

County/District Court

THE PEOPLE OF THE STATE OF COLORADO
City and County of Denver, Colorado

Offense Case No. 2020-391969



**AFFIDAVIT AND APPLICATION FOR A SEALED ARREST
WARRANT FOR THE PERSON OF:**

Oscar Daniel VILLEGAS-ORTEGA, DOB: 11/12/1998, an Hispanic male, as depicted below, who stands approximately 5'09" and weighs 165#, with brown eyes and black hair;



for the crime of CRS 18-3-102(1)(a), First Degree Murder, a class 1 felony.

I, Detective Daniel Andrews 96015 of the Denver Police Homicide Unit, the Affiant, state under oath that the facts known to the Affiant which establish probable cause to believe that a criminal offense was committed, and that the offense was committed by the above named person, are the following:

Saturday, June 27, 2020

At 10:12 p.m. Denver 911 began receiving numerous calls regarding a fight and shooting at the Old West Pancake House, 3600 Park Avenue West. Numerous Denver Police Officers responded, along with Denver Health Paramedics.

Upon their arrival, several injured parties were found in the parking lot. They included; Fausto MARQUEZ, DOB: 12/08/1989, who is herein after referred to as the victim, Oscar VILLEGAS, DOB: 11/12/1998, [REDACTED], DOB: [REDACTED]/[REDACTED]/1989 and [REDACTED], DOB: [REDACTED]/[REDACTED]/1991. Your Affiant will refer to the parties involved in this homicide by first name not as a sign of disrespect but rather for clarity's sake since many of them have the same sur names.

The victim was suffering from at least one gunshot wound to his torso and was unresponsive. Oscar had head and facial trauma consistent with an assault, [REDACTED] had a large sharp force injury across his abdomen, and [REDACTED] had an injury to his forehead which appeared consistent with sharp force trauma. Officer Marcus BLACK patted Oscar down upon arriving at what he described as a "chaotic scene." He felt and then recovered a handgun magazine, loaded with 15 .40 caliber rounds, from Oscar's right front pants pocket. The victim, Oscar and [REDACTED] were all rushed to Denver Health Medical Center by ambulance. [REDACTED] refused medical treatment and remained on scene.

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Unfortunately resuscitation efforts were unsuccessful and the victim was pronounced deceased by Dr. Eric LAVONAS at 10:41 p.m.

Denver Police Night Shift Unit Detective Gavin WHITMAN responded to the scene and initiated the investigation. He notified Homicide Unit Sergeant Scott HAGAN when the victim was pronounced deceased. Sergeant HAGAN then phoned Your Affiant and assigned him as the lead investigator, and called Homicide Unit Detective Dan TREGEMBO and assigned him as the secondary investigator. Your Affiant responded to Denver Police Department Headquarters while Detective TREGEMBO responded to the scene to take control of that portion of the investigation.

Both Oscar and [REDACTED] were treated at DHMC and eventually released. Neither would make a statement about what occurred, or how they were injured to Officers or Detectives. DHMC Dr. Anna ENGELN reported that Oscar did not suffer serious bodily injury, while Dr. Spencer TOMBERG reported that [REDACTED] had suffered serious bodily injury, specifically “a [REDACTED] [REDACTED]” as a result of the “[REDACTED].”

Your Affiant conducted numerous digitally recorded interviews with witnesses who voluntarily came to DPD HQ. A very brief summary of the pertinent interviews follows.

Witness [REDACTED], DOB: [REDACTED]:

- She is from [REDACTED] [REDACTED]
- She came to Denver with [REDACTED], who she calls “[REDACTED]” because of his light skin
- All she knows of his legal name is [REDACTED]
- [REDACTED] brother “[REDACTED]” ([REDACTED]) was throwing a first birthday party for his daughter, which is why they came to Denver, and why they were at the location
- She was walking inside, having left the party for about an hour, when there was a big group walking out
- Someone mentioned a fight outside
- When she got back outside she saw a group, approximately 10 people, fighting
- Men and women were trying to break it up, mostly speaking Spanish, which she didn’t understand
- When she heard the first gunshot fired, she saw “Fausto,” who she’d met earlier at the party, fall to the ground
- He was face down, bleeding
- Fausto was [REDACTED] friend
- She ran to his side and called 911
- A second gunshot was fired
- She didn’t see who was shooting and didn’t see a gun

