

AFFIDAVIT

I, Christian Jardin, being duly sworn, depose and say:

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"). I am assigned to ATF's Providence office. I have been a Special Agent with ATF since 2001. Based on my training and experience as an ATF Special Agent, I am familiar with federal firearms and narcotics laws. As an ATF Special Agent, I have been involved, either as lead agent or as a member of an investigative team, in numerous investigations of firearms offenses and narcotics offenses.

2. This Affidavit is submitted in support of a criminal complaint charging Philip Debartolo (born in 1984) (hereinafter, "Debartolo") with the following:

- being a felon in possession of firearms, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2);
- possession of a firearm with an altered or obliterated serial number, in violation of 18 U.S.C. §§ 922(k) and 924(a)(1);
- possession of a sawed-off shotgun that was not registered in the National Firearms Registration and Transfer Record, in violation of 26 U.S.C. § 5861(d); and
- distribution and manufacture of marijuana, in violation of 21 § U.S.C. § 841(a)(1);

3. The facts contained in this affidavit come from my personal observations, my training and experience, and information obtained from other law enforcement agents and other persons. This affidavit does not set forth all of the information known to me or other law enforcement agents about this matter.

4. I note that based on his training and experience, Special Agent Wing Chau ("Chau"), from whom some of the information below was acquired, is familiar with the appearance and smell of marijuana and the appearance and smell of marijuana plants. Furthermore, based on his involvement in investigations of indoor marijuana manufacture or grow operations, Chau is familiar with the type of equipment commonly used to cultivate marijuana indoors.

INVESTIGATION

5. Early in August 2013, a confidential informant ("CI") advised ATF that Debartolo lived in a single-family home at 5 High Street in Scituate, Rhode Island (the "Residence"), was in possession of firearms, and sold marijuana. The CI has a criminal history and was assisting ATF in this investigation in exchange for payment. Information earlier provided by this CI in another investigation led to the recovery and seizure of a firearm. ATF has not found any of the information provided by the CI to be false or misleading.

6. I reviewed Debartolo's criminal history. In 2005, he was convicted by a Rhode Island state court for felony assault, drive-by shooting, discharge of a firearm, and carrying a pistol without a license. On the assault and drive-by shooting counts, he was sentenced to a 15-year term of incarceration, with 5 years to serve and the remainder suspended, and to a 10-year term of probation. On the remaining counts, he was sentenced to a 10-year term of incarceration, the entirety of which was suspended, and to a 10-year term of probation.

7. To further investigate, ATF asked the CI to arrange to purchase marijuana from Debartolo and introduce an ATF undercover agent to Debartolo. Chau was designated as the undercover agent. Described below are several marijuana purchases and three gun purchases, all from within the Residence. Also described below are very recent communications with Debartolo concerning another marijuana purchase and an exchange of guns.

August 2, 2013 - Marijuana Purchase

8. On August 2, 2013, ATF agents met with the CI, searched him for contraband, and found none. Agents provided the CI with money for the purchase of marijuana from Debartolo, and outfitted the CI with an audio transmitter, which was positioned so as to capture anything he said as well as anything said by people near him, but the audio feed from the transmitter was not recorded. Chau then drove the CI to the Residence, and the CI proceeded into the Residence.

9. Via the audio transmitter, agents heard discussion between the CI and another person, a male. A short time after the CI entered the Residence, he exited and returned directly

to Chau, who was waiting in a car near the foot of the Residence's driveway. The CI entered the car and handed Chau a clear plastic bag containing green material consistent in appearance with marijuana. Later fielding testing of the material confirmed the presence of marijuana. The total quantity of marijuana in the bag was approximately one ounce, or 28 grams.

10. When debriefed about the purchase, the CI said he met with Debartolo inside the Residence and purchased the bag of marijuana from him for \$225. The conversation between the CI and the male overheard via the audio transmitter was consistent with the CI's characterization. (After obtaining video and audio footage of Debartolo from subsequent transactions, agents recognized Debartolo's voice as the voice of the male.) Shortly thereafter, Special Agent Chau and the CI left the Residence and left the area with the marijuana purchased from Debartolo from inside the Residence.

11. During the course of the transaction, ATF agents who were watching the Residence saw two vehicles parked in the driveway: one a gray car with Rhode Island license plate number [REDACTED] and the other a silver car with Rhode Island license plate number [REDACTED]. Registration checks revealed that the first vehicle belonged to Debartolo,¹ and the second belonged to a "[REDACTED]" [REDACTED] vehicle registration listed the Residence, 5 High Street, as [REDACTED] address.

