

APPENDIX

B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

v.

HERMAN ROSARIO,
Appellant

Appeal from the judgment entered on May 9, 2019,
in the United States District Court for the Eastern District of Pennsylvania,
Hon. R. Barclay Surrick, at Criminal No. 17-553-RBS-1

BRIEF OF APPELLANT AND JOINT APPENDIX VOLUME I
(Joint Appendix, pages 1-27)

LUIS A. ORTIZ, ESQUIRE
CJA Counsel in the
Eastern District of Pennsylvania

Attorney for Appellant,
Herman Rosario

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERMAN ROSARIO,

Defendant.

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:
:

Criminal Action No. 17-553-1-RBS

NOTICE OF APPEAL

Notice is hereby given that Herman Rosario, Defendant, by and through his undersigned attorney, Luis A. Ortiz Esq., hereby appeals to the United States Court of Appeals for the Third Circuit, from the Judgement entered by The Honorable R. Barclay Surrick on May 9, 2019, in the United States District Court for the Eastern District of Pennsylvania.

Dated: May 21, 2019

/s/ Luis A. Ortiz

LUIS A. ORTIZ, ESQUIRE

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UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

UNITED STATES OF AMERICA

v.

HERMAN ROSARIO

FILED

MAY 09 2019

KATE BARKMAN, Clerk
By _____ Dep Clerk

JUDGMENT IN A CRIMINAL CASE

Case Number: DPAE2:17CR00553-001

USM Number: 69726-066

Luis Ortiz, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 through 4 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21§846	CONSPIRACY TO DISTRIBUTE 1 KILOGRAM OR MORE OF HEROIN	7/14/2017	1

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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

5/9/2019

Date of Imposition of Judgment

Signature of Judge

R. Barclay Surrick, U.S. District Judge

Name and Title of Judge

5/9/2019

Date

DEFENDANT: HERMAN ROSARIO
CASE NUMBER: DPAE2:17CR00553-001

ADDITIONAL COUNTS OF CONVICTION

[illegible]

DEFENDANT: HERMAN ROSARIO
CASE NUMBER: DPAE2:17CR00553-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

On each of Counts 1 and 2, 168 months. On Count 4, 120 months. The terms of incarceration imposed on Counts 1, 2, and 4 are to run concurrently with each other. On Count 3, 60 months, to run consecutive to the terms of incarceration imposed on Counts 1, 2, and 4. This is a total term of incarceration of 228 months. Defendant shall receive credit for time served.

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

Defendant shall receive mental health and drug abuse treatment.
Defendant shall receive educational and vocational training.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: HERMAN ROSARIO
CASE NUMBER: DPAE2:17CR00553-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

On each of Counts 1, 2, and 3, 5 years. On Count 4, 3 years. All such periods of supervised release are to run concurrently with each other. This is a total period of supervised release of 5 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: HERMAN ROSARIO
CASE NUMBER: DPAE2:17CR00553-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: HERMAN ROSARIO
CASE NUMBER: DPAE2:17CR00553-001

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall participate in a program at the direction of the probation officer aimed at obtaining a GED, learning a vocation, or improving the defendant's literacy, education level, or employment skills in order to develop or improve skills needed to obtain and maintain gainful employment. The defendant shall remain in any recommended program until completed or until such time as the defendant is released from attendance by the probation officer.
2. The defendant shall participate in a mental health program for evaluation and/or treatment and abide by the rules of any such program until satisfactorily discharged.
3. The defendant shall refrain from the illegal possession and/or use of drugs and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that the defendant shall participate in drug treatment and abide by the rules of any such program until satisfactorily discharged.

DEFENDANT: HERMAN ROSARIO
 CASE NUMBER: DPAE2:17CR00553-001

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 400.00	\$ 0.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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

DEFENDANT: HERMAN ROSARIO
CASE NUMBER: DPAE2:17CR00553-001

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 400.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

☐ Joint and Several

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

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s)
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States
See page 9.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DEFENDANT: HERMAN ROSARIO

CASE NUMBER: DPAE2:17CR00553-001

ADDITIONAL FORFEITED PROPERTY

- a. the sum of \$18,999 in United States Currency;
- b. one (1) Glock, Model 17, 9 mm pistol, serial number ZEV930; and
- c. one (1) Colt, .45 caliber pistol, serial number CPB9786.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

HERMAN ROSARIO a.k.a. "German Rosario,"
YATSKA MELENDEZ

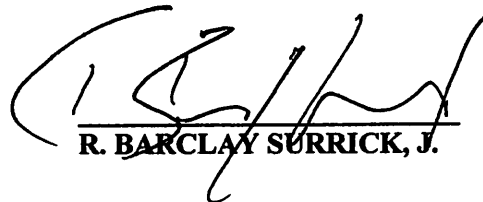
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: CRIMINAL ACTION
:
: NO. 17-553
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ORDER

AND NOW, this 13th day of February, 2018, upon consideration of Defendants' Motions to Suppress Physical Evidence seized at 1611 South 28th Street (ECF Nos. 33, 34, 47) and all documents submitted in support thereof and in opposition thereto, and after a hearing, it is **ORDERED** that the Motions are **DENIED**.

IT IS SO ORDERED.

BY THE COURT:


R. BARCLAY SURRICK, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 17-553
HERMAN ROSARIO a.k.a. "German Rosario,"	:	
YATSKA MELENDEZ	:	

MEMORANDUM

SURRICK, J.

FEBRUARY 13, 2018

Presently before the Court are Defendants' Motions to Suppress Physical Evidence. (ECF Nos. 33, 34, 47.) For the following reasons, Defendants' Motions will be **DENIED**.

I. BACKGROUND

On October 11, 2017, a grand jury returned an Indictment charging Defendants Herman Rosario and Yatska Melendez with conspiring to distribute the controlled substances heroin, crack cocaine, fentanyl, and tramadol, in violation of 21 U.S.C. §§ 841, 846. (Indictment, ECF No. 1, Count One.) Rosario was also charged with possession with intent to distribute these controlled substances (Count Two), possession of a firearm in furtherance of a drug trafficking crime (Count Three), and possession of a firearm by a convicted felon (Count Four). (*Id.*) Rosario and Melendez now move to suppress all evidence seized at 1611 South 28th Street in Philadelphia, Pennsylvania, pursuant to a search warrant issued by a state magistrate. Defendants contend that the affidavit upon which the warrant application was based did not contain enough information to support a finding of probable cause.

A. Factual Background

Although drugs, paraphernalia, and weapons were recovered from three separate houses pursuant to different search warrants in this case, Defendants only challenge the sufficiency of the application for search warrant and affidavit issued for 1611 South 28th Street. (Rosario Mot., Ex. A, ECF No. 33.)

On July 13, 2017, Philadelphia Police Officer Neil Carr filed an affidavit of probable cause in support of a search and seizure warrant. In the affidavit, Carr declared his belief that firearms, narcotics, and/or narcotics proceeds were being stored and/or sold from 1611 South 28th Street in Philadelphia, Pennsylvania. (*Id.*)

The affidavit provided that in the month of June 2017, the Philadelphia Police Department Narcotics Unit conducted an investigation into the illegal sale of narcotics in the area of Jasper and Wishart Streets. (*Id.*) As part of the investigation, a confidential informant working with the police purchased heroin in this area on June 14, June 21, and June 26. (*Id.*) The investigation established that a male identified as Defendant Herman Rosario was supplying narcotics to a woman described as an “H/F” (Hispanic female) at 1908 East Wishart Street, and that this woman was providing street dealers in the area with these narcotics. (*Id.*) On several occasions, Rosario was seen receiving sums of cash from the woman and then driving to 2863 North 4th Street, using “various vehicles” to do so. (*Id.*) Rosario was also seen on multiple occasions leaving 2863 North 4th Street and going to 1908 East Wishart Street, where he would hand a bag believed to contain narcotics to the woman. (*Id.*)

The affidavit states that on June 28, 2017, a search warrant for 1908 East Wishart Street was executed and resulted in the confiscation of 24 capsules of heroin and \$79. (*Id.*) It also describes the execution of a search warrant at 2863 North 4th Street, also on June 28, where

police confiscated 251 packets of cocaine, 699 grams of marijuana, \$18,999, and a .45 caliber handgun hidden in a bathroom wall. (*Id.*) In addition, police found two pictures of Rosario at the 2863 North 4th Street location. (*Id.*) Rosario was not present at either location during the execution of the warrants. (*Id.*)

It appears from the affidavit that Officer Carr's Narcotics Unit was working in conjunction with a DEA Task Force and was also in communication with the "Attorney General's Gun Violence Task Force." (*Id.*) Following the execution of the search warrants at the North Philadelphia locations, "information was received" that Rosario was residing at 1611 South 28th Street in South Philadelphia and that Rosario was using a gray Mazda sedan. (*Id.*)

On July 5, an officer from the DEA Task Force observed Rosario driving the grey Mazda and began to follow him. (*Id.*) The DEA officer followed Rosario to 1611 South 28th Street and saw him park the Mazda in front of that residence and then go inside. (*Id.*)

Two days later on July 7, Officer Carr and another officer set up surveillance of 1611 South 28th Street, where they again observed the Mazda parked in front of that address and saw Rosario come out of the residence two separate times to talk on a cell phone. (*Id.*)

On July 10, 11, and 12, Special Agent Mangold of the Attorney General's Gun Violence Task Force conducted a separate surveillance of 1611 South 28th Street.¹ (*Id.*) On each of these three days, Agent Mangold saw Rosario leaving the residence and driving the Mazda. (*Id.*)

The concluding paragraph of the affidavit states that Officer Carr believed that there was probable cause to search 1611 South 28th Street for narcotics, narcotics proceeds, and firearms

¹ It appears from the affidavit that the Gun Violence Task Force received the information that Rosario was staying at 1611 South 28th Street independently. (Rosario Mot., Ex. A ¶ 4 ("Senior Special Agent Mangold #767 of the Attorney General's Gun Violence Task Force received information that Rosario was residing at 1611 S 28th St *as well*") (emphasis added))).

based on his experience as a police officer for over 20 years and a narcotics officer for over 13 years and based upon the information contained in the affidavit. (*Id.*)

Based on this affidavit, the magistrate issued a warrant to search 1611 South 28th Street. (Gov't Resp. ¶ 4 ECF No. 36.) On July 14, 2017, a DEA search team and the Philadelphia Police Department executed the search warrant at 1611 South 28th Street. (Gov't Resp. ¶¶ 2-4.) The agents seized over 650 grams of heroin, 380 grams of a mixture of heroin, fentanyl and tramadol, 38 grams of a mixture of heroin and fentanyl, and 44 grams of crack cocaine in the residence. (*Id.*) These drugs were found in various packets stamped with brand names, clear plastic bags and wraps, and glass jars. (*Id.*) Agents also found drug packaging and drug-dealing paraphernalia, including thousands of unused drug capsules, plastic bags, rubber bands, a grinder, a scale, a strainer, and a spoon. (*Id.*) Agents recovered United States currency stored in multiple bags, cell phones, a tablet device, mail addressed to Yatska Melendez at 1908 East Wishart Street, and a loaded 9mm Glock handgun. (*Id.*) Rosario and Melendez were both present at the 1611 South 28th Street location during the execution of the search warrant, along with Melendez's two young children, and it is believed that Melendez and her children had spent the night in the home prior to the execution of the warrant. (*Id.*)

B. Procedural Background

Defendant Rosario filed a Motion to Suppress on December 26, 2017. (Rosario Mot.) Defendant Melendez filed a Motion to Suppress on December 27, 2017. (Melendez Mot., ECF No. 34.) The Government filed a Response to both motions on January 10, 2018. (Gov't Resp.) On January 18, 2018, a hearing was held on the Motions. (Jan. 18 Hr'g Tr. (on file with Court).) At the hearing, Defendant Rosario dismissed his counsel and retained new counsel, who

subsequently filed a supplemental Motion to Suppress on January 23, 2018. (Rosario Supp. Mot., ECF No. 47.)

III. DISCUSSION

A. Standing

Addressing first the issue of Fourth Amendment standing, the Fourth Amendment to the United States Constitution prohibits “unreasonable searches and seizures.” U.S. Const. amend. IV. In order to assure this guarantee, evidence obtained in violation of the Fourth Amendment may be excluded at trial. *United States v. Calandra*, 414 U.S. 338, 347 (1974). However, a defendant may only get the benefit of the Fourth Amendment’s exclusionary rule if the defendant’s own Fourth Amendment rights were violated by the challenged search or seizure. *Stearn*, 597 F.3d 540, 551 (3d Cir. 2010) (citing *Rakas v. Illinois*, 439 U.S. 128, 132-34 (1978)). Proponents of a motion to suppress bear the burden of proving not only that the search was illegal, but also that they had a legitimate expectation of privacy in the place searched. *Stearn*, 597 F.3d at 551.

Residents of a property have a legitimate expectation of privacy in their residence. *United States v. White*, 748 F.3d 507, 511 (3d Cir. 2011) (“The Fourth Amendment draws ‘a firm line at the entrance to the house’” (quoting *Payton v. New York*, 445 U.S. 573, 590 (1980))). Overnight guests also have a legitimate expectation of privacy in their host’s home. *Minnesota v. Olson*, 495 U.S. 91, 98-100 (1990).

Here, both Rosario and Melendez have standing to assert Fourth Amendment violations. Rosario was the occupant of 1611 South 28th Street, as set forth in the search warrant affidavit. While it appears that Melendez resided at 1908 East Wishart Street, the Government concedes in its Response that she appears to have spent the night in Rosario’s home at 1611 South 28th

Street, as she was present in the home with her children during the early-morning hours when the search warrant was executed. Law enforcement surveillance of the home does not point to the contrary. (Gov't Resp. ¶ 5.) In addition, the Government does not argue that either Defendant lacks standing. Accordingly, both Rosario and Melendez have standing to seek suppression of the evidence seized from 1611 South 28th Street.

B. The Warrant

i. Legal Background

With a few exceptions, the Fourth Amendment requires law enforcement officers to obtain a search warrant supported by probable cause before they may lawfully search a person's home. *United States v. Burton*, 288 F.3d 91, 102 (3d Cir. 2002) (citing *Payton*, 445 U.S. at 586).

Where, as here, a magistrate has made a probable cause determination and issued a search warrant, the duty of the reviewing court is *not* to determine whether there was in fact probable cause to issue the warrant, but whether the magistrate had a substantial basis for concluding that probable cause existed. *Stearn*, 597 F.3d at 554 (citing *Illinois v. Gates*, 462 U.S. 213, 236-39 (1983)). If the court finds that there was a substantial basis to support the magistrate's probable cause finding, it must uphold that finding. *Id.* This is not a license to merely rubber-stamp the magistrate's conclusions, but is instead a process guided by the deference accorded to warrants in close-call cases. *Id.* (citation and quotation marks omitted). The reviewing court's circumscribed duty means it may only consider those facts that were before the magistrate, *i.e.*, the facts contained in the affidavit of probable cause. *United States v. Herrera*, No. 15-22, 2015 WL 3536616, at *4 (E.D. Pa. June 5, 2015) (citing *United States v. Jones*, 994 F.2d 1051, 1055 (3d Cir. 1993)).

Probable cause has no set definition. It is best conceptualized as a fluid concept determined by the totality of the circumstances in a given context. *Id.* In the context we have here, where a magistrate judge has been presented with an application for a search warrant, the magistrate may find probable cause if the totality of the circumstances set forth in the affidavit supports “a fair probability that contraband or evidence of a crime will be found in a particular place.” *United States v. Hodge*, 246 F.3d 301, 305 (3d Cir. 2001) (citing *Gates*, 462 U.S. at 238)). This is not a formulaic calculation, but instead should be a practical, common-sense decision. *Stearn*, 597 F.3d at 554.

It is important to note that a magistrate may issue a search warrant even where the affidavit does not provide *direct* evidence linking the crime with the place to be searched. *Id.* That isn’t to say that no nexus must be shown between the place to be searched and the evidence sought; it simply recognizes that this nexus (*i.e.*, probable cause), “can be, and often is, *inferred* from ‘the type of crime, the nature of the items sought, the suspect’s opportunity for concealment and normal inferences about where a criminal might hide [evidence].’” *Id.* (quoting *Jones*, 994 F.2d at 1056) (emphasis added).

This is particularly true when the crime under investigation is drug distribution. The Third Circuit has repeatedly held that

evidence associated with drug dealing needs to be stored somewhere, and . . . a dealer will have the opportunity to conceal it in his home . . . and could logically conclude that his residence is the best, and probably the only, location to store items such as . . . cash, . . . guns, . . . and large quantities of drugs to be sold.

Stearn, 597 F.3d at 558 (quoting *United States v. Whitner*, 219 F.3d 289, 298 (3d Cir. 2000)); *see also Burton*, 288 F.3d at 104 (“[I]t is a reasonable inference to conclude that drug dealers often store evidence of drug crimes in their residences[.]”); *Hodge*, 246 F.3d at 306 (“It is reasonable

to infer that a person involved in drug dealing on such a scale would store evidence of that dealing at his home.”).

The Third Circuit has articulated a test for the exact circumstances described here. When the crime under investigation is drug distribution, an issuing judge may infer that a suspected drug dealer is storing evidence of his drug crimes in his residence if three preliminary premises are supported by evidence: (1) that the person suspected of drug dealing is actually a drug dealer; (2) that the place to be searched is possessed by, or the domicile of, the dealer; and (3) that the home contains contraband linking it to the dealer’s activities. *Stearn*, 597 F.3d at 559. That third factor essentially re-phrases and narrows the “nexus” inquiry into the question, what type of evidence may allow the inference that the home contains contraband?

The mere fact that a suspect is thought to be a drug dealer by authorities is insufficient to support the inference that contraband may be found in the suspect’s home. *Id.* (citing *Burton*, 288 F.3d at 104). Instead, the magistrate may apply commonsense and look to see if circumstances support the inference. The Third Circuit has devised a non-exhaustive list of factors, the existence of which help to establish the required nexus between a suspect’s drug-dealing activities and his home. *Id.* at 559. These factors include: (1) evidence of large-scale drug dealing operations; (2) probable cause to arrest the suspect on drug-related charges; (3) the proximity of the suspect’s residence to the location of criminal activity; and (4) the conclusions of experienced officers regarding where evidence of a crime is likely to be found. *Id.* at 559-60.

These factors are not necessary requirements, and the Third Circuit has stressed the practical, non-technical process for determining probable cause. For example, where a suspected drug dealer has ready access to private places outside his home that could serve as hiding places for contraband, a magistrate may still infer probable cause to search the suspect’s home, so long

as the evidence described in the affidavit establishes the required nexus between the home and the alleged drug dealing. *Id.* at 560.

ii. Application

Here, the affidavit prepared by Officer Carr provided the issuing magistrate with a substantial basis to find probable cause to search 1611 South 28th Street for evidence related to Rosario's alleged drug-dealing crimes.

First, the affidavit provided support for the premise that Rosario was actually a drug dealer. The affidavit clearly establishes that the authorities in this case had been surveilling an ongoing drug-dealing operation during the month of June 2017 at the 1900 block of East Wishart Street. It states that a confidential informant working with the police purchased heroin on that block on June 14, 21, and 26. It also states that on several occasions the officers had observed a woman giving cash to Rosario. Rosario was observed on several occasions driving from those meetings to 2863 North 4th Street, and he used different vehicles to do so. Further, Rosario was seen multiple times leaving the 2863 location, going to the 1908 location, and handing a bag believed to contain drugs to the same woman from whom he had received the cash. Finally, the affidavit informed the magistrate that on June 28, 2017, a search warrant was issued and executed at 1908 East Wishart Street, resulting in the seizure of 24 capsules of heroin and \$79. A search warrant was also executed at 2863 North 4th Street, resulting in the seizure of 251 packets of cocaine, 699 grams of marijuana, \$18,999 in cash, a .45 caliber gun hidden in the wall of a bathroom, and two photographs of Rosario. The information provided in the affidavit was sufficient to support the conclusion of the magistrate that Rosario was actually a drug dealer. *See, e.g., United States v. Suarez-Arzon*, 664 F. App'x 180, 182-83 (3d Cir. 2016) (finding the affidavit provided sufficient evidence to support inference that defendant was drug dealer based

on confidential informant statements that defendant was a “known heroin dealer” corroborated by police surveillance of defendant handling suspected drug paraphernalia, an attempt to flee from unmarked police cars, and officer’s experienced conclusions).

Second, the affidavit provided support for the premise that 1611 South 28th Street was possessed by, or at least the domicile of, Rosario. The affidavit states that both the Narcotics Task Force and the Gun Violence Task Force received information that Rosario was “staying” and/or “residing” at 1611 South 28th Street and operating a gray Mazda sedan. This was corroborated by surveillance, with the affidavit stating that officers observed Rosario driving that Mazda, parking it in front of 1611 South 28th Street, and going into that address on July 5, 2017. Rosario was also seen going in and out of that location on July 7, all while the Mazda was parked directly in front of that residence. In addition, the affidavit states that Rosario was seen exiting the residence at 1611 South 28th Street on July 10, 11, and 12, and also driving the Mazda on those three days. Finally, while the search warrant application does list a “Suk Fan Wong” as the owner of the 1611 location “per realeste [sic] check,” it goes on to list Herman Rosario as “Occupaat [sic].”

This information provided a sufficient basis to believe that Rosario was at the very least domiciled at 1611 South 28th Street. The affidavit provided direct evidence that Rosario was using that address and doing so in the manner of someone who was living there. Regardless of whether Rosario planned to make 1611 South 28th Street his long-term home, the evidence collected by the officers and sworn to in the affidavit supports the finding that Rosario was living there. The magistrate was informed that officers learned that Rosario was at the 1611 address. That information was corroborated by surveillance. Rosario was seen going in and out of the house and parking his car in front of the house for over a week. That is sufficient for a

magistrate to make a practical, commonsense decision that Rosario was domiciled at 1611 South 28th Street.

Defendants argue that the affidavit merely shows evidence of a temporary arrangement, and that a temporary living arrangement cannot support the test of sufficiency for a search warrant in this context. They argue that the affidavit doesn't show evidence that Rosario moved into the 1611 location from either of the North Philadelphia locations and that officers conducted no property investigation. This is incorrect. The affidavit states that a real estate check was performed. Moreover, the affidavit makes no representation as to Rosario *moving* to 1611. It simply provides evidence that he was living at that location.

The Third Circuit's test calls for the place to be searched to be "possessed by, or the domicile of, the dealer." *Stearn*, 579 F.3d at 559. A "domicile" may be defined as "the place where someone lives,"² or a fixed permanent residence.³ However, if a random person is observed entering and exiting a house or apartment on a regular basis and parking their car in front of that residence over the course of 8 days, it is perfectly logical to assume that that person is living there. At the very least, there was enough evidence in the affidavit for the magistrate to conclude that 1611 South 28th Street was the place where Rosario was staying, *i.e.* his domicile. *See, e.g., Burton*, 288 F.3d at 104-05 (finding "ample evidence" that searched location was defendant's "residence" in large part because defendant parked in close proximity to the residence after leaving scene of the alleged drug-dealing).

Third, the affidavit provided sufficient evidence for the magistrate to reasonably believe that contraband or evidence linked to Rosario's alleged drug-dealing would be found at 1611

² *Domicile*, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/domicile> (last visited Feb. 2, 2018).

³ *Friedrich v. Davis*, 767 F.3d 374, 377 (3d Cir. 2014).

South 28th Street. The affidavit establishes many of the factors that the Third Circuit has indicated would permit a magistrate to infer such a connection. The affidavit provided clear evidence of a large-scale drug operation: the use of two different residences in North Philadelphia, the use of multiple vehicles, surveillance showing Rosario making deliveries to a woman and receiving cash from that woman at one of those residences, the use of multiple street dealers, the purchase of heroin by a confidential informant on three separate occasions, a sustained operating period of at least two weeks, and last but certainly not least, the searches of those North Philadelphia residences, which yielded large amounts of cocaine and marijuana, capsules of heroin, \$18,999 in cash, and a gun hidden in the wall near this substantial stash of contraband. *See Stearn*, 597 F.3d at 567-70 (finding that defendant's use of multiple stash houses storing large quantities of different types of drugs, drug paraphernalia, and handguns provided compelling evidence of a large-scale operation).

The affidavit also contained the conclusions of Officer Carr who swore that he believed there would be narcotics, narcotics proceeds, and/or weapons found at 1611 South 28th Street. As detailed in the affidavit, he did so based on the surveillance and searches of the North Philadelphia houses and the surveillance of 1611 South 28th Street, and based upon his many years of experience as a narcotics officer.

Defendants raise the issue of proximity, arguing that the evidence should be suppressed because of the significant distance between 1611 South 28th Street and the North Philadelphia residences, calling them "two distant regions" and declaring that they are 7 to 12 miles and a "half hour drive" apart, depending on the route taken. (Hr'g Tr. ¶¶ 13, 15.)

Defendants' distance argument is unpersuasive. In fact, all of these locations were relatively close to each other. *See, e.g., Hodge*, 246 F.3d at 307 (finding that defendant's home

was a “more likely repository” of his drug-dealing paraphernalia because it was in the “same city” as the location of where he was supposed to deliver drugs). The affidavit established that Rosario had access to multiple cars and used them regularly in the course of his drug dealing to transport drugs and money between various locations. All of these locations were in the same city. Rosario would not have had to cross any bridges or use toll roads where security cameras could be a problem. It is silly to call South Philadelphia and North Philadelphia “distant regions.” Depending on the route, one can make the trip between 1611 South 28th Street and 2863 North 4th Street in as little as 20 minutes by car depending on the time of day.⁴ Even if we accept Defendants’ proffered travel-time, a 30-minute drive to make a delivery is no great impediment. When one is running an operation involving significant cash and drugs, there is certainly an incentive to put up with the inconvenience of Center City traffic.

Finally, Defendants argue that because surveillance of 1611 South 28th Street did not result in any observations of direct criminal activity, the link between the North Philadelphia drug dealing and the 1611 South 28th Street address was not supported by the affidavit.

Again, we disagree. The drugs being delivered by Rosario in North Philadelphia had to be coming from somewhere, and it again makes sense to reasonably believe that those drugs and their proceeds were being stored in a private residence used by Rosario. Defendants argue that it was unlikely that Rosario would be storing drugs at his house because he must have known that he was a wanted man after the raids on the North Philadelphia homes. This argument actually supports the inference that there would be drugs at the 1611 South 28th Street residence: If

⁴ See, e.g., Driving Directions from 1611 South 28th Street, Philadelphia, PA 19145 to 2863 North 4th Street, Philadelphia, PA 19133, Google Maps, <https://www.google.com/maps/> (follow “Directions” hyperlink; then input addresses in respective starting point and destination point fields). Depending on the time of day, Google Maps estimates the travel time between 1611 South 28th Street and 2863 North 4th Street to be from as little as 18 minutes to as long as 45 minutes.

Rosario's drug locations had just been raided by the police, then Rosario would have been forced to keep whatever drugs and paraphernalia he still possessed in a secure location to which he still had access. In this case, that would have been where he was living.

Defendants' argument that no criminal activity was observed at 1611 South 28th Street disregards the purpose of the Third Circuit's test, which is designed to allow a magistrate to infer probable cause to search a residence from the totality of the circumstances when there is a lack of direct evidence.

Here, the totality of the circumstances provided in the affidavit supports the premises that Rosario was actually a drug dealer, that 1611 South 28th Street was Rosario's domicile, and that 1611 South 28th Street would contain contraband related to Rosario's drug-dealing activities. Accordingly, we find that the magistrate had a substantial basis for concluding that probable cause existed.

C. Good Faith Exception

Even if one were to somehow conclude that the magistrate here lacked a substantial basis for finding probable cause, the evidence obtained from the search of 1611 South 28th Street would be admissible under the "good faith exception" to the exclusionary rule.

The good faith exception attempts to balance the exclusionary rule's costs against its deterrent benefits by not excluding evidence where officers acted with an objectively reasonable belief that their conduct did not violate the Fourth Amendment. *Stearn*, 597 F.3d at 560 (citing *United States v. Leon*, 468 U.S. 897, 918 (1984)).

Ordinarily, if an officer obtains a search warrant and executes it with the good faith belief that he was acting in accord with the Fourth Amendment, a court should not suppress evidence seized under that warrant's authority even if that warrant is subsequently invalidated. *Id.* (citing

United States v. Zimmerman, 277 F.3d 426, 436 (3d Cir. 2002)). However, if a “reasonably well trained officer would have known that the search was illegal despite the magistrate’s authorization,” then the evidence would still be suppressed. *Id.*

The Third Circuit has identified four situations where this exception to the exception would come into play. An officer’s reliance on a warrant is unreasonable and therefore does not trigger the good faith exception: (1) when the magistrate issued the warrant in reliance on a deliberately or recklessly false affidavit; (2) when the magistrate abandoned his judicial role and failed to perform his neutral and detached function; (3) when the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) when the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized. *United States v. Zimmerman*, 277 F.3d 426, 436-37 (3d Cir. 2002).

Defendants argue that the affidavit was so lacking in indicia of probable cause that no officer could rely on the search warrant in good faith. They contend that the distance between the North and South Philadelphia locations was too great and that surveillance of Rosario at 1611 South 28th Street only showed benign activity. Therefore, they argue that no officer could have believed in good faith that the affidavit would support a finding of probable cause to search the 1611 South 28th Street location. We disagree.

The affidavit here described a large-scale drug operation of which Rosario was an integral part. It involved multiple locations and vehicles and large quantities of drugs, cash, and a gun. This information was gathered through weeks of surveillance, the use of a confidential informant, and the execution of two search warrants yielding contraband, proceeds, and a weapon. In addition, surveillance established that Rosario had access to and appeared to be

residing at 1611 South 28th Street. These circumstances all support a good faith belief that Rosario was a drug dealer living at 1611 South 28th Street and that contraband, proceeds, and weapons would likely be found there.

We are satisfied that a reasonable officer acting in good faith would believe that the warrant here was based on an affidavit that supported a finding of probable cause. *See Stearn*, 597 F.3d at 562-63 (finding affidavit linking locations to either drug activity or dealers supported good faith belief, and also noting that good faith analysis does not expect officers to engage in “detailed analysis of [] case law” for complex probable cause analysis); *see also Herrera*, 2015 WL 3536616, at *7-8 (finding affidavit supported good faith belief where it contained information from confidential informant corroborated by investigation and surveillance).

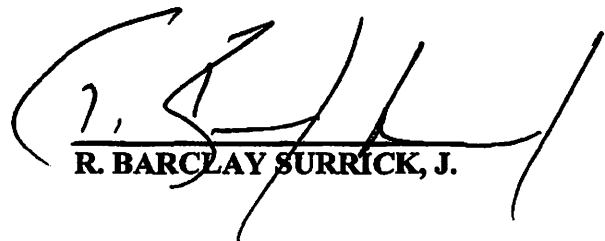
Accordingly, we find that the warrant here was not based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. Therefore, the evidence found at 1611 South 28th Street would be admissible under the good faith exception even if one were to conclude that the magistrate lacked a substantial basis to find probable cause to issue the search warrant.

IV. CONCLUSION

For these reasons, Defendants’ Motions to Suppress Physical Evidence will be denied.

An appropriate Order follows.

BY THE COURT:



R. BARCLAY SURRICK, J.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

v.

