because I've already hinted -- not hinted, I've
24 already said that --

25 DEFENDANT JOHNSON: I understand, Judge.

1 THE COURT: -- you've got a lot of priors that have not
2 been counted and that I think this crime, even though it's not a
3 lot of drugs --

4 DEFENDANT JOHNSON: But I was in denial, I realize I
5 was in denial because of my drug addiction, Your Honor, and I'm
6 really not a bad guy. I did do a lot of stupid things because
7 of my addiction and I know -- I come to realize that I need help
8 in that now.

9 I just have one question to ask, Your Honor, just one.
10 There was a search warrant involved in this case that never was
11 presented into trial, but all the evidence that was obtained
12 through the search warrant was presented at the trial, and I was
13 informed that I couldn't argue the evidence through the search
14 warrant because the Government never presented the search
15 warrant into trial. My whole defense was the search warrant and
16 by me not being able to argue the search warrant, I had no
17 defense.

18 So my question to you is: Is that true? Or why wasn't
19 I able to bring up that matter of the search warrant?

20 THE COURT: Oh, I'm not used to being questioned, even
21 though I'm not under oath.

22 DEFENDANT JOHNSON: Actually, it was like getting an
23 understanding, more than a question, getting an understanding.

24 THE COURT: That's why you have a lawyer who fought for
25 you.

1 DEFENDANT JOHNSON: And I couldn't get an
2 understanding. Maybe your way of -- your simple English I can
3 understand it maybe, because you do use simple English.

4 THE COURT: I do do that, in writing, too, I do do
5 that, but I can't give you any advice. That's why you have your
6 lawyer. He can tell you whatever he thinks is right and I'm
7 sure he has and I have no business getting involved in that
8 advice.

9 Anything else you want to say?

10 DEFENDANT JOHNSON: No. Then I appreciate if you give
11 lenient to the sentence.

12 THE COURT: All right.

13 DEFENDANT JOHNSON: I did have a drug addiction. I've
14 been in denial for a long time, Your Honor.

15 THE COURT: I accept the fact that you're in denial and
16 that's a problem. I agree with you that you haven't accepted
17 responsibility.

18 DEFENDANT JOHNSON: Yes.

19 THE COURT: I agree with you that you're in denial and
20 I agree with you that you have a drug problem, but after having
21 heard from all parties, I do think, as I mentioned at the
22 beginning of the hearing and even without the Government's
23 request for an upward variance, which I did not read because you
24 filed it this morning, I think an upward variance is
25 appropriate.

1 The question is how much of an upward variance and the
2 uncounted convictions are very troublesome and the nature of
3 this case being maintaining a premises near a school -- I will
4 not count the case that he has in State court, which is the same
5 thing, because he's presumed innocent, but one of the factors in
6 3553(a) is protect the public. The public includes everyone in
7 every neighborhood.

8 We don't have neighborhoods where we don't care that
9 there's a home where drugs are being sold. It's not fair to
10 that neighborhood. Not everybody can live in a gated community.
11 I don't live in a gated community, but I live in a nice
12 community and I know there are probably drug dealers who live
13 there, and if they're caught, I hope they get punished because
14 it hurts the neighborhood. It hurts the kids even as they're
15 walking through the home that they know is being used for drugs
16 because everybody in the neighborhood knows, and they have to go
17 to school going through that. That's why the laws were passed.

18 The fact that a small amount of drugs versus the 500
19 kilograms that are on a boat where illiterate fishermen are on
20 it, unloading it, and they get a 10-year minimum mandatory
21 sentence, I think a drug abuser who also dispenses drugs from
22 his home in a neighborhood near a school should be similarly
23 punished, especially if he has a prior record that has not been
24 counted, and especially when he hasn't accepted responsibility.

25 Therefore, it is the judgment of this Court -- the

1 maximum sentence for Counts 1 and 2 is 40 years. I think that
2 would be an unreasonable sentence, but I think a sentence less
3 than 50 percent of those 40 years would be reasonable.

4 Therefore, it is the judgment of this Court that you,
5 Richard Johnson, be committed to the custody of the Bureau of
6 Prisons for 15 years on Counts 1 and 2. The sentences will be
7 concurrent with each other. Count 3, there's a maximum 20
8 years, but I will give you less than the maximum, 15 years, that
9 will also be concurrent, for a total 15-year sentence, five
10 years' supervised release. That will be concurrent with each
11 other. Wait, that's on Counts 1, 2 and 3. On count -- six
12 years, six years' supervised release on Counts 1 and 2, three
13 years on Count 3, but it will be concurrent. Strike whatever I
14 said about five years. No fine because you cannot afford to pay
15 one. \$300 special assessment.

16 The defense objects, obviously, to the upward variance.
17 The Government does not.

18 You have the right to appeal. Your lawyer will file a
19 Notice of Appeal within 14 days regarding the trial, any errors
20 that may have occurred, and also as to the upward variance, but
21 make sure that that is done within 14 days.

22 Any objections from the Government?

23 MR. MONSOUR: No objection.

24 THE COURT: From the defense?

25 MR. HOULIHAN: Judge, I object to the upward variance.

1 THE COURT: All right. I assume you would.

2 Okay. Richard Johnson, the codefendant.

3 MR. VEREEN: Jackson, Judge, the codefendant.

4 THE COURT: Pardon?

5 THE COURTROOM DEPUTY: You said Johnson, it's Jackson.

6 THE COURT: Oh, yes, I said -- Jackson is what I meant
7 to say.

8 MR. VEREEN: Yes, sir. Good morning, Judge.

9 THE COURT: I made that mistake before, but I know who
10 is who. So Johnson has just been sentenced, Richard Johnson.

11 Let me give you back this, Shirley.

12 Now I'm on Ricardo Jackson. On behalf of the
13 defendant, who do we have?

14 MR. VEREEN: Roderick Vereen, Judge. Good morning.

15 THE COURT: Good morning, again. Same prosecutor, same
16 probation officer.

17 MR. MONSOUR: Yes, sir.

18 (Defendant Johnson retired from the courtroom.)

19 THE COURT: In this particular case, the first
20 obligation of the Court is to calculate the guidelines after
21 reading it.

22 Mr. Jackson, Ricardo Jackson, I assume you've read the
23 report. Am I right, sir?

24 DEFENDANT JACKSON: Yes, sir.

25 THE COURT: In this particular case, the guidelines

1 according to the probation officer are 27 to 33 months, total
2 adjusted offense level 18, Criminal History Category I.

3 Any objections from the Government?

4 MR. MONSOUR: No, Your Honor.

5 THE COURT: From the defense? Any objections to the
6 guidelines?

7 MR. VEREEN: Yes, Judge. My objections to the
8 calculations deal with what was contemplated in the Plea
9 Agreement, that the defendant would receive a two-level
10 reduction for minor role.

11 THE COURT: The Government agrees?

12 MR. MONSOUR: Yes, Your Honor.

13 THE COURT: Then I'll ask the probation officer, in
14 paragraph 37, to give him a two-level minor role adjustment in
15 this particular case. Therefore, his guidelines go down to 16,
16 and does he still get three levels for acceptance of
17 responsibility off?

18 MR. VEREEN: No, Judge.

19 MR. MONSOUR: That's already included, Your Honor.

20 THE COURT: If it's so low, it may not be included. I
21 don't know.

22 MR. VEREEN: He didn't get three, he was only given
23 two.

24 THE PROBATION OFFICER: The parties had agreed to only
25 give him a two-level reduction for acceptance.

1 THE COURT: Okay, because of that?

2 THE PROBATION OFFICER: Yes.

3 THE COURT: Now the adjusted offense level is 16?

4 MR. MONSOUR: Yes, Your Honor.

5 THE COURT: Okay. 16, with Criminal History Category
6 I, 21 to 27 months.

7 Any other objections by the defendant?

8 MR. VEREEN: There was another objection I filed that
9 does not affect the calculation, Judge, it's just with regard to
10 paragraph 10 of the PSI where it stated that the defendant was
11 the supplier of the drugs in this particular case. We object to
12 that as --

13 THE COURT: Government agrees?

14 MR. MONSOUR: Your Honor, certainly no evidence at
15 trial came out.

16 THE COURT: Then delete -- after it says "Richard
17 Johnson sold drugs at the premises" delete the words "and
18 Ricardo Jackson supplied the narcotics that were sold at the
19 premises" delete that from paragraph 10, the third line up on
20 Page 5.

21 THE PROBATION OFFICER: Yes, Your Honor.

22 THE COURT: All right. Based upon that, then, what is
23 the Government's position?

24 MR. MONSOUR: Your Honor, the Government is
25 recommending 21 months, the low end in this case.

1 THE COURT: What say the defense?

2 MR. VEREEN: Your Honor, the defense is asking for a
3 departure.

4 THE COURT: Oh, my goodness gracious. You saw what I
5 gave the codefendant, 15 years.

6 MR. VEREEN: I understand that, Judge, but my client is
7 in a completely different position than Mr. Johnson was.

8 THE COURT: That's why he has got now, thanks to your
9 persuasive skills, 21 months.

10 MR. VEREEN: Judge, if I can elaborate further.

11 THE COURT: You can certainly elaborate further. He
12 has a Bachelor's Degree from the University of Houston, right?

13 MR. VEREEN: He does, Judge.

14 THE COURT: We kind of expect more from people like
15 that, don't you think?

16 MR. VEREEN: We do, Judge.

17 THE COURT: All right. Go ahead.

18 MR. VEREEN: Let me start off by saying, I've known
19 Mr. Jackson probably for about 40 some odd years, grew up in the
20 same community. I went to a different rival school, but we've
21 known each other for many, many years. He's known in Carol City
22 as Coach Jackson. He set up camps throughout the communities
23 where he taught young kids the sport of basketball.

24 This incident -- this relationship between he and
25 Mr. Johnson go back many, many, many years. He actually was

1 sitting here shocked when the Court was reading off the priors
2 of Mr. Johnson. He had no knowledge that Mr. Johnson had had
3 such priors. Mr. Jackson was not the target of this
4 investigation, Mr. Johnson was. There was no evidence at all
5 that Mr. Jackson was one supplying any drugs. He was never
6 observed selling any drugs in this particular case, but he was
7 observed at the residence at the times when Mr. Johnson was, in
8 fact, selling drugs.

9 It was contemplated initially that Mr. Jackson would
10 have an opportunity to enter a plea to simple possession of
11 cocaine. During the period of time that he was out on bond, the
12 Court may recall he was tested on at least three or four
13 occasions where he tested positive for using cocaine and
14 warranting the Court to take him back into custody where he
15 remained up until today.

16 The Government and I had discussed a possible
17 resolution of the case where Mr. Johnson -- excuse me --
18 Mr. Jackson would plead to a modified, or should I say an
19 Information charging him with possession of cocaine, but what
20 Mr. Jackson would have been required to do at that time was to
21 cooperate with the Government and testify against Mr. Johnson.
22 He would have gotten a minor role. He would have gotten
23 acceptance of responsibility, three levels, and potentially a
24 substantial assistance reduction as well.

25 Mr. Jackson, as you may recall, the day when he was

1 supposed to enter a plea did not want to do that for a couple of
2 reasons, but whatever those reasons were, he withdrew his
3 objection -- I mean withdrew his intent to enter a plea at that
4 time and the case was set for trial.

5 Negotiations continued between the Government, myself
6 and Mr. Jackson with regard to how to resolve this case, getting
7 him out of it and allowing Mr. Johnson to proceed to go to
8 trial. And prior to trial, again Mr. Jackson had agreed to
9 enter a plea at that time. We were not able to come up with a
10 new Plea Agreement, but for about 20 to 30 minutes, Judge -- and
11 I don't know if you recall that specific date --

12 THE COURT: Oh, I recall.

13 MR. VEREEN: -- he was working diligently with Mr. Day,
14 myself, trying get Mr. Johnson to plead guilty. He tried. He
15 tried. He said, listen, this is the best thing for you to do,
16 you know, plead guilty to this, and Mr. Johnson just would not
17 do it. But Mr. Jackson was going to do it. He realized then
18 that the same offer that was on the table was not going to be on
19 the table then because he had put the Government in a position
20 where they had to prepare the case against him as well.

21 But nevertheless, you know, prior to the Court sending
22 out for a jury, Mr. Jackson at that time decided it was in his
23 best interest to enter a plea of guilty to, again, a modified
24 version, a reduced count, which I believe was Count 2 of the
25 Indictment charging possession with intent, and that's what he

1 did in this particular case.

2 Mr. Jackson, Judge, would admit that he was a drug
3 user. That's one of the reasons why he was going around
4 Mr. Johnson's house as much as he was, because he was
5 supplying him. Mr. Johnson was supplying him with drugs that he
6 would use.

7 You know, he has been a good father to his kids. He
8 has been a, believe it or not, a pillar in the community. I
9 mean, there's no evidence whatsoever that he ever tried to
10 provide any drugs to any of these kids. And I know by him being
11 a coach, and that's one of the things that's probably the most
12 embarrassing for him because even my barber -- he coached my
13 barber's son, Jacob Blake. The most embarrassing thing for him
14 is to have, one, been arrested for being involved with any drug
15 activity when, in fact, he's been given access to all these
16 schools around Miami-Dade County to set up these after-school
17 programs teaching kids how to play basketball. And he had a
18 company, which is how he makes his money now, called Triple
19 Threat, where, you know, people hire him to coach their kids.

20 This residence that was being used is probably half a
21 mile down the street from my mother's residence, so I'm not
22 happy about that. So when Mr. Jackson came to me and I saw the
23 facts and circumstances of this case, I wasn't happy about it,
24 you know, but as a friend and a former classmate, if you want to
25 look at it that way, I agreed to represent him, but it didn't

1 come at a cheap expense, put it that way. So there's a penalty
2 to pay.

3 He was not present at the trial of Mr. Johnson, but he
4 soon learned that Mr. Johnson's defense was essentially the
5 empty chair where he blamed everything on Mr. Jackson. So
6 there's an old saying "that no good deed goes unpunished," or in
7 the case of Mr. Jackson, "When you sleep with dogs, you wake up
8 with fleas." If anybody needs a break in this situation today,
9 it is Mr. Jackson.

10 He is not the type of individual that I believe would
11 ever come back before this Court with regard to this type of
12 activity. His prior history does not speak to any drug dealings
13 on his part. He's not a drug dealer. He's a user. He knows
14 he has a drug problem that he has to get under control. You
15 know, he would have been out for the fact that he violated by
16 using. Okay. And I was shocked to see that was taking place
17 because I was led to believe that he was not using at all. So
18 that makes me believe that he has to come to grips with his own
19 vices, but does he have to be incarcerated to do that, is the
20 question for the day.

