

UNITED STATES DISTRICT COURT
for the
Northern District of California

United States of America
v.

KEVIN VIDAL,
aka "Killa Kev"

Case No.

FILED UNDER SEAL

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 July 23, 2019 in the county of Contra Costa in the
Northern District of California, the defendant(s) violated:

Code Section

26 U.S.C. § 5861(d)

Offense Description

Possession of an Unregistered Firearm

Maximum Penalties: 10 years' imprisonment; 3 years
supervised release; \$10,000 fine; \$100 special
assessment; forfeiture

This criminal complaint is based on these facts:

Attached Affidavit of Bureau of Alcohol, Tobacco, Firearms & Explosives Special Agent Richard P. Timbang

Continued on the attached sheet.

Approved As To Form:

/s/ Samantha Schott Bennett

AUSAs SAMANTHA SCHOTT
BENNETT and JONATHAN U. LEE

/s/ Richard P. Timbang

Complainant's signature

Richard P. Timbang, Special Agent, ATF

Printed name and title

Sworn to before me by telephone.

Date: Sept. 8, 2020

[Handwritten signature]

Judge's signature

City and state: Oakland, California

Hon. Donna M. Ryu, U.S. Magistrate Judge

Printed name and title

1 **AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT**

2 I, Richard P. Timbang, a Special Agent with the United States Bureau of Alcohol, Tobacco,
3 Firearms and Explosives, being duly sworn, state:

4 **I. INTRODUCTION**

5 1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives
6 ("ATF") and have been so employed since June 2004. I am presently assigned to the ATF Oakland Field
7 Office in Oakland, California. As a Special Agent with ATF, my responsibilities include conducting
8 criminal investigations concerning alleged violations of Federal laws that encompass alcohol/tobacco
9 diversion, arson, firearms, and explosive investigations as well as alleged violations of Federal narcotic
10 laws. I am a graduate of the Federal Law Enforcement Training Center's Criminal Investigator Training
11 Program, and the ATF National Academy's Special Agent Basic Training, a combined twenty-three
12 week regimen covering subject matters including, among other things, firearm identification, trafficking,
13 and interdiction; confidential source recruitment/management and undercover techniques; and asset
14 identification, seizure, and forfeiture. Since graduating from the Academy, I have attended seminars and
15 courses during which I received further training in the laws and investigative techniques relating to pen
16 registers/trap and trace; phone toll analysis; the forensic extraction and analysis of digital evidence; Title
17 III; electronic and physical surveillance; advance firearms trafficking; interstate nexus determination of
18 firearms and ammunition; cyber and fraud crimes; financial investigations; asset forfeiture; and narcotics
19 investigations.

20 2. As an ATF Special Agent, I have been involved in the execution of numerous state and
21 federal firearm-and narcotics-related search and arrest warrants. I have conducted multiple
22 investigations of illicit drug and firearms trafficking as well as the illegal possession of firearms. These
23 investigations have resulted in the arrests of multiple individuals and the seizure of various types of
24 evidence.

25 3. I am an investigative or law enforcement officer of the United States, within the meaning
26 of Title 18 United States Code, Section 2510(7), and am empowered by law to conduct investigations of
27

1 and to make arrests for offenses enumerated in 18 U.S.C. § 2516.

2 4. I submit this Affidavit in support of a Criminal Complaint charging Kevin VIDAL, aka
3 “Killa Kev,” with Possession of an Unregistered NFA Firearm, in violation of 26 U.S.C. § 5861(d).

4 5. Because this affidavit is being submitted for the limited purpose of securing a criminal
5 complaint and an arrest warrant for VIDAL, I have not included every fact known to me concerning this
6 investigation. I have set forth only those facts that I believe are necessary to establish probable cause to
7 believe that on or about July 23, 2019, in the Northern District of California, VIDAL possessed a
8 machinegun, namely, a Glock conversion switch, which was not registered to him in the National
9 Firearms Registration and Transfer Record, in violation of 26 U.S.C. § 5861(d).

10 6. Where statements made by other individuals are referenced in this Affidavit, such
11 statements are described in sum and substance and in relevant parts only. Similarly, where information
12 contained in reports and other documents or records are referenced in this Affidavit, such information is
13 also described in sum and substance and in relevant part only. Where slang is used, I have relied on my
14 training, experience, and involvement in the investigation to explain the meaning in parentheses
15 following use of the term or phrase. I have based the information included in this Affidavit on sources
16 that I believe to be reliable, including, but not limited to, my review of law enforcement reports,
17 surreptitiously recorded calls/meetings with investigative targets, law enforcement database research,
18 discussions with other agents/officers, and my direct participation in the investigation. Where
19 information is based on a Confidential Informant (CI), the reliability of the CI is addressed separately.
20 Further, my understanding of the significance of certain facts and circumstances may evolve or change
21 as new information is discovered in the course of the investigation.

