

FILED

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

UNITED STATES DISTRICT COURT

for the

AUG 11 2011 *ds*

United States of America)

v.)

David R. Martinez)

Year of Birth 1985)

SSN xxx-xx-8981)

Defendant(s)

MATTHEW J. DYKMAN

Case No. 11MS206 CLERK

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 08/10/2011 in the county of Rio Arriba in the
State District of New Mexico, the defendant(s) violated:

Code Section

18 USC 1152, 113(a)3 and 2111

Offense Description

The defendant a non Indian, committed an assault with a dangerous weapon with the intent to do bodily harm to the person of Joseph L. Naranjo, an Indian, without just cause or excuse while in Indian Country.

The defendant, a non Indian, used force, violence and intimidation to take something of value from the person of Joseph L. Naranjo an Indian, while in Indian Country.

This criminal complaint is based on these facts:

refer to attached affidavit

☒ Continued on the attached sheet.*JP Montowine*

Complainant's signature

JP Montowine 8/11/11

Printed name and title

Sworn to before me and signed in my presence.

Date: 11 AUG 11City and state: ALBUQUERQUE, NEW MEXICO*W. DANIEL SCHNEIDER*

W. DANIEL SCHNEIDER

UNITED STATES MAGISTRATE JUDGE

Printed name and title

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

UNITED STATES OF AMERICA)

VS.

**David R. Martinez
Year of Birth 1985
SSN xxx-xx-8981**

Case No: _____

AFFIDAVIT

I, J.P. MONTOWINE, being duly sworn, depose and say the following:

1. I am a Special Agent (SA) with the Bureau of Indian Affairs (BIA) assigned to the Northern Pueblos Agency in Ohkay Owingeh, New Mexico, which provides law enforcement services to the Eight Northern Indian Pueblos and other Indian Country Entities within the State of New Mexico. My primary duties are investigating violations of the Major Crimes Act, which occur on the reservations to which I am assigned. I have seventeen total years of law enforcement experience with two different law enforcement entities. I have been with the Bureau of Indian Affairs, Office of Justice Services for fifteen years. I have completed the Basic Criminal Investigation Course at the Federal Law Enforcement Training Center in Glynco, Georgia and the Basic Police Training with the United States Indian Police Academy at the Federal Law Enforcement Training Center in Artesia, New Mexico. I have extensive in-service and technical training in different aspects of Law Enforcement. Investigations of Assault with a Dangerous Weapon and Armed Robbery are some of my responsibilities.

2. Because this affidavit is being submitted for the purpose of securing a Warrant for Arrest, I have not included each and every fact known to me concerning this investigation. The information set forth in this affidavit is known to me as a result of my own investigation, or has been communicated to me by other law enforcement officers and or agents. I have set forth facts I believe are necessary to establish Probable Cause to arrest **David R. Martinez**, a non Indian, for the crimes of Assault with a Dangerous Weapon and Armed Robbery while in Indian Country.

3. On August 10, 2011, I learned of an Assault with a Dangerous Weapon and Armed Robbery, from the Santa Clara Tribal Police Department. It was determined the suspect of the robbery was a non Indian and the victim was an Indian. It was also determined the robbery was committed in Indian Country.

4. The location of this robbery has been identified as the Automatic Teller Machine (ATM), located on the property of the Zia Credit Union (Española Branch), 707

Riverside Drive, Espanola New Mexico. The location is within the exterior boundaries of the Santa Clara Pueblo Indian Land Grant, and is "Indian Country."

5. The victim of this robbery has been identified as Joseph L. Naranjo, an Indian. He will be referred to as Naranjo for the remainder of this affidavit. Naranjo has a year of birth of 1941 and a Social Security Account Number of xxx-xx-4233. Naranjo is an enrolled member of the Santa Clara Pueblo Indian Tribe.

6. The suspect of this investigation has been identified as **David R. Martinez**, a non Indian, with a year of birth of 1985, Social Security Account No: xxx-xx-8981. He will be referred to as **Martinez** for the remainder of this affidavit.

7. On Wednesday, August 10, 2011, at approximately 11:00 am, The Espanola city Police Department responded to an armed robbery at the ATM of the Zia Credit Union.

