

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA : **FILED UNDER SEAL**
 :
 v. :
 : MISC. NO. :
 ANDREW ROBERT LEVENE, :
 a.k.a. "Robert Thomas" : DATE: January 10, 2012

AFFIDAVIT IN SUPPORT OF COMPLAINT AND ARREST WARRANT

I, James Masterson, under penalty of perjury, declare and state that:

1. I am a Deputy United States Marshal assigned to the Bridgeport office of the United States Marshals Service ("USMS"). I have been a Deputy United States Marshal for over 15 years. As such, I am a law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18 of the United States Code, that is, an officer empowered by law to conduct investigations of, and make arrests for, offenses enumerated in Section 2516 of Title 18. During my tenure as a Deputy United States Marshal, I have participated in numerous criminal investigations involving firearms, robbery and murder. I have also participated in over 1000 fugitive investigations, including investigations into persons who have fled the jurisdiction in order to evade prosecution.

I, Detective Philip Restieri, under penalty of perjury, declare and state that:

2. I am a detective with the Westport Police Department, in Westport, Connecticut. I have been a police officer for over 15 years and have been assigned to the Detective Bureau for approximately six years. During my tenure as a police officer, I have participated in numerous criminal investigations involving robbery, larceny, assault

and murder.

3. We are currently working with members of the United States Marshal Service, the Westport Police Department, the Connecticut State Police, the Federal Bureau of Administration and other law enforcement officials to investigate ANDREW ROBERT LEVENE, a.k.a. "Robert Thomas," date of birth [REDACTED], for violations of Title 18, United States Code, Section 1951(a)(1) (Interference with Commerce Through Robbery); Title 18, United States Code, Section 1111 (Murder); Title 18, United States Code, Section 1113 (Attempted Murder); and Title 18, United States Code, Section 924(j)(1)(Causing Death Through the Use of a Firearm). The statements contained in this affidavit are based on: (1) personal participation in the investigation; (2) information provided by members of the United States Marshal Service, the Westport Police Department, the Connecticut State Police, the Federal Bureau of Investigation and several other law enforcement agencies; (3) witness statements; (4) videotaped surveillance; (5) information from Departments of Motor Vehicles; (6) public information databases; (7) toll records; (8) cell site records; (8) experience and training; and several other sources of information. Unless otherwise indicated, all conversations and statements described in this affidavit are related in substance and in part.

4. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint and arrest warrant, we have not included each and every fact regarding this investigation. Rather, we have only set forth the facts necessary to establish probable cause to believe that LEVENE has violated Title 18, United States Code, Sections 1951(a)(1), Title 18, United States Code, Section 1111; Title 18, United States Code, Section 1113; and Title 18, United States Code, Section 924(j)(1).

I. Factual Background

5. On Friday December 8, 2011, at approximately 2159 hours, Westport Police Department Dispatch received a 9-1-1 emergency call from YZ Manufacturers, LLC, (“Y.Z. Jewelers”), which is an upscale diamond dealership located at [REDACTED] in Westport, Connecticut. The caller (hereinafter “victim one”) stated that he had been shot and that his friend (hereinafter “victim two”) was dead.

6. Officers immediately responded to the business. While officers could hear an individual inside the location, they were unable to enter as the front door, which was made of metal, was locked. Officers thus used a crowbar to force entry both through the front door and a secondary metal door. Upon entering the business, officers discovered victims one and two, both of whom had been shot. While victim one was alert and stating that he had been shot, victim two was unresponsive and was believed to be dead.

7. Victim two was transported to Norwalk Hospital, where he was pronounced dead by Hospital Emergency Personnel.

8. Victim one was also transported to Norwalk Hospital for treatment. While victim one was in the trauma room, officers briefly interviewed him. Victim one described the shooter as a white male in his 40s. Victim one stated that the shooter was wearing a green coat with brown pants and brown “cowboy” boots. Victim one further described the shooter as having brown hair and a big nose and said that he was wearing glasses with black rims.

