

1 CR2014-752; LC141635  
LEO J. GALLAGHER  
2 County Attorney  
Lewis and Clark County  
3 Courthouse - 228 Broadway  
Helena, MT 59601  
4 (406) 447-8221

5 Attorney for State

6 ORIGINAL

NANCY SWEPNEY  
Clerk District Court

2014 DEC -2 AM 8:11

FILED  
BY *Apstunjak*  
Deputy

8 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

9 \* \* \* \* \*  
10 THE STATE OF MONTANA, )  
11 Plaintiff, )  
12 -vs- )  
13 WAYNE AUGUST HUSSAR, II, )  
14 Defendant. )  
\* \* \* \* \*

No. DDC 2014-437

INFORMATION INDEXED  
JAMES P. REYNOLDS  
Presiding Judge

15 TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE, a felony, Section 45-7-  
16 207(1)(a), MCA, alleged to have occurred on or about August 4, 2014

17 \* \* \* \* \*  
18 STATE OF MONTANA )  
19 :ss.  
20 County of Lewis and Clark)

21 LEO J. GALLAGHER, County Attorney for Lewis and Clark County,  
22 states the defendant committed the following offense in Lewis and Clark  
23 County, Montana.

24 The facts constituting the offense are that on or about August 4,  
25 2014, the above-named defendant committed the felony offense of  
26 TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE, in violation of Section  
27 45-7-207(1)(a), MCA, in that, while believing an official proceeding or  
28 investigation was pending or about to be instituted, the defendant  
altered, destroyed, concealed, or removed a record, document, or things


1 with purpose to impair the item(s)' verity or availability in the  
2 proceeding or investigation.

3 A list of the possible witnesses for the State now known to the  
4 prosecution is as follows:

- 5 Representative(s) from State Crime Laboratory
- 6 Representative(s) from State Identification Bureau
- 7 Evidence Technician, Chad Day
- 8 Representative(s) fire responders
- 9 Representative(s) Birdseye Volunteer Fire Department
- 10 Representative(s) medical responders
- 11 Representative(s) St. Peter's Hospital
- 12 Representative(s) Helena Towing Service
- 13 Representative(s) R & R Diesel Repair, Inc.  
S. Gleich
- 14 Cindy Paradise, Adult Protective Services
- 15 Representative(s) Anaconda Coins & Jewelry
- 16 Representative 9-1-1 Dispatch
- 17 Helena Police Department Detectives/Officers
- 18 Deputy Andrew Blythe, LCSO
- 19 Deputy Phil Clark, LCSO
- 20 Sgt. Brett Friede, LCSO
- 21 Deputy Getz, LCSO
- 22 Detective Mike Hayes, LCSO
- 23 Deputy Hildenstab, LCSO
- 24 Deputy Greg Holmlund, LCSO
- 25 Trooper Cal Janes, Montana Highway Patrol
- 26 Deputy Robert Kinyon, LCSO
- 27 Sgt. Nelson, Montana Highway Patrol
- 28 Detective Cory Olson, LCSO
- 29 Detective Dan O'Malley, LCSO
- 30 Deputy Bill Pandis, LCSO
- 31 Captain Dave Peterson, LCSO
- 32 Deputy Pullman, Civil Bureau
- 33 Sgt. Brian Robinson, LCSO
- 34 Trooper Connor Smith, Montana Highway Patrol
- 35 Officer Jeffery Stoltz, LCSO
- 36 Deputy Joani Thompkins, LCSO
- 37 Trooper Brandon Uhl, Montana Highway Patrol
- 38 Deputy Marvin Weber, LCSO
- 39 Sgt. Kevin Wright, LCSO
- 40 Deputy Tim Zarske, LCSO
- 41 Dennis Almendinger
- 42 Eric aka Rick Almendinger
- 43 Debra \_\_\_\_\_
- 44 James Crenshaw
- 45 Kim Crenshaw, Rusty Hussar's aunt
- 46 Dustin Glueckert, Gold Rush Property Management
- 47 M.H., 10-year old girl
- 48 Rusty Hussar, II
- 49 Sandra Hussar
- 50 W.H., Jr., 13-year old boy

1 Tom Jewell  
Steve Pullin  
2 Marcus Rupp  
Larry Tighe  
3

4 DATED this 26<sup>th</sup> day of November, 2014.

5  
6   
LEO J. GALLAGHER, County Attorney  
Lewis and Clark County  
7

8 POSSIBLE PUNISHMENT:

9 TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE, a felony:  
Imprisonment in the state prison for a term not to exceed 10 years or  
10 may be fined an amount not to exceed \$50,000, or both.

11 BAIL FOR THE DEFENDANT IS SET AT \$20,000

12 ALL PREVIOUSLY IMPOSED CONDITIONS OF DEFENDANT'S RELEASE ON BOND OR ON  
HIS OWN RECOGNIZANCE SHALL REMAIN IN FULL FORCE AND EFFECT.

13 ~~December~~  
14 November 1, 2014

15   
DISTRICT COURT JUDGE  
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NANCY SWEENEY  
CLERK DISTRICT COURT

2014 DEC -2 AM 8:11

FILED  
BY *R. Postural*  
CLERK

1 Incident LC141635; CR2014-752  
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**ORIGINAL**

10 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

11 THE STATE OF MONTANA,  
12 Plaintiff,  
13 vs.  
14 WAYNE AUGUST HUSSAR, II,  
15 Defendant.

16 Case No. DDC 2014-437

17 **AFFIDAVIT IN SUPPORT OF MOTION  
18 FOR LEAVE TO FILE INFORMATION**

19 **INDEXED**

20 STATE OF MONTANA )  
21 )  
22 ) ss.  
23 County of Lewis and Clark )

24 After being duly sworn the undersigned deposes and states that I am the County Attorney for  
25 Lewis and Clark County and acting in this capacity I am familiar with the investigation relating to  
26 the above-named defendant. I believe the facts developed during the investigation support this court  
27 finding that probable cause exists to believe the defendant committed the felony offense of  
28 TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE, in violation of Section 45-7-  
29 207(1)(a), MCA, alleged to have occurred at the County of Lewis and Clark, State of Montana, on or  
30 about August 4, 2014, based upon the reports of the Lewis and Clark County Sheriff's Office.

31 The investigation began at approximately 10:39 a.m. on Monday, August 04, 2014 when  
32 Sandra Hussar (Mrs. Hussar) called the Lewis and Clark County 911 Dispatch Center to report a  
33 physical altercation taking place at her home at 5526 Birdseye Road, Lewis and Clark County,

1 Montana. While speaking to the dispatcher she began to scream and the dispatcher heard gunshots  
2 at Mrs. Hussar's location. Initial responders in marked emergency vehicles including uniformed  
3 Sheriff Deputies Pandis, Blythe and Hildenstab as well as Highway Patrolmen Trooper Uhl and  
4 Sergeant Nelson responded to the call. Before their arrival the 911 Dispatch Center received another  
5 call at 10:48 a.m. from Rusty Hussar who reported he had "unloaded" a gun into a truck after the  
6 landlord had tried to run him over and somebody was going to, "leave in a body bag" and at 10:55  
7 a.m. a third call came to the Dispatch Center requesting help at the location.

8 As Deputy Hildenstab approached the residence 71-year-old Dennis Almendinger flagged  
9 him down. Almendinger was standing near his truck by the corner of Lone Pine and Birdseye Road  
10 south of Hussar's residence, but within sight of it. Almendinger's truck had extensive damage and  
11 Almendinger appeared injured. He pointed toward Hussar's house where a man was standing  
12 outside yelling to indicate someone at the house was responsible.

13 Deputy Hildenstab left Almendinger to join Sergeant Nelson. They drove to the residence  
14 where they found two children and three adults standing in the yard. Investigators later identified  
15 the group as 43-year-old Wayne August Hussar, his 44 year old wife, his 24-year-old son, Rusty  
16 Hussar, a 13-year-old boy and a 10-year-old girl. All said they lived at the residence. For his safety,  
17 Deputy Hildenstab asked them to tell him where the gun the Dispatcher heard during the 911 call.  
18 Rusty Hussar picked up by two fingers a semi-automatic pistol. Deputy Hildenstab ordered him to  
19 return the gun to ground and ordered the group to step away from the pistol which they did after  
20 briefly yelling about the events leading to the 911 Call. Investigators later identified as a *Taurus* .40  
21 caliber PT-101. The gun had its safety off, the slide forward, the hammer back, the chamber empty  
22 and no ammunition magazine with the weapon. While processing the scene investigators found both  
23 live and spent rounds associated with the weapon around Hussar's property as well as its magazine.  
24

25 The occupants of Hussar's residence and Almendinger provided statements to investigators  
26 and investigators recorded statements of the adults who waived their *Miranda* rights to remain silent.  
27  
28

1 Deputy Hildenstab was the first to meet Almendinger at the side of Lone Pine Road. He  
2 reported and the investigators later confirmed Almendinger owned the Hussar residence as well as  
3 the property immediately east of the Hussar residence. The parcel east of Hussar's residence was  
4 served by a driveway onto Birdseye Road and contained an unrented mobile home on the property.  
5 Hussar's residence was served by a separate driveway.

