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2 United States Attorney

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RICHARD W. WIEKING
U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

WHA

12 **CR 06 0687**

13 UNITED STATES OF AMERICA,

No.:

14 Plaintiff,

VIOLETIONS:
18 U.S.C. § 1623(a) – False Declaration
Before a Court;
18 U.S.C. § 1001(a)(2) – False Statement

15 v.

16 BRUCE BARKER,

17 Defendant.

ECF DOCUMENT

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Northern District of California.

20 INDICTMENT

Date Filed: 10/12/04

21 The Grand Jury charges:

RICHARD W. WIEKING, Clerk

22 At all times relevant to this Indictment:

By: [Signature] Deputy Clerk

23 Introductory Allegations

24 1. Bruce Barker ("BARKER") was a physician employed by Kaiser Permanente
25 Medical Center, 2238 Geary Boulevard, San Francisco, California.

26 2. Marvin Washington ("Washington") was a resident of the Holly Courts
27 Housing Development, San Francisco, California. Washington resided at 162 Appleton
28 Street. Sometime before May 1, 2002, Washington had been convicted of a felony crime

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1 punishable by a term of imprisonment exceeding one year.

2 3. BARKER knew Washington and sponsored Washington in an outpatient
3 substance abuse rehabilitation program.

4 The Events of May 1, 2002

5 4. At approximately 5:00 p.m. on or about May 1, 2002, a security officer was on
6 duty at the Holly Courts Housing Development security office, located at 100 Patton
7 Street. The security officer heard gunshots in the vicinity. The security officer saw a man
8 she recognized as Marvin Washington carrying a gun and running down Patton Street
9 toward the security office. When Washington arrived at the security office, he knocked
10 on the door. The security officer, who was inside the office, saw Washington through the
11 window. She saw Washington place the gun in the waistband of his pants.

12 5. After the security officer placed a call to her patrol dispatcher for assistance,
13 she went outside the office to speak to Washington. Shortly thereafter, Washington
14 walked up Appleton Street to his residence. The security officer then used her radio to
15 place another call to her patrol dispatcher.

16 6. San Francisco police officers arrived at 100 Patton Street at approximately
17 5:15 p.m. and met with the security officer. No later than 5:20 p.m., the police officers
18 arrived at the residence at 162 Appleton Street. Once there, police officers detained
19 Washington, searched the residence, and located a .380 semi-automatic pistol on a ledge
20 outside the kitchen window of the residence. At approximately 6:25 p.m., police officers
21 arrested Washington on suspicion of being a felon in possession of a firearm, among
22 other charges. Residue samples taken from Washington's hands after he was arrested
23 tested positive for gunshot residue.

24 7. Starting at approximately 1:00 p.m. on or about May 1, 2002, BARKER
25 performed surgery on Patient A at Kaiser Permanente Medical Center at 2238 Geary
26 Boulevard in San Francisco. At approximately 5:35 p.m. on or about May 1, 2002,
27 BARKER was present in the Post-Anesthesia Care Unit at the Medical Center attending
28 to Patient A.

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1 Q: And on May 1st, 2002, did you go to the Holly Court Housing
2 Complex?

3 A: Yes, I did.

4 Q: And was that at approximately 5:00 o'clock or later that afternoon?

5 (a) A: It was.

6

7 Q: When you arrived at the Housing [sic] Court Housing Complex
8 did you see Marvin Washington?

9 (b) A: Yes, I did.

10 Q: Where did you first see Mr. Washington?

11 (c) A: I saw him on Patton Street.

12 ...

13 Q: What drew your attention to Mr. Washington?

14 A: I saw Marvin running down the street.

15 Q: When you saw that what did you do?

16 A: I stopped the car.

17 ...

18 Q: Now, what, if anything, did you see — first of all, did you get out
19 of your car?

20 A: Yes, I did.

21 Q: What did you do when you got out of the car?

22 A: I got out of my car I walked around the car at approximately right here.

23 Q: And what happened? What happened next?

24 (d) A: Okay, I saw Marvin running down the street and was running
25 on the sidewalk coming towards me. When he approximately got
26 to me, he recognized me and came towards me. He stopped
27 approximately right there, right by the grass. He raised his hand
28 and said, "Wait a minute, I have to get help."

Q: And where did you see Mr. Washington go?

A: He went to this —

Q: Let me draw your attention to the photograph above that one.

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A: I think it's right here, the security door.

...

Q: From your vantage point, did you see Marvin go do [sic] that door?

A: Yes, I did.

...

Q: And what, if anything, did you see?

(e) A: I saw Marvin knock on the door, and the security guard opened the door. I couldn't hear what they were saying. She put up her hand to stop him from coming in and shut the door. And then Marvin lingered here for a few seconds, at which point I thought something was wrong, so I figured I better park my car. I got back into my car and —

Q: Let me just ask you this question: When you said he lingered you pointed, and I just want the record to reflect —

A: Right here.

Q: So some distance in front of the door of that particular security office?

A: Yes.

Q: And he remained there for —

A: — seconds.

...

Q: What did you do next?

A: I got back to my car and drove up — I can show you in this picture, but I drove up the street to park.

...

Q: All right. When you say you "parked up the street," what residence did you park close to?

A: To his residence, 162 Appleton.

Q: When you parked the car, when is the next time that you saw Marvin Washington?

(f) A: I saw him walking up the street, up the sidewalk.

Q: When he was walking up the sidewalk, was that towards you, or was —

A: Yes.

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Q: Were you still in your car?

A: Yes.

...

Q: Okay. What did you see Marvin Washington do?

A: While he was walking up the sidewalk?

Q: If anything?

(g) A: I saw him walk up the sidewalk. He came up, and he stopped right here and told me what had happened through the window and then he walked into his apartment.

Q: What did you do?

(h) A: I got up to my car and got the battery out of the back seat and followed him into the house.

Q: Did you go into 162 Appleton?

(i) A: Yes, I did.

...

Q: When you went into 162 Appleton, where was Mr. Washington?

A: He was inside.

...

Q: At any time while you were located outside the security office area, did you see Marvin Washington in possession of a firearm?

(j) A: No.

Q: At any time you saw Marvin Washington walk up Appleton Street, did you see Marvin Washington in possession of a firearm?

(k) A: No.

Q: At any time he was in your presence inside 162 Appleton, did you see him in possession of a firearm?

(l) A: No.

...

Q: Dr. Barker, why are you willing to pay for Marvin's lawyer?

(m) A: I'm willing to pay for his lawyer because I know he's innocent. I was there. I saw this. I know he's innocent.

1 when in truth and fact, as BARKER well knew when he gave this testimony, it was
2 materially false in that BARKER was not present in the vicinity of the Holly Courts
3 Security Office on May 1, 2002 when Marvin Washington ran down Patton Street,
4 knocked on the security office door, and then went to 162 Appleton Street.

5 All in violation of Title 18, United States Code, Section 1623(a).

6 COUNT TWO: (18 U.S.C. § 1623(a) – False Declaration Before a Court)

7 14. Paragraphs 1 through 11 of this Indictment are re-alleged and incorporated as
8 if fully set forth herein.

9 15. On or about November 20, 2002, in the Northern District of California, the
10 defendant

11 BRUCE BARKER,

12 having taken an oath to testify truthfully in a proceeding before a court of the United
13 States, did knowingly make a false material declaration in the trial of United States v.
14 Marvin Washington, CR 02-0169 SI, in that when he was asked what Marvin Washington
15 was carrying in his hand in the vicinity of the Holly Courts Housing Development
16 security office on May 1, 2002, he gave the following testimony (underlined portions
17 alleged as false):

18 Q: Let me just ask you this question: when you said he [Washington]
19 lingered you pointed, and I just want the record to reflect –

20 A: Right here.

21 Q: So some distance in front of the door of that particular security office?

22 A: Yes.

23 Q: He remained there for –

24 A: – Seconds.

25 Q: Okay. And up to that point, had you ever seen Marvin Washington
with a gun?

26 (a) A: No.

27 Q: Did you see Marvin Washington at that time in possession of a cell
28 phone?

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(b)

A: Yes.

