

UNITED STATES DISTRICT COURT


EASTERN DISTRICT OF CALIFORNIA

FILED

SEALED

SEP 12 2011

UNITED STATES OF AMERICA  
v.

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY  DEPUTY CLERK

BRYAN SMITH,  
KELLY SMITH,  
DANIEL GOLDSMITH,  
BRUCE GOLDSMITH,  
ROBERT KLAUS, and  
RYDER PHILLIPS

CRIMINAL COMPLAINT

CASE NUMBER: 2:11mj 288 GGH

(Name and Address of Defendant)

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. Between on or about June 1, 2011 to on or about the present, in Sacramento County and elsewhere, in the Eastern District of California, the defendants did,

- ▶ knowingly and intentionally conspire to manufacture at least 100 marijuana plants and to distribute at least 100 kilograms of marijuana, a Schedule II controlled substance, and
- knowingly and intentionally manufacture at least 100 marijuana plants,

in violation of Title 21, United States Code, Sections 846 and 841(a)(1). I further state that I am a Special Agent of the U.S. Drug Enforcement Administration and that this complaint is based on the following facts:

- ▶ See attached affidavit,

Continued on the attached sheet and made a part of this complaint:

  
Signature of Complainant MIGUEL ZAVALA  
Special Agent, DEA

Sworn to before me, and signed in my presence  
September 12, 2011

at Sacramento, CA

Date  
GREGORY G. HOLLOWS, U.S. Magistrate Judge

City State  
  
GREGORY G. HOLLOWS

Name of Judge

Title of Judge

Signature of Judge

## **AFFIDAVIT OF MIGUEL ZAVALA**

I, Miguel Zaval, state the following to be true to the best of my knowledge and belief, under the penalties of perjury.

I am a Special Agent of the U.S. Drug Enforcement Administration and have been so employed for 7½ years. I am the assigned DEA case agent to this investigation/prosecution.

This affidavit is made to support a complaint charging Bryan SMITH, Kelly SMITH, Daniel GOLDSMITH, Bruce GOLDSMITH, Robert KLAUS, and Ryder PHILLIPS with 21 U.S.C. §§ 841(a)(1) Manufacturing at Least 100 Plants of Marijuana, a Schedule I, controlled substance and 21 U.S.C. §§ 846 Conspiracy to Manufacture at Least 100 plants of Marijuana, a Schedule I controlled substance.

I make this affidavit based upon information provided to me by other state and local law enforcement officers from speaking to them, reviewing their reports, and reviewing their summary of the available evidence in the case.

Bryan SMITH, is a white male, blonde hair, blue eyes, approximate height of 5'10", approximate weight of 165 lbs, with a date of birth of January 11, 1984. His last known address was 9700 Palazzo Ct, Elk Grove, CA, 95624. A criminal history check of Bryan SMITH revealed no past arrest history.

Kelly SMITH, is a white male, brown hair, blue eyes, approximate height of 5'10", approximate weight of 180 lbs, with a date of birth of March 17, 1957. His current address was 8930 park trail Drive, Elk Grove, CA, 95624. A criminal history check of Kelly SMITH revealed no past arrest history.

Daniel GOLDSMITH, is a white male, brown hair, blue eyes, approximate height of 6'3", approximate weight of 210 lbs, with a date of birth of October 15, 1985. His current residence is believed to be 9551 New Hope Road, Galt, California, 95632. A criminal history check of Daniel GOLDSMITH revealed a past arrest for vandalism and minor traffic violations.

Bruce GOLDSMITH, is a white male, gray hair, blue eyes, approximate height of 6', approximate weight of 190 lbs, with a date of birth of February 1, 1951. His current residence is believed to be 9551 New Hope Road, Galt, California, 95632. A criminal history check of Bruce GOLDSMITH revealed no past arrest history.

Robert KLAUS, is identified as a white male, blonde hair, blue eyes, approximate height of 5'10", approximate weight of 190 lbs, with a date of birth of October 23, 1976. His last known residence was 1579 Chatsworth Blvd, San Diego, CA, 92107. A criminal history check of Robert KLAUS revealed no past arrest history.

Ryder PHILLIPS, is a white male, blonde hair, blue eyes, approximate height of 6'4", approximate weight of 185 lbs, with a date of birth of October 15, 1985. His last known residence was 830 Meladee Lane, Galt, California, 95632. A criminal history check of Daniel GOLDSMITH revealed a past arrest for conspiracy and burglary.

#### **Investigative Activity**

**Summary:** The investigation into the aforementioned individuals has revealed a network of marijuana cultivators which all worked in knowing cooperation with others within the conspiracy to further their goal to make as much money as possible via the sale of marijuana with the common link being Bryan SMITH, who owns and operates the medical marijuana dispensary known as R&R Wellness, located at 75 Quinta Ct #A, Sacramento, CA.

All of the defendants were involved in growing marijuana for the purpose of selling it at as great a profit as possible. Theses growing operations included the grow operations of the following persons, at the following locations, which were found to have the following number of marijuana plants: Bryan Smith's [5761 Florin Perkins Rd #5, Sacramento (401 Plants)], Daniel GOLDSMITH [9749 Lazulite Ct., Elk Grove (317 Plants)], Bruce GOLDSMITH [9551 New Hope Rd, Galt (179 Plants)], Ryder PHILLIPS [830 Meladee Lane, Galt (574 Plants)], Robert KLAUS [1579 Chatsworth Blvd, San Diego (756 Plants)], and Kelly SMITH [8930 Park Trail Dr., Elk Grove (17 plants) plus aiding and abetting the grow operation of Daniel GOLDSMITH and Bryan SMITH].

The evidence as to each individual (mostly in chronological order) is set forth as follow:

**DANIEL GOLDSMITH**

On February 24, 2011, Elk Grove Police Department executed a search warrant at 9749 Lazulite Ct., Elk Grove based on an anonymous tip regarding suspicious/drug activity and a SMUD check that indicated power theft was occurring. Detectives located an indoor marijuana grow. Detectives found 9 pounds of processed marijuana, a digital scale, 10ml of anabolic steroids, and two rooms set up with live grows—a total of **317 plants**. Three other rooms appeared to be in the process of being set up as grows with lamps and ballasts. The house was rented by Daniel GOLDSMITH.

A loaded shotgun was found leaning up against the bed D. GOLDSMITH had just come from when detectives entered, as well as a loaded revolver in the dresser drawer. The iPhone next to Daniel GOLDSMITH upon officer's entry was in the process of calling a subject named "Bryan." Detectives heard the call go to voicemail and the detective disconnected the call. An electrical bypass was found in the garage, with estimated power theft in excess of \$8,000. D. GOLDSMITH said it was all "legit" and that he was employed by R&R Wellness. When asked about his pay from R&R Wellness, D. GOLDSMITH invoked. Bryan SMITH, the owner of R&R Wellness was contacted, who said D. GOLDSMITH is not on the payroll but was a member of the cooperative. Bryan SMITH distanced himself from D. GOLDSMITH, denied providing him with equipment but did say he would be reimbursed for electricity, fertilizer and equipment costs. D. GOLDSMITH's girlfriend told detectives Bryan comes over late at night, and that he was there as recently as the night before, and that one time she saw Daniel give Bryan marijuana.

Forensic examination of D. GOLDSMITH's cell phone revealed over 17,000 text

messages which clearly show a conspiracy to grow and sell marijuana with Bryan SMITH and others. In particular, the text messages reveal that Bryan SMITH had a key to the Lazulite Ct. residence, he sometimes paid the rent and/or electricity bill, he directed D. GOLDSMITH how to care for the plants, and provided equipment. Indeed, a text message sent to D. GOLDSMITH by BRYAN SMITH the day before D. GOLDSMITH's arrest indicated B. SMITH had a truck full of equipment for D. GOLDSMITH and asked when D. GOLDSMITH was going to come get it. The text messages are crass about how much money each is making for the other.

There are photos on D. GOLDSMITH's phone of stacks of money, money fanned out, money on countertops, bulk marijuana, steroids, and marijuana-related lists and equipment receipts. Several voice mail messages on his phone indicated D. GOLDSMITH was delivering and selling marijuana to buyers in Los Angeles and that at least one buyer came to him from Phoenix, AZ.

Seven latent fingerprints of Kelly SMITH (Bryan SMITH's father) were developed from the electrical box panel used to divert power prior to the normal electrical power meter, and from the door to the 24-hour dial timer switch on the equipment (e.g., lights, ventilation equipment, etc.) inside the facility. Kelly SMITH's number was listed in D. GOLD-SMITH's phone contacts twice and the forensic also revealed one saved voice mail left by Kelly SMITH on 11/26/10 saying it was Kelly and that he had talked to Bryan and for Daniel to let him know when he'd be there, and Kelly would come over and "look at it."

**DANIEL GOLDSMITH, BRUCE GOLDSMITH, RYDER PHILLIPS**

Additional co-conspirators are identified from the text messages in D. GOLDSMITH's phone, including his father Bruce GOLDSMITH and a friend Ryder PHILLIPS. There are

numerous text messages between D. GOLDSMITH and PHILLIPS in October 2010 wherein they discuss the sale of D. GOLDSMITH's marijuana by PHILLIPS. Text messages between father and son GOLDSMITH discuss the cultivation of marijuana and money from its sale being deposited into B. GOLDSMITH's account.

On March 4, 2011, Elk Grove Police Department executed a search warrant at 830 Meledee Lane, Galt, the home of Ryder PHILLIPS, that revealed an indoor marijuana grow with **574 plants**. Power theft was also discovered as the power lines were illegally bypassed to supply power. In a post-*Miranda* statement, PHILLIPS said he had a medicinal marijuana recommendation but also sold some of the marijuana. He said he was the primary caregiver for his mother. His mother, when contacted, stated she did not receive marijuana from her son, but that she purchased it from dispensaries. PHILLIPS also stated that he had sold marijuana to R&R Wellness in the past. D.GOLDSMITH drove by PHILLIPS' residence during search warrant execution and was detained. He was in possession of a garage door remote and front door key to his father's Galt residence, which was searched next.

In the later hours of March 4, 2011, Elk Grove Police Department executed a search warrant at 9551 New Hope Rd., Galt, the home of BRUCE GOLDSMITH, DANIEL GOLDSMITH's father, and which D. GOLDSMITH also moved into after his arrest. Detectives located **179 marijuana plants** growing in two bedrooms. Indicia in the form of D. Goldsmith's recent jail booking paperwork was found on the kitchen counter. As the search was underway, B. GOLDSMITH drove up and was ultimately arrested by the CHP for driving under the influence (THC). He said he was a "contract grower" for R&R Wellness but would not answer any further questions.

The text messages between father and son GOLDSMITH regarding B. GOLDSMITH's bank account number show that father knows what is going on based on the following. Son had to ask father for his bank account number. When father asked "Why?" son wrote "I have incoming funds," and father replied "Oh, that's different. Just a minute" and sent him the account number within 3 minutes. Son later told father the money is not for the father, but that "u can keep it for electricity but don't spend it yet. No guarantees I can get this stuff off that quick so I may need it for rent. I'm expecting another 4k from same guy within a week" and father replied, "Very good!"

### ROBERT KLAUS

Another contact in D. GOLDSMITH's phone was ROBERT KLAUS. KLAUS is a San Diego resident and commercial real estate broker whose text communications were exclusively about marijuana sales. Text messages between them revealed that KLAUS provided D.GOLDSMITH with clones and was responsible for selling D. GOLDSMITH's marijuana in the San Diego area. According to the text messages, KLAUS made at least one large deposit of cash proceeds from marijuana sales into the Chase bank account of BRUCE GOLDSMITH.

In addition, there is at least one saved voice mail in D. GOLDSMITH's phone from KLAUS wherein KLAUS discusses selling marijuana, and several voice mails from GREG LUCAS (an early co-conspirator in the Lazulite Ct. grow who had a falling-out with D. GOLDSMITH) that put KLAUS in Sacramento County bringing clones in October 2010 and again in December 2010.

On April 19, 2011 Elk Grove Police Department executed a search warrant at KLAUS's home at 1579 Chatsworth Blvd., San Diego where detectives found **756 marijuana plants**, cultivation equipment, paper documents and receipts. Chase bank account receipt showing

\$5600 cash deposit into BRUCE GOLDSMITH's account on 10/27/10 found in KLAUS's house. A piece of paper with BRYAN SMITH's cell phone number was also found.

In a post-*Miranda* statement, KLAUS admitted selling clones and marijuana. KLAUS said he met D. GOLDSMITH at R&R Wellness dispensary in Sacramento and said he helped D. GOLDSMITH hang the grow lights at D. GOLDSMITH's house in Elk Grove in the Fall of 2010 (confirming that he had aided and abetted Daniel GOLDSMITH in setting up GOLDSMITH's grow operation). He admitted selling D. GOLDSMITH's marijuana in San Diego County for about \$2500 per pound and kept \$200 per pound profit for himself. He would deposit the proceeds into a Chase bank account with the last name "Goldsmith" and had given him about \$10,000. He said D. GOLDSMITH brought him 8 pounds. The \$5600 deposit was from the sales of the first 4 pounds. The last 4 pounds he never paid D. GOLDSMITH for. KLAUS said that BRYAN SMITH called him after D. GOLDSMITH's arrest and told KLAUS that half of the money KLAUS owed D.GOLDSMITH for the last 4 pounds was his and that KLAUS needed to pay him (SMITH).

