

AO 91 (Rev. 5/85) Criminal Complaint

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

United States District Court

SEP - 6 2010

IN THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

v.

MATTHEW J. DYKMAN
CLERK
CRIMINAL COMPLAINT

CALVIN E. AUGUSTINE, JR, YOB: 1990
BYRON C. PAHE, YOB: 1990
PRESLEY B. SHORTY, YOB: 1989
BRIAN B. THOMPSON, YOB: 1990

10-MJ-2487
CASE NUMBER: 10-MF-039

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about September 04, 2010 in McKinley county, in the District of New Mexico, defendant(s), **within the exterior boundaries of the Navajo Indian Reservation; did commit the unlawful killing of Vinton B. Wally with malice aforethought; and aided and abetted**

in violation of Title 18 United States Code, Section(s) 1153; 1111 (a); 2 (a).

I further state that I am a(n) Special Agent and that this complaint is based on the following facts:


See Attached Affidavit hereby incorporated by reference as if fully restated herein.

Continued on the attached sheet and made a part hereof:

Yes No

AUSA - GCM

Sworn to before me and subscribed in my presence,


Signature of Complainant
SA David D. Cordova
Special Agent
Federal Bureau of Investigation

Date Sept 6, 2010

at GALLUP, NM
City and State

Name & Title of Judicial Officer
Robert W. JANTA
US Magistrate Judge


Signature of Judicial Officer

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IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)
)
vs.)
)
CALVIN E. AUGUSTINE, JR., YOB: 1990)
BYRON C. PAHE, YOB: 1990)
PRESLEY B. SHORTY, YOB: 1989)
BRIAN B. THOMPSON, YOB: 1990)

10-MF-039
10-MJ-2487

AFFIDAVIT

The undersigned being duly sworn, deposes and says:

1) I, David D. Cordova, am a Special Agent (SA) of the Federal Bureau of Investigation (FBI), currently assigned to the Albuquerque Division, Gallup Resident Agency. I have a total of approximately ten (10) years of federal law enforcement experience. I have been employed with the FBI as an SA since April 2008. I have primary investigative responsibility in crimes that occur in Indian Country including violent crimes such as: homicide, robbery, arson, aggravated assault, and sexual assault. The information set forth is known to me as a result of my own investigation or has been communicated to me by other law enforcement officers:

2) This affidavit has been made in support of an application for arrest warrants for Calvin E. Augustine, Jr., Byron C. Pahe, Presley B. Shorty, and Brian B. Thompson, all Indian men. The arrest warrants are to be issued in connection with violations of Title 18, United States Code (USC) 1153; 18

1 USC 1111(a); 18 USC 2(a); crimes occurring within the exterior
2 boundaries of the Navajo Nation Indian Reservation in Indian
3 Country; an unlawful killing of a human being with malice
4 aforethought; and aided and abetted.

5
6 3) On Saturday, September 04, 2010, at approximately
7 1:17 AM, a caller reported to the Navajo Nation Department of
8 Law Enforcement (NNDLE), Crownpoint Police Dispatch Center, that
9 shots were fired at the public housing complex in Little Water,
10 New Mexico. Approximately 11 minutes later a second caller
11 reported that father and son, Vinton B. Wally (42 YOA) and
12 Nathaniel R. Wally (24 YOA), had been shot and were being
13 transported to the Crownpoint Indian Health Services (CIHS).
14 Upon arrival, Vinton was pronounced dead; Nathaniel received
15 medical attention for his wound. Nathaniel was later airlifted
16 to an out of state hospital. FBI SA David Cordova and NNDLE
17 Criminal Investigator (CI) Malcolm Leslie were subsequently
18 notified of the shooting and responded to investigate.

19
20 4) At approximately 4:32 AM, SA Cordova and CI Leslie
21 interviewed CIHS emergency room physician, Daryl Patterson, MD.
22 Dr. Patterson stated that Vinton and Nathaniel arrived at the
23 CIHS emergency room at approximately 1:33 AM. Vinton had coded
24 (died) before arriving at the hospital. Medical personnel
25 attempted to revive Vinton, but were unsuccessful. Vinton's
26 gunshot entry wound was located approximately 2" left of the
27 right nipple; no exit wound was visible.

28

1 5) Dr. Patterson stated Nathaniel had a gunshot wound
2 to his back near his left armpit. The impact of the bullet
3 fractured a rib. The bullet fragmented and lodged near the
4 backside of the lung, narrowly missing all major organs. As a
5 result of the wound, Nathaniel will likely suffer nerve damage.
6 Based on the size of the Vinton's and Nathaniel's gunshot
7 wounds, Dr. Patterson surmised that both men had been shot with
8 a small caliber gun, possibly a .22 caliber.