22 **II. APPLICABLE LAW**

23 7. Under 26 U.S.C. § 5861(d), it is unlawful for anyone to receive or possess a firearm
24 which is not registered to him in the National Firearms Registration and Transfer Record.

25 8. Under 26 U.S.C. § 5845(a), the definition of “firearm” includes a machinegun.

1 9. Under 26 U.S.C. § 5845(b), a “machinegun” is any weapon which shoots, is designed to
2 shoot, or can be readily restored to shoot, automatically more than one shot. The term also includes the
3 frame or receiver of any such weapon, any part designed and intended solely and exclusively, or
4 combination of parts designed and intended, for use in converting a weapon into a machinegun, and any
5 combination of parts from which a machinegun can be assembled if such parts are in the possession or
6 under the control of a person.

7 **III. FACTS ESTABLISHING PROBABLE CAUSE**

8 **A. An ATF Confidential Source Negotiates the Purchase of a Firearm Purchase with** 9 **an Identified Individual (Individual-1)**

10 10. Between July 18, 2019, and July 23, 2019, during a long-term investigation, an ATF
11 Confidential Informant (hereinafter, “CI-1”)¹ had Snapchat contacts and phone contacts with an
12 identified Hispanic Male referred to herein as Individual-1. Individual-1 sent Snapchat pictures of an
13 AR-style firearm and an AK-style firearm for sale to CI-1. CI-1 responded asking for the price for both
14 firearms.

15 11. On or about July 22, 2019, Individual-1 explained that they only had one firearm left,
16 which CI-1 understood to be one of the AR and AK style firearms; CI-1 asked for the sale price and
17 Individual-1 responded it cost \$2,000. Individual-1 also explained he had a Glock 17 with two barrels
18 and a “fully switch” (i.e. a part, or combination of parts, designed and intended for use in converting a
19

20 ¹ CI-1 has worked for CPD, as well as another police department. In exchange, CI-1 has
21 received pecuniary payments for his/her assistance. The information provided to ATF/FBI/Concord PD
22 by the CI-1 has, to date, been found to be credible and much of it has been corroborated through
23 contemporaneous recordings, as well as other methods. CI-1 has sustained previous felony and
24 misdemeanor convictions for crimes related to possession of a controlled substance, theft of access card,
25 burglary, exhibiting a deadly weapon not firearm, grand theft, and obstructing a public officer. CI-1 has
26 previous arrests for various offenses, including but not limited to the following: possess/purchase for
27 sale controlled substance, use/under the influence of controlled substance, obstruct public officer,
28 possess controlled substance, possess controlled substance paraphernalia, drive without a license,
possess marijuana 1oz or less while driving, possess/sell dangerous weapon, probation violation, theft,
petty theft, conspiracy commit crime, possess burglary tools, take vehicle without consent, use or access
account info without consent, possess unlawful paraphernalia, robbery, false imprisonment, assault
deadly weapon not firearm, burglary, carry concealed dirk or dagger, exhibit deadly weapon not firearm,
tamper with vehicle, grand theft, and receive known stolen property. To my knowledge, CI-1 is not
presently working in consideration for any pending criminal charges.

1 semiautomatic Glock pistol into a machinegun). CI-1 asked for the price of the firearm. Individual-1
2 explained “they” (i.e., Individual-1 and one or more of his associates) want “2” (\$2,000) for the “big
3 one” (i.e., the AR or AK style firearm). Individual-1 explained for the small firearm was \$1,500.
4 Individual-1 explained the firearm can be a 9mm or .40 caliber with the two barrels. Individual-1
5 explained the cost for the Glock 17 with two barrels would be \$1,500. CI-1 asked to conduct the
6 transaction the following day and Individual-1 agreed. Individual-1 mentioned they would have go to
7 Pittsburg, California for the transaction.

8 12. Later that day, CI-1 sent Snapchat messages to Individual-1 to ask which firearm
9 specifically was the “big one.” CI-1 also negotiated the price, telling Individual-1 that \$2,000 was too
10 high for the firearm alone, but the price would be good if the firearm was “fully” (i.e., a machinegun).
11 CI-1 asked Individual-1 to let the CI-1 know.

12 13. On or about July 23, 2019, CI-1 had text messages and phone calls with Individual-1 in
13 order to coordinate meeting up for the firearm transaction. During the calls, Individual-1 suggested that
14 he would throw in 100 rounds (i.e., ammunition) for the transaction. Individual-1 initially suggested CI-
15 1 would come to Individual-1’s house and they would both then drive to the deal location. Later,
16 Individual-1 suggested meeting at a smoke shop in West Pittsburg. During the calls, CI-1 and
17 Individual-1 continued to discuss where they would conduct the firearm transaction. Ultimately,
18 Individual-1 agreed to provide the address of the firearm source. Shortly after, Individual-1 texted an
19 address in Bay Point, California to CI-1. I know that Bay Point falls within Contra Costa County, which
20 is in the Northern District of California.

