

State of Minnesota
County of Scott

District Court
1st Judicial District

Prosecutor File No. 187870-20
Court File No. 70-CR-20-15929

State of Minnesota,

Plaintiff,

vs.

AUSTIN JAMES HERBST DOB: 05/30/1994

347 Wagner Way
New Market, MN 55054

Defendant.

COMPLAINT

Warrant

The Complainant submits this complaint to the Court and states that there is probable cause to believe Defendant committed the following offense(s):

COUNT I

Charge: Aiding and Abetting Second Degree Intentional Murder - Not Premeditated

Minnesota Statute: 609.19.1(1), with reference to: 609.05.1, 609.19.1

Maximum Sentence: Imprisonment for Not More Than 40 Years

Offense Level: Felony

Offense Date (on or about): 06/29/2020

Control #(ICR#): 20009815

Charge Description: On or about July 8, 2013, in Elko New Market, Scott County, Minnesota, Defendant Austin James Herbst, DOB: 5/30/1994, did acting alone, or did intentionally aid, advise, hire, counsel, or conspire with or otherwise procure another to: cause the death of a human being with intent to effect the death of that person or another, but without premeditation; to wit, Gary Albert Herbst.

STATEMENT OF PROBABLE CAUSE

The Complainant states that the following facts establish probable cause:

On December 3, 2017, at approximately 12:30 p.m., the Barron County, Wisconsin, Sheriff's Office received a call from APC, that he had found a human skull in the driveway of his residence, located in the Township of Maple Grove, Barron County, Wisconsin, which is in rural Wisconsin. The residence is located on a 15-acre wooded parcel. At the scene, deputies spoke with APC, who showed the officer a skull he had found. The deputies believed the skull was human and appeared to have a bullet hole in the top of the skull. APC reported that their dog had apparently recovered the skull somewhere in the area and brought it home and was chewing on it when they recovered it. They put the skull in a bag inside a box and called the sheriff. APC told the deputies that the dog generally did not leave the property.

Deputies conducted a search of the area. Deputies located human remains east of the residence, about 66 feet from the center of 10th Avenue, near a field drive along the edge of the woods and adjacent to a field to the east. The remains appeared to be part of human ribs, backbone, legs and other bones, some clothing, and a full set of dentures. There was a depression in the soil and a mound of dirt to the north side of the bones. The remains were devoid of flesh and only skeletal. On December 4, 2017, deputies returned to the scene and recovered more remains near the original site. Deputies and the Barron County Medical Examiner recovered the human remains. Also recovered were pieces of clothing, including a tag for Wrangler brand jeans size 33X32. On December 13, 2017, the human remains recovered from the field were taken to the Midwest Medical Examiner's Office in Ramsey, Minnesota.

Dr. Rebecca Asch-Kendrick, M.D., of the Midwest Medical Examiner's Office, concluded that the skull had a contact range gunshot wound. The cause of death was a gunshot wound to the head. The trajectory was from the decedent's left to right, front to back and downwards. The victim was likely a male, likely European (White), but could not exclude some Asian admixture, 30-65 years of age (greatest likelihood was 35-55), stature 70.5 +/- 4.0 inches. The manner of death was undetermined.

On January 11, 2018, the remains were then sent to the University of North Texas, University of Texas Center for Human Identification, Forensic Anthropology Unit, in Fort Worth, Texas. In a report dated March 5, 2018, the remains were most likely a male of European (White) ancestry, 30-65 years of age, estimated stature of 70.5 plus or minus 4 inches. A projectile had entered the left parietal; near the midpoint of the sagittal suture, due to a gunshot wound.

On March 21, 2019, Barron County deputies sent bone samples to DNA Solutions Inc., in Oklahoma City, OK, for DNA extraction and forensic genealogy using familial DNA. On February 24, 2020, Barron County detectives received notification for the DNA Doe project, a nonprofit organization, which uses genealogical research to identify "John and Jane Does," that the skeletal remains were believed to have an ancestral link to the State of Wisconsin. On February 27, 2020, Barron County detectives received information from the DNA Does Project that a possible match for the remains was GARY ALBERT HERBST, DOB: 06/02/1956. GARY HERBST'S wife was identified as CONNIE LOU HERBST, DOB: 02/25/1958, hereinafter DEFENDANT 1; and GARY HERBST's biological son was identified as AUSTIN JAMES HERBST, DOB: 05/30/1994, hereinafter DEFENDANT 2. GARY was originally from northern Wisconsin. DEFENDANT 1 and DEFENDANT 2 currently reside in New Prague, Scott County, Minnesota.

Barron County detectives learned that GARY is a missing person from Elko New Market, Scott County, Minnesota. According to the report, dated 03/25/2014, GARY has been missing since July 6, 2013. However, a police report was not filed with the Elko New Market police until July 6, 2014, twelve months

later. DEFENDANT 1 made the report on the suggestion of GARY's brother, who was trying to contact Defendant 1. Defendant 1 reported that sometime in early July 2013, GARY came home to their residence at 347 Wagner Way, Elko New Market, Scott County, Minnesota, and packed some clothing and took \$5,000 in cash. He then left in a grey Honda vehicle driven by an unknown person. GARY left his cell phone and she has not heard from him since.

Detectives learned that GARY and DEFENDANT 1 were married in Butternut, Wisconsin. GARY and DEFENDANT 1 moved to Richfield, MN in 1980 and then to Elko New Market in 1981. GARY worked at various machining jobs in the Twin Cities Metro area, and DEFENDANT 1 worked as a cook. Sometime in the mid-1990's, DEFENDANT 1 purchased a .45 caliber Sig Sauer pistol.

On February 28, 2020, police officers from Minnesota and Wisconsin located DEFENDANT 1 and DEFENDANT 2 and obtained known buccal swabs for DNA comparison. Both consented to give statements. DEFENDANT 1 stated:

- * On July 6, 2013, GARY left home and never returned.
- * She was at the library when DEFENDANT 2 called and told her that dad left.
- * She returned to the house and found the bedroom had been ransacked.
- * Taken from the room was GARY's clothing, \$5000 cash, and a .45 caliber Sig Sauer pistol (which she owned), and her wedding ring.
- * DEFENDANT 1 was told by DEFENDANT 2 that GARY left in a grey car with an unknown person.
- * He was frequently unemployed and was verbally and physically abusive to her, and occasionally to DEFENDANT 2.

Officers spoke with DEFENDANT 2, who stated:

- * He is the only child of GARY and DEFENDANT 1 and they all lived together at 347 Wagner Way, Elko New Market.
- * GARY left them when he was 18.
- * He hasn't seen or heard from GARY since he left.
- * When he turned 17 or 18 things got a lot more tense between his mother and father.
- * He didn't recall the exact day, month or year, but his father came home and immediately packed his belongings.
- * He left and got into a gray or silver pickup, and left behind his own 2010 Chevy Silverado pickup.
- * The vehicle was driven by an unknown person.
- * He called his mother and told her.
- * His mother came home and found some money was missing.
- * He has not heard from his dad since and doesn't know where he is.
- * He said GARY usually wore jeans, a t-shirt and belt.
- * His father had a full set of dentures.

On March 16, 2020, results from the Wisconsin State Crime Laboratory comparing DEFENDANT 1 and DEFENDANT 2's buccal swab to the DNA profile obtained from the human remains in Barron County, concluded that it was at least 87 trillion times more likely to observe the profile from DEFENDANT 2 HERBST if the questioned profile from the human remains is from his biological father than from a random unrelated male.

On June 16, 2020, Wisconsin officers re-interviewed both DEFENDANT 1 and DEFENDANT 2. DEFENDANT 2 stated:

- * He did not have a good relationship with GARY.

- * DEFENDANT 1 wasn't home when GARY left in a gray or silver pickup.
- * When DEFENDANT 1 returned home, she found the money was missing.
- * It was unusual for GARY not to take the pickup.
- * GARY has never left for an extended period of time before.
- * He was reported missing because GARY's mother died, and GARY's family needed to settle the estate.
- * He said he failed to tell the police that he did see the person who drove the pickup truck when his dad left, and the person was a male with a black shirt and several tattoos.
- * He denied he would commit patricide, saying he knew the term from on-line gaming.
- * He knew the truth about what happened but would not divulge it at this time.

DEFENDANT 1 stated:

- * When officers confronted her with a car title for GARY's 2003 Chevy Impala, which was sold and retitled in Wisconsin, with GARY's signature and a date of 12/02/2017, four years after he went missing, DEFENDANT 1 said that GARY routinely pre-signed all his vehicle titles and pre-dated them.

On June 29, 2020 Wisconsin officers interviewed several neighbors who recalled GARY when he resided at 347 Wagner Way, Elko New Market, Scott County, Minnesota. One neighbor, JDG, reported:

- * He lived across the street from the HERBST family for some time.
- * GARY was a difficult neighbor; he would frequently yell profanities at neighbors and call the police for minor issues.
- * One rare time he was very sociable and proud after he purchased a new pickup.
- * He recalled that DEFENDANT 1 and DEFENDANT 2 held a garage sale, for which GARY was not present, selling mostly men's clothing and various tools. (GARY was a mechanic by profession).
- * In subsequent weeks and months, DEFENDANT 1 and DEFENDANT 2 were much more active in the neighborhood, than when GARY was around.

On June 29, 2020, officers spoke with former neighbors of the HERBST's, NS and MS, who lived across the street from the HERST's home, who reported:

- * While GARY was there, they didn't see many visitors, and didn't see DEFENDANT 1 or DEFENDANT 2 go out often. After GARY was gone, they saw DEFENDANT 1 and DEFENDANT 2 going outside more often and more kids would come over.
- * When GARY purchased a new truck, he invited one of the neighbors to come over and look at it, which was very uncharacteristic.
- * On August 30, 2013, DEFENDANT 1 and DEFENDANT 2 had a garage sale.
- * DEFENDANT 1 appeared to be selling GARY's tools and clothing.
- * In Mid-August 2013 they observed a black pickup parked in the back yard of the HERBST residence.
- * It was dark outside, and the truck backed up to the sliding glass door on the grass.
- * Until this evening, they had never seen a vehicle driving on the grass at the HERBST residence.
- * MS saw DEFENDANT 1 and DEFENDANT 2 loading something in the back of the pickup, possibly rolled up carpeting.
- * After finishing, they hooked the boat onto the truck and left.
- * They were gone 1-3 days.
- * After they returned from fishing, they did not see GARY at the house again.

On June 29, 2020, officers spoke with former neighbors of the HERBST's, CMK and KMK, who lived behind the HERBT's home, who reported:

- * Their property abutted the HERBST's property in the back.

- * GARY was a difficult neighbor, and yelled profanities and called the police over frivolous matters. 11/18/2020
- * GARY was very particular about his lawn and property boundaries.
- * Sometime in 2013, they recalled seeing GARY's pickup truck parked in the backyard outside the lower level walk-out doors.
- * They found it very unusual because GARY had a history of keeping the yard in good condition.
- * They saw the truck in the back yard between 10 p.m. and 1:00 a.m.
- * While watching out the window, they saw DEFENDANT 1 and DEFENDANT 2 carry a large item, appearing to be a rolled-up carpet or rug, from the basement walkout doors.
- * DEFENDANT 1 and DEFENDANT 2 put the rolled-up item into the bed of GARY's pickup.
- * They saw DEFENDANT 1 and DEFENDANT 2 through the window cleaning and scrubbing the basement floor, and in front of the glass on the lower level patio door.
- * He also saw them carry out several large black colored bags from the house and place them in the truck.
- * The next morning the truck was gone.
- * They did not see DEFENDANT 1 or DEFENDANT 2 for a day or two, nor did they see anyone around the house.
- * They never saw GARY after the incident.
- * Sometime later, DEFENDANT 1 and DEFENDANT 2 had a garage sale, in which they primarily sold men's clothing and tools.
- * During the sale, DEFENDANT 1 commented to CMK and KMK that GARY had "walked out."
- * DEFENDANT 1 and DEFENDANT 2 became much more social after the sale than when GARY was around.

On June 29, 2020 officers spoke with a former neighbor of the HERBST's, SDT, who lived across the street from the HERBST's home, who reported:

- * GARY would often complain about minor issues.
- * He didn't see DEFENDANT 1 or DEFENDANT 2 very often while GARY was there.
- * After GARY went missing, it appeared DEFENDANT 2 had more friends visit the house.
- * GARY had a silver Chevrolet Silverado pickup he purchased two or three years before he went missing.
- * GARY and DEFENDANT 1 owned a fishing boat.
- * Sometime after GARY went missing, DEFENDANT 1 had a garage sale.
- * DEFENDANT 1 told him that GARY left but didn't say where he went.
- * Two or three months after GARY went missing the HERBST house went up for sale.

On June 29, 2020 Scott County Deputies and members of the Minnesota BCA Forensic Science Laboratory, after receiving permission from the new owners of 347 Wagner Way, Elko New Market, Scott County, MN, conducted a search of the HERBST's former home. The current homeowners told officers that while remodeling the basement in August 2019, they discovered a stain on the concrete floor that seemed unusual. Officers had a cadaver dog search the residence, and the dog gave indicators of the presence of human decomposition near the sliding glass door in the basement, as well as the north wall of the garage. Forensic Scientists did a presumptive chemical test for the presence of human blood on the stain on the concrete floor in the basement, which rendered a positive result.

On June 30, 2020, investigators spoke with GARY's former employer, SG, at RL Tool in Bloomington, MN. SG confirmed that the last day GARY worked was July 8, 2013, when he completed his shift at 3:00 p.m. The next day GARY didn't show for work, at which point he simply stopped showing up and SG never heard from him again.

On July 9, 2020, officers executed a search warrant at 347 Wagner Way, Elko New Market, Scott County, MN. The BCA personnel used Luminol, which reacts with blood, in the residence on the following locations, where they discovered a presumptive positive test:

- * The drywall directly next to the stain on the concrete floor in the basement.
- * The wood studs behind the drywall.
- * Lower track and door area of the sliding glass door leading out of the basement.
- * A small stain on the floor north side of the garage (where the cadaver dog indicated).
- * Rubber mats that were previously in the basement.

On July 28, 2020 Scott County Deputies and New Prague Police Officers executed a search warrant at DEFENDANT 1 and DEFENDANT 2's residence in New Prague. During the search, the police seized numerous electronic devices. Investigators interviewed DEFENDANT 2 again, and he stated:

- * His father spent a lot of time in the basement in his workshop.
- * He said they went camping that weekend and there was nothing wrong with the boat motor in northern Wisconsin at the Turtle Flowage Lake. (Which contradicted DEFENDANT 1 who stated they did not go camping because the boat motor was not operable.)
- * They drove his father's silver truck.
- * When asking about the Sig .45 caliber handgun, and safety concerns, he stated no one would ever get hurt with the gun. When asked how he knew that, he stated the gun was safe in "60 feet of water."
- * When asked how he knew that, he said because it is in the "Flambeau Flowage," and would be able to show investigators its approximate location.
- * When asked if he threw it from shore or the side of a boat, he stated, he needed to speak with his mother before answering.
- * The last year and particularly the months prior to the summer of 2013, things had gotten far worse in their home.
- * His father was far more verbally and physically abusive toward his mother.
- * He intervened many times and basically became his mother's protector.
- * He wanted to speak with his mother before he spoke with investigators, and to ask her what would happen to his job and the dogs.
- * Throughout the interview, DEFENDANT 2 never denied involvement in his father's homicide.

DEFENDANT 1 spoke with investigators for about 90 minutes and offered no new information. DEFENDANT 1 eventually requested an attorney and the interview ended.

On July 31, 2020, the Minnesota BCA issued a report that concluded that the swab of apparent blood from the sliding glass door located at 347 Wagner Way, Elko New Market did not match GARY's profile. All the other tested samples had insufficient genetic information to make a statement regarding DNA.

An examination of both DEFENDANT 1 and DEFENDANT 2's cell phones revealed that:

- * On June 24, 2020 at 10:33 a.m., DEFENDANT 1 texted DEFENDANT 2, "It was on Channel 9 News last night." (On June 23, 2020, Barron County Sheriff's Office issued a press release on the remains being identified and investigated as a homicide.)
- * On July 18, 2020, at 3:03 p.m., DEFENDANT 1 texted DEFENDANT 2, "You need to call me ASAP, actually right away."
- * On July 18, 2020 at 3:37 p.m., DEFENDANT 1 texted DEFENDANT 2, "Might have a problem, they are searching 347. Don't mean to fuck up your vacation just wanted u to know. It's in the paper." The investigation showed that on July 18, 2020, DEFENDANT 2 was on vacation with friends at the Flambeau Flowage in Wisconsin. Interviews with DEFENDANT 2's friends confirmed he took a phone call from his mother.

AUSTIN is described as a 26-year-old Caucasian male, 6'00", weighing approximately 166 pounds with

green eyes and brown hair.

PLEASE TAKE NOTICE: Pursuant to Minn. Stat. 609.49., intentional failure to appear for duly scheduled court appearances may result in additional criminal charges, and in addition to any arrest warrant that may otherwise be issued by the Court.

SIGNATURES AND APPROVALS

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

Complainant declares under penalty of perjury that everything stated in this document is true and correct. Minn. Stat. § 358.116; Minn. R. Crim. P. 2.01, subds. 1, 2.

Complainant

John Kvasnicka
Sergeant
301 Fuller Street S
Shakopee, MN 55379-1220
Badge: 148

Electronically Signed:
11/18/2020 10:02 AM
Scott County, Minnesota

Being authorized to prosecute the offenses charged, I approve this complaint.

Prosecuting Attorney

Michael J. Groh
Assistant County Attorney
200 4th Avenue W
Shakopee, MN 55379
(952) 496-8240

Electronically Signed:
11/18/2020 09:58 AM

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

SUMMONS

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear on _____, ____ at _____ AM/PM before the above-named court at 200 4th Avenue W, Shakopee, MN 55379 to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

Execute in MN Only **Execute Nationwide** **Execute in Border States**

ORDER OF DETENTION

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: \$
Conditions of Release:

This complaint, duly subscribed and sworn to or signed under penalty of perjury, is issued by the undersigned Judicial Officer as of the following date: November 18, 2020.

Judicial Officer Paula Duggan Vraa Electronically Signed: 11/18/2020 10:24 AM
 Ditric Court Judge

Sworn testimony has been given before the Judicial Officer by the following witnesses:

**COUNTY OF SCOTT
STATE OF MINNESOTA**

State of Minnesota

Plaintiff

vs.

Austin James Herbst

Defendant

LAW ENFORCEMENT OFFICER RETURN OF SERVICE
I hereby Certify and Return that I have served a copy of this Warrant upon the Defendant herein named.

Signature of Authorized Service Agent:

DEFENDANT FACT SHEET

Name: Austin James Herbst
DOB: 05/30/1994
Address: 347 Wagner Way
New Market, MN 55054

Alias Names/DOB:

SID:

Height:

Weight:

Eye Color:

Hair Color:

Gender: MALE

Race:

Fingerprints Required per Statute: Yes

Fingerprint match to Criminal History Record: No

Driver's License #: E905053380414 (MN)

Alcohol Concentration:

STATUTE AND OFFENSE GRID

Cnt Nbr	Statute Type	Offense Date(s)	Statute Nbrs and Descriptions	Offense Level	MOC	GOC	Controlling Agencies	Case Numbers
1	Charge	6/29/2020	609.19.1(1) Murder - 2nd Degree - With Intent-Not Premeditated	Felony	H2811	X	MN0700000	20009815
	Penalty	6/29/2020	609.19.1 Murder - 2nd Degree	Felony	H2811	X	MN0700000	20009815
	Modifier	6/29/2020	609.05.1 Liability for Crimes of Another-Intentional	No-Level	H2811	X	MN0700000	20009815