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| DISTRICT COURT, EL PASO COUNTY COLORADO | | DATE FILED: June 10, 2021 |
| Court Address: 270 South Tejon Street, Colorado Springs, Colorado 80903 | | |
| People of the State of Colorado v. | | ▲ COURT USE ONLY ▲ |
| Dana McNair, DOB 10/02/1967, 5'7, 182 lbs., White Female, Blonde hair, Blue eyes, | | Case/File Number: |
| SSN | Colorado driver's license | Defendant |
| El Paso County Sheriff's Office Case Number: 2021-00001385 | | 21 CR 3286 |
| | | Division: Criminal Ctrm: |
| ATTACHMENT A | | |

The following Affidavit is submitted to the Court to document the probable cause in support of a request for the issuance of an Arrest Warrant for Dana McNair (DOB 10/02/1967).

This offense is fully documented in El Paso County Sheriff's Office case report **2021-00001385** detailing the offense(s) of: **18-6-401 (1) (a) (7) (a) (I) Child Abuse Knowingly/ Reckless Felony 2; 18-6-401 (1), (7) (b)(I) Child Abuse Knowingly/ Reckless No Injury Misdemeanor 2 X 16 COUNTS.**

The facts set forth within this affidavit are based upon information Your Affiant has gained from this investigation, Your Affiant's personal observations, Your Affiant's training and experience, and/or information related to Your Affiant by other law enforcement officers. Since this affidavit is being submitted for the limited purpose of securing an arrest warrant, Your Affiant has not included each and every fact known to him/her concerning this investigation, but has set forth only the facts that are necessary to establish probable cause to believe that evidence of a crime has occurred.

With the victim(s) identified as:

1. (DOB 11/02/2020)
2. (6 Years old)
3. (4 Years old)
4. (5 Years old)
5. (7 years old)
6. (3 Years old)
7. (4 Years old)
8. (4 Months old)
9. (4 Years old)
10. (3 Years old)
11. (3 Years old)
12. (18 Months old)
13. (4 Years old)
14. (4 Years old)
15. (3 Years old)

16. (1 Years old)

17. (2 Years old)

On Friday, February 5, 2021, at approximately 12:23 pm, I, Detective J. Bethel #07088 of the El Paso County Sheriff's Office (EPSO) Investigations Division was contacted by Detective Sgt. Rosario Hubbell. Sgt. Hubbell informed me an infant was unresponsive and being rushed to Memorial Central Hospital. The infant was at 508 Widefield Dr. in Unincorporated El Paso County when he became unresponsive. Sgt. Hubbell requested I respond to 508 Widefield Dr. to initiate the investigation along with Detective Patrick Gallagher.

As I was responding to the scene, I learned the infant was a 4-month-old male, who had been placed on an adult bed for a nap while at his babysitter's home. The caregiver, Ms. Dana McNair, DOB: 10/02/67, was providing childcare for the infant at the time of the incident. Ms. McNair also had several other small children at her residence (508 Widefield Dr.) when the infant was found unresponsive.

I arrived on scene at approximately 1:28 pm. When I arrived on scene, I was briefed by EPSO Patrol Sgt. Jared Harmon and EPSO Patrol Deputy Brandon Hall outside. The temperature was approximately 42 degrees Fahrenheit outdoors. I was informed at approximately 11:37 am, El Paso County Sheriff's Office Communications Center (Dispatch) received a call about a 3-month-old baby who was not breathing. The baby was located at 508 Widefield Dr. Sgt. Hammond told me he arrived on scene and observed medical personnel providing medical care to the 4-month-old infant, identified as DOB: 11/02/2020. was on the dining room table while he was being treated. Sgt. Harmon stated he did not conduct a formal interview with Ms. McNair and instead stood back while medical personnel treated . During this time, Ms. McNair made several statements to medical personnel that Sgt. Harmon overheard.

Sgt. Harmon stated Ms. McNair told medical personnel she put to sleep on an adult bed in one of the bedrooms in the home at approximately 10:45 am. She placed face up on the bed and went to the kitchen to prepare lunch for the other children in her care. After approximately 15 minutes, she returned to the bedroom where was sleeping and found him facedown on top of the blankets on the bed. She noted a drool spot on the bed when she picked up and rushed him to the dining room to begin CPR and call 911.

Sgt. Harmon estimated at least 8 small children (under the age of 8), including other infants were in the home with Ms. McNair when the incident happened. Ms. McNair was the only adult in the home and was responsible for all the children. Deputy Hall collected the names of the children Ms. McNair said were still at the home. There were 12 children listed.

Detective Gallagher and I entered the residence to speak with Ms. McNair and assess how many children remained on scene. I walked in the front door of the home and noted the front entry/ living room and dining room area to be messy. No medical debris or equipment were noted in the dining room or kitchen area. The home was comfortably warm, approximately 70 degrees Fahrenheit. I was met by Ms. McNair who was standing in between the dining room and the living room area of the home where other small children were present. I introduced myself to Ms. McNair. She appeared to have been crying. She asked me if was ok. I told Ms. McNair was stable. She told me she did not trust what I was saying. I told her I was providing her with the most recent information I had. I asked Ms. McNair to help me identify the children who were still in her care and what children were at the elementary school so I could contact parents. Ms. McNair became defensive and asked why I needed to

know the information as she had already provided it to Deputy Hall. I explained I still needed to collect the information in order to contact parents and told her Deputy Hall did not know which children were at the elementary school. Ms. McNair told me she preferred to contact the parents herself and asked why I needed the information. I explained I was only trying to assess the situation and provide some assistance as she had just been through a traumatic experience. Ms. McNair began listing names of the children. Some of the children Ms. McNair listed were not on the list Deputy Hall provided me. Ms. McNair began contacting the parents of the children who remained in the home, using her cell phone.

Based on the lack of cooperation Detective Gallagher and I were getting from Ms. McNair and her family we decided it would be best to allow all the parents of the children to come to the home to pick them up and document the children and their parents as they left. Detective Gallagher maintained record of the children and their parents as they left the residence.

Detective Robert Sirois obtained a search warrant for the home while the children were being picked up by their parents or guardians.

After all the children were picked up Detective Gallagher informed me there were 22 children in the care of Ms. McNair. 4 other older children were at the "barn" with a trainer and another child was in school at [REDACTED]. The total children related to Ms. McNair either by babysitting or biological relation is 27.

After the last child left the residence, I re-entered the home with Detective Gallagher and spoke with Ms. McNair. I explained to Ms. McNair a search warrant was obtained to search the home and I would like to speak with her while the search warrant was being executed. Ms. McNair became defensive and accused me of not being transparent with her. I explained to Ms. McNair I did not want to interrupt the process of getting the children to their parents or speak about the situation in front of parents who were steadily coming to the home to get their children. I also explained to Ms. McNair her interview with me would be voluntary and she could have a family member drive her to the Office of The Sheriff (OTS) or I would drive her if she would like. Ms. McNair spoke with her daughter, [REDACTED] DOB: 12/27/92, and agreed have [REDACTED] drive her to the OTS for an interview.

I departed the scene at approximately 3:55 pm and responded to the OTS located at 27 E. Vermijo Ave for an interview with Ms. McNair. At approximately 4:44 pm I began the interview with Ms. McNair. I told Ms. McNair her participation in the interview was voluntary. I explained she was free to leave at any time and could take a break at any time. I asked Ms. McNair to let me know if she wanted to leave or take a break from the interview. She said ok.

I completed a Miranda Warning with Ms. McNair. I read her the Miranda Rights from the waiver. Ms. McNair acknowledged she understood her rights and wished to speak with me. She completed the form, indicating the same.

I collected personal information from Ms. McNair. She identified herself verbally to me as Dana McNair, DOB: 10/02/67. She stated she lives at 508 Widefield Dr. in Colorado Springs, CO 80911 with her husband, Robert McNair, DOB: 09/25/65, her daughter [REDACTED] DOB: 12/27/92, daughter, [REDACTED] DOB: 11/07/12; her ex-daughter in-law, [REDACTED], DOB: 08/02/85, and Jamie's 3 children, [REDACTED] (F), DOB: 04/7/06; [REDACTED] (12 or 13 year old female) and [REDACTED] (11 year old female).

