

05AP2202

STATE OF WISCONSIN

SUPREME COURT

CASE NO.: 2005AP2202-CR

STATE OF WISCONSIN

Plaintiff- Respondent,
v.

JEFFREY ALLEN HOUSE
Defendant - Appellant-
Petitioner.

AN APPEAL FROM THE JUDGMENT OF CONVICTION AND SENTENCE
IMPOSED FROM THE CIRCUIT COURT OF MILWAUKEE COUNTY,
THE HONORABLE CHARLES F. KAHN, JR. PRESIDING

MICHAEL J. STEINLE
Attorney for Petitioner

TERSCHAN, STEINLE & NESS
309 North Water Street
Suite 215
Milwaukee, Wisconsin 53202
(414) 258-6200

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STATE OF WISCONSIN

SUPREME COURT

STATE OF WISCONSIN

Respondent,

v.

JEFFREY ALLEN HOUSE

Petitioner.

I. STATEMENT OF THE CASE

On the 23rd day of May, 2004, the Petitioner was arrested and charged with conspiracy to deliver cocaine in violation of Wis. Stats. §961.16(2)(b)(1), §961.41(1)(cm)(4), §939.31, 961.41(1x) and §971.365. The Petitioner made his initial appearance on the 24th day of May, 2005. The criminal complaint named a total of thirty-one (31) defendants. The Petitioner was one of the thirty-one defendants in this case. The Petitioner was only charged in Count One which was the all encompassing conspiracy count.

On the 27th day of May, the Petitioner waived his statutory right to a preliminary hearing. On the 18th day of June, the Petitioner entered a not guilty plea to the charge.

After several status conferences because of the complex nature of the voluminous discovery and number of defendants, a Motion Hearing was held by the Court as to the Petitioner on February 23, 2005. The Petitioner challenged the legality of the application for the wire tap pursuant to

Wisconsin Statutes in two respects. The first challenge was to the extension sought by the State and the second was to the original application being illegal, as it specifically listed crimes to be investigated which were not authorized by the statute.

After a Motion Hearing, the Circuit Court found that the extension to the interception of communications obtained by the police after April 14, 2005 were illegal and suppressed them for use at the trial of the Petitioner. However, the Court did find the original application by the State was not improper or illegal due to the listing of crimes within the application which were not specifically enumerated within the Wisconsin Statute.

Based upon the Court's ruling to the Title III wiretap motions, the Petitioner entered a guilty plea to an amended charge of Conspiracy to Deliver Cocaine (1-5 grams) contrary to Wis. Stats. §961.41(1)(cm)(1g), §939.31, §961.41(1x) and §971.365.

On the other 20th day of June, 2005, the Honorable Charles F. Kahn, Jr., sentenced the Petitioner to six (6) years total confinement consisting of two (2) years six (6) months initial confinement and three (3) years six (6) months of extended supervision. The sentence was stayed and the Petitioner was placed on probation with various conditions set out by the Court.

On the 22nd day of June, 2005, the Petitioner filed a Notice of Intent to Seek Post-Conviction Relief. The

Petitioner filed a Notice of Appeal on August 22, 2005 and sought review in the State Court of Appeals. In a Decision dated August 30, 2006, the Court of Appeals affirmed the Trial Court. The Petitioner filed a Petition to Review in this Court on August 29, 2006. In a Decision dated January 11, 2007, this Court accepted review and the Petitioner now files this Brief in Support of his Petition.

II. STATEMENT OF FACTS

The Petitioner was charged with thirty (30) other defendants in a criminal complaint with a Conspiracy to Distribute Cocaine. The charges against all the Defendants arose out of an application out of a wire application by the State (The Milwaukee HIDTA Task Force), to the Chief Judge of Milwaukee County, to intercept telephone conversations of one co-defendant, Samuel Caraballo (414-202-1005). On March 15, 2004, the Honorable Chief Judge Michael Sullivan authorized the interception of electronic communications pertaining to Mr. Caraballo's telephone. On April 14, 2004, the Honorable David A. Hansher, Acting Chief Judge, authorized the continued interception of wire communications for Mr. Caraballo's telephone. On April 30, 2004, the Honorable Chief Judge Michael Sullivan authorized the interception of electronic communications pertaining to a new telephone number used by Mr. Caraballo, (414-379-5371).

Out of the many hundreds and hundreds of calls intercepted by the Agents, the Petitioner talked with Samuel Caraballo some five (5) times wherein the Petitioner was

requesting \$350.00 worth of cocaine. There were a total of five (5) calls between Mr. Caraballo and the Petitioner, occurring on March 27, 2004, April 3, 2004, April 8, 2004 and April 24, 2004.

III. STATEMENT OF THE ISSUE

Whether the Circuit Court erred when it ruled that the telephone evidence or communication from telephone number (414)202-1005 were lawfully applied for and the Chief Judge lawfully authorized the interception of communications for crimes not enumerated in the statute?

IV. ARGUMENT

A. The Wire Intercept Application Unlawfully Applied and Received Orders for the Interception of Communications for Crimes Not Enumerated in the Statute.

The Petitioner believes that the Trial Court erred as the wire tap intercept applications were unlawfully applied for as they authorized the interception of communications for specific crimes not enumerated in the Statute.

Title III of the Omnibus Crime Control and Safe Streets Acts regulates the interception of communications by public officials and private persons. See 18 U.S.C. §2510 et seq. One of the goals of this act is to define a uniform basis for the circumstances and conditions under which the interception of wire or oral communications may be authorized. States are authorized to enact similar legislation, which could be more restrictive but not more permissive than Title III. See 18 U.S.C. §2516(2); United States v. Smith, 726 F.2d 852, 860-61 (1st Cir. 1984).

Wisconsin Statutes Sections 968.27 to 968.33 were enacted to regulate the inception of oral and wire communications. The Wisconsin Statute requires that the Attorney General together with the District Attorney of any county approve any application for the interception of any wire, electronic or oral communication before submitting the application to Chief Judge. §968.28, Stats.

Both the Federal Act and the Wisconsin Statute limit the crimes for which intercept authority may be obtained. §968.28 only authorizes an intercept for the crimes of "homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substance analogs, a computer crime that is a felony under §943.70, or any conspiracy to commit any of the foregoing offenses." See §968.28, Stats.

Interceptions unlawfully obtained or not made in conformity with the statutes should have been suppressed pursuant to §968.30(9), Stats.

In the case before the Court, the State applied for and received orders authorizing the interception of communications related to a number of crimes. Specifically, the applications applied for and the orders authorized the interception for the investigation of: (1) Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises, in violation of 18 U.S.C. §1952; (2) Money Laundering in violation of 18 U.S.C. §1956 and §1957; and (3) Racketeering and Continuing Criminal Enterprises in

violation of §946.83 and §946.85, Stats. Section 968.28 does not authorize interceptions for any of these offenses.

The orders violate Wisconsin's wire interception law by authorizing interceptions for crimes not enumerated or authorized under that Statute. Therefore, the orders are not valid and the intercept evidence should be suppressed pursuant to §968.30(9)(a), Stats. There appears to be no Wisconsin case law on this issue.

In United States v. Ward, 808 F.Supp. 803 (S.D.Ga. 1992), the Court addressed whether wiretap evidence should be suppressed when the applications and orders authorizing the wiretaps included within their scope offenses not listed in 18 U.S.C. §2516. The Court noted that compliance with §2516 (the list of enumerated offenses) is not mere technicality, that Congress took deliberate steps to restrict wiretap applications to a specific list of offenses. *Id.* at 806. The Court further noted that this requirement plays a central and functional role in furthering Congress' legislative purpose to guard against unwarranted use of wiretapping, and that it directly and substantially implements Congress' limited intent regarding this intrusive technique. *Id.* at 806. "An application cannot be sought, not an order entered, authorizing interception to gather evidence of offenses not enumerated in §2516." *Id.* The Court distinguished this case from others and emphasized that the references to the unlisted offenses were included in both the original applications and

orders. *Id.* at 806. The Court held that the repeated references to unlisted offenses in the applications and affidavits made it clear that the Government sought communications related to those offenses. *Id.* The Court ordered suppression of the electronic interceptions because of this violation. *Id.* at 809. (See also, United States v. Millstone Enterprises, Inc., 684 F.Supp. 867, 870-72 (W.D.Pa.), *rev'd on unrelated grounds*, 864 F.2d (3rd Cir. 1988), wherein a wiretap was authorized for the investigation of prostitution and racketeering crimes not listed in the Federal Statute. The Court held that the wiretaps were illegal.)

Similarly, in the case before the Court the original applications and orders included offenses not listed in the Wisconsin Statute. (Additionally, the applications for extensions and orders granting those extensions also authorized interception of communications related to non-enumerated offenses.) These are not minor violations or clerical errors. The unlisted offenses are in every application and every Court order. The State clearly sought to obtain evidence related to the unlisted offenses. While Federal law may authorize interception for a broad range of offenses, the Wisconsin statute is substantially more limited. State statutes can be more restrictive than the Federal requirements but not more permissive. The State of Wisconsin choose to enact a more restrictive statute and law enforcement must comply with those requirements.

This is not a case where the application merely informed the court that law enforcement might discover evidence related to non-enumerated offenses. The application in this case actually sought and obtained an order to investigate unlisted offenses. In United States v. Smart, 278 F.3d 1168 (10th Cir. 2002), the defendant argued that references to non-enumerated offenses in the wiretap application/material and orders rendered those orders invalid. *Id.* at 1172. The government argued that the reference to the non-enumerated offenses was merely a forthright attempt to disclose all the facts and circumstances surrounding the investigation. *Id.* at 1174. The Court stated that the fail-safe of these misleading documents lies in the scope of the offenses actually approved for wiretap investigation." *Id.* The Court emphasized that the orders only authorized investigations for enumerated offenses. *Id.* The Court stated "the federal judges issuing the orders fulfilled their reviewing function by limiting the scope of the wire tap investigation to only three enumerated offenses." *Id.* "The incorrect description of suspected non-enumerated offenses as enumerated in application materials and findings in a wiretap order does not invalidate that order where the authorization to wiretap itself was limited to only enumerated offenses." *Id.* (emphasis added).

In this case before the Court, the orders do not limit the scope of the investigation to enumerated offenses. The

orders specifically authorize investigation into the non-enumerated offenses. Therefore, the orders do not comply with the State wiretap laws and are thus invalid. This is not a minor violation of the law. Wiretaps or interceptions are extremely invasive investigative techniques of police into one's life. This is why Congress and the State legislature have enacted laws strictly detailing when this investigative technique can be used and the procedure that must be followed. The State's failure to comply with the law required suppression pursuant to §968.30(9)(a), Stats. and the Trial Court erred when it denied suppression in this case.

The State has taken the position that all the offenses listed in the application and order are within the scope of §968.28, Stats. The State has asserted that violations of 18 U.S.C. § 1952, 18 U.S.C. §§ 1956 and 1957, and Sections 946.83 and 946.85, are all within scope of the Wisconsin's wiretap law. That State further points out that the above offenses are all offenses for which 18 U.S.C. § 2516 authorizes interceptions.

The State's argument is inconsistent with the plain language of Section 968.28 which fails to list any of the offenses in question. While the offenses listed are authorized under federal law, section 968.28 is much more restrictive than the federal counterpart 18 U.S.C. § 2516.

The State asserts that Sections 946.83 and 946.85 (racketeering and engaging in a continuing criminal enterprise) are included offenses under Section 968.28 because in the context of this application they are in essence controlled substance offenses. However, the order in this case does not limit the interception to racketeering and continuing criminal enterprise acts that are in relation to dealing in controlled substances. The State correctly points out that a pattern racketeering activity requires three interrelated incidents of racketeering. § 946.82(4), Stats.

However, racketeering activity is not limited to offenses related to controlled substance trafficking. In fact "racketeering activity" includes a long list of criminal offenses not included in Section 968.28. See § 946.82(4), Stats. Thus, the order in this case essentially authorized the interception of communications related to any of the offenses listed in Section 946.82(4), Stats. Clearly this is not what was intended when the legislature drafted Section 968.28, Stats.

The problem with simply authorizing interceptions for racketeering and continuing criminal enterprise offenses is that the order requiring minimization for interceptions not covered under Chapter 968 of Wisconsin Statutes has little

effect. The order covers such a broad range of activities that law enforcement can listen to virtually any call and argue that they believed it was related to "racketeering activity." This is contrary to the purpose of Section 968.28 which limits the interception to communications related to the specifically enumerated offenses.

Similarly the order authorizing interception of communications related to Money Laundering in violation of 18 U.S.C. 1956 and 1957, does not limit the authorization to laundering in relation to controlled substance offenses.

B. Suppression of All the Wire Intercepts is the Appropriate Remedy.

Suppression of all of the intercepts, in which the defendant has standing, is the only appropriate remedy available as a result of the unlawful orders. The order in the case before the Court violates statutory requirements that directly and substantially implement the congressional and legislative intention to limit the use of intercept procedures.

Wisconsin's wire tap law was patterned on Title III of the Omnibus Crime and Safe Streets Act of 1968, and therefore the federal legislative history and federal decisions should be considered by this Court. State v. Gilmore, 201 Wis. 2d. 820, 825, 549 N.W.2d 401 (1996).

1. **Section 968.30 (9)(a), Stats., provides for suppression as a remedy for communications intercepted pursuant to an unlawful order.**

Section 968.30 (9)(a), Stats., specifically provides suppression as the remedy for communications intercepted pursuant to unlawful orders. This section is patterned after 18 U.S.C. § 2518 (10)(a).

The purpose of Title III was "to effectively prohibit, on the pain of criminal and civil penalties, all interceptions of oral and wire communications, except those specifically provided for in the Act, most notably those interceptions permitted to law enforcement officers when authorized by court order in connection with the investigation of the serious crimes listed in § 2516." United States v. Giordano, 416 U.S. 505, 514, 94 S.Ct. 1820, 40 L.Ed.2d 341 (1974).

The Act not only limits the crimes for which intercept authority may be obtained but also important preconditions to obtaining any intercept authority at all. *Id.* at 515. "Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping and evinced the clear intent to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications." *Id.* at 515. "Congress

intended to require suppression where there is failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures. . . ." *Giordano*, at 527. The Supreme Court recognized that Congress specifically intended to limit wiretapping to "certain crimes and situations." *Id.*

§968.28 and its federal counterpart 18 U.S.C. §2516 are clearly a statutory requirement that directly and substantially implements congressional intent. Congress deliberately provided a list of only those offenses for which interception can be authorized. Congress recognized that there are only certain offenses for which this type of intrusion is warranted. The State of Wisconsin also enacted a list of offenses for which the intrusion is warranted. However, §968.28 contains a much more limited list of offenses than allowed under Title III.

In the case at bar the order fails to comply with the specific requirements of Sections 968.28 and 968.30 (3)(a), Stats. The order directly authorized the State to intercept communications related to the non-enumerated offenses. Therefore, the order is insufficient and unlawful on its face because it failed to comply with the provisions of §968.28 and §968.30 (3)(a).

The only remedy in this case is suppression. The State has to be held to the requirements of the statute. The statutory requirements will have no real meaning if the Court adopts any other interpretation. Suppression of the wire intercepts made pursuant to the unlawful orders is appropriate. This remedy is consistent with the language of the Statute and Federal case law. The State has argued United States v. Smart, 278 F.3d 1168 (10th Cir. 2002), in support of their position. However, *Smart* is distinguishable from this case because in *Smart* the orders did not authorize interception for non-enumerated offenses. *Id.* at 1174). In this case both the applications and order contained non-enumerated offenses.

The State has also relied on United States v. O'Neill, 27 F. Supp. 2d 1121, 1127 (E.D. Wis. 1998). However, *O'Neill* only dealt with the "mere reference" to a non-enumerated offense. The violation in this case was more than a mere reference to a non-enumerated offense. The State specifically applied for and the order specifically authorized the interception of non-enumerated offenses.

V. CONCLUSION

For all the foregoing reasons, the Petitioner respectfully requests that this Court carefully review this record and remand the matter to Trial Court with an Order to Suppress the Wire Communications in this case. The

Petitioner believes that such a ruling is legally mandated and also in the interests of justice of this case.

Dated at Milwaukee, Wisconsin, this 1st day of February 2007.

Respectfully Submitted,

TERSCHAN, STEINLE & NESS

A handwritten signature in cursive script, appearing to read "M. J. Steinle", written over a horizontal line.

Michael J. Steinle
Attorney for Petitioner
State Bar No.: 01018859

CERTIFICATION

I, MICHAEL J. STEINLE, certify that this brief meets the
form and length requirements of Rule 809.19(8)(b) and (c) in
that it is:

Typewritten (Courier, 12 spaces
per inch (cpi), non proportional font,
double-spaced, 1-1/2 margin on left and
1 inch margins on other three sides);
and it is 15 pages in length.

Dated at Milwaukee, Wisconsin, this 1st day of February 2007.

TERSCHAN, STEINLE & NESS



MICHAEL J. STEINLE
Attorney for Petitioner
State Bar No.: 1018859

STATE OF WISCONSIN

SUPREME COURT

CASE NO.: 2005AP2202-CR

STATE OF WISCONSIN,

Plaintiff - Respondent,

v.

JEFFREY ALLEN HOUSE,

Defendant - Appellant -
Petitioner.

AN APPEAL FROM THE JUDGMENT OF CONVICTION AND SENTENCE
IMPOSED FROM THE CIRCUIT COURT OF MILWAUKEE COUNTY, THE
HONORABLE CHARLES F. KAHN, JR. PRESIDING

PETITIONER'S APPENDIX

MICHAEL J. STEINLE
Attorney for Petitioner

TERSCHAN, STEINLE & NESS
309 North Water Street
Suite 215
Milwaukee, Wisconsin 53202
(414)258-6200

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CLERK OF CIRCUIT COURT
CRIMINAL DIVISION

Milwaukee County

JOHN BARRETT • Clerk of Circuit Court/Court Services Director

SARAH A. GUNN
Administrator

LAURA FUNK
Assistant Administrator

THOMAS N. OELSTROM
Accountant

JUNE SIMETH
Staff Attorney

MICHAEL GROSSMAN
Staff Attorney

September 15, 2005

PEGGY A. LAUTENSCHLAGER
Attorney General
BY: GREGORY M. WEBER
Assistant Attorney General
Department of Justice
Post Office Box 7857
Madison, WI 53707-7857

E. MICHAEL McCANN
District Attorney
BY: ROBERT D DONOHOO
Deputy District Attorney
Safety Building
821 West State Street
Milwaukee, WI 53233

MICHAEL J. STEINLE
Law Office of Michael J. Steinle
2600 North Mayfair Road, Ste 700
Milwaukee, WI 53226

In re: Case Number 04CF002744
STATE OF WISCONSIN, Plaintiff -vs- JEFFREY ALLEN HOUSE,
Defendant
APPEAL NUMBER 2005AP002202-CR

Notice is hereby given that the appeal record for the above entitled case has been assembled and is available for inspection. A list of the papers constituting the record is attached.

All examinations of the record and additions thereto, must be completed before the mailing date. The record will be forwarded to the Clerk of the Court of Appeals on SEPTEMBER 29, 2005 per 809.15 (2) and (4).

Sincerely,

JOHN BARRETT
Clerk of Circuit Court/
Court Services Director

A handwritten signature in cursive script that reads "Gloria Brown".
By: Gloria Brown

Attachment

SAFETY BUILDING, ROOM 117 • 821 WEST STATE STREET • MILWAUKEE, WI 53233 • CUSTOMER SERVICE: (414) 278-4538
FAX: (414) 223-1262 • TTY: (414) 223-1830 • RECORDED INFORMATION LINE: (414) 278-4599

THE RECORD ON APPEAL NO. 2005AP002202-CR CONSISTS OF THE FOLLOWING:

| | | |
|----|-------|---|
| 1 | - 5 | Judgment Roll |
| 2 | - 61 | Criminal Complaint |
| 3 | - 2 | Order to Seal |
| 4 | - 1 | Notice of Motion And Motion To Set Condition Of Bond |
| 5 | - 1 | Order, defendant not to be release until hearing |
| 6 | - 1 | Bail Bond In The Amount of \$50,000 cash |
| 7 | - 1 | Preliminary Hearing Questionnaire and Waiver dated May 27, 2004 |
| 8 | - 1 | Bail Assignment |
| 9 | - 5 | Information |
| 10 | - 2 | Motion To Modify Bail |
| 11 | - 1 | Notice of Motion And Motion To Suppress Evidence |
| 12 | - 9 | Brief In Support Motion To Suppress Wire Intercept Evidence |
| 13 | - 8 | State's Response To Defendant's Motion To Suppress |
| 14 | - 1 | Order, Court excludes all telephonic evidence obtained from wiretap of telephone number 414-202-1005 after April 14, 2005 |
| 15 | - 1 | Agreed Upon Request For A New Court Date |
| 16 | - 1 | Agreed Upon Request For A New Court Date |
| 17 | - 10 | Plea Questionnaire and Waiver of Rights Form |
| 18 | - 1 | Written Explanation of Determinate Sentence |
| 19 | - 2 | Notice of Intent to Seek Postconviction Relief |
| 20 | - 1 | Conviction Report And Order Of Revocation Or Suspension |
| 21 | - 2 | Judgment of Conviction Dated June 23, 2005 |
| 22 | - 1 | Order, Staying Conditional Time of 90 days pending appeal |
| 23 | - 2 | Amended Judgment of Conviction Dated June 28, 2005 |
| 24 | - 2 | Notice of Appeal |
| 25 | - 2 | Statement On Transcript |
| 26 | - 124 | Transcript of Reporters Notes dated February 22, 2005 – Motion Hearings |
| 27 | - 22 | Transcript of Reporters Notes dated June 20, 2005 – Sentencing |
| 28 | - 2 | Certificate of The Clerk |

CIRCUIT COURT
STATE OF WISCONSIN CRIMINAL DIVISION MILWAUKEE COUNTY

| STATE OF WISCONSIN vs. | Plaintiff | INFORMATION |
|---|-----------|--|
| Caraballo, Samuel (1) 2020A South 32 nd Street Milwaukee, Wisconsin 53215 (D.O.B. September 3, 1971) 04CF002719 | | Ramos-Figueroa, Pablo (17) 3347 A. S. 99 th Ct. Milwaukee, Wisconsin 53227 (D.O.B. July 17, 1975) 04CF002735 |
| Figueroa-Rivera, Felix (2) 4653 South 23 rd Street, #7 Milwaukee, Wisconsin 53221 (D.O.B. November 13, 1974) 04CF002720 | | Matias, Ricardo (18) 2050 West Vilter Lane Milwaukee, Wisconsin 53204 (D.O.B. September 13, 1980) 04CF002736 |
| Caraballo, Luis Enrique (3) 5419 West Lincoln, #4 Milwaukee, Wisconsin 53219 (D.O.B. February 20, 1976) 04CF002721 | | De La Rosa, Deine (19) 4901 W. Oklahoma, #5 Milwaukee, Wisconsin 53219 (D.O.B. August 25, 1966) 04CF002737 |
| Torres-Espinal, Ambioris (4) 727 E. Lincoln Ave. Milwaukee, Wisconsin 53207 (D.O.B. December 13, 1980) 04CF002722 | | Perez, Manuel (20) 1428 South 9 th Street Milwaukee, Wisconsin 53204 (D.O.B. November 3, 1966) 04CF002738 |
| Cruz, Grisel (5) 1568 West Becher Milwaukee, Wisconsin 53215 (D.O.B. September 18, 1972) 04CF002723 | | Espada, Reynaldo (21) 2767 South 15 th Place Milwaukee, Wisconsin 53215 (D.O.B. January 16, 1964) 04CF002739 |
| Yanmariano, Sandro (6) 2130 South 31 st Street Milwaukee, Wisconsin 53215 (D.O.B. May 2, 1970) 04CF002724 | | Parrish, Scott (22) 2001 South 34 th Street Milwaukee, Wisconsin 53215 (D.O.B. August 11, 1965) 04CF002740 |
| Brito, Fred (7) 545 W. St. John Ct. Glendale, Wisconsin 53217 (D.O.B. February 25, 1957) 04CF002725 | | Velazquez, Francisco (23) 3727 South 80 th Street Milwaukee, Wisconsin 53220 (D.O.B. June 27, 1951) 04CF002741 |
| Rosado, Madeline (8) 1040 South 28 th Street Milwaukee, Wisconsin 53215 (D.O.B. January 30, 1981) 04CF002726 | | Caraballo, Andrea (24) 3613 W. Greenfield Milwaukee, Wisconsin 53215 (D.O.B. February 15, 1972) 04CF002742 |

Leonardo-Sanchez, Pedro (9)
1632 South 3rd Street
Milwaukee, Wisconsin 53204
(D.O.B. November 15, 1967)
04CF002727

Sanchez, Jose (10)
4359 South Quincy
Milwaukee, Wisconsin 53207
(D.O.B. April 12, 1973)
04CF002728

King, Michael (11)
856 S. 86th St.
West Allis, Wisconsin 53215
(D.O.B. September 8, 1972)
04CF002729

Cruz, Jose (12)
1568 West Becher
Milwaukee, Wisconsin 53215
(D.O.B. February 28, 1978)
04CF002730

Amparo, Juan (13)
1547 South 10th Street
Milwaukee, Wisconsin 53204
(D.O.B. October 29, 1962)
04CF002731

Caraballo, Gabriella (14)
3289 North 44th Street
Milwaukee, Wisconsin 53216
(D.O.B. December 22, 1977)
04CF002732

Caraballo, Brenda (15)
1428 South 9th Street
Milwaukee, Wisconsin 53204
(D.O.B. July 30, 1974)
04CF002733

Berrios, Javier (16)
3904 South Sunset Square
Greenfield, Wisconsin 53220
(D.O.B. March 2, 1976)
04CF002734

Silva, Juan Carlos (25)
2220 s. 12th St.
Milwaukee, Wisconsin 53215
(D.O.B. April 13, 1975)
04CF002743

House, Jeff (26)
9438 West Eden Place
Milwaukee, Wisconsin 53228
(D.O.B. June 18, 1971)
04CF002744

Huyke, Joann (27)
623 S. 63rd Street
Milwaukee, Wisconsin 53214
(D.O.B. July 8, 1972)
04CF002745

Rivera, Maria N. (29)
330 Lincoln Street
Gary, Indiana 46402
(D.O.B. October 1, 1969)
04CF002747

Ocasio, Juan (30)
413 W. Harrison
Milwaukee, Wisconsin 53207
(D.O.B. August 30, 1973)
04CF002748

Renta, Johnny (31)
1743 W. Greenfield
Milwaukee, Wisconsin 53204
(D.O.B. June 3, 1964)
04CF002749

Osorio, Jean A. (32)
2867 S. Kinnickinnic Ave. #17
Milwaukee, Wisconsin 53207
(D.O.B. August 31, 1980)
04CF002750

Complaining Witness:

Detective Gerald Stanaszak
Milwaukee Police Department

DA Case Number: 04XF 3463
Circuit Court Case Numbers:

Defendant(s)

I, E. MICHAEL MC CANN, DISTRICT ATTORNEY FOR MILWAUKEE COUNTY, WISCONSIN, HEREBY INFORM THE COURT THAT THE ABOVE NAMED DEFENDANTS IN THE COUNTY OF MILWAUKEE, STATE OF WISCONSIN.

