

STATE OF INDIANA
MARION COUNTY, ss:

IN THE MARION SUPERIOR COURT
CRIMINAL DIVISION

THE STATE OF INDIANA

vs.

BRIAN
CAUSE NO.
(AS TO COUNTS I, II, III)

) INFORMATION
) COUNT I
) POSSESSION OF COCAINE, CLASS D
) FELONY I.C. 35-48-4-6

COUNT II
RESISTING LAW ENFORCEMENT,
CLASS D FELONY I.C. 35-44-3-3

COUNT III
DRIVING WHILE SUSPENDED
(SUSP/PRIOR), CLASS A
MISDEMEANOR I.C. 9-24-19-2

On this date, K. Smith came before the Prosecuting Attorney of the Nineteenth Judicial Circuit and, being duly sworn (or having affirmed), stated that in Marion County, Indiana

COUNT I

BRIAN , on or about December 7, 2011, did knowingly possess a controlled substance, that is: cocaine;

COUNT II

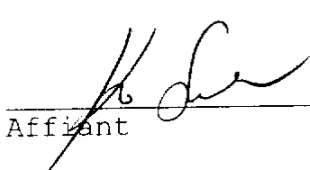
BRIAN , on or about December 7, 2011, did knowingly flee from K. Hershberger, a law enforcement officer empowered by the Indianapolis Metropolitan Police Department, after K. Hershberger had identified himself by visible or audible means and ordered BRIAN to stop, and while committing said offense did operate a vehicle, that is: a 1997 GMC sport utility vehicle;

COUNT III

BRIAN on or about December 7, 2011, did operate a motor vehicle upon a public highway; said defendant knowing his or her driving privilege was suspended, and said defendant within the past ten (10) years has a prior unrelated judgment for a violation of I.C. 9-24-19-2 (I.C. 9-24-18-5);

all of which is contrary to statute and against the peace and dignity of the State of Indiana.

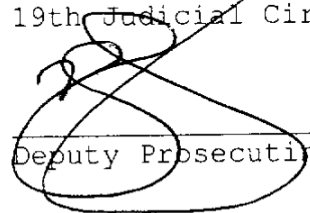
I swear or affirm under penalty of perjury as specified by I.C. 35-44-2-1 that the foregoing representations are true.



Affiant

12/09/2011
Date

TERRY R. CURRY
Marion County Prosecutor
19th Judicial Circuit



Deputy Prosecuting Attorney

State's Witnesses:
K. HERSHBERGER IMPD 20906
J. EHRET IMPD 20439
J. MACKEY IMPD 31722
D. SMILEY IMPD S0028
E. KENNEY IMPD K4487
G. MAXWELL IMCFSA M9357

STATE OF INDIANA, COUNTY OF MARION, SS:

PROBABLE CAUSE AFFIDAVIT

Date/Time Printed: 12/07/2011 4:01:29 AM

Defendant Name: BARNETT, BRIAN

Location of Incident: 1300 S RICHLAND ST

Date of Incident: 12/07/2011 Time: 01:15:00 Case Number: 110174783

Slated Charges: POSSESSION COCAINORN, RESISTING LAW ENFORC, DRIVING WHILE LIC

Arresting Officer: HERSHBERGER, KEVIN W IMPD

Officer ID: 20906

Agency: Indianapolis Metropolitan Police Department

ON WEDNESDAY DECEMBER 7, 2011 AT APPROXIMATELY 1:15AM, I OFFICER K HERSHBERGER OF IMPD, BEING IN FULL POLICE UNIFORM AND A FULLY MARKED POLICE VEHICLE, OBSERVED A SILVER 1997 GMC SUBURBAN EXIT AN ALLEY FROM THE EAST ONTO THE 1300 BLOCK OF S RICHLAND ST, JUST NORTH OF HOWARD ST. I WAS PARKED FACING SOUTHBOUND IN FRONT OF 1305 S RICHLAND ST WHILE OBSERVING THE ACTIONS OF THE DRIVER OF THE SUBURBAN. THE VEHICLE EXITED THE ALLEY SWINGING WIDE INTO THE SOUTHBOUND LANE OF RICHLAND AND TRAVEL NORTH ON RICHLAND. THE VEHICLE ACCELERATED APPROACHING MY CAR, AT WHICH POINT I COULD IDENTIFY THE VEHICLE AS A GMC SUBURBAN WITH THE DRIVER SIDE REAR WINDOW COVERED IN PLASTIC, AS WELL AS THE GAS CAP COVER OPENED. I RECOGNIZED THIS VEHICLE DUE TO THE SPECIFIC CHARACTERISTICS NOTED ABOVE AS BELONGING TO A B/M BRIAN , OF WHOM I HAVE BEEN IN CONTACT WITH MANY TIMES ON MSW DISTRICT ZONE 20. I ALSO KNEW BRIAN TO HAVE A DRIVERS LICENSE STATUS OF BEING SUSPENDED WITH PRIOR CONVICTIONS. AS THE GMC SUBURBAN PASSED MY FULLY MARKED POLICE VEHICLE, I HAD A CLEAR VIEW OF THE INTERIOR OF THE SUV AND OBSERVED BRIAN AS THE DRIVER AND SOLE OCCUPANT OF THE VEHICLE. FAILED TO MAKE A COMPLETE STOP AT THE STOP SIGN OF RICHLAND AND LAMBERT WHILE TURNING WEST ONTO LAMBERT AND FAILING TO SIGNAL. I OBSERVED THIS IN MY REAR VIEW MIRROR AND ACCELERATED IN REVERSE TO LAMBERT TO MAKE A TRAFFIC STOP. I WENT WEST ON LAMBERT AND OBSERVED MAKE NO ATTEMPT TO STOP AT THE FOUR-WAY STOP AT LAMBERT AND LEE ST AND TURN NORTH ONTO LEE ST. I ACTIVATED MY EMERGENCY LIGHTS AND SIREN WHILE FOLLOWING NORTH ON LEE ST IN AN ATTEMPT TO INITIATE THE TRAFFIC STOP. THEN ACCELERATED, RUNNING THE STOP SIGN AT LEE AND MORRIS ST AND TURN WESTBOUND ONTO MORRIS ST AND ACCELERATE AWAY FROM ME. AS WE BOTH REACHED MORRIS AND KAPPES ST, I ANNOUNCED OVER MY RADIO TO CONTROL THAT I WAS IN VEHICLE PURSUIT. RAN THE RED TRAFFIC LIGHT AT MORRIS/BELMONT INTERSECTION, CONTINUING WEST AND TURNED SOUTH ON PERSHING AV. I WAS FOLLOWED BY OFFICER KENNEY (D573) AT THIS POINT. CONTINUED SOUTH IN THE RESIDENTIAL AREA ON PERSHING AT SPEEDS REACHING NO MORE THAN 50MPH. RAN THE STOP SIGN AT HOWARD AND PERSHING AT WHICH POINT HE BEGAN SWERVING ERRATICALLY FROM LEFT TO RIGHT WHILE MAKING FURTIVE MOVEMENTS INSIDE THE VEHICLE. I COULD SEE S ACTIONS DUE TO ILLUMINATION FROM MY SPOTLIGHT AND TAKE-DOWN LIGHTS. CONTINUED SOUTH ON PERSHING RUNNING THE STOP SIGN AT MILLER ST AND THEN AT MINNESOTA ST. HE TURNED EAST ONTO MINNESOTA ST THEN NORTH ONTO SHEFFIELD AVE.

