

United States District Court

FILED
At Albuquerque NM

FEB 17 2009

MATTHEW J. DYKMAN
CLERK

DISTRICT OF New Mexico

UNITED STATES OF AMERICA
V.

CRIMINAL COMPLAINT

Jorge Alberto MARISCAL
Alejandro CRUZ

CASE NUMBER: 09-MJ-416

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about February 14, 2009 in McKinley County, in the District of New Mexico defendant(s) did, (Track Statutory Language of Offense)

- possess with intent to distribute more than five kilograms of cocaine
- attempt and conspiracy to distribute cocaine

in violation of Title 21 United States Code, 841(a)(1), (b)(1)(A)(ii) and 846

I further state that I am a(n) Task Force Officer and that this complaint is based on the following Official Title

facts: SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part

Yes No

Hugo Munoz
Signature of Complainant



Sworn to before me, and subscribed in my presence,

February 17, 2009
Date

at Albuquerque, New Mexico
City and State

U.S. Magistrate Judge W Daniel Shneider
Name and Title of Judicial Officer

[Signature]
Signature of Judicial

AFFIDAVIT

I, Hugo Muñoz, a Task Force Officer (TFO) with the Drug Enforcement Administration (DEA), United States Department of Justice (USDOJ), being duly sworn, do depose and hereby state the following:

INTRODUCTION

1. I am a Task Force Officer of the Drug Enforcement Administration (DEA), United States Department of Justice. I have been so employed since May 2008. As such, I am a law enforcement officer of the United States within the meaning of 18 U.S.C. § 2510(7), and am empowered by law to conduct investigations and to make arrests for offenses enumerated in 18 U.S.C. § 2516. Prior to being assigned as a Task Force Officer with the Drug Enforcement Administration, I worked as a New Mexico State Police Officer and Narcotics Agent from June 2001 to May 2008.

2. My training with the New Mexico State Police included, but was not limited to, controlled substances identification, narcotics and gang related investigative techniques, interview and interrogation techniques, preparation of search warrants, tactical application of narcotics enforcement, surveillance and electronic monitoring

3. My experience as a Task Force Officer includes, but is not limited to, conducting surveillance, interviewing witnesses, writing affidavits for and executing search warrants, and working with undercover agents and informants. I have received training in and have experience in the investigation of violations of the federal drug and money laundering laws, including the offenses listed below. I have participated and assisted in the investigation of numerous drug trafficking conspiracies that have included a Title III. As a result, I am familiar

with matters including but not limited to the means and methods used by persons and drug trafficking organizations to purchase, transport, store, and distribute drugs and to hide profits generated from those transactions. I also have experience in analyzing and interpreting drug codes and cryptic dialogue used by drug traffickers.

RELEVANT FACTS

4. On Saturday February 14, 2009, at approximately 1:40 pm, while at the Gallup New Mexico Motor Transportation Division Office Port of Entry, Transportation Inspector, Kenneth Homer conducted a Level III (paperwork) inspection on a 2000 white Kenworth commercial motor vehicle pulling a box trailer. Inspector Homer identified the driver and co-driver by their California drivers licenses. The owner and driver were identified as Jorge Alberto Paez MARISCAL and the passenger as Alejandro Pliego CRUZ. During the inspection, Inspector Homer noticed the handwritten bill of lading stating two vehicles were being transported from Bakersfield, California to Lexington, Kentucky. Inspector Homer noted the bill of lading did not have specific contact information regarding the owner of the vehicles, where the vehicles had been loaded, and where the vehicles were to be delivered. Inspector Homer inspected MARISCAL's log book and noted no entries indicating MARISCAL loading in Bakersfield. MARISCAL told Inspector Homer he was transporting the two vehicles from Fontana, California to Lexington, Kentucky. Since MARISCAL falsified his log book by not showing on "duty time" for the pickup of the vehicles in Bakersfield, Inspector Homer placed MARISCAL in Out Of Service status. Inspector Homer checked CRUZ'S log book and noted he was not able to drive for another two hours. Inspector Homer checked the trailer and noticed two vehicles in the trailer, a Dodge Van and a Chevrolet Pick-up without license plates. MARISCAL and CRUZ could not provide any information about the owner/s of the vehicles. Inspector Homer asked New Mexico Department of Transportation Division, Officer James Smid for assistance.

5. MARISCAL stated he had loaded the Dodge van in Bakersfield and the Chevrolet Pick-up in Fontana, California, which were destined for Lexington, Kentucky. Officer Smid checked MARISCAL's and CRUZ's log books noting no entries indicating being loaded in Bakersfield. Both log books showed leaving Fontana, California heading to Lexington Kentucky. Officer Smid also looked at the handwritten bill of lading and noticed no contact information for the shipper or receiver. Officer Smid stated while he spoke to MARISCAL and CRUZ he noticed they answered questions with a shaky voice and would not make eye contact. MARISCAL stated he was being paid \$2,500 to transport the vehicles. Officer Smith stated MARISCAL said the Chevrolet Pick-up was loaded in Bakersfield, California and CRUZ stated the Chevrolet pick-up was loaded in Fontana, California. Officer Smid stated based on his training and experience, the way the bill of lading was written was not consistent with the trucking industry standards, and the inconsistent travel plans, be believed criminal activity was taking place.

6. Officer Smid stated Inspector Homer finished with the Level III inspection and handed MARISCAL and CRUZ all their paperwork. Officer Smid then asked MARISCAL if he was willing to answer a few more questions because of the inconsistencies regarding the vehicles he was transporting. Officer Smid asked MARISCAL and CRUZ if they were transporting marijuana, methamphetamine and both looked at Officer Smith and promptly answered, "no". When Officer Smid asked if they were transporting cocaine, both MARISCAL and CRUZ looked at the ground, hesitated, looked at each other, turned to Officer Smid and answered, "no" with a shaky voice. Officer Smid asked if they were transporting heroin, both answered, "no".

7. Officer Smid asked MARISCAL and CRUZ if they would give consent to search the tractor and trailer for any of the contraband he had asked about. Both MARISCAL and CRUZ gave Officer Smid verbal and written consent

to search the tractor and trailer. Officer Smid looked under the bunk and noticed a large black duffle bag. Officer Smid felt the content of the bag and noticed hard bundles similar to cocaine kilogram packaging. Officer Smid opened the black duffle bag and noticed 33 kilogram packages wrapped in cellophane wrapping consistent with packaging of illegal contraband. Officer Smid cut open one of the packages revealing a white powdery substance. Based on Officer Smid's training and experience he believed he had located cocaine. Officer Smid arrested MARISCAL and CRUZ reading them their Miranda Rights. Officer Smith went back into the tractor and conducted a further search of the cabin, which he discovered more bundles of cocaine. In total, Officer Smid located and seized 69 bundles of cocaine from the inside of the tractor. Officer Smid conducted a field test on the white powdery substance, testing positive for cocaine.

8. At approximately 4:00 pm, Affiant was contacted by Officer Smid for possible Federal Adoption and prosecution. Special Agent Reynaldo Rodriguez, TFO Danny Joseph, New Mexico State Police Agent James Mowduk and Affiant drove to Gallup, New Mexico. Affiant arrived to the Gallup, New Mexico Port of Entry at approximately 9:00 pm, Affiant was provided the above facts by Officer Smid. Special Agent Reynaldo Rodriguez and Affiant interviewed CRUZ at approximately 9:30 pm. SA Rodriguez and Affiant are both fluent Spanish speakers, so the interview was conducted in Spanish. Before the start of the interview, SA Rodriguez read CRUZ his Miranda Rights in Spanish. SA Rodriguez then handed CRUZ an Advisement of Rights Form in Spanish which he signed. CRUZ waived his rights and agreed to answer questions. During the interview, CRUZ was questioned regarding his knowledge of the cocaine that was seized from the trailer he was traveling in with MARISCAL. CRUZ denied that he knew there was any cocaine in the cabin of the tractor and stated the only thing he noticed was a strong odor of pine (referring to cleaning liquid). CRUZ stated MARISCAL never told him of any cocaine being transported and did not notice any large bags containing cocaine in the cabin. The interview was

terminated at approximately 10:21 pm.

9. Special Agent Reynaldo Rodriguez and Affiant then interviewed MARISCAL at approximately 10:30 pm. Before the start of the interview, MARISCAL was given and read an Advisement of Rights Form. MARISCAL waived his rights and agreed to answer questions. MARISCAL stated because of the slow economy he has been having financial trouble. MARISCAL stated that was the reason why he agreed to transport drugs. MARISCAL stated that in December 2008, while he was unloading at a dock in California, he was approached by an unknown older Hispanic male who he only knows as "Aquel", which means "that person". MARISCAL stated AKA Aquel asked him if he was interested in transporting cocaine for him. MARISCAL stated he declined but still exchanged phone numbers with AKA Aquel on a business card. MARISCAL stated AKA Aquel called him from a restricted number for several weeks asking him if he was interested in transporting cocaine for him, MARISCAL declined every time. MARISCAL stated because of his financial troubles he and CRUZ eventually called AKA Aquel and agreed to transport cocaine.

10. MARISCAL stated he and CRUZ agreed to transport 69 kilograms of cocaine for AKA Aquel to be delivered to Lexington, Kentucky a week prior to arrest. MARISCAL stated he and CRUZ negotiated with AKA Aquel to get paid \$700 per kilogram.

11. MARISCAL stated that on February 13, 2008 he drove to Bakersfield, California to pick up CRUZ. MARISCAL stated he used the vehicles as a cover load in case they were stopped by law enforcement. MARISCAL stated he and CRUZ then drove to a truck stop in Los Angeles, California, and meet with two, unknown Hispanic males in a white Ford Explorer who handed him 3 duffle bags containing the cocaine. MARISCAL stated he and CRUZ placed one of the duffle bags under the bed of the sleeper and the other cocaine in the walls of the cabin. The interview was terminated at approximately 11:30 pm.

12. Task Force Officer Joseph and NMSP Agent Mowduk transported the 69 bundles of suspected cocaine from the Gallup Port or Entry office to the Albuquerque District Office. The 69 bundles of cocaine were subsequently labeled as Exhibit 1 and weighed as approximately 75.15 gross Kilograms.

CONCLUSION

13. Based upon the aforementioned facts, the Affiant believes there is probable cause for the arrest of Jorge Alberto Paez MARISCAL and Alejandro Pliego CRUZ for Possession with Intent to Distribute Cocaine a violation of Title 21 USC 841 and Conspiracy to Possession with Intent to Distribute Cocaine a violation of Title 21 USC 846.

14. The aforementioned facts do not include every fact known to the Affiant, only that which is sufficient to establish probable cause. I declare under penalty of perjury that the facts contained herein are true and correct to the best of my information and knowledge.



Hugo Muñoz, Task Force Officer
Drug Enforcement Administration

*Telephonically approved by James Braun, Assistant United States Attorney,
District of New Mexico, on February 16, 2009, at 7:00 pm.

SWORN and SUBSCRIBED to before me
this 17th day of February, 2009



W Daniel Schneider
United States Magistrate Judge