

AFFIDAVIT OF SPECIAL AGENT COLGAN NORMAN

I, Colgan Norman, being duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation (“FBI”). I am currently assigned to a Resident Agency of the Boston Division located in Boston, Massachusetts. As a Special Agent, I have conducted investigations into federal crimes relating to the unlawful possession of firearms, among other investigations. Throughout my career, I have directly participated in numerous criminal investigations and I am responsible for the investigation and enforcement of violations of federal law.

2. I make this affidavit in support of an application for a criminal complaint and arrest warrant, charging James W. Morales, dob xx/xx/1981 (hereinafter “Morales”), with: (1) unlawful possession of a machine gun, in violation of 18 U.S.C. § 922(o); (2) unlawful possession of stolen firearms, in violation of 18 U.S.C. §922(j); and (3) Theft of Government Property, in violation of 18 U.S.C. §641 (hereinafter, the “Subject Offenses”).

3. I further make this affidavit in support of a search warrant pursuant to Federal Rule of Criminal Procedure 41 and 18 U.S.C. § 2703(c)(1)(A), and for an Order, directing Sprint to assist agents of the FBI by providing all information, facilities and technical assistance needed to ascertain the physical location including but not limited to, E-911 Phase II data indicating the specific latitude and longitude of (or other precise location information) concerning the Sprint cellular phones assigned the numbers (857) 209-6156 (hereinafter “Target Telephone #1”) and (857) 500-1232 (hereinafter “Target Telephone #2”).

4. As detailed more fully below, I have probable cause to believe that the tracking of these phones will lead to contraband and evidence of a crime, fruits of a crime, instrumentalities of, and a person to be arrested for the Subject Offenses.

5. The statements contained in this affidavit are based in part on: information provided by FBI Special Agents; written reports about this and other investigations that I have received, directly or indirectly, from other law enforcement agents; information gathered from the service of administrative subpoenas and court orders; investigation and analysis by FBI agents/analysts; and my experience, training and background as a Special Agent with the FBI.

6. Because this affidavit is submitted for the limited purpose of securing authorization for the requested warrant, I have not included each and every fact known to me concerning this investigation. Instead, I have set forth only the facts that I believe are necessary to establish the necessary foundation for the requested complaint, arrest warrant, and search warrant.

BACKGROUND

7. On November 14, 2015, at approximately 9:07 p.m., an alarm was triggered for a vault inside the United States Army Reserve Center located at 25 Lake Avenue North, Worcester, Massachusetts 01605.

8. The following day, November 15, 2015, at approximately 7:30 a.m. United States Army personnel reported forced entry through the roof of the gun vault located in the drill room of the facility.

9. An inventory of the vault revealed that six (6) M-4 Rifles and ten (10) Sig Sauer M11 9mm pistols had been stolen from the weapons vault. The M-4 Rifles are equipped with a toggle switch that allows them to fire a single shot, or a three round burst, for each single pull of the trigger. *See* 18 U.S.C. §5845 (defining a machine gun as, among other things, “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.”).

10. The value of these weapons exceeds \$1,000.

11. The drill room in which the weapons vault was located is a large, hanger like structure. The weapons vault, fairly described as being approximately the size of a shipping container, is located within the drill room.

12. The perpetrator gained access to the building in which the weapons vault is kept by breaking a window of a kitchen located in the proximity of the drill room within the facility.

13. The perpetrator gained access to the interior of the vault by climbing to the top of the weapons vault, then by cutting a hole in through the ceiling through several layers of metal and wood.

14. It is believed that the perpetrator utilized a power saw and pry bar to cut through the ceiling of the weapons vault. In this regard, tool marks demonstrating the use of a pry bar were found in and around the hole in the ceiling of the weapons vault.

Surveillance Video

15. Among other evidence, agents have retrieved surveillance video from a nearby building. The video, while grainy, depicts a vehicle (possibly a dark colored hatchback), parked at the Shaw building, located adjacent to the U.S. Army facility, at approximately 6:43 p.m.