9
10 6) SA Cordova and CI Leslie interviewed Nathaniel at
11 CIHS before he was airlifted to an out of state hospital.
12 According to Nathaniel, at approximately 1:00 AM, a female
13 cousin came running into the house and told him that a group
14 individuals were causing problems with Vinton. Nathaniel
15 grabbed a baseball bat and went outside. Nathaniel observed two
16 (2) juvenile family members and a juvenile family friend,
17 outside with Vinton.

18
19 7) Moments later, a red four (4) door compact sedan
20 drove in front of the Wally residence and stopped; Nathaniel
21 observed four (4) occupants in the sedan. Nathaniel recognized
22 the occupants as members of a local gang called the "Dark Side
23 Boys." Nathaniel is a member of a rival local gang known as "L
24 DUBS" [also known as (AKA): LWS]. The occupants of the sedan
25 were later identified by investigators as: Calvin E. Augustine,
26 Byron C. Pahe, Brian B. Thompson, and Presley B. Shorty.
27 Nathaniel and Presley have been feuding for the last nine (9)
28 years.

1 8) Once the sedan came to a stop, Presley and Byron
2 jumped out of the sedan with shovels and provoked Vinton and
3 Nathaniel into a physical altercation. A fight broke out
4 between the men. During the altercation, Nathaniel heard
5 Presley instruct Brian, who did not exit the sedan, to shoot
6 Vinton. Brian initially hesitated, but then fired three (3)
7 shots, one of which struck Vinton. The sedan drove-off and then
8 stopped a second time. Vinton and Nathaniel chased the sedan on
9 foot. Nathaniel heard two (2) shots fired from the stopped
10 vehicle. Nathaniel was struck by one of the bullets. Nathaniel
11 identified the person who discharged the firearm as Brian
12 Thompson (AKA: Brian B. Thompson). Nathaniel described the
13 firearm used by Bryan as a .22 caliber handgun revolver.

14
15 9) At approximately 10:16 AM, SA Cordova and CI Leslie
16 interrogated Brian after he was taken into custody by the
17 officers of the NNDLE at the residence of a relative. Brian was
18 advised of his Miranda Rights as per the FBI Advise of Rights
19 form (FD-395). Brian indicated he understood his rights and
20 signed the waiver portion of the form indicating he was willing
21 to answer questions without the presence of an attorney.

22
23 10) Brian immediately told SA Cordova and CI Leslie
24 that he was willing to cooperate with the investigation. Brian
25 provided the location of the firearm that he used in the
26 shooting; he described it as a silver .22 caliber revolver.
27 Brian stated he purchased the firearm approximately one (1)
28 month ago for \$80.00. The firearm was recovered by an evidence

1 technician in the area identified by Brian; the firearm was
2 entered into evidence.

3
4 11) Brian noted that some members of the Wally family
5 call themselves "L Dubs", while Brian and his gang call
6 themselves "Dark Side Boys."

7
8 12) Brian confessed to discharging the firearm while
9 confronting the Wallys at their residence. Brian stated that
10 Byron, Calvin, Presley, and himself drove to the public housing
11 complex in Little Water in Calvin's maroon Nissan sedan to visit
12 an acquaintance. Brian took his loaded .22 caliber revolver
13 with him. On the way to the acquaintance's residence, while in
14 the sedan, Brian was showing Byron how to operate the firearm.
15 Brian purposely discharged the firearm and accidentally shattered
16 the front passenger window of the sedan.

17
18 13) As they drove into the public housing complex,
19 Brian noticed a group of individuals (many of them children)
20 outside the Wally residence. Someone from the residence yelled
21 profanities at Brian and the sedan occupants. They continued
22 driving until they arrived at the residence of the acquaintance,
23 who lives near the Wallys; the acquaintance was not home. The
24 men (Brian, Byron, Calvin, and Presley) remained at the
25 residence for several minutes and prepared for a confrontation
26 with Wallys. Presley grabbed a shovel from the acquaintance's
27 residence and Byron a wooden board, approximately three (3) feet
28 in length. The men drove in Calvin's car toward the public

1 housing complex exit, which is the road along side the Wally
2 residence. Calvin was the driver; Brian sat in the rear
3 passenger seat behind Calvin; Byron sat in the front passenger
4 seat; Presley in the rear passenger seat behind Byron.

5
6 14) Upon nearing the Wally residence, a group of
7 individuals were gathered off the side of the street, to include
8 children, some had golf-clubs. Presley and the individuals
9 yelled profanities at each other. Presley instructed Calvin to
10 stop the sedan. Presley and Byron exited the sedan, with the
11 weapons (wood board and shovel) in hand; a physical altercation
12 ensued. Presley and Byron fought with some of the people in the
13 group.

