

UNITED STATES DISTRICT COURT
for the
Northern District of California

FILED

Aug 22 2023

Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

United States of America
v.
Ray Gilbert

Case No. 4:23-mj-71263-MAG

Defendant(s)

CRIMINAL COMPLAINT FILED UNDER SEAL

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 8/16/2023 in the county of Alameda in the
Northern District of California, the defendant(s) violated:

Code Section
18 U.S.C. § 922(g)(1)

Offense Description
Felon in possession of firearm

Maximum Penalties: 15 years' imprisonment, \$250,000 fine, 3 years
supervised release, \$100 special assessment, forfeiture

This criminal complaint is based on these facts:
See attached affidavit of ATF Special Agent Christopher Bailey

Continued on the attached sheet.

Approved as to form: /s/ Leif Dautch
Assistant U.S. Attorney

/s/ Christopher Bailey

Complainant's signature

Christopher Bailey, ATF Special Agent

Printed name and title

Sworn to before me by telephone.

Date: 08/22/2023

[Handwritten signature]

Judge's signature

City and state: Oakland, California

Hon. Donna M. Ryu, Chief Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR COMPLAINT

I, Christopher Bailey, Special Agent (“SA”) with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), being duly sworn, state:

INTRODUCTION

1. I make this affidavit in support of an application under Rule 4 of the Federal Rules of Criminal Procedure for a criminal complaint and arrest warrant for Ray GILBERT for being a felon in possession of a firearm, in violation of Title 18, United States Code, Section 922(g)(1) (hereafter, the “Target Offense”), on or about August 16, 2023, in the Northern District of California.

SOURCES OF INFORMATION

2. This affidavit is submitted for the limited purpose of securing a criminal complaint and arrest warrant. I have not included every fact known to me concerning this investigation. Instead, I have set forth only the facts necessary to establish probable cause that violations of the federal law identified above have occurred.

3. I have based my statements in this affidavit on my training and experience; personal knowledge of the facts and circumstances obtained through my participation in this investigation; information provided by other law enforcement officers; information provided by reports prepared by other law enforcement officers; and information provided by records and databases, including regarding GILBERT’s criminal history. Where I refer to conversations and events, I often refer to them in substance and in relevant part rather than in their entirety or verbatim, unless otherwise noted. This affidavit also reflects my current understanding of facts relating to this investigation, but my understanding may change in the future as the investigation proceeds.

AFFIANT BACKGROUND

4. I have been employed as a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) since February 2009. I am presently assigned to the ATF

Oakland Field Office in Oakland, California. I am a law enforcement officer of the United States within the meaning of Title 18, United States Code, Section 2510(7). I am a graduate of the Criminal Investigator Training Program at the Federal Law Enforcement Training Center and Special Agent Basic Training at the ATF National Academy. The training that I received at the academy included formalized instruction in, among other things: firearms, drugs, and violent crime-related investigations, familiarization with United States firearms laws, financial investigations and money laundering, identification and seizure of drug and firearms tracking related assets, physical and electronic surveillance, weapon qualification and tactics, operation and use of confidential sources, and undercover operations.

5. Prior to working as an ATF Special Agent, I worked as an industry operations investigator for the ATF and investigated federal firearm and explosive licensees, including manufacturers, importers, and dealers of firearms, for compliance with the Gun Control Act and the Code of Federal Regulations.

6. As an ATF Special Agent, I have conducted and participated in both state and Federal investigations involving the illegal possession and trafficking of firearms. I have investigated and assisted in the prosecution of criminal street gangs engaged in illegal narcotics and firearms trafficking. During these investigations, I have participated in and/or served as the primary case agent in cases involving various types of investigative techniques, including the use of electronic surveillance, assistance from undercover agents and informants, and the controlled purchases of firearms and narcotics from suspects. I have also participated in physical surveillance operations and the execution of state and federal arrest warrants and search warrants, resulting in state and federal prosecution of defendants.

APPLICABLE STATUTES

7. Title 18, United States Code, Section 922(g)(1) provides: “It shall be unlawful for any person . . . who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition

which has been shipped or transported in interstate or foreign commerce.”

8. The elements of the Target Offense are as follows: (1) defendant knowingly possessed a firearm; (2) the firearm had been shipped or transported from one state to another, or between a foreign nation and the United States and/or otherwise affected interstate commerce; (3) at the time defendant possessed the firearm, defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year; and (4) at the time defendant possessed the firearm, defendant knew that he/she had been convicted of a crime punishable by imprisonment for a term exceeding one year.