21 I believe that he can be placed on supervised release
22 and forced to take a drug program. He's been involved in a drug
23 program at the Federal Detention Center and has been
24 successfully participating in it.

25 I think that he has learned the errors of his ways and

1 he knows that he cannot associate with individuals such as
2 Mr. Johnson. I think that he can make amends to the community
3 that he's been serving. He's not going to be allowed now --
4 this is one of the things that's going to affect him. He's not
5 going to be allowed to have access to these schools to teach
6 these programs and set up these aftercare programs, after-school
7 programs because of the nature of this conviction.

8 So whether or not he still will be able to maintain his
9 business of coaching kids in the sport of basketball, well,
10 that's going to be between the parents who find out about this
11 and Mr. Jackson. Hopefully, he will still be allowed to.

12 I mean, by being incarcerated, I think he's learned a
13 lot. During the time he's been incarcerated, folks have tried
14 to steal his house. He had squatters break into his house and
15 put all his belongings out in the garage. I had to get law
16 enforcement involved. They had to go in there and evacuate
17 those individuals so he can get his house back. So he is
18 learning what happens, you know, in situations where you put
19 yourself in.

20 I mean, he had no reason to be involved in this type of
21 activity, and I know he recognizes that, a day late and a dollar
22 short. He will be a convicted felon, something he had not been
23 his whole life. He retired, he had a pension, you know, he had
24 money in the bank. He was doing well except for the fact that
25 he decides to associate with Richard Johnson for whatever

1 reason.

2 But I believe, Judge, that if given the opportunity --
3 and in my motion for downward departure, I made reference to two
4 other cases that I represented the individuals, one who had a
5 prior criminal history, which was Leonard Johnson. Leonard
6 Johnson is the owner of MLK Restaurant in Liberty City, employs
7 about 40 people. Leonard Johnson had gotten involved with
8 another young lady with the importation of over 400 pounds of
9 marijuana. He scored out at about 37 months in prison even
10 though he had a prior trafficking offense where he served 15
11 years in prison, but it had been many, many years prior to him
12 being charged, approximately around 20 years prior to being
13 charged in the new offense. His incarceration would have
14 resulted in about 40 people being terminated from their
15 employment.

16 He was the individual that provided after-school meals
17 to about 10 different schools in Miami-Dade County free of
18 charge and the Judge believed that, you know, because he
19 accepted responsibility, agreed to cooperate with the
20 Government, he did everything he was required to do, the judge
21 gave him a break and she gave him supervised release.

22 THE COURT: Who was that?

23 MR. VEREEN: The case was out of West Palm Beach. I
24 want to say Rosenberg. Which judge is in --

25 THE COURT: Rosenberg is one of the judges.

1 MR. VEREEN: Okay. Then I believe it was Judge
2 Rosenberg.

3 The second case -- give me a second, Judge. Yes, it
4 was Judge Rosenberg, Judge. That was case number
5 14-20244-CR-Rosenberg.

6 The second case was an individual by the name of Joel
7 McNeal, and this was a case that came before Judge Middlebrooks
8 in 2014 as well. That case number is 14-20060. Joel McNeal was
9 a longshoreman on the docks in Miami who had conspired with a
10 couple of other individuals to remove approximately three kilos
11 of cocaine off the docks. He had not had any prior criminal
12 history. He was actually a deacon, I believe a deacon or a
13 musician in the church that he attended.

14 He too scored out approximately 37 months in prison,
15 and Judge Middlebrooks in that particular case after listening
16 to argument of counsel and the factors under 3553(a) 1 through
17 6 -- excuse me, 1 through 7 -- said he was going against his
18 judgment. Initially his judgment was, as he told Mr. McNeal, he
19 said it was his intent to sentence him to, at a minimum, two
20 years in Federal prison for his behavior.

21 But after listening to Mr. McNeal and how contrite he
22 was and his argument to the Court that if he was given a break,
23 that he would be the Court's mouthpiece on the docks, is how he
24 stated it, and that he would let other longshoremen know to
25 steer clear of this type of activity and don't get themselves

1 involved in this type of difficulty and the judge gave him
2 supervised release as well instead of incarceration.

3 Those are two similar cases that I think the Court
4 should consider with regard to Mr. Jackson. I think that falls
5 in line with how the Court should look at his behavior versus
6 that of Mr. Johnson, his acceptance of responsibility for his
7 crimes, you know, or whatever participation he had in it. He
8 was not the one maintaining this house and I think he's learned
9 his lesson, Judge.

10 I would say I will stake my reputation on it, but I
11 don't know what my reputation is, so I won't say that. But I
12 will say that I know this guy, Judge. I don't believe that
13 he'll ever come back before this Court again.

14 THE COURT: You know, the problem with that is, when
15 you're a drug abuser, you would steal from your own mother even
16 if you love her. That's the problem with being an addict,
17 right?

18 It's not necessarily that you have evil in your heart,
19 it's that you have an addiction to a substance.

20 MR. VEREEN: Well, that's why I recommended, Judge, in
21 my motion for downward variance that he be placed on home
22 confinement, therefore, Probation will know where he is at all
23 times unless he is working.

24 THE COURT: And what would you say about the disparity
25 in the sentence of a codefendant who I just gave 15 years to?

1 MR. VEREEN: Well, I think they're, like I said, Judge,
2 completely in two different categories with regard to, you know,
3 what was being done at that house and what Mr. Johnson is
4 accused of doing versus what Mr. Jackson was accused of doing.

5 THE COURT: All right. I agree with you on that.

6 What say the Government? Do you want to expand since I
7 kind of cut you off when you said 21 months?

8 MR. MONSOUR: Yes, Your Honor. I think 21 months is a
9 break in this case. I think it's a break --

10 THE COURT: It's the low end of the guidelines.

11 MR. MONSOUR: It is. It's the low end of the
12 guidelines.

13 THE COURT: Isn't that what most of time you all
14 recommend when someone pleads guilty?

15 MR. MONSOUR: It is, but this case -- let's talk about
16 the facts of this case. The defendant pled guilty on the
17 morning of trial, but through the testimony at trial and
18 incontrovertible evidence that the Government showed, this
19 defendant was constantly at that house. He was observed at the
20 house while Johnson is doing hand-to-hand deals on multiple
21 occasions, multiple days. He has basketball cards for his camp.
22 He has a basketball camp for kids. Cards for his basketball
23 camp and fliers were on that table filled with drugs that the
24 jury got to see.

25 In addition, on that table of drugs was a bag that had

1 paraphernalia in it as well, a strainer and things like that,
2 that also had Mr. Jackson's basketball cards, a flier and things
3 of that nature. He's coming and going from the house.

4 When the police execute the arrest of Mr. Johnson out
5 front and they come into the house, what they see is Mr. Jackson
6 attempting to hide a plate of crack cocaine from which his
7 fingerprints were obtained.

8 So you add all of this up, Your Honor, this is not
9 consistent with someone who's just a user. It's not. This is
10 someone who was there constantly. He is attempting to hide
11 evidence.

12 He did not cooperate at all in this case. He did plead
13 guilty on the morning of trial as Your Honor witnessed. He has
14 no priors, that's why his sentencing range is low, and he was
15 given minor role in this case. That's the break, but it doesn't
16 change the significance of the case, the significance of what
17 went on, the offenses that he took part in.

18 THE COURT: Mr. Vereen, do you want to say anything
19 else? And then I'll hear from your client.

20 MR. VEREEN: Yes, Judge. My client was debriefed on
21 two occasions, one prior to his plea and once yesterday. It was
22 contemplated that he would get a safety valve reduction, but
23 after speaking with Probation today, we realized that under the
24 guidelines under which he pled, safety valve would not apply, so
25 there's two levels that he didn't get.

1 THE COURT: Government agrees?

2 MR. MONSOUR: No. What happened, Your Honor, was when
3 Probation ruled that minor role should not apply, in talking to
4 Mr. Vereen I said I would debrief him to see if he's safety
5 valve eligible.

6 Our agreement was that the level would be 16 regardless
7 if it came through minor role or safety valve, not that he would
8 get both.

9 THE COURT: Can someone get both?

10 MR. MONSOUR: I suppose, but not in this case, Your
11 Honor.

12 THE COURT: Because?

13 MR. MONSOUR: For the reasons articulated by Probation
14 safety valve cannot apply in this case.

15 THE COURT: Because?

16 THE PROBATION OFFICER: Your Honor, the appropriate
17 guideline for Mr. Jackson is 2D1.2. The two-level reduction
18 which they're referencing falls under the guideline of 2D1.1.

19 THE COURT: So the crime isn't serious enough to get
20 that, is that the bottom line?

21 MR. MONSOUR: No, Your Honor, it's because -- and
22 correct me if I'm wrong -- it's because this is an 860 crime,
23 within a thousand feet of a school, it's not applicable. It
24 would not be applicable to Mr. Johnson either.

25 THE COURT: All right.

1 MR. MONSOUR: I think that's for good reason, Your
2 Honor. Again, just to remind the Court of something obvious,
3 this is within 1,000 feet of a school. Testimony at trial, kids
4 are walking by while these hand-to-hands are going on, and
5 Mr. Jackson is in the house the whole time.

6 THE COURT: All right. I guess I should hear from your
7 client, don't you think, Mr. Vereen?

8 MR. VEREEN: Yes, Judge.

9 THE COURT: All right.

10 DEFENDANT JACKSON: Good morning, Your Honor. To the
11 Court --

12 THE COURT: Good morning.

13 DEFENDANT JACKSON: I'm here today to just apologize,
14 just give my remorse to the people involved, to my family and my
15 kids.

16 The one thing I can say from what he's saying, that
17 what Mr. Johnson doing, I had no -- I was in no agreement with
18 him or no selling no drugs. I never sold drugs a day in my
19 life. I did use a few times and I've, you know -- and I am very
20 remorseful for that. Like I said, my kids are most important.
21 Like I said, I get kids in college now even to this day through
22 college recruiters, I'm very known in the community, and I did
23 have a habit, you know. But as far as like being selling drugs
24 and being around, no, that's not me. I was in the wrong place
25 at the wrong time, I do agree with that, and I was very

1 remorseful and apologize to the courts and my family and --

2 THE COURT: Well, whenever someone says, I'm at the
3 wrong place at the wrong time, when people say that, they don't
4 really say I did something wrong.

5 DEFENDANT JACKSON: Yeah, I know, I do apologize for
6 being in the wrong --

7 THE COURT: You did do something wrong.

8 DEFENDANT JACKSON: Yeah, being around, you know,
9 certain people that I shouldn't have been around and I've been
10 told certain people you shouldn't be hanging around and, you
11 know, and I was from time to time. But as far as me seeing him,
12 witnessing -- because most of the time when I did go around
13 there and people would come up, he would like tell them to get
14 from around here, if I'm around there, he was high.

15 He hid a lot of things from me, you know, that I didn't
16 know of until just recently. A lot of stuff I'm finding out
17 recently. Like I said, I had been knowing him for a long time
18 as well.

19 But my thing is here, is that, you know, I want a
20 second chance 'cause, like I said, I serve -- in my camp now I
21 have over 150 kids now and everybody still looking for me. A
22 lot of them don't even know where I'm at, wondering where I'm
23 at. Like I said, I help provide kids scholarships, girls and
24 boys. I have some of the top players, girls and boys, in the
25 country that I still serve.

1 THE COURT: But it seems to me that that may be an
2 aggravating factor because you should have known better. What
3 do I do with that?

4 DEFENDANT JACKSON: Well, like I said, Judge, like I
5 said, I've made mistakes in my past and I really want to move on
6 because I know who the person I truly am and I know I owe my
7 community still a whole lot more than what I've already given.
8 And, you know, I just want the courts to just give me a chance
9 to -- like he said, you'll never see me in here again, or not my
10 name being mentioned nowhere around any activities, you know.

11 I really, you know, learned from this, these few months
12 being in here and, like I said, I'm just thankful that it
13 stopped when it did. And like I said, I got so much support
14 from my family, my neighborhood still supports me, and like I
15 said, maybe if I don't even get the gyms, what I give to my
16 community still, I'm still blessed, you know, at the same time.

17 THE COURT: Well, what say the probation officer, if
18 you want to say anything?

19 THE PROBATION OFFICER: I have nothing additional to
20 add, Your Honor.

21 THE COURT: Okay. See, I give you that second phrase
22 to help you out. I won't force anybody to say anything.

23 This is the problem that I've got, okay, you did plead
24 guilty to distribution of a detectable amount of cocaine, that's
25 what Count 2 is, not just using cocaine. Generally, in Federal

1 court we do not sentence people for just using cocaine unless
2 they violated supervised release, and then, of course, I revoke
3 supervised release, or at least I have a hearing and I generally
4 take them into custody. So I think there's a little bit of
5 denial, even though your lawyer is arguing that you've got a
6 drug problem, but the problem is, he's not the one who's going
7 to go to the drug treatment program.

8 You say in your Presentence Investigation Report,
9 paragraph 65 -- well, 64, substance abuse: The defendant began
10 to use cocaine in 1985 and divulged that he only used it twice
11 in college. He denied regular use of this drug and explained
12 that he was subject to random substance abuse testing while
13 employed with the Miami-Dade County Department of Parks,
14 Recreation and Open Spaces. He did not provide the last date
15 that he used the substance.

16 But on May 8, 2017, you submitted a urine sample which
17 tested positive for cocaine. On May 11th, a urine sample tested
18 positive for cocaine. And as a result, I issued the arrest
19 warrant and a hearing was held on June 1st. So there seems to
20 be a disconnect; no, you know, I really don't use regularly
21 cocaine, but then the only conclusion I can make, I only use it
22 when I'm arrested and I'm awaiting court, which would probably
23 be the worst time to use cocaine.

24 The only explanation for that would be that you are
25 addicted to cocaine and your lawyer says you are and you need

1 drug help, but I'm not sure that that in and of itself is a
2 sufficient basis since you pled guilty to Count 2. So that's my
3 concern in this case.

4 Do I think you're a good guy? Obviously, people think
5 you've been a great coach with a drug problem, and I recognize
6 that a lot of people in many professions, even airline pilots,
7 use drugs and it's very troublesome.

8 In your case, it's troublesome because of the example
9 and the dealing with kids. I do think that you'll suffer quite
10 a bit because you're going to lose your income and the
11 satisfaction that you have; but I do think there are some
12 redeeming qualities that, frankly, in order to prevent others
13 who use drugs, who are addicted, not to use drugs, it takes,
14 from my understanding -- that's how NA is, Narcotic Anonymous --
15 someone who uses drugs because those of us who don't, can only
16 preach without understanding how it destroys your life and how
17 it grips all parts of your life and it's better for someone
18 who's been there. So I recognize all of that.

19 The issue is: To what extent, if any, do I consider
20 that in sentencing you? And the one concern I have, I think
21 people -- I mean you have had -- you are in Criminal History
22 Category I, but, you know, some people are virgin ones, some
23 people are one-plus, and some people are one a little bit. You
24 had a couple of run-ins with the law, too. It's not like -- and
25 the issue, of course -- I'll accept the fact that you pled

1 guilty to Count 2. Remember we changed it from Count 1 to Count
2 in the Plea Agreement right then and there. You changed it
3 and it was an 841.

4 What should be the punishment? I will recommend the
5 substance abuse both while you're incarcerated and while you're
6 out. I'm not just going to give you probation or house arrest.
7 There's got to be a period of incarceration.

8 MR. VEREEN: Judge, may I speak real quickly?

9 THE COURT: Okay.

10 MR. VEREEN: One of my concerns is that if the Court is
11 inclined to sentence him to prison, he would not have an
12 opportunity do the RDAP program and get the one year off
13 based on the fact that --

14 THE COURT: Because I've got to give him enough time.

15 MR. VEREEN: Well, and I don't think he should be
16 given --

17 THE COURT: More time in order --

18 MR. VEREEN: Just for him to --

19 THE COURT: What is the cutoff?

20 MR. VEREEN: I am not sure, but I know it's going to
21 take more than six months for him to even be considered for the
22 program and, you know, the bottom of the guidelines, I think is
23 21 months. He's already been in for seven months, so you're
24 talking he'll get -- on 21 months, he will get four months gain
25 time, or at least three months gain time, so that's 10 months,

1 or even 11 months. He would be entitled to a year off if he
2 completed the RDAP program, but he won't even get that because
3 five months from then, he'll qualify for halfway house. So
4 he'll just sitting there for no reason --

5 THE COURT: Well, he will be sitting there as
6 punishment for what he did.

7 MR. VEREEN: I understand, but he will not be getting
8 the benefit of any drug program, is what I'm trying to say.

9 THE COURT: Does the probation officer agree that
10 that's how it will work?

11 THE PROBATION OFFICER: Your Honor, I don't have the
12 specifics as to how the RDAP program is run. I don't know what
13 the time period is.

14 THE COURT: It is true that when a sentence is too low
15 you don't get the benefit of that. That is true.

16 MR. VEREEN: And he would have to complete that, and if
17 he completed the RDAP program, which usually takes about six
18 months from my understanding, 500 hours, then he'll qualify to
19 get a year off of his sentence.

20 THE COURT: He would get a year off no matter what the
21 sentence is?

22 MR. VEREEN: He qualifies to get a year off.

23 THE COURT: Even if the sentence were low?

24 MR. VEREEN: If the sentence was low, then he won't get
25 a year off, because if he doesn't have a year to do, then

1 whatever time is remaining, you know -- but if he's going to a
2 halfway house the last six months -- that is why I say, what's
3 the use in the sense of drug treatment if he can afford drug
4 treatment on the outside and use own residence as a jail cell.

5 THE COURT: Well, because I think most residences are
6 nicer than most jails, wouldn't you agree?

7 MR. VEREEN: I would hope so.

8 THE COURT: Okay. And that's the reason. I'm not
9 enamored with house arrest because the only people who complain
10 about house arrest in their home are the very young who can't
11 stand being at home. But your client is how old?

12 MR. VEREEN: 53.

13 THE COURT: 53 years old. Most 53-year-olds would love
14 being at home watching sports, probably would watch a lot of
15 basketball on the side. Well, I can't -- he's got to do some
16 prison time, so the only question is how much, and some people
17 learn in a little bit of time enough, others don't, and that's
18 the problem.

19 The easiest thing for judges to do, of course, is just
20 give the bottom of the guidelines, get it over and done with.
21 I'm not suggesting that's a bad thing. That means that
22 everybody is treated fairly when we do that. I probably
23 complicate things by giving an upward variance like I did to his
24 codefendant, and I'm thinking of a downward variance, but I
25 can't go as low as that, even if it involves the lack of a drug

1 program being available. That's something the Bureau of Prisons
2 decides.

3 MR. VEREEN: He has done seven months.

4 MR. MONSOUR: Six months, Your Honor.

5 THE COURT: He gets automatic credit for everything
6 he's done in jail and I don't necessarily -- I don't punish
7 people for not wanting to cooperate, because that's not, I
8 think, appropriate. People get a benefit for that.

9 MR. VEREEN: Would the Court consider 366?

10 THE COURT: That means he would get out now.

11 MR. VEREEN: He would still have a couple of months to
12 do.

13 THE COURT: Yeah. All right. I will give a variance
14 downwards based upon his acceptance of responsibility and the
15 good that he has done in his life. We should always consider
16 the good and the bad. So somewhat reluctantly, I'll give a
17 variance.

18 It is the judgment of this Court that you, Ricardo
19 Jackson, be committed to the custody of the Bureau of Prisons
20 for a period of 18 months, a slight variance. Upon release from
21 imprisonment, you'll be placed on supervised release for six
22 years. There's a special assessment of \$100. I'll recommend
23 drug treatment in prison. If you don't get it, I'll also order
24 that you get it while you're on supervised release.

25 MR. VEREEN: Is that the RDAP program?

1 THE COURT: Whatever program they have. I don't
2 specify one, whatever drug program that he qualifies for.

3 MR. VEREEN: I think the Court has to specifically say
4 the RDAP program because there's one where they don't get credit
5 and there's one where they do.

6 THE COURT: And I guess that's the one where you get
7 credit, right?

8 MR. VEREEN: Yes, sir.

9 THE COURT: But I thought he wasn't going to get
10 credit.

11 MR. VEREEN: Well, I mean, that's going to be up to the
12 BOP.

13 THE COURT: Well, I'm going to leave it with drug
14 program. You know, those drug programs may not be around next
15 year, you never know. That's what I hear. Whether that's good
16 or bad, is not for me -- I think drug programs are good for
17 everybody. I'm even thinking we should drug test everybody,
18 including judges, I don't care, but I don't know if that would
19 be constitutional.

20 Now that I've imposed the sentence, other than the
21 length of the hearing, are there any objections to the findings
22 of fact, conclusions of law, manner of imposition of sentence or
23 reasonableness, from the defense?

24 MR. VEREEN: No, Judge.

25 THE COURT: From the Government?

1 MR. MONSOUR: No, Your Honor.

2 THE COURT: Did he give up the right to appeal?

3 MR. MONSOUR: Yes, Your Honor.

4 THE COURT: You gave up the right to appeal. The
5 Notice of Appeal would have to be filed within 14 days. Do you
6 understand that, Mr. Jackson?

7 DEFENDANT JACKSON: Yes, sir.

8 THE COURT: Do you wish to appeal this sentence below
9 the guidelines?

10 DEFENDANT JACKSON: No, sir.

11 MR. VEREEN: You've got to say it louder.

12 THE COURT: I'm sorry, I couldn't hear what you said.

13 DEFENDANT JACKSON: No, sir.

14 THE COURT: Are you satisfied with your lawyer?

15 DEFENDANT JACKSON: Yeah. Yes, sir.

16 THE COURT: Anyone force you to give up the right to
17 appeal?

18 DEFENDANT JACKSON: No, sir.

19 THE COURT: I find that the waiver of appellate rights
20 was freely and voluntarily entered and that you're represented
21 by more than competent counsel with whom you have expressed
22 satisfaction.

23 I also note that it doesn't seem like you're happy with
24 the downward variance. I hope that's not indicative of any
25 failure to accept responsibility.

1 Have as best of a year as you can under the
2 circumstances.

3 MR. MONSOUR: Thank you, Your Honor.

4 THE COURT: Thank you. Sorry it took so long.

5 (The hearing was concluded at 11:28 a.m.)

6

C E R T I F I C A T E

8 I hereby certify that the foregoing is an accurate
9 transcription of proceedings in the above-entitled matter.

10

11

06-03-18

12

DATE

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A - 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-20299-CR-MORENO

UNITED STATES OF AMERICA,
Plaintiff,
vs.

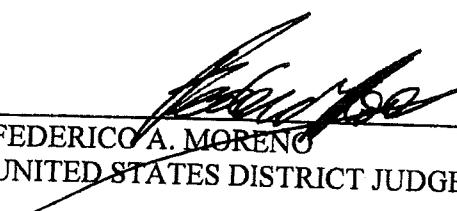
RICHARD JOHNSON
Defendant.

ORDER DENYING MOTION TO SUPPRESS PHYSICAL EVIDENCE
and
ORDER DENYING MOTION TO COMPEL

THIS CAUSE came before the Court upon defendant's motion to suppress physical evidence [D.E. #28] and defendant's motion to compel the government to disclose the identity of its confidential informant [D.E. #29]. It is

ORDERED and ADJUDGED that the Motions to Suppress and for Disclosure of the Confidential Informant are DENIED after conducting an in camera, on the record but sealed proceeding, with the Confidential Informant on October 10, 2017. There is an insufficient basis to conduct a *Franks* hearing regarding the search warrant nor does the informant provide any evidence helpful to the defense. *See Roviaro v. U.S.* 353 U.S. 53 (1957), *U.S. v. Razz*, 240 Fed. App'x 844 (11th Cir. 2007), *U.S. v. Votrobek*, 847 F.3d 1335 (11th Cir. 2017).

DONE and ORDERED in Open Court in Miami-Dade County Florida this 10th day of October, 2017 and signed this 12 day of October, 2017.


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:
All counsel of record

A - 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-20299-CR-MORENO

UNITED STATES OF AMERICA

vs.

RICHARD JOHNSON,

Defendant.

UNITED STATES OF AMERICA'S RESPONSE TO DEFENDANT'S MOTION TO
COMPEL THE GOVERNMENT TO DISCLOSE THE IDENTITY OF ITS
CONFIDENTIAL INFORMANT

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files this Response to the Defendant's Motion to Compel the Government to Disclose the Identity of its Confidential Informant (DE 29), and, in opposition, states as follows:

I. INTRODUCTION

On April 28, 2017, a grand jury in Miami, Florida indicted Defendant, Richard Johnson, with conspiracy to possess with intent to distribute, possession with intent to distribute, and maintaining a drug-involved premises, all within one thousand feet of a school. (DE 1). This case is set for trial on October 10, 2017. (DE 33).

On September 26, 2017, the Defendant filed the instant Motion. (DE 29). In the motion, the Defendant moves to compel the Government to disclose the identity of its confidential informant, pursuant to *Roviaro v. United States*, 353 U.S. 53 (1957). The Eleventh Circuit in *United States v. Gutierrez*, 931 F.2d 1482 (11th Cir 1985), summarized the factors for determining whether the Government should be so compelled: (1) the extent of the informant's participation in

the criminal activity; (2) the directness of the relationship between the defendant's asserted defense and the probable testimony of the informant; and (3) the Government's interest in nondisclosure. *Id.* at 1490.

II. ANALYSIS

The Eleventh Circuit case of *United States v. Razz*, 240 Fed. App'x 844 (11th Cir. 2007) is dispositive that the Defendant's motion should be denied. Faced with the same facts as here, the *Razz* court held that the defendant had failed to meet his burden on the first factor because, “[t]he CI's controlled buys played no direct relationship to the criminal conduct charged, but rather served solely as the basis to secure the search warrants of Razz's residences.” *Id.* at 848 (citing *United States v. Alfonso*, 552 F.2d 605, 618 (5th Cir. 1977)). As is the case here, the defendant in *Razz* was charged with possession with intent to distribute and maintaining a drug-involved premises, which came after and were not connected to the controlled buys with the CI. *Id.* Accordingly, the Defendant has failed to meet his burden with respect to the first factor under *Gutierrez*.

The court in *Razz* found that the defendant could likewise not meet his burden with respect to the second factor, because even if the CI would testify that the defendant was not present during the controlled buys,¹ that would have no bearing on the defendant's charged conduct, which did not involve the CI. *Id.* Indeed, here, the Defendant is explicit that “[o]nly the CI can identify the individual who sold the narcotics to him which resulted in the issuance of a search warrant.” Mot at 2. As in *Razz*, that testimony would be unrelated to the charges, and not aid the Defendant's defense. Accordingly, the Defendant has failed to meet his burden with respect to the second factor under *Gutierrez*.

¹ The court noted this was a wholly speculative proposition, as it would be here.

Finally, the *Razz* court found that there had been a legitimate Government interest in nondisclosure to protect the CI. *Id.* Here, Johnson concedes that the Government “undoubtedly has an interest in protecting the identity of the [CI]” Mot. at 3. He argues only that it is outweighed by the first two factors. For the reasons stated, those factors cannot outweigh the Government’s obvious interest in maintaining the confidential nature of the CI’s identity. Accordingly, the Defendant has failed to meet his burden with respect to the third factor under *Gutierrez*.

III. CONCLUSION

For the foregoing reasons, the Government submits that the Court should deny the Defendant’s motion to compel the Government to disclose the identity of its confidential informant.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By: /s/ Franklin G. Monsour
FRANKLIN G. MONSOUR
Assistant United States Attorney
Florida Bar No.: A5501761
99 N.E. 4th Street
Miami, Florida 33132
Telephone: (305) 961-9128
Facsimile: (305) 530-7139
Email: Franklin.Monsour@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 2, 2017 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Franklin G. Monsour

Franklin G. Monsour
Assistant United States Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-20299-CR-MORENO

UNITED STATES OF AMERICA

vs.

RICHARD JOHNSON,

Defendant.

UNITED STATES OF AMERICA'S RESPONSE TO DEFENDANT'S MOTION TO
SUPPRESS PHYSICAL EVIDENCE

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files this Response to the Defendant's Motion to Suppress Physical Evidence (DE 28), and, in opposition, states as follows:

I. INTRODUCTION

On April 28, 2017, a grand jury in Miami, Florida indicted Defendant, Richard Johnson, with conspiracy to possess with intent to distribute, possession with intent to distribute, and maintaining a drug-involved premises, all within one thousand feet of a school. (DE 1). This case is set for trial on October 10, 2017. (DE 33).

