

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

District of New Mexico

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

United States of America

v.

Daniel Capehart

Case No. 18-MJ-2167

JUL 2 - 2018

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 6/21/18; 6/23/18; and 6/29/18 in the county of San Juan in the
District of New Mexico, the defendant(s) violated:

Code Section

Offense Description

21 U.S.C. §§ 841(a)(1) and (b)(1)
(D)

Distribution of Marijuana

21 U.S.C. §§ 841(a)(1) and (b)(1)
(C)

Distribution of a Mixture and Substance Containing Methamphetamine

This criminal complaint is based on these facts:

The affidavit of Special Agent Kalon Fancher is incorporated herein by reference.

☒ Continued on the attached sheet.

Complainant's signature

Special Agent Kalon Fancher

Printed name and title

Sworn to before me and signed in my presence.

Date: 07/02/2018

Judge's signature

City and state: Farmington, New Mexico

B. Paul Briones, United States Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE ARREST

I, Kalon Fancher being duly sworn, hereby, depose and state as follows:

1. I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and have been employed in that capacity since February 2012. I am currently assigned to the Albuquerque Division of the FBI, where I am responsible for investigating federal firearm and drug crimes. I also have primary investigative responsibility for violent crimes occurring in Indian Country such as robbery, aggravated assault, assault on Federal Officers, drug distribution, and homicide.
2. The information set forth in this affidavit has been derived from an investigation conducted by members of the Farmington Resident Agency of the FBI, San Juan County Sheriff's Office (SJCSO) Deputies, and/or communicated to me by other sworn law enforcement officers as well as non-law enforcement witnesses. The following information does not contain all information known to me, but is intended to establish probable cause for violations of 21 U.S.C. § 841.

RELEVANT STATUTES

3. This investigation concerns alleged violations of 21 U.S.C. §§ 841(a)(1) and (b)(1)(D), that being Distribution of Marijuana; and 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), that being Distribution of a Mixture and Substance Containing Methamphetamine. Times provided in this affidavit are approximate.

PROBABLE CAUSE

4. On Tuesday, June 19, 2018, SJCSO Detective Erik Barlow met with an adult male (hereinafter referred to as "John Doe") about an incident involving his 16-year-old daughter (hereinafter referred to as "Jane Doe-1"), and Jane Doe-1's 17-year-old friend

(hereinafter referred to as “Jane Doe-2”). John Doe said that Jane Doe-1 and Jane Doe-2 were driving in a vehicle when they were contacted by a New Mexico State Police officer during a traffic stop. After the traffic stop, the New Mexico State Police officer began sending text messages to Jane Doe-1’s cellular phone.

5. John Doe, Jane Doe-1, and Jane Doe-2 were present during the interview with Detective Barlow. Jane Doe-2 stated that during the evening of Friday, June 15, 2018, at around 9:30 pm, she was driving around the area of 20th Street in Farmington. She said Jane Doe-1 was the front seat passenger and they were the only two occupants of the vehicle. Jane Doe-2 said she pulled into the Hutton Plaza, and shortly after leaving the plaza onto 20th street, a State Police officer pulled her over in a traffic stop.
6. Jane Doe-2 stated that in her opinion, the interaction with the state police officer seemed unusual. She stated that the officer asked her for personal information such as her phone number and email address; and that the officer directed Jane Doe-1 to exit the vehicle before speaking to Jane Doe-1 alone. Jane Doe-1 stated that she provided Capehart with her cellular telephone number, address, and personal identifiers, including her date of birth, during their interaction during the traffic stop. Jane Doe-2 said that she signed one ticket, but the officer directed Jane Doe-1 to provide three tickets to Jane Doe-2. Jane Doe-2 brought the tickets to the interview with Detective Barlow. The tickets claimed violations of:
 - in citation 16-790-8388776-0: use or possession of drug paraphernalia;
 - in citation 16-790-8388777-8: possession of marijuana or synthetic cannabinoids (one ounce of less) (1st offense); and
 - in citation 16-790-8388775-2: turning movements and required signals.