6 Almendinger said he was in the process of evicting the Hussars. He said a couple of days  
7 ago he discovered they were storing junk on the property so he parked his truck on the driveway next  
8 to the unoccupied mobile home from where he walked to an area behind Hussar's rented residence to  
9 photograph the condition of the properties.

10 Investigators determined the events of that day were part of a series of calls and complaints  
11 to the Sheriff's Office during the preceding months. More specifically:

- 12 • On May 29, 2014 HUSSAR reported to the 911 Dispatch Center Almendinger's property  
13 management agent threatened him with physical harm while serving HUSSAR with an  
14 eviction notice. Sheriff Deputy Getz spoke with both parties and neither wished to pursue  
15 charges;
- 16 • On July 5, 2014, Mrs. Hussar reported Almendinger cut down the fence on their property.  
17 Sheriff Sergeant Robinson investigated the complaint and learned Almendinger had actually  
18 removed the fence from his own property east of the parcel rented by the Hussars;
- 19 • On July 16, 2014 Sheriff Civil Deputy Pullman served Mrs. Hussar a Summons and  
20 Complaint filed in the Lewis and Clark County Justice Court by which Almendinger was  
21 asking the court to, among other things, evict the Hussars from the property.
- 22 • On July 31, 2014 Mrs. Hussar reported to the 911 Dispatch Center her neighbors were  
23 harassing her. At about the same time a neighbor reported the Hussars had threatened to  
24 shoot him and he thought he heard a gunshot from a .22 caliber gun. Sheriff Deputy Wright  
25 interviewed both sides and learned the Hussars had encountered their neighbor on the road  
26 leading to their properties. Both reported they felt threatened by the other's driving. The  
27 incident escalated to a confrontation between them across their fence lines during which the  
28 neighbor said one of the Hussars fired a gun into the air which he thought was from a .22  
caliber handgun. The neighbor did not feel threatened by the gun shot. Mrs. Hussar said no  
one had or fired a gun and thought he may have heard the discharge of a firecracker which  
may have been lit.
- August 1, 2014 Mrs. Hussar called dispatch to report Almendinger was on their property.  
Before a deputy arrived she called to say Almendinger left the property.

1 During his initial statement, Almendinger said as he was taking the pictures HUSSAR came  
2 out of the house holding a black gun which Almendinger thought was a pellet gun. Almendinger  
3 said when he saw HUSSAR holding the gun he told HUSSAR, "I got a gun too." He said he was not  
4 afraid of the "pellet gun." He said he thought he heard a shot, but he was not afraid of the discharge  
5 of a pellet gun.

6 He said he returned to his truck. He said HUSSAR began shooting the pellet gun so he took  
7 his .40 caliber gun from the side pocket of his truck and placed it onto the seat. He said he grabbed  
8 his camera and attempted to photograph HUSSAR shooting at him. He said Rusty Hussar began to  
9 run at him from Hussar's residence as he stood by the truck taking pictures. He said when Rusty  
10 Hussar arrived he "started pounding the shit out of me." He said Rusty Hussar took both the camera  
11 and the .40 caliber gun and returned by foot toward the Hussar residence.

12 Rusty Hussar said he was inside the trailer when he observed Almendinger trespassing on the  
13 rented property. He said both he and his father went out to confront Almendinger. He said he did  
14 not see his father with a gun, but he did hear a noise which could have been a shot. He said he saw  
15 Almendinger go to his truck to obtain a handgun which he held in a threatening manner while saying  
16 he would shoot. He said Almendinger was standing by the open door of his truck. He said he was  
17 concerned Almendinger would use the gun to harm him or his family so he crossed the rented  
18 property line to approach Almendinger and as he did so Almendinger pointed the gun at him while  
19 saying he would shoot him unless he returned to his side of the property line. He said he told  
20 Almendinger to shoot him and "get it over and done with" as he rapidly approached Almendinger.  
21 He said before he closed on Almendinger, Almendinger set the gun onto his seat and replaced it with  
22 a large camera which he used to hit Rusty Hussar on the face causing bodily injury to his face.  
23 Rusty Hussar said he took the camera away from Almendinger and it broke. He said he struck  
24 Almendinger repeatedly. He said after disabling Almendinger he thought Almendinger was  
25 seriously hurt which concerned him so he quit hitting him. He said he removed the loaded gun from  
26 the seat of the truck to keep Almendinger from using it and began to walk west to return to his  
27 residence. He said he heard his father instruct him to shoot out the truck's tire to keep Almendinger  
28 from moving the truck.

1 Almendinger said when Rusty Hussar took his gun, he got into his truck and, "I spun around  
2 and I probably hit him, I ran over him or tried to run over him because the other guy, the dad  
3 [HUSSAR], was still shooting at me." Later that day investigator's spoke to Almendinger's son who  
4 said his father tried to run over Rusty Hussar because he was concerned Rusty Hussar had  
5 Almendinger's loaded .40 caliber gun with them. During his taped interview he indicated he  
6 decided to try to run over Rusty Hussar both because he (Rusty) had made him angry by beating him  
7 so badly and because he realized Rusty Almendinger had Almendinger's loaded gun with him which  
8 could be used to shoot him and he believed he saw HUSSAR shooting at him from a position near  
9 the Hussar's residence.

10 Rusty Hussar said as he was leaving Almendinger, Almendinger got into his truck and began  
11 yelling and screaming. He said he heard his father instruct him to shoot out the back tire of the  
12 truck. He said he fired Almendinger's gun repeatedly at the back tire of the truck to disable it. He  
13 said Almendinger backed the truck up rapidly to orient it so the front of the truck was toward the  
14 house. He said he was concerned Almendinger was going to use the truck to run him over. He said  
15 he also believed Almendinger may have had another gun in the truck. He said he fled toward his  
16 house as Almendinger pursued him with the truck. He said Almendinger drove the truck toward him  
17 and the rest of his family who were outside their residence. There were concrete barriers on the  
18 ground between the Hussars and Almendinger. All the Hussars reported Almendinger drove the  
19 truck over the barriers and struck Rusty Hussar as well as his father and mother who were standing  
20 near the children.

21 No one was shot. Rusty Hussar, his father and mother all had injuries which were consistent  
22 with being struck by a vehicle and all required treatment at the hospital for a variety of injuries  
23 ranging from lacerations to broken bones. Almendinger's injuries included three broken ribs caused  
24 by Rusty Hussar slamming him into the truck during the struggle over Almendinger's camera and  
25 gun. The two juveniles associated with the Hussar household were not injured, but they confirmed  
26 Almendinger hit the adult Hussars with his truck after Rusty Hussar disarmed him.

27 Almendinger remembered driving his truck into Rusty Hussar, but did not realize he had  
28 struck either HUSSAR or Mrs. Hussar, nor did he recall seeing the children nearby. He seemed



1 genuinely surprised to hear from investigators he had struck others besides Rusty Hussar. He said  
2 after he hit Rusty Hussar he backed the truck up and drove onto Birdseye Road then onto Lone Pine  
3 Road a short distance away to ask a man who was standing on the road for permission to use a phone  
4 to call for help. He said he realized he probably tore up the bottom of his truck by driving over the  
5 barricades to hit Rusty Hussar.

6 He said after he got out of his truck to speak with the man, the man alerted him to the  
7 approach of a red car which struck the driver's side of his truck. He said HUSSAR was driving the  
8 red vehicle and after smashing into his truck HUSSAR backed up and drove away onto Birdseye  
9 Road where he spun around in the road to drive back to HUSSAR'S residence on Birdseye Road.

10 Tire tracks leading to and from Almendinger's truck indicated the truck was struck by  
11 another vehicle which caused considerable damage to it, particularly the area near the driver's door.  
12 Additionally, the driver-side rear tire was flat because it had a hole in the sidewall about the size of a  
13 bullet and a mark immediately behind the tire consistent with the look of a bullet strike after passing  
14 through the tire. There was possibly another bullet hole in the sidewall of the tire and the truck's gas  
15 tank was punctured by something about the size of a bullet which was causing gas to leak onto the  
16 road which trailed from the truck's location on Lone Pine Road back to another location near  
17 Hussar's residence. Inside the truck investigators found an empty holster with two pistol magazines  
18 and an empty open camera case. Investigators found pieces of the broken camera where the  
19 altercation took place between Rusty Hussar and Almendinger and the broken camera was recovered  
20 from a junk pile near Hussar's property. The windows of the truck were also damaged by something  
21 hitting the windows and Rusty Hussar said he used the concrete broken during the approach of the  
22 truck to try to break Almendinger's window to prevent him from continuing to use the truck to run  
23 over people and one of the children struck the truck with a stick to damage it after it struck the adult  
24 Hussars. Located in the back of the truck was some of the broken concrete material which  
25 corroborated it was used in an attempt to break the truck's window. A neighbor reported he saw a  
26  
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28

1 truck drive, "full throttle" onto the Hussar property where it hit three people who were running from  
2 it. He said after striking the people the truck backed out of the property rapidly and drove to Lone  
3 Pine Road.

