

Appendix

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 4 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-30033

Plaintiff-Appellee,

D.C. No.
1:16-cr-00041-SPW-1

v.

PEDRO CARRASCO, Jr., AKA Pedro
Carrasco,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Argued and Submitted March 2, 2020
Portland, Oregon

Before: WOLLMAN,** FERNANDEZ, and PAEZ, Circuit Judges.

Pedro Carrasco appeals the district court's denial of a hearing under *Franks v. Delaware*, 439 U.S. 154 (1978). He also argues that he received ineffective assistance of counsel. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Roger L. Wollman, United States Circuit Judge for the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

1. The district court did not err in denying Carrasco a *Franks* hearing. For the reasons the district court provided, the search warrant application contained sufficient information to establish probable cause. *See United States v. Ruiz*, 758 F.3d 1144, 1148–49 (9th Cir. 2014). Thus, even if the agent had provided additional details about the Confidential Source’s (CS’s) criminal history, removed the information about the CS’s February 6, 2016 phone call to Carrasco, and included co-defendant Luis Santana-Salgado’s statements about delivering methamphetamine to the truck stop in Laurel, Montana, there was sufficient evidence for the magistrate to find probable cause. We therefore conclude the agent’s omissions were not material.

2. We decline to review Carrasco’s claim for ineffective assistance of counsel on the existing record. We ordinarily refrain from evaluating such claims on direct appeal because the record rarely reveals *why* counsel acted as they did. *See, e.g., United States v. Jeronimo*, 398 F.3d 1149, 1155–56 (9th Cir. 2005), *overruled on other grounds by United States v. Castillo*, 496 F.3d 947, 957 (9th Cir. 2007) (en banc). So too here: the present record contains little evidence about why Carrasco’s counsel did not file a second motion for reconsideration. We therefore cannot evaluate his counsel’s effectiveness on this record.

AFFIRMED.¹

¹ Our decision is without prejudice to raising an ineffective assistance of counsel claim on collateral review under 28 U.S.C. § 2255.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 14 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-30033

Plaintiff-Appellee,

D.C. No.
1:16-cr-00041-SPW-1

v.

District of Montana,
Billings

PEDRO CARRASCO, Jr., AKA Pedro
Carrasco,

ORDER

Defendant-Appellant.

Before: WOLLMAN,* FERNANDEZ, and PAEZ, Circuit Judges.

The panel has voted to deny the petition for rehearing. The petition for
panel rehearing is DENIED.

* The Honorable Roger L. Wollman, United States Circuit Judge for the
U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 11 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PEDRO CARRASCO, Jr., AKA Pedro
Carrasco,

Defendant-Appellant.

No. 18-30033

D.C. No.
1:16-cr-00041-SPW-1
District of Montana,
Billings

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

Appellant has submitted Volume II of the excerpts of record (Docket Entry No. 24-2) provisionally under seal, along with an unopposed notice of intent to file it publicly (Docket Entry Nos. 24-1 & 24-3), and has filed an unopposed motion (Docket Entry Nos. 22-1 & 22-3) to file under seal Volume III of the excerpts of record (Docket Entry No. 22-2). *See* 9th Cir. R. 27-13(e) & (f). The motion to seal is granted.

The Clerk shall publicly file the notice (Docket Entry Nos. 24-1 & 24-3), Volume II of the excerpts of record (Docket Entry No. 24-2), the motion to seal (Docket Entry Nos. 22-1 & 22-3), the opening brief (Docket Entry No. 21), and

gml/Appellate Commissioner

Volume I of the excerpts of record (Docket Entry No. 23), and shall file under seal

Volume III of the excerpts of record (Docket Entry No. 22-2).

The existing briefing schedule shall continue in effect.

gml/Appellate Commissioner

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

DEC - 2 2016

Clerk, U.S. District Court
District Of Montana
Billings

UNITED STATES OF AMERICA, Plaintiff, vs. PEDRO CARRASCO, JR., Defendant.	CR 16-41-BLG-SPW ORDER (Filed under seal)
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Defendant Pedro Carrasco, Jr., is charged with conspiracy to distribute methamphetamine, possession with intent to distribute methamphetamine, felon in possession of a firearm, possession of a firearm in furtherance of a drug trafficking crime, and conspiracy to commit money laundering. (Doc. 2). He moves to suppress evidence seized from his home and the statements he made to law enforcement at the time arguing that the search warrant was obtained in violation of the Fourth Amendment. (Doc. 39).

On November 28, 2016, the Court held an evidentiary hearing on Carrasco's motion. The Court heard from Drug Enforcement Agency (DEA) Special Agent Robert Grayson. After reviewing the evidence and arguments presented by the parties, the Court DENIES Carrasco's motion.

I. Facts as stated in the search warrant application

In the Spring of 2013, the DEA initiated an investigation into Juan Pablo Villasenor-Villa's distribution of methamphetamine, cocaine, and marijuana in the greater Boise, Idaho area. During the investigation, law enforcement determined that Villasenor-Villa drove roundtrip from Boise to Billings, Montana on both July 25- 26, and September 4, 2013. During the September visit, law enforcement observed him park for a short time at the Kentucky Fried Chicken in Billings and then move and park in an Albertson's parking lot for a short time, before moving again to a different parking spot in the same lot. Shortly thereafter, law enforcement saw a dark blue Cadillac park next to Villasenor-Villa's truck. Villasenor-Villa got in the Cadillac, which took him to 1679 Vucrest Drive, in Billings. After approximately fifteen minutes, law enforcement saw Villasenor-Villa exit the residence carrying a brown paper bag. He got in a maroon Chevrolet Trailblazer, registered to Katrina Ann Dovel, and was driven back to his truck. He then drove back to Boise.

Law enforcement later determined that (1) the Cadillac is owned by and registered to Pedro Carrasco, (2) Carrasco rents the house at 1679 Vucrest, and (3) Dovel is Carrasco's wife. Law enforcement also learned that while

Villasenor-Villa was parked in the Albertson's lot, he called his brother in law, Joe Gonzalez, who immediately called a phone number registered to Carrasco.

More than a year later, as part of the same investigation, law enforcement saw a white Dodge Caravan with Washington state license plates parked in front of Carrasco's house on November 20, 2014. The driver and passenger in the Caravan were identified as German Garcia and Martin Meraz. Investigation revealed that the Caravan was registered to Garcia out of Prosser, Washington.

Then almost a year and a half after that, on February 7, 2016, Montana Highway Patrol Trooper Charles Burton stopped a blue 1993 Mitsubishi Galant with Washington plates for expired registration. The driver, Jose Luis Santana-Selgado, had a suspended Washington license and was arrested. One of the Galant's two passengers, who was later established as a Confidential Source (CS) and the car's owner, provided consent to search the car. Burton found approximately two and a half pounds of methamphetamine hidden in the car. Burton also found a methamphetamine pipe on the second passenger, Garcia Cardenas, who consented to a search of his property.

After Burton arrested Santana-Selgado, CS, and Cardenas, law enforcement interviewed CS regarding his/her knowledge of the methamphetamine seized from the car. CS told law enforcement that he/she, along with Cardenas and Santana-

Selgado, were transporting methamphetamine from Prosser to Billings to deliver to Carrasco. CS explained that for the prior four years, Martin Meraz had been Carrasco's primary methamphetamine source of supply. According to CS, sometime in February or March 2015, law enforcement had stopped Garcia and Meraz after leaving Carrasco's residence. CS believed that law enforcement may have seized money from them. After this incident, Garcia and Meraz did not want to continue transporting methamphetamine to Billings, so they recruited couriers to do so.

CS reported that Meraz and Carrasco had also recently disagreed over payment for the methamphetamine. Because of that disagreement, Santana-Selgado was attempting to replace Meraz as a source of Carrasco's methamphetamine supply. According to CS, Santana-Selgado had previously been a money courier for the organization, tasked with obtaining and transporting the proceeds from Carrasco's methamphetamine trafficking. Using photographs containing no personal identifiers, CS was able to positively identify Garcia and Meraz.

CS stated that he/she and others had previously made trips to Billings to meet with Carrasco for methamphetamine distribution. In November 2013 and January 2015, CS, Geraldo Navarette-Garcia and Santana-Selgado drove to

Billings to collect money from Carrasco for methamphetamine previously delivered to him. On December 25, 2015, CS, Garcia and another person named "Marco" delivered approximately one pound of methamphetamine from Washington to Carrasco at his house. Carrasco paid Garcia \$5,500 for the methamphetamine, even though he was supposed to pay \$20,000. Carrasco told Garcia, "Marco," and CS that because it was Christmas, he wanted to pay only what he absolutely had to pay. When Garcia insisted that he had to have \$5,500 for the methamphetamine, Carrasco left the garage area of his residence, went upstairs and returned with a black box. CS saw approximately \$10,000 in the box but Carrasco gave Garcia only \$5,500 and kept the rest of the money. Garcia and "Marco" thus left CS in Billings to collect the money Carrasco still owed.

CS stayed at Carrasco's house for a week. While there, CS used methamphetamine with Carrasco, his wife, Katrina Dovel, and his brother, Filemon Carrasco. Carrasco refused to pay CS for the rest of the methamphetamine. Carrasco told CS that that it was "sleepy dope," meaning not good quality. CS moved to the Rodeway Inn for one night, and then returned to Washington on a Greyhound bus.

CS told law enforcement that on February 6, 2016, he/she and Santana-Selgado contacted Carrasco from CS's cell phone. During the call, Carrasco told

CS and Santana-Selgado that Garcia and "Marco" had again sent people to Billings to collect the money Carrasco still owed for the methamphetamine. CS heard that they were unable to collect the money from Carrasco. Carrasco told CS and Santana-Selgado that he pointed a firearm at them and forced them to leave the residence.

CS also told law enforcement that in December 2014 or January 2015, he/she heard that Carrasco gave \$120,000 to Navarett-Garcia to obtain methamphetamine. Navarette-Garcia was instructed to take the money to Tijuana, Mexico to obtain three kilograms of methamphetamine, and to transport it back to Billings for Carrasco to distribute. According to CS, Navarette-Garcia was Meraz's co-conspirator in supplying methamphetamine to Carrasco. CS reported that the methamphetamine Navarette-Garcia obtained from Tijuana and provided to Carrasco was bad and made people sick because it was allegedly laced with strychnine or some other chemical.

CS informed law enforcement that Navarette-Garcia flies commercial airlines regularly from Washington to Billings to conduct methamphetamine transactions. He also drives occasionally. CS stated that during these trips Navarette-Garcia stays at the Country Inn near an Applebees restaurant in Billings. Law enforcement's review of Carrasco's credit card accounts on February 8, 2016,

revealed numerous transactions to Country Inn and Suites in Billings, as well as other hotels located in Billings.

CS reported that Carrasco preferred to pay for drugs with cash only, because he believes regular bank transfers leave a paper trail. During its February 8, 2016, review of Carrasco's credit card accounts, law enforcement located numerous cash advances issued from credit card accounts.

CS stated that Carrasco has surveillance cameras to cover every angle or view on the outside of his residence. CS stated that Carrasco continually monitors the surveillance cameras and has sensors around the house to alert him if someone is near the house. Law enforcement observed multiple surveillance cameras installed at Carrasco's residence during previous surveillance conducted there.

Finally, law enforcement determined that Carrasco was previously convicted of Conspiracy to Possess with Intent to Distribute Methamphetamine in the District of Montana in 2002. He was sentenced to 92 months and three years of supervised release.

Based on the above facts, Grayson filed an affidavit in support of his application for a search warrant for Carrasco's residence and Magistrate Judge Carolyn Ostby signed a warrant on February 10, 2016, authorizing the search of

Carrasco's home. (Doc. 42-1). Agents executed the search on February 10, 2016.

II. Discussion

Carrasco argues that Grayson's affidavit and application in support of the search warrant was not supported by probable cause. An affidavit for a search warrant must be "sufficient to justify a conclusion that the property which is the object of the search is probably on the premises to be searched at the time the warrant is issued." *United States v. Greany*, 929 F.2d 523, 524-25 (9th Cir. 1991). At the federal level, probable cause is based on the "totality of the circumstances." *United States v. Chavez-Miranda*, 306 F.3d 973, 978 (9th Cir. 2002) (citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). Under this test, "otherwise innocent behavior may be indicative of criminality when viewed in context." *Id.*

Facts supporting probable cause can come from various sources, including observations of law enforcement who use their expertise and training to draw inferences of criminal activity from behavior that is not criminal on its face. See e.g., *Alford v. Haner*, 446 F.3d 935, 937 (9th Cir. 2006) (probable cause to arrest for impersonating officer where police observed police radio, scanner, and handcuffs in car). In making a probable cause determination, "[a] magistrate may

‘draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense.’” *United States v. Pitts*, 6 F.3d 1366, 1369 (9th Cir.1993) (quoting *United States v. Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986)).

Carrasco specifically argues that: (1) the affidavit was based on stale information; (2) the application failed to provide a sufficient nexus to the property; (3) the affidavit was based on information from a confidential source that was not reliable; and (4) the information in the financial section did not provide support for the warrant. Because the confidential source provided much of the information contained in the affidavit, the Court analyzes the reliability prong first, which in turn impacts the remaining prongs.

A. Confidential Source’s Reliability

Carrasco argues that the affidavit lacked sufficient information for Judge Ostby to determine the reliability of CS’s information. (Doc. 40 at 13). Where, as here, a warrant application is based largely on an informant’s tips, evidence bearing on the informant’s veracity and his or her basis of knowledge is considered together with other relevant evidence in making the probable cause determination based on the totality of the circumstances. *Angulo-Lopez*, 791 F.2d at 1396.

An informant's veracity and reliability may be established in a number of ways. *Id.* at 1397. It may be established through independent police corroboration of the information provided. *Id.* Police may corroborate details provided by the informant "to increase confidence in either the [informant's] reliability or basis of knowledge." *Id.*; *see also Gates*, 462 U.S. at 233-35 ("[B]ecause an informant is right about some things, he is more probably right about other facts...."). An informant's veracity may also be established through admissions against penal interest. *Id.* And a known informant's tip is thought to be more reliable than an anonymous informant's tip. *United States v. Rowland*, 464 F.3d 899, 907 (9th Cir. 2006).

When considering the basis of an informant's knowledge, the court must evaluate "how the informant came by his or her knowledge," and first-hand knowledge is more compelling than hearsay. *United States v. Bishop*, 264 F.3d 919, 925 (9th Cir. 2001). However, "[h]earsay reported by informants is no bar to a finding of probable cause. When the circumstances suggest veracity, such as an admission against penal interest, a statement made to an informant may be considered reliable." *Angulo-Lopez*, 791 F.2d at 1397.

CS's first-hand knowledge of Carrasco's drug trafficking out of his home, including exchanging large amounts of methamphetamine for thousands of dollars,

was enough to provide Judge Ostby with probable cause to issue the search warrant. *See United States v. Elliott*, 893 F.2d 220, 223 (9th Cir. 1990) ("A detailed eye-witness report of a crime is self-corroborating; it supplies its own indicia of reliability."')(quoting *United States v. Estrada*, 733 F.2d 683, 686 (9th Cir.), *cert. denied*, 469 U.S. 850 (1984). The nexus standard is relaxed when it comes to drugs: "Direct evidence that contraband or evidence is at a particular location is not essential to establish probable cause to search the location . . . In the case of drug dealers, evidence is likely to be found where the drug dealers live." *Angulo-Lopez*, 791 F.2d at 1399.

On top of that, law enforcement was able to successfully corroborate details that CS provided about the drug trafficking organization. Law enforcement checked charges on Carrasco's credit card to corroborate CS's statement that members of Carrasco's drug trafficking organization stayed at the Country Inn and Suites in Billings. CS stated that he/she and Santana-Selgado were transporting the methamphetamine from Prosser, Washington -- the same city to which law enforcement traced Meraz's car registration and residence. CS was able to independently identify Carrasco's home, drug players Garcia and Meraz's identity, Carrasco's cell phone number, and the fact that Carrasco used surveillance cameras at his home. Although law enforcement already knew these details, CS's ability

to independently provide the same details and positive identifications bolstered the reliability of his/her information. *See Gates*, 462 U.S. at 245 (citing informant's "range of details" regarding the alleged crime as an important indicia of reliability).

CS's admission to participating in the methamphetamine distribution ring - a statement against his/her penal interest -- adds further credibility to his/her story.

United States v. Perez Luna, 15 F.3d 1093 (9th Cir. 1993) (citing *United States v. Estrada*, 733 F.2d 683, 686 (9th Cir.), cert. denied, 469 U.S. 850 (1984)). CS's information about his/her participation in the drug trafficking -- delivering a pound of methamphetamine to Carrasco's house, collecting thousands of dollars for methamphetamine from Carrasco, and using methamphetamine with Carrasco and his family members -- is the same information that incriminates CS. And even though CS's admission occurred after his/her arrest, it still buttresses the reliability of his/her information. *See id.* ("[E]ven after arrest '[p]eople do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions.'" (quoting *United States v. Dozier*, 844 F.2d 701, 707 (9th Cir. 1988)).

Finally, while some of CS's information was hearsay, the hearsay information he/she provided was with respect to a drug conspiracy CS had already

implicated him/herself in. Accordingly, CS's reports that Carrasco ordered drugs from Mexico and recently shot off a gun to scare away drug debt collectors possesses sufficient indicia of reliability. The Court finds that the information provided by CS was reliable.

2. Staleness

Carrasco also argues that some of the information contained in Grayson's affidavit is too stale to support a finding of probable cause. The Ninth Circuit has made clear that courts are to evaluate staleness in light of the particular facts of the case and the nature of the criminal activity and property sought. *United States v. Pitts*, 6 F.3d 1366, 1369 (9th Cir. 1993). The timeliness of a search warrant depends on whether it is reasonable to believe that the items to be seized are still on the property. See *United States v. Gann*, 732 F.2d 714, 722 (9th Cir. 1984).

Carrasco argues that there were no reasonable grounds to believe an immediate search of Carrasco's house would be fruitful because the affidavit contains information from 2013. The Court disagrees. Just because the affidavit included information from 2013 does not make the information stale. *United States v. Vaandering*, 50 F.3d 696, 700 (9th Cir. 1995) ("[T]he mere lapse of substantial amounts of time is not controlling in a question of staleness."). This is particularly true when the affidavit concerns a drug conspiracy, as it does here.

See, e.g., United States v. Alvarez, 358 F.3d 1194, 1203 (9th Cir. 2004) (stating that evidence of "the existence of a widespread, firmly entrenched, and ongoing narcotics operation" diminishes a defendant's staleness arguments); *United States v. Hernandez-Escarsega*, 886 F.2d 1560, 1566 (9th Cir. 1989) (upholding warrant based in part on information almost two years old regarding defendant's involvement in widespread narcotics conspiracy); *United States v. Pitts*, 6 F.3d 1366, 1369 (9th Cir. 1993) (affidavit based in part on four-year-old information not stale because of ongoing nature of drug trafficking operation); *United States v. Foster*, 711 F.2d 871, 878 (9th Cir.) (1983) (evidence of drug transactions occurring fifteen months prior to the issuance of a search warrant not stale where evidence also linked defendant to a drug sale occurring three months prior to the issuance of the search warrant).

Furthermore, Carrasco's argument ignores the fact that CS was stopped just days before the search warrant application with two and a half pounds of methamphetamine in his/her car and stated that his/her destination was Carrasco's house. Also, CS reported that Carrasco told her he had shot his gun in the air to get drug debt collectors to leave his home just days before the warrant issued. The ongoing nature of the crime, the location to be searched, and the recency of the

information in the warrant suggested that probable cause was not diminished solely by the inclusion of information from 2013.

3. Sufficient Nexus to Property

Carrasco argues that the only current information the warrant provides regarding the subject property is that the CS was going to deliver drugs to the property at some point in the future. Carrasco argues that this “speculative” connection to the house is insufficient to provide probable cause. (Doc. 40 at 13). This argument is meritless.

“Based on the nature of the evidence and the type of offense, a magistrate may draw reasonable inferences about where evidence is likely to be kept.” *Garza*, 980 F.2d at 551. Moreover, the law recognizes that “[i]n the case of drug dealers, evidence is likely to be found where the dealers live.” *See United States v. Ayers*, 924 F.2d 1468, 1479 (9th Cir. 1991) (nexus between property and premises established where officer stated that drug traffickers typically keep contraband in their homes); *United States v. Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986) (evidence is likely to be found where drug dealers live); *United States v. Peacock*, 761 F.2d 1313, 1315 (9th Cir.) (magistrate judge need only determine that it would be reasonable to seek evidence in the location indicated in the affidavit), *cert. denied*, 474 U.S. 847 (1985). Accordingly, the Court finds

that a sufficient nexus existed in the search warrant to authorize the search of Carrasco's residence.

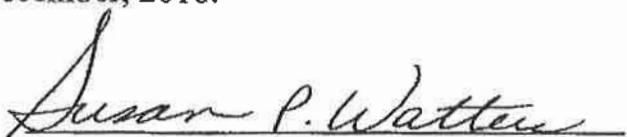
4. Financial Records

Carrasco next argues that Grayson's affidavit fails to establish probable cause to search for financial records. In his affidavit, Grayson states that Carrasco is a drug trafficker, and that financial records related to the distribution of controlled substances are frequently found in the residences of a drug trafficker such as Carrasco. (Doc. 42-1 at ¶ 44). This alone is sufficient to establish probable cause exists for a search warrant of a suspected drug trafficker's residence. *See Ayers*, 924 F.2d at 1479.

