

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **CRIMINAL NO. 12-170**

v. * **SECTION: "C"**

RODERICK MAGEE *

* * *

FACTUAL BASIS

If this case were to proceed to trial, the government would prove that the defendant, **RODERICK MAGEE (MAGEE)**, is guilty beyond a reasonable doubt of count two of the Indictment, which charges **MAGEE** with a violation of the Federal Gun Control Act under Title 18, United States Code, Sections 922 (g)(1) and 924 (a)(2). The government would establish through credible and competent witnesses and evidence the following facts:

On Tuesday, November 29, 2011, at 8:38 p.m., New Orleans Police Department (NOPD) Officers David Desalvo and Troy Williams, Jr. were dispatched to investigate a signal 107 (suspicious person/vehicle) in the 4200 Block of Florida Avenue, in New Orleans, Louisiana, involving a white Monte Carlo allegedly occupied by 5-6 black males armed with guns in the car heading in eastbound direction toward the Industrial Canal in the Lower 9th Ward. NOPD Officers Desalvo and Williams relocated to Florida Avenue and canvassed the area. They then turned onto

Charbonnet Street where they observed a vehicle matching the description given out by NOPD dispatch. The vehicle was in fact a white Monte Carlo occupied by several black males moving throughout the vehicle as if attempting to conceal a firearm or contraband.

NOPD Officer Desalvo notified dispatch that he was going to make a vehicle stop of vehicle matching the description in the earlier call. NOPD Officer Desalvo activated his emergency lights and siren on his marked vehicle and initiated a stop of the white Monte Carlo in the 5800 block of St. Claude Avenue just passed the intersection of Charbonnet Street.

NOPD Officers Desalvo and Williams engaged the occupants and compelled the driver, Chad Johnson, and the front passenger, **MAGEE**, to exit the vehicle with their hands raised. Once these two were secured, NOPD Officer Desalvo positioned himself near the passenger side rear door to remove Ernest Blackmon from the vehicle. While standing outside of the vehicle, NOPD Officer Desalvo noticed an un-obscured large black semi-automatic rifle located on top of the center console in between the driver and front passenger seat. All three subjects were handcuffed for officer safety. NOPD Officer Williams took a photograph of the firearm, which was later identified as a Romak-Romarm/Cugir/Romarm, 7.62x39, AK-47, serial number DR-3332-10, as it was placed inside the vehicle. Afterwards, the firearm was removed and rendered safe.

NOPD Officer Williams ran a criminal background check on all subjects and discovered **MAGEE** was a convicted felon. Since **MAGEE** knowingly had the power to exercise dominion or control over the Romak-Romarm/Cugir/Romarm, 7.62x39, AK-47, serial number DR-3332-10 that was next to him in the Monte Carlo center console at the time of the traffic stop, the NOPD

determined that he was in constructive possession of the said firearm and was arrested for being in possession of firearm. Incidental to the **MAGEE** arrest, NOPD Officer Desalvo also removed a glass crack pipe from his sweatshirt.

NOPD requested a Gun Shot Residue (GSR) test on **MAGEE**. NOPD Crime Lab Tech Cook performed the test and **MAGEE** tested positive for gun shot residue, the results of which are more fully described in NOPD Item no. K-42273-11.

Certified court records would establish that at the time of his arrest on November 29, 2011, **MAGEE** was convicted on or about December 12, 2003, for simple robbery, in violation of La.-R.S. 14:65 in Orleans Parish Criminal District Court in case 438-829, and on or about June 29, 2009, for attempted possession of a firearm by a convicted felon in violation of La.-R.S. 14(27)95.1 in Orleans Parish Criminal District Court in case 478-959, both felonies punishable by more than one year of incarceration.

An expert with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) would testify that the firearm **MAGEE** possessed at the time of the arrest was not manufactured in the State of Louisiana and therefore, by virtue of the Romak-Romarm/Cugir/Romarm, 7.62x39, AK-47, serial number DR-3332-10 being found in Louisiana on or about November 29, 2011, it had to have crossed state lines and affected interstate commerce. The ATF expert would also state that the

firearm met the legal definition of a “firearm” set forth in Title 18, United States Code, Section 921(a)(3).

APPROVED AND ACCEPTED:

RODERICK MAGEE Date
Defendant

JOSEPH A. MARINO, Jr. Date
Attorney for Defendant

EDWARD J. RIVERA Date
Attorney for the United States of America