7. Each citation required Jane Doe-2 to appear at Farmington Magistrate Court on June 29, 2018, at 8:00 a.m. The officer named as issuing the tickets was Daniel Capehart, who investigators later identified as a patrol officer with the New Mexico State Police.
8. Jane Doe-1 recalled that after the officer directed her to exit the vehicle, he asked her for personal information, including her date of birth, phone number, and email address. She said she thought it was unusual because she was not the vehicle's driver. She said the officer handed her three tickets and told her to provide them to Jane Doe-2. Jane Doe-1 stated that the officer also handed her a business card with his name, Daniel Capehart, on it, and included his personal cell phone number on it, [REDACTED]-[REDACTED]-3914.
9. Jane Doe-1 stated that approximately an hour after the traffic stop she received a text message from the officer, who she came to know as Capehart. During the initial text messages Jane Doe-1 received from Capehart, Capehart identified himself as being the police officer that had pulled her over. Jane Doe-1 felt that the text messages were flirtatious in nature and made her uncomfortable. Capehart texted Jane Doe-1 and made reference to Jane Doe-1 being the most beautiful woman he had ever met. During the text conversation, Jane Doe-1 made it a point to tell Capehart that she was 16-years-old. Capehart replied that age was just a number. Jane Doe-1 said she continued communicating with Capehart because Capehart stated he would drop the charges against Jane Doe-2.¹ Jane Doe-1 stated that Capehart claimed to remember her from approximately one year earlier when he stopped her sister while Jane Doe-1 was a passenger. Jane Doe-1 said she was concerned about the amount of information Capehart knew about her. Capehart sent text messages to Jane Doe-1 from June 16, 2018, through

¹. Jane Doe-2's charges related to the June 15th traffic stop were dropped by Capehart.

June 19, 2018.

10. John Doe and Jane Doe-1 gave Detective Barlow permission to use Jane Doe-1's cellular phone so that Detective Barlow could continue communicating with Capehart under the pretense of being Jane Doe-1.
11. On Tuesday, June 19, 2018, at 3:56 p.m., Detective Barlow texted Capehart from Jane Doe-1's phone while pretending to be Jane Doe-1. The tone of the messages from Capehart to Detective Barlow were flirtatious in nature; and Detective Barlow reciprocated Capehart's flirtation. Detective Barlow discussed marijuana and getting to know one another. On June 19th, 2018, at 10:15 p.m., Capehart sent a text message to Jane Doe-1's phone, about Jane Doe-2, in which he wrote: **Just tell her you met a guy and her charges are taken care of. Tell her "you" influenced me. That will make you the best friend ever lol[.]**
12. On Wednesday, June 20, 2018, at 7:55 p.m., Capehart sent Jane Doe-1's phone/Detective Barlow a picture of two plastic prescription-style containers. One of the containers was translucent and contained a green leafy substance. A glass pipe was laying next to the containers. In a caption, Capehart wrote: **Know what that is[.]**
13. Capehart wrote that it was medical-grade and asked where Jane Doe-1 lived. Detective Barlow was vague in his response because he knew Capehart had the resources available to find out Jane Doe-1's actual address. Capehart wrote: **Like if you were to hide something near where you live, where you hide something? Let's say you "stumbled across" something..... ;)**
14. The text conversation continued regarding a location where Capehart would drop the marijuana for Jane Doe-1. Capehart gave Jane Doe-1/Detective Barlow directions on how

to avoid getting caught while carrying marijuana in a vehicle or on her person. Capehart wrote that Jane Doe-1 should hide the marijuana in a plastic container with coffee grounds. Capehart told Jane Doe-1 to delete the text message conversation from the phone.