RAN THE STOP SIGN AT SHEFFIELD AND MILLER ST AND THE STOP SIGN AT SHEFFIELD AND HOWARD ST. TURNED WEST ON J HOWARD AND PARKED THE SUBURBAN ABRUPTLY IN THE EAST BOUND LANE OF HOWARD NEAR THE SOUTH SIDE CURB. I TOOK INTO CUSTODY. THE DRIVER SIDE DOOR WAS OPEN AND A CLEAR PLASTIC BAGGIE WAS LOCATED IN PLAIN VIEW IN THE DOOR PANEL. WHAT DREW MY ATTENTION TO THE BAGGIE WAS THAT IT APPEARED THE CORNER HAD BEEN BITTEN OFF AND THERE APPEARED TO BE FRESH SALIVA ON AND AROUND THE CORNER, IN ADDITION, THE BAGGIE CONTAINED WHITE RESIDUE CONSISTENT WITH WHAT I KNOW THROUGH MY TRAINING AND EXPERIENCE TO BE CRACK COCAINE. OFFICER EHRET (D335) WAS ON SCENE FROM THE PURSUIT AND APPREHENSION. I INFORMED OFFICER EHRET WHAT I HAD OBSERVED IN THE 1400 BLOCK OF S PERSHING AV WHEN BARNETT WAS SWERVING BACK AND FORTH. OFFICER EHRET RELOCATED TO THE 1400 BLOCK OF S PERSHING AVE AND LOCATED JUST NORTH OF MARTHA ST, IN THE NORTHBOUND LANE, A SMALL CLEAR PLASTIC BAGGIE CORNER CONTAINING A WHITE, ROCK-LIKE SUBSTANCE, WHICH THROUGH HIS TRAINING AND EXPERIENCE HE RECOGNIZED TO BE CRACK COCAINE. IN ADDITION, IT APPEARED THAT PART OF THE BAGGIE AND CRACK COCAINE HAD BEEN CHEWED AND THE BAGGIE STILL CONTAINED WHAT APPEARED TO BE FRESH SALIVA ON AND AROUND THE PLASTIC BAGGIE. I INSTRUCTED OFFICER EHRET TO STAND BY WITH THE EVIDENCE. OFFICER MACKEY (D339) WAS ONSCENE AND PERFORMED A SEARCH OF THE PRISONER AND STOOD GUARD WHILE I RELOCATED TO OFFICER EHRET'S LOCATION. OFFICER SMILEY (D330) WAS ON SCENE FOR APPREHENSION, AND ALSO BEING THE EVIDENCE TECHNICIAN, OFFICER SMILEY PHOTOGRAPHED THE 1997 GMC SUBURBAN, THE EMPTY BAGGIE WITH THE TORN CORNER, AND THE SMALLER CORNER BAGGIE CONTAINING THE CRACK COCAINE IN THE LOCATION IT WAS RECOVERED. USING LATEX GLOVES, I RECOVERED THE SUSPECT CRACK COCAINE IN THE BAGGIE AND PLACED IN A HEAT SEALED ENVELOPE AND SECURED IN MY LOCKED POLICE VEHICLE ALONG WITH THE OTHER BAGGIE RECOVERED FROM THE SUBURBAN. *** I CHARGED BRIAN WITH POSSESSION OF COCAINE (FD), RESISTING LAW ENFORCEMENT--FLEEING W/VEHICLE (FD), AND DRIVING WHILE SUSPENDED W/PRIOR CONVICTION.

WAS TRANSPORTED TO APC BY MCSO WAGON ALONG WITH HIS PERSONAL BELONGINGS AND \$81.00 CASH. THE 1997 GMC SUBURBAN WAS TOWED TO ZORES BY ZORES. I TRANSPORTED THE SUSPECT CRACK COCAINE TO THE PROPERTY ROOM IN THE HEAT SEALED ENVELOPE, SEALED IT, AND PUT IN THE NARCOTICS DROP BOX AS EVIDENCE WITH AN AFFIXED BIO-HAZARD LABEL DUE TO THE SALIVA. IN ADDITION, I SUBMITTED A REQUEST FOR DNA ON BOTH BAGGIES. ALL EVENTS OCCURRED IN MARION COUNTY, INDIANA.



Indianapolis-Marion County Forensic Services Agency
40 S. Alabama Street
Indianapolis, IN 46204
(317)327-3670 FAX (317)327-3607

*Att. Dave Davis
244-4130*

Laboratory Examination Report

LAB11-07849

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DATE: 12/09/2011

Agency Case #: DP11174783

TO: Indianapolis Metropolitan Police Department

FROM: Glen Maxwell, Forensic Scientist

EXAMINATION REQUESTED: Drug Chemistry

MATERIAL SUBMITTED:

- Item 001
One heat sealed plastic envelope marked DP11174783 containing:
- Item 001.001
One plastic bag containing:
- Item 001.001.01
One plastic bag corner with:
Item 001.001.01.01
DNA swab from plastic bag corner.
- Item 001.001.01.02
A white substance.
- Item 001.001.02
One torn plastic bag (print analysis).

