

FILED

United States District Court

UNITED STATES DISTRICT COURT
ROSSELL, NEW MEXICO

STATE AND JUDICIAL DISTRICT OF NEW MEXICO

MAY 14 2010

UNITED STATES OF AMERICA

**AMENDED
CRIMINAL COMPLAINT**
CLERK

v.

**TOMMY PENA;
JEREMY CONDE**

CASE NUMBER: **10-1317 MJ**

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about April through May 2010 in Chaves County, in the Judicial District of New Mexico defendant(s) did, (Track Statutory Language of Offense)

See Attachment Affidavit hereby incorporated by reference as if fully restated herein.

in violation of Title 18 United States Code, Section(s) 2119(1), 924(c)(1)(A)(ii), 922(g)(1).

I further state that I am a(n) Special Agent of the Federal Bureau of Investigation and that this complaint is based on the following facts:

Official Title

See Attachment Affidavit hereby incorporated by reference as if fully restated herein.

Continued on the attached sheet and made a part hereof:

Yes No

AUSA Alfred Perez telephonically approved 5/14/2010
Sworn to before me and subscribed in my presence,

ADAL
Signature of Complainant
Adam D. Aichele
Special Agent
Federal Bureau of Investigation

5/14/10 at Roswell, NM
Date City and State

Heav. Rigas Signature of Judicial Officer
[Signature] Signature of Judicial Officer

ATTACHMENT "A" TO THE CRIMINAL COMPLAINT

COUNTS

COUNT 1

On or about the 6th day of April, 2010, in Chaves County, in the State and District of New Mexico, the defendants **TOMMY PAUL PENA** and **JEREMY RAY CONDE**, did knowingly and with the intent to cause death or serious bodily harm, take a motor vehicle that had been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, contrary to 18 U.S.C. § 2119(1).

On or about the 6th day of April, 2010, the Roswell Police Department (RPD) responded to a motor vehicle robbery which had occurred at 109 E. Church, Roswell, New Mexico. RPD learned that two armed subjects, identified later as **TOMMY PAUL PENA** and **JEREMY RAY CONDE** gained entry into the residence occupied by Arthur and Collette Lacey, 109 East Church, Roswell, New Mexico, and robbed them. **PENA** and **CONDE** removed various items from the residence to include the Lacey's vehicle, a maroon, 2000 Cadillac, El Dorado Coupe, New Mexico license plate KYX875, registered to Arthur Lacey, Vehicle Identification Number (VIN), 1G6EL12Y9YU185260.

Arthur Lacey was subsequently interviewed by RPD and provided the following information:

Lacey stated that at approximately 9:30 PM on April 6, 2010, he arrived at his residence after going to the gym and was beginning to prepare dinner when he heard a knock on his door. Lacey advised that his wife, Collette, was watching television and that his children were in bed asleep. Lacey went to the door and attempted to turn on the porch light. When he turned on the light, the porch area remained dark and was not illuminated. Lacey opened the door and flipped the light switch several times in an attempt to illuminate the porch. Lacey said it was at this time that the barrel of a gun was thrust into his face. Lacey retreated back into his residence and the individual with the weapon continued to point it at him while following him back into the house. Lacey and the armed individual came into the house, went through the kitchen area, into the living room, and around the hallway when a second armed subject entered the residence. Lacey asked both individuals what they were doing and also told them that they had the wrong person. Both individuals pointed their weapons at Lacey's legs. Lacey ran out of his house and contacted several of his neighbors who subsequently called the police.

While waiting for the police to arrive, Lacey saw what he believed to be his wife driving his Cadillac east down Church Street. At the time, Lacey believed that his wife was driving his vehicle and was looking for him. Lacey initially thought that his wife left the residence after he left and that the two armed individuals had been left to ransack the house. Shortly after Lacey saw his Cadillac driving off, he noticed that the vehicle which the subjects had driven was also driving away from his residence.

Lacey then proceeded back to his residence where he met up with his wife. Collette

advised Lacey that the two individuals took their laptop, various pieces of jewelry, a DVD player and the Cadillac. Lacey further stated that the subjects also took Collette's car keys and both of their cellular telephones. Collette advised Lacey that one of the subjects was TOMMY PENA. Lacey did not know who the two individuals were. Collette further told Lacey that she had asked PENA why he was robbing them, and PENA told her that Lacey owed him, \$50,000. Lacey advised that he does not owe any money to the subjects, and that he does not know them.

Lacey described the first subject as being armed with a black and silver 9 mm handgun. Lacey stated that the slide of the gun was black and that the receiver was silver. Lacey stated that the second subject had what he believed to be a silver or chrome .380 caliber handgun.

