

FILED

UNITED STATES DISTRICT COURT

for the Northern District of California

United States of America v. TUAN NGOC LUONG

Case No.

4-15-70290

2015 MAR 10 A 8:13 RICHARD W. WIERING CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

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 15 to 17, 2015 in the county of Alameda in the Northern District of California, the defendant(s) violated:

Code Section 18 USC § 922(g)(1)

Offense Description Felon in possession of a firearm. Maximum penalties: 10 years in prison; \$250,000 fine; 3 years of supervised release; and a \$100 special assessment.

18 USC § 1951

Interference with commerce by violence (Hobbs Act robbery). Maximum penalties: 20 years in prison; \$250,000 fine; 5 years of supervised release; and a \$100 special assessment.

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT IN SUPPORT OF THIS COMPLAINT

Continued on the attached sheet.

Approved as to form:

Brian C. Lewis

Brian Lewis, AUSA

Jonathan Clemens Complainant's signature Jonathan Clemens, FBI Special Agent Printed name and title

Sworn to before me and signed in my presence.

Date: 3/9/15

Kandis Westmore Judge's signature

City and state: Oakland, California

Kandis A. Westmore, U.S. Magistrate Judge Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Jonathan Clemens, after being duly sworn, depose and say as follows:

I. INTRODUCTION AND PURPOSE OF AFFIDAVIT

1. This affidavit is submitted in support of a criminal complaint against Tuan Ngoc Luong for possessing a firearm, in violation of 18 U.S.C. § 922(g)(1) and for committing and attempting to commit commercial robberies, in violation of 18 U.S.C. § 1951. The facts set forth in this affidavit are based on my review of written reports, my personal observations, my training and experience, and information from other law enforcement officials. However, these facts are not all of the facts related to this investigation that I know. I have set forth those facts that I believe are sufficient to establish probable cause that Tuan Ngoc Luong committed the aforementioned offenses.

II. AGENT'S BACKGROUND

2. I am a Special Agent of the FBI and have been so employed since August of 2014. Currently I am assigned to the Applicant Squad and am also assisting the Violent Crimes and Major Offender Squad at the Oakland Resident Agency, San Francisco Field Office, where my responsibilities include the investigation of violent crimes and firearms offenses. In connection with my official duties, I have participated in the investigation of Tuan Ngoc Luong.

3. As a Special Agent of the FBI, I am authorized to investigate violations of laws of the United States, and I am a law enforcement officer with authority to execute arrest and search warrants under the authority of the United States.

III. APPLICABLE LAWS

4. Title 18 U.S.C. § 922(g)(1) provides that “[i]t shall be unlawful for ... any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year[,] ... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition....”

5. Title 18 U.S.C. § 1951 provides that “[w]hoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do . . . shall be find under this title or imprisoned not more than twenty years, or both.”

IV. FACTS ESTABLISHING PROBABLE CAUSE

Armed Robbery at Castro Valley BART

6. According to investigative reports, on February 15, 2015, at approximately 10:30 p.m., Alameda County Sheriff's Office (ACSO) deputies were dispatched to respond to an armed robbery at the Castro Valley BART station, which is located at 3301 Norbridge Avenue in Castro Valley. The first ACSO deputy to respond met with the victim of the armed robbery and a BART police officer who had also responded.

7. The victim of the armed robbery reported that at 9 p.m. he found a car advertised for sale on Craigslist and that he contacted the seller by phone to discuss purchasing the car. The two agreed to meet at the Castro Valley BART station so the victim could have a look at the car. The seller said his name was "Michael." At 9:40 p.m., "Michael" called the victim and said that he was waiting at the BART station. The victim got a ride from his girlfriend and headed to the BART station. The victim arrived at about 9:55 p.m. and met with "Michael," who was standing next to a green 1996 Acura Integra. "Michael" again introduced himself, and he also stated that he was a sheriff.

8. The victim took the car for a test drive on Interstate 580, and "Michael" accompanied him. The victim's girlfriend waited in the BART parking lot. During the test drive, the victim told "Michael" that he wanted to buy the car for \$1100.

9. As they were returning to the BART station, "Michael" instructed the victim to drive past the station and proceed to his house in order to retrieve the title to the car. "Michael" told the victim to park in front of a residence around 2720 Norbridge Avenue. Both of them got out of the car to conduct a final inspection of the Acura. Once outside the car, "Michael" pointed a black semi-automatic handgun at the victim and demanded the money. The victim told "Michael" that he had left the money back at the BART station. "Michael," while waiving a gun at the victim, then demanded the victim's cell phone and everything in his pockets. The victim gave up his iPhone 6, credit card, driver's license, and medical card. "Michael" then fled in the Acura, and the victim ran back to his girlfriend at the BART station.