FACTS SUPPORTING PROBABLE CAUSE

A. Overview of the Investigation

9. The ATF, Southern Alameda County Major Crimes Task Force (SACMCTF), and the Oakland Police Department (OPD) have been investigating GILBERT for multiple crimes to include firearms possession, robbery, and evading law enforcement. During this time, GILBERT was observed by law enforcement posting photographs and videos to his Instagram account (“stainshiit_3k0”) of himself in possession of various firearms.

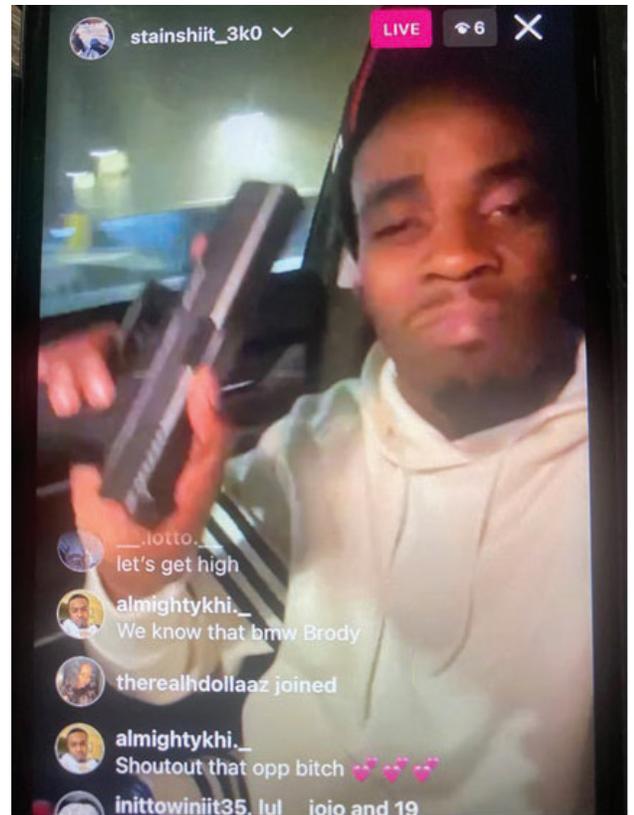
B. Instagram Posts

10. On or about June 13, 2023, GILBERT—at the very least an associate of the CASE criminal street gang in Oakland, if not a validated member—posted the following photograph of himself exhibiting disrespectful gang signs towards a rival gang of CASE. Inside his front sweatshirt, the outline of what appears to be a full-size Glock type pistol can be observed.



11. On or about August 1, 2023, GILBERT posted an Instagram “Live” video to his account, which showed him holding what appears to be a full-size Glock type pistol. A still photograph from that video is at right.

12. On or about August 2, 2023, GILBERT posted the below photograph of himself with what appears to be the pistol grip and magazine from a semi-automatic pistol sticking out of his front pants pocket.



C. Search Warrant at GILBERT's Residence on August 16, 2023

13. On August 11, 2023, the Honorable Donna M. Ryu authorized a federal search warrant (4:23-mj-71216-DMR) for GILBERT's residence located at 2364 East 16th Street, Oakland, California 94601, which is in the Northern District of California.

14. On August 16, 2023, law enforcement conducted the search warrant at GILBERT's residence. Following a "knock and notice" of police presence at the front door of the upstairs residence, perimeter units observed a male, later identified as J.D., come to the back door of the upstairs residence to flee before returning inside and being detained by agents. During this time, agents forcibly breached the front door to the upstairs residence.

15. When agents entered the upstairs residence, they found that it contained three bedrooms, and they identified the inhabitants of each bedroom. The first bedroom contained J.D.'s belongings, including his cellular phone on the bed. J.D. also provided me with the passcode to a small safe inside the first bedroom, which I used to open and search it without evidence recovered. Based on my training and experience, in addition to these facts, I believe that the first bedroom belonged to J.D.

16. Immediately after entering the residence, agents encountered F.B. and J.R. exiting the second bedroom. Both individuals advised agents that the second bedroom belonged to them, and agents observed their belongings inside the bedroom. A firearm and suspected methamphetamine were recovered inside a purse with F.B.'s California driver's license. F.B. was later arrested for violations of California law. Based on my training and experience, in addition to these facts, I believe that the second bedroom belonged to F.B. and J.R.

