

FILED

FEB 27 2017

JUSTICE COURT

1 JASON MARKS
 2 Chief Deputy County Attorney
 3 KIRSTEN H. PABST
 4 Missoula County Attorney
 5 Missoula County Courthouse
 6 Missoula, Montana 59802
 7 (406) 258-4737
 8 ATTORNEYS FOR PLAINTIFF

9 IN THE JUSTICE COURT OF THE STATE OF MONTANA
 10 IN AND FOR THE COUNTY OF MISSOULA
 11 BEFORE, Marie A Andersen, JUSTICE OF THE PEACE

12 STATE OF MONTANA,

13 Plaintiff,

Department No. 1

Cause No.

CR-2017-202

14 -VS-

COMPLAINT

15 EMILY BESS LEVENS,

16 Defendant,


17 JASON MARKS, Chief Deputy County Attorney, deposes and says that on or about
 18 the 24th day of February, 2017, in Missoula County, the Defendant committed the
 19 offenses of COUNT I: VEHICULAR HOMICIDE WHILE UNDER INFLUENCE, a Felony, in
 20 violation of Montana law, namely: Mont. Code Ann. 45-5-106, punishable by 30 years
 21 MSP and/or \$50,000 fine; COUNT II: FAIL TO STOP IMMEDIATELY AT SCENE WHERE
 22 PERSON KILLED OR SERIOUSLY INJURED, a Felony, in violation of Montana law,
 23 namely: Mont. Code Ann. 61-7-103(1)[3], punishable by not less than 1 year or more than
 24 10 years MSP and/or \$50,000 fine.

25 The facts constituting the offense are:
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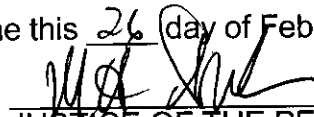
1 COUNT I: On or about the 24th day of February, 2017, the above-named
2 Defendant negligently caused the death of Benno Bigback, Jr. while the Defendant was
3 operating a vehicle in violation of 61-8-401 and/or 61-8-406.
4

5 COUNT II: On or about the 24th day of February, 2017, the above-named
6 Defendant, having driven a vehicle which was involved in an accident resulting in death
7 or serious injury to another person, failed to immediately stop such vehicle at the scene
8 of the accident or as close to the accident as possible.
9

10 DATED this 26th day of February, 2017.

11 
12 JASON MARKS
13 Chief Deputy County Attorney

14 Subscribed and sworn to before me this 26 day of February, 2017.

15 
16 JUSTICE OF THE PEACE

17 COMPLAINT 17-465
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2 Chief Deputy County Attorney
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10 IN THE JUSTICE COURT OF THE STATE OF MONTANA
11 IN AND FOR THE COUNTY OF MISSOULA
12 BEFORE, Marie A Andersen, JUSTICE OF THE PEACE

13 STATE OF MONTANA,
14
15 Plaintiff,
16
17 -vs-
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19 EMILY BESS LEVENS,
20
21 Defendant,

22 Department No. 1
23 Cause No. *CR-2017-202*
24
25 **AFFIDAVIT OF PROBABLE CAUSE**

26 STATE OF MONTANA)
27 : ss
28 County of Missoula)

JASON MARKS, Chief Deputy County Attorney, Montana, being first duly sworn upon oath, deposes and says:

I have read the official law enforcement reports regarding the investigation of EMILY BESS LEVENS for allegedly committing the offense(s) set forth in the complaint and based upon the information contained in the reports, if true, believe probable cause exists to justify charging the above-named defendant as specified in the accompanying complaint.

On or about the 24th day of February, 2017, 911 dispatch received a call that a male had been struck by a vehicle in the 400 block of Mount Ave within Missoula

1 County. The male, later identified as Benno Bigback, Jr., was not responsive and was
2 later pronounced dead at the scene.

3 The caller was interviewed by law enforcement. She stated she heard a collision
4 and looked out her window. She observed Bigback's body in the street and a woman,
5 later identified as the Defendant, Emily Levens, standing over the body, holding her
6 phone. The caller opened her window and stated that she was calling 911. Levens
7 stated, "Oh God, Oh God," and returned to her vehicle and drove away. The caller
8 described the vehicle as a dark blue or gray Nissan X-Terra.
9
10

11 Corporal Erbacher arrived on scene. As medical personnel were performing
12 CPR, Corporal Erbacher noticed a puddle of fluid in the street. He saw fresh drops of
13 liquid in the east bound driving lane. He followed a trail of liquid to the 1600 of Thames
14 where the fluid trail turned into a driveway. In the driveway, he saw a navy blue 2000
15 Nissan X-Terra. The license plate returned to Levens.
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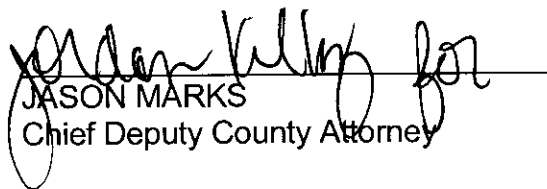
17 Corporal Erbacher approached the door and knocked. The door was unlatched
18 and came open. Levens came out of the house. Stephen Cardella also came out and
19 spoke with Corporal Erbacher. Cardella stated that Levens told him something about
20 someone being in the road and that they may have been hit. He stated he was sleeping
21 and was unsure what Levens was telling him.
22

23 Officer Volinkaty spoke briefly with Levens. Levens stated she went and met a
24 friend and she hit someone. Officer Volinkaty noticed Levens's eyes were bloodshot
25 and she could smell a strong odor of an alcoholic beverage on Levens's breath.
26 Levens's speech was slurred. Officer Volinkaty performed the standardized field
27 sobriety maneuvers. On the Horizontal Gaze Nystagmus maneuver, Officer Volinkaty
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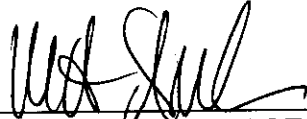
1 observed Levens to have 6 out of 6 indicators of impairment. On the Walk and Turn
2 maneuver, Officer Volinkaty observed Levens to have 6 out of 8 indicators of
3 impairment. On the One Leg Stand Manuever, Officer Volinkaty observed Levens to
4 have 2 out of 4 indicators of impairment. Officer Jones, who is a Drug Recognition
5 Expert, evaluated Levens and observed Horizontal Gaze Nystagmus consistent with a
6 person with a .15 BAC. A search warrant was obtained for Levens's blood.
7

8 Levens was interviewed by Detectives Franke and Manraksa. Levans stated she
9 had consumed one "IPA" beer at her home around 6 pm while she ate supper. She
10 stated she went to Diamond Jim's Casino on Mount and Russell around 8 or 8:30pm.
11 She played Keno and consumed two pints of Blue Moon beer before leaving around
12 10:30 or 11pm. She stated she felt "buzzed," but did not feel impaired. She placed
13 herself as a 2 or 3 on a scale of 1-10, where 10 is the most impaired.
14

15 Levens stated she continued east on Mount and did not see Bigback until she hit
16 him. She stated he came up onto the hood of her vehicle and then slid off. She
17 confirmed she stopped her vehicle and had her phone in her hand as she was getting
18 ready to call 911. She stated she "freaked" when a resident yelled at her from a window
19 that the resident was calling 911. She stated she "didn't know what to do," and that she
20 "knew it was selfish," but she got in her car and drove away. She did not return to the
21 scene.
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26 JASON MARKS
27 Chief Deputy County Attorney

28 SUBSCRIBED AND SWORN TO before me this 26 day of February, 2017.

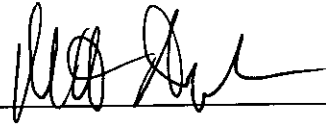

JUSTICE OF THE PEACE

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ORDER

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3 Upon reading the foregoing Affidavit, the Court finds that there is probable cause to
4 believe the above-named Defendant committed the crimes charged.

5 DATED this 26 day of Feb, 2017 at 4:12 a.m./p.m.

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9 JUSTICE OF THE PEACE
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