

Affidavit

SW-17-677



Background Relating to the Initial Investigation

NOV 27 2017

I, Wayne Stinnett, am an investigator with the Twelfth District Attorney's Office, Court Clerk with statewide peace officer jurisdiction in the performance of my duties, STATE OF OKLA. TULSA COUNTY pursuant to Title 19 O.S. § 215.35A. Attorney General Mike Hunter assigned the Twelfth District Attorney as a special prosecutor to investigate and potentially prosecute a sexual assault involving members of the Bixby High School football team and related crimes, pursuant to 19 O.S. § 215.9. To that end, I have been participating in a joint investigation of that incident along with the Bixby Police Department and the Oklahoma State Bureau of Investigation. This investigation also includes whether there were efforts to avoid the mandatory reporting requirements of 10A O.S. § 1-2-101 as well as potential efforts to thwart a police investigation into the incident. As such, this affidavit is in support of multiple search warrants related to this investigation.

Affiant's Training and Experience

1. Your affiant states that he is the Chief Investigator for the 12th District Attorney's Office for the State of Oklahoma, with statewide jurisdiction, and has been so employed since January 5, 2015.
2. Prior to his employment with the District Attorney's Office your affiant was employed as a police officer with the Claremore Police Department for more than twenty-five years.
3. During that time your affiant was assigned as an Investigator for the Claremore Police Department for twenty-three years. For twenty of those twenty-three years your affiant was assigned as the Sergeant for the Investigation Division. As an Investigator your affiant was assigned to initiate investigations, and also follow up investigations initiated by other officers, of violations of Oklahoma Criminal Statutes.
4. Your affiant further states that he has been trained in the investigation of violations of the Oklahoma Criminal Statutes by the State of Oklahoma Council on Law Enforcement Education and Training, the Tulsa Police Department, the Oklahoma State Bureau of Investigation, the Oklahoma Bureau of Narcotics, the Federal Drug Enforcement Administration, the Bureau of Alcohol Tobacco and Firearms, the Regional Organized Crime Information Center, the Oklahoma Gang Investigators Association, and the Association of Oklahoma Narcotics Enforcers.

5. Your affiant has also received informal training while working with more experienced officers and investigators.

Property to be Seized

1. Any and all Documents Related to the Sexual Assault, Hazing, or Bullying Involving Any Member of the Bixby Football Team in 2016 or 2017, including any video and attachments to said documentation,
2. All Electronic Communications Sent or Received from:
 - a. Superintendent Kyle Wood,
 - b. Principal Terry Adams,
 - c. Athletic Director Jay Bittle,
 - d. Head Football Coach Loren Montgomery

**The Date Range of Said Emails to be September 27, 2017 to Present*
3. The Cellular Telephone of Superintendent Kyle Wood assigned Telephone Number [REDACTED],
4. The Cellular Telephone of Principal Terry Adams assigned Telephone Number [REDACTED],
5. The Cellular Telephone of Athletic Director Jay Bittle assigned Telephone Number [REDACTED],
6. The Cellular Telephone of [REDACTED] assigned Telephone Number [REDACTED],
7. The Cellular Telephone of [REDACTED] assigned Telephone Number [REDACTED],
8. The Cellular Telephone of [REDACTED] assigned Telephone Number [REDACTED],
9. The Cellular Telephone of [REDACTED] assigned Telephone Number [REDACTED],

Places to be Searched

It is believed, that during school hours on November 17, 2017, the following property will be on the campus of the Bixby High School, 601 S. Riverview Drive, Bixby, Tulsa County, Oklahoma:

- The Cellular Telephone of Principal Terry Adams assigned Telephone Number [REDACTED],
- The Cellular Telephone of [REDACTED] assigned Telephone Number [REDACTED],
- The Cellular Telephone of [REDACTED] assigned Telephone Number [REDACTED],

-The Cellular Telephone of [REDACTED] assigned Telephone Number [REDACTED],

-The Cellular Telephone of [REDACTED] assigned Telephone Number [REDACTED],

It is believed, that during school hours on November 17, 2017, the following property will be located at the Bixby Public Schools Administration Office, 109 N. Armstrong, Bixby, Tulsa County, Oklahoma:

-The Cellular Telephone of Superintendent Kyle Wood assigned Telephone Number [REDACTED],

-Any and all Documents Related to the Sexual Assault, Hazing, or Bullying Involving Any Member of the Bixby Football Team, including any video and attachments to said documentation,

-All Electronic Communications Sent or Received from:

- a. Superintendent Kyle Wood,
- b. Principal Terry Adams,
- c. Athletic Director Jay Bittle,
- d. Head Football Coach Loren Montgomery

**The Date Range of Said Emails to be September 27, 2017 to Present*

It is believed, that during school hours on November 17, 2017, the following property will be at the Home of the Spartans on the Bixby High School Campus, 601 S. Riverview Drive, Bixby, Tulsa County, Oklahoma:

-The Cellular Telephone of Athletic Director Jay Bittle assigned Telephone Number [REDACTED],

Interview of the Victim

Detective Rene Torres of the Bixby Police Department and Agent Danny Flores of the Oklahoma State Bureau of Investigation interviewed a sixteen (16) year old male (hereinafter "the victim") on November 13, 2017, who stated the following:

1. The victim has been a player on the Bixby High School football team for some time.
2. In some time prior to the interview, the victim was at a team function in the evening at a private residence located at [REDACTED]
[REDACTED] The victim identified this residence as the residence of Bixby School Superintendent Kyle Wood.

3. While upstairs, three football players held him down while a fourth player stuck a pool stick into his anus, through his shorts. While this took place, another football player videoed the incident on a cellular telephone.
4. These other players did the following:
 - a. Juvenile [REDACTED] held one of the victim's legs during the assault.
 - b. Juvenile [REDACTED] held the other leg of the victim during the assault.
 - c. Juvenile [REDACTED] restrained the victim's upper body during the assault.
 - d. Juvenile [REDACTED] stuck the pool stick into the anus of the victim.
 - e. Juvenile [REDACTED] videoed the assault with a cellular telephone.
5. The victim said that the other football players in the room were laughing during the assault. The victim also said that another player was blocking the door during the assault.
6. After the assault, which caused significant pain, the victim immediately left the residence.
7. The victim was aware that [REDACTED] had shown the video to multiple friends, but the victim was told later that the video was deleted at the request of [REDACTED]. *Note: It is unknown if the video was actually deleted off of the original recording device.*
8. The victim said a similar incident had also happened at a team function at the same location during the 2016 football season.

Interview of the Victim's Mother

On November 15, 2017, I conducted an interview of the victim's mother who told me the following:

1. On October 26, 2017, she was contacted by Bixby athletic director Jay Bittle who told her that he believed the victim had been subjected to a bullying and hazing incident. Bittle learned of this from another student at Bixby High School.
2. Bittle asked her if she wanted the police contacted and the victim's mother stated that she believed it could be handled internally by the school system.
3. The victim's mother and father had an early morning meeting set up with Bixby superintendent Kyle Wood for October 31, 2017, regarding the leniency of the punishment of the suspects. *Note: This meeting was set when the victim's parents were unaware that the bullying/hazing actually involved a sexual assault.*

4. The meeting with the Superintendent Wood became very heated.
5. In the late evening hours of October 31, 2017, she and her son were preparing a written summary of the incident and her son disclosed to her for the first time that the incident involved a sexual assault. The victim also mentioned another similar incident in 2016 at the same residence.

Actions of the Bixby School System

While the exact timeline is still unclear to investigators conducting this investigation, we have discovered the following:

1. On October 26, 2017, the Bixby school system was aware that some type of incident had taken place. Bixby School Athletic Director, Jay Bittle received a tip from a concerned student that the victim had been subjected to bullying/hazing.
2. At some point, the school was aware of the previously mentioned juveniles involvement and that the incident resulted in forcible anal penetration of the victim and that the incident was video recorded on another student's cellular telephone. When the school officials discovered information regarding the sexual assault is unclear.
3. The school system conducted some type of investigation, but the police had not been notified. In fact, the High School Principal Terry Adams asked if the school had to report the incident to police or the Department of Human Services during an October 31, 2017 meeting with Officer B. Toney of the Bixby Police Department. Principal Adams asked to meet Toney "off the record."
4. On the evening of November 1, 2017, Principal Adams called Officer Toney and stated that Superintendent Kyle Wood had given him permission to report the incident to the police, but directed it be reported to a certain Bixby police officer.
5. On November 2, 2017, Detective Rene Torres, Officer Giana Wood, and Officer Harrell Kendrick spoke to Athletic Director Bittle and were advised of the following:
 - a. A female had approached Bittle and reported the rumors of hazing/bullying on October 26, 2017.
 - b. Bittle spoke to the victim who, while initially denying the incident, then became very emotional and disclosed the sexual assault.
 - c. Bittle spoke to [REDACTED], who admitted to holding the victim down during the assault.

- d. Bittle also provided the names of [REDACTED], [REDACTED], and [REDACTED] as being involved in the incident.
- e. Bittle was aware from the victim's mother that the sexual assault did result in bleeding from the rectal area of the victim.
6. The case was assigned to Detective Rene Torres of the Bixby Police Department. Detective Torres was waiting on documentation from the Bixby School System. During the week of November 6, 2017, the Bixby Police Department received a very vague description of the incident submitted by an official from the Bixby School System.
7. By Thursday, November 9, 2017, the Bixby Police Department had requested the assistance of the Oklahoma State Bureau of Investigation and District Attorney Matt Ballard was assigned as the special prosecutor in the case by Attorney General Mike Hunter. On November 10, 2017, Ballard spoke to an attorney representing the Bixby School System who told Ballard that he had advised the Bixby School System to decline to turn over the results of their investigation without legal process, citing certain privacy laws.
8. It is unclear when school officials reported this sexual assault of a child to the authorities, although it was certainly delayed for days. It certainly appears that any reporting of the incident was significant and has caused difficulty in the investigation, especially including the inability to preserve evidence. It also appears that there may have been some initial effort by one or others to not report the incident at all.
9. On November 16, 2017, I spoke to a representative from the Department of Human Services, and the only documentation they have of any report of this child sexual assault took place on the morning of November 10, 2017. In my opinion, it is relevant that much of the media coverage regarding this incident began on the evening of November 9, 2017.

**It should be noted, that discrepancies and difficulties in the timeline have been exacerbated by the fact that the officers do not have possession of the actual interviews, written statements, or the dates thereof. Efforts to avoid reporting requirements could also hamper the accuracy of the timeline at this point in the law enforcement investigation. While the victim's mother first learned of the sexual assault on the late evening of October 31, 2017, it appears that school officials were aware of the sexual assault prior to the 12:29 "off the record" meeting with Officer Toney on October 31, 2017.*

Aspects of Cellular Telephones

The Supreme Court has outlined the technical aspects, privacy concerns, and legal requirements relating to cellular telephones. In *Riley v. California*, 573 U.S. _____ (2014), the United States Supreme Court stated the following:

1. The term “cell phone” is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.
2. The current top-selling smart phone has a standard capacity of 16 gigabytes (and is available with up to 64 gigabytes). Sixteen gigabytes translates to millions of pages of text, thousands of pictures, or hundreds of videos.
3. The sum of an individual’s private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions;
4. Today, by contrast, it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate.
5. Data on a cell phone can also reveal where a person has been. Historic location information is a standard feature on many smart phones and can reconstruct someone’s specific movements down to the minute, not only around town but also within a particular building.
6. It would be a particularly inexperienced or unimaginative law enforcement officer who could not come up with several reasons to suppose evidence of just about any crime could be found on a cell phone.
7. Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest.

Information Related to the Cellular Telephones

The following information and evidence supports the seizure of the cellular telephones:

1. Professional individuals communicate on cellular telephones by both text messaging and audio calls. An examination of the cellular telephones of Superintendent Wood, Principal Adams, and Athletic Director Bittle would be relevant to their efforts to comply with the mandatory reporting requirements related to child sexual assault. Great care will be taken to avoid the examination of additional data on the devices, and the

subsequent examination will be limited to the text message history between the dates outlined in the description herein, from October 2017 to present.

2. Juvenile [REDACTED] clearly was in possession of a cellular telephone when he reportedly videoed the assault and shared it by some media. Even if deleted, a forensic search of the device can often retrieve deleted data. Furthermore, the transmission of the video of the assault would likely be shown in the text message history and/or the data left on various social media platforms. Furthermore, the video could be stored in a "cloud" format which could potentially be accessed from a subsequent search pursuant to an order from a court of competent jurisdiction.
3. Juvenile [REDACTED] was in communication regarding the deletion of the video. In my training and experience, I have found that high school age individuals often communicate more by text message or communications through social media platforms as compared to audio transmissions.
4. Furthermore, in my training and experience, co-conspirators often communicate regarding a completed crime, especially when they are made aware that the crime has been detected by the authorities. This likelihood is even higher when there are indications of a "cover-up" such as those outlined herein.
5. On November 14, 2017, Detective Torres and Agent Flores interviewed a minor student from Bixby High School. Torres and Flores asked if the several of the suspects described herein possessed cellular telephones and requested the minor to give the respective numbers assigned to the cellular telephone. The minor stated that he/she was aware of several of the individuals cellular telephone numbers, specifically:
 - a. [REDACTED] has a cellular telephone assigned number [REDACTED]
 - b. [REDACTED] has a cellular telephone assigned number [REDACTED]
 - c. [REDACTED] has a cellular telephone assigned number, [REDACTED]
 - d. [REDACTED] has a cellular telephone assigned number [REDACTED]
6. Detective Torres and Agent Flores also interviewed a Bixby School Employee who believed that the incident would have taken place on September 27, 2017, as that was the date the dinner at Superintendent Wood's house. (This is also the date appearing in the November 10, 2017 DHS referral).
7. Detective Torres, who has previously served as a school resource officer, knew Wood, Bittle, and Adams to have cellular telephones, specifically:
 - a. Kyle Wood has a cellular telephone assigned number [REDACTED]
[REDACTED]

- b. Terry Adams has a cellular telephone assigned number [REDACTED]
 - c. Jay Bittle has a cellular telephone assigned number [REDACTED]
8. In my training and experience, it is my opinion that there is probable cause to believe that the digital devices listed herein will contain the evidence sought in this affidavit.

Information Relating to Electronic Communications

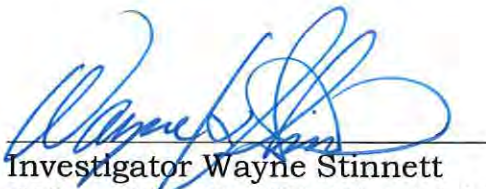
Any information related to the disclosures by the victim, investigation, reporting to authorities (or the lack thereof) would likely be in the electronic communications (i.e., email) of Superintendent Kyle Wood, Principal Terry Adams, Athletic Director Jay Bittle, and Head Football Coach Loren Montgomery. The relevant dates would be ^{SEPT. 27} ~~October 26~~, 2017 to present. Any communications unrelated to this investigation would be kept in the possession of your affiant until further order of the court.

Manner of Identification and Seizure of Cellular Telephones

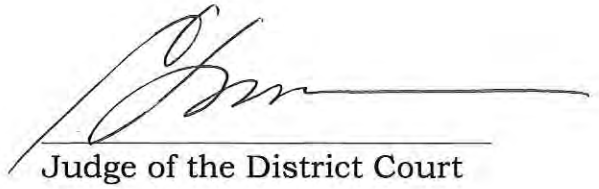
It is believed that the above described digital devices will be in the respective possession of the individuals also listed herein. As such, as it relates to each cellular telephone, every individual will be contacted on the grounds of the Bixby Public School System and every effort will be made for officers to take custody of the cellular telephones in as minimally intrusive manner as possible. Every reasonable effort will be made to take custody of the cellular telephones by simple request of the respective individual without any force being employed. It should further be stressed that this affidavit simply seeks for law enforcement to take custody of the cellular telephones. After officials have custody of the cellular telephones, no searching will be done without additional authorization from a court of competent jurisdiction. As these devices may contain information not relevant to this investigation, and measures will be in place to address ^{such} ~~these~~ aspects in compliance with the Fourth Amendment. Furthermore, as investigators have the telephone numbers assigned to the respective devices, a call will be placed to each respective cellular telephone to ensure it is the device described in this affidavit. Your Affiant will be executing this search warrant in cooperation with the Bixby Police Department and the Oklahoma State Bureau of Investigation. In doing so, Detective Torres was formerly a school resource officer for the Bixby school system and will be assisting in the execution as he is very familiar all of the aforementioned school property and will assist in directing law enforcement personnel during the execution of the warrant. Furthermore, law

enforcement officials will seek technical assistance from the school personnel to retrieve the electronic communications and other documentation so as to reasonably do so without disrupting school activities and minimize the search to obtain the listed property. Furthermore, it is anticipated that many of the individuals listed herein will be on the premises of the Bixby School System. It is possible that some of the school officials will be on school property other than their duty station. In that regard, all reasonable efforts will be made to contact the individuals to take custody of the cellular telephones in a minimally intrusive manner, even if the school official is not at their duty station. While your affiant has described the likely location of each individual, it is the intent of your affiant that the authorization to take custody of the cellular telephones encompass all school property.

Subscribed and Sworn to before me this this 16 day of November, 2017



Investigator Wayne Stinnett
Office of the Twelfth District Attorney
Affiant



Judge of the District Court