12. A check of Rhode Island Department of Corrections records indicated that Debartolo listed the Residence, 5 High Street, as his home address. Those records also indicate that while he was incarcerated, he was visited repeatedly by his girlfriend, "[REDACTED]"

¹ On the vehicle registration papers, Debartolo's address is listed as 109 Amore Lane Warwick, Rhode Island. That Amore Lane address is listed in the Department of Corrections records as a prior address, while 5 High Street is listed as his present address.

August 8, 2013 - Marijuana and Gun Purchase

13. On August 8, 2013, Chau and the CI drove to the Residence and spoke to Debartolo inside. Chau was outfitted with an audio and video recorder, and his interaction with Debartolo was recorded.

14. Debartolo took Chau and the CI to a bedroom on the first floor. [REDACTED] was present in the bedroom. Debartolo retrieved a revolver from a plastic bag in the bedroom. He handled the gun using a sock; he did not directly touch the gun. He explained that he did not want to leave any DNA on the gun because the authorities had obtained a sample of his DNA in 2010.

15. Inside the bedroom, Debartolo handed the CI a bag containing green material consistent in appearance with marijuana. Later fielding testing of the material confirmed the presence of marijuana.

16. Special Agent Chau provided Debartolo a total of \$400 for the gun, and the CI provided Debartolo \$225 for the marijuana.

17. During the course of the transactions, Debartolo told Chau that he was planning on obtaining additional guns, and specified that he was willing to trade some of his guns for other guns.

18. Shortly after the completion of the transactions, Chau and the CI left the Residence and left the area with the marijuana and revolver purchased from Debartolo from inside the Residence.

19. Later examination of the revolver revealed that it was a Colt .38 caliber revolver, and I know from my discussion with Special Agent Kevin McNamara and his analysis of the revolver, that this revolver was manufactured outside Rhode Island. Special Agent McNamara has been trained in the analysis of the origins of firearms and has access to manufacturer records and other information that reveals where guns are manufactured.

August 19, 2013 – Marijuana Purchase and Discussion about Guns

20. On August 18, 2013, Chau called telephone number (401) 649-9538. The CI had provided this number and told Chau that it was Debartolo's number. When the call was answered, Chau recognized Debartolo's voice as the voice of the person who answered. Chau arranged to buy additional marijuana from the Residence the next day. Debartolo said that he might be out but would leave the marijuana with someone else at the Residence. This telephone call was recorded.

21. On August 19, 2013, Chau drove to the Residence and spoke to Debartolo inside. Chau was outfitted with an audio and video recorder, and his interaction with Debartolo was recorded.

22. Chau followed Debartolo into a bedroom. There Debartolo retrieved a box that contained multiple clear plastic bags. Each of the bags contained material consistent in appearance with marijuana. Debartolo used a digital scale to weigh out approximately one ounce of green material, and gave that material to Chau in a clear plastic bag. Chau gave Debartolo \$200. Later field testing of the purchased material was inconclusive, but subsequent laboratory testing indicated that the material contained marijuana.² In exchange, Chau gave Debartolo \$200.

23. During the course of their interaction, Debartolo and Chau discussed both marijuana and guns. Debartolo showed Chau two larger packages of marijuana and told Chau that those were for someone else. Debartolo said that it was difficult to obtain guns in Rhode Island and that he got guns from Virginia. He specified that he has obtained 10 guns from Virginia and had sold some of them but had the remainder. He described some of the guns he still had: a .40 caliber handgun with a laser sight and with three ammunition magazines and a

² I know based on my training and experience, that field tests are susceptible to occasional false negatives and are general used as preliminary tests, while laboratory analysis provides the level of certainty necessary for trial.

Smith and Wesson Sigma pistol with a 30-round magazine. Debartolo said that he was interested in obtaining a Glock pistol.

24. I know based on discussions with Special Agent McNamara that Sigma pistols are manufactured outside Rhode Island.

25. Shortly after the close of the transaction and conversation, Chau left the Residence and left the area with the marijuana purchased from Debartolo from inside the Residence.

August 28, 2013 - Marijuana Purchase and Discussion about Guns

26. On August 28, 2013, Special Agent Chau and the CI drove to the Residence and spoke to [REDACTED] inside. Chau was outfitted with an audio and video recorder, and the interaction with [REDACTED] was recorded.

27. The CI told [REDACTED] that he was there to purchase marijuana from Debartolo, and she told him that Debartolo was not at home. From a bedroom nightstand, [REDACTED] retrieved a clear plastic bag containing a material consistent in appearance with marijuana. Later field testing of the material indicated the presence of marijuana. Special Agent Chau gave [REDACTED] \$225, and [REDACTED] handed over the bag of marijuana.