A forensic examination of KLAUS's cell phone revealed that on 2/25/11 (the day after D. GOLDSMITH's arrest), BRYAN SMITH sent a text message to KLAUS with his Chase bank account number. Then, on 2/28/11, BRYAN SMITH sent KLAUS a text message providing KLAUS with his wife Ashley's Wells Fargo Bank account number. Finally, on 4/19/11 (the day of KLAUS's arrest), BRYAN SMITH sent KLAUS a text message that asked "What up on the \$\$\$."

Subsequent investigation revealed KLAUS's fingerprint was found on the glass bottom cover of a grow light hood in D. GOLDSMITH's 9749 Lazulite Ct, Elk Grove, home.

Chase bank account records for B. GOLDSMITH were obtained via search warrant, and also confirm the 10/27/10 deposit, which was withdrawn the same day. There are text messages and at least one voice mail message between father and son GOLDSMITH that indicate they were waiting for this deposit, and each inquiring of the other whether it had come in yet.

**BRYAN SMITH, KELLY SMITH and R&R WELLNESS**

The investigation re-focused onto BRYAN SMITH. A total of 982 text messages between D.GOLDSMITH and BRYAN SMITH were recovered from D.GOLDSMITH's phone that layout their partnership in cultivating marijuana at 9749 Lazulite Ct. and selling it for profit. On May 24, 2011, and June 2, 2011, detectives utilized an undercover deputy assigned to HIDTA to conduct controlled buys of marijuana from R&R Wellness. Bryan SMITH was present during and participated in the sale on June 2, 2011.

Over the months, detectives surveiled both BRYAN and KELLY SMITH to a warehouse marijuana grow located at 5761 Florin Perkins Road #5, Sacramento, CA (the "warehouse"). Kelly Smith was seen at the warehouse on April 28, 2011 (one month after the electrical service in the name of Bryan SMITH was connected). On that day Kelly SMITH's vehicle was seen in the back of the warehouse and he was seen exiting the warehouse and leaving. Later that same evening, police returned to the warehouse, heard humming sounds consistent with ventilation equipment often used in indoor marijuana grows, and a narcotic K-9 positively alerted to the presence of drugs outside the warehouse door. On June 6, 2011, Kelly Smith was surveiled going from his residence to the warehouse, was seen backing his vehicle through the roll-up door into the warehouse, and then the roll-up door was closed. Surveillance was terminated approximately five hours later and neither the vehicle, nor any other person, was seen coming or

leaving the warehouse. Surveillance saw Bryan SMITH at the warehouse on May 3, 2011.

On June 16, 2011, Elk Grove Police Department detectives along with Sacramento County Sheriff's Department HIDTA and CalMET served four search warrants at 75 Quinta Ct #A, Sacramento, CA, 9700 Palazzo Ct, Elk Grove, CA, 8930 Park Trail Drive, Elk Grove, CA, and 5761 Florin Perkins Rd #5, Sacramento, CA.

Elk Grove Police Department detectives detained BRYAN SMITH during a traffic stop around the corner from his home and then executed the search warrant at 9700 Palazzo Ct., Elk Grove. BRYAN SMITH had \$16,733 in cash in a backpack in his truck. In the residence, detectives found a shotgun and Glock 9mm handgun, **\$256,020 in cash in the master bedroom closet**, (approximately \$190,000 of which was all \$100 bills vacuum sealed), R&R business receipts, pay/owe sheets, paper noting hours worked by "Ryder" (8 hours), 3 small ziplock baggies of marijuana in same room as guns, \$245 in cash, two \$3375 checks payable to Daniel GOLDSMITH from July 2010. More marijuana, plastic bags (most were labeled) with marijuana residue, pay/owes found in the garage. Bryan SMITH's home computer and cell phone were seized.

Indicia found in the Palazzo residence included receipts in Bryan SMITH's name for the rental of the Allied Storage boxes from the Florin Perkins warehouse grow; 4 receipts for purchases made in 18 minutes on 2/8/11 from Farm Assist Hydroponics, for equipment, etc. totaling over \$47,000.