14
15 15) While engaged in the altercation, Presley
16 instructed Brian to discharge the firearm. Bryan, who did not
17 exit the sedan, grabbed his .22 caliber handgun with his right
18 hand and discharged the firearm three (3) times, intending to
19 fire warning shots. Calvin then drove forward and stopped to
20 allow Presley and Byron to enter the sedan. Brian again
21 discharged the firearm at least two (2) times; the men then
22 drove off. Brian and Byron exited the sedan at an intersection
23 down the road. The men proceeded to walk home. Later that
24 morning Brian learned from a family member that at least one (1)
25 individual at the Wally residence had been hospitalized for a
26 gunshot wound.

27
28 16) At approximately 3:15 PM, SA Cordova and CI Leslie

1 interrogated Presley at the Crownpoint Adult Detention Center
2 (CADC), Crownpoint, New Mexico where he was in custody on tribal
3 charges. Presley was advised of his Miranda Rights as per the
4 FBI Advise of Rights form (FD-395). Presley indicated he
5 understood his rights and signed the waiver portion of the form
6 indicating he was willing to answer questions without the
7 presence of an attorney.

8
9 17) Presley knew that Brian, who discharged the
10 firearm at the Wally residence, was armed prior to arriving at
11 the residence. Presley was present when Brian discharged his
12 (Brian's) firearm inside Calvin's sedan shattering the front
13 passenger window. Presley admitted to provoking the individuals
14 at the Wally residence when he responded to their profanity by
15 using profanity of his own toward them. After stopping at a
16 nearby residence to get weapons, Presley instructed Calvin to
17 stop his (Calvin's) sedan at the Wally residence. Presley
18 exited Calvin's sedan with a shovel and engaged in a physical
19 confrontation with an unidentified individual. Presley admitted
20 to instructing Brian to discharge the firearm during the
21 altercation. Presley and two (2) other individuals returned to
22 a property located across the Wally residence after the shooting
23 and continued provoking the Wallys by yelling profanity.

24
25 18) The sedan used during the shooting was recovered
26 after NNDLE officers executed a vehicle stop on the sedan and
27 arrested Calvin the only occupant, approximately two (2) miles
28 from the crime scene. The sedan is described as a red four (4)

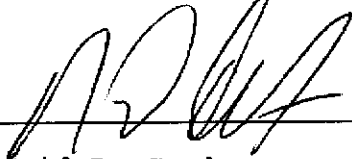
1 door Nissan Sentra bearing a State of New Mexico license plate.
2 Calvin was transported to the CADC where he was later
3 interrogated by investigators, after he was advised of his
4 Miranda Rights, and waived his right to have an attorney present
5 during questioning. Calvin recounted the events of the morning.
6 Calvin admitted to smoking marihuana and drinking alcohol with
7 Brian, Byron and Presley before driving out to the public
8 housing in Little Water. Calvin also admitted to being the
9 driver of the get away sedan, before and after the shooting.

10
11 19) At approximately 6:15 PM, Byron was interrogated
12 by investigators at the CADC, after he was advised of his
13 Miranda Rights, and waived his right to have an attorney present
14 during questioning. Byron stated that Brian was showing of a
15 silver .22 caliber revolver before they went to Littlewater. On
16 their way to Littlewater, Byron was sitting in the front
17 passenger seat when Brian purposely discharged the firearm
18 chattering the window; the bullet narrowly missed Byron's head.
19 At an acquaintance's residence the men (Brian, Byron, Calvin and
20 Presley) got together to plan how they would confront, the
21 individuals at the Wally residence. A shovel and wood board
22 were loaded into the vehicle. On the way out of the public
23 housing complex, Presley told Calvin to stop the vehicle. Both
24 Byron and Presley participated in an altercation with some
25 individuals at the Wally residence. Byron heard Presley tell
26 Brian to load the firearm. Byron heard the discharging of the
27 firearm.

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20) Based on the training and experience of the affiant, and information set forth in this affidavit, your affiant submits that there is probable cause to believe that on or about September 04, 2010, within the exterior boundaries of the Navajo Indian Reservation, Indian Country, in the State and District of New Mexico Calvin E. Augustine, Byron C. Pahe, Presley B. Shorty, and Brian B. Thompson, all Indian men, committed the unlawful killing of Vinton B. Wally with malice aforethought; and aided and abetted; in violation of 18 USC 1153 and 18 U.S.C. 1111 (a); 18 USC 2(a).



David D. Cordova
Special Agent
Federal Bureau of Investigation
Gallup, New Mexico

Subscribed and sworn to before me this 6 day of Sept,
2010.



U.S. Magistrate Judge
Robert W. Ionta