

_AO91 (Rev. 10/03) Criminal Complaint

United States Courts
Southern District of Texas
FILED

APR 24 2008

Michael N. Milby, Clerk of Court
TEXAS

UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF _____

UNITED STATES OF AMERICA

V.

CRIMINAL COMPLAINT

John Phillip Hernandez

Case Number: H-08-317M

unSealed
Public and unofficial staff access
to this instrument are
prohibited by court order.

(Name and Address of Defendant)

I, the undersigned complainant, state that the following is true and correct to the best of my knowledge and belief. On or about June 12, 2006 in Harris County, in the Southern District of Texas defendant(s) did,

(Track Statutory Language of Offense)

in connection with the acquisition of a firearm from Carter's Country, a licensed dealer of firearms within the meaning of Chapter 44, Title 18 United States Code, knowingly made a false and fictitious written statement which was intended and likely to deceive Carter's Country as to a fact material to the lawfulness of such sale of firearm to the defendant, in that the defendant represented he was the true purchaser of the firearm when in fact he was not

in violation of Title 18 United States Code, Section(s) 922(a)(6) & 924(a)(2).

I further state that I am a(n) Special Agent and that this complaint is based on the facts related in the affidavit attached hereto and made a part of this complaint.

Carla Mayfield
Signature of Complainant

Carla D. Mayfield
Printed Name of Complainant

Sworn to before me and signed in my presence,

at

Houston, TX
City and State

Date April 24, 2008

Frances H Stacy, US Magistrate Judge
Name and Title of Judicial Officer

Frances Stacy
Signature of Judicial Officer

ATTACHMENT A

I, Special Agent Carla D. Mayfield, affiant, do hereby depose and state as follows:

I am a Special Agent of the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and have been so employed since June of 1988. I have attended formal training at the Federal Law Enforcement Training Center and the ATF National Academy in Glynco, Georgia.

My duties include investigations of violations of the Federal Firearms Laws. As a result of my training and experience as an ATF Special Agent, I am familiar with federal firearms laws and know that it is a violation of Title 18, United States Code, Section 922(a)(6) to knowingly make false statements during the acquisition of firearms.

In January of 2007, after a routine inspection of Carter's Country, a Federally Licensed Firearms Dealer, by the Bureau of Alcohol, Tobacco, Firearms and Explosives Industry Operations Branch, numerous individuals were identified as having made large purchases of firearms. The firearms of choice were Bushmaster rifles, Beretta pistols, FN pistols and FN rifles.

Further investigative efforts revealed that during a fifteen (15) month time frame, 22 suspected firearms traffickers have been identified after having purchased 328 firearms. At least thirty (28) of these firearms have been recovered in the United Mexican States (Mexico) and at least three (3) have been recovered in Guatemala. The total expenditure to date is approximately \$352,134.04.

One of the most prolific purchasers of this organization is an individual that has been identified as John Phillip Hernandez, date of birth March 12, 1983, Hispanic male, current address is 8803 Bird Forest Drive, Houston, Texas 77088. During a twelve month time frame, Hernandez has used his Texas Driver's License Number 15436960 to purchase the following 23 firearms which totaled approximately \$24,819.77:

- **On June 12, 2006, Hernandez purchased two (2) Bushmaster .223 caliber rifles, one (1) Beretta 9mm pistol and both rifle and pistol ammunition from Carter's Country #2 (Federally licensed firearms dealer), Houston, Texas. The total amount of the sale was \$2,789.08.**
- **On July 1, 2006, Hernandez purchased one (1) Bushmaster .223 caliber rifle and two (2) Smith and Wesson, .223 caliber rifles from Carter's Country #2 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$3,441.93.**
 - **According to information provided by Mexican law enforcement authorities, approximately two months later, one of the firearms**

purchased on July 1, 2006, was recovered in Municipio De Xicoteppec, Puebla (Mexico) during an incident in which a businessman was kidnapped and murdered.

