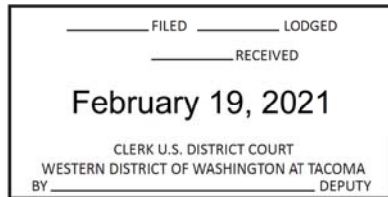


Magistrate Judge David W. Christel



UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEVAN LEE KLUGE,

Defendant.

NO. MJ21- 5040

COMPLAINT FOR VIOLATION
26 U.S.C. §§ 5861(d), 5845(a)(8), 5871

BEFORE David W. Christel, United States Magistrate Judge, Tacoma, Washington.

The undersigned complainant being duly sworn states:

COUNT 1

(Unlawful Possession of a Destructive Device)

On or about December 24, 2020, in Bremerton, in Kitsap County, in the Western District of Washington, DEVAN LEE KLUGE did knowingly possess a destructive device, that is, an incendiary device commonly known as a "Molotov Cocktail," that was not registered to him in the National Firearms Registration and Transfer Record.

All in violation of Title 26, United States Code, Sections 5861(d), 5845(a)(8), and 5871.

1 This complaint is to be presented by reliable electronic means pursuant to Federal
2 Rules of Criminal Procedure 4.1 and 41(d)(3).

3 The undersigned complainant, Gregory Heller, being duly sworn, further deposes
4 and states as follows:

5 **INTRODUCTION**

6 1. I, Special Agent Gregory Heller, am a duly sworn member of the Bureau of
7 Alcohol, Tobacco, Firearms, and Explosives (ATF). I am currently assigned to the ATF
8 Seattle III Field Office located within the Seattle, Washington Field Division. I have
9 been employed as a special agent since September 2014. From 2007 to 2014, I was
10 employed as a police officer and detective in Gwinnett County, Georgia. In total, I have
11 approximately thirteen years of state and federal law enforcement experience.

12 2. I am a graduate of Duke University in Durham, North Carolina, where I
13 received a Bachelor's of Science in Engineering (B.S.E.) in Civil Engineering. I
14 completed a 12-week Criminal Investigator Training Program (CITP) and a 14-week
15 Special Agent Basic Training (SABT) at the ATF National Academy/ Federal Law
16 Enforcement Training Center (FLETC) in Glynco, Georgia. I also completed a 23-week
17 Gwinnett County Police Training Academy and was a Peace Officer Standards and
18 Training (P.O.S.T.) certified peace officer in the State of Georgia.

19 3. I am also responsible for enforcing federal firearms and explosives laws
20 and related statutes in the Western District of Washington. I received training on the
21 proper investigative techniques for these violations. I have actively participated in
22 investigations of criminal activity, including but not limited to: crimes against persons,
23 crimes against property, fire and explosives-related crimes, and crimes involving the
24 possession, use, theft, or transfer of firearms. During these investigations, I have also
25 participated in the execution of search warrants and the seizure of evidence indicating the
26 presence of criminal violations. As a law enforcement officer, I have testified under oath,
27 affirmed to applications of search and arrest warrants, and obtained electronic monitoring
28 orders.

4. The facts set forth in this Affidavit are based on my own personal knowledge; information obtained from other individuals during my participation in this investigation, including other law enforcement officers; review of documents and records related to this investigation; communications with others who have personal knowledge of the events and circumstances described herein; and information gained through my training and experience. Because this Affidavit is submitted for the limited purpose of establishing probable cause in support of a criminal complaint, it does not set forth every fact that I or others have learned during the course of this investigation.

SUMMARY OF PROBABLE CAUSE

A. Initial Bremerton Police Arrest and Investigation

5. On the evening of December 24, 2020, a Bremerton Police Department (BPD) officer was on patrol on Wheaton Way in Bremerton, Washington. The officer saw a teal Hyundai hatchback vehicle bearing a Washington license plate. The officer recognized the driver as DEVAN LEE KLUGE. The officer knew KLUGE had an active arrest warrant for Escape issued by the Washington Department of Corrections (DOC).

6. The officer stopped the vehicle, arrested KLUGE for the warrant, and identified another passenger in the vehicle. The officer read KLUGE his *Miranda* Rights. After doing so, the officer asked KLUGE if there were drugs or other illegal items in his car. KLUGE said there were not. When the officer asked if he could search the vehicle, KLUGE consented and asserted that his car was “clean.” (A subsequent records search showed the vehicle was in fact registered to KLUGE.)

7. During the vehicle search, KLUGE was in the back of a patrol car within voice range of the searching officers. In fact, KLUGE yelled to officers on several occasions. On each of those occasions, officers returned to the patrol car and retrieved contacts, keys, and a jacket at KLUGE’s request. At no point during those interactions or any other point during the search did KLUGE revoke consent.

8. When searching the rear cargo area of the hatchback vehicle, officers located two plastic containers containing a total of three glass jars. Each jar was sealed

1 with a metal lid that had been punctured to allow a piece of cloth to run through it. Each
2 jar contained a liquid that smelled to the BPD officers like a petrochemical, such as
3 gasoline. The officers believed the jars were improvised explosive devices, commonly
4 referred to as “Molotov Cocktails.” The devices are shown in the photograph below:

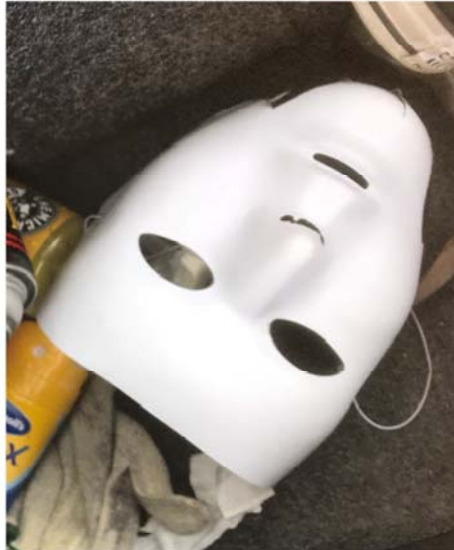


BPD photograph of configuration of devices at time of seizure

9. After finding the devices, the officers questioned KLUGE about them. KLUGE told one officer that a friend found the devices in a storage unit the friend “won” (presumably as one might at an auction). KLUGE said the friend gave them to him. KLUGE said he did not intend to use them.

