

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

23 MAG 6912

UNITED STATES OF AMERICA

v.

MIGUEL DIAZ,
a/k/a "Butter,"

Defendant.

SEALED COMPLAINT

Violation of 18 U.S.C. §§ 922(g)(1) and 2

COUNTY OF OFFENSE:
BRONX

SOUTHERN DISTRICT OF NEW YORK, ss.:

SARAH VAN FOSSEN, being duly sworn, deposes and says that she is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE
(POSSESSION OF AMMUNITION AFTER A FELONY CONVICTION)

1. On or about October 4, 2023, in the Southern District of New York and elsewhere, MIGUEL DIAZ, the defendant, knowing he had previously been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed ammunition, to wit, a 9mm Luger shell casing, and the ammunition was in and affecting commerce.

(Title 18, United States Code, Sections 922(g)(1) and 2.)

The bases for my knowledge and for the foregoing charge are, in part, as follows:

2. I have been involved in the investigation of this matter, and I base this affidavit on that experience, my conversations with other law enforcement agents, and my examination of various reports, records, and recordings, including surveillance video. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part.

The Defendant's Criminal History

3. Based on my review of criminal history records pertaining to MIGUEL DIAZ, the defendant, I have learned, in substance and in part, the following:

a. On or about May 7, 2018, DIAZ was convicted in the Bronx County Supreme Court, Bronx, New York, of Reckless Endangerment in the First Degree, in violation of New York Penal Law § 120.25, a felony punishable by imprisonment for more than one year, for which DIAZ

was sentenced to a term of 42 months to 7 years' imprisonment. He completed the sentence on or about June 1, 2023.

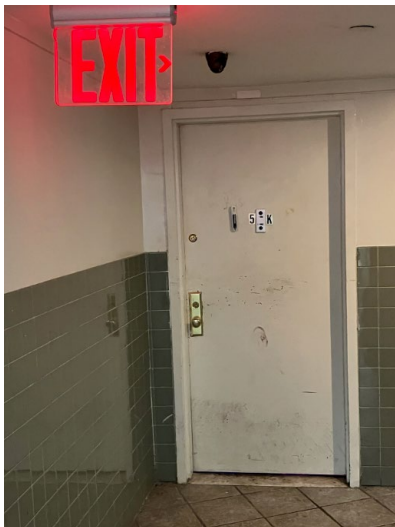
The Defendant Carried Out a Shooting on October 4, 2023

4. For the reasons that follow, I believe that MIGUEL DIAZ, the defendant, carried out a shooting on or about October 4, 2023, in which he fired one gunshot, which struck an individual ("Victim-1") in the left arm. Specifically, based on my participation in the investigation of this matter, my conversations with other law enforcement agents, my review of reports prepared by officers of the New York City Police Department ("NYPD"), and my review of surveillance video, I have learned, in substance and in part, the following:

a. As captured by surveillance video from 1314 Nelson Avenue, Bronx, New York ("the Building"), on or about October 4, 2023, at approximately 5:37 p.m., a man whom I believe, for the reasons explained below, to be DIAZ entered the lobby of the Building, which I believe to be the location at which DIAZ was then residing. DIAZ was wearing a black jacket with gold sleeves, black pants with a gold stripe on the sides, a red Chicago Bulls cap, black and white Nike sneakers, and grey or silver headphones. The sneakers had a white sole, black toe, white sides and tongue, and black laces. DIAZ was carrying a small red bag with "New York" written in white on a black strap.

b. A second surveillance camera from the lobby of the Building captured DIAZ entering the Building's elevator at approximately 5:37 p.m. The elevator's display shows that the elevator proceeded to the fifth floor and stopped.

c. A third surveillance camera on the fifth floor of the Building captured DIAZ exiting the elevator at approximately 5:38 p.m. Based on the placement of the surveillance camera and the location of the door to Apartment 5K, DIAZ appeared to enter Apartment 5K. Below is a still image taken by an NYPD officer depicting the camera and apartment door:



d. Approximately six minutes after DIAZ exited the elevator on the fifth floor, the same camera captured DIAZ appearing to leave Apartment 5K and return to the elevator bank,

now in different clothing. As DIAZ awaited the elevator, the surveillance camera captured him wearing a black hooded sweatshirt and a surgical mask, but the same white and black Nike sneakers. He also wore rectangular black-framed glasses.