28. During the course of the transaction, Chau, the CI, and [REDACTED] discussed guns. The CI warned [REDACTED] that the "Feds" might be tracking a gun Debartolo sold to another and that was used in a murder. The CI inquired whether Debartolo cleaned his guns properly. [REDACTED] said that she thought Debartolo must have cleaned that gun because he cleans all of his guns.

29. Shortly after the close of the transaction and conversation, Chau and the CI left the Residence and the area with the marijuana purchased from [REDACTED] from inside the Residence.

September 6, 2013 - Marijuana Purchase and Discussion about Guns

30. On September 4, 2013, Chau received a call from telephone number (401) 649-9538, the number he had previously called to reach Debartolo. Chau recognized Debartolo's

voice as the voice of the caller. Chau asked to purchase more marijuana. Debartolo said he had just harvested some marijuana, but it was not yet dry. He said it would be dry by Thursday or Friday.

31. On September 5, 2013, Chau exchanged text messages with (401) 649-9538, Debartolo's cellular telephone number. Chau inquired whether the marijuana was dry. The response from Debartolo's number was that the marijuana was still damp.

32. On Friday, September 6, 2013, Chau received a text message from (401) 649-9538 indicating that the texter, presumably Debartolo, was on his way home from work.

33. After receiving the text message, Chau and the CI drove to the Residence and spoke to Debartolo inside. Chau was outfitted with an audio and video recorder, and his interaction with Debartolo was recorded.

34. Chau followed Debartolo to a bedroom. [REDACTED] was in the bedroom. Debartolo retrieved a glass container from a closet. Inside the container was material consistent in appearance with marijuana. Inside the closet, Chau saw plant matter that was consistent with marijuana, and it appeared to be positioned for drying. Debartolo took some of the material from the glass container and placed it on a digital scale. Chau gave Debartolo \$225. Debartolo asked Special Agent Chau to retrieve a plastic bag from the kitchen, and Debartolo placed the measured quantity of material in the bag and gave it to Special Agent Chau. Later field testing and of the material in the plastic bag indicated the presence of marijuana.

35. Chau and Debartolo spoke about guns after the marijuana transaction. Debartolo said that he would work on setting up a gun deal for Chau and the CI. Debartolo mentioned, as he had in a previous discussion, that he had various guns, including one with a laser sight, and said that he planned to get a Glock pistol. Debartolo repeated that he was willing to trade firearms, namely that he would part with one of his guns if he got a gun of a type he wanted in return.

36. During the course of conversation, Debartolo mentioned that if he got caught with guns he would go to jail "forever," and that he was on probation for a firearm and described his involvement in a shooting when he was a juvenile.

37. Shortly after the close of the transaction and conversation, Chau and the CI left the Residence and left the area with the marijuana purchased from Debartolo from inside the Residence.

September 20, 2013 - Marijuana and Gun Purchase

38. On September 20, 2013, Chau and the CI drove to the Residence and spoke to Debartolo inside. Chau was outfitted with an audio and video recorder, and his interaction with Debartolo was recorded.

39. Chau and the CI followed Debartolo to a bedroom. [REDACTED] was in the bedroom. Debartolo retrieved one latex glove and asked [REDACTED] for another one. He explained that he need the gloves to handle the gun he was going to be selling to Chau, and further explained that he promised the source of the gun that he would clean it before selling it.

40. After getting a second glove, Debartolo led Chau and the CI to the basement. Debartolo showed Chau an area of the basement that contained numerous mature plants consistent in appearance and smell with marijuana plants. There were lights above the plants. Chau recognized, based on his experience and training, that the basement contained a marijuana growing facility.

41. Also in the basement, Debartolo showed Chau a mechanical drill and explained that it was used to obliterate serial numbers from guns. From elsewhere in the basement, Debartolo retrieved a rifle and gun oil and then proceeded to clean the rifle with the oil. Debartolo explained that gun oil would remove any fingerprints from the gun. Chau paid Debartolo \$300, and Debartolo gave him the rifle. Later examination revealed that the rifle was a .22 caliber Winchester Model 74, and Special Agent McNamara advised that such rifles are manufactured outside Rhode Island.

42. After the gun transaction, Chau, the CI, and Debartolo returned to the ground floor of the Residence and went to a bedroom. The CI gave Debartolo \$225, and Debartolo gave the CI a bag containing material consistent in appearance and smell with marijuana. Later field testing of the material was inconclusive, and formal chemical analysis by a forensics laboratory has not yet been completed. Over the course of the marijuana transaction, Debartolo said that he makes approximately \$3,000 to \$4,000 per month selling marijuana.

