

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the
District of New Mexico

DEC 11 2020

MITCHELL R. ELFERS
CLERK

United States of America
v.
Derick GARCIA (YOB 1988)

Case No. 20-MJ-2038

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 December 11, 2020 in the county of Bernalillo in the
District of New Mexico, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 111	Assault of a Federal Officer
18 U.S.C. § 924(c)(1)(A)(iii)	Discharge of a Firearm During a Crime of Violence.
18 U.S.C. §§ 922(g)(1)	Felon in Possession of a Firearm

This criminal complaint is based on these facts:

See attached Affidavit, attached hereto and incorporated herein.

Continued on the attached sheet.


Complainant's signature

Lorraine (Rainy)Hardy Special Agent
Printed name and title

Electronically Submitted and Telephonically Sworn to me on this date.

Date: December 11, 2020



City and state: Albuquerque, New Mexico

Karen B. Molzen, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANTS

I, Lorraine Hardy, being duly sworn, depose and say:

INTRODUCTION AND PURPOSE OF THE AFFIDAVIT

1. I am currently serving as an FBI Special Agent assigned to the FBI Albuquerque Field Office, Violent Crime Task Force (VCTF), where I primarily investigate violent repeat offenders, armed robberies, kidnappings, and FBI fugitives. I have been with the FBI for approximately 2 years. I have received on the job training from other experienced agents, correctional officers, and detectives in the investigation of gangs and criminal organizations. My investigative training and experience includes, but is not limited to, conducting surveillance, interviewing subjects, targets, and witnesses; writing affidavits for and executing search and arrest warrants; examining cellular telephones; managing confidential human sources and cooperating witnesses/defendants; serving subpoenas; collecting and reviewing evidence; and analyzing public records. Over the past 18 months, I have assisted with the arrest numerous persons for offenses related to drug distribution, assault, armed robbery, homicide, gang crimes, firearm violations, and other criminal offenses. This affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

2. This affidavit is being submitted in support of a criminal complaint and arrest warrant charging **DERICK GARCIA** (hereinafter "GARCIA") with 18 U.S.C. § 111 – Assault on a Federal Officer, 18 U.S.C. § 922(g)(1) – Felon in Possession of a Firearm, and 18 U.S.C. § 924(c)(1)(A)(iii) - Discharge of a Firearm During a Crime of Violence.

3. On December 11, 2020, at approximately 7:20 a.m., FBI personnel were executing a federal search warrant on the residence located at 2709 12th St., NW, Apt. 13, Albuquerque, New Mexico 87107. Special Agent D.R. was shot through the front door when agents knocked and announced their presence and the existence of the search warrant. At the time of the incident, Special Agent D.R. was

wearing a marked FBI ballistic vest. The knock and announce identified the agents as "FBI." D.R. is a Special Agent with the FBI and was executing the search warrant in his official capacity.¹

4. The incident described herein occurred within the past few hours and is currently being investigated by the FBI. The crime scene is still being processed, as such, I have not detailed every fact or circumstance pertaining to this investigation, rather just the information I believe supports probable cause to charge GARCIA with the aforementioned violations.

STATEMENT OF PROBABLE CAUSE

5. On December 11, 2020, at approximately 7:20am, the FBI attempted to execute a District of New Mexico search warrant (20-MR-1776) on the residence located at 2709 12th St., NW, Apt. 13, Albuquerque, New Mexico 87107, pursuant to an investigation involving threatening communications relating to the purported kidnapping of a former FBI Special Agent. FBI Agents initiated a knock and announce on the residence which consisted of identifying themselves as FBI and the existence of a search warrant for the premises. After the knock and announce, at least one shot was fired from inside the residence, through the front door. At least one round struck Special Agent D.R. in the forearm. No occupants exited the residence.

6. After Special Agent D.R. was shot, FBI Agents secured the scene and the FBI Special Weapons and Tactics ("SWAT") responded to the scene to assist with executing the search warrant and barricade of the residence's occupants. Shortly thereafter, a male, later identified as DERICK GARCIA; and a female, later identified as DENISE HERRERA; and two minors, exited the residence through the front door and were detained pending further investigation.

