



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

DMP/CRH/AAS:ICR/SKW/EHS
F. #2022R00326

*271 Cadman Plaza East
Brooklyn, New York 11201*

April 28, 2022

By E-Mail and ECF

The Honorable Roanne L. Mann
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Frank James
Magistrate Docket No. 22-429

Dear Judge Mann:

The government respectfully submits this letter pursuant to the Court's April 28, 2022 Order directing a response to the defendant's letter motion dated April 28, 2022 (ECF No. 10) (the "April 28 Motion"). The defendant moves for an order compelling the disclosure of (1) the underlying affidavit upon which the DNA buccal swab search warrant was issued; (2) all documents signed by the defendant; and (3) the sum and substance of any statements made by him on April 26, 2022. (April 28 Motion at 2.) Contrary to the defendant's hyperbole, his DNA was obtained pursuant to a judicially authorized search warrant and no violations of any of the defendant's constitutional rights occurred in the execution of the warrant.

As to the first request, the defendant already has access to the search warrant affidavit. The affidavit in support of the search warrant for DNA buccal swab samples was filed publicly with the redactions required by Rule 49.1 on April 22, 2022—the day the application was made to Magistrate Judge Bloom—and is accessible to defense counsel and the public on ECF. See Docket No. 22-MJ-457 (LB) (E.D.N.Y. Apr. 22, 2022). Thus, this request is moot. The government attaches the affidavit hereto for the Court's convenience. See Exhibit A.

With regard to the second and third requests, the defendant's claims about eliciting statements from the defendant are inaccurate. It is the government's understanding that in the brief period required to take the buccal swab samples, the defendant was not questioned by and made no relevant statements to the law enforcement officers who executed the search warrant. The executing law enforcement officers also did not direct the defendant to sign any documents. Thus, the government obtained no relevant statements during the execution of the

search warrant that would be subject to disclosure under Rule 16(a)(1)(A). Accordingly, these requests are moot.

In any event, Rule 16 does not entitle the defendant to pre-indictment discovery. See, e.g., In re Possible Violations of 18 U.S.C. §§ 201, 371, 491 F. Supp. 211, 214 (D.D.C. 1980) (“Rule 16(a)(1)(A) applies only to defendants; it governs discovery of evidence after the return of an indictment; it is available to Congressman Kelly only if he should be indicted by a grand jury.”); see also In re Search Warrants Executed on Apr. 28, 2021, No. 21-MC-425 (JPO), 2021 WL 2188150, at *3 (S.D.N.Y. May 28, 2021) (“Giuliani requests that the Court unseal the affidavits submitted in support of the 2019 and 2021 warrants so he can challenge their legality. But he is not entitled to a preview of the Government’s evidence in an ongoing investigation before he has been charged with a crime.”). Thus, the defendant’s requests are also premature as a matter of law.

Should the defendant wish to file a motion to suppress evidence, he may do so after he is indicted, and the government will respond to the defendant’s concerns regarding the reasonableness of the warrant’s execution at that time. See In re Search Warrants, 2021 WL 2188150, at *3 (“If Giuliani is charged with a crime, of course, he will be entitled to production of the search warrant affidavits as part of discovery pursuant to Federal Rule of Criminal Procedure 16. He will also be able to file motions challenging the warrants under Rule 12. But such disclosure is premature at the present stage.”). Any such motion should be presented to a district judge with jurisdiction to decide it. See 28 U.S.C. § 636(b)(1)(A) (“[A] judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion . . . to suppress evidence in a criminal case . . .”).

For the foregoing reasons, the defendant’s motion should be denied.

Respectfully submitted,

BREON PEACE
United States Attorney

By: /s/
Ian C. Richardson
Sara K. Winik
Ellen H. Sise
Assistant U.S. Attorneys
(718) 254-7000

cc: Clerk of Court (RLM) (by ECF)
Ms. Mia Eisner-Grynberg, Esq. (Counsel for the defendant) (by ECF)

Exhibit A

CRH:ICR/SKW/EHS
F. #2022R00362

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

The government shall file a redacted copy of this warrant on the docket. This unredacted copy shall be filed under seal.