COUNT 01: CONSPIRACY TO COMMIT THE OFFENSE OF DELIVERY OF A CONTROLLED SUBSTANCE – COCAINE (As to all defendants except Sandro Yanmariano, Gabriella Caraballo)
Between January 1, 2002 and May 18, 2004 in the County of Milwaukee, did intentionally and unlawfully conspire with another for the purpose of committing the crime of delivery of a controlled substance (cocaine), more than 40 grams, contrary to Wisconsin Statutes 961.16(2)(b)(1) and 961.41(1)(cm)(4), and further, that the defendants did acts to intentionally and unlawfully effectuate the purpose of this combination, contrary to Wisconsin Statutes sections 939.31, 961.41(1x) and 971.365 (Class C Felony)

COUNT 02: CONSPIRACY TO COMMIT THE OFFENSE OF POSSESSION WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE – COCAINE (As to all defendants except Sandro Yanmariano, Gabriella Caraballo)
Between January 1, 2002 and May 18, 2004 in the County of Milwaukee, did intentionally and unlawfully conspire with another for the purpose of committing the crime of possession with intent to deliver of a controlled substance (cocaine), more than 40 grams, contrary to Wisconsin Statutes 961.16(2)(b)(1) and 961.41(1m)(cm)(4), and further, that the defendants did acts to intentionally and unlawfully effectuate the purpose of this combination, contrary to Wisconsin Statutes sections 939.31, 961.41(1x) and 971.365 (Class C Felony)

COUNT 03: CONSPIRACY TO DELIVER OF A CONTROLLED SUBSTANCE – ECSTASY (MDMA) (MORE THAN 50 GRAMS) (As to defendants Samuel Caraballo, Luis Caraballo, Felix Rivera, Gabriella Caraballo, Sandro Yanmariano, Rick Matias)
Between January 1, 2002 and May 18, 2004 in the County of Milwaukee, did intentionally and unlawfully conspire with another for the purpose of committing the crime of delivery of a controlled substance (Ecstasy - MDMA), more than 50 grams, contrary to Wisconsin Statutes 961.14(4)(am) and 961.41(1)(e)4, and further, that the defendants did acts to intentionally and unlawfully effectuate the purpose of this combination, contrary to Wisconsin Statutes sections 939.31, 961.41(1x) and 971.365 (Class C Felony)

COUNT 04: DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE (MORE THAN 40 GRAMS), PARTY TO A CRIME (As to defendants Felix Rivera and Juan Carlos Silva)
On or about January 14, 2004, in the City and County of Milwaukee, as party to a crime, did knowingly deliver more than 15 but less than 40 grams of cocaine, a controlled substance, contrary to Wisconsin Statutes sections 961.16(2)(b)(1) and 961.41(1)(cm)3 and 939.05. (Class D felony)

COUNT 05: DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE (MORE THAN 40 GRAMS), PARTY TO A CRIME (As to defendant Samuel Caraballo)
On April 9, 2004, at 3904 South Sunset Square Drive, City of Greenfield, as party to a crime, did knowingly deliver more than 40 grams of cocaine, a controlled substance, contrary to Wisconsin Statutes sections 961.16(2)(b)(1) and 961.41(1)(cm)4 and 939.05. (Class C Felony)

COUNT 06: ATTEMPTED POSSESSION WITH INTENT TO DELIVERY A CONTROLLED SUBSTANCE - COCAINE (MORE THAN 40 GRAMS), PARTY TO A CRIME (As to defendant Javier Berrios)

On April 9, 2004, at 3904 South Sunset Square Drive, City of Greenfield, as party to a crime, did knowingly attempt to possess with intent to deliver more than 40 grams of cocaine, a controlled substance, contrary to Wisconsin Statutes sections 961.16(2)(b)(1) and 961.41(1m)(cm)4, 939.32 and 939.05. (Class C Felony)

COUNT 07: DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE (MORE THAN 40 GRAMS), PARTY TO A CRIME (As to defendant Jose Sanchez)

On April 5, 2004, at the area of 2020A S. 32nd St, City of Milwaukee, as party to a crime, did knowingly deliver more than 40 grams of cocaine, a controlled substance, contrary to Wisconsin Statutes sections 961.16(2)(b)(1) and 961.41(1)(cm)4 and 939.05. (Class C Felony)

COUNT 08: DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE (MORE THAN 40 GRAMS), PARTY TO A CRIME (As to defendant Samuel Caraballo)

On April 5, 2004, at the area of 2020A S. 32nd St, City of Milwaukee, as party to a crime, did knowingly deliver more than 40 grams of cocaine (approximately 55.21 grams), a controlled substance, contrary to Wisconsin Statutes sections 961.16(2)(b)(1) and 961.41(1)(cm)4 and 939.05. (Class C Felony)

COUNT 09: POSSESSION WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE - COCAINE (MORE THAN 40 GRAMS), PARTY TO A CRIME (As to defendant Deine De La Rosa)

On April 5, 2004, at the area of 4901 W. Oklahoma, City of Milwaukee, as party to a crime, did knowingly possess with intent to deliver more than 40 grams of cocaine, a controlled substance, contrary to Wisconsin Statutes sections 961.16(2)(b)(1) and 961.41(1m)(cm)4 and 939.05. (Class C Felony)

COUNT 10: POSSESSION WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE - COCAINE (MORE THAN 40 GRAMS), PARTY TO A CRIME (As to defendant Ambioris Torres-Espinal)

On April 5, 2004, at the area of 8000 S. Wildwood, City of Oak Creek, as party to a crime, did knowingly possess with intent to deliver more than 40 grams of cocaine (approximately 55.21 grams), a controlled substance, contrary to Wisconsin Statutes sections 961.16(2)(b)(1) and 961.41(1m)(cm)4 and 939.05. (Class C Felony)

COUNT 11: DELIVERY OF A CONTROLLED SUBSTANCE – ECSTASY (MDMA) (MORE THAN 10 GRAMS AND LESS THAN 50 GRAM) (As to defendants Sandro Yanmariano, Gabriella Caraballo and Samuel Caraballo)

On February 11, 2004, in the City and County of Milwaukee, as party to a crime, did knowingly deliver 100 pills (approximately 15 grams of Ecstasy - MDMA), a controlled substance, contrary to Wisconsin Statutes sections 961.14(4)(am) and 961.41(1)(e)3. (Class D Felony)

COUNT 12: DELIVERY OF A CONTROLLED SUBSTANCE – ECSTASY (MDMA) (MORE THAN 10 GRAMS AND LESS THAN 50 GRAMS) (As to defendant Gabriela Caraballo and Luis Caraballo)

On April 2, 2004, in the area of 36th Street and National Avenue, City of Milwaukee, as party to a crime, did knowingly deliver 100 pills (approximately 15 grams of Ecstasy - MDMA), a controlled substance, contrary to Wisconsin Statutes sections 961.14(4)(am) and 961.41(1)(e)3. (Class D Felony)

COUNT 13: DELIVERY OF A CONTROLLED SUBSTANCE – ECSTASY (MDMA) (MORE THAN 10 GRAMS AND LESS THAN 50 GRAMS) (As to defendant Samuel Caraballo and Sandro Yanmariano)

On April 6, 2004, at 2020 South 32nd Street, City of Milwaukee, as party to a crime, did knowingly deliver 99 ½ pills (approximately 15 grams of Ecstasy - MDMA), a controlled substance, contrary to Wisconsin Statutes sections 961.14(4)(am) and 961.41(1)(e)3, and 939.05. (Class D Felony)

COUNT 14: DELIVERY OF A CONTROLLED SUBSTANCE – ECSTASY (MDMA) (MORE THAN 10 GRAMS AND LESS THAN 50 GRAMS) (As to defendant Gabriella Caraballo and Luis Caraballo)

On May 5, 2004, at 6900 W. Greenfield Ave, City of West Allis, as party to a crime, did knowingly deliver 100 pills (approximately 15 grams of Ecstasy - MDMA), a controlled substance, contrary to Wisconsin Statutes sections 961.14(4)(am) and 961.41(1)(e)3, and 939.05. (Class D Felony)

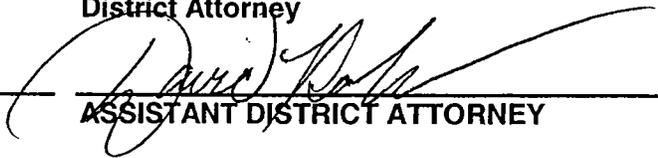
COUNT 15: KEEPER OF A DRUG HOUSE (As to defendant Samuel Caraballo)

On January 1, 2004 to May 18, 2004, at 2020 A. S. 32nd St., City of Milwaukee, as party to a crime, did knowingly keep or maintain a place which is used for the purpose of manufacturing, keeping or delivering controlled substances in violation of Chapter 961 of the Wisconsin Statutes, contrary to Wisconsin Statutes sec. 961.42 and 939.05 (Class I Felony)

DATED:

E. Michael McCann
District Attorney

6/18/04



ASSISTANT DISTRICT ATTORNEY

IN THE MATTER OF THE APPLICATION OF
THE STATE OF WISCONSIN FOR AN ORDER
AUTHORIZING THE INTERCEPTION OF WIRE
COMMUNICATIONS TRANSMITTED OVER A
CELLULAR TELEPHONE FACILITY PRESENTLY
ASSIGNED NUMBER (414) 202-1005.

APPLICATION NO.

AFFIDAVIT

GERALD STANASZAK, being duly sworn, depose and state as follows:

INTRODUCTION

1. I am a Detective with the City of Milwaukee Police Department (MPD) and presently assigned to the Vice Control Division (VCD) and the High Intensity Drug Trafficking Area Drug Gang Task Force (HIDTA). As a State certified law enforcement officer, I have been employed by MPD for approximately 21 years, and have been a Detective since 1993. In the course of my work, I have investigated hundreds of State of Wisconsin and federal narcotics, firearms and money laundering offenses. I have had previous assignments working with the Milwaukee Metropolitan Drug Enforcement Group (MMDEG), the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI). I have further been assigned to the Milwaukee Police Department Vice Control Division Narcotics Unit for over 15 years. In the course of my professional experience, I have assisted in the preparation and execution of over 500 search warrants, have personally made over 250 undercover purchases of narcotics and conducted over 270 successful "knock and talk" investigations. I have also served as case agent in federal criminal cases regarding seven separate narcotics trafficking organizations, one of which utilized three wire communications interceptions that led to the successful prosecution of continuing criminal enterprises. In addition, I have participated in four other previous successful state and federal interception of wire communications investigations. Based upon my training and experience, I know that cocaine, Ecstasy (3,4-methylenedioxymethamphetamine, or MDMA) and heroin are not manufactured in Wisconsin, but generally have their origin in foreign

countries, and are then imported directly to states other than Wisconsin for ultimate nationwide distribution. I have also learned the methods of distribution and the values of these substances as they are bought and sold in Milwaukee County. I have also performed thousands of field tests for substances including cocaine and heroin, and am familiar with such tests for Ecstasy (MDMA) and know that these tests have proven reliable compared to the final identification of these substances by the Wisconsin State Crime Laboratory.

2. This affidavit is based upon my personal knowledge and investigation, as well as information related to me directly or through reports by other federal, state and local law enforcement officers, whom I believe to be truthful and reliable, in the course of their official duties, including the: Bureau of Alcohol, Tobacco and Firearms (ATF), DEA, FBI, Cudahy Police Department, Milwaukee County Sheriff's Department (MCSO), MPD, and the Wisconsin Department of Justice Division of Narcotics Enforcement (DNE), which has now become part of the Division of Criminal Investigation (DCI). This affidavit is also premised upon information obtained through citizen witnesses, confidential informants and defendants, whose reliability will be established separately herein. I have further obtained the authorization of Nannette H. Hegerty, the Chief of the Milwaukee Police Department, to present this affidavit and make this application. All addresses described herein are within Milwaukee County, Wisconsin, unless otherwise noted.

3. This affidavit is submitted in support of an application for an order authorizing the interception of wire communications¹ of **SAMUEL CARABALLO, FELIX RIVERA (a.k.a. "FELO"), GUILLERMO ALVAREZ (a.k.a. "GORDO"), GRISEL CRUZ, JOSE CRUZ (a.k.a. "PACHIE"), REYNALDO ESPADA, GABRIELA CARABALLO, MODESTO FONTANEZ, HUSSEIN GOVANI, YAMARI GOVANI, FRANCISCO VELASQUEZ** and of others, as yet unknown, over a cellular telephone utilized by **SAMUEL CARABALLO** to wit: Sprint cellular telephone number **(414) 202-1005** bearing International Mobile Subscriber Identifier (IMSI) number **4142021005** and Electronic Serial Number (ESN) **3FE94206**, which is subscribed in the name of Brenda Caraballo, at 1428 South 9th Street, Milwaukee, Wisconsin. This number is an active pre-paid account plan with Sprint that was activated on September 1, 2000, and is current as of the date of this affidavit.

¹ In this affidavit, the target cellular telephone number and anticipated interceptees will be demarcated in bold caps.

4. This application is also intended to apply to the interception of background conversations intercepted in the vicinity of the target cellular telephone while the telephone is activated or otherwise in use.

5. I am familiar with all aspects of this investigation due to personal participation, interviews and reports submitted by MPD, MCSD, ATF, DEA, FBI, DNE/DCI and the Cudahy Police Department and other representatives of these law enforcement agencies, as well as witnesses and other concerned parties.

6. The investigation to date has provided evidence establishing that **SAMUEL CARABALLO, FELIX RIVERA (a.k.a. "FELO"), GUILLERMO ALVAREZ (a.k.a. "GORDO"), GRISEL CRUZ, JOSE CRUZ (a.k.a. "PACHIE"), REYNALDO ESPADA, GABRIELA CARABALLO** and others, as yet unknown, have committed, are committing and will continue to commit state violations of Wisconsin Statutes §961.41(a) (Manufacture, Distribution or Delivery), §961.41(1m) (Possession With Intent to Manufacture, Distribute or Deliver) and §961.42 (Keeping a Place for Using, Manufacturing, Keeping or Delivering) for controlled substances including, but not limited to, §961.16(2)(b) (cocaine), §961.14(4)(am) (3,4-methylenedioxymethamphetamine: "Ecstasy" or MDMA) and §961.14(3)(k) (heroin); §§939.31 and 961.41(1x) (Conspiracy), and §§946.83 and 946.85 (Racketeering and Continuing Criminal Enterprises) as well as federal violations of Title 21, United States Code, §§ 841(a)(1) (Possession with the Intent to Distribute and Distribution of Controlled Substances, including but not limited to cocaine, Ecstasy (MDMA) and heroin), 846 (Conspiracy), and 843(b) (Use of a Communication Facility to Facilitate Controlled Substance Felonies), and violations of Title 18, United States Code, §§ 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), and 1956 and 1957 (Money Laundering). Specifically, the evidence established that **SAMUEL CARABALLO** is operating a drug trafficking organization involving numerous family members and other individuals that distributes controlled substances including cocaine, Ecstasy (MDMA) and heroin in and around the Milwaukee area from sources located outside Wisconsin, utilizing commercial properties to facilitate these activities and likely launder the proceeds. See Attachments A and B pages 46-47.

7. The investigation to date has included traditional law enforcement methods, including, but not limited to, interviews with citizen witnesses and confidential informants, garbage searches, the

gathering and analysis of information from other law enforcement agencies, the gathering and analysis of documentary evidence, recorded telephone conversations between confidential informants and **SAMUEL CARABALLO** and his associates, controlled purchases of cocaine by confidential informants from **SAMUEL CARABALLO** and his associates, the analysis of pen register, trap and trace, and telephone toll data, and physical surveillance.

8. Based on my personal participation in this investigation, I am familiar with all aspects of this investigation. On the basis of this familiarity, and on the basis of other information that I have reviewed and determined to be reliable, I allege the facts contained in this affidavit show that:

- a. There is probable cause to believe that **SAMUEL CARABALLO, FELIX RIVERA (a.k.a. "FELO"), GUILLERMO ALVAREZ (a.k.a. "GORDO"), GRISEL CRUZ, JOSE CRUZ (a.k.a. "PACHIE"), REYNALDO ESPADA, GABRIELA CARABALLO** and others, yet unknown, have committed, and will continue to commit state violations of Wisconsin Statutes §961.41(a) (Manufacture, Distribution or Delivery), §961.41(1m) (Possession With Intent to Manufacture, Distribute or Deliver) and §961.42 (Keeping a Place for Using, Manufacturing, Keeping or Delivering) for controlled substances including, but not limited to, §961.16(2)(b) (cocaine), §961.14(4)(am) (3,4-methylenedioxymethamphetamine: "Ecstasy" or MDMA) and §961.14(3)(k) (heroin); §§939.31 and 961.41(1x) (Conspiracy), and §§946.83 and 946.85 (Racketeering and Continuing Criminal Enterprises) as well as federal violations of Title 21, United States Code, §§ 841(a)(1) (Possession with the Intent to Distribute and Distribution of Controlled Substances, including but not limited to cocaine, Ecstasy (MDMA) and heroin), 846 (Conspiracy), and 843(b) (Use of a Communication Facility to Facilitate Controlled Substance Felonies), and violations of Title 18, United States Code, §§ 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), and 1956 and 1957 (Money Laundering);
- b. There is probable cause to believe that particular wire communications of **SAMUEL CARABALLO FELIX RIVERA (a.k.a. "FELO"), GUILLERMO ALVAREZ (a.k.a. "GORDO"), GRISEL CRUZ, JOSE CRUZ (a.k.a. "PACHIE"), REYNALDO ESPADA, GABRIELA CARABALLO** and others, yet unknown, concerning the above-described offenses will be obtained through the interception of wire communications taking place on (414) 202-1005, believed to be used by **SAMUEL CARABALLO**, and that these wire communications are expected to concern and identify (i) all of the associates of the organization, whether acting in leadership, trafficking, courier, money laundering, or other roles, in and outside Milwaukee and Wisconsin; (ii) the source(s) of the narcotics, including cocaine, Ecstasy (MDMA) and heroin, whether in Wisconsin or in Indiana, Puerto Rico or other unknown locations; (iii) the methods of transportation used to bring the narcotics into Wisconsin; (iv) the couriers used to transport the narcotics to Wisconsin; (v) the

method(s) of payment used to purchase the narcotics; (vi) the location(s) in the Milwaukee area where the narcotics are stored; (vii) the location(s) of proceeds received from the sales of narcotics; (viii) the assets that have been purchased by this organization with proceeds from narcotics trafficking; (ix) the method(s) used, if any, to launder the proceeds and the individuals responsible; and all other offenses, including violent and property crimes, committed by and on behalf of this organization. These wire communications are expected to constitute admissible evidence of the above-described offenses;

- c. Normal investigative procedures have been tried and have failed. In addition, these procedures reasonably appear to be unlikely to succeed in identifying the entire scope of criminal activity. Finally, these procedures are too dangerous to employ, as is described herein (see paragraphs 65-86); and
- d. There is probable cause to believe that the target cellular telephone bearing telephone number (414) 202-1005 is being, and will continue to be used in connection with the commission of the offenses described herein.

9. Because this affidavit is submitted for the limited purpose of securing authorization for the interception of wire communications, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are essential to establish the necessary foundation for an order authorizing interception of wire communications.

PERSONS EXPECTED TO BE INTERCEPTED

10. The investigation has revealed that **SAMUEL CARABALLO** and his associates maintain a substantial narcotics trafficking operation utilizing cellular telephones, to wit: Sprint cellular telephone number (414) 202-1005. Therefore, it is anticipated that the wire communications of **SAMUEL CARABALLO, FELIX RIVERA (a.k.a. "FELO"), GUILLERMO ALVAREZ (a.k.a. "GORDO"), GRISEL CRUZ, JOSE CRUZ (a.k.a. "PACHIE"), REYNALDO ESPADA, GABRIELA CARABALLO** and others, yet unknown, will be intercepted in accordance with an order authorizing interception of wire communications taking place on the cellular telephone currently assigned number (414) 202-1005. In addition, **MODESTO FONTANEZ, HUSSEIN GOVANI, YAMARI GOVANI, and FRANCISCO VELASQUEZ** are among the individuals suspected to be involved in this operation and whose wire communications may be intercepted. Summary information on these individuals, obtained from the investigation to date, is as follows:

- A. **SAMUEL CARABALLO**
 Date of birth September 3, 1971
 Leader of the drug trafficking organization, reputed owner of LA PLAYA restaurant and LA PLAYA fashions, presently employed at FRESH START AUTO SALES, former employee of NATIONAL AUTO SALES. Directly involved in the procurement and sale of narcotics, uses commercial properties to facilitate these activities and likely launder the proceeds.
- B. **FELIX RIVERA a.k.a. "FELO"**
 Date of Birth November 13, 1974
 Cousin of CARABALLO, co-owner of SABOR LATINO restaurant, possible supplier of cocaine to the organization, supervises the importation of cocaine from Puerto Rico, where he owns businesses. Directly assists CARABALLO in sales of narcotics.
- C. **GUILLERMO ALVAREZ a.k.a. "GORDO"**
 Date of Birth April 29, 1976
 Close associate of CARABALLO and RIVERA, who has acted as a courier to obtain and deliver narcotics from outside Wisconsin to Milwaukee.
- D. **GRISEL CRUZ**
 Date of Birth September 9, 1973
 Sister of CARABALLO and common-law wife of JOSE CRUZ, very high frequency of contact with CARABALLO's cell phone.
- E. **JOSE CRUZ a.k.a. "PACHIE"**
 Date of Birth February 28, 1972
 Arrested in 1992 with CARABALLO for Possession with Intent to Deliver Cocaine, several deliveries of cocaine to a confidential informant between 1999 and 2003, husband of GRISEL CRUZ.
- F. **REYNALDO ESPADA**
 Date of Birth January 16, 1964
 Close associate of CARABALLO whose cellular telephone was found in the possession of a courier delivering heroin to Milwaukee in 1998, resided at residence used by CARABALLO for drug trafficking, convicted in 2001 for Possession with Intent to Deliver Cocaine from arrest at that residence.
- G. **GABRIELA CARABALLO**
 Date of Birth December 22, 1977
 Cousin of CARABALLO who facilitates his sales of Ecstasy (MDMA).