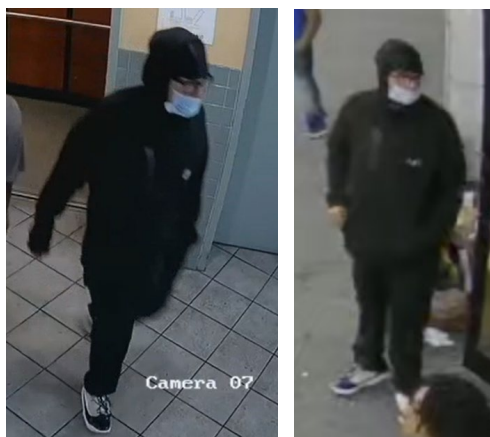
e. The two surveillance cameras in the lobby of the Building then captured DIAZ exiting the elevator in the lobby at approximately 5:45 p.m. DIAZ was then captured leaving the building by a lobby surveillance camera.

f. Other surveillance cameras in the vicinity of the Building captured DIAZ walking several blocks to the corner of Edward L Grant Highway (“Grant Highway”) and Jesup Avenue in the Bronx, New York.

g. Surveillance cameras outside a deli (“Deli-1”), located in the vicinity of the corner of Grant Highway and Jesup Avenue in the Bronx, New York, and another deli (“Deli-2”), also located in the vicinity of the corner of Grant Highway and Jesup Avenue in the Bronx, New York, captured the shooting described below.

h. As captured by surveillance video, on or about October 4, 2023, at approximately 6:00 p.m., DIAZ walked southbound on Grant Highway to the corner of Grant Highway and Jesup Avenue, and stopped for several minutes outside Deli-2.

i. As captured by surveillance video, at the time of the shooting DIAZ was wearing a black hooded sweatshirt, black pants, black-framed glasses, a light blue surgical mask, and white and black Nike sneakers. Below are still images, as captured by surveillance video, depicting DIAZ as he appeared on or about the evening of October 4, 2023:



j. As captured by surveillance video, Victim-1 exited Deli-1 at approximately 6:00 p.m. and walked southbound toward the corner of Grant Highway and Jesup Avenue.

k. Seconds later, DIAZ approached Victim-1 from behind, pulled a firearm from DIAZ’s right pocket, and fired a shot at Victim-1. DIAZ is then shown returning the firearm to his pocket and fleeing the scene westbound on W 170th Street, toward Shakespeare Avenue in the Bronx, New York. Below are still images depicting DIAZ carrying and firing the firearm at Victim-1:





1. As captured by surveillance video, Victim-1 returned to Deli-1 several minutes later, visibly bleeding from his left arm.

m. The NYPD Officers recovered a 9mm Luger shell casing (the “Shell Casing”) at the scene of the shooting, in approximately the same location where DIAZ appears to have discharged a firearm. Below is an image of the Shell Casing:



5. Based on communications I have had with a Special Agent from the Bureau of Alcohol, Tobacco, Firearms and Explosives, who is familiar with the manufacturing of firearms and ammunition, I know that the Shell Casing was not manufactured in the State of New York.

Identification of MIGUEL DIAZ

6. Based on my comparison of still images and video as captured by the surveillance video described above, which depict the face of the individual wearing the black hooded sweatshirt, black pants, black-framed glasses, light blue surgical mask, and white and black Nike sneakers, on or about October 4, 2023 (the “Shooter”), with images of MIGUEL DIAZ, the

defendant, in law enforcement databases and from other surveillance footage collected in and around the Building, I believe that DIAZ and the Shooter are the same person.

7. As captured by the surveillance video described above, DIAZ has a distinctive tattoo on his neck. The first two images on the left below are still images as captured by body-worn camera and surveillance video. On the left is a picture of a man who identified himself as DIAZ to the NYPD during a shooting that occurred on or about June 22, 2023, in which DIAZ was the victim. In the center is a picture of a man exiting Apartment 5K in the Building on or about October 11, 2023. On the right is a picture of DIAZ from law enforcement databases.



