

ORIGINAL

Approved: _____

DANIEL H. WOLF
Assistant United States Attorney

Before: HONORABLE ROBERT W. LEHRBURGER
United States Magistrate Judge
Southern District of New York

20 MAG 7444

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UNITED STATES OF AMERICA :
 : SEALED COMPLAINT
 :
 - v. - : Violation of 21 U.S.C.
 : \$ 846
 RICHARD LOTITO, :
 : COUNTY OF OFFENSE:
 Defendant. : NEW YORK
 :
-----X

STATE OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

KENNETH McGRAIL, being duly sworn, deposes and says that he is a Special Agent with the Drug Enforcement Administration ("DEA"), and charges as follows:

COUNT ONE

(Narcotics Conspiracy)

1. From at least in or about July 2018, up to and including in or about June 2020, in the Southern District of New York and elsewhere, RICHARD LOTITO, the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree, together and with each other, to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that RICHARD LOTITO, the defendant, and others known and unknown, would and did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

3. The controlled substance that RICHARD LOTITO, the defendant, conspired to distribute and possess with intent to distribute was a quantity of mixtures and substances containing a

detectable amount of oxycodone, in violation of Title 21, United States Code, Section 841(b)(1)(C).

(Title 21, United States Code, Section 846.)

The bases for my knowledge of the foregoing charge are, in part, as follows:

4. I am a Special Agent with the DEA and I have been personally involved in the investigation of this matter. This affidavit is based upon my personal participation in the investigation, my examination of reports and records, and my conversations with other law enforcement agents and other individuals. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

BACKGROUND ON OXYCODONE AND OXYCODONE DIVERSION

5. I have personally participated in the investigation and prosecution of multiple schemes to illegally divert oxycodone for resale. Based on my participation in those investigations, and my training and experience, I have learned the following, in substance and in part:

a. Oxycodone is a highly addictive, narcotic-strength opioid used to treat severe and chronic pain conditions, such as post-operative pain, serious back and orthopedic injuries, as well as pain associated with certain forms of cancer and other terminal illnesses. Oxycodone is a Schedule II narcotic, meaning that it is a "controlled substance" under the Controlled Substances Act ("CSA"). Oxycodone can be legitimately obtained from most pharmacies with a prescription written by a treating physician (or treating physician assistant or nurse practitioner), and is typically dispensed to patients in tablet form, with dosages varying between 5 milligram ("mg") and 30 mg pills.

b. Every year, millions of Americans abuse oxycodone, with the misuse of prescription painkillers such as oxycodone leading to hundreds of thousands of annual emergency room visits nationwide. In addition, studies show that misuse of prescription medication, such as oxycodone, can lead to an increased rate of heroin use. As a result, the distribution of oxycodone is heavily regulated. For example, prescriptions for oxycodone cannot exceed

a 30-day supply, and cannot allow for "refills." Instead, a patient who has exhausted his or her initial prescription must see a treating physician again each month and be re-evaluated before obtaining a new prescription from the doctor. Similarly, to curb any potential for abuse, pharmacies are required to track and report all prescriptions filled for oxycodone, and by law, no patient is supposed to be able to fill a prescription for oxycodone more than once every 30 days, even if written by a different doctor.

c. Oxycodone prescriptions have significant cash value to drug dealers. Oxycodone prescriptions can be filled at virtually any pharmacy and the oxycodone tablets can be resold on the street for thousands of dollars. For example, 30 mg oxycodone pills, which are popular among street-level drug dealers, have a street value of approximately \$30 per pill in New York City, with prices ranging even higher in other parts of the country. In other words, a single 30-day prescription for 180 30 mg pills of oxycodone could net a street-level dealer in New York City approximately \$5,400 in cash or more.

THE DEFENDANT'S TRAFFICKING OF OXYCODONE

LOTITO and Doctor-1

6. Based on my review of data from the DEA and the New York State Bureau of Narcotic Enforcement ("BNE"), my review of phone records, my review of law enforcement records, and my training, experience, and involvement in this investigation, I have learned the following, in substance and in part:

a. From in or about July 2018 to June 2020, a family member and co-conspirator ("CC-1") of RICHARD LOTITO, the defendant, received prescriptions on a monthly basis for oxycodone from a doctor ("Doctor-1") who maintains an office in Manhattan, New York.

b. From in or about August 2018 to June 2020, LOTITO received prescriptions on a monthly basis for oxycodone from Doctor-1, as well.

c. From in or about August 2018 to July 2020, LOTITO and CC-1 consistently received oxycodone prescriptions from Doctor-1 on the same day or within days of each other. LOTITO and CC-1 have also consistently filled such prescriptions on the same day or within days of each other.

d. From in or about July 2018 to June 2020, Doctor-1 has issued prescriptions (the "Doctor-1 Prescriptions") to LOTITO and CC-1 for approximately 10,485 30 mg oxycodone pills, 510 time-released 80 mg oxycodone pills, and 180 time-released 60 mg oxycodone pills.¹

e. During the 14-month period between approximately April 2019 and June 2020, Doctor-1 issued to LOTITO on a monthly basis a prescription for 240 30 mg oxycodone pills, and during the same 14-month period, Doctor-1 issued to CC-1 prescriptions in 12 of the 14 months for 240 30 mg oxycodone pills² and prescriptions in two of the 14 months for 120 30 mg oxycodone pills. Based on my training and experience, I understand the quantity and dosage of a monthly prescription for 240 30 mg oxycodone pills would be associated with taking eight 30 mg oxycodone pills per day.

f. Based on my training and experience, I know that individuals who obtain oxycodone pills for the purpose of diverting them for resale typically pay for such pills with cash rather than through insurance, to avoid detection and maximize profit. From in or about summer 2018 through in or about June 2020, LOTITO and CC-1 have paid for oxycodone obtained pursuant to the Doctor-1 Prescriptions in cash on approximately 46 occasions and through insurance on only approximately 14 occasions. Since in or about July 2019, LOTITO and CC-1 have exclusively used cash to purchase oxycodone pills obtained pursuant to the Doctor-1 Prescriptions.

7. Based on my training and experience, I believe that the significant number (well over 10,000) of oxycodone pills that LOTITO and CC-1 have been prescribed over multiple years, the high dosages of those pills, and the method of payment for those pills (typically cash) indicate that LOTITO is unlawfully diverting for resale oxycodone prescribed to LOTITO and CC-1.

¹ Based on my training and experience, I know that 30 mg oxycodone pills are the most commonly diverted prescription opioid and have enormous cash value for drug dealers.

² BNE records indicate that Doctor-1 issued to CC-1 on April 2, 2019, one prescription for 210 30 mg oxycodone pills and another prescription for 30 30 mg oxycodone pills (together, totaling 240 30 mg oxycodone pills) rather than a single prescription for 240 30 mg oxycodone pills.

LOTITO's Distribution of Oxycodone to CC-2 for Resale

8. Based on my judicially authorized search of a cellphone ("Lotito Cellphone-1") seized from the person of RICHARD LOTITO, the defendant, incident to his arrest by the DEA on or about June 30, 2020,³ my review of DEA and BNE data, and my training and experience, I have learned, in substance and in part, that LOTITO appears to have been unlawfully diverting for resale a substantial portion of the oxycodone prescribed to LOTITO and CC-1 by Doctor-1 to, among others, a particular individual and co-conspirator ("CC-2") whose phone number is saved in Lotito Cellphone-1, including as follows:

October 2019 Pills

a. On or about October 18, 2019, Lotito Cellphone-1, which I believe was used by LOTITO,⁴ sent a text message to the contact for CC-2 saved in the Lotito Cellphone-1, stating, in substance and in part, "Hey next Thursday or Friday we will hang out." The same day, CC-2 responded, in substance and in part, "Perfect." Based on my training, experience, and involvement in this investigation, I believe that in the foregoing exchange, LOTITO and CC-2 were agreeing to meet the following Thursday or Friday for, as described below, the purpose of LOTITO selling oxycodone pills to CC-2.

b. The following Thursday, on or about October 24, 2019, between approximately 11:14 a.m. and 12:39 p.m., Lotito

³ The circumstances of LOTITO's arrest on or about June 30, 2020, are discussed *infra*, paragraph 11.

⁴ I believe that LOTITO was the user of Lotito Cellphone-1 based, in part, on the fact that Lotito Cellphone-1 was seized incident to LOTITO's arrest from his person on or about June 30, 2020, and my review of the contents of Lotito Cellphone-1, which includes several pictures depicting LOTITO and a social media account bearing LOTITO's name. In addition, Lotito Cellphone-1 is assigned a call number ("Lotito Phone Number") for which the subscriber is LOTITO's wife and which was identified as LOTITO's phone number on an insurance claim filed in or about April 2018 in connection with a vehicular accident, and which transmitted electronic communications that were lawfully intercepted in or about summer and fall 2019 during which the user of that phone number was referred to as "Rich."

Cellphone-1 exchanged the following consecutive text messages with CC-2, in substance and in part:

Sender	Recipient	Message
LOTITO	CC-2	I have 480
CC-2	LOTITO	Damn lol ok im at work till 9:30 ish then will come take what I can
LOTITO	CC-2	Ok i will be home about 10:45

Based on my training, experience, and involvement in this investigation, I believe that in the foregoing text message exchange, LOTITO confirmed he had obtained 480 oxycodone pills ("I have 480"), and CC-2 agreed to purchase from LOTITO as many pills as CC-2 could afford ("will come take what I can").

c. That same day, on or about October 24, 2019, LOTITO and CC-1 were each issued prescriptions by Doctor-1 for 240 30 mg oxycodone pills - together, a total of 480 pills (the "October Pills"). BNE data shows that those prescriptions were filled on that day, October 24, 2019, and I believe - based on my training and experience, and the facts set forth herein - that LOTITO was referring to the October Pills when he sent a text message to CC-2 on that day stating "I have 480."

d. Later that day, on or about October 24, 2019, at approximately 2:04 p.m., CC-2 sent LOTITO a text message stating, in substance and in part, "Hockey tickets too or no." LOTITO responded, in substance and in part, "No." Based on my training, experience, and participation in this investigation, I believe that CC-2 was asking whether LOTITO had Xanax available for resale, as I know through my training and experience that "hockey" is a slang term for Xanax.

e. Later that day, between approximately 7:44 p.m. and 10:02 p.m., Lotito Cellphone-1 exchanged the following consecutive text messages with CC-2, in substance and in part:

Sender	Recipient	Message
LOTITO	CC-2	We on for tonight
CC-2	LOTITO	Yeah grabbing as much as I can and then if you can save da rest I take in day or two
LOTITO	CC-2	Ok
LOTITO	CC-2	Be home 10:45
CC-2	LOTITO	Still at work
LOTITO	CC-2	Ok. Text me on my other phone when you are coming

Based on my training, experience, and involvement in this investigation, I believe that in the foregoing text message exchange, CC-2 reaffirmed that CC-2 would purchase "as much as I can" of the oxycodone pills LOTITO had obtained and would then attempt to purchase the remainder of the oxycodone pills that LOTITO had available for sale "in [a] day or two." At the conclusion of the exchange, LOTITO asked CC-2 to "[t]ext me on my other phone when you are coming." Based on my training, experience, and involvement in this investigation, I believe LOTITO so requested CC-2 to contact LOTITO on a separate phone as a means of attempting to evade law enforcement detection. I know, through my training and experience, that narcotics traffickers commonly use multiple cellphones in an effort to avoid law enforcement detection. As discussed below, when LOTITO was arrested on or about June 30, 2020, two cellphones (including Lotito Cellphone-1) were recovered from his person.

f. On or about November 1, 2019, Lotito Cellphone-1 exchanged the following consecutive text messages with CC-2, in substance and in part:

Sender	Recipient	Message
LOTITO	CC-2	Whats up
CC-2	LOTITO	Nothjng jus been havin trouble gettin em Off so been slow
LOTITO	CC-2	Its that hard to move
CC-2	LOTITO	Yeah there on some bullshit
CC-2	LOTITO	I'm still gunna so my thing jus need time

