

Docket No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERTO GRIEGO JIMENEZ,
PETITIONER,

-v-

THE STATE OF TEXAS,
RESPONDENT.

On petition for writ of certiorari from the
Texas Court of Criminal Appeals

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
VOL. 2 OF 2

Mike DeGeurin
Attorney for Roberto Jimenez

300 Main Street, Suite 300
Houston, Texas
Phone: 713-655-9000
Fax: 713-655-1812
mike@fddlaw.net

TABLE OF CONTENTS

Appendix I of II

- Appendix A -- Texas Court of Criminal Appeals' Order Denying Petition for Discretionary Review
- Appendix B -- Texas 14th Court of Appeals Memorandum Opinion
- Appendix C -- Order Denying Motion for En Banc Reconsideration
- Appendix D -- Dissent from Denial of Motion for En Banc Reconsideration
- Appendix E -- Order Denying Motion for Rehearing
- Appendix F -- Trial Court's Findings of Fact and Conclusions of Law

Appendix II of II

- Appendix G -- Judgment of Conviction
- Appendix H -- Trial Court's Certification of Defendant's Right of Appeal
- Appendix I -- Jimenez's First Amended Motion to Suppress Evidence
- Appendix J -- Jimenez's Memorandum on Motion to Suppress
- Appendix K -- Search Warrant Affidavit and Search Warrant

APPENDIX G –
Judgment of Conviction

THE STATE OF TEXAS

v.

JIMENEZ, ROBERTO GRIEGO

STATE ID No.: TX06451822

§ IN THE 174TH DISTRICT
§
§ COURT
§
§ HARRIS COUNTY, TEXAS
§

DISENT
(999-
DIJDG
(999)

JUDGMENT OF CONVICTION BY COURT—WAIVER OF JURY TRIAL

Judge Presiding: HON. HAZEL B. JONES Date Judgment Entered: 11/06/2018

Attorney for State: JEFF MATOVICH Attorney for Defendant: DEGEURIN, MIKE

Offense for which Defendant Convicted:

POSS W/INT DEL/MAN/DEL PG1 >=4<200G

Charging Instrument: Statute for Offense:
INDICTMENT N/A

Date of Offense:

04/05/2017

Degree of Offense: Plea to Offense: Findings on Deadly Weapon:
1ST DEGREE FELONY GUILTY N/A

Terms of Plea Bargain:

5 YEARS TDCJ

Plea to 1st Enhancement Paragraph: N/A - Abandoned Plea to 2nd Enhancement/Habitual Paragraph: Not Applicable

Findings on 1st Enhancement Paragraph: Not Applicable Findings on 2nd Enhancement/Habitual Paragraph: Not Applicable

Date Sentence Imposed: 11/06/2018 Date Sentence to Commence: 11/06/2018

Punishment and Place of Confinement: **5 YEARS INSTITUTIONAL DIVISION, TDCJ**

THIS SENTENCE SHALL RUN CONCURRENTLY.

SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

Fine: Court Costs: Restitution: Restitution Payable to:
\$ N/A \$ As Assessed \$ N/A VICTIM (see below) AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62

The age of the victim at the time of the offense was N/A .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From 04/05/2017 to 05/21/2017

From _____ to _____

Time Credited: From _____ to _____

From _____ to _____

From _____ to _____

From _____ to _____

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: TOWARD INCARCERATION, FINE, AND COSTS

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Harris County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

Defendant appeared in person with Counsel.

Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea. The Court received the plea and entered it of record. Having heard the evidence

submitted, the Court found Defendant guilty of the offense indicated above. In the presence of Defendant, the Court pronounced sentence against Defendant.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of Tex. Code Crim. Proc. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

Confinement in State Jail or Institutional Division. The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

County Jail Confinement / Confinement in Lieu of Payment. The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of **Harris County, Texas** on the date the sentence is to commence. Defendant shall be confined in the **Harris County Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

Fine Only Payment. The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County District Clerk**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

The Court **ORDERS** Defendant's sentence **EXECUTED**.

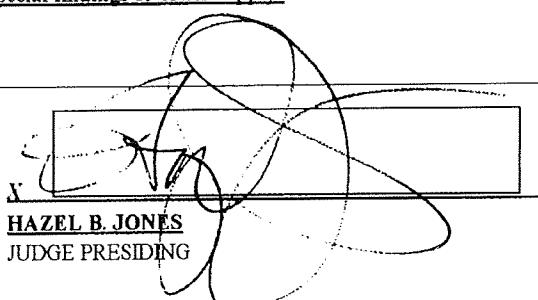
The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated. The Court further **ORDERS** that if the defendant is convicted of two or more offenses in a single criminal action, that each cost or fee amount must be assessed using the highest category of offense. Tex. Code Crim. P. art. 102.073.

Furthermore, the following special findings or orders apply:

APPEAL WAIVED. NO PERMISSION TO APPEAL GRANTED.

Signed and entered on 11/06/2018



HAZEL B. JONES
JUDGE PRESIDING

Notice of Appeal Filed: _____

Mandate Received: _____ Type of Mandate: _____

After Mandate Received, Sentence to Begin Date is: _____

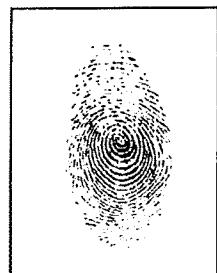
Jail Credit: _____

Def. Received on at AM PM

By:, Deputy Sheriff of Harris County

Clerk: L GARZA
Case Number: 154679401010
Defendant: JIMENEZ, ROBERTO GRIEGO

Right Thumbprint



APPENDIX H –

Trial Court's Certification of Defendant's Right to Appeal

CAUSE NO. 154679401010

THE STATE OF TEXAS

§ IN THE 174TH DISTRICT COURT

VS.

§ OF

JIMENEZ, ROBERTO GRIEGO

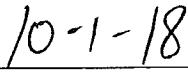
§ HARRIS COUNTY, TEXAS

TRIAL COURT'S CERTIFICATION OF DEFENDANT'S RIGHT OF APPEAL*

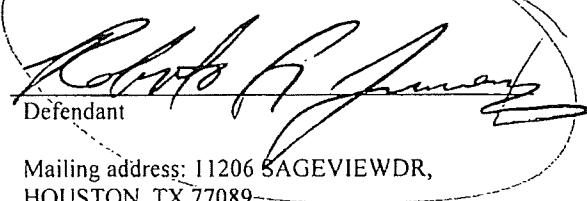
I, judge of the trial court, certify this criminal case:

Is not a plea-bargain case, and the defendant has the right of appeal [or] *RULED*
 Is a plea-bargain case, but matters were raised by written motion filed and ~~ruled~~ on before trial, and not withdrawn or waived, and the defendant has the right of appeal [or]
 Is a plea-bargain case, but the trial court has given permission to appeal, and the defendant has the right of appeal [or]
 Is a plea-bargain case, and the defendant has NO right of appeal [or]
 The defendant has waived the right of appeal.


Judge


Date Signed

I have received a copy of this certification. I have also been informed of the rights concerning an appeal of this criminal case, including any right to file a *pro se* petition for discretionary review pursuant to Rule 68 of the Texas Rules of Appellate Procedure. I have been admonished that my attorney must mail a copy of the court of appeals' judgement and opinion to my last known address and that I have only 30 days in which to file a *pro se* petition for discretionary review in the Court of Criminal Appeals. TEX. R. APP. P. 68.2. I acknowledge that, if I wish to appeal this case and if I am entitled to do so, it is my duty to inform my appellate attorney, by written communication of any change in the address at which I am currently living or any change in my current prison unit. I understand that, because of appellate deadline, if I fail to timely inform my appellate attorney of any change in my address, I may lose the opportunity to file a *pro se* petition for discretionary review.


Defendant

Mailing address: 11206 SAGEVIEWDR,
HOUSTON, TX 77089

Telephone number:

346-275-7303

Fax number (if any):

FILED

Chris Daniel
District Clerk

OCT - 1 2018

Time: _____
Harris County, Texas

Telephone number: 7136559000

Fax or Email (if any): Mike@fdclaw.net

* "A defendant in a criminal case has the right of appeal under ~~these~~ ~~the~~ ~~statutes~~. The trial court shall enter a certification of the defendant's right to appeal in every case in which it enters a judgement of guilt or other appealable order. In a plea bargain case—that is, a case in which a defendant's plea was guilty or *nolo contendere* and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant—a defendant may appeal only: (A) those matters that were raised by a written motion filed and ruled on before trial, or (B) after getting the trial court's permission to appeal." Texas Rules of Appellate Procedure 25.2(a)(2).

APPENDIX I –
Jimenez’s First Amended Motion to Suppress Evidence

Cause No: 1546794
Cause No: 1546795

THE STATE OF TEXAS § **IN THE DISTRICT COURT**
VS. § **HARRIS COUNTY, TEXAS**
ROBERTO GRIEGO JIMENEZ § **174TH JUDICIAL DISTRICT**

FIRST AMENDED MOTION TO SUPPRESS

A search warrant was executed at a location where Defendant Jimenez was arrested on April 5, 2017. The affidavit in support of the request for the search warrant did not establish probable cause for the search.

NO PROBABLE CAUSE

The affidavit for the search warrant does not provide probable cause for the search because the information is stale and does not provide credible information to show that drugs would be present at the home to be searched.

FRANKS ISSUE

An informer, Michael Tornatore was stopped on a traffic offense after being seen leaving Mr. Jimenez home. Another person was in the car with Mr. Tornatore. Drugs were found in Mr. Tornatore – the informer's automobile. It is alleged that the informer told the officers he bought the drugs from Mr. Jimenez and reportedly said he had seen approximately one ounce of drugs in the house. Mr. Tornatore at the request of the police officers called Defendant Jimenez and asked to return to his home and buy more drugs. Defendant Jimenez would not

agree to receive Mr. Tornatore and his friend at Defendant Jimenez's home. Thereafter the affidavit was prepared for the search warrant. [Exhibit A – search warrant and affidavit]

It was alleged that Mr. Tornatore was found to be in possession of a controlled substance. It was agreed between the police officers and Mr. Tornatore that Mr. Tornatore would not be charged with the criminal offense if he would try to return to Defendant Jimenez's home and try to buy drugs and write a statement that the drugs he had in his automobile were purchased from Defendant Jimenez. What was not made known to the Magistrate in the affidavit is the agreement to not charge Mr. Tornatore in exchange for his allegations against the defendant Jimenez and to not mention his unsuccessful effort to buy drugs from Mr. Jimenez. This creates a *Franks*⁴ issue pertaining to the credibility of Mr. Tornatore and to the sufficiency of probable cause. Further, the presence of Mr. Tornatore's friend upon the arrest of Mr. Tornatore was not mentioned in the affidavit presented to the magistrate.

A hearing should be conducted because the affidavit is insufficient to establish probable cause for the search and because a *Franks* issue has been presented. **Ramsey v. State**, 579 S.W.2nd (Tex.Crim.App. 1979). The suggested three-part test in *Ramsey* is:

“(1) Allege a deliberate falsehood or reckless disregard for the truth by the affiant, specifically pointing out the portion of the affidavit

Claimed to be false;

(2) Accompany these allegations with an offer of proof stating the supporting reasons;

(3) Show that when the portion of the affidavit alleged to be false is excised from the affidavit, the remaining content is insufficient to support the issuance of the warrant."

Here we have the deliberate omission in the affidavit of the deal made with the informer to not charge him with an offense if he tells the officers he bought his drugs from Defendant Jimenez; a deliberate omission of the fact that the informer - in the presence of the police officers - called Defendant Jimenez trying to buy drugs from him and this effort was unsuccessful; and the omission of the fact that the informer was with another person when drugs were found in the informer's automobile.

At the conclusion of the hearing the evidence seized from the home of Mr. Jimenez should be suppressed as evidence.

Respectfully submitted,

/s/ Mike DeGeurin
Mike DeGeurin
State Bar No. 05637500
Foreman DeGeurin & DeGeurin
300 Main Street, Suite 300
Houston, Texas 77002
Telephone: (713) 655-9000
Facsimile: (713) 655-1812

¹ *Franks v. Delaware*, 438 U.S. 154 (1978); *Ramsey v. State*, 579 S.W.2nd 922 (1979)

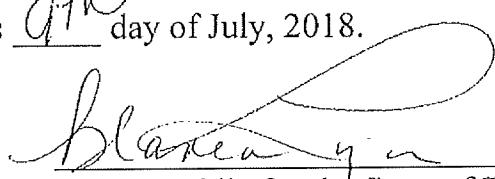
AFFIDAVIT

“The facts alleged in this Motion to Suppress are true and correct to the best of my information and belief.”

