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ATTORNEYS FOR PLAINTIFF

IN THE JUSTICE COURT OF RECORD OF MISSOULA COUNTY,
STATE OF MONTANA

<p>STATE OF MONTANA, Plaintiff, -vs- MICHAEL ROSS AUSTIN, Defendant.</p>	<p>Dept. Cause No. AFFIDAVIT OF PROBABLE CAUSE</p>
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STATE OF MONTANA)
 : ss
County of Missoula)

CARRIE L. GARBER, Deputy County Attorney, Montana, being first
duly sworn upon oath, deposes and says:

I have read the law enforcement reports regarding the investigation of
MICHAEL ROSS AUSTIN for allegedly committing the offense of:

COUNT I: CRIMINAL ENDANGERMENT, a felony, in violation of § 45-
5-207, MCA.

I believe that the facts as set forth in the law enforcement reports, if true, constitute sufficient probable cause to justify the filing of the charges.

Those facts are as follows:

On July 31, 2020, at approximately 1802 hours, Officer Clark Nissley with the Missoula Police Department (MPD) was dispatched to an apartment at 1216 McDonald Ave., Unit B, after 9-1-1 Dispatch received a report from resident Jennifer Sawyer regarding suspicious activity by her neighbors. Sawyer lives with her boyfriend, Michael Austin, at the apartment. Law enforcement has interacted with Sawyer and Austin on multiple prior occasions when they have called 9-1-1 to make similar reports which were investigated and determined to be unfounded. For example, they had previously reported that their neighbors had tapped into their phone lines to listen to their conversations and were seeking to kill or harm them. Officer Nissley was familiar with Sawyer and Austin due to prior contact with them and knew from that contact that Sawyer and Austin both suffer from mental health issues, possess multiple firearms inside their apartment and routinely open-carry the firearms outside the apartment. Due to his experience and knowledge with Austin and Sawyer, Officer Nissley called Sawyer on the phone to inform her that he would be responding to her apartment and asked

her to provide him additional details about why she had called 9-1-1 and informed her that was on his way to her location.

Sawyer told Officer Nissley there were multiple individuals brandishing firearms outside of her and Austin's residence. While speaking with Sawyer on the phone, Officer Nissley could hear Austin in the background adding his comments. Sawyer stated that she and Austin heard the individuals outside make statements about "taking care of them," them meaning her and Austin. She and Austin suspected that the individuals were their upstairs neighbors. Sawyer explained to Officer Nissley that she and Austin believed that their upstairs neighbors had caught on to the fact that they (Sawyer and Austin) planned to report them to the FBI, and that as a result, the neighbors were planning to kill them. Sawyer described the neighbors as a white male with black hair, a Hispanic male, a third male and a female. Sawyer and Austin both stated that these individuals were currently outside their apartment and that two males were carrying pistols. Officer Nissley asked Sawyer to provide specific detail about where the individuals were located to which Sawyer responded by stating that Austin was telling her that they are on the east side close to the maintenance storage shed. Officer Nissley had previously arrived at the apartment complex, had driven around the complex twice, and did not observe any individuals whatsoever outside while he

continued to speak to Sawyer on the phone. Officer Nissley then informed Sawyer that he was present outside and that no one else was there. In the background, Officer Nissley could hear Austin begin speaking in an upset manner. Officer Nissley informed Sawyer that he did not have probable cause to arrest any individuals outside because there were none present. Officer Nissley determined that the complaint Sawyer and Austin were making was unfounded and attributable to the mental health issues that he knew both suffered.

As Officer Nissley continued to talk to Sawyer on the phone, Austin addressed him from the background and stated that he had accidentally discharged his firearm inside the apartment and indicated that this had happened just seconds ago. Sawyer interjected that it had happened before Officer Nissley called her on the phone. Austin stated that nobody had been injured and that he had confirmed the trajectory of the bullets and determined that based on their trajectory, no one could have been harmed. Officer Nissley felt that Austin's statement implied that Austin had already taken steps to confirm the trajectory prior to him (Officer Nissley) calling Sawyer and that therefore the discharge had occurred more than a few second ago as Austin claimed. Officer Nissley could continue to hear Austin addressing him in the background and stating that the shots had been fired into the floor.

At this point, Officer Nissley instructed both Sawyer and Austin to safely stow their firearms and informed Sawyer that he would call her right back. Officer Nissley radioed other officers to respond to the location to assist with in-person contact. Officer Nissley knew from prior contact with Sawyer and Austin that both are deferential and cooperative with law enforcement personnel. Officer Nissley called Sawyer back and asked her to confirm that she and Austin had stowed their firearms. Officer Nissley asked Sawyer and Austin to step outside their residence without any firearms so that they could meet with law enforcement officers, and they complied.

Officer Nissley had been joined by Sgt. Patrick Erbacher and Sgt. Michael Kammerer. Sawyer and Austin exited their apartment both wearing external vests typically used as body armor and similar to protective vests utilized by law enforcement. All of the MPD officers immediately recognized Sawyer and Austin due to prior interactions with them. Officer Nissley noted that two additional individuals came out of Sawyer and Austin's apartment who were later identified as Austin's roommate and friend, Jason Zane and his daughter, Olivia Zane. Zane and his daughter remained on-scene so that officers could speak with them.

The officers checked Sawyer and Austin for weapons and removed knives from their persons. Officer Nissley talked to Sawyer and Austin

together regarding the incident. Austin told Officer Nissley that he had called police earlier that day. Officer Nissley checked with dispatch who advised him that Sawyer had called earlier that day to report that she heard a gun being loaded in the maintenance closet outside of their residence. Officer Nissley asked Austin and Sawyer to point to the location of the maintenance closet, which they did, and he noted that it was directly across the wall from their apartment and had been the subject location of many of Austin and Sawyer's prior reports to law enforcement.

Austin told Officer Nissley to make note that he (Austin) believed the upstairs neighbors have access to both the maintenance closet directly outside his apartment and the maintenance storage facility on the east side of the building. Officer Nissley recalled that Austin had made similar claims during past contacts, but that Austin had never provided a reasonable explanation as to why the upstairs neighbors would want to access the maintenance facilities. Austin told Officer Nissley that he (Austin) worked for "Blackwater" in the past and had done tours in Iraq and Afghanistan and that he attributed his knowledge of the surveillance mechanisms used by his neighbors to his experience. Officer Nissley was not familiar with the methods of surveillance that Austin tried to explain. Austin insisted to the officers that the neighbors were surveilling him and Sawyer, and Sawyer

made comments that the neighbors know something about her and Austin's sex life that they should not or could not know.

Austin continued to explain to Officer Nissley that "Trisha" or "Tessa" was in the maintenance closet outside the front door of his residence earlier in the day. Austin claimed that someone was "messaging with" the building but could not point out or provide proof of what he meant. Austin stated that he heard someone outside his apartment state something along the lines of "Why don't you just have us take him," and stated that he was the person being referred to.

During the course of his statement to officers, Austin admitted that his firearm discharged twice, explaining that the firearm is equipped with a "binary trigger" which will fire once when pulled and a second time when it is released. Austin confirmed that he owned three weapons, and that the weapon that had discharged was his AR-15 assault rifle. Austin stated that the rounds fired were 5.56 mm rounds. Austin's description of where the shots were fired changed as he then stated that the rounds had been fired through the housing of a light switch, entering the wall behind. Austin volunteered that the rounds were not armor piercing. Austin further stated that he is currently on methadone and also takes blood pressure medicine. Austin then claimed that he tried to open the maintenance closet door after

the firearm was discharged to confirm whether anyone inside it had been struck.

Officer Nissley spoke to Jason Zane who stated that he had been in his room watching a movie with his daughter Olivia and had started to doze off when he heard the gunshots, which immediately woke him. He was unsure if he heard one or two shots. Zane asked Austin and Sawyer what was going on, and he witnessed Austin standing at the door with a firearm and Sawyer standing right behind with a black pump shotgun which they continued to hold onto until officers arrived, at which time they put the firearms down and exited the residence.

With Austin's written consent, officers seized the firearms from inside the residence. MPD officers determined that Austin knowingly pointed a loaded rifle in the direction of a closet that he believed to be occupied by one or more unknown individuals and discharged two rounds. Although Austin claimed that the discharge had been accidental, the bullet trajectory observed by the officers contradicted Austin's claims: the bullets exited at a position on the wall that would have been roughly chest level and not toward the ground; the discharged rounds angled in such a way that they went through the residence wall and into the exterior maintenance closet; to go through a light switch housing, the firearm had to be pointed outward at the

housing and not toward the ground as Austin claimed; and the presence of the spent shell casing in the narrow entryway and the angle that the rounds entered the wall indicate that the firearm had to be discharged in the hallway. Moreover, Austin—who is extremely familiar with firearms—would have pointed the firearm with the safety mechanism disengaged, which based on the officers training and experience, would be inconsistent with an accidental discharge.

DATED this 2nd day of August, 2020.

/s/Carrie L. Garber
CARRIE L. GARBER
Deputy County Attorney

SUBSCRIBED AND SWORN TO before me, a Justice of the Peace, in and for the State of Montana, County of Missoula.