

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States Courts
Southern District of Texas

FILED

June 29, 2020

David J. Bradley, Clerk of Court

Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order

United States of America)

v.)

RICKY EARL BERNARD)

Case No. **4:20-mj-1160**

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 26, 2020 in the county of Harris in the
Southern District of Texas, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
21 U.S.C. § 841(a)(1)	Possession with intent to distribute a controlled substance

This criminal complaint is based on these facts:

See attached Affidavit in support of the Criminal Complaint.

Continued on the attached sheet.



Complainant's signature

Walter Hammann, Task Force Officer, DEA

Printed name and title

Sworn to before me telephonically.

Date: 06/29/2020

City and state: Houston, Texas



Frances H. Stacy
United States Magistrate Judge

United States Magistrate Judge Frances H. Stacy

Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

I, Walter Hammann, being duly sworn, hereby depose and state as follows:

1. I have been employed by the City of League City as a peace officer since 2003. I am currently assigned to the Criminal Investigations Division where my job duties are to investigate all crimes, including narcotics violations. Since 2014, I have also been assigned as a Task Force Officer (“TFO”) to the Drug Enforcement Administration (“DEA”), Galveston Resident Office (“GRO”). The GRO is a multi-agency task force that investigates the illegal trafficking of illicit drugs and pharmaceutical controlled substances. The Task Force is comprised of agents from the DEA, Internal Revenue Service, Homeland Security Investigations, and state and local law enforcement personnel assigned as Task Force Officers. I have conducted and assisted in state and federal investigations for violations of the Texas Controlled Substance Act and Title 21 of the United States Code. I have received advanced training in narcotic operations to include, but not limited to: physical and electronic surveillance, search and seizure for narcotic investigations, money laundering, drug identification, high-risk warrant planning and execution, video recording techniques and installation, narcotic trafficking interdiction, undercover investigation techniques and general criminal investigations.

2. Through my position, I have spoken with, and learned from, pharmacists, physicians, diversion investigators, state medical board investigators, pharmacy board investigators, patients, and others with extensive knowledge of pharmaceuticals, regarding the methods and practices of individuals trafficking in or diverting pharmaceutical controlled substances.

3. The information in this affidavit is based upon my personal knowledge and information provided to me by others, including other law enforcement personnel, as well as

records, documents, and surveillance conducted, obtained, and reviewed by law enforcement officers.

4. I make this affidavit in support of a complaint and federal arrest warrant for RICKY EARL BERNARD (hereinafter, “BERNARD”). The information contained in this affidavit is submitted for the sole purpose of establishing that there is probable cause to believe that on or about June 26, 2020, in the Southern District of Texas, BERNARD did knowingly and willfully possess with the intent to distribute a controlled substance, in violation of 21 U.S.C. § 841.

5. Because this affidavit is submitted for the limited purpose of securing authorization for a criminal complaint, I have not included every fact known to me or other law enforcement officers concerning this investigation. I have set forth only the facts essential to establish probable cause for the requested complaint.

BACKGROUND

I. Relevant Statutes and Controlled Substances

6. 21 U.S.C. § 841(a)(1) makes it unlawful for any person to, *inter alia*, knowingly and intentionally possess with the intent to distribute or dispense a controlled substance, or to distribute or dispense a controlled substance except as authorized by law.

7. 21 U.S.C. § 822 states that, aside from some exceptions not relevant here, controlled substances may only be prescribed, dispensed, or distributed by persons registered with DEA (referred to as “registrants”).

8. Pursuant to 21 CFR § 1301.76, registrants shall not employ, as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances.

9. 21 U.S.C. § 812 establishes five schedules of controlled substances—Schedules I, II, III, IV, and V—based on the drug’s potential for abuse, its currently accepted medical use, and

the severity of physical or psychological dependence that could result from its abuse. Pharmaceutical controlled substances are listed in Schedules II through V because they are considered drugs for which there is an accepted medical use, but which pose a substantial potential for abuse and addiction. Relevant here,

a. **Oxycodone** is the generic name for a Schedule II analgesic drug that is typically prescribed for moderate-to-severe pain relief. Oxycodone is also sold under the brand names Percocet and Roxicodone. Oxycodone is a commonly abused and diverted controlled substance.

b. **Hydrocodone** is the generic name for a narcotic analgesic that was reclassified from a Schedule III to a Schedule II controlled substance as of October 6, 2014. Hydrocodone is sold under several brand names, including Norco. Hydrocodone is a commonly abused and diverted controlled substance.

c. **Hydromorphone** is the generic name for a Schedule II analgesic drug that is typically prescribed for moderate-to-severe pain relief. Hydromorphone is more potent than oxycodone and hydrocodone.

d. “Potentiators,” so-called because they enhance the high from opioids like oxycodone and hydrocodone, include **carisoprodol**, a Schedule IV controlled substance classified as a muscle relaxant; **alprazolam**, a Schedule IV controlled substance classified as a medication used for the treatment of anxiety; and **promethazine syrup with codeine**, a Schedule V medication used as a cough suppressant.

