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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

XAVIER ADAM CHARLES,

Defendant.

CAUSE NO. DC

JUDGE: MICHAEL G. MOSES

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

The undersigned Deputy County Attorney of Yellowstone County, Montana, being first duly sworn upon her 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 offense of:

DELIBERATE HOMICIDE (WITH WEAPONS ENHANCEMENT) (FELONY)

committed at Yellowstone County, State of Montana, on or about December 6, 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 she 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 or about December 6, 2020, at approximately 5 a.m., Billings Police officers were dispatched to 834 Wyoming Ave., Billings, Yellowstone County, Montana, regarding a shooting. The complainant advised that a juvenile female had been shot. Officers requested that all persons inside the residence wait outside until officers arrive.

Upon arrival, officers made contact with three adults and two juveniles. The adults were identified as Karmen Arndt, Matthew Harris, and Timothy Shelton. The two male juveniles were identified as O.P. (born in August 2004), and XAVIER ADAM CHARLES (born in August 2003), the Defendant herein. When

officers approached the Defendant, he asked to be put in handcuffs, stating that he had shot someone. The Defendant told officers several times, "I killed her."

Officers proceeded to clear the residence. In a bedroom, officers located a juvenile female with an apparent gunshot wound to her head. She was deceased. The deceased female was later identified as D.M. (born in September 2003), 17-year old. Officers observed a single .45 spent shell casing near D.M.

Officers observed that a back door leading outside towards the garage was open and that the side door to the garage was also ajar. Officers proceeded to clear the garage. Inside the garage, near the overhead garage door, officers observed a .45 caliber Springfield XD semi-automatic pistol. Near the pistol, officers observed a backpack with multiple pistol magazines laying on top of it.

The residence and garage were secured pending a search warrant. A search warrant was granted and executed. Officers seized the casing located near D.M., the pistol, and the backpack and magazines along with other evidence discovered at the scene. Officers also located and recovered an apparently fired bullet inside a wall in the room where the decedent was found.

Officers outside the residence obtained statements from Arndt and Harris. Arndt was visibly upset. Arndt informed officers that she had been sleeping in the living room when the shooting occurred. She stated that her partner, Harris, was out in the garage when she fell asleep on the couch. Her friend, Shelton had also fallen asleep in the living room. She stated that her son, O.P., her stepson, D.H. (born in July 2005), and the Defendant were together in the bedroom. Arndt said she was awoken abruptly by the boys. According to Arndt, the boys appeared to be freaking out. The boys exclaimed things like "I don't know what happened" and "Xavier's gun went off" and "She's dead." Arndt said the boys further explained that D.M. had been shot. Arndt said that she did not know D.M. was inside the residence. Arndt said she saw the boys go out towards the garage to get Harris. Harris then came inside and called 911. Arndt stated that the boys told her that the Defendant was holding the pistol when it was fired. Officers then inquired about a firearm being present inside the residence. Arndt stated that no one in her family owns a firearm and would not allow her sons to have a firearm.

Harris informed officers that he was in the garage near the residence when he heard a gunshot. Harris advised that after hearing the gunshot, he headed towards the residence where he was met by O.P. and the Defendant. Harris said O.P. and the Defendant told him that the Defendant had shot someone. Harris calmed the Defendant down and called 911. Harris did not provide officers with an explanation regarding the pistol observed in the garage. Harris advised that he did not know D.M. but believed that the Defendant snuck her inside the residence.

On scene, officers spoke briefly with O.P. He was also visibly upset. O.P. advised that he was hanging out with D.M., who was visiting from Wyoming. The Defendant had a gun in his hand, was messing with it, and then the gun just went off. Officers transported O.P., D.H., and the Defendant to City Hall for questioning since they were all present during the shooting.

Detectives Hallam and Beck took statements from O.P. and D.H. at City Hall. O.P. provided the following summary of events: He and the Defendant were hanging out for most of the day on Saturday,

December 5, 2020. O.P. said he bought the pistol on Saturday and the Defendant was with him. Late Saturday night and into Sunday morning, he, D.H., and the Defendant were at the residence on 834 Wyoming Avenue hanging out in his and D.H.'s bedroom. They were messing around with the pistol throughout the night. He said that he put the gun away earlier in the night and checked the chamber to make sure it was empty but did not remove the loaded magazine prior to putting the pistol away. Around 3:30 a.m., he and the Defendant learned that D.M. was in town from Wyoming. He and the Defendant left the residence to pick up D.M. and returned to the residence. He, D.M., and the Defendant were all hanging out and drinking in the bedroom. D.H. was also present in the bedroom. There are two beds in the bedroom, parallel to each other, a few feet apart. He left the room to use the restroom. When he returned to his bedroom, he sat on a bed with D.H. and the Defendant. On the other bed was D.M. He then observed the Defendant pull out the pistol. He stated that he did not know when the Defendant retrieved the pistol but assumed it was when he was in the bathroom. The Defendant pointed the pistol at D.M. While the pistol as pointed at D.M., he heard D.M. jokingly tell the Defendant that he wouldn't shoot. He then heard a gunshot and saw D.M. collapse to the floor. He looked at the Defendant and saw the pistol in the Defendant's right hand. He ran out the room to tell the adults what had happened. They went out to the garage with the pistol to speak with Harris. He stated that Harris yelled at them to put the gun down and not to touch it any further. He consented to a gunshot residue kit.

D.H. provided the following summary of events: He was hanging out with O.P. and the Defendant late Saturday night into Sunday morning. He confirmed that he had held O.P.'s pistol earlier on Saturday. Late Saturday night, they were all hanging out in his and O.P.'s bedroom. The Defendant and O.P. were drinking. Around 3 a.m. on Sunday morning, the Defendant and O.P. left the residence to pick up D.M. and brought her back to the residence. The Defendant, O.P., and D.M. were drinking. He, O.P., and the Defendant were sitting on O.P.'s bed while D.M. was sitting on his bed. The boys were facing D.M. He said he was on his phone and not paying attention when he heard a gunshot and saw D.M. fall to the floor. He said they all panicked and ran out of the room. He stated that he did not see who pulled out the gun or who pulled the trigger. He consented to a gunshot residue kit.

Detective Hallam and Officer Beck then met with the Defendant. They advised the Defendant of his juvenile *Miranda* rights. The Defendant declined to answer questions. The Defendant did inform officers that his phone should be inside the residence and consented to a gunshot residue kit.

Officers later learned that the pistol was reported as stolen.

On December 7, Chief Medical Examiner Dr. Robert Kurtzman conducted an autopsy of the decedent and the cause of death was preliminarily determined to be a gunshot wound to the head. The investigation is ongoing.

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

DATED: December 11, 2020

/s/ Hallie E. Bishop
Deputy County Attorney