

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

EAST-CENTRAL JUDICIAL DISTRICT

IN DISTRICT COURT

ARREST WARRANT

TO ANY PEACE OFFICER OF THIS STATE:

Affidavit having been made before me by Lieutenant Pat Claus, Fargo Police Department, that they have reason to believe that there is probable cause for the arrest of

MICHAEL ALLEN NAKVINDA

Date of birth 1968

6 foot 2 inches, approximately 185 lbs, blue eyes, light brown hair

and as I am satisfied that there is probable cause to believe that there is probable cause for his arrest;

NOW THEREFORE,

YOU ARE HEREBY COMMANDED to arrest:

MICHAEL ALLEN NAKVINDA

Date of birth 1968

6 foot 2 inches, approximately 185 lbs, blue eyes, light brown hair

Given under my hand, with the seal of said Court affixed, this 31 day of October, 2009.

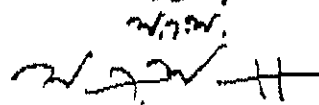


Magistrate

(To be completed by Magistrate)

Time of Issuance 4:52 a.m.

FURTHER, the Court directs this Arrest Warrant to be kept Under Seal until further Order of the Court or as may be otherwise discoverable pursuant to North Dakota Rules of Criminal Procedure on a pending criminal matter. *Arrest Warrant under seal until Michael Allen Nakvinda is arrested, then no longer under seal. So Ordered.*



Magistrate

FILED-CLERK OF DISTRICT COURT

NOV 02 2009

CASS COUNTY, ND

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

EAST-CENTRAL JUDICIAL DISTRICT

IN DISTRICT COURT

APPLICATION AND AFFIDAVIT FOR ARREST WARRANT

IN THE MATTER OF APPLICATION of Lieutenant Pat Claus of the Fargo Police Department, for an arrest warrant to arrest:

MICHAEL ALLEN NAKVINDA

Date of birth . 1968

6 foot 2 inches, approximately 185 lbs, blue eyes, light brown hair

STATE OF NORTH DAKOTA)

) ss.

AFFIDAVIT

COUNTY OF CASS)

Pat Claus
10/31/09 *2/27/10 10/31/09*

~~Kelly DeBerg~~, being first duly sworn under oath, deposes and states there is probable cause to believe that MICHAEL ALLEN NAKVINDA has committed the crimes of:

- Murder, North Dakota Century Code § 12.1-16-01 (1)(c), a class AA felony and/or;
- Robbery, North Dakota Century Code § 12.1-22-01, a class A felony and/or;
- Burglary, North Dakota Century Code § 12.1-22-02, a class B felony and/or;
- Theft, in violation of North Dakota Century Code § 12.1-23-02 and 12.1-23-04, a class B Felony.

In support of your affiant's assertion as to the existence of probable cause, the information contained on the attached "Exhibit A" is offered. Such Exhibit is incorporated herein as if set forth verbatim.

WHEREFORE, YOUR AFFIANT REQUESTS that the Court issue an arrest warrant directing the arrest of MICHAEL ALLEN NAKVINDA.

Subscribed and sworn to before me

this 31 day of October, 2009.

[Handwritten signature]

[Handwritten signature]
Affiant

Magistrate

EXHIBIT A

Your affiant, Lieutenant Patrick Claus, is a lieutenant with the Fargo Police Department in charge of investigations. I am a 19 year law enforcement veteran with 10 of those years assigned to the investigations division as either a detective or a supervisor. Your affiant has participated in the investigations of over 200 felony cases including supervising in 3 homicide investigations in the last three years.

On October 26, 2009, Phillip Mario Gattuso, dob [redacted], 1960 was found dead in his home at [redacted] Fargo, North Dakota. The North Dakota coroner determined the cause of death to be multiple blows to the head with a hammer.

In processing the crime scene, it was discovered by Fargo Police that several items were missing from Mr. Gattuso's residence. These items included two laptop computers, a Cannon Powershot camera, a Panasonic video camera, a Blackberry phone and a Netgera wifi phone.

Mr. Gattuso was the owner of a silver 1999 Porsche Boxter. A records check with the North Dakota Department of Motor Vehicles revealed that there were only two such vehicles registered in Cass County. Your affiant contacted the owner of the other 1999 Porsche Boxter and was advised that he had traded the vehicle four years ago. Thus, Mr. Gattuso's silver 1999 Porsche Boxter was the only such vehicle registered in Cass County North Dakota.

On the morning of October 26, 2009, Mr. Gattuso drove his silver 1999 Porsche Boxter to drop off his 3 year old daughter at her daycare at approximately 8:30 a.m. According to a calendar in Mr. Gattuso's home, he was scheduled for a teleconference at 10:30 a.m. with Mr. Paul Sletten, a dentistry employment consultant. Mr. Gattuso was a paradontist by trade. Mr. Sletten was interviewed by detectives with the Fargo Police Department and reported that Mr. Gattuso missed his phone appointment and had not returned any of his follow-up phone calls.

At approximately 10:30 a.m. to 10:40 a.m. that morning, Ms. Deborah Cook, an employee of a dental office neighboring Mr. Gattuso's home, observed the silver Porsche backing out of the driveway of his residence. Ms. Cook is familiar with Mr. Gattuso's vehicle as the business she works at is next door to Mr. Gattuso's house and she has seen it many times. She did not see who was driving the vehicle.

Fargo Police also interviewed Mr. Jim Tandeski, the owner of a business named "The Bowler", located one block south of the victim's home. Mr. Tandeski reported he arrived at work that morning at approximately 9:00 a.m. He observed what he described as a black Chevy club cab pickup truck, possibly 1995 or newer, with a flatbed UHAUL trailer attached to it, parked in the north east corner of his parking lot. He said the pickup had an Oklahoma license plate and he believed the trailer had an Illinois license plate. He also observed the vehicle to have a tonneau cover on the bed of the pickup with a very strong green design. Mr. Tandeski reported there was a surveillance video on the north end of The Bowler's parking lot.

A review of The Bowler surveillance video footage by your affiant shows the described vehicle pulling into the parking lot at approximately 0729 with a tandem, wheeled flatbed trailer. An occupant of the vehicle is then seen crossing 26th Avenue on foot heading north towards the direction of Mr. Gattuso's condominium complex.

[Handwritten signature] 10/31/09

On the north side of the street is located an A&W restaurant. Review of the A&W restaurant surveillance video footage by Fargo Police detectives revealed the legs of an individual crossing through this parking lot to the north. Your affiant is aware that there is a sidewalk connecting the A&W parking lot to the condominium complex where the victim's residence is located. From this approximate location in the A&W parking lot, one has a clear view of the garage and front door of Mr. Gattuso's condominium and could observe his vehicle coming and going.

At 10:52 a.m. on The Bowler surveillance video, a light color vehicle matching the size and shape of the victim's car can be seen traveling east on 26th Avenue. The vehicle then slows and is believed to have turned into the paved parking garage area of _____ At 10:56 a.m., video surveillance shows the dark pickup and tandem trailer leaving The Bowler parking lot and backing into the same area described above.

Your affiant is aware that Fargo Police investigators interviewed Jamie Viker who lives at _____ Ms. Viker reported that at approximately 11:00 a.m. that day, she looked out her back window and saw an older 1990's style pickup, dark green pulling a car on a trailer whom she believed had a California license plate. She went outside to dump her trash and spoke to a white male, slender build, late 20's to early 30's, possibly blonde hair, lying under the trailer. The male told her the vehicle had been bought on E-Bay and he was just delivering it. She described the car as a silver vehicle with a black cover and having the word "Boxter" written on the back of the vehicle.

A continuing review of The Bowler video shows a dark colored pickup truck pulling a trailer with a light color vehicle matching the size and shape of Mr. Gattuso's car leaving the parking lot of _____ at 11:31 a.m. and traveling west bound. Your affiant, through my personal knowledge and experience, recognize the shape and size of this pickup as being consistent with a mid to late 1990's model Chevy or GMC pickup. An additional camera at The Bowler shows the same vehicle and tandem trailer with the car on it driving south bound on University Drive South.

On October 29, 2009, your affiant contacted the Oklahoma Bureau of Investigation and requested they attempt to locate any UHAUL trailers which were rented or returned in the Oklahoma City area. On that same date, Oklahoma Bureau of Investigations advised that Mr. Michael Nakvinda had rented a UHAUL trailer from October 23, 2009 to October 27, 2009. UHAUL records indicate that he was driving a 1999 Chevy Silverado pickup with Oklahoma license plate numbers 591 AEY. Oklahoma Bureau of Investigations advised that Mr. Nakvinda had an extensive criminal history that included arrests for unauthorized use of a motor vehicle, concealing stolen property, assault, felon in possession of a firearm, rape, burglary, armed robbery and kidnapping. Also provided was a department of motor vehicle photo for Mr. Nakvinda.

Mr. Tom Frankel was also interviewed by your affiant. He was exercising on October 26, 2009 on a treadmill at the Southpoint medical facility on 32nd Avenue South and 25th Street. At approximately 11 to 11:30 a.m., he observed a dark blue extended cab pickup truck traveling west bound pulling a tandem trailer with a car completely covered, including the wheels, by a tarp. Driving southbound from The Bowler on University Drive South, the next major intersection is 32nd Avenue South. Traveling westbound on 32nd Avenue South leads one to Interstate 29.

Your affiant is aware that Carroll Ray Griffith was interviewed by Fargo Police Investigators. Griffith advised that on the same day at approximately 2:00 p.m., at a South Dakota State rest stop located 2.5 miles south of the North Dakota border, he observed a dark or black colored Chevy pickup with a UHAUL trailer carrying a vehicle which was completely covered with a grey colored tarp. He observed the pickup had Oklahoma license plates with the word "Native" printed above the license numbers. The driver was described as a white male, 6 foot to 6 foot one inches tall, slender or thin build, about 45 to 50 years old, with brown wavy hair and no facial

W. J. 10/31/09

hair. Griffith's stated the driver of the pickup advised that the car was a 1999 Porsche Boxter that he purchased over the internet and had traveled to Canada to pick up the car. He paid \$12,000 cash for the vehicle. Griffith noted the tarping of the car completely covered the car including license plates and wheels. He also believed the driver was somewhat nervous as he repeatedly checked the tarp to make sure the car was completely covered despite the fact the car was well covered.

In a subsequent interview, Mr. Griffith was provided a photo lineup by Fargo Police detectives. Mr. Griffith picked out one photograph out of the lineup which he stated could quite possibly be the individual he spoke to at the truck stop, but he no longer had facial hair. That photo was indeed a picture of Mr. Nakvinda with a goatee.

Mr. Darwin Lusty was also in the vehicle with Mr. Griffith but did not speak with the driver of the dark pickup truck. He described the vehicle as a black, possible '80's model GMC or Chevy pickup with no front license plate, pulling a trailer with a vehicle covered with a tarp. He was also independently shown a photo lineup and chose two individuals who were possibly the driver of the pickup truck. One of the individuals chosen was Mr. Nakvinda.

Your affiant has reviewed surveillance videos from the aforementioned rest stop obtained from the South Dakota Department of Criminal Investigation. The video corroborates Griffith's statements about his interaction with the above driver and the appearance of the pickup truck and tandem trailer described by both parties. Further review of the video shows the trailer bearing a license plate with the numbers E851796. In addition, the driver of the dark pickup truck can be clearly seen entering the rest stop with an empty black garbage bag and a change of clothing. Your affiant also observed on the left thigh of the subject's pants what appears to be a red stain. He is subsequently seen exiting the reststop wearing a different shirt and pants and carrying a black garbage bag which now has items in it, presumably the old clothing items which cannot be seen anywhere else.

Comparing the Oklahoma DMV photo of Mr. Nakvinda and the clear image of the driver in the rest stop surveillance video, your affiant believes the individuals are one in the same.

Your affiant is aware that Fargo Police detectives who have traveled to Oklahoma City and who are working in conjunction with the Oklahoma Bureau of Investigations have confirmed that the trailer rented by Mr. Nakvinda bears the license place number of E851796. UHAUL records showed that Mr. Nakvinda rented the tandem trailer 3:49 p.m. on October 23, 2009, and returned the trailer at 2:53 p.m. on October 27, 2009. The time frame between pickup and return of the trailer corresponds with the suspected time of death of Mr. Gattuso and the travel time between Oklahoma City and Fargo, North Dakota.

Fargo detectives assigned to Oklahoma further advised your affiant that Mr. Nakvinda changed the license plates on the above described 1999 Chevy Silverado pickup on October 27, 2009. The old license plates, however, were not set to expire until December of 2009. The pickup now bears Oklahoma license plate number 658 DGM.

Your affiant has run a Kelly Blue Book search for a 1999 Porsche Boxter and found it to be worth approximately \$12,000.

M.H. 10/31/09

Based on the aforementioned witness statements and evidence, your affiant submits there is probable cause to arrest:

MICHAEL ALLEN NAKVINDA

date of birth 1968,

6 foot 2 inches, approximately 185 lbs, blue eyes, light brown hair;

For committing the crime of:

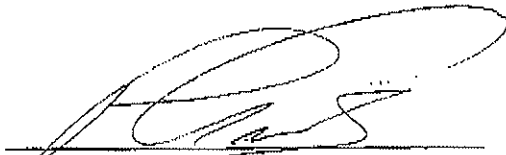
Murder, North Dakota Century Code § 12.1-16-01 (1)(c), a class AA felony and/or;

Robbery, North Dakota Century Code § 12.1-22-01, a class A felony and/or;

Burglary, North Dakota Century Code § 12.1-22-02, a class B felony and/or;

Theft, in violation of North Dakota Century Code § 12.1-23-02 and 12.1-23-04, a class B Felony.

FURTHER YOUR AFFLIANT SAYETH NAUGHT



Lieutenant Pat Claus

10/31/09
date

10/31/09
Date

27.24.11
Magistrate's
Initials

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

State of North Dakota,)
)
 Plaintiff,)
)
 vs.)
)
 Michael Allen Nakvinda,)
)
 Defendant(s).)

INFORMATION
 09-2009-CR-3828
 SA#09-PC-01257

The Cass County State's Attorney charges that the above-named defendant(s) committed the following offense in Cass County, North Dakota:

Count 1: MURDER in violation of N.D.C.C. §12.1-16-01 in that on or about October 26, 2009, the above-named defendant, acting alone or with one or more other persons, willfully committed or attempted to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, an enumerated felony offense against a child, or escape, and in the course of and in furtherance of such crime or of immediate flight therefrom, the person or any other participant in the crime willfully caused the death of any person, to-wit: that on or about said day, the defendant, **MICHAEL ALLEN NAKVINDA**, willfully committed or attempted to commit the crime of robbery and/or burglary by taking a Porsche Boxter automobile and/or various electronic equipment from the residence of Philip Gattuso and in the course of and in furtherance of such crime(s) or in the immediate flight therefrom, caused the death of Philip Gattuso in Fargo, North Dakota.

Count 2: ROBBERY in violation of N.D.C.C. §12.1-22-01 in that on or about October 26, 2009, the above-named defendant, in the course of committing a theft, willfully inflicted or attempted to inflict bodily injury upon another or threatened or menaced another with imminent bodily injury, and in the course of committing the theft willfully fired a firearm or exploded or hurled a destructive device or directed the force of any other dangerous weapon against another, to-wit: that on or about said day, the defendant, **MICHAEL ALLEN NAKVINDA**, committed a theft of a Porsche Boxster automobile and/or various electronic equipment belonging to Philip Gattuso during the course of which he willfully inflicted bodily injury upon Philip Gattuso using a hammer or other dangerous weapon thereby killing him in Fargo, North Dakota.

Count 3: BURGLARY in violation of N.D.C.C. §12.1-22-03 in that on or about October 26, 2009, the above-named defendant, willfully entered or surreptitiously remained in a building or occupied structure, or a separately secured or occupied portion thereof, when at the time the premises were not open to the public and the actor was not licensed, invited, or otherwise privileged to enter or remain, with the intent to commit a crime therein, to-wit: that on or about said day, the defendant, **MICHAEL ALLEN NAKVINDA**, willfully entered or surreptitiously remained in the home of Philip Gattuso when the defendant was not otherwise licensed, invited or privileged to enter or remain, with the intent to steal Philip Gattuso's Porsche Boxter

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CASS COUNTY, ND

automobile and/or various electronic equipment and while in the premises inflicted bodily injury with hammer or other dangerous weapon on Philip Gattuso thereby killing him, in Fargo, North Dakota.

Court 4: THEFT in violation of N.D.C.C. §12.1-23-02 in that on or about October 26, 2009, the above-named defendant, knowingly took or exercised unauthorized control over, or made an unauthorized transfer of an interest in, the property of another with the intent to deprive the owner thereof, to-wit: that on or about said day, the defendant, **MICHAEL ALLEN NAKVINDA**, knowingly took a Porsche Boxter automobile and/or various electronic equipment belonging to Philip Gattuso when he was not authorized to do so with intent to deprive Philip Gattuso thereof, when the value of the Porsche Boxter automobile and/or various electronic equipment was in excess of \$10,000.00, in Fargo, North Dakota.

Against the peace and dignity of the State of North Dakota.

State's witnesses:

Dated: November 2, 2009

- Lt. Pat Claus, FPD
- Det. Paula Ternes, FPD
- Det. Paul Lies, FPD
- Sgt. Matthew Sanders, FPD
- Sgt. Mark Lykken, FPD
- Det. Mark Voigtschild, FPD
- Sgt. Ross Renner, FPD
- Det. Chris Nichtern, FPD
- Det. Robert Stanger, FPD
- Det. Nick Kjonaas, FPD
- Det. Paul Holte, FPD
- Det. Leo Rognlin, FPD
- Det. Dain Hjelden, FPD
- Det. Brett Witte, FPD
- Det. Shane Aberle, FPD
- Det. Wes Libner, FPD
- Deborah Cook
- Jim Tandeski
- Paul Sletten
- Tom Frankel
- Carroll R. Griffith
- Darwin Lusty
- Jamie Viker

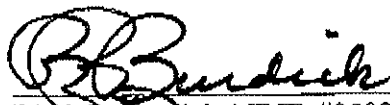
Penalty section:

Count 1: 12.1-16-01(1)
Class AA felony

Count 2: 12.1-22-01 and 12.1-32-02.1
Class A felony
(Min. mandatory 4 years imprisonment)

Count 3: 12.1-22-02 and 12.1-32-02.1
Class B felony
(Min. mandatory 4 years imprisonment)

Count 4: 12.1-23-02(1) and 12.1-23-05
Class B felony



Birch P. Burdick, NDID #05026
State's Attorney