HERMAN ROSARIO,
Appellant

Appeal from the judgment entered on May 9, 2019,
in the United States District Court for the Eastern District of Pennsylvania,
Hon. R. Barclay Surrick, at Criminal No. 17-553-RBS-1

JOINT APPENDIX VOLUME II
(Joint Appendix, pages 28-211)

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CLOSED,APPEAL,FORFEITURE

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CRIMINAL DOCKET FOR CASE #: 2:17-cr-00553-RBS All Defendants**

Case title: USA v. ROSARIO et al

Date Filed: 10/11/2017

Date Terminated: 05/09/2019

Assigned to: HONORABLE R.
BARCLAY SURRECK

Appeals court case number: 19-2163
THIRD CIRCUIT

Defendant (1)

HERMAN ROSARIO

TERMINATED: 05/09/2019

also known as

GERMAN ROSARIO

TERMINATED: 05/09/2019

represented by **HERMAN ROSARIO**

69726-066

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TERMINATED: 12/20/2018

Designation: Retained

Pending Counts

Disposition

21:846 CONSPIRACY TO
DISTRIBUTE 1 KILOGRAM OR
MORE OF HEROIN
(1)

IMPRISONMENT: 168 MONTHS;
SUPERVISED RELEASE: 5 YEARS;
SPECIAL ASSESSMENT: \$400

21:841(a)(1),(b)(1)(A)(b)(1)(B) and (b)
(1)(C) POSSESSION WITH THE
INTENT TO DISTRIBUTION 1
KILOGRAM OR MORE OF HEROIN
(2)

IMPRISONMENT: 168 MONTHS;
SUPERVISED RELEASE: 5 YEARS;
SPECIAL ASSESSMENT: \$400

18:924(c)(1) POSSESSION OF A
FIREARM IN FURTHERANCE OF
DRUG TRAFFICKING CRIME
(3)

IMPRISONMENT: 60 MONTHS
CONSECUTIVE TO COUNTS 1, 2,
AND 4; SUPERVISED RELEASE: 5
YEARS; SPECIAL ASSESSMENT:
\$400

18:922(g)(1) FELON IN POSSESSION
OF A FIREARM
(4)

IMPRISONMENT: 120 MONTHS;
SUPERVISED RELEASE: 3 YEARS;
SPECIAL ASSESSMENT: \$400

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Assigned to: HONORABLE R.
BARCLAY SURRICK

Defendant (2)

YATSKA MELENDEZ
TERMINATED: 01/14/2019

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Designation: Retained

Pending Counts

21:846 CONSPIRACY TO
DISTRIBUTE 1 KILOGRAM OR
MORE OF HEROIN
(1)

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

IMPRISONMENT: TIME SERVED;
SUPERVISED RELEASE: 3 YEARS;
SPECIAL ASSESSMENT: \$100

Disposition

Disposition

Plaintiff

USA

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
10/11/2017	<u>1</u>	INDICTMENT as to HERMAN ROSARIO (1) count(s) 1, 2, 3, 4, YATSKA MELENDEZ (2) count(s) 1. (Attachments: # <u>1</u> Designation Form) (tj,) (Entered: 10/12/2017)
10/11/2017	<u>2</u>	MOTION AND ORDER FOR ISSUANCE OF BENCH WARRANT AS TO HERMAN ROSARIO. Signed by MAGISTRATE JUDGE MARILYN HEFFLEY on 10/11/17.10/12/17 Entered and E-Mailed.(tj,) (Entered: 10/12/2017)
10/11/2017	<u>3</u>	MOTION AND ORDER FOR ISSUANCE OF BENCH WARRANT AS TO YATSKA MELENDEZ. Signed by MAGISTRATE JUDGE MARILYN HEFFLEY on 10/11/17.10/12/17 Entered and E-Mailed. (Entered: 10/12/2017)
10/11/2017		BENCH Warrant Issued by MAGISTRATE JUDGE MARILYN HEFFLEY in case as to HERMAN ROSARIO, YATSKA MELENDEZ. (tj,) (Entered: 10/12/2017)
10/11/2017	<u>10</u>	PETITION AND ORDER BY USA FOR IN CASE AS TO HERMAN ROSARIO THAT THE WARDEN OF CURRAN-FROMHOLD CORRECTIONAL FACILITY PRODUCE THE BODY OF HERMAN ROSARIO,, PPN # 883431, ON WEDNESDAY, OCTOBER 11, 2017, INTO THE CUSTODY OF SPECIAL AGENT DIANA FROELICH AND SPECIAL AGENT ROBERT BROOKS OF THE DRUG ENFORCEMENT ADMINISTRATION FOR AN INITIAL APPEARANCE. Signed by HONORABLE R. BARCLAY SURRICK on 10/11/2017.10/13/2017 Entered and Copies E-Mailed. (kk,) (Entered: 10/13/2017)
10/11/2017	<u>11</u>	PETITION AND ORDER BY USA FOR IN CASE AS TO YATSKA MELENDEZ THAT THE WARDEN OF RIVERSIDE CORRECTIONAL FACILITY PRODUCE THE BODY OF Y ATS KA MELENDEZ, PPN # 1188822, ON WEDNESDAY, OCTOBER 11, 2017, INTO THE CUSTODY OF SPECIAL AGENT DIANA FROELICH AND SPECIAL AGENT ROBERT BROOKS OF THE DRUG ENFORCEMENT ADMINISTRATION FOR AN INITIAL APPEARANCE. Signed by HONORABLE R. BARCLAY SURRICK on 10/11/2017.10/13/2017 Entered and Copies E-Mailed. (kk,) (Entered: 10/13/2017)
10/12/2017	<u>4</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE

		MARILYN HEFFLEY RE: IA/AC as to HERMAN ROSARIO held on 10/12/2017. The Government's Motion for Temporary Detention is Granted. A detention hearing and arraignment are scheduled for Tuesday, October 17, 2017 at 1:30 p.m. Signed by Judge Heffley.Court Reporter ESR.(kk,) (Entered: 10/12/2017)
10/12/2017	<u>5</u>	CJA 23 Financial Affidavit by HERMAN ROSARIO (kk,) (Entered: 10/12/2017)
10/12/2017	<u>6</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE MARILYN HEFFLEY RE: IA/AC as to YATSKA MELENDEZ held on 10/12/2017. The Government's Motion for Temporary Detention is Granted. A detention hearing and arraignment are scheduled for Tuesday, October 17, 2017 at 1:30 p.m. Signed by Judge Heffley.Court Reporter ESR.(kk,) (Entered: 10/12/2017)
10/12/2017	<u>7</u>	CJA 23 Financial Affidavit by YATSKA MELENDEZ (kk,) (Entered: 10/12/2017)
10/12/2017	<u>8</u>	CJA 20 AS TO HERMAN ROSARIO: APPOINTMENT OF ATTORNEY for HERMAN ROSARIO. Signed by MAGISTRATE JUDGE MARILYN HEFFLEY on 10/12/2017.10/12/2017 Entered and Copies E-Mailed. (kk,) (Entered: 10/12/2017)
10/12/2017	<u>9</u>	CJA 20 AS TO YATSKA MELENDEZ: APPOINTMENT OF ATTORNEY for YATSKA MELENDEZ. Signed by MAGISTRATE JUDGE MARILYN HEFFLEY on 10/12/2017.10/12/2017 Entered and Copies E-Mailed. (kk,) (Entered: 10/12/2017)
10/17/2017	<u>12</u>	MOTION for PRETRIAL DETENTION by USA as to HERMAN ROSARIO, CERTIFICATE OF SERVICE. (BOLOGNA, JASON) Modified on 10/18/2017 (afm,). (Entered: 10/17/2017)
10/17/2017	<u>13</u>	MOTION for PRETRIAL DETENTION by USA as to YATSKA MELENDEZ, CERTIFICATE OF SERVICE. (BOLOGNA, JASON) Modified on 10/18/2017 (afm,). (Entered: 10/17/2017)
10/17/2017	<u>14</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE RICHARD A. LLORET RE: ARR/PTD as to HERMAN ROSARIO (1) Count 1,2,3,4 held on 10/17/2017. THE DEFT STIPULATED TO TEMPORARY DETENTION PENDING FURTHER PROCEEDINGS. PLEA: NOT GUILTY TO ALL COUNTS. COUNSEL HAVE 14 DAYS TO FILE PRETRIAL MOTIONS. SIGNED BY JUDGE LLORET. Court Reporter ESR.(kk,) (Entered: 10/18/2017)
10/17/2017	<u>15</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE RICHARD A. LLORET RE: ARR/PTD as to YATSKA MELENDEZ (2) Count 1 held on 10/17/2017. THE DEFT STIPULATED TO TEMPORARY DETENTION PENDING PURTHER PROCEEDINGS. THIS CASE MAY BE BROUGHT BACK TO JUDGE LLORET FOR THE DEFENDANT TO PRESENT A PROPOSAL OF AN ALTERNATE PLACE TO LIVE, AND OTHERWISE

		COMPLYING WITH THE CONDITIONS OF RELEASE PREVIOUSLY RECOMMENDED BY PRE-TRIAL. PLEA: NOT GUILTY TO ALL COUNTS. COUNSEL HAVE 14 DAYS TO FILE PRETRIAL MOTIONS. SIGNED BY JUDGE LLORET. Court Reporter ESR.(kk,) (Entered: 10/18/2017)
10/17/2017	<u>16</u>	PRETRIAL DETENTION ORDER as to HERMAN ROSARIO (1). Signed by MAGISTRATE JUDGE RICHARD A. LLORET on 10/17/2017.10/18/2017 ENTERED AND COPIES E-MAILED.(kk,) (Entered: 10/18/2017)
10/19/2017	<u>17</u>	NOTICE OF HEARING as to HERMAN ROSARIO, YATSKA MELENDEZ JURY TRIAL SET FOR 11/20/2017 AT 9:30 AM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 10/19/2017)
10/25/2017	<u>18</u>	MOTION to Continue <i>Trial And To Extend Time To File Pre-Trial Motions</i> by HERMAN ROSARIO. CERTIFICATE OF SERVICE. (Attachments: # <u>1</u> Text of Proposed Order)(ORTIZ, LUIS) Modified on 10/26/2017 (afm,). (Entered: 10/25/2017)
10/26/2017	<u>19</u>	First MOTION to Continue <i>Trial Date and Enlarge Time within which to File Pre-trial Motions</i> by YATSKA MELENDEZ, CERTIFICATE OF SERVICE. (ROBERTS, DOUGLAS) Modified on 10/27/2017 (afm,). (Entered: 10/26/2017)
10/27/2017	<u>20</u>	SCHEDULING ORDER AS TO HERMAN ROSARIO, YATSKA MELENDEZ THAT ALL PRETRIAL MOTIONS SHALL BE FILED NO LATER THAN 12/27/2017. TRIAL IS RESCHEDULED FOR 3/5/2018 AT 9:30 AM., ETC. Signed by HONORABLE R. BARCLAY SURRICK on 10/27/2017.10/30/2017 Entered and Copies E-Mailed. (kk,) (Entered: 10/30/2017)
10/30/2017	<u>21</u>	AMENDED NOTICE OF HEARING as to HERMAN ROSARIO, YATSKA MELENDEZ JURY TRIAL RE-SET FOR 3/5/2018 AT 9:30 AM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 10/30/2017)
10/30/2017	<u>22</u>	NOTICE OF HEARING as to HERMAN ROSARIO, YATSKA MELENDEZ PRETRIAL MOTIONS HEARING SET FOR 1/17/2018 AT 10:00 AM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 10/30/2017)
11/06/2017	<u>23</u>	ORDER AS TO YATSKA MELENDEZ THAT A DETENTION HEARING WILL BE HELD BEFORE ME ON NOVEMBER 9, 2017 AT 3:00 P.M. IN COURTROOM 6A. Signed by MAGISTRATE JUDGE RICHARD A. LLORET on 11/6/2017.11/7/2017 Entered and Copies E-Mailed. (kk) (Entered: 11/07/2017)
11/07/2017	<u>24</u>	ARREST Warrant Returned Executed on 10/12/2017 in case as to HERMAN ROSARIO. (ems) (Entered: 11/07/2017)

11/07/2017	<u>25</u>	ARREST Warrant Returned Executed on 10/12/2017 in case as to YATSKA MELENDEZ. (ems) (Entered: 11/07/2017)
11/13/2017	<u>26</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE RICHARD A. LLORET RE: PRETRIAL DETENTION HEARING as to YATSKA MELENDEZ held on 11/9/2017. Pretrial Services shall update their report after speaking with defendants mother regarding an alternative place to live and submit it to me. The Defendant shall continue to be detained pending further proceedings. Signed by Judge Lloret. Court Reporter ESR.(kk,) (Entered: 11/13/2017)
11/15/2017	<u>27</u>	AMENDED NOTICE OF HEARING as to HERMAN ROSARIO, YATSKA MELENDEZ PRETRIAL MOTIONS HEARING RE-SET FOR 1/18/2018 AT 10:00 AM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 11/15/2017)
11/17/2017	<u>28</u>	ORDER SETTING CONDITIONS OF RELEASE AS TO YATSKA MELENDEZ (2) THAT THE DEFENDANT IS RELEASED ON BAIL IN THE AMOUNT OF \$75,000 O/R WITH THE FOLLOWING CONDITIONS AS OUTLINED HEREIN. Signed by MAGISTRATE JUDGE RICHARD A. LLORET on 11/17/2017. 11/17/2017 Entered and Copies E-Mailed. (ems) (Entered: 11/17/2017)
11/17/2017		O/R Bond Entered as to YATSKA MELENDEZ in amount of \$ 75,000. (ems) (Entered: 11/17/2017)
11/20/2017	<u>29</u>	SEALED EX PARTE MOTION by YATSKA MELENDEZ. (FILED UNDER SEAL) (kk,) (kk,). (Entered: 11/20/2017)
11/20/2017	<u>30</u>	SEALED EX PARTE MOTION by YATSKA MELENDEZ. (FILED UNDER SEAL) (kk,) (kk,). (Entered: 11/20/2017)
11/22/2017	<u>31</u>	SEALED EX PARTE ORDER as to YATSKA MELENDEZ (2). Signed by HONORABLE R. BARCLAY SURRICK on 11/22/2017.11/22/2017 ENTERED AND COPIES MAILED. (FILED UNDER SEAL)(kk,) (kk,). (Entered: 11/22/2017)
11/22/2017	<u>32</u>	SEALED EX PARTE ORDER as to YATSKA MELENDEZ (2). Signed by HONORABLE R. BARCLAY SURRICK on 11/22/2017.11/22/2017 ENTERED AND COPIES MAILED. (FILED UNDER SEAL)(kk,) (kk,). (Entered: 11/22/2017)
12/26/2017	<u>33</u>	MOTION to Suppress <i>Physical Evidence</i> by HERMAN ROSARIO. (Attachments: # <u>1</u> Exhibit)(ORTIZ, LUIS) (Entered: 12/26/2017)
12/27/2017	<u>34</u>	MOTION to Suppress <i>Physical Evidence</i> by YATSKA MELENDEZ, MEMORANDUM AND CERTIFICATE OF SERVICE. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(ROBERTS, DOUGLAS) Modified on 12/27/2017 (afm,). (Entered: 12/27/2017)
12/27/2017	<u>35</u>	MOTION to Compel <i>Disclosure of Identity of Confidential Informant(s)</i> by YATSKA MELENDEZ. (ROBERTS, DOUGLAS) (Entered: 12/27/2017)

01/10/2018	<u>36</u>	RESPONSE to Motion by USA as to HERMAN ROSARIO, YATSKA MELENDEZ re 34 MOTION to Suppress <i>Physical Evidence</i> , <u>33</u> MOTION to Suppress <i>Physical Evidence with Certificate of Service</i> filed by USA (BOLOGNA, JASON) (Entered: 01/10/2018)
01/10/2018	<u>37</u>	RESPONSE to Motion by USA as to YATSKA MELENDEZ re <u>35</u> MOTION to Compel <i>Disclosure of Identity of Confidential Informant(s) with Certificate of Service</i> filed by USA (BOLOGNA, JASON) (Entered: 01/10/2018)
01/11/2018	<u>38</u>	NOTICE OF ATTORNEY APPEARANCE ANGELO CHARLES PERUTO, JR appearing for HERMAN ROSARIO <i>AND Cert of Service</i> (PERUTO, ANGELO) (Entered: 01/11/2018)
01/17/2018	<u>39</u>	MOTION to Withdraw as Attorney by Luis A. Ortiz. by HERMAN ROSARIO. (Attachments: # <u>1</u> Text of Proposed Order)(ORTIZ, LUIS) (Entered: 01/17/2018)
01/18/2018	<u>40</u>	MOTION to Continue <i>March 5, 2018 Jury Trial to May, 2018 AND Cert of Service</i> by HERMAN ROSARIO. (PERUTO, ANGELO) (Entered: 01/18/2018)
01/18/2018	<u>41</u>	Minute Entry for proceedings held before HONORABLE R. BARCLAY SURRICK in Courtroom 8-A RE: MOTIONS HEARING as to HERMAN ROSARIO, YATSKA MELENDEZ held on 1/18/2018. MR. PERUTO ENTERED HIS APPEARANCE AS DEFENSE COUNSEL FOR DEFENDANT HERMAN ROSARIO. MR. ORTIZ IS PERMITTED TO WITHDRAW AS DEFENSE COUNSEL FOR DEFENDANT HERMAN ROSARIO. MR. ROBERTS, MR. PERUTO, AND MR. BOLOGNA ADDRESSED THE COURT RE: MOTIONS ECF NOS. 33 & 34. RULING: TAKEN UNDER ADVISEMENT. MR. PERUTO MAY FILE A MEMORANDUM IN SUPPORT OF HIS ARGUMENT WITHIN 5 DAYS. THE GOVERNMENT MAY FILE A RESPONSE WITHIN 5 DAYS OF RECEIPT. MR. ROBERTS AND MR. BOLOGNA ADDRESSED THE COURT RE: MOTION ECF NO. 35. RULING: TAKEN UNDER ADVISEMENT. Court Reporter C. FRANZESE.(kk,) (Entered: 01/19/2018)
01/18/2018	<u>42</u>	ORDER as to HERMAN ROSARIO (1) THAT LUIS A. ORTIZ, ESQ.'S MOTION TO WITHDRAW FROM REPRESENTATION IS GRANTED. Signed by HONORABLE R. BARCLAY SURRICK on 1/18/2018.1/19/2018 ENTERED AND COPIES E-MAILED.(kk,) (Entered: 01/19/2018)
01/18/2018	<u>43</u>	ORDER AS TO HERMAN ROSARIO, YATSKA MELENDEZ THAT COUNSEL FOR DEFT HERMAN ROSARIO MAY SUBMIT A MEMORANDUM IN SUPPORT OF HIS ARGUMENT WITHIN 5 DAYS OF THE DATE HEREOF, ETC. Signed by HONORABLE R. BARCLAY SURRICK on 1/18/2018.1/19/2018 Entered and Copies E-Mailed. (kk,) (Entered: 01/19/2018)
01/19/2018	<u>44</u>	RESPONSE to Motion by YATSKA MELENDEZ as to HERMAN ROSARIO, YATSKA MELENDEZ re <u>40</u> MOTION to Continue <i>March 5, 2018 Jury Trial to May, 2018 AND Cert of Service</i> filed by YATSKA

		MELENDEZ (ROBERTS, DOUGLAS) (Entered: 01/19/2018)
01/22/2018	<u>45</u>	AMENDED SCHEDULING ORDER AS TO HERMAN ROSARIO, YATSKA MELENDEZ THAT DEFENDANT'S MOTION TO CONTINUE JURY TRIAL (DOC. NO. 40) IS GRANTED. PROPOSED VOIR DIRE QUESTIONS, POINTS FOR CHARGE, TRIAL MEMORANDUM, WITNESS LISTS, AND PROPOSED VERDICT FORMS SHALL BE SUBMITTED ON OR BEFORE APRIL 30, 2018. TRIAL IS RESCHEDULED FOR MAY 7, 2018 AT 9:30 A.M., ETC. Signed by HONORABLE R. BARCLAY SURRICK on 1/22/2018. 1/22/2018 Entered and Copies E-Mailed. (ems) (Entered: 01/22/2018)
01/22/2018	<u>46</u>	AMENDED NOTICE OF HEARING as to HERMAN ROSARIO, YATSKA MELENDEZ JURY TRIAL RE-SET FOR 5/7/2018 AT 9:30 AM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 01/22/2018)
01/23/2018	<u>47</u>	Memorandum of Law in support of re <u>33</u> MOTION to Suppress <i>Physical Evidence</i> by HERMAN ROSARIO <i>AND Cert of Service</i> . (PERUTO, ANGELO) Modified on 1/24/2018 (afm,). (Entered: 01/23/2018)
02/13/2018	<u>48</u>	MEMORANDUM AND/OR OPINION AS TO HERMAN ROSARIO, YATSKA MELENDEZ RE: DEFTS' MOTION TO SUPPRESS PHYSICAL EVIDENCE. <u>33</u> <u>34</u> <u>47</u> . Signed by HONORABLE R. BARCLAY SURRICK on 2/13/2018.2/13/2018 Entered and Copies E-Mailed. (kk,) (Entered: 02/13/2018)
02/13/2018	<u>49</u>	ORDER AS TO HERMAN ROSARIO, YATSKA MELENDEZ THAT THE DEFTS' MOTION TO SUPPRESS PHYSICAL EVIDENCE <u>33</u> <u>34</u> <u>47</u> ARE DENIED. Signed by HONORABLE R. BARCLAY SURRICK on 2/13/2018.2/13/2018 Entered and Copies E-Mailed. (kk,) (Entered: 02/13/2018)
02/14/2018	<u>50</u>	ORDER as to HERMAN ROSARIO (1), YATSKA MELENDEZ (2) THAT THE DEFTS MOTION TO COMPEL DISCLOSURE OF CONNFIDENTIAL INFORMANT 35 IS DENIED. Signed by HONORABLE R. BARCLAY SURRICK on 2/14/2018.2/14/2018 ENTERED AND COPIES E-MAILED.(kk,) (Entered: 02/14/2018)
04/02/2018	<u>51</u>	TRANSCRIPT of Proceedings as to HERMAN ROSARIO, YATSKA MELENDEZ held on 1/18/2018, before Judge R. BARCLAY SURRICK. VERITEXT LEGAL SOLUTIONS. (kk,) (Entered: 04/02/2018)
04/12/2018	<u>52</u>	NOTICE OF ATTORNEY APPEARANCE MICHAEL R. SHAPIRO appearing for YATSKA MELENDEZ (SHAPIRO, MICHAEL) (Entered: 04/12/2018)
04/12/2018	<u>53</u>	MOTION to Withdraw as Attorney for <i>Yatska Melendez</i> by Douglas E. Roberts. by YATSKA MELENDEZ. (Attachments: # <u>1</u> Text of Proposed Order)(ROBERTS, DOUGLAS) (Entered: 04/12/2018)
04/13/2018	<u>54</u>	ORDER as to YATSKA MELENDEZ (2) THAT THE MOTION TO

		WITHDRAW AS COUNSEL FOR YATSKA MELENDEZ <u>53</u> IS GRANTED. Signed by HONORABLE R. BARCLAY SURRICK on 4/12/2018.4/13/2018 ENTERED AND COPIES E-MAILED.(kk,) (Entered: 04/13/2018)
04/25/2018	<u>55</u>	MOTION to Continue <i>Trial</i> by YATSKA MELENDEZ. (SHAPIRO, MICHAEL) (Entered: 04/25/2018)
04/26/2018	<u>56</u>	SECOND AMENDED SCHEDULING ORDER AS TO HERMAN ROSARIO, YATSKA MELENDEZ THAT DEFENDANT'S UNOPPOSED MOTION TO CONTINUE TRIAL (DOC. NO. 55) IS GRANTED. TRIAL IS RESCHEDULED FOR JUNE 4, 2018 AT 9:30 A.M., ETC. Signed by HONORABLE R. BARCLAY SURRICK on 4/26/2018. 4/26/2018 Entered and Copies E-Mailed. (ems) (Entered: 04/26/2018)
04/26/2018	<u>57</u>	AMENDED NOTICE OF HEARING as to HERMAN ROSARIO, YATSKA MELENDEZ JURY TRIAL RE-SET FOR 6/4/2018 AT 9:30 AM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 04/26/2018)
05/15/2018	<u>58</u>	MOTION to Continue <i>Jury Trial set for June 4, 2018 to June 19, 2018 AND Cert of Service</i> by HERMAN ROSARIO. (PERUTO, ANGELO) (Entered: 05/15/2018)
05/18/2018	<u>59</u>	ORDER AS TO HERMAN ROSARIO, YATSKA MELENDEZ THAT THE TRIAL IS RESCHEDULED FOR 6/19/2018 01:00 PM IN COURTROOM BEFORE HONORABLE R. BARCLAY SURRICK, ETC. Signed by HONORABLE R. BARCLAY SURRICK on 5/18/2018.5/18/2018 Entered and Copies E-Mailed. (kk,) (Entered: 05/18/2018)
05/18/2018	<u>60</u>	AMENDED NOTICE OF HEARING as to HERMAN ROSARIO, YATSKA MELENDEZ JURY TRIAL RE-SET FOR 6/19/2018 AT 1:00 PM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 05/18/2018)
05/25/2018	<u>61</u>	MOTION to Compel <i>Reweigh of Controlled Substances Pursuant to Fed.R.Crim.P. 16</i> by YATSKA MELENDEZ. (Attachments: # <u>1</u> Exhibit Exhibits to Motion)(SHAPIRO, MICHAEL) (Entered: 05/25/2018)
05/29/2018	<u>62</u>	ORDER AS TO YATSKA MELENDEZ THAT A TELEPHONE CONFERENCE IS SCHEDULED FOR THURSDAY, MAY 31, 2018 AT 4:00 P.M. CHAMBERS WILL INITIATE THE CALL. Signed by HONORABLE R. BARCLAY SURRICK on 5/29/2018.5/30/2018 Entered and Copies E-Mailed. (kk,) (Entered: 05/30/2018)
06/01/2018	<u>63</u>	Minute Entry for proceedings held before HONORABLE R. BARCLAY SURRICK RE: Telephone Conference as to YATSKA MELENDEZ held on 5/31/2018.(kk,) (Entered: 06/01/2018)
06/08/2018	<u>64</u>	ORDER THAT <u>61</u> MOTION TO PRESERVE EVIDENCE AND REWEIGH CONTROLLED SUBSTANCES FILED BY YATSKA MELENDEZ IS GRANTED, ETC. Signed by HONORABLE R. BARCLAY SURRICK on

		6/8/18.6/8/18 ENTERED AND COPIES E-MAILED BY CHAMBERS.(ke) (Entered: 06/08/2018)
06/11/2018	<u>65</u>	MOTION to Continue <i>Trial</i> by YATSKA MELENDEZ. (SHAPIRO, MICHAEL) (Entered: 06/11/2018)
06/13/2018	<u>66</u>	LETTER Request to <i>Continue Trial until September 10, 2018 in light of re-weigh</i> by HERMAN ROSARIO (PERUTO, ANGELO) Modified on 6/14/2018 (ap,). (Entered: 06/13/2018)
06/19/2018	<u>67</u>	NOTICE OF ATTORNEY APPEARANCE STEPHEN LACHEEN appearing for YATSKA MELENDEZ <i>as co-counsel</i> (LACHEEN, STEPHEN) (Entered: 06/19/2018)
06/19/2018	<u>68</u>	LETTER Request <i>regarding scheduling of trial date</i> by HERMAN ROSARIO (PERUTO, ANGELO) Modified on 6/20/2018 (ap,). (Entered: 06/19/2018)
06/21/2018	<u>69</u>	FOURTH AMENDED SCHEDULING ORDER AS TO HERMAN ROSARIO, YATSKA MELENDEZ THE MOTION TO CONTINUE TRIAL 65 IS GRANTED. TRIAL IS RESCHEDULED FOR 9/12/2018 09:30 AM BEFORE HONORABLE R. BARCLAY SURRICK, ETC. Signed by HONORABLE R. BARCLAY SURRICK on 6/21/2018.6/22/2018 Entered and Copies E-Mailed. (kk,) (Entered: 06/22/2018)
06/22/2018	<u>70</u>	AMENDED NOTICE OF HEARING as to HERMAN ROSARIO, YATSKA MELENDEZ JURY TRIAL RE-SET FOR 9/12/2018 AT 9:30 AM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 06/22/2018)
07/12/2018	<u>71</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE MARILYN HEFFLEY RE: SEARCH WARRANT ISSUE as to HERMAN ROSARIO held on 7/12/2018. SEARCH WARRANT ISSUED RESOLVED. SIGNED BY JUDGE HEFFLEY. Court Reporter ESR.(kk,) (Entered: 07/13/2018)
08/30/2018	<u>72</u>	NOTICE OF HEARING as to HERMAN ROSARIO Change of Plea Hearing set for 9/10/2018 at 2:00 PM in COURTROOM 8A before HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 08/30/2018)
08/31/2018	<u>73</u>	NOTICE OF HEARING as to YATSKA MELENDEZ Change of Plea Hearing set for 9/11/2018 at 3:00 PM in COURTROOM 8A before HONORABLE R. BARCLAY SURRICK. (cfz) (Main Document 73 replaced on 9/4/2018) (kk,). (Entered: 08/31/2018)
09/10/2018	<u>74</u>	Minute Entryfor proceedings held before HONORABLE R. BARCLAY SURRICK in Courtroom 8-AChange of Plea Hearing as to HERMAN ROSARIO held on 9/10/18., Plea entered as to HERMAN ROSARIO (1) Guilty Count 1,2,3,4. Pre-Sentence Report Ordered. Sentencing scheduled for 12/19/2018, at 10:00 AM. Defendant remain in the custody of the U.S. Marshals pending sentencing.Court Reporter ESR.(ti,) (Entered: 09/10/2018)
09/10/2018		***Set/Reset Hearings as to HERMAN ROSARIO: (ti,) (Entered: 09/10/2018)

		09/10/2018)
09/10/2018	<u>75</u>	Abstract of Order for Presentence Investigation as to HERMAN ROSARIO (ti,) (Entered: 09/10/2018)
09/10/2018	<u>76</u>	Plea Document <i>together with Certificate of Service</i> as to HERMAN ROSARIO (ti,) (Entered: 09/10/2018)
09/11/2018	<u>77</u>	NOTICE OF HEARING as to HERMAN ROSARIO Sentencing set for 12/19/2018 at 10:00 AM in COURTROOM 8A before HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 09/11/2018)
09/12/2018	<u>78</u>	Minute Entryfor proceedings held before HONORABLE R. BARCLAY SURRICK Change of Plea Hearing as to YATSKA MELENDEZ held on 9/11/18. Plea entered as to YATSKA MELENDEZ (2) Guilty Count 1. Presentence Investigation ordered. Sentencing is schedule for 12/19/2018, at 11 AMCourt Reporter ESR.(ti,) (Entered: 09/12/2018)
09/12/2018	<u>79</u>	Plea Document <i>together with Certificate of Service</i> as to YATSKA MELENDEZ (ti,) (Entered: 09/12/2018)
09/13/2018	<u>80</u>	NOTICE OF HEARING as to YATSKA MELENDEZ: Sentencing is set for 12/19/2018 at 11:00 AM in COURTROOM 8A before HONORABLE R. BARCLAY SURRICK. (ajf,) (Entered: 09/13/2018)
09/14/2018	<u>81</u>	MOTION to Modify Conditions of Release by YATSKA MELENDEZ. (SHAPIRO, MICHAEL) (Entered: 09/14/2018)
09/17/2018	<u>82</u>	ORDER as to YATSKA MELENDEZ (2)THAT THE MOTION TO MODIFY CONDITIONS OF RELEASE <u>81</u> IS GRANTED, AND THE CONDITIONS OF RELEASE ARE MODIFIED TO PROVIDE THAT DEFENDANT SHALL MAINTAIN A RESIDENCE APPROVED BY PRETRIAL SERVICES. IN ALL OTHER RESPECTS, THE CONDITIONS OF RELEASE SHALL REMAIN THE SAME. Signed by HONORABLE R. BARCLAY SURRICK on 9/17/2018.9/17/2018 ENTERED AND COPIES E-MAILED.(kk,) (Entered: 09/17/2018)
10/25/2018	<u>83</u>	Sealed Letter as to YATSKA MELENDEZ. (FILED UNDER SEAL) (kk,) (kk,). (Entered: 10/26/2018)
10/25/2018	<u>84</u>	SEALED ORDER AS TO YATSKA MELENDEZ. Signed by HONORABLE R. BARCLAY SURRICK on 10/24/2018.10/26/2018 Entered and Copies Mailed. (FILED UNDER SEAL)(kk,) (kk,). (Entered: 10/26/2018)
11/08/2018	<u>85</u>	MOTION to Continue Sentence by YATSKA MELENDEZ. (SHAPIRO, MICHAEL) (* DUPLICATE ENTRY - SEE DOC <u>86</u> *) Modified on 11/9/2018 (ap,). (Entered: 11/08/2018)
11/08/2018	<u>86</u>	MOTION to Continue Sentence by YATSKA MELENDEZ. (SHAPIRO, MICHAEL) (Entered: 11/08/2018)
11/19/2018	<u>87</u>	MOTION to Withdraw Plea of Guilty <i>AND Cert of Service</i> by HERMAN ROSARIO. (PERUTO, ANGELO) (Entered: 11/19/2018)

11/27/2018	<u>88</u>	AMENDED NOTICE OF HEARING as to YATSKA MELENDEZ Sentencing re-set for 1/14/2019 at 11:00 AM in COURTROOM 8A before HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 11/27/2018)
11/27/2018	<u>89</u>	ORDER THAT DEFENDANT'S UNOPPOSED MOTION TO POSTPONE SENTENCING <u>86</u> IS GRANTED. SENTENCING WILL BE HELD ON JANUARY 14, 2019 AT 11:00 A.M. AS TO YATSKA MELENDEZ (2). Signed by HONORABLE R. BARCLAY SURRICK on 11/26/18.11/27/18 ENTERED AND COPIES E-MAILED.(mac,) (Entered: 11/27/2018)
11/29/2018	<u>90</u>	RESPONSE in Opposition as to HERMAN ROSARIO re <u>87</u> MOTION to Withdraw Plea of Guilty <i>AND Cert of Service</i> filed by USA (BOLOGNA, JASON) Modified on 11/30/2018 (ap,). (Entered: 11/29/2018)
11/30/2018	<u>91</u>	(PRO SE) MOTION TO WITHDRAW GUILTY PLEA by HERMAN ROSARIO. (kk,) (Entered: 12/03/2018)
12/06/2018	<u>93</u>	Transcript of Proceedings held on 9/10/2018, before Judge R. BARCLAY SURRICK. Court Reporter/Transcriber I. GOLDSHTEYN. VERITEXT TRANSCRIPTION SERVICE. (kk,) (Entered: 12/07/2018)
12/07/2018	<u>92</u>	NOTICE OF HEARING as to HERMAN ROSARIO Hearing on Status of Counsel set for 12/19/2018 at 12:30 PM in COURTROOM 8A before HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 12/07/2018)
12/19/2018	<u>94</u>	MOTION to Travel by YATSKA MELENDEZ.(FILED IN ERROR BY ATTORNEY, ATTORNEY BE REFILE) (SHAPIRO, MICHAEL) Modified on 12/19/2018 (mac,). (Entered: 12/19/2018)
12/19/2018	<u>95</u>	MOTION to Travel by YATSKA MELENDEZ. (SHAPIRO, MICHAEL) (Entered: 12/19/2018)
12/19/2018	<u>96</u>	AMENDED NOTICE OF HEARING as to HERMAN ROSARIO Status of Counsel Hearing re-set for 12/20/2018 at 3:00 PM in COURTROOM 8A before HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 12/19/2018)
12/19/2018	<u>97</u>	ORDER as to YATSKA MELENDEZ (2) THAT THE MOTION TO TRAVEL IS GRANTED, ETC. Signed by HONORABLE R. BARCLAY SURRICK on 12/19/2018.12/20/2018 ENTERED AND COPIES E-MAILED. (kk,) (Entered: 12/20/2018)
12/20/2018	<u>98</u>	Minute Entry for proceedings held before HONORABLE R. BARCLAY SURRICK in Courtroom 8-A RE: HEARING ON STATUS OF COUNSEL as to HERMAN ROSARIO held on 12/20/2018. DEFT ADDRESSES THE COURT. COUNSEL ADDRESSES THE COURT. THE COURT PERMITTED MR. PERUTO TO WITHDRAW. THE COURT APPOINTED MR. ORTIZ. THE GOVT WILL RESPOND TOT HE PRO SE MOTION TO WITHDRAW GUILTY PLEA IN 2-3 WEEKS. THE COURT WILL THEN SCHEDULE A HEARING ON THE MOTION TO WITHDRAW GUILT PLEA. SENTENCING IS CONTINUED UNTIL FURTHER ORDER OF THE COURT. Court Reporter C. FRANZESE.(kk,) (Entered: 12/21/2018)

