

**AFFIDAVIT OF TASK FORCE OFFICER MICHAEL A. MILLER IN SUPPORT OF
A CRIMINAL COMPLAINT AND ARREST WARRANT**

I, Michael A. Miller, being duly sworn, state the following:

Purpose

1. This Affidavit is made in support of a criminal complaint and arrest warrant for:
 - a. **Kenny Xyrus LOSITO**

For the following federal law violations:

COUNT 1: Felon in possession of a firearm [18 U.S.C. § 922(g)(1)]

Affiant's Background and Experience

2. I am a Detective with the Vacaville Police Department. I have been a sworn law enforcement officer with the City of Vacaville for the past 17 years. I served as a peace officer with the Oakland Police Department for two years before that. In January 2017, I was cross-designated as a Task Force Officer (TFO) with the Federal Bureau of Investigation (FBI), Sacramento Division, Fairfield Resident Agency. In this role, I am responsible for investigating firearms, narcotics, and gang related activity in Solano County as a member of the Solano County Violent Crime Task Force.
3. I have received thousands of hours of formal training with the Oakland and Vacaville Police Departments. This includes: 1,051 hours at the P.O.S.T. basic police academy (1999); Over 400 hours of formal training in firearms use, instruction, identification, and mechanical function (from 2000 to 2017); 40-hour Interview and Interrogation course (2002); 80-hour Basic SWAT Operator course (2004); 80-hour Major Drugs / Narcotics Investigations course (2014); 16-hour Search Warrants "A through Z" course (2014); 24-hour Informant Development and Maintenance course (2015); 16-hour Child Exploitation Investigation course (2016); 8-hour California State Wiretap Certification (2016); 40-hour SWAT Team Leader School (2016); and 16-hours in attendance at the WSIN Human Trafficking Summit (2017).
4. In addition to my classroom training, I have been involved in over 100 firearms-related investigations, over 100 narcotics-related investigations, and over 100 human-trafficking investigations. I have testified as an expert over thirty times in the field of narcotics possession and sales, and over ten times in the field of human trafficking, in the Solano County Superior Court. I have also testified as an expert in the area of firearms functioning and identification, as well as with respect to the Cellebrite data extraction process. In my 19-year career in law enforcement, I have participated in all aspects of criminal investigations, including physical and electronic surveillance, executing search warrants, use of GPS data and tracking devices, interviews, and arrests. In addition to my classroom training, this practical experience has formed the basis of my opinions set forth below.

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5. As a result of my training and experience with the Oakland PD, the Vacaville PD, and the FBI, I am familiar with the state and federal laws pertaining to firearms. I know that it is unlawful under Title 18 (of the United States Code) for a convicted felon to possess a firearm or ammunition.
6. This Affidavit is submitted in support of a criminal complaint and arrest warrant charging **Kenny Xyrus LOSITO** with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).
7. The information contained in this Affidavit is based on my review of the reports and files in this case, conversations with other law enforcement personnel involved in this case, and my own personal knowledge. Because this Affidavit is submitted for the limited purpose of establishing probable cause for a criminal complaint and arrest warrant, I have not included every fact known to me about this case. Rather, I have set forth only those facts I believe are necessary to support probable cause for a criminal complaint and arrest warrant.

Statement of Probable Cause

8. On March 14, 2019, Vacaville Police Officer D. Willis and Officer Trainee E. Uldall were on routine patrol in Vacaville, California. The two officers were driving in a fully marked police vehicle and wearing patrol uniforms. Officer Willis was driving.
9. At around 11:30 p.m., while Officer Willis was driving westbound on Interstate 80, just past the Davis Street off-ramp in Vacaville, he saw a white Nissan Altima driving at what he believed to be an unreasonably slow speed in the freeway's far right hand lane. As Officer Willis caught up to the Nissan with his patrol vehicle, he estimated that it was only driving between 40-50 miles per hour. This was well below the flow of regular traffic, which Officer Willis estimated to be at least 65 miles per hour. Officer Willis determined that the Nissan was driving at a slow enough speed to render it in violation of California Vehicle Code, Section 22400(a).
10. As Officer Willis passed the Nissan in his patrol vehicle, he noticed that it did not appear to have any license plates affixed to the rear trunk. Officer Willis later determined that the car's temporary paper plate had been moved, effectively obscuring it from view.
11. After the patrol car had passed the Nissan and was positioned in front of it, Officer Willis noticed that the Nissan did not have a front license plate and, instead, was bearing some sort of dealership's advertisement plate, a violation of California Vehicle Code, Section 5200.
12. Due to the Nissan's unusually slow speed, Officer Willis was forced to pass the car and continue on westbound Interstate 80.
13. Officer Willis exited the freeway, quickly conducted a U-turn after arriving on surface streets, and immediately re-entered the freeway in the westbound direction. On doing so, he noticed that the white Nissan Altima was just ahead of him as it continued to drive at a slow rate in the far right lane.

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14. Officer Willis decided to conduct a traffic stop for the above-mentioned vehicle code violations. After Officer Willis activated his patrol car's signal, the Nissan exited off on the Cherry Glen off-ramp in Vacaville and yielded.

15. Officer Willis notes that after the Nissan had yielded, and before he [Officer Willis] got out of his driver's-seat, he noticed the driver of the Nissan making furtive movements towards the area near his waist. These movements consisted of the driver looking down towards his waist with his body slightly lifted up off his seat. Officer Willis notes that he believed the driver's movements were consistent with someone who was trying to conceal or retrieve a weapon or contraband near their waist or under their seat.

16. After seeing the driver's movements, Officer Willis advised Officer Trainee Udall to use caution as they approached the Nissan. Officer Willis got out of his patrol car and approached the Nissan on the driver's side. When Officer Willis reached the "C pillar" of the car, he directed the driver to place his hands on the steering wheel. The driver—later identified as Kenny LOSITO—complied, at which time Officer Willis walked up to the driver's-side window, which was rolled down.

17. Officer Willis contacted LOSITO and told him why he was stopped. Officer Willis told LOSITO that it did not appear that license plates were affixed to the rear of his car. Officer Willis also said, however, that as he was walking up to the car, he noticed that the temporary license plate may have been bent or blown in an upward position making it no longer visible.

18. Officer Willis asked LOSITO for his license, and LOSITO retrieved his license from his wallet, which appeared to be in his back pocket. LOSITO handed Officer Willis his license and the two men spoke briefly. Officer Willis notes that as he was watching LOSITO's mannerisms, he saw that LOSITO's eyes were continually darting between himself and the area of LOSITO's right leg.

19. Officer Willis told LOSITO that he had seen him reaching in the area of his [LOSITO's] right leg at the outset of the traffic stop. LOSITO denied reaching around his car and started to shift around in his seat. As he did so, Officer Willis saw a portion of what appeared to be a metal object concealed between the seat and underneath LOSITO's right thigh. Officer Willis notes that he recognized the visible portion of the unknown object as the barrel end of a handgun.

20. After seeing what he believed to be a portion of a handgun, Officer Willis drew his service weapon and pointed it at LOSITO and asked him if the object under his leg was a firearm. LOSITO initially denied having anything under his leg, but as he did so, his hands began to lower from the steering wheel toward his lap area. Officer Willis ordered LOSITO to place his hands on his head while he [Officer Willis] waited for additional cover officers. Officer Willis notes that while they were waiting, LOSITO became stoic and refused to acknowledge the gun, a large portion of which was now visible under his right thigh.

21. After the cover officers arrived, LOSITO was placed in handcuffs while still seated in the Nissan, and then removed from the car without incident. As LOSITO got up from the driver's seat, a 9mm Ruger handgun (s/n: 325-42700) was visible on the seat cushion directly under where

his right leg had been positioned. Later on, officers conducted a safety check and determined that the gun was loaded with nine rounds of ammunition. A records check confirmed that this gun had been reported stolen in Nevada.

22. Once LOSITO was removed from the car, Officer Willis looked down into the driver's-side door pocket and saw a clear plastic bag with a large quantity of oblong white pills. Upon closer inspection, Officer Willis could see that the pills had numerous perpendicular hash marks, which Officer Willis recognized as associated with the prescription drug Alprazolam, commonly known by the brand name Xanax.

