



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
)
Plaintiff,)
)
VS.)
)
MICHAEL BEVER,)
)
Defendant.)

Case No. NF-2015-5901

DISTRICT COURT
FILED

JUL 31 2015

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

MOTION FOR PROTECTIVE ORDER RE: PRE-TRIAL EXTRAJUDICIAL
STATEMENTS BY THE PARTIES AND COUNSEL AND SEALING OF POLICE
REPORTS AND OTHER DOCUMENTS

COMES NOW the Defendant, Michael Bever (hereinafter, “Defendant” or “Mr. Bever”), by and through his attorney of record, Robert Nigh, Jr., Chief Public Defender of the Tulsa County Public Defender’s Office, and respectfully requests this Court issue the following Protective Order:

That the State, it’s agencies and agents, and all counsel and members of the prosecution and defense team be ordered not to make, or cause to be made, any extrajudicial statements, orally or in writing, to the public, the press, the “media,” or any other person or organization not directly involved in the prosecution or defense of Mr. Bever concerning the alleged facts of this case. Any proceedings filed which contain discovery material must be filed under seal.¹

Mr. Bever is a sixteen-year-old juvenile defendant subject to intense media scrutiny as he stands accused of five counts of First Degree Murder and one count of Assault and Battery with a Deadly Weapon. The Protective Order is sought to preserve any possibility that Mr. Bever can receive a fair trial and impartial trial from a jury that is not tainted by the media. According to a recent article published by the Tulsa World, Broken Arrow City Attorney, Beth Anne Wilkening,

¹This Motion applies to all agencies – State or Federal, that have assisted with the investigation. Further, for purposes of this motion, “media” includes: Press Conferences, Newspapers, Television, radio, twitter, Instagram, FaceBook, MySpace, YouTube, linkedin, or other social or professional media.

is prepared to release information regarding the investigation of the case to the media beginning Tuesday, August 4th, 2015. *See* Exhibit A. Said information sought by the media, and at risk of release to the public, includes a copy of the 911 call made to the Broken Arrow Police Department. Further, according to the Tulsa World article because of the numerous requests for documentation, the city plans to “compile all information into a single format for release.” *See* Exhibit A. In addition, numerous articles reveal information concerning investigative materials from law enforcement which reveal what purport to be the facts of the case. *See* Exhibits B, C, and D.

Argument and Authority

Intense publicity surrounding a criminal proceeding – what Justice Frankfurter referred to as “trial by newspaper” – poses significant and well-known dangers to a fair trial. *See Pennekamp v. Florida*, 328 U.S. 331, 66 S.Ct. 1029, 1043, 1047 (1946) (*Frankfurter, J., concurring*) (“human beings, however strong, should not be torn from their moorings of impartiality by the undertow of extraneous influence.”); *see also Bridges v. California*, 314 U.S. 252, 62 S.Ct. 190, 197 (1941) (“conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.”). Paramount among these dangers is the potential that pretrial publicity may taint the jury venire. “Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by ‘impartial’ jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S.Ct. 2720, 2745 (1991).

Oklahoma statute allows judges to issue protective orders in certain cases. Specifically, 22 O.S. § 2002(E)(1) provides, in part, “[u]pon motion of the state or defendant, the court may at

