Sample AFFIDAVIT FOR PEN/TRAP/E911/ESN ORDER

IN RE ORDER AUTHORIZING INSTALLATION AND USE OF § THE STATE OF TEXAS

TRAP AND TRACE, PEN REGISTER, AND ESN READER

DEVICES

AUTHORIZING RELEASE OF CUSTOMER RECORDS § (UNDER SEAL)

AND OTHER INFORMATION

AUTHORIZING E911 LOCATION-GEOLOCATION BASED

MEASUREMENTS PERTAINING TO MOBILE § HARRIS COUNTY, TEXAS

COMMUNICATIONS DEVICES

AUTHORIZED PEACE OFFICER’S AFFIDAVIT FOR COURT ORDER

{ARTICLE 18.21, TEXAS CODE OF CRIMINAL PROCEDURE}

I, JASON WILCOX, the undersigned peace officer (“Requestor”) am a Texas peace officer commissioned by the Harris County Sheriff’s Office. I am conducting an investigation that is documented under incident #17-038992. I am investigating the offense of Murder, a violation of Texas Penal Code §19.02.

I am attempting to locate Mario Cantu, a fugitive from justice who is charged with the offense of murder, under arrest warrant number F17-038992, issued in the 232nd District Court of Harris County, Texas. I have verified, within the last 24 hours, that this arrest warrant remains unexecuted.

I believe that information regarding the target device is relevant to an ongoing criminal investigation. During the course of my investigation, I have discovered that wireless telephone number/identifier (281) 555-1215 (“target device”) or other telephone numbers such as landline/voice over internet protocol (VOIP) numbers, are associated with the suspect/fugitive.

The target device is serviced by one or more of the following communications carriers/companies/entities: Apple, American Online (AOL), Amerilink Wireless, AT&T (SBC), AT&T Internet Services, AT&T Mobility, Caprock Cellular, Cellco Partnership d/b/a Verizon Wireless, Cellular One, Cellular One of East Texas, Clearwire, Comcast, Commnet Wireless, Cricket Communications/Leap Wireless, Earthlink Embarq, Etex Communications, Five Star Wireless, Goggle/Gmail, Juno, Lamar County Cellular, MetroPCS, Microsoft [(Danger/Sidekick), (MSN), (Hotmail), etc.], Mid-Tex Cellular, NetZero, Panhandle Telecommunications, Inc. (PTCI), People PC, Peoples Communications (Telephone Cooperative, Inc.), Phonoscope, Pine Cellular, Plateau Telecommunications, Pocket Communications, Right Wireless, Research In Motion (RIM)/Blackberry, Sprint/Nextel, Time Warner, T-Mobile, US Cellular, Vonage, West Central Wireless, Windstream, XIT Communications, Yahoo!, and/or any other communications provider/carrier, any internet company(ies), including telephone companies, public/private/commercial email providers, website hosting companies, website companies or private entities, and/or services, and Internet Service Providers (ISPs), who may possess the requested information, such as roaming carriers, hereinafter “Providers.”

For the reasons stated further on in this affidavit, I believe that the proposed order authorizing the installation and use of pen register and/or trap and trace and/or similar devices and requiring disclosure of certain electronic customer data and other information will probably yield evidence of crimes, further the criminal investigation, and/or lead to the location of the suspect/fugitive.

MY BELIEF IS BASED UPON THE FOLLOWING PROBABLE CAUSE:

I am Detective Jason Wilcox, a peace officer commissioned by the Harris County Sheriff’s Office currently assigned to the Gulf Coast Violent Offenders Task Force. I obtained the following information by reviewing reports of other investigators and/or speaking with other investigators and/or individuals with knowledge of the following events.

On November 19, 2017, at approximately 2357 hours, Officer R. McElroy of the Houston Police Department (“HPD”) was dispatched to 4700 West Hampton Ave., Houston, Harris County, Texas. Officer McElroy’s report indicated that dispatch advised that a caller had reported multiple gunshots.

Officer McElroy located the complainant, Victor Higgs, behind the building at that location. Higgs was having difficulty breathing and appeared to have sustained two gunshot wounds to his chest and abdomen. Though barely able to speak, Higgs told Officer McElroy that a person he knew as “Concho” had shot him for unknown reasons. Officer McElroy observed that Higgs was still in possession of his cell phone and wallet.