8. On the same date at about 11:35 a.m., I arrived at the Zia Credit Union. I was briefed of the circumstances surrounding the robbery by Lieutenant (Lt.) Christen Lopez of the Espanola Police Department. Lt. Lopez explained the victim drove up to the ATM in his personal vehicle and was attempting to retrieve money. An unidentified male subject approached the victim. The victim was seated in his vehicle. The suspect demanded the victim give him money. The victim attempted to retrieve money, however, the ATM malfunctioned. On the second attempt, the suspect punched in the dollar amount on the keyboard. The suspect forcibly removed the keys from the victim's vehicle. The suspect fled with about \$140.00. The suspect dropped a red cloth of some type and left it at the crime scene. The suspect was armed with a knife and threatened to kill the victim.

9. The credit union allowed investigators to view surveillance footage of the robbery. The footage shows the victim sitting in his vehicle parked at the ATM. An unidentified male suspect exits the passenger side of a black Chevy pickup which is parked in the parking lot west of the ATM. The suspect quickly walks to the ATM. The suspect wedges himself between the ATM and the victim's car. The ATM blocks the view of the robbery. The victim and suspect are together for approximately a minute and a half. The suspect then runs to the black Chevy pickup, jumps on the bumper, and the pickup flees the scene.

10. The surveillance footage shows the suspect to be of slender build. The suspect is wearing white tennis shoes, blue denim shorts, a black shirt, a red over shirt, and a black cap. The suspect appears to be of Hispanic or Native American descent.

11. At this time, investigators were notified that an unidentified female individual had driven to the State Police Office in Espanola, NM, and reported she may have been involved in a robbery. Lt. Lopez and I proceeded to the State Police Office.

12. At the State Police Office we met with a female individual who identified herself as Erin Martinez, a non Indian. She will be referred to as Erin for the remainder of this affidavit. Erin has a year of birth of 1986 and a Social Security Account Number of xxx-xx-3956.

13. Lt. Lopez and I interviewed Erin. Erin acknowledged she was the driver of the black Chevy pickup. Erin identified the robbery suspect as her ex-boyfriend **David R. Martinez**. Erin said **Martinez** called her at about 9:00 a.m. on this same date and demanded she go to his house in Alcalde, NM, and pick him up. Erin drove to **Martinez**' residence and picked him up. **Martinez** was acting strange. **Martinez** demanded money from Erin. She told him she did not have any. **Martinez** forcibly took her purse and attempted to find her ATM card. He could not find it. **Martinez** slapped Erin in the back of the head as she drove. Erin was scared. **Martinez** demanded she take him to the ATM located by the AutoZone in Espanola, NM. Erin drove him there. The ATM had been removed. **Martinez** then demanded she drive him to the ATM by the Wal-Mart in Espanola, NM. The ATM was sitting in the middle of a construction zone. **Martinez** became enraged. **Martinez** held an unknown object to the right side of his leg. Erin suspected it was a knife. **Martinez** then demanded Erin drive him to the Zia Credit Union in Espanola, NM. She did so. While enroute to the credit union, **Martinez** continued to act strange and continued to slap Erin in the back of the head as she drove. Erin said she was scared and attempted to get the attention of law enforcement by breaking traffic laws and flashing her lights at the police in an attempt to get stopped. Erin pulled into the credit union and parked. **Martinez** told her "you better not leave." You better stay here." Erin was scared and stayed. **Martinez** exited the truck and was gone for a few minutes. He walked towards the ATM. Erin could not see what occurred at the ATM. **Martinez** suddenly ran back to the truck and jumped into the back. **Martinez** yelled, "Go, go, get the fuck out of here." Erin complied. As she drove on upper San Pedro Road, **Martinez** entered the pickup from the rear sliding window. She did not see it, but she suspected he had just committed a robbery. **Martinez** threw something out the window. Erin threatened to go to the police. **Martinez** then jumped out of the vehicle and fled on foot to an unknown location. Erin then drove directly to the State Police Office. Erin was upset and cried during the interview. Erin described how **Martinez** was dressed during the robbery. Her description matched that of the subject depicted on the video surveillance. Erin said the cap worn by **Martinez** was in the pickup

14. The pickup truck is a black 1999 Chevy bearing New Mexico license plate number LXC-240. The pick was impounded and is being held as evidence for further investigation and processing.

