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United States District Court
STATE AND DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

v.

Case Number:

12-mj-650 (MKK)

MICAH JAMES WAYBENAIS

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about September 11, 2012 in Beltrami County, in the State and District of Minnesota within the exterior boundaries of the Red Lake Indian Reservation, defendant, an Indian, did assault B.S., D.S. and L.W. also Indians, resulting in serious bodily injury,

in violation of Title 18, United States Code, Section(s) 113(a)(6), 1151 and 1153(a).

SEE ATTACHED AFFIDAVIT

I further state that I am a(n) Special Agent and that this complaint is based on the following facts:

Continued on the attached sheet and made a part hereof: Yes No

Signature of Complainant
Matthew Zavala
FBI

Sworn to before me, and subscribed in my presence,

Sept. 25, 2012
Date

at

Bemidji, MN
City and State

The Honorable Mary Kay Klein
UNITED STATES MAGISTRATE JUDGE

Name & Title of Judicial Officer

Signature of Judicial Officer

1 STATE OF MINNESOTA)
2)
3 COUNTY OF BELTRAMI) ss. AFFIDAVIT OF MATTHEW A. ZAVALA
4)
5)

12-MJ-650 (MKK)

6 1. Your affiant, Matthew A. Zavala, being duly sworn,
7 does depose and state as follows:

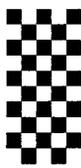
8 2. I am a Special Agent (SA) with the Federal Bureau of
9 Investigation (FBI). I have been a Special Agent of
10 the FBI since April 2003. I am currently assigned to
11 the Bemidji, Minnesota Resident Agency of the FBI with
12 the primary responsibility of investigating violent
13 crimes that occur on the Red Lake Indian Reservation.

14 3. As a federal agent, your affiant is authorized to
15 investigate violations of laws of the United States
16 and to execute warrants issued under the authority of
17 the United States.

18 4. This Affidavit is made in support of Complaint and
19 Warrant for the arrest of MICAH JAMES WAYBENAIS, for
20 violation of Title 18, United States Code, Sections
21 1151, 1153, and 113(a)(6). The facts set forth in this
22 affidavit are based on my personal knowledge and
23 observations in this investigation, upon my
24 discussions with other law enforcement officers and
25 agents directly involved in this investigation, and
26 upon my review of official reports submitted in
27 relation to this investigation. This affidavit does
28 not contain all facts known to me regarding these
29 matters, but only those sufficient to support a
30 finding of probable cause for the requested warrant.

31 5. On September 11, 2012, at approximately 6:27 AM a call
32 was made to the Red Lake Police Dispatch to report an
33 assault at a residence located at 14280 Circle Pines

- 1 Road, Red Lake, Minnesota. At approximately 6:47 AM,
2 Red Lake Police Officers arrived at the residence.
- 3 6. At approximately 7:06 AM, officers were informed
4 victims of the assault may be present inside the
5 residence. The officers entered the residence after
6 knocking and announcing and observed blood on the
7 floor in the living room, and throughout many of the
8 other rooms of the house.
- 9 7. Officers also observed a set of brass knuckles and a
10 knife, with a blade of approximately six inches in
11 length, on a table adjacent to the entranceway.
- 12 8. One victim, Beverly Smith, was located in the living
13 room on the couch, to the left of the entranceway.
14 Beverly Smith received injuries to her face and head,
15 which required her to be transported by helicopter to
16 Sanford Hospital in Fargo, North Dakota. As of
17 September 19, 2012, Beverly Smith remained in the
18 Intensive Care Unit and was unable to speak with
19 investigators due to the extent of her injuries.
- 20 9. A second victim, Derrick Smith, was found in the
21 bedroom located in the rear left side of the
22 residence. Derrick Smith had a laceration to his
23 neck. Derrick Smith was transported to Indian Health
24 Services and then to North Country Regional Hospital
25 in Bemidji, MN.
- 26 10. The suspect, Micah James Waybenais, was found in the
27 second bedroom, located in the rear right side of the
28 residence. All persons were removed from the
29 residence.
- 30 11. A third victim, Leatrice Waybenais, had exited the
31 residence after the assault, but before police had
32 arrived. Leatrice Waybenais was transported to Indian



1 Health Services and then to North Country Regional
2 Hospital in Bemidji, MN.

3 12. At approximately 8:30 AM, SA Matthew A. Zavala, FBI,
4 arrived at the residence and observed the blood on the
5 floor throughout the residence. SA Zavala observed
6 the knife and brass knuckles on the table. The
7 officers that had remained on-scene advised there was
8 a power cord in the bedroom where Derrick Smith was
9 found that had been tightly wrapped around Smith's
10 neck when he was found by responding officers.

11 13. During the course of investigation, law enforcement
12 spoke with Leatrice Waybenais, who reported that she
13 had been drinking with Micah Waybenais, Derrick Smith,
14 and Beverly Smith during the evening of September 10,
15 2012, at 14280 Circle Pines Road. Leatrice Waybenais
16 advised she had passed out on the couch in the living
17 room, next to Beverly Smith, and when she awoke early
18 in the morning on September 11, 2012, she was on the
19 floor with blood on her head and shirt. Leatrice
20 Waybenais further advised Beverly Smith was on the
21 floor next to her, naked from the waist down, with
22 blood on her face and upper body. According to
23 Leatrice Waybenais, Micah Waybenais was standing in
24 the kitchen without a shirt on and he told Leatrice
25 she could leave the residence. Micah Waybenais did
26 not appear to be injured.

27 14. Leatrice Waybenais exited the residence and went to
28 the home of her sister, Dawn Waybenais, across the
29 street for assistance. Leatrice Waybenais told her
30 sister that Micah Waybenais had assaulted her and
31 Beverly Smith. Leatrice Waybenais did not see Derrick
32 Smith in the living room before she left so she did

- 1 not know where Derrick Smith was. Dawn Waybenais
2 advised your affiant she observed blood on the face
3 and upper body of Leatrice Waybenais.
- 4 15. Leatrice Waybenais was told by the medical personnel
5 who examined her that she had sustained a fracture to
6 her orbital bone as a result of the assault to her
7 face and head. She also had stitches on the left side
8 of her forehead.
- 9 16. SA Zavala and SA Ogden also spoke with Derrick Smith,
10 who reported he had witnessed Micah Waybenais kick his
11 mother, Beverly Smith, in the face while Micah was
12 wearing Nike shoes. Derrick Smith also advised Micah
13 Waybenais had wrapped a cord around Derrick's neck and
14 used it to drag Derrick around the residence.
15 According to Derrick Smith it was the cord that had
16 caused the laceration along Derrick's neck. During
17 the execution of a federal search warrant at 14280
18 Circle Pines Road, a cord with blood on it was
19 recovered in the same bedroom where Derrick Smith was
20 found by responding officers.
- 21 17. When your affiant interviewed Derrick Smith in Sanford
22 Bemidji Medical Center on September 12, 2012, eight
23 metal staples were observed in his neck and stitches
24 on his chin. On September 21, 2012, Derrick Smith
25 advised your affiant he had also received a bite on
26 his upper back from Micah Waybenais during the
27 assault. Pictures were taken of the markings left on
28 Smith's back from the bite marks.
- 29 18. Your affiant has not been able to interview Beverly
30 Smith about the assault. Beverly Smith has been at
31 the Sanford Fargo Medical Center since September 11,
32 2012, and has been sedated according to the nurses

1 your affiant has spoken to. On September 21, 2012,
2 your affiant spoke with a nurse attending to Beverly
3 Smith who advised Smith had recently had a tracheotomy
4 (a breathing tube inserted directly into her throat)
5 and Smith would soon be transferred to a long term
6 care facility to help her recover once the tube was
7 removed from her throat.

8 19. The nurse at Sanford Fargo Medical Center further
9 advised Beverly Smith had a broken ulna bone (forearm)
10 in her left arm; multiple fractures in her face and
11 head; two types of bleeding in the top layers of the
12 tissues of her brain, which were not expected to
13 result in permanent brain damage; and injuries to her
14 right ear, including a piece missing off the top of
15 the ear.

16 20. I know that the residence located at 14280 Circle
17 Pines Road, Red Lake, Minnesota, is located within the
18 exterior boundaries of the Red Lake Indian
19 Reservation, a location within the special territorial
20 jurisdiction of the United States.

21 21. From the investigation your affiant is aware that
22 Micah Waybenais, Beverly Smith, Leatrice Waybenais,
23 and Derrick Smith are enrolled members of the Red Lake
24 Band of Chippewa Indians.

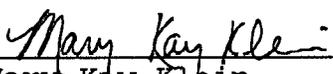
25 22. Based upon the above information, I believe that there
26 is probable cause to conclude that on September 11,
27 2012, within the exterior boundaries of the Red Lake
28 Indian Reservation, Minnesota, a location within the
29 special territorial jurisdiction of the United States,
30 MICAH WAYBENAIS, did intentionally assault Beverly
31 Smith, Leatrice Waybenais and Derrick Smith resulting
32 in serious bodily injury, in violation of Title 18,

1 United States Code, Sections 1151, 1153, and
2 113(a)(6).

3 23. Further your affiant sayeth not.
4
5

6
7 
8 _____
9 Matthew A. Zavala
10 Special Agent
11 Federal Bureau of Investigation
12 Bemidji, Minnesota

13 Subscribed and sworn to before me this 25th day of September
14 2012.

15
16 
17 _____
18 Mary Kay Klein
U.S. Magistrate Judge