16. A male exits the vehicle at approximately 7:43 p.m., takes duffle bags and walks toward the Army facility. At approximately 7:48 p.m., the individual returns to the vehicle without the bags.

17. At approximately 7:55 p.m., the same individual walks toward the Army facility with additional duffle bags. At 10:46 p.m., the individual returns to car without bags.

18. At approximately 10:47 p.m., the individual exits the vehicle and walks in the direction of the Army facility.

19. At approximately 11:59 p.m., the individual returns to the vehicle with one or more duffle bags.

20. At approximately 12:00 a.m. hours on November 15, 2015, the individual exits the vehicle empty handed.

21. At approximately 12:02 a.m., the individual returns to vehicle with two bags. At 12:05 p.m., the individual exits the vehicle carrying three or four duffle bags.

22. At approximately 12:08 p.m., the vehicle departs the area towards Lake Avenue North.

Blood Stains and DNA Profile Match

23. FBI Agents and specialists took, among other things, four samples of reddish brown stains from the area in and around the weapons vault which are believed to have been left by the perpetrator of the robbery.

a. Sample #1 was a swab taken from a reddish brown stain located on the left hand wall of the exterior of the weapons vault as one faces the door of the vault. Sample #1 was taken from a position approximately one foot from the top of the vault. Based upon agents' observations of the scene and the height of the weapons vault, I do not believe that this sample could have been left by an individual standing on the ground. It must have been left by an individual climbing to, or located on, the roof of the weapons vault.

b. Sample #2 was a swab taken from a reddish brown stain located on one of the pillars supporting the ceiling of the drill room in the wall of the drill hall. This pillar is located directly adjacent to the weapons vault. Sample #2 was taken from a reddish brown stain on the pillar located approximately three feet above the top of the weapons vault. Based upon agents' observations of the scene and the height of the weapons vault, I do not believe that this sample could have been left by an individual standing on the ground. It must have been left by an individual located on the roof of the weapons vault.

c. Samples #3 and #4 were taken from reddish brown stains located inside the vault under the hole that had been drilled in the ceiling of the weapons vault. Sample #3 was taken from the wall of the safe within approximately one foot below the hole cut in the ceiling of the vault through which the perpetrator gained access. Sample #4 was taken from the wall of the safe within approximately eighteen inches below the hole cut in the ceiling of the vault through which the perpetrator gained access.

24. The samples were transported to the FBI Laboratory for analysis in order to determine if a DNA Profile was present.¹

25. The DNA profile obtained from one or more of the foregoing samples was compared to the known DNA Profiles maintained in the FBI's Combined DNA Index System ("CODIS") and National DNA Index System ("NDIS"), a massive, centrally managed database including DNA profiles from federal, state, and territorial DNA collection programs, as well as profiles drawn from crime-scene evidence, unidentified remains, and genetic samples voluntarily provided by relatives of missing persons.²

26. The DNA profile created from the analysis of one or more of the samples described above was a match for Morales.

¹ As described by the First Circuit Court of Appeals:

DNA profiles currently function as identification records not unlike fingerprints, photographs, or social security numbers. To create a DNA profile, the FBI uses short tandem repeat (STR) technology to analyze repeating sequences found at thirteen specific regions, or loci, on an individual's DNA. Each of the targeted loci are found on "so-called 'junk DNA'-DNA that differs from one individual to the next and thus can be used for purposes of identification but which was purposely selected because it is not associated with any known physical or medical characteristics and does not control or influence the expression of any trait. Thus, the resulting DNA profile provides a kind of genetic fingerprint, which uniquely identifies an individual, but does not provide a basis for determining or inferring anything else about the person.

Boroian v. Mueller, 616 F.3d 60, 65-66 (1st Cir. 2010) (citations and quotations omitted).

² As of September 2015, CODIS - NDIS contained over 11,962,222 offender profiles, 2,120,729 arrestee profiles and 657,298 forensic profiles. <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/ndis-statistics> (last visited November 17, 2015).

Additional Investigation

27. Agents have learned from personnel at the U.S. Army Reserve Facility that on or about November 12, 2015, Morales was present at the facility to obtain copies of his discharge papers.