7. Your Affiant and Special Agent Nancy Stemo conducted an interview of HERRERA. HERRERA was advised of her Miranda Rights per an FD-395 form, waived her rights and agreed to speak

¹ D.R. is a full-time Federal Agent employed by the Federal Bureau of Investigation with the United States Department of Justice (DOJ) in Albuquerque, New Mexico.

with agents. HERRERA stated she was awake and in her bedroom when she heard loud banging on her door. GARCIA was in the bedroom with her. Her bedroom is located near the front door. GARCIA told her to run and hide. HERRERA fled towards the rear of the apartment and dialed 911 and informed them someone was trying to break into her apartment. Per HERRERA, she remained on the phone with 911 the entire time until she exited the apartment. HERRERA bought two handguns, a pistol and a revolver, approximately two weeks ago from a store off of Old Coors Blvd, Albuquerque, New Mexico. She described the pistol as purple. HERRERA stated she kept both firearms in her closet and locked with gun locks. The keys to the gun locks were kept in her bedroom, behind her nightstand. The firearms were not loaded and she did not have ammunition in the magazine of the purple pistol. The ammunition to the firearms were kept in a tote in her bedroom. She obtained the firearms because GARCIA told her she needed them for protection. HERRERA stated she was afraid of handguns because they are more difficult to control but was comfortable with rifles. She did not hear any shots being fired and denied being the shooter. She did not touch or use the firearms that day.

8. Your Affiant and Special Agent Stemo conducted an interview of Jane Doe 1,² one of the minors at the residence. Jane Doe 1 was read her Miranda Rights per an FD-395, waived her rights and agreed to speak with investigators. Jane Doe 1 stated she was asleep in her bedroom when she heard loud banging and HERRERA ran into her room and told them to hide under the bed. Jane Doe 1 heard two gunshots when HERRERA was in the room with her. She observed GARCIA with a silver revolver on that morning. GARCIA was in and out of the bedroom between the banging and when they exited the residence.

9. Jane Doe 2,³ the second minor at the residence, spoke with Your Affiant and Special Agent Stemo. Jane Doe 2 indicated she previously observed GARCIA with a firearm approximately one to two

² The full name of Jane Doe 1 is known to law enforcement, but not included her to protect the minor.

³ The full name of Jane Doe 2 is known to law enforcement, but not included her to protect the minor.

months ago. She heard loud banging and hid under the bed; however, could not see what was happening as she was facing the wall. She heard HERRERA on the phone with 911 while they were in the bedroom. She did not know if GARCIA was in the bedroom with them the entire time.

10. Special Agent Aaron Carp conducted an interview of GARCIA. GARCIA was read his Miranda Rights, waived his rights and agreed to speak with investigators. GARCIA stated HERRERA shot the pistol. He believed someone was trying to break into the residence. He denied owning a firearm and had seen HERRERA with a gun.

11. Investigators observed a hole through the front door of the residence indicative of a gunshot hole. An additional search warrant for the premises, seeking evidence of 18 U.S.C. § 111 – Assault of a Federal Officer and 18 U.S.C. § 922(g)(1) and 924: Felon in Possession of a Firearm, will be sought.

12. Special Agent D.R. is presently at the University of New Mexico Hospital (UNMH) undergoing treatment. I understand he suffered a gunshot wound to his left forearm.

PRIOR FELONY CONVICTIONS

13. GARCIA has one prior felony conviction out of Bernalillo county for, Receiving or Transferring a Stolen Motor Vehicle (CR-2019-00800). GARCIA received a sentence of 18 months incarceration, indicating he knew that he had a prior conviction for a felony offense that was punishable by imprisonment for a term exceeding one year.

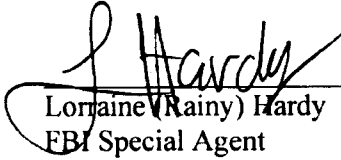
INTERSTATE NEXUS

14. I believe the firearm used to shoot Special Agent D.R. is presently inside the residence located at 2709 12th St., NW, Apt. 13, Albuquerque, New Mexico 87107. The firearm clearly functioned as it was utilized in the assault of Special Agent D.R. As such, I believe that weapon meets the federal definition of a firearm. I am aware that no firearms are currently manufactured within the State of New Mexico, therefore, it moved in or affected interstate commerce.

CONCLUSION

15. Based on the information contained herein, I believe that there is probable cause to charge GARCIA with 18 U.S.C. § 111 – Assault of a Federal Officer, 18 U.S.C. § 922(g)(1) – Felon in Possession of a Firearm, and 18 U.S.C. § 924(c)(1)(A)(iii) - Discharge of a Firearm During a Crime of Violence. This affidavit was reviewed by Supervisory Assistant United States Attorney Jack Burkhead.

Respectfully submitted,


Lorraine (Rainy) Hardy
FBI Special Agent

Electronically submitted and telephonically sworn to me on December 11, 2020.



The Honorable Karen B. Molzen
United States Magistrate Judge
District of New Mexico