10. When asked about the devices by another officer, KLUGE initially admitted he made the devices to use them to burn tires. He later said he made the devices “just to make them.”

11. During the search of the vehicle, BPD officers also located brass knuckles, a digital scale with white residue, walkie-talkie style radios, bolt cutters, a crow bar, a sledge hammer and white, plastic masks as shown in the following picture:



12. When asked about those items, KLUGE said he “knew what it looked like,” but denied involvement in any criminal activity.

13. KLUGE was arrested for his warrant and BPD retained the devices as evidence. An FBI Special Agent Bomb Technician (SABT) later helped BPD disassemble the devices.

B. The Devices

14. An ATF Special Agent Certified Explosive Specialist (CES) and I examined the recovered evidence. We saw that each device had been made up of a glass jar and a metal top with a cloth material threaded through it. The CES conducted a preliminary analysis of samples of the fluid from each of the three devices. The preliminary analysis identified the fluid from all three samples as diesel fuel.

15. The CES consulted with an ATF Explosives Enforcement Officer (EEO). Within ATF, EEOs have the responsibility of making device determinations under the National Firearms Act as required by 27 C.F.R. § 478.27. The EEO conducted an initial review of photographs of the evidence, and opined that the items were consistent with

improvised incendiary devices. Pending laboratory chemical analysis of the contents and physical examination of the device components, the EEO asserted that the items would be identified as three incendiary bombs, grenades, or devices. The EEO asserted that incendiary bombs and grenades are “Destructive Devices” as that term is defined in 26 U.S.C. § 5845(f)¹, and are therefore regulated in accordance with the Federal Firearms Regulations. Moreover, incendiary bombs, grenades, or devices are “explosives” as that term is defined in 18 U.S.C. § 844(j) and fall within the definition of “incendiary device” found in 18 U.S.C. § 232(5). Once the EEO receives the report of laboratory analysis/examination and examines this physical evidence, a final Device Determination can be written and submitted for final review and approval.

16. Via the ATF National Firearms Act Division, I queried the National Firearms Registration and Transfer Record (NFRTR) for any devices registered by KLUGE. No records were located.

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¹ The Ninth Circuit Court of Appeals recently reaffirmed the well-settled proposition that a Molotov cocktail device constitutes a “destructive device” under federal law. *United States v. Barker*, 689 Fed. Appx. 555 (9th Cir. 2017) (“We hold that a Molotov cocktail fits within the firearm category of ‘a destructive device.’ A Molotov cocktail is an incendiary device that is quite similar to a grenade. Therefore, possession constitutes a crime of violence.”). Federal “courts have uniformly held that a fully-assembled Molotov cocktail device – defined as a device comprising a bottle, gasoline, and a rag – constitutes an ‘incendiary ... bomb’ or ‘similar device’ under section 5845(f).” *United States v. Simmons*, 83 F.3d 686, 687–88 (4th Cir. 1996) (citing *United States v. Peterson*, 475 F.2d 806, 811 (9th Cir. 1973) (device comparable to a Molotov cocktail was a “destructive device”); *United States v. Neal*, 692 F.2d 1296, 1303-04 (10th Cir.1982) (affirming conviction for possession of a destructive device made from “a one gallon plastic jug, a flammable liquid, and a rag wick”); *United States v. Campbell*, 685 F.2d 131, 132 (5th Cir.1982) (sustaining indictment for possession of a destructive device “made from cloth rags, [and] flammable liquid with a fuse made of incense sticks”); *United States v. Ross*, 458 F.2d 1144, 1144-46, 1144 n. 1 (5th Cir. 1972) (affirming conviction for possession of “crude incendiary devices” consisting of “a quart glass bottle with cloth therein and containing a flammable liquid and having a cloth wick in the mouth of said bottle); *United States v. Curtis*, 520 F.2d 1300, 1304 (1st Cir.1975) (“[W]hile gasoline, bottles and rags all may be legally possessed, their combination into the type of home-made incendiary bomb commonly known as a Molotov cocktail creates a destructive device.”); *United States v. Wilson*, 546 F.2d 1175, 1177 (5th Cir.) (same); *United States v. Tankersley*, 492 F.2d 962, 966 (7th Cir.1974) (affirming conviction for possession of a “destructive device” which consisted of “a bottle, a firecracker and tape, and paint remover: the components of a Molotov cocktail”)).

CONCLUSION

Based on the foregoing, I respectfully submit that there is probable cause to believe that DEVAN LEE KLUGE committed the above-referenced offense.

 Digitally signed by
GREGORY HELLER
Date: 2021.02.18
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GREGORY HELLER
Special Agent, ATF

The above agent provided a sworn statement attesting to the truth of the contents of the foregoing affidavit by telephone on this 19th day of February, 2021. Based on the Complaint and the sworn statement, the Court hereby finds that there is probable cause to believe the Defendant committed the offenses set forth in the Complaint.



DAVID W. CHRISTEL
United States Magistrate Judge