

W/S

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

V.

Matthew S. Olvany

Case Number: 09-039 MAG

(Name and Address of Defendant)

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about April 3, 2008 in Jefferson County, in the Eastern District of Louisiana defendant(s) did,

(Track Statutory Language of Offense) knowingly and intentionally conspire with other persons known and unknown to distribute quantities of heroin, a Schedule I drug controlled substance

in violation of Title 21 United States Code, Section(s) 841(a)(1), (b)(1)(C) and 846.

I further state that I am a(n) F.B.I. Special Agent and that this complaint is based on the following facts:

Official Title

See Attached Affidavit

Continued on the attached sheet and made a part of this complaint:

Yes No

James B. Hurley, Jr.
Signature of Complainant

James B. Hurley, Jr.
Printed Name of Complainant

Sworn to before me and signed in my presence,

2/10/2009
Date

at New Orleans, Louisiana
City State

Louis Moore, Jr. U.S. Magistrate Judge
Name of Judge Title of Judge

Louis Moore, Jr.
Signature of Judge

AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE

I, James B. Hurley, Jr., being duly sworn, deposes and states as follows:

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI), United States Department of Justice, and have been so employed for over nine years. I am currently assigned to the FBI's New Orleans Field Office, where I am a member of the New Orleans Gang Task Force (NOGTF). This Task Force includes federal, state, and local law enforcement officers investigating illegal gang activity in the Metropolitan New Orleans area. Prior to joining the FBI, I practiced law, and remain licensed in good standing in all Federal and State Courts of Alabama, Florida, and Mississippi, as well as the Federal Courts of Appeals for the Fifth and Eleventh Circuits.

2. I have participated in numerous investigations involving narcotics, street gangs and violent crime, as well as investigations of alleged illegal narcotics trafficking and racketeering offenses. I am thoroughly familiar with the investigative techniques used in these investigations, such as the use of undercover agents, the use of cooperating witnesses, the use of confidential informants, the analysis of telephone toll and pen register information, search and seizure warrants, grand jury investigations, and interception of wire and oral communications.

3. I am an "investigative or law enforcement officer" as defined in Section 2510(7) of Title 18, United States Code; that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in Section 2516 of Title 18, United States Code. I am a Special Agent of the Federal Bureau of Investigation (FBI) within the meaning of Title 28, Code of Federal Regulations (CFR), Section 0.85, which authorizes the Director of the FBI, concurrently with the Administrator of the Drug Enforcement Administration (DEA), to investigate violations of the criminal drug laws of the United States. These violations are outlined in Title 21, United States Code, Section 801 *et seq.* The information contained in this Affidavit is

either personally known by me or was relayed to me by other law enforcement officers involved in this investigation.

STATUTORY AUTHORITY

4. This investigation concerns alleged violations of Title 21, United States Code, Sections 841(a)(1) and 846 which criminalize, *inter alia*, the manufacture, distribution, dispensing and/or possession with the intent to manufacture, distribute and/or dispense a controlled substance, to wit, heroin as well as conspiracy to manufacture, distribute and/or dispense controlled substances.

BACKGROUND OF THE INVESTIGATION

5. During the first five weeks of 2008, the Uptown New Orleans community experienced at least five heroin overdoses among its youth, three of which were fatal. The victims ranged in age from 16 to 21. Because of the timing and the overlapping associations of the victims, Agents initially believed that the heroin, causing the fatal overdoses, was from one tainted source of supply (organization). The investigation later revealed that the overdoses were more likely attributable to the potency of the heroin, and that there were several narcotics distribution rings involved. This particular investigation was initiated following the February 4, 2008 overdose death of 21 year old ZACHARY JAMES MOSER (hereinafter "ZAC"). Through this investigation, my partner, Special Agent Ketrick Kelley, and I have identified MATTHEW OLVANY (hereinafter "MATT"), as the source of the heroin ingested by ZAC on the day that he died.

6. During this investigation, I have reviewed numerous relevant telephone toll records and call logs, including those for the telephones utilized by ZAC and MATT. These toll records, along with interviews of witnesses, demonstrate that MATT was the source of supply for the heroin that was ingested by ZAC on the day that he died. Additionally, while acting in an undercover

capacity, I personally went to MATT's residence and negotiated the purchase of heroin from him; I also personally observed a digital scale and a high-capacity, semiautomatic handgun, which were present during my controlled drug purchase.

FACTS OF THE CASE

7. On February 6, 2008, the New Orleans Parish Forensic Center conducted an autopsy on ZAC MOSER, and on March 9, 2008, the Orleans Parish Coroner's Office issued its final "Autopsy Protocol." The report confirmed the presence of the controlled substances in ZAC's body, citing the cause of death as "acute visceral and cerebral congestion." On March 19, 2008, SA Kelley interviewed Doctor (Dr.) Alvaro Hunt, the Forensic Pathologist for the Orleans Parish Coroner's Office; Dr. Hunt has been a Forensic Pathologist in the New Orleans Metropolitan area for over forty years. Dr. Hunt advised that, after reviewing the autopsy and toxicology reports on ZAC, it was his professional opinion that the primary cause of ZAC's death was the ingestion of heroin. Dr. Hunt further advised that he was basing this opinion on the quantities and locations of the heroin in ZAC's body.

8. In March 20, 2008, Agent Kelley and I interviewed ZAC's mother, Cathy Moser (hereinafter Ms. Moser), who advised us that on Monday, February 4, 2008 she was notified that ZAC had overdosed on drugs and was dead. Ms. Moser stated that, prior to his death, ZAC had been employed at Emeril's Delmonico Restaurant on St. Charles Avenue in New Orleans (hereinafter "Delmonico"), and that ZAC had worked as a bartender there on Sunday, February 3, 2008, the night before his death. That had been ZAC's first night as a bartender, and he had been very excited about the promotion from waiter. Ms. Moser had learned that, following work that night, ZAC and his friends and/or coworkers had met at Igor's Lounge, also on St. Charles Avenue, to socialize. Ms.

Moser believed that those individuals might have additional information about where ZAC had obtained the drugs that he ingested that night, causing his death. Ms. Moser advised that ZAC's cellular phone, (504) 491-4379 (hereinafter "ZAC's phone"), was discovered a few weeks after his death, in the pocket of his jacket, still at Emeril's Delmonico restaurant. Ms. Moser provided ZAC's phone to me, along with written consent to search its contents.

9. I have reviewed the contents of ZAC's phone. The contents of ZAC's phone reflect two contacts with (504) 701-6288 (hereinafter MATT's phone) on February 3, 2008, which were among the last ten telephone calls dialed and received by ZAC's phone. MATT's phone is subscribed to by MATTHEW OLVANY at 1201 Vegas Drive, Metairie, Louisiana.

10. During this investigation, Agent Kelley and I interviewed dozens of people, and developed four Cooperating Witnesses ("CW1", "CW2", "CW3" and "CW4"), each of whom was well acquainted with both ZAC and MATT. One or more of these Cooperating Witnesses was also with ZAC at virtually all times between his arrival for work at Delmonico on Sunday afternoon, February 3, 2008, until Monday afternoon, February 4, 2008, when he was pronounced dead. Additionally, all four Cooperating Witnesses knew MATT to have supplied heroin to ZAC on prior occasions, because all four CWs had accompanied ZAC to MATT's house on prior occasions when ZAC had purchased heroin from MATT; three of the Cooperating Witnesses actually went with ZAC to purchase heroin from MATT on the day that he died.

