

3:20-mj-165

DISTRICT OF OREGON)
) ss: AFFIDAVIT OF SPECIAL AGENT
County of Multnomah) STEVEN BINGLEY

Affidavit in Support of a Criminal Complaint and Arrest Warrant

I, Steven Bingley, being duly sworn, do hereby depose and state as follows:

Introduction and Agent Background

1. I am employed as a Special Agent (SA) with the Federal Protective Service (FPS) and have been employed by FPS since February 2009. I have participated in several investigations relating to the protection of federal facilities and personnel. I am currently assigned to Region 8 in Fort Collins, Colorado as a general crimes agent.

2. I submit this affidavit in support of a criminal complaint and arrest warrant for David Michael BOUCHARD. As set forth below, there is probable cause to believe, and I do believe, that BOUCHARD committed the offense of Assaulting a Federal Officer (Felony), in violation of 18 U.S.C. § 111(a)(1).

3. The facts set forth in this affidavit are based on the following: my own personal knowledge; information obtained from other individuals during my participation in this investigation including other law enforcement officers; interviews of witnesses; my review of records related to this investigation; communication with others who have knowledge of the events and circumstances described herein; and information gained through my training and experience. Because this affidavit is submitted for the limited purpose of establishing probable cause in support of the application for an arrest warrant, it does not set forth each fact that I or others have learned during this investigation.

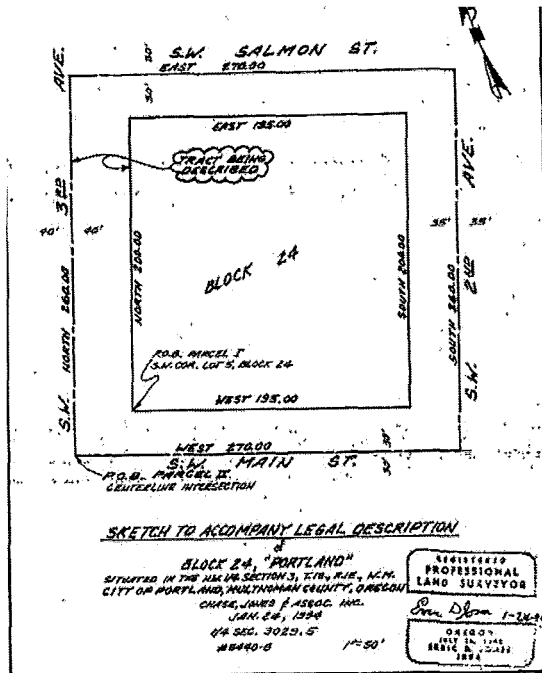
Applicable Law

4. 18 U.S.C. § 111(a)(1) makes it an offense to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in 18 U.S.C. § 1114 while engaged in or on account of the performance of official duties. Persons designated in § 1114 include any officer or employee of the United States or of any agency in any branch of the United States government while such officer or employee is engaged in or on account of the performance of official duties, and any person assisting such an officer or employee in the performance of official duties. Under § 111(a), simple assault is a misdemeanor, but where the assaultive acts involve physical contact with the victim, the offense is a felony punishable by imprisonment up to 8 years.

Statement of Probable Cause

5. Since on or about May 26, 2020, protesters have gathered in Portland public areas to protest. Three of these public areas are Lownsdale Square, Chapman Square and Terry Schunk Plaza. The Portland Justice Center, housing Portland Police Bureau's (PPB) Central Precinct and the Multnomah County Detention Center (MCDC), border these parks, as does the Mark O. Hatfield United States Federal Courthouse¹. The United States of America owns the entire city block (Block #24) occupied by the courthouse building depicted below:

¹ As part of my duties, I am familiar with the property boundaries for federal facilities in the Portland Oregon area. The federal government owns the entire city block occupied by the Mark O. Federal Courthouse. Easements have been granted for the sidewalks surrounding the facility. The property boundary extends past the sidewalks and into the streets surrounding the courthouse.



Daily protests have regularly been followed by nightly criminal activity in the form of vandalism, destruction of property, looting, arson, and assault. One violent event impacting federal property occurred on May 28, 2020, when the Portland Field Office for the Immigration and Customs Enforcement (ICE) was targeted by a Molotov Cocktail. The Mark O. Hatfield Courthouse has experienced significant damage to the façade, glass, and building fixtures during the weeks following this incident. Additionally, mounted building security cameras and access control devices have been vandalized or stolen. The most recent repair estimate for the damage at the Mark O. Hatfield Courthouse is in excess of \$50,000. Other federal properties in the area routinely being vandalized include the historic Pioneer Federal Courthouse, the Gus Solomon Courthouse, and the Edith Green Wendall Wyatt Federal Office Building. FPS law enforcement officers, U.S. Marshal Service Deputies and other federal law enforcement officers working in the protection of the Mark O. Hatfield Courthouse have been subjected to assault, threats, aerial

fireworks including mortars, high intensity lasers targeting officer's eyes, thrown rocks, bottles and balloons filled with paint, and vulgar language from demonstrators while performing their duties.

6. On July 24, 2020, at approximately 01:35 a.m., protesters attempted to breach into the Mark O. Hatfield Federal United States Courthouse (USCH) by damaging and removing the protective fencing around the west entrances of the USCH. As protesters cut open a section of the fence, U.S. Customs and Border Protection (CBP), U.S. Marshals Service (USMS), and FPS tactical teams deployed to the affected area to prevent further damage and a possible breach into the USCH. Tactical teams verbally and visually identified themselves as "POLICE" and ordered protesters to move away from the USCH.

7. While FPS and CBP tactical teams deployed to the intersection of SW Main Street and SW Fourth Avenue near the USCH, CBP BORTAC OFFICER 1 (Officer 1)² and CBP BORTAC Officer (Officer 2) observed a group of demonstrators not following the verbal directives to move away from the USCH. CBP Officer 1 (Victim) moved closer to the group while verbally telling them to "move back." The group was physically defiant and remained in the area of USCH property as FPS and CBP tactical teams moved forward while using their hands to direct the group away from the USCH.

8. At approximately 01:37 a.m., an unknown male, later identified as David Michael BOUCHARD, was given verbal commands to "move" and "move back" by CBP Officer 1, there were numerous audio messages from a trailing FPS vehicle loudspeaker in the immediate area

² Identification of the CBP BORTAC Agent(s) is known to me. For security reasons his/her name will not be included in this affidavit, but is readily available for the court if needed.

telling the crowd to leave as BOUCHARD stood near the intersection of SW Main Street and SW Fourth Avenue. BOUCHARD was not moving away from the USCH, and stood in the path of CBP Officer 1. CBP Officer 1 placed his right hand on BOUCHARD's shoulder to remove him from his path, BOUCHARD then placed his right arm around the neck of CBP Officer 1 in headlock maneuver. CBP Officer 2 attempted to remove BOUCHARD's right arm from around the neck of Officer 1 and as result all three individuals went to the ground. CBP Officer 1 was able to remove the arm of BOUCHARD from around his neck and subsequently arrested him for assault on a federal officer.

9. CBP Officers 1 and 2 were interviewed following the event, and provided a written statement regarding what they observed. CBP Officer 1 added that BOUCHARD was wearing shorts, a white t-shirt, and a mask with the Texas state flag on it. Additionally, CBP Officer 1 stated BOUCHARD was carrying a leaf blower and a shield. BOUCHARD was transferred to Deputy U.S. Marshals for processing.

10. Shortly after the arrest, FPS personnel confirmed CBP Officer 1 was wearing the same clothing and gear that he had on earlier when he confronted BOUCHARD, which was clearly identified as "POLICE." CBP Officer 1 did not display any visible bruising in the areas where BOUCHARD grabbed him.

11. At approximately 03:38 a.m., law enforcement asked BOUCHARD for biographical information and advised BOUCHARD of his legal rights. BOUCHARD waived his right to remain silent and to have an attorney present during questioning. BOUCHARD provided a verbal statement that he did place his right arm around the neck and shoulder area of CBP Officer 1. BOUCHARD stated his intent was not to hurt anyone, but to "stand his ground."

Law enforcement identified BOUCHARD through his Texas issued Driver's License which was acquired during a search incident to arrest.

Conclusion

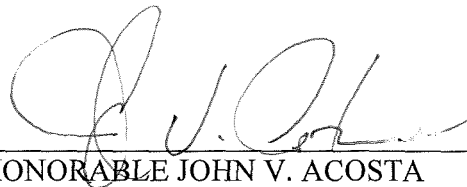
12. Based on the foregoing, I have probable cause to believe, and I do believe, that David Michael BOUCHARD committed a violation of 18 U.S.C. § 111(a), and in so doing made physical contact with CBP BORTAC Z-19.

13. Prior to being submitted to the Court, this affidavit, the accompanying complaint and the arrest warrant were all reviewed by Assistant United States Attorneys (AUSA) Kelly Zusman and Natalie Wight, who advised that in their opinion the affidavit and complaint are legally and factually sufficient to establish probable cause to support the issuance of the requested criminal complaint and arrest warrant.

/s/ Sworn to by telephone
In accordance with Fed. R. Crim. P. 4.1

Steven Bingley
Special Agent
Federal Protective Service

Sworn to by telephone or other reliable means at 12:55 a.m./p.m. in accordance with Fed. R. Crim. P. 4.1 this 24th day of July 2020.



HONORABLE JOHN V. ACOSTA
United States Magistrate Judge