

OA 91 Criminal Complaint

United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA

UNITED STATES OF AMERICA
V.
Walter SIMON

(Name and Address of Defendant)

FILED
MAY 31 2007
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL COMPLAINT

EDL

Case Number: 3-07-70317

I, the undersigned complainant being duly sworn state that the following is true and correct to the best of my

knowledge and belief. On or about April 14, 2007 in San Francisco County, in
(Date)
the Northern District of California defendant(s) did,

(Track Statutory Language of Offense)

knowingly and intentionally possess a firearm in and affecting interstate commerce, after having previously been convicted of a felony

in violation of Title 18 United States Code, Section(s) 922(g)(1)

I further state that I am a(n) Inspector, San Francisco Police Department and that this complaint is based on the
Official Title
following facts:

See attached Affidavit in Support of Criminal Complaint.

Continued on the attached sheet and made a part hereof:

Yes No

Approved

As To

Form: Joshua Eaton/

AUSA

Michael Kelly/

Name/Signature of Complainant

Sworn to before me and subscribed in my presence,

Date

at San Francisco, CA

City and State

Elizabeth D. Laporte

U.S. Magistrate Judge

Name & Title of Judicial Officer

Signature of Judicial Officer

AFFIDAVIT OF MICHAEL KELLY

I, Michael L. Kelly, being duly sworn, hereby state:

I. Background of Affiant

1. I am employed by the San Francisco Police Department (SFPD) as a Sergeant/Inspector and have been employed by the SFPD for 32 years. I am currently assigned to work with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as a Task Force Officer. I have been assigned to work with ATF for over five years. In this capacity, I am responsible for enforcing federal criminal statutes, including Illegal Possession of a Firearm or Ammunition, in violation of Title 18, United States Code, Section 922.

2. I have been a law enforcement officer for 32 years and have had extensive training in that time in the use of firearms and ammunition. I have also attended an 80 hour criminal investigations course certified by the California Peace Officers Standards and Training Commission and a 24 hour training course by the Bureau of Alcohol, Tobacco, Firearms, and Explosives dealing with firearms investigations.

3. This affidavit is made in support of a complaint and arrest warrant against Walter SIMON, date of birth August 24, 1974, for knowingly and intentionally possessing a firearm after having previously been convicted of a felony, in and affecting interstate commerce, in violation of Title 18, United States Code, Section 922(g)(1).

4. I am familiar with the facts as set Fourth herein from investigations by other law enforcement officers as related to me in conversation and through written reports, and from records and/or documents and other evidence obtained as a result of this investigation. Since this affidavit is being submitted for the limited purpose of securing a complaint and arrest warrant against Walter M. SIMON, I have not included each and every fact known to me concerning this investigation. I have only set Fourth the facts that I believe necessary to establish probable cause that a violation of federal law has occurred.

II. The Law

5. The elements of Title 18, United States Code, Section 922(g)(1) are as follows: (1) defendant knowingly possessed a firearm; (2) the firearm had been shipped or transported from one state to another or from another country to the U.S.; and (3) at the time he possessed the firearm, defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year.

III. This Investigation

6. On April 14, 2007, a shooting incident occurred on the sidewalk in front of the

business at 385 Ellis Street in San Francisco. Specifically, at approximately 12:03 AM on April 14, 2007, an unknown male subject was observed by multiple witnesses approaching Walter SIMON (SIMON) who was in front of the store at 385 Ellis Street. The unknown subject began shooting at SIMON from a distance of approximately 10 to 15 feet away. SIMON, who was seated in a wheel chair at the time the shooting began, drew a 380 caliber semi automatic handgun and began shooting in the direction of the unknown subject.

7. Shots fired by SIMON and the currently unidentified second shooter hit Lena Allen and 4 other victims. Allen died from one gun shot wound to her head. In all, five victims, including Latanya Mosley, SIMON's girlfriend, were shot by bullets from SIMON and/or the unknown subject's gun.

8. During the course of the investigation that followed the shooting San Francisco police officers spoke with all of the victims, except Lena Allen who never regained consciousness. Two of the four victims who spoke to San Francisco police officers reported to officers that they did not see who fired the shots that hit them. Latanya Mosley reported that the unknown subject fired the shots that hit her. Mosley also claimed SIMON, her boyfriend, did not have a gun during the shooting. The fourth victim, whose name and identity are known to the affiant, indicated to officers on the scene that a man fitting the description of SIMON shot him. The fourth victim's girlfriend, a witness whose name and identity are known to the affiant, was with the Fourth victim as the shooting began. This witness indicated to officers on the scene that she witnessed the shooting and could identify the individual who shot her boyfriend.

9. After firing multiple shots, SIMON turned around and began rolling westward on the southern sidewalk on Ellis Street toward Jones Street, turned left on Jones Street and rolled his wheel chair in the southern direction on Jones Street on the eastern sidewalk. While rolling south on Jones Street, shortly after turning the corner, SIMON is believed to have discarded the 380 caliber semi automatic handgun on the sidewalk. Thereafter, while continuing to roll south on Jones Street, SIMON was observed by San Francisco police officers pulling a pair of black gloves off his hands. Approximately 20 feet south of the location where the 380 caliber semi automatic handgun was recovered, SIMON discarded the above mentioned pair of black gloves. SIMON continued to roll south on Jones Street and was taken into custody by San Francisco police officers approximately 40 feet south of the location that he discarded the gloves. While officers did not observe SIMON discard the handgun found on the scene, San Francisco Police Officer Patrick Butherus did observe SIMON pulling the black gloves off his hands and discard them on the sidewalk as he rolled south on Jones Street away from Ellis Street.

10. As SIMON was being detained by other San Francisco police officers on the scene, Officer Butherus walked north on Jones Street and recovered the gloves he had witnessed SIMON pull off his hands and discard on the sidewalk. After recovering the gloves, Officer Butherus continued north on Jones Street and as he neared the corner of Jones Street and Ellis Street, he discovered a 380 caliber handgun on the sidewalk. Both the gloves and handgun recovered were booked as evidence.

11. At approximately 12:30 AM on April 14, 2007, the fourth victim's girlfriend was driven by San Francisco Police Officer Matthew Cloud to view SIMON, who was being detained. Upon viewing SIMON, the Fourth victim's girlfriend positively identified him as the man she saw fire a handgun earlier that night. Later that morning, the fourth victim's girlfriend provided a recorded statement to San Francisco police inspectors wherein she gave a detailed description of her recollection of the shooting incident. In this statement, she indicated that she witnessed the unknown subject shoot at SIMON. Thereafter, she witnessed SIMON stand up and return fire in the direction of the unknown subject. She recalled witnessing SIMON fire approximately 6 shots.

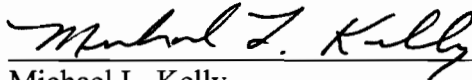
12. Based on a sworn affidavit by San Francisco Police Inspector Michael Mahoney, the San Francisco Police Department obtained a search warrant for SIMON's car and his residence, located at 615 Berk Ave. Apt #3, Richmond, CA. In the evening of April 14, 2007, San Francisco police executed the search warrant and seized in the residence three rounds of ammunition, two of which were of the same manufacturer, caliber and shell casing color as those found in the 380 caliber firearm recovered on Jones St, believed to be discarded by SIMON after the shooting. The same two bullets from SIMON's house also matched spent shell casings recovered from the ground at the scene of the shooting. These bullets were found on a nightstand next to prescription bottles with SIMON's name typed on them.

13. The firearm recovered on Jones Street is a 380 caliber Beretta, 70s P230, serial number A53142Y, manufactured in Italy and imported to the United States.

14. I have reviewed SIMON's criminal record which shows that prior to April 14, 2007 SIMON was convicted of a felony for which he was sentenced to and served a term of imprisonment in excess of one year.

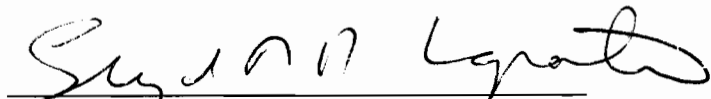
III. Conclusion

15. Based on the above, I believe that there is probable cause that on or about April 14, 2007, Walter SIMON did knowingly and intentionally possess a firearm after having previously been convicted of a felony, in and affecting interstate commerce, in violation of Title 18, United States Code, Section 922(g)(1).



Michael L. Kelly
Sergeant/Inspector, SFPD; ATF Task Force Officer

Subscribed and sworn to before me
on May 31, 2007



The Honorable Elizabeth D. Laporte
United States Magistrate Judge

AO 442 (Rev. 10/03) Warrant for Arrest

UNITED STATES DISTRICT COURT

Northern District of California

UNITED STATES OF AMERICA

v.

Walter SIMON

WARRANT FOR ARREST

Case Number:

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest

Walter SIMON

Name

and bring him or her forthwith to the nearest magistrate judge to answer a(n)

- Indictment
 Information
 Complaint
 Order of court
 Probation Violation Petition
 Supervised Release Violation Petition
 Violation Notice

charging him or her with (brief description of offense)

knowingly and intentionally possess a firearm in and affecting interstate commerce, after having previously been convicted of a felony

in violation of Title 18

United States Code, Section(s) 922(g)(1)

Hon Elizabeth D. Laporte
Name of Issuing Officer

Elizabeth D. Laporte
Signature of Issuing Officer

U.S. Magistrate Judge
Title of Issuing Officer

May 31, 2007
Date and Location San Francisco, CA

RETURN

This warrant was received and executed with the arrest of the above-named defendant at

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		