/s/ Mike DeGeurin

Mike DeGeurin

SWORN TO BEFORE ME on this 9th day of July, 2018.



Blanca B. Lujan

Notary Public for the State of Texas

Certificate of Service

A copy of the Motion to Suppress was served on the office of the District Attorney on this 9th day of July, 2018.

/s/ Mike DeGeurin

Mike DeGeurin

Cause No: 1546794
Cause No: 1546795

THE STATE OF TEXAS § **IN THE DISTRICT COURT**
VS. § **HARRIS COUNTY, TEXAS**
ROBERTO GRIEGO JIMENEZ § **174TH JUDICIAL DISTRICT**

ORDER

After a hearing was held on the Motion to suppress where both sides had the opportunity to be heard this Court concludes that the affidavit when considered together with the omitted facts pertaining to the credibility of the informer for the search warrant was lacking in probable cause. It is therefore

ORDERED that all evidence seized during the search is SUPPRESSED as evidence at trial.

Judge Presiding

APPENDIX J –
Jimenez's Memorandum on Motion to Suppress

Cause No: 1546794
Cause No: 1546795

THE STATE OF TEXAS § **IN THE DISTRICT COURT**
VS. § **HARRIS COUNTY, TEXAS**
ROBERTO GRIEGO JIMENEZ § **174TH JUDICIAL DISTRICT**

MEMORANDUM ON MOTION TO SUPPRESS

COMES NOW ROBERTO JIMENEZ through his attorney, Mike DeGeurin and files this *Memorandum on Motion to Suppress* and would show:

Background

A search was conducted on April 5, 2018 at a residence alleged to be the residence of the Defendant. The search was pursuant to a warrant issued by a magistrate. The affidavit for the search warrant was prepared and presented to the Magistrate by Officer Curry. A motion to suppress was filed asking for a *Franks* hearing, and the *Franks* hearing was held in this Court on August 16, 2018. Officer Curry and the Defendant testified. This Court allowed two weeks to file a memorandum of law on the issue of the sufficiency of the affidavit in presenting probable cause for the issuance of the search warrant.

The Franks Issue

It was established through the testimony of Officer Curry that, in the affidavit he prepared for presentation to the magistrate for the issuance of a search warrant, there was an intentional omission of the fact that the allegations of the person he

relied upon – Mike Tornatore – were obtained by a promise not to prosecute Mr. Tornatore for possession of the felony drugs found in his automobile after a traffic stop. Officer Curry admitted at the hearing that he contacted the District Attorney’s Office and made this arrangement before he presented the affidavit to the Magistrate. This information concerning the question of credibility of Tornatore was intentionally omitted from the affidavit Officer Curry presented to the magistrate, which would be both a *Giglio* and a *Brady* violation. The officer admitted the *Giglio*¹ information would be relevant to the credibility and reliability of Tornatore’s allegations. Without Tornatore’s alleged statements in the affidavit, or with the inclusion of the omitted and material information, the affidavit would not sufficiently establish probable cause to search.

In addition to the *Franks* hearing establishing that the affidavit did not include the very relevant information of promising the informer, Tornatore, that he would not be prosecuted, the hearing also established that the affidavit did not include: 1) Tornatore’s extensive criminal history;² 2) the unsuccessful attempt the informer had

¹ *Giglio v. United States*, 405 U.S. 150 (1972) is a case where the Supreme Court held that the prosecutor’s failure to inform the defense counsel or the jury that a witness had been promised not to be prosecuted in exchange for his information and testimony was a failure to fulfill the duty to present all material evidence to the jury and was a violation of *due process* requiring a new trial. It did not matter whether the failure was intentional or negligent. This case extended the Court’s ruling in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio* material refers to deals made with a witness because it directly affects the witness’s credibility.

² Tornatore has a significant criminal history, including arrests and convictions for Burglary, Theft, Burglary of a Vehicle, Evading Arrest, Use of a Criminal Instrument, Driving while Intoxicated, Assault, Driving While License Suspended, Criminal Trespass, Possession of Controlled Substance, Possession of a Firearm, and Fraudulent Use of Identification. See Exhibit “A.”

in trying to buy drugs from the defendant; and 3) that the informer was with another person when the informer was stopped by the officer. Each of these materially omitted items would have vitiated the credibility and reliability of not only Tornatore, but also the credibility and reliability of the entirety of the information contained in the search warrant affidavit. Instead, this information was intentionally omitted.

There are many cases in our jurisprudence where people convicted of felony offenses had their convictions reversed where it was shown in a writ of habeas corpus that *Giglio* evidence was neither shown to the defense attorney nor the jury during the trial. There are also cases from the Texas Court of Criminal Appeals that support our position that the affidavit was insufficient to establish probable cause for the issuance of the search warrant. For example, *State v. Davila*, 169 S.W.3d 735, (Tex.Crim.App. 2005) ruled the search warrant was not supported by an affidavit that presented probable cause even though the affidavit stated the informer was promised leniency for his information about drugs being inside a house but where the informer's information was not corroborated. *See also Gonzales v. State*, 481 S.W.3rd 300, 309-311 (Tex. App. – San Antonio 2015, no pet.) (holding that *Franks* applies to challenges of material omissions in probable cause affidavits).

It is clear from our *Franks* hearing that there was an intentional omission of highly relevant information that would bring into doubt whether the alleged

statements of the informer, Tornatore, were credible and reliable. Removing Tornatore's statements from the affidavit removes the sufficiency of the affidavit. Additionally, even if the materially omitted information were to be included in the affidavit, the affidavit would have failed to establish probable cause for issuance of the search warrant. And, recall that the first part of the affidavit did not name either the law enforcement officer or the informer who allegedly gave information about a traffic stop a week before the affidavit given to the magistrate in this case.

It is clear that the search warrant was not supported by an affidavit that supplied probable cause for the search. The results of the search should be suppressed.

Respectfully submitted,

FOREMAN, DeGEURIN & DeGEURIN

/s/ Mike DeGeurin

Mike DeGeurin
State Bar No. 05637500
300 Main Street, Suite 300
Houston, Texas 77002
713-655-9000 – Tel.
713-655-1812 – Fax
mike@fddlaw.net

ATTORNEY FOR MR. JIMENEZ

Certificate of Service

A copy of this *Memorandum on Motion to Suppress* was served on the office of the District Attorney on this 22nd day of August 2018.

/s/ Mike DeGeurin
Mike DeGeurin

**Cause No: 1546794
Cause No: 1546795**

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

HARRIS COUNTY, TEXAS

ROBERTO GRIEGO JIMENEZ

174TH JUDICIAL DISTRICT

ORDER

After a hearing was held on the Motion to Suppress where both sides had the opportunity to be heard this Court concludes that the affidavit for the search warrant was lacking in probable cause. It is therefore

ORDERED that all evidence seized during the search is SUPPRESSED as evidence at trial.

Judge Presiding

APPENDIX K --
Search Warrant Affidavit and Search Warrant

THE STATE OF TEXAS

§

SEARCH WARRANT

PL

COUNTY OF HARRIS

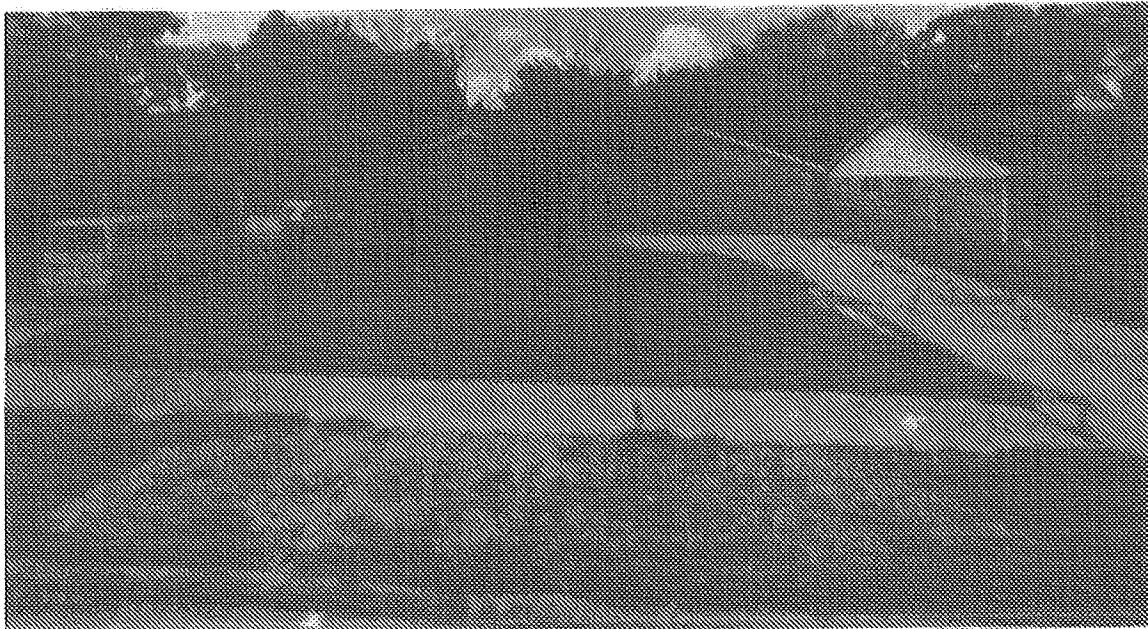
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TO THE SHERIFF OR ANY PEACE OFFICER OF HARRIS COUNTY TEXAS