15. Detective Barlow drove to the intersection of Club House Drive and Castle Rock in Farmington, New Mexico, and selected a location at which the marijuana drop should take place. Detective Barlow sent Capehart a picture of an electric box with the identifier 25521L on it; a picture of the intersection marking; and a screenshot of the location while near box.
16. During the text message conversation, Capehart discussed bringing the “medical grade” item to the drop location. Capehart told Jane Doe-1/Detective Barlow he had just arrested someone and he was at his office. Capehart wrote that he had to finish paperwork and drive the arrestee to jail before he would bring the item to the drop location. After receiving this information, SJCSO Detective Jon Nyce went to the jail in anticipation of Capehart’s arrival with an arrestee.
17. Later, at 11:48 p.m. on June 20, 2018, Capehart sent Jane Doe-1/Detective Barlow an image of a clear plastic container containing a green leafy substance and packaged in a sealed plastic bag. Detective Barlow recognized the packaging as being consistent with how the New Mexico State Police’s Farmington office packages marijuana in order to keep the odor from escaping. Capehart wrote: **This is what you’ll look for and it’s sealed so it won’t stink. Hide it in your bra baby!!! That’s the best spot for girls[.]** Capehart also wrote that [Jane Doe-1] owed a “selfie” as payment.
18. After midnight, and therefore on Thursday, June 21, 2018, at 12:15 a.m., Capehart sent a

text message to Jane Doe-1/Detective Barlow in which he wrote he was heading to the jail. At 12:28 a.m., a New Mexico State Police Chevrolet Tahoe pulled into the sallyport of the San Juan County Adult Detention Center. Detective Nyce identified the driver in the Tahoe as Officer Daniel Capehart. Detective Nyce identified Capehart based on prior contacts with Capehart. At 12:35 a.m., Capehart left the jail and Detective Nyce followed him. Both vehicles arrived at Main Street and Country Club Drive at 12:47 a.m. Detective Nyce did not follow Capehart further because the area had only one entrance and exit.

19. SJCSO Lieutenant Kyle Lincoln and Detective Barlow were hidden within site of the agreed-upon drop location. Detective Barlow witnessed Capehart arrive at the drop location by the electric box, exit his vehicle, place something on the ground behind the box, re-enter his vehicle, and drive away at approximately 12:52 a.m.
20. After Capehart left the area, Detective Barlow examined the drop location. Law enforcement maintained visual surveillance of the drop location from the time that Capehart left the drop location until Detective Barlow arrived. No other person was present at the drop location during that time. At the drop location, Detective Barlow located what appeared to be the same sealed plastic bag depicted in the picture Capehart sent to Jane Doe-1's phone. The bag contained a translucent container that contained a green leafy substance. Detective Barlow located the package behind the electric box with the identifier 25521L on it. The substance inside the package was green and leafy, consistent with marijuana. Detective Barlow took possession of the package and it was transported to the Farmington Police Department where Detective Barlow determined that the total gross weight of the package was 14 grams. A field-test of the suspected

marijuana, using a marijuana identification kit, returned a positive result for the presence of marijuana. The package and its contents were logged by Farmington Police Department as evidence.

21. The conversation with Capehart through Jane Doe-1's phone continued over the subsequent days. On Saturday, June 23, 2018, Capehart wrote to Jane Doe-1/Detective Barlow: **Anyway I have a gift for you. I don't know where you want me to drop it off tho[.]** In response, Detective Barlow asked what the gift was, and Capehart wrote: **you favorite gift[.]** Detective Barlow asked if it was the same as last time, and Capehart affirmed. Capehart asked where he could leave it and stated that he had to provide it quickly.
22. Detective Barlow tried to convince Capehart to use the same location as before, because surveillance was in place on the location, but Capehart wanted to use a different location. Capehart discussed a carwash located next to Farmington High School. Capehart sent pictures of the carwash and wrote: **It's in the far car wash port for big trucks in the tube, and It's in the tube with the green hose thing on top[.]**
23. Capehart sent detailed directions about how to pick it up without arousing the suspicion of anyone Jane Doe-1 might be with. Capehart also described how to avoid suspicion if pulled over by law enforcement and described how to hide marijuana in a vehicle in a way to keep law enforcement from smelling it.
24. SJCSO Detective Nima Babadi and Lieutenant Lincoln were in the area of the carwash conducting surveillance. Detective Babadi and Lieutenant Lincoln were made aware that Capehart dropped a package off at the location. The carwash was identified as the Quick Stop Car Wash located at 330 E. 20th Street in Farmington, New Mexico, which is locate

