

AO 91 (Rev. 08/09) Criminal Complaint

**FILED**  
At Albuquerque NM

DEC 15 2010

**MATTHEW J. DYKMAN**  
CLERK

**UNITED STATES DISTRICT COURT**

for the  
District of New Mexico

United States of America )

v. )

Roman KIRBY )  
YOB: 1974 )  
SSN: 3232 )

Case No. )

10mj 3172

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 December 14, 2010 in the county of Bernalillo in the  
State District of New Mexico, the defendant(s) violated:

*Code Section*  
18 U.S.C. 922(g)(1)

*Offense Description*  
It 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 commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate commerce.

This criminal complaint is based on these facts:  
Incorporated by and referenced herein on the attached sheets.

Continued on the attached sheet.

*Approved*  
*R. Kirby*  
*Sheriff*  
*12-15-10*

*M. J. Dykman*  
Complainant's signature  
Task Force Agent, BATFE  
Printed name and title

Sworn to before me and signed in my presence.

Date: DEC 15 2010

City and state: Albuquerque, New Mexico

*Lorenzo F. Garcia*  
Judge's signature  
**LORENZO F. GARCIA**  
United States Magistrate Judge  
Printed name and title

Page 2 of 4 Pages

Criminal Complaint - Continued.

United States of America

V.

Roman KIRBY

SSN: 3232

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Your Affiant's name is Matthew Pound. Your Affiant is a full time salaried law enforcement officer with the Albuquerque Police Department, and has been so for 5 years. Approximately one of those years has been spent on the investigation of federal felony crimes. Part of your Affiant's duties for the past year has included being a Task Force Officer for the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. In this capacity your Affiant routinely investigates violations of federal criminal statutes, to include violation of federal firearms laws, and has specifically investigated violations related to subjects who are found to be in possession of illegal and altered firearms. Your Affiant requests that an Arrest Warrant be issued for the above named defendant based on the following information, which your Affiant believes to be true and accurate.

I am an investigative, or law enforcement officer of the United States within the meaning of Title 18, United States Code, Section 2510 (7), in that I am an officer of the United States who is empowered by law to conduct investigations and make arrests for the offenses enumerated in Title 18 and 26, United States Code.

The statements contained in this affidavit are based, in part, on information provided by Special Agents and Task Force Officers of the ATF and other law enforcement officers; on conversations held with police officers; and on my background and experience as a Task Force Officer of the ATF. I have not included each and every fact known to me concerning this investigation. I have set forth only the facts, which I believe are required to establish the necessary foundation for an order authorizing the arrest of Roman KIRBY.

On December 14<sup>th</sup>, 2010 at approximately 1021 hours, Officers in the Foothills Area Command of the Albuquerque Police Department were dispatched to a shooting that had occurred inside the residence of 12537 Yorba Linda Dr. SE, City of Albuquerque, County of Bernalillo, District of New Mexico. Comments on the call indicated that 36 year old Roman KIRBY had shot his father, Kraig Kirby, in the leg and then fled the residence on foot. Detective Randy Rogers of the Special Investigations Division of the Albuquerque Police Department was the first responding unit in the area and observed a male subject matching the physical and clothing description given of Roman KIRBY. Detective Rogers was able to take KIRBY into custody at this point without incident. Detective Geoffery Stone of the Foothills Area Command Impact Team arrived on scene and learned the following information.

Kraig Kirby arrived at his residence from work and heard his wife Teresa and KIRBY arguing in KIRBY's bedroom about the fact that KIRBY refused to look for a job. Hearing the argument,

*[Handwritten signature]*  
MFP

Page 3 of 4 Pages

Criminal Complaint - Continued.

United States of America

V.

Roman KIRBY

SSN: 3232

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Kraig Kirby became concerned for Teresa's physical well being because it sounded as if the argument was becoming heated. Kraig Kirby walked into KIRBY's bedroom to confront KIRBY about the way he was talking to Teresa.

KIRBY told Kraig he was not going to get a job because he is a "Con and a thug." The argument between Kraig, Teresa and KIRBY became increasingly more intense at this point. After several more minutes of arguing, KIRBY walked to the closet in his bedroom and grabbed a silver handgun. KIRBY turned towards Kraig and stated "I am a thug." KIRBY then chambered a bullet in the firearm and pointed it at Kraig's head. KIRBY moved the firearm from Kraig's head and pointed it at Kraig's pelvic area and fired one shot, striking Kraig in the hip. KIRBY then left the bedroom and began to look for keys to Kraig's vehicle before leaving the residence on foot.

Detective Jodi Gonterman of the Foothills Area Command interviewed Teresa in reference to the incident. Teresa told Detective Gonterman that KIRBY had shot Kraig in the hip during the argument. Teresa said that after shooting Kraig, KIRBY pointed the firearm at her head while she attempted to call for police. Teresa told Detective Gonterman that after KIRBY left the residence on foot she noticed the firearm that KIRBY had used to shoot Kraig was sitting on the kitchen counter. Teresa was contacted a short time later by officers who had arrived on scene and the residence was secured pending a State of New Mexico Search Warrant being obtained.

At approximately 1630 hours your Affiant arrived at 12537 Yorba Linda SE and was present for the execution of the Search Warrant. Detectives from the Foothills Area Command Impact team and your Affiant executed the search warrant and located the silver pistol which KIRBY had used in the shooting laying on the kitchen counter.

The firearm is described as a Davis Industries model P-32 .32 caliber semiautomatic pistol serial number P043498. The firearm was loaded with five (5) rounds of Remington Peters .32 caliber ammunition. Your Affiant test fired the firearm in which it fired and functioned as designed pursuant to Title 18 Chapter 44 of the United States Code.

Through training and experience your Affiant knows it is contrary to federal law, 18 USC 922(g)(1) for a person previously convicted of a felony crime to possess a firearm and/or ammunition.

AK  
MFP

Page 4 of 4 Pages

Criminal Complaint - Continued.

United States of America

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Your Affiant knows through training and experience that the above firearm was not manufactured in the State of New Mexico and found in the State of New Mexico, therefore affecting Interstate Commerce.

A criminal history query was conducted and it was learned that Roman KIRBY has previously been convicted of felony offenses punishable by imprisonment exceeding one year in CR-9600864, Trafficking of a Controlled Substance with Intent to Distribute; CR-9701567, Bribery of a Witness (Threats); CR-9702343, Attempt to Commit a Felony, Shooting at Dwelling or Occupied Building, Possession of Destructive Device/Firearm by a Convicted Felon, Resisting/Evading/Obstructing an Officer; CR-200600571, Possession with Intent to Distribute a Controlled Substance.

  
Matthew F. Pound, Task Force Officer  
Bureau of Alcohol, Tobacco, Firearms  
and Explosives

Subscribed and sworn before me this 15<sup>th</sup> day of December, 2010.

  
United States Magistrate Judge