- H. **MODESTO FONTANEZ**
 Date of Birth October 3, 1958
 Co-owner of the SABOR LATINO restaurant, per confidential informant laundering money with co-owner **RIVERA**.
- I. **HUSSEIN GOVANI**
 Date of Birth November 3, 1957
 Listed property owner of NATIONAL AUTO SALES used car lot at 2366 South 27th Street where **CARABALLO** has been employed, and the location of multiple deliveries of cocaine to a confidential informant. Also owner of **GOVANI'S AUTO BODY** at 2437 National Avenue. Employed at **NATIONAL MUFFLER AND BRAKE** at 1614 West National Avenue.
- J. **YAMARI GOVANI**
 Date of Birth June 29, 1976
 Listed property owner of NATIONAL AUTO SALES, also employed at **NATIONAL MUFFLER AND BRAKE**.
- K. **FRANCISCO VELASQUEZ**
 Date of Birth June 27, 1951
 Owner of **FRESH START AUTO SALES** at 7904 South 27th Street, where **CARABALLO** is presently employed.

RELIABILITY OF CONFIDENTIAL SOURCES(CI's)

11. The information relating to drug violations described in this affidavit is predicated, in part, upon conversations with individuals in a position to be aware of the activities of **SAMUEL CARABALLO**, **FELIX RIVERA** (a.k.a. "FELO"), **GUILLERMO ALVAREZ** (a.k.a. "GORDO"), **GRISEL CRUZ**, **JOSE CRUZ** (a.k.a. "PACHIE"), **REYNALDO ESPADA**, **GABRIELA CARABALLO**, **MODESTO FONTANEZ**, **HUSSEIN GOVANI**, **YAMARI GOVANI**, **FRANCISCO VELASQUEZ** and others, yet unknown. These persons, referred to herein as confidential sources (CIs), have provided valuable information about the illegal drug activities of **SAMUEL CARABALLO** and his associates. Some of the CIs have been proactive, conducting controlled purchases of narcotics from various subjects including **SAMUEL CARABALLO**. The information provided by all of the CIs has proven to be reliable, and much of the information provided has also been corroborated through other investigative techniques such as surveillance and telephone toll analysis. This information is discussed in detail below, and the limitations of the informants in this investigation are discussed in paragraphs 73-74 herein.

HISTORICAL FACTS AND CIRCUMSTANCES

April 2, 1992 traffic stop of SAMUEL CARABALLO and JOSE CRUZ.

12. On April 2, 1992, MPD Officer Scott Lafleur performed a traffic stop of a vehicle for equipment violations. As the passenger, **JOSE CRUZ**, exited the vehicle, two paper packets of what was later field tested and confirmed to be cocaine fell out of his right coat pocket, and fifteen (15) additional paper packets of cocaine were found in the same pocket during a custodial search. **SAMUEL CARABALLO** was identified as the driver of the vehicle, and found to be in possession of a paging device and \$210 in U.S. currency. Following arrest, **CARABALLO** and **CRUZ** stated that they resided at 1339 West State Street. **CRUZ** was subsequently convicted of Possession With Intent to Deliver Cocaine in case 1992CF921272. Based upon training and experience, affiant knows that cocaine, when sold on the street level in 1992, was packaged in paper packets and that narcotics dealers utilized paging devices to facilitate contact with customers. To avoid detection and arrest by the police, these dealers would often have their workers carry the cocaine on their persons.

April 5, 1992 traffic stop of SAMUEL CARABALLO.

13. On April 5, 1992, MPD Officers David Klotski and Thomas Stigler arrested **SAMUEL CARABALLO** for a traffic offense. A custodial search revealed **CARABALLO** was in possession of \$1,133.00 in U.S. currency. Subsequently, this currency was placed in an envelope next to three other envelopes filled with paper on the floor of the Police Administration Building, where Officer John Sullivan led narcotics detection canine "Fax" past the envelopes. "Fax" scratched and bit at the envelope containing currency recovered from **CARABALLO**, indicating the presence of narcotics, but did not alert to any of the other envelopes. Based upon my training and experience, I know that specially trained canines have proven to be extremely reliable in determining the presence of narcotics.

March 8, 1994 controlled purchase of cocaine from SAMUEL CARABALLO.

14. Wisconsin Department of Justice Division of Narcotics Enforcement (DNE) reports authored by Special Agent Robert W. Sloey written in 1993 and 1994 reflect that during that time period, Agent Sloey and Alcohol, Tobacco and Firearms Agent (ATF) David Darin met with a confidential informant (CI-1) who identified **SAMUEL CARABALLO** as a multi-ounce cocaine dealer in the Milwaukee area.

15. On Tuesday March 8, 1994, Agent Sloey met with CI-1 in an attempt to purchase an ounce of cocaine from SAMUEL CARABALLO, and dialed pager number (414) 575-7023 provided by CI-1. A few minutes later a subject later identified as Juan Carlos Pantojas, D.O.B. 12-09-72, returned the call and spoke with CI-1. During the recorded conversation, Pantojas stated that he was answering the beeper message because SAMUEL CARABALLO was in a halfway house. CI-1 then arranged to purchase one ounce of cocaine from Pantojas in the area of North Holton and West Auer. Agent Sloey drove CI-1 to that location and once again dialed the pager number. A few minutes later Pantojas called back and informed CI-1 that he would not be available for at least fifteen (15) minutes. An hour later, Agent Sloey decided to terminate the attempt to purchase the cocaine because Pantojas had not arrived. As he drove from the scene, Agent Sloey and CI-1 observed CARABALLO driving northbound on Holton with Pantojas in a silver van. Agent Sloey then parked on the 2400 block of Holton, and CARABALLO pulled up behind Agent Sloey's vehicle. CI-1 then walked up to the passenger side of the van, reached in and appeared to obtain something from Pantojas. CI-1 engaged the occupants of the van in a short conversation before returning to Agent Robert Sloey's vehicle with a clear plastic bag containing what was later field tested and confirmed to be approximately 27 grams of cocaine. CI-1 then informed Agent Sloey that CI-1 received the cocaine from Pantojas, but that CI-1 had asked CARABALLO about the price for a ¼ kilogram of cocaine and CARABALLO replied that the price would be \$7,500. Agent Sloey then gave \$950 to CI-1 and CI-1 went back to the van and handed the money to Pantojas, who handed the money to CARABALLO. I have reviewed Milwaukee Police Department reports reflecting that on November 11, 1995, Juan Carlos Pantojas was shot and killed at 1112 B S. 23rd Street, Milwaukee, Wisconsin.

March 16, 1994 attempted purchase of cocaine from SAMUEL CARABALLO.

16. On March 14, 1994, Agent Sloey, again working with CI-1, dialed pager number (414) 575-7023. SAMUEL CARABALLO returned the call and spoke to CI-1, and in the recorded conversation, agreed to sell CI-1 a quarter-kilogram of cocaine on March 15, 1994. However, on March 15, 1994, Agent Sloey placed three separate phone calls to that pager number but received no return calls. On March 16, 1994, Agent Sloey again dialed the pager number. A short time later, SAMUEL CARABALLO returned the call and spoke with CI-1. In the recorded conversation, CARABALLO stated he would deliver the quarter-kilogram of cocaine at 1:30 P.M. CI-1 was instructed by Agent

Sloey to tell **CARABALLO** that CI-1 would not be available to make it until 2:00 P.M. At approximately 2:00 P.M. Agent Sloey dialed the pager number, but received no return call. Agent Sloey again dialed the pager number at 2:44 P.M., and **CARABALLO** called back and had a recorded conversation with CI-1. CI-1 asked **CARABALLO** if he could deliver the cocaine to the Burger King Restaurant on South 14th Street. **CARABALLO** stated he did not want the transaction to occur at that location and instructed CI-1 to call back at 4:00 P.M. Agent Sloey placed two additional calls to pager number (414) 575-7023 on that date, but received no return calls. The cocaine delivery never occurred, and there was no further documented contact between CI-1 and **SAMUEL CARABALLO**. Later that year, CI-1 was arrested, charged and convicted of Possession of Controlled Substance and could no longer work with the DNE. I have spoken with officials from DCI who stated that the cocaine purchased from **SAMUEL CARABALLO** and placed on evidence was destroyed in 2000.

August 6, 1995 shooting of Jose Rivera by SAMUEL CARABALLO.

17. Milwaukee Police Department reports regarding an incident on August 6, 1995, at 820 West Hayes, reflect that a Jose R. Rivera, D.O.B. 06-10-66 was shot in the leg and back after an argument in the SABOR LATINO tavern at 2423 South 6th Street. Jose Rivera positively identified **SAMUEL CARABALLO** as the shooter from a photographic lineup. In a statement to detectives on August 8, 1995, Rivera stated that he wished to prosecute, but was fearful and wanted to discuss the issue further with his family. On August 21, 1995, Rivera reiterated that **CARABALLO** was the shooter, but stated he did not want to prosecute for fear of retaliation, and that he planned to move to Puerto Rico after he recovered from his gunshot wounds.

18. On August 16, 1995, Milwaukee Police Detective Daniel Teske spoke with a confidential informant (CI-2) regarding this incident. CI-2 stated Jose Rivera had brushed the hair of the sister of Luis Caraballo's wife. Luis Caraballo slapped Rivera, who then left the tavern and fled on foot westbound on Hayes. CI-2 stated that **SAMUEL CARABALLO** and a subject known only as "FoFo" pursued Rivera, and that "FoFo" shot at Rivera, causing him to fall to the ground. **CARABALLO** then shot Rivera as he was lying on the ground. CI-2 identified **CARABALLO** in a photo lineup, and stated that **CARABALLO** was a drug dealer who frequented the area of 23rd and Scott. CI-2 further related that the East Side Mafioso street gang was pursuing **CARABALLO** because he shorted them on four grams of cocaine.

19. On August 23, 1995, the Milwaukee County District Attorney's Office charged **SAMUEL CARABALLO** with First Degree Reckless Injury While Armed in case 1995CF003649. However, on September 13, 1995, the charge was dismissed because Jose R. Rivera failed to appear in court. Unverified information received by the Milwaukee Police Department indicated that Rivera had in fact moved to Puerto Rico (see paragraph 17 above).

October 24, 1997 to March 16, 1998 information supplied by a confidential informant regarding **SAMUEL CARABALLO's drug trafficking organization.**

20. FBI Special Agent Stephen O'Reilly authored reports in regards to an investigation into **SAMUEL CARABALLO** and his narcotics trafficking organization in 1997. On October 24, 1997, Agent O'Reilly spoke with a confidential informant (CI-3) who stated that **SAMUEL CARABALLO**, his brother "**FELO**" and associates "Joel" and "**GORDO**" visited CI-3 to have CI-3 help them take over Osmaide Palacio's drug business. Palacio was subsequently convicted of Possession With Intent to Deliver Cocaine Base in Milwaukee County case 1998CF1243051. I subsequently identified "**FELO**" as **FELIX RIVERA**, and "**GORDO**" as **GUILLERMO ALVAREZ**. CI-3 also reported that **RIVERA** and **MODESTO FONTANEZ** had jointly invested in the **SABOR LATINO** restaurant. My review of MPD reports regarding the shooting incident described in paragraphs 17-19 above revealed that **FONTANEZ** was interviewed in the course of that investigation and admitted being the co-owner of the **SABOR LATINO** restaurant. I further know based upon prior investigations that **FONTANEZ** was one of the original five members who formed the Latin King Street Gang in the City of Milwaukee. **FONTANEZ** was federally indicted for and convicted for Conspiracy to Distribute Cocaine Base on May 26, 1987.

21. On February 5, 1998, CI-3 reported to Agent O'Reilly that Felix Rivera, **SAMUEL CARABALLO**, Joel Rivera-Pagan and a subject known as "Junito" pooled their money together to purchase kilogram quantities of cocaine from a Cuban male named "Ronkillo" in Miami, Florida. The group gave their money to **GUILLERMO ALVAREZ** who then flew down to Miami between January 31 and February 3, 1998, to meet with "Ronkillo". CI-3 stated that he was told that **ALVAREZ** met with and gave the money to "Ronkillo" but never heard from Ronkillo again and returned to Milwaukee without the cocaine. Affiant has reviewed Milwaukee Police Department reports reflecting that Joel Rivera-Pagan was shot and killed on December 20, 1999 at 1838 South 15th

Street. A warrant, which remains outstanding, was issued for the arrest of Luis A. Vega, D.O.B. 11-25-68, but it is unknown how or if this homicide is related to this investigation.

22. On March 16, 1998, CI-3 reported to Agent O'Reilly that **FELIX RIVERA** a.k.a. "**FELO**", **SAMUEL CARABALLO** and **GUILLERMO ALVAREZ** a.k.a. "**GORDO**" continued to sell narcotics on the south side of Milwaukee. CI-3 stated that **RIVERA** was very surveillance conscious and often employed lookout vehicles to circle the area in which he sells or purchases narcotics. Affiant knows based on his training and experience that narcotics dealers often have other individuals acting as lookouts in the areas where they conduct their transactions. This technique is called "counter-surveillance" and is primarily used by narcotics dealers to detect the presence of law enforcement officers, and results in increased difficulty for those officers to successfully conduct an undercover transaction with the targets of an investigation.

April 5, 1998 attempted homicide of Gilberto Melendez by Samuel Caraballo Sr.

23. Milwaukee Police Department reports concerning an attempted homicide on April 5, 1998 at 2061 South 7th Street show that the victim, Gilberto Melendez, D.O.B 12-08-65, told detectives that he had been selling heroin and marijuana out of that residence for the last six months when he was approached by the father of **SAMUEL CARABALLO**, Samuel Caraballo Sr., whom he recognized as a seller of cocaine base. Caraballo Sr. asked to work for Melendez selling heroin, and Melendez stated that they agreed that Caraballo Sr. was to receive 20% of the profits from all sales by Caraballo Sr. Melendez related that Caraballo Sr. agreed to come over to his house at 2061 South 7th at noon on April 5, 1998. However, Caraballo Sr. arrived at 8:00 A.M. when Melendez was sleeping, causing an argument wherein Caraballo Sr. stated "I'm ready, I'm gonna start dealing and no one's gonna stop me." When a customer arrived, Melendez made the sale and Caraballo Sr. became upset with the fact he was not allowed to sell the heroin and stabbed the victim eight times. On April 8, 1998, a warrant was issued for Samuel Caraballo Sr. for First Degree Reckless Injury While Armed in case 1998CF001808. Samuel Caraballo Sr. was not arrested on this warrant until almost four years later, and on May 5, 2003, the charges were dismissed because the State could not locate Gilberto Melendez. As is detailed herein, **SAMUEL CARABALLO** is also a known seller of cocaine and heroin, his drug trafficking organization involves numerous family members, and the vast majority of phone numbers dialed by him from (414) 202-1005 remain unidentified.

June 4, 1998 "knock and talk" investigation.

24. Milwaukee Police Department reports show that on June 4, 1998, the MPD Narcotics Unit conducted a "knock and talk" at 1564 A South 4th Street. Upon entering the residence, they encountered SAMUEL CARABALLO, Eladio Hernandez D.O.B. 04-09-83 and Joan Soto D.O.B. 01-8-81. CARABALLO, Hernandez and Soto denied living there, and CARABALLO stated that he resided at 3700 East Pulaski # 2. Inside the residence the officers recovered what was later field tested and confirmed to be 67.19 grams of cocaine, 12.34 grams of cocaine base and 5.67 grams of marijuana. None of these individuals were arrested, and no one was prosecuted in relation to this incident. I know based on my training and experience that these quantities of cocaine and cocaine base are consistent only with possession for distribution.

June 4-5, 1998 traffic stop of a vehicle suspected to be delivering cocaine from Indiana to Milwaukee for SAMUEL CARABALLO's drug trafficking organization.

25. On June 4, 1998, FBI Agent Stephen O'Reilly sent a teletype to law enforcement in the Milwaukee area that a dark green 1996 Nissan Maxima with Lic. # RDH822 was being driven back to Milwaukee from Indiana on that date with at least two kilograms of cocaine. This license plate was registered to GUILLERMO ALVAREZ a.k.a. "GORDO".

26. Cudahy Police Department reports reflect that on Friday, June 5, 1998, Detective Gene Behnke observed the above-described Nissan stop at the intersection of Kirkland and Pulaski, where an individual later identified as SAMUEL CARABALLO exited and walked up to the front door at 3700 E. Pulaski #2. Det. Behnke was familiar with CARABALLO after receiving a call from Agent O'Reilly on March 12, 1998, advising that CARABALLO was trafficking in cocaine and possibly storing it at his residence at 3700 E. Pulaski #2. Agent O'Reilly also advised that Andrea Caraballo D.O.B. 02-15-72, FELIX RIVERA a.k.a. "FELO" and GUILLERMO ALVAREZ a.k.a. "GORDO" were associates of SAMUEL CARABALLO. These reports further reflect that Det. Behnke subsequently conducted surveillance on that residence and observed vehicles with Wisconsin plates listing to RIVERA, ALVAREZ and Priscilla Rivera.

27. Cudahy Police Department reports further reveal that on June 5, 1998, after dropping off SAMUEL CARABALLO, the above-described Nissan then drove from the scene and was stopped by the Cudahy Police Department on East Layton Avenue just east of Howell Avenue. Officers identified Jose Morales as the driver, Domingo Hernandez as the front passenger, and Eladio Hernandez and Joan

Soto as rear passengers. In a search of the vehicle, the officers recovered \$1,107.00 in U.S. currency hidden under the dashboard and secured with a rubber band, and a ziplock bag containing a strip of adhesive tape with white residue on the tape along with thirty (30) empty corner cuts from the trunk. Affiant knows from training and experience that narcotics dealers typically package cocaine to be sold on the street in the corners of plastic bags, known as corner cuts, which are then cut off and sealed by knots. The Wisconsin State Crime Laboratory subsequently confirmed the presence of cocaine on the ziplock bag and the strip of adhesive tape; however, the corner cuts were not tested. The Crime Lab further recovered a latent print on the adhesive tape, which matched the left thumb of SAMUEL CARABALLO, whose prints were on file with the Milwaukee Police Department.

28. I have reviewed a document from Verizon Wireless dated February 1, 2002, revealing that on June 5, 1998 at 5:56 PM, less than seven hours after the Cudahy Police Department stopped the above-described Nissan, SAMUEL CARABALLO opened a new account with Verizon for cellular telephone number (414) 403-3512. The subscriber is listed as SAMUEL CARABALLO with a Social Security number of 581-29-4083, a Drivers License number of C614-7807-1323-00, and residence at 2167 A South 14th Street. On January 9, 2004, I obtained information from the Wisconsin Department of Transportation showing that Wisconsin Drivers License number C614-7807-1323-00 is in the name of SAMUEL CARABALLO, D.O.B. 09-03-71, at 2020A South 32nd Street, Milwaukee, Wisconsin. I know based on my training and experience that narcotics dealers will change their phone numbers, both landline and cellular, when they suspect law enforcement officers are investigating their narcotics organization. Narcotics dealers do this to avoid having their phones wiretapped and to prevent law enforcement officers from learning the identities of the persons they contact by telephone to conduct their drug trafficking.

June 11, 1998 information that SAMUEL CARABALLO was concerned that the drug trafficking organization was the subject of police investigation.

29. On June 11, 1998, CI-3 contacted FBI Agent Stephen O'Reilly and related that SAMUEL CARABALLO was very worried about recent police pressure on him and his associates. CI-3 stated that CARABALLO's car was recently pulled over and seized on Layton Avenue, and an associate of his was arrested after a search of one of his drug houses. CARABALLO told CI-3 that he was worried he may be arrested soon.

November 3, 1999 interdiction of heroin to be delivered to SAMUEL CARABALLO's drug trafficking organization from New York.

30. I have reviewed Milwaukee Police Department reports reflecting that on Wednesday, November 3, 1999, Detectives Jeffrey Micklitz, Glen Bishop and Frank Velasquez went to the Milwaukee Amtrak Station at 433 West St. Paul to investigate a tip that a drug courier by the name of Ramon Cruz would deliver narcotics into Milwaukee via an Amtrak train. Detectives stopped and talked with Ramon Cruz while in the Amtrak Station. In a consensual pat down search of Cruz, detectives found a 7" by 3" package wrapped in duct tape and taped to his left inner thigh containing what was later field tested and confirmed to be 156.73 grams of heroin. Another confirmed 5.95 grams of heroin was recovered from inside the duffel bag carried by Cruz. Also inside the duffel bag was a notepad with a handwritten note: "When I get to NY call ITO 917-495-4628 115St 1st Ave Then Call Sam 1 (414) 403-3512". As detectives spoke with Cruz, a Jose M. Plaza approached and said something to Cruz in Spanish, which the detectives did not understand. Cruz stated in an interview that Jose Plaza gave him \$ 400 to pay for his ticket to New York, his hotel bill and his food. Cruz added that Jose Plaza was going to pay him \$ 1,000 when he returned from New York with the narcotics, which he believed to be cocaine. The cell phone number written on the note to call "Sam", (414) 403-3512, is the same number that was assigned to SAMUEL CARABALLO on June 5, 1998, as noted in paragraph 28 above.

31. Special Agent Helen Wasmer of the DEA Task Force in Milwaukee authored a report revealing that in a subsequent interview of Ramon Cruz, Cruz stated he met Jose Plaza through SAMUEL CARABALLO and that the phone Cruz had in his possession when he was arrested belonged to CARABALLO. Based on my training and experience, narcotics couriers (known as "mules") often have to call and report back to a member of the narcotics organization as to the status of the purchase and shipment of narcotics from out of state. Agent Wasmer obtained subscriber information for numerous phone numbers recovered from the memory of the cell phone taken from Ramon Cruz at the time of his arrest. This telephone listed to REYNALDO ESPADA at 2167 South 14th Street and bore number (414) 840-5805. The phone numbers taken from the cell phone, and the relevant subscriber information, included: (414) 384-5834, listing to Manuel Perez D.B.A. LA PLAYA at 1330 South Cesar Chavez Drive (Manuel Perez has been identified as the common law husband of SAMUEL CARABALLO's sister Brenda Caraballo); (414) 649-8612, listing to

REYNALDO ESPADA at 2167 South 14th Street; (414) 403-9375, listing to Jose R. Vega at 2240 South 15th Street; and (414) 403-3512, listing to SAMUEL CARABALLO at 11040 West Wildwood Lane # F218.

March 27, 2000 to June 8, 2001 investigation into the connection between SAMUEL CARABALLO's drug trafficking organization and a residence known to be used for drug trafficking.

32. On Monday March 27, 2000, Milwaukee County Sheriff's Detective Michael Hecker and Milwaukee Police Officer Rod Klotka conducted stationary surveillance on the multi-unit buildings at 2167 South 14th Street, where it was believed REYNALDO ESPADA and a Jose R. Vega resided. The officers observed SAMUEL CARABALLO exit the front residence with an unknown Hispanic male and drive off in a maroon Cadillac. Ninety minutes later, the Cadillac returned and SAMUEL CARABALLO and the unknown Hispanic male exited the vehicle and entered the front residence. Shortly thereafter, another unknown Hispanic male walked up to the front porch and met briefly with CARABALLO, before both entered the front residence.

33. On Wednesday, May 24, 2000, Milwaukee Police Detectives Abner Valcarcel, Jeffrey Mcklitz and Mark Mathy interviewed Jose R. Vega, D.O.B. 11-05-65, at the Milwaukee Amtrak Station, 433 West St. Paul, after stopping him from boarding a train bound for Miami, Florida. At that time, Vega stated he had \$4,700 in his underwear. Vega consented to a search of his residence at 2167 C South 14th Street, and the detectives recovered a Tanita brand gram scale and two knives with confirmed heroin and cocaine residue and a box of opened sandwich bags.

34. Verizon Wireless records for the cell phone number (414) 403-9375 listing to Jose R. Vega indicate that Vega had this cell phone account from March 6, 1999 up until February 15, 2000. I have run a "frequency count report" which shows the number of calls dialed from one phone number to another phone number over a period of time. During the time period of March 6, 1999 to February 15, 2000, 465 calls were placed from Vega's cell phone to SAMUEL CARABALLO's cell phone of (414) 403-3512. In the same period, 210 calls were placed from SAMUEL CARABALLO's cell phone to Vega's cell phone. In addition, 62 calls were made from Vega's cell phone to REYNALDO ESPADA at (414) 649-8612.

35. On Tuesday, June 6, 2000, DEA Task Force Agent Helen Wasmer observed **SAMUEL CARABALLO** exit the front residence at 2167 South 14th Street and enter the driver's side of a white Ford Expedition. Agent Wasmer followed the Expedition to the 3100 Block of South 18th where it parked. Shortly thereafter, **CARABALLO** reentered the Expedition and returned to the residence.

36. A Milwaukee County Sheriff's Department Drug Enforcement Unit report written by Detective Raul Rivera regarding a narcotics search at 2167 South 14th Street on June 8, 2001, shows that inside the residence, officers recovered what was later field tested and confirmed to be 47.4 grams of cocaine, 67.4 grams of marijuana, a digital scale and packaging material. **REYNALDO ESPADA** was inside at the time the warrant was executed and was subsequently charged and convicted of Possession with the Intent to Deliver Cocaine in Milwaukee County case 2001CF002980.

December 6, 2000 offer from SAMUEL CARABALLO at LA PLAYA to arrange a sale of heroin to a confidential informant.

