

UNITED STATES DISTRICT COURT

for the District of New Mexico

FILED UNITED STATES DISTRICT COURT ALBUQUERQUE, NEW MEXICO

OCT 29 2015

MATTHEW J. DYKMAN CLERK

15 mr 683

In the Matter of the Search of (Briefly describe the property to be searched or identify the person by name and address)

Obtain DNA evidence via buccal swab from Richmond Sam

Case No.

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

The body of Richmond Sam

located in the District of New Mexico, there is now concealed (identify the person or describe the property to be seized):

Obtain DNA evidence via buccal swab from Richmond Sam

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- [x] evidence of a crime; [] contraband, fruits of crime, or other items illegally possessed; [] property designed for use, intended for use, or used in committing a crime; [] a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Table with 2 columns: Code Section, Offense Description. Rows include 18 U.S.C. Section 1111 (Murder), 18 U.S.C. Section 1153 (The murder of one Indian against another), and 18 U.S.C. Section 922(g) (Felon in possession of a firearm).

The application is based on these facts:

See attached affidavit

- [x] Continued on the attached sheet. [] Delayed notice of days (give exact ending date if more than 30 days:) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature: Ross Zuercher, Special Agent - FBI

Sworn to before me and signed in my presence.

Date: 10-29-15

Judge's signature: Kirtan Khalsa U.S. Magistrate Judge

City and state: Albuquerque, New Mexico

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

Your Affiant, Ross Zuercher, having been duly sworn, does hereby depose and say:

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a search warrant authorizing the collection of deoxyribonucleic acid (DNA) evidence.
2. I have been a Special Agent (SA) of the Federal Bureau of Investigation (FBI), United States Department of Justice, since August 2012. As such, I am a "federal law enforcement officer" within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request both a search warrant and arrest warrants. As a Special Agent, I am authorized to investigate suspected violations of federal laws, including Title 18, United States Code, Sections 1111, 922(g), and 1153.
3. I make this affidavit based on personal knowledge derived from my participation in this investigation, as well as information provided to me by other law enforcement officers and witnesses.
4. This affidavit is submitted in support of an order authorizing the search of Richmond Sam's person, and does not set forth all of my knowledge about this matter.

RELEVANT STATUTES

5. This investigation concerns alleged violations of certain activities relating to crimes occurring in Indian Country; Title 18 U.S.C. §§ 1111, 922(g) and 1153.
 - a. 18 U.S.C. § 1111 makes it a federal crime for any person who unlawfully kills another human being with malice aforethought.
 - i. 18 U.S.C. § 1153(a) makes it a federal crime for any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely murder.
 - b. 18 U.S.C. § 922(g) makes it a federal crime for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year to possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

DETAILS OF THE INVESTIGATION

6. On July 30, 2015, the Albuquerque Division of the FBI was notified of the shooting death of John Doe near Counselor, New Mexico. The shooting was conducted by Richmond Sam (SAM) on the property he occupied.

7. According to JH, the brother of John Doe, the two men plus their other brothers, left their residence some time during the afternoon of July 29, 2015. The four men bought a 12 pack of Old English malt liquor. After consuming the liquor, JH told his brothers that SAM owed JH approximately \$45 that he lent SAM for gas money several months ago. The brothers decided to collect the debt.
8. Around midnight of July 30, 2015, the four men arrived at SAM's residence shouting that he owed JH money, and to pay his debts. The men tried to call SAM out of the residence to confront him. After the unsuccessful attempts to coax SAM from his residence, John Doe and a brother began to smash the car windows of the two automobiles parked outside of SAM's residence. The windows were smashed with iron fence posts obtained from the property.
9. JH stated that he saw a man, although he could not make out his face begin to fire live ammunition at the four brothers. JH stated that he heard between three and five rounds being fired while they were outside of their vehicle. After the shots were fired, the four brothers got into their vehicle and fled the property. John Doe was driving the vehicle and JH was sitting next to him on the passenger side. As the vehicle sped away down SAM's driveway, several more shots were fired at the vehicle. One round broke the back window of the vehicle. One of the rounds fired entered the back of John Doe's neck, and exited the oral cavity. JH stated that he saw his brother, John Doe, slump forward with blood coming out of his mouth. John Doe had made painful moaning noises as he slumped forward. JH used his left hand to steady the steering wheel of the vehicle as it headed down a steep grade in the driveway. The vehicle then crashed into a small ditch. JH got out of the vehicle, grabbed John Doe from the driver's seat, and placed him into the rear seat of the vehicle. JH could not recall where the other two brothers went.
10. JH drove the vehicle to John Doe's mother's house, located approximately four miles from SAM's residence. John Doe's mother, EB, was notified of the incident. John Doe died sometime between being struck with the round of ammunition and the drive to the EB's residence.
11. Emergency response was contacted, and a search for SAM commenced. At approximately 5 a.m., SAM surrendered to the San Juan County Sheriff's Office and was detained. The Sheriff's Office transferred custody of SAM to the Navajo Tribal Police Department.
12. The FBI arrived at SAM's residence and conducted a search of the areas outside the area of the residence. Much of residence was open field with no discernible fencing or property line. Several items of interest were found, including rifle casings, matched in caliber, that grouped in two separate areas of the property as well as an AK-47 rifle with a drum magazine and a chambered live round of ammunition. The rifle was found wrapped in a blanket and placed inside a bush.