4  
5 HUSSAR reported he was alerted to Almendinger's presence by the children who were  
6 riding their bikes. He said he and his wife went outside to confront Almendinger who they believed  
7 had no right to be on their property because the court had not entered an eviction order and the  
8 Deputy Sheriff had told him to stay away. He said Almendinger told him he had a right to be on the  
9 property. He said his wife was armed with a .22 caliber handgun which he took from her hands and  
10 used it to fire a warning shot into the ground. He said Almendinger went to his truck to grab a  
11 handgun which he pointed at HUSSAR so he took cover behind a vehicle and attempted to put  
12 another bullet into the .22 caliber gun. He said his wife called "911" to report what was happening.  
13 He said his son walked between Almendinger and himself. He said he saw Almendinger point the  
14 gun at his son's chest while saying he was going to blow him away. He said his son told  
15 Almendinger to go ahead and shoot him as he continued to approach. He said Almendinger put the  
16 gun down into the truck and picked up a camera which he used to hit his son in the face. He said his  
17 son took the camera from Almendinger and assaulted Almendinger before removing the gun from  
18 Almendinger's truck.

19 HUSSAR said he wanted to prevent Almendinger from leaving until law enforcement arrived  
20 so he told his son to shoot out the truck's tire to disable it. He said he saw his son firing and hitting  
21 the truck's rear tire area while Almendinger was "dazed and confused" lying inside the truck. He  
22 said he then saw Almendinger back up the truck to point it toward his son. He said Almendinger  
23 "floored it" to drive toward the Hussars. He said Almendinger drove over concrete barriers before  
24 hitting him, his son and his wife and he believed the truck pinned her against a motorcycle and a red  
25 Subaru which were parked near the residence. He said he was briefly knocked unconscious or was  
26 dazed after flying through the air and hitting the ground. He said after being struck he believed  
27 Almendinger still intended to kill them with the truck so he instructed his son to try to shoot out the  
28 back tires of the truck, but he didn't think his son was able to fire the gun again because it didn't

1 have any more bullets and his son hit a lever which ejected the pistol's magazine onto the ground.  
2 He said the truck drove away from his residence. He said he got into his red Subaru car to pursue  
3 Almendinger to disable the truck. He said he saw Almendinger standing by a man and his vehicle  
4 on Lone Pine Road. He said the man's vehicle was there as well. He said he knew the man with  
5 Almindigner usually carried a gun inside his vehicle. He said he hit Almendinger's truck with the  
6 Subaru, intending to disable Almendinger's truck by parking in front of the front door, but, he didn't  
7 intend to hit it. He said the collision occurred because he was unable to use the gears and emergency  
8 brake of his car because he had suffered a broken wrist when he was hit by Almendinger's truck. He  
9 said after he disabled Almendinger's truck he thought about running and drove past his house, but  
10 changed his mind and turned around to return to the residence to await the arrival of law  
11 enforcement. He said he knew the car would be of interest to law enforcement because he used it to  
12 hit Almendinger's truck while driving with a suspended or revoked license.

13 He said he gave the .22 caliber handgun to one of the children with instructions to hide it  
14 inside the house in a floor vent in the kitchen because he realized "5-0's" [police] were coming to  
15 the house. Similarly, he said he parked the red Subaru vehicle he had used to smash into  
16 Almendinger's truck behind the house because he realized "5-0's" were coming to the house.

17 One of the juveniles told Deputy Pandis after the shootings he took a gun from HUSSAR at  
18 HUSSAR'S request which at HUSSAR'S request he hid inside a heater vent in the floor of the  
19 residence's living room. The juvenile showed the Deputy the location of a .22 caliber handgun  
20 which was concealed in the heater vent.

21 Based on the foregoing, the undersigned requests the court find that probable cause exists  
22 and allow the state to prosecute the defendant in the manner provided by law.

23 Further Affiant sayeth naught.

24  
25   
LEO J. GALLAGHER, Affiant

26 Subscribed and sworn to before me this 24<sup>th</sup> day of November, 2014.

27  
28   
NOTARY

