

FILED

United States District Court
DISTRICT OF
NEW MEXICO

UNITED STATES DISTRICT COURT
ROSWELL, NEW MEXICO

AUG 05 2010

UNITED STATES OF AMERICA

V.

Gary MONTOYA
Roswell, NM 88203

CRIMINAL COMPLAINT
CLERK

CASE NUMBER: 10-2160MJ

(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 June 23, 2010 in Chaves county, in the Judicial District of New Mexico, defendant(s) did, *(Track Statutory Language of Defense)* possess a firearm and ammunition in and affecting commerce after being convicted of a crime punishable for more than one year in violation of Title 18 United States Code, Section(s) 922(g)(1)

I further state that I am a(n) ATF Task Force Agent and that this complaint is based on the following facts:
See Attachment

Continued on the attached sheet and made part hereof: Yes No



Signature of Complainant



Sworn to before me and subscribed in my presence,

8/5/10

Date

at Roswell, NM

City and State



Name and Title of Judicial Officer



Signature of Judicial Officer

Attachment

This complaint is based on the following facts:

I, Greg Carrasco, being duly sworn, state that I am employed as a Detective with the Roswell Police Department and currently commissioned as a Task Force Agent (TFA) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I have been so employed with the police department for twelve years and a TFA for two years. I am currently assigned to work in the Roswell, New Mexico area.

1. On June 23, 2010, RPD Detective Michael Stanton conducted a traffic stop on a green Honda Accord at Lea and Deming for disorderly conduct. Detective Stanton contacted the driver, Gary MONTOYA DOB: 1983 SSN: 3593 Roswell NM 88203. MONTOYA appeared to be very nervous and asked Detective Stanton to give him a break. Detective Stanton requested a driver's license inquiry on MONTOYA and it revealed that MONTOYA was suspended. Detective Stanton advised MONTOYA that he was under arrest for Disorderly Conduct and Unlawful Use Of License. Detective Stanton advised MONTOYA that the vehicle would be towed. MONTOYA was upset and told Detective Stanton that he could not tow the vehicle. MONTOYA told Detective Stanton "you can't look in that car, its not mine, anything you find in the car is not mine". Detective Stanton began an inventory of the vehicle for the tow. Detective Stanton opened the center armrest and observed the grip of a handgun. Detective Stanton had knowledge that MONTOYA was a convicted felon and stopped the search to obtain a search warrant. MONTOYA declined to answer any questions about the firearm. The registered owner of the vehicle, Jose Juarez, arrived prior to the vehicle being towed. Mr. Juarez advised that MONTOYA borrowed his vehicle the day prior (June 22, 2010). Mr. Juarez advised that he did not leave any firearms in the vehicle. On June 24, 2010, Detective Stanton obtained and executed a District Court state search warrant on the vehicle. Detective Stanton recovered a Walter, P99, 40 caliber pistol, SN: FAD3837. The firearm was loaded with one Federal 40 S&W cartridge and twelve Federal 40 S&W cartridges in the magazine. Another magazine was located in the console containing eleven Federal 40 S&W cartridges. Several shotgun shells were also located in the vehicle. On June 28, 2010, Detective Stanton spoke to Mr. Juarez. Detective Stanton asked Mr. Juarez about the shotgun shells and Mr. Juarez advised that he may have left them in the vehicle. Detective Stanton asked Mr. Juarez about the pistol that was found and Mr. Juarez had no knowledge of it. Detective Stanton requested the firearm be ran through NCIC to see if it was reported stolen. The inquiry revealed that the firearm was reported stolen through the Hobbs Police Department (HPD). A report from the HPD was obtained showing that it was reported stolen on January 13, 2010.

2. On July 29, 2010, TFA Carrasco obtained certified copies of the Judgment and Sentences pertaining to MONTOYA from the Chaves County District Court Clerks Office. Upon review of Judgment and Sentence No. CR-2004-00609, TFA Carrasco observed that MONTOYA was charged with Aggravated Burglary, Aggravated Assault on a Peace Officer, and Possession of a Controlled Substance with Intent to Distribute to wit: Marijuana on December 8, 2004. On August 8, 2005, MONTOYA pled no contest to the felony crimes of Aggravated Assault on a Peace Officer and Possession of a Controlled Substance with Intent to Distribute to wit: Marijuana. MONTOYA was sentenced to three years in the custody of the Department of Corrections followed by two years parole for Aggravated Assault on a Peace Officer and eighteen months in the custody of the Department of Corrections followed by one year parole for Possession of a Controlled Substance with Intent to Distribute to wit: Marijuana. The sentence was suspended except for one year with the balance to be served on supervised probation. Upon review of Judgment and Sentence No. CR-2005-387, TFA Carrasco observed that MONTOYA was charged with Aggravated Burglary and Criminal Damage on July 25, 2005. On August 8, 2005, MONTOYA pled no contest to felony crime of Aggravated Burglary and was sentenced to nine years in the custody of the Department of Corrections followed by two years parole. The sentence was suspended except for one year to be served in the Department of Corrections. Upon review of Judgment and Sentence No. CR-2007-00486, TFA Carrasco observed that MONTOYA was charged with Possession Of A Controlled Substance to wit: Cocaine on October 12, 2007. On December 13, 2007, MONTOYA pled guilty to the felony crime of Possession Of A Controlled Substance to wit: Cocaine and Habitual Criminal Offender. MONTOYA was sentenced to thirty months followed by one year parole and the sentence was suspended except for one year in the custody of the Corrections Department.
3. On July 29, 2010, TFA Carrasco test fired the weapon pertaining to MONTOYA that being a Walther, P99, 40 caliber pistol, SN: FAD3837. The firearm was found to function as designed.
4. The firearm was manufactured by Walther and had the stampings of "MADE IN GERMANY" and "SPRINGFIELD, MASS.". TFA Carrasco knows through training and experience that Walther firearms are not and have never been manufactured in New Mexico. Therefore the firearm possessed by MONTOYA on June 23, 2010, traveled in and affected interstate commerce.

Arrested on 8/4/10. 

USA Ron Jennings reviewed this criminal complaint.


Greg Carrasco
ATF Task Force Agent

Sworn Before Me on this ^{5th} day of August, 2010,


Hon. Kea Riggs, U.S. Magistrate Judge