any time order that specified disclosures be restricted, or make any other protective order.” Trial courts have “an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity.” *Gannett Co. v. DePasquale*, 443 U.S. 368, 99 S.Ct. 2898, 2904, 61 L.Ed2d 608 (1979); *See Estes v. Texas*, 381 U.S. 532, 85 S.Ct. 1628, 1632 (1965); *also Chandler v. Florida*, 449 U.S. 560, 101 S.Ct. 802, 809 (1981) (“Trial courts must be especially vigilant to guard against any impairment of the defendant’s right to a verdict based solely upon the evidence and the relevant law.”). The beneficiary of this duty includes not only Mr. Bever, but also the co-defendant, whose fair trial rights might be prejudiced. The vigilance of trial courts against the prejudicial effects of pretrial publicity also protects the interest of the public and the State in the fair administration of criminal justice. A criminal defendant’s right to a fair trial may not be compromised by commentary, from any lawyer or party, offered up for media consumption on the courthouse steps or at a press conference. The Fourth and Tenth Circuits have held that a trial court may restrict extrajudicial comments by trial participants, including lawyers, parties, and witnesses, if there is a “reasonable likelihood” of prejudicing a fair trial. *See In re Russell*, 726 F.2d 1007, 1010 (4th Cir. 1984); *United States v. Tijerina*, 412 F.2d 661 (10th Cir. 1969).

In this case, the law enforcement officials participated in the prejudicial public declarations and like the attorneys are privy to a wealth of information that, if disclosed to the public, could readily jeopardize the fair trial rights of Mr. Bever. Jury tainting will be the same whether prejudicial comments are uttered by law enforcement officers, the parties, or their lawyers. The prejudice that is inflicted by the potential release of materials related to the investigation in this case may not be capable of remedy. The prejudicial information to be released would be available to the public via the internet and available to any prospective juror, *ad infinitum*.

Conclusion

For the reasons discussed above, Counsel for Mr. Bever requests the Court enter a Protective Order prohibiting extrajudicial statements to the public, press or media by prosecutors and their staff, counsel for the defense and their staff, witnesses, and law enforcement officers concerning merits of the case, evidence, witnesses, and court rulings.

Respectfully Submitted,



Robert Nigh, Jr., OBA # 11686
Chief Public Defender
Nicole Herron, OBA # 30105
Assistant Public Defender
Attorneys for Defendant

Certificate of Delivery

This is to certify that on the 31 day of July, 2015, a true and correct copy of the above and foregoing Motion for Protective Order was delivered, by hand, to the District Attorney's Office, in and for Tulsa County, State of Oklahoma.



Nicole Herron
Assistant Public Defender

Exhibit A

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Broken Arrow city attorney says Bever homicide documents may be released next week

The two suspects in the quintuple homicide are due in court Monday.



ARRAIGNMENT SET

Robert Davis Bever (left) and Michael Bever: The two brothers are suspects in the murders of several family members. Their arraignment is scheduled for Monday, and Broken Arrow officials say they hope to release records related to the case on Tuesday.

3

By SAMANTHA VICENT World Staff Writer | Updated Yesterday

BROKEN ARROW — While two brothers jailed in the stabbing deaths of five family members await their arraignment Monday, the city of Broken Arrow says it hopes to make records related to the case available by the following day.

City Attorney Beth Anne Wilkening said in a news release that the city has been "inundated" by open records requests from local and national media in the case against Robert Bever, 18, and Michael Bever, 16.

The brothers are being held in the Tulsa Jail after being accused of fatally stabbing their parents, David Bever, 52, and April Bever, 44; as well as three of their siblings: Daniel Bever, 12; Christopher Bever, 7; and 5-year-old Victoria Bever, late July 22 inside the family's home.

Wilkening said Tulsa County District Attorney Steve Kunzweiler was concerned that the release of certain records to the media "could impact the prosecutorial integrity of the case."

"Due to the number of requests and the complexity of the documentation, it is the intent of our Department to compile all information into a single format for release," she stated in the release.

The Tulsa World has requested a copy of the 911 call made to the Broken Arrow Police Department that led officers to the scene, which officials now believe was placed by one of the brothers who died in the attack. The World also has a pending request for other documents related to the case.

Broken Arrow Police Sgt. Thomas Cooper provided more details about the contents of the 911 call on Tuesday, saying a dispatcher was able to communicate briefly with the caller and get the address to the Bevers' home after the caller reported the attack.

"After that short dialogue, it goes to an open line and we can hear some type of struggle," he said, adding that the line disconnected shortly afterward.

Because the call disconnected, officers went to the home, Cooper said.

"It makes it that much worse knowing what happened, having heard (the call) and knowing the outcome," he said of the deaths. "The good that came of that call was the rescue of the two survivors, the 2-year-old and the 13-year-old."

However, when asked Tuesday, Cooper did not say what may have prompted Robert and Michael Bever to attack their family.

"I truly understand the public's need to understand this a little bit better, but we need to make this a solid case and keep the integrity (of the investigation) intact," he said.

Susan Witt, communications and outreach spokeswoman for the DA's Office, said Tuesday that the agency expects to see probable cause affidavits requesting criminal charges against Robert and Michael Bever "later in the week."

If Michael Bever is charged with first-degree murder, Oklahoma law states that he will be treated as an adult despite being younger than 18, and will not be subject to the provisions of the Youthful Offender Act or the Juvenile Code for certification as a juvenile.

Police arriving at the family's home around 11:30 p.m. July 22 saw blood on the front porch and reported hearing a faint voice asking for help. Officers entered the home to find a 13-year-old girl lying on the floor with multiple stab wounds. The girl, according to Robert Bever's arrest report, told the officers that her brothers were responsible for attacking her and her family.

A 2-year-old girl was found unharmed in an upstairs room, the report states. The 13-year-old girl underwent surgery last week and has been in stable condition, police previously told the World.

The five members of the Bever family who were killed all died of "multiple sharp force injuries," Oklahoma State Medical Examiner's Office spokeswoman Amy Elliott said Monday.

The Oklahoma State Bureau of Investigation, state Department of Human Services and federal Bureau of Alcohol, Tobacco, Firearms and Explosives are assisting Broken Arrow police in the investigation.

Police have not cited a motive for the slayings.

Samantha Vicent 918-581-8321

samantha.vicent@tulsaworld.com

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Posted: Wednesday, July 29, 2015 12:00 am | Updated: 11:04 am, Wed Jul 29, 2015.

By SAMANTHA VICENT World Staff Writer | 3 comments



Police investigate the fatal stabbings of five people Thursday at a home near the Indian Springs Country Club in Broken Arrow. MATT BARNARD/Tulsa World

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Exhibit B

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Sources: Brothers Planned Attack Of Broken Arrow Family In Advance

Posted: Jul 27, 2015 6:02 PM CST Updated: Jul 29, 2015 3:41 PM CST

LORI FULLBRIGHT, NEWS ON 6 [BIO](#) [EMAIL](#)



BROKEN ARROW, Oklahoma - The medical examiner has ruled on the cause and manner of death of the five members of the Bever family killed last week in their Broken Arrow home.

According to the ME, the cause of death for David and April Bever and three of their children is multiple force sharp injuries; the manner of death is a homicide.

News On 6 has also learned from sources close to the investigation that 18-year-old Robert Bever and 16-year-old Michael Bever had planned the attack on their family for some time.

Sources said the brothers wanted to kill their family first because they were considered easier targets, then, they planned to attack other people considered to be harder targets.

They also said 3,000 rounds of ammunition were delivered to the home after the murders and the boys planned to use it to kill so many people they would become more famous than the Columbine shooters.

Both Robert and Michael were booked into jail as adults and will be charged as adults to start the court case; Michael's attorney could later argue for him to be treated less harshly under the law, as either a juvenile or a youthful offender since he is 16 years old, but that is yet to be seen.

They are both being held without bond on five counts of first-degree murder and one count of assault and battery with a dangerous weapon.

Police said they stabbed their parents, David and April Bever, to death, along with their 12-year-old brother Daniel, 7-year-old brother Christopher and 5-year-old sister Victoria.

7/27/2015 Related Story: ME's Office Releases Additional Victims' Names In Broken Arrow Quintuple Murder

They're also accused of trying to kill their 13-year-old sister who survived. They also had a 2-year-old sister who was not hurt.

Police said it was 12-year-old Daniel who called 911 and told police his brothers were attacking the family before he passed away. The 13-year-old survivor confirmed for officers her brothers were responsible.

7/23/2015 Related Story: Report: Survivor, 13, Identified Brothers As Killers In Broken Arrow Quintuple Murder

Officers followed the brothers' footprints from the back door to a wooded area behind the home where they were captured.

7/27/2015 Related Story: Court Date Set For Teen In Broken Arrow Quintuple Murder

Tulsa County Jail records show Robert is scheduled to appear in court August 3.

Some of the information in this news story may have been provided by law enforcement with the request News On 6 inform the public of, and/or assist in locating a person in connection with, a police investigation. News On 6 can make no independent verification of the accuracy of the information, photographs and/or video provided to it by police or other law enforcement agencies.

Exhibit C

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CRIME & COURTS

Oklahoma brothers accused in family murder reportedly planned more attacks

Published July 30, 2015

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FoxNews.com



July 23, 2015: An investigator walks past a tarp covering a body in the front yard of a house in Broken Arrow, Okla. (AP)

The two Oklahoma brothers who allegedly stabbed five family members to death last week reportedly had planned the attack for a long time and wanted to kill more people.

Sources told News on 6 Robert Bever and his 16-year-old brother, of Broken Arrow, wanted to kill their family first because they considered them to be easier targets. The station reports the brothers then wanted to attack other people because they considered them harder targets.

News on 6 also reported that 3,000 rounds of ammunition were delivered to the home days after the stabbings took place. Bever, 18, and his brother were planning on using the ammo to commit an atrocity that would rival that of the 1999 Columbine High School shooting in Colorado, the station reported.

Exhibit D

On Monday, the Oklahoma medical examiner's office confirmed the couple and three of their children found dead inside the home all died from "multiple sharp-force injuries."

The killings of David Bever, 52, his wife April Bever, 44, and siblings Daniel Bever, 12, Christopher Bever, 7, and Victoria Bever, 5, have been classified as homicides, said office spokeswoman Amy Elliott. The final autopsy reports have not been released, Elliott said.

Robert Bever is accused in a booking document of five counts of first-degree murder and a count of aggravated assault in the attack. His 16-year-old brother is being charged as an adult in the case.

Broken Arrow City Attorney Beth Anne Wilkening said in a statement on Tuesday police will release the 911 call made from inside the home next Tuesday.

Authorities initially said the call, described by Broken Arrow Police Sgt. Thomas Cooper as "gruesome," would be released Monday, but an assistant to the city attorney then indicated that it wouldn't be because it's part of the investigation into the deaths of five members of the Bever family.

Wilkening said the release was delayed because a prosecutor was concerned the provision of certain records to reporters "could impact the prosecutorial integrity of the case."

Cooper had previously described the nature of the call: the caller reports that his brother is attacking the family before the caller and dispatcher have a short exchange about the location of the home.

"They're able to confirm the location, and then it basically goes to an open line for a little while and you can hear a struggle there and then it disconnects," Cooper said. "It's fairly short, but it's gruesome. Obviously the entire crime is gruesome, and the 911 call is just as bad."

A media law expert and advocate for public access to records had called on law enforcement Tuesday to release the audio, saying "the investigation doesn't begin until the 911 call" is made.

"If there's a gray area, disclosure should be favored over withholding," said Joey Senat, an associate professor at the Oklahoma State University School of Media and Strategic Communications.

The two teens are scheduled to be arraigned in court on Aug. 3, at which time a plea is expected to be entered on their behalf and a preliminary hearing date will be scheduled.

[Click for more from News On 6.](#)

The Associated Press contributed to this report.



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Tuesday, August 4th, 2015. *See* Exhibit A. Said information sought by the media, and at risk of release to the public, includes a copy of the 911 call made to the Broken Arrow Police Department. Further, according to the Tulsa World article because of the numerous requests for documentation, the city plans to “compile all information into a single format for release.” *See* Exhibit A. In addition, numerous articles reveal information concerning investigative materials from law enforcement which reveal what purport to be the facts of the case. *See* Exhibits B, C, and D.