37. On Wednesday, December 6, 2000, DEA Task Force Agent Helen Wasmer met with a confidential informant (CI-4) that had purchased heroin from **SAMUEL CARABALLO** in the past. On that date, CI-4 went to the LA PLAYA restaurant located 1330 South 16th Street and met with **CARABALLO**, who stated he could probably arrange for CI-4 to obtain some heroin. **CARABALLO** added that he had not been selling heroin for a period of time, but told CI-4 that he could have "Cuba" (Jose R. Vega) deliver the heroin because "Cuba" was "really hot" (a street term that affiant knows meant that Jose R. Vega, a.k.a "Cuba" was selling a lot of heroin.).

April 10, 2002 traffic stop of HUSSEIN GOVANI.

38. A New Berlin Police Department Report regarding a traffic stop of a 1989 Honda Civic, Lic. # WJW604 for expired plates on Wednesday April 10, 2002, at Andrea Drive and Edgewood Avenue reveals that the driver was identified as **HUSSEIN GOVANI**, and the passenger as Sikander Govani, D.O.B. 01-14-80, both of 13510 West Eagle Trace, New Berlin, Wisconsin (which is outside of Milwaukee County). **GOVANI** stated he had approximately \$2,500 on his person, and Sikander Govani stated he had \$1,500 on his person. **GOVANI** further stated he managed the NATIONAL MUFFLER AND BRAKE shop on 16th and National that was owned by a corporation (I later determined the address to be 1614 West National Avenue) and that the money he had was from the muffler shop that he was taking to the bank. Sikander Govani stated he also worked at that location and made \$ 8.00 an hour, and that the money he had on his person was his personal money. In the

passenger compartment, officers observed three Homicide Reports from the Milwaukee Police Department. A consensual search of the of the trunk revealed a tax form in the name of HUSSEIN GOVANI from an Open Pantry Food Store claiming an income of approximately \$97,000. The officers also recovered several bags from the trunk, one of which contained a stack of envelopes from Wisconsin Electric and various phone companies, several of which bore the name Madelin N. Rosado. The officers had their dispatcher run a Department of Transportation and Criminal Investigation Bureau Report on the name Madelin Rosado, and were advised that a Madelin R. Rosado, D.O.B. 01-30-81 of 1040 South 28th Street, Milwaukee, was on file. A Maria Rosado of this same address is observed with SAMUEL CARABALLO following a cocaine transaction on August 5, 2003, described in paragraph 57 below.

39. Records kept with the City of Milwaukee Tax Assessors Office show that HUSSEIN GOVANI owns GOVANI'S AUTO BODY at 2437 West National Avenue and NATIONAL AUTO SALES at 2366 South 27th Street. Affiant also reviewed records for NATIONAL MUFFLER AND BRAKE located at 1614 West National Avenue showing the listed owner as National Real Estate Investors LLC, which also owns the Open Pantry located at 1110 West Greenfield Avenue.

June 6, 2002 controlled purchase of cocaine.

40. On June 6, 2002, Wisconsin Department of Justice Special Agent John Balchunas, who was assigned to the Milwaukee HIDTA Heroin Initiative, met with a confidential informant (CI-5) to purchase ten half-gram bags of heroin for \$1,000. Agent Balchunas and CI-5 drove to the McDonald's lot at 601 West Oklahoma and parked next to a 1997 Ford F-150 Pickup Lic. # BL75-407. Agent Balchunas observed CI-5 leave his vehicle and walk directly to the 1997 Ford 150 and hand the driver, later identified as Nicholas Estes, D.O.B. 08-28-77, the agreed upon \$1,000. Estes then drove out of the lot, followed by DEA Special Agent Corey Parker and other agents. Estes drove to 1300 West Cleveland Avenue where he met with a subject later identified by Agent Parker as Jose R. Vega, a.k.a. "Cuba" D.O.B. 11-5-65. Estes and Vega entered the residence, and Estes exited a few minutes later and returned to the McDonald's lot, where he delivered what was later field tested and determined to be 4.5 grams of heroin to CI-5 who then handed the heroin to Agent Balchunas. Estes was arrested, and a search of the Ford F-150 revealed an additional 1.5 grams of heroin. Jose R. Vega was subsequently federally indicted and convicted for Delivery of Heroin in Eastern District of Wisconsin case 03-CR-118. As detailed in paragraphs 32-33 and 37 above, Vega was known to reside at a residence used by

CARABALLO for cocaine and heroin drug trafficking, and was known to CARABALLO as being a significant dealer of heroin.

January 2, 2003 sale of cocaine to a confidential informant by SAMUEL CARABALLO at NATIONAL AUTO SALES.

41. On Thursday, January 2, 2003, Milwaukee Police Officer Ryan Heidemann arrested an individual who later became an informant for Milwaukee Police Detective David Baker (CI-6). At the time of the arrest, CI-6 was in possession of what was later field tested and confirmed to be 27.86 grams of cocaine and a cellular telephone. Detective Baker examined the phone and found it had the number (414) 350-7449. Further, the phone contained several names and numbers, including "Sam" at (414) 202-1005. The outgoing call log revealed that CI-6 had called "Sam" at (414) 202-1005 approximately one hour before his arrest, the incoming call log revealed that "Sam" at (414) 202-1005 had called CI-6 approximately 2.5 hours earlier, and the missed call logs showed that "Sam" at (414) 202-1005 had again called CI-6 approximately ninety minutes before the arrest. Subpoenaed telephone records for (414) 350-7449 show that between November 29, 2002 and January 2, 2003, there were 11 phone calls made between CI-6 at (414) 350-7449 and SAMUEL CARABALLO at (414) 202-1005.

42. Detective Baker subsequently interviewed CI-6 pursuant to a proffer agreement, and CI-6 related that on January 2, 2003, CI-6 went to the NATIONAL AUTO SALES used car lot on 27th and Forest Home and met SAMUEL CARABALLO (whom CI-6 stated owned the lot) in an attempt to sell CARABALLO a 1990 Honda Accord. CARABALLO stated that he would give CI-6 nine ounces of cocaine for the car, but CI-6 did not want the cocaine because in past deals with CARABALLO the cocaine had a lot of "mix", meaning cocaine that had additional substances added to it so as dilute the quality of the cocaine. However, CARABALLO then told CI-6 that he had an ounce of cocaine in his office and that CI-6 could purchase it for \$650.00, which CI-6 did. CI-6 stated that on the way home CI-6 was stopped by the police and arrested with the ounce of cocaine that CI-6 had just purchased from CARABALLO. This statement comports with a signed statement taken shortly after the arrest in which CI-6 admitted CI-6 "had just purchased the cocaine".

43. CI-6 added that CI-6 has been purchasing cocaine powder from SAMUEL CARABALLO for 8 to 9 years. CI-6 stated that CARABALLO lives in a white house near 32nd and Burnahm and drives a white Cadillac Escalade, a gold Mercedes and a dark blue Lexus. CI-6 stated

that approximately 8 years earlier CARABALLO offered to sell CI-6 a half-kilogram of cocaine for \$10,000, which CI-6 refused. In April 1998, CI-6 met CARABALLO on 6th and Becher where CI-6 purchased three quarter ounce quantities of powder cocaine for \$200 each. At that time, CI-6 observed CARABALLO had 6 to 7 additional packages of what CI-6 believed to be ounce-quantities of cocaine. Over the years, CI-6 obtained numerous multiple-ounce quantities of cocaine from CARABALLO, and CI-6 estimated that between the summer of 2002 and the arrest on January 2, 2003, CI-6 obtained approximately 15 half-ounce quantities of cocaine from CARABALLO. CI-6 maintained that in the past, CARABALLO told CI-6 that he travels to Indiana and obtains narcotics from his sister.

July 24, 2003 armed robbery and theft of a vehicle belonging to GRISEL CRUZ.

44. Milwaukee Police Department reports show a complaint of an Armed Robbery on July 24, 2003, at 2368 South 19th Street, in which the suspects stole a white 1997 Ford Expedition Lic.# 566-FWB listing to GRISEL CRUZ at 1568 West Becher, money, jewelry and electronic equipment. GRISEL CRUZ is a sister of SAMUEL CARABALLO. According to the reports, four subjects armed with handguns and a shotgun walked into the garage and beat the victims, poured gasoline on them and demanded to know where the victims kept their money. A victim in the offense, Lino Ramos D.O.B. 01-26-72, stated he was at his friend's house to install a vehicle part in a Toyota Landcruiser when the suspects entered the garage. Ramos added that when the subjects were searching his pants pockets for money the keys to the Ford Expedition fell out of his pocket. Two subjects entered the house and returned a short time later with Lymari Echevarria D.O.B. 05-9-73 and her 2-year-old daughter. The subjects then stated, "You got to have more money" and continued to beat the victims and threatened to kill them if they did not tell where they had more money. Eventually the suspects left with the 1997 Expedition.

45. On Wednesday January 7, 2004, a proffer agreement was signed in the District Attorney's Office with one of the four suspects in the above-described Armed Robbery. Milwaukee Police Detective Ralph Spano interviewed this suspect (CI-7) who admitted participating in the robbery. CI-7 stated that CI-7 and CI-7's co-conspirators had received information that the occupants of 2368 South 19th Street held kilogram quantities of cocaine for SAMUEL CARABALLO. CI-7 identified CI-7's co-conspirators and stated that they conducted surveillance on the residence, and received information that on July 24, 2003, there were five kilograms of cocaine in the residence. CI-7

admitted CI-7 was one of the two suspects who went into the house and brought the woman and her daughter out of the house and into the garage. CI-7 also maintained that victims in this offense told CI-7 that just before CI-7 arrived, someone left the residence with an unknown quantity of cocaine. CI-7 positively identified 2368 South 19th Street as the location of the armed robbery, and admitted being the one who drove away with the 1997 Ford Expedition.

January 14, 2004 controlled purchase of cocaine from FELIX RIVERA a.k.a. "FELO".

46. When questioned by affiant, CI-7 stated that CI-7 could purchase an ounce of cocaine from SAMUEL CARABALLO's brother Luis Caraballo, a.k.a. "Kiki" D.O.B. 02-20-76, through a subject known as "Carlos" who lived at 2222 South 12th Street. CI-7 subsequently identified "Carlos" through a booking photo as Juan Carlos Silva, D.O.B. 04/13/75. CI-7 stated CI-7 has known Luis Caraballo for several years because they were both Spanish Cobras. On three prior occasions, CI-7 purchased an ounce of cocaine from Silva, and each time this occurred Luis Caraballo, a.k.a. "Kiki" delivered the cocaine to Silva who then handed the cocaine to CI-7. CI-7 stated that the deliveries occurred in this manner because Silva always wanted payment for arranging the drug deliveries and so was reluctant to have CI-7 go directly to Luis Caraballo. CI-7 related that the first transaction occurred in the summer of 2003. CI-7 met with Silva and they went to the McDonald's located on 14th and Burnham where they met with Luis Caraballo, who was driving a white Mitsubishi Gallant, in the parking lot. CI-7 stated Silva took the \$700 and entered Caraballo's vehicle, and a short time later returned to CI-7 with one ounce of cocaine. The second delivery occurred in the fall of 2003, when CI-7 went to Silva home at 2222 South 12th Street to arrange another one-ounce delivery of cocaine. CI-7 stated that Luis Caraballo, who was alone, drove up in his Gallant, and Silva met with him and received the cocaine and gave it to CI-7 for \$750. The final delivery occurred between Thanksgiving and Christmas 2003 in the same manner, except that Luis Caraballo parked the Gallant at the rear of 2222 South 12th Street.

47. On Wednesday January 14, 2004, at approximately 1:56 P.M., members of the HIDTA Joint Drug Gang Task Force and myself met with CI-7 to set up a controlled purchase of one ounce of cocaine. Under the supervision of HIDTA agents and myself, CI-7 went to 2222 South 12th Street to meet with "Carlos", or Juan Carlos Silva, while wearing a body wire to record the conversation. At that time, Silva indicated to CI-7 that the person they were going to receive the cocaine from had a drug problem and that his family had recently put him in a drug rehabilitation program. Silva then made a

July 30, 2003 controlled purchase of cocaine from SAMUEL CARABALLO.

49. In July of 2003, Milwaukee Police Officer Deneen McClinton and myself met with a confidential informant (CI-8) who stated that CI-8 has known **SAMUEL CARABALLO** for several years and has been buying cocaine from him for 5 or 6 years. CI-8 stated that CI-8 has buying cocaine from **CARABALLO** in sizes from 4 ½ ounce quantities up to being fronted a kilogram of cocaine at one time. CI-8 stated that the deliveries occurred at **CARABALLO**'s residence at 2020 A South 32nd Street, inside the building of the **NATIONAL AUTO SALES** used car lot located 2366 South 27th, the **Leon's Custard Stand** on 27th and Oklahoma or in the area of the bowling alley on 27th and Howard. CI-8 related that CI-8 met **CARABALLO** through a relative and that at one time **CARABALLO** was a Spanish Cobra Street Gang member, although CI-8 is unsure as to whether he ever formally left the gang. CI-8 stated that **CARABALLO** owns the **LA PLAYA** restaurant at 1330 South 16th Street and **NATIONAL AUTO SALES**, which CI-8 physically pointed out to affiant and Officer McClinton. CI-8 stated that CI-8 believes **CARABALLO** owns these two businesses because of the way that **CARABALLO** gives orders to the employees and the way the employees follow his instructions. CI-8 believes these businesses are "fronts" for **CARABALLO**'s drug business. CI-8 stated that **CARABALLO** uses his cell phone to arrange and negotiate his narcotics sales with his customers, and that **CARABALLO**'s current cell phone is (414) 202-1005 and has had this same cell phone number for several years. CI-8 stated that every time CI-8 wanted to purchase cocaine from **CARABALLO**, CI-8 would call (414) 202-1005) and negotiate with **CARABALLO** the quantity and price of cocaine to be purchased. **CARABALLO** would instruct CI-8 where and when to meet **CARABALLO** to buy the cocaine.

50. CI-8 first purchased cocaine from **SAMUEL CARABALLO** sometime in either 1998 or 1999. CI-8 stated that CI-8 called **CARABALLO**'s cell phone and ordered up a "couple of ounces" of powdered cocaine for which **CARABALLO** charged \$700-\$750 an ounce. **CARABALLO** "fronted" CI-8 the cocaine, meaning that CI-8 was expected to pay for the cocaine at a later time. CI-8 continued that a week or two later when **CARABALLO** called to see if CI-8 had any money owed for the ounces of cocaine fronted to CI-8. CI-8 stated that when CI-8 arrived at **CARABALLO**'s residence to inform him that CI-8 needed more time, **CARABALLO** gave CI-8 an additional four ounces of powdered cocaine. CI-8 continued to purchase cocaine from **CARABALLO** on a regular

basis from 1998 or 1999 up until July of 2003 when CI-8 was arrested for Possession of a Controlled Substance-Cocaine and subsequently agreed to cooperate with affiant and Officer McClinton. CI-8 stated that on several occasions CARABALLO's brother in law "PACHIE" would deliver the cocaine to CI-8. Affiant showed CI-8 an assortment of booking photographs, and CI-8 identified JOSE CRUZ as the person he knew as "PACHIE". I noted that this is the same JOSE CRUZ that was stopped with CARABALLO on April 2, 1992 and arrested with 17 paper packets of cocaine (paragraph 12).

51. CI-8 stated that in the fall of 2002 CI-8 called SAMUEL CARABALLO at his cell phone of (414) 202-1005 to inquire about purchasing a kilogram quantity of cocaine. On this occasion, CARABALLO instructed CI-8 that the delivery would occur at the bowling alley near 27th and Howard. CI-8 stated that JOSE CRUZ a.k.a. "PACHIE" delivered the cocaine at the agreed upon location. CI-8 stated that the kilogram of cocaine, which took CI-8 approximately one month to sell, was fronted and CARABALLO charged CI-8 \$24,000. Approximately one month later, CI-8 again called CARABALLO's cell phone at (414) 202-1005 and negotiated the delivery of another kilogram of cocaine. CI-8 stated that on this occasion the delivery occurred at Leon's Ice Cream Stand on 27th and Oklahoma. JOSE CRUZ a.k.a. "PACHIE" again delivered cocaine, but when CI-8 inspected the kilogram of cocaine it was of such poor quality that it was falling apart and as a result, CI-8 went to CARABALLO's residence and returned the cocaine to CARABALLO. Within a week, CARABALLO called CI-8 and said that he had another kilogram of cocaine of better quality. CI-8 went to CARABALLO's house at 2020A South 32nd Street and observed a gold Mercedes parked outside which CI-8 had observed CARABALLO driving in the past. CI-8 met CARABALLO in his apartment, which is the second floor unit of a duplex, and CI-8 received another kilogram of cocaine for \$24,000. One month later, just before Christmas 2002, CI-8 received a telephone call from CARABALLO about being paid for the prior kilogram delivery. Over the telephone CI-8 agreed to meet CARABALLO at NATIONAL AUTO SALES located at 2366 South 27th Street. CI-8 and CARABALLO discussed CI-8's purchase of a ½ kilogram of cocaine and CI-8 agreed to pay between \$11,000 to \$12,000. CARABALLO then stated the ½ kilogram of cocaine was in the bathroom of the dealership, so CI-8 entered the bathroom and retrieved the ½ kilogram of cocaine. CI-8 recalled approximately four additional deliveries that occurred at NATIONAL AUTO SALES, and stated these deliveries were all initiated by CI-8 calling CARABALLO at his cell phone (414) 202-1005. CI-8

stated that sometime between Christmas 2002 and the spring of 2003 CI-8 went to the LA PLAYA restaurant located at 1330 South 16th Street. and purchased nine ounces of cocaine from SAMUEL CARABALLO who handed CI-8 the cocaine over the cash register. In May or June of 2003, CI-8 called CARABALLO at cell phone (414) 202-1005 and ordered nine ounces of cocaine. CI-8 then went to 2020 A South 32nd Street where he met with CARABALLO who retrieved the cocaine from a brown paper bag that was in one of the bedrooms.

52. CI-8 stated that CI-8 was aware that on January 2, 2003, CI-6 was arrested with one ounce of cocaine. A short time later, CI-8 received a phone call from SAMUEL CARABALLO advising CI-8 of the arrest of CI-6, and admitting that he, CARABALLO, supplied the cocaine recovered by police to CI-6, and advising CI-8 not to "do any business" with CI-6 as CI-6 may be working with the police.

53. On Monday, July 28, 2003, Officer McClinton and myself met with CI-8, who related that SAMUEL CARABALLO called CI-8's cell phone on Thursday July 24, 2003, at 7:50 PM, and left a voice message. I recorded that voice message on CI-8's cell phone, and a voice that CI-8 identified as CARABALLO stated "Yeah, I got something good, you, call me, give me a call man." CI-8 stated that this meant that CARABALLO had just received a shipment of quality cocaine. The next day, Tuesday July 29, 2003, under my direction and control, CI-8 made two recorded phone calls at 3:54 PM and 4:05 PM to CARABALLO's cell phone (414) 202-1005, but CARABALLO did not answer the phone. At approximately 4:20 P.M. CARABALLO called CI-8 and stated he had not answered when CI-8 called because he left his cell phone in his house. CI-8 stated that it needed "4 1/2" which CI-8 stated is code for 4 1/2 ounces of cocaine, and CARABALLO agreed and stated he would charge "750 a piece man". CI-8 stated that this meant that CARABALLO was charging \$750 an ounce. When CI-8 asked for the total cost for the 4 1/2 ounces of cocaine, CARABALLO stated "shit man, give me 3 thousand bro". CI-8 had informed the affiant that it still owed CARABALLO several thousand dollars for a previous 1/2 kilo delivery of cocaine. I instructed CI-8 in this recorded conversation to bring up this topic with CARABALLO to confirm for the investigators this existing debt and the prior delivery. CI-8 asked CARABALLO, "what do I owe you" and CARABALLO responded, "you owe me 4,700 bro". Again on my instruction, CI-8 informed CARABALLO that in addition to the agreed upon \$3,000 for the 4 1/2 ounces of cocaine, CI-8 would also give an additional

\$500 towards the prior drug related debt. CI-8 then told CARABALLO that CI-8 would call the next day around 5:00 or 6:00 PM when CI-8 had the money for the cocaine and the prior debt.

54. On Wednesday July 30, 2003, I met CI-8 at a predetermined location and searched CI-8 and CI-8's vehicle for any large sums of money or narcotics, and found none. I then handed CI-8 \$3,500 in assorted U.S. currency for the purchase of the 4 ½ ounces of cocaine and partial payment of the prior drug related debt. A tape recording device was placed on CI-8 and surveillance teams were deployed in the area of SAMUEL CARABALLO's residence at 2020A South 32nd Street. I then followed CI-8 directly to that location and observed CI-8 enter the residence. CI-8 subsequently told me that CI-8 met with CARABALLO in the second floor apartment of the duplex and walked with him into his bedroom where CI-8 handed CARABALLO the \$3,500. CARABALLO then counted the money and then handed CI-8 the 4 ½ ounces of cocaine. I reviewed the tape recording of the conversations between CARABALLO and CI-8 while they were in the apartment, and heard CARABALLO tell CI-8 that CI-8 owes him \$4,700. When handed the money by CI-8, CARABALLO asks if CI-8 counted the money. CARABALLO then tells CI-8 that CI-8 now owes CARABALLO \$4,200. After CARABALLO finished counting the money he told CI-8, "I'm going to get more, ah, Saturday". CI-8 left the residence and walked directly to CI-8's vehicle. At the same time, I drove down the 2000 Block of South 32nd in a southbound direction and CI-8 followed me to a predetermined location where CI-8 handed me a clear plastic bag containing what was later field tested and confirmed to be 126.01 grams of cocaine that CI-8 stated CI-8 had just received from CARABALLO.

55. When CI-8 drove away from the scene, a red Mercury Marquis was observed pulling away from the curb in front of SAMUEL CARABALLO's residence. A red Ford Excursion or Expedition was also observed pulling in behind the red Mercury Marquis and both vehicles followed behind CI-8's auto for several blocks. Based on my training and experience, I am aware of "counter surveillance techniques" which are often used by narcotics dealers to attempt to detect the presence of law enforcement. One such technique is to employ lookouts in vehicles in the area of the narcotics transaction who not only attempt to identify law enforcement investigators set up in stationary positions, but also attempt to follow the purchasers of the narcotics after the "buy" has occurred to determine if the buyer meets with investigators after the transaction. As two other vehicles followed

CI-8 immediately after the purchase of cocaine, I believe that **CARABALLO** does utilize this technique in his narcotics transactions. Further, at 5:37 P.M., two minutes after CI-8 drove off and was followed, **CARABALLO** was observed walking from his residence, crossing the street and walking up to a silver Mercedes Benz with Wisconsin Dealer License Plate #1134D. I determined that this license plate lists to NATIONAL AUTO SALES at 2366 South 27th Street. While standing by the Mercedes, **CARABALLO** was observed answering his cell phone at approximately 5:58 P.M. before entering the vehicle and driving southbound on South 32nd Street. I am further aware based on training and experience that after a drug transaction has occurred and the buyer is followed by "counter surveillance" vehicles, the individuals in the counter surveillance vehicles will call and notify the individual who just sold the narcotics whether they have or have not detected the presence of law enforcement in the area or meeting with the narcotics buyer.

August 5, 2003 investigation at NATIONAL AUTO SALES.

56. On August 5, 2003, Officer McClinton and myself spoke with Wisconsin Department of Transportation Dealership Investigators Jim Bartnik and Scott Selbach. They informed me that **YAMARI GOVANI** of 4309 North 91st Street is listed as the owner of NATIONAL AUTO SALES at 2366 South 27th Street. The dealership had only four Wisconsin dealer plates registered to them: 1134A, 1134B, 1134C and 1134D. The inspectors offered to conduct an inspection, and at 2:45 P.M., went to the dealership as we set up surveillance across the street. While conducting the inspection, the inspectors talked with Ida M. Williams, D.O.B. 10-18-69, who stated she was in charge of the dealership that day and upon the inspectors' request made several phone calls but was unable to contact the owner, **YAMARI GOVANI**. A short time later, a maroon 1999 Ford Expedition WI/106-FMA pulled up to the dealership. We then observed Williams walk up to the Expedition and have a conversation with the unknown Hispanic female driver. After a brief period, Williams walked back into the dealership. I have determined that the Ford Expedition listed to Samuel Caraballo-Perez and **GRISEL CRUZ** at 2561 S. 29th Street, and that Samuel Caraballo-Perez is the father of **SAMUEL CARABALLO**, while **GRISEL CRUZ** is Samuel Caraballo's sister who currently lives at 1568 West Becher.

October 6, 2003 controlled purchase of cocaine from SAMUEL CARABALLO.

