

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.



SIGNATURE <i>Terila Gore</i>	
NAME <i>for</i> SCOTT BEADLE	DATE 11-23-15
TITLE RECORD CENTER DIRECTOR	
NAME AND ADDRESS OF DEPOSITORY National Archives and Records Administration Southwest Region 1400 John Burgess Dr Fort Worth, TX 76140-6222	

NA FORM 14007 (10-86)

this amended response to the defendant's motion to suppress. The government responds to the defendant's motions as follows:

On August 8, 1997, the defendant filed a motion to suppress in the above numbered cause. As a basis for said motion, the defendant alleged that the search of the residence which resulted in the seizure of the evidence in this case was unlawful in that officers entered the residence without obtaining a valid search warrant (protective sweep), and the warrant which was obtained following their entry was tainted by the initial unlawful entry.

2. On August 18, 1997 the government filed a response to the defendant's motion to suppress and argued that the officers had probable cause to enter the residence prior to the warrant being executed and entered the residence to perform a valid protective sweep. The search warrant affidavit was attached to the government's response. The probable cause, prior to the officers entering the residence, were two facts stated in the warrant;

131

Original taken by at?

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT WORTH DIVISION

1997 SEP 11 A 10:42

NANCY DOHERTY, CLERK

BY: DEPUTY

UNITED STATES OF AMERICA

vs.

VICTORIA ROBERTA BARELA

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CRIMINAL NO. 4-95-CR-094-A

**GOVERNMENT'S AMENDED RESPONSE TO
DEFENDANT'S REQUEST FOR A MOTION TO SUPPRESS**

Comes now, the United States Attorney, by and through the undersigned attorney and files this amended response to the defendant's motion to suppress. The government responds to the defendant's motions as follows:

1. On August 8, 1997, the defendant filed a motion to suppress in the above numbered cause. As a basis for said motion, the defendant alleged that the search of the residence which resulted in the seizure of the evidence in this case was unlawful in that officers entered the residence without obtaining a valid search warrant (protective sweep), and the warrant which was obtained following their entry was tainted by the initial unlawful entry.

2. On August 18, 1997 the government filed a response to the defendant's motion to suppress and argued that the officers had probable cause to enter the residence prior to the warrant being executed and entered the residence to perform a valid protective sweep. The search warrant affidavit was attached to the government's response. The probable cause, prior to the officers entering the residence, were two facts stated in the warrant;

(1) That a confidential informant had been in the residence within the past 24 hours and that he had observed a large quantity of marihuana in the residence that was packaged for delivery.

(2) That Special Agent Terri Wyatt of the Drug Enforcement Administration had been on surveillance at the residence and had observed a black Buick back into the driveway of the residence, that two black males exited the vehicle, loaded what appeared to be several packages into the vehicle and left the location.

The affiant of the search warrant, Michael DeLaFlor, wrote in the search warrant affidavit, that based upon his extensive training in the area of narcotics investigations, what the confidential informant had related to him, and what he believed Agent Wyatt saw on surveillance corroborated what the confidential informant had told him, that this location was a "stash house" being maintained for the purpose of storing and distributing marihuana.

Prior to the search warrant being obtained, and based upon the belief that they had probable cause to enter the residence, agents and officers performed a protective sweep at the residence.

3. On August 19, 1997, the Court denied the defendant's motion to suppress.

4. Based upon information which was learned through trial preparation, the government changes its position with respect to the two main factors which it believed established probable cause for the issuance of the search warrant.

First, the case agent on the case at the inception of this investigation was Special Agent William Travis of the Drug Enforcement Administration. On Friday, September 5, 1997, it was

learned by the undersigned attorney that Agent Travis had been placed on Administrative leave pending the results of an investigation by the Department of Justice, Office of Professional Responsibility. On that same day, the undersigned attorney had a telephonic interview with Agent Terri Wyatt in preparation for trial. At that time, the undersigned attorney asked Agent Wyatt about the second (above) event she observed while on surveillance that affiant, Officer DeLaFlor, had written in the search warrant affidavit. At that time, Agent Wyatt informed the undersigned attorney that she had never told anyone that she had observed any black males loading packages into a black Buick since she had not seen that occur. Agent Wyatt informed the undersigned attorney that she had seen a Hispanic male arrive at the residence in a black Buick and that a white female came out of the residence with a baby, got into the Buick and left the location. Agent Wyatt told the undersigned attorney that she had informed Special Agent William Travis of these facts and that he was supposed to have related those same facts to Officer Michael DeLaFlor, who was in the process of writing the search warrant affidavit.