13. The FBI interviewed SAM who said that on the night of July 29, 2015 and while he was watching a movie in his residence, SAM heard a loud commotion coming from outside his residence. The sound was that somebody was trying to break into his home by pounding on his entrance door. SAM held the door shut with his body weight. While holding the door closed, SAM said that he heard a loud bang that sounded like a gunshot. Eventually the intruders lost interest into gaining access to the residence. SAM said that he heard a vehicle shift into drive, and believed it to be the best chance to escape from his residence. SAM said that he ran to his cousin's house occupied by Mr. Henry. SAM said he had a conversation with Mr. Henry regarding the intruders and asked for a weapon. SAM said that Mr. Henry gave him an AK-47 rifle. SAM moved around the west side of the house towards the north and positioned himself next to a woodpile. SAM then said that he was fired upon twice by what he believed to be a rifle. SAM said that he thought it was a rifle because he could see the light reflecting off what looked to be a long barrel. SAM said he returned fire and shot approximately five times. SAM saw approximately four to six men scatter. Although he could not make out their faces, SAM saw the men enter a white or green vehicle. After the men entered the vehicle it then started to drive away from SAM and towards the end of his driveway. SAM moved to a position closer to the departing vehicle behind a metal structure and shot an additional five rounds at the departing vehicle. Second position was approximately 50 feet closer to the vehicle. SAM was unsure if he hit anything or anyone, but did say that he heard what sounded like a vehicle crash after he opened fire the second time.
14. SAM then took the rifle to a location northwest of his position, covered it with a blanket, and placed it inside a bush. SAM then fled his residence until his eventual detention by the San Juan County Sheriff's Office.
15. SAM is currently incarcerated at the Sandoval County Detention Center in Bernalillo, New Mexico.
16. Through my training and experience, deoxyribonucleic acid (DNA) exists in skin cells as well as bodily fluids such as blood, sweat, and saliva which contain unique identifiers to that individual.
17. Forensic scientists can derive a DNA profile of the individual from whom the DNA was taken to compare with another profile and mathematically include or exclude that individual with the compared profile.
18. Your Affiant also knows that DNA evidence is often left behind on the surfaces of a firearm and ammunition as a result of handling those objects.

Interstate Nexus

19. According to 18 U.S.C. § 922(g), interstate or foreign commerce must be affected. The rifle used by SAM was an AK-47 that was manufactured in China. Thus, your Affiant believes that the interstate nexus requirement is satisfied.

Federal Jurisdiction

- 20. SAM is a currently enrolled tribal member of the Navajo Nation.
- 21. John Doe is also enrolled as a tribal member of the Navajo Nation.
- 22. The shooting and eventual death of John Doe entirely took place within the exterior boundaries of the Navajo Nation.

Prior Conviction

- 23. SAM pled guilty to the New Mexico state charge of aggravated assault upon a peace officer. As a result of the charge, SAM was sentenced to jail time as well as probation. SAM was still serving his probation when the incident described above occurred.

CRIME PUNISHABLE
BY IMPRISONMENT
FOR A TERM EXCEEDING ONE YEAR.

Conclusion


- 24. Based on the above information, I believe there is probable cause to collect evidence, specifically DNA evidence via buccal swab and blood via finger prick from Richmond Sam for the alleged violation of 18 United States Code Section 1111; murder, and 18 United States Code Section 922(g); felon in possession of a firearm. This forensic evidence to be secured will be relevant and material to determining Richmond Sam's possession of the firearm used in the shooting death of John Doe by way of comparative forensic analysis with the items recovered from the crime scene.
- 25. Based upon the foregoing, this Affiant respectfully requests that this Court issue a search warrant for the person of Richmond Sam, authorizing the collection of DNA evidence from his saliva via buccal swab.
- 26. I swear that this information is true and correct to the best of my knowledge.

RZ



 Ross Zuercher, FBI Special Agent

SUBSCRIBED and SWORN to before me this 29th day of October, 2015.



 United States Magistrate Judge

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