43. Shortly after the close of the transaction and conversation, Chau and the CI left the Residence and left the area with the rifle and marijuana purchased from Debartolo from inside the Residence.

October 15, 2013 – Gun Purchase

44. On October 15, 2013, Chau and the CI drove to the Residence and spoke to Debartolo inside. Chau was outfitted with an audio and video recorder, and his interaction with Debartolo was recorded.

45. Chau and the CI followed Debartolo to a bedroom. [REDACTED] was present in the bedroom. Debartolo retrieved a blue duffle bag and removed a sawed-off shotgun from the bag. He unloaded the shotgun and wiped it down with a couple of ski masks.

46. Debartolo told Chau to take the shotgun from the house inside the duffle bag and later to discard the duffle and ski masks. Debartolo explained that the shotgun had previously been used in a crime. Debartolo further explained that he was willing to sell it at the agreed upon price because it had previously been used in a crime.

47. Chau gave Debartolo \$300, and Debartolo handed over the gun, duffle bag, and ski masks. Later examination revealed that the sawed-off shotgun was a 12 gauge Winchester Model 1200, and Special Agent McNamara advised that such shotguns are manufactured outside Rhode Island. Also, a check of the National Firearms Registration and Transfer Record indicated no entry for this sawed-off shotgun, and therefore, it was not registered to Debartolo in the Record.

48. My examination of the shotgun revealed that the end of the barrel has markings consistent with the barrel having been sawed-off. Furthermore, in the recording of Chau's interaction with Debartolo, he characterizes the shotgun as a "sawed-off" shotgun.

49. Based on my training and experience, ski masks are commonly used by criminals to hide their identities while they commit crimes.

50. Shortly after the close of the transaction and conversation, Chau and the CI left the Residence and area with the saw-off shotgun purchased from Debartolo inside the Residence.

December 30, 2013, January 8, 2014 & January 9, 2014 – Discussion about Additional Marijuana and Gun Transactions

51. On December 30, 2013, Chau sent text messages to (401) 649-9538, Debartolo's cellular telephone number. Chau asked whether Debartolo had marijuana for sale, using partially coded language. Chau wrote, "Whazzzzz upppp, any good bud bro[.]" Based on training and experience and discussion with Chau, I know that the most potent portion of the marijuana plant tends to be the bud, namely the flowering portion of the plant and that marijuana users and traffickers tend to use the term "bud" to refer to marijuana.

52. Shortly after sending the text message, Chau received the following response from Debartolo's cellular telephone number: "Indeed. I'm working I'll hit y up later or hit me up at 6...."

53. On January 8, 2014, Chau again texted messages to (401) 649-9538, Debartolo's cellular telephone number. The relevant texts and responses from Debartolo's cellular telephone number are set forth below:

Chau Sorry bro that I wasn't able to go by ur house to pick up some bud the other night. u around Friday

Response I should be

Chau Cool which one u have

Chau blueberry or pineapple

Response Different kinds but they are good

Chau Cool still 225 for oz

Response Always

Chau Yea Yea, hey bro one of my other boy hit me up he has something to show me one those metal stuff. u still interest in trade

Response Yeah however u want I'll make trades that's worth it

Chau Cool ill send u a pic when I see it

Response K

54. This exchange continued on January 9, 2014. Around 1pm, as discussed on the January 8, Chau sent a photograph to (401) 649-9538, Debartolo's cellular telephone number. The photograph was of a TEC-9, a sub-machine gun style semi-automatic pistol. The following text message was received by Chau from Debartolo's cellular number in response:

Response U want the 40 with the laser and 2 clips for it

Chau Yup, can u send a pic so I can show my boy

The response by Debartolo's cellular number was a picture of semi-automatic pistol. A text message from Debartolo's cellular number followed:

Response I'm tryna do this asap

Another picture of a semi-automatic pistol followed, and it appeared to be the same gun previous pictured from a different angle. Additional text messages followed from Debartolo's cellular number:

Response When u coming and I gct buf

Response Bud

Response If you don't want that I got a 9 with 2.17 shot clips

Chau Cool send me a pic and I'll see which one he wants

The response by Debartolo's cellular number was three pictures of another pistol, seemingly the same pistol from different angles. Chau ended the discussion with the following: "Cool got it, I'll hit u up what my boy say[.]"