near Farmington High School. At approximately 7:10 p.m., Detective Babadi saw Capehart driving a marked unit in the opposite direction on 30th Street, passing North Carlton Street. Detective Babadi observed Capehart stopping in a street median near the intersection of 30th Street and Sullivan Avenue. Detective Babadi kept Capehart in view while driving towards the carwash.

25. Detective Babadi arrived at the carwash at approximately 7:20 p.m. and located the big bay on the East side of the carwash. He went inside the bay and saw a green hose consistent with that Capehart's description. Detective Babadi photographed the scene and moved a blue hose head that was attached to the green hose from the tube holding it. Detective Babadi located a ziplock-type plastic bag containing a green leafy substance that, based on his training and experience, he recognized to be marijuana. Detective Babadi weighed the bag and determined the total gross weight of the package to be 19 grams. Detective Babadi field-tested the suspected marijuana using a marijuana identification kit, and the test produced a positive result for the presence of marijuana. The bag and its contents were logged into evidence at the Farmington Police Department.
26. On June 28, 2018, I spoke with a Confidential Human Source (CHS) who stated that he/she had been in communication with New Mexico State Police Officer Daniel Capehart for approximately nine months, routinely exchanging text messages during that time period. The CHS stated that a few days prior to first receiving text messages, Capehart conducted a traffic stop on the vehicle the CHS was driving and arrested the CHS for driving-related offenses. The CHS stated that during the same traffic stop, the CHS's passenger was arrested after Capehart discovered approximately 14 grams of methamphetamine in the vehicle. The CHS stated that he/she spent "4 or 5 days" in jail

following the traffic stop, and has been routinely receiving text messages from Capehart since that time. The CHS stated that Capehart's text messages were "weird" and made the CHS "uncomfortable" due to the messages' sexual tone. The CHS stated that Capehart sometimes discussed criminal activity but mostly sent suggestive text messages in which he sought sex. Agents viewed text messages between the CHS and Capehart as recently as June 5, 2018, which were exchanged between the CHS and Capehart prior to the CHS's cooperation with law enforcement.

27. The CHS consented to my use of the CHS's cell phone so that I could communicate with Capehart while posing as the CHS. I then communicated via text message with Capehart on June 27 and 28, 2018. The CHS was present during some of the text exchanges and I often guided the CHS about what to write. During one conversation on June 27, 2018, the following text messages were exchanged between Capehart and me:

7:04 am, sent to Capehart : **Just thinking about was fighting with my husband he went to jail again and I hurting cuz he was suposto get me something and he got his ass put in jail**

7:05 am, received from Capehart: **What he get canned for?**

And what was he supposed to get you

7:10 am, sent to Capehart: **No licence and had warrants...he was supposed to get my regual stuff to keep me happy so now I am not...anyways hows work u being nice to your cosomers??Lol**

7:11 am, received from Capehart: **What's regular stuff?**

I'm always nice

Like green stuff or harder stuff?

