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 CLERK OF DISTRICT COURT
 FILED IN
 DEC 23 P 3:45

COUNSEL FOR THE STATE

MONTANA TWENTIETH JUDICIAL DISTRICT COURT
 LAKE COUNTY

STATE OF MONTANA, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> KENNETH BRITTON COTTER, <p style="text-align: center;">Defendant.</p>	Cause No. DC-24- <u>205</u> The Honorable <u>MOLLY OWEN</u> STATE'S MOTION FOR LEAVE TO FILE AN INFORMATION AND AFFIDAVIT IN SUPPORT
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STATE OF MONTANA)
): ss.
 County of Missoula)

Meghann Paddock, Assistant Attorney General and Special Deputy Lake County Attorney, moves the Court for leave to file an Information and, after first being duly sworn upon oath, alleges, based on information which has been obtained from reports of and information provided by the law enforcement officers investigating this matter, which, if true, I believe constitute sufficient probable cause to justify the filing of the charges that the Defendant has committed the offense(s) of:

COUNT I: Solicitation to Commit Criminal Distribution of Dangerous Drugs, a felony, in violation of Mont. Code Ann. § 45-4-101,

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and § 45-9-101 (2021); **COUNT II: Attempted Criminal Possession of Dangerous Drugs**, a felony, in violation of Mont. Code Ann. § 45-4-103 and § 45-9-102 (2021); and **COUNT III: Attempted Criminal Possession of Dangerous Drugs**, a felony, in violation of Mont. Code Ann. § 45-4-103 and § 45-9-102 (2021).

The following facts from those law enforcement reports and officer-provided information provide probable cause to believe that the Defendant, Kenneth Britton “Britt” Cotter, has committed the above-alleged offenses.

Based on the reports of and information from the Montana Department of Justice, Division of Criminal Investigation, the undersigned deposes and says it appears that:

1. On March 1, 2024, the Montana Department of Justice received a report from the Montana Office of the State Public Defender (“OPD”) regarding an attorney who had previously held an employment relationship with OPD.
2. Montana Department of Justice, Division of Criminal Investigation Agent Cynthia Lengyel was assigned to investigate the attorney’s fraudulent billing practices on April 23, 2024.
3. During her investigation, Agent Lengyel obtained documentation and communications pertaining to the attorney’s billing practices. A review of those communications revealed historical text messages between “A. Doe” and the Defendant, Kenneth Britton “Britt” Cotter. Those text messages included, but were not limited to the following exchanges:

a. March 18, 2022

i. The Defendant texted A. Doe: “So did you get that stuff?”

1. *A. Doe texted the Defendant: “Maaaaaybe”*

- ii. Defendant: "So I'm seriously confused. Do I need to pick something up or not?"
 - 1. A. Doe: "3 balls, yes?"
- iii. Defendant: "Yes"
- iv. Defendant: "900?"
 - 1. A. Doe: "Yep! I'll get it ready! When are you thinking? I'm so excited I can contribute value to the group as a purveyor of fine goods (with a laughing face emoji)."
- v. Defendant: "Next week work – you around?"
 - 1. A. Doe: Responded detailing work and travel plans, then "Just come get it now, haha. Do you need it further divided or just a chunk?"
- vi. Defendant: "Coming now"
- vii. Defendant: "Address"
 - 1. A. Doe: provided A. Doe's home address in Flathead County, Montana.
- viii. DCI Narcotics agents have indicated that in their training and experience "3 balls" is a street-language term referencing to the quantity of cocaine, with a "ball" being 3.5 grams.

b. May 31, 2022

- i. Defendant texted A. Doe: "Are you placing an order anytime soon?"
 - 1. A. Doe: "I was just talking about this with [D. Doe]. That's insane. The universe is weird. Happy to hear we all like the last one. I will see what I can do. I just ran out two nights ago."
- ii. Defendant: "Thanks. I would do the same as last time if that works."
 - 1. A. Doe: "I will work on it and definitely loop you in. I wouldn't mind being in on those blue vitamins haha"
- iii. Defendant: "I'll get you some"
 - 1. A. Doe: "That would be amazing. I tried to order some of the other thing that made that hot tub so fun for me but it was a big fail."