A forensic examination of B. SMITH's home computer located several videos he made of himself that appear to be a type of audition for MTV and a segment called "True Life." In one comical and incriminating 8-minute video, B. SMITH stated that he is the owner of a medical marijuana dispensary...he doesn't get high...he is in the permit process with the City of

Sacramento and so far he has paid \$80,000 in fees. Bryan SMITH also states he is investing \$30,000 in a commercial grow that will churn out \$100,000 worth of marijuana every 40-60 days. Bryan SMITH also stated, "Every day I'm in fear of being raided by the Feds". Bryan SMITH stated that he is in it for the profit ... that he was happy Prop 19 did not pass, because he was not ready to see prices plummet...he wants to make as much money as possible...that there is a battle going on right now with medical marijuana but the DA in Sacramento County, he [sic] is on our side.

During a search of Kelly SMITH's residence at 8930 Park Trail Dr., Elk Grove. A small, 17 plant outdoor marijuana grow was found intermingled with planted vegetables and corn. Some of the marijuana was planted in the ground and some were in pots. The plants were watered by a liquid fertilization system which was much more elaborate than would be found in a typical outdoor vegetable garden. [The marijuana plants were left at the residence by the state law enforcement officers since Mrs. Dianna Smith had a medicinal marijuana recommendation.] Also found at the residence was a statement from the California Employment Development Department showing that Kelly Smith had last worked for "Helix Electric" and show that he was laid off work in December of 2009. A Google search for Helix Electric connects to the Helix Electric website which lists its business as electrical contractors. Bulk electrical goods as you would expect to find at the house of an electrician, e.g., rolls of wire, and conduit and conduit bending tool were found. An outbuilding which either had been used, or was to be used in the future to serve as an indoor growing house with electric and water hook ups was also found. Outside the outbuilding a large charcoal air filter (around 3-4 feet tall and 18 inches in diameter) was found. Such air filtration devices are often found at indoor marijuana grows to filter out some of the strong odor of growing marijuana.

During the search of R&R Wellness at 75 Quinta Ct. #A, Sacramento, detectives seized approximately 139 pounds of processed marijuana, 1.2 pounds of hashish, edibles (over 500 items), \$760 from an ATM machine, \$648 from the cash register, customer records, over 200 marijuana joints (“Doob Tubes”), liquids containing marijuana including “Kush” shots labeled 1 gram per shot, 36 bottled drinks, chocolates and candy with marijuana, smokeable oil drops, 2 new scales in the box, 5 used scales, two computers, 23 live marijuana plants and indicia to Bryan SMITH.

During the search of the warehouse at 5761 Florin Perkins Rd., #5, Sacramento, detectives located **401 marijuana plants** in a sophisticated grow contained in two Allied box storage containers (metal shipping containers). A large room had been constructed out of plywood in the warehouse area. It had a large growing area set up with lights but no plants. A small grow was contained in a bathroom attached to the plywood room. Entry was made into the warehouse with a key that was obtained from Bryan SMITH. An Allied storage container lease agreement to Bryan SMITH and U-Haul receipt to Kelly SMITH (dated April 13, 2011 – 15 days before the first surveillance of Kelly Smith at the warehouse and 16 days after the electrical service commenced) were located inside the warehouse as well.

Elk Grove Police Department Detectives conducted further investigation and seized an additional \$39,614.95 from bank accounts held by Kelly SMITH, Bryan SMITH and R&R Collective (R&R Wellness).


All of the defendants were originally arrested on California marijuana charges and charged in the Superior Court for Sacramento County. Those charges are pending. The U.S. Attorney’s Office has agreed to adopt the case for federal prosecution. It is anticipated that the

state criminal charges will be dropped in favor of the federal charges, once filed.

**CONCLUSION**

Based on the above, I believe there is probable cause to believe that Bryan SMITH, Kelly SMITH, Daniel GOLDSMITH, Bruce GOLDSMITH, Robert KLAUS, and Ryder PHILLIPS have: (1) conspired to manufacture at least 100 plants of marijuana and to distribute at least 100 kilograms of marijuana, and (2) that they did manufacture, and/or aid and abet the manufacture of at least 100 plants of marijuana, both in violation of 21 U.S.C. §§ 846, 841(a)(1).

Dated: September 12 2011

  
MIGUEL ZAVALA  
Special Agent, DEA

Subscribed and sworn before me under oath,

this 12<sup>th</sup> day of September, 2011

  
GREGORY G. HOLLOWS

GREGORY G. HOLLOWS  
U.S. Magistrate Judge