

UNITED STATES DISTRICT COURT

for the

District of South Carolina

United States of America)

v.)

Brandon Polston)

Case No. 0:17-mj-286

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 11/25/2017 in the county of Lancaster in the District of South Carolina, the defendant(s) violated:

Table with 2 columns: Code Section, Offense Description. Includes entries for 18 USC 922(g)(1), 18 USC 922(o), and 26 USC 5861(d) regarding possession of firearms and machineguns.

This criminal complaint is based on these facts:

See attached Affidavit, as incorporated herein.

[X] Continued on the attached sheet.

Signature of David Ford, Special Agent, ATF. Printed name and title.

Sworn to before me and signed in my presence.

Date: November 29, 2017

Signature of Paige D. Sasset. Judge's signature.

AFFIDAVIT IN SUPPORT OF COMPLAINT

I, David R. Ford, being duly sworn, depose and state that:

1) I, David Ford, am employed as a Special Agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), United States Justice Department, and have been so employed since 2003. I am a graduate of the Federal Law Enforcement Training Center and a distinguished graduate of the ATF National Academy in Glynco, Georgia. I have attended various seminars and have received additional specialized training related to Alcohol and Tobacco diversion and the investigation of criminal street gangs. My primary duties involve the investigation of federal firearms violations and the associated use of firearms in violent crime and narcotics violations. I am currently assigned by ATF to the Columbia Field Office, which is responsible for multiple counties in South Carolina, in the District of South Carolina. As a Special Agent with ATF, I am empowered to investigate violations of the federal firearms laws, as set forth in Titles 18 and 26 of the United States Code.

2) As a result of my training and experience as an ATF Special Agent, I am familiar with federal criminal laws and know that the following is a violation of Title 18, United States Code, Section 922(g)(1), Title 18, United States Code, Section 922(o), and Title 26, United States Code, Section 5861(d). I have personally participated in this investigation and am aware of the facts contained herein based upon my own investigation, as well as information provided to me by other law enforcement officers. Since this Affidavit is submitted for the sole purpose of establishing probable cause to support the issuance of a Complaint, I have not included every fact known by the Government concerning criminal activities committed by the defendants.

November 26, 2017: State arrest of Brandon Polston, Kimberly Cannon, and Austin Ritter

3) At approximately 12:41 a.m., on 11/26/2017, an officer with the Lancaster City Police Department was on patrol and observed a Saturn Vue traveling on Highway 9. The vehicle had a bag of food on the roof and the contents of the bag were flying out of the bag, littering the roadway. The officer initiated a traffic stop to speak to the driver concerning the littering. The driver and sole occupant of the vehicle was Kimberly Cannon (“Cannon”). After speaking with Cannon, the officer learned that she was the owner of the vehicle, that the wrong tag was on the vehicle, and that the vehicle was not insured. The officer also observed an open container of beer in the center console. Cannon was placed under arrest for open container, no insurance, and improper tag. While Cannon was being arrested, an officer observed two firearm barrels in plain view in the back seat of the vehicle. The bodies of the firearms were concealed under blankets. Cannon stated that she did not know if there were weapons in the vehicle.

4) Due to the open container and firearms seen in plain view, the vehicle was searched. While searching the vehicle, officers found a FNH M249 5.56 caliber machinegun and a Colt M16 5.56 caliber machinegun in the back seat area under blankets and a barrel bag¹. The FNH M249 5.56 caliber machinegun has markings on the firearm that clearly states it is a machinegun. On the floor of the back seat area, officers also located a blue and black bag that contained various military items,

¹ A barrel bag is a bag typically used by the military to carry extra barrels for machineguns.

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including a Colt M203 40mm grenade launcher, which is defined as a “destructive device” under the federal law. Officers also recovered a black bag containing a Beretta, model M9, 9mm pistol and a bayonet on the seat, as well as military looking electronic equipment. From the cargo area, officers recovered a large green military duffle bag containing a second Beretta, model M9, 9mm pistol, a cart return device², and mosquito netting. On the rear floorboard, officers found two military flak jackets, as well as military night vision optics. Additionally, a UPC reader device was also found in a military bag. Officers noted that one of the pieces of electronics had a tag that indicated that it belonged to the Lancaster National Guard Unit.

(5) Officers then secured and towed the vehicle to the Lancaster Police Department. Investigators later obtained a search warrant for Cannon’s vehicle and recovered a second Colt M16 5.56 caliber machinegun concealed in the spare tire area. Officers also recovered a Walmart employee vest, a Walmart employee identification badge, and blankets.

(6) When asked about the items in her car, Cannon stated that she had just left room 219 at the Carriage Inn Motel, located at 1100 North Main Street, Lancaster, SC. She stated that Austin Ritter (“Ritter”) and Brandon Polston (“Polston”) were at the room and that Polston had put the items in her car. Cannon further advised officers that Ritter had died, but wasn’t dead anymore.

(7) In light of Cannon’s statement about Ritter’s health, officers responded to the Carriage Inn and made contact with Polston and Ritter at room 216 (not 219 as Cannon had previously stated) to check on Ritter’s well-being. Because of the presence of firearms in Cannon’s vehicle and the concern that there was possibly someone dead in the room, officers detained Polston, Ritter, and a third man while they did a security sweep of the room. Officers did not find anyone else in the room and the three men indicated that they were in good health. The third man in the room was known to officers as a local homeless man, who stated that he had come to the room in search of a cigarette. Polston and Ritter were given verbal Miranda warnings and spoke to officers. Both men admitted that they had been with Cannon, that they had gone to Walmart, and that they came back to the hotel. Ritter added that they had also travelled to Indian Land, a nearby town. The officers then left the motel after not finding anyone in need of medical assistance.

(8) Thereafter, after conferring with other officers, the officers were instructed to return to the motel to inquire about the firearms recovered in Cannon’s vehicle. When officers returned to the motel room and knocked and announced at the door, a male voice told the officers to hold on a minute and no one came to the door. Fearing that the occupants were arming themselves, officers made entry into the room and detained both Ritter and Polston. Ritter was cooperative and Polston resisted being handcuffed. In plain view on a countertop in the bathroom, next to Polston’s driver’s license, officers saw methamphetamine and a straw. Both men were arrested and charged with possession of methamphetamine. A search incident to arrest revealed a baggie of methamphetamine on Polston’s person. Later, while being interviewed and after advise of rights, Polston admitted to possessing the methamphetamine.

² This device is used to activate a cart, which assists store employees in returning numerous carts/buggies to inside a store from the parking lot.

(9) Officers made contact with a South Carolina National Guardsman and met him at the National Guard Armory (“Armory”), located at 804 Nichols Road, Lancaster. When they arrived at the Armory, they found that one of the perimeter doors was not secure, that none of the inner doors leading to the weapons vault were secured, that the vault door was not secure, and that the weapons racks were unlocked. A forensic team from the South Carolina State Law Enforcement Division (“SLED”) was called in to process the scene. National Guard personnel verified that the items recovered from Cannon’s vehicle were taken from their Armory. It was determined that a M249 machinegun, two M16 machineguns, a M203 40mm grenade launcher, and five Beretta, model M9, 9mm pistols were stolen, along with miscellaneous military gear. National Guard personnel were unaware of the theft of the items and the unsecured building until notified by the local officers. It should be noted that on November 28, 2017, National Guard personnel advised that three additional machineguns were missing and have not been recovered. Additionally, the UPC card reader device recovered in Cannon’s vehicle was taken from the Armory as well.

(10) Investigators returned to the Carriage Inn after check out time and were allowed by the hotel staff to go into room 216. Investigators discovered female clothing on the bed, male clothing, food wrappers from Wendy’s and Burger King, but no firearms or anything else of material significance. No items were seized at that time.

(11) Investigators went to the Lancaster County Detention Center and interviewed Cannon, who waived her rights pursuant to Miranda and spoke with investigators. Cannon stated that Ritter had been living with her for approximately a month. She said that during the daylight hours of the previous day (November 25th), she took Ritter to the motel to see his cousin, Polston. Cannon stated that there were guns in the motel room on one of the beds. Cannon further stated that Ritter went into the bathroom, used heroin, and then started acting strange. Cannon believed that Ritter had overdosed on the heroin. Cannon stated that she started taking care of Ritter when he became unresponsive. Cannon stated that Polston started to freak out and started loading up all of the guns and started taking them down to her car. Cannon said that Polston had taken her keys and her cellular phone and that he told her that if his cousin died, that she would die. Cannon further stated that she saw a couple of big guns in the room and that she saw a pistol on Polston’s person. Cannon stated that Polston had obtained food from a nearby Burger King and that he had placed the bag on the top of the car and accidentally locked her keys in the car. Cannon stated that ultimately she was able to break one of the small windows of her car, get into the car, find the keys, and drive away. It should be noted that Cannon’s vehicle had a busted window when officers stopped it for the littering offense. Cannon stated that she didn’t immediately call the police because she was going to wait until she got home to call the police. Cannon told officers that she didn’t know where the guns came from. However, Cannon stated that when she found her car keys, they had been in a bag in the car, and that she saw a pistol in the bag.

(12) Investigators then interviewed Ritter, who waived his rights pursuant to Miranda and agreed to speak with investigators. Ritter stated that Cannon had taken him over to the motel so that he could visit his cousin, Polston, and that he (Ritter) had been staying with Cannon. Ritter stated that he did not get sick in any way and that he didn’t see any duffle bags or firearms in the car or in the motel room. Ritter stated that they all three went to Walmart earlier in the evening, but that only Polston walked into Walmart. Ritter said that Polston took so long, that they left him, so he had to

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walk back to the motel, which was nearby. Ritter ultimately admitted that he had used heroin in the motel room and conceded that he may have overdosed. Ritter further admitted that he did see guns on a bed in the room and that he saw something green on the bed. Investigators believe that the green item Ritter was referring to was the green military bag that was later found in Cannon's vehicle.

(13) Investigators interviewed Polston, who waived his rights and agreed to speak with investigators. Polston denied having any knowledge of the firearms or the other stolen items.

(14) Investigators then went to the Walmart, located a short distance from the motel, to try and determine why the Walmart employee vest and identification badge, the UPC reader device, and the cart return device were in Cannon's vehicle. Investigators were able to determine by watching store security camera footage, that Polston stole the Walmart employee vest and employee identification badge on 11/21/2017, after an employee laid them down inside the store. After seeing Polston on the security footage, a WalMart Loss Prevention Officer stated that he recognized Polston's face as someone he had found to have earlier stolen a tablet from the store. It was also confirmed that one of their store's cart return devices had been reported as missing from the store.

(15) Investigators returned to the Carriage Inn motel and watched the motel security footage for 11/25/2017, until the time that Cannon is seen driving away in her vehicle, moments before the traffic stop. Investigators observed Polston renting the room and walking up to the room carrying a medium sized bag. Investigators noted that the bag appeared to be too small to conceal the machineguns that were recovered, but would be large enough to conceal a pistol. Later, Ritter and Cannon are seen pulling up to the motel in Cannon's vehicle and going into Polston's room. At approximately 5:30pm, all three are seen leaving the motel in Cannon's vehicle. Approximately three hours later, Cannon's vehicle arrives back at the motel. Investigators observed Cannon carrying up the recovered green military duffle bag, which appeared to be full, and then watched Cannon go back to the car with what appeared to be an empty duffle bag. Investigators noted that Ritter was seen taking a filled bag back to the room (Ritter later admitted during a post-Miranda interview that he carried the duffle bag back to the room). The video footage shows Polston carry something long and rigid, that was wrapped in a blanket(s) and hoisted on top of his shoulder, to the room. Investigators believe the items wrapped in that blanket(s) were the two machine guns that were recovered from the back seat of Cannon's car. It should be noted that none of the items recovered from Cannon's vehicle, or seen in Polston's room, were the length and size of the items wrapped in the blanket(s) other than the recovered machineguns. Investigators later observed the bags, duffle bag, and the items believed to be the blanket wrapped machineguns being taken back down to the vehicle by Polston and Cannon. The video footage also showed Polston walking around the hotel exterior wearing what appears to be a military type flak jacket. Finally, the video footage shows Cannon go down to the vehicle and the vehicle driving away.

(16) After reviewing the motel video footage, Investigators interviewed Cannon again after waiving her Miranda rights. When confronted with facts learned from the motel security footage, Cannon stated that during the three-hour span, she, Polston, and Ritter went to what she described as an apartment or a townhome complex in Lancaster. There, she said that Ritter and Polston walked into the complex and brought back the bags with the military equipment and pistols. Cannon stated that then Polston and Ritter went to a ditch and that both of them returned to the vehicle with the

machineguns. Cannon stated that she thought Polston had stolen the guns because they recovered from a ditch.

(17) Investigators then interviewed Ritter again, who waived his rights pursuant to Miranda, and agreed to speak with investigators. Ritter admitted that they had gone to the complex at Polston's request and that Polston had retrieved the items. Ritter described where the complex was located and he gave directions an apartment complex that is located across the street from the National Guard Armory in Lancaster. Ritter maintained that he did not carry a machinegun back from the ditch and that he did not know what was in the bags that he carried into the motel room.

(18) On 11/27/2017, SLED, while investigating the burglary of the Armory, obtained a state search warrant for cellular telephones belonging to Ritter and Cannon, which were recovered by officers. During execution of the search warrant on the cellular telephone belonging to Ritter, investigators observed a string of text messages where it appears that Ritter (presumably) is arranging for the sale of an M16 for \$500.00. The text message string occurred on 11/25/2017, at approximately 10:57 p.m. Investigators found another text message string that occurred on 11/25/2017, where Ritter (presumably) is asking someone for 9mm bullets. Investigators further found another text message string where Ritter (presumably) is arranging for the sale of a 9mm and where he (Ritter) noted that he had "like 2 or 3" of the 9mm pistols for sale. Investigators were also able to look at photographs contained on the cellular telephone. Investigators found a "selfie" photograph of Ritter in the front seat of a vehicle with Polston in the rear seat. In that photograph, directly beside Polston is a M16 with blue tape and what appears to be an ACOG sight, which is identical to at least one of the two M16s that were stolen from the Armory. According to the details of the photograph, it was taken on 11/25/2017, at 3:42 p.m.

(19) On 11/28/2017, investigators began to search Cannon's cellular telephone pursuant to the state search warrant obtained by SLED. Investigators found a text message string where on 11/25/2017, at 6:52 p.m. there is a photograph of one of the M16s and reads "Hit me up big BUSINESS." It further states, "Fully auto AR-16." Investigators believe that is a reference to the firearm being a machine gun and having the capability of firing ammunition fully auto. Later in the text string, Cannon (presumably) suggests that the would-be buyer forget the 9 millimeters, that "these cant get purchased or get a hold of anymore." Investigators also found text messages in Cannon's telephone that stated that Ritter "OD" and that "I'm pulled w major guns." There were also text messages that indicate that Cannon "dropped a clean urine" on 11/24/2017. It is noted that Cannon is currently on probation out of North Carolina. Investigators also were able to locate and view a photograph on Cannon's telephone of a M16 machinegun with blue tape and an ACOG sight.

Interstate Nexus of the Firearms

(20) I am an ATF designated Interstate Nexus Expert and have testified in federal court as such. On November 28, 2017, based on my knowledge, training, experience, research, description of the aforementioned firearms, and after conferring with FNH and Colt, I determined that the FNH M249 machinegun receiver was manufactured in the state of Minnesota, was shipped to FNH in Columbia, South Carolina for finishing, and was then sent to a U.S. Army Depot in Alabama after it was completed. Further, I determined that the Colt M16 machineguns were manufactured in the state of

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Connecticut, and that the Beretta, model M9, 9mm pistols were either manufactured in the country of Italy, or in the state of Maryland.

(21) It is my opinion, based on my knowledge, training, experience, research and description of the aforementioned firearms, that they must have previously travelled in, and affected interstate and/or foreign commerce as defined in Title 18, United States Code, Section 921(a)(2).

Criminal History Record for Polston, Ritter, and Cannon

(22) I obtained a criminal history record for Polston and was able to determine that on or about March 13, 2013, Polston was convicted of burglary 2nd (S.C. Code of Laws, Section 16-11-312(C)) and assault and battery 1st degree (S.C. Code of Laws, Section 16-3-600(C)(2)). On both of the convictions, Polston was sentenced to 10 years suspended upon service of 90 days with 3 years of probation. On July 8, 2014, Polston was convicted of burglary 2nd degree (S.C. Code of Laws, Section 16-11-312(C)(1)), property offense 3rd or subsequent (S.C. Code of Laws, Section 16-1-57) and sentenced to 6 years concurrent on each with credit for time served. At that same time, Polston was convicted of receiving stolen goods >\$2,000<\$10,000 (S.C. Code of Laws, Section 16-13-180(B)(2)) and sentenced to 4 years concurrent. All of these crimes are punishable by imprisonment for a term exceeding one year in the state of South Carolina

(23) I obtained a criminal history for Ritter and was able to determine that on or about June 20, 2013, Ritter was convicted of accessory after the fact to a felony (S.C. Code of Laws, Section 16-1-55). This crime is punishable by imprisonment for a term exceeding one year in the state of South Carolina. Ritter was sentenced to a Youthful Offender Act sentence not to exceed 5 years suspended upon 5 years of probation.

(24) I obtained a criminal history for Cannon and was able to determine that on or about November 7, 2017, Cannon was convicted of obtaining property under false pretense (N.C.G.S.A. Section 14-100), which is a crime punishable by imprisonment for a term exceeding one year in the state of North Carolina. Cannon was sentenced to 6–17 months confinement with credit for time served and placed on probation for 30 months.

Pardon Query for Polston, Ritter, and Cannon

(25) On November 27, 2017, I contacted the South Carolina Department of Probation, Parole and Pardon Services and requested that a query of all available records and databases be conducted to determine if Polston or Ritter had ever applied for, or received, a pardon for any of his South Carolina felony convictions. The search confirmed that neither Polston, nor Ritter, have received a pardon for their prior convictions.

(26) On November 27, 2017, I contacted the North Carolina Clemency Office and requested that all available records and databases be conducted to determine if Cannon had ever applied for, or received, a pardon for any of her North Carolina felony convictions. The search confirmed that Cannon has not received a pardon for her convictions.

National Firearms Act Registration


(27) Pursuant to the National Firearms Act under Title 26, United States Code, Sections 5841 and 5845, machineguns and destructive devices are required to be properly registered by the possessors. Title 26, United States Code, Section 5861(d) prohibits a person from receiving or possessing a firearm which is not registered to him/her in the National Firearms Registration and Transfer Record. A firearm is defined in Title 26, United States Code, Sections 5845(a)(6) and 5845(a)(8) as including machineguns and destructive devices.

(27) The aforementioned machineguns and destructive device recovered in this incident were not registered to Cannon, Ritter, or Polston. Additionally, since Cannon, Ritter, and Polston are prohibited felons under Title 18, United States Code, Section 922(g)(1), they would not be able to register the machineguns or destructive device.

CONCLUSION

(28) Wherefore, based upon all of the information set forth in this Affidavit, I respectfully submit that there is probable cause to believe that Brandon Polston, Austin Ritter, and Kimberly Cannon did on or about November 25, 2017, violate the following laws: (1) Title 18, United States Code, Section 922(g)(1), possession of firearms after being convicted of a crime punishable by a term of imprisonment exceeding one year; (2) Title 18, United States Code, Section 922(o), unlawful possession of machine guns; and (3) Title 26, United States Code, Section 5861(d), possession of machineguns and a destructive device not registered to the possessors. In consideration of the foregoing, I respectfully request that this Court issue Criminal Complaints and Arrest Warrants for Brandon Polston, Austin Ritter, and Kimberly Cannon.

Assistant United States Attorney Stacey D. Haynes has reviewed this affidavit.



David Ford
Special Agent
Bureau of Alcohol, Tobacco, Firearms, and Explosives

Sworn to and subscribed before me this 29th day of November 2017.



PAIGE J. GOSSETT
UNITED STATES MAGISTRATE JUDGE