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GALLATIN COUNTY CLERK
OF DISTRICT COURT
JUDITH ER STARDON
2012 OCT 31 PM 1 27
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BY _____
DEPUTY KP

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY
THE STATE OF MONTANA,

Plaintiff,

No. DC-12-207 A

v.

AFFIDAVIT OF PROBABLE CAUSE
AND MOTION FOR LEAVE
TO FILE INFORMATION

RUTH DIANE MCENDOO,

Defendant.

* * * * *

COMES NOW Todd S. Whipple, Chief Deputy County Attorney, and being first duly sworn upon oath, deposes and says as follows:

1. That your affiant is a Deputy Gallatin County Attorney, and by law one of the attorneys to prosecute criminal matters in the State of Montana.

2. Pursuant to a report of investigation prepared by Detective Don Peterson of the Gallatin County Sheriff's Office, your affiant is aware of the following.

3. On or about ~~September 20, 2011~~ Detective Peterson spoke with ~~Trina~~ regarding a complaint she had reported on or about ~~September 20, 2011~~. Trina had reported a theft of funds from her and her ex-husband, Walter Wolf. ~~Trina reported that she and Walter had employed Ruth Diane McEndoo (hereinafter the defendant) from 2002 until June of 2011 as an independent bookkeeper for their businesses, Homeland Development and TW Properties. Trina~~

stated she and Walter terminated the defendant's employment after numerous items had not been taken care of and the businesses' finances were not in order.

4. Trina stated after noticing numerous suspicious documents, she contacted a CPA in California to look into her company's financial records. Trina informed Detective Peterson that in 2008, her former bookkeeper, Karen Dobie, had quit working for her. Trina stated at the time the defendant was hired. Trina stated Dobie was not employed by their businesses at the time the defendant was hired. Trina informed Detective Peterson that upon hiring the defendant, the defendant would have had access to the business credit cards.

5. ~~Trina stated there were numerous transactions found on the business Staples credit card that had been used to purchase gift cards and other miscellaneous items.~~ Trina provided Detective Peterson with receipts showing the defendant's signature for the purchases. Trina stated she learned there were receipts that had been signed as "Karen Dobie" but again informed Detective Peterson that Dobie's employment did not overlap with the defendant's employment. Trina stated she did not authorize the transactions nor did she have prior knowledge of the purchases. Trina provided Detective Peterson with a list of transactions made on the Staples credit card to purchase gift cards (attached as Exhibit A).

6. Trina also provided Detective Peterson with a list of

transactions showing purchases made from Staples that were shipped directly to 180 East River Rock in Belgrade, Montana, and 4080 South 3rd in Bozeman, Montana. Detective Peterson learned the defendant resided at 180 East River Rock and then moved to 4080 South 3rd (attached as Exhibit B), as well as a list of miscellaneous transactions made on the Staples credit card without her or Walter's authorization (attached as Exhibit C).

7. On or about December 28, 2011, Detective Peterson conducted an interview with the defendant. The defendant admitted that she had taken the wrong card to Staples and thus simulated Karen Dobie's signature on the card to make her purchases that day. ~~The defendant refused to advise Detective Peterson why she purchased gift cards and stated someone must have taken the Staples credit card and forged her signature to purchase gift cards because she did not purchase them.~~

8. When Detective Peterson asked the defendant about the purchases that were shipped to her home address, the defendant stated she often made purchases online for Trina and Walter and had the items delivered to her residence because she knew no one would be at the office to pick up the packages.

9. Trina and Walter contested the defendant's statement and informed Detective Peterson that there was a drop box at the office for specifically holding packages until someone could get to the office and retrieve them. Trina and Walter both denied giving the defendant permission to make purchases for the office

and having the packages delivered to her residence. Detective Peterson travelled to Green Hills Ranch Road where the business offices are located and observed a box made of wood that was approximately 26 inches tall and 18 inches wide with a top and door with a latch.

10. The defendant stated she did not purchase all of the gift cards but stated she remembered purchasing most of the office type supplies, candy and children's school supplies. The defendant admitted to purchasing candy to supplement her "sweet tooth" and stated she was willing to pay Trina and Walter back for the candy purchases. The defendant later denied purchasing the school type items for her children but stated her children may have used the supplies while they were at the office with her. Detective Peterson observed that all of the receipts for the candy and children's type school supplies were signed by the defendant.

11. When Detective Peterson showed the defendant the receipts with her signature on them, the defendant stated the items were either purchased for Trina's children, the office or to supplement her "sweet tooth".

12. Detective Peterson observed on some of the Staples receipts there were "W" forms listed as purchases. When questioned about these purchases, the defendant stated she purchased the forms for Trina and Walter's taxes. Later Trina informed Detective Peterson that they have a CPA in California submit their taxes and that the defendant never submitted taxes

for Trina or Walter.

13. On or about January 16, 2012, Detective Peterson received a packet from Lucas Foust, the defendant's attorney, who explained the packet as invoices that the defendant had presented to him. Foust explained the invoices showed how the defendant billed Trina and Walter for her hours worked. The invoices provided to Detective Peterson ranged in date from December 6, 2009, through June 15, 2011. Detective Peterson observed that the majority of the invoices were composed of three (3) pages. The first page appeared to be a check stub, the second page was an invoice to Homelands Development for the hours worked by the defendant and the third page was an invoice for Gateway Partnership, LLC.

14. Detective Peterson first noticed that the first pages or stubs were printed to Diamond MC Business Services, LLC for a "Bill" and did not show hours worked but only a total. Detective Peterson also observed that the first page did not give an explanation of what the "Bill" was for. Detective Peterson observed that the second and third pages were divided into five (5) columns, each column was titled: Item; Description; Hours; Rate and Amount. Detective Peterson noticed the "Item" column was listed as bookkeeping services; "Description" was described as monthly processing of banking, expenses and reconciliation; "Hours" gave the total hours worked for the pay period; "Rate" was listed at 25.0, which Detective Peterson assumed to be the dollar

amount per hour; and "Amount" totaled the hours worked at \$25/hour. Most of the invoices had a second line that was labeled "Expenses" and "Expenses Pre-Paid". These columns had amounts in the "Rate" and "Amount" column used to subtract the totals from the amount owed to Diamond MC Business Services.

15. Detective Peterson spoke with Trina and Walter regarding the invoices provided by Foust. Both Trina and Walter advised Detective Peterson that neither of them had ever seen the invoices. Trina and Walter informed Detective Peterson that they had advised the defendant, when the defendant began working, that they would not pay her over \$1,800 combined or \$900 per business per pay period.

16. The invoices provided show that the defendant had worked more than her prescribed hours in which she would have exceeded the \$1,800 per pay period on numerous billing periods and the totals on the invoices appear to be consistent with what the defendant actually was paid during those billing periods. However, additional charges appear on the invoices that show that the defendant had worked over her allowed hours and had subtracted those hours as "Expenses Pre-Paid" and "Expenses Pre-Paid Computer and Software". Foust had eluded that the defendant had admitted to using Trina and Walter's Staples card for personal purchases but was "paying the Wolf's back" by not charging them for extra hours worked.

17. Detective Peterson has gone through handwriting and

document forgery classes and is aware that it is relatively easy to duplicate or forge invoices with the use of numerous computer software programs and internet access. It is Detective Peterson's belief that the invoices were constructed or that the originals were altered by the defendant after his initial interview with her when she had denied using the Staples credit card and account for her personal gain.

18. Detective Peterson contacted Trina and Walter and requested that they provide him with copies of invoices from the defendant and Diamond MC Business Services. Trina and Walter advised Detective Peterson that when they chose to end their business relationship with Diamond MC Business Services, the majority of their computer records and copies of billing statements from Diamond MC Business Services disappeared. Walter was able to provide Detective Peterson with a copy of an email dated June 2, 2011, between him and the defendant where Walter had noticed a \$4,000 bill from Staples and requested to see a copy of the bill and invoice from the defendant. Walter stated he was never able to get the invoice in question and shortly after he requested a copy, he quit using the defendant's services.

19. Walter also provided Detective Peterson with a copy of a worksheet titled "Unpaid Bills Detail" dated January 5, 2010. Walter advised Detective Peterson that this was how he received notice of unpaid bills from the defendant that also included billing for her business services. Detective Peterson observed

that the worksheet is different in structure than the invoices that were supplied by Foust.

20. Walter advised Detective Peterson that one of the reasons they had discontinued using the defendant for their bookkeeping was that they felt they were being overcharged for her actual hours worked. Walter stated the defendant was usually using close to the capped \$1,800 and was not spending any time within their office but was reportedly doing the work from home. Trina and Walter did not believe that their businesses required the amount of time that the defendant was reportedly spending on their accounts.

21. Detective Peterson noticed on the invoices provided by Foust that the defendant had supplied to him, that the defendant was charging about 20 hours per week, per business, which totaled 40 hours per week. Detective Peterson believed this to be odd as the defendant was reportedly a part-time book keeper for Trina and Walter. Walter informed Detective Peterson that he advised the defendant if they were going to continue to pay her for 40 hours per week, Trina and Walter wished for her to do the work at their office where her time spent could be more easily documented. Walter stated this request was not granted by the defendant.

22. On or about January 18, 2012, Detective Peterson contacted Foust and requested a follow up interview. Detective Peterson advised Foust that if the defendant wished to change her statement that was previously documented that he would like to get

it recorded and give the defendant the opportunity to explain to him her version of the invoices that had been supplied by Foust. Foust advised Detective Peterson that he would contact the defendant and get back in contact with him.

23. On or about January 18, 2012, Detective Peterson spoke with Wendy Wilson, the current book keeper for Trina and Walter at their office located on Green Hills Ranch Road. Wilson advised Detective Peterson that she currently does the bookkeeping for the jobs that the defendant had been previously assigned. Wilson stated that she would be hard pressed to find enough work to keep her busy for 40 hours per week. Wilson showed Detective Peterson the Quickbooks documentation of billing for Diamond MC Business Services for the 2010 year that she was able to locate. Detective Peterson observed the Quickbooks records do not coincide with the invoices provided by Foust. Each record in Quickbooks shows that the defendant charged \$900 for each of Trina and Walter's businesses but the records do not show any accounting for extra hours worked or "Expenses Pre-Paid" as stated in the invoices provided by Foust. Wilson provided Detective Peterson with a copy of the Quickbooks documentation on a compact disk.

24. On or about February 16, 2012, Trina provided Detective Peterson with an invoice she had located that was dated May 16, 2011. This invoice was compared to the invoice that was provided by Foust for the same billing period. Detective Peterson observed that the invoice is in relatively the same format as those

provided by Foust; however, Detective Peterson observed significant differences.

25. Detective Peterson observed that the "Description" column on the invoice provided by Trina does not include the "Expenses Pre-Paid Computer" line; the "Hours" column on the invoice provided by Trina lists 70.5 hours versus the 84 hours listed on the invoice provided by Foust; the "Rate" column on the invoice provided by Trina shows 29.078 versus the 25.00 on the invoice provided by Foust; and the "Amount" column on the invoice provided by Trina shows a total of \$2,050 versus the \$2,100 with \$50 subtracted on the invoice provided by Foust. These differences further made Detective Peterson suspect that the defendant had altered the original invoices.

26. On or about February 20, 2012, at approximately 1030 hours, Foust and the defendant came to the Law & Justice Center where they met with Detective Peterson and spoke about the allegations. Detective Peterson read the defendant her rights per Miranda, to which the defendant agreed to speak with Detective Peterson with Foust present. The defendant signed a Miranda waiver and Foust signed as a witness.

27. The defendant admitted she had used Trina and Walter's Staples account to her benefit without their knowledge. The defendant stated she was denying the purchasing of the gift cards and many of the personal items; however, she was contesting the office supplies as she stated that although she received the

supplies at home, she had used them toward Trina and Walter's businesses.

28. Detective Peterson asked the defendant about the invoices Foust had provided on her behalf. The defendant denied altering the invoices from their original state and stated she had filed them after drafting them and Trina and Walter did not see them. The defendant also admitted that she did not have either Trina or Walter's permission nor did they have knowledge that she had been "paying them back" for overtime hours.

29. Detective Peterson requested the defendant's consent to obtain possession of the computer that the invoices were made on to be forensically checked to see when the documents were originally made and whether or not they had been altered since. The defendant and Foust agreed to the request and the defendant signed a "consent to search" waiver for her computer. Prior to ending the interview, Detective Peterson and Foust warned the defendant not to alter the files in anyway prior to the computer being turned over to Detective Peterson. Detective Peterson ended his interview with the defendant at approximately 1101 hours and Foust provided Detective Peterson with the defendant's computer at approximately 1215 hours on February 20, 2012.


30. Detective Peterson contacted forensic computer specialist, Jimmy Wagg, and explained to him what he had and was he was seeking. Wagg explained that with the Quickbooks programs he would not be able to assist in obtaining any more information

than what Detective Peterson would be able to obtain on his own. Detective Peterson looked at the files contained in the defendant's computer and looked specifically for any files that were related to Trina and Walter's businesses and had been modified between December 28, 2011, and February 20, 2012,.

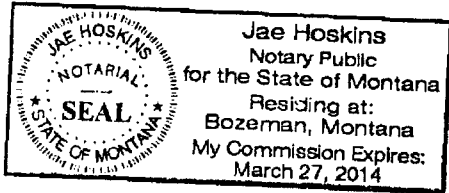
31. Detective Peterson located files labeled Gateway Partnership, LLC and Homelands Development that had been modified on January 5, 2012, at approximately 0454 hours. It should be noted this date is between the date that the defendant was originally interviewed by Detective Peterson and the date Foust provided the invoices to Detective Peterson on behalf of the defendant. Detective Peterson also located two files that had been modified at 1125 hours on February 20, 2012, between the times that the defendant and Foust left the interview with Detective Peterson and the time Foust turned the defendant's computer over to Detective Peterson. Detective Peterson noted he looked at the defendant's computer files from approximately 1416 hours until 1435 hours and the time on the computer was correct. Detective Peterson also found that a file on the defendant's computer had also been removed on February 20, 2012.


Based upon the foregoing facts, the undersigned moves the Court for leave to file an Information charging the defendant with the crime of COUNT 1: Theft, a common scheme, a Felony, in violation of Section 45-6-301, MCA.

DATED this 30th day of October, 2012.


Todd S. Whipple
Chief Deputy County Attorney

SUBSCRIBED and SWORN to before me this 30 day of October, 2012.




NOTARY PUBLIC FOR THE STATE OF MONTANA