Witness [REDACTED], DOB: [REDACTED]

- [REDACTED] is the [REDACTED] of [REDACTED] born [REDACTED], the honoree of the birthday party
- [REDACTED]
- When asked to describe the relationship further she replied, “It’s complicated”

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- (Your Affiant later found that [REDACTED] is the subject of a 17th Judicial District Protection Order of which [REDACTED] and [REDACTED] are the protected parties stemming from a March 2020 domestic violence incident.)
- [REDACTED] rented the back of the Old West Pancake House, which operates as Marsico's El Kora restaurant at night, for [REDACTED] party, which began at 3:00 p.m.
- Everything was going well until she and her cousin Oscar danced to the live band's music
- Apparently some of [REDACTED] friends didn't think [REDACTED] should be dancing with other men
- This became an issue between [REDACTED] friends and Oscar, and turned into a fight
- She went outside and tried to break up the fight
- She didn't see the shooting, or who got shot, but was told it was Fausto, [REDACTED] friend
- She heard the gunshots, and was right next to Fausto, and then heard more shots

Witness [REDACTED], DOB: [REDACTED]

- [REDACTED]
- As he was arriving to the party in a friend's vehicle he heard two gunshots
- His friend wanted to leave but [REDACTED] got out because he was concerned about his family members
- He described the shooter as Hispanic, speaking Spanish, with short black hair
- The shooter had 2-3 other Hispanic men holding him against a car in the parking lot, trying to get the gun from him
- He heard the shooter say, "Die fucker!" in Spanish, before firing a third shot while aiming the gun towards the ground
- He couldn't see the gun itself, but saw sparks coming from something when he heard the third gunshots
- Fausto, the victim, is a longtime friend, and someone he considers to be like an older brother

Witness [REDACTED], DOB: [REDACTED]

- [REDACTED]
- [REDACTED] is her cousin
- She arrived at the party in her black Dodge Charger
- In addition to Oscar, [REDACTED] were also present at the party
- Some of [REDACTED] friends took exception to [REDACTED] dancing with Oscar, which she'd also done
- Her [REDACTED] tried to take Oscar away from the party so there wouldn't be any trouble
- The men followed Oscar outside and jumped him
- She, her mom and her dad all tried to protect Oscar, and were assaulted in the process
- Shots were fired, but she didn't know by whom
- She didn't see anyone with a gun
- When asked why she was referring to [REDACTED], Oscar, as the suspect she said she was only saying what she'd heard the officers say
- She showed Your Affiant a video that someone else took of her dancing with Oscar, who was wearing black jeans and a dark blue or black polo style shirt

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██████████, DOB: ██████████

- Some men who were with the birthday baby's dad's group were upset by the way her son, Oscar, danced with her ██████████
- They were going to start trouble so Oscar was going to leave
- The men followed Oscar outside and jumped him
- She, her husband and daughter all tried to protect Oscar and were assaulted in the process
- Someone got shot, but she didn't know by who

██████████, DOB: ██████████

- ██████████ stated that a group of guys, "██████████ friends" had a problem with way ██████████ Oscar danced with his cousin
- He approached the men and told them that Oscar was dancing with his cousin, just as family, and that they didn't want any problems
- The men appeared to remain angry, so he told Oscar it was time to go home to avoid any problems
- The group followed them outside and started fighting with Oscar, during which he heard gunshots
- He saw ██████████ bleeding and thought ██████████ had been shot
- He was trying to protect ██████████ from getting beat up
- He didn't see the gun, who was shooting, or know who was shooting
- Several times he said, "I don't know what happened"
- When asked specifically if Oscar was shooting he paused and said, "I don't know. I don't think so."
- When asked if Oscar has a gun he said, "I don't think so. I can't tell if he does or not."

At the conclusion of the interviews at DPD HQ Detective ANDREWS went to the scene, which was still being processed for evidence by Detective TREGEMBO and Criminalists from the Crime Scene Unit. Two .40 caliber spent cartridge casings were recovered. This is the same caliber bullet that was in the magazine that was recovered from Oscar's pocket. No firearm was located on scene. An apparent bullet defect, that looks like it was fired at an angle near 90 degrees, was observed in the hood of ██████████ black Dodge Charger, CO license plate #██████████. This bullet defect appears to be consistent with ██████████ statement that the shooter fired his last shot towards the ground. A black fixed blade knife was also recovered on scene, with possible blood on it.

