

ORIGINAL

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

State of North Dakota, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Gene Kirkpatrick, )  
 )  
 Defendant(s). )  
 \_\_\_\_\_ )

**INFORMATION**  
 09-2009-CR-3845  
 SA # 09-PC-01260

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

**Count 1: CONSPIRACY TO COMMIT MURDER** in violation of N.D.C.C. §12.1-16-01 and 12.1-06-04 in that on or between September 1, 2009 and October 31, 2009, the above-named defendant, agreed with one or more people, explicitly or implicitly, to engage in or cause conduct which, in fact constitutes the crime of murder, and any one or more of such persons does an overt act to effect an object of the conspiracy by willfully committing or attempting to commit robbery and/or burglary 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 between said dates, the defendant, **GENE KIRKPATRICK**, explicitly or implicitly agreed with Michael Allen Nakvinda and/or others to engage in conduct which in fact constitutes the crime of murder and the Defendant does an overt act including but not limited to: 1) video taping Philip Gattuso's car and Fargo residence and delivering the recording to Michael Nakvinda; and/or 2) paying Michael Nakvinda \$3,000.00; to effect the object of the conspiracy and Mr. Nakvinda willfully commits or attempts to commit 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: CONSPIRACY TO COMMIT BURGLARY** in violation of N.D.C.C. §12.1-22-03 and 12.1-06-04 in that on or between September 1, 2009 and October 31, 2009, the above-named defendant, agreed with one or more people, explicitly or implicitly, to engage in or cause conduct which, in fact constitutes the crime of burglary, and any one or more of such persons does an overt act to effect an object of the conspiracy by willfully entering or surreptitiously remaining 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 between said dates, the defendant, **GENE KIRKPATRICK**, explicitly or implicitly agreed with Michael Allen Nakvinda and/or others to engage in conduct which in fact constitutes the crime of burglary and the Defendant does an overt act including but not limited to: 1) video taping Philip Gattuso's car and Fargo residence and

CLERK OF DISTRICT COURT  
 NOV 03 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:

**GENE KIRKPATRICK**  
Date of birth . . . . ., 1946  
6 feet tall, approximately 190 lbs, brown hair

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF CASS )

**AFFIDAVIT**

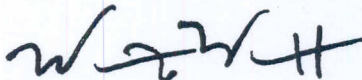
Lieutenant Pat Claus, being first duly sworn under oath, deposes and states there is probable cause to believe that **GENE KIRKPATRICK** has committed the crimes of:

- Conspiracy to Commit Murder, North Dakota Century Code § 12.1-16-01 (1)(c) and 12.1-06-04, a class AA felony and/or;
- Conspiracy to Commit Burglary, North Dakota Century Code § 12.1-22-02 and 12.1-06-04, a class B felony and/or.

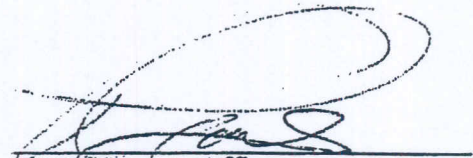
In support of your affiant's assertion as to the existence of probable cause, the information contained on the attached "Exhibit A" is offered. Such Exhibit is incorporated herein as if set forth verbatim.

**WHEREFORE, YOUR AFFIANT REQUESTS** that the Court issue an arrest warrant directing the arrest of **GENE KIRKPATRICK**.

Subscribed and sworn to before me  
this 2 day of November, 2009.



Magistrate

  
Affiant

STATE OF NORTH DAKOTA )

FILED-CLERK OF DISTRICT COURT

NOV 03 2009

CASS COUNTY, ND

delivering the recording to Michael Nakvinda; and/or 2) paying Michael Nakvinda \$3,000.00; to effect the object of the conspiracy and Mr. Nakvinda willfully enters or surreptitiously remains in the home of Philip Gattuso when Mr. Nakvinda was not otherwise licensed, invited or privileged to enter or remain, with the intent to steal Philip Gattuso's Porsche Boxter 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.

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

State's witnesses:

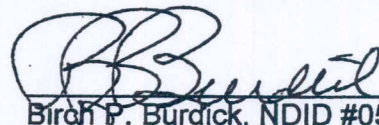
Lt. Pat Claus, FPD  
Det. Paula Ternes, FPD  
Det. Paul Lies, FPD  
Sgt. Matthew Sanders, FPD  
Sgt. Mark Lykken, FPD  
Det. Mark Voigtschild, FPD  
Sgt. Ross Renner, FPD  
Det. Chris Nichtern, FPD  
Det. Robert Stanger, FPD  
Det. Nick Kjonaas, FPD  
Det. Paul Holte, FPD  
Det. Leo Rognlin, FPD  
Det. 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  
Carolyn Corwin  
Sharon Kirkpatrick  
Edith Wade  
Darwin Lusty  
Jamie Viker

Dated: November 3, 2009

Penalty section:

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

Count 2: 12.1-22-02 and 12.1-32-02.1  
Class B felony  
(Min. mandatory 4 years imprisonment)



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

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

**GENE KIRKPATRICK**

Date of birth 1946

6 feet tall, approximately 190 lbs, brown hair

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

**NOW THEREFORE,**

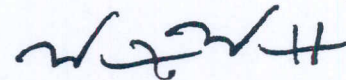
**YOU ARE HEREBY COMMANDED** to arrest:

**GENE KIRKPATRICK**

Date of birth 1946

6 feet tall, approximately 190 lbs, brown hair

Given under my hand, with the seal of said Court affixed, this 2 day of November, 2009.

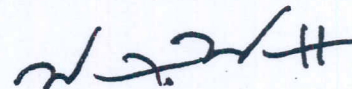


Magistrate

(To be completed by Magistrate)

Time of Issuance 6:58 p.m.

**FURTHER**, the Court directs this Arrest Warrant to be kept **Under Seal** until GENE KIRKPATRICK is arrested or further Order of the Court or as may be otherwise discoverable pursuant to North Dakota Rules of Criminal Procedure on a pending criminal matter.



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, date of birth 1960 was found dead in his home at Fargo, North Dakota. Mr. Gattuso lived alone at this address with his 3 year old daughter since the March 2009 death of his wife. The North Dakota coroner determined the cause of Mr. Gattuso's 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 7:29 a.m. with a tandem, wheeled flatbed trailer. An occupant of the vehicle is then seen crossing 26<sup>th</sup> Avenue on foot heading north towards the direction of Mr. Gattuso's condominium

*W.P. 11/2/09*

complex. 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 26<sup>th</sup> 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 32<sup>nd</sup> Avenue South and 25<sup>th</sup> 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 32<sup>nd</sup> Avenue South. Traveling westbound on 32<sup>nd</sup> 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.W. 11/2/09

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.

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On October 31, 2009 at approximately 7:00 a.m., your affiant is aware that detectives with the Fargo Police Department with assistance of agents with the Oklahoma Bureau of Investigation executed a search warrant and an arrest warrant on Michael Nakvinda at his residence at Oklahoma City, Oklahoma. Mr. Nakvinda was taken into custody at that time.

Edith Wade, Mr. Nakvinda's mother was present as she resides at that address. Ms. Wade was questioned by Detective Paula Ternes about the individuals involved in this case. She recognized the name Gene Kirkpatrick as an individual whom her son Michael had done numerous odd jobs including painting of the Kirkpatrick residence.

During the course of the search warrant on this residence, approximately \$2,500 in US currency was seized. Agents conducting the search also recalled seeing a video camera at the residence which was not seized as part of the search warrant at the time. Ms. Wade expressed surprise at the discovery of the \$2,500 as she stated her son would not have that kind of money.

On October 31, 2009 between approximately 6:00 p.m. and 9:00 p.m., Gene Kirkpatrick was interviewed at the Jones, Oklahoma police department. Mr. Kirkpatrick and his wife Sharon, agreed to a voluntary interview and met officers at the police station. Neither Mr. nor Mrs. Kirkpatrick were under arrest at the time of the interview.