II. Background on the Illegal Diversion of Prescription Drugs

10. Based upon my training and experience, there is a thriving black market in the Southern District of Texas for pharmaceutical drugs of diversion—particularly those defined in the prior Section of this affidavit. Based on my investigative experience, persons trafficking in diverted pharmaceutical drugs often obtain them from “pill-mill” pharmacies—DEA registrants that sell the drugs outside the scope of professional practice and for no legitimate medical purpose, usually for cash, and usually at above-market rates.

11. For example, according to pharmacists with knowledge of market rates, legitimate pharmacies may charge around \$42.00 for 120 dosage units of oxycodone 30 mg and around \$6.00 for 90 dosage units of carisoprodol 350 mg, while pill-mill pharmacies may charge as much as

\$1,340 for that combination. These prices reflect the high cash value on the black market of oxycodone, hydrocodone, and other commonly diverted pharmaceutical drugs.

12. I also know from training and experience that the black market for common pharmaceutical drugs of diversion has created a demand for the drugs in certain sizes, shapes, colors and, most importantly, dosage strengths. In my training and experience, the overwhelming majority of diverted hydromorphone is in the form of 8 mg tablets, referred to commonly on the black market as “D”; diverted oxycodone is in the form of 30 mg tablets, referred to commonly on the black market as “roxy” (an abbreviation of brand name “Roxicodone”), and 10-325 mg tablets, referred to commonly on the black market as “percs” (an abbreviation of brand name “Percocet”);¹ diverted hydrocodone is in the form of 10-325 mg tablets, referred to commonly on the black market as “norcos”;² diverted alprazolam is in the form of 2 mg tablets, referred to commonly on the black market as “bars”; and diverted carisoprodol is in the form of 350 mg tablets, referred to commonly on the black market as “soma,” the brand name. Similarly, promethazine with codeine is commonly diverted on the black market in the Wockhardt brand. I have participated in several investigations of pill-mill clinics that only prescribe—and pill-mill pharmacies that only dispense—these drugs in those strengths, which are generally the strongest quick-release strengths commercially available.

FACTS ESTABLISHING PROBABLE CAUSE

13. DEA has been investigating BERNARD for suspected drug trafficking offenses involving controlled substances. In the course of that investigation, officers have (a) observed

¹ The 10-325 mg dosage describes tablets with 10 mg of oxycodone and 325 mg of another, non-controlled analgesic, such as acetaminophen.

² The 10-325 mg dosage describes tablets with 10 mg of hydrocodone and 325 mg of another, non-controlled analgesic, such as acetaminophen.

BERNARD driving a truck, specifically, a 2017 Toyota Tundra, license plate LTT8679 (hereinafter, the “Toyota Tundra”); and (b) obtained credible evidence that BERNARD uses the Toyota Tundra for illegally possessing and transporting controlled substances.

14. On June 26, 2020, after obtaining credible information that BERNARD was likely transporting controlled substances in the Toyota Tundra, a DEA Task Force Officer requested assistance from the High Intensity Drug Trafficking Agency (“HIDTA”), a law enforcement unit affiliated with the Harris County Sheriff’s Office. After the Task Force Officer provided HIDTA personnel with BERNARD’s identifiers and a description of the Toyota Tundra, a Sheriff’s Deputy agreed to assist.

15. The Sheriff’s Deputy located the Toyota Tundra and began to follow it in the Deputy’s marked patrol vehicle. The Deputy performed a traffic stop on the Toyota Tundra after BERNARD failed to signal within a required distance at or in the vicinity of the Glen Chase Road intersection, in violation of Section 545.104 of the Texas Transportation Code.

16. After making contact with BERNARD in his vehicle, the Sheriff’s Deputy confirmed BERNARD’s identification and observed that BERNARD appeared nervous. BERNARD was the sole occupant of the Toyota Tundra. The Deputy asked BERNARD whether there was anything illegal in the vehicle, such as guns, bombs, drugs, or anything of that nature, to which BERNARD responded, “no.” The Deputy asked BERNARD additional questions, including whether BERNARD had ever been arrested, and BERNARD indicated he had previously been arrested for trafficking marijuana. At that point, the Sheriff’s Deputy requested BERNARD’s consent to search his vehicle, and BERNARD refused. The Deputy then requested that BERNARD exit the vehicle and BERNARD complied.