- **On July 11, 2006, Hernandez purchased two (2) Bushmaster .223 caliber rifles from Academy #18 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$1,848.91.**
 - **According to information provided by Mexican law enforcement authorities, approximately 15 months later, one of these firearms was recovered in Miahuatlan De Porfirio, Oaxaca (Mexico) during an incident in which “Los Zetas” (enforcers for the Gulf Cartel Drug Trafficking Organization) opened fire on the Mexican Army at the Botanical Gardens.**
- **On July 12, 2006, Hernandez purchased one (1) Beretta 9mm caliber rifle and two (2) Bushmaster .223 caliber rifles from Academy #19 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$2,648.72.**
 - **According to information provided by Mexican law enforcement authorities, approximately seven months later, one of the firearms purchased on July 12, 2006, was recovered in Acapulco, Guerrero (Mexico). This incident is commonly referred to as the “Acapulco Police Massacre” due to the fact that more than a dozen armed assailants attacked two offices of the state attorney general and executed four police officers and three secretaries.**
- **On August 19, 2006, Hernandez purchased one (1) Bushmaster .223 caliber rifle and two (2) FN, 5.7 caliber rifles from Carter’s Country #4 (Federally licensed firearms dealer) Houston, Texas. The total amount of sale was \$4,762.58.**
- **On September 21, 2006, Hernandez purchased five (5) Bushmaster .223 caliber rifles from Carter’s Country #1 (Federally licensed firearms dealer) Houston, Texas. The total amount of sale was \$5,013.94.**
 - **According to Mexican law enforcement authorities, approximately nine months later one of the firearms purchased on September 21, 2006 was recovered in Santiago Tuxtla-Tapalapa, Veracruz (Mexico) during an incident in which an arsenal of weapons was recovered from a vehicle.**
 - **According to Mexican law enforcement authorities, approximately ten months later, another one of these firearms was recovered in Orizaba, Veracruz (Mexico) during an incident in which two people were**

detained at a check point after the vehicle they were in was found to contain firearms and marijuana.

- On May 22, 2007, Hernandez purchased a Bushmaster .223 caliber rifle from Father and Son Swap Shop (Federally licensed firearms dealer) Houston, Texas. The estimated amount of sale was \$1,102.83
- On June 5, 2007, Hernandez purchased three (3) FN 5.7 caliber pistols from Father and Son Swap Shop (Federally licensed firearms dealer) Houston, Texas. The estimated amount of sale was \$3,211.78

Another prolific purchaser has been identified as David Israel Alcaide, date of birth April 24, 1985, Hispanic male, Texas Driver's License Number 14255557, address of 6808 Spindle, Houston, Texas. During a twelve month time frame, Alcaide used his Texas Driver's License Number 14255557 in order to purchase the following 37 firearms that totaled approximately \$42,763.87:

- On March 21, 2007, Alcaide purchased three (3) Bushmaster .223 caliber rifles from Father and Son Swap Shop (Federally licensed firearms dealer), Houston, Texas. The estimated amount of sale was \$3,308.49.
- On March 22, 2007, Alcaide purchased three (3) Armalite .308 caliber rifles from Carter's Country #1 (Federally licensed firearms dealer) Houston, Texas. The total amount of sale was \$4,661.74
- On March 28, 2007, Alcaide purchased one (1) H & K, 9mm caliber pistol, one (1) Armalite .308 caliber rifle and one (1) Springfield .308 caliber rifle from Carter's Country #4 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$4,496.96.
- On April 3, 2007, Alcaide purchased one (1) H & K 9mm pistol from Pruitt's Guns and Ammo (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$1,017.00
- On April 26, 2007, Alcaide purchased three (3) Bushmaster, .223 caliber rifles from Carter's Country #1 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$3,207.43.
- On April 28, 2007, Alcaide purchased one (1) FN 5.7 caliber pistol, one (1) Vulcan, 7.62 caliber pistol and one (1) Armalite .308 caliber rifle from Collector's Firearms (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$3,397.37.
 - Collector's Firearms video surveillance cameras indicate that John Phillip Hernandez accompanied Alcaide to make the April 28, 2007 purchase.