Q: Where did you see him in possession of a cell phone?

(c)

A: It was in his hand.

...

Q: When you were watching Marvin Washington in front of the security office was there anything obstructing your view?

A: No.

Q: And when you were inside 162 Appleton was there anything obstructing your view when Marvin Washington was in your presence?

A: No.

Q: Do you think you could be confused about maybe it wasn't the cell phone, but it was a firearm?

A: No.

...

Q: And you say that he [Washington] was running down Patton Street there near the security office; is that right?

A: Yes.

Q: And you say he had a cell phone?

(d)

A: He had a cell phone in his hand.

Q: In his right hand?

(e)

A: Correct statement.

...

Q: You had conversations with the defendant before about simulating a gun by using a cell phone?

A: No.

Q: You haven't?

A: I haven't had a conversation. I saw him doing it.

Q: You've just seen him doing it?

A: Yeah.

Q: Okay. Could you show to the jury how he would do that?

1 A: How he did it?

2 Q: Yep.

3 A: Okay. He was going like this. (Indicating) And he has a thick
4 jacket, so it was like this. It was coming down far enough.
And you go like that, and then it really looks like a gun.

5 Q: So just the tip of the phone is pointed out?

6 A: Correct.

7 Q: And I notice there that you have the blue part of the phone is
facing your palm.

8 A: Yes.

9 Q: Is that the way you saw the defendant running down Patton Street?

10 (f) A: When he came up to me and lifted his hand and tell me to wait
11 a minute, his hand came up.

12 Q: So the blue part of the phone was facing the palm?

13 (g) A: Yes.

14 when in truth and fact, as BARKER well knew when he gave this testimony, it was
15 materially false that Marvin Washington was carrying a cell phone when Washington ran
16 down Patton Street and knocked on the security office door at the Holly Courts Housing
17 Development on May 1, 2002.

18 All in violation of Title 18, United States Code, Section 1623(a).

19 COUNT THREE: (18 U.S.C. § 1623(a) – False Declaration Before a Court)

20 16. Paragraphs 1 through 11 of this Indictment are re-alleged and incorporated as
21 if fully set forth herein.

22 17. On or about November 20, 2002, in the Northern District of California, the
23 defendant

24 BRUCE BARKER,

25 having taken an oath to testify truthfully in a proceeding before a court of the United
26 States, did knowingly make a false material declaration in the trial of United States v.
27 Marvin Washington, CR 02-0169 SI, in that when he was asked whether he attended a
28 patient in the Post Anesthesia Care Unit at the Kaiser Permanente Medical Center at

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1 approximately 5:35 p.m. on May 1, 2002, he gave the following testimony (underlined
2 portions alleged as false):

3 Q: Just to make clear where you were on this day, May 1st, you
4 went to Holly Courts around 5:00 o'clock, a little after, and
you spent time there; is that right?

5 (a) A: Yes.

6 Q: Okay. And you got concerned about your children?

7 A: Yes.

8 Q: So you went to go pick them up at Sloat and Junipero Serra;
is that right? That's why you left?

9 A: Yes.

10 Q: Okay. And you drove out to Sloat and Junipero Serra?

11 A: Yes.

12 Q: And if you stopped anywhere on the way to Sloat and Junipero Serra,
13 it was just to buy groceries?

14 A: Correct.

15 Q: Okay. So at 5:30, or around that time, you were either at Holly Courts
or en route to go pick up your children?

16 (b) A: Yes.

17 Q: Okay. Same thing for 5:35?

18 A: Are you asking me where I was at 5:35?

19 Q: At 5:35 you were either at Holly Courts or en route to pick up
20 your children?

21 A: You know I want to be exact, and I can't tell you where I was at
5:35.

22 Q: You weren't at work, were you?

23 (c) A: No, I wasn't.

24 ...

25 Q: All right. Sir, in fact, at 5:35 p.m. on May 1, 2002, you were
26 in the Post-Anesthesia Care Unit with a patient, weren't you?

27 (d) A: No.

28 ...

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1 Q: You were in the hospital at 5:35, weren't you?