7:13 am, sent to Capehart: **Harder is better u know I like it hard..jk..and don't lie u are not that nice..**

7:15 am, received from Capehart: **Lol ahhhhh I don't know if you like it hard. I've never been in those sexy thighs 😊 jk I know what you mean. I'm nice as fuck**

7:19 am, sent to Capehart: **I was hopping you could make me happy or vice versa just for a minute anyways. Please**

7:20 am, received from Capehart: **I can do that 😊**

28. I continued the conversation on June 28, 2018, without the CHS present. Capehart texted: **and if you know someone I can bust tomorrow then it makes my job easy. Whatever I get I just split it or whatever I get from anyone.** During the text conversation, I texted Capehart: **My friend Max...he has some....i am going to tell him I have somebody he can sell it to and then I will tell u where it's at...Yeah?** Capehart responded: **that works. But I have to be a step ahead so I know where you will be driving from. Also what's he drive and all that[.]**
29. Based on these discussions, investigative agents planned to utilize an undercover (UC) officer, under the name "Max," to transport approximately 24 grams of methamphetamine. This methamphetamine was seized in a prior, unrelated investigation by the San Juan County Sheriff's Office, and scheduled for destruction until investigators decided to use it as part of the present investigation.
30. On June 28, 2018, the UC took control of two baggies containing methamphetamine: one weighed approximately 15 grams and the other weighed approximately nine grams. The UC placed both baggies in the front pocket of his pants. Using the CHS phone, I sent Capehart a text message at 8:13 p.m. stating: **my friend Max is supposed to pick me**

up...hi is going to have at least 1...yeah? Capehart responded: **when he picking you up.** I responded: **He said 30 minutes...yeah?...can I have my friends car so he doesn't have to pay for it....i have my little piece to get in the mood for you...im good right[.]** Capehart responded: **He's coming in 30 minutes? So what is he driving and where will he drive too?** and also wrote **you already have your meds?** I responded: **yeah....white truck...hes taking me to Sunray...he has the meds...I will tell you where....am I doing good?** Based on this exchange, the messages suggested to Capehart that "Max," in reality a UC, was going to give the CHS a ride to the Sunray casino while Max possessed methamphetamine. At approximately 9:00 p.m. on June 28, 2018, the UC arrived to the CHS's location. At 8:51 p.m., I used the CHS phone to text Capehart: **hes here...should I leave...** Capehart responded: **stall for 5 then go,** and subsequently, **Where would he hide it you think[.]** I responded by telling Capehart: **He has it in his pants pocket...** At approximately 9:10 p.m., the UC and CHS departed. I provided Capehart with updates on the UC and CHS's location.

31. At 9:17 p.m., Capehart conducted a traffic stop on the UC's vehicle in the area of New Mexico Highway 64 and County Road 5433. Capehart made contact with the UC and placed the UC under arrest. Capehart seized both baggies of methamphetamine from the UC and placed the UC in his New Mexico State Police marked unit. Capehart permitted the CHS to get a ride to the casino from the tow-truck driver who towed the UC's vehicle to an impound lot. During the traffic stop and afterwards, the following text message conversation took place between me—using the CHS's phone—and Capehart:
 9:33 pm, received from Capehart: **we need to get you a ride and yes you will get a cut of meds**

9:53 pm, sent to Capehart: **can I get my half so I can get ready for you when you get off...** Capehart responded by writing: **you will get your but not now. I have a camera in my unit so it records everything. After I take this guy in I'll split it up. There's a good size rock for you. I'll explain what I have in mind later. But basically I'll drop it off near your house at a location you will know. Then you just walk over and get it. You see I can't just hand it to you directly. That way it looks like you literally found it and know nothing. Get it?**

11:08 pm, received from Capehart: **got the meds in a plastic gum container ready for ya. After I book this guy I'll drop it off[.]** I responded: **Ok..Thanks babe...how long you think...** Capehart wrote: **I'm thinking 1[.]**

