



## BLANCO COUNTY ATTORNEY

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DATE: July 15, 2016  
TO: Captain Ben Ablon  
Blanco County Sheriff Office  
RE: Live Oak Classical School

After thorough review of your investigation notebook, complete with statements, photographs, drawings, emails, and police and medical reports pertaining to the April 28, 2016 incident at the Germer Ranch, I have concluded that there is insufficient evidence for a criminal case. Statements indicate a probability, or at least reasonable belief, that the juvenile was the victim of an accident for which she was at least partly responsible due to the manner in which she and others were pulling a rope attached to a swing, i.e. pulling with their backs to the swing with the rope slung over a shoulder and immediately adjacent to the neck. The many inconsistent statements also leave much room for reasonable doubt.

If I see clear reasonable doubt, I cannot in good conscience file criminal charges and try to convince a judge or jury otherwise. I therefore respectfully reject the case.

*David Allen Hall*

## Blanco County Sheriff's Office

Case # 1606572

### Summary

#### Introduction:

This case first came to the attention of the Blanco County Sheriff's Office (BCSO) as the result of a phone call from a reporter from a Dallas newspaper. Subsequently, without any explanation, a Waco Police Department (WPD) report, emails, and a disc containing an interview of the alleged victim by a WPD Detective were received from the Gillespie County Sheriff's Office, not addressed to anyone at BCSO.

The alleged victim in this case is a 12 year old girl of African-American decent that resides in Waco, Texas. At the time of the alleged offense, she attended Live Oak Classical School (LOCS). Hereinafter she will simply be referred to as "the victim". She lives with her mother, who will be referred to as "the complainant". According to information provided by Child Protective Services (CPS), the complainant and the victim's father are divorced, but there is contact.

LOCS is a private school located in Waco. According to the Grammar School Dean, who is also one of the founders, LOCS was created to provide an education based on Christian values with an emphasis on classical education to include literature and Latin. LOCS is not the recipient of any endowments and is funded solely by the tuition collected. Nine percent of the tuition collected is set aside for scholarships. Those scholarships will fund one half (about \$4000.00) of the tuition for a student who would otherwise not be able to afford to attend LOCS. The victim was the recipient of such a scholarship.

The Grammar School Dean (Dean) arraigned for the sixth grade students to stay at her parent's ranch in Blanco County as part of a field trip on April 28<sup>th</sup> and 29<sup>th</sup> of 2016. 22 students, including the victim, travelled from Waco to Fredericksburg then to the ranch in Blanco County where they swam, played sports and games, and participated in nature studies. There was also a campfire before the students spent the night at the ranch.

The group of 22 students consisted of 14 boys and 8 girls. Of the 8 girls, 2 are African-American and 1 is Asian. Of the 14 boys, 1 is Asian. The remainders are white.

In addition to the Dean, two female teachers, and a female parent, a male teacher and two male parents, chaperoned the trip.

In reviewing the initial report from WPD, there was no allegation that the victim's injury had been inflicted intentionally. The victim reported that she did not know what other children were nearby or may have seen what had happened. However, on May 16, 2016, when WPD Detective Kent interviewed the victim at the request of the Gillespie County Sheriff's Office, she stated that all the children were present, and named three boys as the ones she believed responsible. One of the boys she claimed had been bullying her at school. At this point the complainant had retained an attorney who had already announced intent to file a civil suit against LOCS and the ranch owner. It was also alleged by the attorney that the injury was the result of racially motivated attack.

While there was no evidence to support the allegations at that point, I suggested to my superiors and received approval to move forward with an investigation to determine if an offense had been committed, and if so, was it racially motivated.

At the ranch, one of the activities that the children engaged in was playing on a swing that hung from a tree. This tree was about halfway between the cabin where the boys stayed and the creek, and was visible from the house. The swing is round with a seat that is woven straps. The swing has ropes that rise up and attach to a ring. There is a rope that extends from that ring up to a branch on the tree.

An additional rope was attached to the seat, and that rope is used to pull the swing. Photos of the swing and surrounding area were taken and are included as exhibits in the case file.

It was at this swing that the injury is alleged to and believed to have been received by the victim.

#### **Investigation:**

After reviewing the WPD report and interview, I and Cpl. Acosta went to the ranch and met with the ranch owner. He was very cooperative, even providing us with the gate code. We photographed the swing and immediate area. I also prepared a diagram for use during interviews.

We pulled the rope from the swing toward the water as the owner described how the children had done. I did discover that if I pulled the swing back as far as I could, then did not let go until it pulled back away, the end of the rope would snap or whip away from me. I had Cpl. Acosta stand where the victim had indicated she was when injured. Even without the force that would be added by having a child in the swing, the rope whipped with enough force to cause a rope burn to Cpl. Acosta's neck, as it hit him.

The white rope used to pull the swing is a flexible nylon rope, much like a ski rope. I was unable to cause it to loop over Cpl. Acosta's neck while holding on to it, regardless of whether the swing was in motion. When I got within about eight feet I could get it over him, but could not manipulate it in such a

way as to make it stay around his neck. The rope was very different in size than had been described by the victim during her interview with Det. Kent.

Over the next weeks, the children and chaperones were interviewed. I conducted most of the interview and Cpl. Acosta conducted some. CPS Special Investigator Ida Parmer attended most of the interviews. When the children were interviewed a parent was allowed to be present. Attorneys were not allowed to observe interviews.

One female chaperone and her two sons were travelling and were not interviewed. I did speak with her by telephone and she advised that when the victim was injured, her and her sons were at the house and had no knowledge of how the injury had occurred. A male child was out of the country and is not expected to return until sometime in August. Several of the others interviewed placed him in another area during the time the victim was injured.

#### Victim Interview:

The victim was the first child to be interviewed. She explained that she was the most normal child at the school and characterized the others as "Special Needs". She stated that all of the other children, except two of the girls, are bullies. She characterized being bullied as being called "weird", boys making noises at her, being pushed, and having the advice she gives others turned back on her.

I asked the victim if she believed she had ever been treated differently at LOCS because of her race and she replied, "No". She also told me that she had never heard anyone at LOCS use any racial slurs.

The victim described to me how she had been playing with the others at the swing by helping to pull on the white rope. She identified the rope in the photos I took as the same rope, even though it was very different than what she had described to Det. Kent.

She stated that she had stopped pulling and was just watching when the rope somehow went around her neck, pulled tight from both end, pulled her toward the swing and down. She said she felt it go all the way around her neck.

I had her demonstrate on a doll with a rope how the rope had gone around her neck. She showed me the rope going around her neck twice. I confirmed with her that it went around twice, because in her interview with Det. Kent, she indicated once. She then demonstrated for me how she removed the rope.

In the interview with Det. Kent, the victim stated that the rope had pulled tight and dragged her about one inch.

She claimed that none of the other children attempted to assist her.

She indicated that she was treated by a physician who was one of the chaperones on the trip.

#### Interview of LOCS Dean:

During the interview of the Dean, I was advised that as a private school, LOCS does not get funding for special education programs. Therefore LOCS has no "Special Needs" students, as they do not have the resources to provide adequate services to those students.

The Dean advised me that the victim has been a good student, but did recently get caught cheating on a test. She said the victim has struggled with some topics, but works hard on her assignments.

She mentioned the one email she received from the complainant alleging bullying and how she had looked into it and addressed it.

She also told me of concerns she and the teachers had about the victim's social skills and how they had met with the complainant to offer some information and recommendations. When she followed up with the complainant, she learned that the complainant had disregarded their recommendations and did not seek the assistance they had suggested.

#### Interviews of other witnesses:

During the course of interviewing the other children and adults on the trip the following noteworthy items were discovered.

- While swimming, the victim wore a life jacket, but no one teased her.
- Most of the children like the victim and have tried to include her in activities.
- No one interviewed has ever heard anyone at LOCS use a racial slur or engage in any racially biased act.
- One student reported hearing the victim decline an offer from the Dean to call her mom after the injury.
- Several children claimed to have gotten rope burns.
- Multiple students tried to assist the victim when she was injured.

During the interviews, only three children reported seeing the injury happen, and their accounts differ.

One boy who had been pulling the rope stated that the victim was walking across the area as someone picked up the rope to start pulling the swing again. This "clotheslined" the victim, causing the rope burn.

Another boy who had been pulling the rope stated that the victim was helping to pull the rope. She hesitated when it was time to let go. This caused her to be pulled toward the swing. When she let go of the rope, the end whipped around and hit her neck.

A girl, who was likely the closest to the victim, stated that the victim was pulling the rope and hesitated letting go. This pulled the victim toward the swing and she fell. As she fell, the rope went across her neck as it was pulling back toward the swing.

Other students reported seeing the victim on the ground, but the rope was not around her neck.

One child and one adult stated that shortly after the victim was injured, while eating dinner, they asked what happened. The victim responded, "The rope went across my neck". The adult stated that she asked again the next day and got the same response. The adult also showed how the victim demonstrated how she had been holding the rope over her shoulder to pull it.

I interviewed the physician who was on the trip and tended to the victim's injury. He is licensed in good standing with the Texas State Board of Medical Examiners, with no disciplinary history. He has about twenty years of experience as a doctor, currently practicing family medicine in Waco.

He described the injury as a first degree friction burn. He stated that there was no petechiae present. He suggested that an anti-biotic ointment be applied to establish a barrier, and Motrin be given for any pain. When anti-biotic ointment was not readily available, Vaseline was applied. He did follow up with the victim a little later in the evening, who told him she was much better. This physician stated that in his opinion, if the rope had pulled tight around the victim's neck, petechiae would have been present.

He had taken many photos during the trip, which he forwarded to me. One included the victim at the campfire that evening and the recent injury is visible.

There were inconsistencies in the some of the interviews of the other children and the victim. The victim stated that all the children were at the swing when she was injured. Most of the other reported that all the children were never at the swing at the same time. Very few came up with the same list of names of who was present when the victim was injured.

The victim reported the opposite sleeping quarters than everyone else interviewed.

#### Review of Reports and Records:

There are inconsistencies in the victim's account of the events.

- At the ranch she states the rope went across her neck.
- At ER and WPD interview she says rope went around neck.
- BCSO interview, she says rope went around neck twice.
- At ER she tells WPD she does not know who was around.
- WPD interview she names suspects.

There are discrepancies in the victims account and the accounts by the witnesses.

- The victim and one witness say the rope went around her neck. That witness was one of the furthest away.
- Multiple other witnesses saw the victim on the ground, but the rope was not around her neck. (She said she took it off after getting up)
- The victim claims no one tried to help her. Other witnesses state that several others tried to help her.

The records received from Providence Hospital relative to this incident were reviewed. In summary they indicate a superficial rope burn that extends from the 1 o'clock to the 11 o'clock position on the victims neck. An anti-biotic ointment and Motrin were prescribed. Other than being a prescription medication, this was the same treatment suggested by the physician at the ranch.

The report by the WPD Crime Scene Investigator that arrived to take photos described the injury and made note that there was no petechiae present.

To insure that this case was reviewed by an impartial physician, I requested the assistance of a Pediatric Trauma expert with Dell Children's Hospital in Austin. I have worked with this doctor before on child abuse cases and knew that she would scrutinize the case carefully.

She reviewed the records, photographs, cps information and the details I provided about the different witness accounts. She opined that the absence of petechiae indicated that the rope never pulled tight, as compression would have caused petechiae.

### **Conclusion:**

In the beginning of this investigation there was no evidence of any criminal act or intention to harm this victim. After interviewing almost every person that was at the ranch, and certainly every person believed to have been at the swing when the victim was injured, there still is no evidence.

The injury the victim received was classified by three different physicians as a minor or superficial rope burn. The lack of bruising or other evidence of damage beneath the skin and the length of the rope burn, more support the accounts of the witnesses than that of the victim. In fact, the victim's account of the rope pulling tight and her being dragged one inch, is likely disproven by the evidence.

The victim's story seems to have evolved some, but no evidence was revealed that indicates that this was more than an accident.

As to the allegation, by the attorney, that this injury was the result of a racially motivated attack, there was no evidence found of any racially motivated act toward this victim by anyone at or associated with LOCS. This was even supported by the victim's statement.

In looking into the possibility of bullying at LOCS, there was no evidence to support that allegation. The conduct described by the victim and the other children during the interviews was nothing more than what one would expect from 12 year olds. In the civil action filed by the victim's attorney, the proof of bullying was one email. In that email the complainant admits that the first incident had already been addressed by a teacher. She then mentions two additional instances. In less than an hour of receiving that email, the Dean had already addressed the issue with both children and responded to the complainant's email. There were no more allegations reported to the Dean.

**Recommendation:**

I will request this case be reviewed by our local prosecutor, but I am recommending that the case be closed with no further action.

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Capt. Ben Ablon