

Jorge Rodrigues and Franklin Ogando Leonardo :  
:

v. :

George Vose, Director of the Department of :  
Corrections :

### ORDER

This criminal case came before the Court in conference on the petition of defendants Jorge Rodrigues and Franklin Ogando Leonardo for a writ of habeas corpus wherein petitioners seek release on bail pending their trial on a number of drug-related charges. A District Court justice, following a bail hearing in the matter, declined to set bail. Counsel for petitioners, in support of habeas relief, contend that the hearing justice erred in her finding that the state had met its burden that proof of petitioners' guilt was evident and the presumption thereof great (Rhode Island Constitution, Article 1, §9) because the state failed to introduce into evidence at the hearing the search warrants which had been procured by the police in this case. The hearing justice took judicial notice of the warrants, which were present in the court file. Counsel for petitioners contend that the warrants were not a proper subject of judicial notice.

Since the search warrants in question were apparently present in the file in this case, we are of the opinion that in these circumstances, the District Court justice properly took judicial notice of the warrants and any accompanying documents upon which their issuance was based. No other adequate challenge to these warrants was raised either before the District Court or before this court. While

counsel for the defendants in an oral motion to suppress made at the outset of the District Court bail hearing suggested a challenge to the warrant affidavits and the possibility of a Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) hearing in respect to those affidavits, petitioners' counsel declined the hearing justice's offer to continue the bail hearing until such time as the affiant could be present. Accordingly, no issue is presented to us in respect to the affidavits, or otherwise, which would warrant affirmative relief here.

The petition for writ of habeas corpus is denied.

Entered as an Order of this Court this *13th* day of *September 1999*.

By Order,

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Brian B. Burns  
Clerk Pro Tempore