32. On June 29, 2018, at approximately 1:51 a.m., investigators watched as Capehart left the San Juan County Detention Center after booking the UC, "Max," into jail. Investigators surveilled Capehart driving from the detention center to Salmon Park, which is located near the intersection of 6th Street and Larch Street in Bloomfield, New Mexico. At approximately 2:03 a.m., I watched Capehart arrive at Salmon Park. I watched as Capehart parked in the street near the intersection of 6th Street and Larch Street. Investigators in the area observed Capehart get out of his New Mexico State Police marked unit and walk toward bathrooms located in the park. Investigators watched Capehart walk back to his marked unit and drive away. At approximately 2:06 a.m., FBI Task Force Officer (TFO) Mitch Goins and I walked to the area of the bathrooms and located a plastic gum container. Inside the gum container was a plastic ziplock-type bag that contained a crystal substance. Based on my training and experience, I believed the crystal substance to be consistent with methamphetamine. The substance later field-tested

positive for the presence of methamphetamine. It was determined that the methamphetamine weighed approximately 5.7 grams. The methamphetamine was submitted into evidence at the Farmington Police Department.

33. The following text messages were exchanged between me (over the CHS phone) and Capehart, during the delivery of the methamphetamine:

1:57 a.m., sent to Capehart: **Whats the plan[?]**

Capehart responded: **hold on[.]**

At 2:04 am, Capehart wrote: **It's behind the bathrooms** and then: **In the middle[;]**

Wait 10 min then go[;] and **On the concrete part[.]**

At 2:12 am, Capehart wrote: **you good[.]** and **find it[.]**

34. Capehart's description of "behind the bathrooms" and "[o]n the concrete part" are consistent with where TFO Goins and I located the methamphetamine.
35. On June 29, 2018, TFO Goins and I arrested Capehart at the New Mexico State Police office in Farmington, New Mexico, without incident. We took Capehart to the FBI Office in Farmington, New Mexico. There, I advised Capehart of his *Miranda* rights and he agreed to speak with us. New Mexico State Police did not participate in the interview process.
36. During the ensuing interview, which was recorded, Capehart stated that he pulled over Jane Doe-1 and Jane Doe-2 but could not remember the specific date. He stated that he began texting Jane Doe-1 in an attempt to develop information about criminal activity in the area. He stated that he sent sexually suggestive texts to Jane Doe-1 to "try and make her feel good about herself" so she would provide better information. Capehart admitted that he made both marijuana deliveries that law enforcement seized near the electrical

box and at the carwash. Capehart stated that although it appeared that he wanted to have sex with Jane Doe-1, he would not have acted on any opportunity to carry out the sexual act. Capehart stated that he agreed to deliver the marijuana because he was hoping to obtain information from Jane Doe-1 that could lead to bigger drug cases. Capehart stated he would obtain the marijuana during traffic stops and separated a “few grams” of marijuana to deliver to Jane Doe-1.


37. During the interview, Capehart stated that he delivered the methamphetamine law enforcement seized near the bathrooms in Salmon Park in Bloomfield, New Mexico, on June 29, 2018, to the CHS as “payment” for the CHS’s information that lead to the arrest of the UC and drug seizure. Capehart stated he thought the methamphetamine weighed a “few grams.” During the interview, Capehart stated, “I fucked up,” and “I know what I did was wrong.”
38. The events described above all occurred within San Juan County, within the District of New Mexico.

[concluded on subsequent page]

SUMMARY

In view of the above facts, I submit that there is probable cause to believe that Daniel Capehart, with a year of birth of 1985, on June 21, 2018, and June 23, 2018, committed violations of 21 U.S.C. §§ 841(a)(1) and (b)(1)(D), that being Distribution of Marijuana; and on June 29, 2018, committed a violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), that being Distribution of a Mixture and Substance Containing Methamphetamine. Capehart was arrested on these charges and booked into the San Juan County Detention Center based the above-facts.

I swear that this information is true and correct to the best of my knowledge and belief.

Affiant: 
Special Agent Kalon Fancher
Federal Bureau of Investigation

Subscribed and sworn before me
on this 2nd day of July, 2018.


B. PAUL BRIONES
UNITED STATES MAGISTRATE JUDGE