

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

United States District Court
IN THE DISTRICT OF NEW MEXICO

MAY 07 2010

UNITED STATES OF AMERICA

MATTHEW J. DYKMAN
CLERK
CLERK

v.

CRIMINAL COMPLAINT

LOLANDO NEZ
YOB: 1977

CASE NUMBER: 10-MJ-1344
10-MG-024

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 May 1, 2010, in McKinley County, in the District of New Mexico, defendant(s) did engage in the unlawful killing of a human being with malice aforethought, in violation of Title 18 United States Code, Section(s) 1153 and 1111. Lolando Nez is a registered member of the Navajo Nation, and Ethan Wemytewa is a registered member of the Zuni Pueblo.

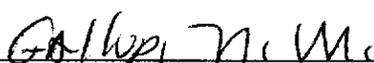
I further state that I am a Special Agent and that this complaint is based on the following facts:

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

Continued on the attached sheet and made a part hereof: Yes No



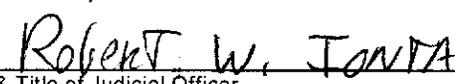
SA Matthew W. Collar
Special Agent
Federal Bureau of Investigation


_____ City and State


_____ Signature of Judicial Officer

AUSA - Chuck Barth
Sworn to before me and subscribed in my presence,

Date 5/7/10 at _____


Name & Title of Judicial Officer
US Magistrate-Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)	CASE NO. <u>10-MJ-1344</u>
)	<u>10-MG-024</u>
VS.)	
)	
LOLANDO NEZ)	AFFIDAVIT IN SUPPORT OF
YOB: 1977)	ARREST

AFFIDAVIT

I, the undersigned, being duly sworn, hereby depose and state as follows:

1. Your affiant is a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and has been employed in that capacity since January of 2008. Your affiant was previously employed by the Montana Highway Patrol and Bozeman Police Department since 1998. Your affiant is currently assigned to the Albuquerque Division of the FBI, Gallup Resident Agency, and has primary investigative responsibility for crimes occurring within Indian Country; including violent crimes such as homicide, robbery, arson, aggravated assault, and sexual assault. The information set forth in this affidavit has been derived from investigation conducted by your affiant, and/or communicated to me by other sworn Law Enforcement Officers.

2. Your affiant received Peace Officer Standardized Training (POST) for the investigation of vehicle accidents while at the Montana Highway Patrol 36th Recruit Academy, and

1 has investigated numerous fatality, injury, and property damage
2 accidents in the official capacity of both a Montana Highway
3 Patrolman and a Bozeman Police Officer assigned to the
4 Motorcycle Traffic Division in the State of Montana.

5
6 (a) Your affiant has previous investigative
7 experience with the interpretation and utilization of roadway
8 impressions and markings to determine vehicle rates of travel
9 and impact positions specific to vehicle accidents.

10
11 3. Your affiant has received crime scene analysis
12 training while attending the FBI Academy in Quantico, Virginia,
13 in 2008 and FBI Advanced Crime Scene/Homicide Training in 2009.

14
15 (a) Your affiant has investigated numerous violent
16 crimes while assigned to the FBI Gallup RA which have involved
17 the analysis and collection of blood evidence and the
18 determination of methods of injury.

19
20 4. Your affiant was informed that on May 1, 2010,
21 Navajo Nation Police Officer Calvin Guerro responded to report
22 of an assault occurring at RA 307 Smooth Mountain Road,
23 Vanderwagen, New Mexico.

24
25 (a) Officer Guerro observed a Chevrolet pick-up
26 truck, bearing New Mexico registration plates 343PLB,
27 immobilized in a roadside ditch with dark-colored spatter and
28 stains consistent in appearance to dried blood on the seats and

1 dashboard.

2
3 (b) Officer Guerro retraced the tracks of the vehicle
4 back to the residence and further observed dark stains on the
5 ground consistent in appearance to dried blood on either side
6 of where the vehicle appeared to have been originally parked.

7
8 (c) Officer Guerro interviewed Calvin and Dorcita
9 Skeet about the incident and determined that Lolando Nez was
10 previously involved in a physical altercation with the
11 unidentified driver of the truck prior to the vehicle accident.

12
13 (d) Officer Guerro further reported that the victim,
14 since identified as Ethan Wemytewa, was transported by Medstar
15 Ambulance Service to Gallup Indian Medical Center (GIMC) for
16 emergency medical treatment.

17
18 5. On May 2, 2010, your affiant was contacted by
19 Arlen Bobelu regarding the assault of her son Ethan Wemytewa
20 near Vanderwagen, NM the previous evening. Bobelu provided the
21 following information:

22
23 (a) Bobelu advised that Wemytewa had been air
24 transported from GIMC to Banner Good Samaritan Hospital in
25 Phoenix, AZ for emergency neurosurgery and had subsequently
26 died from his injuries.

27
28 (b) Bobelu further indicated that Wemytewa had last

1 phoned her from Fire Rock Casino in Gallup, NM at approximately
2 5:30 pm from his cell phone (505) 228-7085.

3
4 6. On May 3, 2010, your affiant, SA John Pierson, SA
5 John McPherson, Navajo Nation Criminal Investigator (CI) Robert
6 James, and Evidence Response Team (ERT) Member Carol York
7 responded to RA 370 Smooth Mountain Road, Vanderwagen, NM, and
8 identified the location of the vehicle. Based on previous
9 training and experience with the investigation of both traffic
10 and criminal related offenses your affiant made the following
11 observations at the accident scene:

12
13 (a) Examination of the roadway and final resting
14 position of the vehicle indicated a proceeding loss of rolling
15 friction while traveling on a muddy and rutted roadway surface,
16 with a subsequent yaw event to the left resulting in loss of
17 directional control, and the perpendicular entry into the ditch
18 running parallel to the adjacent roadway.

19
20 (b) There were no apparent damages observed to the
21 exterior of the vehicle resulting from the slide-off into the
22 ditch and the air bags had not been activated as a result of
23 impact. Cosmetic bumper damage and the partial removal of non-
24 structural undercarriage features were consistent with post-
25 accident efforts to reverse direction and free the vehicle from
26 the ditch after the slide-off.

27
28 (c) The vehicle interior, dashboard, door handles,

1 front seats, headrests, windshield, and center console, were
2 heavily coated in dark-colored stains and spatter consistent in
3 appearance to dried blood. These interior conditions were
4 inconsistent with a low velocity slide-off.

5
6 (d) Dark-colored stains on both front seat head rests
7 contained visible particles of dirt and organic debris
8 consistent with the transfer of blood and material from a head
9 injury. The presence of dirt within the stains indicated the
10 head injury had been in contact with the ground prior to
11 entering the vehicle.

12
13 (e) Tempered glass fragments within the vehicle
14 indicated the driver-side door window had been broken from the
15 outside and the lower half of the steering wheel was bent
16 underneath consistent with occupant bracing efforts.

17
18 (f) A non-protruding glass fracture was visible in
19 the windshield in front of the passenger seat consistent with
20 a possible unrestrained occupant impact. This fracture did not
21 appear to contain hair, scalp, or blood evidence.

22
23 7. On May 5, 2010, your affiant and FBI SA John
24 Pierson returned to RA 307 Smooth Mountain Road and contacted
25 resident Dorcita Skeet (Dorcita) within her residence. Dorcita
26 provided the following summarized information:

27
28 (a) Dorcita stated Nez had acknowledged knocking

1 Wemytewa unconscious during a fight on May 1, 2010, and she had
2 observed Nez drive the truck down the road and slide off into
3 the ditch.

4
5 (b) Dorcita further advised your affiant that Nez was
6 currently hiding within her residence.

7
8 8. Your affiant and SA Pierson took Nez into custody
9 without incident, transported him to the FBI Gallup Resident
10 Agency, and advised Nez of his rights per *Miranda*. Nez refused
11 to answer questions without legal representation. Your affiant
12 made the following physical observations:

13
14 (a) Nez had numerous injuries, to include: dental
15 stitches on his lower gums, a swollen chin and lip, abrasions
16 on his knuckles, and bruises on his stomach, thighs, and knees.

17
18 (b) Nez was transported from the FBI Gallup RA to the
19 McKinley County Adult Detention Center (MCDC) pending his
20 scheduled initial appearance in the United States District
21 Court of New Mexico on May 6, 2010.

22
23 9. Your affiant consulted with District of New
24 Mexico Assistant United States Attorney Chuck Barth regarding
25 the status of the investigation and pending prosecution. Your
26 affiant and AUSA Barth subsequently decided against proceeding
27 forward with the filing of criminal homicide charges against
28 Nez on May 6, 2010.

1 (a) Nez was subsequently released from FBI custody
2 and served with confirmed Arrest Warrant (#0381410) from
3 Bernalillo County. Nez remained in custody at the MCDC
4 facility pending his extradition to Albuquerque, New Mexico.

5
6 10. Your affiant and SA John McPherson returned to
7 RA 307 Smooth Mountain Road and contacted Calvin Skeet
8 (Calvin) regarding the events of May 1, 2010. Calvin provided
9 the following information:

10
11 (a) On May 1, 2010, Calvin came home with his wife,
12 daughter, and grandchildren from the "Family Dollar Store" and
13 observed Lolando Nez standing next to a pick-up parked in the
14 yard.

15
16 (b) Nez requested that Calvin walk over and look
17 into the truck cab. Calvin observed Wemytewa slumped behind
18 the steering wheel holding his head with his hands. Calvin was
19 worried Wemytewa would "die on his property."

20
21 (c) Calvin also stated there was blood inside the
22 cab of the truck, the pick up bed, and that Wemytewa had bloody
23 hair, hands, face, shirt, and pants. Calvin also observed that
24 Nez had blood covering both of his palms.

25
26 (d) Calvin drove from the property with his wife and
27 grandchildren to El Sobino and a nearby rodeo ground to contact
28 911. Calvin returned home and observed ambulance personnel

1 parked next to the pick-up truck in a ditch.

2
3 (e) Calvin assisted the ambulance personnel with the
4 stretcher while they removed Wemytewa from the passenger seat
5 of the vehicle. Calvin observed a steel "lining pole" in the
6 bed of the pick-up truck used for fencing projects on his
7 property.

8
9 11. Your affiant and SA John McPherson returned to
10 RA 307 Smooth Mountain Road and contacted Dorcita Skeet
11 (Dorcita) regarding the events of May 1, 2010. Dorcita
12 provided the following information:

13
14 (a) On May 1, 2010, Dorcita came home with her
15 parents and kids from the "Family Dollar Store" and observed
16 Lolando Nez standing next to a pick-up parked in the yard in
17 front of her residence.

18
19 (b) Dorcita stated Nez contacted her and described
20 "beating-up somebody" and "knocking them out." Nez described
21 getting into the fight with Wemytewa on the road across from a
22 neighboring residence after purchasing beer.

23
24 (c) Dorcita stated her parents left the residents in
25 their vehicle with her children to call 911 because her father
26 had seen a bloody man seated inside the vehicle. Dorcita told
27 Nez to leave and drove her own vehicle away from the property.

28

1 (d) Dorcita observed Nez get into the truck and
2 begin following her down road before losing control and sliding
3 into the ditch. Dorcita continued on the road and back to the
4 residence without stopping at the crash scene.

5
6 (e) Dorcita observed Nez get out of the vehicle and
7 walk behind her house to retrieve a large metal pipe. Nez
8 advised Dorcita that Wemytewa had locked the doors of the truck
9 and the engine was still running.

10
11 (f) Dorcita observed Nez walk to the truck and break
12 out the driver side window with the bar, reach through the
13 window, and turn off the ignition. Nez placed the bar in the
14 bed of the truck before fleeing into the woods.

15
16 (g) Dorcita described Nez returning to the residence
17 and assisting him in burning his clothing and shoes in a
18 garbage pit behind the residence. Dorcita also transported Nez
19 to a nearby abandoned residence to conceal the steel bar in an
20 disabled vehicle.

21
22 (h) Dorcita described taking Nez to the Fort
23 Defiance Hospital on May 3, 2010 to receive stitches in his
24 mouth for injuries sustained during the fight with Wemytewa.
25 Nez told Dorcita that Wemytewa had struck him in the face with
26 his knees and taken him to the ground.

27
28 (i) Dorcita stated that Nez and her children spent

1 the night in Gallup, NM at the Colonial Inn prior to speaking
2 with her the following day.

3
4 12. Your affiant and SA McPherson were taken by
5 Dorcita Skeet to the location of the burn pile, abandoned
6 vehicle, and the probable fight location. Your affiant
7 subsequently located and collected the spud bar, remnants of
8 clothing, shoes, and a cell phone, and a Budweiser beer can and
9 several dollar coins at the probable fight location.