On September 26, 2017, the Defendant filed the instant Motion to Suppress Physical Evidence. (DE 28). In the motion, the Defendant requests a *Franks* hearing, alleging that the search warrant obtained to search Johnson's residence was based on deliberately or recklessly false statements by the affiant for the search warrant, Miami Gardens Police Detective and ATF-TFO Onassis Perdomo. The Defendant's motion should be denied without a hearing, as the Defendant

has barely alleged, let alone, made a “substantial preliminary showing” of any falsehoods. *See Franks v. Delaware*, 438 U.S. 154, 155-56 (1978).

II. FACTUAL BACKGROUND

The search warrant at issue in this case was submitted, signed, and executed on January 19, 2017. The subject of the search warrant was the residence located at 19220 N.W. 35 Ave., Miami Gardens, Florida (“Johnson’s residence”). *See Exhibit 1 (Search Warrant)*. The search warrant for Johnson’s residence was requested to search for drugs and evidence of drug sales and distribution. *See Ex. 1 at 2*. Detective Perdomo was the affiant and affirmed in his affidavit that he had surveilled Johnson’s residence during the month of January and had witnessed Johnson perform multiple hand-to-hand drug deals from the residence. *Id. at 4*. In addition, Detective Perdomo affirmed that he had overseen controlled drug buys utilizing a confidential informant (“CI”) on two occasions, January 11 and January 17. *Id. at 4-6*. For both controlled buys, Detective Perdomo witnessed the CI make the drug purchases from Johnson, retrieved the drugs from the CI, and tested the drugs, which on both occasions tested positive for cocaine. *Id.* Detective Perdomo further included his experience and qualifications, which includes 14 years’ experience investigating street level narcotics sales in South Florida. *Id. at 3*.

Detective Perdomo did not include the events of the day, January 19, which led to Johnson’s arrest. Those events included witnessing Johnson make several hand-to-hand drugs deals with approaching males outside of his residence in the one-hour period leading up to his arrest. Detective Perdomo and other officers made the final call to move in and detain Johnson when he was seen giving a paper bag to a child. It turned out that the bag did not contain contraband. However, at that time, and based on the other hand-to-hand transactions witnessed, Johnson’s arrest and a search of his person yielded two Altoid cans in his pants pocket containing

crack cocaine and cocaine packaged for distribution, specifically, 22 individual baggies of crack cocaine and 8 individual baggies of powder cocaine.

III. LEGAL STANDARD

The Fourth Amendment protects individuals from unreasonable search and seizure. U.S. Const. Amend. IV. However, it is well-settled that “[p]robable cause to support a search warrant exists when the totality of the circumstances allow a conclusion that there is a fair probability of finding contraband or evidence at a particular location.” *United States v. Brundidge*, 170 F.3d 1350, 1352 (11th Cir. 1999). And law enforcement officers may seize items found on one’s person (and even in their vicinity) incident to a lawful arrest. *See United States v. Chimel*, 395 U.S. 752, 762-63 (1969); *Arizona v. Gant*, 556 U.S. 332, 343 (2009); *United States v. Floyd*, 281 F.3d 1346, 1348 (11th Cir. 2002); *United States v. Gomez, et al.*, 807 F. Supp. 2d 1134, 1141 (S.D. FL. 2011).

In *Franks v. Delaware*, 438 U.S. 154 (1978), the Supreme Court held that:

where the defendant 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 [search] warrant affidavit, and if the allegedly false statement is *necessary to the finding of probable cause*, the Fourth Amendment requires that a hearing be held at the defendant’s request.

Id. at 155-56 (emphasis added). “Allegations of negligence or innocent mistake are insufficient, and the defendant’s attack must be more than conclusory and must be supported by more than a mere desire to cross-examine.” *United States v. Votrobek*, 847 F.3d 1335, 1342 (11th Cir. 2017). Moreover, even if factual omissions in an affidavit supporting a search warrant are found to be intentional or in reckless disregard of the truth, it must be shown that their inclusion would have changed the finding of probable cause, for an evidentiary hearing to be warranted. *See United States v. Murray*, 625 Fed. App’x 955, 957 (11th Cir. 2015).

IV. ARGUMENT

In his motion, Johnson first asserts, with no citation, that during a State deposition, Detective Perdomo could not remember how much the CI was paid, or whether he was paid by the Miami Gardens Police Department or the ATF (Detective Perdomo works for both). *See Mot. at 3.* But this information was not material to the probable cause that supported the search warrant at issue. First, it concerns Detective Perdomo's memory months after the search warrant was obtained. Second, Detective Perdomo affirmed in his affidavit in support of the search warrant that he personally witnessed the CI's buys, as well as other drug buys made by others. *See Exhibit 1 at 4 and 6.* Johnson offers no evidence that Detective Perdomo's statements in this regard were false in any way.

Johnson next states that no photographs of the drugs seized or reports concerning the January 11, 2017 controlled buy were provided to the defense in discovery. *See Mot. at 4.* The defense had pointed this deficiency out to the undersigned prosecutor prior to filing the current motion. In response, the undersigned prosecutor provided those materials to the defense prior to the filing of the current motion. That production notwithstanding, those materials exist, and always did. Johnson's assertion here is simply incorrect, which he now clearly knows. Moreover, the affidavit in support of the search warrant listed the controlled buys on January 11 and January 17, as well as other hand-to-hand buys Detective Perdomo witnessed the Defendant perform from his residence. Those representations are what contributed to the finding of probable cause in support of the search warrant, and again, there is no showing that those representations were false in any way.¹

¹ The Defendant makes reference to a complaint filed against Detective Perdomo from several years before the search warrant at issue here – a complaint that was not sustained and for which no action at all was taken against Detective Perdomo. To be clear, the Defendant has put forward no evidence that any impropriety by Detective

Johnson further complains that the affidavit did not include when Detective Perdomo and other law enforcement officers actually arrested Johnson. As a preliminary matter, Johnson has not challenged the probable cause for his arrest, or the search of his person incident to arrest. And for good reason: the multiple hand-to-hand deals the officers witnessed Johnson perform on January 19, 2017, alone, supported the arrest. Furthermore, by pointing out that Detective Perdomo's affidavit was not comprehensive, as it was not required to be, the defense only underscores the considerable amount of evidence supporting probable cause for the search warrant that was not included. Detective Perdomo did not include in the affidavit any events of the day the search warrant was obtained, January 19, 2017, including, as the evidence produced in this case shows, witnessing Johnson perform multiple hand-to-hand drug deals the hour before arresting him.

Indeed, this provides the context for another of Johnson's complaints, concerning Johnson giving a child a paper bag. *See* Mot. at 6-7. It was the multiple hand-to-hand deals with approaching males that caused Detective Perdomo and other officers to move in on Johnson's residence when they saw him give a paper bag to a child; that was the final straw, prompting the officers to act. The act of giving the child a paper bag was not seen in isolation. Finally, while fortunately the bag Johnson gave to the child did not contain contraband, Johnson's motion makes only passing reference to one salient fact: drugs were found on Johnson's person. More specifically, officers found two Altoid cans with 22 individual baggies of crack cocaine and 8 individual baggies of powder cocaine in Johnson's pants pocket. In this context, it is difficult to understand how Detective Perdomo's actions concerning the child could call his experience and training into question.

Perdomo occurred regarding the CI used in support of the search warrant, or the other hand-to-hand drug deals Detective Perdomo witnessed.

The circumstances of Johnson's arrest, although not included in the affidavit in support of the search warrant, only further established probable cause to search Johnson's residence. And of course, none of these facts negate or counter the evidence proffered by Detective Perdomo in his affidavit, on which probable cause for the search warrant was found.

In sum, the Defendant does not assert any allegation that amounts to a "substantial preliminary showing" that Detective Perdomo made "a false statement knowingly and intentionally, or with reckless disregard for the truth" in the affidavit in support of the search warrant. *See Franks v. Delaware*, 438 U.S. at 155-56. At most, Johnson has predicated his motion on an incorrect claim that documentation concerning the January 11, 2017 controlled buy did not exist, and an incredulous possibility that Detective Perdomo's failure to mention in his affidavit that the bag he witnessed Johnson give to a child did not contain contraband, would have somehow undermined his training and experience such that it would have negated the probable cause supporting the search warrant. Such conclusory claims cannot support a *Franks* hearing, *see Votrobek*, 847 F.3d at 1342, nor can omissions that would not have negated a finding of probable cause, *see Murray*, 625 Fed. App'x at 957.

V. CONCLUSION

For the foregoing reasons, the Government submits that the Court should deny the Defendant's motion to suppress.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By: /s/ Franklin G. Monsour
FRANKLIN G. MONSOUR
Assistant United States Attorney
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Facsimile: (305) 530-7139
Email: Franklin.Monsour@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 2, 2017 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Franklin G. Monsour
Franklin G. Monsour
Assistant United States Attorney

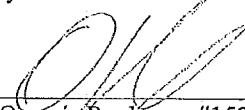
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

**AFFIRMATION OF AFFIANT THAT SEARCH WARRANT AND AFFIDAVIT
WERE REVIEWED BY AN ASSISTANT STATE ATTORNEY**

Your Affiant, Detective Onassis Perdomo, Court Identification Number #153 of the Miami Gardens Police Department, hereby affirms that on Thursday, January 19, 2017, the Search Warrant and Affidavit for the premises described below was reviewed by Miami-Dade County Assistant State Attorney Katheline Cortes.

"The Premises" described as: 19220 NW 35 Avenue, Miami Gardens, Miami-Dade County, Florida, there being a multi-family duplex. "The Premises" to be searched is the Second dwelling South from NW 193 Street and is on the West side of NW 35 Avenue. The dwelling is light red in color with a white trim and a dark roof. The entry door of "The Premises" to be searched is a black iron gate located on the East wall, faces East and is the First door North from the Southern wall.. The numbers "19220" are displayed on the East wall of "The Premises" just South of the entry door.



Detective Onassis Perdomo, #153
Miami Gardens Police Department

STATE OF FLORIDA, COUNTY OF MIAMI-DADE:

Sworn to and subscribed before me this 19th day of JANUARY, 2017, by
Sgt. Hector Kidder H2 #26,

Notary Public, State of Florida
 Personally Known
 Produced Identification
Type: _____

IN THE CIRCUIT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

AFFIDAVIT FOR SEARCH WARRANT

Before me, Jose L. Fernandez, a Judge of the Circuit Court of the Eleventh Judicial Circuit of Florida, electronically appeared Detective Onassis Perdomo, of the Miami Gardens Police Department, Badge #153. "Your Affiant", who being first duly sworn by Sergeant Heather Kidder deposes and says that he has probable cause to believe and does believe that evidence and an instrumentality and contraband relating to a felony is located at the below described premises, which is located in Miami-Dade County, Florida, and hereinafter referred to as "The Premises". *Sergeant Heather Kidder 15-L #761*

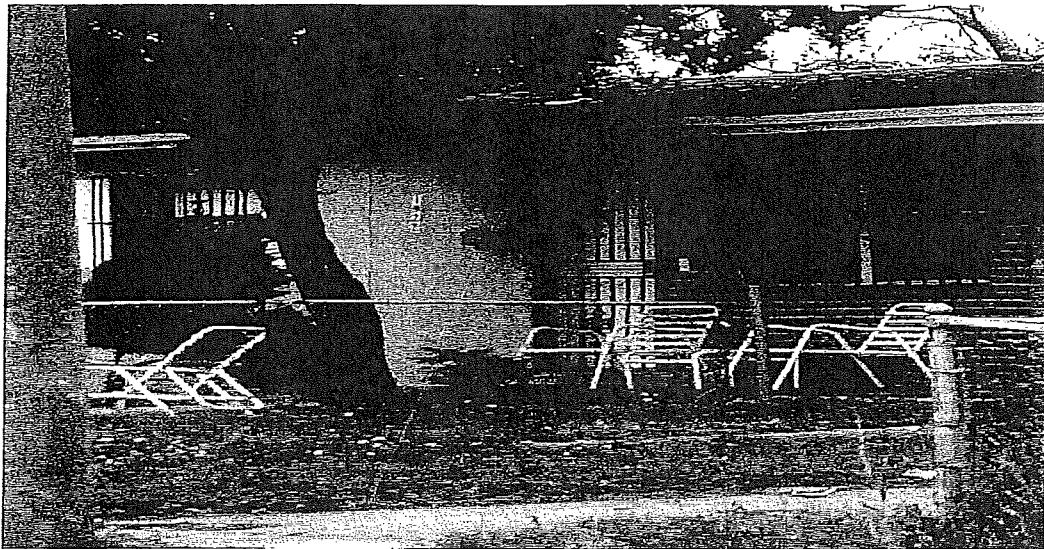
DESCRIPTION OF THE PREMISES TO BE SEARCHED

19220 NW 35 Avenue
Miami Gardens, Florida

"The Premises" described as: 19220 NW 35 Avenue, Miami Gardens, Miami-Dade County, Florida, there being a multi-family duplex. "The Premises" to be searched is the Second dwelling South from NW 193 Street and is on the West side of NW 35 Avenue. The dwelling is light red in color with a white trim and a dark roof. The entry door of "The Premises" to be searched is a black iron gate located on the East wall, faces East and is the First door North from the Southern wall. The numbers "19220" are displayed on the East wall of "The Premises" just South of the entry door.

AFFIANT OP JUDGE JF

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STATUTE(S) BEING VIOLATED

Florida Statute 893.13(1)(C)1, Cocaine Poss. W/ Intent To Sell 1000 feet from a school

Florida Statute 893.1351(2), Possession of a Place for Purposes of Trafficking/Sales

PROPERTY SOUGHT

“Your Affiant” and the officers, agents, and investigators of the above referenced agency seek to seize the below-described evidence related to narcotic and/or drug abuse including but not limited to: powder cocaine, or any other controlled substance unlawfully held, records of narcotic manufacturing distribution activity including records, papers, tally sheets, ledgers, address books, other papers regarding narcotics manufacturing, or distribution, U.S. Currency, titles, receipts, records and/or photographs evidencing illegal activity, weapons, firearms, U.S. Currency and other records indicating the owner or the legal resident of “The Premises”, and/or documents which would lead to the identification of individuals involved in this illegal activity hereinafter referred to as “The Property.”

GROUNDS FOR ISSUANCE

Evidence relevant to proving that a felony has been committed is contained therein.

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Additionally, some of the aforementioned items were used as an instrumentality of the crimes committed and narcotics are contained therein. The facts establishing the grounds for this affidavit and the probable cause for believing that such facts exist are detailed below.