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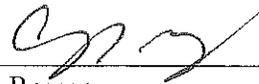
Respectfully Submitted,



Cheryl A. Ramsey, # 7403
Szlichta and Ramsey
P.O. Box 1206
Stillwater, OK 74076

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This is to certify that on the 31 day of July, 2015, a true and correct copy of the above and foregoing Motion for Protective Order was delivered, by hand, to the District Attorney's Office, in and for Tulsa County, State of Oklahoma.



Cheryl A. Ramsey

Exhibit A

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Broken Arrow Police Sgt. Thomas Cooper provided more details about the contents of the 911 call on Tuesday, saying a dispatcher was able to communicate briefly with the caller and get the address to the Bevers' home after the caller reported the attack.

"After that short dialogue, it goes to an open line and we can hear some type of struggle," he said, adding that the line disconnected shortly afterward.

Because the call disconnected, officers went to the home, Cooper said.

"It makes it that much worse knowing what happened, having heard (the call) and knowing the outcome," he said of the deaths. "The good that came of that call was the rescue of the two survivors, the 2-year-old and the 13-year-old."

However, when asked Tuesday, Cooper did not say what may have prompted Robert and Michael Bever to attack their family.

"I truly understand the public's need to understand this a little bit better, but we need to make this a solid case and keep the integrity (of the investigation) intact," he said.

Susan Witt, communications and outreach spokeswoman for the DA's Office, said Tuesday that the agency expects to see probable cause affidavits requesting criminal charges against Robert and Michael Bever "later in the week."

If Michael Bever is charged with first-degree murder, Oklahoma law states that he will be treated as an adult despite being younger than 18, and will not be subject to the provisions of the Youthful Offender Act or the Juvenile Code for certification as a juvenile.

Police arriving at the family's home around 11:30 p.m. July 22 saw blood on the front porch and reported hearing a faint voice asking for help. Officers entered the home to find a 13-year-old girl lying on the floor with multiple stab wounds. The girl, according to Robert Bever's arrest report, told the officers that her brothers were responsible for attacking her and her family.

A 2-year-old girl was found unharmed in an upstairs room, the report states. The 13-year-old girl underwent surgery last week and has been in stable condition, police previously told the World.

The five members of the Bever family who were killed all died of "multiple sharp force injuries," Oklahoma State Medical Examiner's Office spokeswoman Amy Elliott said Monday.

The Oklahoma State Bureau of Investigation, state Department of Human Services and federal Bureau of Alcohol, Tobacco, Firearms and Explosives are assisting Broken Arrow police in the investigation.

Police have not cited a motive for the slayings.

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Broken Arrow city attorney says Bever homicide documents may be released next week

The two suspects in the quintuple homicide are due in court Monday.

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Police investigate the fatal stabbings of five people Thursday at a home near the Indian Springs Country Club in Broken Arrow. MATT BARNARD/Tulsa World

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BROKEN ARROW — While two brothers jailed in the stabbing deaths of five family members await their arraignment Monday, the city of Broken Arrow says it hopes to make records related to the case available by the following day.

City Attorney Beth Anne Wilkening said in a news release that the city has been "inundated" by open records requests from local and national media in the case against Robert Bever, 18, and Michael Bever, 16.

The brothers are being held in the Tulsa Jail after being accused of fatally stabbing their parents, David Bever, 52, and April Bever, 44; as well as three of their siblings: Daniel Bever, 12; Christopher Bever, 7; and 5-year-old Victoria Bever, late July 22 inside the family's home.

