

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	*	CRIMINAL NO.:	09-249
V.	*	SECTION:	“C”
JABAR GIBSON	*	VIOLATION:	21 U.S.C. § 841(a)(1)
			18 U.S.C. § 924(c)(1)(A)
	*		18 U.S.C. § 922(g)(1)
			21 U.S.C. § 851
	*		
	*		
	*		

FACTUAL BASIS

Should this matter proceed to trial, the United States will prove beyond a reasonable doubt, through credible testimony of Special Agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), state and local law enforcement agencies, witnesses and the production of reliable evidence, the following facts:

On Wednesday, March 11, 2009 at 11:25 p.m., New Orleans Police Department (NOPD) Officers Cory Foy and Cory Himel, while traveling southbound on L.B. Landry Boulevard in their marked police unit, observed a 1997 Geo Prizm disregard a posted stop sign when it turned left onto L. B. Landry from Sheppard Court, in Orleans Parish and within the Eastern District of Louisiana. The officers elected to conduct a traffic stop for the observed traffic violation.

Officers Foy and Himel, along with NOPD Sergeant Octavio Baldassaro, who was following their unit, got behind the Geo Prizm to initiate the traffic stop. In response, the driver of the vehicle, later identified as Shareena Hills, accelerated her vehicle, swerving from one side of the roadway to the other in a reckless manner. Officers Foy and Himel activated the emergency lights and siren and Hills disregarded the signal for four (4) full city blocks before swerving over to the right shoulder and stopping at the intersection of Whitney Avenue and Erie Street.

Officer Himel, along with Sergeant Baldassaro, exited their respective vehicles and approached the driver side as Officer Foy approached the passenger side of the vehicle. Upon coming into contact with Hills, Officer Himel advised her to step out of the vehicle with the intent of placing her under arrest for reckless operation of a motor vehicle. As Officer Foy approached the passenger side, he observed the front passenger, later identified as the defendant, **JABAR GIBSON (GIBSON)**, bent over toward the front floorboard with both hands underneath the passenger seat. For officer safety, Officer Foy pointed his hand-held flashlight into the vehicle and advised **GIBSON** to show his hands. Officer Foy then advised **GIBSON** to exit the vehicle. As **GIBSON** stepped out, Officer Foy observed in plain view on the passenger side floorboard of the vehicle a black semiautomatic handgun. Officer Foy immediately placed **GIBSON** under arrest and handcuffed him as a safety precaution. Hills was also arrested and handcuffed and secured in the rear of the a police unit.

Officer Foy secured the handgun and it was determined to be an HS Products (IM Metal), Model XD9, 9mm caliber pistol, serial number MG905315, loaded with one unspent hollow point round in the chamber and seventeen (17) unspent hollow point rounds in the magazine.

The officers conducted a check of **GIBSON**'s name through the NOPD motions computer

and found that **GIBSON** was on federal probation until March 31, 2011 for a narcotics violation. **GIBSON** was arrested for being a convicted felon in possession of a handgun. Officer Foy then conducted a search incident to arrest before placing **GIBSON** in the rear of the police unit. While **GIBSON** was being searched, Officer Foy discovered a clear plastic bag containing seven individually wrapped pieces of an off-white rocklike substance in the inside of **GIBSON's** left shoe. A preliminary field test concluded that the substance was cocaine base or "crack" cocaine.

ATF Task Force Officer (TFO) Robert Stoltz, Jr. was notified of the arrest and he later arrived at the scene in order to interview both Hills and **GIBSON**. After being advised of her *Miranda* rights, Hills denied having any knowledge of a firearm in the vehicle. TFO Stoltz asked **GIBSON** if he would give a voluntary statement pertaining to the firearm. After being advised of his *Miranda* rights, **GIBSON** refused to give any statement other than to say that Hills had "nothing to do with it."

If called to testify, a criminalist with the NOPD crime laboratory would testify that the substance found in **GIBSON's** possession was in fact cocaine base or "crack" cocaine, a Schedule II narcotic drug controlled substance, with a net weight of 5.4 grams.

If called to testify, United States Probation Officer Kenny Dixon would confirm that **GIBSON** has two prior federal convictions and that he was on federal probation at the time of the arrest. Dixon would also testify that **GIBSON** at no time tested positive for any drug usage during the time that he was under supervised release. If called to testify, an ATF expert would also confirm that the 5.4 grams of cocaine base or "crack" cocaine **GIBSON** possessed on March 11, 2009 was packaged for distribution rather than individual use.

ATF/NOPD successfully test fired the HS Products (IM Metal), Model XD9, 9mm caliber

pistol, serial number MG905315, and determined that it met the federal definition of a “firearm” as defined in Title 18, U.S.C. Section 921(a)(3). If called to testify, an ATF expert would confirm that the HS Products (IM Metal), Model XD9, 9mm caliber pistol, serial number MG90531, was not manufactured inside the state of Louisiana and therefore had to travel in and thereby affect interstate commerce and that the subject firearm had been reported stolen from the Superdome parking lot during a concert on January 23, 2009.

Prior to possessing the firearm and to possessing five (5) grams or more of cocaine base or “crack” cocaine with the intention of distributing it on March 11, 2009, certified court records would establish and **GIBSON** further admits that he was previously convicted of a crime punishable by imprisonment for a term exceeding one year, to wit: a conviction on or about December 19, 2006 in the United States District Court for the Eastern District of Louisiana, Case Number 05-323, “B,” for Possession with Intent to Distribute Heroin, in violation of Title 21, United States Code, Section 841(a)(1); and that said conviction is now final. Certified court records would also establish that **GIBSON** was previously convicted of a second crime punishable by imprisonment for a term exceeding one year, to wit: convictions on or about January 23, 2007, in the United States District Court for the Eastern District of Louisiana, Case Number 06-114, “K,” for Possession with Intent to Distribute Cocaine Hydrochloride and Heroin, in violation of Title 21, United States Code, Section 841(a)(1). If called to testify, NOPD Latent Print Examiner George Jackson would also confirm through a fingerprint comparison that **GIBSON** is the same individual who was previously convicted in the Eastern District of Louisiana on the two separate occasions described above.

Also, an ATF expert witness would testify that **GIBSON** possessed the firearm on March

11, 2009 in furtherance of his possession with intent to distribute the 5.4 grams of cocaine base or “crack” cocaine found in his left shoe.

APPROVED AND ACCEPTED:

JABAR GIBSON Date
Defendant

VALERIE WELZ JUSSELIN Date
Attorney for Defendant

EDWARD J. RIVERA Date
Assistant U.S. Attorney