

TO: Clerk's Office
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



**APPLICATION FOR LEAVE
TO FILE DOCUMENT UNDER SEAL**

UNITED STATES

-v.-

20-MJ-560

AARON SWABY

Docket Number

SUBMITTED BY: Plaintiff ___ Defendant ___ DOJ

Name: Andrew Wenzel

Firm Name: _____

Address: US Attorney's Office - EDNY

271 Cadman Plaza East, Brooklyn, NY 11201

Phone Number: 718-887-1294

E-Mail Address: Andrew.Wenzel@usdoj.gov

INDICATE UPON THE PUBLIC DOCKET SHEET: YES ___ NO

If yes, state description of document to be entered on docket sheet:

MANDATORY CERTIFICATION OF SERVICE:

A.) ___ A copy of this application either has been or will be promptly served upon all parties to this action, B.) ___ Service is excused by 31 U.S.C. 3730(b), or by the following other statute or regulation: _____; or C.) This is a criminal document submitted, and flight public safety, or security are significant concerns. (Check one)

July 23, 2020
DATE

Andrew P. Wenzel
SIGNATURE

A) If pursuant to a prior Court Order:

Docket Number of Case in Which Entered: _____

Judge/Magistrate Judge: _____

Date Entered: _____

B) If a new application, the statute, regulation, or other legal basis that authorizes filing under seal

Ongoing criminal investigation _____

**ORDERED SEALED AND PLACED IN THE CLERK'S OFFICE
AND MAINTAINED UNDER SEAL
THE COURT**

DATE

U.S. MAGISTRATE JUDGE

RECEIVED IN CLERK'S OFFICE July 23, 2020
DATE

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

United States of America

v.

AARON SWABY

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Case No. 20-MJ-560

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay
(name of person to be arrested) AARON SWABY,
who is accused of an offense or violation based on the following document filed with the court:

- Indictment Superseding Indictment Information Superseding Information Complaint
- Probation Violation Petition Supervised Release Violation Petition Violation Notice Order of the Court

This offense is briefly described as follows:

Felon in possession of a firearm, in violation of 18 U.S.C. s. 922(g)(1)

Date: 07/23/2020



Issuing officer's signature

City and state: Brooklyn, New York

Hon. Vera M. Scanlon, U.S.M.J.

Printed name and title

Return

This warrant was received on (date) _____, and the person was arrested on (date) _____
at (city and state) _____.

Date: _____

Arresting officer's signature

Printed name and title

This second page contains personal identifiers provided for law-enforcement use only and therefore should not be filed in court with the executed warrant unless under seal.

(Not for Public Disclosure)

Name of defendant/offender: _____

Known aliases: _____

Last known residence: _____

Prior addresses to which defendant/offender may still have ties: _____

Last known employment: _____

Last known telephone numbers: _____

Place of birth: _____

Date of birth: _____

Social Security number: _____

Height: _____ Weight: _____

Sex: _____ Race: _____

Hair: _____ Eyes: _____

Scars, tattoos, other distinguishing marks: _____

History of violence, weapons, drug use: _____

Known family, friends, and other associates (*name, relation, address, phone number*): _____

FBI number: _____

Complete description of auto: _____

Investigative agency and address: _____

Name and telephone numbers (office and cell) of pretrial services or probation officer (*if applicable*): _____

Date of last contact with pretrial services or probation officer (*if applicable*): _____

PTH:APW/JRS
F. #2020R00601

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

AARON SWABY,

Defendant.

----- X

AFFIDAVIT AND
COMPLAINT IN SUPPORT
OF AN APPLICATION FOR
AN ARREST WARRANT

20-MJ-560

(18 U.S.C. § 922(g)(1))

EASTERN DISTRICT OF NEW YORK, SS:

STEVEN L. SCHILIRO, being duly sworn, deposes and states that he is a Special Agent with the Federal Bureau of Investigation, duly appointed according to law and acting as such.

On or about November 20, 2019, within the Eastern District of New York, the defendant AARON SWABY, knowing that he had been previously convicted in a court of one or more crimes punishable by imprisonment for a term exceeding one year, did knowingly and intentionally possess in and affecting interstate or foreign commerce, a firearm, to wit: a Smith & Wesson, Model SD40VE, .40 caliber semi-automatic pistol bearing serial number FWN2679.

(Title 18, United States Code, Section 922(g)(1))

The source of your deponent's information and the grounds for his belief are as follows:¹

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been involved in the investigation of numerous cases involving the recovery of firearms and ammunition. I am familiar with the facts and circumstances set forth below from my participation in the investigation; my review of the investigative file, including the defendant's criminal history record; and from reports of other law enforcement officers involved in the investigation. Where I describe the statements of others, I am doing so only in sum and substance and in part.

2. On or about November 20, 2019, at approximately 12:20 a.m., three New York City Police Department ("NYPD") officers were on patrol together in the Coney Island neighborhood of Brooklyn, New York.² While driving south on West 21 Avenue, Officer-3, who was driving the patrol car, observed a Nissan Altima with tinted windows, and then saw the Nissan turn right onto Surf Avenue without using a signaling device. Officer -1, who was seated in the rear of the patrol car, also observed the Nissan Altima to have tinted windows and turn without using a signaling device. The officers activated their vehicle's lights and stopped the Nissan.

¹ Because this affidavit is being submitted for the limited purpose of establishing probable cause to arrest, I have not set forth every fact learned during the course of this investigation.

² Because multiple law enforcement personnel were involved in the arrest of this defendant, I refer to the relevant officers as Officer-1, Officer-2, and Officer-3 for ease of reference. The identities of each of these individuals are known to the affiant, and I and/or another law enforcement officer have interviewed each of these individuals about the events set forth herein.

3. Officer-3 went to the driver's side of the vehicle to speak to the driver, while Officer-1 and Officer-2 went to the passenger side. The defendant AARON SWABY was seated in the front passenger seat, while another individual was in the driver's seat.

4. Officer-1, Officer-2 and Officer-3 noticed an odor of burnt marijuana emanating from the vehicle. Further, Officer-1 saw marijuana ashes on the defendant's lap and front passenger seat, and saw a burn mark on the front passenger seat.

5. When Officer-1 asked the defendant about marijuana, the defendant replied, in sum and substance, and in part, that the marijuana was from an hour ago.

6. Officer-1 asked the defendant to exit the vehicle. As captured on Officer-2's body-worn camera, when the defendant exited the vehicle, he awkwardly squirmed out of his jacket and left it on the passenger seat. This action caused both Officer-1 and Officer-2 to become suspicious, as it was cold outside.

7. Officer-1 promptly grabbed the defendant's jacket and, while touching the outside of the jacket, felt the handle and barrel of a gun inside one of the jacket's pockets. Officer-1 then handed the jacket to Officer-2.

8. Officer-2 felt a heavy object inside the jacket and saw a gun in one of the jacket pockets. The defendant was then placed under arrest.

9. Following his arrest, the defendant repeatedly asked to have his jacket back and noted that it was cold outside. When Officer-1 stated, in sum and substance, and in part, that he should not have taken his jacket off in the first place, the defendant responded, in and substance, "You know why I took it off."

10. Following his arrest, when the defendant was in the holding cell at the precinct stationhouse, he asked Officer-1 to let the driver of the vehicle go, and stated, in sum and substance, and in part, “It was all me.”

11. While the defendant was at the precinct stationhouse, Officer-4 recovered marijuana from the defendant’s pants pocket.

12. I have reviewed the defendant’s criminal history, which reveals that on or about May 28, 2014, in Kings County Supreme Court, the defendant was convicted of Assault in the Second Degree, in violation of N.Y.P.L. § 120.05(2), which I know to be a crime punishable by a term of imprisonment of more than one year. On June 10, 2014, the defendant was sentenced to two years’ imprisonment for that crime. Further, on June 3, 2011, in Kings County Supreme Court, the defendant was convicted of Sexual Abuse in the First Degree, in violation of N.Y.P.L. § 130.65(1), which I know to be a crime punishable by a term of imprisonment of more than one year. On April 17, 2012, the defendant was sentenced to one year of imprisonment for that crime.

13. According to the NYPD Laboratory, which examined the firearm recovered in this case, the recovered firearm was a Smith & Wesson, Model SD40VE, .40 caliber semi-automatic pistol bearing serial number FWN2679. I have conferred with an interstate nexus specialist, a Special Agent of the FBI, who has informed me, in substance and in part, that this firearm was manufactured outside the state of New York.

REQUEST FOR SEALING

14. It is respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the application and arrest warrant, as disclosure would give the target of the investigation an

opportunity to change patterns of behavior and flee from or evade prosecution and therefore have a significant and negative impact on the continuing investigation that may severely jeopardize its effectiveness.

WHEREFORE, your deponent respectfully requests an arrest warrant for the defendant AARON SWABY, so that he may be [REDACTED]

[REDACTED]

Steven L. Schirra

[REDACTED]

Federal Bureau of Investigation

2 [REDACTED]

[REDACTED] SCANLON
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK