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UNITED STATES DISTRICT COURT

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United States District Court

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IN THE

DISTRICT OF

NEW MEXICO

CLERK - LAS CRUCES

UNITED STATES OF AMERICA

v.

CRIMINAL COMPLAINT

Frank Bow Gallerito

(DOB: 1971)

An enrolled member of the Mescalero Apache
Indian Reservation

892 Highway 244

Mescalero, New Mexico

CASE NUMBER:

10-2225MJ

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 24, 2009 in Otero county, in the State and Judicial District of New Mexico defendant(s) did, (Track Statutory Language)

Gallerito, a convicted felon, assaulted Dennett Jerome Chee (and family) by firing a gun eight times at the residence occupied by the Chees. The assault occurred within the exterior boundaries of the Mescalero Apache Indian Reservation, the territorial jurisdiction of the United States.

in violation of Title 18 United States Code, Section(s) 113(a)(3), 924(c)(1)(A)(iii) and 1153(a).

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

Official Title

See Attachment A

Continued on the attached sheet and made a part hereof:



Yes



No

AUSA - Jake Wishard

Sworn to before me and subscribed in my presence,

Signature of Complainant

SA Daniel J. Sarkozy

Special Agent

Federal Bureau of Investigation

Date

August 11, 2010

at

City and State

Las Cruces, NM

Name & Title of Judicial Officer

Signature of Judicial Officer

Dennis Martinez

IN THE DISTRICT OF THE UNITED STATES
FOR THE DISTRICT OF NEW MEXICO

United States of America)
)
 vs.)
)
 Frank Bow Gallerito)
)
)

AFFIDAVIT

I, Daniel J. Sarkozy, being first duly sworn,
hereby depose and state as follows:

1.) I am a Special Agent of the Federal Bureau of Investigation (FBI) currently assigned to the Albuquerque Division, Las Cruces Resident Agency, and have been employed by the FBI for approximately 14 and a half years. As a Special Agent for the FBI, I am authorized to investigate crimes that occur on Indian reservations.

2.) All the facts set forth in this Affidavit are personally known to me or have been made known to me by other sworn law enforcement officers.

3.) On or about 09/24/2009 at approximately 7:00 p.m., an adult male exited a tan/gold colored Ford F-150, four (4) door pick up truck and approached the resident of Dennett Jerome Chee (and family) located at 53 Carrizo Trials, Mescalero, New Mexico and fired eight (8) .45 ACP

1 rounds into the residence, ran back to the passenger side of
2 the same truck, and fled the scene. The residence was
3 occupied by Chee, his wife Kelani Poncho and their sons (ages
4 2 and 4). The fired rounds struck and penetrated the front
5 wall and window of the Chee residence. All of the rounds
6 entered the home. At least two (2) bullets struck the
7 television set (or surrounding entertainment center) as
8 Dennett Jerome Chee played a video game on it. These bullets
9 entered through the front window, over Chee's shoulder, and
10 into the television. One (1) bullet was recovered from
11 inside the television set and one (1) bullet was recovered
12 from inside an adjacent sound speaker which sat above the
13 television on the entertainment center. Other bullets were
14 recovered from the inside of internal walls of the home. One
15 bullet stopped inside the wall of the kitchen where Kelani
16 Poncho was eating with one of her sons. Other bullets were
17 recovered in the door frame of the children's bedroom located
18 next to the kitchen. The recovered bullets fired into the
19 home were collected as evidence.

20
21 4.) Eight (8) fired .45 ACP shell casings were
22 found on or next to the Chee driveway approximately 33 feet
23 in front of the Chee family room window. Five (5) .45
24 caliber holes were found in the front wall of the Chee
25 residence. Three (3) additional bullets were determined to
26 have penetrated the family room's front window, two through
27 the glass and one through the window frame. Trajectory rods
28 were placed in the bullet holes. All of these rods pointed

1 to a firing point approximately 33 feet from the front of the
2 Chee residence in the middle of the Chee driveway. This
3 coincides with the approximate location where witnesses saw a
4 man, fitting the description of Frank Bow Gallerito, fire the
5 gun from.

6
7 5.) Several witnesses to the shooting identified
8 Frank Bow Gallerito as the man they believed to have fired
9 the shots into the Chee residence. Further, they identified
10 the tan/gold colored Ford F-150 pick up truck (described
11 above) as belonging to Frank Bow Gallerito because they had
12 seen him driving that truck earlier that day and because they
13 had seen that truck on numerous other occasions and knew it
14 to be Gallerito's truck. They further described the truck as
15 having numerous decals in the rear window.

16
17 6.) Investigating agents traveled to Gallerito's
18 home located at 892 Highway 244, Mescalero, New Mexico in an
19 attempt to locate and interview Gallerito regarding the
20 shooting at the Chee residence. Upon arrival at the
21 Gallerito residence, and in an attempt to contact and
22 interview the occupants of the home, agents crossed a locked
23 gate at the end of Gallerito's driveway which displayed a "No
24 Trespassing" sign on it. Agents approached the home, knocked
25 and announced their presence and identities, and announced
26 their the intention to interview Frank Bow Gallerito. Agents
27 could hear movement inside the double wide mobile home but
28 received no answer at the door. Agents also saw a person or

1 person(s) inside the trailer looking out the window through
2 the mini-blinds. Agents still received no answer to their
3 calls. Still further, agents contacted Bureau of Indian
4 Affairs (BIA) Mescalero Dispatch and requested dispatch
5 contact the occupants via telephone. Mescalero Dispatch
6 complied and attempted to make a telephone call to the
7 Gallerito residence. Agents outside the trailer could hear
8 the telephone ringing but the call went unanswered. While
9 attempting to make contact with the occupant(s), agents
10 observed a tan/gold colored Ford F-150, four (4) door pick up
11 truck bearing New Mexico license plate HBP 278 parked on the
12 side of the trailer. The truck matched the description given
13 by witnesses at the Chee shooting. The truck was determined
14 to be registered to Mia Basquez, 892 Highway 244, Mescalero,
15 New Mexico. Mia Basquez is known to be the wife of Frank Bow
16 Gallerito.

17
18 Prior to departing from the residence, agents who
19 had been using the Ford pick up truck as cover while watched
20 the side and back yards, noticed three (3) guns inside the
21 truck: 1.) a bolt action, scope sighted hunting type rifle
22 placed between the front seats; 2.) a 1911 type automatic
23 pistol with it's slide locked to the rear on the front
24 passenger seat; and 3.) a Ruger 10/22 semiautomatic rifle
25 laying on the back seat. Agents also saw ammunition for each
26 type of firearm observed in the truck. Based upon your
27 affiant's experience and training as a FBI Firearms
28 Instructor, the 1911 type pistol is believed to be a Taurus

1 PT-1911, .45 ACP pistol. All of these firearms were in plain
2 view and clearly visible by looking through the truck's
3 windows.

4
5 7.) Based upon the facts presented above, a
6 Federal Search Warrant (09-365 MR) of the Ford F-150 pick up
7 truck (described above) was authorized by The Honorable Karen
8 B. Molzen on 09/25/2009. The search authorized the seizure
9 of the firearms described above. Due to safety concerns,
10 agents were unable to maintain close surveillance of the
11 truck while the warrant was being obtained. The warrant was
12 executed on 09/25/2009 but the firearms were not present.
13 Agents did find magazines (feeding devices) for a Ruger 10/22
14 semiautomatic rifle and a Taurus PT-1911 pistol. The
15 magazines were seized after consent was obtained from Mia
16 Basquez Gallerito. A subsequent consent search of the
17 Gallerito home was authorized by Mia Basquez (Gallerito).
18 The search was also met with negative results for any
19 firearms.

20
21 8.) Subsequent investigation to the shooting has
22 revealed that Mia Basquez (Gallerito) purchased the three (3)
23 firearms described in this affidavit from the Firepower Gun
24 Shop located in Ruidoso, New Mexico. Basquez (Gallerito)
25 admitted that these guns were hers and were in her home prior
26 to the shooting at the Chee residence. The owner of
27 Firepower Gun Shop cooperated with the investigation and
28 provided proof that Mia Basquez was the owner of three (3)

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1 firearms of the type seen in Gallerito's truck on the night
2 of the shooting. Further, Mia Basquez-Gallerito told
3 investigators that she kept the firearms for protection of
4 her home and her family. Basquez-Gallerito also confirmed
5 that Frank Bow Gallerito lived at the same residence and
6 stayed there the night before the shooting at the Chee
7 residence.

8
9 9.) On 09/25/2009, Frank Bow Gallerito was
10 arrested and charged in Mescalero Apache Tribal Court for his
11 role in the shooting at the Chee residence. He is currently
12 jailed at the Otero County Prison Facility located Chaparral,
13 New Mexico. After his arrest, Gallerito was read his Miranda
14 Rights. Gallerito acknowledged his Miranda Rights by signing
15 an Advice of Rights form indicating he was willing to answer
16 questions regarding the events leading to his arrest, without
17 a lawyer present. During the subsequent interview, Gallerito
18 admitted to shooting at the Chee residence. Gallerito stated
19 that first he fired shots at the residence, then, after
20 giving the gun to Michael Munoz, Sr., Munoz fired the gun at
21 the Chee residence. Gallerito also admitted to being a
22 convicted felon and knowing he was prohibited from owning or
23 possessing firearms. Gallerito stated that regardless of
24 this prohibition, he always has access to guns either from
25 his house or from friends.

26
27 10.) On 10/14/2009, Michael Munoz, Sr., Frank Bow
28 Galleriot's brother-in-law, was interviewed regarding his

1 involvement in the shooting assault at the Chee residence.
2 Munoz stated that Gallerito was the only one that fired the
3 gun at the Chee residence on the night of the assault. Munoz
4 denied taking part in the shooting. He stated that he was
5 very drunk that evening and took no active part in the
6 shooting.

7
8 11.) On 09/28/2009, Frank Bow Gallerito plead
9 guilty to the following charges in Mesclero Apache Indian
10 Tribal Court for his role in the shooting assault at the Chee
11 residence: 1.) Assault and Battery; 2.) Negligent use of a
12 Weapon; 3.) Criminal Damage to Property; 4.) Disturbing the
13 Peace; 5.) Intoxication; 6.) Tampering with Evidence; and
14 7.) Conspiracy. Gallerito was sentenced and housed in the
15 Otero County Prison Facility located in Chapparal, New
16 Mexico.

17
18 12.) On 09/30/2009 while in jail, Frank Bow
19 Gallerito made several telephone calls from the Otero County
20 Prison Facility to his wife, Mia Basquez (Gallerito). Prior
21 to making these telephone calls, a recording informed
22 Gallerito that his conversation could be monitored or
23 recorded at any time. During the first of these telephone
24 calls, Gallerito told his wife, "those things, just keep
25 them, don't take them to California, just leave them there."
26 Basquez (Gallerito) objected, saying, "I don't really want
27 to." Gallerito told her, "take them to the shed and leave
28 them down there, they'll be alright." Your affiant believes

1 Gallerito is discussing the guns and instructing his wife
2 about where to store the guns and telling his wife to leave
3 them in the shed.

4
5 13.) On 09/30/2009, Frank Bow Gallerito made a
6 second call to Mia Basquez-Gallerito. During this call, Mia
7 Basquez (Gallerito) told Frank Bow Gallerito that she told
8 the FBI that she had bought the guns in town. Gallerito told
9 her, "what ever you do, just don't fucking give them to them,
10 Mia." Mia replied, "I ain't got nothing to give, I don't
11 have nothing, I don't know where nothing's at." Frank
12 Gallerito then asked her, "did you tell them where they're
13 at?" Mia replied, "No, I don't know where nothing's at, what
14 did you just hear me say?"
15

16 14.) On 10/01/2009, Frank Bow Gallerito made
17 another telephone call to Mia Basquez-Gallerito. During this
18 telephone call, Gallerito begins the conversation where the
19 conversation terminated the day before where he and his wife
20 discussed the guns. Frank asked Mia if the "feds" talked to
21 her yesterday. He told her the "feds" are trying to make a
22 case against him and they are trying to find the guns. Mia
23 told Frank, "he saw them in the truck, Bow." Bow replied, "I
24 know, but they are trying to find them." Mia stated, "I
25 don't know where in the hell they are."
26

27 15.) On 10/05/2009, Frank Bow Gallerito made
28 another telephone call to Mia Basquez-Gallerito. During this

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1 telephone call, Gallerito said, "Hey, those um, those, those
2 ah, remember the family I shot at?" He proceeded to tell his
3 wife the family and/or friends of the Chee family knew who he
4 was and where he was, suggesting they might seek retaliation
5 against him for the shooting.

6
7 16.) On 10/07/2009, Frank Bow Gallerito made
8 another telephone call to Mia Basquez-Gallerito. During this
9 telephone call, Gallerito told his wife he hoped "the feds"
10 do not get involved. He said, "I'm sorry and ah, I'm glad
11 none of that stuff hit anyone."

12
13 17.) On 10/23/2009, Frank Bow Gallerito made
14 another telephone call to Mia Basquez-Gallerito. During this
15 telephone call, Gallerito talked to his wife regarding the
16 possibility that the Federal Government would pursue criminal
17 charges against him. He discussed other cases on the
18 reservation where Federal Charges were not filed and compared
19 them to his case, "And, and what happened? Nothing. You
20 know, nothing. I just don't get it and then, like in my
21 case there was a shooting and it was just, um, shots to the
22 house, no one got hurt or nothing and you know what I mean?"
23

24 18.) On 10/30/2009, Frank Bow Gallerito made
25 another telephone call to Mia Basquez-Gallerito. During this
26 telephone call, Gallerito said to his wife, "And then,
27 hopefully, pray to God, keep praying on it that I be forgiven
28 for shooting at that house."

1 19.) On 11/04/2009, Frank Bow Gallerito made
2 another telephone call to Mia Basquez-Gallerito. During this
3 telephone call, Gallerito told Mia; "Yeah, I know. Okay,
4 well, um, those fishing poles, just um, don't bother, bother
5 them 'cause they, they got hooks and everything on 'em. I
6 don't want you guys getting hooked or anything." Mia
7 answered, "Yes, I know."

8
9 20.) On 03/10/2010, United States Magistrate Judge
10 Carmen E. Garza authorized a search of the Gallerito
11 residence located at 892 Highway 244, Mescalero, New Mexico
12 for the firearms suspected of being used during the assault
13 at the Chee residence. The search was conducted with
14 negative results.

15
16 21.) 53 Carrizo Trails, Mescalero, New Mexico, the
17 residence of Dennett Jerome Chee and family, is located
18 within the exterior boundaries of the Mescalero Apache Indian
19 Reservation, the exclusive jurisdiction of the United States.

20
21 22.) Frank Bow Gallerito (enrollment number 01934)
22 is an enrolled member of the Mescalero Apache Indian Tribe.
23 Dennett Jerome Chee (enrollment number 03628), Kelani Poncho
24 (enrollment number 03545) and both of their minor children
25 are enrolled members of the Mescalero Apache Indian Tribe.

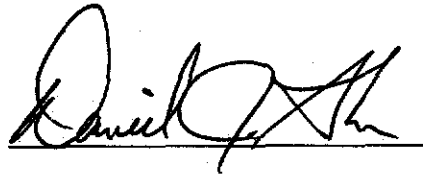
26
27 23.) Based on the above information, the Affiant
28 believes that probable cause exists to support the following

1 criminal charges:

2
3 Count 1: - On September 24, 2009, Frank Bow
4 Gallerito did commit a crime on an Indian Reservation in
5 violation of 18 U.S.C, Section 1153(a);
6

7 Count 2: - On September 24, 2009, Frank Bow
8 Gallerito did commit the crime of assault with a dangerous
9 weapon (firearm) with intent to do bodily harm against
10 Dennett Jerome Chee and family, in violation of 18 U.S.C.,
11 Section 113(a)(3);
12

13 Count 3: - On September 24, 2009, Frank Bow
14 Gallerito did commit the crime of violence by the use of a
15 deadly weapon (firearm) in violation of 18 U.S.C., Section
16 924(c)(1)(A)(iii).
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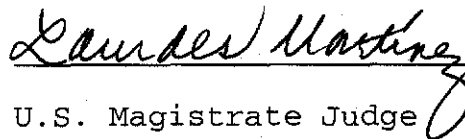
Daniel J. Sarkozy

Special Agent

Federal Bureau of Investigation

Las Cruces, New Mexico

Subscribed and sworn to before me this 11th day of August,
2010.



U.S. Magistrate Judge