12/20/2018		***Terminate Deadlines and Hearings as to HERMAN ROSARIO: (kk,) (Entered: 12/21/2018)
12/20/2018	<u>100</u>	ORDER AS TO HERMAN ROSARIO THAT LUIS A. ORTIZ, ESQ. IS APPOINTED TO REPRESENT DEFT IN ALL MATTERS BEFORE THIS COURT. Signed by HONORABLE R. BARCLAY SURRICK on 12/20/2018.12/21/2018 Entered and Copies E-Mailed. (kk,) (Entered: 12/21/2018)
12/21/2018	<u>99</u>	ORDER AS TO HERMAN ROSARIO THAT ANGELO CHARLES PERUTO, JR., ESQ. IS PERMITTED TO WITHDRAW AS ATTORNEY OF RECORD FOR DEFT. Signed by HONORABLE R. BARCLAY SURRICK on 12/20/2018.12/21/2018 Entered and Copies E-Mailed. (kk,) (Entered: 12/21/2018)
01/09/2019	<u>101</u>	Sentencing Document with Certificate of Service by YATSKA MELENDEZ. (FILED UNDER SEAL) (ems) (ems). (Entered: 01/09/2019)
01/09/2019	<u>102</u>	Sentencing Document with Certificate of Service by YATSKA MELENDEZ. (FILED UNDER SEAL) (ems) (ems). (Entered: 01/09/2019)
01/11/2019	<u>103</u>	ORDER AS TO YATSKA MELENDEZ THAT MICHAEL R. SHAPIRO, ESQ. IS WITHDRAWN AS ATTORNEY OF RECORD FOR DEFENDANT. Signed by HONORABLE R. BARCLAY SURRICK on 1/11/2019. 1/11/2019 Entered and Copies E-Mailed. (ems) (Entered: 01/11/2019)
01/14/2019	<u>104</u>	SENTENCING DOCUMENT CERTIFICATE OF SERVICE by USA as to YATSKA MELENDEZ (Attachments: # <u>1</u> Exhibit)(BOLOGNA, JASON) (Entered: 01/14/2019)
01/14/2019	<u>105</u>	Minute Entry for proceedings held before HONORABLE R. BARCLAY SURRICK in Courtroom 8A: Sentencing held on 1/14/2019 for YATSKA MELENDEZ (2), Count(s) 1, IMPRISONMENT: TIME SERVED; SUPERVISED RELEASE: 3 YEARS; SPECIAL ASSESSMENT: \$100. Court Reporter: ESR. (ems) (Entered: 01/15/2019)
01/14/2019	<u>106</u>	JUDICIAL DOCUMENT AS TO YATSKA MELENDEZ (2). Signed by HONORABLE R. BARCLAY SURRICK on 1/14/2019. 1/15/2019 ENTERED AND COPIES MAILED. (FILED UNDER SEAL) (ems) (ems). (Entered: 01/15/2019)
01/14/2019	<u>107</u>	JUDGMENT AS TO YATSKA MELENDEZ (2), Count(s) 1, IMPRISONMENT: TIME SERVED; SUPERVISED RELEASE: 3 YEARS; SPECIAL ASSESSMENT: \$100. Signed by HONORABLE R. BARCLAY SURRICK on 1/14/2019. 1/15/2019 Entered and Copies E-Mailed. (ems) (Entered: 01/15/2019)
01/15/2019	<u>108</u>	RESPONSE in Opposition re <u>91</u> MOTION to Withdraw Document filed by USA, CERTIFICATE OF SERVICE. (BOLOGNA, JASON) Modified on 1/16/2019 (ke,). (Entered: 01/15/2019)

02/11/2019	<u>109</u>	NOTICE OF HEARING ON MOTION in case as to HERMAN ROSARIO <u>91</u> MOTION to Withdraw Document, <u>87</u> MOTION to Withdraw Plea of Guilty <i>AND Cert of Service</i> : MOTION HEARING SET FOR 2/28/2019 AT 2:00 PM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 02/11/2019)
02/26/2019	<u>110</u>	SUPPLEMENTAL MOTION to Withdraw Plea of Guilty by HERMAN ROSARIO. (ORTIZ, LUIS) Modified on 2/27/2019 (ap,). (Entered: 02/26/2019)
02/28/2019	<u>111</u>	Minute Entry for proceedings held before HONORABLE R. BARCLAY SURRICK in Courtroom 8A: Hearing on Motions to Withdraw Guilty Plea (Doc. Nos. 87, 91, 110) as to HERMAN ROSARIO held on 2/28/2019. The Government called witnesses. Defense counsel and AUSA addressed the Court. Ruling: taken under advisement. Court Reporter: ESR. (ems) (Entered: 02/28/2019)
03/11/2019	<u>112</u>	Transcript of Proceedings RE: MOTIONS HEARING held on 2/28/19, before Judge SURRICK. Court Reporter/Transcriber ESR. (HWANG TRANSCRIPTION SERVICE). (ke) (Entered: 03/12/2019)
03/22/2019	<u>113</u>	MEMORANDUM AND/OR OPINION AS TO HERMAN ROSARIO. Signed by HONORABLE R. BARCLAY SURRICK on 3/22/2019.3/25/2019 Entered and Copies Mailed TO PRO SE and E-Mailed. (tomg,) (Entered: 03/25/2019)
03/22/2019	<u>114</u>	MEMORANDUM AND/OR OPINION ORDER AS TO HERMAN ROSARIO THAT THE DEFT'S MOTION TO WITHDRAW GUILTY PLEA (DOC. #87), PRO SE MOTION TO WITHDRAW GUILTY PLEA (DOC. #91) AND SUPPLEMENTAL MOTION TO WITHDRAW GUILTY PLEA (DOC. #110) ARE DENIED. Signed by HONORABLE R. BARCLAY SURRICK on 3/22/2019.3/25/2019 Entered and Copies Mailed to PRO SE, E-Mailed. (tomg,) (Entered: 03/25/2019)
03/29/2019	<u>115</u>	AMENDED NOTICE OF HEARING as to HERMAN ROSARIO Sentencing re-set for 5/2/2019 at 10:00 AM in COURTROOM 8A before HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 03/29/2019)
04/25/2019	<u>116</u>	SENTENCING MEMORANDUM CERTIFICATE OF SERVICE by HERMAN ROSARIO (ORTIZ, LUIS) (Entered: 04/25/2019)
04/26/2019	<u>117</u>	SENTENCING DOCUMENT CERTIFICATE OF SERVICE by USA as to HERMAN ROSARIO (BOLOGNA, JASON) (Entered: 04/26/2019)
05/01/2019	<u>118</u>	AMENDED NOTICE OF HEARING as to HERMAN ROSARIO Sentencing re-set for 5/9/2019 at 10:00 AM in COURTROOM 8A before HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 05/01/2019)
05/01/2019	<u>119</u>	MOTION for Judgment <i>and Preliminary Order of Forfeiture</i> by USA as to HERMAN ROSARIO. (BOLOGNA, JASON) (Entered: 05/01/2019)
05/03/2019	<u>120</u>	SENTENCING MEMORANDUM CERTIFICATE OF SERVICE by

		HERMAN ROSARIO (ORTIZ, LUIS) (Entered: 05/03/2019)
05/09/2019	<u>121</u>	Minute Entry for proceedings held before HONORABLE R. BARCLAY SURRICK in Courtroom 8A: Sentencing held on 5/9/2019 for HERMAN ROSARIO (1), Count(s) 1, 2, IMPRISONMENT: 168 MONTHS; SUPERVISED RELEASE: 5 YEARS; SPECIAL ASSESSMENT: \$400; Count(s) 3, IMPRISONMENT: 60 MONTHS CONSECUTIVE TO COUNTS 1, 2, AND 4; SUPERVISED RELEASE: 5 YEARS; SPECIAL ASSESSMENT: \$400; Count(s) 4, IMPRISONMENT: 120 MONTHS; SUPERVISED RELEASE: 3 YEARS; SPECIAL ASSESSMENT: \$400. Court Reporter: ESR. (ems) (Entered: 05/09/2019)
05/09/2019	<u>122</u>	JUDGMENT AS TO HERMAN ROSARIO (1), Count(s) 1, 2, IMPRISONMENT: 168 MONTHS; SUPERVISED RELEASE: 5 YEARS; SPECIAL ASSESSMENT: \$400; Count(s) 3, IMPRISONMENT: 60 MONTHS CONSECUTIVE TO COUNTS 1, 2, AND 4; SUPERVISED RELEASE: 5 YEARS; SPECIAL ASSESSMENT: \$400; Count(s) 4, IMPRISONMENT: 120 MONTHS; SUPERVISED RELEASE: 3 YEARS; SPECIAL ASSESSMENT: \$400. Signed by HONORABLE R. BARCLAY SURRICK on 5/9/2019. 5/9/2019 Entered and Copies E-Mailed. (ems) (Entered: 05/09/2019)
05/09/2019	<u>123</u>	JUDGMENT AND PRELIMINARY ORDER OF FORFEITURE AS TO HERMAN ROSARIO. Signed by HONORABLE R. BARCLAY SURRICK on 5/9/2019. 5/10/2019 Entered and Copies E-Mailed and CC USMS AND FBI. (ems) (Entered: 05/10/2019)
05/21/2019	<u>124</u>	NOTICE OF APPEAL by HERMAN ROSARIO RE: <u>122</u> JUDGMENT. (**FILING FEE NO PAID - ATTORNEY IS CJA APPOINTED**). (ORTIZ, LUIS) Modified on 5/21/2019 (ke,). Modified on 5/21/2019 (ke,). (Entered: 05/21/2019)
05/24/2019	<u>125</u>	NOTICE of Docketing Record on Appeal from USCA as to HERMAN ROSARIO re <u>124</u> Notice of Appeal - Final Judgment filed by HERMAN ROSARIO. USCA Case Number 19-2163 (ke,) (Entered: 05/24/2019)
06/27/2019	<u>126</u>	Copy of TPO Form re <u>124</u> Notice of Appeal - Final Judgment : (ems) (Entered: 06/27/2019)
07/12/2019	<u>127</u>	Transcript of STATUS OF COUNSEL HEARING held on 12/20/2018, before Judge R. BARCLAY SURRICK. Court Reporter/Transcriber: ESR / HWANG TRANSCRIPTION. (ems) (Entered: 07/12/2019)
07/12/2019	<u>128</u>	Transcript of SENTENCING HEARING held on 5/9/2019, before Judge R. BARCLAY SURRICK. Court Reporter/Transcriber: ESR / HWANG TRANSCRIPTION. (ems) (Entered: 07/12/2019)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. _____
v.	:	DATE FILED: _____
HERMAN ROSARIO, a/k/a "German Rosario," YATSKA MELENDEZ	:	VIOLATIONS:
	:	21 U.S.C. § 846 (conspiracy to distribute 1 kilogram or more of heroin - 1 count)
	:	21 U.S.C. § 841(a)(1) (possession with the intent to distribution 1 kilogram or more of heroin - 1 count)
	:	18 U.S.C. § 924(c) (possession of a firearm in furtherance of drug trafficking crime – 1 count)
	:	18 U.S.C. § 922(g) (felon in possession of a firearm – 1 count)
	:	Notice of forfeiture

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

1. From on or about June 14, 2017, to on or about July 14, 2017, in Philadelphia, in the Eastern District of Pennsylvania, defendants

**HERMAN ROSARIO,
a/k/a "German Rosario," and
YATSKA MELENDEZ**

conspired and agreed, together and with others known and unknown to the grand jury, to knowingly and intentionally distribute controlled substances, that is, one kilogram or more of a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance, 28 grams or more of a mixture and substance containing a detectable amount of cocaine base ("crack cocaine"), a Schedule II controlled substance, a mixture and substance

containing a detectable amount of fentanyl, a Schedule I controlled substance, and a mixture and substance containing a detectable amount of tramadol, a Schedule IV controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1),(b)(1)(A), (b)(1)(B), and (b)(1)(C).

MANNER AND MEANS

It was part of the conspiracy that:

2. Defendant HERMAN ROSARIO was the leader and organizer of the ROSARIO Drug Trafficking Group ("ROSARIO DTG"). The ROSARIO DTG sold heroin, heroin laced with fentanyl, heroin laced with fentanyl and tramadol, and crack cocaine, in the area of Jasper and Wishart Streets in North Philadelphia.
3. Defendant YATSKA MELENDEZ was a member of the ROSARIO DTG. She supervised and assisted the street-level dealers of the ROSARIO DTG by giving them drugs to sell. Defendant MELENDEZ also collected proceeds of the drug sales from the street-level dealers.
4. The ROSARIO DTG used Philadelphia residences located at 1908 East Wishart Street, 2863 North 4th Street, and 1611 South 28th Street to store heroin, heroin laced with fentanyl, heroin laced with fentanyl and tramadol, crack cocaine, proceeds of drugs sales, and firearms.
5. Defendant HERMAN ROSARIO met with defendant YATSKA MELENDEZ on the 1900 block of East Wishart Street to deliver a supply of drugs to be sold at the intersection of Jasper and Wishart Street, and he also collected proceeds from recent drug sales at that intersection.

6. Defendant HERMAN ROSARIO possessed a loaded firearm to protect the drugs and drug proceeds of the ROSARIO DTG.

7. On or about July 14, 2017, the ROSARIO DTG possessed with the intent to distribute in excess of one kilogram of a mixture and substance containing a detectable amount of heroin, and in excess of 28 grams of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 846.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

On or about July 14, 2017, in Philadelphia, in the Eastern District of Pennsylvania, defendant

**HERMAN ROSARIO,
a/k/a "German Rosario,"**

knowingly and intentionally possessed with the intent to distribute one kilogram or more of a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance; 28 grams or more of a mixture and substance containing a detectable amount of cocaine base ("crack cocaine"), a Schedule II controlled substance; a mixture and substance containing a detectable amount of fentanyl, a Schedule I controlled substance; and a mixture and substance containing a detectable amount of tramadol, a Schedule IV controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(A), (b)(1)(B), and (b)(1)(C).

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

On or about July 14, 2017, at 1611 South 28th Street in Philadelphia, in the Eastern District of Pennsylvania, defendant

**HERMAN ROSARIO,
a/k/a "German Rosario,"**

knowingly and intentionally possessed a firearm, that is, a loaded Glock 9 mm handgun with a serial number ZEV-930, in furtherance of a drug trafficking crime for which he may be prosecuted in a court of the United States, that is, conspiracy to distribute controlled substances in violation of Title 21, United States Code, Section 846, and possession with the intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

In violation of Title 18, United States Code, Section 924(c)(1).

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

On or about July 14, 2017, at 1611 South 28th Street in Philadelphia, in the Eastern District of Pennsylvania, defendant

**HERMAN ROSARIO,
a/k/a "German Rosario,"**

having been convicted in a court of the Commonwealth of Pennsylvania of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed in and affecting interstate commerce a firearm, that is, a Glock 9 mm handgun bearing serial number ZEV-930 and loaded with seventeen live rounds of ammunition.

In violation of Title 18, United States Code, Section 922(g)(1).

NOTICE OF FORFEITURE NO. 1

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 21, United States Code, Sections 841(a)(1) and 846, set forth in this indictment, defendants

**HERMAN ROSARIO,
a/k/a "German Rosario," and
YATSKA MELENDEZ,**

shall forfeit to the United States of America:

(a) any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such offenses, including, but not limited to:

(1) a Glock 9 mm handgun with a serial number ZEV-930 that was loaded with seventeen live rounds of ammunition.

(b) any property constituting, or derived from, proceeds obtained directly or indirectly from the commission of such offenses, including, but not limited to, the sum of \$18,999 seized from 2863 North 4th Street in Philadelphia on June 28, 2017, and the sum of \$57,773.50 seized from 1611 South 28th Street on July 14, 2017.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the property subject to forfeiture.

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

NOTICE OF FORFEITURE NO. 2

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of violation of Title 18, United States Code, Section 922(g)(1), set forth in this indictment, defendant

**HERMAN ROSARIO,
a/k/a "German Rosario,"**

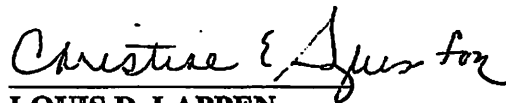
shall forfeit to the United States of America all firearms and ammunition involved in the commission of such violation, including but not limited to:

(a) a Glock 9 mm handgun with a serial number ZEV-930 that was loaded with seventeen live rounds.

All pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 924(d).

A TRUE BILL:

FOREPERSON



LOUIS D. LAPPEN
Acting United States Attorney

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

HERMAN ROSARIO

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CRIMINAL NUMBER 17-553-1

ORDER

AND NOW, this day of , 2018, upon
consideration of Defendant's Motion to Suppress Physical Evidence, and the government's
response thereto, it is hereby **ORDERED** that the Motion is **GRANTED**.

Any and all physical evidence, including derivative evidence, as detailed in Defendant's
Motion is hereby **SUPPRESSED**.

It is so **ORDERED**.

BY THE COURT:

HONORABLE R. BARCLAY SURRECK
UNITED STATES DISTRICT COURT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

HERMAN ROSARIO

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CRIMINAL NUMBER 17-553

DEFENDANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE

HERMAN ROSARIO, by and through his attorney, **LUIS A. ORTIZ**, files the instant Motion to Suppress Physical Evidence. In support thereof, it is averred as follows:

1. Herman Rosario has been charged in an Indictment with one count of conspiracy to knowingly and intentionally possessing with intent to distribute, 1 Kilogram or more of a mixture and substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A), (b)(1)(B) and (b)(1)(c) (Count One); one count of knowingly and intentionally possessing with intent to distribute, 1 Kilogram or more of a mixture and substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A), (b)(1)(B) and (b)(1)(c) (Count Two); one count of knowingly and intentionally possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1) (Count 3); and one count of having been convicted of a crime punishable by one year, knowingly possessing in and affecting interstate commerce a firearm, in violation of 18 U.S.C. § 922(g)(1).

The government alleges in its case in chief that on or about June 14, 2017 to July 14, 2017 the defendant conspired in possessing with intent to distribute, 1 kilogram or more of a

mixture and substance containing a detectable amount of heroin, in the area of 1908 E Wishart Street, 2863 North Fourth Street, and 1611 South 28th Street in Philadelphia.

3. On July 13, 2017, Philadelphia police officer Neil Carr, badge number 3297, was investigating the illegal packaging and distribution of heroin in Philadelphia. Officer Carr prepared an affidavit of probable cause requesting a warrant to search 1611 South 28th Street. (Attached Here as Exhibit A) According to officer Carr's affidavit, During the month of June, 2017, the Philadelphia Narcotics Field Unit (NFU-4) was conducting an investigation of the illegal sale of narcotics in the area of Jasper and Wishart Streets.

4. On June 14th, June 21st and 26th Officer Carr states that purchases were made by a confidential informant in the target area of Jasper and Wishart Streets. Officer Carr states that his investigation established that Herman Rosario was supplying the narcotics being sold in the 1900 block of Wishart to a Hispanic female, specifically at 1908 Wishart Street. These narcotics were then provided to street dealers to be distributed in the area.

5. On several occasions during the investigation, Herman Rosario is said to have received sums of cash from the Hispanic female. After obtaining the sums of cash from this female Herman Rosario was followed to 2863 N 4th Street. He is alleged to have used more than one Vehicle to transport the cash to 2863 N 4th Street. Herman Rosario was also seen on various occasions leaving 2863 N 4th Street and handing a bag believed to contain narcotics to the Hispanic female at 1908 Wishart Street.

6. On June 28, 2017, the above observations, led to search warrant 203250 being executed at 1908 Wishart Street. Twenty-four (24) capsules of Heroin and \$79.00 in U.S. currency were seized from this location.

7. On June 28, 2017, the above noted observations, led to search warrant 20351 being executed at 2863 N 4th Street. Two hundred fifty-one (251) packets of cocaine, 699 grams of marijuana, \$18,999 in United States Currency and a .45 caliber handgun were recovered in the property. Herman Rosario was not at either location during the searches.

8. Following the execution of the warrants at 1908 Wishart Street and 2863 N 4th Street, information was received that Herman Rosario was operating a gray Mazda and was staying at 1611 South 28th Street.

9. On Wednesday July 5th, 2017 surveillance was conducted by police officer Torres, DEA Task Force, badge number 1791, of the 1600 block of South 28th Street. Herman Rosario was seen in the Gray Mazda. Herman Rosario's activities consisted of parking in front on of and then entering 1611 South 28th Street. No other nefarious activity was observed, and Herman Rosario was not arrested.

10. On July 7th, 2017 Police officer Carr, and Police officer Werner, badge number 1731, set up a second surveillance of 1611 South 28th Street. The gray Mazda was parked in front of 1611 South 28th Street. Herman Rosario was observed coming out of this property and talking on a cell phone twice during the surveillance. Nobody was observed visiting Herman Rosario, and once again he was not arrested.

11. From July 10, 2017 to July 12, 2017 Senior Agent Mangold, badge number 767 was tasked with the surveillance of 1611 South 28th Street. Herman Rosario was seen operating the gray Mazda and no illegal activity was noted in the affidavit on these dates. Herman Rosario was not arrested.

12. The affidavit supporting the search warrant for 1611 South 28th Street lacked the requisite probable cause to justify the search. Specifically, the affidavit fails to inform the issuing authority of any criminal activity associated with 1611 South 28th Street. The affidavit submitted by officer Carr does not sufficiently corroborate his assertion that Herman Rosario or that anybody was using 1611 South 28th Street for any illegal activity. Consequently, the information submitted to the magistrate was insufficient to support an objectively reasonable belief that narcotics, firearms, and drug proceeds would be found inside the residence.

13. The search warrant for the residence at 1611 South 28th was executed in violation of Herman Rosario's constitutional rights against unreasonable searches and seizures. A week of surveillance by multiple officers yielded no evidence of illegal drug activity. Omitted from the affidavit, is that 1611 South 28th Street is on the opposite side of a congested city, and not in close proximity to the drug activity observed at 1908 E Wishart Street and 2863 North Fourth Street weeks before.

WHEREFORE, for the above stated reasons pursuant to the Fourth Amendment and any other's reasons deemed just, Defendant Herman Rosario respectfully moves to suppress all items seized from 1611 South 28th Street.

Respectfully submitted,

/s/ Luis A. Ortiz
LUIS A. ORTIZ
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PHILADELPHIA PA 19107
215-858-3787
LUISAORTIZ@COMCAST.NET
Attorney for Herman Rosario

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

HERMAN ROSARIO

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CRIMINAL NUMBER 17-553-1

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE**

INTRODUCTION

The Fourth Amendment provides,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amend. IV. Any evidence obtained from an unreasonable search or seizure is deemed "fruit of the poisonous tree," and consequently must be excluded from trial.

Wong Sun v. United States, 371 U.S. 471 (1963).

The search of a private dwelling by government agents is justified only where the officers have probable cause to believe that the identified items of contraband will be found on the premises. The affidavit supporting the search warrant for 1611 South 28th Street did not contain sufficient facts to support a reasonable belief that contraband, namely the instrumentalities and proceeds of drug trafficking, would be found there. Therefore, the searches were conducted in violation of Herman Rosario's rights under the Fourth Amendment. All evidence recovered as a

result of this search must be excluded from trial.

DISCUSSION

I. No Probable Cause to Support Search Warrant Affidavit

It is well settled that, “One’s home is sacrosanct, and unreasonable government intrusion into the home is ‘the chief evil against which the wording of the Fourth Amendment is directed.’” United States v. Zimmerman, 277 F.3d 426, 431-32 (3d Cir. 2002)(quoting Payton v. New York, 445 U.S. 573, 585 (1980))(internal quotations omitted). The Third Circuit has recognized that, “[i]t is axiomatic that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. ... Hence, the Fourth Amendment has drawn a firm line at the entrance to the house.” United States v. White, 748 F.3d 507, 510-11 (3d Cir. 2014)(quoting Welsh v. Wisconsin, 466 U.S. 740, 748 (1984); Payton, 445 U.S. at 590)(internal quotations omitted). Consequently, “[w]arrantless searches of the home are presumptively unreasonable unless the occupants consent or probable cause and exigent circumstances exist to justify the intrusion.” United States v. Mallory, 765 F.3d 373, 383 (3d Cir. 2014)(quoting United States v. Coles, 437 F.3d 361, 365 (3d Cir. 2006)(internal quotations omitted). In either instance, probable cause to search is the requisite factor.

Probable cause to support a search warrant exists when “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” United States v. DeCruz, 644 Fed.Appx. 189, 191 (3d Cir., Mar. 16, 2016), pet. for cert. docketed, Oct 3, 2016 (No. 16-6298) (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)). While the term “probable cause” has been described as a “fluid concept,” the Third Circuit has recognized that:

the fluidity of the concept has not translated into diverse application. A close reading of the case law shows that the Supreme Court uses the

‘probable cause’ standard almost exclusively to assess the basis and strength of an officer or magistrate's belief that a particular person has committed a particular crime or that an article subject to seizure can be found at a particular location - in short, whether criminal activity is afoot.

United States v. Vasquez-Algarin, 821 F.3d 467 (3d Cir. 2016)(citing Brinegar v. United States, 338 U.S. 160, 175 (1949)).

Essentially, the information included in the affidavit must provide the magistrate with a substantial basis to determine that there is a connection between the object sought, the premises to be search, and criminal activity. See United States v. Conley, 4 F.3d 1200, 1205 (3d Cir. 1993)(citing Gates, 462 U.S. at 236, 239). Further, the search warrant must describe the items to be seized with sufficient particularity. It may not be broader than the probable cause on which it is based. See Zimmerman, 277 F.3d at 432.

When reviewing the magistrate’s decision, the reviewing court must consider the totality of the circumstances. See DeCruz, 644 Fed.Appx. at 191 (citing Gates, 462 U.S. at 238). Probable cause may be inferred from “the type of crime, the nature of the items sought, the suspect's opportunity for concealment and normal inferences about where a criminal might hide [evidence].” United States v. Stearn, 597 F.3d 540, 554 (3d Cir. 2010)(quoting Jones, 994 F.2d at 1056). Within this “totality of circumstances” is a consideration of the source and timeliness of the information. See United States v. Hicks, 460 Fed.Appx. 98, 102 (3d Cir., Jan. 17, 2012) (quoting Gates, 462 U.S. at 238). The magistrate also “is entitled to ‘give considerable weight to the conclusions of experienced law enforcement officers.” United States v. Townsend, 638 Fed.Appx. 172, 176 (3d Cir., Dec. 23, 2015)(quoting United States v. Whitner, 219 F.3d 289, 296 (3d Cir. 2000)). However, the officer’s conclusions may not be based solely on a hunch, “gut feeling” or mere suspicion that contraband will be found in a particular place. See, e.g., Poolaw

v. Marcantel, 565 F.3d 721, 729 (10th Cir. 2009)(quoting United States v. Valenzuela, 365 F.3d 892, 897 (10th Cir. 2004); Doe v. Broderick, 225 F.3d 440, 452 (4th Cir. 2000); United States v. Hogan, 25 F.3d 690, 693 (8th Cir. 1994).

It is well settled that, “[t]he supporting affidavit to a search warrant is to be read in its entirety and in a common sense, nontechnical manner.” United States v. Miknevich, 638 F.3d 178, 182 (3d Cir. 2011)(citing United States v. Williams, 124 F.3d 411, 420 (3d Cir. 1997)). Thus, when determining whether the affidavit provided a substantial basis for finding probable cause, the reviewing court may only consider the information presented to the magistrate, i.e., the “four corners” of the affidavit itself. The court may not review other information from the record. See Miknevich, 638 F.3d at 182 (citing Jones, 994 F.2d at 1055).

Further, while the reviewing court should pay great deference to the magistrate judge when making this determination, the court must not simply rubber stamp the magistrate’s decision. See Miknevich, 638 F.3d at 182 (citing United States v. Tehfe, 722 F.2d 1114, 1117 (3d Cir. 1983), cert. denied sub nom., Sanchez v. United States, 466 U.S. 904 (1984)).

The evidence presented to the magistrate judge was insufficient to support a reasonable belief that any instrumentalities or proceeds from alleged illegal activity would be found at 1611South 28th Street. To the contrary, the mere hunch contained in the affidavit simply indicates that an individual, Herman Rosario, was believed to be physically residing at 1611South 28th Street and drives a gray Mazda while at this property. Herman Rosario is never observed engaging in drug transactions or activity at 1611South 28th Street. Moreover, there is no nexus in the affidavit connecting the purported activities that occurred miles away and weeks before at 1908 Wishart Street and 2863 N 4th Street with 1611South 28th Street.

The affiant notes in the affidavit his years of experience, and presumably his familiarity with drug trafficking operations. However, the affiant fails to explain the specific factors which prompted him to identify the residence at 1611 South 28th Street as the location of a drug operation. While police certainly conducted extensive surveillance of 1611 South 28th Street, their observations failed to yield any evidence that illegal activity occurred at this location. There is no indication that law enforcement officials observed a high level of traffic from 1611 South 28th Street, the exchange of bags, or suspicious activity. To the contrary, the officer's observations of Herman Rosario at 1611 South 28th Street seem to be those of an average person residing at a home in Philadelphia.

In sum, there is no indication that police obtained any information, from a confidential informant or through surveillance, that Herman Rosario or any other individual was engaged in any illegal activity whatsoever inside the residence at 1611 South 28th Street.

CONCLUSION

The search of the residence located at 1611 South 28th Street was unlawful. The affidavit submitted to support the search warrant lacked the requisite probable cause to search. The facts included in the affidavit were insufficient to support a reasonable belief that any proceeds or instrumentalities of drug trafficking or any other criminal activity would be found inside this residence. Consequently, the items discovered during the search, namely United States Currency narcotics, a firearm, and packaging, constitute the fruit of this illegal search. "Under the 'fruit of the poisonous tree' doctrine, evidence gathered as a result of an unlawful search or seizure must be suppressed at trial." United States v. Coggins, 986 F.2d 651 (3d Cir. 1993)(quoting Wong Sun v. United States, 371 U.S. 471 (1963)). As a result, the narcotics, as well as any and all

additional physical evidence recovered from 1611 South 28th Street must be suppressed.

WHEREFORE, it is respectfully requested that this Court grant the instant motion to suppress physical evidence.

Respectfully submitted,

/s/ Luis A. Ortiz
LUIS A. ORTIZ
121 SOUTH BROAD STREET 18TH FL
PHILADELPHIA PA 19107
215-858-3787
LUISAORTIZ@COMCAST.NET
Attorney for Herman Rosario

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 26th day of December 2017, a copy of the foregoing was filed electronically. Notice of the filing will be sent by e-mail to Jason Bologna by operation of the court's electronic filing system.

/s/Luis A Ortiz
Luis A Ortiz Esq.

Dated: December 26, 2017

EXHIBIT

“A”



Commonwealth of Pennsylvania
CITY AND COUNTY OF PHILADELPHIA

ss:

APPLICATION FOR
SEARCH WARRANT
AND AFFIDAVIT

P/O Neil Carr

3297

NFU

WARRANT CONTROL NO.

203263

ISSUED TO DETAIL

NFU(7401)

DATE OF APPLICATION

07/12/17

being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular person as described below.

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):

****SEE APPENDIX A****

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):

1611 S 28th st Phila pa 19145 two story masonry

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description):

owner Suk Fan Wong per realeste check/ Occupant Herman Rosario

VIOLATION OF (Describe conduct or specify statute):

Pa controlled sub act of 1972

YEAR/MONTH/COMPLAINT NO.

17-24-56749

PROBABLE CAUSE BELIEF IS BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES (See special instructions below):

See attachment

ATTACH ADDITIONAL PAPER (75-51) IF NECESSARY

☐ CHECK HERE IF ADDITIONAL PAPER IS USED.

PLEASE SEE REVERSE SIDE OF THIS PAGE FOR INSTRUCTIONS

SIGNATURE OF AGENT

BADGE NO.

DISTRICT

P/O Neil Carr

3297

NFU

Sworn to (and affirmed) and subscribed before me this

day of July 2017

COURT LOCATION

Date Commission Expires

RESULT OF SEARCH

DATE AND TIME OF SEARCH

7-14-17 725

A.M.
☐ P.M.

ARREST

☒ Yes ☐ No

JUDGE'S DISPOSITION

☐ Cit.☐ Held for Court☐ Further Hearing☐ Fined or Committed

PROPERTY SEIZED

(If "Yes" list inventory below)

☒ Yes ☐ No

Drugs, USC, Gun, Para, Packaging, Mail

IF ADDITIONAL SPACE REQUIRED, USE REVERSE SIDE - INVENTORY MUST APPEAR ON ALL COPIES OF THE WARRANT.

I certify, subject to the penalties and provisions of 18 Pa. C.S. §4104(a) that this is a true and correct listing of all items seized.

Signature of Person Seizing Property

3297
Badge No.

OTHER OFFICERS PARTICIPATING IN SEARCH

126 6287 1731

1353 2273 DEA Group

SIGNATURE OF WITNESS TO INVENTORY (Name and Address)

TO LAW ENFORCEMENT OFFICER: WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the above described premises or person, and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the above described items.

This Warrant should be served as soon as practicable but in no event

later than 10:15 A.M. ☐ P.M.

and shall be served only during daytime hours of 8 A.M. to 10 P.M.

Issued under my hand this 17 day of July

2017 at 10:15 A.M. (Issue time must be stated)

(SEAL)

(Signature of Issuing Authority)

Court location

Date Commission Expires

Title of Issuing Authority

This Warrant should be served as soon as practicable but in no event

later than 10:15 A.M. ☐ P.M.

and may be served anytime during day or night.

Issued under my hand this 17 day of July

2017 at 10:15 A.M. (Issue time must be stated)

(Signature of Issuing Authority)

(SEAL)

The issuing authority should specify a date not later than two (2) days after issuance. Pa. R. Crim. P. 2009(d).

If issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavit and wishes to issue a nighttime search warrant, only this section shall be completed. Pa. R. Crim. 2009(d).

APPENDIX "A"

ITEMS TO BE SEARCHED/SEIZED SW# 203263

1. Heroin, Cocaine, Crack Cocaine, Marijuana any and all items classified as a Controlled Substance. Any and all devices used in packaging, weighing and/or manufacturing of Controlled Substances. Proof of ownership and/or residency.
2. Any and all proceeds and/or records of the sales of controlled Substances. Drug Paraphernalia and all other contraband, including firearms and ammunition;
3. Books, records, receipts, notes, ledgers and other documents relating to transporting, ordering, purchasing and distributing controlled substances, in particular heroin being Controlled Dangerous Substances;
4. Books, records, receipts, bank statements, money drafts, letters of credit, money orders, cashier's checks, receipts, passbooks, bank checks, and other items evidencing the obtainment, and/or concealment of assets and the obtainment, concealment and/or expenditure of money;
6. Proceeds of dealing in controlled substances, financial records relating thereto; All cash, currency, stocks, bonds (both foreign and domestic) and other items of Wealth including, but not limited to jewelry and works of art.
7. Firearms and ammunition.

All of the above being fruits, instrumentalities and evidence of violations of the Controlled Substance, Drug, Device and Cosmetic Act of 1972.

PROBABLE CAUSE FOR SEARCH AND SEIZURE WARRANT #203263

During the month of June, 2017, the NFU-4K conducted an investigation in the illegal sale of narcotics in the area of Jasper and Wishart Sts. On June 14th, June 21st and June 26th of 2017, purchases of heroin were made by a Confidential Informant (C/I #1555). During the course of the investigation, it was established that a male identified as Herman Rosario 34 yrs (PPN: 883431) was supplying the narcotics being sold in the 1900 block of E Wishart St to a H/F at 1908 E Wishart, who would then provide the street dealers the narcotics to be distributed. Rosario received sums of cash from the H/F several times during the investigation and was followed in various vehicles to the location of 2863 N 4th St. Rosario was also observed on multiple occasions leaving 2863 N 4th and handing a bag believed to contain narcotics to the H/F at 1908 E Wishart St.

On 6-28-17, SW# 203250 was executed at 1908 E Wishart St. Twenty four capsules of heroin and \$79.00 USC was confiscated from the location. Also on 6-28-17, SW# 20351 was executed at 2863 N 4th St. Two hundred fifty one packets of cocaine, 699 grams of marijuana, \$18,999.00 USC and a .45 caliber handgun that was secreted in a bathroom wall were recovered in the property. Two pictures of Rosario were also confiscated from the location. Rosario was not on location.

Following the execution of the Search and Seizure Warrants at 1908 E Wishart and 2863 N 4th St, information was received that Rosario was operating a gray Mazda sedan with a PA registration of "KKB 2606" and that Rosario was staying at 1611 S 28th St.

On Wednesday, July 5th, P/O Torres #1791 of the DEA Task Force observed Rosario operating the Mazda and followed the vehicle to the 1600 block of S 28th St. Rosario parked the auto in front of 1611 S 28th and went into the location.

On Friday, July 7th, P/O Carr #3297 and P/O Werner #1731 set up surveillance of 1611 S 28th St. The Mazda was parked directly in front of the residence. Rosario was observed coming out of the property and talking on a cell phone twice during the surveillance.

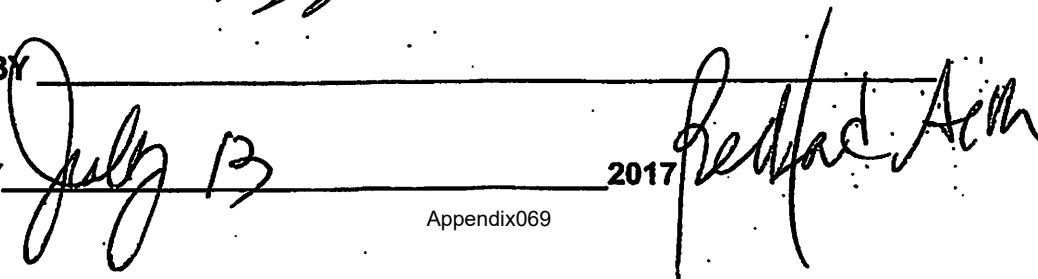
Senior Special Agent Mangold #767 of the Attorney General's Gun Violence Task Force received information that Rosario was residing at 1611 S 28th St as well and conducted surveillance daily from 7-10-17 to 7-12-17. SSA Mangold observed Rosario on all three days exiting the location and operating the Mazda.

P/O NEIL CARR #3297 (YOUR AFFIANT), HAS BEEN A POLICE OFFICER FOR OVER 20 YEARS AND A NARCOTICS OFFICER FOR OVER 13 OF THOSE YEARS. BASED ON THE ABOVE INFORMATION, THE OFFICER BELIEVES THAT FIREARMS, NARCOTICS AND / OR NARCOTICS PROCEEDS ARE BEING STORED AND / OR SOLD FROM 1611 S 28th ST

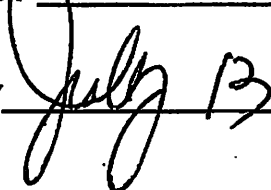
AFFIANT'S SIGNATURE

 #3297

APPROVED BY



ON THIS DAY

 July 13

2017

APPENDIX "A"

ITEMS TO BE SEARCHED/SEIZED SW# 203263

1. Heroin, Cocaine, Crack Cocaine, Marijuana any and all items classified as a Controlled Substance. Any and all devices used in packaging, weighing and/or manufacturing of Controlled Substances. Proof of ownership and/or residency.
2. Any and all proceeds and/or records of the sales of controlled Substances. Drug Paraphernalia and all other contraband, including firearms and ammunition;
3. Books, records, receipts, notes, ledgers and other documents relating to transporting, ordering, purchasing and distributing controlled substances, in particular heroin being Controlled Dangerous Substances;
4. Books, records, receipts, bank statements, money drafts, letters of credit, money orders, cashier's checks, receipts, passbooks, bank checks, and other items evidencing the obtainment, and/or concealment of assets and the obtainment, concealment and/or expenditure of money;
6. Proceeds of dealing in controlled substances, financial records relating thereto; All cash, currency, stocks, bonds (both foreign and domestic) and other items of Wealth including, but not limited to jewelry and works of art.
7. Firearms and ammunition.

All of the above being fruits, instrumentalities and evidence of violations of the Controlled Substance, Drug, Device and Cosmetic Act of 1972.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

YATSKA MELENDEZ

No. 2:17-cr-553-RBS

[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2018, upon consideration of Defendant's Motion to Suppress and any response thereto, it is hereby ordered that the motion is GRANTED. All evidence seized from 1611 South 28th Street, Philadelphia, Pennsylvania, and all derivative evidence, shall be suppressed.

BY THE COURT:

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

YATSKA MELENDEZ

No. 2:17-cr-553-RBS

MOTION TO SUPPRESS

Defendant Yatska Melendez, by and through her counsel, Douglas E. Roberts, hereby moves this Court to suppress all evidence seized during the search of 1611 South 28th Street conducted on July 14, 2017. The motion is based on the following Memorandum of Points and Authorities. For the reasons stated therein, Defendant respectfully requests that her Motion to Suppress be granted.

DATE: December 27, 2017

Respectfully submitted,

/s/ Douglas E. Roberts

Douglas E. Roberts

I.D. No. 321950

Pietragallo Gordon Alfano Bosick & Raspanti, LLP

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Suite 3402

Philadelphia, PA 19103

Phone: (215) 320-6200

Fax: (215) 981-0082

Email: der@pietragallo.com

Attorney for Yatska Melendez

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

YATSKA MELENDEZ

No. 2:17-cr-553-RBS

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION TO SUPPRESS**

I. INTRODUCTION

On July 13, 2017, law enforcement sought and obtained a warrant to search 1611 South 28th Street in Philadelphia, based on an affidavit citing alleged drug activity that occurred on the opposite side of the city during the previous month. The only thing connecting the activity in the north side of Philadelphia to the property in South Philadelphia was the presence of Herman Rosario, who, according to the affidavit, had transported bags from one North Philadelphia home to another. A search of those homes turned up a relatively small amount of narcotics, but not Rosario.

“Information was received” that Rosario was staying at 1611 South 28th Street, so law enforcement surveilled him for a week. They did not observe him transporting bags. They did not trail him back to the north side of Philadelphia. They did not see him engage in any behavior that would give rise to a suspicion of drug trafficking. Instead, they observed him entering and exiting the residence and talking on a mobile phone, just as any law-abiding person might do. The affidavit supporting the search of 1611 South 28th Street is devoid of any evidence linking

the property to the crime of narcotics distribution and thus cannot form the basis for probable cause. Indeed, the affidavit is so lacking in indicia of probable cause that official reliance on it was objectively unreasonable.

II. FACTUAL BACKGROUND

On July 14, 2017, at approximately 7:25 a.m., law enforcement officers executed a search warrant on 1611 South 28th Street in Philadelphia, Pennsylvania. According to property receipts, they seized a 9 mm handgun, ammunition, a substance presumed to be heroin, a substance presumed to be crack cocaine, unused plastic capsules and storage bags, two cell phones, an iPad, and two pieces of mail bearing the name Yatska Melendez and an address of 1908 East Wishart Street.¹ Ms. Melendez and her co-defendant, Herman Rosario, were present during the search and arrested thereafter.

A magistrate judge found probable cause for the search of 1611 South 28th Street on July 13, 2017, based on a one-page affidavit signed by Neil Carr, an officer with the Narcotics Field Unit of the Philadelphia Police Department (“NFU-4K”). In the affidavit, attached hereto as Exhibit 1, Officer Carr attested that:

- NFU-4K investigated the illegal sale of narcotics in the area of Jasper and Wishart Streets.
- A confidential informant purchased heroin on June 14, 21, and 26, 2017.
- A male identified as Herman Rosario was observed “on multiple occasions” leaving 2863 North 4th Street, driving to the area of Jasper and Wishart Streets, and handing a bag believed to contain narcotics to a Hispanic female at 1908 East Wishart Street, and receiving money from the same Hispanic female. The Hispanic female was observed providing narcotics to suspected street dealers.
- On June 28, 2017, law enforcement executed search warrants on 1908 East Wishart Street and 2863 North 4th Street. At 1908 East Wishart Street, 24 capsules of heroin and

¹ Neither the alleged mail itself nor photographs of it have been provided to Ms. Melendez. Undersigned counsel has requested the mail from the government.

\$79 was seized. At 2863 North 4th Street, officers seized 251 packets of cocaine, 699 grams of marijuana, \$18,999, a handgun, and two pictures of Rosario. Rosario was not present during the search.²

- “[I]nformation was received that . . . Rosario was staying at 1611 South 28th Street.”
- On July 5, 2017, officers observed Rosario entering 1611 South 28th Street.
- On July 7, 2017, officers twice observed Rosario exiting 1611 South 28th Street and talking on his cell phone.
- On July 10, 11, and 12, 2017, Rosario was observed exiting 1611 South 28th Street.

Officers did not surveil Rosario driving from 1611 South 28th Street to the Jasper and Wishart area, or indeed driving anywhere. There is no indication in the affidavit that Rosario was transporting bags to or from 1611 South 28th Street, as he allegedly was from 2863 North 4th Street, or that he met with the Hispanic female from 1908 East Wishart Street while “staying” at 1611 South 28th Street.

1611 South 28th Street is between 7.2 miles and 12.7 miles in driving distance from 2863 North 4th Street, depending on the route taken. *See* Exhibit 2. It is 9.1 miles in driving distance 1908 East Wishart Street. *See* Exhibit 3. 2863 North 4th Street and 1908 East Wishart Street are 1.7 miles apart. *See* Exhibit 4.

III. ARGUMENT³

A. Ms. Melendez has standing to bring this suppression motion.

As an initial matter, Ms. Melendez has standing to challenge the search of 1611 South 28th Street as a presumptive overnight guest at the premises. *E.g., Minnesota v. Olson*, 495 U.S. 91, 98 (“To hold that an overnight guest has a legitimate expectation of privacy in his host’s

² The affidavit neglects to mention that officers arrested Rosario’s father, German Rosado, who was at the home when the warrant was executed.

³ Ms. Melendez joins in the motion filed by her co-defendant and incorporates by reference the arguments made therein. Dkt. # 33.

home merely recognizes the everyday expectations of privacy that we all share.”). According to discovery provided in this case, law enforcement began surveilling 1611 South 28th Street on the morning of July 14, 2017, at some time before 5:45 a.m. There is no indication that Ms. Melendez was seen entering the premises between 5:45 a.m., and when officers executed the search warrant at approximately 7:25 a.m. Moreover, officers executing the warrant found Ms. Melendez in a bedroom, along with her two young sons. These facts indicate that Ms. Melendez spent the night and thus had a reasonable expectation of privacy, which was breached by the search of the residence.

B. The search warrant was not supported by probable cause because the underlying affidavit did not establish a nexus between the premises and drug-trafficking activity.

“[N]o Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const., 4th Am. A magistrate may find probable cause for a search only where “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Probable cause is a “fluid concept” that “turn[s] on the assessment of probabilities in particular factual contexts.” *Id.* at 232. In reviewing the probable cause determination, the Court must confine itself “to the facts that were before the magistrate judge, i.e., the affidavit”⁴ *United States v. Jones*, 994 F.2d 1051, 1055 (3d Cir. 1993). Here, the affidavit lacks both (1) direct evidence establishing a nexus between 1611 South 28th Street and drug-trafficking activity, and (2) evidence from which the magistrate could reasonably infer that such a nexus existed.

⁴ The defendant bears the burden of establishing that her Fourth Amendment rights were violated. *United States v. Acosta*, 965 F.2d 1248, 1257 n. 9 (3d Cir.1992).

1. The affidavit cites no direct evidence linking drug-trafficking activity to 1611 South 28th Street.

“[E]very affidavit ideally would contain direct evidence linking the crime with the place to be searched.” *United States v. Stearn*, 597 F.3d 540, 554 (3d Cir. 2010). Officer Carr’s affidavit is remarkable for its lack of such direct evidence. After conducting surveillance of the premises for five days from July 5 through July 12, 2017, law enforcement only observed Rosario entering and exiting the premises, sometimes while speaking on a mobile phone. There is no evidence to suggest he was conducting drug sales out of the residence or even that he made exchanges with individuals who subsequently interacted with drug dealers. He was not so much as carrying backpacks or bags in or out of the property. Moreover, while officers tracked Rosario’s movements throughout the latter half of June 2017, there is no indication that he ever went to 1611 South 28th Street during that time. The affidavit does not even attempt to link 1611 South 28th Street to the alleged drug activity that occurred in the vicinity of Jasper and Wishart Streets, which is a 7-to-12-mile drive from the South Philadelphia address where Rosario purportedly was staying in July 2017.

2. It was unreasonable for the magistrate to infer the nexus between 1611 South 28th Street and drug-trafficking activity based on the contents of the affidavit.

Absent direct evidence, reasonable inferences can support a finding of probable cause, but only under limited circumstances. Of relevance here, magistrates may only infer that a suspect is storing evidence of drug crimes in a residence if the affidavit contains “evidence supporting three preliminary premises: (1) that the person suspected of drug dealing is actually a drug dealer; (2) that the place to be searched is possessed by, or the domicile of, the dealer; and (3) that the home contains contraband linking it to the dealer’s drug activities.” *United States v.*

Burton, 288 F.3d 91, 104 (3d Cir. 2002). Officer Carr's one-page affidavit does not contain sufficient evidence that Rosario was residing at 1611 South 28th Street. Moreover, it is utterly devoid of evidence that the property contained contraband, fruits, or instrumentalities linking it to drug activities. Accordingly, the affidavit cannot support a finding of probable cause.

- i. *At most, the affidavit supports an inference that Rosario was staying temporarily at 1611 South 28th Street.*

As long as the other two "preliminary premises" of *Burton* are met, it is reasonable to infer that a drug trafficker would store evidence of his trafficking at his home. *E.g.*, *United States v. Hodge*, 246 F. 301, 306-07 (3d Cir. 2001) (collecting cases); *United States v. Whitner*, 219 F.3d 289, 298 (3d Cir. 2000) ("evidence associated with drug dealing needs to be stored somewhere, and . . . a dealer will have the opportunity to conceal it in his home"). However, the premise cannot be extended to a residence where the alleged drug dealer is staying temporarily. As with gardening tools, bowling trophies, or other personal property, a person is more likely to store evidence related to drug activity at his home than at a place where he happens to be staying.

According to the affidavit, law enforcement on some unknown date received unspecified information that Rosario was "staying" at 1611 South 28th Street.⁵ Exhibit 1. Officers conducted surveillance from July 5 through 12 and observed behavior consistent with him staying temporarily at the residence. There is no indication in the affidavit that Rosario was moving furniture or other personal effects into the property. The affidavit contains no evidence suggesting that officers spoke to the owner of the property, or did any investigation, concerning

⁵ The last paragraph of the affidavit states that a special agent from the Attorney General's Gun Violence Task Force "received information that Rosario was residing at 1611 South 28th Street," but there is no indication from whom or when he got that information. The affidavit lacks sufficient detail to determine whether Rosario had a more significant level of possessory interest than merely "staying" at the property.

Rosario's status at 1611 South 28th Street. The affidavit is silent as to whether Rosario had a key, otherwise let himself into the property, or had any ownership or renter's interest in the residence.

Indeed, the affidavit supports an inference that Rosario's home was at 2863 North 4th Street, some 7 to 12 miles in driving distance across town. That, after all, is where officers surveilled driving to and leaving from on "multiple occasions" throughout June 2017. *Id.* Moreover, when law enforcement searched 2863 North 4th Street on June 28, 2017, they confiscated two pictures of Rosario. The affidavit does not support an inference that Rosario moved all the way across town just days after the search of 2863 North 4th Street.

- ii. *The affidavit contains no information to connect 1611 South 28th Street to Rosario's alleged drug-dealing activity.*

For a search to be supported by probable cause, there must be a "nexus between the crime and the place to be searched." *United States v. Jones*, 994 F.2d 1051, 1054 (3d Cir. 1993). Thus, courts "demand some evidence 'that the home contains contraband linking it to the drug dealer's activities.'" *Stearn*, 597 F.3d at 559 (3d Cir. 2010) (quoting *Gates*, at 238). Accordingly, the search of a drug dealer's home is "unreasonable if the affidavit suggest[s] no reason to believe contraband would be found there." *Id.* The fact that drug evidence is ultimately found in a suspected trafficker's residence does not justify the search or ameliorate a violation of the Fourth Amendment.

Nothing in Officer Carr's affidavit suggests that evidence of drug activity would be found at 1611 South 28th Street. According to the affidavit, during the month of June 2017, officers observed Rosario travelling between two residences (1908 East Wishart Street and 2863 North 4th Street) in North Philadelphia that are 1.7 miles apart. Exhibit 4. On "multiple occasions," Rosario handed a bag to a Hispanic female outside of 1908 East Wishart Street, and "several times," the female gave Rosario cash. The female "provide[d] the street dealers narcotics to be

distributed.” A confidential informant purchased unspecified amounts of heroin three times – on June 14, 21, and 26, 2017. Law enforcement officers executed search warrants on 1908 East Wishart Street 2863 North 4th Street on June 28, 2017. From the former, they seized 24 capsules of heroin (total weight not provided). From the latter, they seized 251 packets of cocaine (total weight not provided) and 699 grams of marijuana.

At some unidentified time, “information was received” that Rosario “was staying” clear across town⁶ at 1611 South 28th Street. Over the course of seven days spanning from July 5 through July 12, 2017, officers observed Rosario at 1611 South 28th Street violating no state or federal law. Indeed, he was acting as any law-abiding citizen might. He parked his car and went into the house. He exited the house and got into the car. He spoke on his mobile phone. *See United States v. Leake*, 998 F.2d 1359, 1367 (6th Cir.1993) (no probable cause where affidavit demonstrates that officer “observed absolutely nothing out of the ordinary”).

Courts within this circuit have cited various factors in finding a sufficient nexus between the place to be searched and evidence of drug-trafficking activity. *Stearn*, 597 F.3d at 559-60 (listing factors and citing cases). None are present here. The affidavit contains no information linking 1611 South 28th Street to drug activity. To the contrary, the affidavit undermines any inference that evidence of drug-trafficking was on the premises. The following factors should have caused the magistrate to reject Officer Carr’s application for a search warrant:

First, the affidavit did not describe any activity involving Rosario and 1611 South 28th Street that was consistent with drug trafficking. While officers watched him exit the residence and get into a car, there is no indication that they saw him transporting anything that they suspected was related to the sale of narcotics. In contrast, according to the affidavit, Rosario was

⁶ The distance between the two addresses in North Philadelphia and 1611 South 28th Street is not provided in the affidavit. *But see* Exhibits 2 and 3.

observed transporting bags between properties in North Philadelphia. The recipient of those bags was then observed interacting with individuals who allegedly made sales to a confidential informant. The absence of evidence that Rosario was transporting anything undercuts the notion that he was involved in drug-trafficking while at 1611 South 28th Street.

Second, 1611 South 28th Street is miles across town from the properties in North Philadelphia. Narcotics trafficking tends to be a territorial pursuit. *E.g.*, *United States v. Pressler*, 256 F.3d 144, 151 (3d Cir. 2001) (describing division of neighborhood territory into various zones in which dealers operate). The magistrate should have questioned why an alleged drug dealer would have migrated 7 to 12 miles to conduct an operation that, at least according to the statements in the affidavit, was cabined in North Philadelphia.

Third, during the entirety of their surveillance, officers never observed Rosario travel between 1611 South 28th Street and either of the other addresses. Had Rosario (1) driven to 1611 South 28th Street after providing a bag to, or collecting money from the Hispanic female in June, or (2) driven to one of the addresses in the north side of Philadelphia from 1611 South 28th Street in July, that detail may have supported the issuance of a warrant. *Cf. Burton*, 288 F.3d at 104 (“inference is much stronger when the home is the first place a drug dealer proceeds following such a transaction”). The affidavit does not indicate that either of those things happened. Nor does it assert that Rosario interacted with the Hispanic female after the searches that occurred on June 28, 2017.

Fourth, the affidavit does not indicate that Rosario was involved in a large-scale drug-trafficking operation. Instead, two searches yielded 24 capsules of heroin, 251 packets of cocaine, and approximately a pound and a half of marijuana. This sort of weight is not suggestive of a city-wide operation supported by “field offices” in both North and South Philadelphia. Nor

does the affidavit suggest that Rosario is (1) a large-scale drug trafficker who operates all over Philadelphia, or (2) a member of a street gang or organization that sells throughout the city.

Probable cause depends on the totality of the circumstances presented in the supporting affidavit. *E.g., Hodge*, 246 F.3d at 305. Here, the affidavit, read as a whole, undercuts rather than supports the notion of a nexus between 1611 South 28th Street and drug activity. The search warrant never should have issued.

C. The good faith exception does not apply.

The so-called “good faith exception” prevents the suppression of evidence “when an officer executes a search in objectively reasonable reliance on a warrant’s authority.” *United States v. Williams*, 3 F.3d 69, 74 (3d Cir. 1993) (citing *United States v. Leon*, 468 U.S. 897 (1984)). However, “[g]ood faith is not a magic lamp for police officers to rub whenever they find themselves in trouble.” *United States v. Reilly*, 76 F.3d 1271, 1280 (2d Cir. 1996). The exception does not apply where a well-trained officer would realize that the affidavit underlying a warrant is “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” *Leon*, 468 U.S. at 923. Such is the case here.

As noted above, the affidavit suggests that Rosario (1) engaged in benign activity, (2) at a residence located between 7 and 12 miles from two houses in North Philadelphia, (3) which were searched and from which a relatively small amount of narcotics was seized. No well-trained officer could have reviewed the underlying affidavit and harbored a good faith belief that it provided probable cause for the search of 1611 South 28th Street.

The U.S. Court of Appeals for the Third Circuit has found supporting affidavits to be “so lacking” in indicia of probable cause when they are based “on conclusory assertions, a single piece of outdated evidence, or an uncorroborated or unreliable anonymous tip.” *United States v.*

Sarraga-Solana, 263 F. App'x 227, 231 (3d Cir. 2008). Here, the affidavit lacks even those indicators tying 1611 South 28th Street to drug-related activity.

United States v. Laughton, 409 F.3d 744 (6th Cir. 2005) is instructive. There, law enforcement applied for a warrant to search the defendant's residence, where a confidential informant had made controlled buys of methamphetamine. *Id.* at 766. The supporting affidavit read, in relevant part:

During the course of Affiant's police career he has received extensive training in all aspects of law enforcement, including criminal investigation in regard to controlled substances. Affiant is familiar with the appearance of methamphetamine.

Currently your Affiant is involved with ongoing drug investigations in Clare County. Through the course of this investigation, your Affiant has worked with a Confidential Informant (CI), who has made multiple purchases of Methamphetamine in the last 48 hours. Affiant has observed this controlled purchase.

Through the course of this investigation your Affiant has learned that James Howard Laughton will keep controlled substances/drugs in the crotch area of his pants and in his pants pockets. Further that there are various stashes around the home.

This CI is believed to be credible and reliable by the Affiant due to the fact that the CI has provided reliable information in the past which was corroborated by Affiant. CI has provided information that there is more controlled substances located at or in the residence or located on the person of James Howard Laughton due to the fact that he has observed these controlled substances.

Id. at 746-47. A magistrate signed and issued the warrant, and the police executed the search and seized methamphetamine and firearms, which served as the basis for a six-count indictment against Laughton. *Id.* at 747.

Laughton moved to suppress the evidence seized during the search. *Id.* The district court ruled that there was no valid basis for the warrant to issue because the affidavit did not sufficiently link the property to be searched to evidence of criminal activity. *Id.* Among other

flaws, the affidavit did not specify that the controlled buys occurred at Laughton's residence. *Id.* However, the Court applied the *Leon* good faith exception and denied the motion. *Id.*

The U.S. Court of Appeals for the Sixth Circuit reversed, holding that the affidavit was so lacking in evidence concerning the nexus between the property and criminal activity that it was objectively unreasonable for law enforcement to believe that the warrant was supported by probable cause. *Id.* at 751.

The affidavit in Laughton contains two statements – acontextual and imprecise though they might be – that bear on the question of nexus: “Further that there are various stashes around the home”; and “CI has provided information that there is more controlled substances located at or in the residence or located on the person of James Howard Laughton due to the fact that he has observed these controlled substances.” That is two more statements linking property to criminal activity than are in the instant affidavit. The objective well-trained officer could not have read Officer Carr's affidavit and found any basis for probable cause to search 1611 South 28th Street.

Notably, the search of the property was not conducted by officers detached from the application process: Officer Carr was part of the search team. Although there is no exception to the good faith rule based on the identity of the executing officer, it is particularly concerning where “an affiant [who] is also one of the executing officers” relies on good faith given a “paltry showing” of probable cause. *United States v. Zimmerman*, 277 F.3d 426, 438 (3d Cir. 2002). It is difficult to imagine a more paltry showing concerning the nexus between the property and criminal activity than the one that plagues Officer Carr's affidavit. The Court should thus decline to apply the good faith exception.⁷

⁷ The warrant appears to be missing the seal of the Office of Judicial Records of the First Judicial District of Pennsylvania, which appears on all other search warrants that Ms. Melendez has received in

IV. CONCLUSION

For the reasons stated above, the Court should find that probable cause did not support the search of 1611 South 28th Street and suppress all evidence seized during that search.

Dated: December 27, 2017

Respectfully submitted,

/s/ Douglas E. Roberts

Douglas E. Roberts

I.D. No. 321950

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Attorney for Yatska Melendez

discovery and, to counsel's knowledge, on all search warrants that issue in Philadelphia County. The lack of seal should have given the executing officers further reason to question the facial sufficiency of the warrant.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

No. 2:17-cr-553-RBS

YATSKA MELENDEZ

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2017, I caused a true and correct copy of the foregoing motion to be served by ECF upon all counsel of record.

Respectfully submitted,

/s/ Douglas E. Roberts

Douglas E. Roberts

I.D. No. 321950

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Suite 3402

Philadelphia, PA 19103

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Email: der@pietragallo.com

Attorney for Yatska Melendez



Commonwealth of Pennsylvania

CITY AND COUNTY OF PHILADELPHIA

SS:

APPLICATION FOR SEARCH WARRANT AND AFFIDAVIT

WARRANT CONTROL NO.

203263

ISSUED TO DISTRICT

NFU (7401)

DATE OF APPLICATION

07/12/17

P/O Neil Carr

3297

NFU

(Name and Address)

(Badge No.)

(District/Unit)

being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular person as described below.

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):

SEE APPENDIX A

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):

1611 S 28th st Phila pa 19145 two story masonry

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description):

owner Suk Fan Wong per realeste check/ Occupant Herman Rosario

VIOLATION OF (Describe conduct or specify statute):

Pa controlled sub act of 1972

YEAR/DATE COMPLAINT NO.

17-24-56749

PROBABLE CAUSE BELIEF IS BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES (See special instructions below):

See attachment

ATTACH ADDITIONAL PAPER (75-51) IF NECESSARY

☐ CHECK HERE IF ADDITIONAL PAPER IS USED.

PLEASE SEE REVERSE SIDE OF THIS PAGE FOR INSTRUCTIONS

SIGNATURE OF AFFIDANT

BADGE NO.

DISTRICT

P/O Neil Carr

3297

NFU

Sworn to and affirmed and subscribed before me this

day of July 2017

at 10:45 A.M.

COURT LOCATION

Date of Commission Expires

RESULT OF SEARCH

DATE AND TIME OF SEARCH

7-14-17 7:25

☒ A.M.☐ P.M.

ARREST

☒ Yes☐ No

JUDGE'S DISPOSITION

☐ Disc.☐ Held for Court☐ Further Hearing☐ Fined or Committed

PROPERTY SEIZED

(If "Yes" list inventory below)

☒ Yes ☐ No

Drugs, USC, Gun, Para, Packaging, Mail

IF ADDITIONAL SPACE REQUIRED, USE REVERSE SIDE - INVENTORY MUST APPEAR ON ALL COPIES OF THE WARRANT.

I certify, subject to the penalties and provisions of 18 Pa. C.S. §4904(b) that this is a true and correct listing of all items seized

Signature of Person Seizing Property

3297

Badge No.

OTHER OFFICERS PARTICIPATING IN SEARCH

126 6287 1731

1353 2273 DEA Group

Crime Scene Unit

Ag's Homeland Security

Gun Violence Task Force

Chen. Lab

SIGNATURE OF WITNESS TO INVENTORY (Name and Address)

TO LAW ENFORCEMENT OFFICER: WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the above described premises or person, and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the above described items.

* This Warrant should be served as soon as practicable but in no event

later than ☐ A.M. ☐ P.M. 2017

and shall be served only during daylight hours from 6 A.M. to 10 P.M.

Issued under my hand this 17 day of July

2017 at 10:45 A.M. (Issue time must be stated)

(SEAL)

(Signature of Issuing Authority)

Court location

Date Commission Expires

Title of Issuing Authority

** ☐ This warrant should be served as soon as practicable but in no eventlater than ☐ A.M. ☐ P.M. 2017

and may be served anytime during day or night.

Issued under my hand this 17 day of July

2017 at 10:45 A.M. (Issue time must be stated)

(SEAL)

(Signature of Issuing Authority)

Court location

Date Commission Expires

Title of Issuing Authority

*The issuing authority should specify a date not later than two (2) days after issuance, PA. R. Crim. P. 201(d).

**If issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavits and wishes to issue a nighttime search warrant, only this section shall be completed, PA. R. Crim. 2006(b).