Gene Kirkpatrick was interviewed by Detective Paul Lies of the Fargo Police department and assisted by an agent from the Oklahoma Bureau of Investigation. Detective Lies advised your affiant that Mr. Kirkpatrick admitted that a conversation occurred between Mr. Kirkpatrick and Michael Nakvinda sometime prior to the homicide. Mr. Kirkpatrick stated that he told Mr. Nakvinda that he wanted Phillip Gattuso gone or dead and had felt this way for quite a while. Mr. Nakvinda replied that he knew someone who could do that for him for "\$100,000". Mr. Kirkpatrick told Mr. Nakvinda he could not afford that kind of money. Further conversation ensued and an agreement was eventually made for \$3,000 with an additional \$10,000 to be paid at a later date. Mr. Kirkpatrick told Detective Lies that it was his intent to funnel the \$10,000 from a business he intended to start in the future. Later on, Mr. Kirkpatrick reported that he changed his mind and was going to pay \$20,000 to Mr. Nakvinda.

Mr. Kirkpatrick told Detective Lies that just before an early October 2009 trip to Fargo, North Dakota, he received a video camera from Mr. Nakvinda with instructions to video tape the Gattuso residence in Fargo. During the aforementioned visit to Fargo, Mr. Kirkpatrick admitted to videotaping the Gattuso residence. Kirkpatrick further advised Detective Lies that he returned to Oklahoma from Fargo, North Dakota and gave the video camera to Mr. Nakvinda. Mr. Kirkpatrick also relayed to Mr. Nakvinda that he observed an appointment calendar at the Gattuso residence which indicated Phillip Gattuso had no appointments or activities scheduled for Monday, October 26, 2009.

During Detective Paul Lies' interview with Mr. Kirkpatrick, Mr. Kirkpatrick expressed concern over the way Gattuso was raising his daughter, his granddaughter, since the death of Mr. Gattuso's wife in March of 2009.

Your affiant is aware on October 31, 2009, Carolyn Corwin, a neighbor of Phillip Gattuso, told Fargo Police Detective Sergeant Ross Renner she had observed a couple in their sixties at the Gattuso residence sometime in September. The couple was driving a mini-van and Ms. Corwin believes, based on conversations with her friends, that the couple were Gattuso's in-laws. Sergeant Renner is aware that Gene and Sharon Kirkpatrick are the in-laws of Phillip Gattuso and drive a mini-van. Ms. Corwin further stated she observed the male party taking photographs of Gattuso's Porsche in the driveway. She describes the male as approximately 60 years old, balding, light colored hair, a small pot-belly, 5 foot 10 inches to 6 feet, 180 pounds. Sergeant Renner

*M.G.W. 11/2/09*

advised your affiant that these physical characteristics match the description of Mr. Kirkpatrick as Sergeant Renner has met with Mr. Kirkpatrick during the course of this investigation.

Mr. Kirkpatrick told Detective Lies that on or about October 23 or 24, 2009, Kirkpatrick met Mr. Nakvinda at a McDonald's restaurant in the Oklahoma City area and provided him with \$3,000.

Your affiant is aware that Detective Nick Kjonaas interviewed Mr. Kirkpatrick on October 29, 2009. Mr. Kirkpatrick confirmed he had traveled to Fargo, North Dakota approximately two weeks prior to the death of Phillip Gattuso, arriving on a Friday and departing on a Sunday. Phillip Gattuso was found dead in his home on Monday, October 26, 2009.

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

**GENE KIRKPATRICK**

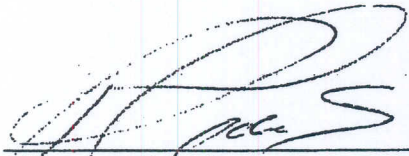
Date of birth 1946,  
6 feet, approximately 190 lbs, brown hair;

For committing the crime of:

Conspiracy to Commit Murder, North Dakota Century Code § 12.1-16-01 (1)(c) and 12.1-06-04, a class AA felony and/or;

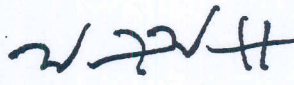
Conspiracy to Commit Burglary, North Dakota Century Code § 12.1-22-02 and 12.1-06-04, a class B felony and/or.

**FURTHER YOUR AFFIANT SAYETH NAUGHT**

  
\_\_\_\_\_  
Lieutenant Pat Claus

11/02/09  
\_\_\_\_\_  
date

11/2/09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Magistrate's  
Initials