9. When asked if he knew the shooter, victim one explained that the individual used the name “Robert.” Victim one also related that “Robert” used a contact telephone number that included the numbers “3-4-7” and that “Robert” had stated that he

lived in New York City. Victim one continued that “Robert” first contacted victim two on either Saturday, December 3, 2011, or Sunday, December 4, 2011. Victim one stated that, in the days that followed, “Robert” spoke with victim two several times by telephone during which time he made an appointment to meet victim two at Y.Z. Jewelers on December 7, 2011 in order to look at diamonds. Victim one stated that “Robert” did, in fact, meet with victim one and victim two at Y.Z. Jewelers on December 7, 2011. The three men looked at several diamonds, each of which was approximately three to four carats in size, discussed a potential purchase and made an arrangement to meet again the following night.

10. On December 8, 2011, victim two contacted victim one and asked him to return to Y.Z. Jewelers that evening and to bring a four karat diamond in addition to the diamonds that victim had brought the night before. Victim one stated that the shooter had previously inquired about buying an engagement ring, but also indicated that he planned to purchase three loose diamonds. Victim one then explained that when “Robert” arrived at Y.Z. Jewelers on the evening of December 8, 2011, he and victim two were already in the store. Victim one showed “Robert” six (6) diamonds, with a total value of approximately \$300,000. After looking at the diamonds and conversing for several minutes, “Robert” took out a gun and shot both victim one and victim two. “Robert” then did something behind the desk before leaving the store.

11. On December 11, 2011, investigators contacted a sergeant with the Metropolitan Transit Authority Police Department who is trained as a sketch artist. The sergeant viewed the surveillance video from the robbery/homicide at Y.Z. Jewelers in order to familiarize himself with the suspect’s features. The sergeant then met with victim

one at Norwalk Hospital to explain the process for preparing a composite sketch. Victim one indicated that he understood the process and that he felt would be able to describe the suspect's features. Victim one then viewed photographs from the Federal Bureau of Investigation Facial Identification Catalog and chose photographs that most closely resembled the suspect's features. The sergeant used the photographs victim one selected to prepare a composite of the suspect, making changes to the sketch as requested by victim one. When the sketch was finalized, victim one stated that on a scale of one to ten, the likeness of the sketch to the suspect was an "11."

II. Details of the Investigation

12. Based upon information obtained from victim one and victim two's family members, investigators determined that Y.Z. Jewelers had two land lines [REDACTED] [REDACTED] and that victim two also had a cellular telephone [REDACTED]. A review of toll records for all three telephones showed that one of the business lines [REDACTED] [REDACTED] received a call on December 8, 2011 at 1545 hours from telephone number 347-[REDACTED]; the duration of the call was 54 seconds. There was also a call from victim two's cellular telephone [REDACTED] to 347-[REDACTED] on December 8, 2011 at approximately 2025 hours. Additionally, officers located a notation upon a desk blotter within YZ Jewelers that included the telephone number 347-[REDACTED] and the amount of \$75,000. The notation was circled in red ink.

13. Subscriber information for 347-[REDACTED] (hereinafter "suspect telephone") listed the subscriber as "Robert Thomas" at [REDACTED] New York, New York 10019, and showed that the telephone was initially activated on August 29, 2011.

14. Officers reviewed toll and cell site records for the suspect telephone. Generally, it was determined that on August 29, 2011, an individual purchased the suspect telephone at an AT&T store in New York, New York. Investigators noticed that there were several patterns in the records. In particular, the suspect telephone was used to call several jewelers. Additionally, between August 29, 2011 and December 8, 2011, there were several extended time periods during which the suspect phone was not used to make any outgoing calls or to send any outgoing texts. During those periods when the suspect telephone was not used to make outgoing calls, it did, nonetheless, receive several incoming text messages and voice mail messages. Notably, there are no cell sites associated with those incoming calls/text messages, [REDACTED]

[REDACTED]

15. Investigators also noticed that the cell tower accessed by the suspect telephone for the last call/text sent from the suspect phone immediately before the extended periods when the suspect phone was not used for outgoing calls/texts was often in the vicinity of an airport. Accordingly, investigators requested information regarding persons who traveled internationally on those days. Investigators obtained the following information.

16. On August 3, 2011, an individual by the name of Andrew Robert Levene (“Levene”) purchased a round trip airline ticket to travel on Lufthansa Airlines from Philadelphia, Pennsylvania to Barcelona, Spain.

17. On August 4, 2011, Levene departed Philadelphia International Airport and arrived in Barcelona on August 5, 2011. On August 9, 2011, Levene boarded a Lufthansa Airlines flight in Barcelona and returned to Philadelphia.

18. As noted above, on August 29, 2011, an individual purchased the suspect telephone at an AT&T Store in New York, New York. A review of cell site records shows that on August 29, 2011, the suspect telephone was used several times in New York, New York. A review of toll records shows that that the suspect telephone was used several times to call [REDACTED] Jewelry, located at [REDACTED] New York.

19. Law enforcement officers interviewed the owner of [REDACTED], who stated that in either late August 2011 or early September 2011, a white male, approximately 40 years old, approximately 5'10" in height, wearing jeans, a tight fitting jacket, a New York Yankees baseball hat and leather shoes entered [REDACTED] and inquired about a ring in the store window. The man left his telephone number (347-[REDACTED]), which is the number for the suspect telephone, stated that his name was Robert Thomas and said that he would come back another time.

20. A review of toll records shows that between August 30, 2011 and September 7, 2011, the suspect telephone was used to communicate via text message with the owner of [REDACTED] Jewelry on several occasions. The owner explained that the purpose of the text messages was to set up a meeting with "Robert Thomas" in order to show him some diamonds.

21. On September 7, 2011, at approximately 1800 hours, the individual using the suspect telephone sent a text message to the owner of [REDACTED] Jewelry. A review

of cell site records shows that the suspect telephone was in the vicinity of Newark, New Jersey when the text was sent. Approximately 25 minutes later, at 1825 hours, Levene and his family departed Newark International Airport on a British Airways flight to Barcelona, Spain.¹

22. A review of toll records for the suspect telephone shows that between 1800 hours on September 7, 2011, and September 26, 2011, there were no outgoing calls made or text messages sent from the suspect telephone. During this same period, the suspect telephone received several incoming text messages and voice mail messages. There are no cell sites associated with those incoming calls/text messages, which indicates that the suspect telephone was either turned off and/or outside the range of any cell towers.

23. On September 26, 2011, Levene flew on an Air Berlin flight from Barcelona, Spain, to John F. Kennedy International Airport in Queens, New York.

24. On September 27, 2011, the suspect telephone was used to make outgoing calls and to send outgoing text messages. A review of cell site records indicates that the great majority of the calls/texts were made while the suspect telephone was in the vicinity of New York City. Notably, several of the text messages were sent to or received from the owner of [REDACTED] Jewelry.

¹ On August 30, 2011, Levene purchased four one-way tickets to travel from Newark, New Jersey to Barcelona, Spain. A review of passport records demonstrates that the tickets were for Levene, a woman who has been identified as his wife and their two children. The passport records further demonstrate that Levene and his family indicated that they were traveling to Spain for a two to three week vacation. According to Immigration authorities, there is no indication that Levene's wife or two children have returned to the United States since their September 7, 2011 departure.

25. During the afternoon of September 27, 2011, "Robert Thomas" returned to [REDACTED] Jewelry. [REDACTED]

26. On September 28, 2011, the suspect telephone was used to make outgoing calls and to send outgoing text messages. A review of cell site records shows that several of the calls/texts were made while the telephone was in the vicinity of New York City. A review of toll records again shows that many of the text messages were to or from the owner of [REDACTED] Jewelry. The last three text messages sent to or received on the suspect telephone on September 28, 2011 were sent when the telephone was in the vicinity of J.F.K. International Airport in Queens, New York. The last text message was sent at 1654 hours. Approximately 41 minutes later, Levene departed J.F.K. International Airport on an Air Berlin flight to Madrid that departed at 1735 hours.

27. A review of toll records for the suspect telephone shows that between 1654 hours on September 28, 2011, and December 5, 2011, there were no outgoing calls made or text messages sent from the suspect telephone. During this same period, the suspect telephone received several incoming text messages. There are no cell sites associated with those incoming text messages, which indicates that the suspect telephone was either turned off and/or outside the range of any cell towers.

28. On December 2, 2011, Levene purchased a round-trip airline ticket from Madrid, Spain, to Philadelphia, Pennsylvania.

29. On December 4, 2011, victim two, the owner of Y.Z. Jewelers, contacted victim one and informed him that he had a customer interested in purchasing several large diamonds. Victim two asked victim one to locate diamonds that were between two and three karats in size and valued between \$45,000 and \$75,000 to meet the prospective buyer's specifications.

30. On December 5, 2011, Levene flew from Madrid to Philadelphia. He arrived at Philadelphia International Airport at 1515 hours.

31. On December 5, 2011, beginning at 1553 hours, the suspect telephone was used to make outgoing calls and to send outgoing text messages. A review of cell site records indicates that the first two uses of the suspect telephone were in Philadelphia.

32. Thereafter, on December 5, 2011, between approximately 1648 and 1730 hours, an individual wearing a black driving hat and dark glasses was seen window shopping [REDACTED] in Philadelphia. The individual was captured on the videotape surveillance of several jewelry stores, including [REDACTED]

[REDACTED] The individual entered [REDACTED], discussed the purchase of diamonds with two female employees and then left without making a purchase; he identified himself as "Robert Thomas" and provided the suspect telephone number as the number at which he could be contacted.

33. At approximately 1730 hours, the same individual entered [REDACTED], and discussed the purchase of diamonds. He again left without making a purchase.

34. At approximately 1745 hours, the same individual entered the [REDACTED]. The individual purchased \$10.00 worth of minutes for the suspect telephone.

35. On December 5, 2011, victim one called victim two to inform him that he had located diamonds for victim two's customer. Victim two told victim one that he had arranged to meet the buyer at Y.Z. Jewelers on Wednesday December 7, 2011, at 2200 hours.

36. A review of cell site records shows that on December 6, 2011, the suspect telephone was used several times, including in the vicinity of Fort Lee, New Jersey; Fairfield, Connecticut; Westport, Connecticut; and Stamford, Connecticut. One of the outgoing calls was to [REDACTED] a jewelry store in [REDACTED] Connecticut. One of the incoming calls was from [REDACTED] Jewelers in [REDACTED] Pennsylvania.

37. On December 7, 2011, the suspect telephone was used several times to make and receive calls/text messages. A review of cell site records shows that the suspect telephone was traveling throughout Fairfield County, Connecticut, during the times at which it was used. Specifically, the suspect telephone was used in the vicinity of Greenwich, Stamford, Norwalk, Westport, Fairfield and Bridgeport, Connecticut. At least two of the calls were made to [REDACTED] Jewelers in [REDACTED] Connecticut.

38. Law enforcement officers have interviewed the owner of [REDACTED]. She stated that the individual who called from the suspect telephone identified himself as "Robert," and made an appointment to meet with her to view high value diamonds. On December 7, 2011, at approximately 1230 hours, "Robert" arrived at the store. When the owner saw "Robert" through the glass, she became nervous and refused to open the door. While she was able to provide a partial description of the individual, namely, that he had blue eyes, facial hair and was wearing a dark hat and glasses, she was unable to identify him in a photographic lineup.