57. On Monday October 6, 2003, CI-8 met with Officer McClinton and myself, and stated CI-8 had, pursuant to our instruction, earlier contacted **SAMUEL CARABALLO** on his cell phone

(414) 202-1005. At that time, CARABALLO agreed to sell CI-8 another 4 ½ ounces of cocaine later in the day. At 7:36 P.M. I used CI-8's cell phone to dial (414) 202-1005 and handed the phone to CI-8. CARABALLO answered the phone and spoke with CI-8, who stated CI-8 was "ready". CI-8 told me that by saying "ready" CI-8 was telling CARABALLO that CI-8 had the money and could meet to buy the cocaine. CI-8 then asked CARBALLO if he was "ready" (in possession of the cocaine) and CARABALLO replied, "it will be ready". While affiant was briefing the surveillance teams, CI-8 received a phone call from CARABALLO who told CI-8 that the delivery would occur at the Hooters Restaurant on 77th and Layton. This conversation was not taped because I was not physically standing next to CI-8 when CI-8 received the call. At approximately 8:08 P.M., CI-8 received another call from CARABALLO asking what the delay was and CI-8 replied that CI-8 would be there shortly. At 8:25 P.M., CARABALLO was observed by HIDTA surveillance teams exiting the Hooters Restaurant at 7700 W. Layton and walking to a 1993 Toyota Land Cruiser WI/880-FWB listing to Priscilla Rivera at 2020 South 32nd Street. CI-8, who was wearing a body wire to record any conversation, then entered the same vehicle and CARABALLO handed CI-8 a large clear plastic bag containing five smaller bags of cocaine. CI-8 handed CARABALLO \$3,000 for the cocaine, and CARABALLO stated, "you owe me \$150 for the pills, thousand for the 5". CI-8 later informed me that when CARABALLO talked about CI-8 owing \$150 for the pills, CARABALLO was referring to a previous delivery of Ecstasy pills to CI-8. As CI-8 was about to leave, CARABALLO stated, "if you want anything just give me a call". After the transaction, I followed CI-8 to a predetermined location where CI-8 handed me the plastic bag containing five smaller bags of what was later field tested and confirmed to be 126.77 grams of cocaine. After the transaction, CARABALLO went back into the restaurant for a short period of time where he sat down with a Hispanic female with a ponytail. After paying his bill, CARABALLO exited with this same subject and walked over to the 1993 Toyota Land Cruiser WI/880-FWB and was followed directly back to 2020 A South 32nd Street where he entered the residence. The Hispanic female walked over to a black 1999 KIA WI/462-FGM which affiant determined lists to Maria Rosado at 1040 South 28th Street. A separate surveillance team followed her vehicle and observed her pull into the alley behind that residence. It should be noted that papers belonging to a Madelin Rosado of this same address were discovered in the truck of HUSSEIN GOVANI's vehicle on April 10, 2002 as described in paragraph 38 above.

October 11, 2003 burglary report filed by SAMUEL CARABALLO.

58. In a Milwaukee Police Department burglary report filed by SAMUEL CARABALLO on October 11, 2003, at his residence at 2020 A South 32nd Street, CARABALLO told Milwaukee Police Detective Octavio Delgado that he has been living at 2020 A S. 32nd St. for the past four years, that his cell phone number was (414) 202-1005 and that he worked at FRESH START AUTO located at 7904 South 27th Street where he purchases and sells cars. In this offense, the suspect(s) forced entry into the apartment, which is the upper unit of a duplex. The suspect(s) ransacked the entire residence including the attic, cereal boxes, rice containers, refrigerator, clothing, shoeboxes etc. CARABALLO reported that a 9mm Ruger handgun and \$1,800 in U.S. currency and jewelry were taken. CARABALLO stated that the 9mm Ruger handgun belonged to his wife Andrea Caraballo who does not live with him. Andrea Caraballo, D.O.B. 02-15-72, of 3613 West Greenfield Avenue arrived on the scene and admitted to Det. Delgado that the handgun was in fact hers, which she purchased at Badger Guns. However, on October 22, 2003, Detective Delgado received a phone call from CARABALLO who stated he found the 9mm Ruger handgun that he reported being taken in the burglary under his pillow in his bedroom.

59. On October 21, 2003, CI-8 contacted me and stated that a few days after the 4-½ ounce delivery of cocaine on October 6, 2003, CI-8 received a phone call from SAMUEL CARABALLO. CARABALLO told CI-8 that someone had broken into his house and stole money and jewelry, and that the burglars had overlooked a jar containing pills of Ecstasy (MDMA).

60. Det. Delgado's report indicates that on October 22, 2003, American Family Insurance Agent Mary Butzlaff contacted him regarding her recorded statement from SAMUEL CARABALLO on a claim for the stolen items, wherein CARABALLO admitted that he has not paid taxes because he gets his income in cash from selling cars. I have not made any attempts to obtain a copy of this recording out of fear of alerting the American Family Insurance Company and CARABALLO to the ongoing investigation of his narcotics organization. I subsequently spoke with Detective Delgado. He and I have been previously assigned to investigate burglary complaints and to the Milwaukee Police Department Vice Control Division. Based on our training and experience, narcotics dealers often attempt to prevent the discovery or theft of their narcotics by hiding them in unusual locations such as cereal boxes, rice containers and refrigerators. Furthermore, it would be highly unusual for burglary

suspects to search cereal boxes, rice containers and refrigerators for anything of value other than narcotics.

January 14, 2004 controlled purchase of Ecstasy (MDMA) from SAMUEL CARABALLO.

61. On Wednesday January 14, 2004, I again met with CI-8 and instructed CI-8 to call SAMUEL CARABALLO and order \$200 worth of Ecstasy pills. I also instructed CI-8 to inform CARABALLO that CI-8 would also be giving CARABALLO an additional \$500 towards an outstanding drug debt owed by CI-8. At 4:40 P.M., in my presence, CI-8 dialed cell phone number (414) 202-1005 and spoke with SAMUEL CARABALLO while a recording device was activated. CARABALLO answered, and CI-8 stated that CI-8 did not have very many minutes left on CI-8's cell phone so they had to talk quickly. CI-8 told CARABALLO that "I gotta get some of those pills probably", and CARABALLO replied, "Okay. How much?" CI-8 responded, "At least fuckin' 200 worth probably. I got that 500 too for you". CARABALLO instructed CI-8 to come to his home. At 5:02 P.M., CI-8 received a call from CARABALLO. Although I was not prepared with a recording device, I was able to listen to the conversation and identified CARABALLO's voice. CARABALLO asked CI-8 how much longer it would be until CI-8 arrived, and CI-8 replied that CI-8 was getting off of the expressway and would arrive shortly. Pen register and trap and trace information for the cell phone of SAMUEL CARABALLO at (414) 202-1005 confirmed that an outgoing call was made from that phone at 5:02 PM to CI-8's cell phone. I then searched CI-8 and CI-8's vehicle and could not locate any narcotics or large sums of money. CI-8 was given \$700 in U.S. currency, and at 5:15 P.M. CI-8 parked CI-8's vehicle across the street and two or three houses south of CARABALLO's residence at 2020 A South 32nd Street. While CI-8 was parking, I observed a possible counter-surveillance vehicle, a 1999 Chrysler WI/ 559-FEE with two occupants parked directly across the street from the residence. Records kept with the Wisconsin Department of Transportation reveal that this vehicle lists to Andrea Caraballo at 3613 West Greenfield Avenue. CI-8 walked up to the building and entered the rear door. Afterwards, CI-8 told me that CI-8 met with CARABALLO in the inner hallway and handed him the \$700. CARABALLO then handed CI-8 a clear plastic bag containing 15 purple pills. CI-8 added that while CI-8 was talking with CARABALLO, CARABALLO received a call on his cell phone. In the presence of CI-8, CARABALLO spoke on the phone in Spanish. In this transcript of this conversation from a body wire on CI-8, CARABALLO says, " Hello? Tell me.

What, what?" Pen register and trap and trace information received from (414) 202-1005 shows an incoming call at 5:15 P.M. from (414) 899-2416. Milwaukee Police Department reports show that, on my instruction, on that date at 5:50 P.M., **FELIX RIVERA** was stopped driving a 1993 Green BMW. At that time, **RIVERA** had a cell phone on him with phone number of (414) 899-2416. At 5:17 P.M., CI-8 left the residence and went directly to CI-8's vehicle and was followed directly to a predetermined location where CI-8 handed me a clear plastic bag containing what was later field tested and confirmed to be 15 pills of Ecstasy (or MDMA: 3,4 methylenedioxymethamphetamine).

February 11, 2004 purchase of Ecstasy by an undercover officer from SAMUEL CARABALLO.

62. On Wednesday, February 11, 2004, City of Milwaukee Detective Kevin Armbruster, who was working undercover, and a confidential informant (CI-9) placed a recorded call to a Hispanic female known only as "Jabby" or "K" at (414) 248-0583, to inquire about the purchase of a "jar" (100 pills) of Ecstasy (MDMA). "Jabby" stated she would call CI-9 back, and later did so, stating that the price would be \$1000.00 for a "jar" and that her supplier "has got a lot." CI-9 and "Jabby" then agreed to meet at 18th and Greenfield. Det. Armbruster was given \$1000.00 in U.S. currency, and drove with CI-9 to that location. As CI-9 and Det. Armbruster could not initially locate "Jabby", CI-9 called her and "Jabby" stated she would arrive in ten minutes, as she had to get the pills from a guy in that area. "Jabby" then called back and told CI-9 to pull in front of her blue Ford Explorer ^{at} and 17th and Greenfield. Det. Armbruster and CI-9 located the Explorer and parked, noting a driver and passenger in that vehicle. The passenger got out and walked over to Det. Armbruster and CI-9, where CI-9 introduced the passenger as "Jabby" to Det. Armbruster. "Jabby" then called out to a subject later identified by Det. Armbruster and surveillance officers as **SAMUEL CARABALLO**. "Jabby" then entered the rear passenger area of Det. Armbruster's vehicle, and **CARABALLO** followed, introducing himself as "Sam." **CARABALLO** then handed Det. Armbruster a plastic baggie of blue pills and another baggie of red pills. Det. Armbruster asked which pills were better and **CARABALLO** replied that he doesn't do it but just "sells it." Det. Armbruster asked if he could get more and **CARABALLO** replied, "yeah, I can get more, just go through my cousin" to which "Jabby" stated, "just go through me." Det. Armbruster then handed **CARABALLO** the \$1000.00, and he gave it to "Jabby" who appeared to count out and keep approximately \$200-\$300 for herself before handing the rest back to **CARABALLO**. Both **CARABALLO** and "Jabby" then exited the vehicle, and later field testing

revealed 99 pills that positively tested for Ecstasy (MDMA), with a total weight of 15.46 grams. I then subpoenaed the phone records for (414) 248-0583, and learned that that number listed to a **GABRIELA CARABALLO**, D.O.B. 12/22/77, at 649 A South 62nd Street. Subsequently, on March 10, 2004, I prepared a photo lineup that included a photo of **GABRIELA CARABALLO**, and showed this lineup to Detective Kevin Armbruster who immediately identified her as "Jabby."

March 9, 2004 request to purchase Ecstasy from SAMUEL CARABALLO.

63. On Tuesday, March 9, 2004, I met with CI-9 and under my direction and supervision, a call was placed to **SAMUEL CARABALLO** at (414) 202-1005 using CI-9's cell phone. In the recorded conversation, CI-9 asked **CARABALLO** about purchasing "X" (which I know to be a street term for Ecstasy). CI-9 stated, "my guy wants some pills again" and **CARABALLO** replied, "how many does he want?" CI-9 then asked how much it would cost for a "jar" (which I know to be a street term for 100 pills of Ecstasy) and **CARABALLO** replied, "900 for 100" (meaning \$900 for 100 pills). CI-9 inquired if CI-9 could obtain the Ecstasy at a cheaper price if more pills were purchased, and **CARABALLO** stated, "Give me a call".

TELEPHONE RECORDS ANALYSIS

64. The information provided in the below chart was compiled through an analysis of pen register, trap and trace, telephone toll records, and subscriber data. The individuals listed in the below chart have been identified by confidential informants and/or law enforcement surveillance as drug trafficking associates of **SAMUEL CARABALLO**, or used by him to further his drug trafficking activities. Some of the telephone numbers used by the following associates are unknown, and some of the listed numbers known to be used are subscribed in the names of individuals other than the associate (those subscribers are indicated in parentheses below the names of the associates). Based upon my training and experience, I know that persons associated with narcotics trafficking often have their telephone numbers subscribed in the name of family or friends in order to avoid detection by law enforcement. The time period of contact between (414) 202-1005 and the listed numbers is current as of March 10, 2004. See also Attachment C page 48.

| ASSOCIATE OR LOCATION | ASSOCIATED NUMBER(S) | NUMBER OF CONTACTS WITH (414) 202-1005 | TIME PERIOD OF CONTACTS |
|--|--|--|--|
| FELIX RIVERA a.k.a. "FELO" (Luis Caraballo) | (414) 899-2416 | 318 | 12/30/2003 – 03/02/2004 |
| GUILLERMO ALVAREZ a.k.a. "GORDO" | Unknown | Unknown | Unknown |
| GRISEL CRUZ | (414) 803-7094 (414) 852-4555 (414) 852-9184 (414) 852-1960 | 660 371 356 287 | 04/15/2002 – 03/10/2004 12/23/2003 – 02/18/2004 04/09/2002 – 04/09/2003 04/09/2002 – 04/07/2003 |
| JOSE CRUZ a.k.a. "PACHIE" | (414) 383-1222 | 584 | 07/10/2002 – 03/10/2004 |
| REYNALDO ESPADA | Unknown | Unknown | Unknown |
| GABRIELA CARABALLO | (414) 248-0583 | 15 | 02/11/2004 – 03/10/2004 |
| MODESTO FONTANEZ | Unknown | Unknown | Unknown |
| HUSSEIN GOVANI (Edmund Niedzwicki) | (414) 427-0051 (414) 427-0017 | 11 5 | 05/26/2002 – 02/20/2003 02/17/2003 – 04/05/2003 |
| YAMARI GOVANI | (414) 303-0786 | 239 | 04/10/2002 – 02/24/2004 |
| | | | |

| | | | |
|----------------------------|----------------------------------|----------|--|
| FRANCISCO VELASQUEZ | (414) 688-8788 | 439 | 12/17/2002 – 03/10/2004 |
| FRESH START AUTO SALES | (414) 304-7290 | 102 | 03/03/2003 – 03/10/2004 |
| NATIONAL AUTO SALES | (414) 649-8500 (414) 649-8515 | 960 7 | 05/07/2002 – 02/24/2004 12/20/2002 – 04/03/2003 |
| LA PLAYA RESTAURANT | (414) 384-5834 | 160 | 04/09/2002 – 02/28/2004 |
| LA PLAYA FASHIONS | (414) 383-3354 | 84 | 05/28/2002 – 03/10/2004 |
| SABOR LATINO RESTAURANT | (414) 649-8206 | 0 | None |
| NATIONAL BRAKE AND MUFFLER | (414) 643-4800 | 103 | 04/08/02 – 03/10/04 |
| GOVANT'S AUTO BODY | (414) 384-8666 | 30 | 06/17/2002 – 04/08/2003 |

As indicated in the chart, **SAMUEL CARABALLO** initiates and receives a high volume of calls using cellular telephone number **(414) 202-1005**. Because a significant number of the calls are contacts with **CARABALLO's** known drug associates, I believe that the target telephone number, **(414) 202-1005**, is key to **CARABALLO's** drug trafficking activities. The pen register, trap and trace, and telephone toll records also indicate in total there were approximately 24,441 contacts with **CARABALLO's** telephone between approximately April, 2002, and March 10, 2004, 2004, with 8,181 of those calls occurring between January 1 and March 10, 2004. Between January 1, 2004, and March 10, 2004, **CARABALLO** had an average of 118 calls (total of incoming and outgoing) per day, with the average

call lasting 48 seconds. Specifically, CARABALLO has had telephone contacts with 33 unidentified subscribers with telephone numbers dialed by targets in 15 current or recent HIDTA investigations. SAMUEL CARABALLO has further had in excess of 100 phone contacts with each of 12 unidentified subscribers, and under 100 phone contacts with each of 526 other unidentified subscribers. CARABALLO has also had phone contacts with unidentified subscribers in eleven jurisdictions outside Milwaukee, Wisconsin, including Florida, New York, Georgia, Illinois, Indiana, Missouri, New York, Virginia, West Virginia, Puerto Rico, the Dominican Republic, and Ontario, Canada. Although many of these phone contacts with unidentified subscribers may be innocent, I know based upon training and experience that these toll records indicate that in all probability, this investigation has not identified all of SAMUEL CARABALLO's narcotics trafficking associates within or outside Milwaukee, Wisconsin, as the investigation has not revealed the source(s) of the cocaine, heroin and Ecstasy, the courier(s), and other relevant participants.

NEED FOR WIRE INTERCEPTION

65. Based upon all of the facts set forth herein, and based upon my training and experience, as well as the experience of other federal agents and local officers assisting in this investigation, I believe that SAMUEL CARABALLO is operating a drug trafficking organization involving numerous family members and other individuals that distributes cocaine, Ecstasy (MDMA) and heroin in and around the Milwaukee area from sources located outside Wisconsin, utilizing commercial properties to facilitate these activities and likely launder the proceeds. It is further my belief that the interception of wire communications to the cellular telephone assigned telephone number (414) 202-1005 is the only currently available technique that has a reasonable likelihood of fully determining the scope of the entire narcotics trafficking enterprise and furthering the investigation into offenses described above committed by SAMUEL CARABALLO, FELIX RIVERA (a.k.a. "FELO"), GUILLERMO ALVAREZ (a.k.a. "GORDO"), GRISEL CRUZ, JOSE CRUZ (a.k.a. "PACHIE"), REYNALDO ESPADA, GABRIELA CARABALLO, and others, yet unknown. Specifically, this is the only means by which we may be reasonably able to identify:

- a. all of the associates of the organization, whether acting in leadership, trafficking, courier, money laundering, or other roles, in and outside Milwaukee and Wisconsin;

- b. the source(s) of the narcotics, including cocaine, Ecstasy (MDMA) and heroin, whether in Wisconsin or in Indiana, Puerto Rico or other unknown locations;
- c. the methods of transportation used to bring the narcotics into Wisconsin;
- d. the couriers used to transport the narcotics to Wisconsin;
- e. the method(s) of payment used to purchase the narcotics;
- f. the location(s) in the Milwaukee area where the narcotics are stored;
- g. the location(s) of proceeds received from the sales of narcotics;
- h. the assets that have been purchased by this organization with proceeds from narcotics trafficking;
- i. the method(s) used, if any, to launder the proceeds and the individuals responsible; all other offenses, including violent and property crimes, committed by and on behalf of this organization.

In addition, the recorded conversations between the individuals involved in the organization, corroborated by other information, would provide the most powerful evidence by which to prove that **SAMUEL CARABALLO** and his associates in fact operate an organized narcotics trafficking organization.

66. The following investigative procedures, which are usually employed during the investigation of this type of criminal case, have been tried and failed, reasonably appear to be unlikely to succeed if attempted or are too dangerous to employ.

Physical Surveillance

67. Physical surveillance in this investigation has been conducted to identify possible locations used by **CARABALLO** in Milwaukee to sell and store cocaine, to identify local members of this drug trafficking organization, and to identify **CARABALLO**'s source(s) of cocaine in or outside of Milwaukee, Wisconsin. Physical surveillance, however, has not been able to fully identify **CARABALLO**'s source(s) of cocaine or the locations from which he receives his supply of cocaine, nor the purchasers of cocaine and locations of sale. In addition, such surveillance has only identified some of **CARABALLO**'s associates in his narcotics trafficking enterprise.

68. During the past several months, case agents have been conducting surveillance on the activities of **SAMUEL CARABALLO**. Surveillance was difficult due to **CARABALLO**'s consistent erratic driving: he often ignored the normal rules of the road such as not using signals when turning or changing lanes, speeding, and not obeying traffic signals. This behavior makes it difficult for law enforcement to effectively conduct surveillance while maintaining an acceptable degree of safety for the public and the surveillance officers.

69. Case agents have been unsuccessful in locating and following **SAMUEL CARABALLO**, although it is clear from the surveillance of **CARABALLO** and conversations between **CARABALLO** and CI-8 that **CARABALLO** has been in the Milwaukee area for the past several months. In addition, surveillance of **CARABALLO** has been mostly dependent on information disclosed to case agents by confidential informants. When provided, information from confidential informants about **CARABALLO**'s whereabouts has been accurate and reliable. However, the informants' knowledge of **CARABALLO**'s whereabouts is limited due to the nature of the informants' relationships with **CARABALLO**. CI-8 is only one of many individuals that **CARABALLO** contacts regarding cocaine transactions.

70. Monitoring of the wire communications over (414) 202-1005 will vastly widen the view and opportunity for case agents to conduct physical surveillance of **SAMUEL CARABALLO** and his associates. Surveillance in this investigation has been especially difficult due to **CARABALLO**'s access to vehicles from two different used car lots: **NATIONAL AUTO SALES** at 2366 South 27th Street and **FRESH START AUTO SALES** at 7904 South 27th Street. Affiant and investigators from the **HIDTA Joint Drug Gang Task Force** have not been able to identify any vehicles that **CARABALLO** operates for any extended period of time. Based on my training and experience, I am aware that narcotics dealers will acquire different vehicles periodically to thwart attempts by law enforcement to conduct surveillance. This method greatly reduces the abilities of law enforcement personnel to conduct surveillance on a particular vehicle. In addition, this technique greatly reduces the likelihood of successful surveillance via use of a **Global Positioning System (GPS)** device, as agents again would have difficulty determining the vehicle(s) used by **CARABALLO** and placing and retrieving the device. However, based upon my training and experience, I believe that physical surveillance used in conjunction with the interception of wire communications to the target telephone number will be far more productive, since the interceptions may assist law enforcement in identifying specific locations where co-conspirators are currently located, as well as when cocaine transactions will occur.

Use of a John Doe Investigation

71. A John Doe investigation into **SAMUEL CARABALLO**'s narcotics trafficking organization was commenced January 15, 2004. However, based upon my training and experience, I

do not believe the use of a John Doe, without a wire interception, would achieve the goals of this investigation. The full extent of the organizational membership and scope of the drug trafficking activities has not been identified, and calling the principal members to testify at a John Doe would alert them to the existence of this investigation, causing them to become more cautious in their activities, to flee, to take steps to avoid investigation or prosecution, to threaten the lives of the informants, or to otherwise compromise the investigation.

72. Furthermore, if any principals or other participants were called to testify at a John Doe, they would most likely be uncooperative and invoke their Fifth Amendment privilege not to testify. It would be unwise to seek any kind of immunity for these persons, because granting immunity might foreclose prosecution of the most culpable members of the organization and could not ensure that such immunized witnesses provide truthful testimony.

73. Confidential informants have been developed and used in this investigation to develop historical information and to actively gather evidence against SAMUEL CARABALLO and his associates. However, based upon my training and experience, as well as the fact that CARABALLO's organization has been functioning since at least 1994, if not earlier, the confidential informants have not and would not appear likely to obtain evidence in regard to all aspects of the organization or the identities and offenses of all the individuals involved. Moreover, as time goes on, narcotics trafficking organizations constantly refine, modify and change the methods they use to transport the narcotics, conduct sales, communicate with other members of the organization, recruit new members and conduct other aspects of their business. Specifically, the informants cannot identify or provide information regarding:

- a. all of the associates of the organization, whether acting in leadership, trafficking, courier, money laundering, or other roles, in and outside Milwaukee and Wisconsin;
- b. the source(s) of the narcotics, including cocaine, Ecstasy (MDMA) and heroin, whether in Wisconsin, Indiana, Puerto Rico, or other unknown locations;
- c. the methods of transportation used to bring the narcotics into Wisconsin;
- d. the couriers used to transport the narcotics to Wisconsin;
- e. the method(s) of payment used to purchase the narcotics;
- f. the location(s) in the Milwaukee area where the narcotics are stored;
- g. the location(s) of proceeds received from the sales of narcotics;
- h. the assets that have been purchased by this organization with proceeds from narcotics trafficking;

- i. the method(s) used, if any, to launder the proceeds and the individuals responsible; all other offenses, including violent and property crimes, committed by and on behalf of this organization.

In addition, the informants have also expressed reluctance to testify against members of this organization in open court, as they fear retribution by **CARABALLO** and his associates.

74. The following is a summary of the investigative limitations of each of the confidential informants listed in this affidavit:

CI-1: As noted in paragraphs 14-16 above, CI-1 was deactivated as an active informant after the informant's arrest for Possession of a Controlled Substance, and as a result the informant has not been in contact with the Wisconsin State Department of Justice. Therefore, it is unknown whether CI-1 would be able to provide any current information on **SAMUEL CARABALLO**'s drug trafficking network. Moreover, cocaine recovered from CI-1's controlled purchase was destroyed in 2000, and as that purchase and CI-1's information occurred almost ten years ago, such offenses are outside the statute of limitations.

CI-2: As noted in paragraph 18 above, CI-2 was interviewed over eight years ago regarding the shooting of Jose R. Rivera. Once again, the statute of limitations has expired on this offense, and any information possessed by the informant regarding **SAMUEL CARABALLO**'s drug trafficking network would now be of limited prosecutorial value.