So ordered. *Lois Bloom*
4/22/22 USMJ

IN THE MATTER OF AN APPLICATION
FOR A SEARCH WARRANT FOR:

THE PERSON KNOWN AND DESCRIBED
AS FRANK ROBERT JAMES (DOB:
[REDACTED]) (INMATE NUMBER 83999-053)

Case No. 22-MJ-457

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Ian Franckling, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of the Government’s application pursuant to Rule 41 of the Federal Rules of Criminal Procedure for a warrant to obtain DNA samples by the taking, and preserving as evidence, of a buccal swab sample from FRANK JAMES (DOB: [REDACTED]) (Inmate Number: 83999-053).¹

2. I am a Special Agent with the Federal Bureau of Investigation (“FBI”). I have been a Special Agent with the FBI for approximately 1 year. As an FBI Special Agent, I am a “federal law enforcement officer” within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request a search warrant. During my tenure working

¹ Although this search warrant affidavit itself will be filed publicly, the government will redact all Personal Identifiable Information (“PTI”) of Frank James from the documents prior to public filing. Thus, the government requests that the Court file the unredacted version under seal.

at the FBI, I have participated in numerous investigations of violent criminals and have used a variety of investigative techniques, including, but not limited to, interviews of witnesses, cooperating witnesses and confidential informants; physical surveillance; reviews of telephone records; and search warrants as to physical premises and electronic devices. I also have training and experience relating to the collection and storage of DNA for testing.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other law enforcement officials and witnesses. This affidavit is intended to show merely that there is probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that DNA samples obtained from FRANK JAMES will match DNA taken from a 9mm Glock 17 and a 9mm magazine which were recovered near and around the N train subway platform at the 36th Street station in Brooklyn, New York, on or about April 12, 2022.

JURISDICTION

5. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) and (c)(1)(A). Specifically, the Court is “a district court of the United States . . . that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

PROBABLE CAUSE

6. At approximately 8:26 AM on April 12, 2022, a shooting incident occurred aboard a subway train located at 36th Street in Brooklyn, New York.

7. In connection with that attack, on or about April 13, 2022, the Honorable Roanne L. Mann, United States Magistrate Judge, Eastern District of New York, signed a complaint and warrant authorizing FRANK JAMES's arrest on a complaint charging him with violating 18 U.S.C. § 1992(a)(7) and (b)(1) (the "Subject Offense"). See Docket No. 22-MJ-429. Exhibit A to this affidavit includes the complaint, which is incorporated herein by reference. See Exhibit A.

8. Searches of the scene of the attack revealed, among other items, a firearm and a 9mm firearm magazine.

9. On or about April 13, 2022, FRANK JAMES was arrested. On or about April 14, 2022, JAMES was arraigned on the complaint, ordered detained at the Metropolitan Detention Center (the "MDC") in Brooklyn, New York. JAMES remains detained at the MDC, which is in the Eastern District of New York.

10. The New York City Office of the Chief Medical Examiner ("OCME") conducted DNA testing on the firearm and 9mm magazine recovered from the scene of the shooting. I have been informed by OCME that results suitable for comparison were generated from the "backstrap, front strap, and side grips" and the "edges/textured areas of the slide grip grooves, slide lock, stop lever" of the firearm. I also have been informed by OCME that results suitable for comparison were generated from the "base plate of magazine."

11. Accordingly, the government seeks to obtain a DNA sample directly from FRANK JAMES against which the DNA from the firearm and magazine will be compared.

12. Based on the foregoing, there is probable cause to believe that FRANK JAMES committed the Subject Offense and that the DNA sample requested will provide evidence of the Subject Offense as well as other related offenses currently under investigation,

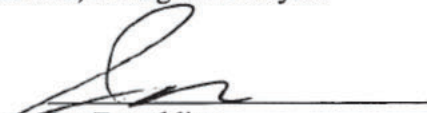
including that FRANK JAMES's DNA is on the firearm and magazine recovered on or about April 12, 2022.

AUTHORIZATION REQUEST

13. From my training and experience, I know that when an individual touches an object, he or she can transfer onto the object certain biological matter, such as skin cells, which contain DNA unique to the individual.

14. Through my training and experience, I know that the DNA samples from FRANK JAMES will be obtained by using cotton swabs to swab the inside of FRANK JAMES's mouth, specifically the lining of each of his cheeks. The sample will then be placed in a sealed container and transported to OCME for analysis.

