

FILED

UNITED STATES DISTRICT COURT

FEB 07 2013

for the

Eastern District of North Carolina

JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
BY MRH DEP CLK

United States of America)

v.)

Erwin Antonio Rios)

Case No. 5:13mj1138

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 February 7, 2013 in the county of Harnett in the Eastern District of North Carolina, the defendant(s) violated:


Code Section
18 U.S.C. 922 j

Offense Description
Possession of a stolen firearm

This criminal complaint is based on these facts:


See attached affidavit

Continued on the attached sheet.


Complainant's signature
SA Frank R. Brostrom, FBI
Printed name and title

Sworn to before me and signed in my presence.

Date: 7 FEBRUARY 2013


Judge's signature
JAMES E. GATES, Magistrate Judge
Printed name and title

City and state: Raleigh, North Carolina

MRH

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 RALEIGH, NORTH CAROLINA

4 AFFIDAVIT

5 I, Frank R. Brostrom, being duly sworn, state that:
6

7 1. I am a Special Agent (SA) with the Federal Bureau of
8 Investigation (FBI) assigned to the Charlotte, North Carolina
9 (NC), Field Office with duty in the Wilmington Resident Agency.
10 I have been employed as a Special Agent with the FBI since 1990
11 and have worked a wide variety of federal criminal
12 investigations including, but not limited to, bank robbery,
13 armored car robbery, firearms violations and terrorism matters.
14

15 2. Affiant states that he is familiar with the facts and
16 circumstances set forth in this affidavit. The information in
17 this affidavit is derived from my personal observations, the
18 review of reports and summaries, discussions with, other law
19 enforcement officers and United States government personnel who
20 have personal knowledge of the matters, and from conversations
21 with persons, further identified below, who have personal
22 knowledge of the events described herein. Since this affidavit
23 is being submitted for the limited purpose of establishing
24 probable cause to support the issuance of a search warrant, I
25 have not included each and every fact known to me concerning
26 this investigation, and have set forth only those facts that I
27 believe are necessary for said purpose.
28

1 3. ERWIN ANTONIO RIOS (RIOS) currently resides with his
2 father at 1215 Oak Knolls Drive, Fayetteville, Cumberland
3 County, North Carolina, within the Eastern District of North
4 Carolina.

5
6 4. Based on the information set forth below, your Affiant
7 believes that there exists probable cause establishing that RIOS
8 adheres to the ideology of Radical Islamic Extremism and in
9 order to take actions in furtherance of these beliefs, he has
10 purchased a purportedly stolen firearm. Your affiant is aware
11 that the ideology of Radical Islamic Extremism asserts that
12 violence, in the form of war-like actions, is religiously
13 justified. These Islamic Extremists often use the Arabic term,
14 "jihad" as a reference to engaging in these violent activities.
15 In this context, RIOS has stated his personal desire to
16 participate in "jihad."

17
18 5. RIOS has stated that he believes that he may not be able
19 to legally purchase a firearm due to his criminal history. As a
20 result, RIOS sought out a stolen firearm. RIOS was informed by
21 a Confidential Human Informant (CHS) (subsequently referred to
22 in this affidavit as CHS#1) about a firearm that could be
23 purchased from CHS#2. CHS#1 represented the firearm as having
24 been stolen.

25
26 6. On 7 February 2013, at Lillington North Carolina in the
27 Eastern District of North Carolina, RIOS purchased a purportedly
28 stolen firearm from CHS#2. Upon completion of the transaction,

1 RIOS was detained by Special Agents of the FEDERAL BUREAU OF
2 INVESTIGATION (FBI). Affiant believes there is probable cause
3 to believe RIOS knowingly received a firearm, which had been
4 shipped or transported in interstate or foreign commerce, for
5 which he had reasonable cause to believe to be stolen, in
6 violation Title 18, United States Code, Section 922j.

7
8 7. On 23 June 2011, a search of the North Carolina
9 Department of Corrections (DOC) offender database revealed Erwin
10 Antonio RIOS, date of birth May 19, XXXX had been convicted in
11 January 2010 of several charges including Breaking and Entering
12 (B&E), Breaking and Entering a motor vehicle, and possession of
13 a stolen firearm.

14
15 8. On 28 December 2011, RIOS executed an application for a
16 United States passport. The passport application was denied by
17 the United States Department of State in March 2012. The denial
18 was based on the fact that RIOS's probation status which
19 prohibited travel outside the jurisdiction of the court.

20
21 9. On 8 June 2012, CHS#1 first met RIOS at a *masjid* (Islamic
22 house of worship) in Raeford, NC. On 27 July 2012, CHS#1
23 telephonically contacted RIOS. During this conversation, RIOS
24 spoke of how Islam will rule the world soon, and that non-
25 believers are guaranteed the hell fire. RIOS stated he felt
26 oppressed by the government, the legal system and non-believers.
27 At another point in the conversation, RIOS stated that if a
28 person goes to war for his religion or to protect his religion,

1 then that person's sins are forgiven and that person would be
2 guaranteed a place in heaven.

3
4 10. On 20 August 2012, CHS#1 spoke with RIOS by telephone.
5 RIOS stated to CHS#1 that during the expansion of Islam, Muslims
6 made "jihad" against the "kuffar." Your affiant is aware that
7 *jihad* is an Arabic term meaning to struggle and that the term is
8 often used by Radical Islamic Extremists to mean violent warlike
9 actions. Your affiant is also aware that *kuffar* is an Arabic
10 term used to reference non-believers. RIOS stated that he would
11 have loved to have been a soldier for Allah. In addition, RIOS
12 stated that he wanted to write to some "brothers" in prison, but
13 he was concerned about doing so because they had been locked up
14 for terrorism charges.

15
16 11. On 21 August 2012, while CHS#1 was driving in
17 Fayetteville, NC, with RIOS, they neared an entrance to Fort
18 Bragg, a United States military installation. RIOS told CHS#1
19 that only a driver's license was needed in order to access Fort
20 Bragg. During the conversation, CHS#1 expressed reluctance at
21 the concept of working on a military installation because some
22 of the soldiers on Fort Bragg may be the same ones oppressing
23 Muslim brothers overseas. RIOS responded that he liked to
24 observe the soldiers and watch their movements in case he ever
25 had to make *jihad* against them. Later that day, when RIOS was
26 exiting the vehicle in which they were riding, a military
27 looking helicopter flew overhead. RIOS stated that he wished he
28 had a "stinger missile" to take it out.

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12. On 12 September 2012, CHS#1 visited RIOS at his residence. RIOS then asked CHS#1 to walk away from the residence with him a short way. RIOS told CHS#1 he had been talking to someone (not further identified) who could get him (RIOS) two AK-47s and a .357 handgun for between \$350 and \$500. CHS#1 expressed concern that they may be stolen or have been used in a shooting. RIOS responded that he knew, but that it was a good deal. RIOS also stated that he believed he would face a charge of being a felon in possession even if the gun was legally purchased. RIOS asked CHS#1 if CHS#1 ever came across guns for sale. CHS#1 responded that he did from time to time. RIOS asked CHS#1 to let him know if something comes up.

13. On 14 September 2012, CHS#1 met RIOS at RIOS' residence in Fayetteville. CHS#1 asked RIOS about the guns RIOS had previously mentioned he was looking into, but RIOS had no further information. RIOS told CHS#1 that it is okay in Islam to do things to non-Muslims, to include robbing, stealing and shedding their blood. RIOS cited some books and texts supporting his claim. CHS#1 told RIOS he spoke with a neighbor about rifles and a couple of pistols. CHS#1 told RIOS the neighbor got the weapons from breaking and entering. CHS#1 asked RIOS about the price range he was looking at and what he was looking for. RIOS told CHS#1 he would get the information to him later. RIOS explained that there was religious justification for using weapons against non-believers.

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1 14. On 24 September 2012, CHS#1 again met with RIOS in
2 Fayetteville. RIOS asked CHS#1 what type of places RIOS could
3 rob. CHS#1 asked what RIOS had in mind and if he had any guns.
4 They discussed CHS#1's experiences with robberies including what
5 others in prison had told CHS#1 about robberies.

6
7 15. On 14 October 2012, CHS#1 was with RIOS in
8 Fayetteville when they observed some kids enter a wooded area
9 with Airsoft or paintball guns. RIOS commented that if the guns
10 were real he would take one from them. RIOS then told CHS#1
11 that if they were real soldiers the most efficient way to kill
12 them all would be to wear an explosive vest and blow yourself up
13 for Allah. RIOS then asked CHS#1 if he had seen the guy who
14 CHS#1 had stated could get guns. CHS#1 replied he had not.

15
16 16. On 20 October 2012, in Fayetteville, NC, RIOS again
17 discussed the "kuffar." RIOS told CHS#1 that he wanted to first
18 attack their money. RIOS also stated that he was thinking that
19 if he ever got the chance, he could make bombs. RIOS noted that
20 he could plant the bombs in a house and then make a police call
21 indicating there was a crime in progress at the house. RIOS
22 stated he would then detonate the bombs when the "kuffar" police
23 arrived. RIOS stated, "I want to make them taste what we
24 tasted." RIOS also told CHS#1 that RIOS still wanted to get a
25 "piece."

26
27 17. On 24 October 2012, CHS#1 told RIOS he ran into the
28 guy he knows who can get things like guns (CHS#2). CHS#1

1 described CHS#2 to RIOS as a Muslim who had been in prison and
2 that he is very careful and would want to meet RIOS before any
3 transactions took place. RIOS expressed concern over how well
4 CHS#1 knew CHS#2. RIOS asked why the guy wanted to meet with
5 him. CHS#1 replied that CHS#2 wanted to know to whom he would
6 be selling. RIOS asked about prices. CHS#1 said he could get a
7 .22 pistol for \$60. RIOS asked about a .357 caliber firearm.
8 CHS#1 replied that CHS#2 had priced a 9mm pistol at \$140 - \$150.

9
10 18. On 28 October 2012, CHS#1 and RIOS met in
11 Fayetteville. RIOS reminded CHS#1, "Don't forget about that
12 gun." CHS#1 told RIOS that CHS#2 wanted to meet.

13 19. On 1 November 2012, CHS#1 informed RIOS that CHS#2 may
14 want to meet them in Lillington, Harnett County, North Carolina.
15 RIOS expressed concern that CHS#2 would be the police.

16
17 20. On 5 November 2012, CHS#1 again met with RIOS. RIOS
18 pointed out the residence of someone who had been trying to
19 fight with a friend of his. RIOS claimed that if he was able to
20 get a "burner" (gun), this person might be his first victim.
21 RIOS explained that he wanted to start with a "burner" to rob
22 something small, using the proceeds to buy more guns and then
23 progressing to bigger robberies.

24
25 21. On 8 November 2012, CHS#1 met RIOS in Fayetteville and
26 the two drove to Lillington, NC, to meet CHS#2 regarding the
27 possible purchase of a stolen firearm. En route to meet CHS#2,
28 RIOS again expressed concern that CHS#2 was the police. RIOS

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1 states he would like to buy a .38 from CHS#2, but RIOS was aware
2 of several incidents in which law enforcement sold "brothers"
3 prohibited items and arrested them. In particular, RIOS spoke
4 about an incident in Florida in which a "brother" wanted to bomb
5 some night clubs, and he bought the weapons from the police and
6 they locked him up. RIOS also mentioned another incident in
7 Oregon where a "brother" was going to bomb a "Christmas special"
8 but law enforcement gave him the bomb and the van. RIOS relayed
9 that in that instance, the "brother" tried to call the bomb to
10 detonate it, but it didn't work and the brother was arrested.
11 RIOS opined that this was entrapment.

12
13 22. RIOS and CHS#1 met CHS#2 that day, 8 November 2012, in
14 a side parking lot of a shopping center in Lillington, NC. RIOS
15 told CHS#2 he would like to get something from him. CHS#2 asked
16 if he needed bullets too. RIOS responded affirmatively. RIOS
17 said he would have the money for a gun in about a month. After
18 the meeting, RIOS asked CHS#1 if he know where CHS#2 would be
19 going. RIOS explained to CHS#1 that being suspicious is good.
20 RIOS then noted that the "brothers in Raleigh" had spies within
21 their group, praying, and planning operations; and they all got
22 locked up. Based on your affiant's knowledge, this appears to
23 be a reference by RIOS to United States v. Boyd, et al, which
24 involved a number of individuals from the Raleigh area who were
25 arrested in 2009 and convicted in 2011 in the Eastern District
26 of North Carolina for terrorism related offenses.

27
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1 23. On 4 January 2013, CHS#1 met with RIOS in
2 Fayetteville, NC in order to attend a local *masjid*. On the
3 way, CHS#1 told RIOS that CHS#2 had a gun available for RIOS to
4 buy. CHS#1 told RIOS the gun would cost \$100.00 according to
5 CHS#2. RIOS responded, "I might get it from him. I might get
6 it from him." RIOS discussed robbing a Brinks truck, problems
7 involved in robbing a bank (such as whether it would be best to
8 put the guards to the ground or to shoot them), and the
9 possibility of waiting and getting shotguns at a later time.
10 Ultimately, RIOS stated he needed a weapon and that he is ready.

11
12 24. On the same day, 4 January 2013, while sitting
13 together in CHS#1's vehicle, RIOS read to CHS#1 from a book by
14 Anwar al-Awlaki. Your affiant is aware that Anwar al-Awlaki is
15 well known as a now deceased radical Islamic extremists who
16 authored documents supported violence. The text being read by
17 RIOS expressed why it was proper to rob from the "kuffar" in a
18 country that is warring on Muslims. RIOS asks CHS#1 if he is
19 okay with that. CHS#1 responded that he was.

20
21 25. The following day, Saturday, 5 January 2013, RIOS sent
22 CHS#1 a message to tell CHS#2 to hold the gun for him. The
23 following Monday, 7 January 2013, RIOS called CHS#1 and asked if
24 he had seen CHS#2 and that RIOS had the money.

25
26 26. On 8 January 2013 CHS#1 met with RIOS in Fayetteville,
27 NC. RIOS showed CHS#1 \$100 for the gun purchase and tried to
28 give it to CHS#1 to give to CHS#2. CHS#1 did not accept the

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1 money and told RIOS that RIOS needed to see the gun for himself
2 to make sure it was what he wanted. RIOS agreed and kept the
3 money. Later that day while driving RIOS spoke of the gun
4 again, telling CHS#1 he had been thinking they could rob an
5 armored car with the gun.

6
7 27. On 11 January 2013, CHS#1 met with RIOS and informed
8 RIOS that CHS#2 had called and that CHS#2 had the gun for RIOS.
9 RIOS asked about the weapon and CHS#1 replied that he did not
10 ask CHS#2 what type it was. RIOS then turned the conversation
11 towards robbing an armored truck and how many guards would be in
12 a truck, what types of weapons they would have, locations of the
13 guards, and at what points the trucks stopped. RIOS suggests
14 they should shoot two of the guards in the face because they
15 will be wearing bullet-proof vests. RIOS additionally stated
16 they should follow a truck around, determine their stops and
17 then hit them at their last stop. RIOS also suggested they
18 practice. RIOS stated he was physically ready and that due to
19 his knowledge of Islam, he was properly viewing the situation.
20 RIOS declared that RIOS and CHS#1 have an edge over others
21 because of their belief in Allah.

22
23 28. On 23 January 2013, CHS#1 met with RIOS in
24 Fayetteville, NC, and explicitly informed RIOS that the gun RIOS
25 would be purchasing from CHS#2 was a stolen 9mm Berretta
26 handgun. CHS#1 informed RIOS that CHS#2 had broken into a home
27 and while stealing some other items found the gun, which CHS#2
28 also stole. RIOS responded by stating that the price was good.

1 29. On 22 January 2013, Special Agent Timothy S. Graden,
2 Bureau of Alcohol Tobacco Firearms and Explosives advised that
3 he had previously viewed the following firearm: a Beretta model
4 92FS Centurion, 9mm, pistol, serial number E89980Z. Agent
5 Graden confirmed that this firearm had been made in Italy;
6 therefore, as defined by Title 18 U.S.C. §921(a)(3), it was
7 manufactured outside of North Carolina traveled in and/or
8 affected interstate and/or foreign commerce prior to being
9 possessed in North Carolina. Agent Graden additionally
10 confirmed that he had previously test-fired this firearm and
11 that it functioned as designed.

12
13 30. On 7 February 2013, after removing the firing pin
14 which made it inoperable, the FBI provided the above mentioned
15 9mm Beretta to CHS#2.


16
17 31. On 7 February 2013, CHS#1 picked up RIOS in
18 Fayetteville and drove RIOS to Lillington, Harnett County, North
19 Carolina where they met with CHS#2. RIOS remained in the
20 passenger side of the vehicle. CHS#2 entered the rear of the
21 vehicle. CHS#2 had in his possession the above described
22 firearm which he displayed to RIOS. CHS#2 informed RIOS that he
23 had stolen the 9mm Beretta during a home burglary. RIOS smiled
24 in response and provided CHS#2 with \$100 cash. CHS#2 in turn
25 provided the purportedly stolen 9mm Beretta to RIOS. After
26 CHS#2 exited the vehicle, CHS#1 and RIOS began driving away.
27 Once the vehicle had traveled roughly a mile, agents of the FBI
28 then conducted a vehicle stop. RIOS and CHS#1 were requested to

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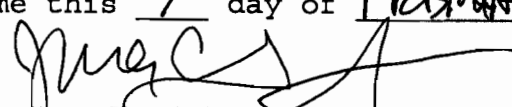
1 exit the vehicle. RIOS made a quick downward movement with his
2 hands and was then removed from the vehicle where he continued
3 to resist. A search of RIOS revealed a folding knife within his
4 pants pocket. A search of the vehicle resulted in recovery of
5 the 9mm Beretta from beneath the front passenger floor mat.

6
7 32. RIOS was then detained by Special Agents of the FBI
8 and found to be in possession of a firearm - namely, a 9mm
9 Beretta - in violation of Title 18, United States Code Section
10 922j.

11
12 33. Your affiant believes there is probable cause that
13 RIOS has knowingly possessed a firearm for which he had
14 reasonable cause to believe was stolen in violation of Title 18,
15 United States Code Section 922j. In view of the above, Affiant
16 respectfully requests an arrest warrant be issued charging ERWIN
17 ANTONIO RIOS with possession of a stolen firearm in violation
18 for United States Code, Section 922(j).

19
20 
21 Frank R. Brostrom
22 Special Agent
23 Federal Bureau of Investigation
24 Fayetteville, North Carolina

25 Subscribed and sworn to before me this 7 day of FEBRUARY,
26 2013.

27 
28 JAMES E. GATES
United States Magistrate Judge
Eastern District of North Carolina
Raleigh, North Carolina