

1 IN THE JUSTICE COURT OF RECORD  
2 CITY OF HELENA, LEWIS AND CLARK COUNTY, MONTANA  
3 Before WALLACE A. JEWELL, Justice of the Peace

4 THE STATE OF MONTANA,

5 Plaintiff,

6 vs.

7 ERNEST NORMAN HUGHES,

8 Defendant.

Case No. CR2016-

421

Agency No. HP156530

**AFFIDAVIT TO SUPPORT REQUEST TO  
FILE COMPLAINT**

53

9 STATE OF MONTANA )

:ss.

10 County of Lewis and Clark )

EAST HELENA

12 After being duly sworn the undersigned deposes and states that I, Domingo Zapata, am a  
13 Corporal with the Helena Police Department, and acting in this capacity I am familiar with the  
14 investigation relating to the above-named defendant conducted by the Helena Police Department and  
15 the Montana Department of Public Health and Human Services. I believe the facts developed during  
16 the investigation support this court finding that probable cause exists to believe that in Lewis and  
17 Clark County, State of Montana the defendant committed the offense of Count I – EXPLOITATION  
18 OF AN OLDER PERSON, a felony, in violation of Section 45-6-333(1)(a)(b)(i), MCA, alleged to  
19 have occurred from on or about 2003 up to and including the present time, or, in the alternative,  
20 Count II – THEFT (Common Scheme), a felony, in violation of Sections 45-6-301(2)(b) and 45-2-  
21 101(8), MCA, alleged to have occurred from on or about 2003 up to and including the present time,  
22 both alleged to have occurred in the County of Lewis and Clark, State of Montana, summarized, as  
23 follows:  
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26 In relevant part § 52-3-803 (3), MCA, defines, “**Exploitation**” as:  
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- 1 (a) the unreasonable use of an older person ... or of a power of attorney,  
2 conservatorship, or guardianship with regard to an older person ... in order to  
3 obtain control of or to divert to the advantage of another the ownership, use,  
4 benefit, or possession of or interest in the person's money, assets, or property by  
5 means of deception, duress, menace, fraud, undue influence, or intimidation with  
6 the intent or result of permanently depriving the older person ... of the ownership,  
7 use, benefit, or possession of or interest in the person's money, assets, or property;  
8  
9 (b) an act taken by a person who has the trust and confidence of an older person or a  
10 person with a developmental disability to obtain control of or to divert to the  
11 advantage of another the ownership, use, benefit, or possession of or interest in  
12 the person's money, assets, or property by means of deception, duress, menace,  
13 fraud, undue influence, or intimidation with the intent or result of permanently  
14 depriving the older person or person with a developmental disability of the  
15 ownership, use, benefit, or possession of or interest in the person's money, assets,  
16 or property;

11 Section 45-6-301 (2)(b), MCA, in combination with Section 45-6-301 (8), MCA, states the  
12 offense of "Theft", a felony, occurs if a person purposely or knowingly obtains the property of  
13 another with a value in excess of \$1500 by deception and purposely or knowingly uses, conceals, or  
14 abandons the property in a manner that deprives the owner of the property; has the purpose of  
15 depriving the owner of the property

16 Section 45-6-333 (1)(a)(b)(i), MCA, states the offense of "Exploitation of older person,  
17 incapacitated person, or person with developmental disability", a felony, occurs if a person  
18 purposely or knowingly obtains or uses or attempts to obtain or use an older person's, incapacitated  
19 person's, or developmentally disabled person's funds, assets, or property with the intent to  
20 temporarily or permanently deprive the older person, incapacitated person, or developmentally  
21 disabled person of the use, benefit, or possession of funds, assets, or property or to benefit someone  
22 other than the older person, incapacitated person, or developmentally disabled person; and the  
23 person stands in a position of trust or confidence with the older person, incapacitated person, or  
24 developmentally disabled person. Section 45-6-333 (4)(c), MCA, defines an "older person" a person  
25 who is 65 years of age or older.

26 On December 17, 2015, Helena Police Sergeant Jayson Zander met with Montana  
27 Department of Public Health and Human Service Adult Protection Service Worker Laurie Chandler  
28

1 regarding her concerns an 81-year-old woman, DT, was being exploited by the defendant, Ernest  
2 Norman Hughes. She explained the Masonic Home, which is located within Lewis and Clark  
3 County, Montana, reported to her its resident, DT, was not paying the necessary fees to stay at the  
4 home and its staff was about to give her a "move-out order" to begin the eviction process. The  
5 Masonic Home staff was aware DT's friend, the defendant, held the older person's power of attorney  
6 which he used to handle her finances. The staff believed the defendant was working to obtain  
7 Medicaid Benefits for DT, but this had not occurred. She reported she had met DT who stated she  
8 met the defendant years ago and had employed him to help her around her house when she still lived  
9 in her house. She said he was able to care for everything for her and she had lost her husband years  
10 ago. She said she had a close friendship with him which continued over the years until she began  
11 living at the Masonic Home because she had health problems preventing her from living at her  
12 house.

13  
14 She said at some point DT entrusted the defendant with her finances because she required  
15 home health care and then moved into different care facilities. She said she gave the defendant her  
16 "Power Of Attorney" in 2003 to enable him to handle her financial affairs and had added him as a  
17 signor to her checking account a couple years later.

18  
19 APS Worker Chandler reported DT received approximately \$1600 per month from  
20 retirement benefits in combination with her Social Security Benefits. She also learned DT sold real  
21 estate and had approximately \$434,000.00 saved when the defendant took over her finances. She  
22 learned the cost to stay at the Masonic Home was approximately \$3700 per month and so there  
23 should have been enough available to pay for her needs.

24  
25 On December 17, 2015, Sergeant Zander learned from the Director of the Masonic Home,  
26 Connie Hallock Klotz, she had learned the defendant had run out of money to pay for DT's care at  
27  
28

1 the Masonic Home. He learned the last money the defendant paid the Masonic Home was on  
2 November 20, 2015, and it was only for \$1500, so DT still owed the Masonic Home the balance of  
3 the money owed for November and was then owed money for December.  
4

5 DT told Sergeant Zander she was a retired teacher. She said her husband died in the middle  
6 of the 1980's, she said she had no children and she had not kept in touch with her only relatives who  
7 lived far away. She confirmed she had known the defendant for many years and had hired him to  
8 help care for her. She said in the early 2000's she became sick and needed assistance. She said the  
9 defendant hired people to stay with her to care for her at her home. She said at about this time she  
10 gave him her "Power of Attorney" and gave him full access to her checking account. She said she  
11 went in and out of care facilities and decided to sell her home in Helena. She said in 2008, she  
12 moved into the Evergreen Home in Clancy where she lived until she became ill again and eventually  
13 moved into the Masonic Home at the beginning of 2013  
14

15 She said she trusted the defendant. She said she didn't know how much money she or the  
16 defendant had spent since 2006, but she said the defendant would know how much had been spent.  
17 Sergeant Zander believed DT had not handled or checked into her finances for several years.  
18

19 Sergeant Zander contacted the defendant. He provided a similar account as to the history  
20 leading to DT's stay at the Masonic Home. He said he has always had her best interest in mind and  
21 it was very expensive to care for her. He said for several years she demanded to live at her home at  
22 a cost of over \$60,000.00 per year. Sergeant Zander told the defendant the numbers still didn't seem  
23 to add up and the defendant agreed to provide the Sergeant with DT's bank statements from 2005  
24 forward. DT indicated he had paid himself between \$8,000 and \$10,000 each of the last several  
25 years for services he provided to DT.  
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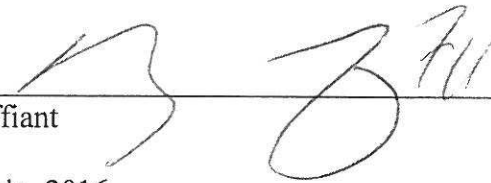
1 On December 22, 2015, APS Worker Chandler advised Sergeant Zander DT had told her she  
2 would pursue charges if the investigation revealed the defendant had stolen from her. She has since  
3 equivocated about whether she wishes to prosecute this case.  
4

5 On December 23, 2015, spoke with the defendant as to the whereabouts of the bank  
6 statements. The defendant said the bank told him it would take up to several weeks to gather the  
7 requested records. Sgt. Zander spoke with the Manager of Opportunity Bank to request the records  
8 and to confirm the defendant had asked for them. The Manager's response was vague, but he  
9 advised the bank would expedite their production for the defendant.  
10

11 By May 4, 2016, Sgt. Zander had not received the statements and his attempts to contact the  
12 defendant had failed. The undersigned requested the service of an investigative subpoena on  
13 Opportunity Bank to obtain the records which were produced on June 9, 2016, and reviewed by Sgt.  
14 Zander. The records reflect the defendant wrote a significant number of checks in significant  
15 amounts to casinos or written to "cash". He contacted some of the individual care givers and hair  
16 dressers who checks were written to over the years. One caregiver and a hairdresser told Sgt. Zander  
17 DT was not a gambler, was in a wheelchair, and rarely left her house to go places, let alone casinos.  
18 In the first two months of records reviewed by Sgt. Zander, there was \$1,700 in checks written to  
19 casinos. As to checks written to "cash" he determined DT's modest spending habits and needs did  
20 not justify the need for the amounts of cash.  
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23 It appears DT is essentially without money and the defendant spent all of her money, most of  
24 which for goods and services which were not used by DT. As some examples, numerous checks  
25 were written to casinos, some to fast-food, some to the defendant's relatives, and some to the some  
26 to himself. Although some checks were written for goods and services for DT, there is no  
27 accounting for the disappearance of more than \$400,000.  
28

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 1<sup>st</sup> day of July, 2016.

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8 (S E A L) Notary 