PROBABLE CAUSE

"Your Affiant" has been a Police Detective with the City of Miami Gardens Police Department for (9) nine years and is presently assigned to the Special Investigations Section, Career Criminal Unit. "Your Affiant" has also been assigned to the Bureau of Alcohol Tobacco and Firearms (ATF) Task Force, Fire Strike Group I for approximately 5 years. Prior to joining Miami Gardens "Your Affiant" worked for the Miccosukee Police Department for approximately (5) five years. "Your Affiant" has approximately (14) fourteen years' experience investigating street level narcotics sales in the South Florida area while working with the Miami Gardens Police Department and the Miccosukee Police Department. "Your Affiant" has received training in the identification of Narcotics and Dangerous Drugs from the Miami Dade Departments Training Bureau and The Law Enforcement Training Association, Inc. Throughout "Your Affiant's" career he has participated in over 500 narcotics investigations, over 500 narcotics arrests, conducted and participated in over 300 narcotics search warrants and has investigated over 100 Marijuana Hydroponics Laboratory. "Your Affiant" has interviewed numerous persons arrested on narcotics charges and viewed many forms of narcotics, consisting of, but not limited to, Cocaine, Crack Cocaine, Heroin, Ecstasy, and Marijuana cultivated through traditional and hydroponics methods. "Your Affiant's" training and experience has made him familiar with the manner, in which narcotics are prepared, distributed, stored and sold in the South Florida area. "Your Affiant" has reason to believe, and does believe that narcotics, to wit: Crack cocaine is being concealed and/or stored at "The Premises" in violation of F.S.S. 893.13.

"Your Affiant's" reasons for the belief that "The Premises" is being used as aforesaid and that "The Property" listed above is being concealed and stored at "The Premises" is as follows:

AFFIANT D JUDGE J

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During the month of December 2016 "Your Affiant" received information from a person who wanted to remain anonymous about a location that was being used for the purpose of trafficking narcotics. The anonymous person advised that marijuana, crack cocaine and powder cocaine were being sold from the location at all times of the day. The anonymous person gave a numerical address on the suspected narcotics trafficking location of, 19220 NW 35 Avenue Miami Gardens, Florida.

During the month of January 2017, "Your Affiant" conducted surveillance on "The Premises" and observed an unknown black male approach. "Your Affiant" then observed a thin, short, black male exit "The Premises" and made a hand to hand transaction at the front door with the unknown black male who had approached. The unknown black male then left the area as the suspected seller entered "The Premises".

"Your Affiant" continued to conduct surveillance on "The Premises" and a short time later observed a second unknown black male approach. "Your Affiant" again observed the same thin, short, black male exit "The Premises" and made a hand to hand transaction with the unknown black male that had approached. The unknown black male then left the area.

On January 11, 2017 "Your Affiant" conducted a controlled purchase of powder cocaine from "The Premises" using a Miami Gardens Police Department Registered/Reliable "CI" and Miami Gardens Police Department Official Funds. "Your Affiant", assisting detectives and the "CI" met at a pre-disclosed location to discuss the operational plan. The "CI" was then searched by "Your Affiant" for any illegal narcotics/ currency and nothing was found on her/him. This "CI" has proven to be reliable in the past. The "CI" was then given twenty dollars (\$20) of Miami Gardens Police Department Official Funds and advised to attempt to purchase narcotics from "The Premises". "Your Affiant" then dropped off the "CI" in the area and kept constant surveillance on the "CI" from the drop off location to "The Premises". "Your Affiant" observed the "CI" arrive at "The Premises" and make contact with an unknown black male at the front entry. "Your Affiant" then observed a hand to hand transaction at the front door of "The Premises"

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between the "CI" and the unknown black male. "Your Affiant" followed the "CI" and kept constant surveillance on the "CI" from "The Premises" to the pick-up location. "Your Affiant" picked up the "CI" and upon the "CI" entering "Your Affiant's" vehicle, the "CI" immediately relinquished one zip lock bag from her/his right hand that contained powder cocaine. "Your Affiant" then drove the "CI" back to the pre disclosed meeting location.

Upon arriving at the pre disclosed meeting location, the "CI" was search again by "Your Affiant" for any illegal narcotics/ currency and nothing was found. "Your Affiant" then debriefed the "CI" and the "CI" advised that upon arriving at the front door of "The Premises" contact was made with an unknown black male. The "CI" advised that the front door of "The Premises" was open and the front iron gate was closed. The CI advised that she/he asked the unknown black male for a dub of white (Street term for \$20 dollar bag of powder cocaine) and the unknown male grabbed a large clear zip lock bag from the inside of "The Premises" that contained multiple smaller zip lock baggies. The "CI" advised that the unknown black male reached in the larger bag and removed one smaller zip lock bag. The "CI" advised that he/she then gave the unknown black male the twenty dollars (\$20) of Miami Gardens Police Department Official Funds and in return received a zip lock bag containing powder cocaine. The "CI" advised that she/he just left the area until picked up by "Your Affiant".

The "CI" described the narcotics seller as a thin, short, black male. The "CI" advised that the black male appeared to be between 50 to 55 years old and possibly missing some teeth. The "CI" advised that the narcotics seller appeared to be wearing a plastic necklace with a cross.

"Your Affiant" conducted a narcotics field test on the suspect powder cocaine using the NARCOTEST kit which revealed positive results for the presence of cocaine.

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The narcotics where impounded at the MGPD Station under case number 2017-000743 and subsequently will be taken to the MDPD Lab under case number PD170111-014858 for further analysis.

On January 17, 2017 "Your Affiant" conducted a controlled purchase of powder cocaine from "The Premises" using a Miami Gardens Police Department Registered/Reliable "CI" and Miami Gardens Police Department Official Funds. "Your Affiant", assisting detectives and the "CI" met at a pre-disclosed location to discuss the operational plan. The "CI" was then search by "Your Affiant" for any illegal narcotics/ currency and nothing was found on her/him. This "CI" has proven to be reliable in the past. The "CI" was then given twenty dollars (\$20) of Miami Gardens Police Department Official Funds and advised to attempt to purchase narcotics from "The Premises". "Your Affiant" then dropped off the "CI" in the area and kept constant surveillance on the "CI" from the drop off location to "The Premises". "Your Affiant" observed the "CI" arrive at "The Premises" and make contact with an unknown black male at the front entry. "Your Affiant" then observed a hand to hand transaction at the front door of "The Premises" between the "CI" and the unknown black male. "Your Affiant" followed the "CI" and kept constant surveillance on the "CI" from "The Premises" to the pick-up location. "Your Affiant" picked up the "CI" and upon the "CI" entering "Your Affiant's" vehicle, the "CI" immediately relinquished one zip lock bag from her/his right hand that contained powder cocaine. "Your Affiant" then drove the "CI" back to the pre disclosed meeting location.

Upon arriving at the pre disclosed meeting location, the "CI" was search again by "Your Affiant" for any illegal narcotics/ currency and nothing was found. "Your Affiant" then debriefed the "CI" and the "CI" advised that upon arriving at the front door of "The Premises" contact was made with an unknown black male. The CI advised that she/he asked the unknown black male for a dub of white (Street term for \$20 dollar bag of powder cocaine) and the unknown male grabbed a small metal can from the living room area of "The Premises". The "CI" then said that he/she gave the unknown black male the twenty dollars (\$20) of Miami Gardens Police Department Official Funds and the

AFFIANT PF JUDGE JF

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unknown black male gave her/him the zip lock bag with powder cocaine.. The "CI" advised that she/he just left the area until picked up by "Your Affiant".

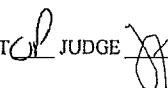
The "CI" described the narcotics seller as a thin, short, black male. The "CI" advised that the black male appeared to be between 50 to 55 years old and possibly missing some teeth. The "CI" advised that the narcotics seller appeared to be wearing a plastic necklace with a cross. The same black male from the first narcotics controlled buy.

"Your Affiant" conducted a narcotics field test on the suspect powder cocaine using the NARCOTEST kit which revealed positive results for the presence of cocaine.

The narcotics where impounded at the MGPD Station under case number 2017-000743 and subsequently will be taken to the MDPD Lab under case number PD170111-014858 for further analysis.

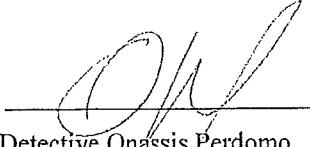
Based on the foregoing, your affiant has probable cause to believe and does believe that the laws of the State of Florida relating to narcotic abuse is being violated within the premises and furthermore that evidence relating to felony offenses are located therein and prays that this search warrant issue.

WHEREFORE, "Your Affiant" prays that a search warrant be issued commanding the Director of the Miami-Dade Police Department, Miami-Dade County, Florida, who is also known as the Sheriff of Metropolitan Miami-Dade County, Florida, or his Deputies, and the Commissioner of the Florida Department of Law Enforcement, or any of his duly constituted agents, the Director of the Bureau of Alcohol Tobacco and Firearms, or any of his duly qualified special agents and all Investigators of the State Attorney of the Eleventh Judicial Circuit of Florida, and to Chief of Police for the City of Miami Gardens, or any of his duly qualified officers, Miami-Dade County, Florida, with the proper and necessary assistance, to search "The Premises" above-described, for "The Property" above-described, making the search in the daytime or the nighttime, as the

AFFIANT  JUDGE 

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exigencies may demand or require, or on Sunday, and if the same be found at "The Premises" to seize the same as evidence and arrest any person in the unlawful possession thereof.



Detective Onassis Perdomo
AFFIANT

SWORN TO AND SUBSCRIBED before me this 19th day of JANUARY, 2017.



Sergeant Heather Kidder
Miami Gardens Police Department
Badge 261

AFFIANT OF JUDGE JF

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IN THE CIRCUIT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

SEARCH WARRANT

The Director of the Miami-Dade Police Department, Miami-Dade County, Florida, who is known as the Sheriff of Metropolitan Miami-Dade County, Florida, or his Deputies, and the Commissioner of the Florida Department of Law Enforcement, or any of his duly constituted Agents, the Director of the Bureau of Alcohol Tobacco and Firearms, or any of his duly qualified special agents and all Investigators of the State Attorney of the Eleventh Judicial Circuit of Florida, and the Chief of Police for the City of Miami Gardens, or any of his duly qualified officers. Affidavit having been made by Onassis Perdomo of the Miami Gardens Police Department Identification Number of #153, a detective with the City of Miami Gardens Police Department Career Criminal Unit, who being first duly sworn by Sergeant Heather Kidder, *Sergeant Heather Kidder #261*, deposes and says that he has probable cause to believe and does believe that the property constitutes evidence relevant to proving that a felony has been committed, at the below described premises, which is located in the City of Miami Gardens in Miami-Dade County, Florida, and hereinafter referred to as "The Premises."

DESCRIPTION OF THE PREMISES TO BE SEARCHED (DWELLING)

19220 NW 35 Avenue

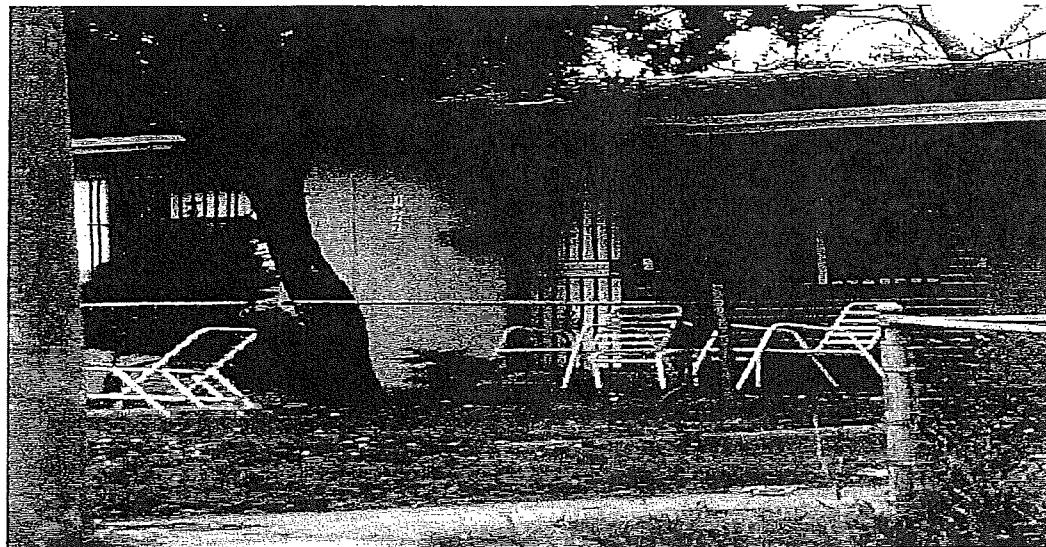
Miami Gardens, Florida

"The Premises" described as: 19220 NW 35 Avenue, Miami Gardens, Miami-Dade County, Florida, there being a multi-family duplex. "The Premises" to be searched is the Second dwelling South from NW 193 Street and is on the West side of NW 35

AFFIANT OF JUDGE JF

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Avenue. The dwelling is light red in color with a white trim and a dark roof. The entry door of "The Premises" to be searched is a black iron gate located on the East wall, faces East and is the First door North from the Southern wall. The numbers "19220" are displayed on the East wall of "The Premises" just South of the entry door.



STATUTE(S) BEING VIOLATED

Florida Statute 893.13(1)(C)1, Cocaine Poss. W/ Intent To Sell 1000 feet from a school

Florida Statute 893.1351(2), Possession of a Place for Purposes of Trafficking/Sales

PROPERTY SOUGHT

"Your Affiant" and the officers, agents, and investigators of the above referenced agency seek to seize the below-described evidence related to narcotic and/or drug abuse including but not limited to: powder cocaine, or any other controlled substance unlawfully held, records of narcotic manufacturing distribution activity including records, papers, tally sheets, ledgers, address books, other papers regarding narcotics manufacturing, or distribution, U.S. Currency, titles, receipts, records and/or photographs evidencing illegal activity, weapons, firearms, U.S. Currency and other records indicating

AFFIANT OP JUDGE X

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the owner or the legal resident of "The Premises", and/or documents which would lead to the identification of individuals involved in this illegal activity hereinafter referred to as "The Property."

GROUND FOR ISSUANCE

The facts upon which the Affiant's belief is based have been stated under oath and are set out in the Affiant's AFFIDAVIT FOR SEARCH WARRANT. These facts are now incorporated herein and made a part of this SEARCH WARRANT.

NOW THEREFORE, the facts upon which the belief of said Affiant is based as set out in said AFFIDAVIT FOR SEARCH WARRANT are hereby deemed sufficient to show probable cause for the issuance of a Search Warrant in accordance with the application of the Affiant. And as I am satisfied that there is probable cause to believe that "The Property" described below is being concealed and stored at "The Premises" above-described, I find probable cause for the issuance of this Search Warrant.