10. The victim described "Michael" as an Asian male in his late 30's or early 40's with balding black hair, approximately 5' 06" tall, 135 pounds, wearing a black zip-up jacket and brown shorts. He described the car for sale as a green 1996 Acura Integra with a faded roof and

front quarter panels. The Acura was equipped with a factory rear spoiler, the front interior door speakers were missing, and the “SRS” and “ABS” lights were on in the instrument cluster.

Tuan Luong is Identified as the Armed Robber

11. A records check of the phone number used in connection with posting the Craigslist ad resulted in the identification of a potential suspect, Tuan Ngoc Luong, and a photo lineup was prepared for the victim to view. The victim was read a lineup admonition form, and then shown a sequential lineup of possible suspects. The victim looked at all of the photographs and identified the photograph of Luong as the armed robber. The victim stated that he recognized Luong’s facial features, eyes, and hair as being the same as those of the armed robber.

12. ACSO deputies identified 3 possible addresses for Luong, but attempts to locate Luong or the Acura at those addresses were unsuccessful.

Luong is Arrested after Undercover Sting Operation

13. On February 17, 2015, ACSO conducted an undercover sting operation, posing as an interested buyer for Luong’s car and contacted Luong about buying the car. At about 6:00 p.m., Luong responded by text message, saying that the car was still available for sale and that he wanted to meet at the Castro Valley BART station. During the text message exchange, Luong also stated that he was a sheriff. ACSO convinced Luong to meet in the parking lot of Kavanagh Liquors in San Lorenzo, instead of at the BART station.

14. ACSO personnel established surveillance around Kavanagh Liquors and waited for Luong. At about 9 p.m., Luong reported that he was on his way. Just after 9:30 p.m., Luong pulled into the parking lot of Kavanagh Liquors and ACSO conducted a high risk car stop on Luong’s car.

15. The deputies instructed Luong to exit his car and lie down on the ground. After Luong got out of his car, the deputies observed a holster containing a black semi-automatic pistol clipped to his belt on the small of his back. Luong was detained without incident. The black semi-automatic pistol was identified as a Glock 30, a .45 caliber pistol, with serial number XAA677. The pistol had a magazine in the magazine well, but both the chamber of the pistol and the magazine were empty and did not contain any ammunition. A second magazine was located in Luong’s left pant pocket containing ten rounds of .45 caliber Federal brand hollow

point ammunition. During a search of Luong's car incident to arrest, a box of the same Federal ammunition was found in the trunk of the vehicle. The box contained twenty-six rounds of ammunition. Luong's car matched the vehicle description provided by the victim from the previous armed robbery. It had the same spoiler, faded paint, missing front speakers, and "ABS" and "SRS" warning lights on the dash were on. Luong declined to make a statement after being advised of his Miranda rights.

16. I have reviewed Luong's and criminal history and learned that he suffered the following felony convictions: (a) in 1996 for burglary, in violation of California Penal Code § 459, receiving a sentence of 8 months in jail and 5 years of probation; (b) in 1996 for petty theft with priors, in violation of California Penal Code § 666, receiving a sentence of 32 months in prison; (c) in 1999 for petty theft with priors, in violation of California Penal Code § 666, receiving 32 months in prison; and (d) in 2009 and 2011 for vehicle theft, in violation of California Vehicle Code § 10851(a), receiving 4 years in prison and 32 months in prison, respectively.


17. Further, from my own investigation and consulting with other law enforcement officers, I know that Glock firearms are not manufactured in the State of California. Therefore, to arrive in Luong's possession, the firearm necessarily traveled in interstate or foreign commerce. In addition, Craigslist is a website that provides numerous online services, including providing an online marketplace allowing users to advertise merchandise for sale throughout the United States, which affects interstate commerce.

* * *

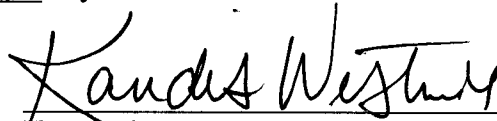
V. CONCLUSION

18. Based on the foregoing facts, my training and experience, and consultation with other law enforcement agents with experience in criminal investigations, I believe Tuan Ngoc Luong, on or about February 15, 2015 and February 17, 2015, in the Northern District of California, was a felon unlawfully possessing a firearm, in violation of 18 U.S.C. § 922(g)(1) and did commit a commercial robbery, in violation of 18 U.S.C. § 1951.

DATED this 09 day of March 2015.


JONATHAN CLEMENS
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me this 9th day of March 2015.


KANDIS A. WESTMORE
United States Magistrate Judge