

AFFIDAVIT

STATE OF TENNESSEE)
)
COUNTY OF GREENE)

I, Gregory E. Moore, on oath duly state that I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives, and that the statements set forth in this affidavit are true and correct to the best of my knowledge:

1. I have been employed as a Special Agent of the Bureau of Alcohol, Tobacco, Firearms and Explosives since August 1992. I am a graduate of the Federal Law Enforcement Training Center and the ATF National Academy; as a result of my training and experience as an ATF Special Agent, I am familiar with federal criminal laws and know that it is a violation of:

Title 26 United States Code, § 5691(a), carrying on the business of a dealer in distilled spirits without paying special tax; and

26 United States Code, § 5604(a)(1), possessing distilled spirits for which the immediate container did not bear closure or other device as required.

Background on the Moonshine Industry

- a. "Moonshine" commonly refers to "home-brewed," illegal liquor on which federal and state excise taxes have not been paid. Moonshine liquor is manufactured in stills, which consist of one or more pots. Still pots are typically made from galvanized metal or aluminum and have wooden sides. The size of the pots vary, but a typical pot holds an average of about 800 gallons.
- b. At a minimum, a still pot requires sugar, yeast, malt, water, and heat to produce liquor. Sugar is the primary ingredient used in making moonshine, and an average of 100 pounds of sugar is added for each 100 gallons of pot capacity. Thus, an 800-gallon still pot would use up to eight 100-pound sacks of sugar, which typically cost between \$40 (2004) and \$54 (2006) per 100-pound sack.
- c. When all the ingredients are mixed into the pot, the pot has been "mashed in." The pot is monitored for temperature and stirred periodically, usually by "still hands" hired by the owner/operator of the still. When the yeast has converted the sugar to alcohol, the pot is "run" by boiling off the alcohol into a cooling box. The alcohol is transferred to a proofing barrel, where batches of moonshine are mixed to adjust the final "proof" (concentration) of the alcohol. Moonshine is

typically 100 proof, which is 50% alcohol. A run typically takes between five to nine days, and then the pot is mashed back in again.

- d. Once the alcohol is in final form, it is usually transferred to industrial weight, one gallon plastic jugs. Most stills produce at least 12 gallons of liquor for every 100-pound sack of sugar. Thus, an 800-gallon still pot would produce at least 96 gallons of liquor for each run.
- e. Untaxed liquor is typically sold in case lots to wholesalers in Tennessee and elsewhere, and then to retailers for sale to the public in what are commonly known as "shot houses" or "nip joints." A case lot consists of six gallons of liquor and typically sells for \$90 - \$100 per case.

Laws Governing the Manufacture of Alcohol

- f. The term "distilled spirits" is defined as the substance known as ethyl alcohol, ethanol, or spirits of wine in any form, and a "distiller" is defined as any person who produced distilled spirits from any source or substance (26 United States Code, § 5002(a)). The term "untaxed liquor" or "moonshine" as used in this affidavit means the same as the term untaxed "distilled spirits."
- g. Any person can engage in the business of distilling distilled spirits by obtaining a basic permit from the Alcohol & Tobacco Tax & Trade Bureau (26 U.S.C. § 5002(a)), and complying with all requirements such as registration (26 U.S.C. § 5179), providing bond (26 U.S.C. § 5173), paying the requisite taxes (26 U.S.C. § 5001(a)), and other requirements.
- h. The tax attaches to distilled spirits as soon as the distilled spirits are made (26 U.S.C. § 5001(b)). The distiller is responsible for paying the tax (26 U.S.C. § 5005(a)), which is payable to the Alcohol & Tobacco Tax & Trade Bureau (26 U.S.C. § 5061). The tax owed must be paid at the time the distilled spirits are removed from the bonded premises (26 U.S.C. § 5007).
- i. All distilled spirits produced in the United States are taxed at a federal rate of \$13.50 per proof gallon and a proportionate tax at the same rate on all fractional parts of a proof gallon (26 U.S.C. § 5001(a)).

I also know that it is a violation of:

18 U.S.C. § 922(g)(1), for any person who has been convicted of a felony to possess any firearm and/or ammunition in or affecting commerce, or to receive any firearm and/or ammunition which has been shipped or transported in interstate or foreign commerce.