15. WHEREFORE, I respectfully request that a search warrant be issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure authorizing me and other law enforcement officers and support personnel to obtain DNA samples from FRANK JAMES. An appropriately trained law enforcement officer, or an appropriately trained designee, will perform the cheek swabbing. The DNA samples sought herein will be collected by buccal swabbing. This method involves taking a sterile swab (similar to a Q-Tip) and gently scrubbing the inside right cheek, then the inside left cheek, for approximately five to ten seconds. Two samples are requested in the event that one of the samples becomes contaminated or otherwise cannot be tested. The samples seized will be subsequently submitted to a forensic laboratory for examination and will be subject to examination, testing and analysis.


Ian Franckling
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me by
telephone on April 22, 2022

Lois Bloom

HONORABLE LOIS BLOOM
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit A

DMP/AAS/CRH/DKK/ICR/AFM/SKW/ES/JAM
F. #2022R00326

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----- X

UNITED STATES OF AMERICA

- against -

FRANK JAMES,

Defendant.

FILED UNDER SEAL

COMPLAINT AND
AFFIDAVIT IN SUPPORT
OF APPLICATION FOR
ARREST WARRANT

(18 U.S.C. §§ 1992(a)(7) and (b)(1))

Docket No. 22-MJ-429

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EASTERN DISTRICT OF NEW YORK, SS:

JORGE ALVAREZ, being duly sworn, deposes and states that he is a Special Agent with the Federal Bureau of Investigation, duly appointed according to law and acting as such.

On or about April 12, 2022, within the Eastern District of New York and elsewhere, the defendant FRANK JAMES did knowingly and without lawful authority and permission commit an act, including the use of a dangerous weapon, with the intent to cause death and serious bodily injury to one or more persons on a terminal, structure, track and facility used in the operation of a mass transportation vehicle, to wit: the New York City subway system, which was carrying passengers and employees at the time of the offense, and the conduct was engaged in, on, against and affecting a mass transportation provider engaged in interstate commerce, and JAMES traveled across a state line in order to commit the offense and transported materials across a state line in aid of the commission of the offense.

(Title 18, United States Code, Section 1992(a)(7) and (b)(1))

The source of your deponent's information and the grounds for his belief are as follows:¹

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI"), and have been since January 2020. I am currently assigned to the FBI and New York City Police Department ("NYPD") Joint Terrorism Task Force. I have training and experience in the investigation of domestic terrorism, including bombings. I am familiar with the facts and circumstances set forth below from my participation in the investigation, my review of the investigative file, and from reports of other law enforcement officers involved in the investigation.

2. The defendant FRANK JAMES is a 62-year old man who was born in New York City and who has resided in recent years in Philadelphia, Pennsylvania and Milwaukee, Wisconsin.

3. At approximately 8:26 a.m. on April 12, 2022, New York City's 911 emergency dispatch center began receiving telephone calls from New York City Transit riders on an N subway train located at 36th Street in Brooklyn, New York. The riders reported that they had heard multiple gunshots and explosions on the train and that the car was filled with smoke.

4. Videos posted shortly afterward to open-source channels such as Twitter appeared to depict the scene. The videos showed a stopped subway train that was pouring smoke out its doors. The videos also showed one or more subway passengers who were lying prone on the floor of the station, just outside the train.

¹ Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

5. Law enforcement officers who interviewed passengers were told that the perpetrator set off one or more smoke-emitting devices in the train car, wore a gas mask or similar protective device, and appeared to be carrying a large number of items. Some passengers also told the law enforcement officers that the perpetrator fired a gun multiple times at passengers in the train car. Some passengers also told law enforcement officers that the assailant was dressed in what appeared to be a construction worker's vest.

6. Searches of the scene of the attack revealed two bags, both of which were recovered from the scene. The first bag contained, among other items, a firearm, a plastic container containing gasoline, a torch, a U-Haul key, and multiple bank cards. The firearm was a Glock 17 pistol manufactured in Austria. Records provided by the Bureau of Alcohol, Tobacco, Firearms and Explosives revealed that the firearm was lawfully purchased in Ohio by an individual named "Frank Robert James." Marks on the serial number on the firearm appear to reflect that an attempt was made to deface the serial number, as reflected in the photo below:



7. The second bag contained fireworks, which are black powder-filled explosives, as depicted in the photograph below:



8. One of the bank cards located in the first bag with the firearm was a debit card issued by a United States financial institution (“Bank-1”) in the name of “Frank James.” Records provided by Bank-1 indicated multiple telephone numbers associated with the account, including a telephone number with Milwaukee, Wisconsin area code 414, ending in 2903 (the “2903 Number”).

