

SENTENCED 3/6

1 CR2013-151; Agency No. CRH12-008-46  
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LEWIS & CLARK COUNTY  
DISTRICT COURT  
LEO J. GALLAGHER  
2013 MAR 15 P 3:37

6 Attorney for State

8 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

9 THE STATE OF MONTANA,

10 Plaintiff,

Case No. BDC 2013-81

11 -vs-

12 JOSEPH R. RAZO,

INDEXED

13 Defendant.

14 AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO FILE INFORMATION

15 STATE OF MONTANA )  
16 : ss.  
17 County of Lewis and Clark )

18 LEO J. GALLAGHER, County Attorney for Lewis and Clark County, having been duly  
19 sworn offer this Affidavit to support my request to file an information alleging that the  
20 defendant, JOSEPH R. RAZO, committed in Lewis and Clark County, and other areas, the  
21 felony offense of CONSPIRACY (Transferring Illegal Articles (into the Montana State Prison),  
22 in violation of Sections 45-4-102 and 45-7-307, MCA, from on or about February, 2013, to, and  
23 including, March 1, 2013, based upon an investigation conducted by Investigators with the  
24 Montana Department of Corrections, including Investigator Derrek Shepherd that is summarized  
25 in this affidavit.  
26

27  
28 On March 1, 2013, Investigator Shepherd arrested the defendant, Joseph R. Razo, in Lewis and  
Clark County, Montana while Razo was possessing three *Ritz* cracker boxes containing herbal

1 incense. Herbal incense is not allowed at MSP under Department of Corrections Policy 3.4.2,  
2 "Prohibited Acts" that states as prohibited in all Department adult offender facilities is:  
3 "possessing, introducing, or using any narcotic, narcotic paraphernalia, drugs or intoxicant not  
4 prescribed for the offender by medical staff." Herbal incense is an "intoxicant."

5 Prior to the defendant's arrest, investigators monitored telephone calls from the Montana  
6 State Prison by inmate Aloysius Blackcrow to former inmate Razo and from inmate Jared  
7 Rosling to his brother, Jon Rosling, who was located in Lewis and Clark County, Montana. The  
8 conversations reflect they were conspiring to smuggle herbal incense into Montana State Prison.  
9 The calls took place through the inmates' use of a telephone system that automatically warns  
10 users the calls are subject to monitoring and recording. The recordings reflect that on:

11 January 15, 2013, inmate Jared Rosling called his sister, "Jenny" DeHerrera to discuss a  
12 money order from which "2" belongs to him and "4" belongs to his buddy that investigators  
believed referred to a total of \$6,000.

13 January 17, 2013, inmate Jared Rosling called DeHerrera. She said she borrowed \$85 to put  
14 gas in her vehicle and Rosling told her to just keep a total of \$100. She reported she was  
15 getting a money order ready and after that they will be left with "58" (\$5,800).

16 January 29, 2013, inmate Jared Rosling called DeHerrera to report that she would be receive  
17 another \$100 in a couple of weeks and that once he is was able to talk to his brother, Jon  
18 Rosling, they "will be able to do some things." He told her that he wanted Jon Rosling to  
visit him to talk about things and then he would have Jon Rosling do some errands for him.

19 February 1, 2013, inmate Jared Rosling called his brother, Jon Rosling, to tell him that he  
20 needed to talk to him about "things" and requested Jon Rosling visit him. Jared Rosling  
21 referenced bath salts and said they are "half the battle." He told Jon Rosling that he had  
22 \$1,000. Jared Rosling referenced incense that he "loves" incense. Jared Rosling said he was  
23 written up for urinalyses that tested positive for marijuana and methamphetamine because he  
24 "needs to enjoy something." Jon Rosling agreed that Jared Rosling needed something that he  
25 enjoyed.

26 February 2, 2013, inmate Jared Rosling called DeHerrera to state he had plans for all the  
27 money.

28 February 2, 2013, inmate Jared Rosling called DeHerrera to state she should take \$500 to fix  
her computer and to put \$1,000 on his "books" at MSP and that left them with "35" (\$3,500).  
He told her that once he talked to Jon Rosling, they would likely give Jon Rosling \$2,000.

1 February 3, 2013, inmate Jared Rosling called DeHerrera and told her to put \$500 in her  
2 account, \$2,000 to Jon Rosling, \$1,000 to Jared Rosling's "books" at MSP, and \$100 for  
3 firewood for his mother and step-father.

4 February 7, 2013, inmate Jared Rosling called DeHerrera who told him that she gave \$2,000  
5 to Jon Rosling. Jared Rosling told her to tell Jon Rosling that when Jon Rosling was ordering  
6 things on the internet, to buy the best. He told her to have Jon Rosling overnight the items so  
7 that can get them quickly. He said Jon Rosling would explain things to her.

8 February 9, 2013, inmate Jared Rosling called Jon Rosling. Jon Rosling said he had received  
9 money from DeHerrera. Jared Rosling told Jon Rosling that \$1,000 would need to go to  
10 Butte, Montana. Jared Rosling said he wanted \$800 of "that other crap," but he did not know  
11 the websites where it was located. Jon Rosling responded that it should not be that hard, but  
12 he did not know who to give it to. Jared Rosling said DeHerrera would take it to Jared  
13 Rosling's friend in Butte. Jon Rosling did not like the idea of DeHerrera taking the stuff to  
14 Butte. Jared Rosling said he would explain to Jon Rosling how to package the stuff. He then  
15 said he liked "Ritz" crackers, the kind with the three packages inside. He told Jon Rosling,  
16 "then you just put what you can in the three's." Jared Rosling said he had done the same  
17 thing when he was at Crossroads Correctional Center in Shelby and he had made \$6,000  
18 from an initial purchase of \$800. He told Jon Rosling that DeHerrera had \$6,000 in her  
19 account and they were just trying to "get back on track." Jon Rosling said he would  
20 definitely help Jared Rosling out, but he did not like the idea of DeHerrera going to Butte.  
21 He thought it would be best if someone could come to Helena and contact him. Jared Rosling  
22 said he would send Jon Rosling a letter to explain everything.

23 February 14, 2013, inmate Jared Rosling called Jon Rosling and during the conversation,  
24 Jared Rosling told Jon Rosling that he had sent Jon Rosling a letter to explain things to him.

25 February 14, 2013, inmate Jared Rosling called DeHerrera. During that conversation, he told  
26 her that things had "gone bad" and they had "hit a bump in the road." He told her that he  
27 cannot sit idle and he is constantly trying to do something. DeHerrera told him that he  
28 needed to make a living somehow. He told her to text Jon Rosling to ask Jon Rosling, "What  
he can see on the net and check out how much those coupons are."

February 16, 2013, inmate Jared Rosling called Jon Rosling at phone number 406-465-8006.  
During that conversation, Jared Rosling asked Jon Rosling if he had looked into prices. Jon  
Rosling said he had, but the price depended on the time of year and other things. Jon Rosling  
said it would be \$200 to \$300 a piece. Jared Rosling asked if Jon Rosling had been to the  
Man's Store or another store called "Unique something." Jon said, "Unique Apparel" and  
said he knew that store because his wallet had been stolen and the person who stole his  
wallet had used his credit card to purchase incense at that store. Jared Rosling referred to the  
incense and said, "those are good, huh?" He also said he had heard those were pretty cheap.  
Jared Rosling told Jon Rosling that he had sent a letter to him and that he was not thinking  
about the items for \$200 and that should make Jon Rosling less nervous.

1 February 18, 2013, inmate Jared Rosling called Jon Rosling and during that conversation,  
2 Jared Rosling told Jon Rosling to go to Unique Apparel and use \$1,000 for the incense,  
3 especially "Dragon or Bubble Gum." He wanted to do something by Friday (February 22,  
4 2013) and they would be "golden" after that. Jon Rosling said he would check at that store,  
5 but they might not have that much there and they may have to order it. Jared told him that it  
6 would be fine if they had to wait a week, but "Dragon" is the one. Jared Rosling said  
7 DeHerrera had \$1,000 that belonged to him and he would give that to Jon Rosling and Jon  
8 Rosling could keep \$500.

9 February 20, 2013, inmate Jared Rosling called his mother, Sharon Brockway, at a phone  
10 number associated with East Helena, Montana. During that conversation, Jared Rosling's  
11 mother said Jon Rosling was at her house. Jared Rosling asked to speak to him. Jon Rosling  
12 got on the phone and said they had to order "it" and it should arrive by the middle of next  
13 week. Jared Rosling told him to spend "15" (\$1,500), keep a couple (hundred dollars) and  
14 the extra \$200 will cover something else. Jon Rosling said the order took almost all of the  
15 money and he ordered about 500 packages. The packages were 1.5 grams each and they cost  
16 less than \$5 each. The items had food names and Jared Rosling said he liked that. Jared  
17 Rosling told Jon Rosling to just "cram" it all together. He asked Jon Rosling if he  
18 remembered the three packages that Jared Rosling had told him about and Jon Rosling did  
19 (this was in reference to the Ritz cracker boxes). Jared Rosling said he thought the best thing  
20 for a hard cover would be a PVC pipe and when Jon Rosling took the PVE pipe away,  
21 everything would hold its shape. Jared Rosling said DeHerrera still had \$1,200 and they  
22 needed \$1,000 to go with the packages, so Jon Rosling should get the \$1,200 from  
23 DeHerrera, send \$1,000 and keep \$200 for himself. Jared Rosling told Jon Rosling that he  
24 would get Jon Rosling another \$500 for packaging and sending everything off. Jared  
25 Rosling told Jon Rosling that once everything was packaged, he would need to meet with  
26 Jared Rosling's friend, "Angel."

27 February 21, 2013, at 1542 hours, inmate Jared Rosling called Jon Rosling and during that  
28 conversation, Jon Rosling said he put in the order and he was waiting for a confirmation  
email. He said they were going to get almost 600 packages with 1.5 grams each. Jared  
Rosling said that was approximately 900 grams total. Jared Rosling asked if it was like  
raspberry and Jon Rosling said yes, "mango raspberry, all kinds of different shit." Jon  
Rosling said he should receive the package by Wednesday or Thursday (February 27 or 28,  
2013). Jared Rosling told him that he would have DeHerrera drop off either \$1,100 or  
\$1,200, whatever was left. Jared Rosling told Jon Rosling to use the PVC pipe so the incense  
would keep its shape. He also told Jon Rosling to be careful when he opened the box and to  
seal it nice like from the factory. Jared Rosling said it had to look normal and Jon Rosling  
did not have to worry about the weight. Jared Rosling said his friend, "Angel" was in Butte  
and Jon Rosling could meet her and then in a few weeks, when Jared Rosling had sold  
everything, he would be able to give Jon Rosling some money and they would be on their  
way to having "prime rib steak dinners." Jon Rosling said he could definitely help out.



1 February 25, 2013, inmate Jared Rosling called Jon Rosling and during that conversation,  
2 Jon Rosling said he received the box and it was approximately two feet by two feet. Jared  
3 Rosling asked if Jon Rosling knew how to put the "bridle" together ("bridle" is the word they  
4 used to refer to the herbal incense). Jon Rosling said he knew to put it in the tube. Jared  
5 Rosling told him to buy a box of Ritz crackers and the sleeves in the box will help keep the  
6 shape, but to open the box carefully and then seal it up well. Jared Rosling said he would  
7 have DeHerrera drop off the \$1,100 so that Jon Rosling could take the \$1,000 with the  
8 "beaded bridle" and meet "Angel." Jon Rosling said he did not want his phone number  
9 given out to other people. Jared Rosling said he did not have "Angel's" number, but he  
10 would come up with a plan.

11 February 25, 2013, inmate Blackcrow called Joseph Razo and during that conversation, Razo  
12 said he talked to "Angel" and everything was "good with that." Blackcrow said "it" was  
13 worth \$2,000 and he was going to have the other person call Razo to get everything arranged.  
14 Razo asked if everything was ready to go and Blackcrow said it was already boxed up. Razo  
15 told Blackcrow to have the guy call Razo. Blackcrow also told Razo that the person had said  
16 it came in a two foot box. Razo told Blackcrow that "Angel" needed to talk to him.

17 February 25, 2013, inmate Jared Rosling called his mother, Sharon Broackway, at an East  
18 Helena phone number and he asked his mother to text a phone number to Jon Rosling. The  
19 number he provided her with a phone number with a "406" area code.

20 February 25, 2013, at 2001 hours, inmate Justin Onesalt called at the same phone number  
21 Jared Rosling had earlier provided to his mother with his request that she text the number to  
22 his brother, Jon Rosling. During the conversation, Onesalt told Razo that Blackcrow said the  
23 guy would call Razo in the morning.

24 February 25, 2013, inmate Onesalt called Razo at the same phone number and stated that  
25 phone number 406-273-1287. During that conversation, Onesalt told Razo that Blackcrow  
26 wanted him to remind Razo to tell "that guy" that Razo needed gas money when "that guy"  
27 called in the morning.

28 February 28, 2013, inmate Jared Rosling called Jon Rosling to report that DeHerrera had the  
\$1,200 and she needed to give it to Jon Rosling. Jon Rosling said that she had probably spent  
the money. Jon Rosling said he got the text from their mother with the phone number and he  
had awaited Jared Rosling instructing him to call the number. Jon Rosling said he received  
the letter from Jared Rosling and that he got the stuff together into three boxes that feel about  
normal with each box having four sleeves in them. Jared Rosling said he needed it done  
today and "Angelo" would come from Missoula to pick it up, but he needed the money from  
DeHerrera. Jon Rosling said he would text DeHerrera about the money and to tell her to give  
it to him today. Jared Rosling said he would be able to take care of Jon Rosling in a couple  
of weeks.

1 February 28, 2013, inmate Blackcrow called Razo to report that everything is ready and  
2 "they" will call today. He said the "bridle" is boxed up and there should be 1200 (\$1,200).  
3 He said everything should be ready for tomorrow. Razo asked if there was \$1,200 and  
4 Blackcrow said yes and the "bridle" was boxed up. Blackcrow said the bridle was supposed  
5 to be real good quality and he wanted Razo to check it out.

6 February 28, 2013, Jared Rosling called Jon Rosling and during that conversation, Jon  
7 Rosling told Jared Rosling that DeHerrera said she lost the money. Jon Rosling told Jared  
8 Rosling that he could give Jared Rosling \$500 because Jared Rosling had \$300 left from the  
9 \$2,000 and Jon Rosling could give him another \$200. Jon Rosling said he could send the  
10 bridle and \$500 today or they could wait to see if DeHerrera found the money. Jared Rosling  
11 told Jon Rosling to call "Angelo" and let "Angelo" make the decision.

12 February 9, 2013, at 1820 hours, inmate Jared Rosling called his mother, to tell her that  
13 DeHerrera had lost his money and that he needed another \$500 today. He told her that if he  
14 could get the bridle over there by today, he can sell it for \$4,000, but he needs another \$500.

15 February 28, 2013, inmate Blackcrow called Razo to report that the guy called and he is way  
16 short. Blackcrow said another guy might be able to get them another \$600. Razo said his  
17 people are expecting the money. Blackcrow said they wanted to make "Angel" happy  
18 because she was going out of her way to sell their bridles. Razo said they are behind "7"  
19 right now because they only have "5."

20 February 28, 2013, inmate Jared Rosling called Jon Rosling to ask if everything went well  
21 and Jon Rosling said the guy (Razo) had called at approximately 4:00 p.m. and had just  
22 received the money order so he would come in the morning to pick everything up.

23 March 1, 2013, inmate Jared Rosling called Jon Rosling to ask if everything worked out and  
24 Jon Rosling said they guy was supposed to be there around 5:00 p.m. Jared Rosling talked  
25 about using some incense that had been purchased in Missoula, Montana, and he talked about  
26 his experience while under the influence of that incense. Jon Rosling said he had tried some  
27 of the herbal incense that he had received and he thought it was "alright," but he had a  
28 strange dream that night and his friend had the same experience. Jared Rosling said inmates  
liked to use the herbal incense because there is no urinalysis that will determine when an  
inmate has used it. Jared Rosling said that based on what Jon Rosling had purchased, he  
believed he would make in the "20's" (\$20,000+). He said he could get \$200 per gram.

Investigator Shepherd performed an internet search and located an internet site called, "Legal  
Herbal Online." The website offered to sell a herbal incense titled "Dreamz" in 1.5 gram  
packages with varied flavoring including "gorilla," "grape," "vanilla," etc. Based on the

1 monitored conversations, Investigator Shepherd believed that Jon Rosling had purchased almost  
2 600 packages of *Dreamz* herbal incense for approximately \$1,700.

3  
4 During the morning of March 1, 2013, DOC investigators Collins and Shepherd together  
5 with members of the Missouri River Drug Task Force, watched Jon Rosling's residence in Lewis  
6 and Clark County, Montana until the afternoon when he drove away at a high rate of speed to  
7 take a circuitous route through Helena until parking next to a pickup truck in a Casino parking  
8 lot from which the defendant exited to approach Rosling's vehicle and from which the defendant  
9 carried away a grocery bag.

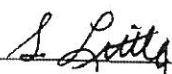
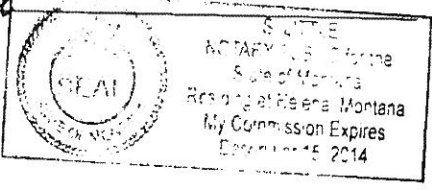
10 Investigator Collins followed the truck until it was stopped by a Helena Police Officer. The  
11 defendant was the passenger and he had a tightly wrapped substance consistent with herbal  
12 incense in a pocket of his sweatshirt. The driver said Razo got something from a man in the  
13 Casino parking lot and Razo had assured him it wasn't narcotics. The driver permitted officers  
14 to remove from the vehicle a grocery bag containing two sealed boxes of Ritz crackers and a  
15 third unsealed box of Ritz crackers outside of the grocery bag from which one of the cracker  
16 sleeves was removed. All contained herbal incense. Razo said the herbal incense was for his  
17 personal use.

18 When questioned, investigators promised Jon Rosling amnesty for his for his full and truthful  
19 cooperation. He said he had agreed to acquire herbal incense for his inmate brother Jared  
20 Rosling. He permitted investigators to remove from his residence a letter from Jared Rosling, a  
21 packing slip, a receipt for a money order payable to the defendant, PVC pipe and a hammer that  
22 he said were all related to his acquiring and packing "*Dreamz*" herbal incense that he purchased  
23 from "*Legal Herbal Online*."

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

3  
4   
5 Affiant

6 Subscribed and sworn to before me this 15th day of March 2013.

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8 Notary   
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