GREETINGS:

WHEREAS, Complaint in writing, under oath, has been made before me by J. Curry, a peace officer employed by Harris County Constable's Office Pet. 2 Special Operation Unit, located at 101 Richey, Suite C, Pasadena, TX 77506, which complaint is attached hereto and expressly made a part hereof for all purposes and said complaint having stated facts and information in my opinion sufficient to establish probable cause for the issuance of this warrant;

YOU ARE THEREFORE COMMANDED to forthwith search the place therein named, to wit: premises located at 11026 Sageview Drive, Houston, Harris County, Texas, and more particularly described as a single story residential dwelling that has red and white colored bricks with white trim. The residence is located on the west side of Sageview, which is a public roadway that runs north and south, in Houston, Harris County, Texas. The front door is constructed of wood and glass. The front door is white in color and faces to the east. The driveway leading to a two-car garage door which is detached from the residence it's accessible from the 11000 block of Sageview. The garage doors face to the north. A photograph of the premises to be searched is below:



RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

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Said suspected place, in addition to the foregoing description, includes all other buildings, structures, storage units, safes, places and vehicles on said premises, or within the curtilage of 11026 Sageview, Houston, Harris County, Texas, that are found in, on, or around which said suspected parties, listed below, may reasonably reposit or secrete property that is the object of the search requested herein.

Further, you are authorized to enter the aforementioned premises with the authority to search for and seize any and all : drugs and controlled substances kept, prepared or manufactured in violation of the laws of this state including the felony laws of this state; to wit, marijuana, heroin, cocaine, methamphetamine, MDMA, prescription pills and implements and instruments used to distribute controlled substances including but not limited to scales, individual packaging materials and firearms used in the protection and distribution of illegal controlled substances.

I further find that affiant has established sufficient reason to believe that to knock and announce their purpose by the officers executing this warrant would be futile, dangerous, and otherwise inhibit the effective investigation of the offense or offenses related to the purpose of this warrant. Therefore, unless circumstances to the contrary are discovered prior to entry, you are hereby authorized to dispense with the usual requirement that you knock and announce your purpose before entering the suspected place to execute this warrant.

HEREIN FAIL NOT and due return make hereof.

WITNESS MY SIGNATURE on April 5, 2017, at

1840 O'clock, P.M.



(Signature)

RON NICHOLAS

(Printed name)

Harris County Criminal Law
Hearing Officer

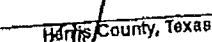
MAGISTRATE/ DISTRICT JUDGE Harris County, Texas
Harris County, Texas

FILED

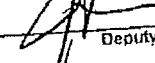
Chris Daniel
District Clerk

APR 11 2017

Time:

 Harris County, Texas

By

 Deputy

EE-58788
39

THE STATE OF TEXAS

§

AFFIDAVIT FOR

§

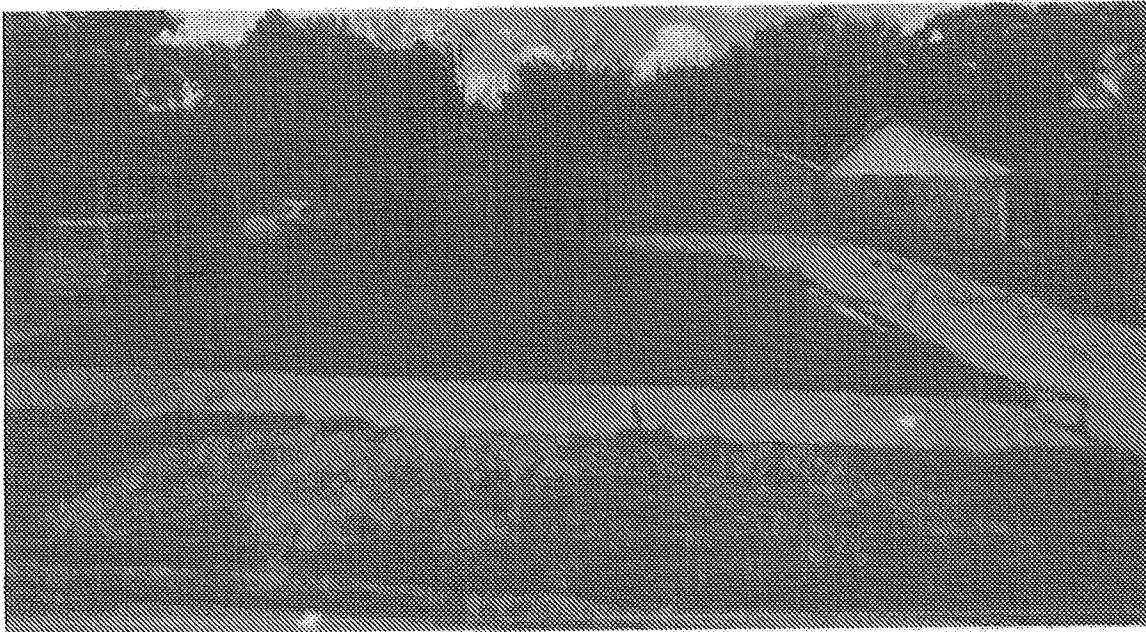
SEARCH WARRANT

COUNTY OF HARRIS

§

J. Curry, a peace officer employed by Harris County Constable's Office Pet. 2 Special Operation Unit, located at 101 Richey, Suite C, Pasadena, TX 77506, do solemnly swear that I have reason to believe and do believe that within 11026 Sageview Drive, Houston, Harris County, Texas, are drugs and controlled substances kept, prepared or manufactured in violation of the laws of this state including the felony laws of this state; to wit, marijuana, heroin, cocaine, methamphetamine, MDMA, prescription pills and implements and instruments used to distribute controlled substances including but not limited to scales, individual packaging materials and firearms used in the protection and distribution of illegal controlled substances. Said location is more particularly described as a single story residential dwelling that has red and white colored bricks with white trim. The residence is located on the west side of Sageview, which is a public roadway that runs north and south, in Houston, Harris County, Texas. The front door is constructed of wood and glass. The front door is white in color and faces to the east. The driveway leading to a two-car garage door which is detached from the residence it's accessible from the 11000 block of Sageview. The garage doors face to the north.

Said suspected place, in addition to the foregoing description, includes all other buildings, structures, storage units, safes, places and vehicles on said premises, or within the curtilage of 11026 Sageview Drive, Houston, Harris County, Texas, that are found in, on, or around which said suspected parties, listed below, may reasonably reposit or secrete property that is the object of the search requested herein. A photograph of the premises to be searched is below:



MY BELIEF IS BASED UPON THE FOLLOWING FACTS:

Your Affiant is employed as a peace officer by the Harris County Constable Office Pct. 2. Affiant has been employed with Harris County Constables Office Pct. 2 for approximately 10.5 years with a total of 13 years of law enforcement experience. Affiant is currently assigned to the Special Operations Unit of the Harris County Constable Office Pct. 2 and engages in narcotics investigations. Affiant has received training in narcotics investigations, drug identification, and drug interdiction. This Affiant has also executed multiple search warrants in his career.

