

AO 91 (Rev. 11/11) Criminal Complaint

FILED

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

for the

MAR 14 2017

District of New Mexico**MATTHEW J. DYKMAN**
CLERK

United States of America

v.

Case No. 17-mj-646Kirby Cleveland Y.O.B. 1984*Defendant(s)***CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 03/11/2017 in the county of McKinley in the
District of New Mexico, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
Chapter 18 Section 1111(a)	Murder
Chapter 18 Section 1153	Crimes Occurring in Indian Country

This criminal complaint is based on these facts:
See attached affidavit☒ Continued on the attached sheet.Monty Waldron
Complainant's signatureW. Monty Waldron Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: March 14, 2017City and state: Farmington, NMB. Paul Briones
Judge's signature**B. Paul Briones, US Magistrate Judge**
Printed name and title

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

VS

Kirby Cleveland

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Case No. 17-MJ-646

AFFIDAVIT IN SUPPORT OF
ARREST WARRANT

AFFIDAVIT

I, the undersigned, being duly sworn, hereby depose and state as follows:

1. I am a Special Agent with the United States Department of Justice, Federal Bureau of Investigation (FBI) and have been employed as such since 2007. I am currently assigned to the Albuquerque Division of the FBI, Farmington Resident Agency. I have primary investigative responsibility for investigating crimes that occur in Indian Country, including violent crimes such as homicide, robbery, arson, aggravated assault, and sexual assault. The information set forth in this affidavit has been derived from an investigation conducted by FBI Special Agent Matt Roe and/or communicated to him by other sworn Law Enforcement Officers.

2. Your Affiant is aware that on the evening of Saturday, March 11, 2017 at approximately 11:00 PM, Navajo Nation Department of Public Safety Officer H. L. (Hereafter known as John Doe), while responding to a domestic violence call, was shot with a firearm near the residence of 959A County Road 19, Prewitt, NM in the Casamero Lake area. John Doe later died as a result of a gunshot wound to the head.

3. On the morning of March 12, 2017, Special Agent Roe was contacted by Navajo Nation Department of Public Safety Criminal Investigator (CI) Robert James regarding an officer involved shooting. According to CI James, John Doe stopped a subject vehicle near the

residence of a domestic violence call and was later found by an area resident near his police unit on the ground bleeding from the head and was unresponsive. John Doe's firearm was located between his legs and there were two .40 caliber shell cases near where he was lying. The area resident found John Doe and called 911 dispatch using the radio in John Doe's police unit. CI James advised that one man was found at the scene, hand cuffed to the subject vehicle, a blue Dodge pick-up truck.

4. Investigators responded to the scene. SA Clay Trant with the FBI and Navajo Nation Evidence Technician Donovan Becenti conducted an investigation of the scene. The following items of evidence were recovered; two .40 caliber shell cases which were located near where John Doe was found, a red, blood-like substance on the ground near where John Doe was found, nine .22 caliber shell cases, which were found approximately 83 feet from where John Doe was lying. The subject vehicle was towed from the scene to the Gallup FBI Office.

5. Investigators interviewed several neighbors who resided close to the scene. One witness A.B., Y.O.B. 1978, advised that she went to bed at approximately 11:15 PM. At approximately 11:25 PM, she heard what she thought was someone knocking softly on one of her windows. A.B. and her Husband went outside to see what was going on. A.B. noticed that there was a police vehicle on the road with its emergency lights on. A.B. could see that her neighbor E.C., Y.O.B. 1967, had his truck near the police vehicle. A.B. assumed that the police had stopped E.C. for driving under the influence of alcohol. A.B. decided to go down to the truck and offer to take it back to the house for E.C. A.B. called her in-laws, A.C., Y.O.B. 1951, and J.C., to drive down to the vehicle. Her in-laws picked her up and drove to the scene. As they were driving, A.B. saw someone lying on the ground beside the road. She thought it was a

drunk person that had passed out, but as they got closer, A.B. noticed the stripe on the individual's pants and recognized it as a police uniform. A.B. told A.C. to stop. A.B. got out of the vehicle and went to the officer. She noticed that John Doe was bleeding from his mouth, ears and nose. John Doe's head was face down and it seemed like he was having trouble breathing. A.B. lifted the officer's head to the side so that John Doe could breathe better. A.B. shouted to A.C. to call 911. A.B. tried to call 911, but she did not have cell service. A.B. then went to the police unit to use the radio, but the unit was locked. A.B. went back to the officer and told him she was going to take his keys and flashlight to call for help, which A.B. then did. A.B. went back to the police unit where she was able to call Crownpoint Police dispatch to inform them that there was an officer down. Police units were dispatched to the scene as a result of the call. At some point after A.B. called for help, Kirby CLEVELAND came to the scene and told her to give him the keys so that he could unlock the cuffs of the driver of the vehicle, E.C. A.B. told him that she already called for help and that she wasn't going to give CLEVELAND the keys. CLEVELAND left the scene. A short time later, a Navajo Police Officer arrived on scene and called for medical assistance.

6. Investigators interviewed K.T., Y.O.B. 1987, common-law wife of Kirby CLEVELAND. K.T. advised that on the evening of March 11, 2017, she was at home watching movies with her children. CLEVELAND was at the home as well. CLEVELAND was drinking. CLEVELAND started to get drunk and angry. He was saying mean things to her and the children. At some point, CLEVELAND grabbed a rifle from the house and went outside. CLEVELAND shot several rounds with the rifle. When he left the house, K.T. called 911 to report the domestic violence situation. K.T. could hear CLEVELAND outside trying to start one of the vehicles parked at the residence.

K.T. went outside and told CLEVELAND that she would drive him. CLEVELAND wanted to go to E.C.'s house. She drove CLEVELAND to E.C.'s home and came back. A short time later, she heard several gun shots and thought that there were eight shots fired. She looked out the window and saw that there was a police vehicle with its lights on and another vehicle in the roadway to E.C.'s house. A short time later, CLEVELAND came back to the house carrying a rifle. CLEVELAND said to K.T. "I shot that police officer, you need to go help him." CLEVELAND started walking back down the road to a nearby pond. K.T. then got into her vehicle and headed down the driveway. CLEVELAND met back up with K.T. on the driveway. CLEVELAND didn't have the rifle at this point. CLEVELAND got into the car and the two argued. CLEVELAND then exited the vehicle. K.T. didn't see him again after this point. K.T. drove to the scene and stayed there until the police arrived.

7. Investigators conducted a consent search of the property surrounding K.T.'s residence located at 959A County Road 19, Prewitt, NM. Investigators located and collected nine .22 caliber shell cases near the residence.

8. Multiple police agencies arrived on scene to include law enforcement personnel from Shiprock and Chinle, New Mexico State Police and McKinley County Sheriff's Office to assist in apprehending CLEVELAND. Investigators conducted a search of the natural areas adjacent to the crime scene. At approximately 9:20 AM on March 12, 2017 Kirby was located by police officers. CLEVELAND was hiding under a large rock approximately 1.5 miles from the crime scene.

9. John Doe was transported to the University of New Mexico Hospital where he later died due to his injuries at approximately 2:30 PM on March 12, 2017. An autopsy was

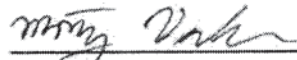
conducted on March 13, 2017. OMI Investigators advised FBI personnel that John Doe died due to a gunshot wound to the right forehead. The bullet passed through the cerebral edema and lodged in the right occipital. The bullet was 107 grains which the investigator informed is consistent with a .22 caliber round.

10. On March 13, 2017 E.C., was interviewed at the Crownpoint Detention Center. E.C. advised that on the afternoon of March 11, 2017, he had been drinking with CLEVELAND at his residence. In the evening E.C. was intoxicated due to drinking all afternoon. E.C. fell asleep and at some point, CLEVELAND woke him up and told him to drive him back to his house. E.C. got dressed and both he and CLEVELAND got in his truck, a blue Dodge pick-up. E.C. drove and CLEVELAND sat on the passenger side. As they neared the end of the driveway towards County Road 19, a police vehicle pulled into the drive and initiated emergency lights. E.C. stopped the vehicle and observed the police officer exit his vehicle and walk to his driver side door. The officer told E.C. to exit of the vehicle, which he did. The officer cuffed E.C. to his vehicle and moved toward the rear of the truck. According to E.C., the officer appeared to be in a hurry. E.C. turned back to look into the vehicle and noticed that CLEVELAND was gone. E.C. did not see or hear any gunfire. E.C. stood there for a while and started to yell for the officer to come back because he didn't know what had happened. After a short time another officer arrived on scene and put E.C. in the back of his police vehicle. E.C. believes that he did not hear the shots due to the engine noise, the noise of the handcuffs and the fact that he was extremely intoxicated.

11. In view of the above facts, your affiant submits that there is probable cause to believe that Kirby Cleveland, an enrolled member of the Navajo Nation, did unlawfully kill, with malice aforethought, John Doe, also an enrolled member of the Navajo Nation, at a location

near House number 959A, Prewitt, New Mexico, which is within the exterior boundaries of the Navajo Nation and is "Indian Country," in violation of Title 18, United States Code, section 1111(a) and Title 18, United States Code, Section 1153.

Respectfully Submitted,



SA W. Monty Waldron
Federal Bureau of Investigation
Albuquerque Division
Farmington Resident Agency

Submitted and sworn to
before me this 14 day
of March 2017.


UNITED STATES MAGISTRATE JUDGE