

August 20, 2021

Terry Halpin
CLERKYellowstone County District Court
STATE OF MONTANABy: Abrahams, Angela

DC-56-2021-0001112-IN

Judge Rod Souza

1.00

Jacob Yerger
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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

ANDREW JOEL DUANE WALLACE,
 Defendant.

CAUSE NO. DC

JUDGE:

**MOTION FOR LEAVE TO FILE
 INFORMATION WITH SUPPORTING
 AFFIDAVIT**

The undersigned Deputy County Attorney of Yellowstone County, Montana, being first duly sworn upon his oath, moves the Court for Leave to File an Information based upon an investigation conducted by law enforcement officers charging the above-named Defendant with the offenses of:

**COUNT I: DELIBERATE HOMICIDE (WITH WEAPONS ENHANCEMENT) (FELONY)
 OR IN THE ALTERNATIVE TO COUNT I:
 COUNT II: DELIBERATE HOMICIDE BY ACCOUNTABILITY (WITH WEAPONS
 ENHANCEMENT) (FELONY)**

committed at Yellowstone County, State of Montana, on or about November 1, 2020.

That law enforcement officers have made a full and careful investigation of all the facts and circumstances surrounding the commission of said offense, so far as they are known or ascertainable; that he believes it a proper case for filing of an Information and that for this reason, and none other, the foregoing motion is made.

The Court is informed that the Billings Police Department (BPD) investigation revealed the following:

On November 1, 2020, at approximately 1:14 a.m., multiple BPD officers responded to St. Vincent's Healthcare after receiving a report of a shooting. Officers were advised by hospital personnel that a man, Waylon Willie Bearground (born in 1980), had been brought to the emergency room with a gunshot wound to the abdomen and what were later determined to be lacerations and a stab wound to the neck.

Officers arrived on scene and made contact with Bearground's mother, C.B., and her boyfriend, B.R. B.R. advised officers that Bearground had asked to borrow their vehicle to bring some clothing to an ex-girlfriend, whom he identified as C.W. B.R. stated that he and C.B. brought Bearground to an apartment building on the 4100 block of King Avenue East in Billings, Yellowstone County, Montana, where he went to an apartment, later identified as apartment 21. Shortly after his arrival, B.R. stated that Bearground returned and informed them to stay in their vehicle, because he was potentially going to "get into it" with someone. B.R. stated that Bearground went back carrying clothes for C.W. towards the apartment when they overheard a confrontation between Bearground and another man. This man was described as having darker skin and wearing a brown, puffy coat. Shortly after hearing the argument take place, B.R. and C.B. reported hearing what sounded like a gunshot. They left their vehicle and saw Bearground lying on the ground outside the apartment building. They transported him to St. Vincent's Healthcare, where he later succumbed to his injuries and was pronounced dead.

Detectives went to the apartment building where the shooting occurred. They located a spent .380 caliber cartridge casing in the alley where the shooting was believed to have occurred. Detectives made contact with the occupants of apartment 22, who reported hearing their neighbor, identified as BENIAL ANTUWAN DAVIS (born June of 1983), the Defendant herein, involved in a verbal altercation with a man earlier in the evening. The neighbors reported hearing a gunshot and a female screaming shortly after the verbal altercation. Detectives attempted to contact the Defendant at apartment 21, with no response. Under exigent circumstances and to ensure nobody was injured inside, officers forced entry and cleared the residence. Detectives again spoke with the neighbors, who reported that the Defendant drove a tan-colored Chevrolet Suburban which was no longer parked at the apartment. Detectives performed a records check, and verified that the Defendant's vehicle was a tan, 2004 Chevrolet Suburban.

A search warrant was obtained for the Defendant's apartment. Detectives located a gun box for a Walther PK. .380 caliber pistol; a holster; and .380 ammunition. Detectives performed a firearms trace on the Walther PK. 380 pistol and learned that the firearm was registered to the Defendant.

