

## WESTLAW

**People v Mack**

Court of Appeals of New York September 18, 2020 35 N.Y.3d 1095 155 N.E.3d 798 131 N.Y.S.3d 305 (Table) (Approx. 1 page)



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35 N.Y.3d 1095, 155 N.E.3d 798, 131 N.Y.S.3d 305 (Table)

**People v Mack**

Court of Appeals of New York

9/18/20

CITE TITLE AS: People v Mack

2d Dept: 183 AD3d 916 (Orange)

APPLICATIONS IN CRIMINAL CASES FOR LEAVE TO APPEAL

denied 9/18/20 (Wilson, J.)

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## WESTLAW

## People v Mack

Supreme Court, Appellate Division, Second Department, New York May 27, 2020 183 A.D.3d 916 122 N.Y.S.3d 547 (Mem) 2020 N.Y. Slip Op. 03032 (Approx. 3 pages)



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183 A.D.3d 916, 122 N.Y.S.3d 547 (Mem), 2020 N.Y. Slip Op. 03032

\*\*1 The People of the State of New York, Respondent,

v

Jerome Mack, Appellant.

Supreme Court, Appellate Division, Second Department, New York

14-00649, 2015-05087

May 27, 2020

CITE TITLE AS: People v Mack

## HEADNOTE

Crimes

Proof of Other Crimes

Bruce A. Petito, Poughkeepsie, NY, for appellant, and appellant pro se.

David M. Hoovler, District Attorney, Goshen, NY (Robert H. Middlemiss and William C. Ghee of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Jeffrey G. Berry, J.), rendered June 1, 2015, convicting him of attempted murder in the second degree, assault in the first degree, criminal possession of a weapon in the second degree, criminal use of a firearm in the first degree, conspiracy in the fourth degree, and criminal possession of stolen property in the fourth degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

Ordered that the judgment is affirmed.

We agree with the County Court's determination denying that branch of the defendant's omnibus motion which was to suppress physical evidence. Contrary to the defendant's contention, the credible evidence at the suppression hearing established that the police had probable cause to arrest him (*see People v Frederique*, 137 AD3d 1161 [2016]; *People v Spann*, 82 AD3d 1013 [2011]).

The defendant's contention that the evidence was legally insufficient to support his convictions is unpreserved for appellate review (*see People v Kolupa*, 13 NY3d 786, 787 [2009]; *People v Hawkins*, 11 NY3d 484, 492 [2008]). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621 [1983]), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see CPL 470.15 [5]*; *People v Danielson*, 9 NY3d 342, 348 [2007]), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410 [2004]; \*917 *People v Bleakley*, 69 NY2d 490, 495 [1987]). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633 [2006]).

The defendant's contention that the verdict finding him guilty of attempted murder in the second degree and acquitting him of conspiracy in the second degree is repugnant is unpreserved for appellate review (*see People v Alfaro*, 66 NY2d 985, 987 [1985]; *People v Lamb*, 164 AD3d 1470, 1472 [2018]) and, in any event, without merit (*see People v Lamb*, 164 AD3d at 1472; *People v Richards*, 164 AD3d 1378 [2018]; *People v Barnette*, 150 AD3d 1136, 1137 [2017]).

The County Court providently exercised its discretion in admitting evidence of the defendant's uncharged criminal behavior. "Evidence of uncharged crimes is inadmissible where its only purpose is to show bad character or propensity towards crime" (*People v*

COUNTY COURT: COUNTY OF ORANGE  
STATE OF NEW YORK

IN THE MATTER OF AN ORDER TO SPRINT/NEXTEL  
CORPORATION, DIRECTING DISCLOSURE OF  
SUBSCRIBER INFORMATION, CALL DETAIL RECORDS,  
AND CELLSITE INFORMATION FOR CELLULAR  
TELEPHONE NUMBER (917) 531-2443 and (917) 549-  
3793

