

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

DISTRICT OF

SEP 10 2008

In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

1998 Oldsmobile Intrigue, New Mexico License 181-PGS
VIN: 1G3WS52K5WF321456, Registered to Benedict
Aguino. Currently stored at Total Secure Towing Service
and Self Storage in Espanola, NM

MATTHEW J. DYKMAN
APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

Case Number:

08-MR-356

I, Carleen Fischer being duly sworn depose and say:I am a(n) Special Agent and have reason to believe

Official Title

that ☐ on the person of or ☒ on the property or premises known as (name, description and/or location)

1998 Oldsmobile Intrigue, New Mexico License 181-PGS
VIN: 1G3WS52K5WF321456, Registered to Benedict Aguino. Currently stored at Total Secure Towing Service and Self
Storage in Espanola, NM

in the _____ State and _____ District of _____ New Mexico

there is now concealed a certain person or property, namely (describe the person or property to be seized)

See attached list of items to be retrieved

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

Property that constitutes fruits, evidence, and instruments of crimes against the United States

concerning a violation of Title 18 United States code, Section(s) 1153, 2242 (2), 2246 (2) (C)

The facts to support a finding of probable cause are as follows:

See attached Affidavit

Continued on the attached sheet and made a part hereof:

☒ Yes ☐ No

Signature of Affiant

Sworn to before me and subscribed in my presence,

Date

ALBUQUERQUE, NEW MEXICO

at

City

State

W. DANIEL SCHNEIDER

UNITED STATES MAGISTRATE JUDGE

Signature of Judge

Items to be Retrieved

- a) Bodily fluid(s), and/or bodily tissue(s) including but not limited to saliva, semen, blood, skin, hair and/or any item(s) that may have said item(s) upon and/or within them.
- b) Any and all glove(s), fabric, footwear, vehicle tires and/or tools and/or known casts and/or standards from said item.
- c) Condom(s), whether used and/or unused and/or condom wrapper(s) and/or package(s).
- d) Trace evidence, including but not limited to hair and/or fiber(s) and/or any item(s) and/or material(s) that may have said item(s) on and/or within them.
- e) Alcoholic beverage(s) and/or alcoholic beverage container(s) containing any amount of beverage whether open or closed.
- f) Prescription narcotic(s) and/or prescription narcotic(s) container(s) containing any amount of narcotic whether open or closed.
- g) Illegal narcotics and/or any other controlled substance(s) and/or suspected illegal narcotics and/or any other suspected controlled substance(s) including, but not limited to any drug or substance listed in Schedules I through V of the Controlled Substance Act or regulations adopted thereto.
- h) Documentation of the herein-described premises, vehicle(s), person(s) and/or the herein-described item(s), to be seized, by means of measurement, photography, videography and/or any other means deemed necessary by law enforcement and/or person(s) assisting law enforcement.

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)

vs.)

1998 Oldsmobile Intrigue,)

New Mexico License 181-PGS)

VIN: 1G3WS52K5WF321456,)

Registered to Benedict Aguino.)

Currently stored at Total Secure Towing)

Service and Self Storage)

In Espanola, NM)

AFFIDAVIT FOR SEARCH WARRANT

The undersigned, being duly sworn, depose and say as follows:

1) I, CARLEEN FISCHER, being duly sworn, depose and say: I am a Special Agent (SA) of the Bureau of Indian Affairs (BIA) assigned to the Northern Pueblos Agency in Espanola, New Mexico, which provides law enforcement services to Indian Reservations within the State of New Mexico. My primary duties are investigating major crimes, including violent crimes, that occur on the Indian Reservations to which I am assigned. I have a Bachelor's Degree from Oklahoma State University; and have eight years of law enforcement experience with the Bureau of Indian Affairs, Office of Justice Services. I have completed the Basic Criminal Investigation Course at the Federal Law Enforcement Training Center in Glynco, Georgia and Council of Law Enforcement Education and Training Basic Police Academy, in Oklahoma. I have three years experience conducting violent crime investigations.

2) This affidavit is made in support of a Criminal Complaint against Benedict Emmette Aguino Jr., also known as Benedict Emmet Aguino, for the following crime committed on an Indian Reservation: Aggravated Sexual Abuse of Yvette Aguino (also known as Yvette Chavez).

3) The information set forth in this affidavit is known to me as a result of my own investigation and/or has been communicated to me by law enforcement officers with the Ohkay Owingeh Tribal Police Department.

4) The events set out herein occurred on the Ohkay Owingeh Indian Reservation, in the State and District of New Mexico.

5) On August 29, 2008, Ohkay Owingeh Tribal Police Officers Pete Chavez and Brice Gabeldon, observed a female, about three years of age, walking near the Ohkay Owingeh Day School. Officers approached the area and found an adult female, identified as Yvette Aguino, lying on the ground half dressed. The decision to have a SANE examination was based on Aguino's condition when she was found wearing only a t-shirt. Officer Gabeldon transported Aguino to St. Vincent's Hospital for a SANE examination.

6) On August 29, 2008, Tribal Police Officer Brice Gabeldon provided the following information: According to Officer Gabeldon, Aguino reported that Benedict Emmette Aguino Jr., (who will be referred to as Aguino Jr.) had come to her house telling Aguino that her husband was with another female. Aguino Jr. convinced Aguino to go riding around with him. He drove Aguino and her daughter to the end of Fish Pond Lane, Ohkay Owingeh, NM, where they stopped and listened to music. Aguino Jr., told Aguino to get out, at which time he made sexual advances on her. Aguino told Officer Gabeldon that Aguino Jr., used physical force when he removed her clothes and had sexual intercourse with her. Aguino was afraid she would be hurt if she resisted.

7) Aguino was examined by SANE Nurse Tamarra J. Ortiz. Ortiz advised SA Fischer that Aguino sustained lacerations to the right labia minora, multiple petechiae to the hymen, lacerations inside the vaginal wall, abrasions, bruising to the vaginal area, two sets of linear scratches to the back, dirt caked on her fingernails, and mud inside her vagina deep enough it would have had to been from some type of penetration. Ortiz stated Aguino complained of pain during the examination.

8) On August 29, 2008, Aguino provided a statement to SA Fischer, following the SANE examination. Aguino said she was at her house, putting her daughter to bed when Aguino Jr., arrived, but she didn't know what time. He told Aguino that her husband was out with another girl. Aguino Jr. tried to kiss Aguino and she declined his advances. He convinced her to go riding around. Aguino was unable to say how long they drove but she knew they were going south. When they stopped Aguino remembered seeing trees and hearing water. She was looking into the trunk of the car but doesn't remember why. Aguino could not recall being sexually assaulted and admitted drinking beer and taking a shot of Tequila. The next thing she recalled was Aguino Jr. dropping her and her daughter in front of the Ohkay Owingeh Day School near the Ohkay Owingeh Tribal Police Department. Aguino was found wearing only a t-shirt when police found her. She said she didn't have any underwear or pants on. Aguino did not know where her clothes were.

9) On August 29, 2008, SA Fischer interviewed Benedict Emmette Aguino Jr. Aguino Jr. stated the sexual encounter was consensual. He said he was unable to have sexual intercourse with Aguino because he was unable to get an erection. Aguino Jr. admitted digitally penetrating her with his fingers. Aguino Jr. said Aguino performed oral sex on him. Afterwards Aguino voluntarily got out of the car at the day school. He claimed it was consensual. Aguino Jr. was asked about Aguino's condition. He said she was intoxicated and admitted she may not have known what she wanted.

10) Benedict Emmette Aguino Jr., was born in 1982, Social Security Account Number xxx-xx-9194, is an Indian who is enrolled with the Ohkay Owingeh Indian Tribe.

11) Yvette Aguino, born 1980, Social Security Account Number xxx-xx-xxxx, is an Indian who is enrolled with the Laguna Pueblo Indian Tribe.

12) Based on the above information, it is believe that the vehicle belonging to Aguino Jr., 1998 Oldsmobile Intrigue, New Mexico License 181-PGS, VIN: 1G3WS52K5WF321456, registered to Benedict Aguino. Currently stored at Total Secure Towing Service and Self Storage in Espanola, NM contains evidence of the sexual assault that occurred against Aguino within the exterior boundaries of the Ohkay Owingeh Indian Reservation, New Mexico.

13) The affiant is requesting a Search Warrant be issued for the following items, which are believe to be in the described vehicle used during the commission of the crime:

a) Bodily fluid(s), and/or bodily tissue(s) including but not limited to saliva, semen, blood, skin, hair and/or any item(s) that may have said item(s) upon and/or within them.

b) Any and all glove(s), fabric, footwear, vehicle tires and/or tools and/or known casts and/or standards from said item.

c) Condom(s), whether used and/or unused and/or condom wrapper(s) and/or package(s).

d) Trace evidence, including but not limited to hair and/or fiber(s) and/or any item(s) and/or material(s) that may have said item(s) on and/or within them.

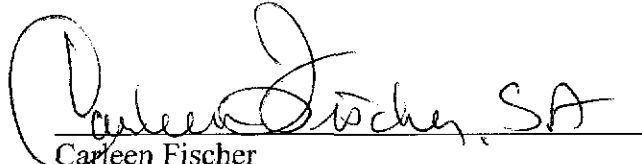
e) Alcoholic beverage(s) and/or alcoholic beverage container(s) containing any amount of beverage whether open or closed.

f) Prescription narcotic(s) and/or prescription narcotic(s) container(s) containing any amount of narcotic whether open or closed.

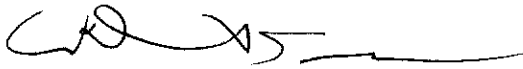
g) Illegal narcotics and/or any other controlled substance(s) and/or suspected illegal narcotics and/or any other suspected controlled substance(s) including, but not limited to any drug or substance listed in Schedules I through V of the Controlled Substance Act or regulations adopted thereto.

h) Documentation of the herein-described premises, vehicle(s), person(s) and/or the herein-described item(s), to be seized, by means of measurement, photography, videography and/or any other means deemed necessary by law enforcement and/or person(s) assisting law enforcement.

Therefore, the affiant believes that there is probable cause to believe that the item(s) to be will show that a felony has been committed, namely a violation of Title 18 United States Code, Section 1153, 2242 (2) 2246 (2) (C). Therefore, the affiant believes that probable cause exists for a search warrant to be issued to seize the above-described item from the 1998 Oldsmobile Intrigue, New Mexico License 181-PGS, VIN: 1G3WS52K5WF321456, Registered to Benedict Aguino. Currently stored at Total Secure Towing Service and SelfStorage in Espanola, NM.


Carleen Fischer
Special Agent
Bureau of Indian Affairs

Subscribed and sworn to me before this 10th day of SEP, 2008.


United States Magistrate