Lacey stated that both subjects wore pantyhose over their heads, but that only the second individual's pantyhose were pulled down over his face to conceal his identity. Lacey stated that he was still able to see the second individual's facial features despite being covered by the pantyhose.

Collette advised Lacey that during the robbery, PENA referred to the other individual as "Jeremy" on several occasions. Collette subsequently called one of her friends, and upon relaying the story of what had happened to her and Lacey, was advised that PENA had been seen recently with JEREMY CONDE.

During the robbery, Lacey feared for his life, Collette's life, and the lives of his children. Lacey believed that he was going to be shot in the legs because the subjects pointed their weapons at his legs, and that when he ran from his residence he believed that he would be shot while running away.

Lacey advised that the reason his porch light did not illuminate was because it had been covered with a black muscle style shirt. Lacey stated that this particular shirt did not belong to him.

The Roswell Police Department also interviewed Collette Lacey regarding the home invasion robbery. Collette corroborated the information given to RPD by Lacey. Collette added that not only did the subjects hold Lacey at gunpoint, they also held her and her children, who had woken up during the robbery, at gunpoint while robbing the house. Collette stated that she was introduced to PENA seven years ago and that he had recently been released from a lengthy prison sentence. Collette stated she recognized PENA, and that he now has more tattoos on his face than he did when she first met him. Collette stated that PENA now has his eyebrows tattooed.

Collette had never met CONDE, and during the robbery he demanded her purse, but she refused to give it to him. Collette stated that both her and her husband's keys were located in the kitchen on top of the breadbox and that this is where the subjects took them from prior to taking the Cadillac. Collette stated that PENA was the one who took Lacey's Cadillac and that CONDE left in a gold-colored Nissan Altima.

The Roswell Police Department showed a photographic array to Collette which contained a photograph of PENA. Collette identified the photo in the top right position as being PENA. Collette was then shown a photographic array which contained a photograph of CONDE.

Collette selected the photograph in the top left position as that of CONDE, the second of two subjects who, while armed, unlawfully entered her residence and took her belongings to include her husband's Cadillac.

A check with General Motors indicated that the Lacey's 2000 Cadillac Eldorado, which was stolen, was, in fact, not manufactured in the state of New Mexico, but at the General Motor's facility in Hamtramck, Michigan. There is no General Motor's manufacturing facility in New Mexico, and thus the vehicle would have traveled in interstate commerce.

Count 2

On or about the 18th day of April, 2010, in Chaves County, in the State and District of New Mexico, the defendants **TOMMY PAUL PENA** and **JEREMY RAY CONDE**, did knowingly and with the intent to cause death or serious bodily harm, take a motor vehicle that had been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, contrary to 18 U.S.C. § 2119(1).

On or about the 18th day of April, 2010, the Roswell Police Department (RPD) responded to a motor vehicle robbery which had occurred in the vicinity of 202 South Sunset, Roswell, New Mexico. RPD was advised by Frederico Luna that the vehicle which he had been driving was unlawfully taken by two armed individuals, subsequently identified as **TOMMY PENA** and **JEREMY CONDE**.

Luna stated that he was driving his vehicle, a blue, 1982 Chevrolet pickup truck, New Mexico license plate 3477AR, VIN 1GCDC14D7CJ146728, on South Wyoming Street in Roswell, New Mexico. Luna advised that he observed a brown, Dodge Stratus approaching from the rear at a high rate of speed. Luna then turned onto Alameda Street and began traveling east. Luna again looked back and saw the same vehicle behind him, this time observing that the two male occupants had their heads sticking outside of the vehicle. Luna advised that he knew who the two individuals were, and identified them as **TOMMY PENA** and **JEREMY CONDE**.

Luna stated that he did not hear the sounds of any gunshots being fired, but did observe what he thought to be a projectile from a weapon pass through the rear passenger window of his vehicle and lodge in the dashboard.

Luna stated that he feared for his safety, and subsequently pulled into the parking lot of the Waymaker Church located at 202 South Sunset, Roswell, New Mexico. Luna then parked and exited his vehicle in an attempt to enter the church to locate a third party to help him and in order to separate himself from the subjects. Luna advised that when he left his vehicle, he turned it off, but that he left the keys inside of it. Luna advised that when he got to the church doors he found that they were locked.

Luna advised that the subject vehicle followed him into the church parking lot. The subject vehicle parked and two armed individuals got out. Luna stated that these two individuals pointed their weapons at him and that both individuals threatened to kill him. Luna advised that

CONDE carried a black handgun.

Luna noted that the driver of the subject car was PENA, and that the passenger of the vehicle was CONDE. Luna stated that after confronting him in the church parking lot, the subjects took his truck. Luna stated that one of the subjects drove away in his vehicle and the other subject drove away in the brown Dodge.

Luna was shown a photographic array by the Roswell Police Department and identified a photo of CONDE as being one of the individuals who robbed him. Luna further stated that he noticed that CONDE had one of his arms in a sling. Luna was shown a photographic array by the Roswell Police Department and identified a photo of PENA as being one of the individuals who robbed him.

A check with General Motors indicated that Luna's 1982 Chevrolet truck, which was stolen, was, in fact, not manufactured in the state of New Mexico, but at the General Motor's facility in Janesville, Wisconsin. There is no General Motor's manufacturing facility in New Mexico, and thus the truck would have traveled in interstate commerce

COUNT 3

On or about the 6th day of April, 2010, in Chaves County, in the State and District of New Mexico, the defendant **TOMMY PAUL PENA**, did knowingly possess, use and brandish a firearm in the furtherance of a crime of violence which may be prosecuted in a court of the United States.

In violation of 18 U.S.C. § 924(c)(1)(A)(ii).

COUNT 4

On or about the 6th day of April, 2010, in Chaves County, in the State and District of New Mexico, the defendant **JEREMY RAY CONDE**, did knowingly possess, use and brandish a firearm in the furtherance of a crime of violence which may be prosecuted in a court of the United States.

In violation of 18 U.S.C. § 924(c)(1)(A)(ii).

COUNT 5

On or about the 18th day of April, 2010, in Chaves County, in the State and District of New Mexico, the defendant **TOMMY PAUL PENA**, did knowingly possess, use and brandish a firearm in the furtherance of a crime of violence which may be prosecuted in a court of the United States.

In violation of 18 U.S.C. § 924(c)(1)(A)(ii).

COUNT 6

On or about the 18th day of April, 2010, in Chaves County, in the State and District of New Mexico, the defendant **JEREMY RAY CONDE**, did knowingly possess, use and brandish a firearm in the furtherance of a crime of violence which may be prosecuted in a court of the United States.

In violation of 18 U.S.C. § 924(c)(1)(A)(ii).

COUNT 7

On or about the 19th day of April, 2010, in Chaves County, in the State and District of New Mexico, the defendant **TOMMY PAUL PENA**, did knowingly possess a firearm and ammunition in and affecting commerce after being convicted of a crime punishable for more than one year.

In violation of 18 U.S.C. § 922(g)(1).

On or about the 18th day of April, 2010, in the Magistrate Court of the State of New Mexico a Warrant for Arrest for issued for PENA charging him with armed robbery and felon in possession of a firearm resulting from the previously discussed armed robbery of Luna.

On or about the 19th day of April, 2010, the Roswell Police Department learned that PENA and CONDE had been staying at 513 South Aspen, Roswell, New Mexico, the residence of PENA's sister. Officers conducted surveillance on the residence and observed a white, 4-door, Nissan Sentra, bearing New Mexico license plate LCP481 leave from the residence during the morning hours. Officers attempted to conduct a traffic stop on this vehicle. The vehicle attempted to elude officers and ultimately hit a curb at the intersection of Tilden and Ohio in Roswell, New Mexico. The left front tire of this vehicle broke off of the vehicle and it subsequently came to a stop. The rear passenger of the vehicle then exited the car and attempted to flee, on foot, from officers. Officers were able to stop this individual, after a foot pursuit, at the intersection of Alameda and Ohio in Roswell, New Mexico. The subject was identified as PENA and then taken into custody. The driver of this vehicle was identified as Chastynee Contreras.

At the time of his arrest by the Roswell Police Department, PENA was armed with one Mossberg Maverick Model 88, 12 gauge shotgun, Serial Number MV86313L, which was loaded with five, 12 gauge shotgun shells in the magazine and one, 12 gauge shotgun shell in the chamber and one Mossberg Maverick Model 500A, 12 gauge shotgun, Serial Number P152130, which was unloaded. The six shells that were recovered from the Mossberg Maverick Model 88, 12 gauge shotgun, Serial Number MV86313L, are broken down by manufacturer as follows, five Winchester 12 gauge shells and one Remington 12 gauge shell. These weapons had been wrapped in a towel and placed inside of the trunk vehicle in which PENA had been riding. Following PENA's arrest, this vehicle was subsequently impounded by the Roswell Police Department and all contents were secured.