**COURT ORDER**

**WHEREAS** this Court has, upon the application of New York State Police Investigator Joseph Kolek on behalf of the People of the State of New York, pursuant to Title 18, Section 2703 of the United States Code, found that the People have set forth probable cause to believe Edgar Wilson and Jerome Mack committed the crimes of Attempted Murder in the Second Degree in violation of the provisions of section 110 and ~~125.25 subdivision 1 of the New York State Penal Law, Assault in the First Degree in~~ violation of the provisions of Section 120.10 (1) of the New York State Penal Law and other related crimes, and that the People have set forth specific and articulable facts showing that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing criminal investigation , it is hereby

**ORDERED** that SPRINT/NEXTEL CORPORATION, provide to the Orange County District Attorney's Office or New York State Police with subscriber information, and call detail records, including but not limited to cell site information and texting information, for a cellular telephone assigned telephone number (917) 531-2443 and (917) 549-3793 for the days of October 1, 2014 through October 10, 2014; and

DATED: Goshen, New York

January 9, 2015

HON.  
COUNTY COURT JUDGE

HON. JEFFREY G. BERRY  
COUNTY COURT JUDGE

COUNTY COURT: COUNTY OF ORANGE  
STATE OF NEW YORK

IN THE MATTER OF AN ORDER DIRECTING  
SPRINT/NEXTEL CORPORATION TO DISCLOSE AND  
PROVIDE SUBSCRIBER INFORMATION, CALL DETAIL  
RECORDS, AND CELLSITE INFORMATION FOR  
CELLULAR TELEPHONE NUMBERS (917) 531-2443  
and (917) 549-3793

**AFFIRMATION**

New York State Police Investigator Joseph Kolek, a New York State Police Investigator in the State of New York, hereby swears and affirms under penalty of perjury that the following is true:

1. I am a police officer currently employed by the New York State Police currently assigned to Troop F Headquarters, Middletown, New York.
2. I make this affirmation in support of an Order directing SPRINT/NEXTEL CORPORATION to disclose subscriber information and call detail records, including, but not limited to, cell site information and texting information for all calls made over a cellular telephone assigned telephone number (917) 531-2443 and (917) 549-3793 (hereinafter, "TARGET PHONES"), service to which is provided by SPRINT/NEXTEL CORPORATION, for the period of October 1, 2014 through October 10, 2014.
3. "Cell sites" are cellular transmitting and receiving stations that work much like radio antennas. Every call made over a cellular telephone is routed through a cell site, and this information is stored by the cellular company's computers. Cell site information will enable us to determine the general vicinity from where a particular cellular telephone was or is transmitting. I have been informed by representatives of SPRINT/ NEXTEL CORPORATION, that they require a Court Order to release cell site information.
4. I make this affirmation on information and belief, based upon my conversations with the law enforcement officers assigned to the New York State Police, Middletown, County of Orange, State of New York, who are familiar with this investigation,

civilian witnesses, and hospital personnel from Westchester County Medical Center, Valhalla, New York. The following provides the factual basis for this application:

5. On October 9, 2014, at approximately 9:58 a.m., a 911 call was made reporting a shooting at 125 Kelly Hill Road, in the Town of Mount Hope, Orange County, New York. I am informed by Officer Kevin McGrath of the Town of Mount Hope Police Department that he responded to the area of the shooting and located the shooting victim, Devon Simmons on the platform of the Otisville Train Station. Officer McGrath could see that Simmons was bleeding from his arm and torso area, which appeared to be the result of gunshot wounds. Officer McGrath spoke with Simmons and Simmons informed him that Simmons had just been released from the Otisville Correctional

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Facility that morning, which your affiant is aware is located a short distance from 125 Kelly Hill Road, in the Town of Mount Hope, Orange County, New York. Officer McGrath further informed your affiant that Simmons stated to him that when he left Otisville Correctional Facility, he had school books with him, and a check in his name for approximately \$1200.00, which was given to him by Otisville Correctional Facility upon his release. Simmons stated to Officer McGrath that he had been shot shortly after leaving the facility in a motor vehicle with another individual. Simmons described that vehicle to Officer McGrath as a gray vehicle, which he believed to be a Hyundai with State of Illinois license plates. Simmons described the driver as a black male wearing a baseball hat and a pink shirt. Simmons stated that after driving a short distance, the driver pulled over, Simmons got out of the vehicle, and a person he knows to be Jerome Mack got out of the vehicle and began shooting at him. Shortly after that conversation with Officer McGrath, Simmons was flown by helicopter directly to Westchester Medical Center, Valhalla, New York.

