

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

UNITED STATES OF AMERICA

* **CRIMINAL NO. 12-170**

v.

* **SECTION: "C"**

JONATHAN FRANK

*

* * *

FACTUAL BASIS

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

On Saturday, December 3, 2011, at approximately 11:56 p.m., New Orleans Police Department (NOPD) Officers Willis-Watson and Wiltz were patrolling the area of Higgins Boulevard and Desire Parkway in a fully marked vehicle when they observed a red, four door, Chevy Impala disregard a posted stop sign at the intersection. The NOPD Officers initiated a traffic stop and the Impala pulled to the right shoulder as if to comply. By this time, two more support NOPD Officers, Dace and Davis, arrived in a police unit at the scene. As the NOPD Officers approached,

the Impala accelerated, pulling from the shoulder in an attempt to elude police. NOPD Officers Willis-Watson, Wiltz, Dace and Davis pursued the fleeing Impala as it turned left from Pleasure Street to Ursula Spencer Way. NOPD Officers Willis-Watson and Wiltz observed the rear seat passenger toss a black rifle out of the open rear passenger window. NOPD Officer Willis-Watson radioed NOPD Officers Dace and Davis the location of the rifle as they were following the NOPD pursuit squad car. NOPD Officer Davis exited his unit and stood guard over the rifle as NOPD Officer Dace continued to follow the fleeing Impala. NOPD Officers Willis-Watson and Wiltz continued to pursue with lights and sirens the fleeing Impala as the vehicle disregarded stop signs, a red light and turned onto Chickasaw Street. While on Chickasaw Street, the Impala continued to ignore stop signs. The pursuit continued and ended at the corner of Benefit and Gordon Plaza in New Orleans, Louisiana. NOPD Officers Willis-Watson and Wiltz observed the Impala commit numerous traffic offenses throughout the pursuit such as failing to stop at a stop sign and running a red traffic light.

NOPD Officers Willis-Watson and Wiltz approached the Impala with weapons drawn and apprehended the driver, Ernest Blackmon. As NOPD Officer Wiltz arrested the driver, NOPD Officer Wiltz observed a silver and black handgun (later identified as a Smith & Wesson, model SW40VE, .40 caliber pistol, serial number DWE7311) on the driver's seat near the center console. NOPD Officer Willis-Watson detained the rear seat passenger, Wayne Handy, who was the person observed tossing the rifle (later identified as a DC Industries, model NDS-4, 7.62x39 caliber rifle bearing serial number 1001381) out of the rear passenger window early in the pursuit of the Impala.

NOPD Officer Willis-Watson continued to verbally command the front passenger, **FRANK**, to not move and keep his hands in view. After removing the rear passenger, NOPD Officer Willis-Watson then removed the front passenger, **FRANK**, from the vehicle and observed a silver and black handgun (later identified as a Springfield, model XD, .45 caliber pistol, bearing serial number XDG27509) fall over on the front passenger seat as it apparently was resting on **FRANK's** left leg. Since **FRANK** knowingly had the power to exercise dominion or control over the Springfield, model XD, .45 caliber pistol, bearing serial number XDG27509, that was in the front passenger seat at the time of the traffic stop, the NOPD Officers determined that he was in constructive, if not actual, possession of the said firearm and **FRANK** was arrested for being a felon in possession of firearm. The Springfield firearm was loaded with a total of fourteen live rounds of ammunition.

After the arrest, NOPD Officer Cockerham arrived at the scene and overheard the subjects talking. Officer Cockerham heard Ernest Blackmon tell Wayne Handy and **FRANK** that he "thought you threw all the guns from the vehicle."

NOPD requested a Gun Shot Residue (GSR) test on **FRANK** due to an earlier shooting in the Desire Project Area and a description of the suspects fleeing in a red vehicle. **FRANK** tested positive for gun shot residue, the results of which are more fully described in NOPD Item no. L-0507111.

Certified court records would establish that at the time of his arrest on December 3, 2011, **FRANK** was convicted on or about April 15, 2002, for armed robbery in violation LRS 14:64, in

Orleans Parish Criminal District Court, case number 429-408 "E"; a felony punishable by more than one year of incarceration.

An expert with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) would testify that the Springfield firearm **FRANK** possessed at the time of the arrest was not manufactured in the State of Louisiana and therefore, by virtue of the Springfield, model XD, .45 caliber pistol, bearing serial number XDG27509, being found in Louisiana on or about December 3, 2011, it had to have crossed state lines and affected interstate commerce. The ATF expert would also state that the Springfield firearm met the legal definition of a "firearm" set forth in Title 18, United States Code, Section 921(a)(3).

APPROVED AND ACCEPTED:

JONATHAN FRANK Date
Defendant

PATRICK C. McGINITY Date
Attorney for Defendant

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