9. Records provided by U-Haul revealed that, on April 11, 2022, at approximately 2:03 p.m., an individual named “Frank James” rented from U-Haul in Philadelphia, Pennsylvania, a white Chevrolet Express Model G2500 Cargo Van with Arizona plates (the “U-Haul Vehicle”). U-Haul records reflected that the individual reserved and pre-paid for the rental on or about April 6, 2022, provided U-Haul with the 2903 Number as his contact information, and advised U-Haul that he preferred to be contacted by text message at that number. That individual also provided U-Haul with a Wisconsin driver’s license in the name of “Frank Robert James,” with an address in Milwaukee, Wisconsin, and a date of birth in 1959. The photograph from that Wisconsin driver’s license is depicted below, and shows the defendant FRANK JAMES:

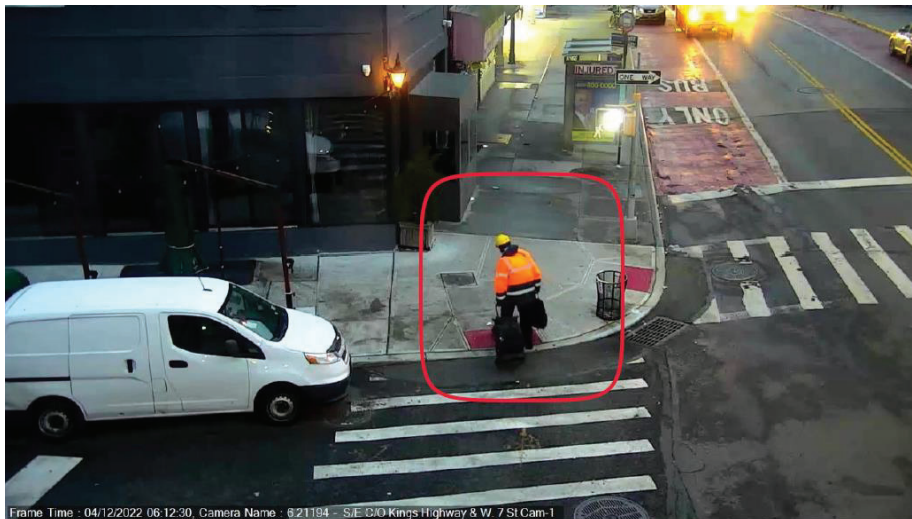


10. New York City Police Department video surveillance cameras recorded the U-Haul Vehicle driving over the Verrazano Narrows Bridge at approximately 4:11 a.m. on April 12, 2022, and entering Brooklyn, New York. The U-Haul Vehicle crossed state lines from Pennsylvania to New Jersey and then to New York. A photograph of the U-Haul Vehicle driving over the Verrazano Narrows Bridge is below:



11. At approximately 6:12 a.m. on April 12, 2022, a surveillance camera located at West 7th Street and Kings Highway in Brooklyn, New York, recorded an individual wearing a yellow hard hat, orange working jacket with reflective tape, carrying a backpack in his

right hand and dragging a rolling bag in his left hand, leaving the U-Haul Vehicle on foot. A photograph from the surveillance video is below:



12. Law enforcement subsequently located the U-Haul Vehicle parked on the side of the road in the vicinity of 366 Kings Highway in Brooklyn, New York. Notably, the location is approximately two blocks from a New York City Transit N-train subway stop, and law enforcement recovered a jacket with reflective tape, which matches the jacket worn by the individual in the surveillance video, at the scene of the attack near the two bags discussed above.

13. Law enforcement officers spoke to an individual, whose identity is known to the affiant, who was on the subway during the April 12, 2022 attack. The individual identified the attacker as a heavy-set man wearing an orange reflective jacket, yellow hard hat and paper face mask, and carrying a large roller bag. Law enforcement officers then showed the surveillance video from West 7th Street and Kings Highway described above. The individual stated, in sum and substance, that the physical build, orange jacket and yellow hard hat of the individual depicted on the video matched that of the attacker. In addition, the individual stated, in sum and substance, that the roller bag in the video matched the roller bag that he saw the attacker holding on the subway.

14. As noted above, the attack took place at approximately 8:26 a.m. on April 12, 2022. At approximately 8:40 a.m., a surveillance camera recorded an individual who appears to match FRANK JAMES's Wisconsin driver's license photograph, walking up the stairs and exiting the New York City Transit N-train subway stop located at 25th Street, one subway stop away from the approximate location of the attack at the 36th Street subway station. A still image from the surveillance video is included below to the left, and JAMES's driver license photo is below to the right:



I assess that these photographs depict the same individual, JAMES.

