

IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE DISTRICT OF KANSAS U.S. District Court
(Wichita Docket) District of Kansas

FEB 27 2019

Clerk, U.S. District Court
By [Signature] Deputy Clerk

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

DAVID L. MADDEN,)

Defendant.)

Criminal Action

No. 19- 6045 -01- GEB

CRIMINAL COMPLAINT

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

COUNT 1

**POSSESSION OF A MACHINE GUN NOT REGISTERED
IN THE NATIONAL FIREARMS REGISTRATION
AND TRANSFER RECORD
[Title 26, U.S.C. Section 5861(d)]**

On or about February 22, 2019, in the District of Kansas, the defendant,

DAVID L. MADDEN,

knowingly possessed a firearm, an AK-47 machine gun in 7.62 x .39 caliber, not registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26, United States Code, Sections 5841, 5861(d) and 5871.

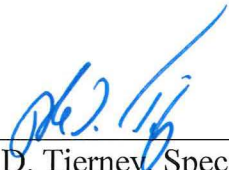
I further state that I am a Special Agent with the Bureau of Alcohol, Tobacco,

Firearms and Explosives and that this Complaint is based upon the following facts:

See attached affidavit which is incorporated herein by reference.


Continued on the attached sheet and made a part hereof:

Yes No



Neal D. Tierney, Special Agent
Bureau of Alcohol, Tobacco, Firearms
and Explosives

The above was subscribed and sworn to before me this 27th day of February, 2019, at Wichita, Kansas. Further, I find probable cause exists to believe that the above offenses were committed by the defendant named herein, pursuant to Federal Rule of Criminal Procedure 4 and 5.



Honorable Gwynne E. Birzer
United States Magistrate Judge

AFFIDAVIT


I, Neal D. Tierney, being duly sworn, state the following:

1. Your affiant is employed as a Special Agent with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and is charged with investigating violations of Federal Firearms and Explosives Laws. Your affiant has been employed with ATF since August of 1992. Prior to becoming a Special Agent, your affiant was assigned to the ATF National Firearms Branch, Washington, DC and also as an Inspector with ATF Regulatory Enforcement Division. In these capacities, your affiant was responsible for ensuring compliance with and in accordance to the National Firearms Act (GCA) and Gun Control Act GCA). Your affiant is further recognized as a Special Agent Certified Explosives Specialist (SA/CES) who is authorized to seize, forfeit, handle and destroy hazardous explosive materials and explosive devices based upon experience, training and authority of Federal Statutes.
2. Your affiant is involved in an investigation regarding a missing person being conducted by the Kansas Bureau of Investigation (KBI) for a Megan Fogelsong. KBI Special Agent (SA) Jeff Newson has been investigating the disappearance of Ms. Fogelsong, who had been reported as a missing person, in November of 2015. SA Newson had previously contacted SA Tierney, on several occasions, to report that the KBI had also received information that David Madden (dob: /1981, ssn: -9946) was suspected to be involved with explosives and/or explosives materials. SA Newson further indicated to SA Tierney that Madden was a person of interest in the disappearance of Ms. Fogelsong.
3. On February 22, 2017, Mr. Madden led law enforcement officers on a high speed chase, beginning in Ellenwood, Kansas, then proceeding through both Rice and Barton Counties on Kansas. Mr. Madden was later arrested, this same day, after a standoff with law enforcement at his residence.
4. On February 24, 2017, KBI SA Newson applied for and received a search warrant for the residence of David Madden located at 304 Steinmetz Street, Alden, Kansas, 67512. On February 25, 2017, SA Tierney drove to Alden, Kansas and assisted KBI and the Rice County Sheriff's Office (RCSO) execute this search warrant.
5. On the afternoon of February 25, 2017, SA Tierney found two (2) wooden crates, located in an outbuilding on the Madden property, which contained 24 separate metal pipe bombs, each wrapped with metal bailing wire and some wrapped further with black electrical tape. Searching activity ended, at the finding of the two (2) crates of pipe bombs, the scene was secured by a RCSO Deputy and searching was continued the following morning.

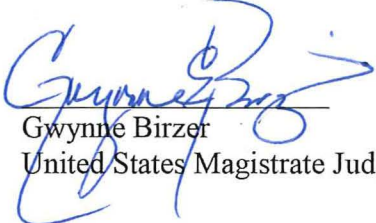
6. SA/CES Tierney and Explosives Enforcement Officer (EEO) Richard Gonzales met and briefed all searchers on the morning of February 26, 2017 regarding the finding of explosive materials inside the residence and outbuildings. Two (2) types of hobby fuse (red and green), 12 containers of smokeless powders and two (2) live 25mm TPOS-T ATJ military ordnance projectiles and two (2) wooden crates; one containing 15 and one containing 9 pipe bombs. SA/CES Tierney and EEO Gonzales removed all explosive materials and then traveled to the Rice County landfill where all pipe bombs were dismantled into their component parts.
7. KBI SA Newsom secured the Madden residence with locks and evidence tape and retained custody of the residence which is consistent with KBI investigations into missing persons and homicides. On March 09, 2017, SA Newsom and KBI SA Condi returned to the residence and continued searching the residence. An AK-47 machinegun and a Standard Fusee Corporation railroad torpedo (regulated explosive item) were found along with a .45 caliber semi-automatic pistol.
8. On April 11, 2017, your affiant traveled to the Rice County jail where Mr. Madden had been incarcerated since his arrest on February 22, 2017. SA Tierney interviewed Mr. Madden, inside the jail, and Mr. Madden agreed to speak with SA Tierney after SA Tierney read ATF Form 3200.4, Advice of Rights and Waiver, to Mr. Madden, which he signed. The interview lasted approximately 34 minutes. Mr. Madden admitted to making and lighting off pipe bombs and said he had been doing this since he was a kid. Mr. Madden admitted to finding the machinegun in Fallujah, Iraq when he was there fighting for the United States Marine Corps. Mr. Madden admitted to bringing the machinegun back to the United States and to knowing it was a machinegun.
9. Your affiant submitted the AK-47 machine in 7.62 X 39 caliber and bearing serial number 79HH7060, to the ATF Firearms Technology Criminal Branch for an NFA determination. Your affiant received a Report of Technical Examination that states this AK-47 rifle is a machinegun. This report further identifies the machinegun as being manufactured by the German Democratic Republic in Suhl, Germany.
10. Your affiant caused a query to be conducted into the National Firearms Registration and Transfer Record (NFRTR) and found that David Lee Madden has never paid a tax to register any firearms and further found that the German Democratic Republic machinegun, model AK-47, bearing serial number 79HH7060, has never been registered in the NFRTR. Your affiant further knows that Mr. Madden has never paid a tax to register pipe bombs as destructive devices.
11. Your affiant knows the German Democratic Republic machinegun was found underneath Mr. Madden's bed, located in his bedroom inside the residence from which Mr. Madden was arrested.

12. Your affiant knows it shall be unlawful for any person to possess NFA firearms that are not registered in the National Firearms Registration and Transfer Record (NFRTR) in violation of 26 United States Code, Section 5861(d). Your affiant further knows that it shall be unlawful for any person to possess a machinegun not registered in violation of 18 United States Code, Section 922(o).
13. Your affiant believes that based on the aforementioned facts, there is probable cause to believe that David Lee Madden has violated Federal Firearms Statutes and that an arrest warrant should be issued for Madden.

Subscribed and sworn before me this
27th day of February, 2019



Neal D. Tierney
ATF Special Agent



Gwynne Birzer
United States Magistrate Judge