Detectives were subsequently contacted by T.B., who advised that the Defendant had come by his residence earlier in the evening, at approximately 2:00 a.m. T.B. stated that the Defendant asked to borrow his vehicle, claiming he wanted to visit his sister in Washington. T.B. advised that the Defendant "wasn't acting like himself," but that he agreed to let him borrow his vehicle. The Defendant agreed to leave his 2004 Suburban at T.B.'s home, in exchange for T.B.'s blue, 2005 Chevrolet Silverado bearing MT license plate 3-86936C. T.B. stated that another man, whom he identified as ANDREW JOEL DUANE WALLACE (born July of 1989)—the Defendant's roommate—was with the Defendant.

On November 2, 2020, an autopsy was conducted on Bearground at the Yellowstone County morgue by Dr. Robert Kurtzman. Dr. Kurtzman observed a single gunshot wound to the abdomen. He also observed a single laceration on the left side of Bearground's neck, and defensive cut wounds on his hand. Dr. Kurtzman opined that both the gunshot wound, and stab wound would have been independently fatal, and contributed to Bearground's death.

On November 3, 2020, Idaho State Police stopped the 2005 pickup outside Coeur d'Alene, Idaho. The four occupants were identified as the Defendant; WALLACE; C.W.; and A.W. All four were interviewed by detectives with the Idaho State Police after being advised of their *Miranda* rights. A.W. and

C.W. stated that they had been at apartment 21 with the Defendant and WALLACE when Bearground arrived at approximately 1:00 a.m. Both reported that the Defendant and WALLACE forced Bearground away from the apartment door, and that both men went outside to confront Bearground a few minutes later. They reported overhearing an altercation and, later, a gunshot. According to A.W. and C.W., the Defendant returned to the apartment and told them that he had shot Bearground, stating that Bearground had “scared” him. He encouraged them to leave the apartment. They remembered exchanging the Suburban with T.B.’s pickup and driving to Idaho, where they were stopped.

Idaho State Police investigators also questioned the Defendant. The Defendant confirmed that he, WALLACE, C.W. and A.W. had been drinking at his apartment when Bearground knocked on the door. The Defendant claimed that, when he answered the door, Bearground attempted to force his way inside. The Defendant told Bearground that he wasn’t welcome at the apartment and shut the door. After approximately 15 minutes, the Defendant stated that he went outside to “check on his truck.” The Defendant told investigators that he observed Bearground walk around the front of his vehicle when he walked outside. The Defendant told investigators that Bearground charged at him, and that he shot him once in the abdomen. He denied being armed with a knife and could not remember if anyone had come outside with him. He admitted that he couldn’t see if Bearground was armed. When asked what he had done with the pistol, the Defendant stated that he had removed it from the scene and disposed of it at an unknown location approximately two hours outside of Billings.

Investigators also questioned WALLACE. WALLACE initially claimed that he was unaware that the Defendant had been in a confrontation with Bearground. After the Defendant spoke with investigators, WALLACE informed police that he wanted to provide a second statement. WALLACE was again advised of his *Miranda* rights. He confirmed that he had been living with the Defendant for approximately one month, and that he, the Defendant, C.W., and A.W. had all been at his apartment drinking on October 31, 2020. WALLACE advised that Bearground came to the door, and told the Defendant and WALLACE that he was there to return clothes to C.W. WALLACE stated that he and the Defendant forced Bearground outside and locked the door. WALLACE further stated that the Defendant asked him to go outside with him, to make sure Bearground didn’t do anything to his vehicle. WALLACE agreed to accompany the Defendant outside. WALLACE stated that both he and the Defendant were armed when they walked outside; the Defendant was carrying a pistol, and he was carrying a “big knife.” WALLACE stated that he saw Bearground walking around the front of the Defendant’s vehicle. WALLACE advised that Bearground charged at the Defendant, and that the Defendant shot him once in the abdomen. WALLACE denied stabbing Bearground when shown photographs of his wounds, claiming that he kept the knife in his waistband, and never touched it. Investigators concluded the statement.

The investigation continues.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: August 19, 2021

\s\ Jacob A. Yerger
Deputy County Attorney