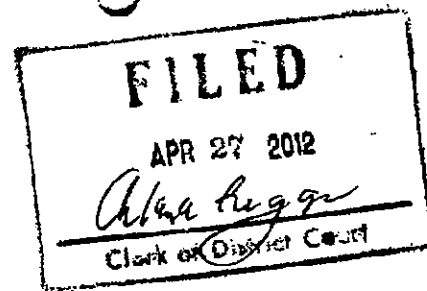


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MONTANA SEVENTH JUDICIAL DISTRICT COURT, RICHLAND COUNTY

STATE OF MONTANA, * NO. DC-12-9

Plaintiff, *

-vs- * AFFIDAVIT IN SUPPORT
OF MOTION FOR LEAVE TO
MICHAEL KEITH SPELL, * FILE AN AMENDED INFORMATION

Defendant. *

STATE OF MONTANA)
) SS.
COUNTY OF RICHLAND)

Mike Weber, being first duly sworn upon oath, deposes and says as follows.

Affiant is the duly qualified and acting County Attorney for Richland County, Montana. As such, affiant is empowered to prosecute persons charged with crimes committed in the State of Montana and to initiate such prosecutions by Information filed in District Court.

Pursuant to Section 46-11-201, M.C.A., affiant seeks leave to file an Amended Information charging the Defendant with the

following offenses and for sentencing purposes, aggravating circumstances.

COUNT I: DELIBERATE HOMICIDE, a felony, in violation of Section 45-5-102(1)(b), M.C.A.

when on or about January 7, 2012, the Defendant, MICHAEL KEITH SPELL, attempted to commit, committed, or is legally accountable for the attempt or commission of aggravated kidnapping, or kidnapping, and in the course of the forcible felony or flight thereafter, he or any person for which he is legally accountable, namely, Lester Van Waters, Jr., for the crime caused the death of another human being, namely, Sherry Arnold, by either choking her or holding her face in mud or water until she was dead.

A person convicted of the offense of deliberate homicide shall be punished as follows:

a. By death as provided in 46-18-301 through 46-18-310. **The aggravating circumstance to be relied upon is this offense was committed by an offender lying in wait or ambush, Section 46-18-303(1)(a)(iv), M.C.A.;**

b. Or by life imprisonment, or by imprisonment in the State prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222.

COUNT II: ATTEMPTED KIDNAPPING, a felony, in violation of Sections 45-5-302 and 45-4-103, M.C.A.

when on or about January 7, 2012, the Defendant, MICHAEL KEITH SPELL, knowingly or purposely, and without lawful authority,

attempted to restrain Sherry Arnold by either secreting or holding her in a place of isolation or using physical force and committed an act in furtherance thereof by grabbing Arnold, who was out running, with the purpose to force her into a green Ford Explorer on Holly Street, also known as the "Truck Route" of Sidney, Richland County, Montana.

A person convicted of the offense of attempted kidnapping shall be imprisoned in the State prison for a term of not less than 2 years or more than 10 years and maybe fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

Your affiant has received reports of investigation made by the United States Federal Bureau of Investigation regarding the facts and circumstances surrounding the above-entitled case and, based thereon, it appears there is probable cause to believe the above named Defendant has committed the offenses above stated.

That said investigation has revealed the following:

1. On January 7, 2012, at approximately 6:30 a.m., Gary Arnold returned to his home in Sidney, Montana after a morning walk. When he arrived home, he noticed that his wife, Sherry Arnold (age 43), was not in the house. Gary assumed that Sherry, who was an avid walker and jogger, had gone for a jog. Gary advised authorities that Sherry normally jogged three miles in about 30 minutes over several different routes around Sidney,

Montana. After Sherry did not return home, Gary became concerned and drove around Sidney looking for her on her usual jogging routes. After not finding Sherry, Gary notified family, friends, and local law enforcement that Sherry had not returned from her jog and was missing.

2. Gary advised investigators that Sherry normally wore a pullover sweatshirt with hood, a turtleneck, tights, jogging pants, knit gloves, and mittens while running. Gary also said that Sherry normally carried a Nike device which measures distance and pace and a digital music device with ear bud speakers while jogging.

3. A search for Sherry began and one of her running shoes was found later in the day on one of her known jogging routes along Holly Street, also known as the "Truck Route" in the northeast part of Sidney. Attached to the shoe's lace was a Nike device which measures pace and distance. The other portion of the device is worn on the wrist. In the area along Holly Street where the shoe was found, a small ditch, an embankment, and then a larger ditch run beside the westbound lane of the road. A dirt path runs along the top of the embankment. An extensive ground search of the Sidney area was begun and involved numerous persons from the community. When Sherry was

not located, an investigation began into her disappearance. The Federal Bureau of Investigation (FBI) joined the investigation on January 9, 2012. The investigation included extensive searches of Sidney and the surrounding area and numerous interviews of family members, friends, coworkers, and other potential witnesses. Sherry's disappearance was well publicized in the media and a command post and tip line were established at the Sidney Police Department.

4. Craig Overby, Special Agent of the FBI, led the investigation into Sherry Arnold's disappearance. He is currently assigned to the Salt Lake City Division of the FBI, Glasgow, Montana, Resident Agency. His primary responsibility is the investigation of violent crimes, and he has been employed with the FBI for thirteen years. He reported to the County Attorney's office the following information.

5. On January 11, 2012, a tipster reported to law enforcement that Angel Cruz (female) said her boyfriend, Michael Spell, was stranded in North Dakota and was attempting to obtain money to get a bus ticket home. Cruz lives with Spell's parents in Parachute, Colorado. The tipster advised that Spell and another male, Lester Waters, left Parachute on Wednesday, January 4, 2012, to look for work in the oil fields around

Williston, North Dakota, near the Montana border. Cruz said that the two were driving a green Ford Explorer. Cruz advised Spell told her that he and Waters were high on drugs and driving around when they picked up a lady walking along the road, killed her, and then buried her. Spell said he was scared of Waters and had gotten away from him, but was now stranded. Cruz said Spell's father, Harry Spell, of Parachute, Colorado, also knew Spell was talking about his involvement in the kidnapping/homicide of a female.

6. On January 10, 2012, Officer Jonathon Raggenkamp of the Williston, North Dakota, Police Department identified Michael Spell and Lester Waters in a dark green 1993 Ford Explorer bearing Colorado license plate 311XSC during a traffic stop after a reported bar fight at a strip club in Williston. Officer Raggenkamp advised that it looked as if Spell and Waters were living in the car. Due to the oil boom in Williston, there is a housing shortage in the area. Williston Police Detective David Peterson advised that people routinely sleep in the Walmart parking lot.

7. On January 12, 2012, FBI Special Agents, Denver Division, made contact with Angel Cruz and she reported Spell advised her he and Waters had abducted a female and killed her.

Cruz reported at one point Spell told her "Babe, Les killed a girl, Les killed a girl." Cruz also stated "Michael told me Les made him shove her face in a puddle of mud, like water, until she was dead." Cruz told FBI Agents that Spell was in Rapid City, South Dakota. Cruz said Spell told her Waters made Spell smoke crack cocaine while driving to North Dakota. Cruz said Spell told her Spell was afraid Waters would kill him. Cruz Said Spell told her Waters made Spell bury the female's body.

8. On January 9, 2012, Lonnie Lyttle of Sidney, Montana, advised that on the morning of January 7, 2012, he was traveling south on Central Avenue approaching Holly Street when he observed a jogger traveling east on Holly Street crossing Central Avenue toward the area where Sherry Arnold's shoe was found.

9. During the investigation, video footage taken on Saturday, January 7, 2012, was obtained from the Ranger Lounge at 110 South Central Avenue, Sidney, Montana. The video depicts traffic traveling north and south on Central Avenue approximately three blocks south of Holly Street. The video depicts an older, dark-colored Ford Explorer traveling north on Central Avenue towards Holly Street at 6:34:20 a.m. The video

depicts Lonnie Lyttle's truck traveling south on Central Avenue from Holly Street at 6:36:08 a.m.

10. On January 12, 2012, officers of the Williston, North Dakota Police Department, who were aware of the investigation, located a 1993 green Ford Explorer bearing Colorado license plate 311XSC in Williston. The driver of the vehicle matched the description of Waters. Investigators from the FBI, Williston Police Department, and North Dakota Bureau of Criminal Investigations (BCI) began surveillance of the vehicle. At approximately 10:45 p.m., investigators placed Waters in custody in the parking lot of Lonnie's Truck Stop, which is across the street from Walmart in Williston. The vehicle was impounded while a state search warrant was obtained from a North Dakota District Court Judge in Williams County, North Dakota. Waters was advised he was being detained for questioning regarding a homicide investigation and that a search warrant for his vehicle was being obtained. Waters later declined to be interviewed prior to speaking with an attorney.

11. On January 13, 2012, Sergeant Jared Davidson of the Williams County Sherriff's Office (WCSO) collected Waters' personal property during his booking into the WCSO detention facility. An inventory of Waters' personal belongings revealed

a purchase receipt from Walmart, 4001 2nd Avenue West, Williston, North Dakota, dated January 7, 2012, at 9:36 p.m. The items purchased included bread, bologna and a shovel.

12. During the early morning hours of January 13, 2012, FBI Special Agents from the Rapid City Resident Agency FBI located and interviewed Spell. Spell confessed to the investigating agents that he and Waters abducted Sherry Arnold while she was jogging and killed her. Spell expressed his desire to help investigators locate Sherry Arnold's burial site and body. Spell said he and Waters left Parachute, Colorado, two or three days before Sherry Arnold was abducted. Spell said Waters was smoking crack cocaine during the entire trip. Spell said Waters told him crack cocaine brought "the devil" out in him and he (Waters) was capable of doing anything while using crack cocaine. Spell said Waters began talking about kidnapping and killing a female. Spell said Waters identified a female in a public laundry who they intended to kidnap, but the lady left before they could carry out their plans.

13. Spell said Waters was driving through a town when they observed a female running along the road. Spell said Waters identified the female as a person to kidnap. Waters drove down the road where the female was jogging and turned around and

parked on the side of the road as the female approached. Spell said Waters told him to grab the lady and pull her into the Explorer as she jogged by the vehicle. Spell said the female was jogging on a trail running along the top of an embankment.

14. Spell said he got out of the Explorer and grabbed the female and forced her into the vehicle. Spell said the female struggled and her shoe fell off. Spell said Waters was mad because the shoe was lost. Waters threw Spell's knit hat with tassels into the large ditch as punishment. During the investigation, investigators recovered a knit hat with tassels from the large ditch beside the embankment near where Arnold's shoe was found.

15. Spell said Waters got into the back seat with the female and "choked her out." Spell said Waters then had Spell drive to a grocery store so Waters could obtain money from Western Union. Spell said he stayed in the Explorer with the female while Waters went inside the store.

16. FBI Special Agent John Teeling contacted Western Union and was advised that Waters picked up \$100.00 from the Valley-View IGA grocery store in Sidney at 7:25 a.m. on January 7, 2012.

17. Spell advised that Waters said he (Waters) would kill Spell and his family if Spell ever told anyone what happened. Spell said he and Waters drove to a truck stop near the Walmart in Williston while the female lay dead inside the vehicle and under a blanket.

18. FBI Special Agent Nate Holland reviewed video coverage from the area around Lonnie's Truck Stop, also known as the OK Fuel Stop, which is across the street from Walmart in Williston. The video depicts the passenger side of the green Ford Explorer arriving at the gas pumps at the truck stop at or about 9:58 p.m. on January 7, 2012. Spell can be seen retrieving paper towels and wiping the windows of the Explorer.

19. Spell said he and Waters threw the female's clothing in a dumpster at Lonnie's Truck Stop across the street from Walmart in Williston. Spell provided a description of the clothing the female was wearing, which closely matched the description of Sherry Arnold's normal running attire provided by her husband, Gary. Spell advised Waters said the female was wearing ear bud speakers. Spell said he and Waters drove to a rural area outside of Williston and dropped off Sherry Arnold's body. The two then returned to Williston and purchased a shovel at Walmart. The two returned to the female's body, and Spell

said Waters made him dig a hole two or three feet deep, and then they placed the female's body in the hole. Spell said the grave site was at the end of a shelter belt, which is a line of trees used as a windbreak, on an old farmstead in a rural, isolated area outside of Williston. Spell said Waters instructed him to be careful to not leave any items such as cigarette butts at the burial scene.

20. Spell said he later observed missing person posters depicting Sherry Arnold around Williston and began to feel remorse. Spell said he was afraid Waters would kill him. Spell said he called home and told family members what was happening. Spell said his mother encouraged him to go to Walmart and stay there, because Waters would not harm him while he was inside Walmart. Spell said he stole Waters' telephone and then began hitchhiking until he got to Rapid City, South Dakota. A receipt was found in Waters' wallet for the purchase of a new cellular telephone at Walmart in Williston on January 12, 2012, at 2:21 p.m.

21. Investigators obtained a returned shovel from Walmart, Williston. The pricing code of the shovel matches the pricing code on the receipt found in Waters' wallet. Investigators took photographs of the shovel. The photographs were shown to Spell

and Spell advised that it was the shovel used to bury Sherry Arnold. FBI Special Agent David Burns reviewed surveillance video footage at Walmart, Williston. Waters and Spell were recorded buying the shovel. Waters and Spell were recorded leaving the store and getting into the vehicle where they stayed for about 13 minutes. The Ford Explorer is then seen leaving the parking lot at 9:54 p.m. on January 7, 2012, and then pulling into Lonnie's Truck Stop. Video footage depicts Waters returning the shovel to Walmart on January 10, 2012. Spell was observed walking around Walmart while Waters returned the shovel.

22. On February 28, 2012, Michael Pruitt was interviewed by Special Agent Overby at the Williams County Law Enforcement Center, Williston, North Dakota. Pruitt provided a recorded statement concerning his interactions with Spell while both were incarcerated together in the sick bay area of the Williams County Law Enforcement Center jail. Pruitt stated Spell said Waters was the instigator in the kidnapping of Sherry Arnold and Waters told Spell what to do. Spell said Sherry Arnold was jogging on a path and he was walking approaching her. Spell said Sherry said "Hi" as they passed each other. Spell said he turned around and speared Sherry in the back of the head and

knocked her down. Spell said he choked her out. Spell said he pushed Sherry's face into some water and drowned her to make sure she was dead. Spell said he picked Sherry up and carried her to the vehicle. Pruitt further related that Spell said the reason for the abduction was he and Waters were high on drugs and Waters wanted to have sex.

23. On March 19, 2012, arrangements were made for Waters to assist in the search for the body of Sherry Arnold. Waters was transported in Special Agent Overby's assigned Bureau vehicle. Waters advised the search should start at Walmart in Williston, North Dakota. The area from Williston, North Dakota, to Ray, North Dakota, on U.S. Highway 2 was searched. Waters advised they (Waters and Spell) drove all over. Waters advised this included driving to railroad bridge in Ray and turning around, but the burial site was not in the Ray area.

24. Special Agent Overby stopped in Ray. Waters drew a map from Walmart to the burial site which included going from Walmart, through town and a residential area, to two large wooden brown buildings where he turned left at a stop sign. Waters said only a left turn could be made at that intersection. Waters described driving past an area where people were welding pipes at night. Right beside the area was an open field.

Waters then went around a curve to a stop sign where he turned right and drove a long way on a hilly road with curves. Waters remembered there being guard rails on the road. Waters advised they turned right into a field where there was a break in a barbed wire fence. Waters then drove up a hill to a shelter belt. The burial site is in the shelter belt.

25. Waters suggested driving past Walmart in the opposite direction. Special Agent Overby drove past Walmart toward downtown Williston. Waters recognized this as being the right direction. Overby continued on Second Avenue West to First Street West where a left turn was made. Waters advised this was the intersection where only a left turn could be made. Overby then drove east on First Street and rounded a curve. Waters recognized this as the right direction and pointed out the business where he saw pipes being welded and the open field. Overby then turned right on to Highway 1804 at Waters direction. Waters recognized this as the right direction and recognized businesses along the route. Overby continued east on Highway 1804 until Waters recognized the area where Sherry Arnold was buried.

26. Waters advised Special Agent Overby the burial site was in the shelter belt on a north and downhill slope from the

crest of the hill. Special Agent Overby, Montana Office of the Public Defender Investigator Roy Perry and Waters began walking in the shelter belt north and downhill. Waters recognized the burial site and pointed out where the dirt from the hole was deposited. Waters pointed to the approximate location of the actual hole where Arnold was buried. A broken branch was resting over the hole. Waters advised Sherry Arnold was buried lying on her side in a fetal position. Waters advised Sherry Arnold's head was to the left (north and east) and her feet were to the right (south and west) in the hole. Waters advised his vehicle was driven up the hill in the most recognizable path of tire ruts closest to the shelter belt. Waters advised the vehicle was parked on the east side of the shelter belt and he and spell walked through the shelter belt to the burial site. Special Agent Overby observed a path in the grass to the burial site from the ruts. Waters became emotional, cried and stated, "I didn't kill that lady."

27. Arnold's body was exhumed by FBI agents. Her body was wrapped in absorbent sheets and placed into a body bag. Her body was removed from the scene and transported to the Montana State Crime Lab in Missoula, Montana.

28. The medical examiner's office at the Montana State Crime Lab identified the remains as Sherry Arnold of Sidney, Montana. An autopsy was performed. FBI Special Agent Caroline A. Marshall observed the autopsy. She noted the contents of Arnold's stomach included an unidentified material which was black and gritty. A similar material in appearance was also observed in Arnold's trachea. Evidence collected has been submitted to the Federal Crime Lab for analysis.

29. With respect to Section 46-18-303(1)(a)(iv), M.C.A., the foregoing evidence establishes that the Defendant lay in wait or ambush in a green Ford Explorer on or near Holly Street, also known as the "Truck Route" of Sidney, Montana with the intent to kidnap and kill Sherry Arnold. When the opportunity presented itself the attempt to kidnap Sherry Arnold resulted in the death of Sherry Arnold.

DATED this 27th day of April, 2012.

Mike Weber
MIKE WEBER
RICHLAND COUNTY ATTORNEY

Subscribed and sworn to before me this 27th day of April, 2012.

Arlene Riggs
CLERK OF COURT

(COURT SEAL)

BY James B. Bickelstad
DEPUTY

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by prepaid mail upon all counsel of record this 27th day of April 2012

Mike Weber
Richland Co. Attorney

BY _____

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