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AO 91 (Rev. 08/09) Criminal Complaint

Felony

UNITED STATES DISTRICT COURT

for the

Southern District of Texas, Brownsville

United States District Court
Southern District of Texas
FILED

OCT 20 2014

D. Bradley, Clerk of Court

United States of America)

v.)

- 1. Kevin Lyndel Massey)
- 2. John Frederick Foerster)

Case No. *B-14-MJ-968*

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of August 29, 2014 in the county of Cameron in the Southern District of Texas, the defendant(s) violated:

Code Section
18 USC 922 (g)(1)

Offense Description
18 USC 922 (g) (1): possession of a Firearm by an individual having been convicted of a felony

This criminal complaint is based on these facts:

See Attachment A

Continued on the attached sheet.

[Signature]
Complainant's signature

Anthony M. Rotunno Special Agent ATF 5006
Printed name and title

Sworn to before me and signed in my presence.

Date: Oct 20, 2014

[Signature]
Judge's signature

City and state: Brownsville, Texas

United States Magistrate Judge
Printed name and title

ATTACHMENT A

I, Special Agent Anthony M. Rotunno, affiant, do hereby depose and state the following:

I am a Special Agent of the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). I have been a Federal law enforcement agent for twelve years.

1. My duties include the investigations of the Federal Firearms Laws. I know it to be unlawful for any person who has been convicted of a felony to receive or possess a firearm, which has traveled in interstate or foreign commerce.

2. On August 29, 2014, United States Border Patrol Agents from the Fort Brown Border Patrol Station, while in performance of their official duties, encountered an armed individual, identified as John Frederick FOERSTER, in the brush. During this encounter, FOERSTER turned and pointed a firearm at a USBP Agent, who intern fired several shots at FOERSTER. FOERSTER is a member of "Rusty's Rangers," an armed citizen militia group patrolling the border of the United States and Mexico.

3. Border Patrol Agents confiscated a ZASTAVA, Model: PAP M92PV, 7.62 x 39mm pistol, SN: MP2PV005143 from FOERSTER. Two other members of this militia group, Edward Varner and Kevin MASSEY, were located in the immediate vicinity of the shooting. Both of these individuals were armed as well.

4. While conducting the post-shooting investigation, five firearms were taken into custody by Cameron County Sheriff Investigator Sergio Padilla. The firearms are described as:

1. ZASTAVA, Model: PAP M92PV, 7.62 x 39mm pistol, SN: MP2PV005143 (carried by FOERSTER)

ATTACHMENT A

2. Llama, Model: 1911, .45 caliber pistol, SN:567266
3. Winchester, Model: 70, .243 caliber rifle, SN: G1914149 (carried by Varner)
4. Springfield, Model: XDS, .45 caliber pistol, SN: XS664509 (carried by MASSEY)
5. Centurion, Model: 39 Sporter, 7.62 x 39mm rifle, SN: 39NC02585 (carried by MASSEY)
5. FBI Special Agent Caryn Chasteen and Cameron County Sheriff's Office Investigator Padilla interviewed FOERSTER. During the interview FOERSTER admitted to possessing the ZASTAVA, Model: PAP M92PV, 7.62 x 39mm pistol, SN: MP2PV005143; adding that he did not own this firearm but borrowed it from Kevin MASSEY.
6. During the interview of MASSEY, by FBI Special Agent David Cordoba and HSI Special Agent Jeremy Bergeaux, MASSEY admitted to both the ownership of the ZASTAVA, Model: PAP M92PV, 7.62 x 39mm pistol, SN: MP2PV005143, and to lending this firearm to FOERSTER.
7. On October 16, 2014, your affiant spoke with Supervisory Border Patrol Agent Danny Cantu. SBPA Cantu was in the area of the shooting when the shots were fired and responded immediately to the scene. SBPA Cantu stated that he in-fact recovered the ZASTAVA, Model: PAP M92PV, 7.62 x 39mm pistol, SN: MP2PV005143 from FOERSTER and that he escorted MASSEY, FORESTER and Varner to the staging area for interviews; witnessing MASSEY carrying a holstered Springfield, Model: XDS, .45 caliber pistol, SN: XS664509 and the Centurion, Model: 39 Sporter, 7.62 x 39mm rifle, SN: 39NC02585, which was slung around MASSEY's neck.

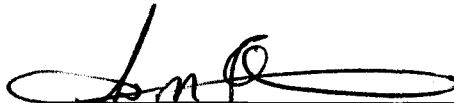
ATTACHMENT A

8. Court documents, specifically Judgment and Conviction records, were obtained and reviewed on FOERSTER. FOERSTER is a person who has been previously convicted of felony; which prohibits him from possessing a firearm. FOERSTER was sentenced on 8/2/1999 to 2 years confinement and 5 years of supervised release from the 138th Judicial District Court of Cameron County, Texas for the Burglary of a Building (Cause No. 99-CR-634-B), but was granted a suspended sentence of community supervision for 5 years. On 12/9/1999 the 138th District Court of Cameron County, Texas, revoked FOERSTER's suspended sentence and sentenced him to 16 months imprisonment for violating the terms of his probation.
9. FOERSTER'S Judgment and Conviction records also reveal that on 5/29/2001, FOERSTER plead guilty to two counts of Burglary of a Building and sentenced to 18 months confinement by the 138th Judicial District Court of Cameron County, Texas (Cause No. 01-CR-365-B)
10. Court documents, specifically Judgment and Conviction records, were obtained and reviewed on MASSEY. MASSEY is a person who has been previously convicted of felony; which prohibits him from possessing a firearm. On 3/1/1988, MASSEY was sentenced to 5 years confinement by the 265th Judicial District Court of Dallas County, Texas for the Burglary of a Habitation (Cause No. F88-77912 JR); which revoked his probation from a 11/11/85 arrest from another Burglary of a Habitation (Cause No. F85-92081 PR) also out of the 203rd Judicial District Court of Dallas County, Texas.

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11. ATF Interstate Nexus Expert Eduardo Ramirez was consulted as to the interstate nexus status of the ZASTAVA, Model: PAP M92PV, 7.62 x 39mm pistol, SN: MP2PV005143, the Springfield, Model: XDS, .45 caliber pistol, SN: XS664509, and the Centurion, Model: 39 Sporter, 7.62 x 39mm rifle, SN: 39NC02585. Special Agent Ramirez, based on his preliminary examination of these firearms, determined that these firearms were manufactured outside of the State of Texas, and therefore traveled in interstate or foreign commerce prior to being possessed by MASSEY in Brownsville, Texas.

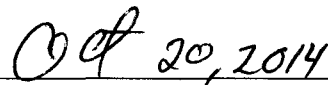


Anthony M. Rotunno Special Agent ATF 5006

Sworn to before me and subscribed in my presence,



United States Magistrate Judge



Date