On April 4, 2017, Affiant was contacted by a Sergeant employed by the Harris County Constable Office Pct. 8. Affiant knows this Sergeant employed by Harris County Constable Office Pct. 8, but for reasons related to personal safety of the Sergeant, he/she will not be named. The Sergeant informed Affiant that he conducted a traffic stop on April 1, 2017 where he was able to recover 15 Xanax. 11700 South Sam Houston Parkway East, Harris County, Tex Sargent told Affiant that the suspect advised him that he purchased the pills from a male who goes by the name "Rabbit" who lives at 11026 Sageview Drive, Houston, Harris County, Texas.

On April 5, 2017, Affiant conducted surveillance at 11026 Sageview Drive, Houston, Harris County, Texas. Affiant observed a vehicle parked in front of the home at this location. Affiant ran the license plate on this vehicle and found it to come back to a Jimenez, Roberto W/M DOB 08/29/87. Affiant knows Roberto Jimenez from previous interactions with him. During my continued surveillance, Affiant also observed a white Nissan passenger car parked in the driveway. A short time thereafter, Affiant observed a male exit the residence, walk to the parked vehicle, get in the driver's seat, and then depart the location. Affiant observed the driver of this vehicle commit a traffic violation, namely failing to signal prior to a left turn onto Sageorchard. Deputy Arellano, who is employed with Harris County Pct. 2, then conducted a traffic stop on this vehicle at a location in Harris County, Texas. After obtaining probable cause, Deputy Arellano found the driver of this vehicle to be in possession of methamphetamine. Deputy Arellano found the weight of this methamphetamine to be 1.75 grams and it field tested positive. The male driver on this vehicle was identified as Tornatore, Michael DOB 04/10/76. Tornatore advised Affiant that he was willing to write a statement regarding whom he purchased the narcotics from. Tornatore stated that he has purchased methamphetamine on four different occasions from an individual he knows as "Rabbit". Affiant showed Tornatore a picture of Roberto Jimenez and he confirmed that was the male he knows as "Rabbit". Tornatore advised on this date he arrived at Jimenez's residence and purchased 1.75 grams of methamphetamine for \$50 from Jimenez. Tornatore advised the Affiant that he observed approx. 1 ounce of methamphetamines inside the residence on this date.

Affiant checked the records of the Texas Crime Information Center (TCIC) and found that Roberto Jimenez has been convicted three times of Possessing Controlled Substances in 2012 (twice) and 2011. Additionally, Affiant observed a summary of facts maintained by the DA Intake Management system (DIMS) for Roberto Jimenez' 2012 Possession of a Controlled Substance 1-4 Grams conviction. In that case, members of the Friendswood Narcotics Unit executed a search warrant at 11026 Sageview, Houston, Harris County, Texas and found Jimenez to be in possession of Heroin.

Affiant request authorization to enter the suspects place and premises without first knocking and announcing the presence and purpose of the officers executing the warrant sought herein. Affiant has reasons to believe that such knocking and announcing would be dangerous, futile, or would inhibit the effective investigation of the offence described in the affidavit. Affiant submits the following facts and circumstances:

LL-58788
41

Based on the above listed information, together with 13 years training and experience in law enforcement, Your Affiant believes that narcotics are being sold from 11026 Sageview drive, Houston, Harris County, Texas. Your Affiant further request a no knock and announce warrant issue due to the fact that the main target of the investigation, Roberto Jimenez, is known to poses narcotics and might destroy evidence, at the location to be search. Based on experience and training, Affiant knowns that narcotics traffickers are known for concealing weapons inside their residence in order to protect proceeds from and narcotics supplies and it is unknown how many weapons are inside the residence. Affiant therefore believes that Officers would be in danger if required to announce their presence.

WHEREFORE, PREMISES CONSIDERED, your affiant respectfully requests that a warrant issue authorizing your Affiant, or any other peace officer of Harris County, Texas to enter the aforementioned premises which is 11026 Sageview Dive, Houston, Harris County, Texas, with authority to search for and to seize the property and items set out earlier in this affidavit.

AFFIANT Jason Gurry

Mark C. Hulse

(Signature)

RON NICHOLAS
Harris County Criminal Law
(Printed name)
MAGISTRATE/ DISTRICT JUDGE Hearing Officer
Harris County, Texas Harris County, Texas

FILED
Chris Daniel
District Clerk

APR 11 2017

Time: 11
Harris County, Texas
By CD Deputy

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