Higgs was transported via ambulance to Memorial Hermann Texas Medical Center, where he later died. An autopsy was performed on Higgs the following day at the Harris County Institute of Forensic Sciences (“HCIFS”). According to the autopsy report, it was determined that the cause of death was blood loss and internal bleeding resulting from a gunshot wound, and the manner of death was homicide.

On November 20, 2017, investigators obtained exterior security camera footage from the business located at 4700 West Hampton. That footage did not show the homicide; however, it did show what appears to be a dark Ford F-150 pickup truck enter the parking lot associated with the business at approximately 2354 hours and then drive off-camera in the direction of the alley behind the building where Higgs was found. No other vehicles were captured on camera driving in that direction in the one hour time-period before the offense. It appeared as if the truck was missing its tailgate.

On November 21, 2017, HPD Homicide Detective A. Grant met Higgs’ daughter Cherrie Stanton at HCIFS. Stanton was present to take possession of Higgs’ personal effects. Stanton took possession of Higgs’ cell phone, and then gave it to Detective Grant and executed a written consent to search the phone. See Tex. Code Crim. Proc. art. 18.0215(d)(1). Detective Grant then used the cell phone investigative kiosk at the Greater Houston Regional Computer Forensics Laboratory (“GHRCFL”) to extract all data from the phone and burn it to a CD or DVD.

Detective Grant examined the cell phone extraction report and observed text messages between Higgs and a phone number saved as “Concho.” The text messages began approximately six months before the offense date. The phone number associated with “Concho” was (281) 555-1215. Detective Grant gleaned from the text messages that Higgs had been periodically purchasing methamphetamine from “Concho.” Detective Grant also determined from the text messages that Higgs had arranged to meet “Concho” at “the gameroom” on the night of the murder at an unspecified time. There is an 8-liner gameroom that shares the alley with the business at 4700 West Hampton Ave. There was nothing else in the extraction report that was suspicious or of concern.

On November 22, 2017, Detective Grant determined by using the CLEAR law enforcement investigative database that the phone number (281) 555-1215 is served by AT&T. Detective Grant obtained a grand jury subpoena for the subscriber and billing information associated with (281) 555-1215 and served it on the AT&T National Compliance Center that day. On November 23, 2017, Det. Grant received the requested subscriber and billing information, which revealed the subscriber of the phone number to be Mario Cantu.

Also on November 23, 2017, HPD Homicide Detective A. Grant conducted an interview with an individual named Richard Clayton. Clayton had reported a stolen truck to the HPD Auto Theft Unit earlier that day. Clayton told Detective Grant that he had loaned his truck to a co-worker that he knew as Mario around 1500 hours on November 19, 2017, ostensibly for the purpose of moving a refrigerator, and had not seen either his truck or Mario since. Clayton related that he expected his truck to be returned later on the 19th, or possibly on the morning of the 20th, but that he did not give Mario consent to take his truck for an extended period of time. Clayton reported that Mario had not returned to work despite being on the schedule to work, and that Mario had not returned numerous voicemails inquiring about the whereabouts of the truck. Clayton provided Mario’s cellular phone number as (281) 555-1215. Clayton described his truck as dark blue. Detective Grant asked Clayton if it was missing the tailgate, and Clayton responded “Yes.” Detective Grant had Clayton view the security footage, and Clayton said that he was “100% sure” that the truck in the video was his. Detective Grant asked Clayton if Mario had any nicknames, and Clayton said that Mario sometimes went by “Marty,” but he had never heard the nickname “Concho.” A photo-lineup was presented to Clayton, and Clayton positively identified Mario Cantu, H/M DOB 6/7/82, as the individual to whom he loaned his truck.

Clayton is the registered owner of a 1997 Ford F-150. The assigned license plate is Texas BGM-2150. Clayton advised that when he loaned the truck to Mario, that it had the assigned license plates on it. The truck was entered into NCIC as a felony vehicle.