III. Conclusion

Considering the totality of the circumstances, this Court finds the search warrant in this matter was supported by probable cause. As a result, Carrasco's Motion to Suppress is DENIED.

DATED this 2nd day of December, 2016.



SUSAN P. WATTERS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
JAN 23 2017
Clerk, U.S. District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,
Plaintiff,
vs.
PEDRO CARRASCO, JR.,
Defendant.

CR 16-41-BLG-SPW
ORDER

Defendant Pedro Carrasco, Jr., is charged with conspiracy to distribute methamphetamine, possession with intent to distribute methamphetamine, felon in possession of a firearm, possession of a firearm in furtherance of a drug trafficking crime, and conspiracy to commit money laundering. (Doc. 2). On November 4, 2016, Carrasco filed a motion to suppress certain evidence seized from his home on February 10, 2016. (Doc. 39). On December 2, 2016, this Court denied the motion. (Doc. 51). Now pending before the Court is Carrasco's Motion to Reconsider and/or Motion for Franks Hearing. (Doc. 62). For the reasons set forth below, the Court denies the motion.

I. Legal Standard

Granting a motion to reconsider is an "extraordinary remedy, to be used

sparingly in the interests of finality and conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (quoting 12 James Wm. Moore et al., *Moore’s Federal Practice* § 59.30[4] (3d ed. 2000)). Under Ninth Circuit law, “[r]econsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). In some cases, “other, highly unusual, circumstances” may also warrant reconsideration. *Id.*

Although the Ninth Circuit contemplates motions for reconsideration in criminal cases, *United States v. Motta*, 2012 L 6569284 at *1 (Dist. of Hawaii December 17, 2012), the Local Rules of this District do not. Local Rule 7.3 is a civil rule and is not specifically incorporated into Chapter II, Criminal Rules, by Criminal Rule 1.1. Ninth Circuit law governs.

A motion to reconsider “may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Carroll*, 342 F.3d at 945; *see also United States v. Lopez-Cruz*, 730 F.3d 803, 811–12 (9th Cir. 2013). Moreover, “[a] motion to reconsider is not a second chance for the losing party to make its strongest case or to dress up

arguments that previously failed.” *United States v. Huff*, 782 F.3d 1221, 1224 (10th Cir.), cert. denied, 136 S. Ct. 537 (2015) (affirming district court’s reconsideration of prior order granting motion to suppress).

II. Discussion

Carrasco has not provided the court with any basis for reconsidering. As the government points out, Carrasco’s motion does not present new evidence, nor point to any change in controlling law. Carrasco attaches CS’s detailed criminal history and Carrasco’s phone records as “new evidence.” But as the government points out, CS’s criminal history merely shows that she has convictions for theft and forgery, facts that Judge Ostby already considered when Agent Grayson stated in his search warrant affidavit that CS has “a history of theft, forgery, and trespassing.” (Doc. 42-1 at 29). In his suppression motion, Carrasco already argued that “what is missing from the affidavit is the true extent of the CS’s criminal history.” (Doc. 40 at 4). This court considered and rejected the argument.

Carrasco also argues that his phone records show that no phone call occurred between CS and Carrasco on the day CS thought it had. (Doc. 63 at 8). This information is not “newly discovered evidence” and it is an old argument. Carrasco already argued in his first motion that the phone call itself was

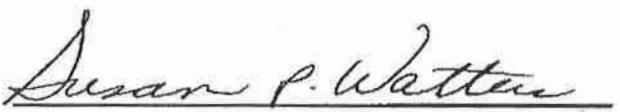
“incredible.” (Doc. 40 at 18). Despite that argument, this court found the sufficient evidence existed to establish probable cause for the warrant.

Carrasco does not articulate any highly unusual circumstances that have arisen that warrant reconsideration. He merely presents the same arguments and assertions he previously presented in his motion to suppress. The Court has already considered these arguments and rejected them. No additional evidentiary hearing is necessary.

IV. Conclusion

For the reasons set forth above, Carrasco’s Motion to for Reconsideration and/or Franks Hearing is DENIED.

DATED this 23rd day of January, 2017.


SUSAN P. WATTERS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

IN THE MATTER OF THE
SEARCH OF THE RESIDENCE
LOCATED AT 1679 VUECREST
DRIVE, BILLINGS, MONTANA

Case No. _____

Filed Under Seal

AFFIDAVIT IN SUPPORT
OF AN APPLICATION FOR A SEARCH WARRANT

I, Robert M. Grayson, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. This Affidavit is made in support of a search warrant for evidence, fruits, and instrumentalities of (a) conspiracy to possess with intent to distribute methamphetamine, possession with intent to distribute and distribution of methamphetamine, in violation of 21 U.S.C §§ 841(a)(1) and 846, (b) conspiracy to launder monetary instruments and laundering of monetary instruments in violation of 18 U.S.C §§ 1956 and 1957, and (c) felon in possession of a firearm and possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C §§ 922(g)(1) and 924(c), as those items are set forth in Attachment B, at the following location, which is further described in Attachment A, and is hereafter referred to as the "SUBJECT PREMISES."

a. 1679 Vuecrest Drive, Billings, Montana ("SUBJECT PREMISES"). The SUBJECT PREMISES is a cream-colored two-story house with an attached garage on the west side of the residence. The house is located on the north side of Vuecrest Drive with

the front door facing south and the numbers "1679", black in color, located on the east side of the door. The house is located at 1679 Vuecrest Drive, Billings, Montana 59101, and the affiant has probable cause to believe it is currently being used by the residents to distribute controlled substances, namely, but not limited to, methamphetamine. Investigators have observed Pedro CARRASCO, Jr. entering a 2008 Cadillac STS four door sedan bearing Montana license plate 377695A, at the residence. Investigators have observed Katrina DOVEL, Pedro CARRASCO Jr.'s paramour, entering a 2004 Chevrolet Trailblazer four door bearing Montana license plate AZXS26 at the residence. Katrina DOVEL's 2004 Chevrolet Trailblazer is registered to her at her residence at 1679 Vuecrest Drive, Billings, Montana 59101. The house is owned by Egan Properties LLP; but based on the information available to the Affiant, the property is rented and occupied by Pedro CARRASCO, Jr. and Katrina DOVEL. (Please see Attachment A).

2. I am a Special Agent of the United States Drug Enforcement Administration (DEA), duly appointed according to the law and acting as such. In January 2012, I entered DEA Basic Agent Training at the DEA Academy in Quantico, Virginia. I graduated and became a DEA Special Agent in May 2012. I am currently assigned to the Billings, Montana, Resident Office. In September 2012, I graduated from a one week course in Clandestine Laboratories at the DEA Academy in Quantico, Virginia. As a DEA Special Agent, I have participated in complex investigations. I am familiar with and have participated in all of the normal methods of investigation, including but not limited to visual surveillance, questioning of witnesses, the use of search and arrest warrants, the use of informants, the use of pen registers, the utilization of undercover agents, the use of Grand Jury, and the use of court authorized wire and electronic

intercepts. I have conducted or assisted with investigations relative to the manufacture, smuggling, and distribution of controlled substances. Additionally, I have consulted with other agents who have been involved in similar investigations. As a result of my training and experience, I can recognize controlled substances, as well as paraphernalia used for ingesting, distributing, manufacturing, and storing controlled substances. I can also recognize conduct commonly engaged in by drug traffickers. I am familiar with all aspects of this investigation.

3. The purpose of applying for this warrant is to seize evidence, more particularly described in Attachment B, of violations of 21 U.S.C. § 841, 21 U.S.C. § 846, 18 U.S.C. § 1956, 18 U.S.C. § 1957, 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(c), that is, possession with intent to distribute and/or distribution of methamphetamine, conspiracy to possess with the intent to distribute methamphetamine, conspiracy to launder monetary instruments, laundering of monetary instruments, felon in possession of a firearm and possession of a firearm in furtherance of a drug trafficking crime.

4. Based on the facts set forth in this affidavit, there is probable cause to believe that violations of 21 U.S.C. § 841, 21 U.S.C. § 846, 18 U.S.C. § 1956, 18 U.S.C. § 1957, 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(c) have been committed and are being committed by Pedro CARRASCO, Jr., Jose LUIS SANTANA-SELGADO, Antonio GARCIA CARDENAS, German GARCIA, Martin MERAZ, Gerlado NAVARETTE-GARCIA and others. There is also probable cause to believe that the information described in Attachment B will constitute evidence of these criminal violations, and will lead to the identification of individuals who are engaged in the commission of these offenses and/or other locations wherein additional evidence may be uncovered.

INITIATION OF INVESTIGATION

5. Beginning in the spring of 2013, the DEA in Boise, Idaho initiated an investigation into the distribution of methamphetamine, cocaine, and marijuana in the greater Boise, Idaho area by Juan Pablo VILLASENOR-VILLA. On July 2, 2013, members of DEA Boise obtained a GPS tracker warrant for VILLASENOR-VILLA's vehicle.

6. On July 25, 2013, members of DEA Boise monitored the GPS tracker installed on VILLASENOR-VILLA's vehicle and determined that he drove from the Boise, Idaho area to Billings, Montana. The tracker indicated that VILLASENOR-VILLA parked his vehicle near the SUBJECT PREMISES in Billings. After leaving Billings, VILLASENOR-VILLA returned to the Boise, Idaho area early on July 26, 2013.

7. On August 12, 2013, DEA Boise Task Force Officer (TFO) Kyle Gandiaga obtained an extension for the GPS tracker warrant on VILLASENOR-VILLA's vehicle.

8. On September 4, 2013, TFO Gandiaga was monitoring the GPS tracker and saw that VILLASENOR-VILLA was driving from the Boise, Idaho area to Billings, Montana. On September 4, 2013, your affiant and TFO Jeff Nedens established surveillance at the SUBJECT PREMISES in anticipation of VILLASENOR-VILLA's arrival. TFO Gandiaga contacted your affiant and indicated that VILLASENOR-VILLA had driven to and parked at the Kentucky Fried Chicken located at 719 North 27th Street, Billings, Montana. Your affiant and TFO Nedens established surveillance at the Kentucky Fried Chicken and located VILLASENOR-VILLA's white Ford truck parked in the parking lot.

9. Shortly after locating VILLASENOR-VILLA's vehicle, investigators observed him drive to the Albertson's located at 611 North 27th Street, Billings, Montana and park in the parking lot for several minutes. Shortly after parking, TFO Nedens observed VILLASENOR-

VILLA pull out of the parking space and drive towards the exit of the Albertson's parking lot.

Before exiting the parking lot, VILLASENOR-VILLA pulled into a different parking space and remained there for several minutes.

