



Jan 31, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 3:23-mj-00050-KFR

DENIS MCCARVILLE

Defendant.

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A CRIMINAL COMPLAINT**

I, KATIE YARBOROUGH, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND TASK FORCE OFFICER BACKGROUND

1. I make this affidavit in support of an application for a criminal complaint and arrest warrant for **Denis McCarville** (hereinafter "SUBJECT"). An investigation has revealed that there is probable cause to believe that the SUBJECT has committed violations of Title 49 United States Code § 46504 (interference with flight crew members and attendants), Title 49 United States Code § 46506 (application of certain criminal laws to acts on aircraft), and Title 18 United States Code § 113(a)(4) (assault).

2. I am familiar with the information contained in this affidavit based upon the investigation I have conducted, in conjunction with other federal, state, and local law enforcement officials, which has included exchanging information with law



Jan 31, 2023

enforcement officers and others; reviewing notes, reports, database records and other information acquired during this investigation; and reviewing evidence obtained therefrom; and interviewing witnesses.

3. Because I submit this affidavit for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me or the government. I have only included those facts necessary to establish probable cause to believe that SUBJECT has committed a violation of 49 U.S.C. § 46504, 49 U.S.C. § 46506, and 18 U.C.S. § 113.

4. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI) and have been since March 2019. I am currently assigned to the Violent Crime squad in the FBI Anchorage Field Office. During my time with the FBI, I have led and participated in investigations involving violent crimes, threats, robbery, fraud, and drugs. Prior to joining the FBI, I was employed as a legislative auditor for the Medicaid Division with the State of Tennessee.

RELEVANT STATUTES AND REGULATIONS

5. The relevant statutory authority and terms used in this affidavit and its attachments are described and defined below.

- a. 49 U.S.C. § 46504, states: “An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the

member or attendant to perform those duties, or attempts or conspires to do such an act, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life.”

b. 46 U.S.C. § 46506 states: “An individual on an aircraft in the special aircraft jurisdiction of the United States who commits an act that--

(1) if committed in the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18) would violate section 113, 114, 661, 662, 1111, 1112, 1113, or 2111 or chapter 109A of title 18, shall be fined under title 18, imprisoned under that section or chapter, or both; or (2) if committed in the District of Columbia would violate section 9 of the Act of July 29, 1892 (D.C. Code § 22-1112), shall be fined under title 18, imprisoned under section 9 of the Act, or both.”

c. 18 U.S.C. § 113(a)(4), states: “(a)Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows: . . . (4) Assault by striking, beating, or wounding, by a fine under this title or imprisonment for not more than 1 year, or both.”

PROBABLE CAUSE

4. On January 29, 2023, at approximately 6:15 p.m., FBI Operations Center in the Anchorage Field Office received a phone call from Anchorage Airport Police



Jan 31, 2023

Dispatch, who reported that a passenger aboard Delta Flight 2236 struck a flight attendant during the flight.

5. Delta Flight 2236 departed from Minneapolis earlier that day and was scheduled to arrive in Anchorage at 9:14 p.m. After the flight landed at the Ted Stevens International Airport, FBI Agents and Airport Police Officers conducted the interviews of the flight crew, victim, witnesses, and SUBJECT.

6. The victim, L.C., stated it was during the first beverage cart service starting in the front of the cabin and working to the back of the plane, when she came to row 12 where SUBJECT was seated in the aisle seat, 12C. When she asked SUBJECT what he wanted to drink, he stated I can't have a drink because my tray table is broken. L.C. tried to assist with getting the tray table out of the arm rest but could not get the tray table out either. She apologized to SUBJECT and pointed out the middle seat was empty, and he could use its tray table instead. He was still very upset, so L.C. offered to give him SkyMiles for the inconvenience to which he replied he didn't want that but that she should reimburse ("comp") his entire flight ticket. L.C. replied to SUBJECT by stating she did not have the ability to do that, but he could talk to Delta representatives once they landed to see what compensations they could give him. He was not happy with L.C.'s response to which she apologized and stated she could not fix the arm tray table while in the air.

7. At this point it was the end of the conversation and L.C. turned to the aisle seat passenger in seat 12D, the same row directly opposite of SUBJECT, to ask the passenger what she wanted to drink. L.C. stated SUBJECT then "jabbed" L.C. in her left

side. L.C. stated he had hit her so hard, it nearly knocked her over on the aisle passenger in 12D. L.C. turned to SUBJECT and told him, “that was not okay, please do not touch me again, let’s keep our hands to ourselves,” to which SUBJECT replied very loudly, “fuck you.” L.C. stated this is when other passengers got involved, including the window seat passenger in 12A, who told SUBJECT something to the effect of “don’t talk to her like that and don’t put your hands on her.” L.C. turned back to SUBJECT and told him, “that’s not appropriate and you can’t just put your hands on me,” to which SUBJECT stated, “I’m a Gold Medallion; I can do whatever I want. Fuck you.” SUBJECT then told the window seat passenger next to him in seat 12A to, “shut the fuck up,” and that he was being a “jerk” and inappropriate.

8. After the incident and altercation, the flight crew had to follow protocol with de-escalation by switching positions and job responsibilities. L.C. was no longer to work that part of the cabin’s beverage service or interact anymore with him or that area. The other flight attendant took L.C. to the back of the plane to inspect her rib area where SUBJECT touched her to see if there was any bruising or marks. L.C. stated there were no marks or bruising yet; however, it hurt when he jabbed her and she had voiced her pain by saying “Oww,” before turning to face SUBJECT. She reported residual pain in the area for approximately five to six minutes immediately after SUBJECT had jabbed her.

9. Later after the incident during the approximate five-hour flight, every time L.C. started to walk by SUBJECT with a tray of water or coffee to dispense to the

passengers, SUBJECT would turn and make eye contact with L.C. and then proceed to stick his foot out into the aisle. L.C. stated since it was a red-eye flight, the lights are out which makes it hard to see. L.C. stated he would not do this with any of the other flight attendants when they walked by, which made her suspect he was intentionally trying to trip her. After this happened several times, the other flight attendants told L.C. to no longer walk past that area for any reason for the rest of the flight.

10. L.C. stated near the end of the flight, the flight crew were notified by the window seat passenger in 12A, D.M., that SUBJECT had refused to allow him to pass by in order to use the restroom. D.M. told the flight crew he nearly urinated himself because of SUBJECT's actions.

11. During the interview of window seat passenger in 12A, D.M., stated he had witnessed SUBJECT poke L.C. in the arm and heard SUBJECT say to L.C. multiple times "fuck you." D.M. came to the defense of L.C., to which SUBJECT replied by starting to swear at D.M. D.M. later stated SUBJECT would not let him out of his seat to use the restroom; therefore, D.M. had to climb over the SUBJECT and knocked his leg over which had been crossed over each other.

12. One of the flight crew members who witnessed the incident, S.G., stated she had pulled her beverage cart up to where L.C. and SUBJECT were and heard SUBJECT sitting in 12C verbally attacking and screaming profanities at L.C. because his tray table would not pull out. S.G. stated SUBJECT had jabbed L.C. with his hand and told L.C. to "shut the fuck up." SUBJECT then said he was a "...gold medallion and

could do whatever he wanted to her.” S.G. recalled SUBJECT having a couple bourbons and was then cut off from any more drinks. S.G. witnessed SUBJECT proceeding to start fighting with the passengers around him who had come to L.C.’s defense.

13. Another flight crew member, B.R., stated each time she and S.G. passed SUBJECT, he would glare at them and showed signs of being physically upset. B.R. stated, “We all felt extremely uncomfortable and proceeded to avoid him.”

14. L.C. recalled serving one alcoholic drink to SUBJECT during the first beverage service, but nothing after that since she had switched positions with the flight crew. She did not believe SUBJECT was drunk or under the influence and spoke clearly to her, without slurring his words. L.C. stated she was wearing a mask and additionally has a deviated septum, and it is hard for her to smell anything and was not able to smell any alcohol prior to serving one to SUBJECT.