10
11 13. Your affiant is aware that on May 6, 2010, FBI
12 SA John Pierson contacted the Maricopa County Office of the
13 Medical Examiner in Phoenix, Arizona regarding the preliminary
14 autopsy results of Ethan Wemytewa. Medical Investigator Henry
15 Farris consulted Forensic Pathologist Dr. William Stano and
16 provided the following conclusions:

17
18 (a) The autopsy concluded that Wemytewa died as a
19 result of blunt force trauma to the head consistent with the
20 circumstances of the described assault event.

21
22 (b) Lacerations identified above the right eye and
23 the left side of the forehead were consistent with the
24 infliction of (2) distinct blunt force events.

25
26 (c) Some of these injuries could potentially be
27 inflicted during the course of a motor-vehicle accident;
28 however, they would be considered inconsistent with a slide-

1 off event.

2
3 14. On May 6, 2010, your affiant received the
4 Prehospital Care Report from Medstar Ambulance Service in
5 reference to the May 1, 2010 call for service to RA 307 Smooth
6 Mountain Road. Emergency Medical Technician - Intermediate
7 (EMT-I) Benjamin Space made the following observations:

8
9 (a) "[Patient] found unresponsive across front seat
10 of truck. Approx 1500cc of blood found on seat of truck and on
11 [patient] clothing. No major damage found to truck w no airbag
12 deployment or windshield starring. [Patient] unresponsive to
13 noxious stimuli. 5 inch full thickness [laceration] found to
14 left forehead above eyebrow and 3-4 inch partial thickness
15 [laceration] found to right forehead. Eyes swollen shut w
16 bruising bi-laterally."

17
18 15. Your affiant is aware that on May 6, 2010, SA
19 Pierson contacted responding Medstar Ambulance Emergency
20 Medical Technician (EMT) Adam Halvorsen regarding his
21 observations on the May 1, 2010 service call at RA 370 Smooth
22 Mountain Road.

23
24 (a) Halvorsen has been an EMT with Medstar Ambulance
25 Service in Gallup, NM for approximately (1.5) years and in that
26 capacity has responded to fatal, injury, and property damages
27 motor vehicle accidents.

28

1 (b) Halvorsen identified a single male occupant in
2 the front passenger seat of the truck and described him as
3 covered in blood, further stating there was blood visible
4 throughout the interior of the cab.

5
6 (c) Halvorsen categorized the observed injuries to
7 the occupant, to include the bloody condition of the vehicle
8 interior, as inconsistent with the apparent mild nature of the
9 crash.

10
11 (d) Halvorsen did not notice any damages to the
12 exterior of the vehicle beyond a small crack visible on the
13 passenger side of the windshield.

14
15 16. On May 7, 2010, your affiant contacted Forensic
16 Pathologist Dr. William Stano regarding the autopsy of Ethan
17 Wemytewa. Your affiant provided Dr. Stano with scene photos
18 from RA 307 Smooth Mountain Road illustrating the nature of the
19 vehicle accident. Dr. Stano provided the following
20 conclusions:

21
22 (a) The injuries observed during Wemytewa's autopsy
23 were unlikely the result of the vehicle accident depicted in
24 the photos, and the location and appearance of the windshield
25 fracture make it further unlikely that Wemytewa's head
26 contacted the glass during the collision.

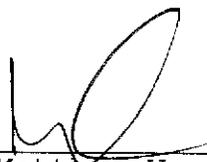
27
28 (b) The nature of Wemytewa's fatal injury, a sub-

1 dural hematoma, was more consistent and likely the result of an
2 assault scenario than the pictured vehicle accident.

3
4 17. Your affiant is aware that Lolando Nez has been
5 identified as an enrolled member of the Navajo Nation, and
6 Ethan Wemytewa has been identified as an enrolled member of the
7 Zuni Pueblo. The location of the offense, at or near RA 307
8 Smooth Mountain Road, Vanderwagen, New Mexico has been
9 determined to be within the exterior boundaries of the Navajo
10 Indian Reservation, or Indian Country.

11
12 18. Based on the information set forth in this
13 affidavit, your affiant submits that there is probable cause to
14 believe that Lolando Nez did commit murder in violation of
15 Title 18 United States Code Sections 1153 and 1111.

16
17 19. I swear that this information is true and
18 correct to the best of my knowledge and belief.

19
20
21 
22 Matthew W. Collar
23 Special Agent
24 Federal Bureau of Investigation
25 Gallup, New Mexico

26
27 Subscribed and sworn to before me
28 this 7 day of May, 2010.


United States Magistrate Judge