Wilkening said Tulsa County District Attorney Steve Kunzweiler was concerned that the release of certain records to the media "could impact the prosecutorial integrity of the case"

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Video

Exhibit B

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Sources: Brothers Planned Attack Of Broken Arrow Family In Advance

Posted: Jul 27, 2015 6:02 PM CST Updated: Jul 29, 2015 3:41 PM CST

LORI FULLBRIGHT, NEWS ON 6 [BIO](#) [EMAIL](#)



BROKEN ARROW, Oklahoma - The medical examiner has ruled on the cause and manner of death of the five members of the Bever family killed last week in their Broken Arrow home.

According to the ME, the cause of death for David and April Bever and three of their children is multiple force sharp injuries; the manner of death is a homicide.

News On 6 has also learned from sources close to the investigation that 18-year-old Robert Bever and 16-year-old Michael Bever had planned the attack on their family for some time.

Sources said the brothers wanted to kill their family first because they were considered easier targets, then, they planned to attack other people considered to be harder targets.

They also said 3,000 rounds of ammunition were delivered to the home after the murders and the boys planned to use it to kill so many people they would become more famous than the Columbine shooters.

Both Robert and Michael were booked into jail as adults and will be charged as adults to start the court case; Michael's attorney could later argue for him to be treated less harshly under the law, as either a juvenile or a youthful offender since he is 16 years old, but that is yet to be seen.

They are both being held without bond on five counts of first-degree murder and one count of assault and battery with a dangerous weapon.

Police said they stabbed their parents, David and April Bever, to death, along with their 12-year-old brother Daniel, 7-year-old brother Christopher and 5-year-old sister Victoria.

7/27/2015 Related Story: ME's Office Releases Additional Victims' Names In Broken Arrow Quintuple Murder

They're also accused of trying to kill their 13-year-old sister who survived. They also had a 2-year-old sister who was not hurt.

Police said it was 12-year-old Daniel who called 911 and told police his brothers were attacking the family before he passed away. The 13-year-old survivor confirmed for officers her brothers were responsible.

7/23/2015 Related Story: Report: Survivor, 13, Identified Brothers As Killers In Broken Arrow Quintuple Murder

Officers followed the brothers' footprints from the back door to a wooded area behind the home where they were captured.

7/27/2015 Related Story: Court Date Set For Teen In Broken Arrow Quintuple Murder

Tulsa County Jail records show Robert is scheduled to appear in court August 3.

Some of the information in this news story may have been provided by law enforcement with the request: News On 6 inform the public of, and/or assist in locating a person in connection with, a police investigation. News On 6 can make no independent verification of the accuracy of the information, photographs and/or video provided to it by police or other law enforcement agencies



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Oklahoma brothers accused in family murder reportedly planned more attacks

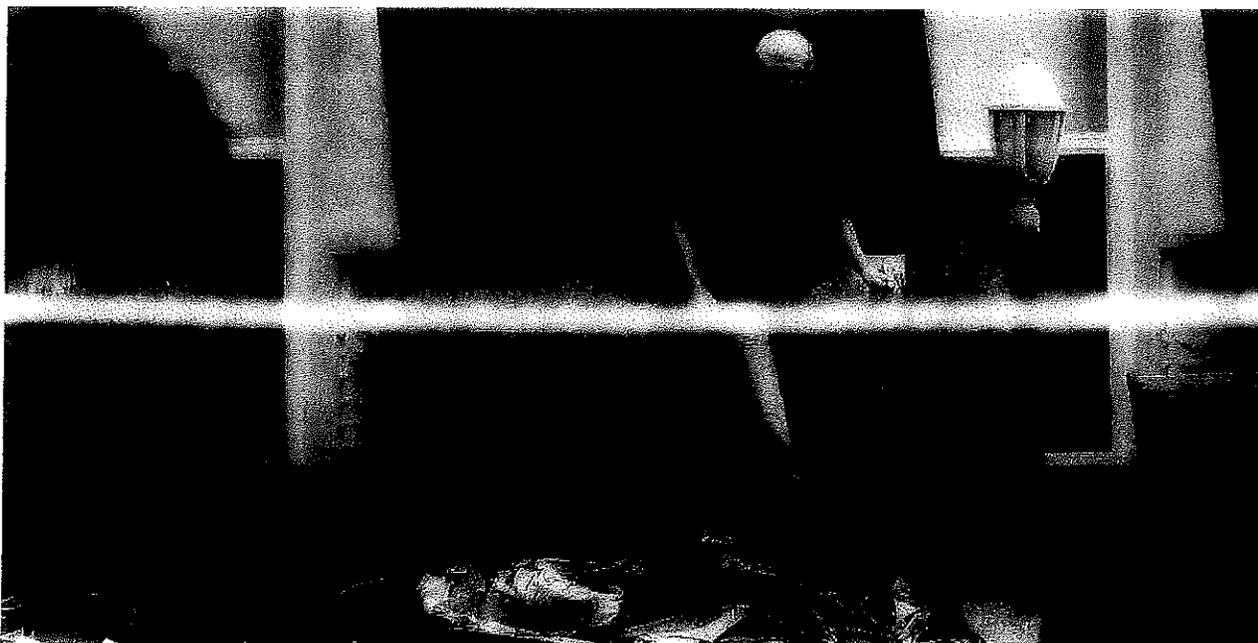
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July 23, 2015: An investigator walks past a tarp covering a body in the front yard of a house in Broken Arrow, Okla. (AP)