10. At approximately 6:30 p.m., TFO Nedens observed a dark blue almost black Cadillac STS with heavily tinted windows and Montana license plate 377695A arrive in the Albertson's parking lot and pull over next to VILLASENOR-VILLA's vehicle. VILLASENOR-VILLA exited his vehicle and entered the dark blue almost black Cadillac.

11. Your affiant and TFO Nedens followed the vehicle back to the SUBJECT PREMISES, where it was observed parked in the driveway. Approximately fifteen minutes later, VILLASENOR-VILLA exited the residence carrying a brown paper bag, and he then entered a maroon Chevrolet Trailblazer with a white female, later identified as Katrina Ann DOVEL. The maroon Chevrolet Trailblazer had Montana license plate AZX526; VIN No. 1GNDT13S942406436, listing the owner as Katrina Ann DOVEL, 1679 Vuccrest Drive, Billings, Montana. DOVEL drove VILLASENOR-VILLA back to his vehicle parked at the Albertson's located at 611 North 27th Street. VILLASENOR-VILLA entered his vehicle and returned to the Boise, Idaho area on September 5, 2013. VILLASENOR-VILLA was only in Billings, Montana for a short period of time. According to Google Maps, Boise, Idaho is approximately a nine hour and eighteen minute drive from Billings, Montana. VILLASENOR-VILLA drove approximately nine hours to come to Billings, Montana and meet Pedro CARRASCO, Jr. and obtain a brown paper bag.

12. Your affiant determined that the dark blue almost black 2008 Cadillac STS AWD four door sedan with Montana license plate number 377695A; VIN No. 1G6DD67V580132308, is owned by and registered to Pedro CARRASCO, Jr. ("CARRASCO, Jr."), at 316 South 30th

Street, Billings, Montana 59101. While the vehicle is registered to Pedro CARRASCO, Jr., at 316 South 30th Street, Billings, Montana, investigators have observed him during physical surveillance residing at the SUBJECT PREMISES.

13. On September 12, 2013, DEA Boise arrested VILLASENOR-VILLA in Caldwell, Idaho. His arrest was followed by the execution of two Idaho state search warrants. The first Idaho state search warrant was executed at his residence located at 3517 Ridgepark Street, Caldwell, Idaho. Investigators also executed an Idaho state search warrant on a suspected "stash house" of VILLASENOR-VILLA's located in Caldwell, Idaho. Subsequently, investigators searched VILLASENOR-VILLA's two marijuana growing operations on U.S. Forest Service land in the Boise, Idaho area. The searches resulted in the seizure of approximately 471 pounds of marijuana, three firearms, over 5,500 marijuana plants, seven vehicles, and \$68,800.00 in U.S. Currency from Villasenor-Villa.

14. On September 16, 2013, your affiant reviewed telephone toll information received from TFO Gaudiaga. DEA Boise had a pen register trap and trace device installed on VILLASENOR-VILLA's cellphone of (360) 463-4224, which indicated that he contacted (208) 965-7901, the phone used by his brother-in-law Joe GONZALEZ, while in Billings, Montana on September 4, 2013. A criminal history records check indicated that GONZALEZ was charged and arrested for violations of Title 21 U.S.C. 841(a)(1) and Title 21 U.S.C. 846 related to methamphetamine in Wyoming in 2002. According to TFO Gaudiaga, VILLASENOR-VILLA placed only one phone call while in the Albertson's parking lot in Billings, Montana (the phone call to Joe GONZALEZ), and the phone call lasted approximately four minutes. After speaking with VILLASENOR-VILLA, GONZALEZ then called (406) 208-9675. According to a local records check, the (406) 208-9675 number is registered to Pedro CARRASCO, Jr.

15. On October 3, 2013, the Affiant obtained a U.S. District Court, District of Montana, Billings Division Court Order Authorizing the Installation, Monitoring, and Collection of Data of Electronic Tracking Device for CARRASCO, Jr.'s dark blue almost black 2008 Cadillac STS AWD four door sedan with Montana license plate number 377695A; VIN No. 1G6DD67V580132308.

SURVEILLANCE OF SUBJECT PREMISES

16. On November 20, 2014, investigators conducted surveillance at the SUBJECT PREMISES. During surveillance, investigators observed a white Dodge Caravan bearing Washington license plate AKX3248 parked in front of the SUBJECT PREMISES. The vehicle was registered to German GARCIA at 835 Higdon Road, Unit 23, Prosser, Washington 99350. A law enforcement database search revealed GARCIA's driver license shows his residence as 835 Higdon Road, Unit 23, Prosser, Washington. Shortly after departing the residence, members of the Billings Police Department attempted to conduct a traffic stop on the vehicle as the vehicle pulled into the Town Pump on U.S. 87 in Billings, Montana. Members of the Billings Police Department did not execute a traffic stop but approached the vehicle and identified the driver of the vehicle as GARCIA and the passenger as Martin MERAZ.

TRAFFIC STOP ON FEBRUARY 7, 2016

17. On February 7, 2016, Montana Highway Patrol Trooper (MHP) Charles Burton conducted a traffic stop on a blue 1993 Mitsubishi Galant bearing Washington license plate 821FML on Interstate 90 eastbound near mile marker 85. The vehicle was stopped for having an expired registration since June 4, 2015, with a 2016 validation tag being displayed.

18. The driver was identified as Jose LUIS SANTANA-SELGADO, who had a suspended license out of the state of Washington. LUIS SANTANA-SELGADO was arrested

for misdemeanor traffic infractions. It was later determined that he had also made illegal entry into the United States and is being held on those charges as well. A second occupant of the vehicle, who was later established as a Confidential Source (CS), was the owner of the vehicle and provided consent to search the vehicle. The third occupant of the vehicle was identified as Antonio GARCIA CARDENAS, and he provided consent to search his personal property in the vehicle.

19. During a consent search of GARCIA CARDENAS' property, a methamphetamine pipe was located and seized. GARCIA CARDENAS was arrested for criminal possession of drug paraphernalia.

20. During a consent search of the vehicle, approximately 2.5 pounds of methamphetamine was located in an aftermarket speaker box in the trunk of the vehicle and subsequently seized. A field test was conducted on the methamphetamine located in the vehicle, the field test yielded positive results for the presence of methamphetamine.

INFORMATION OBTAINED FROM CONFIDENTIAL SOURCE

21. After the arrest of GARCIA CARDENAS and LUIS SANTANA-SELGADO, the CS was interviewed regarding his/her knowledge of the methamphetamine seized from the vehicle. The CS provided information and identified photographs of members of the conspiracy, including CARRASCO, Jr., without any identifying information present on them. The CS also positively identified a photograph of the SUBJECT PREMISES. Some of the information provided by the CS had previously been corroborated through this investigation, including Pedro CARRASCO, Jr.'s cellular telephone number and the identity of several co-conspirators.

22. The CS is cooperating with DEA for consideration on possible drug trafficking charges. DEA has not made any promises to the CS. The CS has a history of theft, forgery, and trespassing.

23. During the interview, the CS stated that, on February 7, 2016, the CS, LUIS SANTANA-SELGADO and GARCIA CARDENAS were transporting the methamphetamine seized from the vehicle from the Prosser, Washington area to Billings, Montana. The CS said that the methamphetamine was going to be delivered to Pedro CARRASCO, Jr.

24. The CS stated that LUIS SANTANA-SELGADO and GARCIA CARDENAS were transporting methamphetamine to CARRASCO, Jr. from a new source of supply. The CS stated that CARRASCO, Jr. had previously been obtaining pound to multi-pound quantities of methamphetamine from Martin MERAZ of Grandview, Washington. According to the CS, LUIS SANTANA-SELGADO was previously just a money courier for the organization and was tasked with obtaining and transporting money, which was the proceeds from methamphetamine trafficking, from CARRASCO, Jr.

25. The CS explained that, in February or March of 2015, German GARCIA and Martin MERAZ were stopped by law enforcement after departing the SUBJECT PREMISES. The CS believed that they may have had some money seized from them. After this incident, GARCIA and MERAZ did not want to continue to transport methamphetamine to Billings and, therefore, recruited couriers to transport the methamphetamine. The CS was shown photos without any identifying information present on them of both GARCIA and MERAZ, and the CS positively identified them as GARCIA and MERAZ.

26. The CS stated that MERAZ¹ had been the primary methamphetamine source of supply to Pedro CARRASCO, Jr. for approximately the last four years. MERAZ and CARRASCO, Jr., however, recently had a disagreement over payment for methamphetamine. The CS said that because of this disagreement, LUIS SANTANA-SELGADO was attempting to replace MERAZ as a methamphetamine source of supply to Pedro CARRASCO, Jr.

27. On February 8, 2016, the CS placed a recorded phone call to CARRASCO, Jr. at (406) 208-9675² to inform him that the CS, LUIS SANTANA-SELGADO and GARCIA CARDENAS were on their way to his residence. The CS explained that CARRASCO, Jr. is expecting them to deliver the methamphetamine to the SUBJECT PREMISES. CARRASCO, Jr. told the CS: "I will talk with you guys when you get here then." The CS told CARRASCO, Jr. that they were on their way. The CS also said that LUIS SANTANA-SELGADO had previous conversations with CARRASCO, Jr. about getting methamphetamine from him and not MERAZ. The CS stated that CARRASCO, Jr. was not happy with the methamphetamine being supplied to him by MERAZ, and LUIS SANTANA-SELGADO informed CARRASCO, Jr. that he could obtain methamphetamine from a separate source of supply.

28. On February 9, 2016, agents again interviewed the CS. During this interview, the CS explained that he/she and others had previously made trips to Billings to meet with Pedro CARRASCO, Jr. for methamphetamine distribution purposes. Specifically, in November of 2013, the CS, GERALDO NAVARETTE-GARCIA, and LUIS SANTANA-SELGADO traveled

¹ Your affiant is aware that DEA in Yakima, Washington has conducted purchases of methamphetamine directly from MERAZ. In early 2015, DEA Yakima purchased an ounce of methamphetamine from MERAZ and subsequently purchased another two ounces of methamphetamine. During the purchase of the ounce of methamphetamine, MERAZ showed up with approximately one pound of methamphetamine.

² This is the same phone number that agents had previously identified as belonging to Carrasco, Jr. See, paragraph 14.

from Washington to Billings to collect money from CARRASCO, Jr. for methamphetamine previously delivered to him.

29. The CS next stated that in approximately December 2014 or January 2015, CARRASCO, Jr. provided \$120,000.00 in U.S. currency to Geraldo NAVARETTE-GARCIA to obtain methamphetamine for him. NAVARETTE-GARCIA was instructed to take the U.S. currency to Tijuana, Mexico and obtain three kilograms of methamphetamine and transport it back to Billings, Montana for CARRASCO, Jr. to distribute. According to the CS, NAVARETTE-GARCIA was a co-conspirator of MERAZ and a fellow methamphetamine source of supply for CARRASCO, Jr. According to the CS, the methamphetamine obtained by NAVARETTE-GARCIA and provided to CARRASCO, Jr. was bad and made people sick because it was allegedly laced with strychnine or some other chemical.

30. According to the CS, NAVARETTE-GARCIA flies commercial airlines from Washington to Billings, Montana on a regular basis to conduct methamphetamine transactions. NAVARETTE-GARCIA also occasionally drives from Washington to Billings to conduct methamphetamine transactions. During these trips, NAVARETTE-GARCIA stays at the Country Inn in Billings, Montana, which is located near an Applebee's restaurant. Your affiant knows that there is a Country Inn and Suites located at 231 Main Street, Billings, Montana, and there is an Applebee's restaurant located across the street from the Country Inn and Suites located at 204 Main Street, Billings, Montana.

31. The CS stated that in approximately January 2015, the CS, GARCIA, and LUIS SANTANA-SELGADO returned to Billings, Montana and picked up approximately \$11,000.00 in U.S. currency from CARRASCO, Jr. for methamphetamine he had previously obtained from them.

32. Further, the CS said that on December 25, 2015, the CS, GARCIA, and another individual named "MARCO" delivered approximately one pound of methamphetamine from Washington to CARRASCO, Jr. at the SUBJECT PREMISES. During this trip, CARRASCO, Jr. provided GARCIA with \$5,500.00 for the methamphetamine that he obtained. The CS stated that CARRASCO, Jr. was supposed to pay \$20,000.00 for the methamphetamine. CARRASCO, Jr. told GARCIA, MARCO, and the CS that because it was Christmas, he only wanted to pay what he absolutely had to pay. GARCIA insisted that he had to have \$5,500.00 for the methamphetamine. CARRASCO, Jr. then left the garage area of the residence, went upstairs and returned with a black box. The CS observed approximately \$10,000.00 in U.S. currency in the box. CARRASCO, Jr. then gave Garcia \$5,500.00, and he kept the rest of the money. GARCIA and "MARCO" then left the CS in Billings to collect additional money owed to them by CARRASCO, Jr.

33. While in Billings, the CS stayed at the SUBJECT PREMISES for approximately one week and then moved to the Rodeway Inn for one night before returning to Washington via Greyhound bus. CARRASCO, Jr., however, refused to pay for the methamphetamine that they had delivered to him. He stated that it was "sleepy dope", which meant that it was not good quality methamphetamine. During the CS's stay at the SUBJECT PREMISES, the CS used methamphetamine with him, his wife, Katrina DOVEL, and his brother, Filemon CARRASCO. The CS positively identified photographs of Filemon CARRASCO and Katrina DOVEL without any identifying information present.

34. The CS stated that, on February 6, 2016, the CS and LUIS SANTANA SELGADO contacted Pedro CARRASCO, Jr. on the CS's cellular phone. During the phone conversation, CARRASCO, Jr. stated that GARCIA and "MARCO" sent members of their drug

trafficking organization to Billings to collect the money owed to them by CARRASCO, Jr. The CS heard that they were unable to collect the money from CARRASCO, Jr. CARRASCO, Jr. informed LUIS SANTANA-SELGADO and the CS that he pointed a firearm at them and had them leave his residence. Your affiant believes that the firearm may still be at the SUBJECT PREMISES.

FINANCIAL INVESTIGATION

35. On February 8, 2016, Internal Revenue Service ("IRS") SA Jeffrey Obie reviewed CARRASCO, Jr.'s credit card account records obtained via Grand Jury subpoena. During the review of the records, SA Obie located numerous transactions to Country Inn and Suites in Billings, Montana as well as other hotels located in Billings, Montana.

36. SA Obie located numerous cash advances issued from the credit card accounts. The CS indicated that CARRASCO, Jr. prefers to pay for drugs with cash only, because he believes regular bank transfers leave a paper trail.

37. Based on the information in the records, CARRASCO, Jr. is making payments to his credit card accounts via internet payments. This indicates that CARRASCO, Jr. is using electronic devices including computers, tablet PC's, and/or cellular devices to further his drug trafficking activities.

38. Based on the records located by SA Obie, there may be receipts and other records maintained by CARRASCO, Jr. at the SUBJECT PREMISES pertaining to his methamphetamine distribution activity with NAVARETTE-GARCIA and others. In particular, there may be receipts from the Country Inn and Suites located inside the SUBJECT PREMISES.

SURVEILLANCE CAMERAS

39. During previous surveillance conducted at the SUBJECT PREMISES, agents have observed multiple surveillance cameras installed at his residence. The CS also confirmed that CARRASCO, Jr. has numerous surveillance cameras located around his residence. The CS stated that CARRASCO, Jr. has surveillance cameras to cover every angle or view on the outside of his residence. The CS stated that CARRASCO, Jr. continually monitors the surveillance cameras and also has sensors around the house to alert him if someone is near the house.

40. Based your Affiant's training and experience, your Affiant has observed drug traffickers utilize surveillance cameras to aid them with the distribution of controlled substances. Surveillance cameras alert drug traffickers to the present of law enforcement, as well as the presence of other co-conspirators.

CRIMINAL HISTORY

41. Your affiant checked CARRASCO, Jr.'s criminal history and found that he was charged and arrested in 2002 the District of Montana for Conspiracy to Possess with Intent to Distribute Methamphetamine, in violation of Title 21 U.S.C. 846. CARRASCO, Jr. was convicted of the charges in the District of Montana and sentenced to 92 months and three years of supervised release. Due to his prior felony, CARRASCO, Jr. is a convicted felon and cannot be in possession of a firearm.

EVIDENCE OF CRIMES LIKELY TO BE FOUND AT SUBJECT PREMISES

42. As a result of my law enforcement training and experience in drug trafficking and money laundering investigations, I have developed a detailed understanding of conspiracies and related illegal activities by criminal drug trafficking organizations and their associates. Such understanding is detailed in the following paragraphs.

43. Drug trafficking conspiracies and the distribution of controlled substances are frequently continuing criminal enterprises which span over months, and often, years. Drug traffickers that have access to multi-pound quantities of controlled substances, typically will obtain and distribute controlled substances on a regular basis.

44. Based on my training and experience drug traffickers commonly maintain those items described in ATTACHMENT B, including records relating to distribution of controlled substances. For instance, drug traffickers commonly utilize a system where they "front", or provide without payment, controlled substances to their co-conspirators. They provide controlled substances and obtain the payment at a later date, after that co-conspirator has distributed the controlled substances obtained from their source to others and received payment from their customers. Due to this "front" it is not uncommon for drug traffickers to keep some type of records concerning the amount of controlled substances provided to their co-conspirators and the money owed to them for the controlled substances provided. These records are commonly maintained where they have access to them, or where the trafficker believes the records would be safe, such as their residence or their cellular telephones and/or other electronic devices.

45. As previously stated, there is evidence that Pedro CARRASCO, Jr. has surveillance cameras outside of his residence. If the surveillance cameras store recordings, then those recording may contain evidence related to the distribution of controlled substances namely, but not limited to methamphetamine.

TRAINING AND EXPERIENCE ON DIGITAL DEVICES

46. As used herein, the term "digital device" includes any electronic system or device capable of storing and/or processing data in digital form, including: Central Processing Units

(CPU's or "computers"); laptop or notebook computers; personal digital assistants; USB hard drives or "jump drives" intended for removable media; digital camera or removable media storage cards; external hard disk drives, cellular telephones, GPS devices, compact disks (CD, DVD, and Blu-Ray); and security devices.

47. Based on my knowledge, training, and experience, as well as information related to me by Agents and others involved in the forensic examination of digital devices, I know that data in digital form can be stored on a variety of digital devices and that during the search of the premises it is not always possible to search digital devices for digital data for a number of reasons, including the following:

- a. Searching digital devices can be a highly technical process that requires specific expertise and specialized equipment. There are so many types of digital devices and software in use today that it is impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a thorough search. In addition, it may also be necessary to consult with specially trained personnel who have specific expertise in the type of digital device, software application or operating system that is being searched.
- b. Digital data is particularly vulnerable to inadvertent or intentional modification or destruction. Searching digital devices can require the use of precise, scientific procedures that are designed to maintain the integrity of digital data and to recover "hidden," erased, compressed, encrypted or password-protected data. As a result, a controlled environment, such as a

law enforcement laboratory or similar facility, is essential to conducting a complete and accurate analysis of data stored on digital devices.

- c. The volume of data stored on many digital devices will typically be so large that it will be highly impractical to search for data during the execution of the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing 500 gigabytes (GB) of data are now commonplace in desktop computers. Consequently, each non-networked, desktop computer found during a search could contain the equivalent of 240 million pages of data, that, if printed out, would completely fill three 35' x 35' x 10' rooms to the ceiling. Further, a 500 GB drive could contain as many as approximately 450 full-length movies or 450,000 songs.
- d. Electronic files or remnants of such files can be recovered months or even years after they have been downloaded onto a hard drive, deleted or viewed via the Internet. Electronic files saved to a hard drive can be stored for years with little or no cost. Even when such files have been deleted, they can be recovered months or years later using readily-available forensics tools. Normally, when a person deletes a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive until it is overwritten by new data. Therefore, deleted files, or remnants of deleted files, may reside in free

space or slack space, i.e., space on the hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a swap or recovery file. Similarly, files that have been viewed via the Internet are automatically downloaded into a temporary Internet directory or cache. The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently viewed Internet pages. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits. Recovery of residue of electronic files from a hard drive requires specialized tools and a controlled laboratory environment.

- c. Although some of the records called for by this warrant might be found in the form of user-generated documents (such as word processor, picture, and movie files), digital devices can contain other forms of electronic evidence as well. In particular, records of how a digital device has been used, what it has been used for, who has used it, and who has been responsible for creating or maintaining records, documents, programs, applications and materials contained on the digital devices are, as described further in the attachments, called for by this warrant. Those records will not always be found in digital data that is neatly segregable

from the hard drive image as a whole. Digital data on the hard drive not currently associated with any file can provide evidence of a file that was once on the hard drive but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave digital data on the hard drive that show what tasks and processes on the computer were recently used. Web browsers, e-mail programs, and chat programs store configuration data on the hard drive that can reveal information such as online nicknames and passwords. Operating systems can record additional data, such as the attachment of peripherals, the attachment of USB flash storage devices, and the times the computer was in use. Computer file systems can record data about the dates files were created and the sequence in which they were created. This data can be evidence of a crime, indicate the identity of the user of the digital device, or point toward the existence of evidence in other locations. Recovery of this data requires specialized tools and a controlled laboratory environment.

- f. Further, evidence of how a digital device has been used, what it has been used for, and who has used it, may be the absence of particular data on a digital device. For example, to rebut a claim that the owner of a digital device was not responsible for a particular use because the device was being controlled remotely by malicious software, it may be necessary to show that malicious software that allows someone else to control the digital device remotely is not present on the digital device. Evidence of

the absence of particular data on a digital device is not segregable from the digital device. Analysis of the digital device as a whole to demonstrate the absence of particular data requires specialized tools and a controlled laboratory environment.

g. Other than what has been described herein, to my knowledge, the United States has not attempted to obtain this data by other means.

48. In searching for digital devices and in searching digital data stored on digital devices, law enforcement personnel executing this search warrant will employ the following procedure:

i. Law enforcement personnel or other individuals assisting law enforcement personnel will, in their discretion, either search the digital device(s) on-site or seize and transport the device(s) to an appropriate law enforcement laboratory or similar facility to be searched at that location. The team searching the digital device(s) shall complete the search as soon as is practicable but not to exceed 60 days from the date of execution of this warrant. If additional time is needed, the government may seek an extension of this time period from the Court within the original 60 day period from the date of execution of the warrant.

ii. The team searching the digital devices will do so only by using search protocols specifically chosen to identify only the specific items to be seized under this warrant.

(a) The team may subject all of the data contained in the digital device or the forensic copy capable of containing items to be seized as specified in this warrant to the protocols to determine whether the digital device and

any data falls within the items to be seized as set forth herein. The team searching the digital device may also search for and attempt to recover "deleted," "hidden" or encrypted data to determine, pursuant to the protocols, whether the data falls within the list of items to be seized as set forth herein.

(b) These search protocols also may include the use of tools to exclude normal operating system files and standard third-party software that do not need to be searched.

iii. When searching a digital device pursuant to the specific search protocols selected, the team searching the digital device shall make and retain notes regarding how the search was conducted pursuant to the selected protocols.

iv. If the team searching a digital device pursuant to the selected protocols encounters immediately apparent contraband or other evidence of a crime outside the scope of the items to be seized, the team shall immediately discontinue its search of that digital device pending further order of Court, and shall make and retain notes detailing how the contraband or other evidence of a crime was encountered, including how it was immediately apparent contraband or evidence of a crime.

v. At the conclusion of the search of the digital devices as set forth in subparagraph (i) above, any digital device determined to be itself an instrumentality of the offense(s) and all the data thereon shall be retained by the government until further order of court or one year after the conclusion of the criminal case/investigation.

vi. Notwithstanding the above, after the completion of the search of the digital devices as set forth in subparagraph (i) above, the government shall not access

digital data falling outside the scope of the items to be seized in this warrant on any retained digital devices or digital data absent further order of court.

vii. If the search team determines that a digital device is not an instrumentality of any offense under investigation and does not contain any data falling within the list of items to be seized pursuant to this warrant, the government will as soon as practicable return the digital device and delete or destroy all the forensic copies thereof.

viii. If the search determines that the digital device or the forensic copy is not an instrumentality of the offense but does contain data falling within the list of the items to be seized pursuant to this warrant, the government either (i) within the time period authorized by the Court for completing the search, return to the Court for an order authorizing retention of the digital device and forensic copy; or (ii) retain only a copy of the data found to fall within the list of the items to be seized pursuant to this warrant and return the digital device and delete or destroy all the forensic copies thereof.

CONCLUSION

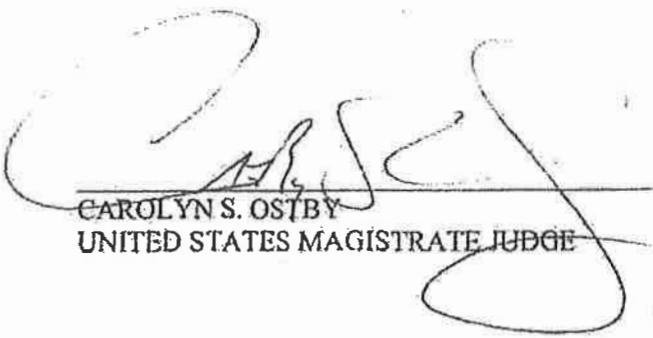
Based on the facts stated in the Affidavit, your Affiant knows Pedro CARRASCO, Jr. is distributing methamphetamine in and around Billings, Montana. CARRASCO, Jr.'s co-conspirators include, but are not limited to, Jose LUIS SANTANA-SELGADO, Antonio GARCIA CARDENAS, German GARCIA, Martin MERAZ, and Geraldo NAVARETTE-GARCIA. Your Affiant knows that Pedro CARRASCO, Jr. has been supplied methamphetamine from Washington by MERAZ, GARCIA, NAVARETTE-GARCIA, and he is now attempting to be supplied methamphetamine by LUIS SANTANA-SELGADO and GARCIA CARDENAS.

Based on foregoing, I submit there is probable cause to believe that evidence, fruits, and instrumentalities of (a) conspiracy to possess with intent to distribute methamphetamine, possession with intent to distribute and distribution of methamphetamine, in violation of 21 U.S.C §§ 841(a)(1) and 846, (b) conspiracy to launder monetary instruments and laundering of monetary instruments in violation of 18 U.S.C §§ 1956 and 1957, and (c) felon in possession of a firearm and possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C §§ 922(g)(1) and 924(c), as those items are set forth in ATTACHMENT B, will be located at the SUBJECT PREMISES, as described on ATTACHMENT A.

Respectfully submitted,


Robert M. Grayson
Special Agent
Drug Enforcement Administration

Subscribed and sworn before me on the 10th day of February, 2016.


CAROLYN S. OSTBY
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Criminal Docket
No. 16-41-BLG-SPW

PEDRO CARRASCO, JR.,

Defendant.

TRANSCRIPT OF HEARING ON MOTION TO SUPPRESS PROCEEDINGS

Heard in Snowy Mountains Courtroom
James F. Battin United States Courthouse
2601 Second Avenue North
Billings, Montana
November 28, 2016
1 p.m.

BEFORE THE HONORABLE SUSAN P. WATTERS

UNITED STATES DISTRICT JUDGE

TINA C. BRILZ, RPR, FCRR
Official Court Reporter
United States District Court
James F. Battin United States Courthouse
2601 Second Avenue North, Room 4209
Billings, Montana 59101

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 Q Okay.

2 And you had been conducting surveillance on this location
3 for months?

4 A We conducted surveillance several times.

5 Q You note nothing in your affidavit that either they
6 brought in a package or took out a package?

7 A That's correct.

8 Q And I believe you said that there was not a traffic stop?

9 A Not a traffic stop, correct. They were identified by
10 members of the Billings Police Department.

11 Q And isn't it true when they were identified by members of
12 the Billings Police Department, that they also had consent to
13 search?

14 A Correct.

15 Q And nothing was found in that search; was there?

16 A They had some currency on them, but nothing was seized.

17 Q Okay.

18 So, currency, but nothing more?

19 A Correct.

20 Q Okay.

21 After that, we get into the stop on February 7th, 2016.

22 When you prepared your affidavit, were you informed of the
23 extent of the investigation involving this traffic stop?

24 A I was informed by members of DEA in Missoula, that's
25 correct.

1 Q Okay.

2 So you were aware that the driver of the vehicle that was
3 stopped, February of 2016, was Santana-Salgado?

4 A Correct.

5 Q And were you also made aware of his -- of his interview?

6 A Yes.

7 Q And you were aware, then, at his interview that he said
8 that these drugs were going to the Laurel Pelican truck stop?

9 A Correct.

10 Q And isn't that directly contrary to what your cooperating
11 source says?

12 A Correct.

13 Q Okay.

14 But you don't include any of that in your affidavit?

15 A I included what the confidential source informed us of.

16 Q You preferred to rely upon the confidential source?

17 A Yes.

18 Q And can we agree that the Laurel Pelican truck stop is
19 quite a distance from the subject premises at 1679 Vuecrest?

20 A It's still within the Billings, Montana, area.

21 Q Oh, absolutely. But they're not the same; are they?

22 A No. It's not the same address.

23 Q Okay.

24 Most of the rest of this investigation, this search
25 warrant, involved statements that were given by the cooperating

1 source? Would you agree with me?

2 A Uhm --

3 (Witness reviewing document.)

4 That and some financial information, surveillance cameras,
5 correct.

6 Q We'll get to that.

7 But the great -- the great heft of this search warrant is
8 involving the cooperating source?

9 A The next section, yes, is about the confidential source.

10 Q Okay.

11 And I would note that paragraph 23, the cooperating source
12 indicates that the 2.5, roughly, odd pounds of methamphetamine
13 was to be delivered to Mr. Carrasco?

14 A Correct.

15 Q Do you think that would be a good place to indicate
16 conflicting statement from Salgado Santana?

17 A This is about the CS's statement.

18 Q Okay.

19 So, after that was -- CS kind of gives some background,
20 would you agree with me that a lot of the background that is
21 given is quite old and dated, sometimes years old?

22 A We asked the CS detailed information about the entire
23 conspiracy.

24 Q Okay.

25 Turning to paragraph 25, the confidential source talks

LISA J. BAZANT
GW Building
2722 3RD Avenue North, Suite 400
P.O. Box 1832
Billings, MT 59103-1832
406-696-2197
lisabazant@hotmail.com
Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. PEDRO CARRASCO, JR., Defendant.	Case No. CR 16-41-BLG-SPW BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE MOTION TO RECONSIDER AND/OR MOTION FOR FRANKS HEARING
--	--

COMES NOW, Pedro Carrasco, Jr. by and through his attorney of record, Lisa J. Bazant, and pursuant to L.R. 7.3, hereby files the following brief in support of his Motion for Leave to File Motion to Reconsider and/or Motion for a Franks Hearing.

BRIEF IN SUPPORT

On December 2, 2016, this Court entered an Order denying Carrasco's

Motion to Suppress evidence obtained following the execution of a search warrant of his house. (Doc. 51, referencing Doc. 39.) Carrasco had challenged the search warrant on several grounds, but the main challenge was to the reliability of the confidential source (CS) used by law enforcement in support of the warrant.

Prior to filing the motion to suppress, Carrasco had filed a motion to obtain additional information about the CS. (Doc. 18.) In that motion Carrasco informed this Court that while Agent Grayson had included information the CS “has a history of theft, forgery and trespassing,” Agent Grayson had not provided any other information about CS’s prior criminal history. In Carrasco’s brief in support of his motion to suppress, he noted that he had not been able to obtain the true extent of CS’s criminal history and he believed this was a factor that should have been considered when evaluating the reliability of CS and his/her information. (Doc. 39).

On December 9, 2016 at 4:14 p.m., Carrasco was finally provided with the criminal history of CS.¹ On the second page of this history, which was obtained by Agent Grayson on February 9, 2016, *prior* to his application for the search warrant on February 10, the Washington State criminal history of CS is identified as follows:

¹ A full copy of the Criminal History provided is filed under seal with this Motion as Exhibit A.

CONVICTION AND/OR ADVERSE FINDING SUMMARY

10 FELONY(S)

DATE	DISPOSITION
------	-------------

THEFT 2 - WELFARE	CLASS C	FELONY	05/04/2005
FORGERY	CLASS C	FELONY	05/04/2005
FORGERY	CLASS C	FELONY	05/04/2005
THEFT-2	CLASS C	FELONY	05/02/2005
THEFT-2	CLASS C	FELONY	05/02/2005
THEFT- 2	CLASS C	FELONY	05/02/2005
FORGERY	CLASS C	FELONY	05/02/2005
THEFT-1	CLASS B	FELONY	10/20/2004
FORGERY	CLASS C	FELONY	10/20/2004
FORGERY	CLASS C	FELONY	10/20/2004

1 CLASSIFICATION (S) UNKNOWN

CRIMINAL TRESPASS	09/20/2004
-------------------	------------

Although the dispositions of several of the convictions listed above occurred on the same day, later portions of the history reflect the date of offenses were on different days and the charges were filed in more than one county. The history also shows that CS was noncompliant with the sentences she received. Finally, CS's criminal history reflects that in 2005, she was actually committed to the Washington Department of Corrections For Women as a result of her convictions for felony theft and felony forgery.

DISCUSSION

A defendant is entitled to an evidentiary hearing on the validity of the affidavit underlying a search warrant if the defendant can make a substantial

preliminary showing that (1) the affidavit contains intentionally or recklessly false statements or misleading omissions, and (2) the affidavit cannot support a finding of probable cause without the allegedly false information. *United States v. Reeves*, 210 F.3d 1041, 1044 (9th Cir. 2000). If an informant's history of criminal acts involving dishonesty renders his/her statements unworthy of belief, probable cause "must be analyzed without those statements." *Id.*, citing to *United States v. Hall*, 113 F.3d 157, 159 (9th Cir.1997).

In *Hall*, the Ninth Circuit discussed the effect of an informant's conviction for a crime involving dishonesty when evaluating an informants credibility. In *Hall*, a state trooper applied for a search warrant using information provided by an informant. When applying for the warrant, the trooper provided some of the informant's criminal history, but not all. Left out was the informant's conviction for falsely reporting a crime. *Hall*, 210 F.3d at 158. Hall filed a motion to suppress, challenging the reliability of the informant. Hall argued the true extent of the informant's criminal history had been intentionally or recklessly omitted, and had this information been provided, the magistrate would not have found the informant credible. *Id.*

The magistrate judge held a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978) and agreed with Hall. The magistrate and later the district judge

reasoned that the informant's credibility was "absolutely critical" and that the magistrate would not have issued the search warrant had he known the truth about the informer's criminal history. As explained in the case:

the state magistrate depended on the prosecutor and the trooper to present him with the truth, and to bring to his attention problems with their informant's credibility. He was misled. [The informant] was presented to the magistrate as a man with a record of minor crimes . . .

Hall, 210 F.3d at 160.

In *Hall*, the government also argued that because the informer had incriminated himself by saying Hall was his supplier, his information gained credibility. On appeal, the Ninth Circuit agreed the information gained *some* credibility as it was self-inculpatory, but it still was not reliable enough to supply probable cause. As explained by the Court in *Hall*:

'[a]dmissions of crime, like admissions against proprietary interests, carry their own indicia of credibility-sufficient at least to support a finding of probable cause to search.' In this case, however, the police had already caught [the informant] red-handed, so his admission of what he knew the police already knew did not make what he said more credible. His claim that [Hall] was his supplier was more in the nature of trying to buy his way out of trouble by giving the police someone 'up the chain,' than a self-inculpatory statement which also implicated [Hall.] Once a person believes that the police have sufficient evidence to convict him, his statement that another person is more important to his criminal enterprise than he gains little credibility from its inculpatory aspect. The fact that a person is making a broadly self-inculpatory confession does not make more credible the confession's non-self-inculpatory parts. One of the most effective ways to lie is to mix falsehood with truth, especially truth that seems particularly persuasive because of its self-inculpatory nature.

Hall, 210 F.3d at 159, quoting *United States v. Harris*, 403 U.S. 573, 583 (1971).

It is recognized that information from an informer can be found to be more credible if the information provided is corroborated. Here, for example, when attempting to rebut the staleness of the information provided by the CS, the government included CS's claim that on February 6, 2016, she and Santana-Selgado had called Carrasco from CS's cell phone. During the call, Carrasco allegedly made admissions about pointing a firearm at "to get drug debt collectors to leave his home just days before the warrant was issued." (Doc. 51 at 14.)

Telephone records to Carrasco's cell phone show that no phone call was made from CS's cell phone on February 6, 2016. The only phone call made to Carrasco's cell phone was the recorded call made by CS on February 10, 2016 at law enforcement's request. See Phone Records, attached as Ex. B.² Also, as noted during the previous suppression hearing, information contradicting the information provided by CS was known to law enforcement at the time of the application for the search warrant. The phone call on February 6, 2016 was allegedly made by both Santana-Selgado and CS. When Santana was interviewed by law enforcement on February 8, 2016, he said nothing about Carrasco or calling

² These phone records were obtained by Carrasco.

him. Santana said the methamphetamine belonged to him. Most importantly, contrary to CS's information, Santana said they were to deliver the methamphetamine to the Pelican Truck Stop in Laurel - not to the SUBJECT PREMISES, as indicated in the Search Warrant Application. (Doc. 42-1, ¶ 27). The fact that law enforcement was in possession of information that contradicted critical information provided by CS was also intentionally or recklessly withheld from the issuing magistrate.

When a probable cause determination is based largely on an informant's credibility, intentionally or recklessly omitting key information reflecting an informant's criminal past involving dishonesty "is fatal to the reliability of the informant's information . . ." *Reeves*, 210 F.3d at 1045. Here, while technically true, the information provided by the government as to the CS's criminal history was extremely misleading by omission. With the additional information, the magistrate would not have found probable cause. Carrasco asks for a Franks hearing following which he will ask for all evidence obtained following a search of his home be suppressed.

RESPECTFULLY SUBMITTED January 6, 2017.

/s/Lisa J. Bazant
LISA J. BAZANT
Attorney for Defendant

CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that on January 6, 2017, a copy of the foregoing document was served on the following persons by the following means:

1 CM-ECF

2 Hand Delivery

 Mail

 Overnight Delivery Service

 Fax

 E-Mail

1.

CLERK, UNITED STATES DISTRICT COURT

Brendan McCarthy
Assistant United States Attorney
U.S. Attorney's Office
Billings, MT

2.

Pedro Carrasco, Jr.,

/s/ Lisa J. Bazant
LISA J. BAZANT
Attorney for Defendant

BRENDAN MCCARTHY
Assistant U.S. Attorney
U.S. Attorney's Office
James F. Battin Federal Courthouse
2601 2nd Avenue North, Ste. 3200
Billings, Montana 59101
Phone: (406) 657-6101
FAX: (406) 657-6058
Email: brendan.mccarthy@usdoj.gov

FILED

OCT 10 2017

Clerk, U.S. District Court
District Of Montana
Billings

ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

CR 16-41-BLG-SPW

Plaintiff,

vs.

PEDRO CARRASCO, JR.,

PLEA AGREEMENT

Defendant.

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, represented by Brendan McCarthy, Assistant United States Attorney for the District of Montana, and the defendant, Pedro Carrasco, Jr., and the defendant's attorney, Wendy Holton, have agreed upon the following:

1. **Scope:** This plea agreement is between the United States Attorney's Office for the District of Montana and the defendant. It does not bind any other

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AUSA DEF ATTY Date

federal, state, or local prosecuting, administrative, or regulatory authority, or the United States Probation Office.

2. Charges: Defendant agrees to plead guilty to Counts I and V of the indictment. Count I of the indictment charges the crime of Conspiracy to Distribute Methamphetamine and Possess with Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 846. This offense carries a penalty of a mandatory minimum of 10 years to life imprisonment, a \$10,000,000 fine, at least five years supervised release, and a \$100 special assessment. Count V of the indictment charges the crime of Conspiracy to Commit Money Laundering in violation of 18 U.S.C. § 1956(h). This offense carries a penalty of 20 years imprisonment, a \$500,000 fine, three years supervised release and a \$100 special assessment.

The defendant also agrees to abandon all right, title and interest in the property described in the forfeiture count of the indictment, execute a release and waiver to that effect, or agree to the entry of an Order of Forfeiture transferring the property to the United States.

In regards to the Forfeiture allegation, the defendant agrees to forfeit the following personal property: (1) a Glock, model 23, .40 caliber, semi-automatic pistol with serial number PKF316; (2) a Smith & Wesson, model Bodyguard, .380 auto caliber semi-automatic pistol with serial number EAX8488; (3) 80 rounds of .40 caliber ammunition; (4) 11 rounds of .380 ACP ammunition; and (5) \$4,665.00

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AUSA DEF ATTY Date

in United States Currency.

In exchange for the concessions made by the defendant in this agreement, the United States agrees to withdraw the information filed on December 22, 2016 under 21 U.S.C. §§ 846 and 851 that subjects the defendant to an enhanced statutory penalty on the basis of the defendant's prior conviction for a felony drug offense.

At the time of sentencing, the United States will move to dismiss counts II, III, and IV of the indictment, if the Court accepts this plea agreement.

3. Nature of the Agreement: The parties agree that this plea agreement will be governed by *Rule 11(a)(2), Federal Rules of Criminal Procedure*. The defendant filed a motion to suppress the evidence seized during the search of his residence, a motion to suppress his statement, and a motion to reconsider the denial of the motion to suppress the evidence seized during the search of his residence. The Court denied all of those motions. With the consent of the United States, the defendant reserves the right to appeal the Court's adverse pre-trial ruling of those motions. *Rule 11(a)(2), Federal Rules of Criminal Procedure*.

The parties acknowledge that this conditional plea agreement and reservation also requires the consent of the Court, and that if that consent is not given, this agreement is void and the case may be set for trial.

The parties agree that this plea agreement is will also be governed by Rule 11(c)(1)(A) and (B), *Federal Rules of Criminal Procedure*. The defendant acknowledges that the agreement will be fulfilled provided the United States: a) moves to dismiss, and the Court agrees to dismiss, counts II, III and IV of the indictment; and b) makes the recommendations provided below. The defendant understands that if the agreement is accepted by the Court, and counts II, III and IV are dismissed, there will not be an automatic right to withdraw the plea even if the Court does not accept or follow the recommendations made by the United States.

4. Admission of Guilt: The defendant will plead guilty because the defendant is guilty of the charges contained in counts I and V of the indictment. In pleading guilty, the defendant acknowledges that:

Conspiracy to Distribute and Possess with Intent to Distribute – Count I

First, beginning in approximately 2011 and continuing to on or about February 10, 2016, there was an agreement between two or more persons to commit at least one crime as charged in the indictment; and

Second, the defendant became a member of the conspiracy knowing of its objectives and intending to help accomplish at least one of those objectives.

Third, the amount of methamphetamine that fell within the scope of the defendant's agreement with his coconspirators or was otherwise reasonably foreseeable to the defendant was at least 500 grams or more of a substance or mixture containing a detectable amount of methamphetamine.

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Conspiracy to Commit Money Laundering – Count V

First, there was an agreement between two or more people to commit certain offenses under 18 U.S.C. § 1956, to knowingly conduct and attempt to conduct financial transactions affecting interstate commerce, which transactions involved the proceeds of specified unlawful activity, that is, conspiracy to possess with intent to distribute methamphetamine; and

Second, the defendant entered the agreement knowing of its objectives and intending to accomplish at least one of those objectives.

5. Waiver of Rights by Plea:

(a) The government has a right to use against the defendant, in a prosecution for perjury or false statement, any statement given under oath during the plea colloquy.

(b) The defendant has the right to plead not guilty or to persist in a plea of not guilty.

(c) The defendant has the right to a jury trial unless, by written waiver, the defendant consents to a non-jury trial. The United States must also consent and the Court must approve a non-jury trial.

(d) The defendant has the right to be represented by counsel and, if necessary, have the Court appoint counsel at trial and at every other stage of these proceedings.

(e) If the trial is a jury trial, the jury would be composed of 12 laypersons selected at random. The defendant and the defendant's attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt.

(f) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not the judge was persuaded of the defendant's guilt beyond a reasonable doubt.

(g) At a trial, whether by a jury or a judge, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those government witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence. If the witnesses for the defendant would not appear voluntarily, their appearance could be mandated through the subpoena power of the Court.

(h) At a trial, there is a privilege against self-incrimination so that the defendant could decline to testify and no inference of guilt could be drawn from the refusal to testify. Or the defendant could exercise the choice to testify.

(i) If convicted, and within 14 days of the entry of the Judgment and Commitment, the defendant would have the right to appeal the conviction to the Ninth Circuit Court of Appeals for review to determine if any errors were made that would entitle the defendant to reversal of the conviction.

(j) The defendant has a right to have the district court conduct the change of plea hearing required by Rule 11, Federal Rules of Criminal Procedure. By execution of this agreement, the defendant waives that right and agrees to hold that hearing before, and allow the Rule 11 colloquy to be conducted by, the U.S. Magistrate Judge, if necessary.

(k) If convicted in this matter, a defendant who is not a citizen of the United States may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

The defendant understands that by pleading guilty pursuant to this agreement, the defendant is waiving all of the rights set forth in this paragraph. The defendant's attorney has explained those rights and the consequences of waiving those rights.

6. Recommendations: The United States will recommend the defendant's offense level be decreased by two levels for acceptance of

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responsibility, pursuant to USSG §3E1.1(a), unless the defendant is found to have obstructed justice prior to sentencing, pursuant to USSG §3C1.1, or acted in any way inconsistent with acceptance of responsibility. The United States will move for an additional one-level reduction, pursuant to USSG §3E1.1(b), if appropriate under the Guidelines. The United States also agrees that it will move to vary downward in the event that the total offense level is increased for acts of money laundering. The parties reserve the right to make any other arguments at the time of sentencing. The defendant understands that the Court is not bound by this recommendation.

7. Sentencing Guidelines: Although advisory, the parties agree that the U.S. Sentencing Guidelines must be applied, and a calculation determined, as part of the protocol of sentencing to determine what sentence will be reasonable.

8. Appeal Waiver:

a. *Waiver of Appeal of the Sentence – General:* The defendant understands that the law provides a right to appeal and collaterally attack the sentence imposed in this case. Based on the concessions made by the United States in this case, the defendant knowingly waives any right to appeal the sentence and any right to bring any other post-conviction attack on the sentence. The defendant specifically agrees not to file a motion under 28 U.S.C. § 2255 or § 2241 attacking the sentence. This waiver does not prohibit the right to pursue or maintain such an action alleging ineffective assistance of counsel.

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AUSA DEF ATTY Date

b. *Waiver of Appeal of the Sentence – 5K motion:* The defendant understands that the law provides a right to appeal and collaterally attack the sentence imposed in this case. 18 U.S.C. § 3742(a). Under appropriate circumstances, the United States may move, but has not made any commitment as part of this agreement to move, for a reduction of sentence pursuant to USSG §5K1.1 to reward the defendant for any substantial assistance provided before sentencing. If such a motion is made and the Court accepts the plea agreement, the defendant waives all right to appeal any aspect of the sentence, including conditions of probation or supervised release, imposed by the Court.

If a motion for downward departure is made under USSG §5K1.1, the defendant also agrees to waive the right to collaterally attack the judgment or sentence pursuant to 28 U.S.C. § 2255. This waiver does not prohibit the right to pursue an action alleging ineffective assistance of counsel.

The United States emphasizes, and the defendant again acknowledges, that no such motion is bargained for in this agreement. No commitment to make such a motion has been made as part of the plea agreement, and the defendant has been made specifically aware that Department of Justice policy does not authorize any individual prosecutor to file such a motion or make such a commitment without express written approval of the U.S. Attorney or a Committee of other prosecutors designated and empowered by the U.S. Attorney to approve such a motion.

USAM 9-27.400.

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c. *Waiver and Dismissal of Appeal of the Sentence – Rule 35 motion:* The defendant understands that the law provides a right to appeal and collaterally attack the sentence imposed in this case. 18 U.S.C. § 3742(a). Under appropriate circumstances, the United States may move, but has not made any commitment as part of this agreement to move, for a reduction of sentence pursuant to Rule 35, *Federal Rules of Criminal Procedure*, to reward the defendant for any substantial assistance the defendant provides after sentencing. If such a motion is made, and granted by the Court, the defendant agrees to waive any appeal of the sentence and judgment imposed, and dismiss any pending appeal of the judgment and sentence previously taken.

If a Rule 35 motion for reduction of sentence is made and granted by the Court, the defendant also agrees to waive the right to collaterally attack the judgment or sentence pursuant to 28 U.S.C. § 2255. This waiver does not prohibit the right to pursue an action alleging ineffective assistance of counsel.

The United States emphasizes, and the defendant again acknowledges, that no such motion is bargained for in this agreement. No commitment to make such a motion has been made as part of the plea agreement, and the defendant has been made specifically aware that Department of Justice policy does not authorize any individual prosecutor to make such a commitment without express written approval of the U.S. Attorney, or a Committee of other prosecutors designated and empowered by the U.S. Attorney to approve such a motion. USAM 9-27.400.

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AUSA DEF ATTY Date

9. Voluntary Plea: The defendant and the defendant's attorney acknowledge that no threats, promises, or representations have been made to induce the defendant to plead guilty, and that this agreement is freely and voluntarily endorsed by the parties.

10. Detention/Release After Plea: Pursuant to 18 U.S.C. § 3143(a)(2), the defendant acknowledges that the defendant will be detained upon conviction unless (A)(i) the Court finds there is a substantial likelihood that a motion for acquittal or new trial will be granted or (ii) this agreement provides that the United States will recommend that no sentence of imprisonment be imposed and (B) the Court finds, by clear and convincing evidence, that the defendant is not likely to flee or pose a danger to any other person or the community. Then, if exceptional circumstances exist, the defendant may be released upon conditions.

11. Breach: If the defendant breaches the terms of this agreement, or commits any new criminal offenses between signing this agreement and sentencing, the U.S. Attorney's Office is relieved of its obligations under this agreement, but the defendant may not withdraw the guilty plea.

12. Entire Agreement: Any statements or representations made by the United States, the defendant, or defense counsel prior to the full execution of this plea agreement are superseded by this plea agreement. No promises or representations have been made by the United States except as set forth in writing

in this plea agreement. This plea agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this plea agreement is not to be considered part of the agreement.

LEIF JOHNSON *Kurt G. Alme* *BMH*
Acting United States Attorney *10/10/17*

RL McCarthy
Brendan McCarthy
Assistant U. S. Attorney
Date: *10/10/17*

Pedro Carrasco
Pedro Carrasco, Jr.
Defendant
Date: *9-29-17*

Wendy Holton
Wendy Holton
Defense Counsel
Date: *9/29/17*

WENDY HOLTON
Attorney at Law
211 5th Avenue
Helena, MT 59601

406-442-9349
406-443-4829 (Fax, call first)
wholton@mt.net

Attorney for Defendant Carrasco

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PEDRO CARRASCO, JR.,

Defendant.

Case No. CR 16-41-BLG-SPW

**UNOPPOSED MOTION
TO FILE DISCOVERY
AND OTHER MATERIALS
CONVENTIONALLY AND
UNDER SEAL**

Comes now Pedro Carrasco, through his counsel of record Wendy Holton, and moves to file the discovery in this matter along with the search warrant application and transcripts of the CI's interview conventionally and under seal. The reason for this Motion is that the plea agreement allows Mr. Carrasco to appeal the denial of his suppression motions and this will ensure that appellate counsel has access to the materials.

Assistant United States Attorney Brendan McCarthy has been contacted

regarding this Motion and he does not oppose it.

DATED this 6th day of February, 2018.

/s/ Wendy Holton

Wendy Holton

Attorney for Pedro Carrasco, Jr.

**CERTIFICATE OF SERVICE
L.R. 5.2(b)**

I hereby certify that on February 6, 2018, a copy of the foregoing document was served on the following persons by the following means:

1-2 CM-ECF
 Hand Delivery
 U.S. Mail

1. CLERK, UNITED STATES DISTRICT COURT
2. BRENDAN P. MCCARTHY
Assistant United States Attorney
U.S. Attorney's Office
2601 Second Ave. North, Suite 3200
Billings, MT 59101

/s/ Wendy Holton

Wendy Holton

Attorney for Pedro Carrasco

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

FEB 07 2018

Clerk, U S District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PEDRO CARRASCO, JR.,

Defendant.

Case No. CR 16-41-BLG-SPW

ORDER

Upon the Defendant Pedro Carrasco, Jr.'s Unopposed Motion to File Discovery and Other Materials Conventionally and Under Seal (Doc. 181), and for good cause being shown,

IT IS HEREBY ORDERED that counsel for Mr. Carrasco may file the discovery, application for search warrant, and transcript of the CI's interview conventionally and under seal.

DATED this 7th day of February, 2018.



SUSAN P. WATTERS
UNITED STATES DISTRICT JUDGE