17. As agents were encountering F.B. and J.R., agents also observed GILBERT and J.D. at the far side of the kitchen. This area is immediately adjacent to the third bedroom, two bathrooms, and the back door where perimeter units observed J.D. trying to leave the residence. Based on the observations by agents inside the residence and perimeter units at the back door,

GILBERT could only have exited the third bedroom or one of the two bathrooms next to it.¹

18. A search of the third bedroom revealed a Glock model 22 .40 caliber pistol bearing serial number 1ELC671US loaded with 18 rounds of .40 S&W caliber ammunition inside a 22-round magazine. I noted that the firearm was found underneath the bed with no items between it and the outer, open, side of the bed. Based on my training and experience, the firearm was in a location consistent with having been tossed quickly underneath upon law enforcement's arrival. I know based on my training and experience, that those who hide firearms in bedrooms usually do so inside boxes, bags, or otherwise concealed. A firearm not contained inside any type of concealment, box, bag, or other container would be expected to be found in a location more readily accessible. I believe that during the knock and notice by agents at the front door, GILBERT tossed the firearm underneath his bed, before exiting the room and being detained by agents.

19. At right is a photograph of the firearm's location underneath the bed, after the mattress had been removed by agents to ensure no one was hiding underneath. As is depicted in the photograph, there is a clear open area by which an individual could have tossed the firearm underneath the bed where it eventually came to rest.



¹ J.D. told investigators that when he was awoken by police knocking at the door, that he went to the back door and observed GILBERT exit the bathroom.

20. Further search of the third bedroom revealed indicia in GILBERT's name, including Alameda County Probation paperwork in GILBERT's name, as well as several distinct clothing items which GILBERT has worn in photographs and/or videos posted to his Instagram account.

21. Below at left and center are two photographs of a pair of shoes believed to belong to GILBERT found in the third bedroom. The third photograph is a photograph posted to GILBERT's Instagram account on or about June 13, 2023, where GILBERT is seen wearing the same shoes and carrying a firearm of similar size and shape as that seized from his bedroom.



22. Below at left is a photograph of a hat and shoes believed to belong to GILBERT and found in the third bedroom on a plastic shelf at the foot of the bed the firearm was found underneath. This hat and shoes match those worn by GILBERT in the second photograph below at right, posted to GILBERT's Instagram account on or about August 12, 2023.

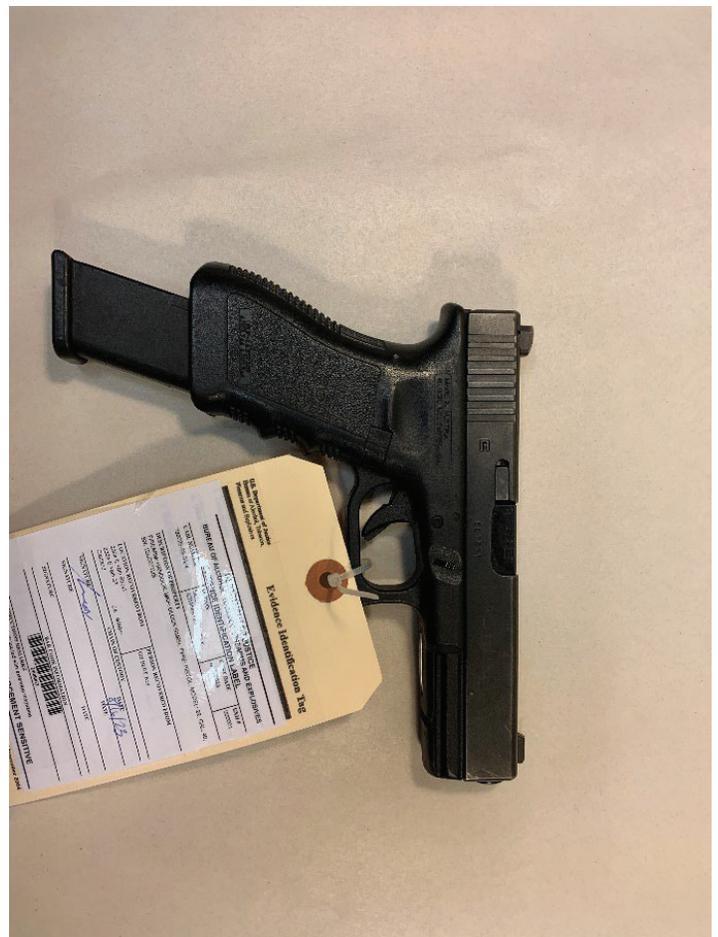


23. Below is a photograph of a blue jacket with a unique set of “+” symbols on the back. This jacket matches the second photograph below showing GILBERT wearing the same jacket, which was posted to GILBERT’s Instagram account on or about August 4, 2023.