28. Morales has a criminal history.³ Most recently, on May 20, 2015, Morales appeared before the Middlesex Superior Court on charges of child rape and indecent assault on a child under fourteen years old. At some point after the appearance, he was released on conditions including electronic monitoring.

29. On or about Monday, November 16, 2015, at approximately 8:48 a.m., it is believed that Morales cut off the monitoring bracelet.

30. On Monday, November 16, 2015, a default warrant issued for Morales' arrest. It is believed that this warrant issued because Morales cut-off his monitoring bracelet.

31. Preliminary review of the location information from the electronic monitoring bracelet indicates that Morales arrived at the vicinity of North Lake Avenue in Worcester at approximately 6:40 p.m. on November 14, 2015 and was present until approximately 12:08 a.m. on November 15, 2015. At several times during the intervening period, the bracelet places Morales directly inside the North Lake Street U.S. Army Facility from which the weapons were stolen.

Target Telephones #1 and #2

32. Agents reviewing Morales' publically available Facebook page on November 18, 2015 discovered the number for Target Telephone #1(857) 209-6156 for Morales.

³ According to hi CORI, Morales has a prior 2013 conviction for aggravated assault and battery in the Cambridge District Court for which he was sentenced to one year of incarceration, suspended.

33. A representative of the Middlesex Superior Court Probation Department provided two cellphone contacts for Morales, Target Telephone #1 (857) 209-6156 and Target Telephone #2 (857) 500-1232.

34. Based upon the foregoing, I believe Morales to be using one or both of these phones and, in my experience, individuals carry their cell phones on their person.

Cell Phone Providers

35. In my training and experience, I have learned that Sprint is a company that provides cellular telephone access to the general public. I also know that providers of cellular telephone service have technical capabilities that allow them to collect and generate at least two kinds of information about the locations of the cellular telephones to which they provide service: (1) E-911 Phase II data, also known as GPS data or latitude-longitude data, and (2) cell-site data, also known as “tower/face information” or cell tower/sector records. E-911 Phase II data provides relatively precise location information about the cellular telephone itself, either via GPS tracking technology built into the phone or by triangulating on the device’s signal using data from several of the provider’s cell towers. Cell-site data identifies the “cell towers” (i.e., antenna towers covering specific geographic areas) that received a radio signal from the cellular telephone and, in some cases, the “sector” (i.e., faces of the towers) to which the telephone connected. These towers are often a half-mile or more apart, even in urban areas, and can be 10 or more miles apart in rural areas. Furthermore, the tower closest to a wireless device does not necessarily serve every call made to or from that device. Accordingly, cell-site data is typically less precise than E-911 Phase II data.

36. Based on my training and experience, I know that Sprint can collect E-911 Phase II data about the location of the Target Telephones, including by initiating a signal to determine

the location(s) of the Target Telephones on Sprint' network or with such other reference points as may be reasonably available.

37. Based on my training and experience, I further know that Sprint can collect cell-site data about the Target Telephone.

CELL PHONE AUTHORIZATION REQUEST

38. Based on the foregoing, I request that the Court issue the proposed search warrants, pursuant to Federal Rule of Criminal Procedure 41 and 18 U.S.C. § 2703(c).

39. I further request, pursuant to 18 U.S.C. § 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), that the Court authorize the officer executing the warrant to delay notice until 30 days after the collection authorized by the warrant has been completed. There is reasonable cause to believe that providing immediate notification of the warrant may have an adverse result, as defined in 18 U.S.C. § 2705. Providing immediate notice to the subscriber or user of the Target Telephones would seriously jeopardize the ongoing investigation, as such a disclosure would give that person an opportunity to destroy evidence, change patterns of behavior, notify confederates, and flee from prosecution. See 18 U.S.C. § 3103a(b)(1). As further specified in Attachment A, which is incorporated into the warrant, the proposed search warrant does not authorize the seizure of any tangible property. See 18 U.S.C. § 3103a(b)(2). Moreover, to the extent that the warrant authorizes the seizure of any wire or electronic communication (as defined in 18 U.S.C. § 2510) or any stored wire or electronic information, there is reasonable necessity for the seizure for the reasons set forth above. See 18 U.S.C. § 3103a(b)(2).

40. I further request that the Court direct Sprint to disclose to the government any information described in Attachment A that is within the possession, custody, or control of Sprint as to Target Telephones #1 and #2. I also request that the Court direct Sprint to furnish the

government, for Target Telephone #1 and #2, all information, facilities, and technical assistance necessary to accomplish the collection of the information described in Attachment A unobtrusively and with a minimum of interference with Sprint' services, including by initiating a signal to determine the location of the Target Telephone Sprint's network or with such other reference points as may be reasonably available, and at such intervals and times directed by the government. The government shall reasonably compensate Sprint for reasonable expenses incurred in furnishing such facilities or assistance.

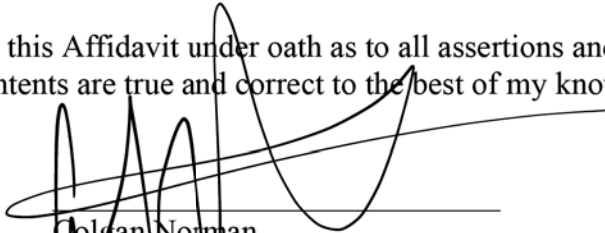
41. I further request that the Court authorize execution of the warrant at any time of day or night, owing to the potential need to locate the Target Telephones outside of daytime hours. Agents cannot know when they will be able to locate Morales, and, once located, how quickly agents would be able to act to apprehend him. Thus, it may be that tracking of Morales would be required outside of daytime hours.

Conclusion

42. Based upon the foregoing I believe that there is probable cause to believe that Morales has committed the Subject Offenses and that an arrest warrant and criminal complaint charging him with the Subject Offenses should issue.

43. Based upon the foregoing I believe that there is probable cause to issue tracking warrants for Target Telephone #1 and #2.

I, Colgan Norman, having signed this Affidavit under oath as to all assertions and allegations contained herein, state that its contents are true and correct to the best of my knowledge, information, and belief.


Colgan Norman
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me,
this 18th day of November, 2015



HONORABLE DAVID H. HENNESSY
UNITED STATES MAGISTRATE JUDGE
DISTRICT OF MASSACHUSETTS



-

ATTACHMENT A

Particular Things to be Seized

All information about the location of the Sprint cellular phone assigned number (857) 209-6156 (hereinafter “Target Telephone #1”) and the Sprint cellular phone assigned number (857) 500-1232 (Target Telephone #2) for a period of thirty days, during all times of day and night. “Information about the location of the Target Cell Phones” includes all available E-911 Phase II data, GPS data, latitude-longitude data, and other precise location information, as well as all data about which “cell towers” (i.e., antenna towers covering specific geographic areas) and “sectors” (i.e., faces of the towers) received a radio signal from Target Telephone#1 or #2 . “Information about the location of the Target Cell Phones” also includes any mobile locator functions or information that can be obtained by signal initiated to determine the location of Target Telephone #1 or Target Telephone #2 on Sprints’ network.

To the extent that the information described in the previous paragraph (hereinafter, “Location Information”) is within the possession, custody, or control of Sprint or any other carrier associated with Sprint and utilizing the cellular network of Sprint, Sprint is required to disclose the Location Information to the government. In addition, Sprint or any other carrier associated with Sprint and utilizing the cellular network of Sprint must furnish the government all information, facilities, and technical assistance necessary to accomplish the collection of the Location Information unobtrusively and with a minimum of interference with Sprint’s services, including by initiating a signal to determine the location of the Target Cell Phones on Sprint’s network or with such other reference points as may be reasonably available, and at such intervals and times directed by the government. The government shall compensate Sprint or any other

carrier associated with Sprint and utilizing the cellular network of Sprint for reasonable expenses incurred in furnishing such facilities or assistance.

This warrant does not authorize the seizure of any tangible property. In approving this warrant, the Court finds reasonable necessity for the seizure of the Location Information. *See* 18 U.S.C. § 3103a(b)(2).