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GALLATIN COUNTY CLERK
OF DISTRICT COURT
JENNIFER BRANDON

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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

THE STATE OF MONTANA,

Plaintiff,

No. DC-12-247A

v.

NATHANIEL JOHN BUDD,

Defendant.

AFFIDAVIT OF PROBABLE CAUSE
AND MOTION FOR LEAVE TO FILE
INFORMATION

* * * * *

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 which occurred on December 1, 2012 at approximately 1:30 a.m. The investigative details set forth below were provided to affiant from Detective Robert Vanuka, Detective Lt. Steve Crawford, and other Bozeman Police Officers.

3. On December 1, 2012 W.M. called dispatch and reported a shooting had occurred at the Taco Bell located at 2817 W. Main St., Bozeman. W.M. described how the suspect, a "younger male driver", in a silver Honda Civic, fled eastbound on W. Main Street

from the Taco Bell location.

4. Several BPD Officers responded to Taco Bell. The officers found a blue Honda CRV, occupied by W.M. and K.R., parked in the driveway to the restaurant. A female in the front passenger seat, K.R., had sustained two gunshot wounds. K.R. had been shot once through the right leg, with a second gunshot wound to her upper left back area. Although W.M. was in the driver's seat of the vehicle when the shooting occurred, W.M. was not injured.

5. At the time of W.M.'s call, Officers Sinness and Chaffins were investigating a DUI in the 2000 block of W. Main Street. Officer Sinness saw a silver Honda Civic travel eastbound on Main St. and turn northbound onto N. 19th Avenue. Officer Sinness noted the Honda was travelling at a high rate of speed.

6. Approximately 20 seconds after the Honda passed Officers Sinness and Chaffins, dispatch relayed the shooting suspect vehicle description. Officer Sinness noted that the description matched the Honda that he had just seen and advised other officers that the suspect vehicle was travelling northbound on N. 19th Avenue.

7. Officers Lusby, Gaukler and Shepherd responded to the area of N. 19th Avenue. Officer Lusby saw the suspect silver Honda Civic travelling northbound on N. 19th Ave. near Rawhide Ridge.

8. Officers Lusby, Gaukler and Shepherd conducted a high-risk traffic stop of the Honda on the eastbound on ramp to

Interstate 90. A lone male occupant was removed from the vehicle and taken into custody. The male was later identified as the Defendant.

9. Officers looked into Defendant's Honda for any additional occupants. From outside the car, Officer Richardson observed in plain view a pump-action shotgun between the front passenger seat and door. Officer Lusby also observed a pistol magazine pouch in plain view on the passenger seat. The magazine contained two single stack pistol magazines. Officer Lusby also saw a pink plastic bag on the floorboard behind the driver's seat. Underneath the pink bag, next to the seat, in plain view, Lusby saw the bottom of the grip of a dark colored handgun. Officer Lusby described the grip as having a single stack type magazine consistent with a 1911-style handgun.

10. After Defendant got out of the Honda, Officer Matthew Slayton helped handcuff the Defendant. Officer Slayton searched Defendant's pockets. Officer Slayton found a large knife in one of Defendant's pockets. The knife was delivered to Det. Vanuka. Det. Vanuka examined the knife, and found that the blade opened automatically by pressing a button on the knife handle. As the blade was over three inches in length, the knife carried by Defendant was a switchblade knife.

11. Officer Richardson went to Bozeman Deaconess Hospital where he met with K.R. and W.M. Both described the suspect vehicle as an older model Honda Civic with black rims. K.R. also said the

vehicle was a four door model. Following the shooting Detective Dana McNeil responded to Bozeman Deaconess Hospital. Det. McNeil watched a surgical procedure where medical staff removed a bullet from K.R.'s back. Detective McNeil took possession of the bullet from the Emergency Room doctor. Detective McNeil and Detective Vanuka concur that the size of the bullet taken from K.R. is consistent with ammunition fired from a .45 caliber handgun.

12. Detective McNeil conducted interviews with both W.M. and K.R. Both denied ever brandishing any type of weapon during the encounter. K.R. denied carrying or holding anything in her hands during the incident. W.M. said that he had a pocket knife, and gave the knife to Detective McNeil. The knife was a folding pocket knife, approximately 4 inches in length folded, approximately 8 inches unfolded. The knife had a matte black metal handle and matte black blade. Detective McNeil conducted a pat search of W.M. and found no other weapons.

13. According to the statements of W.M. and K.R., W.M. was driving his Honda CRV and K.R. was seated in the front passenger seat. The two were in the parking lot of the Gallatin Valley Mall, east of Taco Bell entrance, waiting for traffic ahead so they could pull into the drive through. Both W.M. and K.R. saw a passenger vehicle behind their vehicle, honking its horn and revving its engine. W.M. and K.R. gestured out the window for the vehicle to pass them. At one point K.R. left the car and swore at the driver of the other vehicle, telling him to "go

around". K.R. then re-entered the vehicle. Approximately 1 to 2 minutes later, W.M. pulled forward into the Taco Bell drive-thru. The suspect Honda then pulled forward into the oncoming traffic lane. The driver rolled down the driver's side window. K.R. rolled down her window and heard the driver say something to the effect of, "Oh, I'm just supposed to go around you". K.R. told the driver he was supposed to go around and made an insulting statement about the driver's vehicle, and rolled up her window. A moment later Defendant shot K.R. while she was seated in the front passenger seat of the CRV.

14. Numerous people were in the area of the drive-thru and parking lot of Taco Bell at the time of the shooting. The witnesses were identified and asked to go the Law & Justice Center for further interviews. At the Law & Justice Center, Officers Martin and Sinness conducted interviews with ten people who witnessed the shooting. The witnesses described the suspect vehicle as a late 90's to early 2000's silver Honda Civic, which the witnesses said had been stopped directly behind the Honda CRV.

15. Witnesses stated the driver of the Honda Civic repeatedly revved the engine of the vehicle in an apparent impatient gesture as the CRV was not moving. The female passenger in the CRV left her car, approached the Civic, and gestured for the driver to move around their vehicle because they were waiting to enter the drive-thru. As the female walked back to the CRV, the Civic rapidly accelerated and drove to the left of the CRV and

stopped. When there was room in the drive thru, the CRV pulled forward and stopped again to wait for other vehicles. The Honda Civic was parallel to the CRV, with the driver's door of the Civic next to the passenger door of the CRV.

16. Witnesses stated the female in the CRV and the male driver of the Civic exchanged words and the male produced a black semi-automatic handgun and fired.

17. Witnesses said the driver of the Civic drove away, holding the handgun out of the window. The driver drove southbound in the northbound lane out of the parking lot, drove through the red light at Main Street and turned eastbound on W. Main St.

18. Det. Toresdahl responded to Taco Bell. He saw a blue Honda CRV parked partially in the drive-thru driveway for the restaurant. Det. Toresdahl saw three bullet holes on the passenger side of the vehicle. One round had entered the middle of the front passenger door and exited near the door handle on the interior, continuing into the vehicle. A second round had struck the frame between the front and rear passenger doors and did not appear to have entered the passenger compartment. A third round had entered the rear passenger door at a forward angle, exiting the door and entering the back of the passenger seat. The bullet had exited the front of the passenger seat and continued into the passenger compartment of the vehicle. Officer Bachich advised Det. Toresdahl that three spent .45-caliber casings had been found

near the CRV's passenger side.

19. Dets. Vanuka and Toresdahl interviewed Defendant at the Law & Justice Center. Det. Toresdahl advised Defendant of his rights per *Miranda* and Defendant verbally waived his rights and agreed to speak with the detectives without an attorney present.

20. Defendant said he had been at Taco Bell earlier in the night, where he got into an altercation with a female passenger in another vehicle. Defendant stated he purchased food and was sitting in his vehicle eating when a truck pulled up next to him and a female began to get out of the passenger side of the vehicle. Defendant could not accurately recall whether the female left the vehicle or not. At one point during the interview, Defendant said the female was acting crazy and screaming. Defendant said he believed the female began to open the passenger door. Defendant said he thought the female had a silver object in her hand, which he thought might have been a knife or blade of some type. Defendant said he saw the male driver leaning over and looking toward him, which he said made him fearful of a weapon. Defendant said he did not actually see any weapons in the other vehicle.

21. Defendant said he grabbed his 1911-A1 45-caliber pistol from the driver's door pocket, chambered a round and fired 2-3 shots at W.M. and K.R. Defendant estimated the vehicles were 5-10 feet apart when he fired the shots.

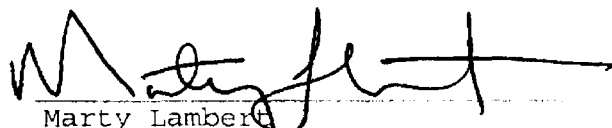
22. When asked what his intent was when he fired, Defendant

explained he was afraid because of W.M.'s and K.R.'s behavior and wanted to stop the threat. Defendant said that both the male and female were threats and he was firing at both of them. At the time of the shooting, both K.R. and W.M. were seated in the CRV with their doors closed waiting to move forward in the drive through line.

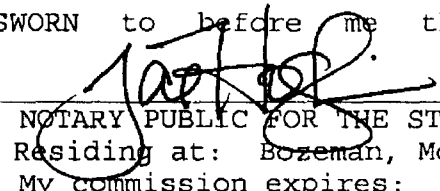
23. On December 1, 2012 District Judge Holly Brown authorized a search of Defendant's Honda. Det. Vanuka, along with other Bozeman Police Officers, searched the Honda, and seized the following: Remington 870 shotgun; .45 cal. handgun magazines; .45 cal. ammunition; marijuana, weighing a total of approximately 137 grams; and a digital scale.

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; COUNT 2: Attempted Deliberate Homicide, a Felony, in violation of §§45-4-103 and 45-5-102, MCA; and COUNT 3: Carrying or Bearing a Switchblade Knife, a Misdemeanor, in violation of §45-8-331, MCA.

DATED this 19 day of December, 2012.


Marty Lambert
Gallatin County Attorney

SUBSCRIBED and SWORN to before me this 19 day of Dec., 2012.



NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at: Bozeman, Montana
My commission expires:

