

FILED

6/2/2020

AO 91 (Rev. 11/11) Criminal Complaint

AUSA S. Jackson (312) 886-1317

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

KEVIN D. TUNSTALL

CASE NUMBER: **20 CR 259**

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 May 30, 2020, at Chicago, in the Northern District of Illinois, Eastern Division, the defendant(s) violated:

Code Section

Title 18, United States Code, Section 922(g)(1)

Offense Description

knowing that he had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, did knowingly possess, in and affecting interstate and foreign commerce, a firearm, namely, a loaded black .40 caliber Smith & Wesson semi-automatic pistol, bearing serial number FZK0972, which firearm had traveled in interstate and foreign commerce prior to defendant's possession of the firearm

This criminal complaint is based upon these facts:

X Continued on the attached sheet.

Digitally signed by CINDY BERND
Date: 2020.06.02 14:24:37 -05'00'
CINDY BERND
CINDY BERND
Special Agent, Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF)

Pursuant to Fed. R. Crim. P. 4.1, this complaint is presented by reliable electronic means. The above-named agent provided a sworn statement attesting to the truth of the foregoing affidavit by telephone.

Date: June 2, 2020



Judge's signature

City and state: Chicago, Illinois

MATTHEW F. KENNELLY, U.S. District Judge
Printed name and title

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

AFFIDAVIT

I, CINDY BERND, being duly sworn, state as follows:

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), and have been so employed for 18 and a half years. My current responsibilities include the investigation of federal firearms offenses, including unlawful possession of firearms or ammunition by convicted felons.

2. This affidavit is submitted in support of a criminal complaint alleging that Kevin D. TUNSTALL has violated Title 18, United States Code, Section 922(g)(1).

3. The facts set forth in this affidavit are based on my personal knowledge, my training and experience, my review of certain reports and video footage, information provided to me by various law enforcement personnel and witnesses, and the training and experience of other law enforcement officers with whom I have spoken. Because this affidavit is being submitted for the limited purpose of establishing probable cause in support of a criminal complaint charging TUNSTALL with unlawful possession of a firearm by a felon, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the defendant committed the offense alleged in the complaint.

I. FACTS SUPPORTING PROBABLE CAUSE

A. TUNSTALL Unlawfully Possessed a Firearm.

4. On or about May 30, 2020, at approximately 1:26 a.m., Chicago Police Department officers were located near the intersection of S. State Street and W. Harrison Street in Chicago as protestors occupied the area. According to a Chicago Police Department arrest report (the “CPD Arrest Report”) and a Chicago Police Department incident report (the “CPD Incident Report”), police officers heard gunshots fired from a parking lot located near the Southeast corner of S. State Street and W. Harrison Street.¹ According to the CPD Arrest Report, following the gunshots, a police officer pointed in the direction of the shots and stated that he had seen someone reloading a firearm. In addition, according to the CPD Incident Report, police officers observed a group of individuals standing in the middle of the parking lot surrounding a black Jeep.²

5. According to the CPD Incident Report, as police officers approached the group of individuals standing near the Jeep, police officers observed several of the individuals flee on foot through the parking lot. According to both the CPD Arrest Report and the CPD Incident Report, police officers observed an individual, later identified as TUNSTALL, enter the back seat of the parked black Jeep. According to the CPD Arrest Report and the CPD Incident Report, while utilizing a flashlight to

¹ Body-worn cameras captured the sounds of gunfire between approximately 1:26 a.m. and 1:27 a.m.

² According to records from the Illinois Secretary of State, the Jeep is registered to Individual A.

look into the rear passenger side window of the Jeep, a police officer observed TUNSTALL seated in the back seat of the Jeep leaning forward, with his hands near his waist.³ According to the police reports, TUNSTALL was subsequently ordered to exit the Jeep.

6. Police officer body-worn camera footage reflects that the rear driver side door of the Jeep was subsequently opened and a police officer removed TUNSTALL from the vehicle. According to the CPD Arrest Report and the CPD Incident Report, at the time the door of the Jeep was opened, a police officer observed a metallic object fall to the ground and heard the sound of a firearm hitting the ground.

7. Police officer body-worn camera footage reflects that no one else was in the Jeep with TUNSTALL.

8. According to the CPD Arrest Report and the CPD Incident Report, and as reflected on police officer body-worn camera footage, a police officer subsequently recovered a loaded black .40 caliber Smith & Wesson semi-automatic pistol, bearing serial number FZK0972, from the ground next to the rear driver side door of the vehicle. According to Chicago Police Department inventory reports, police officers also recovered approximately two fired cartridge cases and approximately two live cartridges, all of which were marked with "S&W" and "40" from the area where TUNSTALL was arrested.

³ The CPD Incident Report states that TUNSTALL was observed adjusting his front jacket pocket. The CPD Arrest Report states that Tunstall was observed manipulating an object in the area of his waist. Body worn camera footage shows that TUNSTALL wore a jacket with pockets near TUNSTALL's midsection.

9. As reflected on police officer body-worn camera footage, as he was transported on foot to a police vehicle, TUNSTALL stated, unprompted, “You dropped that gun, I picked it up,” and shortly thereafter, “I grabbed that gun.”⁴

B. TUNSTALL has a Prior Felony Conviction.

10. Based on my review of TUNSTALL’s criminal history, I know that on or about October 7, 2016, in case number 15 CR 0173101, TUNSTALL was convicted of Harass Witness/Family Member in the Circuit Court of Cook County and sentenced to four years’ incarceration in the Illinois Department of Corrections.

11. On or about December 20, 2016, TUNSTALL signed a letter notifying him that, “Your name has been given to federal law enforcement agencies because of your arrest and prosecution by state and local authorities. Any future offense by you involving the use or mere possession of a firearm or ammunition will be reviewed by the United States Attorney’s Office for federal prosecution. . . . As a convicted felon, you can be prosecuted in federal court even if you only possess a gun”

C. The Firearm TUNSTALL Unlawfully Possessed Traveled in Interstate or Foreign Commerce.

12. On or about June 1, 2020, I spoke to ATF Special Agent Ryan McBride, who told me the following:

a. Special Agent Ryan McBride is a certified interstate nexus expert for firearms and ammunition who has previously testified in federal court as an interstate nexus expert.

⁴ The language that is quoted is based upon a preliminary review, not final transcripts, of the body-worn camera footage.

b. Based upon his training and experience and the research he conducted, Special Agent Ryan McBride stated that Smith & Wesson firearms are manufactured outside the state of Illinois.

13. Therefore, in order for the foregoing firearm to have been recovered in Illinois, it had to have moved in interstate or foreign commerce.

II. CONCLUSION


14. For all the reasons described above, there is probable cause to believe that TUNSTALL has committed a violation of Title 18, United States Code, Section 922(g)(1) (unlawful possession of a firearm by a felon).

FURTHER AFFIANT SAYETH NOT.

CINDY BERND Digitally signed by CINDY BERND
Date: 2020.06.02 14:25:26 -05'00'

CINDY BERND
Special Agent, Bureau of Alcohol, Tobacco,
Firearms & Explosives

SUBSCRIBED AND SWORN to before me on June 2, 2020.



MATTHEW F. KENNELLY
United States District Judge