PROPERTY SOUGHT

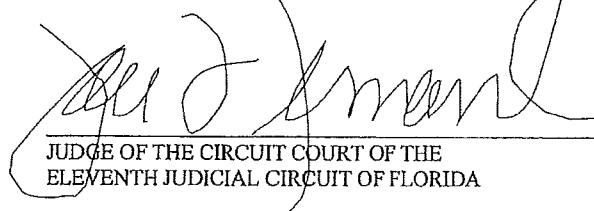
This Court authorizes the officers, agents and investigators of the above referenced agencies to search "The Premises" described above and seize the below-described evidence with the proper and necessary assistance of civilians, and further, to conduct a forensic examination of any of the listed items, if necessary, to wit: powder cocaine, or any other controlled substance unlawfully held, records of narcotic manufacturing distribution activity including records, papers, tally sheets, ledgers, address books, other papers regarding narcotics manufacturing, or distribution, U.S. Currency, titles, receipts, records and/or photographs evidencing illegal activity, weapons, firearms, U.S. Currency and other records indicating the owner or the legal resident of "The Premises", and/or documents which would lead to the identification of individuals involved in this illegal activity hereinafter referred to as "The Property."

AFFIANT CL JUDGE X

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YOU ARE HEREBY COMMANDED to enter and search "The Premises" for "The Property" above-described, and all spaces therein, and all persons therein, and the curtilage thereof, including all vehicles and/or temporary structures within the curtilage for "The Property" above-described, serving this warrant and making the search in the Daytime or the Nighttime, as the exigencies may demand or require, or on Sunday, with the proper and necessary assistance, within ten (10) days from the date of issuance and if "The Property" above-described be found there, to seize the same evidence and to arrest all persons in the unlawful possession thereof, leaving a copy of this Warrant and a receipt for the property taken and prepare a written inventory of the property seized and return this Warrant before a court having competent jurisdiction of the offense within ten (10) days from the date of execution as required by law.

WITNESS MY HAND and seal this the 14 day of January,
2017.



JUDGE OF THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

AFFIANT RF JUDGE JF

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 17-20299-CR-MORENO

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD JOHNSON,

Defendant.

**MOTION TO TO COMPEL THE GOVERNMENT TO
DISCLOSE THE IDENTITY
OF ITS CONFIDENTIAL INFORMANT**

Richard Johnson, through the undersigned counsel, pursuant to *Roviaro v. United States*, 353 U.S. 53 (1957), moves to compel the Government to disclose the identity of its confidential informant in the above-captioned matter. The grounds for this motion are:

1. 1. Mr. Johnson was charged by indictment on April 28, 2017 with conspiracy to possess with intent to distribute narcotics within 1,000 feet of a school, possession with intent to distribute narcotics within 1,000 feet of a school and maintaining a premises for the purpose of distributing a controlled substance within 1,000 feet of a school. DE 1.

2. The basic facts of this case according to the government are that an anonymous source contacted Miami Gardens police and stated that narcotics were being sold out of a house located at 19220 NW 35th Avenue, Miami Gardens. Subsequently, on two occasions, a confidential source (“CS”) who was being paid for his participation, approached that residence and made controlled purchases from an individual at the home. Police surveillance indicated that at least two individuals, Mr. Johnson and his codefendant, Mr. Jackson, were frequently present in the home. Only the CI can identify the individual who sold the narcotics to him which resulted in the issuance of a search warrant.

2. The Eleventh Circuit has set forth a three-factor test for determining whether the Government should be compelled to disclose the identity of its confidential informant: (1) the extent of the informant’s participation in the criminal activity; (2) the directness of the relationship between the defendant’s asserted defense and the probable testimony of the informant; and (3) the government’s interest in nondisclosure. *United States v. Gutierrez*, 931 F.2d 1482, 1490 (11th Cir. 1991); *United States v. Tenorio-Angel*, 756 F.2d 1505, 1509 (11th Cir. 1985).

3. Here, the balancing test described above clearly weighs in favor of disclosure. Here, a confidential source who undoubtedly had enormous

incentive (either help in his own criminal matters or cash) to provide the information the Miami Gardens police were seeking. The defense needs to know who the confidential source is, what payment or consideration he received for participating in this investigation, whether the confidential source has a criminal record, how many times the confidential source purchased narcotics at the scene and the identity of the narcotics seller. This is the only way to determine whether Mr. Johnson was actually engaged in the drug sales knowingly and intentionally.

4. While the Miami Gardens police department undoubtedly has an interest in protecting the identity of the source, Mr. Johnson has a Constitutional right to present an adequate and complete defense. He is unable to do so and defense counsel must know the identity of the source (i.e. his specific legal name and birthdate) in order to properly investigate the confidential source, obtain his/her criminal record, and subpoena him/her.

REQUEST FOR RELIEF

WHEREFORE, Mr. Johnson, through undersigned counsel, moves this Honorable Court for the entry of an order compelling the Government to disclose the identity of its confidential source in this case.

Respectfully Submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

BY: s/R. D'Arsey Houlihan

R. D'Arsey Houlihan

Supervisory Assistant Federal Public Defender
Florida Bar No. 100536

150 W. Flagler Street, Suite 1700

Miami, Florida 33130-1556

(305) 530-7000

(305) 536-4559, Fax

E-Mail: d'arsey_houlihan@fd.org

CERTIFICATE OF SERVICE

I HEREBY certify that on **September 26, 2017**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/R. D'Arsey Houlihan
R. D'Arsey Houlihan

A - 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 17-20299-CR-MORENO

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD JOHNSON,

Defendant.

MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant, Richard Johnson, through undersigned counsel, respectfully requests that the court grant his motion to continue the trial date for thirty days and states the following in support of said motion.

1. Mr. Johnson was charged by indictment on April 28, 2017 with conspiracy to possess with intent to distribute narcotics within 1,000 feet of a school, possession with intent to distribute narcotics within 1,000 feet of a school and maintaining a premises for the purpose of distributing a controlled substance within 1,000 feet of a school. DE 1.
2. Mr. Johnson moves to suppress the evidence seized at the time of his arrest from his person and from the residence where he was residing. A search warrant was issued (exhibit 1, attached) authorizing the

search of the residence, however, the warrant was obtained through materially false statements and materially false omissions.

Factual Background

On January 19, 2017, Miami Gardens police officers seized Mr. Johnson in the front of his residence as he handed a bag they suspected contained narcotics to an individual. Mr. Johnson was flung to the ground and the bag was searched. The bag contained, which the lead officer believed, based on his training and experience contained narcotics, actually contained only perfume. Nonetheless, officers handcuffed and detained Mr. Johnson and proceeded to enter his home, ostensibly to conduct a “protective sweep” despite the fact that the evidence they collected demonstrated that he was not engaged in a narcotics transaction. The officers removed co-defendant Jackson from the home and placed him under arrest. The officers then sought and obtained a search warrant and searched Mr. Johnson’s residence and the belongings they had taken from Mr. Johnson’s pockets. The officers discovered narcotics inside the home and narcotics inside a candy tin that had been taken from Mr. Johnson’s pants pocket.

According to the warrant application, Detective Perdomo received information from an anonymous informant who stated that narcotics were

being sold at 19220 NW 35th Avenue, Miami Gardens. The detective claimed to have conducted a surveillance "during the month of January" during which he saw two individuals make "hand-to-hand" transactions with an occupant of the residence on 35th Avenue. Neither of the individuals who were involved in the alleged transactions were stopped or questioned. In bolstering his case to establish probable cause in the warrant application, Detective Perdomo outlined his experience in law enforcement as being familiar with the manner in which narcotics are prepared, distributed, stored and sold in South Florida.

Detective Perdomo claimed that on January 11, 2017, he arranged for a confidential informant to make a controlled purchase of powder cocaine from the 35th Avenue residence. The confidential informant was allegedly paid a sum of money to conduct the transaction. In a deposition conducted in state court related to these same charges, the detective could not recall which agency (Miami Gardens or ATF) had the log documenting this payment. The detective could not recall which entity's funds were used to pay the alleged confidential informant. He did not recall how much the CI was paid. He did not recall which supervisor authorized the payment of the informant and he was unsure how that information could be obtained.

The detective claimed on the warrant application that on January 11, 2017, a registered confidential informant (“CI”) purchased powder cocaine in exchange for \$20 from an unknown black male at the 35th Avenue residence that was the subject of the warrant application. Following the transaction, the CI allegedly provided the narcotics to the agent. No photographs were provided to the defense of these narcotics despite Detective Perdomo having taken photographs of contraband seized from the codefendant’s vehicle on that same day and having taken photographs of all other narcotics allegedly seized during the course of the investigation. Additionally, there are no contemporaneous reports concerning the January 11th controlled buy, again, despite the detective having produced a contemporaneous “report of investigation” concerning a subsequent controlled purchase. Finally, the affidavit failed to disclose that the alleged CI was paid for his participation in this investigation.

The warrant application affidavit asserts that a second controlled purchase was made from the same location on January 17. While the government provided in discovery a photograph of the alleged narcotics as well as an incident report for this alleged transaction, there still remains the issue of the lack of documentation concerning the payment to the CI. Detective Perdomo asserts that on that occasion, a confidential informant

Case 1:17-cr-20299-FAM Document 28 Entered on FLSD Docket 09/26/2017 Page 5 of 8
again purchased \$20 of powder cocaine from an individual at the 35th avenue residence.

The warrant application fails to disclose that when Detective Perdomo arrested Mr. Johnson on January 19th in the middle of what he believed to be a "hand-to-hand" transaction, the detective discovered that in fact it was an innocent exchange of perfume rather than narcotics.

Mr. Johnson maintains that the warrant application contains what appear to be material falsehoods and omissions and as a result the contraband seized from Mr. Johnson and from the residence where he was residing should be suppressed. Mr. Johnson asserts that the lack of documentation concerning the payments to the alleged confidential informant, the lack of reports concerning the alleged controlled purchase on January 11, 2017, the lack of photographs of the narcotics allegedly purchased on January 11, 2017 demonstrate that the confidential source was invented by the detective in order to cover for his illegal seizure of Mr. Johnson on January 19, 2017. In Detective Perdomo's Internal Affairs file, a fellow Miami Gardens police detective complained that Detective Perdomo and another Miami Gardens officer planted narcotics evidence in order to support a charge against an individual. While no formal finding was entered against Detective Perdomo, the fact that a fellow officer

formally made this complaint raises concerns regarding Detective Perdomo's credibility.

Legal Analysis

Pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), a defendant may challenge the veracity of an affidavit in support of a search warrant if he makes a “substantial preliminary showing” that (1) the affiant deliberately or recklessly included false statements, or failed to include material information, in the affidavit; and (2) the challenged statement or omission was essential to the finding of probable cause. *Franks*, 438 U.S. at 155–56, 98 S.Ct. at 2676. If the makes such a substantial showing, “he is entitled to an evidentiary hearing on the issue.” *United States v. Arbolaez*, 450 F.3d 1283, 1293 (11th Cir. 2006).

In the instant case, the lack of evidence to establish that the first controlled buy actually occurred establishes a substantial question concerning the veracity of the assertions made by Detective Perdomo concerning at the very least, the events related to the first controlled purchase. Furthermore the Detective's failure to inform the Judge in his warrant application that his training and experience had led him to incorrectly conclude that Mr. Johnson was engaged in a drug transaction when he was actually engaged in a transaction involving perfectly legal

Case 1:17-cr-20299-FAM Document 28 Entered on FLSD Docket 09/26/2017 Page 7 of 8
perfume, raises substantial questions concerning Detective Perdomo's training, experience and qualifications and therefore the reliability of the conclusions he conveyed in the search warrant application.

Based on the above, Mr. Johnson respectfully requests that the Court schedule an evidentiary hearing regarding the issuance of the search warrant and the legality of the issuance of the warrant in this matter.

Respectfully Submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

BY: s/R. D'Arsey Houlihan

R. D'Arsey Houlihan
Supervisory Assistant Federal Public Defender
Florida Bar No. 100536
150 W. Flagler Street, Suite 1700
Miami, Florida 33130-1556
(305) 530-7000
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CERTIFICATE OF SERVICE

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s/R. D'Arsey Houlihan
R. D'Arsey Houlihan

F17-1187, F17-1186

(X) IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.
 () IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA.

CRIMINAL DIVISION	AFFIDAVIT FOR SEARCH WARRANT, SEARCH WARRANT, INVENTORY AND RETURN	CASE NUMBER 2017-000743
		CLOCK 2017 JAN 25 AM 11:19 CLERK, 11TH JUDICIAL CIRCUIT COURT CO. 11, FLA. CIRCUIT CRIMINAL

Arrest:

Richard Johnson 08-18-64

Cocaine Trafficking

Ricardo Jackson 09-04-64

Cocaine Trafficking

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

**AFFIRMATION OF AFFIANT THAT SEARCH WARRANT AND AFFIDAVIT
WERE REVIEWED BY AN ASSISTANT STATE ATTORNEY**

Your Affiant, Detective Onassis Perdomo, Court Identification Number #153 of the Miami Gardens Police Department, hereby affirms that on Thursday, January 19, 2017, the Search Warrant and Affidavit for the premises described below was reviewed by Miami-Dade County Assistant State Attorney Katheline Cortes.

"The Premises" described as: 19220 NW 35 Avenue, Miami Gardens, Miami-Dade County, Florida, there being a multi-family duplex. "The Premises" to be searched is the Second dwelling South from NW 193 Street and is on the West side of NW 35 Avenue. The dwelling is light red in color with a white trim and a dark roof. The entry door of "The Premises" to be searched is a black iron gate located on the East wall, faces East and is the First door North from the Southern wall.. The numbers "19220" are displayed on the East wall of "The Premises" just South of the entry door.

Detective Onassis Perdomo, #153
Miami Gardens Police Department

STATE OF FLORIDA, COUNTY OF MIAMI-DADE:

Sworn to and subscribed before me this 19th day of JANUARY, 2017, by
Sgt. Heather Kidder : HQ #261

Notary Public, State of Florida
✓ Personally Known
____ Produced Identification
Type: _____

IN THE CIRCUIT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

SEARCHED
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CLERK
CIRCUIT OF FLORIDA
UNIVERSITY COURT
707 JUN 25 AM 11:20
16-1-4761

AFFIDAVIT FOR SEARCH WARRANT

Before me, Jose L. Fernandez, a Judge of the
Circuit Court of the Eleventh Judicial Circuit of Florida, electronically appeared
Detective Onassis Perdomo, of the Miami Gardens Police Department, Badge #153.
"Your Affiant", who being first duly sworn by Sergeant Heather Kidder deposes and says
that he has probable cause to believe and does believe that evidence and an
instrumentality and contraband relating to a felony is located at the below described
premises, which is located in Miami-Dade County, Florida, and hereinafter referred to as
"The Premises".

DESCRIPTION OF THE PREMISES TO BE SEARCHED

19220 NW 35 Avenue
Miami Gardens, Florida

"The Premises" described as: 19220 NW 35 Avenue, Miami Gardens, Miami-Dade County, Florida, there being a multi-family duplex. "The Premises" to be searched is the Second dwelling South from NW 193 Street and is on the West side of NW 35 Avenue. The dwelling is light red in color with a white trim and a dark roof. The entry door of "The Premises" to be searched is a black iron gate located on the East wall, faces East and is the First door North from the Southern wall. The numbers "19220" are displayed on the East wall of "The Premises" just South of the entry door.

AFFIANT OP JUDGE JF

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STATUTE(S) BEING VIOLATED

Florida Statute 893.13(1)(C)1, Cocaine Poss. W/ Intent To Sell 1000 feet from a school

Florida Statute 893.1351(2), Possession of a Place for Purposes of Trafficking/Sales

PROPERTY SOUGHT

“Your Affiant” and the officers, agents, and investigators of the above referenced agency seek to seize the below-described evidence related to narcotic and/or drug abuse including but not limited to: powder cocaine, or any other controlled substance unlawfully held, records of narcotic manufacturing distribution activity including records, papers, tally sheets, ledgers, address books, other papers regarding narcotics manufacturing, or distribution, U.S. Currency, titles, receipts, records and/or photographs evidencing illegal activity, weapons, firearms, U.S. Currency and other records indicating the owner or the legal resident of “The Premises”, and/or documents which would lead to the identification of individuals involved in this illegal activity hereinafter referred to as “The Property.”

GROUND FOR ISSUANCE

Evidence relevant to proving that a felony has been committed is contained therein.

AFFIANT JP JUDGE JP

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Additionally, some of the aforementioned items were used as an instrumentality of the crimes committed and narcotics are contained therein. The facts establishing the grounds for this affidavit and the probable cause for believing that such facts exist are detailed below.

PROBABLE CAUSE

"Your Affiant" has been a Police Detective with the City of Miami Gardens Police Department for (9) nine years and is presently assigned to the Special Investigations Section, Career Criminal Unit. "Your Affiant" has also been assigned to the Bureau of Alcohol Tobacco and Firearms (ATF) Task Force, Fire Strike Group I for approximately 5 years. Prior to joining Miami Gardens "Your Affiant" worked for the Miccosukee Police Department for approximately (5) five years. "Your Affiant" has approximately (14) fourteen years' experience investigating street level narcotics sales in the South Florida area while working with the Miami Gardens Police Department and the Miccosukee Police Department. "Your Affiant" has received training in the identification of Narcotics and Dangerous Drugs from the Miami Dade Departments Training Bureau and The Law Enforcement Training Association, Inc. Throughout "Your Affiant's" career he has participated in over 500 narcotics investigations, over 500 narcotics arrests, conducted and participated in over 300 narcotics search warrants and has investigated over 100 Marijuana Hydroponics Laboratory. "Your Affiant" has interviewed numerous persons arrested on narcotics charges and viewed many forms of narcotics, consisting of, but not limited to, Cocaine, Crack Cocaine, Heroin, Ecstasy, and Marijuana cultivated through traditional and hydroponics methods. "Your Affiant's" training and experience has made him familiar with the manner, in which narcotics are prepared, distributed, stored and sold in the South Florida area. "Your Affiant" has reason to believe, and does believe that narcotics, to wit: Crack cocaine is being concealed and/or stored at "The Premises" in violation of F.S.S. 893.13.

"Your Affiant's" reasons for the belief that "The Premises" is being used as aforesaid and that "The Property" listed above is being concealed and stored at "The Premises" is as follows:

APPLANT JP JUDGE JP

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During the month of December 2016 "Your Affiant" received information from a person who wanted to remain anonymous about a location that was being used for the purpose of trafficking narcotics. The anonymous person advised that marijuana, crack cocaine and powder cocaine were being sold from the location at all times of the day. The anonymous person gave a numerical address on the suspected narcotics trafficking location of, 19220 NW 35 Avenue Miami Gardens, Florida.

During the month of January 2017, "Your Affiant" conducted surveillance on "The Premises" and observed an unknown black male approach. "Your Affiant" then observed a thin, short, black male exit "The Premises" and made a hand to hand transaction at the front door with the unknown black male who had approached. The unknown black male then left the area as the suspected seller entered "The Premises".

"Your Affiant" continued to conduct surveillance on "The Premises" and a short time later observed a second unknown black male approach. "Your Affiant" again observed the same thin, short, black male exit "The Premises" and made a hand to hand transaction with the unknown black male that had approached. The unknown black male then left the area.

On January 11, 2017 "Your Affiant" conducted a controlled purchase of powder cocaine from "The Premises" using a Miami Gardens Police Department Registered/Reliable "CI" and Miami Gardens Police Department Official Funds. "Your Affiant", assisting detectives and the "CI" met at a pre-disclosed location to discuss the operational plan. The "CI" was then searched by "Your Affiant" for any illegal narcotics/ currency and nothing was found on her/him. This "CI" has proven to be reliable in the past. The "CI" was then given twenty dollars (\$20) of Miami Gardens Police Department Official Funds and advised to attempt to purchase narcotics from "The Premises". "Your Affiant" then dropped off the "CI" in the area and kept constant surveillance on the "CI" from the drop off location to "The Premises". "Your Affiant" observed the "CI" arrive at "The Premises" and make contact with an unknown black male at the front entry. "Your Affiant" then observed a hand to hand transaction at the front door of "The Premises"

AFFIANT OF JUDGE OF

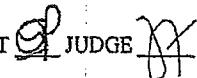
4 of 8

between the "CI" and the unknown black male. "Your Affiant" followed the "CI" and kept constant surveillance on the "CI" from "The Premises" to the pick-up location. "Your Affiant" picked up the "CI" and upon the "CI" entering "Your Affiant's" vehicle, the "CI" immediately relinquished one zip lock bag from her/his right hand that contained powder cocaine. "Your Affiant" then drove the "CI" back to the pre disclosed meeting location.

Upon arriving at the pre disclosed meeting location, the "CI" was search again by "Your Affiant" for any illegal narcotics/ currency and nothing was found. "Your Affiant" then debriefed the "CI" and the "CI" advised that upon arriving at the front door of "The Premises" contact was made with an unknown black male. The "CI" advised that the front door of "The Premises" was open and the front iron gate was closed. The CI advised that she/he asked the unknown black male for a dub of white (Street term for \$20 dollar bag of powder cocaine) and the unknown male grabbed a large clear zip lock bag from the inside of "The Premises" that contained multiple smaller zip lock baggies. The "CI" advised that the unknown black male reached in the larger bag and removed one smaller zip lock bag. The "CI" advised that he/she then gave the unknown black male the twenty dollars (\$20) of Miami Gardens Police Department Official Funds and in return received a zip lock bag containing powder cocaine. The "CI" advised that she/he just left the area until picked up by "Your Affiant".

The "CI" described the narcotics seller as a thin, short, black male. The "CI" advised that the black male appeared to be between 50 to 55 years old and possibly missing some teeth. The "CI" advised that the narcotics seller appeared to be wearing a plastic necklace with a cross.

"Your Affiant" conducted a narcotics field test on the suspect powder cocaine using the NARCOTEST kit which revealed positive results for the presence of cocaine.

AFFIANT  JUDGE 

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The narcotics where impounded at the MGPD Station under case number 2017-000743 and subsequently will be taken to the MDPD Lab under case number PD170111-014858 for further analysis.

On January 17, 2017 "Your Affiant" conducted a controlled purchase of powder cocaine from "The Premises" using a Miami Gardens Police Department Registered/Reliable "CI" and Miami Gardens Police Department Official Funds. "Your Affiant", assisting detectives and the "CI" met at a pre-disclosed location to discuss the operational plan. The "CI" was then search by "Your Affiant" for any illegal narcotics/ currency and nothing was found on her/him. This "CI" has proven to be reliable in the past. The "CI" was then given twenty dollars (\$20) of Miami Gardens Police Department Official Funds and advised to attempt to purchase narcotics from "The Premises". "Your Affiant" then dropped off the "CI" in the area and kept constant surveillance on the "CI" from the drop off location to "The Premises". "Your Affiant" observed the "CI" arrive at "The Premises" and make contact with an unknown black male at the front entry. "Your Affiant" then observed a hand to hand transaction at the front door of "The Premises" between the "CI" and the unknown black male. "Your Affiant" followed the "CI" and kept constant surveillance on the "CI" from "The Premises" to the pick-up location. "Your Affiant" picked up the "CI" and upon the "CI" entering "Your Affiant's" vehicle, the "CI" immediately relinquished one zip lock bag from her/his right hand that contained powder cocaine. "Your Affiant" then drove the "CI" back to the pre disclosed meeting location.

Upon arriving at the pre disclosed meeting location, the "CI" was search again by "Your Affiant" for any illegal narcotics/ currency and nothing was found. "Your Affiant" then debriefed the "CI" and the "CI" advised that upon arriving at the front door of "The Premises" contact was made with an unknown black male. The CI advised that she/he asked the unknown black male for a dub of white (Street term for \$20 dollar bag of powder cocaine) and the unknown male grabbed a small metal can from the living room area of "The Premises". The "CI" then said that he/she gave the unknown black male the twenty dollars (\$20) of Miami Gardens Police Department Official Funds and the

AFFLANT O JUDGE J

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unknown black male gave her/him the zip lock bag with powder cocaine.. The "CI" advised that she/he just left the area until picked up by "Your Affiant".

The "CI" described the narcotics seller as a thin, short, black male. The "CI" advised that the black male appeared to be between 50 to 55 years old and possibly missing some teeth. The "CI" advised that the narcotics seller appeared to be wearing a plastic necklace with a cross. The same black male from the first narcotics controlled buy.

"Your Affiant" conducted a narcotics field test on the suspect powder cocaine using the NARCOTEST kit which revealed positive results for the presence of cocaine.

The narcotics where impounded at the MGPD Station under case number 2017-000743 and subsequently will be taken to the MDPD Lab under case number PD170111-014858 for further analysis.

Based on the foregoing, your affiant has probable cause to believe and does believe that the laws of the State of Florida relating to narcotic abuse is being violated within the premises and furthermore that evidence relating to felony offenses are located therein and prays that this search warrant issue.

WHEREFORE, "Your Affiant" prays that a search warrant be issued commanding the Director of the Miami-Dade Police Department, Miami-Dade County, Florida, who is also known as the Sheriff of Metropolitan Miami-Dade County, Florida, or his Deputies, and the Commissioner of the Florida Department of Law Enforcement, or any of his duly constituted agents, the Director of the Bureau of Alcohol Tobacco and Firearms, or any of his duly qualified special agents and all Investigators of the State Attorney of the Eleventh Judicial Circuit of Florida, and to Chief of Police for the City of Miami Gardens, or any of his duly qualified officers, Miami-Dade County, Florida, with the proper and necessary assistance, to search "The Premises" above-described, for "The Property" above-described, making the search in the daytime or the nighttime, as the

AFILIANT JUDGE XX

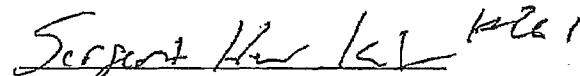
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exigencies may demand or require, or on Sunday, and if the same be found at "The Premises" to seize the same as evidence and arrest any person in the unlawful possession thereof.



Detective Onassis Perdomo
AFFIANT

SWORN TO AND SUBSCRIBED before me this the 19th day of JANUARY, 2017.



Sergeant Heather Kidder
Miami Gardens Police Department
Badge 261

AFFIANT OJ JUDGE JF

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IN THE CIRCUIT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

SEARCH WARRANT

July 25, 1861 11:20
U.S. COURTS
CLERK,
CIRCUIT CLERKS

The Director of the Miami-Dade Police Department, Miami-Dade County, Florida, who is known as the Sheriff of Metropolitan Miami-Dade County, Florida, or his Deputies, and the Commissioner of the Florida Department of Law Enforcement, or any of his duly constituted Agents, the Director of the Bureau of Alcohol Tobacco and Firearms, or any of his duly qualified special agents and all Investigators of the State Attorney of the Eleventh Judicial Circuit of Florida, and the Chief of Police for the City of Miami Gardens, or any of his duly qualified officers. Affidavit having been made by Onassis Perdomo of the Miami Gardens Police Department Identification Number of #153, a detective with the City of Miami Gardens Police Department Career Criminal Unit, who being first duly sworn by Sergeant Heather Kidder, *Sergeant Heather Kidder #761*, deposes and says that he has probable cause to believe and does believe that the property constitutes evidence relevant to proving that a felony has been committed, at the below described premises, which is located in the City of Miami Gardens in Miami-Dade County, Florida, and hereinafter referred to as "The Premises."

DESCRIPTION OF THE PREMISES TO BE SEARCHED (DWELLING)

19220 NW 35 Avenue

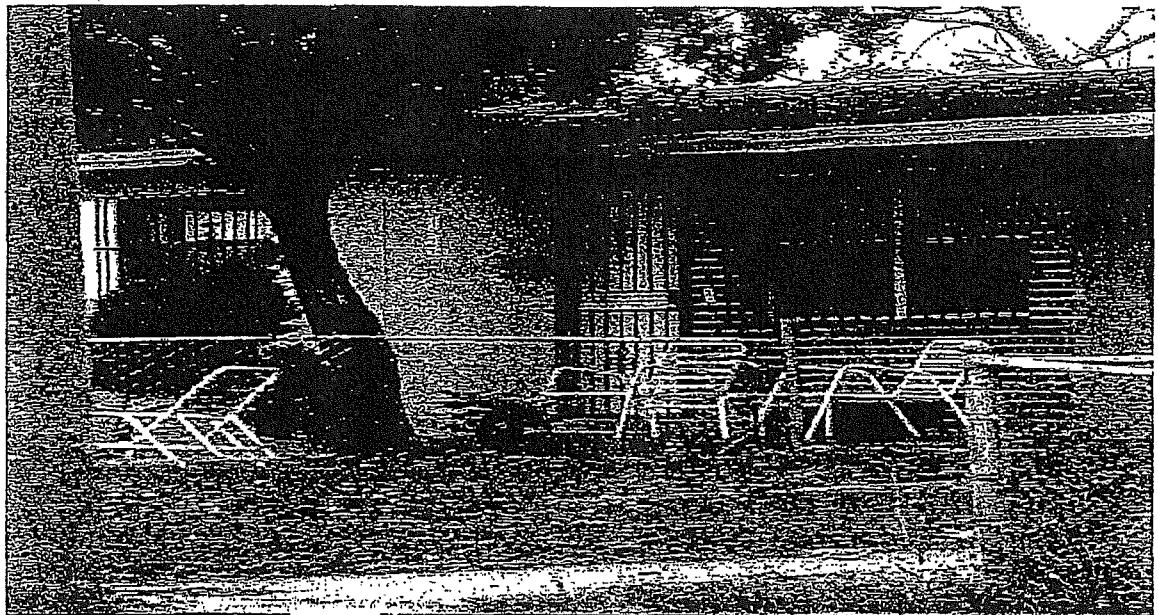
Miami Gardens, Florida

"The Premises" described as: 19220 NW 35 Avenue, Miami Gardens, Miami-Dade County, Florida, there being a multi-family duplex. "The Premises" to be searched is the Second dwelling South from NW 193 Street and is on the West side of NW 35

AFFIANT OR JUDGE X

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Avenue. The dwelling is light red in color with a white trim and a dark roof. The entry door of "The Premises" to be searched is a black iron gate located on the East wall, faces East and is the First door North from the Southern wall. The numbers "19220" are displayed on the East wall of "The Premises" just South of the entry door.



STATUTE(S) BEING VIOLATED

Florida Statute 893.13(1)(C)1, Cocaine Poss. W/ Intent To Sell 1000 feet from a school
Florida Statute 893.1351(2), Possession of a Place for Purposes of Trafficking/Sales

PROPERTY SOUGHT

"Your Affiant" and the officers, agents, and investigators of the above referenced agency seek to seize the below-described evidence related to narcotic and/or drug abuse including but not limited to: powder cocaine, or any other controlled substance unlawfully held, records of narcotic manufacturing distribution activity including records, papers, tally sheets, ledgers, address books, other papers regarding narcotics manufacturing, or distribution, U.S. Currency, titles, receipts, records and/or photographs evidencing illegal activity, weapons, firearms, U.S. Currency and other records indicating

AFFIANT OP JUDGE MM

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the owner or the legal resident of "The Premises", and/or documents which would lead to the identification of individuals involved in this illegal activity hereinafter referred to as "The Property."

GROUND FOR ISSUANCE

The facts upon which the Affiant's belief is based have been stated under oath and are set out in the Affiant's AFFIDAVIT FOR SEARCH WARRANT. These facts are now incorporated herein and made a part of this SEARCH WARRANT.

NOW THEREFORE, the facts upon which the belief of said Affiant is based as set out in said AFFIDAVIT FOR SEARCH WARRANT are hereby deemed sufficient to show probable cause for the issuance of a Search Warrant in accordance with the application of the Affiant. And as I am satisfied that there is probable cause to believe that "The Property" described below is being concealed and stored at "The Premises" above-described, I find probable cause for the issuance of this Search Warrant.

PROPERTY SOUGHT

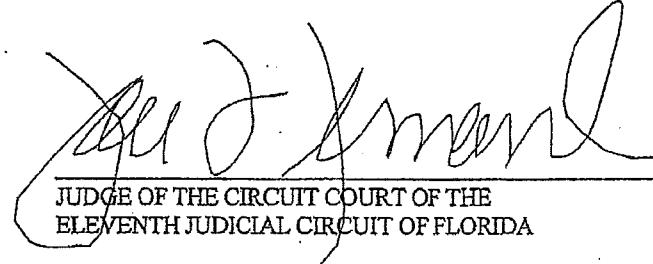
This Court authorizes the officers, agents and investigators of the above referenced agencies to search "The Premises" described above and seize the below-described evidence with the proper and necessary assistance of civilians, and further, to conduct a forensic examination of any of the listed items, if necessary, to wit: powder cocaine, or any other controlled substance unlawfully held, records of narcotic manufacturing distribution activity including records, papers, tally sheets, ledgers, address books, other papers regarding narcotics manufacturing, or distribution, U.S. Currency, titles, receipts, records and/or photographs evidencing illegal activity, weapons, firearms, U.S. Currency and other records indicating the owner or the legal resident of "The Premises", and/or documents which would lead to the identification of individuals involved in this illegal activity hereinafter referred to as "The Property."

APFLANT CP JUDGE JK

3 of 4

YOU ARE HEREBY COMMANDED to enter and search "The Premises" for "The Property" above-described, and all spaces therein, and all persons therein, and the curtilage thereof, including all vehicles and/or temporary structures within the curtilage for "The Property" above-described, serving this warrant and making the search in the Daytime or the Nighttime, as the exigencies may demand or require, or on Sunday, with the proper and necessary assistance, within ten (10) days from the date of issuance and if "The Property" above-described be found there, to seize the same evidence and to arrest all persons in the unlawful possession thereof, leaving a copy of this Warrant and a receipt for the property taken and prepare a written inventory of the property seized and return this Warrant before a court having competent jurisdiction of the offense within ten (10) days from the date of execution as required by law.

WITNESS MY HAND and seal this the 19 day of January,
2017.



JUDGE OF THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

AFFIANT CP JUDGE JK

14 of 14

F17-1187, F17-1186

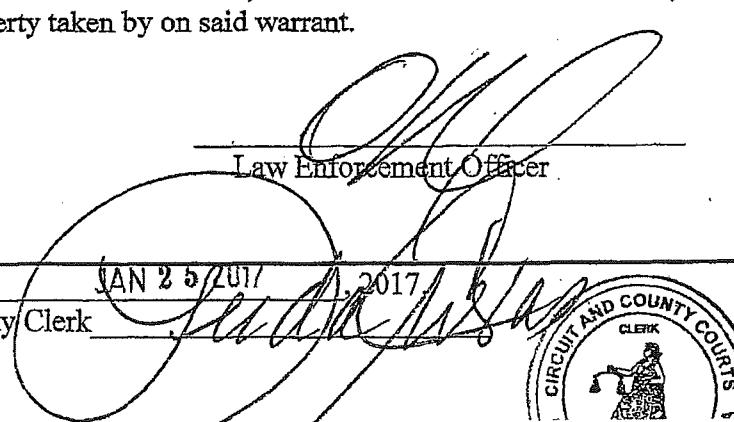
(X) IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.
 () IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA.

DIVISION <input checked="" type="checkbox"/> CRIMINAL <input type="checkbox"/> TRAFFIC <input type="checkbox"/> OTHER	RETURN AND INVENTORY	CASE NUMBER 2017-000743
THE STATE OF FLORIDA SS COUNTY OF MIAMI-DADE		CLOCK IN

I, Det. O. Perdomo received the attached search warrant on January 19, 2017 and duly executed it as follows: On January 17, 2017, at 07:10 P.M. I searched the premises described in the search warrant and left a copy of the search warrant with: On Scene together with an inventory of property taken pursuant to the search warrant:

- A) 330 pieces of crack cocaine +/- 55 grams
- B) Multiple documents with def's name
- C) Multiple photos with def's name
- D) Drug paraphernalia
- E) US Currency \$386.00
- F) 2 cell phones
- G) 1 set of keys
- H) 40 Tramadol pills
- I) Loose marijuana +/- 2 grams
- J) 8 bags of powder cocaine +/- 3.5 grams

I, Detective O. Perdomo the officer by whom the warrant was executed, do swear that the above inventory me contains a true and detailed account of all the property taken by on said warrant.


 Law Enforcement Officer

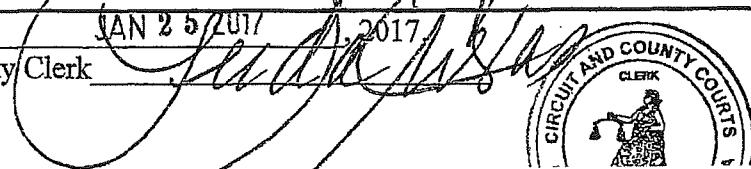
Sworn and subscribed before me this

day of

JAN 25 2017

2017

Deputy Clerk



A - 9

Apr 28, 2017

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. -MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
17-20299-CR-MORENO/TURNOFF

CASE NO. _____

21 U.S.C. § 846

21 U.S.C. § 841(a)(1)

21 U.S.C. § 856(a)(1)

21 U.S.C. § 860(a)

21 U.S.C. § 853

UNITED STATES OF AMERICA

vs.

**RICHARD JOHNSON and
RICARDO JACKSON,**

Defendants.

/

INDICTMENT

The Grand Jury charges that:

COUNT 1

From in and around December 2016, and continuing through on or about January 19, 2017, in Miami-Dade County, in the Southern District of Florida, the defendants,

**RICHARD JOHNSON
and
RICARDO JACKSON,**

did knowingly and willfully combine, conspire, confederate, and agree with each other and with other persons known and unknown to the Grand Jury, to possess with the intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), within (1,000) feet of the real property comprising an elementary school, that is, Excelsior Charter Academy,

pw
mt

3490 191st

located at ~~18200A NW 22nd Avenue~~, Miami Gardens, Florida, 33056, in violation of Title 21, United States Code, Section 860(a); all in violation of Title 21, United States Code, Section 846.

The controlled substance involved in the conspiracy attributable to **RICHARD JOHNSON and RICARDO JACKSON** as a result of their own conduct, and the conduct of other conspirators reasonably foreseeable to them, is a mixture and substance containing a detectable amount of cocaine base, commonly known as "crack cocaine," a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(b)(1)(C).

It is further alleged that the controlled substance involved in the conspiracy attributable to **RICHARD JOHNSON and RICARDO JACKSON** as a result of their own conduct, and the conduct of other conspirators reasonably foreseeable to them, is a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(b)(1)(C).

It is further alleged that the controlled substance involved in the conspiracy attributable to **RICHARD JOHNSON and RICARDO JACKSON** as a result of their own conduct, and the conduct of other conspirators reasonably foreseeable to them, is a mixture and substance containing a detectable amount of tramadol hydrochloride, a Schedule IV controlled substance, in violation of Title 21, United States Code, Section 841(b)(2).

COUNT 2

On or about January 19, 2017, in Miami-Dade County, in the Southern District of Florida, the defendants,

**RICHARD JOHNSON
and
RICARDO JACKSON,**

did knowingly and intentionally possess with the intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2, within (1,000) feet of the real property comprising an elementary school, that is, **3490 NW 191st** Excelsior Charter Academy, located at ~~18200A NW 22nd Avenue~~, Miami Gardens, Florida, 33056, in violation of Title 21, United States Code, Section 860(a). *FM
PAS*

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of cocaine base, commonly known as "crack cocaine," a Schedule II controlled substance.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

Pursuant to Title 21, United States Code, Section 841(b)(2), it is further alleged that this violation involved and a mixture and substance containing a detectable amount of tramadol hydrochloride, a Schedule IV controlled substance.

COUNT 3

On or about January 19, 2017, in Miami-Dade County, in the Southern District of Florida, the defendant,

RICHARD JOHNSON,

did knowingly and intentionally lease, rent, use, and maintain a place, that is, the premises located at 19220 NW 35th Avenue, Miami Gardens, Florida 33056, within (1,000) feet of the real property comprising an elementary school, that is, Excelsior Charter Academy, located at **3490 NW 191st** *FM
PAS* ~~18200A NW 22nd Avenue~~, Miami Gardens, Florida, 33056, in violation of Title 21, United States Code, Section 860(a), for the purpose of distributing a controlled substance, that is, a mixture and substance

containing a detectable amount of cocaine base, commonly known as "crack cocaine," a Schedule II controlled substance; a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance; and a mixture and substance containing a detectable amount of tramadol hydrochloride, a Schedule IV controlled substance, in violation of Title 21, United States Code, Section 856(a)(1), and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATIONS

1. The allegations of this Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging criminal forfeiture to the United States of America of certain property in which the defendants, **RICHARD JOHNSON and RICARDO JACKSON** have an interest.

2. Upon conviction of a violation of Title 21, United States Code, Sections 841, 846, or 856, as alleged in this Indictment, each defendant shall forfeit any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of such violation, and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation, pursuant to Title 21, United States Code, Section 853(a)(1)-(2).

All pursuant to Title 21, United States Code, Section 853 and Title 28, United States Code, Section 2461.

ATTEST RIT

FOREPERSON

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY

FRANKLIN G. MONSOUR, JR.
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. _____

vs.

RICHARD JOHNSON and
RICARDO JACKSON,

Defendants.

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division: (Select One)

Miami Key West
 FTL WPB FTP

New Defendant(s)	Yes	No
Number of New Defendants	_____	_____
Total number of counts	_____	_____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) No
List language and/or dialect _____
4. This case will take 4-5 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<input checked="" type="checkbox"/>	Petty
II	6 to 10 days	_____	Minor
III	11 to 20 days	_____	Misdem.
IV	21 to 60 days	_____	Felony
V	61 days and over	_____	<input checked="" type="checkbox"/>

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge: _____

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

Case No. _____

(Yes or No) No

If yes:

Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

January 19, 2017

Rule 20 from the District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes No X

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes No X


FRANKLIN G. MONSOUR, JR.
ASSISTANT UNITED STATES ATTORNEY
FLORIDA BAR NO. A5501761

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: RICHARD JOHNSON

Case No: _____

Count #:1

Conspiracy to possess with intent to distribute cocaine base, cocaine, and tramadol hydrochloride

Title 21, United States Code, Sections 846, 841(b)(1)(C), and 860(a)

*Max. Penalty: 40 Years' Imprisonment

Count #: 2

Possession with intent to distribute cocaine base, cocaine, and tramadol hydrochloride

Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C), and 860(a)

*Max. Penalty: 40 Years' Imprisonment

Count #: 3

Maintaining drug-involved premises

Title 21, United States Code, Sections 856(a)(1), 841(b)(1)(C), and 860(a)

*Max. Penalty: 40 Years' Imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution
special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: RICARDO JACKSON

Case No: _____

Count #:1

Conspiracy to possess with intent to distribute cocaine base, cocaine, and tramadol hydrochloride

Title 21, United States Code, Sections 846, 841(b)(1)(C), and 860(a)

*Max. Penalty: 40 Years' Imprisonment

Count #: 2

Possession with intent to distribute cocaine base, cocaine, and tramadol hydrochloride

Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C), and 860(a)

*Max. Penalty: 40 Years' Imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution
special assessments, parole terms, or forfeitures that may be applicable.**