

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT **FILED**  
for the UNITED STATES DISTRICT COURT  
District of New Mexico ROSWELL, NEW MEXICO

SEP 16 2011

United States of America )

v. )

Jesse Anthony LEYBA )

Case No. 11MJ2302

CLERK *Ku*

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 17, 2011 in the county of Chaves in the  
District of New Mexico, the defendant(s) violated:

*Code Section*

*Offense Description*

18 USC 1951

In that on August 17, 2011, in Chaves County, in the District of New Mexico, the Defendant Jesse Anthony LEYBA did affect commerce or the movement of commerce on any article or commodity in commerce, by robbery in violation of Title 18 USC 1951

18 USC 924(c)

During and in relation to the above mentioned crime of violence, Jesse Anthony LEYBA did knowingly use, carry, and brandish a firearm, to wit: a handgun, in furtherance of a crime of violence

This criminal complaint is based on these facts:

See attachment

Continued on the attached sheet.

*[Signature]*  
Complainant's signature  
Joshua Hernandez, ATF Special Agent  
Printed name and title

Sworn to before me and signed in my presence.

Date: 09/16/2011

*[Signature]*  
Judge's signature

City and state: Roswell, New Mexico

Kea, W. Riggs, US Magistrate Judge  
Printed name and title

**Affidavit**

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Your affiant, being duly sworn does depose and say:

1. That I am currently employed as a Special Agent with the Bureau of Alcohol, ~~Tobacco, Firearms and Explosives (ATF) and have been so employed for~~ approximately eight years. Prior to my employment with ATF, I was employed by the United States Border Patrol for a period of five years. During the last eight years, I have participated in investigations concerning persons who in any way obstruct, delay, or affect interstate commerce by robbery. That as part of my training and experience, I know that it is unlawful for any person to commit or conspire to commit a robbery on any business which affects interstate commerce.
  2. On August 17, 2011, at approximately 11:00 PM, Roswell Police Department (RPD) Detectives (Det.) R. Romero and R. Scribner were called out to Allsup's Convenience Store #268, located at 520 E. Second, Roswell, New Mexico in regards to a robbery of the store that had just taken place. Detectives learned that there were three witnesses to the robbery, Patricia Chambers and Joshua Chavez both employees of the store, and Antredious Jones, a witness from outside the store. RPD officers transported all three witnesses of the robbery to the Police Department for an interview.
  3. During the interview with Antredious Jones, Detectives learned that Jones was in the parking lot of Allsup's waiting on a friend. Jones stated that when he pulled up to the store he observed two males in the store getting ready to walk out. Jones described one of the males as Hispanic, 6'2", 240 lbs chunky, round face and short hair, wearing a striped polo shirt with white based blue stripes and blue jeans. Jones described the other male as 5'11", 180 lbs, slim build. Jones stated that when he pulled up to the store he thought the two guys were having an argument with employees of Allsup's, then realized that it was a "beer run". Jones stated that he knew Allsup's employee Josh Chavez from previous employment. Jones stated that Chavez came out of the store and said that a gun was stuck in his face by the suspects. Jones stated the suspects ran on foot towards "Chihuahuita" and Farmers Country Market. Jones stated that he did not get a good look at the skinny guy because he was more focused on the other male.
  4. During an interview with Allsup's Employee Patricia Chambers, Detectives learned that there were two males, one subject she described as a 6'1", clean shaven, white male wearing a white t-shirt, and blue jeans. Chambers described the other subject as a 5'10", clean shaven, "Mexican" male in his mid 20s, with dark hair wearing a black and white striped shirt, long jean shorts and white tennis shoes. Chambers stated the white male went behind the counter and the "Mexican" male stayed on the customer side of the counter.
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5. Chambers stated that employee Josh Chavez was behind the counter and she was outside of the counter sweeping the floor. Chambers stated the suspects came to the register and placed beer on the counter. Chambers stated the white male went behind the counter and told Josh Chavez to "Quit Jerking Around". Chambers stated that she then observed the "Mexican" male pull a black gun out of his pocket and cock it. Chambers stated that the "Mexican" male raised ~~the gun up and she observed a red light coming from the gun and the red light~~ was on Josh Chavez's shirt.
6. Chambers stated that she heard one of the males tell Chavez to "hurry up" as Chavez was having difficulty getting the register open. Chambers stated the "Mexican" male told her "you need to keep sweeping and keep your mouth shut". Chambers stated that they then walked out of the front door and headed towards Farmers Market. Chambers stated that she would be able to pick the suspects out of a photo lineup.
7. During an interview with Allsup's employee Joshua Chavez, Detectives learned that Chavez was behind the register observing two male subjects who were coming from the beer isle. Chavez described one subject as a white male approximately 5'11", 21-25 years old. Chavez described the other subject as 5'11", 225-250 lbs, black hair and mustache, approximately 26 years old.
8. Chavez stated that the males came to the counter with two 30 packs of Budweiser. Chavez asked the subjects for their identification and one of the subjects told him "We are taking this shit". Chavez stated one of the males said "You think this is a fucking joke" then he heard the sound of a gun being cocked. Chavez stated the white male came behind the counter with Chavez. Chavez stated that he observed the "Mexican" male had the firearm and was holding it down low. Chavez described the firearm as a black semi-automatic pistol with a laser, Chavez said he saw the red laser from the gun on him and he thought he was going to be shot. Chavez stated that they told him to open the cash register but he was having trouble getting the register open because he was extremely nervous. Chavez stated that he was finally able to get it open and the white male reached into the register and took approximately \$32.00 in cash.
9. Chavez stated that the "Mexican" male outside of the counter was the more dominant of the two suspects. Chavez stated that the "Mexican" male with the gun told the white male to "take his shit" and the white male then took Chavez's watch and ring off of his person. Chavez stated that the males then left out the front doors heading east.
10. Detectives Scribner and Romero were able to get store surveillance video that was sent to Det. Scribner via email from Allsup's Corporate Office. Det. Scribner learned from the store video that the suspect that went behind the counter had an X-3 tattoo on the back of his neck.
11. On August 18, 2011, Det. Scribner researched the RPD electronic booking photographs. Det. Scribner typed in the physical descriptors of the white male

and several photographs returned and he located one of the subjects to have a tattoo of X-3 on the back of his neck. The subject was identified through the booking photo as Adam CRUZ. A photo array was printed with CRUZ's photo in the array. This photo array was shown to Joshua Chavez who was able to immediately identify CRUZ from the array. The photo array was shown to Patricia Chambers who was unable to identify anyone in the array.

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12. Det. Scribner obtained a State Arrest Warrant for Adam CRUZ for Armed Robbery. On August 19, 2011, Adam CRUZ was arrested by the US Marshals Service. On the same date, your Affiant and Det. Scribner interviewed CRUZ at the RPD; this interview was video and audio recorded.
  13. During the interview CRUZ, admitted to committing the August 17, 2011, Allsup's robbery. CRUZ stated that he and the other male had just met and had intended on only doing a "beer run". CRUZ stated that the robbery just happened and he went with it. CRUZ stated that he did not know the other subjects name. When asked if he knew the other subject had a gun, CRUZ stated that he thought the other guy had a gun from the look on the clerks face but stated that he never saw the gun.
  14. On September 12, 2011, Det. Scribner received an anonymous tip from crime stoppers on the Hispanic male suspect. The caller identified the suspect that was in the newspaper on the armed robbery as Jesse LEYBA. Det. Scribner was able to locate a photograph of Jesse LEYBA through RPD records. A photo array was made and Det. Scribner showed the photo array to witness Antredious Jones. Jones identified Jesse LEYBA in the photo on the lower left of the array as the suspect with one hundred percent certainty of him being the suspect of the robbery.
  15. On September 13, 2011, Det. Romero checked RPD records and learned that the latest address for Jesse LEYBA was 809 W. Summit in Roswell, NM. Det. Romero learned that on May 13, 2011, LEYBA was arrested for Negligent Use of a Weapon and was in possession of a black Master Piece hand gun at that time. Det. Romero also learned that on July 4, 2011, LEYBA was arrested for felony bribery Intimidation of a Witness. On September 13, 2011, RPD detectives obtained a State District Court search warrant for 809 W. Summit for evidence relating to the armed robbery of Allsup's.
  16. On September 13, 2011, at approximately 1305 hours, RPD Detectives executed the state District Court Search Warrant at 809 W. Summit, the known address of Mr. Jesse LEYBA.
  17. While conducting surveillance on the residence, Det. Scribner observed a male subject exit the residence. The subject was observed from a distance and was identified as Jesse LEYBA. Several minutes later, officers of the Roswell Police Department approached the residence. RPD officers knocked on both the front and back door and announced Police Department and that they had a Search Warrant. Officers made this announcement numerous times and
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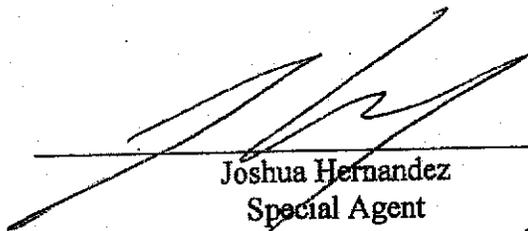
received no response from within the residence. Officers then breached the front door of the residence. LEYBA came into the living room of the residence and was detained without incident.

18. LEYBA was read his Miranda Rights and stated that there was a firearm in the ~~bedroom under a pillow. LEYBA then was transported to the Roswell Police~~ Department for an interview.
19. During the execution of the search warrant RPD Detectives located two striped polo style shirts in the closet in the master bedroom. Both had the exact same striping as the heavyset male in the video from Allsup's. Det. Scribner observed from the video that the shirt had an area on the left shoulder where two dark stripes converge leaving a small area of light fabric between them. Det. Scribner observed that the shirts that officers recovered had the exact same striping. A black Master Piece Arms, Model Unknown, 9mm, Pistol, SN#F11712, with a laser was also located under the pillow in the master bedroom.
20. Once at the Roswell Police Department, Det. Scribner asked LEYBA if he remembered his rights. LEYBA stated that he did. LEYBA initially denied knowing Adam CRUZ or being involved in the robbery. LEYBA later stated that he was present the night of the robbery with CRUZ. LEYBA stated that he did not have the gun that officers recovered at his residence the night of the robbery but had a different firearm. LEYBA stated that he does not know where the firearm went that he used that night of the robbery. LEYBA stated that he was drinking that night. LEYBA stated that he was going to own up to it and that he knew what he was doing. LEYBA stated that the firearm that he had that night was a .9 mm.
21. On September 14, 2011, your Affiant contacted manager Elvira Valenzuela at Allsup's store# 268 located at 520 E. Second, Roswell, New Mexico. Your Affiant received an inventory sheet of products ordered on September 14, 2011. The inventory sheet showed several items ordered from Affiliated Foods, Inc in Amarillo, Texas. The items were shipped from Affiliated Foods Inc., Amarillo, Randall, County, Texas 79105 to Allsup's store #268.
22. Your Affiant confirmed that the firearm mentioned above was not manufactured in the state of New Mexico and therefore traveled in interstate commerce.
23. That based on the above information your Affiant believes probable cause exists showing that Jesse LEYBA and Adam CRUZ did unlawfully and knowingly obstruct, delay and affect, the movement of articles and commodities in commerce by robbery in violation of Title 18 USC 1951. And during and in relation to this crime of violence, Jesse LEYBA did knowingly use, carry, and brandish a firearm, to wit: a handgun, in furtherance of a crime of violence, namely, Title 18 USC 1951. The above described conduct was in

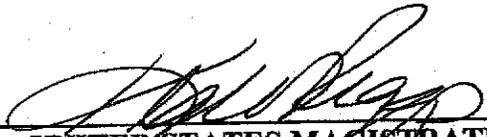
violation of Title 18 USC 924(c). Further, Adam CRUZ did knowingly Aid and Abet Jesse LEYBA to use, carry, and brandish a firearm, to wit: a handgun, in furtherance of a crime of violence, namely, Title 18 USC 1951 in violation of Title 18 USC 2, to commit Title 18 USC 924(c).

24. This Criminal Complaint was approved by AUSA Nathan Lichvarcik.

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Joshua Hernandez  
Special Agent  
Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS 16th DAY OF  
September, 2011.

  
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UNITED STATES MAGISTRATE JUDGE