Following the conversation with Agent Wyatt, the undersigned attorney called Officer Michael DeLaFlor to ask him what facts Agent Travis had related to him for the search warrant affidavit. Officer DeLaFlor told the undersigned attorney that Agent Travis had related to him that Agent Wyatt stated to him (Agent Travis) that she had seen two black males arrive at the residence in a black Buick, load packages into the Buick and leave the location.

5. On Monday, September 8, 1997, the undersigned attorney contacted the attorney for the defendant and related the above facts, including the fact that Agent Travis had been placed on Administrative Leave, to counsel for the defendant. On Wednesday, September 10, 1997, the

undersigned attorney learned that Agent Travis had been terminated from his position as a Special Agent with the Drug Enforcement Administration. The undersigned attorney contacted counsel for the defendant upon learning this information.

6. Based on the forgoing, it appears to the government that the second factor in which the government relied on for probable cause to support the search warrant in this case, is untrue. This appearing to be the case, the first factor in the search warrant affidavit is insufficient to uphold the validity of the warrant. If the second factor stated in the warrant is untrue, the information the confidential informant gave in this case was not corroborated. The determination then must be made as to whether the confidential informant was known by the affiant to be a reliable and credible confidential informant whose information had been used in the past and whether those facts had been stated in the search warrant affidavit. This was not the case.

7. This leaves the government with a search warrant affidavit, which the government does not believe establishes sufficient probable cause to enter the residence.

8. Should the Court agree with the legal analysis of the government with respect to this search warrant affidavit, the government anticipates filing a motion to dismiss the above cause.

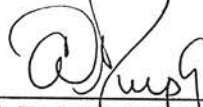
Respectfully submitted,
PAUL E. COGGINS
UNITED STATES ATTORNEY



C. D. MURPHY
ASSISTANT UNITED STATES ATTORNEY
State Bar of Texas No. 14696700
1100 Commerce Street, Third Floor
Dallas, Texas 75242

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and accurate copy of the foregoing response was provided to Kevin Clancy, attorney for the defendant, on this, the 11th day of September, 1997.



C. D. MURPHY
ASSISTANT UNITED STATES ATTORNEY

APR 10 1995

The State of Texas
County of Tarrant

SW-5318

Time 2:00
By LV3 Deputy

Warrant to Search a Particular Place For A Controlled Substance Namely Marijuana Over Four Ounces and Seize Evidence, Books, Records, Ledgers, Bank Records, Money Orders, and Computer Files relating to the Transportation, Ordering, Sale and Distribution of Marijuana Over Four Ounces, and/or records relating to the receipt and/or disposition of proceeds from the Distribution of Marijuana Over Four Ounces; Currency, Financial Instruments, Jewelry, and/or other items of value and/or proceeds of drug transactions as evidence of financial transactions relating to obtaining, transferring, laundering, secreting, or spending large sums of money made from engaging in Marijuana Over Four Ounces distribution activities; Telephone and Address Books, Computer Files, or Papers reflecting Names, Addresses, and/or Telephone Numbers of individuals associated in dealing Marijuana Over Four Ounces; Photographs of individuals, Property, Currency, and Marijuana Over Four Ounces, including Video Recordings, Materials used in the packaging, cutting, weighing, and distributing Marijuana Over Four Ounces and firearms, Believed concealed in a particular place.
(Based On Information and Belief)

The State of Texas to the Sheriff or Any Peace Officer of the City of Fort Worth, Tarrant County, State of Texas, Greeting:

Whereas, complaint in writing, under oath, has been made before me by Fort Worth Police Narcotic Officer M. DeLaFlor #1258, which complaint is hereto attached and expressly made a part hereof 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 premise therein named and described at 5916 Hampshire Blvd. South, a cream colored frame house with brown trim and a brown composition roof. Said residence is located on the south side of Hampshire and is the fifth house east of 900 Canton Drive. The numbers "5916" are located on a post on the front porch. The front door faces east. The driveway is located on the east side of the residence. Said residence has a detached garage, in the City of Fort Worth, Tarrant County, State of Texas, where the said controlled substance