Based on my training, experience, and involvement in this investigation, I believe that in the foregoing text message exchange, CC-2 conveyed that CC-2 had not yet resold a sufficient number of the oxycodone pills already supplied to him by LOTITO as described above on or about October 24, 2019 ("jus been havin trouble gettin em Off so been slow"), such that CC-2 had not yet generated sufficient revenue to be used for purchasing additional pills from LOTITO. Confirming his understanding that CC-2 was reselling the oxycodone pills that LOTITO had provided CC-2, LOTITO asked CC-2, "Its that hard to move," which I understand to be an inquiry into the difficulty of selling ("mov[ing]") oxycodone. CC-2 then affirmed his interest in purchasing the remaining available oxycodone pills from LOTITO ("I'm still gunna [purchase the pills] jus need time"). Based on my training, experience, and involvement in this investigation, I believe the foregoing

evidences that LOTITIO supplies bulk quantities of illicit oxycodone to distributors for resale to customers at the street level.

g. On or about November 5, 2019, Lotito Cellphone-1 exchanged the following consecutive text messages with CC-2, in substance and in part:

Sender	Recipient	Message
LOTITO	CC-2	Whats up
CC-2	LOTITO	Nothing at work finally running low on those
LOTITO	CC-2	Do you want to meet up tonight or tomorrow
CC-2	LOTITO	Tomorrow Most likely I'm off
LOTITO	CC-2	I will give them to you for 20
LOTITO	CC-2	But we have to do it tomorrow
CC-2	LOTITO	Howmany left tho
CC-2	LOTITO	Gotta make sure have mkney for all
LOTITO	CC-2	150 to 180 not sure
CC-2	LOTITO	Kk

Based on my training, experience, and involvement in this investigation, I believe the foregoing exchange of text messages is a continuation of the text messages discussed above regarding the October Pills. In particular, LOTITO was attempting to sell to CC-2 the remaining October Pills (*"Do you want to meet up tonight or tomorrow"*) that CC-2 had not been able to purchase in the prior days. CC-2 indicates CC-2 is able to purchase at least a portion of the remaining pills because CC-2 had successfully sold the pills CC-2 previously acquired from LOTITO (*"finally running low on those"*). LOTITO then agreed to sell CC-2 additional pills for \$20 per pill (*"I will give them to you for 20"*) on the condition that CC-2 purchase those pills the next day (*"we have to do it tomorrow"*).

November 2019 Pills

h. BNE data shows that on or about November 18, 2019, LOTITO and CC-1 were each issued prescriptions by Doctor-1 for 240 30 mg oxycodone pills - together, a total of 480 pills (the "November Pills"). The prescription issued to CC-1 was filled on or about November 18, 2019, and the prescription issued to LOTITO was filled on or about November 19, 2019.

i. On or about November 18, 2019, Lotito Cellphone-1 exchanged the following consecutive text messages with CC-2, in substance and in part:

Sender	Recipient	Message
LOTITO	CC-2	You want to hang out tonight i have 240 good ones
LOTITO	CC-2	Tonight
LOTITO	CC-2	You want them all tomorrow another 240
CC-2	LOTITO	Yeah ima try take em all

Based on my training, experience, and involvement in this investigation, I believe that in the foregoing exchange of text messages, LOTITO was offering to sell CC-2 the November Pills ("You want to hang out tonight"). Consistent with the above-described BNE data showing that CC-1's prescription for 240 30 mg oxycodone pills was filled on or about November 18, 2019 and that LOTITO's prescription for 240 30 mg oxycodone pills was filled the next day, LOTITO told CC-2 that he had 240 oxycodone pills available that day, November 18, 2019 ("I have 240 good ones"), and that LOTITO "tomorrow" would have "another 240." CC-2 agreed to purchase all 480 of the November Pills ("ima try take em all").

January 2020 Pills

j. BNE data shows that on or about January 17, 2020, LOTITO and CC-1 were each issued prescriptions by Doctor-1 for 240 30 mg oxycodone pills - together, a total of 480 pills (the "January Pills"). Those prescriptions were filled on or about that day, January 17, 2020.

k. On or about January 17, 2020, Lotito Cellphone-1 exchanged the following consecutive text messages with CC-2, in substance and in part:

Sender	Recipient	Message
LOTITO	CC-2	We on for tonight
CC-2	LOTITO	Ya what street again
LOTITO	CC-2	480 hudson st
LOTITO	CC-2	11 tonight good
CC-2	LOTITO	Yes gunna grab as many as can

Based on my training, experience, and involvement in this investigation, I believe that in the foregoing exchange of text messages, LOTITO and CC-2 used coded language to discuss the sale of the January Pills. Specifically, CC-2 asked LOTITO how many pills LOTITO had available to sell ("what street again") and LOTITO

responded that he had 480 pills available to sell ("480 hudson st"), i.e., the same quantity as the January Pills. CC-2 expressed his intent to purchase "as many [of the January Pills] as [he] can."

February 2020 Pills

1. BNE data shows that on or about February 13, 2020, LOTITO and CC-1 were each issued prescriptions by Doctor-1 for 240 30 mg oxycodone pills - together, a total of 480 pills (the "February Pills"). The prescription issued to LOTITO was filled on or about February 15, 2020, and the prescription issued to CC-1 was filled on or about February 17, 2020.

m. On or about February 15, 2020, Lotito Cellphone-1 exchanged the following consecutive text messages with CC-2, in substance and in part:

Sender	Recipient	Message
LOTITO	CC-2	You want to meet up this afternoon
CC-2	LOTITO	Howmany and when
LOTITO	CC-2	200 or 240 not sute yet but at like 5:30
CC-2	LOTITO	Got you
LOTITO	CC-2	You around at 5:30
CC-2	LOTITO	Yeah
LOTITO	CC-2	Ok
CC-2	LOTITO	What's final Number
CC-2	LOTITO	Taking everything , "saved up" lol
LOTITO	CC-2	220
LOTITO	CC-2	Monday 240 more

Based on my training, experience, and involvement in this investigation, I believe that in the foregoing exchange of text messages, LOTITO agreed to sell CC-2 a portion of the February Pills that LOTITO obtained pursuant to the prescription LOTITO filled on or about that same day, February 15, 2020 (CC-2: "What's final Number"; LOTITO: "220"), and to sell CC-2 the remaining portion of the February Pills that LOTITO planned to obtain through the prescription issued to CC-1 that would be filled a couple days later, on or about February 17, 2020 ("Monday 240 more").

LOTITO's Diversion for Resale of
Pills Obtained from the Pharmacy Owner

9. Based on my review of phone records, my review of BNE data, my review of surveillance reports relating to RICHARD LOTITO,

the defendant, my conversations with other law enforcement agents who engaged in surveillance of LOTITO, and my training and experience, I have learned the following, in substance and in part:

a. Since at least approximately 2019, based on my review of commercial databases containing business formation information, LOTITO has operated a commercial e-cigarette and vaporizer store (the "Store") located in Staten Island, New York.

b. On or about April 9, 2019, at approximately 11:15 a.m., Lotito Cellphone-1, which I believe is used by LOTITO as explained above, exchanged phone calls with a phone number ("Pharmacy Owner Phone Number") subscribed to in the name of the owner ("Pharmacy Owner") of a particular pharmacy ("Pharmacy-1") in the New York City area, and with a billing address of the Pharmacy Owner's residence.

c. At approximately 11:41 a.m., LOTITO was observed exiting Pharmacy-1 with a white paper pharmacy bag in his hand. LOTITO was then observed driving to a particular hospital located in Staten Island. LOTITO engaged in a conversation with an unknown male, who handed LOTITO a blue bag.

d. Later that day, LOTITO was observed entering the Store with a white bag in his hand, which appeared to be the same white bag he obtained from Pharmacy-1.

e. Based on my review of BNE data, I have learned, in substance and in part, that although records reflect that LOTITO filled a prescription with Pharmacy-1 for approximately 240 oxycodone pills on or about April 5, 2019, there are no similar records indicating LOTITO (or CC-1) filled a prescription between on or about April 5, 2019, and on or about April 9, 2019. Based on these records and the surveillance that was conducted, as well as the interceptions discussed below, I believe that, on or about April 9, 2019, the Pharmacy Owner was providing LOTITO with a controlled substance for which LOTITO did not have a prescription, which LOTITO transported to the Store.