On the 19th day of April, 2010, agents from the Federal Bureau of Investigation (FBI) and the Roswell Police Department executed a State of New Mexico District Court Search Warrant on the vehicle in which PENA had been riding at the time of his arrest, a white, 1996 Nissan 4-door, New Mexico License Plate LCP481, VIN 3N1AB41D8TL002015. It was at this time that the above noted weapons and ammunition were collected as evidence by the Roswell Police Department. As well, during the search, two boxes of Remington 9mm Luger ammunition were located. One box was full and contained 50 rounds of 9mm Luger ammunition and the other box was partially empty and contained 23 rounds of 9mm Luger ammunition. Additionally, a small black nylon bag was located in the vehicle which contained 15 rounds of 9mm S&B ammunition and one round of Remington 9mm ammunition.

On the 12th day of May, 2010, the shotguns described above were test fired. Both firearms functioned as designed.

Checks with the Bureau of Alcohol Tobacco Firearms and Explosives, ATF, show that these firearms were manufactured by O.F. Mossberg & Sons, Inc. The Mossberg, Model 500A, 12 gauge shotgun, Serial Number P152130 was stamped, "MADE IN USA," "NORTH HAVEN, CONN." The Mossberg Model 88, 12 gauge shotgun, Serial Number MV86313L was stamped, "MAVERICK BY MOSSBERG". Mossberg firearms are not and have never been manufactured in New Mexico. Additionally, there are no manufacturers of ammunition in the state of New Mexico. Therefore, the firearms and ammunition possessed by PENA on the 19th day of April, 2010, traveled in and affected interstate commerce.

PENA was previously convicted on or about the 23rd day of January, 2006, of Aggravated Assault in 5th Judicial District Court, Roswell, New Mexico, Case No. CR-2005-499.

COUNT 8

On or about the 1st day of May, 2010, in Chaves County, in the State and District of New Mexico, the defendant **JEREMY RAY CONDE**, did knowingly possess a firearm and ammunition in and affecting commerce after being convicted of a crime punishable for more than one year.

In violation of 18 U.S.C. § 922(g)(1).

On or about the 18th day of April, 2010, in the Magistrate Court of the State of New Mexico a Warrant for Arrest for issued for CONDE charging him with armed robbery and felon in possession of a firearm resulting from the previously discussed armed robbery of Luna.

On or about the 1st day of May, 2010, the Roswell Police Department executed a vehicle stop on a vehicle in which CONDE was a passenger. CONDE initially provided a false name to officers, ALBERT MONTOYA, date of birth January 19, 1986, but was identified by the Roswell Police Department as Jeremy Conde, date of birth January 15, 1986, and taken into custody.

At the time of his arrest by the Roswell Police Department, CONDE was armed with one GP WASR, Model 10/63, 7.62 x 39mm rifle, Serial Number KV256580. This rifle is an AK/SKS type assault rifle which was loaded with 39 rounds of 7.62 x 39mm Golden Bear ammunition in a magazine that had been loaded into the weapon and one round of 7.62 x 39mm Golden Bear ammunition which was loaded into the chamber of the weapon. This weapon had been placed underneath the front passenger seat of the vehicle in which CONDE had been riding. CONDE occupied the front passenger seat of the vehicle and he and the driver were the only two in the vehicle. A subsequent interview with the driver of this vehicle, Amanda Sifuentes, revealed that she had no knowledge of the weapon being in the vehicle prior to giving a ride to CONDE, that the weapon did not belong to her, that she does not own any weapons and that there is no one who would have had access to her vehicle in order to place a weapon in it. This vehicle was subsequently impounded by the Roswell Police Department and all contents were secured.

On the 4th day of May, 2010, agents from the Federal Bureau of Investigation (FBI) and the Roswell Police Department executed a State of New Mexico District Court Search Warrant on the vehicle in which CONDE had been riding, a 2004 Chrysler Sebring, New Mexico License Plate LGD000, VIN 1C3EL46X04N415826. It was at this time that the above noted weapon and ammunition were collected as evidence by the Roswell Police Department.

On the 12th day of May, 2010, the rifle described above was test fired. The firearm functioned as designed.

Checks with the Bureau of Alcohol Tobacco Firearms and Explosives, ATF, show that this firearm was manufactured by CN ROMARM SA/CUGIR and had the stamping of, "MADE BY CN ROMARM SA/CUGIR," "IN ROMANIA," "IMPORTED CAI GEORGIA, VT". CN ROMARM SA/CUGIR firearms are not and have never been manufactured in New Mexico. Additionally, there are no manufacturers of ammunition in the state of New Mexico. Therefore, the firearm possessed by CONDE on the 1st day of May, 2010, traveled in and affected interstate commerce.

CONDE was previously convicted on or about the 13th day of December, 2005, of Shooting at a Dwelling or Occupied Building in 5th Judicial District Court, Roswell, New Mexico, Case No. CR-2005-00294.