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6. Devon Simmons was also interviewed later on October 9, 2014 by your affiant at Westchester Medical Center. Simmons informed your affiant that as Simmons left the Otisville Correctional Facility on October 9, 2014 at approximately 9:45 a.m., he noticed a gray motor vehicle he believed to be a Hyundai outside the facility. Simmons described the driver of that vehicle as a black male wearing a pink t-shirt, and a black baseball hat; which he believed had the logo of the Boston Bruins, a professional hockey team. Simmons stated to your affiant that he believed the driver stated that he was friends with Simmons' cousin and was there to give him a ride. Simmons stated that he entered the vehicle and they drove off. A short time after they drove away from the facility, the driver stated that he needed to pull over to "take a piss." Simmons stated that when the driver stopped the vehicle, Simmons got out of the car to urinate also, and at that time he noticed that the trunk of the vehicle was open. Simmons stated that he then saw a person known to him as Jerome Mack get out of the trunk of the vehicle. Simmons stated that he knows Jerome Mack, because they grew up in the same neighborhood in New York City, and that they had problems between each other in the past, including an incident when Simmons shot one of Mack's friends. Simmons told your affiant that Simmons and Jerome Mack were incarcerated together in the New York State prison system, and on a previous occasion Mack stated to Simmons the "he would see me again". Officer Kevin McGrath has also informed your affiant that he reviewed the inmate records of Devon Simmons at Otisville Correctional Facility, where Jerome Mack was listed as an "enemy" of Devon Simmons. Simmons also described Jerome Mack as a black male to Officer McGrath. Investigator Kevin Chorzempa from the New York State Police informed your affiant that he obtained Jerome Mack's pedigree information from the New York State Department of Corrections inmate information

system, where Jerome Mack had also been previously incarcerated. A photograph of Jerome Mack was also obtained by the New York State Police through NYSPIN records of Jerome Mack's criminal history. Simmons also stated to your affiant that after he saw Jerome Mack get out of the trunk of the vehicle that Jerome Mack began shooting at him with a handgun, striking him at least two times on his body. Simmons stated that he then ran to the Otisville train station, where an individual at the train station called 911.

7. A "BOLO" (Be on the Lookout) was issued for a gray or white Hyundai with Illinois license plates, containing two black males. Your affiant was informed by Senior Investigator Patrick Beyea who was informed by Henrietta Vandeweert, a dispatcher with the New York State Police, that subsequent to the "BOLO", she was informed at approximately 10:47 a.m. Trooper Scott Kalleberg from the New York State Police in Monroe, New York, observed a Hyundai with Illinois license plates being operated traveling eastbound on State Route 17, Orange County, New York and then get on the New York State Thruway heading southbound. Trooper Kalleberg was able to observe the license plate number of the gray Hyundai; N90-7649. The license plate number was relayed by Trooper Kalleberg to the New York State Police headquarters in Middletown, New York. The license plate was checked through Department of Motor Vehicle records, which revealed that the vehicle was a rental vehicle from a company called Rental Car Finance, located in Des Plaines, Illinois. New York State Police Senior Investigator Thomas Boylan informed your affiant that he contacted Rental Car Finance who told him that the vehicle had been rented directly from a rental car company "Thrifty Dollar" at 148 West 83<sup>rd</sup> Street, in New York, New York. "Thrifty Dollar" was contacted and a representative informed the New York State Police that the Hyundai;

license plate number N90-7649, Illinois plates, had been rented by an Edgar Wilson, who when renting the vehicle, had given his address as 50 West 97<sup>th</sup> Street, apartment 5-J, New York New York, and a phone number of (718) 612-0609. . Additional law enforcement investigation revealed the carrier for that cellular telephone number is AT & T WIRELESS SERVICES. Senior Investigator Beyea contacted Troop NYC of the New York Police and relayed the above information. Investigators from the New York State Police then went to "Thrifty Dollar" and obtained a photograph from "Thrifty Dollar" of the person who rented the gray Hyundai. That photograph was of a black male, wearing a pink shirt.