Your Affiant then began reviewing other documentation including body worn camera footage and 911 call recordings. Of note, Officer Jeffrey GRENFELL recorded a brief interview with a woman named ██████████, who lives near the shooting scene. During her statement, which was about 40 minutes after the homicide she stated that she was walking towards Marisco's when she saw a group of people come out of the restaurant "fussing," and then saw a woman push a man. Next, she saw a man pull a gun from his pocket on his left side. He was standing behind the group that was arguing. She could only describe him as a Hispanic male, "built," with dark hair and a dark shirt. She ran, literally out of her slippers, when she saw the gun. She said that this man wasn't involved in the argument, and

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pulled his gun as he exited the building. She heard gunshots as she ran, 3-4 in total, she estimated. She declined to make a written or formal statement out of fear for her safety.

In Officer BLACK'S BWC recording that documents his arrival at the scene, which does appear very chaotic, he approaches and detains Oscar after finding him bleeding from the head and feeling the magazine in his pocket. An unknown Hispanic male approaches Officer BLACK and identifies Oscar as the shooter. This unknown witness refuses to cooperate further and states, "I ain't no snitch!" Finally Your Affiant listened to a recording of a 911 call that was placed by [REDACTED] shortly after the shooting. She said she was walking home, past the restaurant, when she saw a group "laughing and talking" out front. Then she heard a "pop" and saw people scattering, and then a struggle before hearing 1-2 more pops.

Monday, June 29, 2020

Your Affiant's partner, Detective TREGEMBO, attended the victim's postmortem examination at the Denver Office of the Medical Examiner at 9:00 a.m. Chief Medical Examiner/Coroner, James CARUSO, M.D., found that the victim was killed by a single gunshot wound to his chest. No soot or stippling was observed indicating that the shot was fired from at least several feet away.

Also at 9:00 a.m., Your Affiant received a telephone call from the [REDACTED], [REDACTED]. She'd been in touch with many of her brother's friends, including some of the men who were involved in this incident. She stated that one of them told her that [REDACTED], Fausto, had confronted Oscar for being a "jerk," and that Oscar then shot Fausto. [REDACTED] said that some of her brother's friends are afraid to speak with the police because of immigration concerns. She was assured that neither witnesses nor victims have any reason to fear cooperation with law enforcement in this investigation. She, and others of the victim's family who know his friends, have been asked by Your Affiant to encourage the witnesses and victims to come forward.

[REDACTED] called Your Affiant about an hour later and said that she'd spoken to [REDACTED] [REDACTED] and [REDACTED], and knew that they had information pertinent to the investigation.

Your Affiant first called [REDACTED] who'd already provided a recorded statement at DPD HQ in the hours after the homicide. He stated that the only thing he'd remembered since making his first statement was that the shooter was wearing a black, polo style shirt, possibly with a blue stripe. From reviewing body worn camera video Your Affiant knows that Oscar was wearing a dark blue or black polo shirt, with grey sleeves that had blue and white stripes on them.

Your Affiant called [REDACTED] next and left a message requesting a call back. Your Affiant reached her sister, [REDACTED] next. She stated that she was at the party when an argument started outside. She said that the argument had settled down when she heard the shooter manipulate a gun making a "click click noise." She said that he then shot [REDACTED], the victim, and tried to shoot her [REDACTED]. Your Affiant requested that she come to DPD HQ as soon as possible to make a formal statement which she agreed to do as soon as she got off work this afternoon.

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Her sister, [REDACTED] returned Your Affiant's message shortly thereafter and said that she too would come to DPD HQ after work to make a formal statement as she'd been scared to write down everything she saw when she completed a statement on scene.

Your Affiant has researched Oscar and learned that [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED].

At approximately 6:15 p.m. [REDACTED] and [REDACTED] arrived at DPD HQ in the company their [REDACTED] [REDACTED]. Also with the three women was [REDACTED], [REDACTED] of the birthday party.