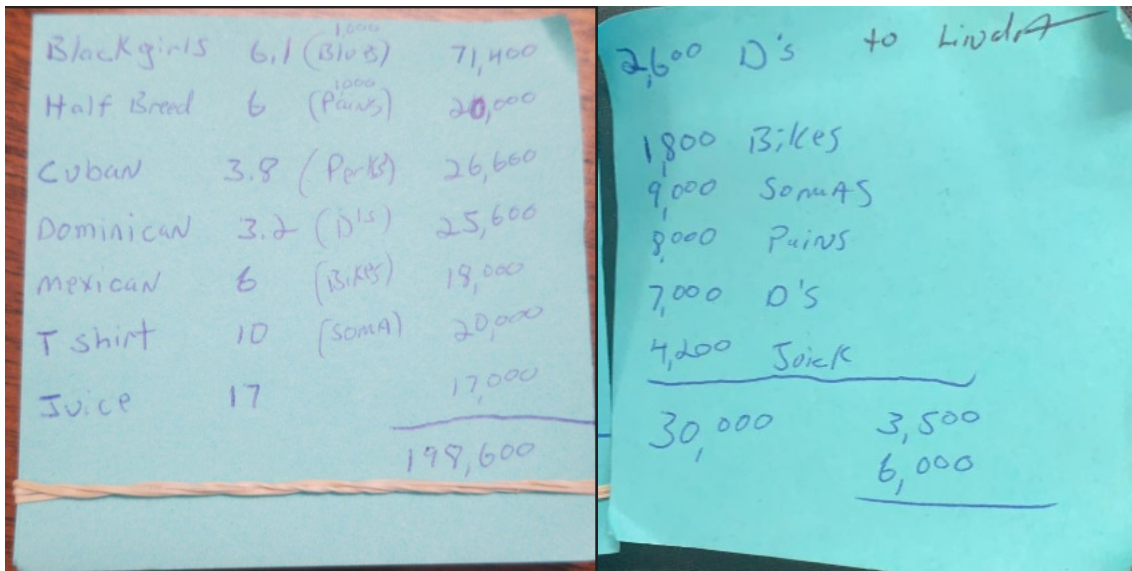
17. The Sheriff's Deputy observed multiple, unmarked cardboard boxes in the bed of the Toyota Tundra (outside the truck's enclosed cab). The boxes were closed but not taped shut. The Deputy asked BERNARD what was inside the boxes. BERNARD first claimed that the boxes contained "luggage," then changed his answer to "trash." The Deputy observed what appeared to be green cellophane protruding from one of the boxes, which, in my training and experience, I know to be a material that drug traffickers sometimes use to wrap contraband. BERNARD continued to appear to the Deputy to be nervous, so for the Deputy's safety, he placed BERNARD in hand restraints. The Deputy then requested an open-air sniff of the vehicle by a K-9 Unit. The K-9 unit arrived approximately 20 minutes later. The K-9 subsequently alerted to the rear of the vehicle, at which time a probable cause search of the Toyota Tundra was conducted.

18. In the course of the search of the Toyota Tundra, officers located in the boxes in the bed of the truck, and in additional boxes found inside the cab of the truck, dozens of bottles of pharmaceutical controlled substances with labels reflecting that they contained oxycodone, hydrocodone, alprazolam, and carisoprodol, as well as bottles with labels reflecting that they contained Wockhardt promethazine syrup with codeine. The bottles containing the pills still bore what appeared to officers to be the pharmaceutical manufacturers' unbroken seals.

19. In total, on June 26, 2020, officers removed from BERNARD's vehicle, the Toyota Tundra, eleven (11) boxes, none of which bore any identifiers indicating where the pharmaceutical drugs came from. Two of the boxes contained only non-controlled medications. An inventory of the boxes revealed that the remaining nine contained at least approximately 5,000 "bars" of alprazolam 2 mg; 5,900 oxycodone pills (comprised of both 30 mg "roxy" and 10-325 mg "percs"); 6,000 hydrocodone pills (all 10-325 mg "norcos"); 7,000 carisoprodol pills (all 350 mg "soma");

700 hydromorphone pills (all 8 mg “D”); and 12 pints of Wockhardt promethazine with codeine syrup.

20. Officers also seized a backpack containing approximately three thousand dollars (\$3,000) in bundled cash and two handwritten ledgers on sticky notes, depicted below:



21. In my training and experience, these notes are consistent with drug ledgers used by narcotics traffickers to keep track of their recent business. In addition to numbers that are consistent with quantities and dollar amounts, I recognize the street names provided above for the narcotics seized from BERNARD’s vehicle, for example, “somas,” “D’s,” and “Percs.” In my training and experience, diverted prescription drugs are commonly sold for cash.

22. Investigators have also determined, through database searches and queries to DEA and the Texas State Board of Pharmacy, that BERNARD has no registration or licensure that would permit him to transport Schedule II controlled substances. In addition, officers have learned from database searches that BERNARD has been convicted on felony drug charges in the past, meaning that, pursuant to the regulation described above, no DEA registrant could legally employ or engage him to transport or otherwise handle such drugs.


CONCLUSION

23. Based on the foregoing facts and circumstances, there is probable cause to believe that, on June 26, 2020, in the Southern District of Texas, BERNARD did knowingly and willfully possess with the intent to distribute hydrocodone, oxycodone, and hydromorphone, all Schedule II controlled substances, in violation of Title 21, United States Code, Section 841(a)(1). Therefore, I request approval of this criminal complaint and the issuance of a federal warrant to arrest BERNARD.



Walter Hammann, Task Force Officer
Drug Enforcement Administration

Subscribed to and sworn before me
telephonically this 29th day of June, 2020.



Frances H. Stacy
United States Magistrate Judge