8. A second team of New York State Police Investigators went to the address that was provided to "Thrifty Dollar", 50 West 97<sup>th</sup> Street, New York, New York. New York State Police Senior Investigator Simon Ocampo informed Senior Investigator Beyea who informed your affiant that while waiting outside 50 West 97<sup>th</sup> Street, the New York State Police Investigators observed Jerome Mack with a female, later identified as Elizabeth Garcia. The New York State Police Investigators identified Jerome Mack through the photograph of him previously obtained. At that time, Elizabeth Garcia had a black bag in her possession and she consented to the State Police Investigators looking <sup>belonging</sup> inside the bag. Inside the bag was a separate bag containing personal items to Devon Simmons. Elizabeth Garcia stated to the Investigators that Jerome Mack had called her at approximately 11:28 a.m on October 9, 2014, from the number (917) 531-2443, which further law enforcement investigation revealed to be a cellular telephone provided by Sprint/Nextel Corporation. Elizabeth Garcia also told Investigators that she has a second cellular telephone number of (917) 549-3793. After Jerome Mack was arrested and processed, he also gave (917) 549-3793 as his cellular telephone number. Further

law enforcement investigation revealed that number to also be provided by Sprint/Nextel Corporation. Subsequent to the phone call Elizabeth Garcia received from Jerome Mack, she met him thereafter at Edgar Wilson's apartment at 50 West 97<sup>th</sup> Street, and Jerome Mack then gave her the bag and asked her to hold it for him. Additionally, at approximately the same time Edgar Wilson was located in the vicinity of 50 West 97<sup>th</sup> Street, New York, New York, and he had paperwork on his person at that time bearing the name Devon Simmons. Furthermore, a white Hyundai, Illinois registration number N90-7649, was located in the vicinity of 50 West 97<sup>th</sup> Street, New York, New York.

9. A New York State Department of Motor Vehicle record was obtained for Edgar Wilson, which revealed a driver's license containing the address of 50 West 97<sup>th</sup> Street, apartment 5-J, New York, New York. New York State Police Investigators knocked on the door of 50 West 97<sup>th</sup> Street, apartment 5-J, and a woman who identified herself as Donna Brown answered the door. Donna Brown stated that Edgar Wilson is her son and that they both live at 50 West 97<sup>th</sup> Street, apartment 5-J, New York, New York.

10. Cell site information will enable us to determine the general vicinity from where the target cell phone was transmitting, so that we may determine where the suspect or any possible accomplice was located at or near the time of the shooting on or about October 9, 2014. Additionally, it will enable us to determine the general vicinity where any planning for these crimes took place. Also, cell site information will enable us to corroborate the location of the various meetings between Jerome Mack and Edgar Wilson. Additionally, the information sought may reveal the identities of other witnesses relevant to the investigation. Because the exact day of the cellular calls between Mack and Wilson is unknown, this application requests records from October 1, 2014 through October 10,

2014, one week prior to the incident, through October 10, 2014. It is reasonable to believe this information may lead to relevant information and evidence regarding the conspiracy to murder Devon Simmons.

11. Based on the foregoing, probable cause has been demonstrated that Jerome Mack and Edgar Wilson committed the above-mentioned crimes for which they are under investigation, and specific and articulable facts have been presented to show that there are reasonable grounds to believe that the information sought in this application is relevant and material to the current criminal investigation.

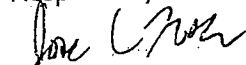
12. No previous application for the relief sought herein has been made before any Court or Justice.

13. It is further requested that SPRINT/NEXTEL CORPORATION provide the aforementioned records to the Office of the District Attorney of Orange County, New York or to the New York State Police, County of Orange, State of New York so that the information may be used immediately by members of the Orange County District Attorney's Office, the New York State Police or their agents. It is therefore requested that this application be granted, and the annexed order be issued.

DATED: January 9, 2015

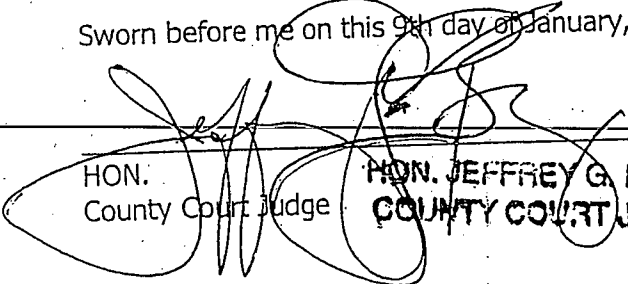
Goshen, New York

Respectfully submitted,



Inv. Joseph Kolek  
New York State Police

Sworn before me on this 9th day of January, 2015.



HON.  
County Court Judge

HON. JEFFREY G. BERRY  
COUNTY COURT JUDGE

COUNTY COURT: COUNTY OF ORANGE  
STATE OF NEW YORK

-----X  
IN RE THE APPLICATION FOR A SEARCH WARRANT FOR A  
CELLULAR MOBILE PHONE THAT IS IDENTIFIED AS A  
SAMSUNG GALAXY S 5, MODEL NUMBER SM-G900A  
SERIAL NUMBER R38F31FK87K THAT IS CURRENTLY IN THE  
POSSESSION OF THE NEW YORK STATE POLICE  
MIDDLETOWN BARRACKS, LOCATED IN THE  
TOWN OF WALLKILL,  
COUNTY OF ORANGE, STATE OF NEW YORK  
-----X

Pursuant to Section  
690.35 of NYS CPL

STATE OF NEW YORK :  
COUNTY OF ORANGE :  
TOWN OF WALLKILL :

INVESTIGATOR JOSEPH C. KOLEK, being duly sworn, deposes and says:

1. I am the applicant herein, and I am a public servant of the kind specified in Criminal Procedure Law Section 690.05(1), my title being Investigator and being employed by the New York State Police for 12 years.

2. That I do hereby state that there is reasonable cause to believe that property of a kind and character as described in section 690.10 of the Criminal Procedure Law, to wit: property that provides evidence that a crime was committed or that a particular person committed a crime; and that will be found in cellular mobile phone described as a Samsung Galaxy S 5, Model Number SM-G900A, Serial Number R38F31FK87K.

3. I make this affidavit in support of an application for a search warrant to search the aforementioned cellular mobile phone and to seize the property set forth below. This affidavit is based upon information and belief, the sources of said information and the grounds from such belief being conversations had with police and civilian witnesses, hereinafter identified.

#### SUPPORTING ALLEGATIONS OF FACT

4. On October 9, 2014, at approximately 9:58 AM, a 911 call was made reporting a shooting at 125 Kelly Hill Road in the Town of Mount Hope, Orange County, New York. I am informed by Officer Kevin McGrath of the Town of Mount Hope Police Department that he responded to the area of the shooting and located

the shooting victim, Devon Simmons, on the platform of the Otisville Train Station. Officer McGrath observed that Simmons was bleeding from the arm and torso area, which appeared to be the result of gunshot wounds. Officer McGrath spoke with Simmons, and Simmons informed him that he had just been released from the Otisville Correctional Facility, which your affiant is aware is just a short distance away from 125 Kelly Hill Road in the Town of Mount Hope, Orange County, New York. Officer McGrath further informed your affiant that Simmons stated to him that he was shot shortly after leaving the Correctional Facility in a motor vehicle with another individual. Simmons described that vehicle to Officer McGrath as a gray vehicle, which he believed to be a Hyundai with State of Illinois license plates. Shortly after that conversation with Officer McGrath, Simmons was flown by helicopter to Westchester Medical Center in Valhalla, New York.

5. On October 9, 2014, I interviewed Devon Simmons at Westchester Medical Center. Simmons informed me that when he left the Otisville Correctional Facility on October 9, 2014 at approximately 9:45 AM, he observed a gray motor vehicle that he believed to be a Hyundai outside of the facility. Simmons described the driver of that vehicle as a black male wearing a pink shirt. Simmons stated to me that he believed the driver told him he was a friend of Simmons' cousin, and was there to give him a ride. Simmons said that he entered the vehicle and they drove off. Shortly after driving away from the facility, the driver stated that he needed to pull over to "take a piss." Simmons stated that when the driver stopped the vehicle, Simmons got out of the car to urinate also, and that at that time, he observed that the trunk of the vehicle was open. Simmons stated that he then saw a person known to him as Jerome Mack get out of the trunk of the vehicle. Simmons stated that he knows Jerome Mack because they grew up in the same neighborhood in New York City, and that Simmons had testified against Mack in a previous criminal proceeding. Simmons stated to me that after he saw Jerome Mack get out of the trunk of the vehicle, Mack started shooting at him with a handgun, striking Simmons two times in his body. Simmons told me that he ran to the Otisville train station, where an individual called 911. As a result, a "BOLO" (Be On the Lookout) was issued for a gray Hyundai with Illinois license plates, containing two black males.

6. On October 9, 2014, I was advised by Henrietta Vanderweert, a dispatcher with the New York State Police, that subsequent to the issuance of the BOLO, at 10:47 AM, Trooper Scott Kalleberg from the New York State Police barracks in Monroe, New York, observed a Hyundai with Illinois license plates being operated in an easterly direction of State Route 17 in Orange County, New York and occupied by two black males. Trooper Kalleberg observed the Hyundai continue traveling onto the New York State Thruway heading southbound. Trooper Kalleberg was able to observe the license plate number of the gray Hyundai as N907649. Trooper Kalleberg relayed the license plate number to the New York State Police headquarters in Middletown, New York. The license plate number was checked through Department of Motor Vehicle Records, which revealed that the Hyundai was a rental vehicle rented by a company called Rental Car Finance, located in Des Plaines, Illinois.

7. On October 9, 2014, Senior Investigator Thomas Boylan, New York State Police, informed your affiant that he contacted Rental Car Finance, who told him that the vehicle had been rented directly from a rental car company called "Thrifty Dollar" at 148 West 83<sup>rd</sup> Street, New York, New York. "Thrifty Dollar" was contacted and a representative informed the New York State Police that the Hyundai bearing Illinois license plate number N907649 had been rented by an Edgar Wilson, who when renting the vehicle, identified himself with a New York State driver's license showing an address of 50 West 97<sup>th</sup> Street, Apartment 5-J, New York, New York. Investigators from Troop NYC of the New York State Police were contacted, and the above information was relayed to them. Investigators from the New York State Police went to the "Thrifty Dollar" at 148 West 83<sup>rd</sup> Street and obtained a photograph from surveillance video of the person that rented the gray Hyundai. The photograph shows a black male wearing a pink shirt.

8. On October 9, 2014, investigators from the New York State Police went to 50 West 97<sup>th</sup> Street, New York, New York. I am informed by Senior Investigator Simon Ocampo of the New York State Police that while waiting outside the location, investigators observed Jerome Mack. The investigators identified Jerome Mack through a photograph of him that had been previously obtained. He was taken into custody. A short time later, Edgar Wilson was observed at the location and taken into custody by State Police investigators. At the time they were taken into custody, both Jerome Mack and Edgar Wilson had in their possession personal items belonging to Devon Simmons. At the time he was taken into custody, Edgar Wilson also had in his possession a Samsung Galaxy S 5 cellular phone, Model Number SM-G900A, Serial Number R38F31FK87K.

9. Based on the foregoing, there is reasonable cause to believe that the person identified as Edgar Wilson has committed the crime of attempted murder in the second degree. Additionally, it is reasonable to believe that a search of the Samsung Galaxy S 5 Cellular phone, Model Number SM-G900A, Serial Number R38F31FK87K that is currently in the possession of the New York State Police will reveal the presence of the text messages that were sent to and received on October 9, 2014. It is also reasonable to believe that a search of the Samsung Galaxy S 5, Model Number SM-G900A, Serial Number R38F31FK87K will reveal additional text messages as well as additional phone call contact information that may indicate if additional calls were made to or received from the phone number. It is also reasonable to believe that evidence of past communications may also be present, dating back to October, 2014.