2. As a Bureau of Alcohol, Tobacco, Firearms and Explosives Agent, my primary duty is the investigation of suspected violations of the federal laws pertaining to firearms, explosives, and tobacco as well as untaxed alcohol in eastern Tennessee. While performing the aforementioned duty, I have had the occasion to uncover the following facts from records, recordings of undercover purchases, as well as from information from other agents involved in the investigation.

3. In 1974, SUTTON was investigated by the Bureau of Alcohol, Tobacco, and Firearms and subsequently charged for multiple violations of the Internal Revenue Laws pertaining to liquor. SUTTON was convicted of the aforementioned charge and was sentenced in 1975.

4. In 1981, SUTTON was convicted and sentenced in the Haywood County Superior Court, North Carolina for felony Possession of a Controlled Substance. SUTTON received a five year sentence.

5. In 1985, SUTTON was convicted and sentenced in the Haywood County Superior Court, North Carolina for felony Assault With a Deadly Weapon With Intent to Kill. SUTTON received a Three year sentence.

6. On April 24, 2007, several local fire departments responded to a reported fire at 324 Upper Road, Parrottsville, Tennessee. The fire was extinguished and the owner of the property, MARVIN "POPCORN" SUTTON, was interviewed. During the interview SUTTON admitted his knowledge of the presence of approximately 650 gallons of untaxed alcohol, commonly referred to as "moonshine" and further admitted to knowingly and willingly manufacturing the

moonshine with the operable moonshine still that was on his property. The crime scene investigation, evidence seized and interviews conducted concluded that SUTTON was knowingly manufacturing and possessing moonshine. On July 7, 2007, in the Criminal Court of Cocke County, Tennessee, SUTTON was sentenced to a term of two years probation for Possession of Untaxed Liquor in Excess of Three Gallons.

7. On February 7, 2008, an agent of the Tennessee Alcoholic Beverage Commission, functioning in an undercover capacity (UC), met SUTTON for the purpose of purchasing moonshine in excess of fifty gallons. The UC initially met SUTTON at 324 Upper Road, Parrottsville, Tennessee, and engaged SUTTON in conversation. During the conversation at the 324 Upper Road location SUTTON advised the UC that SUTTON currently had firearms and moonshine in his possession. SUTTON also advised the UC that SUTTON has been engaged in the business of manufacturing and distributing moonshine for many years. After the aforementioned conversation, the UC loaded a few gallons of moonshine in the UC's vehicle and then was taken to 127 Loftis Road, Parrottsville, Tennessee by SUTTON. While at the Loftis Road location, the UC, SUTTON, and an individual identified as "BILLY" (later identified as BILLY HUX) loaded approximately 80 gallons of moonshine into the UC's vehicle. The moonshine was stored in a brown, wooden outbuilding. Right beside the building was a disabled school bus. There was a large antenna and tower beside the building. A mobile home is beside the building and across the street was a mailbox that had "127" on it. During the process of loading the UC's vehicle, the UC and SUTTON were engaged in conversation. During this conversation, SUTTON advised the UC that several individuals had recently each acquired in excess of 50 gallons of moonshine from him.

8. On February 14, 2008, an agent of the Alcoholic Beverage Commission, functioning in an undercover capacity (UC) met SUTTON for the purpose of purchasing moonshine in excess of one hundred gallons. The UC met SUTTON at 324 Upper Road, Parrottsville, Tennessee, and engaged SUTTON in conversation. During the conversation, SUTTON showed the UC a Star, .380 caliber pistol and an unknown manufactured revolver in .38 caliber. The UC also observed numerous gallons of moonshine at the 324 Upper Road location. At the conclusion of the conversation the UC was taken to 127 Loftis Road, Parrottsville, Tennessee by SUTTON. While at the Loftis Road location, the UC and SUTTON loaded approximately 100 gallons of moonshine into the UC's vehicle. During the process of loading the UC's vehicle, the UC and SUTTON were engaged in conversation. During this conversation, SUTTON advised the UC that he had moonshine stored in at least one other separate location.

9. On February 28, 2008, an agent of the Alcoholic Beverage Commission, functioning in an undercover capacity (UC) met SUTTON for the purpose of purchasing moonshine in excess of one hundred gallons. The UC met SUTTON at 324 Upper Road, Parrottsville, Tennessee, and was immediately taken to 127 Loftis Road, Parrottsville, Tennessee by SUTTON. While at the Loftis Road location, the UC, SUTTON, and an individual who identified himself as BILLY HUX loaded approximately 100 gallons of moonshine into the UC's vehicle. During the process of loading the UC's vehicle, the UC, SUTTON, and BILLY HUX were engaged in conversation. During this conversation, HUX advised the UC that HUX participated in the manufacturing process of the moonshine. During surveillance, your affiant observed SUTTON leaving the location in his vehicle and traveling to "J.D.'s Market" in Parrottsville.

10. At the conclusion of the February 28, 2008 purchase of moonshine, BILLY HUX was observed driving a blue, Ford Ranger with Tennessee license plate number 198-HTH. Investigative research revealed that this vehicle was registered to BILLY J. HUX, Parrottsville, Tennessee.

11. The week of March 3, 2008, the UC had a phone conversation with SUTTON. SUTTON advised the UC that he had conducted a count of all moonshine that he (SUTTON) currently had available to sell. SUTTON advised that he had 500 gallons in Tennessee and 400 gallons in Maggie Valley (North Carolina).

12. On March 12, 2008, an agent of the Tennessee Alcohol Beverage Commission, functioning in an undercover capacity, (UC) met with SUTTON at his residence, 324 Upper Road, Parrottsville, Tennessee, to discuss another delivery of moonshine. While at the residence, the UC observed SUTTON to still be in possession of moonshine and firearms. SUTTON took UC and BILLY HUX to the storage building at 127 Loftis Road in Parrottsville, Tennessee, to show UC that he had the 500 gallons there ready for delivery. Some of the moonshine that SUTTON showed the UC was being stored in the old school bus next to the storage building.

13. On the same day, SUTTON and BILLY HUX took UC to a barn located off Scott Pond Road in Parrottsville, Tennessee. From SUTTON'S residence, they turned left out of SUTTON'S driveway and went a short distance to the intersection of Upper Road and Scott Pond Road. They turned left onto Scott Pond Road and traveled a short distance to a driveway on the right leading to a barn. Inside the barn were three moonshine stills. The UC estimated that the smallest of the stills was 500 gallons and the largest was twice that capacity. Two of the stills were operating and the third still was being prepared for cooking.

14. Investigative research conducted by your affiant revealed that 324 Upper Road, Parrottsville, Tennessee is owned by SUTTON and has been since the early 1990s.

15. Your affiant is considered an expert witness and has previously testified in Federal Court in the Eastern District of Tennessee as to his determinations pertaining to the movement of firearms and/or ammunition in interstate and foreign commerce. On March 10, 2008 your affiant determined that a Star, .380 caliber pistol was manufactured outside the State of Tennessee, and in order to be at the residence located at 324 Upper Road, Parrottsville, Tennessee, it had to have affected interstate and foreign commerce.


16. Your affiant interviewed Agent Chad Beck, State of Tennessee, Alcoholic Beverage Commission reference SUTTON. Chad Beck stated that he had personally participated in the investigation of SUTTON in 2007 that culminated in SUTTON being sentenced to a moonshine related felony conviction. Chad Beck further stated that he has personally participated in this investigation and stated that he knows that the MARVIN "POPCORN" SUTTON, who is the subject of this investigation for possession of firearms as a previously convicted felon and possession of illegal moonshine is the same SUTTON, who was convicted of a felony in 2007.

17. Your affiant was advised by Ray Brady, United States Treasury Department, Trade and Taxation Bureau that their records revealed that SUTTON has never been issued a Beverage Distillers Permit and/or Alcohol Fuel Permit.


CONCLUSION

Based upon the above information, I believe probable cause exists that the residence of MARVIN "POPCORN" SUTTON, 324 Upper Road, Parrottsville, Tennessee 37843, contains property that constitutes evidence of the commission of criminal offenses, namely, violations of Title 26 United States Code, § 5691(a), carrying on the business of a dealer in distilled spirits

without paying special tax; 26 United States Code, § 5604(a)(1), possessing distilled spirits for which the immediate container did not bear closure or other device as required; and Title 18 United States Code § 922(g)(1), being a convicted felon in possession of a firearm; and respectfully request this court to issue a warrant to search for this evidence presently in the possession of MARVIN "POPCORN" SUTTON, 324 Upper Road, Parrottsville, Tennessee 37843.


GREGORY E. MOORE
Bureau of Alcohol, Tobacco,
Firearms and Explosives

Sworn to before me, and subscribed in my presence
on March 13, 2008.


Signature of Judicial Officer
DENNIS H. INMAN
U.S. Magistrate Judge