24. The only indicia found for any other individual inside the third bedroom was all located inside a single backpack containing belongings of K.C., one of GILBERT's close associates.

25. I also compared the recovered Glock 22 pistol to photographs of firearms posted by GILBERT to his Instagram account. The following still photograph was taken from a video posted to GILBERT's Instagram account approximately 15 weeks prior to the date I viewed it (August 18, 2023). The video depicts who I believe to be GILBERT inside his residence with a full-size Glock pistol with a high-capacity magazine protruding from the magazine well. This appears to be the same firearm recovered from GILBERT's bedroom with a 22-round magazine.



26. It should be noted that pistol magazines and various calibers of ammunition were found inside the cupboards/drawers of the same kitchen shown in the photograph above.

27. I also compared the firearm recovered to the still photograph below at left, which is taken from an Instagram Live video posted to GILBERT's Instagram account on or about August 1, 2023. While I cannot see the entire magazine in the still photograph, it does appear to be a full-size Glock pistol identical to the one recovered in his bedroom.



28. I also compared a still photograph provided to me by Special Agent Balady, which was taken from an Instagram Live video posted on or around August 10, 2023 by GILBERT to his account. In the photograph below at left, I observe GILBERT holding three semi-automatic pistols. When compared to the firearm recovered in GILBERT's bedroom, it appears that the firearm on the right is identical to the recovered firearm.



29. I am also aware that two firearms were recovered from a vehicle that GILBERT and K.C. were seen fleeing in Oakland on or about August 2, 2023.

30. All three other occupants of the residence searched on August 16, 2023 identified bedroom one and two as belonging to them. When asked if GILBERT resided in the third bedroom, J.D. told investigators that he did not know even though J.D. had been staying at the residence for two to three weeks. J.D. did say that he saw GILBERT coming out of the third bedroom after police officers announced their presence. Based on my training and experience, I believe that J.D. knew a firearm was inside GILBERT's room and was trying to protect him by declining to tell law enforcement that the third bedroom belonged to GILBERT.

31. GILBERT was arrested for violation of his PRCS terms. A post-arrest interview was conducted at the ATF Oakland Field Office. GILBERT was advised of his Miranda rights and agreed to speak with investigators. When asked about the third bedroom and his clothes being stored there, GILBERT stated that everyone wears the clothes in there. When asked about

the firearm recovered inside the bedroom, GILBERT requested an attorney.

D. Interstate Nexus of Firearm and Ammunition

32. Based on my training and experience, I know that the Glock model 22 firearm seized from GILBERT's bedroom on August 16, 2023, was not manufactured in the state of California. For this reason, the firearm must have traveled in interstate and/or foreign commerce prior to GILBERT's possession.

E. GILBERT's Criminal History

33. Prior to August 16, 2023, GILBERT had been convicted of a felony offense punishable by imprisonment for a term exceeding one year.

a. On or about July 27, 2022, GILBERT received a sentence of 16 months in Delano State Correctional Facility for a felony offense. Although GILBERT's rap sheet does not specify what the felony offense was, probation records obtained through Alameda County show that GILBERT was released on Post Release Community Supervision (PRCS) on February 3, 2023, based on convictions for violating California Vehicle Code 2800.2, Felony Reckless Evading, and California Penal Code 29820(b), Convicted Person in Possession of a Firearm Under 30. Therefore, I believe his underlying felony convictions were for reckless evading and unlawful firearm possession.

34. At the time of GILBERT's arrest by ATF and the recovery of the firearm on August 16, 2023, GILBERT was still on active PRCS. PRCS is a process in the state of California by which an offender can be released to supervision by a county Probation Office instead of paroled to the California Department of Corrections and Rehabilitation (CDCR).

35. Based on this information, I believe that GILBERT knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year at the time that he possessed the firearm.

CONCLUSION

36. On the basis of my training and experience, my participation in this investigation, and the information summarized above, there is probable cause to believe that on August 16, 2023, in the Northern District of California, GILBERT committed the crime of felon in possession of a firearm, in violation of Title 18, United States Code, Section 922(g)(1).

/s/ Christopher Bailey

Christopher Bailey
Special Agent,
Bureau of Alcohol, Tobacco, Firearms and
Explosives

Sworn to before me over the telephone and signed by me pursuant to Fed.R.Crim.P. 4.1 and 4(d) on this 22 day of August 2023.



HONORABLE DONNA M. RYU
Chief Magistrate Judge