SW-5318

namely Marijuana Over Four Ounces is alleged to be concealed, to include any and all detached buildings and/or garage located on the property, and if you find that for which you are directed to search you will seize the same and bring it before me at the Tarrant County Criminal Justice Center in said county on or before the 12th day of April, 1995, and you will arrest and bring before me at said place and time a Hispanic female, known as VICTORIA BARELA, approximately 20-24 years of age and a Hispanic male known as ADRIAN GARCIA, approximately 20-22 years of age, accused of concealing said controlled substance namely Marijuana Over Four Ounces. Herein fail not, and due return make hereof to me at the place and time above named.

Witness my signature on this the

8

day of

April

1995.

JUDGE

Criminal District Court #
Tarrant County, Texas

Time:

5:07 p.m.

Complaint To Search For and Seize A Controlled Substance
Namely Marijuana Over Four Ounces and Seize Evidence, Books,
Records, Ledgers, Bank Records, Money Orders, and Computer
Files relating to the Transportation, Ordering, Sale and
Distribution of Marijuana Over Four Ounces, and/or records
relating to the receipt and/or disposition of proceeds from
the Distribution of Marijuana Over Four Ounces; Currency,
Financial Instruments, Jewelry, and/or other items of value
and/or proceeds of drug transactions as evidence of financial
transactions relating to obtaining, transferring, laundering,
secreting, or spending large sums of money made from engaging
in Marijuana Over Four Ounces distribution activities;
Telephone and Address Books, Computer Files, or Papers
reflecting Names, Addresses, and/or Telephone Numbers of
individuals associated in dealing Marijuana Over Four Ounces;
Photographs of individuals, Property, Currency, and Marijuana
Over Four Ounces, including Video Recordings, Materials used
in the packaging, cutting, weighing, and distributing
Marijuana Over Four Ounces and firearms
Believed Concealed in a Particular Place.
(Based on Information and Belief).

FILED
THOMAS A. WILDER, DIST. CLERK

FILED
THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

THE STATE OF TEXAS) (
COUNTY OF TARRANT) (
CITY OF FORT WORTH) (

APR 10 1995

Time 2:00
By LB Deputy

THE UNDERSIGNED AFFIANT, BEING A PEACE OFFICER UNDER THE LAWS OF TEXAS, BEING DULY SWORN ON OATH, MAKE THE FOLLOWING STATEMENTS AND ACCUSATIONS:

I, Fort Worth Police Narcotic Officer M. DeLaFlor #1258 do solemnly swear that heretofore, on or about the 8th day of April, 1995, in the City of Fort Worth, Tarrant County, State of Texas, a Hispanic female known as "VICTORIA BARELA, approximately 20-24 years of age and a Hispanic male known as "ADRIAN GARCIA, approximately 20-22 years of age, did then and there unlawfully possess and does at this time unlawfully possess a controlled substance namely Marijuana Over Four Ounces at 5916 Hampshire Blvd., South, in the City of Fort Worth, Tarrant County, State of Texas. This residence is described as being a cream colored frame house with brown trim and a brown composition roof. Said residence is located on the south side of Hampshire and is the fifth house east of 900 Canton Drive. The numbers "5916" are located on a post on the front porch. The front door faces east. The driveway is located on the east side of the residence. Said residence has a detached garage. Said

residence is located in the City of Fort Worth, Tarrant County, State of Texas which said controlled substance namely Marijuana Over Four Ounces is possessed, and under the control of a Hispanic female known as "VICTORIA BARELA, approximately 20-24 years of age and a Hispanic male known as "ADRIAN GARCIA, approximately 20-22 years of age .

