

INTEROFFICE MEMORANDUM

DATE: July 25, 2008 **PHONE:** 909.387.6533

FROM: Denise Trager Dvorak, SDDA
Lynn Poncin, DDA

TO: Dennis Christy
Assistant District Attorney



SUBJECT: Memo Re Failure to Report per 11365.7 (Operation Phoenix Employees)

Suspects:

1. **Glenda Robinson**
 - a. Community Recreation Manager responsible for 3 community centers, including Operation Phoenix, and youth sporting events
 - b. Supervised Defendant Michael Miller through June 4, 2008
2. **Curtis Brown**
 - a. Division Manager of Parks and Recreation; supervised Glenda Robinson
3. **Kevin Hawkins**
 - a. Department Director for Operation Phoenix; employed by Parks, Recreation & Community Services Dept; responsible for Facilities and Employees at Operation Phoenix
4. **Glenn Baude**
 - a. Employed by City of San Bernardino Code Enforcement as the Director for the Dept.; additionally, acts as:
 - b. Director of Operations for Operation Phoenix
 - c. Supervised Defendant Miller from June 5, 2008, until his arrest on July 3, 2008

Involved party:

Fred Wilson, City Manager, City of San Bernardino

SUMMARY OF CASE

On June 27, 2008, Glenda Robinson sent an e-mail to her supervisor, Curtis Brown, as well as to the department director, Kevin Hawkins, reporting that employee Michael

Miller was possibly involved in an incident with a minor at the Operation Phoenix facility in San Bernardino.

No one reported the alleged incident to the San Bernardino Police Department.

The e-mail states:

“Kevin/Curtis

I was just told that some former and current employees are planning on going to the City Attorney’s office to report Mike Miller’s involvement in the BB gun incident and a possible sexual involvement with a minor during work hours.”

Ms. Robinson sent the e-mail to Kevin Hawkins and cc to Curtis Brown on Friday, June 27, 2008, at 11:11 am; Kevin Hawkins forwarded the e-mail with a notation of “FYI” to Glenn Baude, on Friday, June 27th, at 12:22pm, and Glenn Baude replied to Kevin Hawkins only at 12:48pm on Friday, June 27th, stating: “I will not use the word that comes to mind. We probably need to talk because if he is now mine I believe there should be some level of discipline for the BB incident, possible sexual involvement (sic) I have heard nothing about but it should be investigated. Let’s meet.”

ISSUES

- (1) Are the suspects, listed above, mandated to report child abuse/neglect pursuant to Penal Code Section 11165 et. seq.?
- (2) Did the suspects fail to report as required, thus committing a misdemeanor criminal offense?

STATEMENT OF FACTS

Interview of Glenda Robinson:

Ms. Robinson was interviewed on July 18, 2008. She advised that she is a Community Recreations Manager and supervises the following City-owned recreation centers:

1. Nicholson Park
2. Lytle Creek Park
3. Hernandez Center
4. Ruben Campos Center

Ms. Robinson stated that she supervised Michael Miller until June 4, 2008 when it was decided during a meeting that Mr. Miller would report directly to Mr. Baude.

In reference to her e-mail, Ms. Robinson stated that she received information from former employee, Witness #1, that he and several other employees were planning to report Mr. Miller's involvement in a BB gun incident and that Mr. Miller was involved in some "bad things". Ms. Robinson inquired further of Witness #1, who explained that a lady from the church pre-school said Mr. Miller was not a good guy. Witness #1 said the lady from the church asked the age of a female rec-center employee, and when she was told that the employee was 16-years-old, she seemed upset, but she didn't say anything else.

Based on the information provided by Witness #1, Ms. Robinson said that she "surmised" there was something going on between Mr. Miller and the young lady pertaining to a sexual nature. However, Ms. Robinson did not think that any molestation was occurring with young children.

Ms. Robinson further stated that Witness #1 never said that he or anyone else had witnessed some type of sexual abuse or assault. Ms. Robinson said that what she put in her June 27th e-mail to Mr. Hawkins and Mr. Brown best described what she thought Witness #1 was trying to tell her.

Interview of Glenn Baude:

Mr. Baude has been the Director of Operations for Operation Phoenix since June of 2006. He is also the Director of the Code Enforcement Department.

Mr. Baude explained that his duties involve the collaboration of partnerships with other City Departments and other community partners. He is responsible for developing the three Operation Phoenix centers, but is not directly involved with supervision of the staff members at the centers.

Mr. Baude acknowledged receiving Ms. Robinson's e-mail on June 27th, regarding Mr. Miller's involvement in the BB gun incident, and possible sexual misconduct. Mr. Baude explained that he responded to Mr. Hawkins that something needed to be done reference discipline for the "BB gun incident" and that the sexual misconduct allegation needed to be looked into.

On June 30, 2008, Mr. Miller asked to meet with Mr. Baude at lunch, but Mr. Baude said he was not able to do so. Later that afternoon, Mr. Miller stopped by Mr. Baude's office, and during that meeting, the subject of the e-mail was discussed. Mr. Miller denied any inappropriate sexual activity. Mr. Baude told Mr. Miller to meet with his Parks and Recreation supervisors about the statement contained in the e-mail. Miller agreed to do so.

On June 30th, at approximately 4:00pm, after his interview with Mr. Miller, Mr. Baude met with Fred Wilson at the City Manager's Office. At this time Mr. Baude informed Mr. Wilson of the rumor of a possible "sexual incident" and that Mr. Miller had denied any such conduct. Mr. Wilson stated to Mr. Baude: "Okay, we'll take care of it."

The last Mr. Baude heard regarding this incident was on July 1, 2008 when Mr. Wilson informed him that the San Bernardino Police Department was now handling the matter and that Mr. Baude was not to talk to anyone about it.

When questioned directly about the contents of Ms. Robinson's e-mail, Mr. Baude stated that he believed the e-mail was very vague and that he knew Ms. Robinson and Mr. Miller did not get along at all. Mr. Baude stated that he gave very little weight to this information but believed that Kevin Hawkins, the Parks and Recreation Director was looking into the matter.

Interview of Kevin Hawkins:

Mr. Hawkins did not wish to make a statement without the presence of his counsel.

However, Mr. Hawkins provided documentation outlining his response to the e-mail from Ms. Robinson. According to this documentation, on June 27th, he questioned Ms. Robinson about the contents of her e-mail regarding Mr. Miller's possible sexual misconduct. In the documentation, he says that Ms. Robinson informed him that there were rumors that disgruntled employees were upset at Mike Miller, and she said she was looking into it, and just wanted to give him a heads up in case something came out of the rumors.

On Tuesday, July 1st, Mr. Hawkins again spoke to Ms. Robinson, who told him that Witness #1 told her he believed Miller had retaliated against Witness #1. As a result of this, Witness #1 implied that he knew that Miller was involved with an employee but did not provide a name, age, time or location.

Interview of Curtis Brown:

Mr. Brown stated that he was a Division Manager for the Parks and Recreation Department. He identified Mr. Hawkins as the Director of the department.

Mr. Brown was on vacation and away from the office from Thursday, June 26, 2008, through Monday, June 30th. His first day back to the office was Tuesday, July 1, 2008. It was on that day that he read the e-mail from Ms. Robinson.

Mr. Brown spoke to Ms. Robinson and asked if she had heard from Kevin Hawkins regarding the e-mail since the e-mail was addressed directly to him. Ms. Robinson advised that she had not heard anything from Mr. Hawkins so Mr. Brown went to speak with Harriet Myers, the executive assistant to Mr. Hawkins. He recalls asking Ms. Myers what was going on with this incident but does not recall her response.

Mr. Brown believed that he was a mandated reporter and advised that there was a policy in place regarding suspected child abuse with the Parks and Recreation Department. He further stated that training was conducted last month with employees

and handouts were provided to all the staff within the division regarding reporting requirements for child abuse.

Mr. Brown believed after talking to Ms. Robinson and Ms. Myers, that the matter was already being handled.

Interview of Harriet Myers:

Ms. Myers is the Executive Assistant to the Department Director, Mr. Kevin Hawkins.

Ms. Myers became aware of the allegations against Mr. Miller when he was arrested. She was aware of the e-mail sent by Ms. Robinson but did not read it thoroughly and didn't really pay attention to it. She says she tries to ignore rumors and innuendo. Ms. Myers stated that no one contacted her with regard to any type of child sexual abuse during the last few months.

Interview of Witness #1:

Witness #1 stated that he was terminated from his employment at Operation Phoenix on Thursday, June 26, 2008. Witness #1 denied any contact with Ms. Robinson on June 27, 2008. He said he did not contact her until the following week, which would have been July 1, 2008. He attempted to contact her between the dates of June 26, 2008 and July 1, 2008, by calling her five times to ask why he had been terminated, but she never called him back. On July 1, 2008, Ms. Robinson informed him that he was "off limits" and she could not talk to him.

Witness #1 stated that three weeks prior to Mr. Miller's arrest, he received information from his girlfriend, Witness #2, who works at the nearby pre-school. Witness #1 stated that Witness #2 told him that she had seen Mr. Miller kissing a sixteen-year-old girl and lighting a cigarette for her in the parking lot of the center.

Witness #1 again stated that he never spoke to Ms. Robinson regarding the kissing incident.

Interview of Witness #2:

She is an employee of the pre-school located at the Church where the Operation Phoenix central office is located.

She stated that she observed Mr. Miller at the location in mid-June. Mr. Miller was with a teenage female employee of the center. She saw Mr. Miller tickle the teenage female and then walk her to his car in the parking lot. She saw Mr. Miller put his arm around the girl and light a cigarette for her. She did not observe any kissing. She believed the girl with Mr. Miller to be about 16-17 years old. The only person she told about her

observations was Witness #1. She reported her observations to Witness #1 the same day she saw Mr. Miller with the female.

Interview of Fred Wilson:

Wilson stated that he had no recollection of talking to Mr. Baude on June 30th, and denied that he discussed a possible sexual misconduct incident involving Mike Miller. Wilson further indicated that he had no recollection of a conversation where he said "Okay, we'll take care of it" with reference to the Miller issue. Wilson checked his calendar and stated that he was at a City Council meeting that afternoon and would not have been in his office. He also stated that this was not something he would take care of, and that the appropriate department head, through their chain of command would handle this type of situation.

Mr. Wilson stated that it was on July 1st that he first became aware of the e-mail from Ms. Robinson dated June 27th, but he could not recall who told him about it.

LEGAL PRINCIPLES

Penal Code §11166(a) mandates reporting to law enforcement or child protective service agencies, "whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect".

PC 11166(a)(1) defines "reasonable suspicion" as follows: "Reasonable suspicion means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect."

PC §11165.6 defines child abuse or neglect that must be reported, as physical injury or death inflicted by other than accidental means... **sexual abuse as defined in Section 11165.1**, neglect, or child endangerment.

PC §11165.7 lists the mandated reporters, including subsections (7) and (8) below:

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

LEGAL ANALYSIS

It appears that the following individuals would be mandated reporters pursuant to subsections 7 and 8 above:

- ❖ **Glenda Robinson**
- ❖ **Curtis Brown**
- ❖ **Kevin Hawkins,**
- ❖ **Glenn Baude**

Fred Wilson, San Bernardino City Manager, does not appear to be a mandated reporter in this case, since he does not appear to fall within any of the categories listed in 11165.7 above.

Given their status as mandated reporters, we must then consider whether the above-indicated individuals had a “reasonable suspicion” that Mr. Miller had sexually abused a minor child at Operation Phoenix.

It is clear that no information was provided to Ms. Robinson regarding *actual sexual abuse* of a child. Rather, as she described it, she “surmised” there was something sexual in nature going on, but did not think any molestation was occurring with young children. It should be noted that Witness #1 in fact denies that he told Ms. Robinson anything about Mr. Miller’s possible sexual involvement with the 16-year-old female or any other minor child.

The e-mail from Ms. Glenda Robinson was sent on June 27th. The Children’s Services notification and the resultant San Bernardino Police Department notification relative to Mr. Miller occurred on July 1st. The San Bernardino Police Department investigation commenced on July 1st, and the arrest of Mr. Miller occurred on July 3rd. It is noteworthy that the child molestation charges alleged against Mr. Michael Miller in case #FSB-802753, occurred between the time the Operation Phoenix Center opened in December, 2007, and April 30th, 2008. (April 30th was the last day that any of the child victims in FSB-802753 were at the Operation Phoenix facility.)

The mandated reporting requirements set forth in Penal Code Sections 11166 et seq serve a critical purpose—the protection of children whose care or evaluation has been entrusted to the specified individuals. Persons subject to these reporting requirements should be expected to promptly investigate any suggestion of child abuse or inappropriate conduct with minors. However, criminal liability attaches under the statute when such persons have or develop “reasonable suspicion” of abuse. As set forth in the foregoing statement of facts, in the instant matter, the June 27th e-mail prepared by Ms. Robinson set forth rumor and conjecture which was passed on to Mr. Brown and Mr. Hawkins internally, with the anticipation that it might be investigated further. It cannot legally be established that this rumor and conjecture alone constituted facts

sufficient to establish reasonable suspicion and thereby require a mandated report pursuant to PC 11166.

CONCLUSION

For the foregoing reasons, it is therefore concluded that there is insufficient evidence to prove beyond a reasonable doubt that there was a violation of PC §11166 or any other related criminal statute.