11. All four CWs recalled working with both ZAC and MATT at Delmonico on Sunday, February 3, 2008; each clearly recalled the evening because it was both Super Bowl Sunday and the day of the Bacchus Parade. Additionally, each recalled that the restaurant was closed the following day, in observance of "Lundi Gras." Subpoenaed employment records from Emeril's Delmonico

Restaurant confirm that ZAC, MATT, and each of the four CWs worked on Sunday, February 3, 2008, and that the restaurant was closed on Monday, February 4, 2008.

12.) Following work that night, CW1, CW2, CW3 and ZAC MOSER all went to MATT OLVANY's home in Metairie to purchase heroin. Although exact recollections of the events varied slightly, all three CWs agreed that at some point following work, MATT communicated to CW2 that the heroin was ready, at which time they went to Metairie, obtained heroin from MATT, and then returned to New Orleans to socialize, drink and/or shoot pool at Igor's Lounge on St. Charles Avenue. All three CWs further recalled MATT not wanting all four of them (CW1, CW2, CW3 plus ZAC) to come inside his house because such might appear suspicious. Therefore, ZAC and CW3 remained outside in ZAC's car, after each gave money to CW2 to buy heroin on their behalf (CW1 believed ZAC gave CW2 between \$25 and \$50; CW2 recalled all four of them being at MATT's to buy heroin, but could not recall how much ZAC bought; CW3 believed ZAC gave CW2 between \$50 and \$100). In a subsequent interview, MATT OLVANY, himself, admitted selling ZAC between \$50 or \$100 worth of heroin that night. (See *infra*, paragraph 17.) Once inside MATT's house, CW1 and CW2 went into MATT's bedroom, where they both observed MATT "breaking up" the larger supply of heroin into smaller "baggies".

13) After obtaining the heroin from MATT, and before returning to New Orleans, CW3 recalled stopping at the "Circle K Store" on David Drive (also in Metairie), where he/she and ZAC ingested a portion of the heroin they had each just bought. While ingesting the heroin, CW3 recalled ZAC mentioning that he had not had any heroin in two days, and the two discussed the potency of the heroin, and the need to be careful about how much they did, so as not to overdose. CW3 recalled ZAC ingesting approximately one-quarter (25%) of the heroin that he had purchased, and wrapping

up the remaining three-quarters (75%) for later use.

14. CW4, who did not go to MATT's with ZAC and the others, was already at Igor's Lounge when CW1, CW2, CW3 and ZAC arrived. CW4 had also worked with ZAC at Emeril's Delmonico Restaurant earlier that evening, and also remembered that it had been ZAC's first night working as a bartender. CW4 recalled seeing CW1, CW2, and CW3 at Igor's that evening, along with ZAC. At the end of the night, CW4 and ZAC left Igor's together, and went to the nearby Avenue Pub, also on St. Charles Avenue. For the rest of the evening/early morning, CW4 and ZAC remained together, and eventually went back to CW4's apartment to watch television. Shortly after their arrival, CW4 fell asleep on a futon in the living room, and did not recall ZAC going into the restroom. The following morning, however, CW4 awoke and learned that ZAC had apparently locked himself in such. CW4 and his/her roommate banged on the door, but got no response. Thinking that ZAC was merely passed out from excessive drinking the night before, they allowed some time to pass. Eventually, although they did not wish to damage the rented apartment, CW4's roommate forced the door open, and they discovered ZAC unconscious on the bathroom floor, with a hypodermic needle beside him. They immediately called "911", and EMS units arrived shortly thereafter, and pronounced ZAC dead.

15. CW4 did not know that ZAC either had or was using heroin that night, and CW4 was not with him when he obtained the drugs that he apparently ingested in CW4's apartment. CW4 is confident that ZAC had the drugs prior to their departing Igor's Lounge, because CW4 would have known if he had gotten the drugs any time thereafter, because they were together.

