

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

2 COUNTY OF SAN DIEGO

3 SEARCH WARRANT

4 No. 402-11

FILED
NORTH COUNTY DIVISION

5 The People of the State of California, to any peace officer in the County of San Diego,

6 Proof, by affidavit, having been this day made before me by James Garrett, a peace officer
7 employed by the California Department of Forestry and Fire Protection, that there is substantial
8 probable cause pursuant to Penal Code section 1524 for the issuance of the search warrant, as set
9 forth in the affidavit attached hereto and made a part hereof as is fully set forth herein, you are,
10 therefore, commanded to make search at any time of the day or night, good cause being shown
11 therefore;

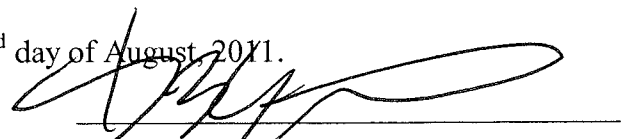
12 **LOCATION, PROPERTY, AND/OR PERSON(S) TO BE SEARCHED**

13 A. **Jesse James Durbin**, a male adult having a date of birth of 04-16-1988, being about 5'09"
14 in height and 165 lbs. in weight, Social Security Number 623-18-8533, and is believed to be currently
15 residing and in the custody of the San Diego County Sheriff under booking number 11155157, located
16 at the Vista Jail at 325 South Melrose Drive, Vista, California, for the following property to wit:

17 1. To seize the person and saliva samples from inside Jeremy Ortiz's mouth, sufficient for
18 comparison purposes, utilizing sterile oral swabs that will be brushed along the inside of both cheeks,
19 to collect the described evidence. This is a non-intrusive collection of evidence that requires no
20 prophylactic intrusion into the body as was necessary in the past with blood draws. The sample will be
21 obtained by Officer Garrett or his designee.

22 and if you find the same, or any part thereof, to bring it forthwith before me at the Superior Court of
23 the State of California for the County of San Diego, or to any other court in which the offense in
24 respect to which the property or things is triable, or retain such property in your custody, subject to
25 the order of this Court, pursuant to section 1536 of the Penal Code. unless seized under federal asset
26 forfeiture laws pursuant to Title 21 United States Code section 881 and to dispose of said property
27 pursuant to law when the property is no longer of evidentiary value.

Given under my hand and dated this 3rd day of August, 2011.



Judge of the Superior Court

1 naturally caused fires. I have received and delivered formal and informal training in fire
2 investigation and general investigative procedures. I am familiar with characteristics and
3 behaviors of Arsonists and the causes of uncontrolled and unwanted fires. I have made and/or
4 assisted with Arson related felony arrests and misdemeanor arrests/citations for forest and fire
5 related offences. I am familiar with local fire conditions, fire behavior and typical causes of fires.

6 I have also received formal training from staff at the San Diego Sheriff's Department
7 Regional Crime Laboratory in the proper collection and preservation of evidence including
8 collecting DNA samples from persons. I know DNA is short for deoxyribonucleic acid. DNA
9 molecules are contained within human cells and hold the genetic 'coding' that makes each person
10 individually distinctive (except identical twins). DNA technology is capable of distinguishing
11 between human beings to an extent that typically the probability of random person having the
12 same profile as the questioned profile is many times greater than the population of the planet.

13 Such evidence is commonly introduced in evidence within the courts of California and
14 other states and has successfully withstood attack on foundational and Kelly-Frye grounds. The
15 DNA evidence I am seeking can be used to exclude suspects from the crime as well as help
16 identify the perpetrator.

17 I submit that the requested saliva samples are clearly necessary for analysis for evidentiary
18 purposes. Such samples may also be used for analysis using more traditional scientific techniques.

19 Samples taken from the suspects as described more fully above will be compared against
20 DNA found on evidence collected from the fire scene. In removing saliva samples from the
21 suspect, I will use medically accepted practices, utilize the services of a trained person and use the
22 least amount of force necessary to collect the described evidence.