39. Law enforcement officers have also interviewed a salesperson at [REDACTED] Jewelers in [REDACTED] Connecticut. The salesperson stated that on December 7, 2011, a white male of slender build, with light brown hair and well-groomed facial stubble entered the store. He was wearing a dark cap and quilted jacket. When the man entered, he asked if the sapphire in the window was real. The salesperson indicated that it was and took the sapphire ring out of the case to show it to the individual. The individual looked at the ring and a second ring. When asked, the individual stated that his budget was \$150,000 and intimated that he wanted to buy a sapphire for the woman who had bought him his watch. The salesperson wrote the information about the two rings on her business card at the male's request. He then left the store.

40. On December 7, 2011, at approximately 1914 hours, victim one took a train from Grand Central Station to Westport, Connecticut. Victim two picked victim one up at the Westport train station, and the two drove to Y.Z. Jewelers to wait for their customer. At approximately 2130 hours, victim two called his customer, who victim two

referred to as “Robert,” on the suspect telephone to confirm their meeting. According to victim one, “Robert” stated that he was running a little late but that he was on his way.

41. At approximately 2245 hours, “Robert” arrived at Y.Z. Jewelers [REDACTED] [REDACTED] in Westport Connecticut. “Robert” examined the diamonds using tweezers and a jeweler’s loop. After approximately 30 minutes, “Robert” told victim two that he would “have to sleep on it.” “Robert” then told victim one that he would be in New York City on December 8, 2011, and that he would meet victim one at his store in New York. After “Robert” finished looking at the diamonds, he and victim one walked downstairs and into the parking lot. “Robert” offered to drive victim one back to New York. Victim one explained that he declined the offer because he was uncomfortable driving with “Robert” while he (victim one) was in possession of the diamonds. Victim one observed “Robert” get into what he described as a “grayish” car with a “flat” front and back.

42. On December 8, 2011, at approximately 1100 hours, victim two called victim one to inform him that “Robert” was not going to meet victim one in New York. Rather, victim two scheduled a meeting with “Robert” at Y.Z. Jewelers for that evening. Victim two asked victim one to be in Westport by 2145 hours and to make sure to bring a four karat diamond.

43. That evening, victim one took a train from Grand Central Station in New York to Westport, Connecticut. Victim two picked victim one up at the Westport train station and together they drove to Y.Z. Jewelers.

44. At approximately 2025 hours, victim two called “Robert” on the suspect telephone. A review of cell site records shows that the suspect telephone was in the

vicinity of Fairfield, Connecticut, at the time of the call. "Robert" stated that he would be at Y.Z. Jewelers soon. At approximately 2113 hours, "Robert" arrived at Y.Z. Jewelers. Victim one noticed that Robert was holding brown gloves in his hand. Victim one stated that he, victim two and "Robert" looked at the diamonds and discussed the potential sale. After approximately 30 minutes, "Robert" again stated that he wanted to "sleep on it" and that he would call the next day to let them know what he had decided. "Robert" then began to shift in his seat, put his hand into his pocket, pulled out a gun and started shooting at victim one and victim two. A review of the videotaped surveillance shows that after both victim one and victim two had been shot and fallen to the floor, "Robert" took the diamonds, walked in and out of the rooms of the business several times and then reached behind the desk. It is believed that "Robert" found the keys to the door behind the desk because he then let himself out of the store.

45. After the robbery, the suspect telephone was never again used to make an outgoing call or to send an outgoing text.

46. Levene was scheduled to depart on a flight from Philadelphia International Airport on December 9, 2011, at 1825 hours, to return to Madrid. However, Levene cancelled his flight.

47. On December 11, 2011, Levene booked a flight from Philadelphia International Airport to Madrid at 1830 hours; he missed that flight. Levene then signed up to fly standby on two flights: one at 2050 hours to Amsterdam and one at 2110 hours to London. Levene ultimately flew from Philadelphia to Amsterdam at 2050 hours and arrived in Amsterdam on December 12, 2011.

48. On January 5, 2012, investigators used a driver's license photograph that they had obtained of Levene, along with photographs of seven other individuals with similar characteristics, to create a photograph book. All eight photographs were in black and white and were of the same approximate size and clarity.