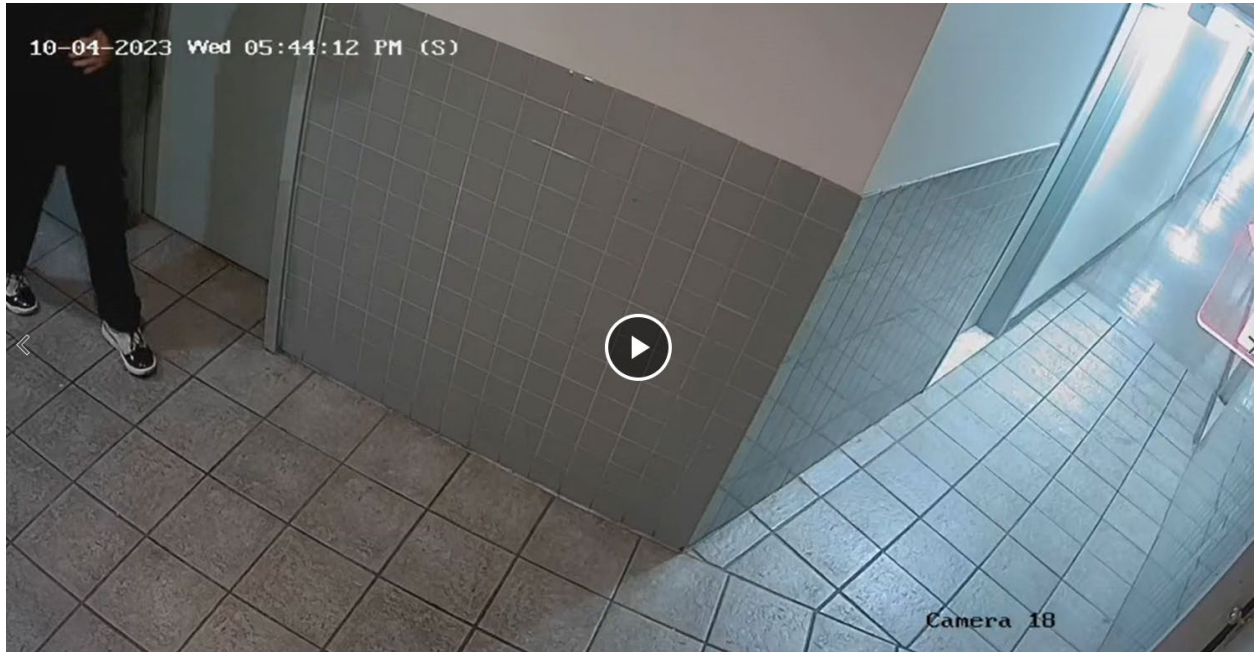
8. Although the Shooter wore a hooded sweatshirt obscuring his neck, I have reviewed surveillance footage that shows the Shooter wearing a distinctive pair of black and white Nike sneakers. Below are still images of the Shooter's sneakers.



a. I have reviewed surveillance footage of the Shooter which captures him walking to the scene of the shooting from the Building. As described above, surveillance footage from within the Building captured the Shooter leaving the Building approximately fifteen minutes before the shooting, wearing a distinctive pair of black and white Nike sneakers. Approximately ten minutes earlier on that same evening, a man, who I believe is MIGUEL DIAZ, the defendant, is captured on surveillance video in the lobby of the Building wearing the same Nike sneakers as the Shooter. The man enters the elevator and proceeds to the fifth floor.

b. Surveillance footage from the fifth floor of the Building captures the man leaving the elevator and entering what I recognize to be Apartment 5K. Approximately six minutes later the man appears to re-enter the hallway from Apartment 5K and re-enter the elevator. The man is seen wearing the same pair of Nike sneakers, but has changed clothing into a black hooded sweatshirt, black pants, and a surgical mask – the same clothing as worn by the Shooter. Below is

a still image depicting the man I believe to be DIAZ standing outside Apartment 5K, with his black and white sneakers clearly visible:

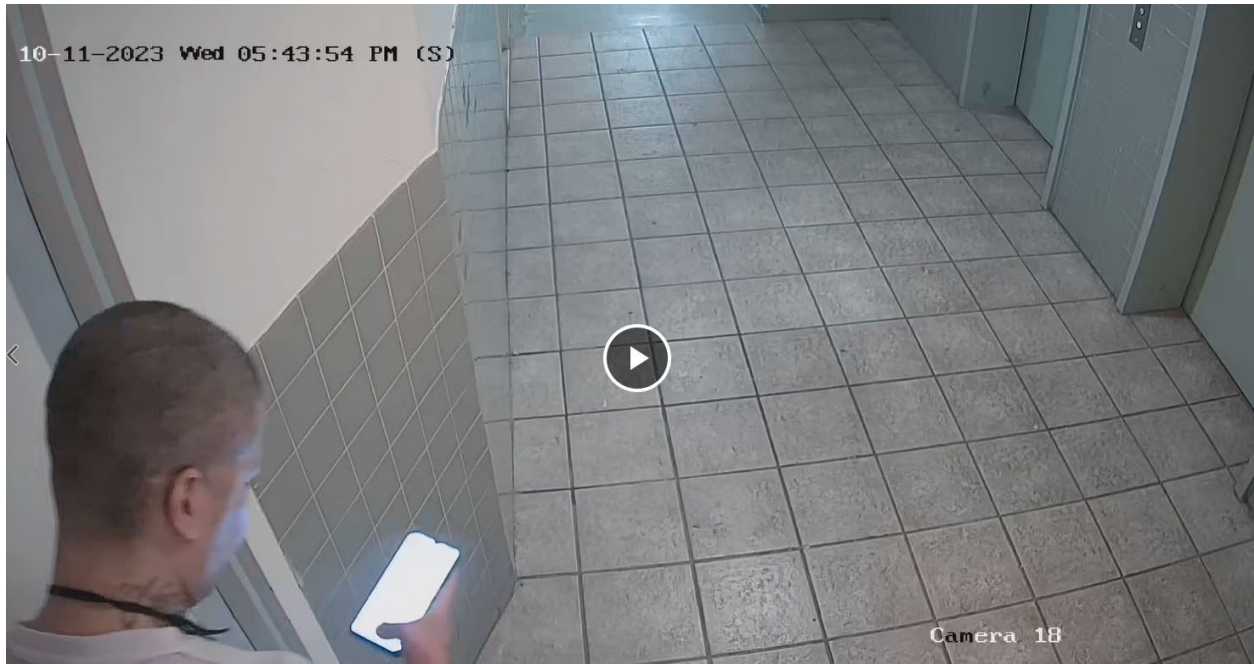


c. Earlier in the same day the same man was captured in the Building lobby with a neck tattoo clearly visible, and wearing the same pair of distinctive Nike sneakers. I believe this man to be DIAZ. Below is a still image showing DIAZ wearing the black and white Nike sneakers, with his neck tattoo visible:



d. I have also received surveillance video captured on other dates taken from the fifth floor of the Building. Those videos show a man with DIAZ's distinctive neck tattoo entering and leaving Apartment 5K. Based on my conversations with law enforcement officers, I know that a

NYPD officer visited the fifth floor of the Building and confirmed that the apartment DIAZ is seen to enter and leave is Apartment 5K. Below is a still image depicting DIAZ standing outside Apartment 5K, his neck tattoo clearly visible:



e. I have also reviewed surveillance footage from outside Apartment 5K that captures DIAZ in what appears to be the same black hooded sweatshirt worn by the Shooter during the shooting. Below is a still image of DIAZ wearing the sweatshirt the day after the shooting on or about October 4, 2023:



9. Based on my comparison of the Shooter's clothing and sneakers as they appear in the surveillance videos described above, with the neck tattoo visible on DIAZ as it appears in images of DIAZ in law enforcement databases, as well as in surveillance videos of DIAZ wearing the same pair of distinctive Nike sneakers throughout the Building before and after the shooting, I believe that DIAZ and the Shooter are the same person.

10. Additionally, based on my conversations with other law enforcement agents and my review of reports prepared by officers of the NYPD, I have learned, in substance and in part, that, on or about October 10, 2023, an NYPD Detective ("NYPD Detective-1") reviewed portions of the surveillance video described above, including portions depicting the Shooter, and NYPD Detective-1 recognized the Shooter as MIGUEL DIAZ, the defendant, based on his having previously interacted with DIAZ during a shooting that occurred on or about June 22, 2023, in which DIAZ was the victim.

a. At the time of the June shooting, NYPD body-worn camera video footage captured a man who identified himself as DIAZ. I recognize that man to be DIAZ. Below is a still image of that footage, which shows Diaz's neck tattoo, as well as the same square-framed blacked glasses the Shooter wore during the October shooting.



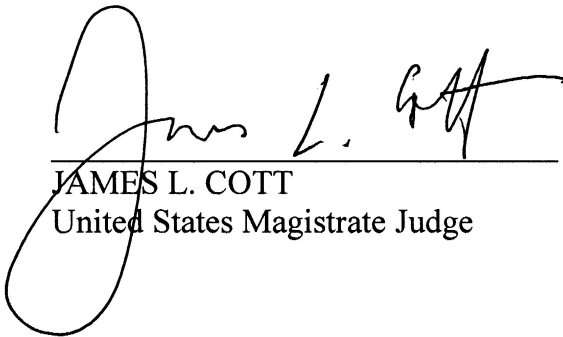
11. Additionally, based on my conversations with other law enforcement agents and my review of reports prepared by officers of the NYPD, I have learned, in substance and in part, that, on or about August 23, 2023, the NYPD responded to a vehicle accident in which DIAZ was injured. I have reviewed body-worn camera video footage taken from the scene of that accident in which a man I recognize to be DIAZ identifies himself as "Miguel Diaz" and says that he lives at 1314 Nelson Avenue, in Apartment 5K (that is, the address of the Building).

12. Based on the above information, I believe the Shooter to be MIGUEL DIAZ.

WHEREFORE, I respectfully request that a warrant be issued for the arrest of MIGEUL DIAZ, the defendant, and that he be arrested, and imprisoned or bailed, as the case may be.

/s/ Sarah Van Fossen, by the Court, with permission
SARAH VAN FOSSEN
Special Agent
Federal Bureau of Investigation

Sworn to me through the transmission of this
Affidavit by reliable electronic means,
pursuant to Federal Rules of Criminal
Procedure 41(d)(3) and 4.1 this 20th day of
October, 2023



JAMES L. COTT
United States Magistrate Judge