23 **PROBABLE CAUSE**

24 On July 21, 2011, at approximately 10:37 p.m., the California Department of Forestry and
25 Fire Protection (CAL FIRE) responded to a fire on the Los Coyotes Indian Reservation. By the
26 time the first CAL FIRE unit arrived the fire was spreading out from a guard shack which was

1 completely burned and had already burned 30 acres of vegetation. The guard shack, which was
2 later determined to be the specific origin area for the fire, was located near a metal gate across
3 Camino San Ignacio Road at the north end of the Los Coyotes Campground. The 8'x16' guard
4 shack belonged to the Eagle Rock Training Center (ERTC). At approximately 11:54 p.m.,
5 emergency personnel on scene located a Ford Expedition (CA 4SZF070) registered to Augustine
6 ORTIZ, which was parked sideways in the road, approximately ¼ to ½ mile from the gate.
7 Augustine ORTIZ is Defendant Jeremy Joseph ORTIZ'S father. Jeremy Joseph ORTIZ has been
8 seen driving the vehicle on a regular basis, and the vehicle was seen parked outside of his
9 residence earlier in the day. The vehicle appeared to be stuck, and was blocking half of the
10 roadway. Investigators discovered the hood of the vehicle was still warm and observed through
11 open windows several items inside the vehicle, including a red plastic fuel container, a Bic lighter,
12 and several Keystone beer cans. They also observed damage to the windshield, and red stains that
13 appeared to be blood. These items of evidence were collected and will be submitted to the
14 Sheriff's Crime Lab to be swabbed for DNA. Investigators also located an empty can of Keystone
15 beer near the burned guard shack. This item will be submitted to the Sheriff's Crime Lab as well
16 for DNA analysis.

17 Emergency personnel began evacuating the area because the fire was spreading toward two
18 nearby residences. One of the houses, located at 5000 Camino San Ignacio, is the residence of
19 Jeremy Joseph ORTIZ. Police went to the residence and located both Jeremy Joseph ORTIZ and
20 Jesse James DURBIN. The house was evacuated, and both ORTIZ and DURBIN were driven
21 down the mountain to safety by police personnel. Fire personnel later responded to the residence,
22 both inside and outside, to preserve it from the fire which was approximately ¼ mile away.
23 Investigators recovered from the house a security surveillance camera that was identified as
24 belonging to the ERTC guard shack. A red substance, which appeared to be blood, was observed
25 on the camera enclosure. This will be submitted to the Sheriff's Crime Lab to be swabbed for
26 DNA.

1 Investigators learned that Defendants Jeremy Joseph ORTIZ and Jesse James DURBIN
2 purchased gasoline from a Mini Mart earlier in the day, or the previous day, and placed it into a
3 red gas can.

4 Defendant Jeremy Joseph ORTIZ voluntarily gave verbal statements admitting to
5 participating in the fire. He admitted that he poured the gasoline and that DURBIN lit the
6 gasoline. He also admitted that he decided to burn the shack when they were at the gate after
7 leaving DURBIN'S father's house. He claimed that DURBIN smashed the camera on the shack
8 and subsequently carried it up to ORTIZ'S house. Defendant Jesse James DURBIN was
9 interviewed and admitted to driving the vehicle involved and knowing ORTIZ wanted to set the
10 fire. He said he was present when ORTIZ burned the guard shack. He also admitted to punching
11 the windshield of the Expedition after it got stuck. DURBIN had a cut on the 4th knuckle of his
12 right hand.

13 The fire destroyed the ERTC guard shack and consumed an estimated 14,100 acres of
14 vegetation. The costs involved in fighting the fire, as well as the property damage, exceed \$15
15 million. Eighteen firefighters sustained injuries as a result of the fire.

16 By obtaining an oral buccal reference sample from Jesse James DURBIN, the SDSO
17 Crime Lab can compare his DNA profile with any DNA profiles obtained from evidence collected
18 in this case. This will assist in determining the respective role of each suspect in this case.

19
20 Therefore, based on my training and experience and the above facts, I believe that I have
21 substantial cause to believe the above described property, or a portion thereof, will be at the above
22 described premises or on the described person when the warrant is served.

23 Based on the aforementioned information and investigation, I believe that grounds for the
24 issuance of a search warrant exist as set forth in Penal Code 1524.

1 I, the affiant, hereby pray that a search warrant be issued for the seizure of said property, or
2 any part thereof, from said person, good cause being shown therefore, and that the same be
3 brought before this magistrate or retained subject to the order of this Court.

4 This affidavit has been reviewed for legal sufficiency by Deputy District Attorney
5 Terri A. Perez.

6 Given under my hand and dated this 3rd of August, 2011.

7 

8 Subscribed and sworn to before me

9 this ____ day of August 3rd, 2011,

10 at 11:20 a.m./p.m.

11 
12 _____
13 Judge of the Superior Court