10. Based on my personal experience, I have learned that text message and certain call information can be stored and retrieved from a cellular mobile phone device. I am also informed by members of the New York State Police Computer Crime Unit that cellular phones have certain memory and phone book features that allow for the storage of phone numbers and other data that show recently received and made phone calls. In addition, memory features also frequently display the dates

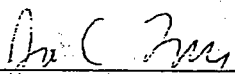
and times of the calls that were made, received, or missed. Missed calls refer to calls that were made to the particular phone but that were not picked up. Phone numbers may also be stored on the cell phone's phone book or contact feature, and the contact information stored on the phone may also list the name of the person or organization associated with the particular phone number. In addition to phone calls, the memory features may also display whether any text messages were made or received by the phone during the same period of time. I have also learned that the caller information and phone numbers relating to recently made, received, or missed calls as well as text messages can be identified and retrieved by searching the cell phone's memory and storage features. In addition to a cursory search using a phone's keypad, I have also learned that an electronic analysis and search of the cell phone's memory features can be conducted in a laboratory setting, such as is done for the search of a computer hard drive or memory device, and that call information and data can be printed and reproduced by converting or copying the data onto another device.

11. Based on my personal experience, I know that the Samsung Galaxy S 5 is a so called "smart phone," which can access the Internet. Internet access allows the user to obtain information and research, such as information about a specific location, such as a correctional facility, provide maps of geographical areas, as well as driving directions from one location to another, making it a useful tool to carry out illegal activity. I also know from my personal experience that the Samsung Galaxy S 5 is equipped with a digital camera, and that persons engaged in criminal activity often photograph themselves involved in such activity.

12. Application is therefore made to search the Samsung Galaxy S 5, Model Number SM-G900A, Serial Number R38F31FK87K for the following, including the address book, date book, email communication, text messaging, call history, including but not limited to incoming and outgoing calls, missed calls, dropped calls, cell site frequency information, the telephone number assigned to this cellular telephone, and other information that identifies this phone, pages and any other electronic communications, Internet sites visited, and related equipment including but not limited to auxiliary batteries, and stored information, data, and images contained on or in said communication equipment including but not limited to stored photographs, digital video, names and numbers and recorded messages; and electronic security equipment and devices that may be contained on said boost mobile phone. A review of that data and stored information is likely to reveal records of phone calls and text messages that were made from said Samsung Galaxy S 5 or received, as well as the dates, times, and length of such phone calls and text messages that were made on or sent or received on October 9, 2014 and during the period of October 1, 2014 through October 9, 2014. Application is also made to retrieve such data and information, analyze such data and information, and, as needed, to do so in a secure laboratory setting, and to print or otherwise reproduce such data and information by converting or copying such data or information onto the storage of another device.

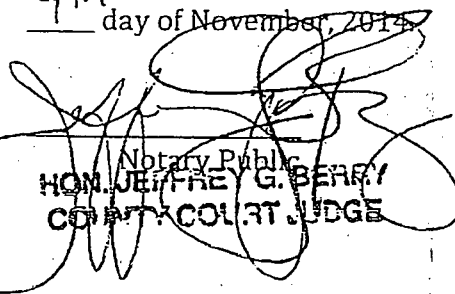
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WHEREFORE, your deponent requests that this Court issue a warrant of search and seizure in the form annexed, authorizing the search of a Samsung Galaxy S 5 Cellular Phone, Model Number SM-G900A, Serial Number R38F31FK87K that is identified as belonging to Edgar Wilson and that is currently in the possession of the New York State Police at the State Police Middletown Barracks located in the Town of Wallkill, Orange County, New York, and directing that should such property or evidence or any part thereof be found, that it be seized and retained and stored by the New York State Police and, if so ordered, be made accessible to the court together with such other and further relief as this court may deem just and proper.

  
Investigator Joseph C. Kolek  
Applicant

Sworn to before me this

7<sup>th</sup> day of November, 2014

  
Notary Public  
HON. JEFFREY G. BERRY  
COUNTY COURT JUDGE