CI-3: As noted in paragraphs 20-22 and 29 above, CI-3 provided information on **SAMUEL CARABALLO**'s drug trafficking organization in 1997 and 1998. However, it is unknown whether CI-3 has any current information about the organization.

CI-4: As noted in paragraphs 37 and 40 above, CI-4 reported in 2000 that **SAMUEL CARABALLO** informed CI-4 that he was no longer selling heroin but could arrange for Jose Vega to sell heroin to CI-4. It is now unknown whether CI-4 could provide any current information, and as Jose Vega is presently incarcerated due to his federal conviction for Delivery of Heroin, CI-4 obviously could not make any controlled purchases from him.

CI-5: As noted in paragraph 40 above, CI-5 made a controlled purchase of heroin from Nicholas Estes and Jose Vega. CI-5 ultimately testified in court against Jose Vega, who was convicted and sentenced. As a result of CI-5's testimony in open court against Jose Vega, CI-5's cooperation with law enforcement is known not only to Jose Vega but reasonably assumed to be known to other members of **SAMUEL CARABALLO**'s organization. In addition, CI-5 is presently incarcerated, and therefore of no active use to investigators.

CI-6: As noted in paragraphs 41-43 above, CI-6 was arrested in with one ounce of cocaine that CI-6 alleged was purchased from **SAMUEL CARABALLO**. Shortly after CI-6's arrest, **CARABALLO** contacted CI-8 and instructed CI-8 not to have any contact with CI-6 because CI-6 could be cooperating with the police due to the arrest. CI-6 ultimately was convicted of Possession

With Intent to Deliver Cocaine, and is incarcerated. Therefore, CI-6 would not be of any proactive value to this investigation. CI-6 has provided historical information based on CI-6's past dealing with CARABALLO's organization, and it has been determined that CI-6 has only limited knowledge of the organization and its members.

CI-7: As noted in paragraphs 45-47 above, CI-7 made a controlled purchase of cocaine in 2004 from Juan Carlos Silva and provided historical information regarding purchases of cocaine from Silva and Luis Caraballo. Based upon information obtained in the debriefing of CI-7, it is clear that CI-7's knowledge of the organization is limited to Juan Carlos Silva and Luis Caraballo. Moreover, Silva insulates CI-7 from other members of the organization by insisting that CI-7 purchase cocaine only through him (Juan Carlos Silva).

CI-8: As noted in paragraphs 49-55, 57, 59 and 61, CI-8 has provided detailed and recent historical information regarding CI-8's knowledge of the organization, and purchases of narcotics from SAMUEL CARABALLO and JOSE CRUZ a.k.a. "PACHIE". In addition, CI-8 made two controlled purchases of cocaine from CARABALLO. However, despite a long-standing drug trafficking relationship, CI-8 has a limited ability to directly communicate with CARABALLO. Although CARABALLO tells CI-8 when cocaine is available and where he sometimes stores cocaine, CARABALLO does not discuss with CI-8 specific information about his customers, associates, or sources of supply. Therefore, CI-8 is not in a position to identify all the members of the organization in Milwaukee, Indiana or Puerto Rico, but is merely a "buyer" of the organizations illegal narcotics not privy to the inner workings, conversations and decisions made by members of the organization.

CI-9: As noted in paragraph 62 above, CI-9 has been able to set up a recent purchase of Ecstasy from SAMUEL CARABALLO; however, this arrangement was only made through an as of yet unidentified female cousin known as "Jabby" or "K". At that deal, CARABALLO indicated that any future deals were also to go through "Jabby". In addition, CI-9 has had only one prior contact with "Jabby" for a purchase of Ecstasy. Therefore, CI-9 is, like CI-8, not in a position to identify all the members of the organization and is not privy to the inner workings, conversations and decisions made by members of the organization.

Undercover Police Officers and Agents

75. Based upon my training and experience, I know that that individuals involved in the sale of controlled substances are naturally wary of meeting new people, and that they attempt to insulate themselves from illegal activities of the organization. During this investigation, CI-8 has stated that the organization will not allow new members into the upper levels of the organization, including CI-8. Affiant notes that SAMUEL CARABALLO's conversations and activities during the investigation corroborate this belief.

76. If the introduction of an undercover agent into the organization were possible, it would still be unlikely that the goals of this investigation would be satisfied. Due to the scope of this

investigation, it is very unlikely that an undercover agent would be able to infiltrate the organization beyond the local participants in the Milwaukee, Wisconsin area, and therefore, would have limited capacity in obtaining information related to the source of supply of drugs to the organization.

77. Furthermore, it would be extremely dangerous to attempt the infiltration of an undercover law enforcement officer into the organization. A number of law enforcement officers currently working on this investigation have had contact with **SAMUEL CARABALLO** and his associates in the past in previous investigations, including drug trafficking and a homicide.

Interviews of Associates

78. Based upon my experience, I believe that even if interviews were possible with known associates, those interviews would produce insufficient and or inaccurate information as to the identities of all of the persons involved in the organization, the source(s) of cocaine, the location of records, drugs, firearms, and other pertinent information regarding the named offenses.

79. I further believe that at this point in the investigation, it would be virtually impossible to determine if responses to the interviews might contain significant untruths, diverting the investigation with false leads or otherwise frustrating the investigation, because not enough information is known about the scope of the organization or its activities inside and outside the Milwaukee area to verify the information.

80. Additionally, such interviews would have the effect of alerting members of the conspiracy, thereby compromising the investigation and resulting in the possible destruction or concealment of documents and other evidence, and the possibility of harm to cooperating sources whose identity would become known, or whose existence may otherwise be compromised. The use of such interviews suffers from many of the same limitations as the use of a John Doe to compel the production of information from members of the organization.

Search Warrants

81. I believe that the execution of search warrants at this time would not appear to be a feasible alternative to electronic surveillance. The execution of search warrants at any location identified to date would alert **SAMUEL CARABALLO** and any of his associates and thereby risk jeopardizing the ongoing investigation as well as impede any chance to learn the identities of additional associates.

82. In addition, search warrants at identified locations at this time would produce only limited success in the investigation of the organization as a whole. Frequently, written records of drug trafficking that would be kept at the residences or businesses are kept in code and may mean little unless examined in light of comparisons with additional telephone calls and transactions. Also, the recovery of drugs or drug paraphernalia will not advance the investigation, as information obtained will not provide evidence against other associates. Evidence from search warrants will not reveal the extent of the organization.

Garbage Searches

83. Law enforcement officers performed a garbage search at 2020 A South 32nd Street, the home of **SAMUEL CARABALLO** on September 23, 2003, and recovered personal paperwork addressed to **CARABALLO**, as well as plastic Ziploc baggies, one of which field tested positive for the presence of cocaine. However, officers have already gathered enough evidence to tie **CARABALLO** to drug trafficking – this evidence is insufficient to provide information regarding the full scope of the organization, as detailed in paragraphs 8 and 73 above. In addition, garbage searches that were performed at the other residences discussed in this affidavit did not lead to the recovery of any evidence related to drug trafficking. Finally, officers have been unable to search the garbage canisters located at 1568 West Becher Avenue, the residence of **GRISEL CRUZ** and **JOSE CRUZ** a.k.a. “**PACHIE**” (a sister and brother-in-law of **SAMUEL CARABALLO**). The residence is located one building east of the major thoroughfare of South 16th Street and West Becher Avenue. The trash canisters are located within a fenced in area under a window with the lights on inside the residence. Investigators believe that the likelihood of their being detected searching while searching those trash canisters is very high, and therefore do not make any such attempts for a garbage search at that location. Officers have also received information that the residences at 4359 and 4365 South Quincy, may be locations where **SAMUEL CARABALLO** stores cocaine. Again, investigators believe the risk of detection is high as the two houses are adjacent to each other and the trash canister are located beneath what appear to be bedroom windows.

Pen Registers/Trap and Traces/Telephone and Pager Toll Records

84. Pen registers and trap and traces have been ordered on telephone numbers that are believed to be associated with **SAMUEL CARABALLO** and his drug trafficking associates.

However, the information obtained from this data has been limited. These telephones have been previously verified through telephone toll analysis as having direct contact with the target telephone number and are believed, based upon informant information, to be used directly by cocaine customers of CARABALLO. However, pen register and trap and trace device information is limited as it cannot provide information as to where a subject is when placing or receiving calls to and from the target telephone number. Intercepted communications to the target telephone number will identify customers, co-conspirators, couriers and sources that call CARABALLO from other telephones, who cannot be identified by other means.

85. Extensive telephone toll information has also been used in this investigation to date. The telephone toll data has identified the existence and length of telephone calls between telephones believed to be used by CARABALLO and his drug trafficking associates, as well as telephone contacts with the target telephone number. However, toll records are generally available only on a monthly basis, and thus are not able to provide timely information regarding placed calls.

86. Based upon the foregoing, it is my belief that the interception of electronic communications is an essential investigative means in obtaining evidence of the totality of the offenses in which the subjects of the investigation and others yet unknown are involved.

PRIOR APPLICATIONS

87. Based upon a records check, no prior application for an order authorizing the interception of wire, oral, or electronic communications has been made involving the persons, premises, or facilities named herein,

88. A records check through the ELSUR (Electronic Surveillance) system by the FBI and DEA has established that no prior order has been issued authorizing the interception of communications over the cellular telephone assigned telephone number (414) 202-1005.

MINIMIZATION

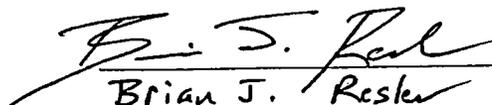
89. All interceptions will be minimized in accordance with Wisconsin Statutes §968.30(5). Authorized law enforcement officers and monitors will only make such interceptions as are consistent with the objectives of this investigation and the Court's Orders. All authorized law enforcement officers

objectives. The nature of this conspiracy is likely to involve a protracted and continuing course of conduct involving a number of individuals who perform diverse functions in drug distribution. It is believed that the evidence sought will be intercepted on a continuing basis following the first receipt of communications. Therefore, it is requested that the interception not terminate when the communications are first intercepted, but allowed to continue until communications are intercepted which fully reveal the full scope of the enterprise, including the identities of all participants, the precise function of each within the enterprise and or conspiracy, their places and methods of operation, and the various criminal activities in which they are engaged in furtherance of the enterprise, or for a period of thirty (30) days from the date on which the investigative or law enforcement officers first begin to conduct the interception under this court order.



Detective Gerald STANASZAK
Milwaukee Police Department

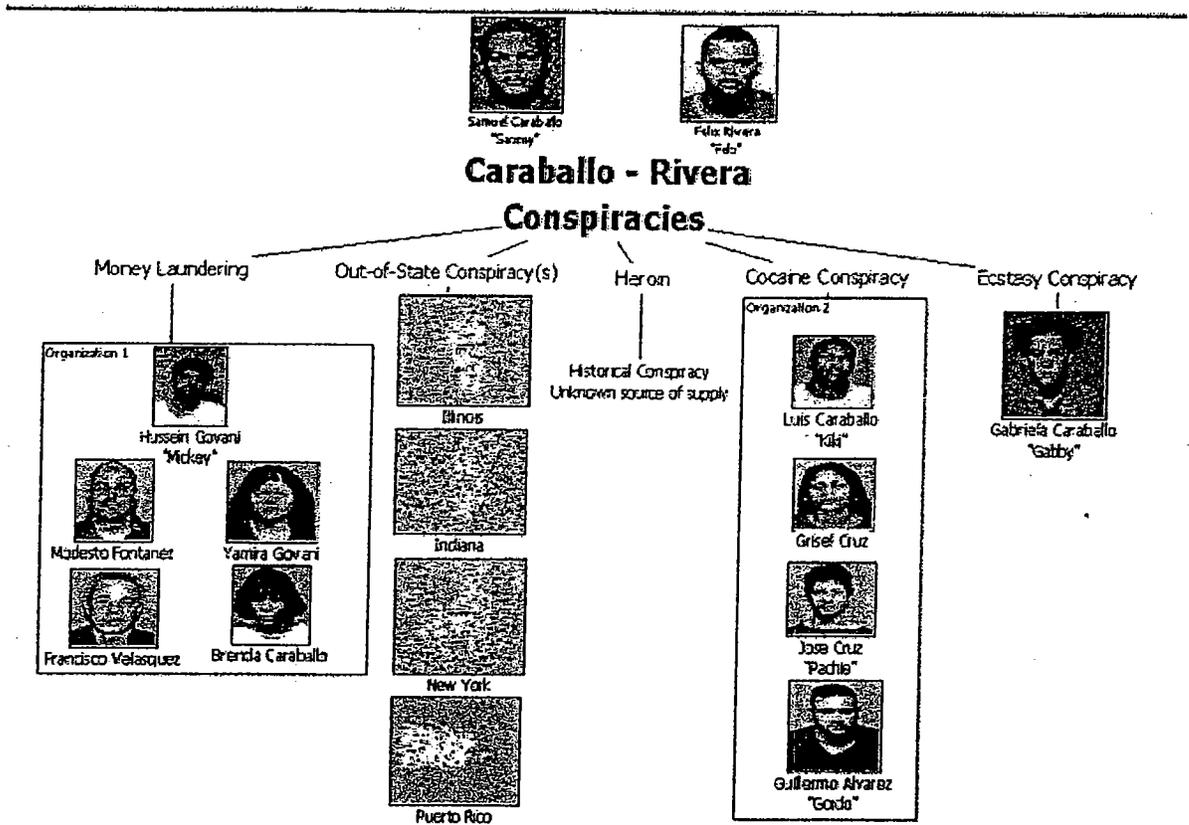
Sworn to before me
this 12TH day of March, 2004.



Brian J. Resler
Notary Public, State of Wisconsin
My commission is permanent.

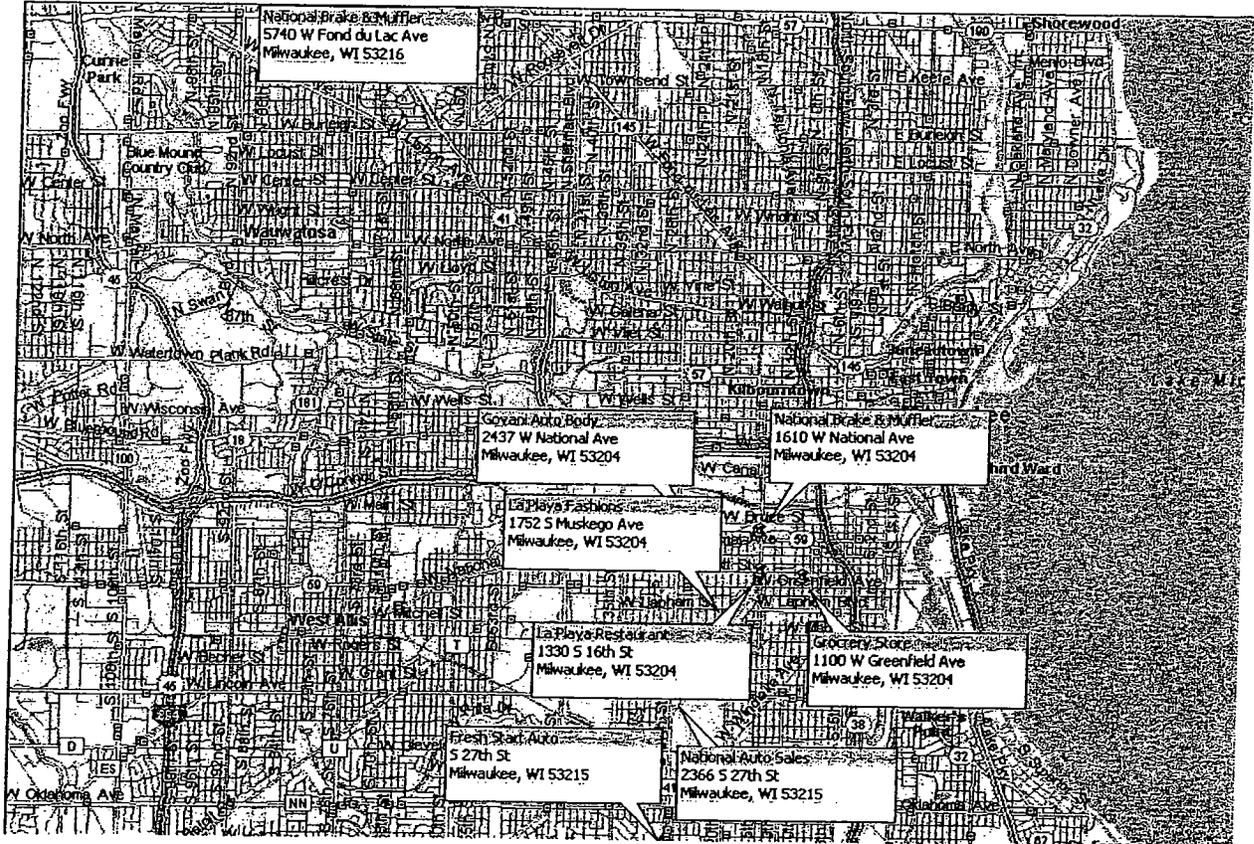
ATTACHMENT A

SAMUEL CARABALLO is operating a drug trafficking organization involving numerous family members and other individuals that distributes cocaine, Ecstasy (3,4 methylenedioxymethamphetamine, or MDMA) and heroin in and around the Milwaukee area from sources located outside Wisconsin, utilizing commercial properties to facilitate these activities and likely launder the proceeds.



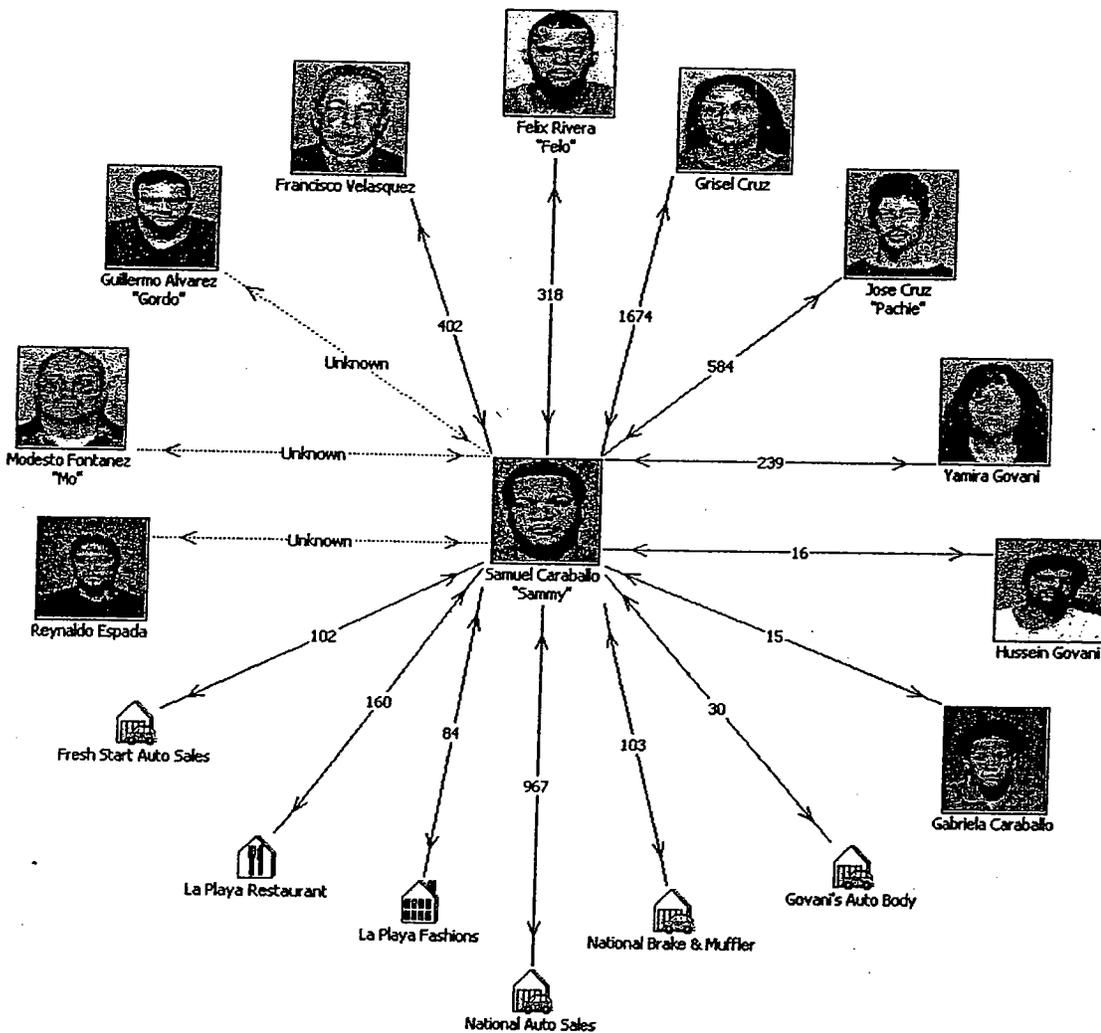
ATTACHMENT B

Locations of commercial properties in Milwaukee County used to facilitate drug trafficking by SAMUEL CARABALLO's organization, and likely used to launder the proceeds.



ATTACHMENT C

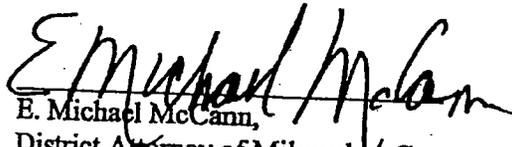
Chart of phone calls between anticipated interceptees/businesses and SAMUEL CARABALLO at (414) 202-1005 between April 9, 2002 and March 10, 2004.



4. That affiant has read the affidavit and application for said order signed under oath by Detective Gerald Stanaszak and has been fully apprised of the facts and circumstances surrounding the application herein; and

5. That affiant is further advised by Detective Gerald Stanaszak that all references to locations in Milwaukee are in Milwaukee County, Wisconsin, and that City of Milwaukee Police Chief Nannette H. Hegerty has authorized this affidavit and application.

THEREFORE, affiant, the District Attorney for Milwaukee County, Wisconsin, hereby formally approves the request of Detective Gerald Stanaszak to apply to the Chief Judge of the First Judicial Administrative District, which includes Milwaukee County, for an order authorizing the interception of wire (cellular phone) communications as more fully described in the attached affidavit and application of Detective Gerald Stanaszak.


E. Michael McCann,
District Attorney of Milwaukee County,
Wisconsin

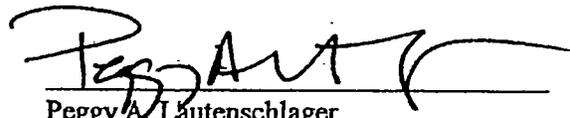
Subscribed and sworn to before me this
13th day of March, 2004.


Notary Public, State of Wisconsin
My commission is permanent.

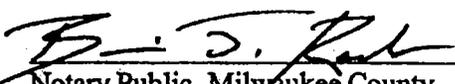
4. That affiant has read the affidavit and application for said order signed under oath by Detective Gerald Stanaszak and has been fully apprised of the facts and circumstances surrounding the application herein; and

5. Affiant is further advised by Detective Gerald Stanaszak that all references to locations in Milwaukee are in Milwaukee County, Wisconsin, and that City of Milwaukee Police Chief Nannette H. Hegerty has authorized this affidavit and application.

THEREFORE, affiant, the Attorney General of the State of Wisconsin, hereby formally approves the request of Detective Gerald Stanaszak to apply to the Chief Judge of the First Judicial Administrative District, which includes Milwaukee County, for an order authorizing the interception of wire (cellular phone) communications as more fully described in the attached affidavit and application of Detective Gerald Stanaszak.


Peggy A. Lautenschlager,
Attorney General of the State of Wisconsin

Subscribed and sworn to before me this
12TH day of March, 2004.


Notary Public, Milwaukee County

My commission is permanent

IN THE MATTER OF THE APPLICATION OF THE
STATE OF WISCONSIN FOR AN ORDER
AUTHORIZING THE INTERCEPTION OF WIRE
COMMUNICATIONS TRANSMITTED OVER A
CELLULAR TELEPHONE FACILITY PRESENTLY
ASSIGNED NUMBER (414) 202-1005.