- On April 28, 2007, Alcaide purchased three (3) Bushmaster .223 caliber rifles from Carter's Country #1 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$3,358.65
- On May 2, 2007, Alcaide purchased three (3) Bushmaster .223 caliber rifles and one (1) FN 5.7 caliber pistol from Carter's Country #1 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$4,398.09.
- On May 12, 2007, Alcaide purchased eight (8) Bushmaster .223 caliber rifles from Carter's County #1 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$8,961.55
- On May 17, 2007, Alcaide purchased two (2) FN 5.7 caliber pistols from Tomball Pawn (Federally licensed firearms dealer) Tomball, Texas. The total amount of the sale was \$1,883.44
- Also, on May 17, 2007, Alcaide purchased one (1) FN 5.7 caliber pistol from Father and Son Swap Shop (Federally licensed firearms dealer) Houston, Texas. The total estimated amount of the sale was \$1,048.80
 - On this date, myself and several other ATF Agents observed Alcaide arrive at Tomball Pawn located at 14011 FM 2920 in Tomball, Texas in a blue Chevrolet Impala bearing Texas Registration 609 DRT. Upon arrival, John Phillip Hernandez was observed sitting in the passenger seat of the vehicle. Alcaide was observed parking the vehicle in front of the store, going inside alone and then returning with two gun boxes. Alcaide placed these boxes in the trunk of the vehicle. Alcaide and Hernandez were surveilled by unmarked vehicles leaving Tomball Pawn and travelling to Father and Son Swap Shop located at 11531 Eastex Freeway, in Houston, Texas. Hernandez and Alcaide were both observed going into the store and returning later with a large box which they placed in the trunk of the vehicle. An unknown female was also observed placing a box in the trunk of the vehicle.
- On May 31, 2007, Alcaide purchased three (3) FN 5.7 caliber pistols from Carter's Country #1 (Federally licensed firearm dealer) Houston, Texas. The total amount of the sale was \$3,024.35
 - On this same date, ATF received information from an employee at Carter's Country #1 located at 6231 Treaschwig Road, Houston, Texas that an individual was in the store attempting to purchase several FN pistols. Upon arrival at the scene, I observed the blue Chevrolet Impala, Texas Registration 609 DRT parked in the

parking area. John Phillip Hernandez was standing outside the vehicle talking on a cellular telephone. David Alcaide came outside the store talking on a cellular telephone also. A few minutes later, I observed Alcaide go back inside the store. I went inside and observed Alcaide completing his transaction. I went outside and waited for him to return to his vehicle. Upon his return, Alcaide placed his purchases in the vehicle and he and Hernandez left together. They were surveilled back to the neighborhood in which they both appear to reside off of Highway 249 in Houston, Texas.

Additionally, another purchaser has been identified as Jecorey Dwann McGrough, date of birth September 19, 1981, black male, address of 5610 Lost Forest, Houston, Texas. During a two month time frame, McGrough used his Texas Driver's License Number 07625823 to purchase 21 firearms which totaled approximately \$27,785.70:

- On January 9, 2007. He purchased three (3) FN 5.7 caliber rifles, one (1) FN 5.7 caliber pistol, one (1) Armalite 380 caliber rifle and two (2) Bushmaster .223 caliber rifles from Collector's Firearms (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$10,446.13.
 - According to information received from Mexican law enforcement authorities, approximately three months later one of the firearms was recovered in Victoria, Tamaulipas (Mexico) during the execution of a narcotics related search warrant.
- On January 12, 2007, McGrough purchased one (1) Armalite .308 caliber rifle, one (1) Smith and Wesson .223 caliber rifle, two (2) Bushmaster .223 caliber rifles and one (1) H&K 9mm pistol from Carter's Country #2 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$8,571.27.
 - According to Mexican law enforcement authorities, approximately eight months later, one of the firearms purchased on January 12, 2007 was recovered in Campeche (Mexico). This firearm was recovered after twenty (20) suspected kidnapers and narcotics traffickers affiliated with the Gulf Cartel Drug Trafficking Organization were detained by police.
- On March 14, 2007, McGrough purchased one (1) FN 5.7 caliber pistol and two (2) Bushmaster .223 caliber rifles from Father and Son Swap Shop (Federally licensed firearms dealer) Houston, Texas. The total estimated amount of sale was \$3,254.46.
- On March 18, 2007, McGrough purchased one (1) Springfield .308 caliber rifle, one (1) Bushmaster .223 caliber rifle and one (1) FN 5.7 caliber pistol

from Carter's Country #2 (Federally licensed firearms dealer) Houston, Texas. The total amount of the sale was \$3,971.27