16. On April 3, 2008, while acting in an undercover capacity, I went to 1201 Vegas Drive, Metairie, Louisiana and met with MATT OLVANY. The meeting was digitally recorded by a covert

device on my person. During the meeting, I negotiated the controlled purchase of ½ gram of a substance believed to be heroin from MATT, for one-hundred dollars (\$100.00). I made the controlled purchase from MATT while in his bedroom. While in MATT's bedroom, I also observed both a digital scale and a handgun. I later weighed and field tested the substance that I purchased; the substance weighed approximately .5 grams, and field tested positive for the presence of opiates. The suspected heroin has since been submitted to the crime lab for analysis, and results are pending.

17. The following day, on April 4, 2008, I returned to MATT's residence with SA Kelley, and interviewed MATT in an overt capacity. MATT immediately recognized me from the previous day, and voluntarily agreed to speak with us. MATT had in his possession the cell phone assigned the number (504) 701-6288 (MATT's phone). MATT admitted that he had sold heroin to ZAC MOSER on multiple occasions, the last time having been the night before ZAC died, which had also been ZAC's first night working as a bartender. During this first interview, MATT believed that night had been Saturday, February 2, 2008; MATT later revised his statement and recalled that it was in fact Sunday, February 3, 2008. MATT was certain of this fact because he recalled clearly that the restaurant had served food in a buffet-style that evening, because it had been Super Bowl Sunday as well as the day of the Mardi Gras Bacchus Parade. While at the restaurant that day, MATT recalled he and ZAC had discussed ZAC's purchasing heroin from MATT later that night. MATT admitted that ZAC did come to his residence after work that night, and that he had sold ZAC either \$50 or \$100 worth of heroin. MATT advised that was the last time he saw ZAC alive.

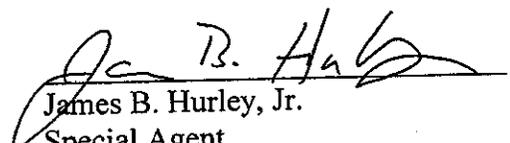
18. MATT gave Agent Kelley and myself written consent to search his bedroom and the contents of his phone. During the search, we discovered and seized several items of evidence and/or contraband, including: a substance believed to be heroin, a loaded .40 caliber Glock pistol, a digital

scale, and "baggie" corners and aluminum foil (believed to be used for packaging heroin for resale). MATT admitted that the seized pistol was also present the previous day, when I purchased heroin from him. I later field tested the seized substances, which also tested positive for the presence of opiates.

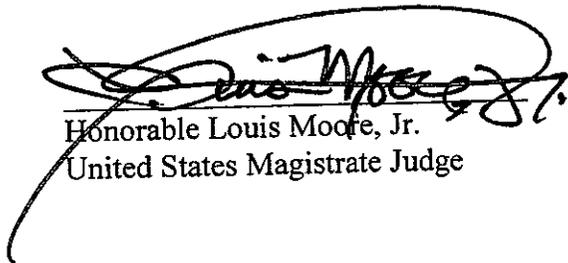
19. Through subpoena, as previously mentioned in this Affidavit, I obtained employment records from Emeril's Delmonico Restaurant for February 2, 3 and 4, 2008. The records indicated that ZAC did not work on Saturday, February 2, and that the restaurant was closed on Monday, February 4, 2008; the records also confirmed that CW1, CW2, CW3, CW4, MATT and ZAC did work together on Sunday, February 3, 2008, with MATT and ZAC "clocking out" at 11:53 p.m. and 12:01 a.m., respectively.

CONCLUSION

20. Because of my personal knowledge, as well as reports made to me by other Special Agents of the FBI, I am thoroughly familiar with the information obtained during this investigation. Based on this familiarity, I believe the facts contained herein clearly demonstrate that there is probable cause to believe that MATTHEW OLVANY violated Title 21 U.S.C. 841 (a)(1) and 846.


James B. Hurley, Jr.
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed before me this 10th day of February, 2009, New Orleans, LA


Honorable Louis Moore, Jr.
United States Magistrate Judge