2 (e) A: No.

3 Q: I'd like you to read, sir – what kind of operation does this document
4 reflect?

5 A: This is a dialysis access graphic.

6 ...

7 Q: And the next thing it says is, after the 17:35 notation, it says,
8 "Dr. Barker here to check," doesn't it?

9 A: Yes, yes.

10 Q: Does it?

11 (f) A: Yes. I wasn't there.

12 Q: You weren't there?

13 A: Nope.

14 Q: Your testimony – you left work at what time?

15 A: I don't remember.

16 Q: And at 5:35 you say, if you were anywhere –

17 (g) A: I was on the way to get my children.

18 Q: You were between Holly Courts and where you were going to pick up
19 your children?

20 (h) A: That's correct.

21 Q: Sir, you weren't at Holly Courts at all –

22 A: That is not true –

23 Q: – when you say that you saw Marvin Washington with a cell phone,
24 were you?

25 (i) A: Yes, I was.

26 Q: You were in post-op, in the Post-Anesthesia Care Unit with Nurse Mia
27 Singer, weren't you?

28 (j) A: No.

when in truth and fact, as BARKER well knew when he gave this testimony, it was
materially false in that BARKER was at the Post-Anesthesia Care Unit at the Kaiser

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1 Medical Center, 2238 Geary Boulevard, San Francisco, at approximately 5:35 p.m. on
2 May 1, 2002, caring for Patient A.

3 All in violation of Title 18, United States Code, Section 1623(a).

4 COUNT FOUR: (18 U.S.C. § 1001(a)(2) – False Statement)

5 18. Paragraphs 1 through 11 of this Indictment are re-alleged and incorporated as
6 if fully set forth herein.

7 19. In the criminal investigation conducted by the United States Attorney's Office
8 of the United States Justice Department and the Bureau of Alcohol, Tobacco, and
9 Firearms of the United States Treasury Department the following matters, among others,
10 were material to that investigation:

11 a. Whether there were any additional witnesses to the events that took place
12 in the vicinity of the Holly Courts Security Office between approximately 5:00 p.m. and
13 5:15 p.m. on May 1, 2002;

14 b. Whether Marvin Washington possessed a gun when he ran down Patton
15 Street toward the security office and when he knocked on the door of the security office.

16 20. On or about November 14, 2002, in the Northern District of California,

17 **BRUCE BARKER**

18 did knowingly and willfully make a materially false, fictitious, and fraudulent statement
19 and representation in a matter within the jurisdiction of the Bureau of Alcohol, Tobacco,
20 and Firearms and the United States Attorney's Office, agencies within the executive
21 branch of the United States, in that the defendant, during an interview with an
22 investigator working for the Bureau of Alcohol, Tobacco, and Firearms and attorneys
23 with the United States Attorney's Office, stated that:

24 Barker arrived at the Holly Courts housing complex at approximately
25 5:00 p.m. on May 1, 2002. He saw Marvin Washington running
26 slowly down Patton Street. Washington stopped in the vicinity of
27 Barker's car and held up his right hand. Washington was holding a cell
28 phone in his hand. Barker saw Washington knock on the security office
door. He then saw Washington walk up Appleton to his residence.
During the time that Barker saw Washington, Washington was
not in possession of a gun.

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1 21. As defendant well knew when he made it, this statement was materially false
2 in that:

3 a. BARKER was not present in the vicinity of the Holly Courts security
4 office on May 1, 2002, when Washington ran down Patton Street and knocked on the
5 security office door; and

6 b. BARKER did not see Washington holding a cell phone in his hand after
7 Washington ran down Patton Street and just before he approached the Holly Courts
8 security office.

9 All in violation of Title 18, United States Code, Section 1001(a)(2).

10
11
12 DATED: *Oct 12, 2006* A TRUE BILL.

13
14 
15 _____
FOREPERSON

16 KEVIN V. RYAN
United States Attorney

17 
18 _____
19 MARK KROTOSKI
Chief, Criminal Division

20 (Approved as to form: )
21 _____
AUSA Badger

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INDICTMENT