

Approved: _____

J. Ong

JENNIFER N. ONG
Assistant United States Attorney

Before: THE HONORABLE JUDITH C. MCCARTHY
United States Magistrate Judge
Southern District of New York

- - - - - X 20 MAG 10706

UNITED STATES OF AMERICA

: COMPLAINT

- v. -

: Violations of 21 U.S.C.
§ 841(a)(1),
: 841(b)(1)(C), 18 U.S.C.
§ 924(c)(1)(A)(i), and
: 18 U.S.C. § 922(g)(1)
Defendant.

COUNTY OF OFFENSE:
ORANGE

- - - - - X

SOUTHERN DISTRICT OF NEW YORK, ss.:

MYRA RUDE, being duly sworn, deposes and says that she is a Task Force Officer with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE
(Possession with Intent to Distribute Narcotics)

1. On or about October 1, 2020, in the Southern District of New York and elsewhere, ALBERTO RIVERA, the defendant, intentionally and knowingly possessed with the intent to distribute controlled substances in violation of Title 21, United States Code, Section 841(a)(1).

2. The controlled substances involved in the offense were (a) mixtures and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Section 841(b)(1)(C); (b) mixtures and substances containing a detectable amount of heroin, in violation of Title 21, United States Code, Section 841(b)(1)(C); and (c) mixtures and substances containing a detectable amount of fentanyl, in violation of Title 21, United States Code, Section 841(b)(1)(C).

(Title 21, United States Code, Sections 841(a)(1) and (b)(1)(C))

COUNT TWO
(Possession of a Firearm)

3. On or about October 1, 2020, in the Southern District of New York and elsewhere, ALBERTO RIVERA, the defendant, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the possession with intent to distribute a controlled substance as charged in Count One of this Complaint, knowingly did carry a firearm, and, in furtherance of such a crime, did possess a firearm, to wit, a Springfield Armory Model XD-9 9mm pistol with serial number AT116681.

(Title 18, United States Code, Sections 924(c)(1)(A)(i))

COUNT THREE
(Possession of a Firearm)

4. On or about October 1, 2020, in the Southern District of New York and elsewhere, ALBERTO RIVERA, the defendant, knowing he had previously been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess a firearm, to wit, a Springfield Armory Model XD-9 9mm pistol with serial number AT116681, and the firearm was in and affecting interstate commerce.

(Title 18, United States Code, Sections 922(g)(1))

The bases for my knowledge and for the foregoing charges are, in part, as follows:

5. I am a Task Force Officer with the FBI, and I have been personally involved in the investigation of this matter. This affidavit is based upon my personal participation in the investigation of this matter, my conversations with law enforcement agents, witnesses, and others, as well as my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

6. Based on my review of reports, photographs, and records from the City of Newburgh Police Department ("CNPD"),

the New York State Division of Criminal Justice Services, and my conversations with other law enforcement officers, I have learned the following, in part and in substance:

a. On or about October 1, 2020, at approximately 1:24p.m., a CNPD Detective (the "Detective") who is familiar with the appearance of ALBERTO RIVERA, the defendant, and who knows that a warrant has been issued for RIVERA for absconding on his parole, spotted RIVERA operating a bicycle on the south side of Broadway and travelling westbound. The Detective reported that RIVERA had a black backpack with him.

b. The Detective slowly drove by ALBERTO RIVERA, the defendant, before passing him and pulling his unmarked detective vehicle into the driveway of 211 Broadway to block the path of RIVERA. RIVERA then jumped off his bicycle with his backpack and ran into a pizza parlor located at 209 Broadway. The Detective chased after RIVERA through the pizza parlor and took RIVERA into custody without incident in the pizza parlor's fenced-in backyard. RIVERA did not have his backpack when he was taken into custody.

c. Shortly thereafter, a CNPD Police Lieutenant (the "Lieutenant") searched the backyard of Mr. Cris Pizzeria at 209 Broadway. The Lieutenant checked the roof of 209 Broadway which is next door to 211 Broadway. Video surveillance footage from 209 Broadway also shows ALBERTO RIVERA, the defendant, throwing the backpack on the roof.

d. The Patrol Lieutenant found and secured a black backpack from the roof. Inside the backpack, the Patrol Lieutenant found a loaded Springfield Armory Model XD-9 9mm pistol with serial number AT116681 (the "Firearm"), approximately \$463 in U.S. currency, and a large amount of narcotics.

7. I know, based on my discussions with other law enforcement officers and on my participation in conducting the field tests of the mixtures or substances, that the narcotics in the backpack included the following:

- a. One sealed plastic bag filled with a light brown powder substance weighing approximately 3.5 grams that field tested positive for the presence of fentanyl.
- b. One sealed plastic bag containing 500 envelopes filled with a brown powder substance. Samples of the

substance field tested positive for the presence of heroin. When the envelopes were weighed together, they collectively weighed approximately 12.5 grams.

- c. One sealed plastic bag filled with a light brown powdery substance weighing approximately 34.5 grams that field tested positive for the presence of heroin and fentanyl.
- d. One sealed plastic bag filled with a light brown powdery substance weighing approximately 7.3 grams that field tested positive for the presence of heroin and fentanyl.
- e. One sealed plastic bag filled with an off white chunk-like substance weighing approximately 29 grams that field tested positive for the presence of cocaine.

8. Based on my review of a criminal history report pertaining to ALBERTO RIVERA, the defendant, and my involvement in this investigation, I have learned, among other things, that on or about May 5, 2016, RIVERA was convicted of criminal sale of a controlled substance in the third degree in violation of N.Y. Penal Law Section 220.39, and was sentenced to a term of three years' imprisonment.

9. I know, based on my participation in this investigation, that photographs of the Firearm recovered on October 1, 2020, were submitted to a trained examiner from the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF").

10. I know the ATF examiner prepared a report, which I have reviewed. The report concluded that the Firearm was manufactured by Springfield Armory either in Illinois, Texas, or Massachusetts.

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of ALBERTO RIVERA, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.


MYRA RUDE

Task Force Officer
Federal Bureau of Investigation

Sworn to me through the transmission of this
Complaint by reliable electronic means, pursuant to
Federal Rule of Criminal Procedure 4.1, this

Sworn to before me this
6th day of October, 2020



THE HONORABLE JUDITH C. MCCARTHY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK