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CLERK OF DISTRICT COURT

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Attorneys for the State

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

RASCO JAMES BIRDTAIL,

Defendant.

Co-Defendants:

Emilio E. Renova and

Stephanie Grace Byington

No. **BDC - 19 - 825**

**AFFIDAVIT, MOTION, AND
ORDER FOR LEAVE TO FILE
INFORMATION DIRECT**

STATE OF MONTANA)

: ss.

County of Cascade)

The undersigned Deputy County Attorney of Cascade County, Montana, being first duly sworn, moves the Court for leave to File an Information charging the above-named defendant with:

COUNT I: DELIBERATE HOMICIDE, a Felony, in violation of M.C.A. § 45-5-102(1)(b).

COUNT II: TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE, a Felony, in violation of M.C.A. § 45-7-207(1)(a).

Affiant has reviewed reports submitted by the Great Falls Police Department. These reports pertain to the events hereinafter described, and on the basis of the same, Affiant makes the allegations hereinafter set forth:

On November 20, 2019 at 9:07 a.m., Great Falls Police received a dispatch call from Stephanie Byington (Renova), who called 911 to report her child was not breathing. As dispatchers tried to walk her through conducting CPR, she reported that "blood was coming out" and sounded panicked. When officers arrived, they ran into Unit #1, then ran through the apartment into the child's room. The child was unresponsive, on the floor in the bedroom. The child (a five-year-old male identified hereinafter as "John Doe"¹) was bleeding from the nose and mouth. Officers began doing CPR, but the child showed no responsiveness. The child had blood and what was possibly brain matter on his clothing and the floor around his body.

Officers also found Doe's father, Emilio Renova. There were two other people who had spent the night the previous night. The apartment is a two-bedroom one-bath residence. The other two people were identified as Racso Birdtail and Teanna Small. As officers looked around, they found blood in the bathroom on the bathtub ledge and inside the bathtub. There was a small streak of blood in the tub itself. The blood was streaked or smeared, and there was not a great quantity of blood deposited on the tub.

¹ John Doe is pseudonym being used to protect the victim's privacy, as he was a minor.

On closer examination, Doe was covered in bruises. His knees, torso ribs, face. One of the child's leg appeared to be abnormal and possibly broken. There was blood on the carpet in several locations. The parents said they found the child on the floor. Based on the on-scene assessment of officers, Doe appeared to have been assaulted. The child had an obvious gash on his head that was about the size of a silver dollar. The gash was on his hairline and was very apparent. Great Falls Fire and Rescue paramedics indicated that some of the material near the child's body appeared to be brain matter.

The occupants of the apartment were not in distress when officers arrived. The father was not reacting as officers would have expected for such a traumatic event. The mother was very upset for moments then would calm down. Their behavior was not consistent with what the officers would have expected from a mother and father experiencing such a traumatic event.

Sgt. Eric Bauman was the first on scene and saw Rasco Birdtail was walking out of the apartment carrying bags to a dumpster. Officers saw what appeared to be a bloody rag with other "gory stuff" on it in the dumpster. There were also alcoholic beverage containers and possibly clothing, all thrown in haphazardly. The dumpster was photographed in place and then moved to a more secure location to preserve the contents. Rasco later admitted to "cleaning up" the apartment by disposing of these items before police arrived, as he did not want the apartment to appear to be dirty.

In June, the child was taken to Benefis Emergency Room for bruising on his face and was described as having "sad eyes." Child Protective Services ("CPS")

responded, but the child had already left the facility. CPS workers tried to locate the family without success and had to close their case file as a result.

Emilio Renova was interviewed and admitted that he had been drinking. He claimed that he woke up that morning, went outside to smoke a cigarette and his wife came outside and told him his son was not breathing. Emilio claimed ignorance of an injuries to Doe or why he might not be breathing. Emilio admitted that he had been the last person to touch the child. When pressed further about the matter, he became upset and called detectives, "faggots."

Based on observations by officers on scene, there are multiple discrepancies in his statements. First, there is blood on Emilio's pants, which he claims is nail polish. Emilio said he did not touch the child after he was injured. He did not assist in the CPR and thus would not have had blood on him in that manner. Second, officers noted blood on Emilio's face and lip that appeared as if it been cleaned off prior to officers arriving.

Scene evidence seen by the officers who performed CPR showed blood in the bed next to where Emilio normally lies. Based on other statements made by Stephanie, two other children were sleeping in the bed as well. There was what appears to be blood on the bed in the spot where a child would have slept on the bed. The way the bed is set in the room, Emilio would have had to climb over the child to exit the bedroom to go smoke a cigarette. Further, there would not have been time for the injuries to occur in the short time Emilio went outside to smoke.

Based on where the blood was on the bed, and the extensive injuries to the child, it is unlikely Emilio would not have noted that when he climbed off of the bed.

The female visitor reported that the group drank several cases of beer and twisted tea. She said that at one point the five-year-old was up and got in trouble for being awake. Emilio and Stephanie took the child into the bathroom and gave him a cold shower. Emilio remained in the bathroom while Stephanie came out and called her sister. She then heard what she believed was Emilio and Rasco beating the child in the bathroom. She reported that Rasco was egging Emilio on, calling the child a "fucking faggot." She later wanted to use the bathroom and Emilio said the child was still in the bathtub. She went in and didn't see the child but noted the shower was still running. She believed it was cold water because there was no steam in the bathroom. She says the child is very sad and has to hold heavy bottles up over his head as punishment. She said at one point she and Stephanie left to go visit a friend. On the way, Stephanie reported she was stressed out because she was not supposed to have the child, and CPS workers were looking for him.

Images of the child show a significantly injured and malnourished child. Based on the photographs, there is no chance the injuries were accidental.

ER staff reported that one of Doe's siblings, aged 2, had almost no teeth, as they had virtually decayed away. The other sibling, aged 1, was extremely had rotten teeth. Both children were extremely unclean.

During her interview, Stephanie admitted to hearing Emilio and Rasco beating Doe. Stephanie also reported that about a few weeks prior, Emilio had

kicked Doe into a can of some sort, causing the child to be injured. This injury left a large scab on his head, which is visible in photos. Additionally, Stephanie admitted that both she and Emilio had beaten Doe on prior occasions with a belt and electrical cords.

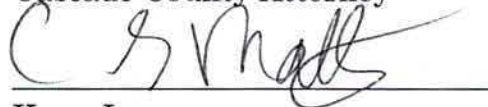
Given the foregoing, the undersigned has probable cause to believe that the Defendant has engaged in activity constituting the offenses of:

COUNT I: DELIBERATE HOMICIDE, a Felony, in violation of M.C.A. § 45-5-102(1)(b).

COUNT II: TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE, a Felony, in violation of M.C.A. § 45-7-207(1)(a).

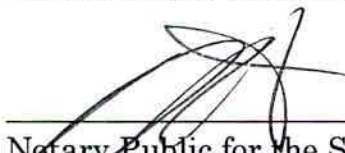
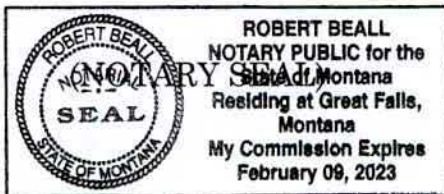
DATED 20 November 2019.

JOSHUA A. RACKI
Cascade County Attorney



Kory Larsen
Deputy County Attorney

SUBSCRIBED AND SWORN TO before me on the 20th day of November, 2019.



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

My commission expires 2/23

ORDER

Upon examining the foregoing Motion and Affidavit for Leave to File Information, and it appearing that there is probable cause to charge the above-named defendant as stated in the Information,

IT IS HEREBY ORDERED that the State of Montana is granted leave to file the Information as requested by the State's motion.

IT IS FURTHER ORDERED A WARRANT SHALL ISSUE FOR THE DEFENDANT'S ARREST.

DATED this 20th day of November, 2019, at Great Falls, Montana.



DISTRICT COURT JUDGE

cc: County Attorney/Kory Larsen
Defense Counsel c/o Public Defender's Office
Defendant – c/o Counsel
GFPD/
CCSO/warrants