49. Investigators then met with victim one for the purpose of conducting a photographic "lineup." Prior to showing victim one the book containing the eight photographs, investigators informed victim one both orally and in writing that he was under no obligation to make a positive identification. Victim one indicated that he understood. Victim one then began to look through the booklet. When victim one looked at photograph number three, he stopped and stared at the photograph. Victim one then continued to turn the pages in order to look at the remaining five photographs. When he reached the end of the booklet, victim one turned back to photograph three and indicated that the person depicted therein was the one who had shot him and victim two. The person depicted in photograph three is Andrew Robert Levene. Victim one then explained that he was not certain of the identification as the shooter was wearing a dark hat and glasses when victim one met with him on both December 7th and December 8th and the person in the photograph was not wearing a hat or glasses. Victim one did say that the person depicted in photograph three had the same facial features as the shooter.

50. Investigators also met with the salesperson from [REDACTED] Jewelers in [REDACTED] Connecticut, for the purpose of conducting a photographic "lineup." Prior to showing the salesperson the book containing the eight photographs, investigators informed the salesperson both orally and in writing that she was under no obligation to make a positive identification. The salesperson indicated that she understood and then

began to look through the booklet. The salesperson from [REDACTED] then chose photograph number four, stating that the person depicted therein was possibly the person that had come into the store inquiring about the sapphire. The person depicted in photograph four is Andrew Robert Levene.² The salesperson explained that she was not 100% certain of the identification as the shooter was wearing a dark hat and glasses on the day that he had been in the store. However, she stated that the facial hair and the shape of the nose of the person in photograph number four looked like the person she had encountered on December 7, 2011.

III. Identification of the suspect

51. Based upon information obtained during the course of the investigation, I have determined that Andrew Robert Levene is a United States citizen. He is a Caucasian male who is 41 years of age, approximately five feet nine inches tall and weighs approximately 180 pounds. Levene has brown hair and light blue eyes. Levene was formerly in the United States Armed Forces and has training in the use of weapons. Levene has family members both in Connecticut and in New York. Levene previously used a Connecticut address as a point of contact and regularly provides two contact phone numbers that have New York City area codes. At this time, it is believed that Levene is in [REDACTED] Spain. The investigation is ongoing.

² Investigators varied the order of the photographs in the booklets that were used to conduct the photographic identifications.

IV. CONCLUSION

52. Based on my investigation, and the investigation of others, there is probable cause to believe and I do believe that ANDREW ROBERT LEVENE has committed violations of Title 18, United States Code, Section 1951(a)(1) (Interference with Commerce Through Robbery); Title 18, United States Code, Section 1111(a) (Murder); Title 18, United States Code, Section 1113 (Attempted Murder) and Title 18, United States Code, Section 924(j)(1) (Causing Death Through the Use of a Firearm). Accordingly, I request the issuance of a complaint and warrant authorizing his arrest.

53. Finally, because your affiants believe that public disclosure of the within affidavit and public disclosure of the existence of an arrest for ANDREW ROBERT LEVENE may tend to: compromise the investigation; cause the suspect to flee in order to avoid apprehension; or to destroy physical evidence or conceal proceeds of criminal activity. Accordingly, your affiant respectfully requests that the Court direct Assistant United States Attorney Tracy Lee Dayton, who is assigned to investigate and prosecute this matter and who is an officer of the Court, to retain this affidavit, the complaint and the arrest warrant, and to maintain said documents in a secure place until further order of the Court.

The foregoing is true and correct to the best of this Applicant's knowledge.

JAMES MASTERSON
DEPUTY UNITED STATES MARSHAL
UNITED STATES MARSHAL SERVICE

The foregoing is true and correct to the best of this Applicant's knowledge.

PHILIP RESTIERI
DETECTIVE
WESTPORT POLICE DEPARTMENT

Subscribed and sworn to before me 10th day of January 2012, at Bridgeport, Connecticut.

HONORABLE WILLIAM I. GARFINKEL
UNITED STATES MAGISTRATE JUDGE