The two Oklahoma brothers who allegedly stabbed five family members to death last week reportedly had planned the attack for a long time and wanted to kill more people.

Sources told News on 6 Robert Bever and his 16-year-old brother, of Broken Arrow, wanted to kill their family first because they considered them to be easier targets. The station reports the brothers then wanted to attack other people because they considered them harder targets.

News on 6 also reported that 3,000 rounds of ammunition were delivered to the home days after the stabbings took place. Bever, 18, and his brother were planning on using the ammo to commit an atrocity that would rival that of the 1999 Columbine High School shooting in Colorado, the station reported.

Exhibit D

On Monday, the Oklahoma medical examiner's office confirmed the couple and three of their children found dead inside the home all died from "multiple sharp-force injuries."

The killings of David Bever, 52, his wife April Bever, 44, and siblings Daniel Bever, 12, Christopher Bever, 7, and Victoria Bever, 5, have been classified as homicides, said office spokeswoman Amy Elliott. The final autopsy reports have not been released, Elliott said.

Robert Bever is accused in a booking document of five counts of first-degree murder and a count of aggravated assault in the attack. His 16-year-old brother is being charged as an adult in the case.

Broken Arrow City Attorney Beth Anne Wilkening said in a statement on Tuesday police will release the 911 call made from inside the home next Tuesday.

Authorities initially said the call, described by Broken Arrow Police Sgt. Thomas Cooper as "gruesome," would be released Monday, but an assistant to the city attorney then indicated that it wouldn't be because it's part of the investigation into the deaths of five members of the Bever family.

Wilkening said the release was delayed because a prosecutor was concerned the provision of certain records to reporters "could impact the prosecutorial integrity of the case."

Cooper had previously described the nature of the call: the caller reports that his brother is attacking the family before the caller and dispatcher have a short exchange about the location of the home.

"They're able to confirm the location, and then it basically goes to an open line for a little while and you can hear a struggle there and then it disconnects," Cooper said. "It's fairly short, but it's gruesome. Obviously the entire crime is gruesome, and the 911 call is just as bad."

A media law expert and advocate for public access to records had called on law enforcement Tuesday to release the audio, saying "the investigation doesn't begin until the 911 call" is made.

"If there's a gray area, disclosure should be favored over withholding," said Joey Senat, an associate professor at the Oklahoma State University School of Media and Strategic Communications.

The two teens are scheduled to be arraigned in court on Aug. 3, at which time a plea is expected to be entered on their behalf and a preliminary hearing date will be scheduled.

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The Associated Press contributed to this report.



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