ORDER AUTHORIZING THE INTERCEPTION OF CERTAIN
WIRE COMMUNICATIONS PURSUANT TO CHAPTER 968
OF THE WISCONSIN STATUTES

Application under oath having been made to me, the Chief Judge of the Milwaukee County Circuit Court, Milwaukee County, Wisconsin, by Detective Gerald Stanaszak of the City of Milwaukee Police Department, presently assigned to the Vice Control Division and the High Intensity Drug Trafficking Area Drug Gang Task Force (HIDTA), who is an investigative or law enforcement officer as those terms are defined in Section 968.27(10), Stats., for an order authorizing the interception of certain wire (cellular phone) communications described in said application pursuant to the provisions of Chapter 968 of the Wisconsin Statutes and Title 3 of the Omnibus Crime Control and Safe Streets Act of 1968, 18 USC 2510 to 2520, and upon the aforementioned application and upon the approvals of said application by Peggy A. Lautenschlager, Attorney General of the State of Wisconsin and E. Michael McCann, District Attorney of the County of Milwaukee, the authorization of Nannette H. Hegerty, City of Milwaukee Chief of Police, upon all the evidence and the affidavit and the application of Detective Gerald Stanaszak, and upon all the records, files and information herein and proceedings conducted herein before me, I hereby find as follows:

A. App. P. 58



1. There is probable cause to believe that **SAMUEL CARABALLO, FELIX RIVERA (a.k.a. "FELO"), GUILLERMO ALVAREZ (a.k.a. "GORDO"), GRISEL CRUZ, JOSE CRUZ (a.k.a. "PACHIE"), REYNALDO ESPADA, GABRIELA CARABALLO** and others, yet unknown, have committed, are committing and will continue to commit state violations of Wisconsin Statutes §961.41(a) (Manufacture, Distribution or Delivery), §961.41(1m) (Possession With Intent to Manufacture, Distribute or Deliver) and §961.42 (Keeping a Place for Using, Manufacturing, Keeping or Delivering) for controlled substances including, but not limited to, §961.16(2)(b) (cocaine), §961.14(4)(am) (3,4-methylenedioxymethamphetamine: "Ecstasy" or MDMA) and §961.14(3)(k) (heroin); §§939.31 and 961.41(1x) (Conspiracy), and §§946.83 and 946.85 (Racketeering and Continuing Criminal Enterprises) as well as federal violations of Title 21, United States Code, §§ 841(a)(1) (Possession with the Intent to Distribute and Distribution of Controlled Substances, including but not limited to cocaine, Ecstasy (MDMA) and heroin), 846 (Conspiracy), and 843(b) (Use of a Communication Facility to Facilitate Controlled Substance Felonies), and violations of Title 18, United States Code, §§ 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), and 1956 and 1957 (Money Laundering);

2. There is probable cause to believe that particular wire (cellular phone) communications of **SAMUEL CARABALLO, FELIX RIVERA (a.k.a. "FELO"), GUILLERMO ALVAREZ (a.k.a. "GORDO"), GRISEL CRUZ, JOSE CRUZ (a.k.a. "PACHIE"), REYNALDO ESPADA, GABRIELA CARABALLO** and others, as yet unknown, will be obtained through the interception sought by this application;

3. That these communications will concern the offenses described herein and constitute evidence of the commission of such offenses; that in particular, these wire (cellular phone) communications will include conversations, the subject of which will concern the receipt, sale, and illegal delivery of controlled substances, the ways and means by which such criminal conduct will

occur, the names and identification of other members, the telephone numbers of other telephone facilities employed and the precise nature and full scope of the conspiracies;

4. That there is probable cause to believe that the telephone instrument with the International Mobile Subscriber Identifier number 4142021005, currently assigned telephone number (414) 202-1005, is commonly used by SAMUEL CARABALLO to communicate with the other persons named above in paragraphs 1 and 2, and others yet unknown, and will be used by SAMUEL CARABALLO, the other persons named above in paragraphs 1 and 2, and others yet unknown, in connection with the commission of said offenses;

5. That the requested interception of wire communications is necessary because normal investigative procedures have been tried but have failed to fully establish the complete nature and scope of the above-noted crimes and conspiracy and that further use of normal investigative procedures reasonably appears to be unlikely to succeed; further, that the requested interception of wire communications is also necessary because the use of normal investigative procedures to attempt to fully establish the complete nature and scope of the above-noted crimes and conspiracies reasonably appears to be too dangerous;

6. That Peggy A. Lautenschlager, Attorney General of the State of Wisconsin, and E. Michael McCann, District Attorney of the County of Milwaukee, both have read and are familiar with the affidavit and application of Detective Gerald Stanaszak of the City of Milwaukee Police Department, for this authorization, have both been apprised of the facts and circumstances surrounding said application, and have formally approved Detective Gerald Stanaszak's application in writing and under oath. Further, that Chief Nannette H. Hegerty of the City of Milwaukee Police Department has reviewed and approved of this application; and

7. That the physical location of the equipment and listening post where agents will be physically present and will actually listen to, monitor and record the telephone conversations and

wire communications as authorized in this order will be in the City of Milwaukee, Milwaukee County, Wisconsin.

THEREFORE, IT IS HEREBY ORDERED:

That law enforcement officers of the High Intensity Drug Trafficking Area Drug Gang Task Force (HIDTA), including the City of Milwaukee Police Department, the County of Milwaukee Sheriff's Department, and other qualified persons as set forth in the application, upon the attached application under oath of Detective Gerald Stanaszak, and upon the attached affidavits and approvals of Peggy A. Lautenschlager, Attorney General of the State of Wisconsin, and E. Michael McCann, District Attorney of Milwaukee County, Wisconsin, approving of said application, be and they are hereby authorized, pursuant to Chapter 968 of the Wisconsin Statutes, and Title 3 of the Omnibus Crime Control and Safe Streets Act of 1968, 18 USC 2510 to 2520, to intercept the wire (cellular phone) communications of **SAMUEL CARABALLO, FELIX RIVERA (a.k.a. "FELO"), GUILLERMO ALVAREZ (a.k.a. "GORDO"), GRISEL CRUZ, JOSE CRUZ (a.k.a. "PACHIE"), REYNALDO ESPADA, GABRIELA CARABALLO, MODESTO FONTANEZ, HUSSEIN GOVANI, YAMARI GOVANI, FRANCISCO VELASQUEZ,** and others yet unknown, said communications occurring over telephone facilities and instrument having International Mobile Subscriber Identifier number 4142021005 presently assigned the number (414) 202-1005, such communication concerning or related to state violations of Wisconsin Statutes §961.41(a) (Manufacture, Distribution or Delivery), §961.41(1m) (Possession With Intent to Manufacture, Distribute or Deliver) and §961.42 (Keeping a Place for Using, Manufacturing, Keeping or Delivering) for controlled substances including, but not limited to, §961.16(2)(b) (cocaine), §961.14(4)(am) (3,4-methylenedioxymethamphetamine: "Ecstasy" or MDMA) and §961.14(3)(k) (heroin); §§939.31 and 961.41(1x) (Conspiracy), and §§946.83 and 946.85 (Racketeering and Continuing Criminal Enterprises) as well as federal violations of Title 21, United

States Code, §§ 841(a)(1) (Possession with the Intent to Distribute and Distribution of Controlled Substances, including but not limited to cocaine, Ecstasy (MDMA) and heroin), 846 (Conspiracy), and 843(b) (Use of a Communication Facility to Facilitate Controlled Substance Felonies), and violations of Title 18, United States Code, §§ 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), and 1956 and 1957 (Money Laundering), said interceptions to commence as soon as practicable but no later than 10 days from the signing of the order, said interceptions being authorized from 3-16-04 11:01 a.m./p.m. on the 16th day of March, 2004, to 11:59 a.m./p.m. on the 15th day of April, 2004, or until the obtainment of the authorized objective or until the expiration of 30 days, whichever comes first;

Providing also that Detective Gerald Stanaszak, or another agent from HIDTA, shall provide the court with a report on or about the 10th, 20th, and 30th days following the date of this order, or as otherwise directed by the court, showing that progress has been made toward the achievement of the authorized objective and the need for continuing interceptions;

IT IS FURTHER ORDERED that such interceptions need not terminate with the interception of the first or subsequent communications relevant to the objectives of this authorization unless such communication by its content completely and expressly reveals all the evidence sought concerning violations of Wisconsin Statutes §961.41(a) (Manufacture, Distribution or Delivery), §961.41(1m) (Possession With Intent to Manufacture, Distribute or Deliver) and §961.42 (Keeping a Place for Using, Manufacturing, Keeping or Delivering) for controlled substances including, but not limited to, §961.16(2)(b) (cocaine), §961.14(4)(am) (3,4-methylenedioxymethamphetamine: "Ecstasy" or MDMA) and §961.14(3)(k) (heroin); §§939.31 and 961.41(1x) (Conspiracy), and §§946.83 and 946.85 (Racketeering and Continuing Criminal Enterprises) as well as federal violations of Title 21, United States Code, §§ 841(a)(1) (Possession with the Intent to Distribute and Distribution of Controlled Substances, including but not limited to cocaine, Ecstasy (MDMA) and heroin), 846

(Conspiracy), and 843(b) (Use of a Communication Facility to Facilitate Controlled Substance Felonies), and violations of Title 18, United States Code, §§ 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), and 1956 and 1957 (Money Laundering) expressed herein;

IT IS FURTHER ORDERED, that this authorization for the interception of wire (cellular phone) communications shall be conducted in a way as to minimize the interceptions not otherwise subject to interception under Chapter 968 of the Wisconsin Statutes and not relevant or related to the subject matter herein. In that regard, it is ordered that where a conversation is intercepted which is completely unrelated to the subject matter of this authorization and unrelated to other criminal offenses for which interception is provided and authorized under Section 968.29(5) Stats., interception of said wire (cellular phone) communications shall terminate whenever it becomes reasonably apparent that the conversation is not relevant to the subject matter herein.

IT IS FURTHER ORDERED, that Detective Gerald Stanaszak or another agent from HIDTA shall provide the court with a report on or about the 10th, 20th and 30th days following the date of this order or as otherwise directed by the court, showing that HIDTA is in compliance with the minimization order described herein, to enable the court to monitor said order.

IT IS FURTHER ORDERED, that Sprint, an electronic communication service provider, furnish forthwith to HIDTA, all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such services providers are affording the person whose communications are to be intercepted, including caller ID; and to insure an effective and secure installation of electronic devices capable of intercepting incoming and outgoing wire (cellular phone) communications over the above-described telephone facilities. The service provided shall be compensated by the applicant for reasonable expenses incurred in providing such facilities or assistance.

IT IS FURTHER ORDERED, that the authorization given to intercept wire (cellular phone) communications apply not only to the target telephone number listed above but to any changed telephone number subsequently assigned to the instrument bearing the same International Mobile Subscriber Identifier number as the target cellular phone within the 30 day period. It is also ordered that the authorization apply to the background conversations intercepted in the vicinity of the target phone while that phone is in use.

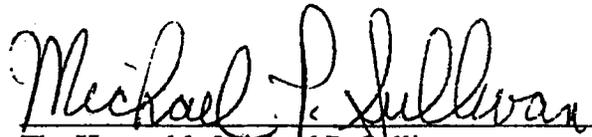
IT IS FURTHER ORDERED, that in the event that the target phone is transferred outside the territorial jurisdiction of the court, that interceptions may take place in any other jurisdiction within the United States.

IT IS FURTHER ORDERED, that to avoid prejudice to the government's criminal investigation, Sprint, and its agents and employees be ordered not to disclose or cause a disclosure of the order or the request for information, facilities and assistance by HIDTA or the existence of the investigation to any person other than those of its agents and employees who require the information to accomplish the services ordered. In particular, it is ordered that the provider be ordered not to make such disclosure to a lessee, cellular phone subscriber or any interceptee or participant in the intercepted communications.

IT IS FURTHER ORDERED, that Sprint shall trace, record, and provide to the applicants herein, a record of the source of all incoming and outgoing telephonic communications over telephone line and instrument presently assigned International Mobile Subscriber Identifier number 4142021005 presently assigned phone number (414) 202-1005 to include locating identifying information (cell site information) and a corresponding cell-site reference list, and terminating call toll dump information.

THE COURT FURTHER ORDERS that HIDTA and its agents are authorized to seek and obtain, if needed, the assistance of any state or federal law enforcement agency to assist state law enforcement officers with all appropriate technical facilities and expertise available.

Dated at Milwaukee, Wisconsin, this 15th day of March, 2004 at 9:45 AM



The Honorable Michael P. Sullivan
Chief Judge, Milwaukee County Circuit Courts
Milwaukee County, Wisconsin

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CF-2744

JEFFREY HOUSE,

Defendant.

MAR - 2 2005

ORDER

IT IS HEREBY ORDERED that the Defendant's Motion to Suppress Telephonic Evidence or Communications from telephone number 414-202-1005 is DENIED as the Court finds that the applications were lawfully applied for and the Chief Judge's Order lawfully authorized the interception of communications for crimes not enumerated in the statute.

IT IS FURTHER ORDERED, that the defendant's Motion to Suppress Telephonic Evidence or Communications from telephone number 414-202-1005 is GRANTED as the two extensions of the wiretap are illegal in that they did not conform to the requirements of Wis. Stats. §968.30 and 968.28.

THEREFORE, the Court excludes all telephonic evidence obtained from the wiretap of telephone number 414-202-1005 after April 14, 2005.

Dated at Milwaukee, Wisconsin, this 2 day of March 2005.

BY THE COURT:

Charles F. Kahn, Jr.

Charles F. Kahn, Jr.
Circuit Court Judge



State of Wisconsin vs. Jeffrey Allen

Judgment of Conviction

House

Sentence Imposed & Stayed,
Probation Ordered

Date of Birth: 06-18-1971

Case No.: 2004CF002744

COURT COPY

The defendant was found guilty of the following crime(s):

| Ct. | Description | Violation | Plea | Severity | Date(s) Committed | Trial To | Date(s) Convicted |
|-----|---|-----------------|--------|----------|-------------------------------|----------|-------------------|
| 1 | Manufacture/Deliver Cocaine (> 1-5g) [939.31 Conspiracy] | 961.41(1)(cm)1r | Guilty | Felony F | Between 1-1-02 and 5-18-04 | | 04-11-2005 |

IT IS ADJUDGED that the defendant is guilty as convicted and sentenced as follows:

| Ct. | Sent. Date | Sentence | Length | Concurrent with/Consecutive to/Comments | Agency Department of Corrections |
|-----|------------|--|--------------|---|----------------------------------|
| 1 | 06-20-2005 | Probation, sent imposed | 4 YR | | |
| 1 | 06-20-2005 | License suspended | 6 MO | | |
| 1 | | Sentence(s) Stayed Extended Supervision | 3 YR 6 MO | Concurrent with/Consecutive to/Comments Imprisonment of 6 years in WSP with credit for 7 days time served. Confinement of 2 years 6 months and extended supervision of 3 years 6 months. Stayed and placed on probation for 4 years. Eligible for the challenge incarceration program and the earned release program. Conditions same as probation with the exception of the condition time. | Sent. Credit |
| 1 | | State prison | 2 YR 6 MO | | 7 days |

Conditions of Sentence or Probation**Obligations:** (Total amounts only)

| Fine | Court Costs | Attorney Fees | Restitution | Other | Mandatory Victim/Wit. Surcharge | 5% Rest. Surcharge | DNA Anal. Surcharge |
|--------|-------------|---------------|-------------|-------|---------------------------------|--------------------|---------------------|
| 475.00 | 20.00 | | | 7.00 | 70.00 | | 250.00 |

Conditions:

| Ct. | Condition | Length | Agency/Program | Begin Date | Begin Time | Comments |
|-----|---------------------|--------|----------------|------------|------------|--|
| 1 | House of Correction | 3 MO | | | | Release privileges for work. Stayed to 07-20-05. |

COPY

State of Wisconsin vs. Jeffrey Allen
House
Date of Birth: 06-18-1971

Judgment of Conviction
Sentence Imposed & Stayed,
Probation Ordered
Case No.: 2004CF002744

| Ct. | Condition | Agency/Program | Comments |
|-----|----------------|----------------|--|
| 1 | Fine | | \$250.00 fine plus costs and surcharges; cash bail to be applied. |
| 1 | Drug treatment | | Absolute sobriety; random urine screens; participate in any treatment deemed appropriate by agent. |
| 1 | Prohibitions | | May not vote until his civil rights are restored. May not possess any firearms. |
| 1 | Other | | Provide DNA; cash bail to be applied. |

IT IS ADJUDGED that 0 days sentence credit are due pursuant to § 973.155, Wisconsin Statutes

IT IS ORDERED that the Sheriff execute this sentence.

Charles F. Kahn-24, Judge
Kent Lovern, District Attorney
Michael John Steinle, Defense Attorney

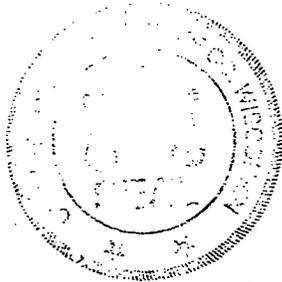
BY THE COURT:

Maureen D. Hoff

Court Official

John Barrett

June 23, 2005
Date



**COURT OF APPEALS
DECISION
DATED AND FILED**

August 3, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See Wis. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2005AP2202-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2004CF2744

**IN COURT OF APPEALS
DISTRICT I**

**STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY ALLEN HOUSE,

DEFENDANT-APPELLANT.**

APPEAL from a judgment of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Higginbotham, JJ.

¶1 **PER CURIAM.** Jeffrey House appeals a judgment convicting him of conspiracy to deliver cocaine. The sole issue on appeal is whether the circuit court properly denied House's motion to suppress telephonic evidence on the

ground that the evidence had been obtained by an illegal wire interception. We conclude that the evidence was legally obtained, and affirm.

¶2 The Wisconsin statutes set out a procedure for law enforcement officials to apply for a court order to intercept wire, electronic or oral communications. However, such wiretaps are only available to investigate certain enumerated crimes. Specifically:

The authorization shall be permitted only if the interception may provide or has provided evidence of the commission of the offense of homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances or controlled substance analogs, a computer crime that is a felony under s. 943.70, or any conspiracy to commit any of the foregoing offenses.

WIS. STAT. § 968.28 (2003-04).¹

¶3 In this case, a Milwaukee police detective applied for an order authorizing law enforcement officers to intercept the cell phone communications of a group of individuals to a specific phone number. The application stated that the police had evidence showing that named individuals and others

have committed, are committing and will continue to commit state violations of Wisconsin Statutes § 961.41(a) (Manufacture, Distribution or Delivery), § 961.41(1m) (Possession With Intent to Manufacture, Distribute or Deliver) and § 961.42 (Keeping a Place for Using, Manufacturing, Keeping or Delivering) for controlled substances including, but not limited to, § 961.16(2)(b) (cocaine), § 961.14(4)(am) (3,4-methylenedioxymethamphetamine: "Ecstasy" or MDMA) and § 961.14(3)(k) (heroin); §§ 939.31 and 961.41(1x) (Conspiracy), and §§ 946.83 and 946.85 (Racketeering and Continuing Criminal Enterprises) as well as federal violations of Title

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

21, United States Code, §§ 841(a)(1) (Possession with the Intent to Distribute and Distribution of Controlled Substances, including but not limited to cocaine, Ecstasy (MDMA) and heroin), 846 (Conspiracy), and 843(b) (Use of a Communication Facility to Facilitate Controlled Substance Felonies), and violations of Title 18, United States Code, §§ 1952 (Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises), and 1956 and 1957 (Money Laundering).

The Chief Judge of the Milwaukee County Circuit Court found probable cause to believe that the identified individuals and others were committing all of the described offenses, and that “these wire (cellular phone) communications will include conversations, the subject of which will concern the receipt, sale, and illegal delivery of controlled substances, the ways and means by which such criminal conduct will occur, the names and identification of other members, the telephone numbers of other telephone facilities employed and the precise nature and full scope of the conspiracies.” The judge then authorized law enforcement officials to intercept communications to the specified phone number concerning or relating to all of the described crimes.

¶4 House was among the group of people charged with conspiracy to deliver cocaine based on the subsequent intercepted communications. He moved to suppress the wiretap evidence under WIS. STAT. § 968.30(9). The circuit court denied that motion, and House now appeals.

¶5 House contends that the wiretap order was unlawful because it authorized the interception of communications relating to racketeering and money laundering, offenses that fall outside the scope of the wiretap statute, in addition to identified drug offenses that he concedes fall within the scope of the statute. We review the application of the wiretap statute to a particular set of facts as a

question of law. *State v. Maloney*, 161 Wis. 2d 127, 128, 467 N.W.2d 215 (Ct. App. 1991).

¶6 The State contends that racketeering and money laundering *are* enumerated offenses encompassed within the phrase “dealing in controlled substances.” While we agree that the phrase “dealing in controlled substances” is not limited to a single statutory offense, we question whether it applies to any crime that might, as a factual matter, be related to dealing in controlled substances. We need not, however, resolve that question because, even assuming for argument’s sake that crimes such as racketeering and money laundering are not crimes covered by the statute, we conclude that the inclusion of non-enumerated offenses did not render the order unlawful.

¶7 WISCONSIN STAT. § 968.28 authorizes a wiretap when the proposed intercepted communications may provide evidence of an enumerated offense. Here, the chief judge found probable cause that intercepting calls to a certain cell phone number would likely provide evidence about a number of drug-related offenses. The fact that the intercepted communications might also provide evidence of related² non-enumerated offenses does not undermine the legitimate purpose of the wiretap statute. *Cf. United States v. Giordano*, 416 U.S. 505, 527 (1974) (requiring suppression under analogous federal law for failure to comply with a statutory requirement that “directly and substantially implement[s] the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device”).

² We do not address what the result might be if the order had also authorized interception of conversations relating to entirely unrelated non-enumerated offenses.

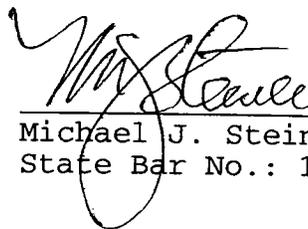
CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with §809.19(2)(a), Stats., and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality with appropriate references to the record.

Dated at Milwaukee, Wisconsin, this 1st day of February 2007.

BY:



Michael J. Steinle
State Bar No.: 1018859

Given the nature of the investigation described in the application for the wiretap here, it was highly likely that the same conversations would relate to both the enumerated drug offenses and racketeering and money laundering. Therefore, if non-enumerated offenses were included, such inclusion did not unlawfully broaden the scope of the wiretap order in this case.

¶8 Because we conclude that the wiretap order was lawful, we do not address the State's argument that suppression is not the proper remedy under these circumstances.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

STATE OF WISCONSIN
IN SUPREME COURT

No. 2005AP2202-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JEFFREY ALLEN HOUSE,

Defendant-Appellant-Petitioner.

ON APPEAL FROM A DECISION OF THE
COURT OF APPEALS AFFIRMING THE ORDER
DENYING SUPPRESSION OF EVIDENCE AND THE
JUDGMENT OF CONVICTION ENTERED IN THE
CIRCUIT COURT FOR MILWAUKEE COUNTY,
THE HONORABLE CHARLES F. KAHN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

J.B. VAN HOLLEN
Attorney General

JUAN B. COLAS
Assistant Attorney General
State Bar #1005968

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 264-6360

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STATE OF WISCONSIN
IN SUPREME COURT

—
No. 2005AP2202-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JEFFREY ALLEN HOUSE,

Defendant-Appellant-Petitioner.

ON APPEAL FROM A DECISION OF THE
COURT OF APPEALS AFFIRMING THE ORDER
DENYING SUPPRESSION OF EVIDENCE AND THE
JUDGMENT OF CONVICTION ENTERED IN THE
CIRCUIT COURT FOR MILWAUKEE COUNTY,
THE HONORABLE CHARLES F. KAHN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

ISSUE PRESENTED

Should evidence from intercepted telephone conversations be suppressed solely because an otherwise valid wiretap application and order listed offenses for which Wis. Stat. § 968.28 does not explicitly authorize use of wiretaps, along with offenses for which it does?

The trial court and the court of appeals answered no.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

House's statement of the case is adequate. His statement of facts is incomplete and contains one error. To avoid repetition the State supplements House's statement of facts with additional facts below, and will add other facts as necessary in argument.

According to House, House was a party to five intercepted conversations, all of them relating to cocaine dealing (House's brief, at 4). Though there is not a citation to the record, the State accepts this assertion as correct. He and thirty other defendants were charged in a fifteen-count complaint with a variety of offenses all relating to a large-scale and sustained enterprise engaged in delivery of controlled substances and keeping a drug house (9). House states that he was only charged in count one (House's brief at 1). In fact, House was charged with the first two counts, conspiracy to deliver controlled substances (count one) and conspiracy to possess controlled substances with intent to deliver (count two) (9:3). House was convicted of count one upon a guilty plea and count two was dismissed at that time (21:1, 29:1).

ARGUMENT

House seeks suppression of recorded phone conversations. He contends the application for wiretaps and the orders authorizing them included both offenses for which the statutes authorize wiretaps ("enumerated offenses") and offenses for which state statutes do not authorize wiretaps ("non-enumerated offenses").

House does not claim, and nothing in the record shows, that any of the intercepted conversations concerned non-enumerated offenses. Both charges against House were enumerated offenses. House does not challenge the sufficiency of the application for the enumerated offenses included in it or the finding of probable cause as

to enumerated offenses. He also does not argue that the wiretaps conducted exceeded the scope of the authorizing order.

In sum, House believes he is entitled to relief even though: 1) the wiretap application established probable cause that enumerated offenses were being committed, 2) the intercepted conversations concerned only enumerated offenses, and 3) he was charged with and convicted of only enumerated offenses.