RESULTS AND CONCLUSIONS:

Item 001.001.01.02
Cocaine: 0.1795 gram(s)

Signature:

Glen Maxwell
Forensic Scientist

M9357













For the purposes of the writing assignment, you should assume that a hearing has already been held on the motion to suppress. All of the attached have been admitted into evidence. IMPD General Order 7.3 has been admitted into evidence. Additionally, at the hearing, the following testimony was elicited:

The vehicle came to a stop in front of Brian's parent's house on Howard Street, which is a residential street on which parking is allowed.

The vehicle was parked against the flow of traffic, facing "westbound in the eastbound lane."

The "rear wheels were more than twelve inches from the curb."

The vehicle would have obstructed traffic "because the back end [was] out into the lane."

Photographs of the vehicle were taken.

After the vehicle came to a stop, Brian "put his hands out the window." Officer Hershberger "exited his vehicle" with "his gun drawn" and ordered defendant out of the vehicle. Officer Hershberger told Brian "with one hand to open up his door and exit the vehicle. Brian came out. Brian kept his hands out where Officer Hershberger could see them." "Officer Smiley came up next to Officer Hershberger and gave Brian commands to walk all the way back to the back of the vehicle and placed him in cuffs." Brian was "behind Officer Hershberger's vehicle, which was behind Brian's vehicle."

Once Brian was "handcuffed," Officer Kenney or Officer Ehret were "told to clear the vehicle" in order to "make sure no one [was] in the vehicle crouched down." Officer Hershberger then went "to clear the front driver side part of the vehicle." The front driver side door of the vehicle was still open as Brian had been ordered at gun point

to open it and then walk away. Officer Hershberger was “looking through the windows” and “shining the spotlight.” Officer Hershberger “made sure there was no gun on the floorboard.”

Officer Hershberger saw a plastic bag “sticking out of the door panel.” It was a “regular sandwich sized baggie.”

Officer Hershberger removed the baggie from the vehicle because “only a partial amount of it was sticking out” and he “didn’t know if there was something attached to it.” Officer Hershberger removed the baggie from the vehicle “to see if there was anything in it.” A portion of the bag “was in plain view.” “There was no contraband in plain view . . . other than the baggie.” Officer Hershberger “believed that moving that bag would reveal contraband” for the following three reasons:

(1) based on his “training and experience” “plastic bags sometimes are used to package drugs,”

(2) the bag was “very thin, very clear, [a] cellophane type baggie” as opposed to “a Ziploc baggie” with “thick plastic,” and

(3) the officer has a “history of 5 years working that area” and “everybody in that area, people in the street that [the officer] stop[s], narcotics arrests [he] [has] made” have told the officer they “purchased crack cocaine from Brian.”

When asked again if those were the only three reasons for removing the bag, the officer was asked: “You have spoken to people who said that Brian has sold them crack cocaine” and “based on your training and experience plastic bags are used in the storing of drugs”, and “the bag was basically a cheap bag, thin cellophane, not an expensive Ziploc bag” and “those are the three reasons that led you to believe that moving the bag might

produce contraband,” The officer replied: “Correct.” Defense counsel asked if there was “anything else,” and the officer replied: “No.”

After Officer Hershberger “removed the baggie from the vehicle” he could “see cocaine residue on the bag.” A corner of the bag was “stretched and torn.” A dog sniff of the vehicle was done after the bag had been retrieved from the vehicle. Officer Hershberger was also asked “at the point that you remove the bag from the vehicle . . . “at that point had the decision to tow the vehicle been made” Officer Hershberger replied “I don’t know . . . I don’t know at which exact point I decided to tow it.” When asked a second time, “so at that point in time you can not state with certainty that you had made the decision to tow the vehicle, is that correct,” Officer Hershberger replied, “Correct.”

The officer agreed that he was “not checking the bag for officer safety.”

When asked to confirm that “Brian had not consented to a search of the vehicle” the officer replied “No, I didn’t need his consent.”

The officer agreed that “to the best of his knowledge” Brian “was not on probation, parole, or work release.”