- iv. DCI Narcotics agents have indicated that in their training and experience “blue vitamins” may be a street-language term for fentanyl.

c. June 30, 2022

- i. Defendant: “You ever talk to your friend?”
 - 1. *A. Doe: I’m working on it. Apparently kind of dry right now. But I just got another lead. Yay. [A. Doe referenced leaving out of country location today]”*
- ii. Defendant: “I just did some. I need a pic”
 - ...
- iii. Defendant: “I shouldn’t have changed the subject, ruin the mood. I’m all jacked up.”
 - 1. *A. Doe sent a couple of photos of A. Doe to the Defendant.*
- iv. Defendant: “I gotta go. Have fun. Delete this shit.”
 - 1. *A. Doe: “Shoot I had more. Maybe next time. I won’t stop thinking about it.”*
- v. Defendant: “Well send me a proper one”
 - 1. *A. Doe: sent a photo*
- vi. Defendant: “Damn. Hot as fuck”
 - 1. *A. Doe: “You are.”*
- vii. Defendant: “I’m gonna go jerk off. Night”

d. July 21, 2022

- i. *A. Doe: “I think I can help you with that one thing if you’re still interested.”*
 - 1. Defendant: “Yes. But I’m heading to Spain tomorrow for 2 weeks. Can I meet up with you when I get back? I can Venmo you if needed.”
- ii. *A. Doe: “Yeah Venmo works fo sho. And I’m jelly! I’m about to book tickets to [travel plans] How exciting! It’s going to be so nice there right now.” Doe shared their Venmo account and QR code.*
 - 1. Defendant: “How much.”
- iii. *A. Doe: “\$900 for same amount if that works”*

iv. A search warrant return from Venmo confirmed that Defendant sent A. Doe \$900 for “Legal Fees” on July 21, 2022, at 19:23 from an IP address in Polson, MT.

e. August 9, 2022

i. Defendant: “Any luck on that thing?”

1. A. Doe: “*Yep. I have the thing. How was Spain?!*”

ii. Defendant: “Spain was the shit, as was Andorra and France. I’ll be in Kalispell the 17th and 18th. Can I meet up with you one of those days?”

1. A. Doe: ... “*And it looks like I’ll be around then. Let me know which day is better and I’ll plan to go to Helena the other day.*”

iii. Defendant: “Either day works. I can meet around noon or late afternoon after court.”

f. August 16, 2022

i. Defendant: “So you want to meet up tomorrow or Thursday?”

1. A. Doe: “*I was just thinking about you – I tested positive for COVID yesterday. I have everything though and could put it somewhere at my house you could grab it? Or mask up. Not something I can ask my assistant to help with unfortunately. Lol.*”

ii. Defendant: “I don’t care about COVID. Just tell me what day. It will be late afternoon.”

1. A. Doe: “*Ha okay. Well then. I like your renegade attitude. Seeing as my schedule is pretty clear now for a few days – whichever day works best for you is fine by me. So long as you can come to Lakeside.*”

iii. Defendant: “I stop by tomorrow, after 3:00 if that works?”

1. A. Doe: *confirmed that would work.*

g. August 17, 2022

i. A. Doe: “*Let me know when you have an approximately idea of time. My assistant is coming by sometime after 3 and dropping off a target order and I need a nap soon. I have everything all ready though (smiley face emoji).*”

1. Defendant: “Probs 3:30 to 4:00”

- ii. A. Doe: *"Sounds good!"*
 - 1. Defendant (at 3:12pm): "Heading your way"
 - 2. Defendant: "address please"
- iii. A. Doe: *"Okay. I'll put on my hazmat suit. [home address]"*
- iv. A. Doe: *"Always good to see you! Enjoy!"*
 - 1. Defendant: "You're awesome"
 - 2. Defendant: "Thanks again"
- v. A. Doe: *"My pleasure."*

h. September 30, 2022

- i. Defendant: "I need more medicine girl"
 - 1. A. Doe: *"I'm about to put in an order. How much?"*
- ii. Defendant: "Same" "Or more"
 - 1. A. Doe: *"Want a half? Or a whole one? And how have we never done this together. Lol?"*
 - 2. A. Doe: *"I don't know how much I can get but I'll try my best."*
- iii. Defendant: "I don't know what a whole one is, but I trust your discretion"
- iv. Defendant: "I want to do some off your boobies"
 - 1. A. Doe: *"That could possibly be arranged lol. We'll see what I can do. I mean like a half or whole oz."*
 - 2. A. Doe: *"Are you going to the OPD conference? I'm getting it Tuesday and I'm going to the conference. I ordered a half for ya."*
- v. Defendant: "No"
 - 1. A. Doe: *"Well I could stop on the way"*
- vi. Defendant: "I'll talk to you later about it"

i. October 2, 2022

- i. Defendant: "What are you doing"
 - 1. A. Doe: *texted a credit card emoji and a snowflake emoji*
- ii. DCI Narcotics agents indicate that in their training and experience, snow is a street-language reference to cocaine.

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j. October 3, 2022

- i. A. Doe: *"So I'm putting in my order now and will have tomorrow. Wanna Venmo me?"*
 1. Defendant: "Yes"
 2. Defendant: "How much"
- ii. A. Doe: *"1200"*

k. October 4, 2022

- i. Defendant: "You passing through town tomorrow?"
 1. A. Doe: *"Yessir. Getting things sometime tonight."*
- ii. Defendant: "What time?"
 1. A. Doe: *"Tonight? I don't know yet. I am still in court in GF."*
- iii. Defendant: "Tomorrow I mean"
 1. A. Doe: *"Ohhhhh gotcha. Not positive. I know the conference starts at like 1. But I have some zoom stuff to do."*
- iv. Defendant: "I've got a bunch of shit going on tomorrow. Text me when you get close and I'll try to meet up with you. If not I'll just hook up with you later. Thanks again."
 1. A. Doe: *"Yep. For sure I can try on the way back, too. And my pleasure!"*
- v. A search warrant return from Venmo confirmed that Defendant sent A. Doe \$1200 for "work" on October 4, 2022.

l. October 7, 2022

- i. A. Doe: *"What's your schedule like today? We are leaving Missoula soon but need to stop in Arlee for a bit."*
 1. Defendant: ... "Whose 'we'?"
- ii. A. Doe: ... *"My man friend with whom I attended said conference. Lol"*
 1. Defendant: "I'm at office, prefer not to do it here. I'll catch up with you later, gotta siwoc trial in Missoula next week"
- iii. A. Doe: *"Okay sounds good. And really?! Good case? Sure you don't need for trial prep?? Leaving Missoula by 1:30."*
- iv. ...

1. Defendant at 1:14pm: "Text me when you're close. I might be gone and can meet at my house."
- v. A. Doe: *"I'll text you when I'm going through Pablo?"*
- vi. Defendant: "Sure"
- vii. A. Doe: *"Stopped in Ronan for a second"*
 1. Defendant: "I can meet you at my house if you come quick"
 2. Defendant: "[Defendant's wife] will be home around 3:30"
 3. Defendant: [home address, in Lake County, Montana]
 4. Defendant: "My driveway is confusing. Call me when you get close and I'll walk you in."
- viii. A. Doe: *"Okay sounds good. Leaving Ronan."*
- ix. A. Doe: *"ETA 10 mins"*
 1. Defendant: "Green light"

m. November 18, 2022

- i. Defendant: "can we do the thing next time you get a ch"
- ii. Defendant: *"*chance"*
- iii. Defendant: "I'm going to see [J. Doe] :.." "and [B. Doe]"

...

 1. A. Doe: *"I could sell you a bit of what I've got left. I don't know when I'm going to re-up personally but I could juts try to get you some as well. When do you need?"*

...
- iv. Defendant: "No biggie if it's a headache"
 1. A. Doe: *"Britt, you're never a headache to me! [...] How much? And do you pass near Great Falls or anything? I'm just not going to be home much the next few weeks because of a trial in Fort Benton and [trip plans]. But I've got a source here as well."*

...
- v. Defendant: "As much as possible"
- vi. Defendant: "I'll follow up next week, gotta run"
 1. A. Doe: *"Oh that could work then possibly. We can figure this out! And yeah I understand that. I'll see if I can get a big chunk arranged to pick up when I'm in Lakeside. Have a great weekend!"*
- vii. Defendant: (heart emoji)

n. December 7, 2022

- i. Defendant: "Yo nig"
- ii. Defendant: "Yo yo"
- iii. Defendant: "I can't tell if I texted the right number or offended you, or perhaps you're in trial..."

o. December 8, 2022

- i. A. Doe: *"I'm not offended at all. [...] I'm still in GF and haven't been back through the Flathead to buy anything unfortunately. (tear face emoji). Probably a decent thing for my sleep schedule"*
 1. Defendant: "No worries stud"
 2. Defendant: "Let me know next time you order, if you don't mind"

p. December 13, 2022

- i. Defendant: "Yo. When you put in for that thing can I do the same?"
 1. A. Doe: *"I can try, yes. I am trying to figure out when I'll be doing my order!"*
 2. A. Doe: *Everyone was out when I was just in town. It was sad."*
- ii. Defendant: "I believe in you"

q. May 11, 2023

- i. A. Doe: *"Nice to see you today. As always."*
 1. Defendant: "Call me"

r. May 23, 2023

- i. A. Doe texted the Defendant about A. Doe's issues with ODC (Office of Disciplinary Counsel) wanting information about an incident A. Doe was involved in.
 1. Defendant: "Sounds like you'll be alright though"

s. May 25, 2023

- i. A. Doe: *"Wanna help me take down a bitch at ODC?"*
 1. Defendant: "Not sure I want to poke that bear ..."
- ii. A. Doe: ... *"I don't want to affirmatively start anything but I want someone with me next time they talk to me."*

4. A. Doe sent the Defendant a text message on March 10, 2024, congratulating him on his Judicial campaign announcement, and telling him about OPD trying to deny payment of late invoices A. Doe had submitted for payments.
 - a. The Defendant responded to A. Doe, indicated that he had “been thinking about [A. Doe]” and ended with “Call me this week so we can chat.”
5. A search warrant issued to Venmo confirmed that the Defendant made payments to A. Doe via Venmo on the following occasions:
 - a. July 21, 2022: \$900.00
 - b. October 4, 2022: \$1,200.00
6. The Defendant was the uncontested winner of the November 2024, election for the Lake County District Court Judge position.
7. On November 13, 2024, DCI Agents met with the Defendant at his office in Polson, Montana. The Defendant confirmed that A. Doe was a friend of his. The Defendant claimed it had been several years since he had seen A. Doe, and several months since they had spoken.
 - a. The Defendant indicated that A. Doe had asked him for advice about an issue with OPD and asked that he possibly represent A. Doe if needed.
 - b. The Defendant confirmed that he was aware that A. Doe had a substance abuse issue but refused to discuss it further. The Defendant would not clarify whether he was refusing to do so outright, or if he was claiming that it was attorney-client privileged information.
 - c. DCI agents asked the Defendant if he had a substance abuse issue. The Defendant said no. When asked if he had ever purchased drugs from A. Doe, the Defendant said no, and ended

the conversation.

- d. The DCI Agents did not ask any further questions but advised the Defendant that they had found evidence of drug activity, and they would like to interview him about that in the future if he wished to speak with them.

8. In the course of the fraud investigation Flathead County District Court Judge Amy Eddy reviewed an affidavit. Judge Eddy was interviewed by DCI Agents on November 22, 2024, and confirmed that she had spoken with the Defendant about the material in the affidavit pertaining to his cocaine use. Additionally, Judge Eddy confirmed that:

- a. She was greatly concerned by this information, since she is aware that the Defendant is the Judge-Elect for Lake County District Court.
- b. Judge Eddy conferred with the Flathead County Attorney's Office and understood the Defendant was being investigated and may be charged.
- c. On November 18, 2024, Judge Eddy called the Defendant and had a conversation with him about her concerns. During their conversation, the Defendant admitted that he "bought cocaine from [A. Doe] a long time ago" and said he stopped when he decided to run for judge. The Defendant also told Judge Eddy that "I want to do the right thing and not embarrass the judiciary." Judge Eddy told the Defendant that she would be making a report to the Judicial Standards Commission.

9. On November 19, 2024, the Defendant attended the first day of a training for newly elected Judges in Helena, Montana. Judge Eddy was also present at the training.

- a. During the lunch hour, the Defendant spoke with Judge Eddy

and asked if there was any way she “wouldn’t file” a complaint. Judge Eddy advised the Defendant that that was not an option. Judge Eddy told the Defendant that she was speaking with him as a colleague, and she had an ethical obligation to report.

- b. The Defendant then asked how Judge Eddy had the information, and if investigators had gotten someone’s phone.
- c. The Defendant told Judge Eddy that he had spoken with his political consultant about how he could minimize the situation.
- d. The Defendant left the training during the lunch hour and did not return for the remaining days of the program.
- e. The Defendant sent Judge Eddy text messages after leaving the training, again asking her to change her mind and give him a “chance to resolve this”
- f. Judge Eddy responded that she would be filing a complaint. The Defendant responded asking her “[c]an you give me until Monday to resign please?”
- g. The Defendant followed up with another text that included the following: “Would resigning have any impact on charges? I guess I’m asking if there is a deal to be made.”

BASED UPON the nature of the offenses, and the Defendant’s present status as a duly-licensed member of the Montana State Bar with significant ties to the community and no prior criminal history, the State respectfully requests that the Court issue a Summons directing the Defendant to appear before the Court for arraignment, and that failure to do so will result in the issuance of an Arrest Warrant pursuant to Mont. Code Ann. § 46-6-201.

WHEREFORE, your Affiant prays that this Court issue an Order granting leave to file an Information initiating the charges set forth above,

and issue a Summons directing the Defendant to appear before the Court for arraignment.

DATED the 23rd day of December, 2024.

DAVID ORTLEY
Deputy Attorney General
MEGHANN PADDOCK
Assistant Attorney General

By:


MEGHANN PADDOCK

SUBSCRIBED AND SWORN TO before me this 23rd day of December, 2024.


NOTARY PUBLIC

