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JENNIFER BRANDON

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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

THE STATE OF MONTANA,

No. DC-13- 216A

Plaintiff,

v.

AFFIDAVIT OF PROBABLE CAUSE
AND MOTION FOR LEAVE TO FILE
INFORMATION

JOHN DAVID HODGES,

Defendant.

* * * * *

COMES NOW Marty Lambert, Gallatin County Attorney, and being first duly sworn upon oath, deposes and says as follows:

1. Affiant is the Gallatin County Attorney, and by law one of the attorneys to prosecute criminal matters in the State of Montana.

2. Affiant learned that the Bozeman Police Department investigated a shooting. The investigative details set forth below were provided to affiant from Detective Robert Vanuka, Det. Sgt. Ed Benz, and Bozeman Police Officers Ellingson, Senenfelder, Ogden, and Chaffins.

3. On August 25, 2013, at approximately 9:29 p.m., Robert Black called 911. Black said "I've got shot . . . by a guy with

his frickin' camp down by the railroad tracks". When dispatch asked what type of gun Black had been shot with, Black replied "a f----- gun, you gotta get down here". The call was disconnected.

4. After the call was disconnected, apparently 911 dispatch immediately called Black's number, and Black answered. Dispatch asked "where is the guy who shot you?", and Black replied "he's standing right here . . . he's got it [the gun] . . . "I'm laying down here I'm f----- dying dude". When dispatch asked where he had been shot, Black replied "in the spine, in the back." When asked how many times he'd been shot, Black replied "two, three, I don't remember".

5. Bozeman Police were dispatched on August 25, 2013 to the North 19th Avenue overpass to I-90, Montana Rail Link and Frontage Road (Old U.S. 10). Officers Ellingson, Senenfelder, Vandersloot, and Ogden arrived to investigate. Ellingson parked on the westbound on-ramp and walked to the east, going under the overpass toward the MRL main line. Ellingson could see a man rummaging through a tent. Officer Senenfelder, approaching from the east, yelled "police!" and ordered the man to the ground.

6. Ellingson also heard another man yell "I need help". This man, later identified as Robert Black, was lying on his back, holding on to his stomach, and saying "he shot me". Senenfelder asked Black "where is the guy with the gun", and the other man, later identified as Defendant, yelled "It's me".

Ellingson approached Black, who told Ellingson "I'm going to die here", and "he f----- shot me". Before he was transported to Bozeman Deaconess Hospital, Black told Ellingson "He shot me in the back while I was trying to get away".

7. Officer Lucas Chaffins arrived, and checked Black's injuries. Chaffins saw gunshot wounds to Black's upper abdomen, tailbone, and hip.

8. Senenfelder, Vandersloot, and Ogden approached Defendant, who was holding onto leash attached to a dog. Defendant disobeyed commands to release his grip from the leash. Senenfelder eventually managed to get the dog away from Defendant. The officers arrested Defendant. Ogden walked over to where the patrol cars were parked. Defendant spontaneously told Ogden "I'm a good guy", and "he pulled a knife on me a couple of times. He pushed me over a fence and attacked me. That's what he gets."

9. At Bozeman Deaconess, Det. Vanuka interviewed Black. Black said that he and Defendant had been camping next to each other on the property in between I-90 and MRL for about five months. Black said that Defendant "routinely" showed Black a black powder revolver handgun. On the day he was shot, Black said Defendant accused Black of knocking down a support pole to Defendant's tent. Defendant brandished the handgun, and Black pushed Defendant over a small wire fence. Defendant got up and

shot Black three times. Black denied threatening Defendant with a knife.

10. Dr. Grace was one of the doctors who operated on Black. Dr. Grace told Vanuka that Black had three gunshot wounds. One bullet had passed through Black's abdomen and back. The other two bullets were shattered and the medical staff had not tried to remove the bullet pieces from Black's body.

11. A warrant was obtained to search Defendant's tent. The search was executed by Det. Vanuka, who seized a Colt Handgun with a holster, Speer Ball ammunition, percussion caps, a powder horn, and gunpowder.

12. Evidence Technician Tom Weightman went to the campsite to process the site for evidence. Weightman looked in a backpack at the west end of Black's possessions. Inside the backpack Weightman found a sheathed knife. Weightman noted no visible blood on the backpack, sheath or the knife.

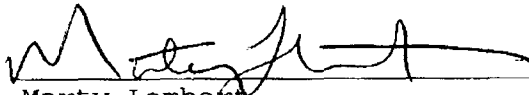
13. Defendant was taken to the Gallatin County Detention Center. Ellingson and Ogden taped brown paper bags over Defendant's hands, to secure the hands to test for gunshot residue. The officers specifically instructed Defendant to keep the bags on his hands, and that removing the bags would be tampering with evidence. Defendant told the officers that he didn't know why the bags were necessary, and that the officers didn't need the bags because "I definitely shot the gun I will

admit that on paper".

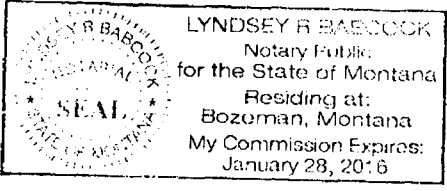
14. Approximately 30 minutes after leaving Defendant in the jail, dispatch alerted Ogden and Ellingson that Defendant was tearing the bags off of his hands. Ogden and Ellingson went back to the jail. Detention Officer Lenard went into the holding cell occupied by Defendant, and grabbed Defendant's arms, in an attempt to prevent Defendant from further removing the bags from his hands. The detention officers managed to get Defendant's hands behind his back and handcuffed Defendant. Ellingson watched as jail staff placed Defendant in a restraint chair. Ellingson saw that Defendant had torn the bags. Ogden held Defendant's wrists while Ellingson taped new bags over Defendant's hands.

15. Based upon the foregoing facts, the undersigned requests that this court find probable cause exists to file an Information charging the above-named defendant with the following offenses: COUNT 1: Attempted Deliberate Homicide, a Felony, in violation of §§45-4-103 and 45-5-102, MCA; and COUNT 2: Tampering With or Fabricating Physical Evidence, a Felony, in violation of § 45-7-207, MCA.

DATED this 16 day of September, 2013.


Marty Lambert
Gallatin County Attorney

SUBSCRIBED and SWORN to before me this 16th day of September, 2013.



Lyndsey R. Babcock
NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at: Bozeman, Montana
My commission expires: January 28, 2016
Lyndsey R. Babcock