[REDACTED] provided a digitally recorded statement to Your Affiant beginning at about 6:29 p.m. In pertinent part [REDACTED] stated the following:

- [REDACTED] asks if he will have to testify in court, and stated that he wanted to be "silent witness"
- Fausto was like his brother. This "guy" (suspect) is family to [REDACTED]
- [REDACTED] didn't have a gun
- [REDACTED] says the first name of the shooter is "Oscar" and later identified a photo of Oscar VILLEGAS
- Asked what started the problem, [REDACTED] says he (Oscar) is into gangs and [REDACTED] friends are into gangs. [REDACTED] did not think Oscar would have a gun. [REDACTED] went outside to tell Oscar to "relax".
- Fausto was coming out and thought Oscar was arguing with [REDACTED]
- [REDACTED] does not know if Oscar had the gun in the party or went to a vehicle to retrieve the gun.
- When Oscar drew the gun (mimics) from waistband, Oscar shot Fausto. [REDACTED] grabbed Oscar from the back, trying to get the gun. Oscar's mom was trying to get the gun from him too.
- There were "three shots" with the first hitting Fausto. [REDACTED] thinks the other shots went into the ground.
- Out of nowhere [REDACTED] got hit but he wasn't sure by who.
- After the shooting Oscar pulled out a knife and stabbed [REDACTED]
- It all happened so fast, when the gun dropped out of Oscar's hand, that is when [REDACTED] let go of Oscar.
- [REDACTED] feels like Oscar could have shot a warning shot or just had a fist fight.
- Fausto never met [REDACTED] before.
- [REDACTED] demonstrates that Oscar pulled the gun and extended his arm to fire.
- Oscar's [REDACTED] took Oscar outside. That is when [REDACTED] went outside to try and calm him down. Fausto then came out. Oscar and [REDACTED] were outside about one minute before [REDACTED] came out. Oscar drives the black Land Rover.
- The gun was black.
- [REDACTED] does not think this started over Oscar dancing with [REDACTED] [REDACTED] says Oscar did not even know any of [REDACTED] friends and wonders why Oscar wouldn't just leave.
- [REDACTED] is almost thirty. His gang affiliations are in the past.
- [REDACTED] signs a consent form to allow law enforcement to search his truck.

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- Asked how Oscar got injured, [REDACTED] says they were fighting for their lives.
- [REDACTED] stated that he would not testify in court, and was very concerned about his name and statement being made public in discovery

At the time of this writing the undercover Fugitive Unit Detectives are conducting surveillance in an attempt to locate Oscar pending the issuance of this warrant. Detective Tregembo has begun interviewing [REDACTED] who was emphatic that the shooting was unprovoked, and identified Oscar as the shooter. She said there was no reason for the shooter to take out the gun, and “he could have just left.”

Your Affiant is applying for this warrant now to minimize the opportunity for Oscar to flee, or potentially harm someone else, rather than waiting for [REDACTED] interview to be completed, and the interviews of [REDACTED] and [REDACTED] to occur.

Therefore, your Affiant respectfully requests your Honor issue an arrest warrant for Oscar VILLEGAS for the murder of Fausto MARQUEZ.

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Oscar Daniel VILLEGAS-ORTEGA, DOB: 11/12/1998, an Hispanic male, as depicted below, who stands approximately 5'09" and weighs 165#, with brown eyes and black hair;



for the crime of CRS 18-3-102(1)(a), First Degree Murder, a class 1 felony.

FURTHER, pursuant to Crim. P. 41 and §16-3-304(2), your Affiant requests that this Court seal this arrest affidavit. The affidavit establishes grounds to believe that disclosure at this time could potentially endanger those who are cooperating with the investigation, and would inhibit the ongoing investigation. Such order for sealing does not apply to representatives of the Denver Police Department, Denver District Attorney's Office, and other law enforcement officers, but those individuals are precluded from further dissemination prior to expiration of this order without an order of the court handling the case.

I affirm this information to be true and correct, /s/ Detective Daniel Andrews, 96015.

Subscribed under oath before me on 06/29/2020 8:17pm
Date Time
Adam J. Espinosa
Judge or Notary Public

My commission expires: _____

ARREST WARRANT

To all Sheriffs, Peace Officers and Police Officers with the said State:

You are hereby commanded to take the person of the defendant and bring him without unnecessary delay before a Judge of the County Court to be dealt with according to law.

Bail fixed at \$ at first appearance Adam J. Espinosa
Signature of Judge

Date 06/29/2020 Adam J. Espinosa
Printed name of Judge

I HEREBY CERTIFY that I executed the above warrant on (date) _____ by taking _____
_____ (name of person arrested) into custody and placing said person in the _____ Jail for safekeeping until further order of the court.

Signature of Arresting Officer

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