

STATE OF OKLAHOMA

PLAINTIFF,

vs.

NAME: Capps, James Keith

DOB: 08/**/1976

SSN#: *****0702

DEFENDANT,

TRIBAL COURT OF CHOCTAW NATION
STATE OF OKLAHOMA

NO. Cm-21-485

AFFIDAVIT

FILED
CHOCTAW NATION OF OKLAHOMA
DISTRICT COURT CLERK

STATE OF OKLAHOMA - TRIBAL COURT OF CHOCTAW NATION: SS.

The undersigned upon oath deposed and states as follows, to wit:

SEP 13 2021
SUSAN LOZANO
COURT CLERK
BY [Signature] DEPUTY

On Friday, September 10, 2021, your affiant was employed by the Oklahoma Highway Patrol and was on duty in Atoka County. The Oklahoma Highway patrol is currently cross deputized with the Choctaw Nation Tribal Police. On March 23, 2021, your affiant received cross commission with the Choctaw Nation Tribal Police and is currently cross-commissioned.

On Friday, September 10, 2021, at approximately 9:00 pm, your affiant was contacted by Tushka Assistant Police Chief TROY BENNIBOSE via cell phone. BENNIBOSE received complaints that Tushka Police Officer JAMES KEITH CAPPs was on duty and intoxicated. BENNIBOSE requested that your affiant and Trooper KEVIN MILLER look into the complaint. KEVIN MILLER also received a complaint of the situation from Atoka County Sheriff's Deputy JD MIXON. MIXON was at the collision scene and noticed signs of intoxication. Your affiant and KEVIN MILLER responded to the intersection of United States Highway 69 at County Road (Boggy Depot Road) where CAPPs was investigating two collisions. This location is in the territorial boundaries of the Choctaw Nation. Your affiant approached CAPPs while he was setting inside his patrol unit. The motor was running and the emergency lights were activated in the patrol unit. Your affiant leaned down into the driver window and asked CAPPs about the collision. Your affiant detected a strong odor of alcoholic beverage on the breath and person of CAPPs. CAPPs exited the vehicle. KEVIN MILLER approached CAPPs and detected an odor of alcoholic beverage on the breath and person of CAPPs. Your affiant and KEVIN MILLER took CAPPs away from other people at the collision scene where he was asked about consuming alcohol. CAPPs began denying that he had drank anything, but then stated that he had two drinks earlier in the day. CAPPs stated that his last drink was around 1:00 pm. Your affiant and KEVIN MILLER advised CAPPs to stay away from other people at the collision scene and asked him what he needed to complete the at scene portion of the collision investigation. CAPPs disobeyed and spoke to multiple people before your affiant and KEVIN MILLER were able to clear others from the collision scene. Your affiant had MIXON watch CAPPs' patrol unit while CAPPs was transported to the Tushka High School parking lot where standard field sobriety tests were performed. KEVIN MILLER performed standard field sobriety test while your affiant witnessed the tests. CAPPs failed to field sobriety tests and was hesitant when requested to to give breath sample for preliminary breath test (PBT). CAPPs eventually complied and the test indicated .156 breath alcohol content (bac). Your affiant explained to CAPPs that he was being arrested. CAPPs stated that he was a member of the Choctaw Nation, but was not in

possession of a tribal membership card. Your affiant confirmed membership through Choctaw Nation Tribal Police Dispatch with a membership number of CN183499. At 10:06 pm, KEVIN MILLER read implied consent request to CAPPs. CAPPs refused the state's test. Arrangements were made to transport CAPPs to the Coal County Jail due to the circumstance of being a law enforcement officer in Atoka County. Choctaw Nation Tribal Prosecutor KARA BACON approved the housing arrangements. CAPPs was transported to the Coal County Jail where he was booked for Actual physical control of a motor vehicle while under the influence of alcohol and possess firearm while intoxicated.

I HAVE READ THE FOREGOING STATEMENT AND KNOW THE CONTENTS THEREOF TO BE TRUE AND CORRECT UNDER PENALTY OF PERJURY.

Trey Miller

SUBSCRIBED AND SWORN BEFORE ME THIS 13th DAY OF September, 2021

MY COMMISSION EXPIRES

KELSEY-RHAE LONG
Notary Public, State of Oklahoma
Commission # 13005085
My Commission Expires 05-30-2025

Kelsey Rhae Long

NOTARY PUBLIC

The undersigned Judge of this court, upon sworn testimony and/or affidavit, hereby determines there to be probable cause to detain the defendant.

Dated this 13 day of September, 2021

[Signature]

JUDGE OF THE DISTRICT COURT