

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Middle District of Alabama

United States of America
v.
MICHAEL ALBERT FOCIA

Case No. 2:15mj 21-SRW

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 August 9, 2013, and Oct. 27, 2014, in the county of Montgomery in the Middle District of Alabama, the defendant(s) violated:

Table with 2 columns: Code Section, Offense Description. Rows include 18 USC 922(a)(5) and 18 USC 1715.

This criminal complaint is based on these facts:

See Attached Affidavit.

Continued on the attached sheet.

Signature and printed name of JAR Rudden Conway, SSA.

Sworn to before me and signed in my presence.

Date: 01/27/2015

Signature of Judge Susan Russ Walker.

City and state: Montgomery, AL

Susan Russ Walker, Chief U.S. Magistrate Judge

## AFFIDAVIT

I, Special Agent Jennifer A. Rudden-Conway, affiant, hereby depose and state the following:

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), United States Justice Department, and have been so employed since June 18, 2001. I have completed Criminal Investigator School at the Federal Law Enforcement Training Center and New Professional Training Program at the ATF National Academy. I am currently assigned to the Montgomery Field Office in Montgomery, Alabama. As a result of my training and on-the-job experience as an ATF Special Agent, I have become thoroughly knowledgeable in the violations of the Federal firearm, arson and explosive laws to include various criminal statutes enacted in the Gun Control Act of 1968 and those set forth in the National Firearms Act.
2. All of the information in this affidavit has been personally verified by me and/or obtained from other Law Enforcement Officers. As a result of my training and experience as an ATF agent, I am familiar with several Federal laws to include the statutes which are the basis of this Affidavit, specifically:
  - a. Unlicensed transfer, sale, trade, gift, transport or delivery of any firearm to a resident in another state, a violation of 18 U.S.C. § 922(a)(5); and
  - b. Depositing in the mail for delivery by the United States Postal Service any pistols, revolvers, or other firearms capable of being concealed on the person, a violation of 18 U.S.C. § 1715.

### **First Undercover Firearm Purchase from FOCIA**

3. On or about August 23, 2013, ATF Senior Special Agent ("SSA") Tully Kessler from the Omaha, Nebraska Field Office contacted the ATF Montgomery Field Office and provided information pertaining to an investigation involving subjects utilizing The Onion Router ("TOR") Network websites to traffic firearms nationally and internationally. TOR Network websites are designed so that they may be accessed by users privately and anonymously, and are described as residing in the "deep web" rather than in the conventional, publicly-accessible internet.
4. On August 7, 2013, SSA Kessler observed a posting on the TOR Network website "Black Market Reloaded" for a "Grab Bag Mystery Hand Gun #1." The price for the handgun was listed as 15 Bitcoins, an online currency. SSA Kessler, acting in an undercover capacity, agreed to purchase the firearm from an unknown subject identifying himself by the screen name "iWorks."

Approximately twenty minutes after agreeing to purchase the firearm, SSA Kessler received an email from iWorks questioning his purchase because SSA Kessler held himself out to be a domestic buyer. Ultimately, iWorks agreed to sell the gun even though SSA Kessler provided a domestic mailing address, and advised that the gun would be received the next day, August 8, 2013. In addition, iWorks advised that the firearm was a Smith & Wesson ("S&W") .40 caliber handgun that already had been pictured on the website.

5. On August 9, 2013 SSA Kessler received a package from the United States Postal Service. The large Priority Mail flat-rate box contained a S&W M&P Shield .40 caliber handgun, serial number HPP9188, along with two magazines, all inside of a plastic bag.
6. A trace of the firearm revealed that Alan Thomas Turner purchased the firearm from Gulf States Distributors in Montgomery, Alabama on July 29, 2013. ATF Special Agent Richie Carpenter and U.S. Postal Inspector Special Agent Brian Wilson met with Alan Turner at Baptist South Hospital, located in Montgomery, and he agreed to be interviewed. Alan Turner advised that in the Summer of 2013 he purchased a S&W M&P Shield, then approximately two weeks later he purchased a second one to give to his son for his birthday. Alan Turner advised that he showed the gun to his son, who did not like it. Mr. Turner said that he had no need for two of the same model handgun, so he listed the one he had bought for his son in the Bulletin Board, an Alabama-based publisher of classified advertisements.
7. Alan Turner advised that a man identifying himself as "Mike" contacted him and wanted to purchase the firearm. Turner met Mike at the Rite Aid pharmacy near Vaughn Road in Montgomery to make the exchange. Turner stated that Mike arrived in a gold Acura MDX SUV with Alabama license plate number 3A26T27, and was dressed in shorts and a button down shirt with a hat. Turner further stated that Mike appeared to be a businessman but in his opinion was very strange, and when he opened the passenger door of his vehicle it was very cluttered inside. Turner provided Mike's phone number as (334) 312-7596.
8. Turner stated that, during the exchange, Mike told him that he sued the government for a living and made a statement about having a goal of accumulating five hundred guns. Mike asked Turner if he would take gold coins for the firearm, but Turner declined. Turner said Mike rushed the sale and left.
9. A query of the National Crime Information Center ("NCIC") database on November 15, 2013 revealed that Alabama tag 3A26T27 was currently registered to Presley Focia, with an address in Prattville, Alabama. Further investigation utilizing the Alabama Law Enforcement Tactical System ("LETS") database revealed that the vehicle was previously registered to

Presley Focia's father, Michael Albert FOCIA, with an address of 204 Seminole Drive, Montgomery, Alabama.

10. Based on this information, I assembled a line-up of photographs including one of Michael Albert FOCIA taken on August 11, 2013, and provided the line-up to Alan Turner on November 18, 2013, asking him if he could identify any of the photographs as depicting the individual he knew as Mike and who bought the S&W handgun. Alan Turner reviewed the line-up and identified FOCIA without hesitation.
11. On November 18, 2013, I then met with Jessica Busby, an employee at the United Parcel Service ("UPS") store located on the Atlanta Highway in Montgomery, Alabama. I provided the same line-up to Jessica Busby and asked her if she could identify anyone from the line-up. She identified FOCIA as an individual who mailed a package he claimed was a computer "mother board" from the UPS store on August 7, 2013.
12. A review of the ATF National Licensing Center by ATF Investigator Greg Griffin in November 2013 revealed that ATF has no record of a Federal Firearms License for FOCIA. A second review of the ATF National Licensing Center on January 23, 2015 confirmed that ATF still has no record of a Federal Firearms License for FOCIA.

#### **Second Undercover Purchase of Firearm from FOCIA**

13. My investigation indicates FOCIA continued to actively market firearms for sale on the internet well into 2014, but now on a deep website known as "Agora." Specifically, in order to investigate an Agora vendor using the screen name "RTBArms," ATF Special Agent ("SA") John Harrell created an account on Agora named "gnomesayin." SA Harrell located a listing by RTBArms for a used Glock, Model 27, .40 caliber pistol with two (2) magazines for the price of \$2,800, which was to be paid in BitCoins. SA Harrell began communicating with RTBArms about purchasing the Glock pistol. Because the gnomesayin account was newly created and had not yet received any positive feedback, RTBArms agreed to sell the Glock pistol only if the transaction were broken into two separate parts. The first part of the transaction would cover RTBArms' raw costs, like shipping, and would have to be finalized early ("FE"). In FE transactions, the buyer releases the funds to the vendor before receiving the product. This is uncommon since the buyer assumes the risk of never receiving the order. The second transaction would place the funds for the remainder of the purchase into full escrow on Agora pending the arrival of the pistol.
14. On October 15, 2014, SA Harrell utilized \$2,000 to purchase 4.5 BitCoins in person from a [www.localbitcoins.com](http://www.localbitcoins.com) vendor identified as a female with the initials of "RK." SA Harrell placed the BitCoins into an electronic BitCoin

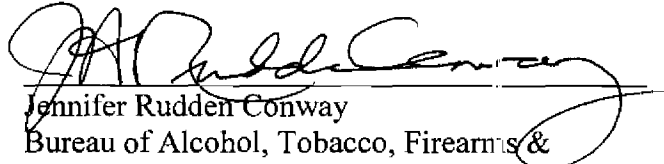
wallet that contained leftover BitCoins purchased for an unrelated investigation. On October 15, 2014, SA Harrell placed the two-part order for the used Glock, Model 27, .40 caliber pistol and two (2) magazines. The final negotiated price for the first transaction was \$1,150. As requested, the funds for the first transaction were released. The final negotiated price for the second transaction was \$1,500. The funds for the second transaction were placed into escrow on Agora.

15. SA Harrell instructed "RTBArms" in the first transaction via an encrypted message to ship the pistol to: Jon Hoffman, P.O. Box 629, Newark, NJ 07101.
16. On October 16, 2014, RTBArms sent a message indicating the package had been shipped and to expect it to arrive on Friday, October 17, 2014 or Saturday, October 18, 2014.
17. On October 27, 2014 United States Postal Inspector Donna Algieri confirmed the receipt by the United States Postal Service of a package in P.O. Box 629, Newark, New Jersey, containing a black firearm with two (2) magazines. The firearm was a Glock, Model 27, .40 caliber handgun, serial number RZC194, the same firearm that was purchased by gnomesayin from RTBArms.
18. The package was addressed to Jon Hoffman, P.O. Box 629, Newark NJ 07101-0629, with a return address of Will Wylong, Kyocera, 592 George Todd Dr., Montgomery, AL 36117-2206.
19. On November 7, 2014, a United States Postal Service Forensic Laboratory examiner determined that latent prints of value could be lifted from the packing materials of the package mailed to Newark, New Jersey. The latent fingerprints were matched to a known print for Michael Albert FOCIA.

### **Conclusion**

20. Based on the foregoing facts, there is probable cause to believe that on or about the dates August 9, 2013 and October 27, 2014, Michael Albert FOCIA transferred, sold, and delivered a firearm to another person who also was not licensed to deal, import, manufacture, or collect firearms and had reasonable cause to believe that the person receiving the firearm from him resided in another state, in violation of Title 18, United States Code, Section 922(a)(5).
21. On the same dates, there is probable cause to believe Michael Albert FOCIA deposited in the mail for delivery by the United States Postal Service a firearm capable of being concealed on the person, without being a licensed firearm manufacturer or dealer or otherwise complying with Postal Service regulations, in violation of Title 18, United States Code, Section 1715.

22. These violations occurred in Montgomery County, within the Middle District of Alabama.

  
Jennifer Rudden Conway  
Bureau of Alcohol, Tobacco, Firearms &  
Explosives

Sworn to and subscribed before me this  
27<sup>th</sup> day of January, 2015.

  
CHIEF UNITED STATES MAGISTRATE JUDGE