15. On this same date at about 2:00 p.m., I interviewed the victim at the City of Espanola Police Department. The victim identified himself as Joseph L. Naranjo. Naranjo said he drove up to the ATM located at the Zia credit Union. He swiped his card. Suddenly a young unidentified male subject was standing between Naranjo's car and the ATM. The subject said, "I need money." "I need four hundred dollars." The subject had a knife with a serrated edge. Naranjo was scared and nervous. Naranjo told the subject, "I don't have four hundred dollars." The subject said, "I will fuckin kill you." Naranjo said he tried to withdraw funds and the machine malfunctioned. The subject said, "You have thirty seconds, or I'm going to kill you." Naranjo swiped his card again and entered the PIN. Naranjo was scared and could not punch in the dollar amount. The subject punched in the dollar amount himself. The subject continued to

demand the money. The money came out the dispenser and the subject kept demanding Naranjo give it to him. The subject continued to threaten Naranjo with the knife. The subject said, "Give me your ring, or I will kill you." Naranjo could not get the ring off his finger. The subject held the knife to Naranjo's back with his right hand and took the keys out of the ignition with his left hand. The subject had trouble doing so. The subject then realized the money was in the dispenser. He grabbed it and ran off. Naranjo said it was \$140.00. Throughout the ordeal, Naranjo feared for his life. Naranjo could only describe the subject as being young, slender, and wearing a red shirt. I ended the interview.

16. On this same date at about 4:30 p.m., I was notified that **Martinez** turned himself in to the Rio Arriba County Sheriff. **Martinez** was detained at the Espanola City Police Department.

17. I arrived at the Espanola Police Department. I spoke to Police Officer Apadoca. Officer Apadoca said as he was transporting **Martinez** to the jail, **Martinez** inquired as to why he was facing Federal charges. Officer Apadoca explained it was because he robbed a tribal member. **Martinez** then replied, "I should have just killed him." **Martinez** then said, "I fucked up."

18. I introduced myself as a Special Agent with the US Bureau of Indian Affairs to **Martinez**. I asked **Martinez** if he wanted to talk to me about the robbery. I read him his Miranda Warning. **Martinez** said he was ready to admit to the whole incident. **Martinez** then asked for a phone call. **Martinez** invoked his right to remain silent and have his attorney present during questioning. **Martinez** suddenly became abusive towards me. He called me a "fuckin pig" and stated, "all you cops are corrupt. **Martinez** had to be physically restrained by the Espanola Police Officers. **Martinez** then stated, "I should have killed that old man." I advised **Martinez** he was under arrest for Assault with Dangerous Weapon and Robbery. "**Martinez** again stated, I should have killed him."

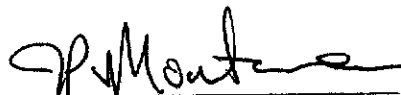
19. **Martinez** was placed in a holding cell at the Espanola City Police Department. **Martinez** was present with two Espanola police officers and a detention officer. **Martinez** purposely attempted to break his thumb and was able to free himself from one of the handcuffs which restrained him. **Martinez** refused officer commands to stop his action. **Martinez** then lunged at one police officer. Subsequently a tazer was deployed and used to subdue **Martinez**. **Martinez** was treated for minor injuries.

20. As **Martinez** was being lead out to a BIA Police Unit, he stated one more time, "I should have killed him."

21. Based on the above mentioned facts, known to me concerning this investigation, I believe probable cause exists to arrest **David R. Martinez** a non Indian for the crime of Assault with a Dangerous Weapon to the person of Joseph L. Naranjo an Indian with the attempt to do bodily harm without just cause or excuse and robbery for the use of force, violence and intimidation in which he took something of value from Joseph L. Naranjo,

an Indian, while in Indian Country, in violation Title 18, United States Code, Section 1152, 113(a)(3), and 2111.

I swear this information is the truth to the best of my knowledge and belief.



J.P. Montowine
Special Agent
BIA/NPA/OLES

Subscribed and sworn to before me
This 11th Day of August, 2011.



United States Magistrate Judge