The decision of the court of appeals and the judgment of conviction should be affirmed because it was not improper to include the contested offenses in the application and order and, if it was improper, suppression is not a required or appropriate remedy in this case.

**I. THE ORDER WAS LAWFUL
BECAUSE OFFENSES LISTED
IN THE WIRETAP APPLI-
CATION AND ORDER ARE
WITHIN THE SCOPE OF BOTH
STATE AND FEDERAL
STATUTE.**

**A. Standard of Review and
Applicable Law.**

The application of the communications surveillance statute to a particular set of facts is a question of law that is reviewed *de novo* by the appellate courts. *State v. Maloney*, 161 Wis. 2d 127, 128, 467 N.W.2d 215 (Ct. App. 1991).

Because Wis. Stat. §§ 968.28 to 968.37, were patterned on Title III of the Omnibus Crime Control and Safe Streets Act of 1968, [18 U.S.C.A. Part I, Ch. 119], interpretation of those statutes “benefits from the legislative history of Title III as well as from federal

decisions that have considered Title III.” *State v. Gilmore*, 201 Wis. 2d 820, 82, 549 N.W.2d 401 (1996).

“A district court’s wiretap authorization order is presumed proper, and the defendant bears the burden of overcoming this presumption.” *United States v. Nunez*, 877 F.2d 1470, 1472 (10th Cir.), *cert. denied*, 493 U.S. 981 (1989).

Wisconsin Statute § 968.28 permits application for and authorization of the interception of wire, electronic or voice communications (“wiretaps”) only

if the interception may provide or has provided evidence of the commission of the offense of homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances or controlled substance analogs, a computer crime that is a felony under s. 943.70, or any conspiracy to commit any of the foregoing offenses.¹

18 U.S.C. § 2516 is the comparable federal law and allows the use of wiretaps for a much broader list of offenses. Of relevance to the present case are the authorization by 18 U.S.C. § 2516(1)(c) of wiretaps for investigation of violations of 18 U.S.C. § 1952 (interstate travel or transportation in aid of racketeering) and 18 U.S.C. §§ 1956 and 1957 (money laundering).

A court may order a wiretap upon finding probable cause in the application “that an individual is committing, has committed, or is about to commit a particular offense enumerated in s. 968.28.” Wis. Stat. § 968.30(3)(a).

The order authorizing the wiretap must contain “[a] particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates.” Wis. Stat. § 968.30(4)(c).

¹House omits “dealing in controlled substances” from his list of enumerated offenses (House’s brief at 5).

A party to an intercepted communication may move to suppress the communication on the grounds that: 1) the interception was unlawful, 2) that the order authorizing the interception was insufficient on its face or 3) that the interception did not conform to the order authorizing it. Wis. Stat. § 968.30(9)(a).

B. The Offenses Listed In The Application and Order Are Within The Scope of Wis. Stat. § 968.28.

House argues that including violations of Wis. Stat. §§ 946.83, 946.85, and 18 U.S.C. §§ 1952, 1956 and 1957 invalidates the wiretap order because those are not offenses enumerated by Wis. Stat. § 968.28 (House's brief at 5-6). The application and order also included enumerated offenses.² He also argues that the remedy is suppression (House's brief at 6). House's reading of the statute is incorrect. The statute does not limit wiretap

² The application lists the offenses under investigation as violations of Wis. Stat. § 961.41(1)(a) (manufacture, distribution or delivery of controlled substances), § 946.41(1m) (possession of controlled substances with intent to manufacture, distribute or deliver), and § 961.42 (keeping a place for using, manufacturing, keeping or delivering controlled substances) (35:13-14). The controlled substances included cocaine, heroin and Ecstasy (35:13-14). The application also listed violations of Wis. Stat. § 961.41(1x) (conspiracy to commit violations of section 961.41) and Wis. Stat. §§ 946.83 and 946.85 (racketeering and continuing criminal enterprises) (35:13-14). Finally, the application listed violations of 21 U.S.C. § 841(a)(1) (distribution of and possession with intent to distribute controlled substances), 21 U.S.C. § 843(b) (use of a communication facility to facilitate controlled substance felonies), 18 U.S.C. § 1952 (interstate or foreign travel or transportation in aid of racketeering enterprises), and 18 U.S.C. §§ 1956 and 1957 (money laundering) (35:13-14). The order authorizing the wiretaps listed the crimes above and also listed violations of 21 U.S.C. § 841(a)(1) (possession with intent to distribute and distribution of controlled substances), 21 U.S.C. § 846 (conspiracy) and 21 U.S.C. § 843(b) (use of a communication facility to facilitate controlled substance felonies) (35:65).

orders to investigation of violations of particular state statutes, or even to violations of state law, but to certain “offenses,” a more general term. Moreover, the federal crimes he complains are improperly included are all offenses for which 18 U.S.C. § 2516 authorizes wiretaps.

The federal wiretap law, 18 U.S.C. § 2516, lists crimes which may be investigated by referring to their statutory citation. Wisconsin statutes instead use descriptive terms, such as “kidnapping” or “extortion.” Some of the terms correspond to titles of statutory sections (e.g., “felony murder” is the title of Wis. Stat. § 940.03, “kidnapping” is the title of Wis. Stat. § 940.31). Other listed offenses do not correspond to statutory titles (e.g., the term “extortion” is used in the statutes only in Wis. Stat. § 968.28, and is not a title of any criminal statute, “dealing in controlled substances” is a descriptive term but is not a title of any criminal statute and encompasses many crimes).

Because of this lack of direct correspondence between the terms used in Wis. Stat. § 968.28 and the criminal code, the terms must be interpreted. “[T]he purpose of statutory interpretation is to determine what a statute means so that it may be given the full, proper, and intended effect.” *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110.

Statutory interpretation “begins with the language of the statute.” *Kalal*, 271 Wis. 2d. 633, ¶ 45 (citation omitted). Statutory language “is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.*, ¶ 45. Further:

[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or

closely-related statutes; and reasonably, to avoid absurd or unreasonable results.

Id. ¶ 46.

The legislature could have followed the federal example and restricted wiretaps to violations of specifically cited statutes. In fact, it did so in the case of one crime, felony computer crimes under Wis. Stat. § 943.70. Had the legislature intended to limit wiretaps for drug-related crimes to violations of Wis. Stat. ch. 961 it could easily have so specified, as it did for computer crimes. Instead it used the broader “dealing in controlled substances.”

By its plain meaning the phrase “dealing in controlled substances” includes all those activities that relate to the sale of controlled substances and the preservation, retention or use of the fruits of those sales, including laundering the proceeds of those sales. The trial court found that “money laundering in the context of this application and order is directly and clearly related to drug dealing . . . there is no request for authorization, nor is there any authorization for investigation of money laundering other than with respect to the proceeds of drug dealing” (31:33). Money laundering is integral to dealing in controlled substances. The legislature has also reached that conclusion. Wisconsin Statute § 961.55(1)(f), authorizes seizure and forfeiture of “all property, real or personal, including money, directly *or indirectly*, derived from or realized through the commission of any crime under this chapter.” (emphasis added). This court should find that laundering the proceeds of drug deals is encompassed by the phrase “dealing in controlled substances.”

Similarly, in this case the only allegations of racketeering and engaging in a continuing criminal enterprise in the application are in relation to dealing in controlled substances. The crime of engaging in a continuing criminal enterprise in violation of Wis. Stat. § 946.85 can only be committed by one who engages in a

pattern of racketeering activity. A pattern of racketeering activity requires three interrelated incidents of racketeering activity. Wis. Stat. § 946.82(3). Racketeering activity is the “attempt, conspiracy to commit or commission of any of the felonies specified in . . . ch. 961.” Wis. Stat. § 946.82(4). Thus, in the context of this case and this application, racketeering and engaging in a continuing criminal enterprise are also encompassed by the phrases “dealing in controlled substances” and “any *conspiracy* to commit any of the foregoing offenses”. Wis. Stat. §968.28 (emphasis added). They are those crimes that persons commit by dealing in controlled substances repeatedly and in concert with others. This does not open the door to the interception of all calls related to racketeering activities; only those involving racketeering activities that are part of dealing in controlled substances.

A contrary reading would lead to the paradoxical result that a wiretap order could be obtained to seek evidence of a single, small-scale instance of drug dealing, but not to seek evidence of an organized, large-scale drug dealing operation involving multiple parties, multiple sales and large sums. This would undermine the legislative finding that singled out the commercial nature of drug trafficking as “a substantial menace” and “pernicious.” Wis. Stat. § 961.001(1r). A fundamental rule of statutory construction is to avoid absurd or unreasonable results. *State ex. rel. Reimann v. Circuit Court for Dane County*, 214 Wis. 2d 605, 622, 571 N.W.2d 385 (1997). The legislature cannot have intended to insulate such organized crime from the investigative reach of wiretapping.

C. State Wiretap Orders That Include Investigation of Federal Crimes And State Crimes Are Not Unlawful Under Wis. Stat. § 968.28.

Nothing in the plain language of Wis. Stat. § 968.28 limits the offenses described to violations of state law. There is no restriction on the authority of state law enforcement officers to investigate violations of federal law that occur within Wisconsin. It is to be expected that criminal conduct of the nature described in Wis. Stat. § 968.28 will often violate both state and federal criminal laws. Indeed, this is anticipated in Wis. Stat. § 968.29(3)(a), which authorizes a person who has obtained wiretap evidence under a state order to give “testimony under oath or affirmation in any proceeding in any court or before any magistrate or grand jury in this state, or in any court of the United States or of any state, or in any federal or state grand jury proceeding.”

To read Wis. Stat. § 968.28 as limiting state wiretap orders to violations of Wisconsin law would unnecessarily and unduly restrict the ability of law enforcement to investigate crimes occurring in Wisconsin and to refer the prosecution of those crimes to appropriate authorities, according to whether they are state or federal offenses.

II. EVEN IF SOME OF THE OFFENSES INCLUDED WERE NOT ENUMERATED OFFENSES THEIR INCLUSION DOES NOT MAKE THE ORDER UNLAWFUL.

House argues that the inclusion of federal offenses and of a non-enumerated state offense makes the order unlawful and the trial court should have suppressed all the wiretap evidence. House cites no binding precedent

compelling the result he seeks--there is none. The court of appeals did not decide whether the term "dealing in controlled substances" encompassed the challenged offenses, but held that even if it did not, including them in the order in this case did not make the order unlawful. *State v. House*, No. 2005AP2202-CR, slip op. ¶ 6, (Wis. Ct. App. Dist. I August 3, 2006). Even if this court finds that the statute does not encompass all the offenses listed in the application and order, it should find that the addition of non-enumerated offenses to an otherwise lawful and sufficient application and order does not make the order unlawful.

Not all applications and orders that do not adhere strictly to the terms of the wiretap statute are unlawful. The federal counterpart of the remedy statute is 18 U.S.C. 2518(10)(a)i, which provides for suppression on the same grounds as the Wisconsin statute. In *United States v. Chavez*, 416 U.S. 562 (1974), the supreme court, concluding that misidentification of the official authorizing a wiretap application did not invalidate the order, held that the suppression remedy "was not intended to reach every failure to follow statutory procedures" but only failures to "satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." *Chavez*, 416 U.S. at 575, citing *United States v. Giordano*, 416 U.S. 505, 527 (1974).

Evidence obtained following an application and order which did not include any enumerated offenses, would be subject to suppression. See, e.g. *United States v. Millstone Enterprises, Inc.*, 684 F. Supp. 867 (W.D. Pa. 1988) (suppression granted where application and order listed *only* non-enumerated offenses). But House does not dispute that the application provided probable cause for a wiretap for the enumerated offenses included in it. In other words, if the references to non-enumerated offenses were simply stricken the application and the order would

be valid and sufficient. The presence of non-enumerated offenses in an otherwise sufficient and valid application or order does not render the order unlawful and should not result in suppression of the intercepted communications.

In *United States v. Smart*, 278 F.3d 1168 (10th Cir. 2002), the Tenth Circuit United States Court of Appeals upheld the validity of a wiretap order where the application contained both enumerated and non-enumerated offenses. The court stated that “We cannot say that either reference to non-enumerated statutes or even the incorrect description of two non-enumerated statutes as enumerated amounts to a failure to satisfy a statutory requirement that directly and substantially implements congressional intent” and held that under *Chavez* suppression was not required. *Smart*, 278 F. 3d. at 1174. The court rested its decision in part on the fact that though the application included non-enumerated offenses, the order included only enumerated offenses, not reaching “whether an order authorizing wiretapping in investigation of both enumerated and non-enumerated offenses would survive review.” *Id.*

United States v. Ward, 808 F. Supp. 803 (S.D. Ga. 1992), a federal trial court decision cited by House (House’s brief at 7-8), held that the restriction of wiretaps to enumerated offenses was central to the intent to limit the use of wiretaps and therefore the inclusion of non-enumerated offenses warranted suppression. In contrast, in *United States v. O’Neill*, 27 F. Supp. 2d 1121, 1127 (E.D. Wis. 1998) the court denied O’Neill’s motion to suppress wiretap evidence because the application and order contained references to a non-enumerated offense.

The United States District Court of the Northern District of Illinois in *United States v. Marcy*, 777 F. Supp. 1400 (N.E. Ill. 1991), has held that evidence of non-enumerated offenses obtained during a wiretap investigating enumerated offenses could be used to prove crimes not specified in the order “even if those are crimes not specifically targeted by Title III [Federal Wiretap Law].”

Marcy, 777 F. Supp. at 1403, citing *United States v. Pacheco*, 489 F.2d 554 (1974), *cert. denied*, 421 U.S. 909, and *United States v. Lanza*, 341 F. Supp. 405 (M.D. Fla. 1972). The court in *Marcy* distinguished *Millstone* because, just as in the present case, the application and order in *Marcy* included both enumerated and non-enumerated offenses. *Marcy*, 777 F. Supp. at 1403.

The Seventh Circuit Court of Appeals has held that a wiretap order is not invalidated when there is unlawfully obtained information in the application if, “[t]here was sufficient information to find probable cause based on the untainted proper sources listed in the application.” *United States v. McHale*, 495 F.2d 15, 17 (Ill. 1974). All other United States Circuit Courts of Appeals have held that the analysis of factual misstatements in search warrant affidavits set out in *Franks v. Delaware*, 438 U.S. 154 (1978) applies to wiretap applications.³ Under *Franks*, as applied to wiretap applications, even if a party alleges false statements made knowingly or recklessly, a hearing is not required “if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause.” *United States v. Southard*, 700 F.2d 1, 8 (1983), quoting *Franks*, 438 U.S. at 171-72. Even if the knowing and reckless falsehoods are proven at a hearing, the order will be set aside and the evidence suppressed only if “with the affidavit’s false material set to one side, the affidavit’s remaining content is insufficient to establish probable cause.” *United States v. Novaton*, 271 F.3d 968, 986 (Fla. 2001).

³*United States v. Ippolito*, 774 F.2d 1482, 1485 (9th Cir.1985), *United States v. Garcia*, 785 F.2d 214, 222 (8th Cir.1986), *United States v. Small*, 423 F.3d 1164, 1172 (10th Cir. 2005), *United States v. Martin*, 332 F.3d 827, 834 (5th Cir. 2003), *United States v. Southard*, 700 F.2d 1 (1st Cir. 1983), *United States v. Ferguson*, 758 F.2d 843, 848 (2d Cir.), *cert. denied*, 474 U.S. 841 (1985), *United States v. Hawkins*, 788 F.2d 200 (4th Cir.1986), *United States v. Stewart*, 306 F.3d 295 (6th Cir. 2002), *United States v. Novaton*, 271 F.3d 968, 986 (11th Cir. 2001).

If a wiretap application can be held valid as long as redacting willfully false statements leaves sufficient factual basis for probable cause, it is reasonable that it can also be held valid when redaction of inapt legal references leave sufficient legal basis for an order. Adapting the *Franks* analysis to the present case, the evidence should not be suppressed if, with the references to non-enumerated offenses “set to one side,” the remainder of the offenses listed are sufficient to allow the wiretap.

An application and order that includes both enumerated and non-enumerated offenses does not undermine the legislative purpose of ensuring that wiretaps be used only when enumerated offenses are suspected, even if those enumerated offenses are entwined with non-enumerated offenses. It would be illogical and serve no evident purpose to allow use of evidence of non-enumerated offenses as long as they were not listed in the order, but disallow the same evidence if the non-enumerated offenses are listed in an order along with enumerated offenses.

III. EVEN IF THE ORDER IS HELD UNLAWFUL SUPPRESSION IS NOT REQUIRED AND IS NOT APPROPRIATE IN THIS CASE.

A. The Inclusion Of Non-enumerated Offenses Or Of Federal Counterparts To Enumerated State Offense In The Application And Orders Does Not Require Suppression In This Case.

Exclusion of evidence obtained through an unlawful order, though authorized by statute, is not required and under these circumstances should not be ordered. Wisconsin Statute § 968.30(9)(a) authorizes, but does not require, suppression of communications intercepted

pursuant to an unlawful order. The language of the statute is conditional and discretionary: "If the motion is granted . . ." Wis. Stat. § 968.30(9)(a).

Smart recognized that to suppress evidence where investigators suspect both enumerated and non-enumerated evidence "would create perverse incentives for law enforcement officers to only disclose suspicion of enumerated crimes." *Smart* 278 F.3d at 1173. It cited with approval *United States v. Levine*, 690 F. Supp. 1165, (E.D.N.Y. 1988), in which the court noted that failure to disclose possible evidence of non-enumerated offenses "might give rise to an inference of bad faith." *Smart*, 278 F.3d at 1173 n.6. Clearly it is preferable that investigators disclose that a wiretap may lead to evidence of non-enumerated offenses.

Wisconsin has adopted the holding of *United States v. Leon*, 468 U.S. 897 (1984), recognizing an exception to the exclusionary rule for evidence obtained in violation of the Fourth Amendment when officers have relied in objectively reasonable good faith upon a search warrant. *State v. Ward*, 2000 WI 3, 231 Wis. 2d 723, 604 N.W.2d 517, *State v. Eason*, 2001 WI 98, 245 Wis. 2d 206, 629 N.W.2d 625. The warrant cannot be one "based upon a deliberately or recklessly false affidavit, or, a bare bones affidavit that she or he reasonably knows could not support probable cause or reasonable suspicion" or "so facially deficient" that she or he could not "reasonably presume it to be valid." or "a warrant issued by a magistrate that "wholly abandoned his [or her] judicial role." *Eason*, 245 Wis. 2d 206 at 237. In addition, the process used in obtaining the search warrant must include significant investigation and review by either a police officer trained and knowledgeable in probable cause requirements or knowledgeable government attorney.

Wisconsin courts have not yet considered whether a *Leon* good faith exception applies to evidence obtained pursuant to a wiretap authorization. Other jurisdictions have extended the good faith exception for searches

pursuant to warrants to wiretaps. See *United States v. Moore*, 41 F.3d 370, 376-77 (8th Cir. 1994), *cert. denied*, 514 U.S. 1121 (1995), *United States v. Malekzadeh*, 855 F.2d 1492, 1497 (11th Cir. 1988), *cert. denied*, 489 U.S. 1024 (1989), *United States v. Bellomo*, 954 F. Supp. 630, 638 (S.D.N.Y. 1997), *United States v. Gotti*, 42 F. Supp. 2d 252 (S.D.N.Y. 1999), *Commonwealth of Pennsylvania v. Melilli*, 555 A.2d 1254 (1989).

The reasons for extending the good faith exception to wiretaps are persuasive. In *Moore*, the court considered that the legislative history of the federal wiretap act “expresses a clear intent to adopt suppression principles developed in Fourth Amendment cases.” *Moore*, 41 F.3d at 376. The deterrent purpose of the exclusionary rule is not served when applied to “evidence obtained in objectively reasonable reliance upon a warrant.” *Eason*, 245 Wis. 2d 206 at 234. The Louisiana Supreme Court, adopting a good faith exception for wiretaps noted “The deterrent purpose of the exclusionary rule in La.Rev.Stat. 15:1307 would not be served by suppressing otherwise valid criminal evidence because of the type of police behavior involved in this case, namely, the inclusion of superfluous information in the affidavit used to obtain the wiretap order.” *State v. Neisler*, 666 So.2d 1064, 1068-69 (La. 1996).

Few states have considered whether the good-faith exception should be extended to wiretap evidence. The California Court of Appeals concluded that by adopting a statute that provides a good faith exception from civil liability for disclosure of communications improperly intercepted the legislature expressed its intent to not allow the same exception for the statutory exclusionary rule. *People v. Jackson*, 129 Cal. App. 4th 129, 154 (Cal. Ct. App. 2005). Wisconsin has a similar statute, Wis. Stat. § 968.31(3) (“Good faith reliance on a court order or on s. 968.30(7) shall constitute a complete defense to any civil or criminal action brought under ss. 968.28 to 968.37.”) However, the California court attached significance to the fact that by adopting the statute the legislature “showed it

was aware of the *Leon* issue” and made a deliberate choice not to include a good faith exception to its exclusionary rule. *Jackson*, 129 Cal. App. 4th, 154. Wisconsin’s good-faith defense statute was enacted by 1970 Wisconsin Act 40, well before the *Leon* decision of 1984. Therefore, it cannot be said to reflect any awareness of *Leon* or express any legislative intent to bar a good-faith exception.

Florida has also rejected a good faith exception for wiretap evidence, but based on its statute which, unlike Wisconsin’s, expressly and mandatorily bars use of evidence obtained under a faulty order. *State v. Garcia*, 547 So.2d 628, 630 (Fla. 1989). Florida’s statute provides that in the case of an unlawful interception, “no evidence derived therefrom may be received in evidence in any trial.” West’s F.S.A. § 934.06. Interestingly, Louisiana has an identical statute, LSA-R.S. 15:1307, but as noted above has adopted a good-faith exception. Wisconsin has no comparable provision to prevent adoption of a good-faith exception.

The wiretap authorization relied upon by police in this case meet the standards set out in *Eason* for a process that incorporates review by knowledgeable police or government attorneys . The application for the order was reviewed and approved by the chief of police of the City of Milwaukee, the district attorney of Milwaukee County and by the attorney general (35:59-62). The application was considered and the wiretap authorized by the Chief Judge for the 1st Judicial District. The investigating officers in good faith relied upon the order and did not exceed its scope or otherwise violate its terms.

Even if this court now finds the wiretap order invalid, suppression of the evidence here clearly fails the cost-benefit analysis that must be undertaken. “[T]he marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the

substantial costs of exclusion.” *Eason*, 245 Wis. 2d 237 at 234, quoting *Leon*, 468 U.S. at 922.

When an application properly lists enumerated offenses, provides probable cause to order a wiretap in relation to those offenses and the wiretap yields such evidence and the defendant is charged only with enumerated offenses, it makes no sense to suppress all of the evidence obtained under the order as the remedy for the inclusion of non-enumerated offenses in the application order. The legislative intent to restrict the use of wiretaps to gather evidence only of certain crimes can be equally served by allowing only evidence that would have been obtained had the application referred only to enumerated offenses. In this case, that would include all of the evidence at issue.

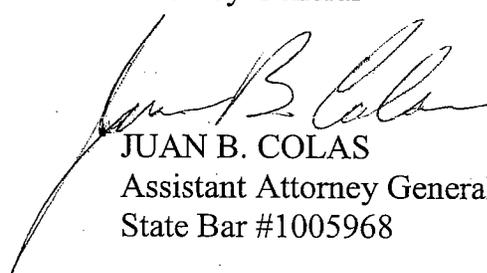
CONCLUSION

This court should affirm the decision of the court of appeals and House's conviction.

Dated at Madison, Wisconsin: February 19, 2007

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General



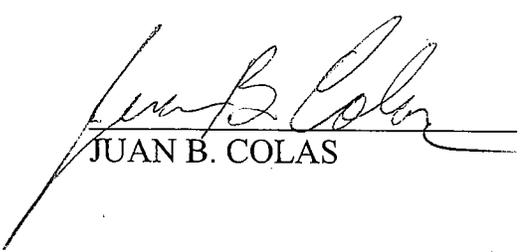
JUAN B. COLAS
Assistant Attorney General
State Bar #1005968

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 264-6360

CERTIFICATION

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The length of the brief is 4,527 words.



JUAN B. COLAS



ATTORNEYS

Michael J. Steinle

March 1, 2007

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MAR 02 2007

Ms. Cornelia Clark
Clerk of Supreme Court
110 East Main Street
Suite 215
P.O. Box 1688
Madison, WI 53701-1688

CLERK OF SUPREME COURT
OF WISCONSIN

Re: State of Wisconsin v. Jeffrey House
Case No. 2005AP2202-CR

Dear Ms. Clark:

This letter is to inform you that I will not be filing a Reply Brief in the above-referenced matter.

The Plaintiff-Respondent's Brief was sent to an incorrect address and was not received until today's date.

If you have any questions, please feel free to contact my office.

Sincerely,



MICHAEL J. STEINLE
Attorney at Law

MJS: plk

Cc: Juan B. Colas
Assistant Attorney General

Karen Loebel
Assistant District Attorney