

**FILED****United States District Court** FEB - 2 2010DISTRICT OF New Mexico

UNITED STATES OF AMERICA

v.

MATTHEW J. DYKMAN

CLERK  
*A. Mendez*  
CRIMINAL COMPLAINT

CALBERT HENDERSON

CASE NUMBER: 10-MJ-277  
10-MG-006

(Name and Address of Defendant)

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 January 31, 2010 in McKinley county, in the \_\_\_\_\_ District of New Mexico defendant(s) did, (Track Statutory Language of Offense)

**assault with a dangerous weapon, with intent to do bodily harm, resulting in serious bodily injury, Anthony Ray Miller and Simone Smith, members of the Navajo Nation Tribe. This occurred on the Navajo Nation Indian Reservation, Indian Country, in violation of**

Title 18 United States Code, Section(s) 1153, 113(a)(3), 113(a)(6).

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

Official Title

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 -Chuck Barth

Sworn to before me and subscribed in my presence,

Signature of Complainant

John Fortunato

Special Agent

Federal Bureau of Investigation

Date

2/3/10  
*Robert W. J. [Signature]*  
Name & Title of Judicial Officer

at

City and State

Signature of Judicial Officer

1 CB/AUSA

2 NEW MEXICO

3 ALBUQUERQUE, NEW MEXICO

4 United States of America )

5 vs )

10-MJ-277

6 CALBERT HENDERSON )

10-MG-006

7 YEAR OF BIRTH: 1982 )

8

9

10 AFFIDAVIT

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

13

14 1. I am a Special Agent (SA) of the Federal Bureau of  
15 Investigation (FBI) and have been employed in that capacity  
16 for approximately six years. I am currently assigned to  
17 the Albuquerque Division of the FBI, and have primary  
18 investigative responsibility in crimes which occur in  
19 Indian Country including violent crimes such as robbery,  
20 aggravated assaults, and involuntary manslaughter.

21

22 2. The information set forth in this affidavit has  
23 been derived from an investigation conducted by the Navajo  
24 Nation Police Department, Criminal Investigator Malcolm  
25 Leslie (hereinafter referred to as CI Leslie), and Special  
26 Agent John Fortunato (hereinafter referred to as SA  
27 Fortunato), Gallup Resident Agency, as well as other law  
28 enforcement officers of the Navajo Nation Police Department

1 and communicated to the affiant by the above.

2  
3 3. On January 31, 2010, Anthony Ray Miller  
4 (hereinafter referred to as Miller) and Simone Smith  
5 (hereinafter referred to as Smith) were admitted into the  
6 Gallup Indian Medical Center (hereinafter referred to as  
7 GIMC) in Gallup, New Mexico, to receive treatment for  
8 injuries resulting from gunshot wounds. Miller was shot in  
9 the groin area causing trauma to his upper left thigh, the  
10 projectile remaining inside the leg. Miller has not been  
11 released as of the date of this affidavit. Smith was shot  
12 through the base of her right thumb with the projectile  
13 passing through (not recovered). Smith was treated at GIMC  
14 and released later that morning.

15  
16 4. On January 31, 2010, SA Fortunato and CI Leslie  
17 interviewed Perris Arthur and Nathan Davis who both stated  
18 they were driving with Calvert Henderson (hereinafter  
19 referred to as Henderson) in a White Ford Mustang belonging  
20 to Henderson. During the early morning hours of January  
21 31, 2010, the group drove to the Smith residence  
22 (identified as 301 C Jones Ranch Road, Jones Ranch, New  
23 Mexico) because they observed a group of people and  
24 vehicles in front of the house. As they drove up the  
25 driveway, a vehicle, reversing down the driveway, collided  
26 with the Henderson's vehicle. An individual by the name of  
27 Anthony (identified as Anthony Miller) walked to  
28 Henderson's car and an altercation ensued between Henderson

1 and Miller, mostly Miller pushing and yelling at Henderson.  
2 Henderson attempted to drive away. Miller began to hit  
3 Henderson's vehicle with his fists and run beside  
4 Henderson's driver's side door. Henderson grabbed a .22  
5 caliber revolver that had in the vehicle and fired one shot  
6 in the air and then several shots at Miller. Henderson,  
7 Perris Arthur, and Nathan Davis then left the scene and  
8 drove back to Henderson's mother's house (identified as 531  
9 Jones Ranch Road, Jones Ranch, New Mexico).


10  
11 5. On February 1, 2010, Henderson signed an advice of  
12 rights and agreed to be interviewed by SA Fortunato and CI  
13 Leslie. Henderson's stated that during the early morning  
14 hours of January 31, 2010, he traveled to the Smith  
15 residence, got into an altercation with Miller and fired a  
16 .22 caliber revolver several times at Miller as he drove  
17 away.

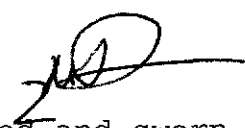
18  
19 6. Based on the information provided, there is  
20 probable cause to believe that on or about January 31,  
21 2010, Anthony Ray Miller and Simone Smith, enrolled members  
22 of the Navajo Nation Indian Tribe, were within the  
23 territorial jurisdiction of the Navajo Nation Indian  
24 Reservation, Indian Country, and were assaulted with a  
25 firearm by Calbert Henderson, also an enrolled member of  
26 the Navajo Nation Indian Tribe, in violation of Title 18,  
27 United States Code, Section 1153, Section 113 (a)(3),  
28 113(a)(6), : assault with a dangerous weapon, with intent to

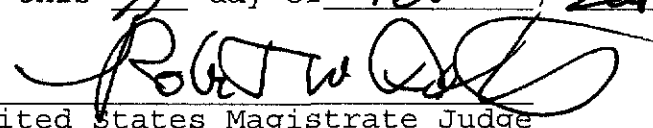
1 do bodily harm, and assault resulting in serious bodily  
2 injury, which occurred on the Navajo Nation Indian  
3 Reservation, Indian Country.

4  
5 I swear that this information is true and correct  
6 to the best of my knowledge and  
7 belief.

8  
9  
10 Affiant

  
John Fortunato  
Special Agent  
Federal Bureau of  
Investigation  
Gallup, New Mexico

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15   
16 Subscribed and sworn before me  
on this 3 day of Feb, 2010.

17   
18 United States Magistrate Judge  
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