On November 24, 2017, Detective A. Grant went to the Cantu residence to perform a “knock and talk.” He first observed that there was no blue F-150 present at the residence or parked in the vicinity. He interviewed Sylvia Cantu, Mario Cantu’s wife, at the residence. Grant did not convey to her that he was investigating a homicide; rather, he informed her that he was looking for Clayton’s truck, and that he needed to speak with Mario Cantu as soon as possible. Sylvia had not seen a blue F-150 pickup truck. Sylvia advised that Mario had left Houston early on the morning of November 20, 2017, to visit his mother in Harlingen, Texas, but that she (Sylvia) had been in daily contact with him via his cell phone. Sylvia provided his cell phone number as (281) 555-1215. Sylvia identified Cantu’s mother as Rosario Cantu, residing at 3316 W. Lamb Ave., Harlingen, Texas. Records of the Cameron County Appraisal District reflect that Rosario Cantu is the owner of the residence at that address. Detective Grant contacted the Harlingen Police Department and requested that someone drive by the 3316 W. Lamb location to see if a dark blue Ford F-150 was parked at the location; Harlingen PD informed that there was not.

During the early morning hours of November 25, 2017, Clayton’s 1997 Ford F-150 was located damaged and abandoned in a warehouse parking lot off of Monroe Blvd., in Houston, Texas. The vehicle was missing its license plates, but was confirmed by VIN number to be the truck belonging to Richard Clayton. The truck was searched with Clayton’s written consent. Latent fingerprints found in the truck were compared to known prints of Mario Cantu that were obtained during book-in for a prior, unrelated arrest. Elimination prints were obtained from Clayton. Latent prints belonging to both Clayton and Cantu were located in the interior of the truck. A presumptive test for gunshot residue (“GSR”) on the steering wheel and gear shift was positive for GSR.

Based on this information, Detective Grant obtained a warrant for Mario Cantu’s arrest for the offense of murder. The warrant was issued in the 232nd District Court of Harris County at approximately 2:00 p.m. on November 25th. The warrant number is F17-038992. A criminal investigation into these events remains ongoing. The arrest warrant remains unexecuted.

On November 25, 2017, this case was referred to me in my capacity as a Task Force Officer of the Gulf Coast Violent Offenders Task Force. I know from training and experience that pen registers, trap and trace devices, ESN readers, and similar equipment are commonly used to locate fugitives, and I have used such devices and equipment in the past to successfully apprehend fugitives.

A cell phone is, in essence, a radio transmitter and receiver. When an individual makes or receives a phone call or communication, the cell phone connects to the nearest tower with the strongest signal. Even when the subscriber is not using the device for communication, it is in frequent contact with a tower via a control channel.

The range of a cell tower varies with population density and terrain, but it is typically two to three miles in an urban environment. Most cell phone towers are divided into three 120 degree sectors. If I know what sector of what tower the target device is in contact with, then that substantially narrows the area in which to search for the fugitive. This is especially helpful when, as here, there is a suspected place where the fugitive may be located. In this case, if the device using number (281) 555-1215 is in contact with the cell tower and sector most likely to serve 3316 W. Lamb in Harlingen, Texas, then it is likely that the fugitive may be found there, as opposed to Houston.

Enhanced 911 (“E911”) or other location tools, such as GPS fixes and network triangulation, can be much more precise in getting investigators closer to the actual handset. Some of these E911 tools or records are not created by the service provider unless the user of a device dials “911,” the provider has reason to believe a mobile phone’s user is in distress, or the provider receives a request to create, record, and disclose these electronic records to law enforcement. Unlike CSLI, which only reveals the general area of town in which target device is located, the precision of E911 and similar location tools make it possible to reveal that the target device is in a constitutionally protected area, such as a home. Therefore, this affidavit sets out facts amounting to probable cause to issue a warrant, rather than the lesser standard contemplated by article 18.21 §2.

Based on my training and experience, I have probable cause to believe, and do believe, that the installation and use of a pen register, trap and trace device, ESN reader, or similar equipment will produce information material to an ongoing criminal investigation, namely, the location of Mario Cantu. I therefore request that a prosecutor of Harris County apply for a probable-cause-based court order authorizing the installation and use of a pen register, trap and trace device, ESN reader, or similar equipment, and further authorizing the release of subscriber information related to the target device.

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AUTHORIZED PEACE OFFICER

SUBSCRIBED AND SWORN before me, the undersigned authority, on this the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

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NOTARY PUBLIC