23. Officer Willis noted that based on his training and experience in the area of narcotics enforcement, including five years as a detective for the Vacaville Police Department's Narcotics Enforcement Team, he recognized the number of pills (61 pills), and the manner in which they were packaged, to be consistent with pills that were possessed for sale, as opposed to personal use. Officer Willis also noted that typically, a single Xanax tablet can cost between \$10-25 in street-level transactions, giving the bag found in the Nissan's driver's-side door a street value between \$600-1,500.

24. During a later search of LOSITO's person, officers found over \$5,000 in cash. Officer Willis notes that the large quantity of currency is consistent with proceeds gleaned from street-level sales of narcotics, which further reinforced his belief that the Xanax pills found in the Nissan were possessed for sale.

25. After LOSITO was detained, Officer Willis examined his California driver's license in detail for the first time. Officer Willis noted that after seeing LOSITO's name, he recognized LOSITO as someone who he had investigated as a narcotics detective and arrested as a patrol officer. Officer Willis remembered that in September 2018, he had assisted other officers in arresting LOSITO after LOSITO was found in possession of a loaded handgun in a vehicle that also contained various other controlled substances.

26. Officers searched LOSITO's car and found additional evidence, which included dozens of rounds of ammunition in various calibers; controlled substances, including heroin, cocaine, and cocaine base in personal-use amounts; approximately one pound of marijuana (468.5 grams, gross weight); a digital scale; and numerous items of indicia in LOSITO's name.

27. Officer Trainee Uldall read LOSITO his *Miranda* rights from a department-issued card. Afterwards, LOSITO said the heroin in the car was for personal use because he is an "addict."

28. LOSITO was arrested and taken to the Solano County Jail for booking. There, he was charged with various narcotics and firearms violations.

29. The Ruger pistol that LOSITO possessed on March 14, 2019, is a "firearm" as defined in 18 U.S.C. § 921(a)(3). I know from my training and experience, and from consulting with other law enforcement personnel, that Ruger firearms are not manufactured in the State of California. It is my opinion that if this firearm was possessed in California, it necessarily traveled in interstate or foreign commerce to get here.

30. I have reviewed Kenny LOSITO's criminal history. His adult criminal record includes the following felony convictions:

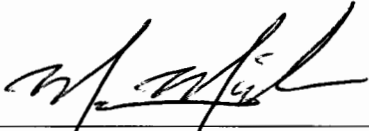
- (i) A felony conviction for possessing a controlled substance for sale, in violation of California Health and Safety Code, Section 11378 [judgment entered September 12, 2016, in Solano County, California]; and
- (ii) A felony conviction for possessing a controlled substance for sale, with a prior controlled substance conviction, in violation of California Health and Safety Code, Section 11378 [judgment entered June 20, 2017, in Solano County, California].

As a previously-convicted felon, LOSITO is prohibited from possessing any firearms or ammunition.

Conclusion

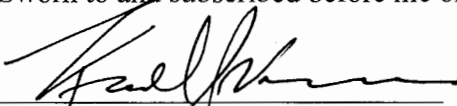
31. Based on the facts set forth above, I request that a criminal complaint and arrest warrant be issued for **Kenny Xyrus LOSITO**, charging him with possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1).

I declare under the penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.



Michael A. Miller
Task Force Officer
Federal Bureau of Investigation

Sworn to and subscribed before me on April 18, 2019.



Hon. Kendall J. Newman
United States Magistrate Judge

Approved as to form:



Timothy H. Delgado
Assistant United States Attorney

United States v. Kenny Xyrus Losito
Penalties for Criminal Complaint

DEFENDANT: 1) **Kenny Xyrus Losito**

COUNT 1:

VIOLATION: 18 U.S.C. § 922(g)(1) – Felon in Possession of a Firearm

PENALTIES:

- A term of imprisonment for up to 10 years,
- A fine of up to \$250,000, or both fine and imprisonment,
- A term of supervised release for up to 3 years.

SPECIAL ASSESSMENT: \$100 (mandatory on each count)