55. Based on my training and experience and discussion with Chau, I know that "blueberry" and "pineapple" are varieties of marijuana. I also know from the prior transactions, that Debartolo tended to sell an ounce of marijuana for around \$225. Based

discussions with Chau, I understand his reference to "metal stuff" to refer to a gun. Based on context, I believe that "metal stuff" was understood by the responder to refer to a gun. Debartolo repeatedly told Chau that he was willing to trade his guns for other guns, and his response to Chau's query as to whether he would be interested in trading for "metal stuff" was to indicate that he was willing to make a trade. Given all this and Chau's multiple interactions with Debartolo as described above and the actual text exchange itself, I understand the above text message exchange to indicate that Debartolo has marijuana that he is willing to sell and that he presently possesses at least two firearms.

January 15, 2014 Execution of Search Warrant

56. On Monday, January 13, 2014, ATF obtained a warrant to search the Residence, and ATF executed the warrant in the early morning on January 15, 2014.

57. In a storage room on the second floor of the Residence, agents found nine guns and multiple boxes of ammunition under the floorboards. All but one of the guns were loaded. Among the guns were the two guns that were in the photographs that Chau received from Debartolo's cellular telephone. In those photographs, the background depicted was consistent with portions of the second floor storage room in which the nine guns were found. Also among the nine guns were two Glock pistols and a .40 caliber gun with a laser sight, all types of guns Debartolo had referred in earlier conversation with Chau.

58. The serial number on one of the guns was obliterated, and the obliteration was apparent on the frame of the gun.

59. Among the nine guns were guns manufactured by Smith and Wesson, Glock, Ruger, Springfield Armory, Taurus, and Master Peace Arms. Special Agent McNamara advised that these manufacturers manufacture guns outside Rhode Island.

60. Special agents with the Drug Enforcement Administration ("DEA"), all of whom have training and experience in the identification of marijuana plants, examined the basement area. DEA agents found that the odor in the basement was consistent with the odor of marijuana plants. The DEA agents also found 31 plants consistent in appearance with

marijuana plants. In the course of collecting these plants, the DEA agents examined each plant to determine whether it had roots. Each of the 31 plants had roots. Agents additionally found a number of immature plants or seedlings, all of which were consistent in appearance with immature marijuana plants or seedlings.

PROBABLE CAUSE

61. As detailed above, on three separate occasions, Special Agent Chau purchased firearms from Debartolo: first a .38 caliber Colt revolver; second a .22 caliber Winchester Model 74 rifle, and third a sawed-off 12 gauge Winchester Model 1200 shotgun. Accordingly, there is probable cause to believe that Debartolo, on three separate instances, possessed a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

62. As detailed above, nine additional firearms were found in a storage room in the Residence, namely Debartolo's residence, and Special Agent Chau received photographs of two of those firearms during the course of exchanging text messages with Debartolo's cellular telephone. Those text messages were exchanged in the course of negotiating a trade for those two firearms. Also, some of the firearms found in the storage room were consistent with firearms Debartolo had described to Special Agent Chau over the course of this investigation. Accordingly, there is probable cause to believe that Debartolo possessed all nine of those firearms, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

63. As detailed above, the serial number on one of the firearms found among the nine firearms was obliterated, and Debartolo showed Special Agent Chau a drill which he, Debartolo, described as equipment he used to obliterate serial numbers on guns. Accordingly, there is probable cause to believe that Debartolo possessed a firearm with an obliterated serial number, in violation of 18 U.S.C. § 922(k).

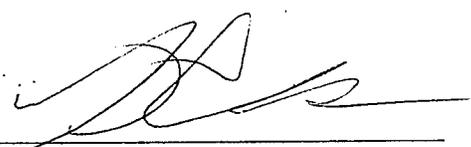
64. As detailed above, one of the firearms Debartolo sold to Special Agent Chau was a sawed-off shotgun that Debartolo characterized as a "sawed-off" and that was not registered to Debartolo in the National Firearms Registration and Transfer Record. Accordingly, there is

probable cause to believe that Debartolo possessed a firearms that was not registered to him in the Record, in violation of 26 U.S.C. § 5861(d).

65. As detailed above, Debartolo sold marijuana on multiple occasions, in violation of 21 U.S.C. § 841(a)(1). Also, as detailed above, drying marijuana plant matter was observed in a bedroom of the Residence during the course of one of the purchases of marijuana from the Residence, Debartolo told Chau that he made money selling marijuana, and marijuana plants and seedlings were found in the basement of the Residence. Accordingly, there is probable cause to believe that Debartolo was manufacturing marijuana, in violation of 21 U.S.C. § 841(a)(1).


CHRISTIAN JARDIN
ATF Special Agent

Subscribed and sworn to before
me this 15th day of January, 2014,
at Providence, Rhode Island


LINCOLN D. ALMOND
United States Magistrate Judge