Appendix 087

APPENDIX "A"

ITEMS TO BE SEARCHED/SEIZED SW# 203263

1. Heroin, Cocaine, Crack Cocaine, Marijuana any and all items classified as a Controlled Substance. Any and all devices used in packaging, weighing and/or manufacturing of Controlled Substances. Proof of ownership and/or residency.
2. Any and all proceeds and/or records of the sales of controlled Substances. Drug Paraphernalia and all other contraband, including firearms and ammunition;
3. Books, records, receipts, notes, ledgers and other documents relating to transporting, ordering, purchasing and distributing controlled substances, in particular heroin being Controlled Dangerous Substances;
4. Books, records, receipts, bank statements, money drafts, letters of credit, money orders, cashier's checks, receipts, passbooks, bank checks, and other items evidencing the obtainment, and/or concealment of assets and the obtainment, concealment and/or expenditure of money;
6. Proceeds of dealing in controlled substances, financial records relating thereto; All cash, currency, stocks, bonds (both foreign and domestic) and other items of Wealth including, but not limited to jewelry and works of art.
7. Firearms and ammunition.

All of the above being fruits, instrumentalities and evidence of violations of the Controlled Substance, Drug, Device and Cosmetic Act of 1972.

During the month of June, 2017, the NFU-4K conducted an investigation in the illegal sale of narcotics in the area of Jasper and Wishart Sts. On June 14th, June 21st and June 26th of 2017, purchases of heroin were made by a Confidential Informant (C/I #1555). During the course of the investigation, it was established that a male identified as Herman Rosario 34 yrs (PPN: 883431) was supplying the narcotics being sold in the 1900 block of E Wishart St to a H/F at 1908 E Wishart, who would then provide the street dealers the narcotics to be distributed. Rosario received sums of cash from the H/F several times during the investigation and was followed in various vehicles to the location of 2863 N 4th St. Rosario was also observed on multiple occasions leaving 2863 N 4th and handing a bag believed to contain narcotics to the H/F at 1908 E Wishart St.

On 6-28-17, SW# 203250 was executed at 1908 E Wishart St. Twenty four capsules of heroin and \$79.00 USC was confiscated from the location. Also on 6-28-17, SW# 20351 was executed at 2863 N 4th St. Two hundred fifty one packets of cocaine, 699 grams of marijuana, \$18,999.00 USC and a .45 caliber handgun that was secreted in a bathroom wall were recovered in the property. Two pictures of Rosario were also confiscated from the location. Rosario was not on location.

Following the execution of the Search and Seizure Warrants at 1908 E Wishart and 2863 N 4th St, information was received that Rosario was operating a gray Mazda sedan with a PA registration of "KKB 2606" and that Rosario was staying at 1611 S 28th St.

On Wednesday, July 5th, P/O Torres #1791 of the DEA Task Force observed Rosario operating the Mazda and followed the vehicle to the 1600 block of S 28th St. Rosario parked the auto in front of 1611 S 28th and went into the location.

On Friday, July 7th, P/O Carr #3297 and P/O Werner #1731 set up surveillance of 1611 S 28th St. The Mazda was parked directly in front of the residence. Rosario was observed coming out of the property and talking on a cell phone twice during the surveillance.

Senior Special Agent Mangold #767 of the Attorney General's Gun Violence Task Force received information that Rosario was residing at 1611 S 28th St as well and conducted surveillance daily from 7-10-17 to 7-12-17. SSA Mangold observed Rosario on all three days exiting the location and operating the Mazda.

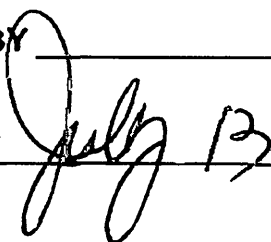
P/O NEIL CARR #3297 (YOUR AFFIANT), HAS BEEN A POLICE OFFICER FOR OVER 20 YEARS AND A NARCOTICS OFFICER FOR OVER 13 OF THOSE YEARS. BASED ON THE ABOVE INFORMATION, THE OFFICER BELIEVES THAT FIREARMS, NARCOTICS AND / OR NARCOTICS PROCEEDS ARE BEING STORED AND / OR SOLD FROM 1611 S 28th ST

AFFIANT'S SIGNATURE

 #3297

APPROVED BY

ON THIS DAY

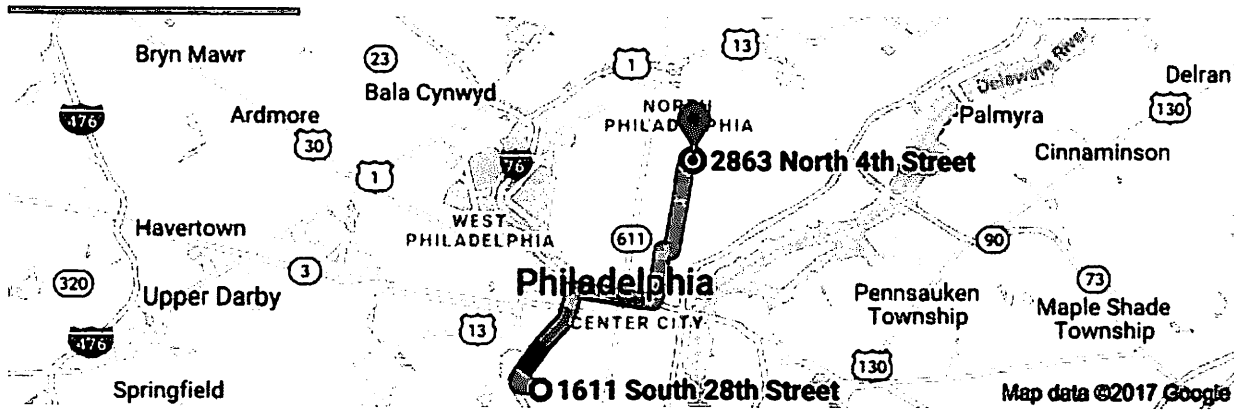


2017



1611 S 28th St, Philadelphia, PA 19145

2863 N 4th St, Philadelphia, PA 19133



36 min (7.2 mi) via N 5th St

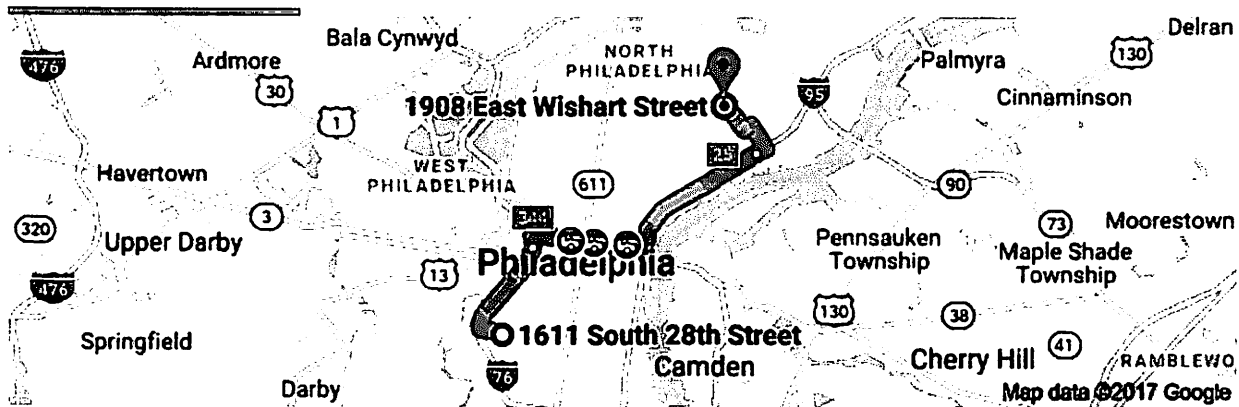
[Directions](#)

38 min (9.0 mi) via I-76 W

39 min (12.7 mi) via I-76 W and US-1 N

1611 S 28th St, Philadelphia, PA 19145

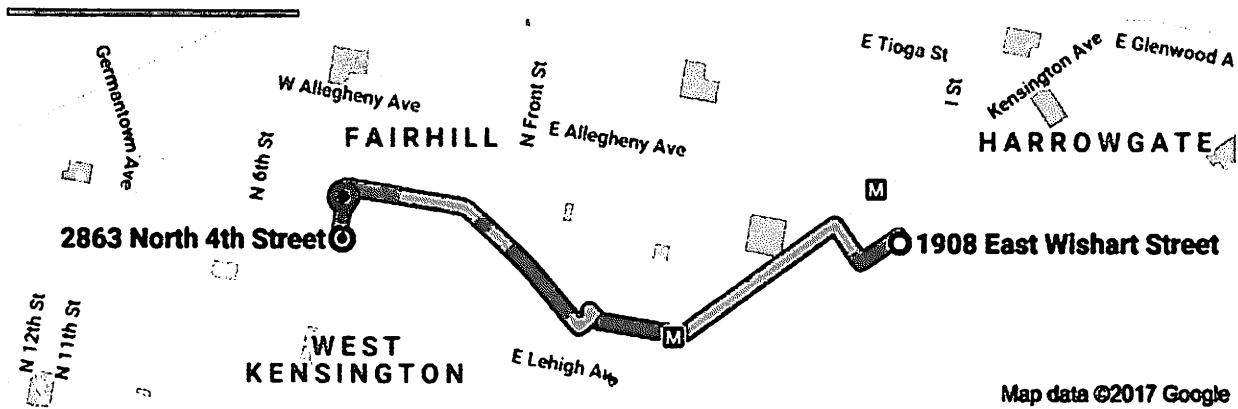
📍 2863 N 4th St, Philadelphia, PA 19133



34 min (9.1 mi) via I-95 N

1908 E Wishart St, Philadelphia, PA 19134

📍 2863 N 4th St, Philadelphia, PA 19133



11 min (1.7 mi) via Kensington Ave

[Directions](#)

11 min (1.7 mi) via E Indiana Ave

13 min (1.8 mi) via E Allegheny Ave

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 17-553
	:	
HERMAN ROSARIO	:	
YATSKA MELENDEZ	:	

ORDER

AND NOW, this date of , 2018, upon consideration of the motions to suppress evidence filed by Herman Rosario (ECF 33) and by Yatska Melendez (ECF 34), and the government's response thereto, it is hereby **ORDERED** that the defendants' motions are **DENIED**.

BY THE COURT:

HONORABLE R. BARCLAY SURRECK
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

HERMAN ROSARIO

YATSKA MELENDEZ

:
:
:
:
:
:

CRIMINAL NO. 17-553

**GOVERNMENT'S RESPONSE TO DEFENSE MOTIONS TO SUPPRESS
EVIDENCE SEIZED PURSUANT TO A SEARCH WARRANT**

The United States of America, by its attorneys, Louis D. Lappen, United States Attorney for the Eastern District of Pennsylvania, and Jason P. Bologna, Assistant United States Attorney, hereby responds to motions to suppress evidence filed by Defendant Herman Rosario (ECF 33) and by Defendant Yatska Melendez (ECF 34). These defense motions are without merit and, for the reasons detailed below, they should be denied.

I. INTRODUCTION

On October 11, 2017, a grand jury in the Eastern District of Pennsylvania returned a four-count Indictment charging Herman Rosario and Yatska Melendez with conspiring to distribute controlled substances, in violation of Title 21, United States Code, Section 846 (Count One), Rosario with possessing controlled substances with the intent to distribute; in violation of Title 21, United States Code, Section 841 (Count Two), Rosario with possessing a firearm in furtherance of a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1)(A) (Count Three), and Rosario with possessing a firearm as a convicted felon, in violation of Title 18, United States Code, Section 922(g)(1) (Count Four).

Rosario and Melendez are scheduled to be tried by a jury on Monday, March 5, 2018. The government's case involves drug evidence that was purchased on June 14, 2017, June

21, 2017, and June 26, 2017, as well as drug evidence that was seized pursuant to search warrants on June 28, 2017, and July 14, 2017. The government's case also involves a firearm that was seized pursuant to a search warrant on July 14, 2017. The defendants' motions to suppress only challenge the seizure of evidence from 1611 South 28th Street on July 14th.

In this case, there was a substantial basis for the magistrate judge to determine the search warrant for 1611 South 28th Street was supported by probable cause. The motions to suppress evidence should be denied for this reason. A copy of the search warrant application and affidavit are included as "Attachment A." The government has described the search of 1611 South 28th Street on July 14th in Section II, has summarized the pertinent facts in the search warrant in Section III, and has analyzed the applicable case law in Section IV.

Even if it were true that the magistrate judge did not have a substantial basis to determine the search warrant for 1611 South 28th Street was supported by probable cause, the July 14th seizure of drug evidence and a firearm is nonetheless justified by the Good Faith Exception to the warrant requirement. The government has briefly analyzed the applicable case law for that exception in Section V.

II. THE SEARCH OF 1611 SOUTH 28TH STREET ON JULY 14, 2017

On July 14, 2017, the Philadelphia SWAT Unit assisted in the execution of a search warrant at 1611 South 28th Street. After knocking and announcing "Police Search Warrant" several times with no response, the SWAT Unit forced the front door open. Two SWAT Unit officers found Herman Rosario in a second floor bathroom. Rosario was near empty plastic bags on the bathroom floor and heroin on the floor and walls surrounding the toilet. This discovery suggested that Rosario was trying to destroy the evidence by flushing it down the toilet. SWAT Unit officers also found Yatska Melendez and her two children (a four year-old and one year-old) inside the home in the second floor front bedroom. In the second floor middle

bedroom, SWAT Unit officers round numerous open containers with bulk amounts of suspected heroin and/or fentanyl. There was an air conditioner in a window of the middle bedroom, and that machine was potentially dispersing the substances around the house. Accordingly, the house was temporarily evacuated. Yatska Melendez and her children were placed in an unmarked vehicle so the children could be transported to the Children's Hospital of Philadelphia (CHOP) for medical evaluation. In the presence of numerous officers, Melendez climbed through the rear passenger window of the unmarked car in an (unsuccessful) attempt to escape arrest.

A DEA search team, and the Philadelphia Police Department's Crime Scene Unit, proceeded to search 1611 South 28th Street. Simply put, the home was being used as a large-scale heroin cutting and packing operation. The following items were seized from the front bedroom, middle bedroom, and second floor bathroom of the property.

- (A) 1052 packets stamped "Cumbag," which weighed 33.0 grams and contained a mixture and substance of heroin and fentanyl.
- (B) 102 packets stamped "Beast," which weighed 5.5 grams and contained a mixture and substance containing heroin and fentanyl.
- (C) A clear plastic bag with 44.4 grams of cocaine base ("crack cocaine").
- (D) A clear plastic bag with 385.2 grams of heroin.
- (E) A green plastic wrap with 151.8 grams of heroin.
- (E) A knotted plastic bag with 64.7 grams of heroin.
- (F) A knotted plastic bag, which weighed 30.6 grams and contained a mixture and substance of heroin, fentanyl, and tramadol (a Schedule IV controlled substance).
- (G) A clear glass baking dish with 273.1 grams of heroin, fentanyl, and tramadol (a Schedule IV controlled substance).
- (H) A clear glass jar with 50.1 grams of heroin.
- (I) A clear glass jar with 8.0 grams of heroin, fentanyl, and tramadol (a Schedule IV controlled substance).

(I) A clear glass jar with 3.1 grams of heroin, fentanyl, and tramadol (a Schedule IV controlled substance).

(J) A myriad of drug paraphernalia, to include a table that was set-up to package heroin, thousands of unused capsules (similar to the capsules purchased by a confidential informant on June 14th and June 26th, and seized on June 28th), as well as plastic bags, numerous rubber bands, a grinder, a scale, a strainer and a spoon.

(K) United States Currency, stored in multiple bags.

(L) Cell phones, a tablet, and mail addressed to Yatska Melendez at 1908 East Wishart, Philadelphia, Pennsylvania.

A loaded Glock 9 mm handgun was found in the front bedroom of the property, hidden between the mattress and box spring. Based on observations made by law enforcement members before the early-morning search, it appears that Yatska Melendez spent the night in that home.

III. THE SEARCH WARRANT FOR 1611 SOUTH 28TH STREET

On July 12, 2017, Philadelphia Police Officer Neil Carr (hereinafter “the affiant”) applied for a state search warrant to search 1611 South 28th Street. The warrant was approved on July 13th and executed on July 14th. “[W]e have specifically instructed that an affidavit filed in support of an application for a search warrant is to be read in its entirety, with the focus on what the affidavit includes, not what it missing.” *United States v. Miknevich*, 638 F.3d 178, 184 (3d Cir. 2011). The affiant detailed twelve essential facts in his application/affidavit. The essential facts include:

First, the affiant reported he was a police officer for over 20 years, and a narcotics officer for over 13 years.

Second, 1611 South 28th Street was owned by Suk Fan Wong. Herman Rosario was identified as an occupant of the property.

Third, the affiant was investigating the illegal sale of narcotics in the area of Jasper and Wishart Streets in June of 2017. A confidential informant purchased heroin three different times - - on June 14th, on June 21st, and on June 26th - - as part of the investigation.

Fourth, the affiant's investigation determined that Herman Rosario "was supplying the narcotics being sold" on the 1900 block of East Wishart Street.

Fifth, the affiant's conclusion that Herman Rosario supplied the block with narcotics was supported by the following: (a) Herman Rosario gave a Hispanic female (referred to as a H/F) "a bag believed to contain narcotics" on multiple occasions; (b) the Hispanic female gave cash to Herman Rosario several times; (c) the Hispanic female was seen at 1908 East Wishart Street; and (d) the Hispanic female then provided "the street dealers the narcotics to be distributed."

Sixth, Herman Rosario was followed before and after he met with the Hispanic female.¹ Rosario was seen entering/exiting 2863 North 4th Street in conjunction with these meetings. Rosario also drove multiple vehicles to/from that 2863 North 4th Street.

Seventh, a search warrant was approved for 1908 East Wishart Street. On June 28th, pursuant to that warrant, a search of the property yielded 24 capsules of heroin and \$79.

Eighth, a search warrant was approved for 2863 North 4th Street. On June 28th, pursuant to that warrant, a search of the property yielded 259 packets of cocaine, 699 grams of marijuana, \$18,999 of cash, and a .45 caliber handgun that was hidden in a bathroom wall. Two photographs of Herman Rosario were also found inside that property and seized.

¹ The Hispanic female is not identified by name in the affidavit. At trial, the government will introduce evidence establishing the Hispanic female is Yatska Melendez.

Ninth, Herman Rosario was not located on June 28th. Members of law enforcement received information that Rosario was driving a grey Mazda sedan with Pennsylvania license tag KKB-2606, and he was staying at 1611 South 28th Street.

Tenth, Herman Rosario was seen entering/exiting 1611 South 28th Street on July 5th, July 7th, July 10th, July 11th, and July 12th by the affiant and other members of law enforcement.

Eleventh, Herman Rosario was seen using the aforementioned Mazda sedan, and a cell phone, during the period from July 5th through July 12th.

Twelfth, after detailing the facts gathered during his investigation and his experience as an officer, the affiant expressed his belief that “firearms, narcotics and/or narcotics proceeds are being stored and/or sold from 1611 S[outh] 28th Street.”

IV LEGAL ANALYSIS OF SEARCH WARRANT

A district court’s role in reviewing a probable cause assessment is “limited to assuring that a magistrate [i.e., any member of the judiciary – federal or state – who has the authority to issue warrants] had a ‘substantial basis’ for concluding that the affidavit supporting the warrant established probable cause.” *Miknevich*, 638 F.3d at 181, *citing United States v. Jones*, 994 F.2d 1051, 1054-55 (3d Cir. 1993). A magistrate may find probable cause when “viewing the totality of the circumstances, ‘there is a fair probability that contraband or evidence of a crime will be found in a particular place.’” *Id.* at 182, *citing Illinois v. Gates*, 462 U.S. 213, 238 (1983). Probable cause is a “fluid concept” that turns on the “assessment of probabilities in particular factual contexts not readily, or even usefully, reduced to a neat set of legal rules.” *United States v. Shields*, 458 F.3d 269, 277 (3d Cir. 2006), *citing Gates*, 462 U.S. at 232. Stated differently, probable cause “requires only a probability or substantial chance of criminal activity,

not an actual showing of such activity.” *Miknevich*, 638 F.3d at 185, *citing Gates*, 462 U.S. at 244, n. 13.

In this case, the affiant had 13 years of experience working as a narcotics officer. His experience was an important factor in assessing the interactions between Rosario and Melendez. “[A] police officer views the facts through the lens of his police experience and expertise. The background facts provide a context for the historical facts, and when seen together yield inferences that deserve deference . . . our cases have recognized that a police officer may draw inferences based on his own experiences in deciding whether probable cause exists.” *Ornelas v. United States*, 517 U.S. 690, 699-700 (1996) (citations omitted). Here, the affiant’s experience enabled him to connect the multiple exchanges of cash and bags between Rosario and Melendez with the multiple purchases of heroin (by a CI) on the 1900 block of East Wishart Street. Those facts led the police to search two properties connected with Rosario and Melendez on June 28th and to recover heroin, crack cocaine, marijuana, a large sum of cash, and a firearm. The recoveries fully corroborated the affiant’s belief that Rosario and Melendez were actively involved in the distribution of narcotics, and more specifically, the recoveries justified his belief that Rosario was supplying the 1900 block of East Wishart Street with narcotics.

“When the crime under investigation is drug distribution, a magistrate may find probable cause to search the target’s residence even without direct evidence that contraband will be found there.” *United States v. Whitner*, 219 F.3d 289, 298 (3d Cir. 2000). The Third Circuit addressed a number of cases presenting this issue, noting that while “drug dealers often store evidence of drug crimes in their residences,” courts should look to three factors, namely “(1) that the person suspected of drug dealing is actually a drug dealer; (2) that the place to be searched is possessed by, or the domicile of, the dealer; and (3) that the home contains contraband linking it

to the dealer's activities." *United States v. Burton*, 288 F.3d 91, 104 (3d Cir. 2002). The Third Circuit has specifically addressed the third prong, noting:

Our case law, from *Jones* to *Burton*, suggests many factors that help establish the required nexus between a defendant's drug dealing activities and his home. These include: large scale operations, a defendant's attempts to evade officers questions about his address, the conclusions of experienced officers 'regarding where evidence of a crime is likely to be found,' the proximity of the defendant's residence to the location of criminal activity, probable cause to arrest the defendant on drug-related charges, and the tip of a 'concerned citizen' . . . these factors are not requirements. Nor are these factors exhaustive.

United States v. Stearn, 597 F.3d 540, 559-560 (citations omitted).

In this case, many of these factors are present. The conclusion of an "experienced officer" about where evidence is "likely to be found" is paramount. The affiant expressly stated his belief that 1611 South 28th Street would contain "firearms, narcotics and/or narcotics proceeds," and the search revealed all of these items. His belief was a product of his experience, the observations of Rosario's behavior in June and July, the searches of 2863 North 4th Street and 1908 East Wishart Street, and the short gap between the searches on June 28th and the search on July 14th. In addition, there was probable cause to arrest Herman Rosario on July 14th due to the drug purchases and drug recoveries in June of 2017. It is clear that Herman Rosario ran a large-scale operation, a reality made clear by the recovery of \$18,999 of cash inside 2863 North 4th Street, the use of multiple cars to travel to/from 2863 North 4th Street, the recovery of heroin, crack cocaine, and marijuana in locations used by Rosario and his co-conspirators, the use of street-level drug dealers to sell the narcotics, and the possession of a firearm to protect the drugs and drug proceeds. The proximity of 1611 South 28th Street to Jasper and Wishart Streets is another factor that weighs in the government's favor, notwithstanding defense counsel's claims to the contrary. The affidavit addresses Rosario's access to and use of a Mazda sedan and a cell phone from July 5th through July 12th. His ability to travel by car, and his ability to communicate

with others by phone, gave him easy access to the drug activities at Jasper and Wishart Streets. In light of his ability to travel by car and communicate by phone, the distance from a row home in South Philadelphia to this drug corner in North Philadelphia is minimal.

In summary, the factors detailed above provided a substantial basis for the magistrate to conclude there was probable cause to search this home.

V. THE GOOD FAITH EXCEPTION

“Even if the magistrate judge lacked sufficient basis for his probable cause determinations, that fact alone does not warrant the ‘extreme sanction of exclusion.’” *Leon*, 468 U.S. at 926. The exclusionary rule is not justified when an officer acts in “objectively reasonable belief that their conduct d[oes] not violate the Fourth Amendment.” *Id.* at 918. Ordinarily, the “mere existence of a warrant . . . suffices to prove that an officer conducted a search in good faith,” and will obviate the need for “any deep inquiry into reasonableness.” *Id.* at 922.

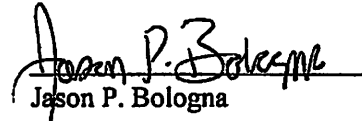
The Third Circuit has identified four circumstances where the good faith exception does not apply. *See United States v. Williams*, 3 F.3d 69, 74, n. 4 (1993). None of the four circumstances are presented here. In brief summary, there is no evidence the affidavit presented information that was deliberately or recklessly false, there is no evidence the magistrate abandoned their judicial role in approving the warrant, there is no evidence the affidavit was “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,” and there is no evidence the warrant was facially deficient in describing the place to be searched or items to be seized. Accordingly, the good faith exception applies to this search and seizure of evidence.

VI. CONCLUSION

For the reasons detailed above, the government requests this Court deny the defendants' motions to suppress. A proposed Order is attached.

Respectfully submitted,

LOUIS D. LAPPEN
United States Attorney


Jason P. Bologna
Assistant United States Attorney

ATTACHMENT A



Commonwealth of Pennsylvania
CITY AND COUNTY OF PHILADELPHIA

ss:

APPLICATION FOR
SEARCH WARRANT
AND AFFIDAVIT

WARRANT CONTROL NO.

203263

ISSUED TO DISTRICT

DATE OF APPLICATION

P/O Neil Carr

3297

NFU

(Name and Address)

(Badge No.)

(District/Unit)

I being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular person as described below.

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):

****SEE APPENDIX A****

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):

1611 S 28th st Phila pa 19145 two story masonry

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description):

owner Suk Fan Wong per realeste check/ Occupant Herman Rosario

VIOLATION OF (Describe conduct or specify statute):

Pa controlled sub act of 1972

YEAR/DIST/COMPLAINT NO.

17-24-56749

PROBABLE CAUSE BELIEF IS BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES (See special instructions below):

See attachment

ATTACH ADDITIONAL PAPER (75-51) IF NECESSARY

☐ CHECK HERE IF ADDITIONAL PAPER IS USED.

PLEASE SEE REVERSE SIDE OF THIS PAGE FOR INSTRUCTIONS

SIGNATURE OF SEARCHER

BADGE NO.

DIST/UNIT

P/O Neil Carr

3297

NFU

Sworn to (or affirmed) and subscribed before me this

day of

20

COURT LOCATION

Date Commission Expires

ARREST

☒ Yes ☐ No

JUDGE'S DISPOSITION

☐ Disa.☐ Held for Court☐ Further Hearing☐ Fined or Committed

RESULT OF SEARCH

DATE AND TIME OF SEARCH

7-14-17 725

☒ A.M.☐ P.M.

PROPERTY SEIZED

(If "Yes" list inventory below)

☒ Yes ☐ No

Drugs, USC, Gun, Para, Packaging, Mail

IF ADDITIONAL SPACE REQUIRED, USE REVERSE SIDE - INVENTORY MUST APPEAR ON ALL COPIES OF THE WARRANT.

I certify, subject to the penalties and provisions of 18 Pa. C.S. §4904(b) that this is a true and correct listing of all items seized.

Signature of Person Seizing Property

3297

Badge No.

OTHER OFFICERS PARTICIPATING IN SEARCH

126 6287 1731

1353 2273 DEA Group

SIGNATURE OF WITNESS TO INVENTORY (Name and Address)

TO LAW ENFORCEMENT OFFICER: WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the above described premises or person, and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the above described items.

This warrant should be served as soon as practicable but in no event

later than ☒ A.M. ☐ P.M.

and shall be served only during daytime hours of 8 A.M. to 10 P.M.

Issued under my hand this

20 17 at 10:15 A.M. (Issue time must be stated)

(SEAL)

(Signature of Issuing Authority)

Court location

Date Commission Expires

Title of Issuing Authority

Date Commission Expires

Title of Issuing Authority

Date Commission Expires

Title of Issuing Authority

Date Commission Expires

Title of Issuing Authority

Date Commission Expires

Title of Issuing Authority

This warrant should be served as soon as practicable but in no event

later than ☐ A.M. ☐ P.M.

and may be served anytime during day or night.

Issued under my hand this

20 17 at 10:15 A.M. (Issue time must be stated)

(SEAL)

(Signature of Issuing Authority)

Court location

Date Commission Expires

Title of Issuing Authority

Date Commission Expires

Title of Issuing Authority

Date Commission Expires

Title of Issuing Authority

Date Commission Expires

Title of Issuing Authority

Date Commission Expires

Title of Issuing Authority

Appendix 105

APPENDIX "A"

ITEMS TO BE SEARCHED/SEIZED SW# 203263

1. Heroin, Cocaine, Crack Cocaine, Marijuana any and all items classified as a Controlled Substance. Any and all devices used in packaging, weighing and/or manufacturing of Controlled Substances. Proof of ownership and/or residency.
2. Any and all proceeds and/or records of the sales of controlled Substances. Drug Paraphernalia and all other contraband, including firearms and ammunition;
3. Books, records, receipts, notes, ledgers and other documents relating to transporting, ordering, purchasing and distributing controlled substances, in particular heroin being Controlled Dangerous Substances;
4. Books, records, receipts, bank statements, money drafts, letters of credit, money orders, cashier's checks, receipts, passbooks, bank checks, and other items evidencing the obtainment, and/or concealment of assets and the obtainment, concealment and/or expenditure of money;
6. Proceeds of dealing in controlled substances, financial records relating thereto; All cash, currency, stocks, bonds (both foreign and domestic) and other items of Wealth including, but not limited to jewelry and works of art.
7. Firearms and ammunition.

All of the above being fruits, instrumentalities and evidence of violations of the Controlled Substance, Drug, Device and Cosmetic Act of 1972.

During the month of June, 2017, the NFU-4K conducted an investigation in the illegal sale of narcotics in the area of Jasper and Wishart Sts. On June 14th, June 21st and June 26th of 2017, purchases of heroin were made by a Confidential Informant (C/I #1555). During the course of the investigation, it was established that a male identified as Herman Rosario 34 yrs (PPN: 883431) was supplying the narcotics being sold in the 1900 block of E Wishart St to a H/F at 1908 E Wishart, who would then provide the street dealers the narcotics to be distributed. Rosario received sums of cash from the H/F several times during the investigation and was followed in various vehicles to the location of 2863 N 4th St. Rosario was also observed on multiple occasions leaving 2863 N 4th and handing a bag believed to contain narcotics to the H/F at 1908 E Wishart St.

On 6-28-17, SW# 203250 was executed at 1908 E Wishart St. Twenty four capsules of heroin and \$79.00 USC was confiscated from the location. Also on 6-28-17, SW# 20351 was executed at 2863 N 4th St. Two hundred fifty one packets of cocaine, 699 grams of marijuana, \$18,999.00 USC and a .45 caliber handgun that was secreted in a bathroom wall were recovered in the property. Two pictures of Rosario were also confiscated from the location. Rosario was not on location.

Following the execution of the Search and Seizure Warrants at 1908 E Wishart and 2863 N 4th St, information was received that Rosario was operating a gray Mazda sedan with a PA registration of "KKB 2606" and that Rosario was staying at 1611 S 28th St.

On Wednesday, July 5th, P/O Torres #1791 of the DEA Task Force observed Rosario operating the Mazda and followed the vehicle to the 1600 block of S 28th St. Rosario parked the auto in front of 1611 S 28th and went into the location.

On Friday, July 7th, P/O Carr #3297 and P/O Werner #1731 set up surveillance of 1611 S 28th St. The Mazda was parked directly in front of the residence. Rosario was observed coming out of the property and talking on a cell phone twice during the surveillance.

Senior Special Agent Mangold #767 of the Attorney General's Gun Violence Task Force received information that Rosario was residing at 1611 S 28th St as well and conducted surveillance daily from 7-10-17 to 7-12-17. SSA Mangold observed Rosario on all three days exiting the location and operating the Mazda.

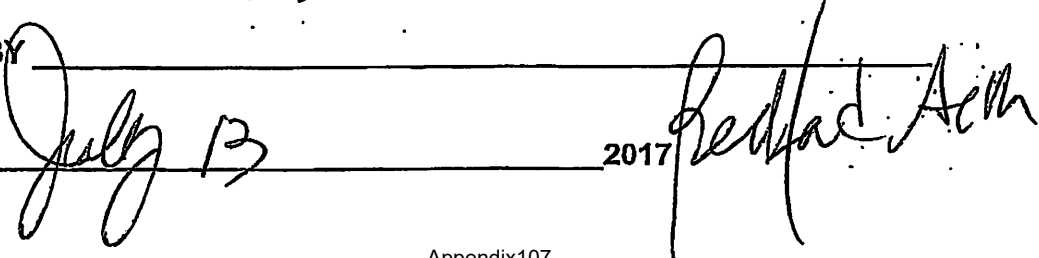
P/O NEIL CARR #3297 (YOUR AFFIANT), HAS BEEN A POLICE OFFICER FOR OVER 20 YEARS AND A NARCOTICS OFFICER FOR OVER 13 OF THOSE YEARS. BASED ON THE ABOVE INFORMATION, THE OFFICER BELIEVES THAT FIREARMS, NARCOTICS AND / OR NARCOTICS PROCEEDS ARE BEING STORED AND / OR SOLD FROM 1611 S 28th ST

AFFIANT'S SIGNATURE

 #3297

APPROVED BY

ON THIS DAY


 2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Response Motion has been served by electronic filing and e-mail to the following:

Luis A. Ortiz
Counsel for Herman Rosario

Douglas E. Roberts
Counsel for Yatska Melendez


Jason P. Bologna
Assistant United States Attorney

Date: 1/10/18

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL DOCKET NO.
	:	2:17-cr-00553-RBS
Plaintiff,	:	
	:	
v.	:	
	:	
HERMAN ROSARIO	:	
	:	
Defendant.	:	

Memorandum of Law in support of Defendant's Motion to Suppress

Defendant, Herman Rosario, by and through undersigned counsel, respectfully submits this memorandum of law in support of his motion to suppress:

INTRODUCTION

The affidavit of probable cause presented to the magistrate judge was insufficient to support a reasonable belief that any instrumentalities or proceeds from alleged illegal activity would be found at 1611 S. 28th Street. To the contrary, the mere hunch contained in the affidavit simply indicated that an individual, Herman Rosario, was believed to be staying at 1611 S. 28th Street and drove a gray Mazda while at this property.

In fact, Herman Rosario was never observed engaging in any drug transactions or activity at 1611 S. 28th Street. Moreover, there is no nexus in the affidavit connecting the purported activities that occurred miles away and weeks before at 1908 Wishart Street and 2863 N 4th Street with 1611 S. 28th Street.

DISCUSSION

A valid warrant requires a “substantial basis for ... conclud[ing] that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more.” *Illinois v. Gates*, 462 U.S. at 236 (1983). The central question is whether the affidavit provided “a fair probability that . . . evidence of a crime will be found” at 1611 S. 28th Street. *Gates*, 462 U.S. at 238.

The Third Circuit has held, “probable cause to arrest does not automatically provide probable cause to search the arrestee’s home.” *United States v. Jones*, 994 F.2d 1051, 1055 (3d Cir. 1993).¹ The distinction turns on the fact that “search warrants are directed, not at persons, but at property where there is probable cause to believe that instrumentalities or evidence of crime will be found.” *United States v. Whitner*, 219 F.3d 289, 297 (3d Cir. 2000).

In *United States v. Stearn*, 597 F.3d 540 (3d Cir. 2010), the Third Circuit explained that a magistrate judge may not infer probable cause to search a defendant’s residence or property solely because there is evidence that he has committed a crime involving drugs. *Id.* at 559. Rather, the Third Circuit instructed that there must be “some evidence that the home contains contraband linking it to the drug dealer’s activities[.]” *Id.* (quoting *United States v. Burton*, 288 F.3d 91, 104 (3d Cir. 2002)). This requirement brought the inferences of drug dealing “back to the ‘practical, common-sense decision, whether, given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a

¹ *United States v. Jones*, 994 F.2d 1051, 1055 & n. 5 (3d Cir.1993)(holding that probable cause to arrest does not automatically provide probable cause to search the arrestee's home). In *Jones*, we went on to note that although probable cause to arrest does not automatically provide probable cause to search the defendant's home, the fact that probable cause to arrest has been established increases the probability that the defendant is storing evidence of that crime in the defendant's residence. 994 F.2d at 1055-56. The distinction turns on the fact that “search warrants are directed, not at persons, but at property where there is probable cause to believe that instrumentalities or evidence of crime will be found.” *United States v. Conley*, 4 F.3d at 1207 (quoting *United States v. Tehfe*, 722 F.2d 1114,

particular place.” *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). In other words, there must be a nexus between a defendant’s drug activity and the place to be searched.

In this case, the affidavit of probable cause presented to the magistrate judge was insufficient to support a reasonable belief that any instrumentalities or proceeds from alleged illegal activity would be found at 1611 S. 28th Street. Moreover, there was no nexus in the affidavit connecting the purported activities that occurred weeks before at 1908 Wishart Street and 2863 N 4th Street with 1611 S. 28th Street.

Instead, the affidavit only states that the individual, Herman Rosario, was believed to be staying at 1611 S. 28th Street and drives a gray Mazda while at this property. Notably, Rosario was never observed engaging in drug transactions, nor any other nefarious activity at 1611 S. 28th Street.

The Affiant in this case did in fact have a confidential informant who could have been asked (or may have been asked) where Rosario lived and if any drugs, proceeds and/or contraband were stored at that location. In this case, the Affidavit has zero information where Rosario lived, nor if any drugs, proceeds and/or contraband were stored at the S. 28th Street location. Whether the informant did not know or told the affiant something to the contrary, we will never know since it was not placed in the Affidavit.

Furthermore, this is not a case about good faith, since good faith must be based on something. This case is no more than a baseless hope by the Affiant that he would find something at a property where Rosario had minimal documented contact. Further, a property that would be searched weeks after search warrants were executed at two other locations (further

1117-18 (3d Cir.1983).

reducing any likelihood that anything would be found). Hope is not faith and therefore, “hoping” that contraband may be found is not a “good faith” basis.

CONCLUSION

The search of the property located at 1611 S. 28th Street was unlawful since the Affidavit of Probable submitted to support the search lacked the requisite probable cause.

There was no information for a Magistrate to believe that any proceeds or instrumentalities of drug trafficking or any other criminal activity would be found inside this property weeks after the other two subject properties were searched. The evidence provided would only allow an arrest warrant to be executed at this location.

Therefore, the items discovered during the search constitute the fruit of this illegal search and must be suppressed at trial. *United States v. Coggins*, 986 F.2d 651 (3d Cir. 1993)(quoting *Wong Sun v. United States*, 371 U.S. 471 (1963)).

WHEREFORE, Defendant respectfully requests that this Court grant the instant motion to suppress physical evidence recovered at 1611 S. 28th Street.

Respectfully submitted,

LAW OFFICES OF A. CHARLES PERUTO, JR.

s/A. Charles Peruto, Jr.

By: _____
A. Charles Peruto, Jr., Esquire
Attorney for Defendant

Date: 1/22/2018

CERTIFICATE OF SERVICE

I, A. Charles Peruto, Jr., certify that, by electronic filing, I have served or caused to be served by ECF and/or e-mail, a copy of the foregoing upon:

Jason Bologna, Esquire
Assistant United States Attorney
U.S. Attorney's Office
615 Chestnut Street, Suite 1250
Philadelphia, Pa 19106-4476

s/A. Charles Peruto, Jr.
By: _____
A. Charles Peruto, Jr., Esquire
Attorney for Defendant

Date: 1/22/2018

RBS

Page 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

UNITED STATES OF AMERICA : 2:17-cr-00553-RBS-1 and 2
: PHILADELPHIA, PA
vs. :
:
HERMAN ROSARIO & YATSKA :
MELENDEZ : January 18, 2018
Defendants. : 11:00 a.m.

TRANSCRIPT OF PRETRIAL MOTIONS HEARING
BEFORE THE HONORABLE R. BARCLAY SURREICK
UNITED STATES DISTRICT JUDGE

FILED

APR -2 2018

APPEARANCES:

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(Proceedings recorded by electronic sound
recording, transcript produced by transcription
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1 P R O C E E D I N G S

2 (On the record - 11:38:13 a.m.)

3 THE DEPUTY: Please rise. The United States
4 District Court for the Eastern District of Pennsylvania
5 is now in session. The Honorable R. Barclay Surrick
6 presiding.

7 THE COURT: Good morning.

8 MR. PERUTO: Good morning, judge.

9 MR. BOLOGNA: Good morning, Your Honor.

10 MR. ROBERTS: Good morning, Your Honor.

11 THE COURT: Have a seat. Okay. We have the
12 case of United States versus Herman Rosario and Yatska
13 Melendez. It is No. 17-553. Counsel, please identify
14 yourselves for the record.

15 MR. PERUTO: Charles Peruto, Junior, for the
16 Defendant Rosario.

17 MR. ROBERTS: Good morning, Your Honor. Doug
18 Roberts for Defendant Yatska Melendez.

19 MR. BOLOGNA: Good morning, Your Honor. Jason
20 Bologna for the Government.

21 THE COURT: All right. Mr. Peruto, the
22 Defendant was represented by Mr. Ortiz. He has
23 submitted a request to withdraw as counsel. And I
24 understand that you have entered your appearance; is
25 that correct?

1 MR. PERUTO: It is correct, judge.

2 THE COURT: Are you prepared to move forward
3 this morning with --

4 MR. PERUTO: I --

5 THE COURT: -- these motions?

6 MR. PERUTO: I am, judge.

7 THE COURT: All right, okay. We have the two
8 motions outstanding. The first motion is a motion to
9 suppress evidence. The Defense contends that the
10 affidavit of probable cause was deficient and that the
11 evidence should therefore be suppressed. The other
12 motion deals with the disclosure of confidential
13 informants.

14 Let's address the, first, the motion to
15 suppress. Okay. Mr. -- go ahead.

16 MR. PERUTO: Judge, just to narrow it down for
17 the sake of time so that we're very specific, it's a
18 four corners motion --

19 THE COURT: Right.

20 MR. PERUTO: -- on this warrant on just the
21 one house. We agree that all the guns and drugs found
22 in the other warrants come in.

23 THE COURT: All right.

24 MR. PERUTO: So the case is not going to end
25 today even if it's -- it's granted. It's a four

1 corners motion. I don't believe any testimony is
2 necessary from either side. It is simply an argument
3 for lack of probable cause.

4 THE COURT: I agree with you, counsel.

5 MR. PERUTO: Okay.

6 THE DEPUTY: We have two Spanish interpreters
7 here.

8 THE COURT: What?

9 THE DEPUTY: We have two Spanish interpreters
10 here.

11 THE COURT: I can't hear you.

12 THE DEPUTY: We have Spanish interpreters.

13 THE COURT: My -- my deputy just indicated to
14 me that we have Spanish interpreters present in the
15 courtroom. I did not realize that they were necessary;
16 but before we go any further, we'll swear in the
17 interpreters, and then we'll move forward again.

18 THE DEPUTY: Please state and spell your name
19 for the record.

20 THE INTERPRETER: Raymond J. McConnie,
21 M-c-C-o-n-n-i-e.

22 THE INTERPRETER: Lois Weaver, W-e-a-v-e-r.

23 THE DEPUTY: You do swear or affirm that you
24 will interpret the proceedings to the Defendant and any
25 answers thereto to the best of your knowledge --

1 ability and knowledge so help you God?

2 THE INTERPRETER: I do.

3 MR. ROBERTS: I do.

4 (The interpreters are duly sworn according to law)

5 MR. PERUTO: Judge, just for the sake of
6 speed, although I love Ray and have dealt with him for
7 30 years, my --

8 THE INTERPRETER: I love you.

9 MR. PERUTO: -- my client speaks fluent
10 English and I communicate with him in English and I
11 don't think we need an interpreter for -- for my
12 client.

13 THE COURT: What about yours, Mr. Roberts?

14 MR. ROBERTS: Your -- Your Honor, Ms. Melendez
15 also communicates in fluent English; however, she has
16 indicated to me that because it's a court proceeding,
17 because of the speed of the way we talk sometimes and
18 the words we use, she would be comfortable if there was
19 a Spanish interpreter to help her understand the court
20 proceedings.

21 THE COURT: All right. Well, then why don't
22 we move the interpreter close to the client, and we
23 will proceed on that basis.

24 MR. ROBERTS: That's fine, Your Honor.

25 THE INTERPRETER: We do have wireless

1 equipment that will be conveying a simultaneous
2 rendition of the whole argument.

3 THE COURT: Oh, you do have?

4 THE INTERPRETER: (Indiscernible).

5 THE COURT: Oh, that's fine.

6 THE INTERPRETER: We can move over there, of
7 course. We'll indulge you, Your Honor.

8 THE COURT: All right. Counsel, with regard
9 to the motion to suppress, I will hear whatever you
10 have to say with regard to that motion. And I would
11 prefer it that you come forward and speak into the
12 microphone at the podium so I can hear you.

13 MR. PERUTO: Oh. Good to see you, judge.
14 Judge, weeks before, in excess of two weeks before this
15 warrant was obtained, my client was under surveillance
16 going in and out of houses where drugs were stored. We
17 know drugs were stored there because warrants were
18 executed. Guns and drugs were found in a few different
19 houses in which he had a serious connection. At least
20 three other houses netted guns and drugs.

21 Two weeks later, a police officer gives the
22 affiant in this affidavit -- in the affidavit of
23 probable cause information, but not a mention of where
24 he got the information, how he knows it to be true, how
25 stale it is. And here's the information, I heard that

1 Rosario is staying, that's a quote, not lives, not is
2 stashing, not is keeping drugs, I heard he's staying at
3 such-and-such an address.

4 Police on two different dates set up a
5 surveillance, and they see him either entering or
6 leaving the property, not both, but one or the other.
7 It doesn't say if how he was dressed, if he -- if -- if
8 he stayed out all hours of the night, day, whatever.
9 It's just, they -- they saw him at that property. No
10 information whatsoever that drugs would be there.

11 And it can be assumed, because all three
12 houses were hit with a search warrant, and these guns
13 and drugs were found, that this Defendant Rosario knows
14 the police are looking for him. In other words, he's a
15 wanted man. This was a Philadelphia Police case at the
16 time.

17 So the information is that he's staying at
18 this house. Well, that's certainly enough to get an
19 arrest warrant. That's certainly enough to execute an
20 arrest warrant at that house if you have that belief.
21 But to get a search warrant for drugs and the proceeds
22 of a drug -- drug case, you need probable cause. I
23 don't care if it's the Third Circuit or Pennsylvania.

24 Now, Pennsylvania, and I'm going to provide
25 the cases to the court, is absolutely -- which is the

1 state we're in -- which is absolutely smack dab in our
2 favor, that you have to have probable cause that drugs
3 would be there at the time. And you have to have a
4 showing in the affidavit of probable cause of how you
5 know that and how the information is not stale. We
6 don't know if this information is stale. It turns out
7 that it's not because the surveillance cured that, that
8 he does have some connection to that property, that he
9 was staying there; but the quote is staying there and
10 that's what you're stuck with because that's in the
11 four corners of the warrant.

12 So they obtain a search warrant, not an
13 arrest warrant, a search warrant for this house, which
14 nets more drugs. Now, a plain reading of it, a plain
15 reading of it, you have words like information is
16 received, we don't know from who or when, in the
17 affidavit of probable cause.

18 On July 5th, the police see this Defendant
19 enter that premises. We don't know when the
20 surveillance stopped, there's no mention of it. On
21 July 7th, he exits the premises. We don't have a time.
22 We don't know how he's dressed. We don't know how --
23 how long he's in there. On July 10th and 12th, he also
24 exits the property, but mind you, it's in excess of two
25 weeks that the other warrants were served. We don't

1 have any evidence whatsoever in the affidavit of
2 probable cause from any informant, from any
3 surveillance, from any activity that he stashed guns or
4 drugs or any proceeds of the crime at this place that
5 he was "staying."

6 My position is very clear, judge. And I'm
7 well aware of the good faith exception in the Third
8 Circuit, although they don't follow Pennsylvania law;
9 but I'm also aware of -- of cases in the other
10 circuits, and I hope you'll allow us to brief this
11 before making a decision today, I think you will, you
12 have to have something before you enter a person's
13 home. And I'm talking about the United States
14 Constitution back in 1789.

15 You can't just say, well, a guy is staying
16 there, therefore we're going to go search the whole
17 house. That's -- we don't know if it's somebody else's
18 home. In fact, somebody else is listed as a homeowner
19 in the affidavit of probable cause. It gives them no
20 right to search the home.

21 Does it give them a right to enter on belief
22 that he is staying there? Yes. Can they arrest him?
23 Yes, if they see drugs in plain view when they go in
24 there with this arrest warrant. Can they go get a
25 search warrant for that house? Oh, yes. Should they

1 confiscate that that's where he lives, proof of
2 residence? Oh, yes.

3 But to get a search warrant now when the only
4 information you have is that he's staying there and the
5 only thing surveillance corroborates is that he's
6 staying there, there's no probable cause for a search
7 warrant to search the home. And that's our position on
8 this warrant. And as I said, everything else on the
9 other warrants, we're not here to waste your time.

10 THE COURT: All right. Counsel.

11 MR. ROBERTS: Thank you, Your Honor. Your
12 Honor, we briefed this motion in what I -- I hope is a
13 fairly thorough manner. And I don't want to waste the
14 Court's time with belaboring much of what we wrote,
15 but -- but I would like to stress a couple of aspects.
16 To borrow from Charles Dickens, this may not be A Tale
17 of Two Cities, but it's a tale of two distant regions
18 of the same city.

19 I have prepared a demonstrative for Your
20 Honor which shows the locations of the two homes in
21 north Philadelphia at 1908 East Wishart and the one on
22 North Fourth Street and then that home that was
23 searched in south Philadelphia, 1611 South 28th Street,
24 which I also showed to Mr. Bologna before I -- I -- I
25 propped it up for Your Honor.

1 But one of the regions again is in north
2 Philadelphia. And as Mr. Peruto and as we would agree,
3 there was evidence of activity consistent with drug
4 trafficking there. Police surveilled and observed a
5 person who they believe is Mr. Rosario traveling
6 between the homes, carrying bags between the homes,
7 giving the bags to a Hispanic female. They then
8 observe that Hispanic female engaging in some sort of
9 interactions with people who they leave were street
10 level drug dealers. And those street level drug
11 dealers, they believe, sold drugs to a confidential
12 informant.

13 We have no question that that establishes
14 probable cause for those two residences. And then 10
15 miles away, 7 to 12 miles away depending what route you
16 take, in south Philadelphia we have no evidence of drug
17 activity. Over the course of six, I believe, days, law
18 enforcement surveilled, again, Mr. Rosario and they saw
19 him doing quite frankly what we all do, they saw him
20 exiting a residence, they saw him entering a residence,
21 and they saw him talking on his cellular phone outside
22 of that residence.

23 The caselaw is very clear that a magistrate
24 may only infer that a suspect is storing evidence of
25 drug crimes in a specific property if the affidavit,

1 first of all, contains evidence that the place to be
2 searched is the domicile of the suspected dealer; and
3 second of all, if the home contains contraband linking
4 it to drug activity. I would rest on our memorandum of
5 points and authorities as to that first requirement I
6 mentioned. As to the second, again, there's absolutely
7 no evidence in this affidavit that the home contained
8 contraband linking it to drug activity.

9 The United States, in its response, I think
10 is very telling, because it focuses on the experience
11 of Officer Carr, who has been a narcotics officer for
12 13 years, which we absolutely don't discount.
13 Experience is significant, because what it does is it
14 allows officers to interpret potentially suspicious
15 activity and determine whether or not it is indicative
16 of drug trafficking.

17 Here, there -- and I -- -- I would -- I would
18 go back to what happened in north Philadelphia.
19 Perhaps your casual observer would not be able to tell
20 that somebody bringing bags from one residence to
21 another is indicative of drug activity or that a
22 Hispanic female interacting with people who are on
23 bicycles and then go onto the corner is indicative of
24 drug activity; but Officer Carr, he's a 13-year
25 veteran, we give deference to those determinations and

1 say, okay, that supports probable cause.

2 But what experience does not allow one to do
3 is look at exceptionally innocuous activity and say,
4 okay, that's indicative of drug trafficking. And
5 again, that's what we have here. We have somebody who
6 is leaving a residence, entering a residence, and
7 speaking on a cellular phone.

8 This case, Your Honor, is unique. And if not
9 unique, certainly remarkable for its lack of evidence
10 linking this property to any drug trafficking -- drug
11 trafficking activity. And the Government says in its
12 response that it's not about what the affidavit is
13 lacking, but I would submit that when the Government or
14 law enforcement engages in six days of surveillance on
15 a suspected drug dealer and comes up with nothing, that
16 that is a significant omission and something that the
17 magistrate should take account of.

18 You can't rely on the activity that happened
19 in north Philadelphia because there is nothing to link
20 these two very distant regions of the city. Again,
21 they are 7 to 12 miles apart depending on what route
22 you take, approximately a half hour drive in any event.
23 Mr. Rosario is never observed traveling between north
24 Philadelphia and south Philadelphia even though the law
25 enforcement is surveilling him for a good number of

1 days in June in north Philadelphia and then a good
2 number of days in July in south Philadelphia.

3 The Government says he could have done that.
4 He had a car. He -- he -- he very well could have gone
5 between those two regions. And that's absolutely true.
6 He had easy access, but he never did it, they never saw
7 him do it.

8 Mr. Rosario is not alleged to be involved in
9 a citywide drug trafficking organization. He's not
10 alleged to have any gang affiliations or anything in
11 the affidavit or anything that would suggest that he is
12 involved in an act -- in an organization that might
13 span these two very disparate neighborhoods.

14 In fact, Your Honor, the affidavit is so
15 lacking in indicia -- indicia of probable cause that
16 there's simply no good faith. The officer could not,
17 of good faith, relied on this warrant to conduct the
18 search. There are just no facts, again, suggesting
19 that there was any evidence of drug activity in the
20 residence.

21 The distant between the areas, the lack of
22 suspicious activity; when you add those up, I -- I
23 could not find any case around the country that had
24 applied a good faith exception when you have these sort
25 of factors. And so I think those reasons the Court

1 should suppress all evidence that was found pursuant to
2 this search warrant at 1611 South 28th Street.

3 THE COURT: All right.

4 MR. ROBERTS: Thank you, Your Honor.

5 THE COURT: Counsel.

6 MR. BOLOGNA: Thank you, Your Honor. The
7 Government submits that the analysis here is simply
8 whether the magistrate judge had a substantial basis,
9 looking at the four corners of the affidavit, to
10 determine that there was probable cause that
11 Mr. Rosario's home that he was staying at was likely to
12 contain contraband.

13 I almost fell out of my seat when
14 Mr. Roberts, who is obviously very educated, wrote a
15 very good brief, made a very good argument, told this
16 Court that there's nothing that links these different
17 regions of the city, north Philadelphia and south
18 Philadelphia.

19 Mr. Rosario links these two sections of the
20 city based on what's contained in the affidavit. On
21 four separate occasions he was seen bringing a bag to
22 Yatska Melendez. The officers, who are seated in the
23 back of the courtroom, saw him do something, to take
24 defense counsel's word, that was innocuous, hand a bag
25 to someone on a corner in north Philadelphia and in

1 exchange receive cash. He would then travel back to
2 his property at 2863 North Fourth Street and enter that
3 property.

4 He did that four times. He did it from a
5 block that was repeatedly selling heroin to a
6 confidential informant. And this same affiant prepared
7 search warrants for 1908 East Wishart and 2863 North
8 Fourth based on the behavior of Ms. Melendez and
9 Mr. Rosario. He was an experienced officer then. He
10 knew what he saw, he knew what it meant, and those
11 warrants were approved.

12 Those warrants yielded heroin at 1908 East
13 Wishart. They revealed crack, excuse me, cocaine and
14 weed at 2863 North Fourth Street. They revealed a gun.
15 So the affiant has proven that his investigation of
16 these two individuals is tied to a drug conspiracy.
17 Those drugs are being stored in multiple locations.
18 Those drugs are being protected by a gun, and yet he
19 continues to investigate, not months or years later,
20 but literally a week later.

21 Mr. Peruto argued to this Court that there
22 were two dates, two, in which his client was seen
23 entering 1611 South 28th Street. That is not accurate.
24 That is not correct. What actually was seen is that on
25 five dates, July 5th, July 7th, July 10th, July 11th,

1 and July 12th, on five dates Mr. Rosario was seen
2 either entering and/or exiting the property at 1611
3 South 28th Street.

4 This is literally a week or two after his
5 drug operation had warrants that hit the Wishart Street
6 and the North Fourth Street property. Are we supposed
7 to reasonably conclude that the magistrate judge, when
8 presented with these facts, would believe that
9 Mr. Rosario, who was selling heroin, cocaine,
10 marijuana, had a loaded gun, oh, and almost \$19,000 of
11 cash, was suddenly going to stop engaging in the drug
12 business, which everyone knows, everyone understands is
13 a day in, day out, 365-days-a-year business?

14 What do we also know? We also know that
15 Mr. Rosario, after those two warrants were executed,
16 knew he had to go some place to lay his head and to
17 keep his supply because those two properties were now
18 off limits given what the police did.

19 Next, the distance that's alluded to here,
20 Your Honor, is based on counsel's argument and
21 counsel's map, according to him 10 miles, if you take
22 that, or as little as 7 or as much as 12 miles from
23 specifically where those activities took place at
24 190 -- 1908 East Wishart.

25 I don't know where all of us live, I'm not

1 going to put on the record where I live; but I would
2 submit to the court that part of our professional
3 experiences that we carry from our workplace, this
4 courthouse or our respective offices, for Mr. Roberts
5 and for Mr. Peruto, things that we need to do in our
6 work environment.

7 And if we had to travel 7 or 10 or 12 miles,
8 none of those things are such a distance that we would
9 think that we wouldn't take a brief home or that we
10 wouldn't take a case home to read or we wouldn't take
11 something work related to where we lay our head at
12 night. That is not, in this day and age, a big
13 distance.

14 Further, Mr. Rosario's trade, the drug
15 business, to travel a matter of 20 or 30 minutes to
16 resupply a corner is a pittance compared to the amount
17 of money that's being generated by his business. He's
18 seen repeatedly using a phone. And when he's seen
19 repeatedly using a phone, that gives him access, not
20 only to people within this city, but people outside
21 this city, so he can know exactly what he needs to do,
22 where he needs to take it, and when he needs to get it
23 there.

24 I'm not going to cite Pennsylvania caselaw to
25 this Court. I'm going to cite Third Circuit caselaw,

1 which I already did in my brief. The Third Circuit
2 caselaw is abundantly clear that the Government need
3 not show direct evidence of contraband will be found at
4 the defendant's home. So contrary to Mr. Peruto's
5 arguments, the affiant, Officer Carr, who is seated, is
6 the last person there, did not need to show that
7 Mr. Rosario was selling drugs out of the property on
8 South 28th Street.

9 The caselaw makes it very clear, Your Honor,
10 and I cited to the Court the factors, which are
11 illustrative, but not exhaustive, that the courts
12 should look for; they include whether this is a
13 large-scale operation. I submit to the Court verbally
14 now, as I did in writing, that an operation that has
15 access to selling marijuana, cocaine, and heroin is a
16 large operation.

17 Next, an operation that uses a gun to protect
18 its proceeds is a large operation. Next, an operation
19 that has almost \$19,000 of cash in a safe is a large
20 operation. The magistrate judge, when the affidavit
21 was prepared and submitted, knew all of those things
22 about Mr. Rosario's operation. So therefore under the
23 caselaw, and specifically looking at Stern, this is a
24 case where we have a large operation.

25 Next, the conclusions of an experienced law

1 enforcement officer. I think counsel conceded that
2 Officer Carr is an experienced officer. He details in
3 his affidavit he's been an officer for 20-odd years and
4 a narcotics officer for 13 years. The caselaw again
5 and again and again tells the Court to show great
6 deference in reviewing the conclusions of an
7 experienced officer because they are allowed to see and
8 infer things that to another person may appear
9 innocuous.

10 Officer Carr clearly did that, and he was
11 right. The caselaw makes his conclusions about where
12 drugs or money or guns are going to be found, those
13 things are entitled to great deference.

14 Next, the issue of proximity. The
15 Government's position is contrary to Mr. Roberts's
16 position, which is just simply, from my position,
17 incorrect. Ten miles in the City of Philadelphia to
18 take a supply of drugs from one location to another
19 location to resupply a corner, that is ridiculous, Your
20 Honor, to say that that is too far to believe that
21 somehow the difference from Mr. Rosario's drug corner
22 in north Philadelphia to that home in south
23 Philadelphia is too tangential.

24 You can get there in 20 minutes, depending on
25 traffic, 30. That's too much, especially after his

1 other property has been searched to believe he wouldn't
2 move his operation to some place where he could
3 continue to package and supply his heroin corner?

4 Finally, probable cause to arrest, Your
5 Honor. Mr. Peruto conceded this, I think everyone
6 would acknowledge this, the officers in this case had
7 ample probable cause to arrest Mr. Rosario for his drug
8 crimes on the date of June 28th. The caselaw makes it
9 clear that having probable cause to arrest a particular
10 individual is an important factor for the court to
11 consider.

12 The police could have arrested, Mr. Peruto
13 conceded it in his argument, could have arrested
14 Mr. Rosario at the front door of the property once they
15 got inside. Of course since I detailed for the Court
16 what actually happened that day, he didn't meet him at
17 the door, he met him in the bathroom as he was trying
18 to flash the -- flush the heroin down the toilet.

19 All of these factors, Your Honor, all of them
20 point in the direction of the Government and point in
21 the direction of the magistrate's decision that there
22 was a substantial basis to conclude there was probable
23 cause to search this property. Our role is not to
24 determine whether there was probable cause. Our role
25 is to determine whether the magistrate judge had a

1 substantial basis.

2 The Third Circuit caselaw that controls this
3 decision says again and again and again, these facts in
4 this affidavit were sufficient from that affiant.

5 Finally, Your Honor, I wouldn't be doing my
6 job if I didn't acknowledge this, if for some reason
7 Your Honor was to disagree with me and say,
8 Mr. Bologna, you're just wrong, I reach a different
9 conclusion than you do; there is a good faith
10 exception. The good faith exception, Your Honor, I
11 submit clearly applies in this instance.

12 We have a detailed affidavit, which speaks to
13 prior and contemporaneous drug purchases from the
14 block; prior search warrants from properties in
15 Philadelphia that yielded drugs, money, and guns;
16 contemporaneous review of a tip that Mr. Rosario was
17 staying in a place on five separate corroborative dates
18 that he was seen at that place; the experienced
19 officer's belief that there would be drugs and proceeds
20 found there, as well as a gun, all of which proved to
21 be accurate.

22 This is a case, in which for some reason if
23 the Court disagrees with the Government's position, the
24 good faith exception can, does, and must apply. I
25 thank you.

1 THE COURT: All right, all right. Counsel, I
2 will take the issue under advisement.

3 Mr. Peruto, you indicated that you would like
4 to submit a memorandum.

5 MR. PERUTO: Yes. I just got involved in the
6 case, and I was cramming all night trying to catch up.

7 THE COURT: How much time do you need?

8 MR. PERUTO: Five days.

9 THE COURT: All right. Submit that within
10 five days.

11 If the Government feels the necessity to
12 respond, you may do so in five days.

13 MR. BOLOGNA: Thank you, Your Honor.

14 THE COURT: All right. The next question is
15 the disclosure of the -- the confidential informant
16 information.

17 Counsel.

18 MR. ROBERTS: Thank you, Your Honor. And --
19 and again, tried to brief the issue fairly extensively.
20 I don't want to belabor what I said in those briefs.
21 I -- I think it boils down to this, Your Honor, there
22 are two types of confidential informants; there are
23 tipsters, and there are active participants.

24 What the Third Circuit says is that when a
25 confidential informant plays an active role in a case,

1 the disclosure of that informant's identity is likely
2 necessary for the defendant to have a fair trial.
3 And -- and that's really because an active participant
4 is present for key events and is likely to have
5 critical information that is relevant to the defense's
6 preparation for trial.

7 The inquiry does not turn on whether there
8 are other active participants that the defendant can
9 interview or cross-examine, and it does not turn on
10 whether the Government intends to call the confidential
11 informant as a witness at trial. If -- if turned on
12 those factors, again, the Government would be in a
13 position where they got to choose which witnesses the
14 defense got to interview, got to investigate, and got
15 to examine.

16 Here we have a confidential informant, who
17 allegedly participated in controlled buys and was
18 present when the Hispanic female was outside of 1908
19 East Wishart Street. One of the key issues for trial,
20 it's clear from the discovery that was submitted so
21 far, is whether Ms. Melendez is that Hispanic female
22 that was outside of 1908 East Wishart Street.

23 The Government concedes that the confidential
24 informant was on the block when the Hispanic female
25 interacted with the street-level dealer at least one

1 time; therefore, that confidential informant had the
2 opportunity to see the Hispanic female, to observe and
3 identify the Hispanic female.

4 And -- and again, it doesn't matter if there
5 were other officers -- or -- or not other officers, but
6 officers who were present. It doesn't matter if there
7 were street-level dealers who were present who we could
8 run down that could also identify the Hispanic female.
9 It -- what -- what matters is whether the confidential
10 informant made those observations, made that
11 identification.

12 And I think under these circumstances, Your
13 Honor, the -- the -- the scale tips in the balance of
14 the Defense, and we are entitled to know who that
15 confidential informant is. Thank you.

16 THE COURT: All right. Counsel.

17 MR. BOLOGNA: Thank you, Your Honor. I'm
18 going to begin with the law and then apply it to the
19 facts. First, it's important to recognize that the
20 Defendant, in this case, Ms. Melendez, has the burden
21 to establish the need for disclosure. The Third
22 Circuit has stated that a defendant, like Ms. Melendez,
23 who merely hopes, without showing the likelihood, that
24 the disclosure will lead to evidence, has not shown
25 that the disclosure will be relevant and helpful to the

1 defense or is essential to a fair determination of the
2 case.

3 I submit that's exactly what we have here,
4 which is that Ms. Melendez hopes that that informant
5 may have some information which would be helpful to her
6 case.

7 Let's now turn to the facts of what the
8 informant did, and in particular, did not did. There
9 were three buys. In two of the buys, the informant was
10 not present in purchasing narcotics to see any
11 interaction between the seller and Ms. Melendez. There
12 were four instances in which surveillance officers saw
13 Mr. Rosario meet, speak with, and interact with
14 Ms. Melendez, exchanging a bag for money. The
15 confidential informant was not present for any of those
16 four interactions.

17 The confidential informant was present for
18 one interaction. That interaction involved the date of
19 June 14th, where the confidential informant was sent
20 onto the block and approached an individual, a male, to
21 engage in narcotics purchase. That person went and
22 then had a brief meeting with Ms. Melendez, who left
23 the area, came back, gave something, small item to the
24 male, who returned and then sold heroin to the
25 informant.

1 There is no indication, none, that the
2 informant was in a position to see that meeting, to
3 hear anything that was said between Ms. Melendez and
4 the person who was the seller, or to understand the
5 nature of that meeting. To call the informant a
6 witness in that instance is, I submit, a stretch under
7 these facts.

8 Moreover, the caselaw talks about the need
9 for a fair determination of the cause. I think it's
10 important to also factually point out to the Court that
11 Ms. Melendez was residing on that block during that
12 time. Ms. Melendez physically was living at 1908 East
13 Wishart Street during the summer of 2017. The
14 Government doesn't dispute that was her address. The
15 Defendant doesn't dispute that's her address. That's
16 what she told pretrial.

17 Accordingly, there is ample reason and ample
18 argument available to Mr. Roberts in representing his
19 client to have a completely innocent explanation for
20 why his client was on the block and why his client
21 would speak to someone on the block; she lived there.

22 We have no evidence, meaning the Government,
23 that that item that was exchanged was heroin. At most
24 we could say circumstantially it might be. We have no
25 evidence of what the seller and Ms. Melendez discussed.

1 And we have no evidence that the informant was in a
2 position to see, hear, or understand anything about
3 what happened there.

4 What we have is an informant, who was sent
5 with a very discrete purpose. The informant was not
6 wearing a wire to record sight, not wearing a video to
7 record -- excuse me -- not wearing video equipment or
8 recording equipment that would give you a visual or
9 audio cue as to what was happening. It would be their
10 memory alone based on an event that happened six months
11 ago that there's really no indication they even saw,
12 heard, or understand.

13 There's just not a basis to say that that,
14 which is Ms. Melendez's burden, would be evidence that
15 would be relevant and helpful to the Defense,
16 especially when you consider that Ms. Melendez went
17 into the property at 1908 East Wishart Street, which
18 was searched two weeks later and yielded heroin.

19 Why would Mr. Roberts want to be introducing
20 evidence from an informant that his client, immediately
21 prior to a drug sale, went into the property that was
22 later searched revealing heroin? She came out of that
23 property, gave something to the seller, who then went
24 over and sold heroin. How is that helpful to the
25 Defense? Why would he want to put evidence like that

1 on through an informant?

2 I submit to the Court circumstantially it's
3 not helpful to the Defense, and he knows it; but he
4 wants us to be able to produce the informant as someone
5 who could help, might help, may help. That's not the
6 law.

7 The law is that the defense has to show more.
8 A mere hope is insufficient. And I submit to this
9 Court that Ms. Melendez has not met that burden.

10 If Your Honor, again, in doing my job, I have
11 to anticipate, if Your Honor for someone reason was to
12 disagree with me, Mr. Bologna, you are wrong, what do I
13 next ask the Court to do; I would ask the Court to do
14 what the Third Circuit says, which is to balance
15 against the public's need for the flow of information
16 from informants to law enforcement so you can do your
17 jobs, in particular so they can do their jobs, against
18 the Defendant's need for a fair trial.

19 Let me be very clear, any defendant charged
20 with a crime deserves absolutely a fair trial. I am in
21 no way suggesting that Ms. Melendez or anyone who comes
22 before this Court doesn't deserve absolute fairness,
23 but what I am saying is that when you balance the
24 fairness under the specific facts in this case against
25 the informant's need to have their secrecy maintained,

1 the balance tips in the favor of the Government.

2 Here's why, first, and I detailed this, the
3 Third Circuit asks us to look at these factors, this is
4 cited in Giles, the possible testimony will be highly
5 relevant, it might have disclosed the issue of
6 entrapment, it might have thrown doubt upon the
7 defendant's identity, or the informer was the sole
8 participant other than the accused. Those are the
9 factual factors the Court is supposed to look at.

10 And I went through and I analyzed for
11 those -- those factors for the Court in writing. Those
12 factures in sum present some basis, some basis for the
13 Court to order such identity; however, they need to
14 then be balanced against -- balanced against the need
15 to protect an informer's identity.

16 I would note that this Court is well aware
17 and very familiar with the need to protect law
18 enforcement witnesses. One of the cases I cited to
19 this Court is this court's own written work in the case
20 involving Kaboni Savage, a Philadelphia case involving
21 multiple informants involving criminal enterprises.
22 You know this caselaw quite well, Your Honor, because
23 you've dealt with it at a very serious level.

24 This is a case in which clearly Mr. Rosario
25 and Ms. Melendez had alleged conspirators who had not

1 been arrested. Those individuals include the people
2 who were on the street, who were seen by law
3 enforcement making sales. Those people were not named
4 in the indictment. They have not been charged
5 anywhere. It would strain reason to believe that they
6 are the only people involved in this conspiracy.

7 And the Court has also heard, and it's
8 undisputed by the Defense, that there were multiple
9 guns recovered from multiple properties in this case.
10 The risk to an informant, who has provided evidence
11 against such a network with other conspirators who are
12 out there in a case with this kind of magnitude, given
13 the weight that was seized and recovered on July 14th,
14 is quite significant.

15 And I submit, while there is a need to give
16 every defendant a fair trial, the risk, the serious
17 risk of retaliation against the person under these
18 facts and these circumstances in this city balances,
19 again, to the favor of the Government. And there is
20 absolutely no basis to reveal the identity of the
21 informant under these facts in this case. I thank the
22 Court.

23 THE COURT: All right. Counsel, we will take
24 the matter under advisement. We will await the briefs
25 from counsel, and we will hand down an appropriate

1 decision. Anything further?

2 MR. PERUTO: Nothing, judge.

3 MR. ROBERTS: No, Your Honor.

4 MR. BOLOGNA: No, Your Honor. Thank you.

5 THE COURT: Recess.

6 MR. PERUTO: Judge, if -- if you have a moment
7 to see the lawyers in chamber, just for a moment, it's
8 my --

9 THE COURT: Excuse me?

10 MR. PERUTO: If you have a moment to see the
11 lawyers in chambers, we might be able to save some time
12 on the end result.

13 THE COURT: I will certainly meet with counsel
14 if you wish to meet with me.

15 MR. BOLOGNA: Sure.

16 THE COURT: All right.

17 THE DEPUTY: Please rise.

18 - - -

19 (Whereupon, the proceeding was concluded at 12:17 p.m.)

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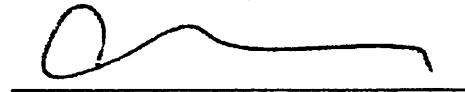
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C E R T I F I C A T I O N

I, Christine Aiello, transcriber, do hereby
certify that the foregoing is a true and correct
transcript from the electronic sound recordings of the
proceedings in the above-captioned matter.



January 25, 2018

Christine Aiello

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, : Case No. 2:17-cr-00553-RBS
:
Plaintiff, :
:
v. : Philadelphia, Pennsylvania
: September 10, 2018
HERMAN ROSARIO, : 2:22 p.m.
:
Defendants. :
.

TRANSCRIPT OF GUILTY PLEA
BEFORE THE HONORABLE R. BARCLAY SURRICK
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff: Jason Patrick Bologna, Esquire
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Page 2

I N D E X

EXHIBITS:

Marked

Government's

1

Change of Plea Memo

20

1 P R O C E E D I N G S

2 THE CLERK: All rise, please. The Court is now in
3 session. The Honorable R. Barclay Surrick presiding.

4 THE COURT: Good afternoon.

5 (Chorus of good afternoon)

6 THE COURT: Have a seat. Okay. We have the case
7 of The United States v. Herman Rosario. It's number 17-553.
8 Counsel, please identify yourselves for the record.

9 MR. BOLOGNA: Good afternoon, Your Honor. Jason
10 Bologna for the Government.

11 MR. PERUTO: Good afternoon, Judge. Charles
12 Peruto for the Defendant.

13 THE COURT: Okay. Counsel, I understand we're
14 here this afternoon for pleas of guilty to Counts I, II,
15 III, and IV of the indictment. Is that correct?

16 MR. BOLOGNA: Yes, Your Honor.

17 MR. PERUTO: Yes, Your Honor.

18 THE COURT: All right. Count I charges conspiracy
19 to distribute controlled substances, heroin and crack
20 cocaine. Count II, possession with intent to distribute
21 controlled substances, again heroin and crack cocaine.
22 Count III, possession of a firearm in furtherance of a drug
23 trafficking crime. And Count IV, a convicted felon in
24 possession of a firearm.

25 Counsel, do you want to bring your client forward?

1 Okay. Will you please swear the defendant?

2 MR. PERUTO: Mr. Rosario, would you please state
3 your full name?

4 THE DEFENDANT: Herman Rosario.

5 MR. PERUTO: Would you please raise your right
6 hand.

7 HERMAN ROSARIO, DEFENDANT, SWORN

8 THE COURT: Okay. As I understand it, this is an
9 open plea, is that correct?

10 MR. PERUTO: It is, Judge.

11 THE COURT: All right. Mr. Rosario, how old are
12 you?

13 THE DEFENDANT: I'm 34.

14 THE COURT: How far did you go in school?

15 THE DEFENDANT: The 11th grade.

16 THE COURT: Do you read and write?

17 THE DEFENDANT: Not English, though. I read in
18 Spanish. Spanish is more --

19 THE COURT: Did you have a chance to go over the
20 Government's change of plea memorandum with your attorney?

21 THE DEFENDANT: Yeah.

22 MR. PERUTO: I answered his questions, Judge. And
23 I have no trouble communicating with him in English.

24 THE COURT: All right. Are you under the
25 influence of any alcohol today?

1 THE DEFENDANT: No.

2 THE COURT: Are you under the influence of any
3 drugs?

4 THE DEFENDANT: No.

5 THE COURT: Are you on any medication?

6 THE DEFENDANT: No.

7 THE COURT: Are you under the care of a
8 psychologist or psychiatrist?

9 THE DEFENDANT: No, sir.

10 THE COURT: Is there any reason at all why you
11 might have difficulty understanding these proceedings?

12 THE DEFENDANT: No.

13 THE COURT: Are you represented by Mr. Peruto?

14 THE DEFENDANT: Yeah.

15 THE COURT: Have you had a chance to discuss this
16 with him in detail?

17 THE DEFENDANT: Yeah. Not all in detail, but
18 yeah.

19 THE COURT: Do you want more time to talk to him?

20 THE DEFENDANT: Yeah, I do.

21 THE COURT: We'll give you whatever time you want,
22 Mr. Rosario. We'll recess right now. If you think that
23 your discussion can be completed today, then I will --

24 THE DEFENDANT: Yeah.

25 THE COURT: -- reconvene and move forward.

1 However, if you need time beyond today, we'll give you that.
2 You're entering a plea of guilty if we move forward. That's
3 a serious step and I want you to have the opportunity to
4 discuss this with your attorney as much as you need to. Do
5 you understand that?

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay. Mr. Peruto, we'll let you talk
8 with Mr. Rosario. If you conclude that you need additional
9 time, we will recess this matter for -- and then we will
10 reschedule it. Okay?

11 MR. PERUTO: Thank you, Judge.

12 THE COURT: All right. Recess.

13 MR. BOLOGNA: We'll wait outside, Your Honor.

14 THE COURT: All right.

15 (Recessed at 2:26 p.m.; reconvened at 2:38 p.m.)

16 THE CLERK: All rise, please. The Court is now in
17 session.

18 THE COURT: Okay. Have a seat. Okay, Mr. Peruto,
19 do you want to bring your client forward again? Okay, Mr.
20 Rosario, do you want to continue?

21 THE DEFENDANT: Yeah.

22 THE COURT: Do you understand you're entering a
23 plea of guilty to these charges?

24 THE DEFENDANT: Yeah.

25 THE COURT: All right. Mr. Rosario, let's talk

1 about the charges that you are pleading guilty to. And you
2 understand when you plead guilty, you admit that you
3 committed the crimes?

4 THE DEFENDANT: Yeah.

5 THE COURT: In this instance, you are charged with
6 conspiracy to distribute controlled substances, heroin and
7 crack cocaine; do you understand that?

8 THE DEFENDANT: Yeah.

9 THE COURT: That's Count I; do you understand
10 that?

11 THE DEFENDANT: Yeah.

12 THE COURT: And when you plead guilty, you're
13 admitting that you committed the crimes; do you understand
14 that?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. If the Government had to
17 prove that charge against you, that conspiracy charge
18 against you, they would have to prove that two or more
19 people agreed to distribute 1,000 grams or more of a mixture
20 containing heroin and 28 or more grams of crack cocaine; do
21 you understand that?

22 THE DEFENDANT: Yeah.

23 THE COURT: They would have to prove that you were
24 a party to that agreement; do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: They would have to prove that you
2 joined the agreement, knowing its objective and intending to
3 join together with at least one other conspirator to achieve
4 that objective.

5 THE DEFENDANT: Yes.

6 THE COURT: That is that you and at least one
7 other conspirator shared a unity of purpose and the intent
8 to achieve the objective; do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that conspiracy to
11 distribute controlled substances such as these is punishable
12 by a mandatory minimum 10 year jail sentence?

13 THE DEFENDANT: Yes.

14 THE COURT: And the jail sentence can be up to a
15 lifetime in jail; do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: So it's a mandatory minimum of ten
18 years up to life; do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that there is a
21 supervised release that follows any jail sentence, and that
22 supervised release on Count I would be up to a lifetime of
23 supervised release; do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And if you're on supervised release

1 and you violate the terms of supervised release, you can be
2 brought back into court and re-incarcerated; do you
3 understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that there is a fine
6 that can be imposed on Count I of up to \$10 million?

7 THE DEFENDANT: Yes.

8 THE COURT: And you're going to have to pay a
9 special assessment on Count I of \$100; do you understand
10 that?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you have any questions at all about
13 the crime that you are admitting in Count I?

14 THE DEFENDANT: No.

15 THE COURT: Any questions about the punishment
16 that can be imposed for that crime?

17 THE DEFENDANT: No.

18 THE COURT: Let's talk about the Count II. Count
19 II charges you with possession with intent to distribute the
20 controlled substances, heroin and crack cocaine. If the
21 Government had to prove that charge against you, they would
22 have to prove that you knowingly and intentionally possessed
23 the cocaine and the heroin; do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: They would have to prove that you

1 possessed those controlled substances with the intent to
2 distribute them, that is to transfer them from yourself to
3 another individual; do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that that crime in
6 Count II is punishable by a mandatory minimum ten year jail
7 sentence?

8 THE DEFENDANT: Yes.

9 THE COURT: And it can be a jail sentence of up to
10 life; do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: So it's a mandatory minimum of ten
13 years up to life; do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that a supervised
16 release on Count II can be up to a lifetime of supervised
17 release --

18 THE DEFENDANT: Yes.

19 THE COURT: -- do you understand that? Again, the
20 fine on Count II would be -- could be up to \$10 million; do
21 you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: And you'll have to pay a special
24 assessment on Count II of \$100; do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: Any questions about the crime you're
2 admitting in Count II?

3 THE DEFENDANT: No, sir.

4 THE COURT: Any questions about the punishment
5 that can be imposed for that crime?

6 THE DEFENDANT: No.

7 THE COURT: Let's talk about Count III. Count III
8 charges you with possession of a firearm in furtherance of
9 the drug trafficking crime; do you understand that?

10 THE DEFENDANT: Yeah.

11 THE COURT: If the Government had to prove that
12 charge against you, they would have to prove that you
13 committed the drug trafficking crime, that is distributing
14 controlled substances; do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: And they would have to prove that you
17 knowingly possessed a firearm when you were committing that
18 offense; do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: And they would have to prove that you
21 possessed that firearm in furtherance of the drug
22 trafficking crime; do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that that crime is
25 punishable by a mandatory minimum of five years in jail.

1 And that five year mandatory minimum must run consecutively
2 to any other sentence imposed; do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: In addition, on Count III, you could
5 be incarcerated for up to life; do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: On Count III, there is a supervised
8 release that follows any jail sentence of up to five years;
9 do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: And again, if you're on supervised
12 release and you violate the terms and conditions, you could
13 be brought back into Court and re-incarcerated; do you
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: On Count III, there's a fine of up to
17 \$250,000 that can be imposed; do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: And you're going to have to pay
20 another special assessment for \$100 on Count III; do you
21 understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Rosario, any -- do you have any
24 questions about the crime you're admitting in Count III?

25 THE DEFENDANT: No, sir.

1 THE COURT: Any questions about the punishment
2 that can be imposed for that crime?

3 THE DEFENDANT: No, sir.

4 THE COURT: Let's talk about Count IV. Count IV
5 charges you with being a convicted felon in possession of a
6 firearm. If the Government had to prove that charge against
7 you, they would have to prove that you are a convicted felon
8 and that you have been convicted of a crime that was
9 punishable by more than one year in jail; do you understand
10 that?

11 THE DEFENDANT: Yes.

12 THE COURT: And they would have to prove that
13 after that conviction, you knowingly possessed a firearm; do
14 you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Then they would have to prove that you
17 possessed that firearm in or affecting interstate or foreign
18 commerce; do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that that crime is
21 punishable by up to 20 years in jail?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: With supervised release that follows
24 jail up to three years; do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: There's a fine of up to \$250,000 that
2 can be imposed on Count IV; do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And there is another \$100 special
5 assessment on Count IV; do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Any questions about the crime you're
8 admitting in Count IV?

9 THE DEFENDANT: No, sir.

10 THE COURT: Any questions about the punishment
11 that can be imposed for that crime?

12 THE DEFENDANT: No, sir.

13 THE COURT: Mr. Rosario, under the statutes, you
14 subject yourself by this guilty plea of up to life imprison.
15 You subject yourself to a mandatory minimum of ten years in
16 jail on Counts I and II. And you subject yourself to a
17 mandatory minimum of five years consecutive jail sentence,
18 that is after any other sentence on Count III; do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: So you're facing a mandatory minimum
22 of 15 years in jail; do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that under the
25 statute, you're facing up to a lifetime of supervised

1 release?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You're facing fines of up to
4 \$20,500,000; do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you're going to have to pay \$400
7 in special assessments; do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Knowing all of this, do you still wish
10 to plead guilty here this afternoon?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Rosario, you don't have to plead
13 guilty. You have an absolute constitutional right to go to
14 trial; do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And if you chose to go to trial in
17 this case, we would schedule the matter for trial on the
18 date served. We would bring a panel of prospective jurors
19 into this courtroom. Those jurors would all be citizens
20 from the Eastern District of Pennsylvania. And you could
21 participate in the selection of the jury that would hear the
22 case; do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that if you chose to
25 go to trial, you'd have a right to file pretrial motions; do

1 you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And in fact, you did file pretrial
4 motions in this case. We had a motion to suppress and I
5 filed an opinion denying that; do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that if you chose to
8 go to trial, after you made your selection of the jurors and
9 after the Government did the same, 12 jurors would be
10 impaneled to hear the matter; do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that I would
13 instruct those 12 jurors that you are presumed innocent and
14 that the burden is upon the Government to prove you guilty
15 by evidence beyond a reasonable doubt; do you understand
16 that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that if, after
19 hearing all of the evidence and testimony, any one of those
20 12 jurors had a reasonable doubt as to your guilt, you could
21 not be found guilty because the verdict of a criminal jury
22 must be unanimous. All must agree. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that if you chose to
25 go to trial, you have a right to confront and to cross-

1 examine all of the witnesses against you; do you understand
2 that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You have a right to present your own
5 witnesses and if you subpoenaed witnesses, we would require
6 that they appear; do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that you do not have
9 to testify at a trial. You have a constitutional right to
10 remain silent. And if you choose to exercise that right, it
11 cannot be held against you in any way; do you understand
12 that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that if you went to
15 trial and you were convicted, you'd have a right to appeal
16 and we'd give you an attorney free of charge to file that
17 appeal if you couldn't afford one; do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: In that appeal, you could raise
20 objection to my rulings on the pretrial motion; do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you could also raise objection to
24 anything that happened during the trial that you felt was
25 improper; do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Rosario, you're telling me you
3 don't want to go through that process, is that what you're
4 telling me?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You want to admit your guilt here this
7 afternoon and take the consequences.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that if I accept
10 this plea, I'm simply going to order a presentence
11 investigation report and schedule the matter for sentencing;
12 do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You and your attorney will get a copy
15 of that presentence report and you can make objections to it
16 at the time of sentencing; do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand, Mr. Rosario, that
19 there are sentencing guidelines in the federal system?
20 Those guidelines are advisory. They're not mandatory. But
21 I have to consider them when I'm imposing sentencing; do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that if I accept
25 this plea, your appeal rights are limited; do you understand

1 that?

2 THE DEFENDANT: No, I don't understand that one.

3 THE COURT: Well, let me tell you what you can
4 appeal. If you chose to file an appeal from this guilty
5 plea, the only thing that you can raise on appeal would be
6 that these proceedings are being conducted improperly; do
7 you understand that?

8 THE DEFENDANT: No, we're not.

9 THE COURT: Excuse me.

10 THE DEFENDANT: No. No, sir.

11 MR. PERUTO: If I may, Judge, if I may interject.
12 We are going to appeal the denial of the motion to suppress
13 after a conviction.

14 THE COURT: All right. Well, all right.

15 MR. PERUTO: That's why he's stuck.

16 THE COURT: I understand. So your appeal rights,
17 you can appeal and raise an objection to the propriety of
18 these proceedings, whether these proceedings were conducted
19 properly; do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: You could also raise an objection that
22 your attorney was ineffective in representing you; do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you can also raise objection to

1 the fact that you filed a motion to suppress evidence and I
2 denied that motion; do you understand that?

3 THE DEFENDANT: Yes, sir. Yes, sir.

4 THE COURT: Counsel, can we have the factual basis
5 for these charges?

6 MR. BOLOGNA: Yes, Your Honor. The Government
7 would mark as Government's Exhibit 1 in its entirety the
8 change of plea memorandum and enter it into the record,
9 specifically the factual summaries detailed on pages 3, up
10 to and including page number 10. For purposes of the plea,
11 Your Honor, I'll summarize those things at this point.

12 (Government's Exhibit No. 1 marked for identification)

13 THE COURT: Okay. Before we get to that, Mr.
14 Rosario, you had a chance to see this plea memorandum?

15 THE DEFENDANT: No, sir, I haven't seen it. Have
16 I -- yeah, I've seen that one.

17 THE COURT: You went over it with Mr. Peruto?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You understand that the factual basis
20 for these charges is outlined in this plea memorandum?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Go ahead, counsel.

23 MR. BOLOGNA: Thank you, Your Honor. The case
24 against Mr. Rosario originates from an investigation done by
25 the Philadelphia Police Department in the months of June and

1 July of 2017, specifically members of the narcotics field
2 unit went to the area of Jasper and Wishart Streets in
3 Philadelphia to conduct an investigation. During that
4 investigation, they encountered, through surveillance, Mr.
5 Rosario on multiple occasions. In particular, first on the
6 date of June 14th, 2017, officers observed what they
7 believed to be narcotics transactions taking place on that
8 block, in particular the home at 1908 E. Wishart Street as
9 being used as a potential stash location.

10 The confidential information was given \$120 of
11 pre-recorded buy money, approached an individual, and
12 purchased 12 pink (ph) capsules of heroin. Those items were
13 returned to the narcotics field unit and placed on a
14 property receipt.

15 An individual on the street, later identified as
16 Yatska Melendez, was later seen that day going into 1908 E.
17 Wishart and emerging with a blue bag in her hand. She
18 handed it through the driver's side window of a Honda and in
19 return accepted a dark colored backpack.

20 The Defendant at the bar of the Court, Mr.
21 Rosario, was the driver of that car. He left the block,
22 returning to 2863 N. 4th Street in the City of Philadelphia
23 and exited his car with the blue bag. What I -- what was
24 uncovered, Your Honor, was an ongoing conspiracy that is
25 outlined in page 5. In brief summary, the evidence, which I

1 will go further in summarizing is that Mr. Rosario was
2 supplying the block with narcotics, that he would deliver in
3 bags, driven onto the block, and he would take cash off the
4 block from prior narcotics sales.

5 This was seen on multiple occasions. Numerous
6 people on the block actually conducted the hand to hand
7 narcotics transactions and Yatska Melendez assisted him in
8 this by entering and exiting 1908 E. Wishart Street to
9 collect bags that would be given to Mr. Rosario, or accept
10 bags from him that would be stored there.

11 Specifically, Your Honor, also on the date of June
12 16th, surveillance officers watched Mr. Rosario leave 2863
13 N. 4th Street with a green bag slung over his shoulder. He
14 entered a black Jeep and drove to 1900 E. Wishart, where he
15 met with Melendez. He gave Melendez the green bag and in
16 return accepted something from her, and then returned to
17 2863 N. 4th Street.

18 On the date of June 21st, narcotics field unit
19 sent another CI in. That CI, in exchange for \$20 of pre-
20 recorded buy money, met with an unknown black male and
21 purchased two packets of heroin stamped "Rolex," R-O-L-E-X.
22 Those items were given to the narcotics field unit. On that
23 same date, Mr. Rosario again was seen driving to the block,
24 this time handing through the driver's side window a black
25 plastic bag. And Ms. Melendez handed him a white bag.

1 Finally, Your Honor, on the date of June 26th,
2 narcotics field unit again watched Mr. Rosario leave 2863 N.
3 4th Street, driving an Infinity. He went to the block, 1900
4 E. Wishart. He met with Ms. Melendez and they exchanged
5 bags again through the driver's side window. On that same
6 date, shortly thereafter, a confidential informant, in
7 exchange for \$20 of pre-recorded buy money purchased two red
8 capsules. Those items were turned over to the narcotics
9 field unit.

10 On this basis, Your Honor, in summary, Mr. Rosario
11 was seen driving to that block of four separate occasions.
12 Three buys had been made. The identities of the properties
13 at 1908 E. Wishart was seen as a stash location. 2863 N.
14 4th Street was seen as a stash location. And through the
15 City of Philadelphia, warrants were obtained and executed on
16 that date.

17 On June 28th, a narcotics field unit entered 1908
18 E. Wishart Street and recovered 24 red capsules of heroin
19 and \$79 of cash. Those items were placed in property
20 receipts. They also executed a warrant at 2863 N. 4th
21 Street. Specifically, the Defendant at the bar of the
22 Court, Mr. Rosario, was not there. However, his father was.
23 Numerous items of narcotics were recovered from that
24 location and placed on the property receipt.

25 A weapon, which Mr. Rosario is not charged with,

1 was also recovered at that location, along with photographs
2 of Mr. Rosario and the property. Notably, neither Mr.
3 Rosario nor Ms. Melendez was arrested that day or found in
4 those locations. As a result, further investigation was
5 conducted. Mr. Rosario had been seen in the area of 1600 S.
6 28th Street in surveillance, specifically on the dates of
7 July 5th, 7th, 10th, 11th, and 12th show that he was
8 entering and exiting the two-story row home located at 1611
9 S. 28th Street. A warrant was obtained.

10 On July 14th, 2017, a squad unit entered that
11 property in South Philadelphia. After knocking and
12 announcing that they were there, police, search warrant, and
13 getting no response, they forced the front door open. Two
14 squad officers went upstairs and found Mr. Rosario in the
15 bathroom on the second floor. He, at that point, appeared
16 to be trying to flush bags of heroin down the toilet. He
17 was taken into custody. There were numerous bags open with
18 white powder scattered around the toilet area.

19 Ms. Melendez was found in that property, in the
20 front of the property, second floor bedroom. She was there
21 with two children, who were minors.

22 A cursory review of the property showed that it
23 appeared to be used as a large scale heroin packing plant.
24 The Government has detailed on pages 8 and 9 all of the
25 things that were found in there. Notably, there was open

1 containers of Fentanyl, and as it was the summer, there was
2 an air conditioner that was disbursing air throughout the
3 house. Due to concerns about Fentanyl potentially being
4 blown into the air and affecting any of the people
5 conducting the search, the police cleared the property and
6 essentially, a hazmat suit was placed on everyone who
7 entered the property thereafter to search the property.

8 Ms. Melendez was put in the back of a police car,
9 along with her two children, who were going to be taken to
10 Children's Hospital. She attempted to escape by climbing
11 out the back of the property -- excuse me, the back of the
12 car, and she was immediately stopped.

13 Mr. Rosario was in police custody at that point.
14 The search revealed, among other things, Your Honor, as
15 detailed in the change of plea -- 1,052 packets of stamped
16 (indiscernible). Testing and analysis showed that that
17 weighed a total of 33 grams and contained a mixture in
18 substance of heroin and Fentanyl.

19 Another 102 packets stamped (indiscernible),
20 containing 5.5 grams of mixture, containing heroin and
21 Fentanyl. Then, Your Honor, there were numerous clear bags.
22 Some of those bags contained heroin. Some of those bags
23 contained heroin and Fentanyl. Some of those bags contained
24 heroin, Fentanyl, and Tramadol, which is a schedule 4
25 controlled substance.

1 By analogy, we had our vanilla, chocolate, and
2 strawberry of the drug market here, Your Honor. Further,
3 there was also a bag containing 44 grams of crack cocaine
4 that was found in there, the United States currency, a
5 myriad of drug paraphernalia to include literally thousands
6 of capsules, thousands of unused packets. It would -- cell
7 phones, a tablet, and mail address to Ms. Melendez at 1908
8 E. Wishart, and a Glock 9 millimeter handgun. I'll note,
9 Your Honor, the Glock handgun was found under a mattress in
10 the front bedroom, between the box spring and the mattress.

11 The Government, after the arrest of Ms. Melendez
12 and Mr. Rosario conducted a series of tests. The Glock
13 handgun was swabbed in three areas: the gun, the trigger,
14 and the magazine for DNA purposes. Profiles were detected.
15 Those profiles were then compared against samples taken from
16 Mr. Rosario and Ms. Melendez.

17 In summary, Mr. Rosario's DNA was found on a
18 mixture in the trigger area of the handgun, specifically
19 proving that he touched the trigger of that gun. If the
20 Government proceeded to trial, it would have presented
21 scientific evidence, expert testimony concerning his
22 handling of that gun.

23 The Government analyzed the drugs that were
24 purchased on the three dates that I mentioned. It was
25 seized during the first search warrant and were seized

1 during the second search warrant on July 14th. In sum and
2 substance, there was over 1,000 grams of heroin that was
3 recovered by virtue of those search warrants and those
4 purchases. There was over 28 grams of crack cocaine that
5 was recovered during one of the search warrants. That would
6 create the mandatories that Your Honor discussed earlier.

7 The Government also would present testimony --
8 expert testimony that the drugs in this case were possessed
9 with the intent to distribute, given the quantity, the
10 packaging, and the prior behavior of those in the 1900 block
11 of E. Wishart Street. We'll present testimony about the
12 origins of that gun, specifically that it was manufactured
13 outside the United States, as Glock is a foreign maker, and
14 that it traveled through interstate or foreign commerce to
15 arrive here.

16 It would also provide expert testimony that Mr.
17 Rosario possessed that gun in furtherance of his drug
18 trafficking crimes, namely to protect his product, which was
19 over a kilogram of heroin, and to protect the currency that
20 was in there. And that would prove the 924(c).

21 Finally, Your Honor, the Government would
22 introduce likely through a segmented trial that Mr. Rosaria,
23 in fact, is a convicted felon. Namely that he has
24 convictions for aggravated assault and for attempted murder.
25 In the Court of Common Pleas of Philadelphia County, those

1 convictions would have occurred in a timeframe in which he
2 would have been ineligible to possess that firearm. That's
3 the summary of the Government's evidence.

4 THE COURT: All right. Mr. Rosario, you heard
5 what the Assistant United States Attorney just said?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you read the factual basis
8 contained in this plea memorandum?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You understand that you are admitting
11 the facts that you just related and that are contained in
12 the memorandum.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you admit those facts?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that if you did the
17 things you just admitted, you're in fact guilty of each one
18 of these crimes; do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Rosario, do you have a -- are you
21 on probation or parole at the present time?

22 THE DEFENDANT: I'm on parole.

23 THE COURT: Do you understand that this guilty
24 plea may very well be, and probably is, a violation of your
25 parole; do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: That would be entirely up to the
3 parole board with the state; do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Rosario, you've had a chance to
6 talk to your attorney about this before entering this plea
7 and I just want to be sure at this point. Are you satisfied
8 with the representation you're getting from Mr. Peruto?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You're satisfied that he could
11 represent you properly if you chose to go to trial?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you have faith in his
14 representation?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You understand that if I accept this
17 plea, I'm simply going to schedule the matter for sentencing
18 and order a presentence report; do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that when I bring
21 you back here for sentencing, I will impose a flat sentence
22 of incarceration on you. There is no parole in the federal
23 system; do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Peruto, do you have anything

1 further?

2 MR. PERUTO: I do not, Judge.

3 THE COURT: Does the Government have anything
4 further?

5 MR. BOLOGNA: No, Your Honor. Thank you.

6 THE COURT: I'm satisfied that this plea is
7 voluntarily and intelligently entered. I'm satisfied that
8 there is a factual basis for it, and I will accept it. Will
9 you take the plea, please?

10 THE CLERK: Herman Rosario, you have previously
11 pled not guilty to the charges against you in Criminal
12 Indictment No. 2017-553, which charges you in Count I with
13 conspiracy to distribute one kilogram or more of heroin and
14 crack cocaine in violation of Title 21 under the United
15 States Code Section 846; and also you've been charged with
16 Count II with possession with the intent to distribute one
17 kilogram or more of heroin and crack cocaine in violation of
18 Title 21 under the United States Code Section 841(a)(1),
19 (b)(1)(A), (b)(1)(B), and (b)(1)(C); also in Count III,
20 you've been charged with possession of a firearm in
21 furtherance of a drug trafficking crime in violation of
22 Title 18 of the United State Code Section 924(c)(1); and
23 then Count IV, you've been charged as a felon in possession
24 of a firearm in violation of Title 18 of the United States
25 Code Section 922(g)(1).

1 Now, how do you plead as to the charges against
2 you in Count I, guilty or not guilty?

3 THE DEFENDANT: Guilty.

4 THE CLERK: How do you plead as to the charges
5 against you in Count II, guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE CLERK: How do you plead as to the charges
8 against you in Count III, guilty or not guilty?

9 THE DEFENDANT: Guilty.

10 THE CLERK: And how do you plead as to the charges
11 against you in Count IV, guilty or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: We're going to make the Government's
14 change of plea memorandum a part of the record. I'm going
15 to order that presentence investigation report. And I'm
16 going to schedule this matter for sentencing on December
17 19th, 2018 at 10:00 a.m.

18 Counsel, anything further?

19 MR. PERUTO: Nothing, Judge.

20 THE COURT: Anything further from the Government?

21 MR. BOLOGNA: No, Your Honor. I have the original
22 change of plea memorandum and I'll hand it up, so if you
23 file this record on --

24 THE COURT: All right.

25 MR. BOLOGNA: Thank you.

1 MR. PERUTO: Your Honor, can we have -- could I
2 just have five minutes with the Defendant here and
3 (indiscernible).

4 THE COURT: You may certainly have time to talk to
5 him, yes.

6 MR. PERUTO: Thank you. Thank you.

7 (Proceedings concluded at 3:09 p.m.)
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C E R T I F I C A T I O N

I, Jamie Gallagher, court approved transcriber, certify that the foregoing transcript is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Jamie Gallagher

December 4, 2018

Jamie Gallagher

[00553 - attorney's]

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[notably - punishable]

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[punishment - sir]

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Commonwealth of Pennsylvania
CITY AND COUNTY OF PHILADELPHIA

ss:

APPLICATION FOR
SEARCH WARRANT
AND AFFIDAVIT

P/O Neil Carr 3297 NFU

WARRANT CONTROL NO.

203263

ISSUED TO DISTRICT

DATE OF APPLICATION

(Name and Affiant) (Badge No.) (District/Unit)
being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular person as described below.

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):

****SEE APPENDIX A****

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):

1611 S 28th st Phila pa 19145 two story masonry

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description):

owner Suk Fan Wong per realeste check/ Occupant Herman Rosario

VIOLATION OF (Describe conduct or specify statute):

Pa controlled sub act of 1972

YEAR/DIST./COMPLAINT NO.
17-24-56749

PROBABLE CAUSE BELIEF IS BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES (See special instructions below):

See attachment

ATTACH ADDITIONAL PAPER (75-51) IF NECESSARY

☐ CHECK HERE IF ADDITIONAL PAPER IS USED.

PLEASE SEE REVERSE SIDE OF THIS PAGE FOR INSTRUCTIONS

SIGNATURE OF AFFIANT

BADGE NO.

DISTRICT

Sworn to (or affirmed) and subscribed before me this
day of July 20 17

COURT LOCATION

Date Commission Expires

RESULT
OF SEARCH

DATE AND TIME OF SEARCH

7-14-17 725

☒ A.M.
☐ P.M.

ARREST

☒ Yes ☐ No

JUDGE'S DISPOSITION

☐ Disc. ☐ Held for Court ☐ Further
Hearing ☐ Fined or
Committed

PROPERTY SEIZED

(If "Yes" list inventory below)

☒ Yes ☐ No

Drugs, USC, Gun, Para, Packaging, Mail

IF ADDITIONAL SPACE REQUIRED, USE REVERSE SIDE - INVENTORY MUST APPEAR ON ALL COPIES OF THE WARRANT.

I certify, subject to the penalties and provisions of 18 Pa. C.S. §4004(b) that this is a true and correct listing of
all items seized.

Signature of Person Seizing Property

Badge No.

OTHER OFFICERS PARTICIPATING IN SEARCH

126 6287 1931

1353 2273 DEA Group

Crime Scene Unit

Adm's Homeland Security

Gun Violence Task Force

Chen. Lab

SIGNATURE OF WITNESS TO INVENTORY (Name and Address)

TO LAW ENFORCEMENT OFFICER: WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the above described premises or person, and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the above described items.

* This Warrant should be served as soon as practicable but in no event

later than ☒ A.M. ☐ P.M. July 15 20 17

and shall be served only during daytime hours of 8 A.M. to 10 P.M.

Issued under my hand this

20 17 at 10:45 A.M. o'clock. (Issue time must be stated)

(SEAL)

(Signature of Issuing Authority)

Court location

Date Commission Expires

Title of Issuing Authority

☐ This warrant should be served as soon as practicable but in no event

later than ☐ A.M. ☐ P.M. July 15 20 17

and may be served anytime during day or night.

Issued under my hand this

20 17 at 10:45 A.M. o'clock. (Issue time must be stated)

(Signature of Issuing Authority)

*The issuing authority should specify a date not later than two (2) days after issuance. 18 Pa. C.R. 3005(d).

**If issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavit and wishes to issue a nighttime search warrant, only this section shall be completed. 18 Pa. C.R. 3005(d).

Appendix 201

ORIGINAL APPLICATION - DETAINED BY AFFIANT

APPENDIX "A"

ITEMS TO BE SEARCHED/SEIZED

SW# 203263

1. Heroin, Cocaine, Crack Cocaine, Marijuana any and all items classified as a Controlled Substance. Any and all devices used in packaging, weighing and/or manufacturing of Controlled Substances. Proof of ownership and/or residency.
2. Any and all proceeds and/or records of the sales of controlled Substances. Drug Paraphernalia and all other contraband, including firearms and ammunition;
3. Books, records, receipts, notes, ledgers and other documents relating to transporting, ordering, purchasing and distributing controlled substances, in particular heroin being Controlled Dangerous Substances;
4. Books, records, receipts, bank statements, money drafts, letters of credit, money orders, cashier's checks, receipts, passbooks, bank checks, and other items evidencing the obtainment, and/or concealment of assets and the obtainment, concealment and/or expenditure of money;
6. Proceeds of dealing in controlled substances, financial records relating thereto; All cash, currency, stocks, bonds (both foreign and domestic) and other items of Wealth including, but not limited to jewelry and works of art.
7. Firearms and ammunition.

All of the above being fruits, instrumentalities and evidence of violations of the Controlled Substance, Drug, Device and Cosmetic Act of 1972.

PROBABLE CAUSE FOR SEARCH AND SEIZURE WARRANT #203263

During the month of June, 2017, the NFU-4K conducted an investigation in the illegal sale of narcotics in the area of Jasper and Wishart Sts. On June 14th, June 21st and June 26th of 2017, purchases of heroin were made by a Confidential Informant (C/I #1555). During the course of the investigation, it was established that a male identified as Herman Rosario 34 yrs (PPN: 883431) was supplying the narcotics being sold in the 1900 block of E Wishart St to a H/F at 1908 E Wishart, who would then provide the street dealers the narcotics to be distributed. Rosario received sums of cash from the H/F several times during the investigation and was followed in various vehicles to the location of 2863 N 4th St. Rosario was also observed on multiple occasions leaving 2863 N 4th and handing a bag believed to contain narcotics to the H/F at 1908 E Wishart St.

On 6-28-17, SW# 203250 was executed at 1908 E Wishart St. Twenty four capsules of heroin and \$79.00 USC was confiscated from the location. Also on 6-28-17, SW# 20351 was executed at 2863 N 4th St. Two hundred fifty one packets of cocaine, 699 grams of marijuana, \$18,999.00 USC and a .45 caliber handgun that was secreted in a bathroom wall were recovered in the property. Two pictures of Rosario were also confiscated from the location. Rosario was not on location.

Following the execution of the Search and Seizure Warrants at 1908 E Wishart and 2863 N 4th St, information was received that Rosario was operating a gray Mazda sedan with a PA registration of "KKB 2606" and that Rosario was staying at 1611 S 28th St.

On Wednesday, July 5th, P/O Torres #1791 of the DEA Task Force observed Rosario operating the Mazda and followed the vehicle to the 1600 block of S 28th St. Rosario parked the auto in front of 1611 S 28th and went into the location.

On Friday, July 7th, P/O Carr #3297 and P/O Werner #1731 set up surveillance of 1611 S 28th St. The Mazda was parked directly in front of the residence. Rosario was observed coming out of the property and talking on a cell phone twice during the surveillance.

Senior Special Agent Mangold #767 of the Attorney General's Gun Violence Task Force received information that Rosario was residing at 1611 S 28th St as well and conducted surveillance daily from 7-10-17 to 7-12-17. SSA Mangold observed Rosario on all three days exiting the location and operating the Mazda.

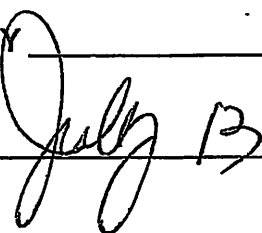
P/O NEIL CARR #3297 (YOUR AFFIANT), HAS BEEN A POLICE OFFICER FOR OVER 20 YEARS AND A NARCOTICS OFFICER FOR OVER 13 OF THOSE YEARS. BASED ON THE ABOVE INFORMATION, THE OFFICER BELIEVES THAT FIREARMS, NARCOTICS AND / OR NARCOTICS PROCEEDS ARE BEING STORED AND / OR SOLD FROM 1611 S 28th ST

AFFIANT'S SIGNATURE

 #3297

APPROVED BY

ON THIS DAY



2017



PROPERTY RECEIPT <input type="checkbox"/> LOST AND FOUND <input type="checkbox"/> FOR INVESTIGATION <input type="checkbox"/> PERSONAL PROPERTY FOR SAFEKEEPING <input checked="" type="checkbox"/> EVIDENCE	FROM WHOM TAKEN Residence 1611 S. 28th st		AGE	SEX	Nº 3306246	
	ADDRESS 1611 S. 28th st		DATE 7/14/17	TIME 725M	DISTRICT NB	UNIT NFU
	OWNER (If Known) Herman Rosario/Yatska Melendez		LAB USER FEE REQUESTED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DC NO. 17-24-56749	
	ADDRESS 1611 S. 28th st				SEIZURE NO.	
	DEFENDANT'S NAME Above		BULK OF PROPERTY STORED AT Police Evidence Cust			

ITEMS OF PROPERTY AND CIRCUMSTANCES UNDER WHICH IT WAS RECEIVED INCLUDING THE EXACT LOCATION TAKEN FROM
 1. (1)black and (1)gold Iphone cell phone. (1)Ipad.
 2. Above listed evidence was recovered from inside 1611 S 28th as result of search warrant#203263.
 3. Narc Case Number: 17-NFU-541
 4. Field Test:N/A
 5. Charges: N1330F & N1316M (1805)(903)
 6. Co-Def's: See PIINS
 7. Add pr#'s: See PIINS
 8. Lab Fees: N/A
 9. Add Information: Above listed evidence originally placed on pr#3306243 then removed and items were placed on pr#3306246.

If the person from whom the above amount of money and/or property was taken does not sign below, state reason why: PERSON FROM WHOM TAKEN (Signature) Unable to sign	RECEIVED BY POLICE DEPARTMENT Arresting or Receiving Officer: (If personal property for safe-keeping, Desk Supervisor is the Receiving Officer) <div style="display: flex; justify-content: space-between;"> <div> WITNESS (Signature) Lt. McCrone </div> <div> BADGE NO. (Type) 126 </div> <div> SIGNATURE P/O Carr </div> <div> BADGE NO. (Type) XXX3297 </div> </div>
--	---

TRANSFERRED TO EVIDENCE CUSTODIAN/COLLECTOR
 I hereby acknowledge receipt of the above listed items.

(Date)

(Time)

(Evidence Custodian/Collection)

RELEASE FROM CUSTODY OF POLICE DEPARTMENT

 This will acknowledge the receipt from the Police Department of the City of Philadelphia of the amount of money and/or property listed above, and will constitute the release of the City of Philadelphia and its agencies from any and all future responsibility therefor.

<input type="checkbox"/> Returned to Owner or Agent <input type="checkbox"/> Confiscated by Court <input type="checkbox"/> Destroyed by Order of Court Petition No. _____ <input type="checkbox"/> Escheat to State Escheat List No. _____ <input type="checkbox"/> To Department of Collections <input type="checkbox"/> Other Disposition (Explain): _____	RECEIVED BY (Owner or Agent) OWNER OR AGENT (Signature) <div style="display: flex; justify-content: space-between;"> <div>WITNESS (Signature)</div> <div>BADGE NO.</div> <div>DATE</div> </div> RECEIVED BY (Other than Owner of Agent) SIGNATURE AND TITLE WITNESS DATE
---	--

PROPERTY RECEIPT <input type="checkbox"/> LOST AND FOUND <input type="checkbox"/> FOR INVESTIGATION <input type="checkbox"/> PERSONAL PROPERTY FOR SAFEKEEPING <input checked="" type="checkbox"/> EVIDENCE	FROM WHOM TAKEN 2 ND FLOOR FRONT BEDROOM		AGE	SEX	NO. 9021935	
	ADDRESS 1611 S. 28TH STREET		DATE 7-14-17	TIME 3:00 PM	DISTRICT 24	UNIT CSU
	OWNER (IF KNOWN) UNKNOWN		LAB USER FEE REQUESTED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		DC NO. 17-24-056749	
	ADDRESS UNKNOWN		SEIZURE NO. SW#203263			
	DEFENDANT'S NAME PENDING INVESTIGATION		BULK OF PROPERTY STORED AT: FIREARMS IDENTIFICATION UNIT			

ITEMS OF PROPERTY AND CIRCUMSTANCES UNDER WHICH IT HAS RECEIVED INCLUDING THE EXACT LOCATION TAKEN FROM

The below listed evidence was collected and packaged by P/O Craig Perry #1337 and P/O Kostick# 3353 of the Crime Scene Unit, relative to the NARCOTICS/VUFA Investigation that occurred at 1900 S. Whishart Street on 6-14-17 at 1:46 pm. Assigned P/O Carr# 3297 from Narcotic Field Unit. N.F.U Control# 17-541, UCR- 1805. Items from property receipt# 9021935 a Black Glock 17 serial# ZEV930, 9mm handgun with 17 live cartridges. The above item was recovered from the 2nd floor front bedroom of 1611 S. 28th Street on 7-14-17 at 9:42 am after serving a warrant. Warrant# issued 203263. R-17-552-1

Item#1 - One (1) Black Glock 17 handgun serial# ZEV930 loaded with (17) seventeen live cartridges.

If the person from whom the above amount of money and/or property was taken does not sign below, state reason why:		RECEIVED BY POLICE DEPARTMENT Arresting or Receiving Officer: <i>(If personal property for safekeeping, Desk Supervisor is the Receiving Officer.)</i>	
PERSON FROM WHOM TAKEN <i>(Signature)</i>			
WITNESS <i>(Signature)</i> P/O DANIEL KOSTICK# 3353	PR#269441	BADGE NO. <i>(Type)</i>	SIGNATURE P/O CRAIG PERRY Pr# 232096 BADGE NO. <i>(Type)</i> 1337

TRANSFERRED TO EVIDENCE CUSTODIAN/COLLECTOR

I hereby acknowledge receipt of the above-listed items.

(Date) (Time) (Evidence Custodian/Collector)

RELEASE FROM CUSTODY OF POLICE DEPARTMENT

This will acknowledge the receipt from the Police Department of the City of Philadelphia of the amount of money and/or property listed above, and will constitute the release of the City of Philadelphia and its agencies from any and all future responsibility therefore.

<input type="checkbox"/> Returned to Owner or Agent <input type="checkbox"/> Confiscated by Court <input type="checkbox"/> Destroyed by Order of Court Petition No. <input type="checkbox"/> Escheat to State Escheat List No. <input type="checkbox"/> To Department of Collections <input type="checkbox"/> Other Disposition <i>(Explain):</i>	RECEIVED BY (Owner or Agent) OWNER OR AGENT <i>(Signature)</i>		
	WITNESS <i>(Signature)</i>	BADGE NO.	DATE
	RECEIVED BY (Other than Owner or Agent) SIGNATURE AND TITLE		
	WITNESS	DATE	

PROPERTY RECEIPT <input type="checkbox"/> LOST AND FOUND <input type="checkbox"/> FOR INVESTIGATION <input type="checkbox"/> PERSONAL PROPERTY FOR SAFEKEEPING <input checked="" type="checkbox"/> EVIDENCE	FROM WHOM TAKEN 1611 S. 28 TH STREET.		AGE	SEX	NO. 9021937
	ADDRESS 1611 S. 28TH STREET		DATE 7-14-17	TIME 7:25 A M	DISTRICT NB
	OWNER (IF KNOWN) HERMAN ROSARIO/YATSKA MELENDEZ		LAB USER FEE REQUESTED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		UNIT NFU
	ADDRESS 1611 S 28 TH ST		DC NO. 17-24-056749		
	DEFENDANT'S NAME HERMAN ROSARIO		BULK OF PROPERTY STORED AT: POLICE CHEM LAB		

ITEMS OF PROPERTY AND CIRCUMSTANCES UNDER WHICH IT HAS RECEIVED INCLUDING THE EXACT LOCATION TAKEN FROM

1. (2098) CLEAR PKTS WITH BLUE GLASSINE INSERTS. "STAMPED AINT EZ BOY", (1155) CLEAR PKTS WITH RED GLASSINE INSERTS. RED PKTS WERE STAMPED "CUMBAG" AND BEAST". ALL CONT ALLEGED HEROIN. (1) ZIPLOCK BAG CONT AN OFF WHT CHUNKY SUB. ALLEGED CRACK COCAINE. APPRX 46GRAMS, (1) PILL PRESS CONTAINING WHT POWDER. BULK HEROIN. (1) BLK TAPPED BAG CONT BULK HEROIN, (1)GRN PLASTIC SARAN WRAPPING CONT BULK HEROIN, (2) BAGS CONT BULK HEROIN, (1) PYREX DISH CONT LARGE AMOUNT OF BULK HEROIN, LOOSE BULK HEROIN THAT WAS NEXT TO TOILET AND PLACED INTO A JAR, (2)GRINDER TOPS, (1) GRINDER BOTTOM,(1) SCALE, (1) STRAINER ALL COVERED IN HEROIN AND LOOSE HEROIN THAT WAS ON PLATE ON TABLE. (1) JAR Manitol.
 2. ABOVE LISTED EVIDENCE WAS RECOVERED AS RESULT OF SEARCH WARRANT#203263 INSIDE 1611 S 28TH ST.
 3. NARC CASE NUMBER:17-NFU-541
 4. FIELD TEST: ABOVE LISTED EVIDENCE WAS SUMMITTED TO POLICE CHEM LAB DUE TO POSSIBLE FENTANYL CONTAMINATION.
 5. CHARGES: N1330F & N1316M (1805)(903)
 6. CO-DEF'S: SEE PIINS
 7. ADD PR#'S: SEE PIINS
 8. LAB FEES: YES

If the person from whom the above amount of money and/or property was taken does not sign below, state reason why:

PERSON FROM WHOM TAKEN (Signature)

RECEIVED BY POLICE DEPARTMENT

Arresting or Receiving Officer: (If personal property for safekeeping, Desk Supervisor is the Receiving Officer.)

WITNESS (Signature)
LT MCCROREY

PR#175834

BADGE NO. (Type)
126

SIGNATURE
P/O CARR

Pr#:208320

BADGE NO. (Type)
3297

TRANSFERRED TO EVIDENCE CUSTODIAN/COLLECTOR

I hereby acknowledge receipt of the above-listed items.

(Date)

(Time)

(Evidence Custodian/Collector)

RELEASE FROM CUSTODY OF POLICE DEPARTMENT

This will acknowledge the receipt from the Police Department of the City of Philadelphia of the amount of money and/or property listed above, and will Constitute the release of the City of Philadelphia and its agencies from any and all future responsibility therefore.

- ☐ Returned to Owner or Agent
- ☐ Confiscated by Court
- ☐ Destroyed by Order of Court
Petition No.
- ☐ Escheat to State

Escheat List No.
- ☐ To Department of Collections
- ☐ Other Disposition (Explain):

RECEIVED BY (Owner or Agent)

OWNER OR AGENT (Signature)

WITNESS (Signature)

BADGE NO.

DATE

RECEIVED BY (Other than Owner or Agent)

SIGNATURE AND TITLE

WITNESS

DATE

PROPERTY RECEIPT <input type="checkbox"/> LOST AND FOUND <input type="checkbox"/> FOR INVESTIGATION <input type="checkbox"/> PERSONAL PROPERTY FOR SAFEKEEPING <input checked="" type="checkbox"/> EVIDENCE	FROM WHOM TAKEN		AGE	SEX	N ^o 3306245	
	Inside 2005 Mazda KKB-2606		M 32	M		
	ADDRESS		DATE	TIME	DISTRICT	UNIT
	1611 S 28th St.		7/14/17	3:40PM	NB	7401
	OWNER (If Known)		LAB USER FEE REQUESTED		DC NO.	
	Herman Rosario DOB 5-14-84		YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		17-24-056749	
	ADDRESS		SEIZURE NO.			
	4210 'G' St					
	DEFENDANT'S NAME		BULK OF PROPERTY STORED AT			
	Herman Rosario		Police Chemical Lab			

ITEMS OF PROPERTY AND CIRCUMSTANCES UNDER WHICH IT WAS RECEIVED INCLUDING THE EXACT LOCATION TAKEN FROM

- 1.EVIDENCE: (1) Sandwich bag contain bulk green weed matter alleged Hydro-Marijuana.
- 2.CIRCUMSTANCES: S&SW# 203264 was executed at 4210 'G' st. on the above vehicle above item seized from the center console.
- 3.FILED TEST: A NIK test 'E' was conducted on a sample test result was positive for marijuana.
- 4.CASE NUMBER: 17-NFU-0541 UCR 1805
- 5.CHARGES: N1316M,N1332M,N1330F,903F
- 6.CO-DEFENDANTS: YESS SEE PINN
- 7.ADDITIONAL PROPERTY RECEIPTS: SEE PINN

If the person from whom the above amount of money and/or property was taken does not sign below, state reason why:

RECEIVED BY POLICE DEPARTMENT

Arresting or Receiving Officer: (If personal property for safe-keeping, Desk Supervisor is the Receiving Officer)

PERSON FROM WHOM TAKEN (Signature)

WITNESS (Signature)

Lt. McCrorey

BADGE NO. (Type)

126

SIGNATURE

P/O Carr

208320

BADGE NO. (Type)

3297

TRANSFERRED TO EVIDENCE CUSTODIAN/COLLECTOR

I hereby acknowledge receipt of the above listed items.

(Date)

(Time)

(Evidence Custodian/Collection)

RELEASE FROM CUSTODY OF POLICE DEPARTMENT

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- ☐ Returned to Owner or Agent
- ☐ Confiscated by Court
- ☐ Destroyed by Order of Court

Petition No. _____

- ☐ Escheat to State

Escheat List No. _____

- ☐ To Department of Collections
- ☐ Other Disposition (Explain): _____

RECEIVED BY (Owner or Agent)

OWNER OR AGENT (Signature)

WITNESS (Signature)

BADGE NO.

DATE

RECEIVED BY (Other than Owner of Agent)

SIGNATURE AND TITLE

Appendix 2017

DATE

PROPERTY RECEIPT <input type="checkbox"/> LOST AND FOUND <input type="checkbox"/> FOR INVESTIGATION <input type="checkbox"/> PERSONAL PROPERTY FOR SAFEKEEPING <input checked="" type="checkbox"/> EVIDENCE	FROM WHOM TAKEN		AGE	SEX	NO	
	highwat 1600 S 28th st				3306242	
	ADDRESS		DATE	TIME	DISTRICT	UNIT
	Highway 1600 S 28th st		7/14/17	7:20	NB	NFU
	OWNER (If Known)		LAB USER FEE REQUESTED		DC NO.	
Ana Rodriguez		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		17-24-56749		
ADDRESS		SEIZURE NO.				
3037 N 4th st						
DEFENDANT'S NAME		BULK OF PROPERTY STORED AT				
Herman Rosario		Police Auto pound				

ITEMS OF PROPERTY AND CIRCUMSTANCES UNDER WHICH IT WAS RECEIVED INCLUDING THE EXACT LOCATION TAKEN FROM

1. (1) 2005 mazda sdn pa tag#KKB-2606, Vin#JM1BK32391221805
2. Above listed vehicle was confisacted after above def was involved in narc trans. Above vehicle secured for warrant#203264.
3. Narc Case Number; 17-MNFU-541
4. Field Test: N/A
5. Charges: N1330F & N1316M (1805)(903)
6. Co-Def's: See PIINS
7. Add pr#'s: See PIINS
8. lab Fees: N/A

If the person from whom the above amount of money and/or property was taken does not sign below, state reason why:

RECEIVED BY POLICE DEPARTMENT

Arresting or Receiving Officer: (If personal property for safe-keeping, Desk Supervisor is the Receiving Officer)

PERSON FROM WHOM TAKEN (Signature)

Unable to sign

WITNESS (Signature)

Lt. McCrory

BADGE NO. (Type)

126

SIGNATURE

P/O Carr pr#208320

BADGE NO. (Type)

3297

TRANSFERRED TO EVIDENCE CUSTODIAN/COLLECTOR

I hereby acknowledge receipt of the above listed items.

(Date)

(Time)

(Evidence Custodian/Collection)

RELEASE FROM CUSTODY OF POLICE DEPARTMENT

This will acknowledge the receipt from the Police Department of the City of Philadelphia of the amount of money and/or property listed above, and will constitute the release of the City of Philadelphia and its agencies from any and all future responsibility therefor.

- ☐ Returned to Owner or Agent
- ☐ Confiscated by Court
- ☐ Destroyed by Order of Court

Petition No. _____

- ☐ Escheat to State

Escheat List No. _____

- ☐ To Department of Collections
- ☐ Other Disposition (Explain): _____

RECEIVED BY (Owner or Agent)

OWNER OR AGENT (Signature)

WITNESS (Signature)

BADGE NO.

DATE

RECEIVED BY (Other than Owner of Agent)

SIGNATURE AND TITLE

WITNESS

DATE

PROPERTY RECEIPT <input type="checkbox"/> LOST AND FOUND <input type="checkbox"/> FOR INVESTIGATION <input type="checkbox"/> PERSONAL PROPERTY FOR SAFEKEEPING <input checked="" type="checkbox"/> EVIDENCE	FROM WHOM TAKEN		AGE	SEX	N ^o 3306244	
	Residence 1611 S 28th st					
	ADDRESS		DATE	TIME	DISTRICT	UNIT
	1611 S 28th st		7/14/17	725 M	NB	NFU
	OWNER (If Known)		LAB USER FEE REQUESTED		DC NO.	
	Herman Rosario/ Yatska Melendez		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		17-24-56749	
	ADDRESS		SEIZURE NO.			
	1611 S 28th st					
	DEFENDANT'S NAME		BULK OF PROPERTY STORED AT			
	Above		Police Evidence cust			

ITEMS OF PROPERTY AND CIRCUMSTANCES UNDER WHICH IT WAS RECEIVED INCLUDING THE EXACT LOCATION TAKEN FROM

- (3) plastic containers with white lids.
- Above listed evidence as recovered from above location after above containers were used to store narc para.
- Narc Case Number: 17-NFU-541
- Field Test: N/A
- Charges: N1330F & n1316M (1805)(903)
- Co-Def's: See PIINS
- Add pr#'s: See PIINS
- Lab Fees: N/A

If the person from whom the above amount of money and/or property was taken does not sign below, state reason why:		RECEIVED BY POLICE DEPARTMENT	
PERSON FROM WHOM TAKEN (Signature)		Arresting or Receiving Officer: (If personal property for safe-keeping, Desk Supervisor is the Receiving Officer)	
Unable to sign			
WITNESS (Signature)	BADGE NO. (Type)	SIGNATURE	BADGE NO. (Type)
Lt. McCrorey	126	P/O Carr pr#208320	3297

TRANSFERRED TO EVIDENCE CUSTODIAN/COLLECTOR

I hereby acknowledge receipt of the above listed items.

(Date) (Time) (Evidence Custodian/Collection)

RELEASE FROM CUSTODY OF POLICE DEPARTMENT This will acknowledge the receipt from the Police Department of the City of Philadelphia of the amount of money and/or property listed above, and will constitute the release of the City of Philadelphia and its agencies from any and all future responsibility therefor.			
<input type="checkbox"/> Returned to Owner or Agent <input type="checkbox"/> Confiscated by Court <input type="checkbox"/> Destroyed by Order of Court Petition No. _____ <input type="checkbox"/> Escheat to State Escheat List No. _____ <input type="checkbox"/> To Department of Collections <input type="checkbox"/> Other Disposition (Explain): _____		RECEIVED BY (Owner or Agent)	
		OWNER OR AGENT (Signature)	
		WITNESS (Signature)	BADGE NO. DATE
		RECEIVED BY (Other than Owner of Agent)	
		SIGNATURE AND TITLE	
		DATE	

PROPERTY RECEIPT <input type="checkbox"/> LOST AND FOUND <input type="checkbox"/> FOR INVESTIGATION <input type="checkbox"/> PERSONAL PROPERTY FOR SAFEKEEPING <input checked="" type="checkbox"/> EVIDENCE	FROM WHOM TAKEN Residence 1611 S 28th st		AGE	SEX	NO 3306243
	ADDRESS 1611 S 28th st		DATE 7/14/17	TIME 725 M	DISTRICT NB
	OWNER (If Known) Herman Rosario/ Yatska Melendez		LAB USER FEE REQUESTED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DC NO. 17-24-56749
	ADDRESS 1611 S 28th st		SEIZURE NO.		
	DEFENDANT'S NAME Above		BULK OF PROPERTY STORED AT Police Evid Cust		
ITEMS OF PROPERTY AND CIRCUMSTANCES UNDER WHICH IT WAS RECEIVED INCLUDING THE EXACT LOCATION TAKEN FROM 1. Numerous new and unused plastic capsules in various colors. (4)boxes of storage bags. (1)plastic Saran wrapper, (2)cell phnes, (1)ipad amd (2) pieces of mail in the name of Yatska Melendez, address 1908 E Wishart st. 2. Above listed evidence was recovered as result of search warrant#203263 at 1611 S 28th st. 3. Narc Case Number: 17-NFU-541 4. Field Test: N/A 5. Charges: N1330F & N1316M (903)(1805) 6. Co-Def's: See PIINS 7. Add. pr#'s: See PIINS 8. Lab Fees:N/A					
If the person from whom the above amount of money and/or property was taken does not sign below, state reason why: PERSON FROM WHOM TAKEN (Signature) Unable to sign			RECEIVED BY POLICE DEPARTMENT Arresting or Receiving Officer: (If personal property for safe-keeping, Desk Supervisor is the Receiving Officer) <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> WITNESS (Signature) Lt. <i>McGregor</i> </div> <div style="width: 45%;"> BADGE NO. (Type) 126 </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> SIGNATURE <i>P/O Gary</i> pr#208320 </div> <div style="width: 45%;"> BADGE NO. (Type) 3297 </div> </div>		
TRANSFERRED TO EVIDENCE CUSTODIAN/COLLECTOR I hereby acknowledge receipt of the above listed items. <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 30%;">(Date)</div> <div style="width: 30%;">(Time)</div> <div style="width: 40%;">(Evidence Custodian/Collection)</div> </div>					
RELEASE FROM CUSTODY OF POLICE DEPARTMENT This will acknowledge the receipt from the Police Department of the City of Philadelphia of the amount of money and/or property listed above, and will constitute the release of the City of Philadelphia and its agencies from any and all future responsibility therefor.					
<input type="checkbox"/> Returned to Owner or Agent <input type="checkbox"/> Confiscated by Court <input type="checkbox"/> Destroyed by Order of Court Petition No. _____ <input type="checkbox"/> Escheat to State Escheat List No. _____ <input type="checkbox"/> To Department of Collections <input type="checkbox"/> Other Disposition (Explain): _____			RECEIVED BY (Owner or Agent)		
			OWNER OR AGENT (Signature)		
			WITNESS (Signature)	BADGE NO.	DATE
			RECEIVED BY (Other than Owner of Agent)		
			SIGNATURE AND TITLE		
			DATE		

Certifications of Counsel

I, Luis A Ortiz, Esquire, hereby certify as follows:

1. I am a member of the Bar of this Court;
2. using FedEx 2-Day Delivery, I have this day served an original and Four copies of the Joint Appendix Volume II upon Patricia S. Dodszuweit, Clerk of the United States Court of Appeals for the Third Circuit, 21400 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania, 19106-1790;
3. using First Class United States Mail, I have this day served a copy of the Joint Appendix Volume II upon Jason Bologna. Esquire, Office of the United States Attorney, 615 Chestnut Street Suite 1250 Philadelphia, PA 19106
4. I have this day filed with the Court an electronic copy of the Brief of Appellant and Joint Appendix Volume II;
5. the electronic filing is identical to the paper filing;
6. using my computer's Symantec Endpoint Protection, Version 11.05 anti-virus software, I checked the electronic Brief of Appellant and Joint Appendix Volume I for viruses, and no viruses were detected.

Date: September 18, 2019

/s/ Luis A. Ortiz
LUIS A. ORTIZ, ESQUIRE
Attorney for Appellant,
Herman Rosario