MY BELIEFS ARE BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES:

1. That your affiant, M. DeLaFlor #1258, is a Fort Worth Police Officer assigned to the Special Operations Division, Narcotics Section. That your affiant has been a police officer for over 24 years and has worked in the Narcotic Section for over 22 years, where said affiant has gained experience and training in the detection, identification, and apprehension of narcotic offenders.
2. That on April 8, 1995 your affiant was contacted by a confidential informant who advised your affiant the following information:
 - A. That a residence located at 5916 Hampshire Blvd., South is currently being used as a storage and distribution point for bulk quantities of marijuana. The confidential informant further described two subjects as being in charge of the marijuana storage and sales, stating that the subject lives at the residence at 5916 Hampshire Blvd., South. The confidential informant described the subjects as a Hispanic female known as "VICTORIA BARELA", approximately 20-24 years of age, and a Hispanic male known as "ADRIAN GARCIA", approximately 20-22 years of age, hereinafter referred to as "the suspects".
 - B. That the confidential informant stated that he/she had personally been inside 5916 Hampshire Blvd. South within the past 72 hours - with the most recent visit within the past 24 hours - and that the confidential informant observed a large bulk quantity of marijuana inside the residence and that the marijuana was packaged for delivery.

- C. That the confidential informant stated that the quantities of marijuana are packaged with brown tape for delivery and that the large bulk quantity of marijuana was to be immediately transferred from the residence at 5916 Hampshire Blvd. South to an unknown location.
3. That following the gathering of the above information, your affiant proceeded to 5916 Hampshire Blvd. South and found the residence appeared exactly as the confidential informant described.
 4. That during the surveillance of said residence, Special Agent T. Wyatt, assigned to the DEA (Fort Worth Office), observed a 1986 Buick 2dr., Texas license plate GWS57L, back into the driveway of 5916 Hampshire Blvd. South and that two black males exited the vehicle, entered the residence, then load what appeared to be several packages into the trunk of the vehicle and leave.
 5. That based upon your affiants extensive training in the area of narcotic investigations, with the quantity of marijuana, method of packaging, lack of furnishings inside the residence, and surveillance, your affiant believed that this residence is a "stash house" for marijuana and that it is common for large quantities to be immediately distributed to other "buyers".
 6. That your affiant along with officer E. Abilez approached 5916 Hampshire Blvd. South in order to secure the residence from the removal of potential evidence. That officer knocked on the front door. After no response, both your affiant and officer Abilez entered the residence to secure any possible suspects. While securing the residence, your affiant and officer Abilez smelled a strong odor, known to your affiant as Marijuana, coming from several packages wrapped in brown tape, previously described by the informant, in a closet. That no suspects were located inside the residence.
 7. That your affiant and officer Abilez also observed, in plain view, a large quantity of open boxes which were emitting a strong odor, known to your affiant as marijuana.

SW-537

8. That at that time, said residence was secured by Agents of the Drug Enforcement Administration, Fort Worth office.
9. That your affiant believes it is necessary for the confidential informant in this case to remain anonymous for obvious safety reasons.

Therefore, I, the undersigned ask that a search warrant be issued according to the provisions of the State Law to search for and seize the controlled substance namely Marijuana Over Four Ounces, believed unlawfully possessed by a Hispanic female known as "VICTORIA BARELA", approximately 20-24 years of age, and a Hispanic male known as "ADRIAN GARCIA", approximately 20-22 years of age, at 5916 Hampshire Blvd., South, in the City of Fort Worth, Tarrant County, State of Texas.

Witness my signature on this the 8 day of April, 1995

Michael De La Flor
Affiant

Subscribed and sworn to me on this the 8 day of April, 1995

[Signature]
JUDGE
Criminal District Court # 4
Tarrant County, Texas

Time: 5:07

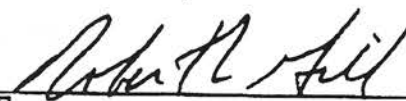
SEARCH WARRANT RETURN
SW-5378
12-S-210-95

I, SP DesCamps #1664, a duly sworn Peace Officer under the laws of the State of Texas, received a search warrant on 8th day April, 1995, for a location at 5916 Hampshire Blvd., South. I executed this search warrant on April 8, 1995, at approximately 1730 hours and as commanded, seized the following:

1. \$2,935 in U.S. Currency.
2. Two set of scales.
3. One notebook.
4. Crack baggies and miscellaneous papers.
5. 570 Kilograms of marijuana.
6. 147 Grams of crack cocaine.


Affiant

Subscribed and sworn to before me on this the 11 day of
April, 1995.


JUDGE
Criminal District Court #
Tarrant County, Texas

Time: 12:45 pm

FILED
THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

APR 11 1995

Time 12:50
By LRB Deputy

"Exhibit E"