21 **B. The Firearms Purchase Occurs at VIDAL’s Residence and Is Conducted By VIDAL**
22 **and Individual-1**

23 14. During the investigation, I learned that VIDAL resides at the Bay Point address provided
24 by Individual-1. Prior to the planned firearms transaction, investigators conducted surveillance at the
25 Bay Point residence. A detective with Concord Police Department (CPD) observed VIDAL going in
26 and out of the garage at the location on the day of the transaction.

1 15. CI-1 and CI-3² subsequently arrived at the location, entered the garage, and met with
2 VIDAL and Individual-1. VIDAL then closed the garage door. VIDAL handed one of the CIs a high-
3 capacity magazine. Individual-1 referred to the magazine as a “100 round” (i.e. a magazine capable of
4 holding 100 rounds of ammunition). During this time, the CIs observed the firearms to be purchased on
5 a table in the garage.

6 16. During the meeting, VIDAL informed the CIs he could install the Glock conversion
7 switch onto the handgun. VIDAL referred to the Glock conversion switch as a “fully switch,” which
8 indicates VIDAL understood that installing it would convert the firearm to a machinegun. CI-1
9 responded that they did not have time for VIDAL to install it. VIDAL additionally informed the CIs
10 that one of the firearms comes with two barrels and the AR-style firearm comes with a 30-round
11 magazine.

12 17. CI-3 asked how much they owed for the firearms. VIDAL responded the cost was
13 \$3,500. VIDAL retrieved the firearms and handed them to CI-1, who put them in a bag. CI-3 handed
14 \$3,500 to Individual-1 for the firearms. Individual-1 then handed the cash to VIDAL. VIDAL then
15 counted the cash.

16 18. I believe the purchased firearms belonged to VIDAL based on Individual-1’s reference to
17 the transaction occurring at his source’s residence, VIDAL establishing the price during the in-person
18 meeting, VIDAL transferring the firearms to the CIs, and Individual-1’s actions in providing the money
19 paid for the firearms to VIDAL.

20 **C. Examination of the Firearms Purchased by the CIs from VIDAL and Individual-1**

21 19. I know Glock conversion switches to be machinegun conversion devices, which are
22 specifically used to convert a semi-automatic Glock pistol to a firearm that fires automatically, i.e. a
23 machinegun, as defined further below.

24 _____
25 ² ATF CI-3 is an individual working with federal and state law enforcement for the purpose of
26 judicial consideration and compensation. CI-3 is pending sentencing on federal charges involving
27 firearms and drug offenses. The information provided to ATF/DEA/Concord PD by CI-3 has, to date,
28 been found to be credible and much of it has been corroborated through contemporaneous recordings, as
well as other methods. CI-3 has previously been arrested for possession of a controlled substance and
has sustained a felony conviction for the drug-related offense.

1 20. The Glock conversion switch sold by Individual-1 and VIDAL had a crude mimic of a
2 “Glock” logo and “Made in Austria.” I know from training, experience, and consultation with other law
3 enforcement officers that Glock manufactures certain models of machinegun pistols; however, Glock
4 does not manufacture machinegun conversion devices for sale to the general public. Therefore, the
5 aforementioned Glock automatic switches were designed by a person or persons that were fraudulently
6 using the Glock logo. It is likely that the referenced Glock automatic switches, with the fraudulently
7 used “Glock” and “Made in Austria” labeling, are designed this way because, as far as I know through
8 my training and experience, the switches are solely designed for use with semi-automatic pistols
9 manufactured by Glock.

10 21. Following the transaction, I measured the barrel length of the AR-style rifle sold by
11 Individual-1 and VIDAL. I did this by closing the bolt and inserting a straight rod down the muzzle
12 until it made contact with the face of the bolt. I found the barrel of the rifle to be approximately nine
13 inches. I know that a rifle having a barrel less than 16 inches would classify it as a short-barreled rifle
14 (and thus a firearm requiring registration) under 26 U.S.C. § 5845.

15 22. I have reviewed a certification from the custodian of the National Firearms Registration
16 and Transfer Record which states that no firearm has been registered to VIDAL.

17 **IV. CONCLUSION**

18 23. Based on the information set forth in the paragraphs above, I submit that there is probable
19 cause to believe that on July 23, 2019, in the Northern District of California, Kevin VIDAL possessed a
20 machinegun, namely, a Glock conversion switch, which had not been registered to him in the National
21 Firearms Registration and Transfer Record, in violation of 26 U.S.C. § 5861(d).

22 24. Accordingly, based upon the foregoing, I respectfully request that the Court sign the
23 requested criminal complaint and issue the requested arrest warrant.

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