10. Based on my participation in this investigation, including conversations with other law enforcement officials, surveillance conducted of RICHARD LOTITO, the defendant, my review of BNE data, my review of phone records, my review pursuant to a judicially authorized Title III interception order of intercepted communications over a cellphone (the "Pharmacy Owner Cellphone") assigned the Pharmacy Owner Phone Number and used by the Pharmacy

Owner, and my training and experience, I have learned the following, in substance and in part:⁵

a. On or about July 23, 2019, at approximately 2:49 p.m., the Pharmacy Owner Cellphone, which was used by the Pharmacy Owner as explained above, received a call from a male using a cellphone assigned the Lotito Phone Number (as defined above, "Lotito Cellphone-1"), which as explained above I believe was used by LOTITO. During the call, the Pharmacy Owner and LOTITO engaged in the following conversation, in substance and in part:

Speaker	Statement
Pharmacy Owner	Hey. What's going on bro?
LOTITO	What's up brother? You get back? ⁶
Pharmacy Owner	Bro, we're back bro, and I got uhm, finally a word yesterday from my drug company, the guy said is, uhm, finally it's some good news, he said to me "Hey [first name of Pharmacy Owner], I didn't forget you, I'm working on sending your paperwork for the approval as of right now as of last night." So maybe things will start happening soon.
LOTITO	Okay. Question [first name of Pharmacy Owner].
Pharmacy Owner	Yeah.
LOTITO	Any, any hockey sticks?

⁵ Descriptions and quotations set forth herein of intercepted communications are based on my review of the recordings of the communications and preliminary draft transcripts of the recordings.

⁶ Based on my training, experience, and involvement in this investigation, I have learned, in substance and in part, that prior to on or about June 5, 2019, Pharmacy-1 was exclusively supplied with controlled substances by a particular pharmaceuticals supplier ("Supplier-1"). On or about June 5, 2019, Supplier-1 ceased supplying Pharmacy-1 with controlled substances following an audit it conducted of Pharmacy-1. After on or about June 5, 2019, the Pharmacy Owner engaged in several intercepted communications explaining steps that the Pharmacy Owner was taking to obtain a new supplier of controlled substances for Pharmacy-1. I believe that LOTITO's question "You get back?" is a reference to his understanding that Pharmacy-1 was then without a supplier of controlled substances and was attempting to obtain a new supplier.

Speaker	Statement
Pharmacy Owner	You know what bro? Actually it's funny, I don't have it yet but I spoke to someone yesterday actually about it, and they said they'll have them but they'll probably have the blue ones but it's the stick, the blue ones.
LOTITO	They'll take them.
Pharmacy Owner	Yeah, alright good. I should be able to work on it within the day, I might be able to. [Voices Overlap]

LOTITO	[First name of Pharmacy Owner], get as many as you can.
Pharmacy Owner	You got it bro, let me work on it right now bro. I'll work on whatever I can.

Based on my training, experience, and involvement in this investigation, I believe that the Pharmacy Owner and LOTITO were discussing the diversion of controlled substances. Specifically, the Pharmacy Owner informs LOTITO that he may be getting a supply of controlled substances from a new pharmaceutical supplier ("I got uhm, finally a word yesterday from my drug company. . . . So maybe things will start happening soon") and LOTITO asks whether the Pharmacy Owner will be receiving any "hockey sticks," which as discussed above I believe is a reference to Xanax. The Pharmacy Owner informs LOTITO that the supplier should be able to supply Xanax, and LOTITO replies that he can sell the Xanax pills to others ("They'll take them") and asks the Pharmacy Owner to supply him with as many Xanax pills as the Pharmacy Owner can obtain ("get as many as you can."). The Pharmacy Owner agrees that he will try to obtain a supply of Xanax ("You got it bro, let me work on it right now bro.").

b. On or about July 26, 2019, at approximately 5:26 p.m., the Pharmacy Owner received a call from LOTITO using Lotito Cellphone-1. During the call, the Pharmacy Owner and LOTITO engaged in the following conversation, in substance and in part:

Speaker	Statement
Pharmacy Owner	Hey, what's up Rich?
LOTITO	What's up brother?
Pharmacy Owner	Yeah, not much bro. Same shit bro.
LOTITO	You hear anything on the hockey?
Pharmacy Owner	I didn't hear anything yet bro. I just got back home now with the [unintelligible]. I

Speaker	Statement
	don't know if I'm getting them tonight. I'm gonna try [system glitch] still trying.
LOTITO	Okay.
Pharmacy Owner	I'm still trying.
LOTITO	Give me a call.
Pharmacy Owner	Oh, I'll definitely call you.
LOTITO	My friend is going away Sunday and they really need it.
Pharmacy Owner	Bro, a hundred percent, bro. I'll call you, the minute. A hundred percent.

Based on my training, experience, and involvement in this investigation, I believe that the Pharmacy Owner and LOTITO were discussing the diversion of controlled substances. Specifically, LOTITO asks about the Pharmacy Owner's supply of "the hockey," a term which, as noted, I understand to be a slang term for Xanax. LOTITO explains that LOTITO wants the Xanax so he can provide the Xanax to a "friend" who "really need[s] it," which I believe further indicates LOTITO planned to divert the Xanax for resale to an individual who was not prescribed the pills.

c. On or about August 1, 2019, at approximately 4:16 p.m., the Pharmacy Owner received a call from Lotito Cellphone-1. During the call, the Pharmacy Owner and LOTITO engaged in the following conversation, in substance and in part:

Speaker	Statement
LOTITO	What up brother
Pharmacy Owner	Hey, what's up bro? How you feeling?
LOTITO	Good, good, a little sluggish bro, a bit sluggish. Question.
Pharmacy Owner	Yeah.
LOTITO	The other things, what do you have, the blues?
Pharmacy Owner	Oh, oh, the hock things?
LOTITO	No, you said you may have blues today, huh?
Pharmacy Owner	Oh, yeah, yeah. I do. I have some, uh, I'll double check, fifty or sixty maybe?
LOTITO	Okay. Alright.
Pharmacy Owner	I thought [unintelligible] the hockeys now too [laughs]
LOTITO	What do you have on the hockeys?
Pharmacy Owner	I think I have about two for you.
LOTITO	Okay. You got it.

Speaker	Statement
Pharmacy Owner	Alright? So give me a buzz. See you later on.
LOTITO	You got it. I'll see you tonight, [first name of Pharmacy Owner]
Pharmacy Owner	I'll see you tonight. You got it, bro. Bye.

Based on my training, experience, and involvement in this investigation, I believe that the Pharmacy Owner and LOTITO are discussing the diversion of controlled substances, including oxycodone. LOTITO asks the Pharmacy Owner if the Pharmacy Owner has "the blues," which, based on my training and experience, I believe is a reference to oxycodone pills. I know, through my training and experience, that 30 mg oxycodone pills are typically blue. The Pharmacy Owner responds that the Pharmacy Owner has "some . . . fifty or sixty maybe?" The Pharmacy Owner also confirms for LOTITO that the Pharmacy Owner has a supply of "hockeys," which I believe is a reference to Xanax, as discussed above.

June 30, 2020 Surveillance and Arrest of LOTITO

11. Based on my judicially authorized search of Lotito Cellphone-1, my review of DEA and BNE data, my review of the results of a DEA audit of a particular pharmacy in Staten Island ("Pharmacy-2"), my review of surveillance reports relating to RICHARD LOTITO, the defendant, and CC-1, my review of video recordings of certain incidents described herein, my conversations with other law enforcement agents who engaged in surveillance of LOTITO and CC-1, and my training and experience, I have learned the following, in substance and in part:

a. Paper prescriptions obtained from Pharmacy-2 on or about June 30, 2020, and described further below, show that LOTITO and CC-1 were each issued prescriptions by Doctor-1 on or about June 25, 2020 (the "June 25 Prescriptions") for 240 30 mg oxycodone pills - together, a total of 480 pills.

b. On or about June 27, 2020, CC-1 presented Pharmacy-2 with the June 25 Prescriptions and requested they be filled. On or about the same day, Lotito Cellphone-1 exchanged the following consecutive text messages with CC-2, in substance and in part:

Sender	Recipient	Message
LOTITO	CC-2	Hey have people getting them this week but the price would be 25 they are so in demand right now
CC-2	LOTITO	Ok when

Sender	Recipient	Message
LOTITO	CC-2	Monday or Tuesday the couldn't get them today

Based on my training, experience, and involvement in this investigation, I believe that LOTITO planned to resell the oxycodone pills prescribed through the June 25 Prescriptions, which CC-1 had delivered to Pharmacy-2 that day. I further believe that in the foregoing exchange of text messages, LOTITO was referring to the pills he expected to obtain through the June 2 informed CC-2 that LOTITO was expecting to obtain an unspecified quantity of oxycodone pills on "Monday" (June 29, 2020) or "Tuesday" (June 30, 2020) and that LOTITO would be selling such pills for \$25 each (*"the price would be 25 they are so in demand right now"*), since oxycodone pills were *"so in demand right now."*

c. On or about June 29, 2020, Lotito Cellphone-1 received a text message from CC-2 stating, "Howmany tnite," which I believe, based on my training, experience, and involvement in this investigation, was an inquiry into the number of oxycodone pills LOTITO would have available for sale that day. A review of Lotito Cellphone-1 does not indicate whether any response was sent from Lotito Cellphone-1 to the foregoing text message.

d. On or about June 30, 2020, at approximately 12:15 p.m., CC-1 arrived by vehicle at Pharmacy-2 and purchased, pursuant to the June 25 Prescription issued to CC-1, a bottle of 240 30 mg oxycodone pills for approximately \$480. CC-1 paid for such pills with cash. CC-1 then exited Pharmacy-2 with a white pharmacy bag (the "June 30 White Bag") in-hand and returned to his vehicle.

e. Approximately 55 minutes later, at approximately 1:10 p.m., CC-1 arrived by vehicle at a pizzeria ("Pizzeria") in Edison, New Jersey. As CC-1 arrived, LOTITO was standing in the doorway of his own vehicle, a pickup truck ("Lotito Vehicle"), parked in the parking lot of the Pizzeria. Law enforcement, which was monitoring LOTITO's location through location data obtained pursuant to a judicially authorized warrant, conducted surveillance of the Pizzeria parking lot.

f. At the Pizzeria, CC-1 parked in the parking lot and exited his vehicle holding the June 30 White Bag. CC-1, continuing to hold the June 30 White Bag, approached LOTITO, and the two stood in an area next to the Lotito Vehicle that was obstructed from view by law enforcement. Moments later, LOTITO and CC-1 walked away from the Lotito Vehicle, with neither LOTITO nor CC-1 carrying the June 30 White Bag, leading law enforcement agents to believe,

based on their training and experience, that CC-1 had given LOTITO the June 30 White Bag and LOTITO had placed the June 30 White Bag in the Lotito Vehicle.

g. At approximately 2:12 p.m., CC-1 left the vicinity of the Pizzeria by vehicle.

h. At approximately 2:22 p.m., LOTITO left the Pizzeria and began entering the rear passenger door of the Lotito Vehicle, at which point law enforcement agents placed LOTITO under arrest. While detaining LOTITO, law enforcement agents observed in plain view the June 30 White Bag in the cabin of the Lotito Vehicle and conducted a search of LOTITO's person incident to arrest, finding on LOTITO's person approximately \$7,425.95 in cash and two cellphones, including Lotito Cellphone-1, certain of the contents of which are discussed above.


i. Law enforcement agents then seized the June 30 White Bag, and found inside it a pill bottle prescribed to CC-1 – and not LOTITO – and 240 pills that, based on their training and experience, the law enforcement agents believed to be 30 mg oxycodone pills. LOTITO was subsequently released from custody and not charged at that time.

WHEREFORE, I respectfully request that a warrant be issued for the arrest of RICHARD LOTITO, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.

S/ by the Court with permission

Kenneth McGrail
Special Agent
DEA

Sworn to me through the transmission of
this Affidavit by reliable electronic means,
pursuant to Federal Rules of Criminal Procedure 4.1 and
41(d)(3),
this 15th day of July, 2020



HONORABLE ROBERT W. LEHBURGER
United States Magistrate Judge
Southern District of New York