

Joshua A. Racki
Cascade County Attorney
121 4th Street North, #2A
Great Fall, MT 59401
Telephone: (406) 454-6915

Attorney for the State

**IN THE JUSTICE COURT, IN AND FOR THE COUNTY OF CASCADE
CITY OF GREAT FALLS, STATE OF MONTANA
BEFORE THE HONORABLE JUSTICE OF THE PEACE**

STATE OF MONTANA,

Plaintiff,

vs.

RACSO JAMES BIRDTAIL,

Defendant.

No. _____

**INITIAL COMPLAINT,
AFFIDAVIT IN SUPPORT, AND
MOTION TO DETERMINE
PROBABLE CAUSE AND SET
BOND**

Citation No. 052C08608, 052C01091,
052C08609, 052C08607

The State of Montana, by and through the Cascade County Attorney, pursuant to M.C.A. §§ 46-11-101(1), 46-11-401(1), 46-1-202(6), and 46-11-401(3), hereby files this complaint against the above-named Defendant in the above-captioned Justice Court for purposes of M.C.A. § 46-10-105(1), pending filing of an Information and Affidavit in District Court pursuant to M.C.A. §§ 46-11-101(3), 46-11-201, and 46-11-203. This complaint consists of this pleading and the attached law enforcement citation form(s) and probable cause affidavit(s) which by this reference are hereby incorporated herein as if set forth in their entirety.

The State further moves the Court for a finding of probable cause and to set bail in this matter pursuant to M.C.A. §§ 46-9-109 and 46-9-301. This Defendant has been charged with the following offenses:

COUNT I: STRANGULATION OF A PARTNER OR FAMILY MEMBER, a Felony, in violation of M.C.A. § 45-5-215(1)(a). A person convicted of a first offense of strangulation of a partner or family member shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

COUNT II: ASSAULT, a Misdemeanor, in violation of M.C.A. § 45-5-201(1)(a). A person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

COUNT III: DESTRUCTION/TAMPERING WITH A COMMUNICATION DEVICE, a Misdemeanor, in violation of M.C.A. § 45-6-105(1)(a). A person convicted of this offense shall be imprisoned in the county jail for not more than six months, fined not more than \$1,000, or both.

COUNT IV: AGGRAVATED BURGLARY, a Felony, in violation of M.C.A. § 45-6-204(2)(a)(i)(b)(ii). A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed \$50,000, or both.

STATE OF MONTANA)

: ss.

County of Cascade)

AFFIDAVIT IN SUPPORT

As outlined in the attached probable cause affidavit, on July 6, 2021, Officer Lyons was dispatched to a residence in Great Falls, Montana for a welfare check on a female who kept telling dispatch to "hurry, hurry". The female also told dispatch she woke up to a lot of blood in her residence. On the way to the residence a second call came in at 1209 6th Avenue NW for a report that a male was knocking on the door and covered in blood.

At that address Lyon and Sergeant Bragg made contact with KM whose face was extremely bloodied and swollen, and his torso, arms, and legs were also very bloodied. KM state he was in bed with his friend TL at the first address when he was awakened by Racso Birdtail punching him in the face repeatedly. KM stated he tried to block the punches and flee the residence, but Racso followed him outside toe the back porch and started punching him in the face again.

KM stated he believed Racso punched him a minimum of ten times. KM said he believed his nose and jaw were broken, his left eye was bruised and swollen, his lip was cut open, and a bottom tooth was knocked loose. KM explained he did not know how Racso entered the residence as they had locked the door, however, upon inspection of the back door, Lyon noted the door handle was almost completely off the door. As Lyon entered the back porch of the residence, she saw there was blood spatter spreading the entirety of the porch. Upon entering the actual residence, Lyon saw blood smears on the stairway wall and blood drops on the stairs leading to the outside consistent with KM's statements. There was also blood on the bed and bedroom floor.

Lyons next spoke with TL, Racso's girlfriend. She stated she had been assaulted the previous day by Racso, so she asked KM to stay with her at her residence as she felt afraid to be alone. She stated she woke up to Racso standing over her in her bedroom asking if KM was her new boyfriend and telling her not to worry about what he did to him. TL explained Racso then told her to take her clothes off and that he would "fucking kill" her, "sell" her, and no one would know what happened to her. TL told Lyons that Racso did not live at the residence and was fully aware he was not allowed at her house. TL said she called 911 and Racso yelled at her "who is on the phone." She explained she hung up the phone out of fear, called back, and then hung up again. TL could not find her phone for Lyons, however, Officer Bott later discovered it in the toilet at the residence. The phone was destroyed as result of the water damage. Racso was transported to jail, and he had fresh injuries to his knuckles as they were swollen and bloody.

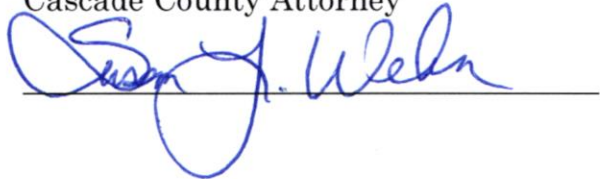
Later that day TL again spoke with Lyons and explained how she had been assaulted by Racso the day prior, on July 5, 2021. She said Racso had been at her residence uninvited with a female. She said an argument ensued and Racso used his right hand to grab her throat and choke her. TL said her normal breathing patterns were impeded when he did this and upon inspection Lyons could see bruising on her neck. TL stated Racso then started slapping her legs causing pain and bruising. TL had visible bruising and marks on her right upper leg consistent with her statements. TL said she was in an ongoing relationship with Racso since about April of this year. She said this assault caused her pain and fear and she was adamant she did not want

Racso around her or her residence. She was visibly shaking and crying when recounting these events. TL stated the assault scared her so that she asked her friend to stay with her, resulting in the subsequent break-in by Racso.

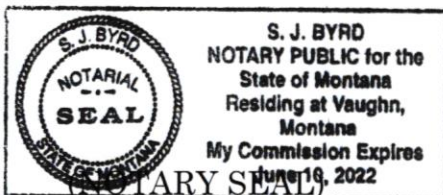
The Defendant was out on a \$10,000 bond in BDC-19-825. The Defendant pled no contest in that matter to Assault on a Minor, felony, and Tampering with Physical Evidence, felony, and is awaiting sentencing in August. That matter involved the death of a 5-year-old child and the Defendant's charges were amended from Deliberate Homicide. For the foregoing reasons, the State respectfully requests bond in the amount of \$50,000.00.

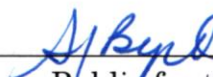
DATED this 7th day of July, 2021.

JOSHUA A. RACKI
Cascade County Attorney



SUBSCRIBED AND SWORN TO before me on the 7th day of July, 2021.




Notary Public for the State of Montana,
Residing at Great Falls, Cascade County,
Montana.
My commission expires 6-10-2022

cc: CA/Racki

O R D E R

Upon examining the foregoing Motion and Affidavit,

IT IS THE FINDING OF THIS COURT:

_____ that probable cause exists to charge the Defendant as stated above;

OR,

_____ that probable cause does not exist to charge the Defendant as stated above.

DATED this _____7th day of _____ in Cascade County,
Montana.

DISTRICT COURT JUDGE

PROBABLE CAUSE AFFIDAVIT



DISTRICT COURT GREAT FALLS, CASCADE COUNTY, MONTANA

STATE OF MONTANA

Plaintiff

vs.

BIRDTAIL, RACSO JAMES

Defendant

PROBABLE CAUSE AFFIDAVIT/ HEARING

CASE NUMBER: PD21-07977

INCIDENT DATE: 07/06/21

OFFICER AFFIDAVIT:

The undersigned Officer of the Great Falls Police Department, being first duly sworn, states the following:

1. The offense(s) charged in this complaint occurred within the city limits of Great Falls, Montana.
2. I base the probable cause to charge or issue a warrant in this case on the following:

On July 6, 2021, I was dispatched to 1216 5th Ave NW Unit 2 for a welfare check on a female who kept telling dispatch to "hurry hurry." The female also told dispatch she woke up to a lot of blood in her residence. While en-route to this address, a second call came in at 1209 6th Ave NW for a report that a male was knocking on the door and covered in blood.

Upon my arrival, Sgt Bragg and I made contact with K.M. - I immediately noticed K.M.'s face was extremely bloodied and swollen, and his torso, arms, and legs were also very bloodied. K.M. stated he was in bed with his friend T.L. at 1216 5th Ave NW Unit 2 when he was woken up by Racso Birdtail (Zuercher; DOB: 12/02/1996) punching him in the face repeatedly. K.M. stated he tried to block the punches and flee the residence - he stated Racso followed him outside to the back porch of the residence and started punching him in the face again.

K.M. stated he believed Racso punched him a minimum of ten times. K.M. stated he believed his nose and jaw were broken, his left eye was bruised and swollen, his lip was cut open, and a bottom tooth was knocked loose. K.M. explained he did not know how Racso entered the residence as they had locked the door, however upon my inspection of the back door, I noted the door handle was almost completely off the door. As I entered the back porch of the residence, I saw there was blood splatter spreading the entirety of the porch. As I entered the actual residence, I saw there were blood smears on the stairway wall and blood drops on the stairs leading to the outside, consistent with K.M.'s statements. Additionally, once in the bedroom, I could see blood on the bed and bedroom floor, consistent with K.M.'s statements.

Next I spoke with T.L., Racso's girlfriend. She stated that she was assaulted yesterday by Racso so she asked K.M. to stay with her at her residence as she felt afraid to be alone. She stated she woke up to Racso standing over her in her bedroom, asking if K.M. was her new boyfriend, and telling her not to worry about what he did to him. T.L. explained Racso then told her to take her clothes off and that he would "fucking kill" her, "sell" her, and no one would know what happened to her. T.L. told me that Racso did not live at the residence and was fully aware he was not allowed at her house.

T.L. explained she called 911 and Racso yelled at her "who is on the phone." She explained she hung up the phone out of fear, called back, and then hung up again. T.L. could not find her phone, however, Officer Bott later discovered it in the toilet at the residence. The phone was destroyed as a result of the water damage.

Based on the above listed details, I arrested Racso and he was transported to the CCDC. Racso had fresh injuries to his knuckles as they were swollen and bloody. I remanded Racso on the below listed charges.

3. I know the purpose of this statement is part of the probable cause hearing for the issuance of the below listed charges, and/ or requesting a warrant for the arrest of the defendant named in the complaint.

CHARGES:

45-6-204(2) - Burglary, Aggravated

45-5-201 - (M) Assault

45-6-105(1)(a) - Destruction/Tampering Of Communication Device To Obstruct/Prevent/Int...

Dated this Tuesday, July 06, 2021

OFFICER SIGNATURE:

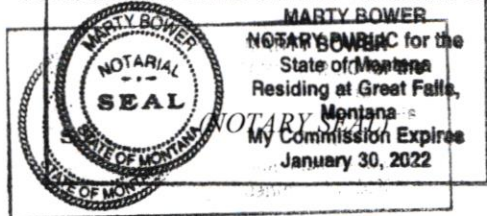
BADGE NUMBER/OFFICER NAME:



353 - Lyons, McKenzie

NOTARY SIGNATURE:

SUBSCRIBED AND SWORN to before me this 6th day of July, 2021.



Notary Public for the State of Montana,
Residing at Great Falls, Cascade County, Montana

My commission expires: Jan. 30, 2022

JUDGE ORDER:

The Court/ undersigned Judge hereby finds:

☐ *THERE IS*

☐ *THERE IS NOT*

SUFFICIENT PROBABLE CAUSE to file the above listed charges, and/ or hold the defendant pending trial or hearing, based on the facts outlined herein.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2021.

JUDGE SIGNATURE:

DISTRICT COURT JUDGE

CITY ATTORNEY <input type="checkbox"/>	COUNTY ATTORNEY <input type="checkbox"/>	COUNTY JAIL <input type="checkbox"/>	SHERIFF'S OFFICE <input type="checkbox"/>	PUB DEF PARALEGAL <input type="checkbox"/>	DEFENDANT <input type="checkbox"/>	DEFENSE COUNSEL <input type="checkbox"/>
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PROBABLE CAUSE AFFIDAVIT



DISTRICT COURT GREAT FALLS, CASCADE COUNTY, MONTANA

STATE OF MONTANA

Plaintiff

vs.

BIRDTAIL, RACSO JAMES

Defendant

PROBABLE CAUSE AFFIDAVIT/ HEARING

CASE NUMBER: PD21-07977

INCIDENT DATE: 07/06/21

OFFICER AFFIDAVIT:

The undersigned Officer of the Great Falls Police Department, being first duly sworn, states the following:

1. The offense(s) charged in this complaint occurred within the city limits of Great Falls, Montana.
2. I base the probable cause to charge or issue a warrant in this case on the following:

On 07-06-2021 I was dispatched to an active disturbance located at 1216 5th Ave NW. While on scene, I spoke with the caller, T.L. who told me that she was assaulted by her ex-boyfriend, Racso Birdtail (CCDC Booking Photo), yesterday.

T.L. stated on 07/05/2021 around approximately 1330 hours, Racso had been at her residence, uninvited with a female. She stated an argument ensued and Racso used his right hand to grab her throat and choke her. T.L. stated her normal breathing patterns were impeded when he did this, and upon inspection I could see bruising on her neck. T.L. stated Racso then started slapping her legs causing pain and bruising - I could see visible bruising and marks on her right, upper leg consistent with her statements.

T.L. stated she was in an ongoing relationship with Racso since approximately April of this year. She stated this assault caused her pain and fear and she was adamant she did not want Racso around her or her residence. She was visibly shaking and crying when recounting these events. T.L. stated the assault made her so scared that she asked her friend to stay with her, which resulted in the disturbance I was initially dispatched to.

Based on the above listed details, I arrested Racso and he was transported to the CCDC where I booked him on the below listed charges. A III criminal history check indicated Racso had no prior PFMA convictions, making this a first offense via CJIN/NCIC.

3. I know the purpose of this statement is part of the probable cause hearing for the issuance of the below listed charges, and/ or requesting a warrant for the arrest of the defendant named in the complaint.

CHARGES:

45-5-215 - STRANGULATION OF PARTNER OR FAMILY MEMBER

Dated this Tuesday, July 06, 2021

OFFICER SIGNATURE:

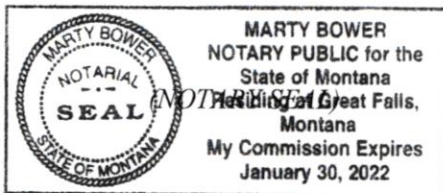
BADGE NUMBER/OFFICER NAME:

MB

353 - Lyons, McKenzie

NOTARY SIGNATURE:

SUBSCRIBED AND SWORN to before me this 6th day of JULY, 2021.



Notary Public for the State of Montana,
Residing at Great Falls, Cascade County, Montana

My commission expires: JAN 30, 2022

JUDGE ORDER:

The Court/ undersigned Judge hereby finds:

☐ THERE IS

☐ THERE IS NOT

SUFFICIENT PROBABLE CAUSE to file the above listed charges, and/ or hold the defendant pending trial or hearing, based on the facts outlined herein.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2021.

JUDGE SIGNATURE:

DISTRICT COURT JUDGE

CITY ATTORNEY <input type="checkbox"/>	COUNTY ATTORNEY <input type="checkbox"/>	COUNTY JAIL <input type="checkbox"/>	SHERIFF'S OFFICE <input type="checkbox"/>	PUB DEF PARALEGAL <input type="checkbox"/>	DEFENDANT <input type="checkbox"/>	DEFENSE COUNSEL <input type="checkbox"/>
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