- On March 20, 2007, McGrough purchased three (3) Romanian 7.62 caliber rifles from Father and Son Swap Shop (Federally licensed firearms dealer) Houston, Texas. The estimated total amount of sale was \$1,542.57

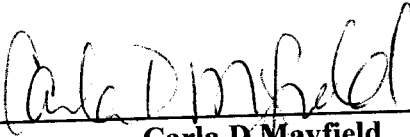
On June 29, 2007, myself and Special Agent Greg Alvarez interviewed a cooperating witness who stated that he/she had purchased some firearms for "John", an individual that he/she had went to school with at Klein Forest High School. He/she stated that when he/she asked "John" about the guns to be purchased that he told him that the guns were to be sold out of state for a large profit and that there was nothing to worry about. The cooperating witness stated that he/she was picked up at his/her residence by "John" and taken to Carter's Country to make a purchase. "John" gave him/her the money outside the store and followed him/her in to observe the purchase. The cooperating witness stated that he/she was paid approximately \$450.00 for purchasing these firearms and that "John" took custody of the firearms after they were purchased. The cooperating witness stated that on a later date, he/she was again contacted by "John" in order to make another purchase. "John" again picked him/her up and took him/her to the gun shop. "John" removed the purchase money, which was in \$100 denominations, from a bank envelope and gave it to him/her. The cooperating witness stated that he/she then went inside the store and the guns were already assembled behind the counter, ready for pickup. He/she said that the store clerk asked him/her if he/she was the person that had called ahead for the guns. The cooperating witness stated that he/she had never called the store and that "John" must have called and ordered the guns ahead of time.

On October 17, 2007, myself and Special Agent Greg Alvarez interviewed a cooperating witness who stated that he/she had been approached by John Hernandez (also known to him/her as J.P.) and asked if he/she was interested in buying some guns for money. He/she stated that Hernandez called him/her a few days later and asked if he/she was ready to buy the guns. Hernandez picked him/her up and took him/her to a gun shop where he gave him/her money to buy the guns. The cooperating witness stated that Hernandez took the money from a large roll of cash he had in a shaving kit bag. He/she stated Hernandez told the gun dealer what kind of guns that he/she wanted and had him/her fill out the forms. He/she stated that he/she was paid \$150.00 to buy the guns. The cooperating witness further stated that that on the same day that he/she bought the guns another individual was there buying guns for Hernandez also. He/she stated that after the purchase they all left the store and Hernandez took him/her back home. Hernandez kept the guns in the vehicle with him.

On November 9, 2007, I interviewed Jecorey Dwann McGrough regarding several purchases of firearms. McGrough stated that he had been approached by John Hernandez (also known to him as J.P.) and was asked to buy some guns. McGrough stated that Hernandez told him that he could not buy guns himself because he had a

criminal record. McGrough stated that Hernandez had met him at Father and Son on Highway 59 in order to make a purchase. He stated that Hernandez told him what to buy beforehand and gave him the money. McGrough stated that he filled out all the paperwork with a female employee while Hernandez visited with a man that worked in the store. He stated that after he made the purchase, he put the guns in the trunk of his own car and met Hernandez down the street in order to make the exchange. McGrough further stated that Hernandez was not the only person he had bought guns for.

Based on the above information, your affiant believes that from June of 2006 to June of 2007 John Phillip Hernandez violated Title 18, United States Code, Section 922(a)(6). These violations occurred within Houston, Harris County, in the Southern Judicial District of Texas.



Carla D Mayfield
Special Agent, ATF

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE



United States Magistrate Judge



Date