15. L.C. stated she was really scared when SUBJECT became very loud and abrasive and almost knocked her over. She reports that she has been a flight attendant with Delta for over eight years and knows what a gentle touch is when a passenger is trying to get your attention and when physically someone is actually angry. She was very scared and never had anyone touch, push, or prod her like SUBJECT had done.

16. After reading SUBJECT his Miranda Rights, SUBJECT agreed to answer questions. SUBJECT stated he had fallen asleep for the beginning of the flight but was awake when the flight attendant came for the beverage cart service to which he requested a bourbon on the rocks from her. He stated he was told by a Delta employee before

boarding that the plane was brand new; however, he could not pull out his tray from the arm rest. He stated, “I asked her to help, and she didn’t want to, so that was the extent of it.” He stated he thinks as she was walking by, he “tapped” her and asked if she could help him with it. She told him not to touch her to which he replied, “okay” and apologized to her. He thinks she was facing away from him when he tapped her but does not recall where he tapped her to get her attention. He does not think he said anything else to her.

17. SUBJECT stated he thought the male sitting next to him in the window seat had been drinking and saying things to SUBJECT but does not recall what he said. He stated, “I thought I got a drunk guy next to me, I’m not going to confront him.” He stated the flight attendant never attempted to help him with his arm rest, and he held his drink the entire flight. When asked by interviewing agents if he had any other interactions with the flight attendant or if she came by him, he replied no and stated he didn’t think she had come by again after that.

18. SUBJECT stated later a male flight attendant from first class came by and gave him another drink but that was it. SUBJECT stated, “this was a five-hour flight...I think I had another drink, but I certainly wasn’t drunk.” SUBJECT stated he read and listened to music the rest of the flight and did not interact with the male passenger next to him in the window seat. However, later in the interview, SUBJECT stated he slept most of the flight.

19. When asked by interviewing Agents if other passengers would say they witnessed the flight attendant try to help SUBJECT with his armrest and then offer



Jan 31, 2023

Skymiles to SUBJECT for the inconvenience, SUBJECT stated, “no, none of that happened.” He stated since there was no one beside him in the middle seat, and once he figured that out, he was able to get that armrest tray table out to use.

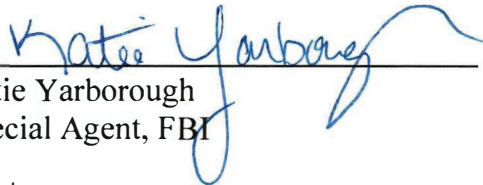
20. When asked if SUBJECT only tapped the flight attendant, why did he think FBI and Airport PD were all involved at this point, SUBJECT responded, “I don’t...it was so unusual, when I walked off the flight and saw.... I thought maybe they were confusing me for somebody else.” SUBJECT speculated maybe this had something to do with his job as a social worker and the agency he works with in Fairbanks. He did not think this was because of the tap. He stated he immediately apologized to the flight attendant after she told him not to touch her. When asked about witnesses saying he told the flight attendant to “shut the fuck up,” he stated he does not use that language. He further stated that it would be very rare if he were to say that or the “F” word, as he is a social worker and does clinical work with kids.

21. When asked if the male passenger in the window seat asked him to move so he could use the restroom, SUBJECT stated the window passenger never asked him or said anything to him. He stated he was sleeping, when the passenger knocked his leg over as he was crawling over him.

22. Upon being transported to Anchorage Correctional Center, SUBJECT was administered a Breath Alcohol Content test (BrAC) at approximately 11:35 p.m. Airport PD Officer and FBI Agent overheard the employee administering the test state that it reported SUBJECT had a BrAC of 0.123.

CONCLUSION

23. Based upon the information above, your affiant submits that there is probable cause to believe that DENIS MCCARVILLE, interfered with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties by assaulting and intimidating a flight crew member or flight attendant of the aircraft, in violation of 49 U.S.C. § 46504; and committed assault, in violation of 49 U.S.C. § 46506 and 18 U.S.C. § 113.


Katie Yarborough
Special Agent, FBI

Telephonically sworn and attested to pursuant to
Fed. R. Crim. P. 15.1, January 31, 2023


HON. EYLEE REARDON
United States Magistrate Judge
District of Alaska
Anchorage, Alaska