Ms. McNair explained her husband works for Flower Company, _____ takes care of an older couple as needed in Fountain, Colorado and has another job at Outback Steakhouse. _____ is the assistant manager of Ace Hardware on South Academy Blvd in Colorado Springs, CO. Ms. McNair explained she watches 5 children on a permanent basis. She explained today was out of the ordinary because she had extra children who were dropped off for one reason or another.

At times during the interview Ms. McNair would tell me she was not sure of exact times for the day and all times should be considered approximate.

Ms. McNair explained her husband went to work early in the morning. _____ and _____ were home with her. _____ (4 years old) and _____ (4 months old) arrived at 5:15 am for childcare. _____ (4 months old) and _____ (3 years old) arrived around 6:45 am. Ms. McNair said she spoke with their mother, _____, about how _____ was doing with potty training and how _____ was starting to try and roll over. The last child she regularly cares for, _____ (9 months old) for arrived at approximately 8:45 am.

Ms. McNair stated she usually only cares for those 5 children but today was a different day. She said _____ and _____ ate pancakes. _____ went to the bathroom and then they discussed the letter Y which was the letter of the day. The kids moved to the play area of the home, and the babies were in a playpen in the living room. She said the kids were in the living room to watch Cocoa Melon on TV while she made lunch for everyone.

I asked Ms. McNair to tell me about all the other kids who were dropped off and their ages. Ms. McNair explained _____ (5 years old) was dropped off at approximately 7:00 am by _____, who needed to attend a surgery. _____ usually only has care 3 times a month.

At approximately 8:00 am, _____ (4 years old) and his brother _____ (16 months old) were dropped off by their grandmother who needed to go get her blood sugar taken. Ms. McNair could not recall their grandmother's name but said their mother's name is _____. Ms. McNair takes care of these children as needed. They are not cared for at her home regularly.

At approximately 7:15 am, _____ (15 months old) and _____ (4 years old) who are cousins, were dropped off. Ms. McNair cares for these children regularly.

Ms. McNair explained she usually talks to whoever drops off at her home to see how the kids are doing and if there is anything she should know about.

_____ cares for _____ (3 years old) and _____ (8 years old) are sisters. They were dropped off at approximately 7:30 am. Their care is on a regular basis. _____ attends school and then walks across the street to her care after school. _____ was with _____ the trainer at the barn when the incident with _____ happened. _____ left the house to go to the barn for 4-H around 8:05 am with _____ took everyone to the barn and came right back home at approximately 8:20 am.

_____ also cares for _____ (4 years old) and _____ (2 ½ years old) who are siblings. _____ is their father. They were dropped off at approximately 8:00 am.

also cares for (3 years old) who arrived around 7:30 am. receives regular care on Fridays only. is his father's name and is his mother.

Ms. McNair told me she receives referrals from the principal at Widefield Elementary School and today was an extraordinary day because there was no school.

who is in 1st grade and who is in kindergarten are siblings. They did not have school and arrived to be cared for . Ms. McNair did not say when the children were dropped off.

(6 years old) and (4 years old) are siblings. They were previously regularly babysat by Ms. McNair. With COVID-19 and the families travel schedule, they have not been regularly babysat. Their mother is and they are half-sisters. is the father of Ms. McNair did not say when the children were dropped off.

is responsible for taking care of (1 year old) and (between 4 and 5 years old). It is unknown when they were dropped off at the residence.

Ms. McNair explained was at school at

Ms. McNair stated she provides care with and but they each have their own designated children. Despite having their own specific children they care for, they all know each of the children and help each other with all of the children in case one of them has to leave. Ms. McNair said she never leaves the home.

Ms. McNair told me she has been doing childcare for 18 years but is not licensed. She explained she was not licensed because she only watches 5 children or less at a time as regulars. She explained in the state of Colorado she did not need to be licensed because of the number of children she watches. She said the parents of the children she cares for, know that she is not licensed. She explained she chose not to be licensed because she is active in 4-H.

We spoke about where was during the morning. Ms. McNair told me left the house at approximately 8:05 am to take to school. She then took to the barn and was home around 8:20 am. took a shower and then left to run an errand. Ms. McNair estimated was only gone for 30 minutes before the incident with occurred. Ms. McNair estimated left the house around 9:30 am to run errands.

I asked Ms. McNair where was. She explained took the older couple from Fountain, CO to the YMCA. She and discussed picking up the children from the barn and was supposed to get the children and bring them back for lunch at 11:00 am or 11:30 am. Ms. McNair stated when the incident with happened she called and told her to get home and have get the kids from the barn to take them to McDonald's. Ms. McNair clarified she did not call first and called after everything was going on. I asked Ms. McNair where was when everything happened with . She told me was out running errands. Ms. McNair told me she was the only adult in the house when she laid down.

I asked Ms. McNair to tell me about what happened with . Ms. McNair told me she gave a bottle and burped him. She said she changed his diaper. Ms. McNair became tearful and told me she

normally lays down on the couch, propped up on his side with blankets so he can't roll over. She explained she discussed getting close to rolling over with his mother, earlier in the morning. Ms. McNair said she told all the kids to come out and sit on the couch to watch Cocoa Melon while she made lunch. She told me she went into bedroom and laid down on her bed for a nap. He was fine when she laid him down. Ms. McNair said she laid on his left side and rolled and stuffed one of comforter's behind his back to prop him up on his side. She covered him with a light brown blanket that belonged to was facing the TV, but she did not put the TV on because he was almost asleep. had a pacifier with him. I asked Ms. McNair if room had a baby monitor in it. She said no. Ms. McNair explained the other kids were sitting on the couch watching Cocoa Melon. She said they were talking about the letter "Y" and the days of the week while she watched them from the kitchen and made lunch. Ms. McNair said she got through 12 minutes on the microwave and then decided to check on because fan was on and she was concerned may have kicked off his blanket and got cold. Ms. McNair said when she went back to check on he had rolled from his side onto his stomach. He was face down on the mattress. She picked him up, ran, put him on a flat surface and called 911 right away with her cell phone. She began CPR and did mouth to mouth and chest compressions with her fingertips. She told 911 she needed to call and to come help her with the other children in the home. Dispatch called her back. She told dispatch she could not hold the phone and take care of at the same time. Ms. McNair said she tossed her phone and continued to do CPR on . Ms. McNair said she did a finger sweep in mouth to make sure he did not have anything in his mouth. There was nothing there.

Ms. McNair stated she did not have time to finish the lunch she was preparing for the other children before finding . She said did not have socks on and she was worried about him being cold. She mentioned she left the door to the bedroom cracked.

Ms. McNair told me she knew it couldn't have been longer than 15 minutes that she left room. She said she was able to keep an eye on all the other children and knew no one went back into room. She explained she does not allow the children to go back in that area where was or be out of her sight. Ms. McNair said all the other children were on the couch or floor watching Cocoa Melon. was in the baby spinner.

I asked Ms. McNair how long she has been watching . She told me she started watching him wher was cleared to go back to work. She estimated she watched him for a month. I asked Ms. McNair if there was anything concerning about today. She said no. She did not notice him being extra sleepy, extra cranky or doing anything new like finding his toes today. She said prior to putting him on the bed she was sitting on the couch with him and he was smiling and happy. She told me there was nothing off with today. She explained she always makes sure to look at the kids to make sure they don't have any new scratches or injuries.

I asked Ms. McNair if she felt like she told me everything she needed to tell me she said yes. At approximately 5:55 pm, I took a break from the interview. I offered Ms. McNair water and use of the restroom. She denied both. She asked me to check on again.

At approximately 6:03 pm, I returned to the interview room. I asked Ms. McNair about starting to roll. She said she discussed with the morning that was about to start rolling. I asked her how she normally put down to sleep and what was different about today. She told me she sometimes has him propped up on his side and sometimes lays him flat on his back. Today was the first

time Ms. McNair mentioned to _____ that _____ was just about ready to roll but was not quite there yet.

I asked Ms. McNair if she had any contracts with any of the parents of the children for the childcare she provides. She said yes and explained her hours are 5:15 am to 5:30 pm. The contract states what meals are provided and when the start date and withdrawal dates are. Ms. McNair became concerned that I may think she was lying because she closed her eyes to think. I assured her I was not. Ms. McNair said she does not have the contracts with all the parents because sometimes she gets a referral quickly. She explained she only provides childcare Monday through Friday and does 4-H with her grandkids on the weekends.

I told Ms. McNair that must be a lot on her to provide care 60 hours a week. She said she was not over stressed or over worked.

I asked Ms. McNair if there was anything else that she felt I should know. Ms. McNair asked if she was allowed to talk to _____. I told her I could not tell her whether or not to speak with _____ and I had not heard if _____ requested no contact from Ms. McNair.

Ms. McNair told me she does not take her eyes off the children. I asked Ms. McNair how often she used _____ room as a napping room. She said this was the second time in general but the first time with _____. She said she put him to sleep there because she was worried one of the other children might disturb _____ while he was sleeping. She said she didn't think anyone would hurt _____ but she also knew stuff could happen so quickly. She explained she could see the children, but also knew her attention would be divided while preparing lunch for the children.

Ms. McNair told me she was not sure what she should say or shouldn't say. She explained how she previously coached soccer and interacted with kids often with 4-H. She told me she loves kids and animals and should have never even put him in the room and just left him on the couch. Ms. McNair said _____ wasn't even in there long. I asked her how long she thought it was. She said she started to make lunch around 10:45 am or 11:00 am. She estimated it was 20 minutes at the most. I asked Ms. McNair how long it was before she called 911. She told me it was instantly.

I asked Ms. McNair how long ago she got her CPR certification. She told me she got it a long time ago. She told me she refreshed the class unofficially not too long ago with 4-H. Ms. McNair mentioned there was still a wet spot on the bed where _____ was lying, and it was there when the officers were at her home. She told me _____ was just like any other baby and drooled.

Detective Gallagher contacted me and notified me he identified the following additional children that were in Ms. McNair's home when the incident occurred that she did not mention during her interview.
(5 Years old), (7 Years old), (2 Years old),
(1 Year old).

At approximately 6:20 pm, I concluded the interview with Ms. McNair and provided her with my business card and contact information. Ms. McNair and _____ were escorted out of the building. Sgt. Hubbell informed me he and Detective Gallagher completed the processing of the home and collected digital photos along with bedding and a burp towel where _____ was found unresponsive. Sgt. Hubbell also informed me _____ had another cardiac arrest incident and his prognosis was grave.

At approximately 7:27 pm, I received a phone call from Dr. A. Sayed who works at Children's Hospital. Dr. Sayed informed me _____ was pronounced dead at 7:21 pm.

I received the autopsy report for _____ autopsy was documented under autopsy number 21-0131. The autopsy was preformed on February 8, 2021 at 8:00 AM by Dr. Travis Danielsen. The final diagnoses are,

"I. _____ with an unsafe sleep environment and prone position:

A: History that the decedent was placed down on his left side for a nap at daycare on an adult bed (unsafe sleep environment) with two sheets, a blanket, and a comforter under him (unsafe sleep environment) approximately 10:45 AM on 02/05/2021.

B: History that the decedent was found unresponsive on the bed in a prone (face down) position at approximately 11:38 AM.

C: The decedent was transported to the hospital and pronounced at 7:21 PM on 02/05/2021.

D: _____

E. _____

II. _____

A. _____

B. _____

III. No significant trauma noted at autopsy.

IV. _____

V. _____

OPINION: Based on the case history and autopsy findings, it is my opinion that _____ a 3 month-3 day old White male infant, died as a result of _____ associated with an unsafe sleep environment and prone position. It is also my opinion that _____ contributed to the cause of death.

MANNER OF DEATH: Accident"

The report was signed by Dr. Danielsen on March 10, 2021.

I would respectfully request that probable cause be found that Dana McNair (DOB 10/02/1967), did within the County of El Paso and State of Colorado, commit in violation of the Colorado Revised Statutes 1973 as amended, the offense(s) of **18-6-401 (1) (a) (7) (a) (I) Child Abuse Knowingly/ Reckless Felony 2; 18-6-401 (1), (7) (b)(I) Child Abuse Knowingly/ Reckless No Injury Misdemeanor 2 X 16 COUNTS.**

Applicant: 
Detective J. Bethel/07088
El Paso County Sheriff's Office

Sworn and subscribed before me this 10 day of June, 2021.

Judge/Magistrate: 