15. Additionally, law enforcement agents recovered from the jacket with the reflective tape that FRANK JAMES apparently discarded on the subway platform a receipt for storage unit #0318 with a particular storage facility. Information provided by the storage facility indicated that the unit, which was located in Philadelphia, Pennsylvania was registered to JAMES. Records from Lyft revealed that JAMES visited the storage facility at approximately 6:17 p.m. on April 11, 2022, the day before the attack.

16. On April 12, 2022, law enforcement agents executed a court-authorized warrant to search the storage unit registered to FRANK JAMES. Inside, law enforcement agents recovered, among other items, 9mm ammunition, a threaded 9mm pistol barrel that allows

for a silencer or suppresser to be attached, targets and .223 caliber ammunition, which is used with an AR-15 semi-automatic rifle.

17. Law enforcement also identified an apartment used by FRANK JAMES in Philadelphia, Pennsylvania. Records from Lyft revealed that an account associated with JAMES ordered Lyft rides to or from the Philadelphia apartment approximately 21 times from March 28, 2022 through April 10, 2022. Information provided by the management company revealed that JAMES rented the apartment for 15 days beginning on or about March 28, 2022.

18. On April 13, 2022, law enforcement agents executed a court-authorized warrant to search the Philadelphia apartment rented by FRANK JAMES. Inside the apartment, law enforcement agents recovered, among other items, an empty magazine for a Glock handgun, a taser, a high-capacity rifle magazine and a blue smoke cannister.

19. In videos posted publicly on YouTube before the April 12, 2022 attack, FRANK JAMES made various statements about the New York City subway system. Among other things, JAMES addressed statements to New York City's mayor: "What are you doing, brother? What's happening with this homeless situation?" and "Every car I went to wa[s] loaded with homeless people. It was so bad, I couldn't even stand." JAMES also made statements, in sum and substance, about various conspiracy theories, including that: "And so the message to me is: I should have gotten a gun, and just started shooting motherf---ers."²

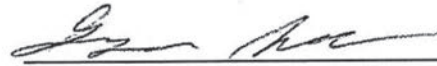
20. This application requests permission to execute the applied-for arrest warrant at a premises upon reasonable grounds to believe that FRANK JAMES will be found there without knocking and announcing the presence of law enforcement personnel, and at any time of the day or night. Executing the warrant in this manner is appropriate because, as set

² All quotations from social media videos include original grammar.

forth herein, there are reasonable grounds to believe that if the defendant is found within a premises at the time of the execution of the arrest warrant, that knocking and announcing the presence of law enforcement personnel prior to executing the arrest warrant would create an imminent threat of physical violence to the agents executing the warrant and/or other persons. Specifically, the defendant JAMES is accused of using a weapon to attempt to kill dozens of people, and I believe that if law enforcement were to knock and announce their presence before a premises in which they believed he would be found, JAMES could take advantage of the opportunity to ambush law enforcement. Additionally, as described herein, law enforcement recovered additional ammunition and firearm peripherals from JAMES's storage locker and rented apartment. This included a quantity of .223 caliber ammunition and a high-capacity rifle magazine, yet no rifle was recovered, suggesting that JAMES has access to additional firearms. Due to the foregoing, the applied-for warrant would permit law enforcement personnel to enter a premises with reasonable grounds to believe that JAMES would be found there without first knocking and announcing their presence, and at any time of the day or night.

WHEREFORE, your deponent respectfully requests that an arrest warrant issue, so that the defendant FRANK JAMES may be dealt with according to law.

IT IS FURTHER REQUESTED that this Court issue an order sealing, until further order of the Court, this Complaint and Affidavit. The defendant FRANK JAMES is currently at large, and the Complaint and Affidavit identify certain facilities and locations which law enforcement has used and continue to use in an effort to locate him. Given the substantial publicity that law enforcement is searching for FRANK JAMES in connection with the conduct described herein, your deponent does not request to seal the arrest warrant, but seeks permission to redact the portion of the arrest warrant authorizing a “no-knock” entry to a premises for purposes of effecting the arrest, in order to prevent the defendant FRANK JAMES from anticipating and preparing for law enforcement entry into such premises.



Jorge Alvarez
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me by telephone
or other reliable electronic means pursuant to
Fed. R. Crim. P. 4.1 on April 13, 2022:

/s/ Roanne L. Mann

THE HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK