

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Northern District of California

United States of America )

v. )

ANDRE TARAY FRANKLIN )

Case No.

4-13-70298

FILED  
MAR 15 2013  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

MAG

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 January 7, 2013 in the county of Alameda in the Northern District of California, the defendant(s) violated:

Code Section  
18 U.S.C. § 668

Offense Description  
The defendant did ~~knowingly~~ steal or obtain by fraud from the care, custody, or control of a museum an object of cultural heritage; and knowing that an object of cultural heritage had been stolen or obtained by fraud, did receive, conceal, exhibit, and dispose of the object.

The maximum penalties for this offense are: 10 years in prison, \$250,000 fine, 3 years of supervised release, and a \$100 special assessment.

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT IN SUPPORT OF THIS COMPLAINT

Continued on the attached sheet.

Approved as to form:

Brian C. Lewis  
Brian Lewis, AUSA

Beth F. Alvarez  
Complainant's signature  
Beth F. Alvarez, FBI Special Agent  
Printed name and title

Sworn to before me and signed in my presence.

Date: 3/15/13

Kandis Westmore  
Judge's signature  
Kandis A. Westmore, U.S. Magistrate Judge  
Printed name and title

City and state: Oakland, CA

## **AFFIDAVIT OF BETH ALVAREZ**

I, Beth Alvarez, after being duly sworn, depose and say as follows:

### **I. INTRODUCTION AND PURPOSE OF AFFIDAVIT**

1. This affidavit is submitted in support of a criminal complaint against ANDRE TARAY FRANKLIN for theft of major artwork, in violation of 18 U.S.C. § 668. The facts set forth in this affidavit are based on my review of written reports, my personal observations, my training and experience, and information from other law enforcement officials. These facts are not all of the facts related to this investigation that I know. I have set forth those facts that I believe are sufficient to establish probable cause that ANDRE TARAY FRANKLIN committed the aforementioned offense.

### **II. AGENT'S BACKGROUND**

2. I have been a Special Agent with the Federal Bureau of Investigation (FBI) since November 2002. I am currently assigned to the Oakland Resident Agency of the San Francisco field office.

3. I am a graduate of the FBI Academy in Quantico, Virginia. As part of my training to become a Special Agent, I received approximately 16 weeks of instruction at the FBI Academy. Since graduating from the Academy, I have received further training in Federal and California laws and investigative techniques relating to wire, electronic, and physical surveillance; criminal street gangs and criminal enterprises.

4. As an FBI Special Agent, I have conducted and participated in investigations of bank robbery, illicit firearms, extortion, art theft, and fugitives. During these investigations, I have utilized, or participated in investigations that utilized, various types of investigative techniques, including electronic surveillance pursuant to court-authorized wiretaps; undercover agents and informants; controlled purchases of firearms and narcotics from suspects; physical surveillance, consensual recording, investigative interviews, mail covers, garbage searches, GPS tracking devices, pole-mounted cameras, and the service of Grand Jury subpoenas. I have participated in the execution of numerous state and federal arrest warrants and search warrants.

### **III. APPLICABLE LAW**

5. Title 18 U.S.C. § 668(b) provides that "A person who— (1) steals or obtains by

fraud from the care, custody, or control of a museum any object of cultural heritage; or (2) knowing that an object of cultural heritage has been stolen or obtained by fraud, if in fact the object was stolen or obtained from the care, custody, or control of a museum (whether or not that fact is known to the person), receives, conceals, exhibits, or disposes of the object, shall be fined under this title, imprisoned not more than 10 years, or both.”

6. An “‘object of cultural heritage’ means an object that is— (A) over 100 years old and worth in excess of \$5,000; or (B) worth at least \$100,000.” 18 U.S.C. § 668(a)(2).

#### **IV. FACTS ESTABLISHING PROBABLE CAUSE**

7. At approximately 3:15 a.m. on Monday, January 7, 2013, the Oakland Museum of California located at 1000 Oak Street, Oakland, California, was burglarized. The museum’s video surveillance system captured the burglary. The burglar entered through a door on the east side of the museum, by smashing the glass panel and reaching through to open the door. The burglar immediately headed toward the California Gold rush exhibit. He smashed two glass display cases with a black and orange axe, removing a miners’ scale used to weigh gold and a historic jewelry box made of California gold and adorned with richly gold veined quartz. The burglar placed the scale and the jewelry box in a dark-colored backpack and fled the museum through the door through which he had entered. The burglary lasted approximately one minute.

8. A review of the museum surveillance video footage revealed that the burglar was a tall, black male with a slender build, possibly 5’9” – 6’0” tall, weighing approximately 175 to 185 pounds. The burglar was wearing a black baseball cap, a black and white bandana to cover his face, a black or dark gray puffy jacket with a hood, and black shoes with white trim on the bottom with a visible white Nike “swoosh.”

9. The jewelry box that was stolen was made between 1869 and 1878. The jewelry box was last formally appraised in March 1978, and it was then valued at \$75,000. According to the Bureau of Labor Statistics Consumer Price Index inflation calculator, available at <http://data.bls.gov/cgi-bin/cpicalc.pl>, an item valued at \$75,000 in 1978 is worth \$264,892.64 in 2013. Media reports have valued the jewelry box at \$800,000.

10. Officers of the Oakland Police Department responded to the museum shortly after the burglary. The officers reviewed the video surveillance footage and searched the museum and its exterior for evidence. Officers located an axe cover that was black and orange. Officers

believed that the black-and-orange axe cover was the cover of the axe used to break into the museum and steal the miners' scale and jewelry box. The axe cover was swabbed for DNA and submitted for testing against known DNA profiles.

11. The officers also located fresh footprints in the mud in the area surrounding the museum. The shoe prints had a distinctive "X" in the pattern on the heel. These were photographed for later comparison to a suspect's shoes.

12. On January 22, 2013, the State of California Department of Justice reported that the DNA collected from the axe cover had been compared to profiles in the Combined DNA Index System (CODIS) and matched the profile of ANDRE TARAY FRANKLIN, date of birth August 8, 1967.

13. The Oakland Police Department conducted a search of law enforcement databases for FRANKLIN, and discovered (i) his date of DNA collection was April 20, 2010, (ii) his criminal history included prior felony convictions for second-degree burglary and possession of stolen property, and (iii) he had a listed address in Oakland, California. FRANKLIN was also found to be on parole, and a "Parolee at Large" warrant had been issued for his arrest for failure to report to his parole officer.

14. On January 24, 2013, an Alameda County Superior Court Judge signed a probable cause "Ramey" warrant for FRANKLIN's arrest related to the museum burglary.

15. On March 3, 2013, FRANKLIN was spotted driving in Oakland, and was arrested on the probable cause warrant. He was questioned by officers after being advised of his Miranda rights. FRANKLIN spoke to officers and denied burglarizing the museum. During the interview, FRANKLIN was wearing black Nike athletic shoes with white trim on the bottom and white Nike "swoosh," consistent with the shoes worn by the individual who burglarized the museum. Officers looked at the soles of the shoes, and also noted that the heel of the sole contained the "X" pattern that appeared to match the shoe prints found outside of the museum the night of the burglary.

16. After arresting FRANKLIN, officers collected his cellular telephone as evidence. In addition to the cellular telephone being found with FRANKLIN when he was arrested, FRANKLIN also acknowledged that it was his phone.

17. I reviewed the contents Franklin's phone as a search incident to his arrest and

later pursuant to a search warrant in order to find evidence FRANKLIN burglarized the museum.

18. I found text messages sent from FRANKLIN to a contact identified as “Boss” in FRANKLIN’s phone.

- a. On February 23, 2013, FRANKLIN sent Boss a text message that said in part [verbatim]: “. . . I can prove you are the one that has the shit they want. Even if you no longer have it the pictures Will be enough to convict you. So I want 10,000 or I will send these photos to the police you better tex me back within the hour on your reply if not you will make the news tonight!” This text message included a blurry photograph of what appears to be the jewelry box stolen from the Oakland Museum of California.
- b. On February 24, 2013, FRANKLIN sent two messages to Boss. The first read, “You better respond today you have reach my deadline. This problem just want go away.” The second read, “I will turn up the heat if you don’t respond by today. You will have to answer the question of the photo of the box on your office disk you think this is a game you better be ready to play.”
- c. On February 25, 2013, FRANKLIN sent four more text messages to Boss, demanding \$10,000 in exchange for FRANKLIN not reporting Boss to the police or the media for possessing the stolen jewelry box.
- d. On February 26, 2013, FRANKLIN sent another message to Boss, continuing his demand for money, and stating an address in Oakland where Boss could be found.

19. The Oakland Police Department obtained and executed a search warrant at the Oakland address for Boss contained in FRANKLIN’s text messages. A business was located at the address. I was present during the execution of this search warrant. During the execution of the search warrant, the owner of the business arrived. The owner admitted having the jewelry box, and showed officers to its location, in a cabinet in a locked shed at the rear of the business.

20. The owner voluntarily spoke to officers, and told them that a black male adult, known to the owner as “Frank,” sold the owner the jewelry box for \$1,500. The owner further stated that he had received text messages from someone who was threatening to reveal the

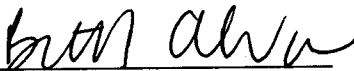
owner's possession of the box.

21. The owner was presented a photographic lineup containing six photographs of black male adults, including FRANKLIN. The owner identified FRANKLIN as Frank, the person who sold the box for \$1,500.

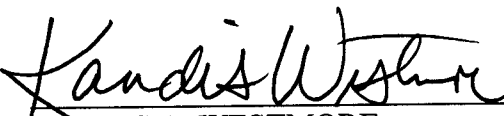
**V. CONCLUSION**

22. Based on the foregoing facts, my training and experience, and consultation with other law enforcement agents with experience in criminal investigations, I believe that on or about January 7, 2013, ANDRE TARAY FRANKLIN, in the Northern District of California, stole the jewelry box from the Oakland Museum of California and later concealed and disposed of the jewelry box knowing it to have been stolen from the Oakland Museum of California, all in violation of 18 U.S.C. § 668.

DATED this 15<sup>th</sup> day of March 2013.

  
BETH ALVAREZ  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn to before me this 15<sup>th</sup> day of March 2013.

  
KANDIS A. WESTMORE  
United States Magistrate Judge