

1 MATT JENNINGS
Deputy County Attorney
2 KIRSTEN H. PABST
Missoula County Attorney
3 Missoula County Courthouse
Missoula, Montana 59802
4 (406) 258-4737
Attorneys for Plaintiff

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 STATE OF MONTANA,
9 Plaintiff,

-vs-

10 BRANDON BRYANT,
11 Defendant,

Dept. No. _____
Cause No. DC-20-

MOTION AND AFFIDAVIT FOR
LEAVE TO FILE INFORMATION

12 STATE OF MONTANA)
13 :ss
14 County of Missoula)

15 MATT JENNINGS, Deputy County Attorney of Missoula County, Montana, being
16 first duly sworn, moves the Court for leave to file an Information charging the above-
17 named Defendant with allegedly committing the offense(s) in Missoula County of COUNT
18 I: THREATS/IMPROPER INFLUENCE IN OFFICIAL AND POLITICAL MATTERS, a
19 Felony, in violation of Montana law, namely: Mont. Code Ann. 45-7-102.

20 The Motion is based upon the following facts which have been obtained from
21 reports of the law enforcement officers which, if true, I believe, constitute sufficient
22 probable cause to justify the filing of the charges. The facts from those reports are as

MOTION AND AFFIDAVIT FOR LEAVE TO FILE INFORMATION

1 follows:

2 On January 29, 2020, during a training with Missoula Police Officer Smith, multiple
3 Missoula City Council members brought to Officer Smith's attention a male who had
4 disrupted their meetings and was acting in an intimidating manner. They were disturbed
5 by the fact that he brought a large walking staff with him that he banged on the table
6 during the public speaking process. At one point during a November 18, 2019 meeting,
7 the mayor had to temporarily adjourn the meeting because the male was yelling at the
8 council. During a January 8, 2020 City Council meeting, the individual provided public
9 comment against Tax Increment Financing ("TIF") and other matters. The individual had
10 a stick with him while providing comment, stating he had sworn an oath to not kill another
11 human being again, and made statements regarding TIF ending people's lives in ways
12 worse than death.

13 On January 30, 2020, Officer Smith was informed via a January 29 email by
14 council president Bryan von Lossberg that another council member had found a YouTube
15 video of the male, who identified himself in the title of the video as Defendant Brandon
16 Bryant. Mr. von Lossberg forwarded a link to that video, which is entitled "Brandon Bryant
17 Promises to 'Eliminate' People Over the Next Year.'" The description of the video says
18 Brandon Bryant identifies people for extermination including the entire Missoula City
19 Council and people in the military that he worked with, saying that he is "preparing" his
20 soul to make those people "submit" and "die." The video states that the "entire City
21 Council had sold out Missoula to the highest bidder and what's going to happen to the
22 people that had wronged everyone don't step aside and put their tails between their legs

1 and run, because over the next year, all those people who have wronged others who
2 have discriminated against others because of class, race, gender or creed...will be
3 eliminated.” While it is unclear who he is next referring to the video, Mr. Bryant states he
4 will hunt people and exterminate them, that he will eliminate “wretched filth.” Mr. Bryant
5 stated that “all you deserve to be eliminated, and I will do it and if you remove me from
6 this life I get to choose my next incarnation and I will hunt you down so not even the
7 stones will hide you.” He says “I will eliminate you from the fabric of reality and you will
8 never see another life again. That is my promise. This is what I am preparing my soul to
9 do...you will submit...you will die.”

10 One of the videos posted on YouTube contains the video described above
11 combined with a video of Defendant’s public comments to the Missoula City Council.

12 The videos were very concerning to Mr. Von Lossberg and fellow council member
13 Gwen Jones.

14 Mr. Bryant's YouTube account username is Pick YourBattles (sic) and a search of
15 other videos he posted under that user name include one where he talks about killing his
16 ex-wife, and another video titled "Brandon Bryant says he will kill his enemies" and
17 "Brandon Bryant - I will set the example."

18 Officer Smith interviewed Mr. Bryant. Mr. Bryant stated that he made the video to
19 get a response. While Mr. Bryant admitted to making the videos and posting them, he
20 stated that the username Pick YourBattles was actually used by a former colleague and
21 used to portray him in a negative light.

22 This case is being filed direct to District Court. A warrant is being requested in the

1 interests of public safety and because Defendant's whereabouts are unknown.

2 DATED this 7th day of February, 2020.

3

4

/s/ Matt Jennings
MATT JENNINGS
Deputy County Attorney

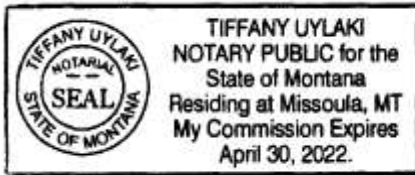
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6

SUBSCRIBED AND SWORN TO before me this 7th day of February, 2020.

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Tiffany Uylaki
NOTARY PUBLIC FOR STATE OF MONTANA

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1 Shane A. Vannatta
DISTRICT COURT JUDGE
2 Missoula County Courthouse
Missoula, Montana 59802
3
4
5

6 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
7

8 STATE OF MONTANA,
Plaintiff,

9 -vs-

10 BRANDON BRYANT,
Defendant,

Dept. No. 5
Cause No. DC-20-70

ORDER

11
12 Upon reading the foregoing Affidavit and Motion for Leave to File Information and
13 it appearing that there is probable cause that the Defendant above-named committed the
14 crime(s) charged,

15 IT IS HEREBY ORDERED that leave be granted to the Deputy County Attorney to
16 file the Information as prayed for.

17 Defendant is to be admitted to bail in the sum of \$100,000.

18 The conditions of release are:

- 19 1. Defendant shall have personal contact with his attorney at least once a
20 week.
21 2. Defendant shall not leave Missoula County, Montana, without written
22 permission of this Court.

ORDER GRANTING LEAVE TO FILE INFORMATION

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3. Defendant shall not possess or consume any alcohol or enter any bar, casino, or other establishment whose principal business is the sale of alcohol.
4. Defendant shall not possess or consume any drugs unless prescribed to him by a physician and taken as directed.
5. Defendant shall appear personally at all court hearings, except for omnibus, unless excused by written order of the Court.
6. Defendant shall not have any contact with the victim or any witnesses except through his attorney to prepare for his defense.
7. Defendant shall not have any contact with any co-defendants.
8. Defendant shall not possess any weapons.
9. Defendant shall abide by all laws.
10. Defendant shall have no contact with any Missoula City Council Members.
11. Defendant is restrained from all City of Missoula Property.

Electronically Signed and Dated Below.

1 MATT JENNINGS
Deputy County Attorney
2 KIRSTEN H. PABST
Missoula County Attorney
3 Missoula County Courthouse
Missoula, Montana 59802
4 (406) 258-4737
Attorneys for Plaintiff

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 STATE OF MONTANA,
Plaintiff,

9 -vs-

10 BRANDON BRYANT,
Defendant,

Dept. No. 5

Cause No. DC-20-70

INFORMATION

Total Possible MSP: **10 Years**

Total Possible MCDF: **N/A**

Total Possible Fine: **\$50,000**

13 MATT JENNINGS, Deputy County Attorney, deposes and says that on or about the
14 18th day of November, 2019, in Missoula County, the Defendant committed the offense of
15 COUNT I: THREATS/IMPROPER INFLUENCE IN OFFICIAL AND POLITICAL MATTERS, a
16 Felony, in violation of Montana law, namely: Mont. Code Ann. 45-7-102, punishable by 10
17 years MSP and/or \$50,000 fine.

18 The facts constituting the offense are:

19 COUNT I: On or about or between November 18, 2019 and January 31, 2020, the
20 above-named Defendant purposely or knowingly threatened harm to public servants,
21 Missoula City Council members, with the purpose to influence the public servants'
22 decision, opinion, recommendation, vote, or other exercise of discretion in an

INFORMATION

1 administrative proceeding.

2 A list of possible witnesses for the state now known to the prosecution is as
3 follows:

4 JOHN CONTOS, MISSOULA, MT
5 BRYAN VON LOSSBERG, MISSOULA, MT
6 GWEN JONES, MISSOULA, MT
7 HEIDI WEST, MISSOULA, MT
8 JORDAN HESS, MISSOULA, MT
9 HEATHER HARP, MISSOULA, MT
10 MIRTHA BECERRA, MISSOULA, MT
11 AMBER SHERRILL, MISSOULA, MT
12 JESSE RAMOS, MISSOULA, MT
13 STACIE ANDERSON, MISSOULA, MT
14 SANDRA VASECKA, MISSOULA, MT
15 JULIE MERRITT, MISSOULA, MT
16 JAKE ROSLING, MISSOULA CITY POLICE DEPT,
17 ETHAN SMITH, MISSOULA CITY POLICE DEPT,

18 Any witness listed by Defendant

19 Any witness necessary for foundation, rebuttal, impeachment and/or
20 chain of custody.

21 Dated this 10th day of February, 2020.

22 /s/ Matt Jennings

MATT JENNINGS

Deputy County Attorney

CERTIFICATE OF SERVICE

I, Matthew C. Jennings, hereby certify that I have served true and accurate copies of the foregoing Information - Information to the following on 02-11-2020:

Brandon Bryant (Defendant)
5106 Village View Way
Missoula 59803
Service Method: First Class Mail

Electronically signed by Tiffany Uylaki on behalf of Matthew C. Jennings
Dated: 02-11-2020

Hon. Shane A. Vannatta
District Court Judge, Dept. 5
Fourth Judicial District
Missoula County Courthouse
200 W Broadway St
Missoula, MT 59802-4292
406-258-4765

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA,

Plaintiff,

-vs-

BRANDON BRYANT,

Defendant.

Department No. 5
Cause No. DC-20-70

WARRANT

The State of Montana to any Peace Officer of this State:

Information, upon oath, having been this day made before me by MATT JENNINGS, Deputy County Attorney for Missoula County, that the crime of COUNT I: THREATS/IMPROPER INFLUENCE IN OFFICIAL AND POLITICAL MATTERS, a Felony, has been committed and accusing Brandon Bryant, thereof:

You are therefore ordered, forthwith, to arrest the above-named Defendant and bring him/her before this Court or in the case of my absence or inability to act, before the nearest and most accessible Judge in this County, or if the arrest is made in another county, before a Judge of the County without unnecessary delay. This warrant may be served day or night.

The Defendant is to be admitted to bail in the sum of \$100,000.

ELECTRONICALLY SIGNED AND DATED BELOW.

A1 2/11/20 MPO Bare

2020 - 9942 FILED
02/10/2020
Shirley Faust
CLERK

Missoula County District Court
STATE OF MONTANA
By: Casie Jenks
DC-32-2020-0000070-IN
Vannatta, Shane
4.00

Hon. Shane A. Vannatta
District Court Judge, Dept. 5
Fourth Judicial District
Missoula County Courthouse
200 W Broadway St
Missoula, MT 59802-4292
406-258-4765

FILED FEB 12 2020

SHIRLEY E. FAUST, CLERK
By: [Signature] Deputy

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA,

Plaintiff,

-vs-

BRANDON BRYANT,

Defendant.

Department No. 5
Cause No. DC-20-70

RECEIVED

WARRANT

FEB 10 2020

MCSO - Warrants

The State of Montana to any Peace Officer of this State:

Information, upon oath, having been this day made before me by MATT JENNINGS, Deputy County Attorney for Missoula County, that the crime of COUNT I: THREATS/IMPROPER INFLUENCE IN OFFICIAL AND POLITICAL MATTERS, a Felony, has been committed and accusing Brandon Bryant, thereof:

You are therefore ordered, forthwith, to arrest the above-named Defendant and bring him/her before this Court or in the case of my absence or inability to act, before the nearest and most accessible Judge in this County, or if the arrest is made in another county, before a Judge of the County without unnecessary delay.

This warrant may be served day or night.

The Defendant is to be admitted to bail in the sum of \$100,000.

ELECTRONICALLY SIGNED AND DATED BELOW.

5

Jennifer Streano
Office of State Public Defender
Regional Office, Region 2
610 N. Woody
Missoula, MT 59802

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA, Plaintiff, v. BRANDON HOWARD BRYANT, Defendant.	Dept. 5 Cause No: DC-20-70 NOTICE OF APPEARANCE AND REQUEST FOR DISCOVERY
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The State of Montana, Office of State Public Defender has been appointed to represent Brandon Howard Bryant, the above-named Defendant. This NOTICE is to inform the Court that Robin Hammond and Jake Coolidge is currently assigned as attorney of record in this matter. All future pleadings, discovery, or other documents should be directed to

Robin Hammond and Jake Coolidge
Office of State Public Defender
610 N. Woody
Missoula, MT 59802

FURTHER the defendant, by and through counsel makes the following discovery request pursuant to the authority of §§46-15-322 and 327, MCA, the relevant federal and state constitutional provisions, and *Brady v. Maryland*, 373 U.S. 83 (1963), and *Kyles v. Whitley*, 514 U.S. 419 (1995). The defendant hereby requests that the State produce for inspection and copying, or provide copies of:

1. Any and all law enforcement agency reports concerning these charges.
2. All written or recorded statements signed or unsigned confessions, written summaries of oral statements of confessions made by defendant and/or witnesses to these offenses, including all informants and/or potential informants or cooperating witnesses who provided any information relevant to the charges against defendant.
3. All books, papers, documents, photographs, sound or video recordings and tangible objects which are intended for use by the prosecution as evidence at the trial or were obtained from or belong to defendant.

4. Copies of any writings, audio or videotapes recorded by any law enforcement official or other interested parties cooperating with investigating authorities dealing with all incidents out of which the charges arose, including but not limited to:

- a. law enforcement reports;
- b. law enforcement logs and detention facility logs;
- c. booking sheets;
- d. mug shots or photographs;
- e. witness statements;
- f. notes made by law enforcement officials to be used at trial; and
- g. all police reports relating to the other individuals acting in concert with the defendant.
- h. all audio or video recordings of in custody phone calls, video calls, 911 audio or transcripts or other conversations involving the defendant.
- i. all emails, letters, texts messages, or any other written statement made by the defendant including any electronic communications, and/or handwritten communication.

5. If photographs, sound or video recordings were taken of any matter relevant in this case:

- a. the name of the person who took the photographs or acted as the technician for sound or video recordings;
- b. the time the photographs, sound or video recordings were taken;
- c. the location at which they were taken;
- d. the present location of any photographs, sound or video recordings; and
- e. whether any photographs, sound or video recordings taken of the victim were subsequently altered, edited, destroyed or discarded and, if so, at whose direction or request was this action taken and, was it taken pursuant to any policy, procedure, guideline, or written direction.

6. Copies of any and/or all scientific reports in this matter, and all other related matters involving co-defendants, including but not limited to any notes, documents, raw test data, testing protocols and procedures, and any or all reports/rough drafts of reports produced by all experts, lab technicians or their employees who were or are involved in any manner with scientific testing, evaluation, observation or analyzing; and directing the preparation of reports by such individuals if in fact no identifiable reports were ever produced of the same; directing the state to

provide immediate advance notice of any testing or analysis to be performed; directing that no expert or other scientific personnel be allowed to testify to any matter not covered in the documentation provided to defendant counsel; and directing that no expert whose complete notes, reports and any other files and documentations of their work that was not timely provided to the defense be allowed to testify for the state for any purpose whatsoever at any proceedings to be held in this matter.

7. To produce for inspection and copying, when feasible, all items of physical evidence in its possession and control relevant in this matter, which include but are not limited to the following:

- a. all clothing, photographs, personal articles, and/or writings taken from the defendant; and
- b. any other items seized pursuant to any investigation performed in this matter.

8. Any other evidence obtained by observation of law enforcement or witnesses intended to be used against Defendant at trial that is not part of a written police report furnished to defendant counsel.

9. A written list of the names and addresses of all persons (including law enforcement officers) whom the prosecution expects to call as witnesses at the trial, together with the last known telephone numbers for all such individuals.

10. Names of any law enforcement officers or any other persons who informed the defendant of his Miranda rights and/or implied consent rights, including the times and places where the rights were given.

11. Names and addresses of any persons the prosecution intends to call as witnesses at the trial of this matter that may have information regarding the guilt or innocence of the defendant.

12. All reports or records of prior convictions of defendant, and reports or records of prior convictions of persons whom the prosecution expects to call as witnesses, including any informant referenced in this matter, and records of any youth court referrals of adjudications for, or any witnesses who are youths under the age of 18, or for adult witnesses who had such juvenile records.

13. Any and all material now known to the prosecution, or which may become known, or which through due diligence may be learned from the investigating officers or the witnesses in this case which is exculpatory in nature or favorable to defendant or which may lead to

exculpatory material. This request includes any evidence that would tend to negate the guilt of defendant, mitigate the degree of the offense, or reduce the punishment. It also includes any and all evidence tending to cast doubts on the veracity, bias and/or interest whatsoever of any witness in these proceedings, as so-called "impeachment" evidence, including any and all favors extended to any informants and/or state's witnesses by the state, federal authorities, or any agent of the state or other law enforcement authorities cooperating with the prosecution or agents of the government.

14. Any and all records and information revealing any defect or defects of the capacity of any of the state's witnesses to perceive, observe, recall or recount events, specifically including, but not limited to, all such records and information in any way related to or connected with the mental capacity, competency, alcohol or drug addiction, disease, mental disorder, diagnosis, counseling and/or prognosis of any such witnesses, which are known to the state or its agents, or which should have been discovered under the exercise of reasonable diligence. Specifically, and as to any informants, it is requested that any drug and/or alcohol addiction, or pattern/habit of taking illegal drugs of such individuals be disclosed.

15. Any and all other records of any witness and/or informant, available to the prosecution, including criminal investigative and/or court convictions, arrest, probation and/or parole, medical, psychiatric, psychological or social service records, files and/or information which arguably could be useful to the defendant in impeaching or otherwise detracting from the probative force/value of the State's evidence or which arguably could lead to such records or information, specifically including, but not limited to:

- a. anything which tends to indicate a defect or deficiency of character for truthfulness and/or to show partiality (prejudice, bias, motive, interest, and/or corruption) on the part of the witnesses;
- b. all statements, written or verbal, relative to the charges, made by the witnesses and/or informants, to law enforcement officers, probation or parole officers, licensed mental health professionals, or any other agents of the state or federal government involved in this case; and
- c. any and all information regarding personal relationships or acquaintances any law enforcement officer involved in these cases previously had, or currently has with any witness and/or informant, or any favor, benefit, or act of non-prosecution or failure to

investigate any potential criminal act such law enforcement officers have extended or are extending to such witnesses and/or informants.

MEMORANDUM OF AUTHORITY

Defendant's Request for Discovery is based upon § 46-15-322 through §46-15-329, MCA, the relevant federal and state constitutional provisions, and *Brady v. Maryland, supra*, and *Kyles v. Whitley, supra*. The requests made are done so with the intention of fully seeking all information discoverable under the above cited authority, and extends to information within the knowledge, possession and control of the state and federal authorities and all other agents, officers and/or informers who have participated in the investigation of this case.

Further, it is specifically requested that the State and its agents update this information as they receive new information, documents and evidence in this matter.

Dated this 13th day of February, 2020.

/S/JENNIFER STREANO

CERTIFICATE OF SERVICE

I, Robin B. Hammond, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice of Appearance and Request for Discovery to the following on 02-13-2020:

Matthew C. Jennings (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Melanie Dodge on behalf of Robin B. Hammond
Dated: 02-13-2020

MONTANA DISTRICT COURT
MISSOULA COUNTY

MINUTE ENTRY

Date: 02/13/2020 01:30 PM

Hearing Type: Initial Appearance

Case Number: DC-32-2020-0000070-IN

Presiding Judge: Shane Vannatta

State of Montana vs. Brandon Bryant
Charge(s):

Department: 5

Threats/Improper Influence In Official/Political Matters

Appearances: Presiding Judicial Officer: Shane Vannatta, Judge. Prosecution appears by Prosecution Attorney, Selene M Koepke. Attorney, Robin B. Hammond, appears with Defendant, Brandon Bryant. Also attending: Julie Pesanti Delong – Court Reporter; C.J. – Court Clerk.

The Defendant appeared by video from the Missoula County Detention Facility.

The Court advised the Defendant of the charges, maximum penalties, and rights and appointed the Office of the Public Defender. The State moved the Court to continue bail as set and Ms. Hammond moved the Court to set this matter for next week and release the Defendant to the Pretrial Supervision Program. The Defendant made a statement on his own behalf and requested admittance to Veteran's Court and release to his mother. The Court ordered the Defendant screened for the Pretrial Supervision Program, denied a bail reduction absent a more complete release plan, and set Arraignment for Thursday, February 20, 2020 at 1:30 PM.

Upon request of the State, the Court read the conditions of release; the Defense reserved objections to the same.

The Defendant was remanded into the custody of the Sheriff pending the posting of bond in the amount of \$100,000.00.

cc: Counsel

1 <MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY>

2 STATE OF MONTANA,
3 Plaintiff,
4 -vs-
5 Brandon Bryant
6 Defendant.

DEPT NO. 5

CAUSE NO. DC 20-70

7 ACKNOWLEDGMENT OF RIGHTS

8 I, Brandon Bryant, the Defendant in the above-entitled
9 cause, have read this document or my lawyer has read the document to me and I
10 fully understand what it says.

11 A. BIOGRAPHICAL INFORMATION

I make the following statements about myself:

- 12 1. My true name is Brandon Wayne Bryant
- 13 2. I am 31 years of age.
- 14 3. I can _____ cannot read the English language.
- 15 4. I can _____ cannot write.
- 16 5. I have 13 years of formal education.
- 16 6. I am currently on probation or parole for
N/A in N/A
(offense) (jurisdiction)

- 17 7. I _____ have _____ have not been treated for mental illness.
(List facts if you answered affirmatively)

- 18 _____
- 19 8. I _____ have have not been released on my own recognizance.

20 B. OFFENSES AND POSSIBLE PUNISHMENTS

21 My attorney has explained to me and advised me of the following, and I fully
22 understand that:

- 23 1. I am charged with the offense(s) of:
24 Count I Threats / Imperious Influence in Political
25 Count II: _____
26 Count III: _____
Matters

- 1 2. BWB The maximum possible punishment provided by law for the above-named offense(s) is:
2 Count I 10 years * MSP r. #50K
3 Count II N/A
4 Count III N/A
- 5 3. N/A If I am charged with more than one offense, the punishments can
6 be made to run concurrently (at the same time) or consecutively
7 (one after the other) for a total possible punishment of N/A
8 months/years in the County Jail/State Prison and/or \$ N/A fine.
- 9 4. BWB If I am found guilty, the court may order me to pay restitution and/
10 or costs, including costs of incarceration, costs of prosecution, and
11 the costs of my court-appointed attorney.
- 12 5. BWB If is possible for the sentencing Judge to order that I serve any
13 prison time without the possibility of parole or furlough.
- 14 6. N/A My sentence can be enhanced or lengthened because I used a
15 weapon in the commission of the offense. The minimum
16 enhancement is two years, and the maximum is ten.
- 17 7. N/A My sentence can be enhanced or lengthened because I have a
18 previous record of criminal offenses.
- 19 8. N/A The offense with which I am charged carries a mandatory minimum
20 prison sentence of N/A months/years unless the sentencing
21 Judge finds an exception to that minimum time.
- 22 9. BWB The Court may place restrictions on my eligibility for parole as well
23 as requirements to be performed during parole.

24 C. LEGAL RIGHTS

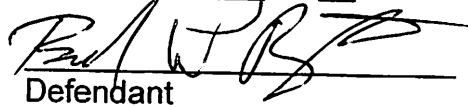
- 25 1. BWB I have the right to plead not guilty to any and all charges and to
26 persist in my plea of not guilty if a plea of not guilty has already
been made.
2. BWB I have the right to a speedy and public trial by jury on these
charges.
3. BWB I have the right to be represented by an attorney at every stage of
these proceedings, and if I cannot afford an attorney, one will be
appointed for me at no expense to me. If I plead guilty or am found
guilty I may have to pay the cost of my court appointed lawyer if
financially able.

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4. BWB At my trial, the State must prove my guilt beyond a reasonable doubt.
 5. BWB I have the right to remain silent and the State may not force me to testify or in any way incriminate myself.
 6. BWB At my trial, I have the right to testify on my own behalf, but if I do, I risk incriminating myself.
 7. BWB At my trial, I have the right to confront and cross-examine the witnesses presented by the State who testify that I committed the crime with which I am charged.
 8. BWB At my trial, I have the right to present witnesses and evidence on my behalf and I can compel the attendance of these witnesses by the use of subpoena at no cost to myself.
 9. BWB At my trial, I have the right to challenge the way in which the State has gathered its evidence against me.
 10. BWB At a trial, I understand that there is a chance that I might be found guilty of a lesser included offense (a less serious offense) which carries a lesser punishment.
 11. BWB I have the right to be released from custody on bail.
 12. BWB I have the right to plead guilty, and reserve the right on appeal to review the adverse determination of specified pretrial motions.

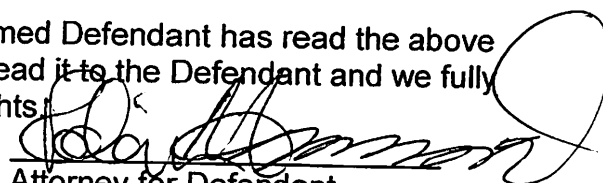
18 BWB *****
I have received a copy of the Information and I have read it or my lawyer has read it to me and I fully understand what it says and waive the reading of the Information.

19
20 BWB I have received a copy of this document and fully understand its contents.

21
22 DATED this 13th day of February, 2020

23 
Defendant

24
25 I certify that the above-named Defendant has read the above
document or that I have read it to the Defendant and we fully
discussed his/her legal rights.

26 
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Robin B. Hammond, hereby certify that I have served true and accurate copies of the foregoing Acknowledgment - Acknowledgment of Rights to the following on 02-14-2020:

Matthew C. Jennings (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Melanie Dodge on behalf of Robin B. Hammond
Dated: 02-14-2020

Robin B. Hammond
Office of the State Public Defender
Regional Office, Region 2
610 N. Woody
Missoula, MT 59802
Phone: (406) 523-5140

Attorney for Defendant

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

<p>STATE OF MONTANA, Plaintiff, v. BRANDON HOWARD BRYANT, Defendant.</p>	<p>Cause No. DC-20-70 MOTION TO DISMISS</p>
---	--

COMES NOW, Brandon Howard Bryant (hereinafter “Mr. Bryant”), by and through his counsel of record, Robin B. Hammond, and hereby respectfully moves the Court to DISMISS the above-captioned matter. Dismissal is necessary because the Affidavit fails to articulate an offense, thereby depriving Mr. Bryant of his substantive and procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article II, Section 17 of the Montana Constitution. Further, dismissal is also appropriate because the statute under which Mr. Bryant has been charged violates his right to free speech under the First Amendment to the United States Constitution and Article II, Section 7 of the Montana Constitution; it is overbroad on its face and as applied to Mr. Bryant; and it is vague as applied to Mr. Bryant.

Procedural History

On February 7, 2020, the Missoula County Attorney’s Office filed a felony criminal complaint, charging Mr. Bryant with a single count of Threats / Improper Influence in Official and Political Matters, alleging violation of Mont. Code Ann. § 45-7-102, a felony. Accompanying the complaint was an Affidavit of Probable Cause, also filed on February 7, 2020. That affidavit refers to statements that Mr. Bryant made at two Missoula City Council meetings¹ and to a video that was found on YouTube. The affidavit acknowledges, “[w]hile it is

¹The November 18, 2019 Missoula City Council video can be accessed at the following link: <https://pub-missoula.escribemeetings.com/Players/ISiStandAlonePlayer.aspx?ClientId=missoula&FileName=New%20Encoder>

unclear who [Mr. Bryant] is next [sic] referring to the video, Mr. Bryant states he will hunt people and exterminate them, that he will eliminate ‘wretched filth.’ ” (See Affidavit, at p. 3:3-4). The affidavit goes on to quote extensively from the undated YouTube video, without ever articulating who actually posted the video, who created YouTube account associated with the video, the context of the video, the IP address² associated with the video, or any other critical, identifying information that would provide fundamental assurance of the video’s accuracy.

In addition, the Affidavit requests an arrest warrant for Mr. Bryant in the amount of \$100,000, justifying this request, in part, based upon the assertion that “Defendant’s whereabouts are unknown.” (See Affidavit, at p. 4:1). It should be noted that the statutory maximum fine amount associated with the charge requested is \$50,000.

Factual History

Mr. Bryant, a decorated veteran of the United States Air Force, is a well-known international advocate.³ He was described by Rolling Stone magazine as “[p]erhaps the world’s most famous drone program whistleblower” in a February 16, 2016 article.⁴ His international advocacy has been focused on objection to the drone program adopted by the United States military, which has been used to kill hundreds, if not thousands, of people living overseas using military drones operated by military service members. Over the years, and through his international advocacy, Mr. Bryan has objected to the dehumanizing effect of drone operations and has been very open about the post-traumatic stress that he has experienced as a result of his

[City%20Council%20Meeting_2019-11-18-08-55.mp4](#). Mr. Bryant’s statement begins at 30:16. In summary, Mr. Bryant can be heard on the video vigorously objecting to the proposed “TIF” or Tax Incentive Financing project that the Missoula City Council granted to a wealthy local developer. The meeting is adjourned when Mr. Bryant yells, for emphasis, “You are a rich man!” Notably, there are no threats of any kind made by Mr. Bryant at the meeting.

The January 8, 2020 Missoula Committee of the Whole meeting can be accessed at the following link: https://pub-missoula.escribemeetings.com/Players/ISISStandAlonePlayer.aspx?ClientId=missoula&FileName=New%20Encoder%20Committee%20of%20the%20Whole_2020-01-08-12-33.mp4. Mr. Bryant’s statement begins at 8:41. Again, Mr. Bryant makes a statement in objection to the TIF financing. He uses a walking stick as an attempt to illustrate that “an imperfect tool” cannot be used to adequately accomplish a correct result – a point that he was attempting to make to the Council members about trickle-down economics and TIF financing. There was no threat of any kind made at the meeting.

² According to Wikipedia, “An Internet Protocol address (IP address) is a numerical label assigned to each device connected to a computer network that uses the Internet Protocol for communication. An IP address serves two main functions: host or network interface identification and location addressing.”

³ Mr. Bryant’s Wikipedia page can be found via the following link: [https://en.wikipedia.org/wiki/Brandon_Bryant_\(whistleblower\)](https://en.wikipedia.org/wiki/Brandon_Bryant_(whistleblower)).

⁴ <https://www.rollingstone.com/culture/culture-news/the-untold-casualties-of-the-drone-war-67029/>

involvement in the drone program. He has co-authored books, has received international acclaim for his whistleblowing efforts, has been featured in two award-winning documentaries for his efforts, has testified before political bodies, including Germany's parliament (the Bundestag), and has presented a TEDx talk⁵ on the subject.

Because of the backlash from members of the military, from some veterans' groups, and from others, Mr. Bryant has had to engage the professional services of acclaimed First Amendment attorney, Jesselyn Radack, in order to protect his rights relative to his whistleblowing efforts.⁶ Also, as a result of his status, Mr. Bryant has been the subject of what can only be described as cyberstalking by one individual, in particular – a man who has previously been accused of stalking others who have spoken out against politically charged people and programs – Rick Rynearson.⁷ This is all information that was provided to the Missoula Police Department and is referenced in the police report provided to the undersigned in discovery; however, there is no meaningful information about these facts contained in the affidavit in support of probable case presented to this Court.

Legal Argument

Constitutionally Infirm Charging Process

In Montana, Mont. Code Ann. § 46-11-201 outlines the procedure required for an information to be filed:

- (1) The prosecutor may apply directly to the district court for permission to file an information against a named defendant. If the defendant named is a district court judge, the prosecutor shall apply directly to the supreme court for leave to file the information.
- (2) An application *must be by affidavit supported by evidence* that the judge or chief justice may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge or chief justice shall grant leave to file the information, otherwise the application is denied.
- (3) When leave to file an information has been granted, a warrant or summons may issue for the defendant's arrest or appearance.

⁵ <https://www.youtube.com/watch?v=Mr7LThSL3Lo>

⁶ Ms. Radack has also represented several other high-profile whistleblowers who have previously spoken out against the United States military, including Edward Snowden and Thomas Drake.

⁷ A Seattle Sun-Times article about Mr. Rynearson can be accessed at the following link:

<https://www.seattletimes.com/seattle-news/federal-judge-blocks-washington-state-cyberstalking-law/>.

- (4) When leave is granted to file an information against a district court judge, the chief justice shall designate and direct a judge of the district court of another district to preside at the trial of the information and hear and determine all pleas and motions affecting the defendant under the information before and after judgment. All necessary records must be transferred to the clerk of the district court of the district in which the action arose.

Mont. Code Ann. § 46-11-201 (emphasis added).

Many jurisdictions require a contested preliminary examination before an individual may be charged with a felony offense; however, the United States Supreme Court has made clear that such a hearing is not required by the tenants of due process, so long as the information provided to the court of jurisdiction is offered in a manner that ensures the probable cause determination is based upon accurate and fair information:

Although we conclude that the Constitution does not require an adversary determination of probable cause, we recognize that state systems of criminal procedure vary widely. There is no single preferred pretrial procedure, and the nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole. While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the States. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer, see *McNabb v. United States*, 318 U.S., at 342-344, or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release. In some States, existing procedures may satisfy the requirement of the Fourth Amendment. Others may require only minor adjustment, such as acceleration of existing preliminary hearings. Current proposals for criminal procedure reform suggest other ways of testing probable cause for detention. Whatever procedure a State may adopt, ***it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty***, and this determination must be made by a judicial officer either before or promptly after arrest.

Gerstein v. Pugh (1975), 420 U.S. 103, 123-25 (emphasis added).

In Montana, the right to this “fair and reliable determination of probable cause” exists in requiring that the information be provided to the appropriate district court in the form of a sworn affidavit provided by a prosecutor, who is an officer of the Court, a member of the Bar, and a representative of the State of Montana. This method of presenting information to the Court presumes that any affidavit filed shall conform with the basic rules of professional responsibility attending the practice of law and with the law, itself.

Here, Mr. Bryant is charged with felony violation of Mont. Code Ann. § 45-7-102. That statute reads, in pertinent part, as follows:

- (1) A person commits an offense under this section if the person purposely or knowingly:
 - (a)
 - (ii) threatens harm to any public servant, to the public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the public servant's decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;
- (2) It is no defense to prosecution under subsections (1)(a)(i) through (1)(a)(iv) and (1)(b) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because the person had not yet assumed office or lacked jurisdiction or for any other reason.
- (3) A person convicted under this section shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

Mont. Code Ann. § 45-7-102 (LexisNexis, Lexis Advance through the 2019 regular session, 66th Legislature)

The Montana Criminal Jury Instructions Commission has outlined the appropriate jury instruction for a charge under this statute, in pertinent part, as follows:

To convict the Defendant of the charge of threat and other improper influence in **[official] [political]** matter, the State must prove the following elements:

1. That the Defendant threatened harm to **(any person) (the person's spouse, child, parent, or sibling) (the person's property)**;
- AND**
2. That the Defendant did so with the purpose to influence the **(decision) (opinion) (recommendation) (vote) (other exercise of discretion)** as a **(public servant) (party official) (voter)**;
- AND**
3. That the Defendant acted purposely or knowingly.

MCJI 7-102(a) (2009).

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“[F]air and reliable determination of probable cause”

Two of the required elements associated with this charge are: (1) that the alleged act was committed “with the purpose to influence” and, further, (2) that any alleged act was done “purposely or knowingly”. The obvious concern here is that, although the Affidavit mentions Mr. Bryant’s disclosure that the YouTube account precipitating the charge belongs to another individual who had been stalking Mr. Bryant, (*see* Affidavit at p. 3:19-21), there is absolutely no context regarding significance of that disclosure upon which the Court can make a meaningful probable cause evaluation. The Affidavit notes that Mr. Bryant made statements objecting to the politically controversial subsidies given to wealthy developers at Missoula City Council meetings – a fact that is easily verifiable by the investigating police officer through witness interviews and videos of the meetings. What the Affidavit fails to disclose is the devastating and misleading omission of fact associated with Mr. Bryant’s international celebrity and the conjecture without proof that Mr. Bryant created the YouTube account and video here at issue. (*See* Affidavit at p. 3:14-16).

This statement – essentially a conclusion without proof – exposes a glaring inaccuracy in the way that the allegations have been presented to this Court. Were this case to have proceeded by way of a grand jury investigation – or by way of a preliminary hearing – the prosecution would have to follow basic rules of evidence to support the allegation that the YouTube account here at issue was associated with Mr. Bryant.⁸ The affidavit circumvents this process – and the omission about the lack of investigation relative to the origination of the YouTube account and video at issue in the Affidavit prevents this Court from having before it the information about who created the video at issue, when the video was created, and what the IP address associated with the video was. All of this information should have been obtained via a search warrant and / or investigative subpoena by the investigating agency in the course of a normal, competent investigation in order to properly evaluate the credibility of information posted on an internationally utilized social media platform prior to charging a crime of any kind.

⁸ *See*, generally, Mont. R. Evid. 802 and 803.

Instead, the statements made by Mr. Bryant about being the subject of cyberstalking activity were not investigated and are included in the Affidavit without appropriate context. There was no information or investigation relative to the creation of the YouTube account. There was absolutely no mention in the affidavit of Mr. Bryant's international celebrity, which would have given important context and credence to his statements about the cyberstalking activities of Mr. Rynearson, who is also the suspected creator of the offending YouTube video and owner of the offending YouTube account.

These glaring omissions have prevented the "fair and reliable determination of probable cause" that is mandated by the United States Supreme Court from happening in this case, the result of which has been multiple and compounding violations of Mr. Bryant's constitutional rights.

Remedy for Deficient Charging Process

Based upon the misleading and incomplete information contained in the Affidavit filed in support of the prosecution's Motion for Leave to file an Information in this case, Mr. Bryant respectfully requests that this Court reevaluate probable cause in this case.

The Montana Supreme Court has affirmed a district court's dismissal of an information without prejudice, upon a defendant's motion to strike information on the basis that the supporting affidavit alleged insufficient facts to support a finding of probable cause. *State v. Renz*, 192 Mont. 306, 307, 628 P.2d 644, 644 (1981); *State v. Thompson*, 243 Mont. 28, 30, 792 P.2d 1103, 1105 (1990). Likewise, the Montana Supreme Court has affirmed a district court's denial of a State's motion for leave to file information on the basis that the accompanying affidavit's facts were insufficient to support a finding of probable cause. *State v. David*, 266 Mont. 365, 369, 880 P.2d 1308, 1310-11 (1994).

State v. Sutton, 2004 ML 2664, ¶ 13.

With the inaccurate and unreliable material excised from the prosecution's Affidavit about the YouTube account, it is clear that the Affidavit fails to properly assert that a crime has occurred, which indicates that this court lacks jurisdiction to hear this felony case.

Violation of Right to Free Speech

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. I.

“No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.” Mont. Const. Art. II. § 7.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution binds the States to the guarantees of the First Amendment. *City of Whitefish v. O’Shaughnessy*, 216 Mont. 443, 438, 704 P.2d 1021, 1024 (1985). Constitutional guarantees of free speech “forbid the States to punish the use of words or language not within ‘narrowly limited classes of speech.’” *Gooding v. Wilson*, 405 U.S. 518, 521-22 (1972) (quoting *Chaplinski v. New Hampshire*, 315 U.S. 568, 571 (1942)). Although certain types of speech may be regulated, regulating statutes may not violate free speech protections by being vague or overbroad. See *O’Shaughnessy*, 216 Mont. at 440-41, 704 P.2d at 1025.

Under the First Amendment “the vast majority of speech is protected.” *State v. Lance*, 222 Mont. 92, 102, 721 P.2d 1258, 1265. However, courts have adopted limited categorical exceptions to protected speech where speech may be regulated because of proscribable content. *R.A.V. v. St. Paul*, 505 U.S. 377, 383 (1992). The categorical exceptions to protected speech are both “few”, *Cohen*, 403 U.S. at 19, and “limited.” *United States v. Stevens*, 559 U.S. 460, 468, 130 S.Ct. 1577, 1584 (2010). These unprotected categories are “obscenity,” *Roth v. United States*, 354 U.S. 476, 45 (1957), “fighting words,” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942); see also, *O’Shaughnessy*, 216 Mont. at 438-439, 704 P.2d at 1024, and “true threats.” *State v. Lance*, 222 Mont. at 102, 721 P.2d at 1266.

The “true threats exception” does not apply to this case.

“True threats’ encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *State v. Dugan*, 2013 MT 38, ¶ 26, 369 Mont. 39, 303 P.3d 755 (quoting *Virginia v. Black*, 538 U.S. 343, 359, 123 S.Ct. 1536, 1548 (2003)). When interpreting true threats in terms of the Montana intimidation statute, the Court in *Lance* held that “only serious expressions of an intention to take a hostage, murder, inflict serious injuries on persons or

property, or commit a felony, for the purpose of accomplishing some end constitute a threat punishable under the statute. *Lance*, 222 Mont. at 104, 721 P.2d at 1267. However, this an objective standard, determined by the trier of fact. *Id.* (internal citations omitted) “A “true threat” must be communicated under circumstances which reasonably tend to produce fear that the threat will be carried out. *State v. Ross*, 269 Mont. 347, 359-60, 889 P.2d 161, 168 (1995), citing *Lance*, 222 Mont. at 104, 721 P.2d at 1266.

In *Lance*, the defendant believed there was a conspiracy against him in his divorce proceeding in which he lost custody of his child and a substantial amount of property, and so he sent a series of letters to judges and others specifically threatening violence and that he would take a hostage if he did not get what he wanted. *Lance*, 222 Mont. at 96-97, 721 P.2d at 1261-62. The Court held that these repeated writings constituted a serious threat to take a hostage, and upheld his intimidation conviction. *Lance*, 222 Mont. at 104, 721 P.2d at 1267. “Furthermore,” the Court held, “the [intimidation] statute is narrowly tailored to accomplish the State's asserted purpose—caustic, abusive, and robust speech is fully protected until it rises to the level of threats which cause harm to society.” *Lance*, 222 Mont. at 105, 721 P.2d at 1267.

In another intimidation case interpreting the true threats doctrine, the Court found that repeated, specific threats of murder and arson against a particular doctor and her abortion clinic constituted true threats. *Ross*, 269 Mont. at 357, 889 P.2d at 167. Michael Ross was a “right to life” advocate who sent multiple threatening letters to a Bozeman doctor who performed abortions. *Id.*, 269 Mont. at 351, 889 P.2d at 163. In his letters, Ross graphically described the abortion procedure, that—like the violence done to unborn babies in an abortion—the doctor should be torn limb from limb and have her head crushed, and that he would shut her clinic down or die trying. *Id.* In his letters, Ross also referenced a Florida abortion doctor who was recently murdered, and the burning of a Missoula abortion clinic, insinuating that such violence could happen to her or her clinic. *Id.*

In *Spottedbear*, the Court found there was sufficient evidence supporting an improper influence charge where the defendant repeatedly threatened to kill the arresting officer and his wife. *State v. Spottedbear*, 2016 MT 243, ¶ 33, 385 Mont. 68, 380 P.3d 810. A disturbance at Walmart led to Gale Spottedbear’s arrest, and when the officer informed Spottedbear that he intended to charge him with disorderly conduct and criminal trespass, Spottedbear became

belligerent. *Id.* at ¶ 4. Spottedbear brought up a previous incident in which he assaulted the officer. *Id.* He also yelled multiple times that “I will fucking kill you, your fat wife and your whole family.” *Id.* at ¶ 30. The Court, viewing the evidence in the light most favorable to the prosecution, found sufficient evidence for a rational trier of fact to support the charge, and upheld the jury’s conviction for improper threats. *Id.* at ¶ 33.

Unlike repeated threats to kill a specific public servant and their family, repeated threats to mutilate someone and burn their place of business, or repeated threats to take a hostage and commit violence, merely cursing at someone in the heat of the moment is not a true threat. In *State v. Dugan*, Randall Dugan called a social worker a “fucking cunt” through the telephone, because he was upset with her for not receiving the help he wanted with an order of protection. *Dugan*, at ¶ 9. The Court held that Dugan’s speech was not a constitutionally unprotected true threat, because it was “not a statement meant to communicate an intent to commit an act of unlawful violence.” *Id.*, at ¶ 48.

Here, Mr. Bryant’s speech does not fall under the true threats exception to free speech protection. Notably, there was no threat directed to anyone. This is acknowledged in the Affidavit, itself (*see*, Affidavit, at p. 3:3-4 “[w]hile it is unclear who he is next referring to [sic] the video . . .”). Essentially, the Affidavit, on its face, acknowledges the constitutional infirmity associated with the allegations in this case.

Mont. Code Ann. § 45-7-102(1) is overbroad on its face and as applied to Mr. Bryant.

“A statute may be deemed constitutionally overbroad if it includes within its scope conduct that is protected by the First Amendment.” *Spottedbear*, ¶ 7 (citing *Dugan*, ¶ 52.) The crucial question in determining whether a statute is overbroad is whether the statute sweeps within its prohibitions what may not be punished constitutionally. *O’Shaughnessy*, 216 Mont. at 440, 704 P.2d at 1026. “[T]he First Amendment needs breathing space and [] statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society.” *Broadrick v. Oklahoma*, 413 U.S. 601, 611-12 (1973). The test for overbreadth “is not whether hypothetical remote situations exist, but whether there is a significant possibility that the law will be unconstitutionally applied.” *Spottedbear*, ¶ 16. (internal citations omitted). “In short, there must be a realistic danger that the statute itself will

significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds.” *Id.*

Legislative History

When originally enacted in the Montana Criminal Codeⁱ, this statute was intended to broaden the classes of people that would be protected from threats influencing their public service. The Annotator’s Note to the 1973 enactment provides:

This section concerning improper influencing of official matters prohibits conduct not covered by the preceding section on Bribery and is directed toward the improper influencing of public servants, party officials, jurors or voters by threat or private communication. The effect of this section is to broaden prior law to cover classes of persons who were not previously clearly protected against attempt to exert improper influence by these means. Subsection (1)(a) is all inclusive in prohibiting the use of threats to influence the exercise of discretion by all public servants or public official or to influence a private citizen in the exercise of his franchise.

The next time the statute was substantively amended was more than twenty years later, and again the legislative intent was to broaden the classes of people that would be protected by the statute. The 1995 amendment—which represents the current version—extended the offense to include threats of harm to an official’s “spouse, child, parent, or sibling, or the person's property.” Laws 1995, ch. 351, § 1. (H.B. No. 347). That legislation revised the penalty to provide that all offenses under 45-7-102 could face a maximum penalty of \$50,000 or 10 years imprisonment, and it also increased the maximum penalty for impersonating a public servant. *Id.*

The impetus for the 1995 amendment came from the actions of the Montana Freemen and other so-called militia groups who terrorized Judges, clerks and recorders, citizen legislators, and other public servants. Senate Judiciary Committee Hearing on H.B. 347, March 8, 1995, beginning on page 13 (accessed online on January 31, 2020 <https://courts.mt.gov/portals/189/leg/1995/mar08-sjud.pdf>.) Several people who testified in favor of the bill had personally received death threats directed at them and their families from the Freemen and other anti-government militants. *Id.* The Freemen also created their own courts, issued warrants, and asserted that their courts had jurisdiction over state and federal courts. The 1995 bill also increased the maximum penalty for impersonating a public servant to capture the Freemen’s pseudo courts and assertions of government authority. Testimony in favor of the bill almost exclusively related to repeated violent threats from the Freemen and other similar groups.

Although the legislature's concern in 1995 was caused by violent threats from people and groups who were well known for their violent ideology, rejection of government authority, and access to firearms and ammunition, the language of 45-7-102 criminalizes more. What it means to threaten harm with the purpose to influence a public official's discretion could encapsulate conduct and speech protected by the first amendment. Many things could be considered a "threat," which "means a menace, however communicated, to:

- (a) inflict physical harm on the person threatened or any other person or on property;
- (b) subject any person to physical confinement or restraint;
- (c) commit a criminal offense;
- (d) accuse a person of a criminal offense;
- (e) expose a person to hatred, contempt, or ridicule;
- (f) harm the credit or business repute of a person;
- (g) reveal information sought to be concealed by the person threatened;
- (h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;
- (i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or
- (j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

Mont. Code Ann. § 45-2-101(76) (2019).

"'Harm' means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested." Mont. Code Ann. § 45-2-101(27) (2019). Although "§ 45-7-102(1)(a)(i), MCA, serves a plainly legitimate purpose—to deter people from threatening harm to a public servant in order to influence that person's actions as a public servant" (*Spottedbear*, at ¶ 17), the statute sweeps within its prohibitions constitutionally protected free speech.

A concerned citizen may say to his city council member that he will not support them in the next election if the council member does not vote a certain way. This lack of political support would be a disadvantage to the council member's welfare, and the citizen's conduct could be charged under the statute. That same citizen could be charged under this statute for asserting their willingness to post a critical op-ed in the newspaper if the council member does not vote their way, because it could harm the council member's reputation and influence their decision.

However, this speech is clearly an exercise of political expression, protected under the Montana and United States Constitutions, and there is a very real possibility that this statute could be used to criminalize protected speech. 45-7-102(1) is thus facially overbroad.

Here, the charges that have been levied against Mr. Bryant appear to be the worst kind of charges that could be brought: the charges directly impact Mr. Bryant's right to speak out against policies adopted by the Missoula City Council. Furthermore, given the glaring violation of Mr. Bryant's procedural due process rights attending the charging process here, as discussed, *supra*, the impact on his First Amendment rights is compounded. Nothing that was said or done at the Missoula City Council hearings by Mr. Bryant constituted a "true threat." No investigation was done regarding the YouTube account here at issue. Despite this, Mr. Bryant's liberty has been restrained because he previously spoke out at Missoula City Council hearings. The end result of this – felony charges and pre-trial incarceration with extraordinarily high bail – is a constitutional violation of an extraordinary level.

Mont. Code Ann. § 45-7-102(1) is vague as applied to Mr. Bryant.

It is a basic principal of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *O'Shaughnessy*, 216 Mont. at 440, 704 P.2d at 1025. Vagueness and overbreadth are "related concepts" that are "often spoken of together." *Id.* The void for vagueness doctrine requires that "laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited" in order to prevent vague laws that "trap the innocent by not providing fair warning." *Id.* Laws must provide "explicit standards" for their application to prevent arbitrary and discriminatory enforcement. *Id.* They cannot delegate "basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis . . ." *Id.*

Vagueness "raises special First Amendment concerns" because vague laws may encourage speakers "to remain silent rather than communicate even arguably unlawful words, ideas, and images." *Reno*, 521 U.S. at 871-71. Vague laws "inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden area were clearly marked." *O'Shaughnessy*, 216 Mont. at 440, 704 P.2d at 1026. A vagueness challenge to a statute may be raised on either the basis that the statute is so vague it is rendered void on its face, or on the basis

that the statute is vague as applied to a particular situation. *Dugan*, 2013 MT 38 at ¶ 66. While a failure to include exhaustive definitions of every term in a statute will not automatically render the statute vague, the meaning of the statute must be clear and provide a defendant with sufficient notice as to what conduct is proscribed. *Id.* at ¶ 69.

Although the Court clarified what it means to show “purpose to influence” in *Spottedbear*, under the improper threats statute, it is unclear how that applies here. “To show purpose... [t]he State had the burden of proving beyond a reasonable doubt that Spottedbear not only threatened Officer Walker with harm, but that he did so with the conscious object to influence Officer Walker’s actions as a public servant.” *Spottedbear*, at ¶ 23; Mont. Code Ann. 45-2-101(65).

Here, as detailed above, there is no indication that any threats were directed to a particular person. Again, this is a fact that is recognized in the Affidavit as noted above. There is no indication that a specific threat has been made, or to whom any such threat has been directed. Most glaring here is the fact that nothing was actually directed to any individual. No letter was sent, no email was forwarded, no text was forwarded. Instead, a spliced video was placed on an internationally utilized social media platform, YouTube, by an unknown party using a username that Mr. Bryant specifically states is not his. Putting all of the procedural due process concerns aside, a video placed onto a social media platform – located by an individual as the result of what appears to be a general search of Mr. Bryant’s name on the internet (*see* Affidavit at p. 2:14-15) – does not demonstrate the requisite “purpose to influence” discussed above.

Conclusion

Accordingly, based upon the foregoing points and authorities, Mr. Bryant respectfully requests that this Court DISMISS the above-captioned case now pending before this Court.

Respectfully submitted this 20th day of February 20, 2020.

/s/ Robin B. Hammond
Attorney for Brandon Bryant

ⁱ **M.C.C. 94-7-103 (1973). Threats And Other Improper Influence in Official and Political Matters.** (1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter;

CERTIFICATE OF SERVICE

I, Robin B. Hammond, hereby certify that I have served true and accurate copies of the foregoing Motion to Dismiss - Motion to Dismiss With Prejudice to the following on 02-20-2020:

Jacob Daniel Coolidge (Attorney)
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Service Method: eService

Electronically Signed By: Robin B. Hammond
Dated: 02-20-2020

MONTANA DISTRICT COURT
MISSOULA COUNTY

MINUTE ENTRY

Date: 02/20/2020 01:30 PM

Hearing Type: Arraignment

Case Number: DC-32-2020-0000070-IN

Presiding Judge: Shane Vannatta

**State of Montana vs. Brandon Bryant
Charge(s):**

Department: 5

Threats/Improper Influence In Official/Political Matters

Appearances: Presiding Judicial Officer: Shane Vannatta, Judge. Prosecution Attorney, Matt Jennings. Public Defender Attorneys, Robin B. Hammond and Jacob Coolidge, appear with Defendant, Brandon Howard Bryant. Also attending: Julie Pesanti Delong, Court Reporter; M.E. Court Clerk.

The Court directed the State will have until Friday, February 28, 2020 to file the response to the Motion to Dismiss and the Defendant's response will be due by March 6, 2020. Ms. Hammond advised the Acknowledgment of Rights has previously been filed. Counsel for the Defendant requested bond be reduced which was opposed and denied. The State requested the Defendant receive a mental health evaluation and be screened for pre-trial supervision. Mr. Coolidge advised the Defendant is involved with case managers, is seeking treatment through the Veteran's Administration, is currently on disability and advised of a potential release plan. The State requested the mental health evaluation be provided to the Court prior to any ruling.

Upon inquiry the Defendant advised that he understands his rights, that he has no outstanding questions, and waived the reading of the Information. The Defendant entered his plea of 'Not Guilty' to Count I as set forth in the Information.

The Court ordered bond is to remain at one-hundred thousand dollars (\$100,000.00), the Defendant is to be screened by pre-trial supervision and if the Defendant agrees, he may receive a mental health evaluation. The Court further ordered if there is a prior evaluation it may be filed under seal. The omnibus hearing is set for Thursday, February 27, 2020 at 2:00 PM.

Counsel for the Defendant requested a jury setting be established which was not opposed and granted. The jury trial will be **Monday, April 27, 2020 at 9:00 AM**, the final pre-trial conference will be held **Thursday, April 2, 2020 at 2:00 PM** and the jury instruction conference will be held **Friday, April 24, 2020 at 9:00 AM**. Jury instructions are due by Friday, April 17, 2020 with any objections due by Thursday, April 23, 2020.

MONTANA DISTRICT COURT
MISSOULA COUNTY

MINUTE ENTRY

Date: 02/27/2020 02:00 PM

Hearing Type: Omnibus

Case Number: DC-32-2020-0000070-IN

Presiding Judge: Shane Vannatta

State of Montana vs. Brandon Bryant

Department: 5

Charge(s):

Threats/Improper Influence in Official/Political Matters

Appearances: Presiding Judicial Officer: Shane Vannatta, Judge. Also attending Julie DeLong, Court Reporter; Donna Duffy, Court Clerk.

Deputy County Attorney Matt Jennings and co-counsel for the Defendant Jake Coolidge, came into court, this being the time set for omnibus proceedings. The Defendant with co-counsel Robin Hammond appeared by video conference from the Missoula County Detention Center.

Thereupon, a discussion was held regarding the Omnibus Hearing Memorandum, which the Court then directed counsel to have filed.

Thereafter, the Court heard oral argument from respective counsel as to the Defendant's release on his own recognizance or a reduction in bail. Counsel for the Defendant presented the Court with letters of support for the Defendant and requested they be made part of the record. After further discussion between counsel and the Court, the Court ordered that bond remains as set in the amount of \$100,000.00 and advised counsel it wants confirmation whether mental health is an issue in this matter.

Thereafter, the Court advised the next appearance date remains the final pre-trial conference on **Thursday, April 2, 2020 at 1:30 P.M.** and the Defendant was remanded into the custody of the Sheriff.

cc: Matt Jennings, CA
Jake Coolidge, PD
Robin Hammond, PD

Robin B. Hammond
Office of State Public Defender
Regional Office, Region 2
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Missoula, MT 59802
Phone: (406) 523-5140

Attorney for Defendant

**MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA**

STATE OF MONTANA, Plaintiff, v. BRANDON HOWARD BRYANT, Defendant.	Cause No. DC-20-70 MOTION FOR BAIL REDUCTION
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Defendant Brandon Howard Bryant (hereinafter “Mr. Bryant”), by and through counsel, respectfully requests that this Court reduce the bail currently set in the above-captioned case and offers this written motion in support of the argument to be presented at hearing on Thursday, February 27, 2020. *See* § 46-9-311, MCA. Defendant cannot afford bail in the amount currently set and believes consideration of additional facts and points of authority outlined, *infra*, in addition to facts presented at hearing justify reduction of the bail amount.

Matt Jennings, the Prosecuting Attorney, has previously indicated that he objects to a reduction in the bail amount currently set. motion.

Procedural History

On Friday, February 7, 2020, the Missoula County District Attorney’s Office, proceeding by way of direct filing,¹ filed a motion with this Court requesting leave to file an Information. This Court granted leave to file the Information on Monday, February 10, 2020, and also issued an arrest warrant for Mr. Bryant that same date in the amount requested by the County Attorney’s Office: \$100,000.00. That warrant was served the next day and Mr. Bryant has remained in custody in the Missoula County Detention Facility, since his arrest on Tuesday, February 11, 2020.

Mr. Bryant first appeared before this court, by video, from the Missoula County Detention Facility, on the afternoon of February 13, 2020. At this time, this Court appointed the State Office

¹ *See*, generally, Mont. Code Ann. § 46-11-201.

of the Public Defender to Mr. Bryant's case. It should be noted that counsel was present in court when appointed, so could not have personal contact with Mr. Bryant at that hearing prior to making any sort of bond argument. In addition, it should be noted that, when undersigned counsel appeared with Mr. Bryant on February 13, 2020, no documents associated with Mr. Bryant's case were provided to counsel for use at the hearing. In other words, counsel was not provided copies of the charging document, the affidavit accompanying the charging document, the Pretrial Screening Assessment² ("PSA"), a criminal history report, or any discovery materials. This Court advised counsel at the February 13, 2020 hearing that Mr. Bryant's PSA score was "Level I, Passive."

Over the video live stream to the courtroom, Mr. Bryant repeatedly attempted to explain that he was a victim of cyberstalking related to Mr. Bryant's status as a Department of Defense whistleblower. Mr. Bryant also advised the Court that he was a veteran and was receiving service-related health benefits from the VA and asked to appear in Veteran's Court. At that hearing, this Court ordered that bail remain as set, at the \$100,000.00 level requested by the County Attorney in the arrest warrant, and put the case over one week, to February 20, 2020, for further bail hearing.

At the February 20, 2020 hearing, several issues were raised by Mr. Bryant in support of release from custody, including Mr. Bryant's lack of criminal history, his "Level I, Passive" PSA score, a release plan which would have him living at his mother's home,³ as well as the general weakness of the charges at issue in this case. In addition, Mr. Bryant noted the litany of stark constitutional violations attending the charging process in this case and the amplification of those violation by Mr. Bryant's continued pretrial detention. In response to the arguments, opposing counsel repeatedly objected to information and constitution argument presented by Mr. Bryant, arguing that such information was not relevant to the bail argument. Ultimately, this Court kept bail as set and ordered that Mr. Bryant be screened by Missoula Correctional Services, Inc., and that he undergo a mental health evaluation, which evaluation shall be disclosed to both the Court and to the prosecution.

Mr. Bryant objected to both the screening and the evaluation numerous constitutional grounds, detailed *infra*. Further bail hearing is set for today's date.

² The PSA prepared in this case is attached hereto as Exhibit A.

³ As noted at hearing, Mr. Bryant's mother, a high school teacher in Missoula, was present in court on that date to confirm the plan.

On advice of counsel, Mr. Bryant has declined to participate in the interview with pretrial, based upon constitutional objections detailed herein. The defense also objects to disclosure of any mental health evaluation as a prerequisite to a bail reduction on the same legal grounds.

Factual Summary

The undersigned incorporates by reference all of the information discussed about the facts and circumstances attending the charges in the above-captioned case detailed in Mr. Bryant's previously filed Motion to Dismiss, filed in this Court on February 20, 2020. In addition, the undersigned offers following, additional information for the Court's review:

Missoula Police Officer Ethan Smith conducted an investigation in this case and, in his report, has provided background information about Mr. Bryant's lifelong ties to Missoula, about Mr. Bryant's status as an internationally recognized United States military whistleblower, and about Mr. Rynearson's connection to this case. (*See* Officer Smith's reports, redacted to protect address and phone number information, attached hereto as Exh. B). The report provides credence to Mr. Bryant's statements about Mr. Rynearson's involvement in dissemination of an edited portion of a private video through Mr. Rynearson's YouTube account, which is at the heart of the allegations at issue in this case.

In fact, after meeting and repeatedly communicating with Mr. Bryant, Officer Smith consulted with another officer in Washington State and ultimately concluded that there did not appear to be any credible, chargeable threat by Mr. Bryant – or by Mr. Rynearson.⁴

Legal Argument

In Montana, the statutory scheme adopted by the Montana Legislature to address the issue of bail in criminal cases is found at Mont. Code Ann. § 46-9-301. The full text of that statute is as follows:

In all cases in which bail is determined to be necessary, bail must be reasonable in amount and the amount must be:

⁴ It should be noted that the undersigned is aware of the fact that the prosecution ultimately decides whether a crime should be charged; however, it should also be noted that, in this case, there has been no other evidence of investigation provided to the defense in discovery. Moreover, although the entire Missoula City Council have been identified as witnesses for the prosecution in the Information, it appears that only two Council members, Bryan Von Lossberg and Gwen Jones, were actually interviewed as part of the investigation in this case.

Furthermore, it should be noted that Council Member Heather Harp has publicly expressed that she desires this case against Mr. Bryant to be dismissed in its entirety. (*See*, Letter from Heather Harp, Attached hereto as Exhibit C). In addition, at the time of filing this motion, the undersigned has become aware that several other Council members share Ms. Harp's sentiment.

1. sufficient to ensure the presence of the defendant in a pending criminal proceeding;
2. sufficient to ensure compliance with the conditions set forth in the bail;
3. sufficient to protect any person from bodily injury;
4. not oppressive;
5. commensurate with the nature of the offense charged;
6. considerate of the financial ability of the accused;
7. considerate of the defendant's prior record;
8. considerate of the length of time the defendant has resided in the community and of the defendant's ties to the community;
9. considerate of the defendant's family relationships and ties;
10. considerate of the defendant's mental health status and of the defendant's participation in a mental health treatment program;
11. considerate of the defendant's employment status; and
12. sufficient to include the charge imposed in 46-18-236.

In evaluating the statutory scheme relative to Mr. Bryant's case, it should initially be noted that consideration of the statutory factors is not discretionary; rather, the statutory language indicates that consideration of all factors (note the conjunctive used between factors 11 and 12) is mandatory (“[m]ust be reasonable in amount and the amount must be . . .”). *Id.*

“Sufficient to Ensure Defendant’s Presence”

It should be apparent from a review of Officer Smith's report, (*see generally*, Exhibit B), that Mr. Bryant always responded when Officer Smith reached out to him. Mr. Bryant provided Officer Smith with Mr. Bryant's cell phone number. In addition, Mr. Bryant responded and met the officer every time the officer requested contact. Mr. Bryant also provided the officer with Mr. Bryant's mother's address – in fact, the same address where Mr. Bryant would live if released from custody. Those facts, combined with Mr. Bryant's lack of any criminal history and low PSA

score, militate in favor of the conclusion that Mr. Bryant is an individual who would be expected to appear voluntarily in court.

Importantly, Officer Smith's report also makes clear that, contrary to the information provided to this Court in the prosecution's previously filed Affidavit in support of probable cause to file the Information and Arrest Warrant, Mr. Bryant was always responsive to law enforcement contacts. The Affidavit declares that Mr. Bryant's whereabouts were unknown, which, given Officer Smith's report, is quite misleading. In fact, Mr. Bryant voluntarily appeared at the Missoula Police Department to turn himself in when he was contacted by Officer Smith regarding the warrant that was issued for Mr. Bryant's arrest in this case. Mr. Bryant was in custody on the same date that this Court issued the \$100,000.00 warrant for his arrest – another fact that strongly supports the proposition that Mr. Bryant will appear in Court as directed.

“Sufficient to Ensure Compliance with Conditions of Bail”

This statutory provision is intrinsically tied to the constitutional arguments that Mr. Bryant raises later in this brief; however, the above-detailed information demonstrates lifelong ties to Missoula, lack of criminal history, prompt response to all law enforcement contact in this case, and verifies that Mr. Bryant's mother lives in Missoula. Mr. Bryant's mother will be at the bail hearing in this matter to further address any housing concern that this Court may have. There is not any indication of substance abuse on the part of Mr. Bryant or of any other issue on his part that would indicate that Mr. Bryant, a 34 year old, honorably discharged United States Air Force veteran without any criminal history, would be unable to comply with appropriate conditions of bail.

“Sufficient to Protect Any Person from Bodily Injury”

The alleged offense is not one that involves violence. Mr. Bryant has no history of violence or of any criminal history and is a 34-year-old veteran. There is nothing in his background to indicate that he is violent; in fact, his well-documented whistleblowing efforts have been in objection to violence.

“Not Oppressive”

This statutory provision is the one that embraces the Fourteenth Amendment, First Amendment, Fifth Amendment, and Eight Amendment concerns raised by Mr. Bryant. Continued bail in this case is oppressive and the extraordinarily high bail amount that has been set in this case compounds the oppressive impact of bail.

Fourteenth Amendment Violations

The undersigned incorporates by reference the deficiencies in the charging document and Affidavit filed by the prosecution that were addressed in Mr. Bryant's previously filed Motion to Dismiss as evidence of procedural due process violations, in violation of both Montana and federal law.

In addition, Mr. Bryant's other, fundamental constitutional rights are incorporated through application of the Fourteenth Amendment's Due Process Clause and those other violation will be addressed, in turn.

First Amendment of the United States Constitution and Article II, § 7 of the Montana Constitution

The Affidavit filed by the prosecution in this case begins by describing Mr. Bryant's participation in two Missoula City Council meetings and notes that he had attended those meetings and vigorously protested the Council's adoption of tax increment financing (hereinafter "TIF") and the growing income disparity / gentrification problems that exist in Missoula. Although this Court made clear at the last hearing that those two referenced City Council meetings were not part of any alleged threat that has been charged in this case, the prosecution has made Mr. Bryant's participation in those meetings a part of the Affidavit in support of the charging document in this case, thereby explicitly including Mr. Bryant's political dissent as an intrinsic part of the accusations. The effect of this is dramatic: Mr. Bryant's political dissent has been made a part of the reason charges were brought by the prosecution – and has been made a part of the reason for the extraordinarily high bail. This stands in direct violation of long-standing First Amendment law – and is violative of the Montana Constitution.

The First Amendment to the United States Constitution and Article II, Section 7 of the Montana Constitution both protect the right to free speech. The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech." Montana is bound to the guarantees of the First Amendment by the Due Process Clause of the Fourteenth Amendment. *City of Whitefish v. O'Shaughnessy*, 216 Mont. 433, 438, 704 P.2d 1021, 1024 (1985) (citing *Gitlow v. New York*, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925)). Article II, Section 7 of the Montana Constitution states that "[n]o law shall be passed impairing the freedom of speech or expression." Additionally, under Article II, Section 7, "[e]very person shall be free to speak . . . whatever he will on any subject, being responsible for all abuse of that liberty."

The right to free speech is a fundamental personal right and "essential to the common quest for truth and the vitality of society as a whole." *St. James Healthcare v. Cole*, 2008 MT 44, ¶ 26, 341 Mont. 368, 178 P.3d 696 (quoting *Bose Corp. v. Consumers Union*, 466 U.S. 485, 503-04, 104 S. Ct. 1949, 1961, 80 L. Ed. 2d 502 (1984)).

State v. Dugan, 2013 MT 38, ¶¶ 17-18, 369 Mont. 39, ¶¶ 17-18.

The most recent and relevant First Amendment case addressing the intersection of political speech and the suppression thereof by the United States Supreme Court is found in the controversial decision of *Citizens United v. FEC* (2010), 558 U.S. 310. In that opinion, the Court goes to great length to review the historical – and fundamental – constitutional protections afforded to individuals who engage in political speech.

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. See *Buckley, supra*, at 14-15, 96 S. Ct. 612, 46 L. Ed. 2d 659 ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential"). The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.

Citizens United v. FEC (2010), 558 U.S. 310, 339.

[P]olitical speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *WRTL*, 551 U.S., at 464, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (opinion of Roberts, C. J.).

Citizens United v. FEC (2010), 558 U.S. 310, 340.

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. See, e.g., *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000) (striking down content-based restriction). Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. See *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 784, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978). As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others,

the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

Citizens United v. FEC (2010), 558 U.S. 310, 340-41.

Related to this case in general – and to the bail argument here, in particular – is the fact that Mr. Bryant's incarceration with an extraordinarily high bail amplifies the First Amendment violation and highlights the most extreme circumstance of speech suppression contemplated by the United States Supreme Court: "If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." *Citizens United v. FEC* (2010), 558 U.S. 310, 349.

Moreover, the *Citizens United* Court also found offensive the idea that a speaker's financial status could be used by the government as a means of preventing free speech. "The rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity." *Citizens United v. FEC* (2010), 558 U.S. 310, 350. Here, of course, Mr. Bryant is homeless and qualifies for the services of the State Office of the Public Defender, which renders the high bail amount here particularly offensive to the dictates of constitutional law.

The violation of Mr. Bryant's First Amendment and Article II, Section 7 of the Montana Constitution rights to freedom of speech render bail in this case oppressive.

Fifth Amendment Right Against Self Incrimination / Article II, Section 25 of the Montana Constitution

This Court has ordered that Mr. Bryant participate in a pretrial interview and also that he receive a mental health evaluation before the Court will consider modification of bail in this case.

The Fifth Amendment, made applicable to the states through the Fourteenth Amendment, commands that "[no] person . . . shall be compelled in any criminal case to be a witness against himself." The essence of this basic constitutional principle is "the requirement that the State which proposes to convict *and punish* an individual produce the evidence against him by the independent labor of its officers, not by the simple, cruel expedient of forcing it from his own lips." *Culombe v. Connecticut*, 367 U.S. 568, 581-582 (1961) (opinion announcing the judgment) (emphasis added).

....

The Court has held that "the availability of the [Fifth Amendment] privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites." *In re Gault*, 387 U.S. 1, 49 (1967).

Estelle v. Smith (1981), 451 U.S. 454, 462.

The Montana Supreme Court has recognized this right against self-incrimination articulated in *Estelle* and has made clear that the right is also embedded in the Montana Constitution:

Under the Fifth Amendment of the United States Constitution and Article II, Section 25 of the Montana Constitution, defendants have the right to remain silent and not incriminate themselves in criminal proceedings. We have previously held that the state constitutional guarantee with respect to a defendant's right to remain silent affords the same protection as that under the federal constitution. *State v. Armstrong* (1976), 170 Mont. 256, 260, 552 P.2d 616, 619 *overruled in part by State v. Johnson* (1986), 221 Mont. 503, 512-14, 719 P.2d 1248, 1254-55 . . .

State v. Shreves, 2002 MT 333, ¶ 10, 313 Mont. 252, ¶ 10.

In *Estelle* and *Shreves*, the issue addressed was whether there existed a post-conviction self-incrimination right. In *Estelle*, the United States Supreme Court found that use of a court-ordered psychological report against the defendant at the sentencing phase in a death penalty case violated the defendant's right against self-incrimination where the defendant was not properly advised of his rights prior to the examination.

A criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding. Because respondent did not voluntarily consent to the pretrial psychiatric examination after being informed of his right to remain silent and the possible use of his statements, the State could not rely on what he said to Dr. Grigson to establish his future dangerousness. If, upon being adequately warned, respondent had indicated that he would not answer Dr. Grigson's questions, the validly ordered competency examination nevertheless could have proceeded upon the condition that the results would be applied solely for that purpose. In such circumstances, the proper conduct and use of competency and sanity examinations are not frustrated, but the State must make its case on future dangerousness in some other way.

Estelle v. Smith (1981), 451 U.S. 454, 468-69.

And the Montana Supreme Court found in *Shreves* that the defendant's right against self-incrimination was violated when the sentencing court condemned Shreves, who had maintained his innocence throughout trial and sentencing, for not properly accepting responsibility for the offense of conviction at the sentencing hearing.

To allow sentencing courts to do otherwise would force upon the defendant the Hobson's choice we discussed in *Fuller* and which is condemned by the Fifth Amendment and Article II, Section 25--specifically, that the defendant must either incriminate himself at the sentencing hearing and show remorse (with respect to a crime he claims he did not commit) or, in the alternative, stand on his right to remain silent and suffer the imposition of a greater sentence. To compel that of a defendant is constitutionally impermissible.

State v. Shreves, 2002 MT 333, ¶ 23, 313 Mont. 252, ¶ 23, 60 P.3d 991, ¶ 23.

Here, of course, Mr. Bryant stands merely accused – not convicted – of allegations that have been brought in a constitutionally inform manner, as discussed in Mr. Bryant's previous Motion. To made Mr. Bryant the subject of a pretrial interview and of a mental health evaluation as a condition precedent to release here stands in direct violation of Mr. Bryant's right against self-incrimination and is therefore oppressive.

Eighth Amendment and Article II, Section 22 of Montana Constitution

The Eighth Amendment and Article II, Section 22 of the Montana Constitution protects those accused of crime against the imposition of excessive bail.

Bail may not be excessive. U.S. Const. Amend. VIII; Mont. Const. art. II, § 22; *Layzell*, 242 Mont. at 149, 789 P.2d at 223. To protect against excessive bail, courts are constrained by the factors listed in § 46-9-301, MCA. *Layzell*, 242 Mont. at 149, 789 P.2d at 223. Those factors help ensure that the bail is sufficient to protect the community, while not being oppressive to the criminal defendant. For example, when setting bail a court may consider the defendant's prior criminal record, the nature of the offense, and the defendant's financial ability. Section 46-9-301(5)-(7), MCA; *State v. Couture*, 2010 MT 201, ¶ 60, 357 Mont. 398, 240 P.3d 987. Implicit within the above statutory requirements is the necessity for the court to evaluate each case individually to determine the appropriate pretrial conditions to impose on each defendant.

State v. Spady, 2015 MT 218, ¶ 37, 380 Mont. 179, ¶ 37.

The United States Supreme Court has held that, in reviewing the constitutionality of the federal Bail Reform Act of 1984, so long as certain, procedural safeguards are in place, a court is

justified in setting high bail and doing so does not violate a defendant's Eight Amendment right against excessive bail or the Due Process Clause of the Fifth Amendment.

[T]he [federal Bail Reform] Act [of 1984] requires a judicial officer to determine whether an arrestee shall be detained. Section 3142(e) provides that "if, after a hearing pursuant to the provisions of subsection (f), the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, he shall order the detention of the person prior to trial." Section 3142(f) provides the arrestee with a number of procedural safeguards. He may request the presence of counsel at the detention hearing, **he may testify and present witnesses in his behalf, as well as proffer evidence**, and **he may cross-examine other witnesses appearing at the hearing**. If the judicial officer finds that no conditions of pretrial release can reasonably assure the safety of other persons and the community, he must state his findings of fact in writing, § 3142(i), and **support his conclusion with "clear and convincing evidence,"** § 3142(f).

The judicial officer is not given unbridled discretion in making the detention determination. Congress has specified the considerations relevant to that decision. These factors include **the nature and seriousness of the charges, the substantiality of the Government's evidence against the arrestee, the arrestee's background and characteristics, and the nature and seriousness of the danger posed by the suspect's release**. § 3142(g). Should a judicial officer order detention, the detainee is entitled to expedited appellate review of the detention order. §§ 3145(b), (c).

United States v. Salerno (1987), 481 U.S. 739, 742-43 (emphasis added).

The Montana Supreme Court has acknowledged the *Salerno* holding, and has applied that holding in the context of Montana's bail statute as follows:

While the State may not subject a pretrial detainee to punishment, it may impose conditions on a pretrial detainee so long as they are part of a legitimate governmental purpose and not intended as punishment. *Bell*, 441 U.S. at 539, 99 S. Ct. at 1874; *United States v. Salerno*, 481 U.S. 739, 748, 107 S. Ct. 2095, 2102, 95 L. Ed. 2d 697 (1987). State law allows Montana courts to impose conditions that will ensure the defendant's appearance at trial, but also ensure the safety of the community. Section 46-9-108(1), MCA; *Miller*, ¶¶ 7-8 (upholding the imposition of a high bail for the purpose of protection of the community from a defendant with three previous DUI convictions and a pending charge of Negligent Homicide).

State v. Spady, 2015 MT 218, ¶ 34, 380 Mont. 179, ¶ 34.

It is Mr. Bryant's position that his federal and state constitutional protections against excessive bail are being violated by the amount set in this case because the amount does not correlate with the strength of the prosecution's case, with Mr. Bryant's criminal history, with the

nature of the allegations in the charging document, and because of the procedural due process failures attending the charging document in this case as discussed in Mr. Bryant's previously filed Motion to Dismiss.

A quick analysis of the United States Supreme Court's *Salerno* opinion, moreover, provides an additional dimension to Mr. Bryant's argument in that the *Salerno* Court stressed repeatedly that the procedural protections and guidelines attending the federal Bail Reform Act provided the accused with sufficient due process protections as it related to the setting of bail. *Salerno*, 481 U.S. at 742-743 (*see* block quote on page 11 of this Motion). Here, all that protects Mr. Bryant from unreasonable bail is the probable cause finding based upon the prosecution's affidavit. There was no contested hearing with witnesses. There was no calling of witnesses. There was no evidence produced by the prosecution in support of the charges beyond the Affidavit. And there is no requirement in the Montana statute that this Court make any finding relative to the setting of bail by clear and convincing evidence.

It is the lack of these procedural protections that illustrate the Fourteenth Amendment procedural due process violations discussed in Mr. Bryant's previously filed motion – but these deficiencies also illustrate the glaring substantive due process violations under the Fourteenth Amendment attending the way that bail was set in this case. Those procedural protections upon which the *Salerno* Court hinged its decision are completely lacking in this case – as in the Montana statutory scheme. The result of this is a violation of Mr. Bryant's right against excessive bail under the Eight Amendment and Fourteenth Amendment Due Process Clause as well as his right against excessive bail under Article II, Section 22 of the Montana Constitution. Accordingly, bail set in this case is oppressive.

“Commensurate with the Nature of the Offense Charged”

Mr. Bryant has repeatedly expressed his objection to the probable cause finding in this case and this objection is detailed in his previously filed Motion to Dismiss. The alleged threat here was not posted on the offending YouTube website by Mr. Bryant and the description of the charge in the prosecution's affidavit is insufficient to sustain a probable cause finding on the offense charged. The allegations here do not justify bail.

“Considerate of the Financial Ability of the Accused”

Mr. Bryant is homeless and cannot afford to post bail in any amount.

“Considerate of the Defendant's Prior Record”

Mr. Bryant has no criminal history, as detailed above.

“Considerate of the Length of Time the Defendant has Resided in the Community and of the Defendant’s Ties to the Community”

“Considerate of the Defendant’s Family Relationships and Ties”

These two conditions are tied together. Mr. Bryant was born and raised in Missoula and has live in Missoula most of his life. His mother lives in Missoula and, if released, Mr. Bryant would reside with her.

“Considerate of the Defendant’s Mental Health Status and of the Defendant’s Participation in a Mental Health Treatment Program”

As previously disclosed to this Court, Mr. Bryant is a United States Air Force veteran and receives services through the VA related to his service. Continued incarceration prevents Mr. Bryant from engaging in those services. Furthermore, Mr. Bryant has a support dog that he cannot have contact with while incarcerated, which also impacts Mr. Bryant’s mental health and well-being.

Fourteenth Amendment Due Process Right to Privacy and Right to Privacy under Article II, Section 10 of the Montana Constitution

It should be noted that Mr. Bryant objects to the Court ordering a mental health evaluation and to the dissemination of said report to the Court and prosecution as a condition precedent of his release. As noted, *supra*, that objection is made on self-incrimination grounds as well, but the order also violates Mr. Bryant’s right to privacy under both the federal and Montana constitutions.

The United States Supreme Court has recognized that a right to privacy exists in federal law a right imbedded in the Due Process Clause of the Fourteenth Amendment. Although "[t]he Constitution does not explicitly mention any right of privacy," the Court has recognized that one aspect of the "liberty" protected by the Due Process Clause of the Fourteenth Amendment is "a right of personal privacy, or a guarantee of certain areas or zones of privacy." *Roe v. Wade*, 410 U.S. 113, 152 (1973). This right of personal privacy includes "the interest in independence in making certain kinds of important decisions." *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions "relating to marriage, *Loving v. Virginia*, 388 U.S. 1, 12 (1967); procreation, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541-542 (1942); contraception, *Eisenstadt v. Baird*, 405 U.S., at 453-454; *id.*, at 460, 463-465 (WHITE, J., concurring in result); family relationships, *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); and child rearing and education, *Pierce*

v. Society of Sisters, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, [262 U.S. 390, 399 (1923)]." *Roe v. Wade, supra*, at 152-153.

Carey v. Population Servs. Int'l (1977), 431 U.S. 678, 684-85.

In addition to the federal right to privacy, in Montana, the state constitution guarantees a right to privacy as a fundamental, constitutional right.

Article II, Section 10, of the Montana Constitution provides an individual's right of privacy: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." The right of privacy is also not absolute—it may be infringed upon with the showing of a compelling state interest. Mont. Const. art. II, § 10.

Krakauer v. State, 2019 MT 153, ¶ 10, 396 Mont. 247, ¶ 10.

The Court's order that Mr. Bryant undergo a mental health evaluation and that said evaluation then be turned over to this Court and to the prosecution as a condition precedent to his release from custody stands in violation of Mr. Bryant's constitution right to privacy. Moreover, this condition cannot reasonably be made a part of any release condition for the same reasons.

The weakness of the prosecution's case, in particular, amplifies the privacy concerns here. To suggest that Mr. Bryant surrender his constitutional right to privacy regarding a mental health evaluation because the prosecution has filed an Affidavit – deficient for all of the reasons detailed in Mr. Bryant's Motion to Dismiss and in this Motion, *supra*, demonstrates that the condition is oppressive (in addition to the issues detailed above) and in tension with basic, constitutional principles.

////

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///

//

Conclusion

Accordingly, based upon the foregoing points and authorities, Mr. Bryant respectfully requests that this Court release him from custody and relieve him of oppressive conditions of release.

Respectfully submitted this 27th day of February, 2020.

/S/ROBIN HAMMOND
Attorney for Brandon Howard Bryant

Exhibit A

Montana Pretrial Public Safety Assessment

Prepared by

Court Administrator's Office

Name: Bryant, Brandon Howard

DOB: 11/18/1985

Arrest Information:

Arrest Date: 2/11/2020

Charge(s):

45-7-102 Threats/Improper Influence In Official/Political Matters

Assessment Results: *(Completed: 2/12/2020)*

Score for Failure to Appear	Score for New Criminal Activity	Flag for New Violent Criminal Activity
FTA 2	NCA 1	No

Assessment Information:

1. Age at Current Arrest	23 or older
2. Current Violent Offense	No
2a. Current Violent Offense & 20 Years Old or Younger	No
3. Pending Charge at the Time of the Offense	No
4. Prior Misdemeanor Conviction	No
5. Prior Felony Conviction	No
5a. Prior Conviction	No
6. Prior Violent Conviction	0
7. Prior Failure to Appear in Past 2 Years	0
8. Prior Failure to Appear Older Than 2 Years	Yes
9. Prior Sentence to Incarceration	No

Presumptive Release Conditions:

Pretrial Monitoring Level 1, Passive

Notes:

Exhibit B

Refer to county attorney



Missoula Police Department
Police Report – Narrative

Report #: 2020-4302

Completed by: E. Smith

Title: Supplemental report

I had requested this report be assigned back to me for follow up. On Friday, Jan. 31st, I was in communications with the city attorney's office regarding a trespass letter to be given to Mr. Bryant, the mayor's office and several city council members regarding this issue. I also reached out to deputy county attorney Suzy Boylan because she handles involuntary commitment hearings for the county attorney's office. Ms. Boylan was travelling on Friday but we spoke over the phone, at which point she advised me that I needed to have Mr. Bryant taken to St. Patrick hospital and evaluated by a mental health professional just to start the process of having him involuntarily committed, if in fact his threats to "exterminate" the city council were deemed a legitimate threat to harm others.

I was watching the news on Friday when I saw NBC Montana doing a story on several local citizens who were frustrated and outspoken against TIF funding issues, and Mr. Bryant was identified as one of several people featured on that story, although he was not quoted directly. That video can be viewed here: <https://nbcmontana.com/news/local/missoula-residents-talk-tif>

I also spent some time reviewing other videos Mr. Bryant had posted to YouTube, in which he talks about having his son taken away from him, as well as numerous televised interviews in which he talks about being a drone pilot for the military. It was clear from the videos that Mr. Bryant was once portrayed as a "whistleblower" against the military and US government, and has actually been awarded for his actions by several European groups, and has been the subject of at least one play and two documentaries. He also has talked to some of those interviewers about his struggles with PTSD. I have found interviews with him in Rolling Stone magazine and other national news outlets as well.

Mr. Bryant is the subject of a Wikipedia page, found here: [https://en.wikipedia.org/wiki/Brandon_Bryant_\(whistleblower\)](https://en.wikipedia.org/wiki/Brandon_Bryant_(whistleblower))

On Monday, I sent a text message to [REDACTED] which was a cell phone number Mr. Bryant had contacted us on, identifying myself as a police officer and asking if I could speak to him over the phone. Mr. Bryant responded that he would prefer to speak to me in person and that "my (his) entire situation is complicated and very serious." We made arrangements for him to meet with me at our Catlin Street facility later that morning.

When Mr. Bryant arrived, he consented to a voluntary pat-down search of his person and an inspection of a tote bag he had with him. I interviewed Mr. Bryant in our "soft" interview room, and that conversation was recorded. The following is a summary of that conversation, but I have not had a chance to review the video.

I advised Mr. Bryant of my concerns about the video that had surfaced in which he talks about exterminating the city council, and that his videos had caused a lot of safety concerns in Missoula city government officials. He was understanding of that, and tried to distance himself from those safety concerns.

He told me he made the video "to get that response," and that "I (he) don't feel like I will cross the line," in regards to committing violence against any of the councilmembers.



Missoula Police Department Police Report – Narrative

Mr. Bryant told me the username Pick YourBattles (sic) is actually used by a former military colleague named Rick Rynearson (pronounced Ray-near-son), and that Mr. Rynearson is the one who is uploading the videos in an effort to embarrass or portray Mr. Bryant in a negative light.

Mr. Bryant told me Mr. Rynearson used to serve with him in the military, and they both left the drone program when they had ethical concerns about their roles in combat. Both of them appeared at conferences and received recognition as “whistleblowers” and had a good friendship up until a few years ago. Mr. Bryant said he was invited by Mr. Rynearson to attend a conference in Texas, and relied on Mr. Rynearson to set up the travel and hotel arrangements at the conference. However, when he arrived he discovered that Mr. Rynearson had botched the entire event, and it created a tremendous amount of headaches for Mr. Bryant, who was critical of Mr. Rynearson. Since then, he said, Mr. Rynearson has been “stalking” him online, and at times posting what Mr. Bryant felt were his private videos and making them more public than Mr. Bryant intended them to be.

Mr. Bryant said he has filed a criminal complaint against Mr. Rynearson in the Seattle area, for this online “stalking,” and that Mr. Rynearson has some type of conditions of release related to this.

Mr. Bryant admitted to me that he uploaded those videos, but said he did so because it was therapeutic to him. He said talking about his frustrations helps him process them better. He did not intend for them to be made public by Mr. Rynearson, which would explain why almost all of the descriptions of the videos involving Mr. Bryant, uploaded by Pick YourBattles, are written in the third person. It’s important to note I have not found any evidence that he sent these videos to any city employees or directed them to anyone’s attention.

Mr. Bryant tried to distance himself from some of the more serious concerns in the video, saying he didn’t directly threaten to kill any councilmembers, although acknowledging that he was referring to the city council later in the video. He freely admits that he is just trying to get attention for his frustrations about the gentrification of Missoula. He said the “language (in the video) was there to incite a response” and that “I’m trying to be the boogeyman” to raise awareness of issues affecting the city. However, he went on to explain that he was so disenfranchised with his military service, that he later “swore an oath to do no violence” against anyone, and has no intention of hurting any councilmembers.

Mr. Bryant told me he grew up here, and his family has deep roots in Missoula, but he’s frustrated at how expensive it has become to live here. He grew disenfranchised with the military, and left it, only to return to his hometown to found himself homeless, unable to afford to live here, disabled and without a job.

Mr. Bryant told me he’s basically staying on a friend’s couch, and that his vehicle no longer runs after he lent it to someone who drove it to Seattle. He said it’s parked on the street in front of his friend’s house. Mr. Bryant walks with a slight limp, and uses the walking stick to help him, the same stick featured on a video from a Dec. 8th city council meeting which I later viewed, in which Mr. Bryant refers to the stick in a menacing manner. Mr. Bryant also has a service dog with him, but I did not question him as to why he needed the dog.

Mr. Bryant shared a lot of the challenges and frustrations he’s facing right now, which I inferred were contributing factors to his anger seen in the videos. He told me he has a son, but that his wife has taken his son and prevented him from seeing him. He met her when he lived overseas, and he said his wife maintains her native citizenship and has taken his son away from him and refused to allow him to have any contact. The authorities in her native country are of no help to him, and he says he’s actually been physically assaulted by law enforcement officers in her home country. He said he



Missoula Police Department Police Report – Narrative

tried to have the attorney who represented him in his whistleblower proceedings help him regain custody, but that they attorney wasn't much help.

Mr. Bryant maintains he's technically still in the military, although the details of his relationship with the military were difficult for me to understand. He apparently still qualifies for help from the Veterans Administration, and told me he goes to counseling there regularly. Mr. Bryant admitted to me he's suffered from depression in the past. He told me he's still fighting against the VA to have his physical disability recognized by both the VA and Social Security Administration, which is another source of frustration to him.

The primary sources of stress in Mr. Bryant's life including homelessness, not have a job, his inability to see his son, and lack of former recognition for his disability, or some type of disability payments. His basic view of society and specifically "the government" is that he fought for his country, and then became disillusioned with his military service, and then left, and they have since turned their back on him. Upon returning to his hometown, he then felt his local city government was ruining the town he grew up in, hence his outburst on the videos.

I offered to help Mr. Bryant with the issue of housing, but made it clear to him that it would be difficult for me to resolve some of the other areas that were causing him stress.

I then brought up the no-trespassing letter Mr. Nugent had written and provided me, and gave it to Mr. Bryant. I explained to him the contents of the letter, and that the city was not trying to stifle his ability to provide feedback on any matters before the council, and that he could submit written feedback through email or during the public comment period via having a friend deliver it. He was notified that he could conduct any business at city court, if necessary, with a police escort. Mr. Bryant did not express any frustration at why he was being trespassed from council chambers and appeared understanding of the situation.

The next day, another city employee found a video uploaded of Mr. Bryant's tirade against the city council in the Jan. 8th committee meeting, the one in which he brought his walking stick to the table, uploaded under the Pick Your Battles username, in which the MCAT video of our city council meetings was then merged with the original Dec. 4th video of Mr. Bryant making threatening comments. That video can be found here:

<https://www.youtube.com/watch?v=IAqrwQmAsoA>

Later in the week, Mr. Bryant notified me he was attempting "press charges" against Mr. Rynearson by contacting the local police department in Washington state where he believed Mr. Rynearson was still living. He asked me for permission to give my name and contact information to an officer there in case they needed to speak to me about the situation, which I said was fine. I got a phone call from a detective from the Bainbridge Island (WA) police department on Thursday afternoon, Feb. 5th. The detective's name was Jon Ledbetter, and he confirmed Mr. Rynearson was a resident there and characterized him as a local activist who sometimes drew the attention of law enforcement. We both discussed the situation and agreed that there didn't seem to be any criminal violations by either party at this point, as Mr. Rynearson was simply taking videos that Mr. Bryant had uploaded to the public domain.

I later made contact with Mr. Bryant over the phone to confirm that conversation with the detective had taken place so that he was aware it was followed up on. I also pressed him for the address where he is actually living, and he refused to tell me, instead giving me his mother's current address [REDACTED]



Missoula Police Department Police Report – Narrative

I asked Mr. Bryant some other questions, including whether he has access to firearms now, and he said he sold them all after being diagnosed with depression, out of concern for having suicidal thoughts. I also asked him if he would be willing to voluntarily go to St. Patrick Hospital to meet with a mental health counselor, but he declined, noting he still meets with a VA counselor, which he characterized as helpful in our discussion earlier in the week.

Mr. Bryant does have a lot of frustration at what he feels is the direction, and widening income disparities, affecting the city, and again articulated those to me. "I served my country and did everything right, and I'm being punished (by the government)," he told me over the phone. "All I want is to be a father to my son, and to help my community improve."

At this time, I'm referring this report to the Missoula County Attorney's Office for review regarding what criminal charges, if any, might be applicable, including Intimidation or Threats/Improper Influences in Political Matters, or an involuntary commitment.

Officer Ethan Smith
Missoula Police Department

OfficerID: ci\smith, Narrative

Report by Officer Ethan Smith
Missoula Police Department

Earlier this month I was requested to provide safety/security training for the Missoula city council, which I had provided two years ago. During that training, which took place on Jan. 29th from 1:45 to 3:30 PM at city council chambers, multiple city council members brought to my attention a male who had disrupted their meetings and was acting in an intimidating manner. They were unable to tell me his name yesterday, but were disturbed by the fact that he brought a large walking staff with him that he banged on the table during the public speaking process. At one point during a Nov. 18th meeting, the mayor had to temporarily adjourn the meeting because the male was yelling at the council.

On Jan. 30th, I was informed via a Jan. 29th email by council president Bryan von Lossberg that another council member had found a YouTube video of the male, who identified himself in the title of the video as Brandon Bryant. Mr. von Lossberg forwarded a link to me to that video, which is entitled 'Brandon Bryant Promises to "Eliminate" People Over the Next Year'. The description of the video - presumably written by Mr. Bryant himself - says 'Brandon Bryant identifies people for "extermination" including the entire Missoula City Council and people in the military that he worked with, saying that he is "preparing" his soul to make those people "submit" and "die."' He articulates ideas about killing people in the video.

The video can be found at:
<https://youtu.be/NC91pbGSgOM>

I believe Mr. Bryant put the words "Eliminate," "extermination," "submit" and "die" in quotation marks as a way to perhaps distance himself from any accusations that he is serious about these actions, but regardless, they were very concerning to Mr. von Lossberg and fellow council member Gwen Jones, and after viewing the video, I share their concerns.

Mr. Bryant's YouTube account username is Pick YourBattles (sic) and a search of other videos he posted under that user name include one where he talks about killing his ex-wife, and another video titled "Brandon Bryant says he will kill his enemies" and "Brandon Bryant - I will set the example"

Other online videos show Mr. Bryant was actually a speaker at TED Talks, in which he talks about killing 1,600 people via drones when he worked as a soldier in the US military, and another video in which he's interviewed by an NBC reporter for what appears to be a nationally televised show in which he talks about not feeling any more emotions. It appears likely to me that Mr. Bryant is suffering from PTSD.

The description of his interview with NBC is: "Former drone operator Brandon Bryant tells NBC's Richard Engel that he felt like he became a 'heartless' 'sociopath' under the drone program."

I also was able to locate two Facebook accounts owned by Mr. Bryant. One of them is

under Brandon Bryant and the other is under Brandon Wayne Bryant, that appears less active. The one under Brandon Bryant has a post from Dec. 2, 2019 in which he states that he "stepped away from this thing (Facebook) for a while....." but that "this will probably be my last message to you" and goes on to tell his family that "You failed me. Every. Single. One of You."

After viewing these posts and videos, I contacted Sgt. Stonesifer to brief him on my concerns, and he asked me to also notify Lt. Denton, which I did. Lt. Denton was familiar with Mr. Bryant due to his outburst at the Nov. 18th city council meeting, and staff emails regarding that.

I also providing a slide in our intel briefing, with two pictures of Mr. Bryant and a link to his YouTube video, and a description of a vehicle he reported to us last year when he was the victim of a hit and run. His last reported address to us is at [REDACTED] I also emailed the patrol and detective divisions about this situation, with special attention to officers working the city council meetings.

Council members von Lossberg and Jones were advised that I intend to make contact with Mr. Bryant on Monday to advise him he's been trespassed permanently from city property, and they both said via email that this was acceptable to them and they felt it was the appropriate course of action. At this time I don't feel that there is any threat to any council member at their own personal residence, but the rest of the council, the mayor, as well as MPD command staff, have also been advised of the situation.

I have not done a threat assessment yet on Mr. Bryant, but will be doing one on Monday. I also noticed contact information for his mother in the prior CFS in which he reported the hit and run last year, and will attempt to work with her on Monday as well.

This report can be assigned back to me for follow up.

Officer Ethan Smith

Exhibit C

2/25/2020

Dear Brandon,

I just wanted to let you know that I am thinking about you. Thinking how sorry I am that this is where you are. I imagine what you are going through, but I have no reference on which to fall. I imagine you are lonely and afraid.

I am not defending your actions, what you did was wrong – it caused fear and intimidation, but I am advocating for compassion and fairness. I know from spending time with you, that you are not a violent person. But there are times when you say violent things, and that scares people. As a City, we have to respond. We have to act to ensure the safety of our citizens. But we must also act with compassion and fairness.

I ask for compassion and fairness because I know you – and I know the sort of things you struggle with. I also understand, in my own way, what it is like to struggle with mental health issues for myself and family members. I know that the person who took those actions is an irrational form of you. Having PTSD, a traumatic brain injury, and depression is a horrific cocktail of mental health issues that no one deserves, and few comprehend. As you may recall, I have mild episodic cases of depression. Most of the time, it feels like an inversion in the Missoula valley: it just shows up one day as feeling gray. When the inversion lifts, all is well. Sometimes, it has crippling effects and self-destructive tendencies.

I realized that I didn't know the symptoms of PTSD. So I looked it up:

- **Memories** of the event can be triggered by sounds and experienced as nightmares or flashbacks. These cause people to feel anxious, guilty, afraid, or suspicious. These emotions can play out as panic attacks, chills, shaking, headaches, heart palpitations.
- **Avoidance** of talking about the event, or being around people who insist you talk about it. This avoidance causes people to stay away from others, causing detachment and loneliness.
- **Behavior changes** can make you emotionally more intense, and irrational and angry outbursts are not uncommon. Many find it hard to focus. Feelings of danger and being under attack can ruin concentration and keep you from finishing everyday tasks. This can lead to sleeplessness, which exacerbates these behaviors all the more.
- **Mood swings** aren't filled with clues like flashbacks. They tend to be filled with negativity: feelings of hopelessness, numbness, shame, and guilt are not uncommon. Relationships with loved ones are low and distant.

However, I have seen you for who you really are when the mental illness does not cloud your personality or judgment. You are a man with goodness in his heart wanting to make this world a better place. You are trying to fight income inequality. Like you, we on City Council share that desired goal. We do the best we can with the limited tools and resources we have. Can we do better? Absolutely, and we must do so collaboratively rather than against one another. No one wins that fight.

You may be asking what I want to see happen. I hope the charges are dropped. Due to your mental illness that contributed profoundly to your actions, time spent in prison would further demoralize a soul and cost us more financially and socially. I would request that you obtain regular mental health help and therapy. But, I also want you to serve others through another avenue: either volunteer at a nonprofit organization or join a service club for a year. Pay it forward. Goodwill comes of that.

Criminal justice reform is hard work. If not you, then who?

Heather Hays

CERTIFICATE OF SERVICE

I, Robin B. Hammond, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion for Release to the following on 02-27-2020:

Jacob Daniel Coolidge (Attorney)
610 Woody Street
Missoula MT 59802
Representing: Brandon Howard Bryant
Service Method: eService

Matthew C. Jennings (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically Signed By: Robin B. Hammond
Dated: 02-27-2020

1 MATT JENNINGS
2 Deputy County Attorney
3 KIRSTEN H. PABST
4 Missoula County Attorney
5 200 West Broadway
6 Missoula, Montana 59802
7 mjennings@missoulacounty.us
8 Ph. (406) 258-4737
9 Attorneys for Missoula County

10 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

11 STATE OF MONTANA,

12 Plaintiff,

13 vs.

14 BRANDON HOWARD BRYANT,

15 Defendant,

Dept. 5
Cause No. DC-20-70

**STATE'S RESPONSE TO
MOTION TO DISMISS**

16 Comes now, MATT JENNINGS, Deputy County Attorney of Missoula
17 County, and files this Response in opposition to Defendant's Motion to
18 Dismiss.

19 **INTRODUCTION**

20 ***"You will submit and you will die."***¹

21 The quote above is one of several threatening statements Defendant
22 made in a video posted on YouTube between two appearances at Missoula
23 City Council meetings where Defendant acted in a disruptive and
24 threatening manner by screaming and gesturing with a stick while giving
25 public comment. Defendant's actions and statements are not protected
26

27 ¹ Defendant Brandon Bryant's closing remarks in a YouTube video, believed to have been made on or about December
28 19, 2019 after discussing grievances against the Missoula City Council, the military, and his ex-wife.

https://www.youtube.com/watch?v=k9Y5dGe_3i0.

1 speech under the First Amendment to the U.S. Constitution.

2 Defendant filed a Motion to Dismiss on February 20, 2020 arguing that
3 the charging process used in this case was defective and that the statute
4 under which Defendant was charged is unconstitutional. In making that
5 argument, Defendant asks this Court to consider Defendant’s “international
6 acclaim” or “celebrity” and that he is an author and public speaker.
7 Defendant attempts to appeal to the sympathies of the Court because
8 Defendant is a military veteran suffering from Post-traumatic Stress Disorder
9 and because Defendant purportedly is involved in a dispute with another
10 person who is reposting his videos. Certainly, it is tragic when a military
11 veteran suffers from Post-traumatic Stress Disorder as a result of military
12 service. It is reasonable to be frustrated that there are systematic
13 shortcomings in our County in dealing with persons suffering from mental
14 health crises—particularly when those persons are veterans. But these
15 arguments regarding Defendant’s activism, military service, or disputes with
16 other persons have no place in a Motion to Dismiss when the question before
17 the Court is whether there is probable cause to believe that an offense was
18 committed.

19 Defendant also argues that the State has not proved that Defendant
20 made the YouTube account where threats were made. Defendant admits he
21 made the video. The full video starts by Defendant, turning on a light, shining
22 it on his face and saying “just so you know that it’s me.” The person in the
23 video is clearly Defendant. There is no legal significance to the assertion that
24 the videos Defendant made were reposted by another person. The manner
25 in which threats are conveyed is not an element of Montana’s Improper
26 Influence statute—it is whether the threats were made with the requisite
27 mental state.
28

1 The only two issues before the Court are (1) whether the affidavit of
2 probable cause fails to articulate an offense, and (2) whether Montana Code
3 Annotated § 45-7-102 is unconstitutional. For reasons stated below,
4 Defendant's motion must be denied.

5 **FACTUAL ISSUES**

6 This is primarily a challenge to an Affidavit of Probable Cause. Thus,
7 the facts presented in the Affidavit speak for themselves and will not be
8 repeated here. However, some additional facts are included in the
9 constitutional analysis because they are necessary for a full understanding of
10 that issue. One of the challenges is that the charged statute is vague as
11 applied. Supplemental facts are necessary to demonstrate how the statute is
12 applied to Defendant's circumstances under the constitutional challenge.

13 Additionally, one issue must be clarified at the outset. In the Affidavit of
14 Probable Cause, the State identified a concerning video that is currently
15 posted on a YouTube channel titled Pick YourBattles which has numerous
16 videos involving the Defendant making concerning statements. The Affidavit
17 also noted that Defendant asserts that YouTube channel is used by a former
18 colleague trying to portray him in a negative light—which certainly seems to
19 be true. This issue is a distraction with no relevance to a determination of
20 whether or not there is probable cause that an offense occurred or whether
21 the statute charged is constitutional. Defendant made the threatening video.

22 **ARGUMENT**

23 **I. The State's Affidavit of Probable Cause satisfies statutory and** 24 **constitutional requirements and should not be dismissed.**

25
26 The State's Affidavit of Probable Cause states facts sufficient to show a
27 high probability that threats were meant to influence Missoula City Council
28 members' decision making. Defendant is improperly attempting to try the

1 case in briefing, which is not permitted. Thus, Defendant's Motion should be
2 denied.

3 Under Montana law, a prosecutor may apply directly to district court for
4 permission to file an information. When moving to file an information, the
5 "application must be by affidavit supported by evidence that the judge or chief
6 justice may require." Mont. Code Ann. § 46-11-201(2). "If it appears that
7 there is probable cause to believe that an offense has been committed by the
8 defendant, the judge or chief justice shall grant leave to file the information,
9 otherwise the application is denied." *Id.* "A defendant has no vested right to
10 a particular procedure for the probable cause determination." *State v.*
11 *Strobel*, 268 Mont. 129, 133, 885 P.2d 503, 505 (1994). Montana law permits
12 a County Attorney to select a method of charging. *Id.*

13 The sufficiency of charging documents is established by reading the
14 information together with the affidavit in support of the motion for leave to file
15 the information. *State v. Elliott*, 2002 MT 26, ¶ 26, 308 Mont. 227, 43 P.3d
16 279, citing *State v. Hamilton*, 252 Mont. 496, 499, 830 P.2d 1264, 1267
17 (1992). "A showing of a mere probability that a defendant committed the
18 offense charged is sufficient to establish probable cause to file
19 an information." *State v. Holt*, 2006 MT 151, ¶ 28, 332 Mont. 426, 139 P.3d
20 819. The Montana Supreme Court has also described probable cause for
21 prosecution as "reasonable grounds for suspicion, supported by
22 circumstances reasonably strong in themselves to warrant a reasonably
23 prudent and cautious [person] to believe that the accused is guilty of the
24 offense charged." *White v. State*, 2013 MT 187, ¶ 36, 371 Mont. 1, 305 P.3d
25 795.
26

27 It is not a requirement that the affidavit in support of a motion to file an
28 information make out a prima facie case that a defendant committed an

1 offense. *Elliott*, ¶ 26, citing *State v. Arrington*, 260 Mont. 1, 6, 858 P.2d 343,
2 346 (1993). “Evidence required to establish guilt is not necessary to prove
3 probable cause.” *Hamilton*, 185 Mont. at 528, 605 P.2d at 1125, citing *State*
4 *v. Fetters*, 165 Mont. 117, 122, 526 P.2d 122, 125 (1974). “It is not required
5 that information in the affidavit supporting a charge, which might later be
6 found inadmissible at trial, be excised before a determination
7 of probable cause is made.” *Holt*, ¶ 29. When circumstantial evidence is
8 susceptible to differing interpretations, it not an issue to be determined in a
9 motion to dismiss for lack of probable cause; it is within the province of the
10 jury to determine which will prevail. *Elliott*, ¶ 36. Issues of fact cannot be
11 addressed in a pre-trial motion in a criminal matter. See *State v. Nichols*,
12 1998 MT 271, ¶ 8, 291 Mont. 367, 970 P.2d 79. A Court cannot dismiss
13 charges on an assumption from Defendant that the State will not be able to
14 produce sufficient evidence to support its charge. *Id.*, ¶ 9.

15 In *State v. Elliott*, a defendant moved to dismiss an information arguing
16 that the State had failed to prove in an affidavit a critical fact of a case. The
17 Supreme Court, in affirming the district court’s denial of a motion to dismiss,
18 made clear that to withstand a motion to dismiss the State only needed to
19 show a probability of a critical fact and that an offense was committed. *Elliott*,
20 ¶ 30. The Supreme Court quoted the district court opinion as follows:

21 There is no doubt that the State has the burden of proving,
22 beyond a reasonable doubt, each element of the offense ... to
23 sustain a conviction in this matter. The State has indicated in its
24 briefs and in its oral argument that it will present evidence on each
25 and every element. Whether this evidence is sufficient for a jury to
26 convict is a question only for that jury. It is inappropriate for the
27 Court at this point to impose its views in territory that clearly
28 belongs to the jury, that is, questions of fact.

Elliott, ¶ 33.

1 “[T]he determination of probable cause becomes a question of law for a
2 court to decide when there is no conflict of evidence and the evidence 'admits
3 only one conclusion.’” *White*, ¶ 36. “The elements of a charged offense are
4 factual in nature and their existence must be determined by the jury. . . It is
5 within the province of the fact finder to weigh the evidence presented and
6 determine the credibility of witnesses” *State v. Gladue*, 1999 MT 1, ¶ 40,
7 293 Mont. 1, 972 P.2d 827.

8 Here, Defendant is challenging facts in the affidavit by asserting (1) that
9 they either do not meet standards under the Montana Rules of Evidence, (2)
10 that they have not been proven, or (3) that the State should have done more
11 investigation before charging.

12 First, the Montana Rules of Evidence explicitly do not apply to
13 “applications for leave to file informations in criminal cases.” Mont. R. Evid.
14 101(3). Nor do the Rules of Evidence apply to grand jury proceedings or
15 preliminary examinations. Defendant erroneously asserts that had the State
16 chosen a different method of charging Defendant it would have had to follow
17 basic rules of evidence to support its allegations. There is no evidentiary
18 difference between the three methods of charging.

19 Second, proof is an issue for trial not for an affidavit of probable cause.
20 Mont. Code Ann. § 46-16-103 (Questions of law must be decided by the court
21 and questions of fact by the jury). Clearly, an affidavit in support of a motion
22 for leave to file an information must be supported by evidence. But that
23 evidence need only provide probable cause, not proof beyond a reasonable
24 doubt.

25 Here, the Motion and Affidavit for Leave to File an Information explains
26 the actions and statements made by Defendant that are threatening and
27 provides the context around his disruptive interactions with the City Council
28

1 which show his purpose and give an indication they may be carried out. The
2 Affidavit explains that Defendant had been disruptive at City Council
3 meetings. The Affidavit then specifically mentions one video where Bryant
4 discusses City Council and threatens to hunt people down and eliminate and
5 exterminate people. The quote cited at the beginning of the brief is his sign
6 off—a threat that others will have to “submit” and “die.” Defendant admitted
7 he made the videos. He admitted he posted them. At the beginning of the
8 video, Defendant turns on a light, shines it on his face and says “so you know
9 that its me.” He is clearly identifiable in the video. Defendant told Officer
10 Smith that his comments about the City Council were meant to incite a
11 response—evidence of his purpose to influence a public official’s decision.
12 The video is a rant against the City Council, the military, and his ex-wife. The
13 video is rambling, disjointed, and menacing. Whether he was threatening the
14 City Council, the military or his ex-wife or all of the above is a question for the
15 jury. In an effort to be candid to this Court in reviewing the Affidavit of
16 Probable Cause, the State noted that while the video specifically addresses
17 the Missoula City Council, the specific threats to eliminate and exterminate
18 people and that others must die, are muddled. He also discusses the military
19 and his ex-wife. What is not in doubt is the threatening language of the
20 video—especially when viewed in light of his appearances at City Council
21 meetings. The State provided “reasonable grounds for suspicion, supported
22 by circumstances reasonably strong in themselves to warrant a reasonably
23 prudent and cautious [person] to believe that the accused is guilty of the
24 offense charged.” *White*, ¶ 36. The State has met its burden to present
25 probable cause.
26

27 Third, Defendant may raise his objections to the sufficiency of an
28 investigation at trial, but cannot dictate an investigation conducted by the

1 State. Essentially, Defendant is frustrated that it appears another person re-
2 posted his threatening videos. At the time of filing the Affidavit, the evidence
3 possessed by the State was that the PickYourBattles YouTube channel
4 contained various videos made by Defendant including some that were
5 threatening. Defendant reported to Officer Smith of the Missoula Police
6 Department that another person was re-posting the videos he posted to make
7 him look bad. Defendant may object at trial to the authenticity or foundation
8 of the videos. But that is a trial evidentiary issue, not a matter for a motion to
9 dismiss.

10 The State moved for leave to file an information in this case when the
11 investigation was ongoing which it is permitted to do. The circumstances of
12 this case called for a motion for leave to be filed expeditiously. Defendant's
13 arguments are appropriate for trial, but not for a motion to dismiss.

14 **II. There is no First Amendment right to threaten or intimidate**
15 **others.**

16 "The most stringent protection of free speech would not protect a
17 man in falsely shouting fire in a theater, and causing a
18 panic." *Schenck v. United States*, 249 U.S. 47, 52 (1919).

19 The First Amendment does not protect a person from shouting fire in a
20 theatre and it does not protect a person from threatening to harm or kill
21 others. Defendant's threats to City Council members and others are not
22 protected under the First Amendment to the United States Constitution. The
23 First Amendment right to free speech is an important and fundamental right,
24 but it has limitations, which were exceeded by Defendant's threats.

25 Defendant has three constitutional arguments: (1) that his actions are
26 protected speech, (2) that Montana Code Annotated § 45-7-102 is overbroad,
27 and (3) that Montana Code Annotated § 45-7-102 is vague as applied to
28 Defendant.

1 “When the constitutionality of a statute is challenged, the party making
2 the challenge bears the burden of proving the statute unconstitutional beyond
3 a reasonable doubt.” *State v. Nye*, 283 Mont. 505, 510, 943 P.2d 96, 99
4 (1997).

5 **A. Defendant’s actions and words are threats and fighting words**
6 **not protected by the First Amendment.**

7 Both the First Amendment to the United States Constitution and Article
8 II, Section 7 of the Montana Constitution protect the right to free speech.
9 Both constitutional provisions prohibit the passage of laws which impair or
10 abridge freedom of speech. Freedom of speech “is a fundamental personal
11 right and essential to the common quest for truth and the vitality of society as
12 a whole.” *State v. Dugan*, 2013 MT 38, ¶ 18, 369 Mont. 39, 303 P.3d 755,
13 citing *St. James Healthcare v. Cole*, 2008 MT 44, ¶ 26, 341 Mont. 368, 178
14 P.3d 696 (quoting *Bose Corp. v. Consumers Union*, 466 U.S. 485, 503-04
15 (1984)).

16 However, both the U.S. and Montana Supreme Courts have made clear
17 that the First Amendment does not prevent states from placing reasonable
18 restrictions on speech that constitutes “true threats” and other types of
19 unprotected speech like “fighting words.” *Dugan*, ¶ 26. As the Montana
20 Supreme Court stated “[i]t has been clear since this Court's earliest decisions
21 concerning the freedom of speech that the state may sometimes curtail
22 speech when necessary to advance a significant and legitimate state
23 interest.” *State v. Lance*, 222 Mont. 92, 102, 721 P.2d 1258, 1265 (1986),
24 citing *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984).

25 For instance, the U.S. Supreme Court has determined that cross
26 burning with the intent to intimidate a person or group of persons is not
27 protected under the First Amendment. *Virginia v. Black*, 538 U.S. 343 (2003).
28

1 "'True threats' encompass those statements where the speaker means to
2 communicate a serious expression of an intent to commit an act of unlawful
3 violence to a particular individual or group of individuals." *Black*, 538 U.S. at
4 359. However, the Court also held that in order for a cross burning statute to
5 be valid, it had to distinguish between cross burning itself and cross burning
6 with the intent to threaten or intimidate. *Black*, 538 U.S. at 365-66.

7 The Montana Supreme Court held in *Lance* that threatening letters in
8 which a person described plans to take hostages to gain media attention was
9 not protected speech. *Lance*, 222 Mont. at 96-97, 721 P.2d at 1261-62. The
10 Court determined that "the State has a substantial, if not overwhelming,
11 interest in preventing intimidation of the public and the resulting fear and
12 anxiety caused by these terroristic-type threats." *Id.*, at 103, 721 P.2d at
13 1266.

14 Similarly, "fighting words" are not protected speech. *State v. Robinson*,
15 2003 MT 364, ¶ 12, 319 Mont. 82, 82 P.3d 27. "Fighting words' are those
16 words that 'inflict injury or tend to incite an immediate breach of peace...have
17 a direct tendency to violence.'" *Id.*, citing *City of Whitefish v. O'Shaughnessy*,
18 216 Mont. 433, 438, 704 P.2d 1021, 1024 (1985).

19 Defendant's words, such as "submit and die" in the context of
20 screaming and waving a stick at City Council meetings are true threats and
21 fighting words not protected by the right to free speech. Defendant's motion
22 to dismiss on this argument must be denied.

23 **B. Montana Code Annotated § 45-7-102 is not overbroad.**

24 **i. The Improper Influence statute is facially valid.**

25 The overbreadth doctrine "is an exception to the general rule that
26 statutes are evaluated in light of the situation and facts before the court."
27 *State v. Spottedbear*, 2016 MT 243, ¶ 15, 385 Mont. 68, 380 P.3d 810. "An
28

1 over-broad statute is one that is designed to burden or punish activities which
2 are not constitutionally protected, but the statute includes within its scope
3 activities which are protected by the First Amendment.” *Dugan*, ¶ 52. The
4 Montana Supreme Court has clarified that “a statute is unconstitutionally
5 overbroad only if its overbreadth is not only “real, but substantial as well,
6 judged in relation to the statute's plainly legitimate sweep.” *Id.*, citing *State v.*
7 *Lilburn*, 265 Mont. 258, 264-265, 875 P.2d 1036, 1040 (1994)
8 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)). The test for
9 overbreadth therefore “is not whether hypothetical remote situations exist, but
10 whether there is a significant possibility that the law will be unconstitutionally
11 applied. *Spottedbear*, ¶ 16. “ When there is no realistic danger or significant
12 possibility that First Amendment protections will be meaningfully
13 compromised, [the Montana Supreme Court has] held consistently that any
14 unconstitutional application of a statute should be addressed on a ‘case-by-
15 case’ basis.” *Id.*

16 However, a statute may be unconstitutional if it contains a prima facie
17 provision which does not differentiate between true threats and speech which
18 may be protected. *Black*, 538 U.S. at 367. For instance, in *Black*, even
19 though the Supreme Court determined that cross-burning with an intent to
20 intimidate would not be protected speech, a law could not ban all cross-
21 burning which could be a protected expression. Similarly, in *State v. Dugan*,
22 the Montana Supreme Court held that the Privacy in Communications statute,
23 which made “use of obscene, lewd, or profane language . . . prima facie
24 evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend’
25 with no regard to the circumstances and facts of the particular case” was
26 facially overbroad and struck the offending portion. *Dugan*, ¶¶ 61-63. The
27 Court did not invalidate the entire statute.
28

1 The Montana Supreme Court is reluctant to “strike down a statute on its
2 face where there were a substantial number of situations to which it might be
3 validly applied.” *Lance*, 222 Mont. at 101, 721 P.2d at 1265. Thus, even if
4 there are marginal applications in which a statute would infringe on First
5 Amendment values, facial invalidation is inappropriate if the “remainder of the
6 statute . . . covers a whole range of easily identifiable and constitutionally
7 proscribable . . . conduct . . .” *Id.*

8 The Montana Supreme Court directly addressed the constitutionality of
9 § 45-7-102 and the overbreadth doctrine in *Spottedbear*. The Court stated “§
10 45-7-102(1)(a)(i), MCA, serves a plainly legitimate purpose—to deter people
11 from threatening harm to a public servant in order to influence that person's
12 actions as a public servant.” In *Spottedbear* the Court found that defendant's
13 trial counsel may reasonably have concluded that an overbreadth challenge
14 would have been unsuccessful. *Id.*, ¶ 17. The Court explained that it should
15 be a “high hurdle” to show how 45-7-102 adversely affected the rights of
16 others in a real or substantive way. *Id.*, ¶ 18.

17 Here, Defendant erroneously asserts that Montana Code Annotated §
18 45-7-102 is so broad that it criminalizes a concerned citizen telling a city
19 council member he will not support him or her if they do not vote in a certain
20 way. Defendant draws this conclusion without any basis in law or rational
21 argument. Similarly, without any support, Defendant argues that a person
22 could be criminally charged for posting a critical op-ed in a newspaper. There
23 is absolutely no possibility of such an offense in any reading of § 45-7-102.
24 The defendant in *Spottedbear* tried a similar tactic pointing to “hypothetical
25 remote situations in which the statute could be applied unconstitutionally.”
26 *Spottedbear*, ¶ 18. The mere fact that an attorney can “conceive of some
27 impermissible applications of the statute” is insufficient to demonstrate that
28

1 the statute is unconstitutional. *Id.* Defendant’s examples—which are clearly
2 protected free speech—are not even remotely contemplated under § 45-7-
3 102, and are certainly not analogous to the issues here.

4 A statute may be overbroad if, for example, it outlawed any curse words
5 from being spoken before a public body without providing a required mental
6 state. See *Black and Dugan*. But Montana Code Annotated § 45-7-102 does
7 no such thing. It makes it illegal only to threaten harm with the purpose to
8 influence another public servant, party official, or voter. A “threat” under
9 Montana criminal law and relevant to this case “means a menace, however
10 communicated, to . . . inflict physical harm on the person threatened or any
11 other person or property.” Mont. Code Ann. § 45-2-101(76)(a). The definition
12 of threat includes other methods of making a threat, but none of them could
13 be construed to ever punish a person for simply disagreeing with a public
14 official, not voting for someone, or publishing a critical op-ed in a newspaper.
15 Disagreeing with a person, voting against them, or writing a critical op-ed is
16 clearly constitutional and in no way prohibited by § 45-7-102.

17 It is fundamentally, crystal clear under both U.S. and Montana law that
18 any citizen can express their disapproval or disagreement of a public official
19 or their opinions. Any citizen can engage with his or her government and
20 disagree, express themselves, provide public comment, be angry, emotional,
21 upset or frustrated about policy decisions—all within constitutional
22 parameters as protected free speech. Not only is such expression allowed,
23 but it is fundamentally necessary to the functioning of our democracy. But
24 equally necessary is that all constituents and public officials be able to
25 engage in vigorous debate and have disagreements without fear for their own
26 safety or safety of their families. That is the line that was crossed here.

27
28 The Improper Influence statute is in place to achieve an important

1 policy objective—to assure that engagement in government without fear for
2 one’s safety. It is not facially overbroad and the Motion to Dismiss should be
3 denied on this issue.

4 **ii. The Improper Influence Statute is not overbroad as applied.**

5 There are situations where a statute can be facially valid, but
6 unconstitutional as applied. This is not one of those circumstances.

7 The Montana Supreme Court has held that constitutional challenges
8 based on the overbreadth doctrine should be dealt with on a case-by-case
9 analysis of the “fact situations where the statute is assertedly being applied
10 unconstitutionally.” *Lilburn*, 265 Mont. at 270, 875 P.2d at 1043. In
11 *Spottedbear*, the defendant had threatened to kill a police officer, his
12 pregnant wife, and his family. *Spottedbear*, ¶ 4. He was convicted of
13 improper influence along with two other charges. *Id.*, ¶ 6. The Supreme
14 Court analyzed and rejected constitutional challenges based on the
15 overbreadth doctrine. *Id.*, ¶ 19. While the issue in *Spottedbear* was whether
16 defendant’s attorney should have raised a constitutional challenge to § 45-7-
17 102 in district court, the Supreme Court was “unpersuaded” that failing to
18 raise it was a mistake. *Id.*, ¶ 17. The Court found the Statute had a plainly
19 legitimate sweep and the hypothetical situations presented by defense
20 counsel on appeal were irrelevant. *Id.*, ¶ 19.

21
22 Montana Code Annotated § 45-7-102 (improper influence) is also
23 similar to Montana Code Annotated § 45-5-203 (intimidation). Both statutes
24 concern threats being communicated to do or not do a certain thing. The
25 Montana Supreme Court has consistently held the Intimidation statute to be
26 “plainly legitimate” and “not unconstitutionally overbroad.” *State v. Ross*, 269
27 Mont. 347, 356, 889 P.2d 161, 166 (1995); see also *State v. Cleland*, 246
28 Mont. 165, 171, 803 P.2d 1093, 1096 (1990) (threats made under

1 circumstances that reasonably tended to produce a fear that the threats
2 would be carried out are not protected under the constitutional principles of
3 free speech); *Lance*, 222 Mont. 92, 721 P.2d 1258 (threats of the kind
4 prohibited by the Intimidation statute are not speech protected by the First
5 Amendment); *State v. Wurtz*, 195 Mont. 226, 636 P.2d 246 (1981)
6 (Intimidation statute was not unconstitutional as applied to a defendant who
7 threatened to rape a pedestrian after she had seen him following her).

8 Defendant asserts that nothing was said or done at a City Council
9 meeting that constituted a “true threat.” Again, Defendant is attempting to
10 argue the merits of this case in a motion to dismiss to circumvent a jury.
11 While this argument is inappropriate for briefing, it is also wrong. It is not
12 Defendant’s public comment at a City Council meeting that is against the law.
13 It is threatening to “eliminate” from the “fabric of reality” those people that he
14 disagrees with; it is threatening to exterminate people; it is ending a video
15 after complaining about the City Council and its actions (among other things)
16 and stating they will submit and die. These are Defendant’s own words.

17 Montana Code Annotated § 45-7-102 is not overbroad. Defendant’s
18 Motion must be denied on this point.

19 **C. Montana Code Annotated § 45-7-102 is neither facially vague**
20 **nor vague as applied to Defendant.**

21 “A vagueness challenge to a statute may be maintained under two
22 different theories: (1) because the statute is so vague that it is rendered void
23 on its face; or (2) because it is vague as applied in a particular situation.”
24 *Dugan*, ¶ 66. A statute is void on its face “if it fails to give a person of
25 ordinary intelligence fair notice that his contemplated conduct is forbidden.”
26 *Id.*, ¶ 67.

27 Defendant’s argument on vagueness is best characterized as another
28

1 factual dispute about what the State may prove at trial. While Defendant
2 correctly identifies the standards for evaluating the concept of vagueness in a
3 constitutional challenge, the Defendant’s actual argument fails to specify how
4 Montana’s Improper Influence statute is void for vagueness or as applied.
5 Defendant asserts that it is unclear how the term “purpose to influence” will
6 be applied in this case. Defendant notes that the State will have to prove
7 beyond a reasonable doubt that the Defendant threatened public officials and
8 that he did so with the purpose to influence someone. Citing *Spottedbear*, ¶
9 23 and §45-2-101(65). Neither of these assertions are a valid constitutional
10 challenge based on vagueness.

11 All Defendant is arguing is that he does not believe the State can prove
12 the elements of the offense at trial. That is a factual matter for a jury, not a
13 conclusion of law to be decided upon in a motion to dismiss.

14 The Montana and U.S. Supreme Courts have specified that if the
15 challenged statute is reasonably clear in its application to the conduct of the
16 person bringing the challenge, it cannot be stricken on its face for vagueness.
17 *State v. Nye*, 283 Mont. 505, 514, 943 P.2d 96, 102 (1997), citing *Village of*
18 *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982).

19 In *State v. Nye*, the Montana Supreme Court dealt with a challenge to
20 Montana’s malicious intimidation statute which makes it a criminal offense to
21 purposely or knowingly, with the intent to terrify, intimidate, threaten, harass,
22 annoy, or offend: cause bodily injury to another, reasonable apprehension of
23 bodily injury in another, or damage to property. *Nye*, 283 Mont. at 513, 943
24 P.2d at 101; § 45-5-221. The Court found that terms like “annoy” and “offend”
25 have commonly understood meanings. *Nye*, 283 Mont. 505, 513, 943 P.2d
26 96, 101 (1997). The Court presumed that a reasonable person of average
27 intelligence would comprehend their meaning. *Id.* The Court also clarified
28

1 that the statute only punished a person when it was their intent to annoy or
2 offend another person. *Id.*, 283 Mont. at 514, 943 P.2d at 102.

3 For vague-as-applied challenges, a court must determine whether the
4 statute in question provides a person with "actual notice" and whether it
5 provides "minimal guidelines" to law enforcement. *Dugan*, ¶ 67. "To
6 determine whether the challenged statute provides "actual notice," courts
7 examine the statute in light of the defendant's conduct to determine if the
8 defendant reasonably could have understood that the statute prohibited such
9 conduct." *Id.* The requirement of a mental state to do a prohibited act can
10 render an otherwise vague or indefinite statute constitutional. *Id.*, ¶ 70.

11 Here, the relevant portions of §45-7-102 state:

12 (1) A person commits an offense under this section if the person
13 purposely or knowingly:

14 (a) (i) threatens harm to any person, the person's spouse,
15 child, parent, or sibling, or the person's property with the
16 purpose to influence the person's decision, opinion,
17 recommendation, vote, or other exercise of discretion as a
public servant, party official, or voter;

18 (emphasis added). This statute provides actual notice to any reasonable
19 person of average intelligence that threats to harm with the requisite mental
20 state are prohibited.

21 This is an as-applied challenge and Defendant is alleging that the State
22 cannot prove that the threats were made with a conscious object to influence
23 a public official. Thus, additional context must be provided to the Court. The
24 assertions below are matters that may be proved at trial.

25 At a November 2019 Missoula City Council meeting Defendant gave
26 public comment. See Def.'s Br. n. 1. He told the City Council that a majority
27 of them had betrayed their country and community and he wanted them to
28 see in his eyes what he thought about each and everyone of them. He told a

1 story, a parable, then screamed into the microphone. He continued to yell
2 that the City Council had sold out the community, wrecked the community.
3 The disruptive outburst resulted in the meeting being adjourned until he could
4 calm down.

5 Then in a video believed to have been made on or about December 19,
6 2019, Defendant made the following statements and threats:

7 *I've witnessed now of those same disgusting putrid sacks of*
8 *shit people coming in and buying up my backyard and*
9 *commercializing life to humans. It's gross. It's absolutely one of the*
10 *most disgusting things I've experienced in my life. The entire City*
11 *Council has sold out Missoula to the highest bidder and what's going*
12 *to happen to the people that had wronged everyone don't step aside*
13 *and put their tails between their legs and run, because over the next*
14 *year, all those people who have wronged others who have*
15 *discriminated against others because of class, race, gender or*
16 *creed...will be eliminated.*

17 *And I always wonder if they even knew what the heck they*
18 *were creating when they created men like me and people like me.*
19 *The Japanese samurai attribute the life of a man to the creation of a*
20 *katana. And should that sword not do its duty then it is discarded*
21 *and forged anew. And the essence of my spirit and my soul was*
22 *pure and given over and over...I had been humiliated by my military*
23 *service. I am humiliated that I gave my life and dedication to a*
24 *group, an entity of disgusting filthy pedophile murders. That's all you*
25 *are. And whether in this life of the next, I will dedicate myself to*
26 *hunting you out and exterminating you. Doesn't matter where I see*
27 *you. It doesn't matter at all. I will be eliminating this wretched fucking*
28 *filth from the human soul. I am sick and tired of everyday I wake up*
and I'm not even sure if I am going to have food. I'm not sure if I'm
going to have the house over my head. I'm not sure, after I
murdered for these people who are making trillions and trillions of
dollars off of this. They violated my fucking soul and the human spirit
and then they come and they spit on us and they degrade us and
they gentrify the places where they steal us from, they uproot us
from. The mold us and shape us and send you back and then you're
just you are no longer yourself.

It is the thing that is within me that got me through my
whistleblowing it was the thing that got me through the military . It

1 was the thing that is before you today. And I don't think it's a thing.
2 Some might attribute it to God. I think that's ignorant. Its
3 themselves. And what myself is saying is that all you deserve to be
4 eliminated. And I will do it. And if you remove me from this life I get
5 to choose my next incarnation and I will hunt you down so not even
6 the stones will hide you. The very atoms will sing out your presence
7 to me and I will eliminate you from the fabric of reality and you will
8 never see another life again. That is my promise. If you had been
9 true to me you will escape the fire. But every single one of you have
10 wronged another human being and have made them more
11 miserable, I wish you to feel everything you have ever made another
12 person have to suffer through. I don't wish death upon anyone.
13 Death will come to everyone. I wish you a very long life... This is
14 what I am preparing my soul to do on this solstice. You have taken
15 everything from me. You have taken my son from me. You have
16 taken my dignity. You have wrecked my community. You have
17 wrecked my family. And I will stand as myself before all of creation
18 and you will move and you will submit and you will die.²

19 (emphasis added).

20 Then, in January, Defendant again gave comment to the City Council.
21 See Def.'s Br. n. 2. He brought a stick, several feet long, to the table to
22 speak. Defendant repeatedly said he did not feel safe. He held up the stick.
23 He said he swore an oath to not kill another human being again. He said it
24 was just a stick, but it was carved in a tool that was specifically created to end
25 another human being's life. He gave further comment regarding policy
26 choices of the City Council. He said you cannot use an imperfect tool to do a
27 correct job. He said the tool could end people's lives in ways that were worse
28 than death.

Here, a threatening video, bookended by menacing and disruptive

² https://www.youtube.com/watch?v=k9Y5dGe_3i0. The State acknowledges that there may be minor typographical or punctuation errors in the transcription of this video. There are minor deletions noted in ellipses. The video in its entirety is located at the link above. Furthermore, the State is compelled to cite to this language because the Defendant has raised the unconstitutional as-applied challenge. However, it is the States' position that all factual matters should be left to the trier of fact.

1 conduct at public meetings is clearly conduct that falls under the prohibitions
2 in § 45-7-102. Defendant has not demonstrated how the statute is vague as
3 applied to Defendant. His conduct clearly falls under the statute's language
4 and purpose. To the extent Defendant has raised an issue regarding whether
5 Defendant was directing these threats to specific individuals, that is a
6 question for the jury.

7 **CONCLUSION**

8 Defendant's Motion must be denied. There is no defective charging
9 process. The State provided an Affidavit of Probable Cause which articulates
10 a probability that Defendant committed the offense of Improper Influence in
11 Official and Political Matters.

12 Furthermore, Defendant's conduct and words are not within the
13 confines of constitutionally protected free speech. Threats and fighting words
14 like those spoken by Defendant are not protected. The Improper Influence
15 statute is neither overbroad nor vague as applied to Defendant.

16 Accordingly, Defendant's Motion to Dismiss must be denied.

17
18 DATED this 28th day of February, 2018.

19
20 /s/ Matt Jennings
21 Matt Jennings
22 Deputy County Attorney
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Matthew C. Jennings, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response Brief to the following on 02-28-2020:

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Electronically signed by Nichole Kercher on behalf of Matthew C. Jennings
Dated: 02-28-2020

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2 Missoula, Montana 59802
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3

4 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

5
6 STATE OF MONTANA,

Plaintiff,

7 and

8 Brandon Bryant,

Defendant,

Dept. No. 5
Cause No. DC-20-70

**OMNIBUS HEARING
MEMORANDUM**

9
10 **The Prosecutor and the Defendant's counsel, by signing this memorandum,**
11 **acknowledge that they have both read the omnibus hearing statute, MCA 46-13-110,**
12 **and are now prepared to discuss any pretrial matters in addition to and including**
13 **those matters listed in MCA 46-13-110. Our discussion of and subsequent agreement**
14 **on these pretrial matters is summarized by this memorandum.**

15 **I. DISCOVERY**

- 16 1. In compliance with MCA 46-15-322, the State shall immediately and on
17 a continuing basis:
 - 18 a. Disclose the names, addresses and statements of the State's
19 witnesses (including experts) that the State may call as witnesses in
20 their case-in chief.
 - b. Disclose and make available for inspection all physical or
documentary evidence in the State's possession that the State may
use at trial or which was obtained from or belonged to the
Defendant.
 - c. Disclose all oral, written or recorded statements made by Defendant
to investigating officers or to third persons.

1 d. Disclose all exculpatory evidence known to the State, including
2 evidence that would tend to reduce the Defendant's potential
3 sentence.

4 2. In compliance with MCA 46-15-323, the Defendant shall, 30 days after
5 arraignment, and on a continuing basis:

6 a. Disclose the names, addresses and statements of the Defendant's
7 witnesses (including experts) that the Defendant may call in their
8 case-in-chief.

9 b. Disclose and make available for inspection all physical or
10 documentary evidence in the Defendant's possession that may be
11 used at trial.

12 3. Initial discovery shall be completed by: Complete and ongoing.
13 Discovery disputes shall be raised no later than twenty-one (21) days
14 prior to trial (or at the time of the final pre-trial, whichever is earlier);

15 II. CO-DEFENDANT(S)

16 The Defendant states that there _____ is is not a co-
17 defendant in this case. The name(s)/cause number(s) of the co-
18 defendant(s) is/are

19 Co-Defendant _____

20 is represented by _____

Co-Defendant _____

is represented by _____

III. FITNESS TO PROCEED

The Defendant's fitness to proceed is at issue: () Yes No. If yes:

a. A psychiatric examination of the Defendant shall be conducted by
(the State Hospital) _____

Name of Psychiatrist: _____

b. Further orders: _____

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IV. INFORMANT, AND SURVEILLANCE

INFORMANT: The State declares that a confidential informant was involved ()Yes (X)No. If yes:

The Informant will be called as a witness: ()Yes ()No
The State has disclosed the informant's identity: ()Yes ()No
The State will disclose the Informant's identity by: _____

ELECTRONIC SURVEILLANCE: The State declares there has been electronic surveillance of the Defendant or his premises: ()Yes (X)No. If yes: All material obtained by electronic surveillance has been supplied to the Defendant.

INVESTIGATIVE SUBPOENA: The State declares that an investigative subpoena has been executed: ()Yes (X)No – not at the time of this Omni.

All material obtained by the investigative subpoena has been supplied to the Defendant ()Yes ()No.

V. SUPPRESSION MOTIONS

1. The Defendant moves, pursuant to MCA 46-13-302, to suppress physical evidence: ()Yes (X)No. If yes: _____

The Defendant's statement of facts and brief filed by: _____
The State's brief filed by: _____
The Defendant's reply brief filed by: _____

2. The Defendant moves, pursuant to MCA 46-13-301, to suppress Defendant's admission or confession: (X)Yes ()No If yes:

The Defendant's brief filed by: 3/9/20
The State's brief filed by: 3/23/20
Defendant's reply brief by: 3/30/20

(NOTE: The motions will be deemed submitted without a hearing unless a Request for Hearing is submitted prior to the end of the briefing period.)

1 VI. OTHER CRIMES, WRONGS OR ACTS/TRANSACTION EVIDENCE

2 The State intends to introduce evidence of other crimes, wrongs, or acts,
3 or transaction evidence pursuant to Rule 404, M.R.E.: (X)Yes ()No

4 Related to past threats.

5 If yes, the State declares that all such evidence has been disclosed to
6 counsel for Defendant through the normal discovery process.

- 7 1. The Defendant may file a brief opposing the use of any such
evidence by: 3/9/20
- 8 2. The State's response brief due on: 3/23/20
- 3. The Defendant's reply brief due on: 3/30/20

9 (NOTE: The motions will be deemed submitted without a hearing unless a
10 Request for Hearing is submitted prior to the end of the briefing period. If and
only if such evidence is discovered later, the exclusion of the evidence may be
11 addressed in a motion in limine)

12 VII AFFIRMATIVE DEFENSES

13 The Defendant is aware of the time limits imposed by MCA 46-15-323 in
which Defendant may assert certain defenses.

14 1. The Defendant will assert an affirmative defense: (X)Yes ()No
15 If yes, the affirmative defense is: Mistaken Identity

16 2. The Defendant will introduce evidence of good character: (X)Yes ()No

17 3. The names and addresses of all witnesses to be called in support of
18 any affirmative defense or good character, together with all written reports or
statements made by them shall be furnished to the State by: 3/30/20

19 4. The State shall furnish the Defendant with the names and addresses of
20 all witnesses the State intends to call, to rebut the Defendant's affirmative
defense or good character, by: Final Pre-Trial Conf.

1 **VIII MOTIONS BY THE STATE**

2 The State has pretrial motions: ()Yes (X)No If yes: These motions are:

3 (a) _____

4 (b) _____

5 The State's brief filed by: _____

The Defendant's brief filed by: _____

6 The State's reply brief filed by: _____

7
8 (NOTE: The motions will be deemed submitted without a hearing unless a
9 Request for Hearing is submitted prior to the end of the briefing period.)

10 **IX. MOTIONS BY THE DEFENDANT**

11 The Defendant has pretrial motions: (X)Yes ()No If yes:

12 These motions are: Motion to Dismiss Based Upon
Destruction of
Evid.

The Defendant's brief filed by: 3/9/20

13 State's response filed by: 3/23/20

14 The Defendant's reply brief filed by: 3/30/20

15 (NOTE: The motions will be deemed submitted without a hearing unless a
16 request for Hearing is submitted prior to the end of the briefing period.)

17 **X. PERSISTENT FELONY OFFENDER**

18 Pursuant to MCA 46-13-108, the State will give notice, by separate
19 pleading, if the State seeks to have the Defendant sentenced as a Persistent
20 Felony Offender.

1 **XI. MENTAL DISEASE OR DISORDER ISSUE**

2 Except for good cause shown concerning fitness to proceed, any mental
3 disease or disorder issue shall be disclosed and discussed at the time of the
4 signing of this omnibus form.

4 Neither party has a mental disease or disorder issue concerning
5 the Defendant and no examination pursuant to MCA 46-14-201 will be
6 requested or conducted.

6 Yes, the State Defendant has a mental disease or
7 disorder issue. This issue shall be brought to the Court's attention by a motion
8 at the time of the Omnibus hearing so that an examination pursuant to MCA 46-
9 14-201 can be ordered.

8 **XII. TRIAL PROCEDURE**

- 9
1. Expected length of trial is: 4 days.
 2. The Court will draw a panel consisting of 100 prospective jurors.

11 The State waives any right to be present at the drawing and agrees
12 that the panel may be drawn from those individuals who have
13 returned their juror questionnaires: (x)Yes ()No.

14 Defendant waives any right to be present at the drawing:
15 ()Yes ()No.

16 Defendant agrees that the panel may be drawn from those individuals
17 who have returned their juror questionnaires: ()Yes ()No.

3. All motions in limine shall be filed and fully briefed not later than
17 14 days prior to trial unless upon good cause shown (or at the
18 time of the final pre-trial, whichever is earlier).
4. All standard jury instructions shall be filed prior to voir dire.
19 Additional instructions will be submitted on a showing of good
20 cause.
5. Appropriate Disposition Date: Final Pre-Trial Conf.

1 (Note: After this date no plea bargains will be accepted by the Court, nor will
2 any pleas bargains be allowed to be filed after this date.)

3 **XII. APPOINTMENT OF COUNSEL**

4 As the court-appointed counsel for the Defendant, I acknowledge that this
5 appointment includes the trial of this matter in District Court, post-trial motions,
6 sentencing and, absent specific permission to withdraw, an appeal to the
7 Montana Supreme Court if the Defendant elects to appeal and I do not deem
8 such an appeal to be frivolous. In the event the Defendant wishes to proceed
9 with an appeal I believe has no merit, I will proceed pursuant to the provisions of
10 46-8103(2), MCA. If the Defendant elects not to appeal, the Defendant and I will
11 sign a written notice of "Election Not to Appeal" and I will file the "Election Not to
12 Appeal" with the Court.

13 **XIII. STIPULATION OF ENTRY**

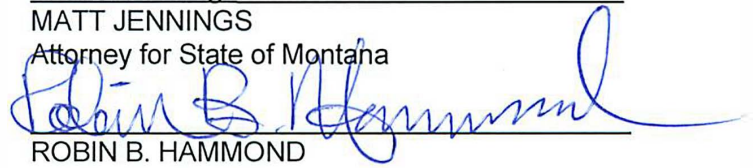
14 Counsel for the State and for the Defendant have reviewed this Omnibus
15 Hearing Memorandum and hereby stipulate to its entry by the Court.

16 DATED this 27th day of February 2020.

17 /s/ Matt Jennings

18 MATT JENNINGS

19 Attorney for State of Montana



20 ROBIN B. HAMMOND

21 Attorney for Defendant



22 Brandon Bryant

23 Defendant

24 SO ORDERED: Dated electronically below.

25 _____
26 Electronically signed below.

27 _____
28 Shane A. Vannatta
29 DISTRICT COURT JUDGE

Jacob Coolidge
Office of State Public Defender
Regional Office, Region 2
610 N. Woody
Missoula, MT 59802
Phone: (406) 523-5140

Attorney for Defendant

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA, Plaintiff, v. BRANDON HOWARD BRYANT, Defendant.	Dept. 5 Cause No. DC-20-70 <p style="text-align: center;">REPLY TO STATE'S RESPONSE</p>
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COMES NOW, Brandon Howard Bryant, by and through his counsel of record, Jacob Coolidge and hereby respectfully replies to the State's Response brief.

Defendant maintains that the State's Affidavit of Probable Cause does not satisfy statutory and constitutional requirements and should be dismissed. Subsequent hearings have highlighted erroneous information in the charging documents that underscore that no offense has been alleged therein. Further, any speech by defendant is protected speech under the First Amendment and does not fall into the narrow "fighting words" or "true threats" exceptions. Defendant maintains that Montana Code Annotated § 45-7-102 is overbroad as applied, vague as applied, and vague on its face.

ARGUMENT

- I. **Defendant maintains the charging process was constitutionally infirm and subsequent hearings have demonstrated deficiencies therein that negate a probable cause finding.**

Defendant relies on his opening brief and maintains that the initial charging process lacked inherent reliability, as required by *Gerstein v. Pugh*, 420 U.S. 103 (1975). Additional statements made by the State have further underscored the lack of reliability in the charging process, which calls into question the accuracy of the Affidavit as a whole, and the probable cause alleged therein.

The State admitted in open court that the Affidavit of Probable Cause contains a material misrepresentation of crucial facts. (*see* Affidavit, at p. 3:14-15¹; *See also* Feb 27 Transcript 16:24-17:2²). This error is critical for three reasons.

First, it highlights the constitutional deficiencies in the charging process. Although the State's argument that the Montana statutory charging scheme does not require strict adherence to the rules of evidence is well taken, Defendant's substantive and procedural due process rights require that the information provided to the Court be inherently reliable. Here, and by the State's own admission, allegations in the Affidavit have proven to be discernably false. Such allegations could have been verified or proven to be false with additional investigative measures. Rather than pursue those investigative measures, the State opted to direct file the charges, relying on an Affidavit that lacks the hallmark reliability requirements espoused in *Gerstein v. Pugh*. As such, it brings into question the reliability and accuracy of the statements therein at the expense of Defendants liberty and rights to procedural and substantive due process. In other jurisdictions, grand jury indictments and preliminary hearings are designed to prevent these inaccuracies prior to the loss of liberty of an individual who is presumed innocent. Here, inaccurate and unreliable statements have led to the prolonged incarceration of Defendant.

Further, the Affidavit relies on internet videos and presumes them to be authentic and accurate. However, internet videos are not self-authenticating, so any reference to them in a charging document need be accompanied by additional verification that the video is what it purports to be. In the instant case, such investigation would have easily showed that the video in question was not distributed by Brandon Bryant, but by Rick Rynearson or some other individual. This error in the charging document is not only vital in showing the lack of reliability of the charging documents, but also because it brings into question whether it actually alleges a crime. Even though strict adherence to the rules of evidence is not required, videos pulled from social media without context should be viewed with skepticism and require additional verification. Hastily charging criminal offenses for videos found on social media platforms without additional investigation and verification undermines the purpose of the reliability requirement espoused in *Gerstein v. Pugh*.

¹ "Mr. Bryant's YouTube account username is Pick YourBattles (sic) and a search of videos he posted under that user name . . ."

² "This video, Your Honor, is posted on a website called "Pick Your Battles." The State will concede that there have been videos posted on the website since Mr. Brandon – Mr. Bryant was arrested. This is a website being maintained by another person."

If, as the State claims, the charging documents comply with Montana statutory scheme and basic requirements of reliability, then the Montana statutory scheme does not meet baseline requirements of reliability required by *Gerstein v. Pugh*. If the State is complying with the statutory scheme and still has clear deficiencies in the affidavit that could have been remedied by additional investigation, then the charging process is clearly deficient as a whole. The State utilized unverified allegations that turned out to be false and it resulted in the Court depriving Defendant of his liberty under false or inaccurate pretenses.

Second, the State's factual error in the charging document highlights that there is not probable cause of any offense. Defendant is charged with Threats and Improper Influence in Political Matters which requires the State to prove that he (a) threatened to harm a specific person or group of people; (b) that Defendant did so with the purpose to influence the political action of that official; and (c) did so purposefully or knowingly. MCJI 7-102(a) (2009). Here, the State's erroneous statement that Defendant operated the YouTube page negates the first element, even with the low threshold of probable cause. In order to threaten a political official with the specific intent to influence their political activity, the threat need be conveyed to that official. Here, the only conveyance alleged is by the operator of Pick Your Battles, which the State initially claimed to be Defendant, yet has since admitted is a third party. As such, based on the charging documents, there is no conveyance of a threat by Defendant, which is fatal to the State's charging theory.

To analogize, the circumstances are akin to an adolescent child writing in a journal that he will punch his teacher if he does not let them have recess on Friday. Then, the child leaves that journal in an unsecure location. A third-party walks by, sees the journal, and opens the journal to read what the child wrote about his teacher. The third party then shouts to the entire school what he read in the journal. The initial child, who wrote in the journal, did not convey his speech to the teacher, and thereby did not commit any threat. Although the content therein may be concerning to the teacher, it was not a threat because it was not conveyed, and it certainly was not conveyed with the intention of dictating whether there will be recess on Friday.

Here, Defendant did not convey the threat to the intended audience with the purpose to impact their political activity. By the State's own admission, it is unclear who the focus of Defendant's alleged comments were directed towards. (*see* Affidavit, at p. 3:3-4 "[w]hile it is unclear who he is next referring to [sic] the video . . ."). Additionally, the State has since admitted

that Defendant did not even distribute the video, thereby negating any probable cause that he intentionally conveyed the message to the intended audience with the intent to influence its political activity. As such, the case should be dismissed for lack of probable cause. Without the conveyance to the intended audience, any strongly worded criticism, even if contemplative of violence, does not constitute a threat under the Montana statute. Of note, Defendant is not conceding that any statements made in any videos found on a social media platform were made by him or that Defendant ever advocated for violence.

Third, it triggers a *Franks* analysis. If a warrant affidavit contains a statement that is demonstrated to be both false and included by an affiant with reckless disregard for the truth, the warrant is invalid. *Franks v. Delaware*, 438 U.S. 154 (1978). Although *Franks* specifically addresses search warrant applications, it is appropriate in the subject case because the affidavit submitted by the State was relied upon by the Court to make a determination of probable cause, just as a law enforcement officer would do in requesting a search warrant. The case is arguably more relevant because, rather than analyzing law enforcement's sworn statements, at issue in the subject case are the sworn statements put forth by a member of the State Bar of Montana, and Officer of the Court, and the wielder of prosecutorial discretion, one of the more influential powers in the criminal justice system. If, under *Franks*, there is an allegation of reckless disregard for the truth, the allegations must be accompanied by a statement of supporting reasons and the statement in the Affidavit must be excised. *Id.*

Here, there are two main statements that reflect a reckless disregard for the truth and must be excised from the Affidavit of probable cause. First, as mentioned, the State has already conceded the inaccuracy of the claim that Defendant operates the Pick Your Battles YouTube page. Despite a police report that suggested that Pick Your Battles was run by a third party (See Ex. B of 2/27/20 motion), the State continued to allege that Defendant operated that YouTube page. In so doing, the State demonstrated reckless disregard for the truth. Further, in stating that Defendant admitted he made *the* video, the State again had reckless disregard for the truth. As stated below, there is more than one video, which have been referenced by the State in subsequent hearings. Using the word "the" prior to the video implies that there is only one video and that Defendant admitted to making it, which is also not accurate and constitutes reckless disregard for the truth. As such, both statements must be excised from the Affidavit of Probable Cause and the Court must determine whether probable cause exists. Without the purposeful and

knowing distribution of the video, there is not probable cause of a crime. Although *Franks* normally requires a hearing, Defendant asks the Court to take judicial notice of the incorrect factual statements found in the Affidavit and excise the statements from in the Affidavit. Without those statements, there is no probable cause of any offense.

II. The “fighting words” exception to the First Amendment does not apply.

The State incorrectly argues that the “fighting words” exception to protected speech applies to the subject case.

Analyzing whether an exception to the First Amendment applies is clouded by the deficiencies in the charging documents. The Information fails to articulate what speech is violative of the law. The date range, paired with the Affidavit of Probable cause, apparently suggests that Defendant’s conduct was cumulatively criminal, and includes reference to two city council meetings and a YouTube video. Subsequent hearings have led Defendant and counsel to infer that the YouTube video is the alleged offense.³ Because of the ambiguity in the charging documents, Defendant is unaware of what speech is allegedly criminal. Regardless, the “fighting words” exception does not apply to the YouTube video or to any comments made in the city council meetings.

The “fighting words” exception does not apply to the YouTube video because it was not a face-to-face communication. “Fighting words” are “those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” *City of Billings v. Nelson*, 2014 MT 98, ¶ 23, 374 Mont. 444, 322 P.3d 1039 (quoting *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 572, 62 S.Ct. 766, 769 (1942)). The fighting words exception is limited to face-to-face communications, because the purpose of the exception is to forbid words that have a “direct tendency to cause acts of violence.” *Dugan*, at ¶ 37 (quoting *Chaplinski*, 315 U.S. at 573, 62 S.Ct. at 770). Of note, the violence contemplated is not general violence, but rather a violent response or “breach of the peace by the addressee,” not the addressor. *Id.* Telephone communications cannot be fighting words because there is no possibility the listener will react with immediate violence against the speaker. *Dugan* at ¶¶ 42-43.

³ “I have not heard the state indicate that he is being prosecuted for the expression of or other statements he has made, but, rather, the threats that were evident in the YouTube video were the preeminent concern of the state in bringing the Information.” (Court; Feb. 20 Transcript 16:11-16).

Here, the YouTube video is akin to a telephone call. In *Dugan*, the Court held that Dugan’s speech did not fall within the “fighting words” exception because the communication was over a telephone and not face-to-face, thereby negating the purpose of the exception. The YouTube video similarly was not a face-to-face communication. The “fighting words” exception categorically does not apply to communications via an online medium that lack the physical and temporal proximity contemplated by the “fighting words” progeny. As such, the State’s argument should be disregarded.

Assuming, *arguendo*, that the State is prosecuting Defendant for his comments made during city council meetings, those comments also fall outside of the “fighting words” exception. In no setting are one’s First Amendment rights more apparent and more embodied than when participating in governance and addressing a legislative body. The United States has a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S. Ct. 710, 721 (1964) (internal citations omitted). As such, public debate and comments during a city council meeting embody the spirit of the First Amendment and the Court must be vigilant in ensuring that citizens’ rights are upheld in these political contexts.

Because the First Amendment is designed to protect robust, vehement, caustic, and unpleasantly sharp debates, elected officials must be prepared to receive such criticism without responding violently. The “fighting words” exception is “consistent with the underlying purpose of the doctrine, which is ‘to preserve the public peace’ by forbidding only those words that have a ‘direct tendency to cause acts of violence.’” *Dugan*, ¶ 37 (quoting *Chaplinsky*, 315 U.S. at 573, 62 S. Ct. at 770). Here, Defendant spoke critically at a city council meeting of the council’s decisions regarding TIF funding. He did so assuming that the council members would not respond with violence. Any American would expect that they can vocalize their opinions at open legislative hearings without evoking a violent response from his or her representatives. Because the “fighting words” exception is meant to forbid words that have a “direct tendency to cause acts of violence” through the response of the listener, it is wholly inapplicable to comments made during open political meetings, regardless of how vehement, caustic, or unpleasantly sharp the comments may be. The Court should disregard the State’s argument that the “fighting words”

exceptions applies, regardless if the State is prosecuting Defendant for comments made at city council meetings, on a YouTube video, or both.

III. The “true threats” exception to the First Amendment does not apply.

The “true threats” exception does not apply and any speech by Defendant, be it via a YouTube video or during city council meetings, is protected speech. Although the First Amendment does not protect “true threats” it does protect political hyperbole and the distinction between the two depends entirely on context of the speech. *Watts v. United States*, 494 U.S. 705 (1969). Political hyperbole is specifically protected because “[t]he language of the political arena . . . is often vituperative, abusive, and inexact.” *Id.* at 708. Conversely, “true threats” prohibit “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a *particular individual or group of individuals.*” *Virginia v. Black*, 538 U.S. 343, 359 (2003) (emphasis added).

Defendant will rely first on the analysis already outlined in his opening brief. Defendant reiterates that, in order for speech to be a “true threat,” the speech must communicate an intent to commit an act of unlawful violence to a “particular individual or group of individuals.” Here, the charging documents undermine any claim that Defendant’s speech was a “true threat” because his speech is not directed at a particular individual or group of individuals. (*see* Affidavit, at p. 3:3-4 “[w]hile it is unclear who he is next referring to [sic] the video . . .). Defendant reiterates that the affidavit acknowledges the constitutional infirmity of the charges.

Additionally, the deficiencies to the affidavit and inaccuracies that have been gleaned during subsequent hearings highlight the removal of context from Defendant’s initial speech and hinders Defendant’s ability to adequately argue whether his speech is protected, implicating his Sixth Amendment right to counsel. As stated, the State erroneously alleged in the Affidavit that Defendant operated the YouTube platform that edited and distributed Defendant’s previous statements. (*see* Affidavit, at p. 3:14-15⁴; *See also* Feb 27 Transcript 16:24-17:2⁵).

There are obvious discrepancies between the video cited in the charging documents, posted on Pick Your Battles, and the apparent video that is now being referenced by the State in

⁴ “Mr. Bryant’s YouTube account username is Pick YourBattles (sic) and a search of videos he posted under that user name . . .”

⁵ “This video, Your Honor, is posted on a website called “Pick Your Battles.” The State will concede that there have been videos posted on the website since Mr. Brandon – Mr. Bryant was arrested. This is a website being maintained by another person.”

open court. Namely, the video posted on Pick Your Battles (the video referenced in charging documents) is 4:34 seconds long. However, the State also claims that the video it is referencing is “almost 13 minutes long.” (Feb 27 Transcript, 15:18). As such, it is unclear which video is the basis of the prosecution. These errors in the charging documents compound the violation of Defendant’s rights because it prejudices his defense. Because context is a crucial component of whether speech is political hyperbole or “true threats,” the length of the video and the context of statements are germane circumstances that the Court must consider. Because defendant is still unaware of what video or speech is being prosecuted, it is impossible to levy an argument that considers context, as required by the Supreme Court.

The State also prejudicially cites individual quotes taken out of context of any video or statement, presumably for theatric purposes⁶. Prejudicially selecting specific aspects of speech out of context and alleging them to be criminal is violative of Defendant’s First Amendment right. In order to argue or analyze whether Defendant’s speech is protected, the Court must consider the full context of the speech. *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. Of Life Activists*, 290 F.3d 1058 (9th Cir. 2002). Because Defendant’s speech is being taken out of context via a video posted by a third party, it is impossible for the Court to determine, or counsel to effectively argue, whether Defendant’s speech is protected. The inaccuracies in the charging documents, and apparent contradictions about what video is the source of the charge, compound to further violate Defendant’s due process and First Amendment rights.

The Court has previously stated that it is not concerned with where the video was posted, how it was posted, or who posted it⁷, but such details and information are critical in analyzing whether Defendant’s speech is political hyperbole or “true threats.” If a third party takes a statement, strips it of its context, and then distributes the video, it is no longer an accurate depiction of the initial speech and cannot be relied upon for determining whether the initial speech was political hyperbole or a true threat. Ironically, it is no longer the original author’s speech because it has been stripped of the context.

Defendant notes that he does not stipulate or agree to the authenticity of any video, be it from Pick Your Battles or some other website or source without proper investigative verification

⁶ State’s Response Br. p. 1:20-21.

⁷ Feb 27 Transcript 20:23-25.

and authentication. As stated in his opening brief, Defendant maintains that the State incorrectly filed charges before verifying the authenticity of the videos or the source of the videos. The State is seemingly unclear about whether the charges stem from the video posted on Pick Your Battles, a video posted on a different YouTube channel, city council meetings, or all the above. As such, it is impossible for the Courts to categorically determine that the statements made therein are political hyperbole or true threats.

Defendant maintains that the State affidavit acknowledges the constitutional infirmity of the charges when it admits that it is unclear who the threatened party is. Additional arguments regarding context are stymied by the deficiencies in the charging documents. Further arguments regarding political hyperbole are reserved once it is clear what speech is actually the Defendant's.

IV. Mont. Code Ann. § 45-7-102(1) is overbroad on its face and overbroad and vague as applied to Mr. Bryant.

Defendant relies on his argument in the previous brief and maintains that Mont. Code Ann. § 45-7-102(1) is overbroad on its face, and both overbroad and vague as applied to Defendant.

CONCLUSION

The violations of Defendant's procedural and substantive due process rights are apparent and compounded by the intersectionality and interactions of his other rights. The State's charging decisions were based on unverified allegations that had no reliability and were ultimately false. Once those allegations are excised, the Information fails to establish probable cause of any offense. The Defendant did not purposefully or knowingly communicate a threat, nor did he expressly state what political end he hoped to achieve with that threat. By the State's own admission, the alleged threat is muddled, and it is "unclear" who the Defendant was referring to. The allegations do not amount to probable cause as the allegations do not satisfy basic elements of the offense, even considering the low threshold of probable cause.

The speech at issue is protected speech. Criticizing the city council during city council meetings is protected speech. Political hyperbole is protected speech. The "fighting words" exception to the First Amendment clearly does not apply to the YouTube video or to the city

council meetings. The “true threats” exception does not apply because, by the State’s own admission, Defendant did not specifically target an individual or group of individuals with his alleged threat. Additionally, the deficiencies in the charging documents prohibit the Court from assessing the context of the speech because the video referenced in the Information was not produced or distributed by Defendant.

For the foregoing reasons, the case must be dismissed.

Respectfully submitted this 6th day of March, 2020.

/s/ Jacob Coolidge
Jacob Coolidge
Attorney for Defendant

1 MONTANA FOURTH JUDICIAL DISTRICT COURT
2 MISSOULA COUNTY

3 STATE OF MONTANA,
4 Plaintiff,
5 Versus
6 BRANDON BRYANT,
7 Defendant.

8 Dept. 5
9 Cause No. DC-20-70

8 Missoula County District Court
9 Courtroom 1
10 200 West Broadway
11 Missoula, Montana

10 TRANSCRIPT OF PROCEEDINGS
11 INITIAL APPEARANCE

12 February 20, 2020
13 2:00 p.m.

13 BEFORE: THE HONORABLE SHANE VANNATTA
14 Missoula County District Court Judge
15 Department 5

15 APPEARANCES: MATT JENNINGS
16 Attorney for the Plaintiff
17 Deputy County Attorney
18 Missoula County Attorney's Office
19 Missoula County Courthouse
20 Missoula, Montana 59802
21 (406) 258-4737 (Phone)
22 Email: mjennings@missoulacounty.us

20 COURT REPORTER: Julie DeLong
21 Registered Professional Reporter
22 Missoula County Courthouse
23 200 West Broadway
24 Missoula, Montana 59801
25 Phone: (406) 498-3941
Email: fortherecord1103@gmail.com

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ADDITIONAL
APPEARANCES:

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JCoolidge@mt.gov

P R O C E E D I N G S

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(Open court.)

(Defendant present in the courtroom.)

(Proceedings began at 2:01 p.m.)

THE BAILIFF: All rise. Court is back in session, with the Honorable Shane Vannatta presiding.

THE COURT: And you may be seated.

Do we have transport?

A JAILER: Yep.

THE COURT: The first matter I will call is State of Montana versus Brandon Bryant, DC-20-70.

Do we have Ms. Hammond?

THE BAILIFF: They are in back.

THE COURT: Okay. Thank you.

(Mr. Bryant and counsel enter the courtroom.)

THE COURT: Good afternoon, Mr. Bryant.

THE DEFENDANT: Good afternoon, Your Honor
(Nods head affirmatively)

THE COURT: Good afternoon, Ms. Hammond and Mr. Coolidge.

MR. COOLIDGE: Good afternoon.

MS. HAMMOND: Good afternoon, Your Honor.

THE COURT: We are here for an arraignment.
The Court did see the most recently filed Motion to

1 Dismiss With Prejudice filed by Ms. Hammond. The Court
2 is going to await the response from the state.

3 Let the record also reflect that Mr. Jennings
4 is here on behalf of the state. Would allow the
5 Court -- the state to respond to the pending motion to
6 dismiss.

7 I guess I will turn it over to you,
8 Ms. Hammond, as to what you -- whether you wish to
9 proceed with arraignment at this stage.

10 MS. HAMMOND: So, we are prepared to proceed
11 with arraignment. And we have kind of a two-part bail
12 argument; I'll be making part of the bail argument, and
13 so will Mr. Coolidge.

14 But we can go ahead with the arraignment.
15 That's the easy part, at this point.

16 THE COURT: Fair enough.

17 Do we have a proposed Waiver of Rights form?

18 MS. HAMMOND: And, Your Honor, I did file that
19 last week. It should be in the court file. I believe
20 I saw it electronically filed.

21 But we did go over that with Mr. Bryant. He
22 is charged by his true and correct name, has been
23 advised of the nature of the charges, the maximum
24 possible penalties for the offense, and I anticipate he
25 will be entering pleas of not guilty as to the sole

1 charge alleged.

2 THE COURT: Thank you, Ms. Hammond.

3 I do see that there was a -- an
4 Acknowledgement of Rights form filed with the Court.

5 Mr. Bryant, do you recall reviewing that form
6 and having an opportunity to talk about your rights
7 with Ms. Hammond?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you have any questions of the
10 Court before we proceed with a discussion of the
11 Information that has been filed against you?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Thank you, Mr. Bryant.

14 So, you have been charged in the Information
15 with Count I, threats and other improper influence in
16 official and political matters, a felony, punishable by
17 ten years in the Montana State Prison and/or a fine of
18 \$50,000.

19 Do you wish to enter a plea today?

20 THE DEFENDANT: Not guilty.

21 THE COURT: The Court then enters your not
22 guilty plea as a matter of record.

23 And I will turn to Ms. Hammond as to the date
24 for an omnibus hearing.

25 MS. HAMMOND: And, Your Honor, those dates are

1 going to depend upon his custodial status. If he does
2 remain in custody, we will be asking that trial dates
3 be set as soon as possible, and omnibus should be set
4 accordingly.

5 THE COURT: Fair enough.

6 We will return to the issue of the omnibus,
7 and we can discuss custody -- or custody at this point,
8 and bail.

9 MS. HAMMOND: (Nods head affirmatively) Thank
10 you, Your Honor.

11 Your Honor, I -- as the Court noted, I did
12 file a brief with the Court. I did that for obvious --
13 the obvious reasons of the concerns that I raised in
14 the Motion to Dismiss, but, also, just so that the
15 Court could get a little bit more background.

16 And, just in summary form, you know, the way
17 that this case began last week, it began, as this Court
18 recalls, as a direct file.

19 So, Mr. Bryant was appearing by video. He
20 didn't have an attorney with him. The Public
21 Defender's Office was appointed, at which point we were
22 not even provided a copy of the charging document in
23 court.

24 We did the best that we could, without being
25 able to communicate privately with Mr. Bryant in terms

1 of offering a bail argument, but a couple of things are
2 really glaring with respect to the direct file
3 procedure.

4 First, obviously, the fact that he couldn't
5 communicate with his attorney and just being held on
6 bail in the amount of \$100,000, I would note, presents
7 issues that really affect adversely his Fourteenth
8 Amendment due process rights, as well as his Sixth
9 Amendment right to counsel, his Eighth Amendment right
10 against excessive bail.

11 Because what I learned upon receiving the
12 charging document is that the maximum possible fine for
13 this offense is capped at \$50,000. So, bail was set at
14 double the amount of the maximum fine allowed for the
15 alleged offense.

16 That's problem number one that I couldn't
17 address because I didn't have a copy of the charging
18 document last week. And I think it is an obvious
19 Eighth Amendment violation that's coupled with the
20 Fifth Amendment violation.

21 The second is just the -- and the prosecution
22 has the ability to -- to decide how these cases
23 proceed. They opted for the direct file procedure, but
24 the direct file procedure is really dependant on the
25 quality of the affidavit that's presented to the Court,

1 as the Court knows.

2 And, this, again, is really addressing
3 fundamental due process rights that are guaranteed to
4 every citizen in this country by the due process clause
5 of the Fourteenth Amendment.

6 So, the procedural due process rights cannot
7 be properly addressed without the Court being provided
8 with important information about the credibility and
9 reliability of the allegation.

10 You know, this issue has been addressed in the
11 United States Supreme Court. I do refer to that in
12 my brief --

13 THE COURT: So, Ms. Hammond, you're straying a
14 bit into the motion to dismiss. We are not here to --
15 on that specific argument on the Motion to Dismiss, nor
16 do I think has the state had an opportunity -- has the
17 state had an opportunity to respond to the Motion to
18 Dismiss.

19 At this stage I want to confine argument at
20 least to the issue of bail. And I understand that you
21 believe that there is fundamental deficiencies in the
22 Information, and respect that argument. And we will
23 address those in due course. But I think we are
24 premature in addressing those at this stage.

25 MR. HAMMOND: Thank you, Your Honor.

1 And just for the Court's information, the
2 reason that I bring this up is because I do think it is
3 intrinsically tied with the bail argument.

4 THE COURT: Okay.

5 MS. HAMMOND: Because -- because of the
6 excessive bail. Because we are talking about bail
7 being set double the statutory maximum here, I think it
8 really -- these issues of procedural due process have
9 to be recognized. I think the -- the -- because that's
10 also what the Court was relying on in setting bail.

11 And I note that in this case, I mean, we do
12 have a PSA, and the Court did advise me last -- last
13 week that Mr. -- Mr. Bryant comes back with a PSA Level
14 1 Passive score. Which, presumptively, has him
15 released on his own recognizance without any conditions
16 of bail.

17 Mr. Bryant has absolutely no criminal history.

18 Mr. Bryant is 34 years old.

19 Mr. Bryant is somebody who is a decorated Air
20 Force veteran.

21 One thing that is notable is that he is
22 actually an internationally acclaimed and recognized
23 whistle-blower who has spoken out against the drone
24 program with the Department of Defense.

25 I can tell this Court that since we were

1 appointed to this case, we have rec- -- we have fielded
2 phone calls from -- international phone calls asking
3 about his well-being, expressing concern about his
4 well-being.

5 We have received contact by co-authors. He's
6 written numerous books, he's been --

7 MR. JENNINGS: Your Honor, how is this
8 relevant to a bail argument?

9 MS. HAMMOND: It's relevant, because it shows
10 who he is, number one; it shows his ties to the
11 community; it shows his complete lack of criminal
12 history. And I think all of that information is
13 inherently relevant for the Court to set appropriate
14 bail on somebody -- for somebody who has absolutely no
15 criminal history.

16 And when we are looking at a charge that is --
17 really implicates First Amendment rights. Not only of
18 Mr. Bryant, but of the extended Missoula community.
19 Because a charge like this has the -- has a detrimental
20 impact on every Missoulian who is in the position of
21 wanting to appear at the Missoula City Council and to
22 speak out against what is going on.

23 So, this is -- this is one of those cases that
24 really presents fundamental constitutional issues. And
25 we are sitting here with a person who has no criminal

1 history at all, who is somebody who has life-long ties
2 to the Missoula community going back generations.

3 And Mr. Coolidge actually is prepared to
4 present, you know, what the release plan would be. His
5 mother is here in the courtroom. She is a teacher at
6 Big Sky High School. This is not somebody who has ever
7 demonstrated a danger to the community, or anything of
8 that nature.

9 THE COURT: So, first, I'm going to give Mr.
10 Jennings an opportunity to respond. I'll circle back
11 with you, Mr. Coolidge, on the release plan.

12 MR. COOLIDGE: (Nods head affirmatively)

13 THE COURT: And then give Mr. Jennings an
14 opportunity to discuss that release plan.

15 MR. JENNINGS: Thank you, Your Honor.

16 And, first, thank you, because this isn't the
17 time or place to argue the merits of the case, but
18 simply to look at the conditions of bail, and the
19 amount of bail.

20 As you know, there is a statutory scheme for
21 the factors that can be considered in the setting bail.
22 A ratio of the maximum amount of fine versus bail is
23 not one of those factors.

24 But one of the factors, Your Honor, is whether
25 the bail is sufficient to protect any person from

1 | bodily injury. Here, there is an allegation in the
2 | Affidavit that Mr. Bryant has made threats against
3 | other people, and there is a matter of public safety in
4 | making sure the bond or bail is sufficient to maintain
5 | that public safety.

6 | At a minimum, at this time, if Mr. Bryant is
7 | even going to consider release, he should be directed a
8 | screen from pretrial, he should get a mental health
9 | evaluation.

10 | And I suppose Mr. Coolidge will give us some
11 | updates on this in a minute, but those are things that
12 | should be considered with all of the information before
13 | the Court before release is even considered.

14 | At this time, the State's recommendation is
15 | that bail remain as set at \$100,000, in the interest of
16 | public safety.

17 | MS. HAMMOND: And, Your Honor, if I could just
18 | respond.

19 | I think it is fundamentally important, because
20 | Mr. Jennings has referenced this Affidavit that hinges
21 | on a YouTube video, with no information about the IP
22 | address. It's not the result of any sort of --

23 | MR. JENNINGS: Your Honor, this goes back to
24 | the merits of the case. I'd be happy to set trial
25 | dates at the soonest possible time.

1 THE COURT: So, first, Counsel, address your
2 -- address your questions, concerns, and argument to
3 the Court, and not to each other.

4 Second of all, --

5 MS. HAMMOND: (Nods head affirmatively)

6 THE COURT: -- I'll -- Ms. Hammond, I --
7 without delving into the Motion to Dismiss and those
8 arguments, I know -- I've read your Motion to Dismiss,
9 and I'm awaiting state's response in writing, and I
10 have considered those.

11 Again, at this stage, the Court is not going
12 to make any ruling on the Motion to Dismiss without
13 state's ability to weigh in.

14 You have punctuated your Motion to Dismiss
15 with the information you have provided here in court,
16 do you have anything, in addition to the information in
17 the motion, to add?

18 MS. HAMMOND: In terms of the release plan,
19 Mr. Coolidge can address that, Your Honor.

20 THE COURT: Thank you.

21 MR. COOLIDGE: So, I've been working with
22 Brandon and his support network this past week, and I
23 can say that he's involved with case managers now.

24 Related to his service, he has post-traumatic
25 stress disorder and a traumatic brain injury that he's

1 | been actively seeking treatment and help with through
2 | the VA.

3 | We are in contact with -- not only with his
4 | mental health professional at the VA, but, also, his
5 | medical doctor, because Mr. Bryant has a myriad of
6 | medical issues that we don't need to dive into, but are
7 | not being, basically, properly addressed at the jail.

8 | He is also currently on disability, but
9 | working with the Veterans Law Clinic at the law school
10 | to try and increase his disability.

11 | So, basically, he's engaged in the community
12 | and trying to better himself when he is out there, both
13 | in terms of medical, mental health, and VA issues.

14 | So, it's our stance that he's not going
15 | anywhere. He's lived here his whole life. His mom is
16 | here, she's in the courtroom. If he's released from
17 | custody, he would go live with his mom, and reengage
18 | all of those services that he was previously engaging.

19 | So, I mean, I really don't think a flight risk
20 | is probably the question here, but then we are talking
21 | about, like, the community safety risk.

22 | I think that the conditions that have already
23 | been ordered that prohibit him from engaging city
24 | council members, prohibit him from going to City Hall,
25 | if those are followed, I think it mitigates any kind of

1 public safety concern that the state is arguing.

2 And, in a long picture, he needs to get out
3 and address his issues, like he has been doing, and
4 keeping him confined while we debate the boundaries of
5 the First Amendment, I think, is just going to be
6 destructive to Mr. Bryant's well-being in the long run.

7 THE COURT: Mr. Jennings.

8 MR. JENNINGS: Your Honor, if Mr. Coolidge
9 wants us to consider his mental health treatment and
10 his caseworkers, I would propose that a mental health
11 evaluation be provided to the Court and the state, so
12 those could be reviewed before you make a decision on
13 any release plan.

14 MS. HAMMOND: Your Honor, I -- I would just
15 note that we -- as the Court knows, we object to the
16 process of a screening. I think it's particularly
17 offensive in a case where, as the Court notes, I do
18 have concerns about the viability of a probable cause
19 determination here.

20 But I also would note that this is a case that
21 really hinges on First Amendment issues; and to subject
22 Mr. Bryant to a pretrial service's interview, I think,
23 is really unnecessary.

24 In addition, to demand a mental health
25 evaluation in order to evaluate his ability to be

1 released from custody when he's screens as a Level 1
2 Passive I don't think complies with Montana Code
3 Annotated Section 26-9-301, the bail statute.

4 I would also note that I think it really
5 stands in violation of his right to privacy under the
6 Montana Constitution.

7 THE COURT: So, Counsel, thank you for your
8 arguments.

9 The -- I understand defense's concern that
10 this is -- this action is a violation of Mr. Bryant's
11 First Amendment rights. I have not heard the state
12 indicate that he is being prosecuted for the expression
13 of or other statements he has made, but, rather, the
14 threats that were evident in the YouTube video were of
15 the preeminent concern of the state in bringing the
16 Information.

17 I realize that references were made to
18 Mr. Bryant's involvement in City Hall meetings, city
19 council meetings, and that there may be a tie between
20 those and then the threats that were identified in the
21 video. Which the Court has not seen the video, as of
22 yet, but takes as statements -- sworn statements of
23 truth the information provided in the Information, and,
24 at this stage, is not going to lower bail below
25 \$100,000.

1 Given the nature and severity of the threats,
2 the Court is concerned about community and public
3 safety, and will maintain bail in the amount of
4 \$100,000.

5 However, the Court will have Mr. Bryant
6 screened for pretrial supervision. And if he agrees,
7 I'll make it optional for him, but either the Court
8 wants to see a fresh mental health screening, or wishes
9 to see the prior mental health assessments that were
10 made. Those can be filed under seal and provided to
11 the Court.

12 Again, given the nature and the concern, the
13 fact that other public officials feel threatened by
14 Mr. Bryant, the Court is going to maintain bail as is.

15 I'm happy to entertain further bail arguments
16 once a prerelease -- or, excuse me, a pretrial release
17 plan has been formulated. But it would require, again,
18 I want to see what pretrial screening determines, and I
19 would like to see whatever is the result of any mental
20 health screening, or current mental health diagnoses
21 for Mr. Bryant.

22 MS. HAMMOND: And, in that case, Your Honor,
23 we would ask to come back next week for an omnibus
24 hearing, and we would ask that we get this case on the
25 trial calendar as soon as possible.

1 THE COURT: Fair enough, Counsel.

2 The Court will set an omnibus hearing for next
3 Thursday at 2:00 p.m., February 27th.

4 MS. HAMMOND: And, again -- oh, sorry.

5 THE COURT: Go ahead.

6 MS. HAMMOND: Can the Court go ahead and set
7 this for a trial date, Your Honor?

8 I know we've got a dispositive motion pending;
9 but given his custodial status, I would like to get on
10 the trial calendar, so we are not further down.

11 THE COURT: Fair enough.

12 So, I'll tell you, the Court has nine or more
13 trials scheduled for April 13th, 27th, May 11th, and
14 eight scheduled for May 8th -- or, excuse me, May 18th.

15 I have been scheduling for June 22nd or July
16 13th.

17 MS. HAMMOND: I'm wondering if we could,
18 perhaps, put Mr. Bryant on one of the earlier trial
19 dates, and, maybe, the April 27th date? And, then, if
20 we could have, maybe, a backup date in June, in case
21 one of those cases doesn't go forward.

22 THE COURT: We would place Mr. Bryant on the
23 April 27th jury calendar. I will inform counsel that
24 currently there are three in-custody individuals with
25 lower cause numbers than Mr. Bryant. But should those

1 settle, we will certainly take Mr. Bryant's matter as
2 soon as possible.

3 So, the following pretrial deadlines flow from
4 that trial setting:

5 A final pretrial conference will be held
6 Thursday, April 2nd, at 2:00 p.m.

7 Jury instructions are due Friday, April 17th.

8 Objections are due Thursday, April 23rd.

9 And a conference to resolve jury instructions
10 and settle trial exhibits will be held at 9:00 a.m. on
11 Friday, April 24th.

12 And do you have a preference, Ms. Hammond, as
13 to a backup trial date?

14 MS. HAMMOND: I would ask -- I mean, I think
15 if we could get a backup in May, that would be great.

16 MR. COOLIDGE: (Nods head affirmatively)
17 Yeah.

18 THE COURT: The Court will set this for a
19 backup trial on May 18th. And to avoid confusion, I
20 won't provide those dates at this time. If we need to
21 go with the backup dates, the Court will issue a
22 separate trial scheduling order with those dates.

23 MS. HAMMOND: Okay. Thank you, Your Honor.

24 THE COURT: Anything further to come before
25 the Court for Mr. Bryant?

1 MS. HAMMOND: Not at this time, Your Honor.

2 THE DEFENDANT: No, Your Honor.

3 MR. JENNINGS: Yes, Your Honor. Can I ask for
4 a calendaring date for the state's response to the
5 Motion to Dismiss?

6 THE COURT: So, I would ask -- given we are
7 moving into the omnibus, I would -- can the state have
8 a response by next Thursday?

9 MR. JENNINGS: I will certainly do my best,
10 Your Honor. (Nods head affirmatively)

11 THE COURT: So, I will give you to next
12 Friday --

13 MR. JENNINGS: (Nods head affirmatively)

14 THE COURT: -- to complete the state's
15 response, and would require any reply to be filed one
16 week, thereafter.

17 MS. HAMMOND: Okay. Thank you, Your Honor.

18 THE COURT: Okay. Thank you, Mr. Bryant, have
19 a good afternoon.

20 THE DEFENDANT: Thank you, Your Honor. You,
21 too.

22 (Proceedings concluded at 2:22 p.m.)
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C E R T I F I C A T E

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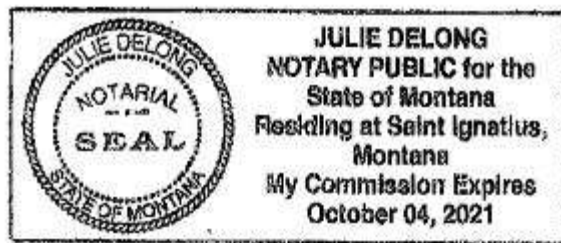
STATE OF MONTANA)
 : SS
COUNTY OF Missoula)

I, Julie DeLong, Registered Professional
Reporter and Notary Public for the State of Montana,
residing in St. Ignatius, Montana, do hereby certify:

That the foregoing pages of this proceeding
constitute a true and accurate transcription of the
testimony, all done to the best of my skill and
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal on this the 25rd day
of February, 2020.

 /s/ Julie DeLong
Julie DeLong, RPR



1 MONTANA FOURTH JUDICIAL DISTRICT COURT
2 MISSOULA COUNTY

3 STATE OF MONTANA,
4 Plaintiff,
5 Versus
6 BRANDON BRYANT,
7 Defendant.

8 Dept. 5
9 Cause No. DC-20-70

8 Missoula County District Court
9 Courtroom 1
10 200 West Broadway
11 Missoula, Montana

10 TRANSCRIPT OF PROCEEDINGS
11 OMNIBUS HEARING AND BAIL ARGUMENT

12 February 27, 2020
13 1:30 p.m.

13 BEFORE: THE HONORABLE SHANE VANNATTA
14 Missoula County District Court Judge
15 Department 5

15 APPEARANCES: MATT JENNINGS
16 Attorney for the Plaintiff
17 Deputy County Attorney
18 Missoula County Attorney's Office
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ADDITIONAL
APPEARANCES:

ROBIN B. HAMMOND (via video)
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P R O C E E D I N G S

1
2
3 (Open court.)

4 (Defendant appearing via video.)

5 (Proceedings began at 1:39 p.m.)
6

7 THE COURT: I'll call State of Montana versus
8 Brandon Bryant, DC-20-70.

9 MS. HAMMOND: And Robin Hammond appearing with
10 Mr. Bryant by video from the Missoula County Detention
11 Facility, Your Honor.

12 THE COURT: Good afternoon, Ms. Hammond.

13 Good afternoon, Mr. Bryant.

14 THE DEFENDANT: Good afternoon, Your Honor.

15 THE COURT: We also have Jacob Coolidge here
16 in the courtroom, as well as Matt Jennings on behalf of
17 the State.

18 We are here, at least initially, on the issue
19 for an omnibus hearing, but I know there is other
20 matters that we are going to attend to, as well.

21 I would like to address the omnibus, and find
22 out if the parties have come to an omnibus memorandum.

23 MS. HAMMOND: Your Honor, we have received and
24 reviewed an omnibus memorandum. There are a number of
25 motions that we anticipate will be filed beyond the two

1 that have -- that are pending before the Court. I
2 haven't put dates on those motions yet, just because
3 his custodial status is going to inform due dates.

4 But, specifically, we have noticed up a motion
5 to suppress Mr. Bryant's statement. Although, I would
6 note that we have not been provided a recording of the
7 statement. So, that might go away once we are able to
8 review the recorded statement.

9 The prosecution is indicating that there are
10 alleged -- there's alleged 404(b) conduct. We haven't
11 received any discovery related to that, and, of course,
12 there is no criminal history. So, we will definitely
13 be filing a brief in objection to any 404(b) evidence.

14 We have noticed up an affirmative defense of
15 mistaken identity, and we will be providing good
16 character evidence.

17 In addition, we are noticing, under generic
18 motions, a motion to dismiss based upon destruction of
19 evidence. Again, with some additional discovery, that
20 -- that might go away, as well.

21 There are no mental health concerns that we
22 are alleging.

23 I am looking at the trial procedure, and the
24 prosecution has indicated that the anticipated length
25 of trial would be four days. This is a case where we

1 anticipate a pretty extensive defense case, so I think
2 four days is a pretty conservative estimate. I would
3 estimate that we would take about two weeks of the
4 Court's time if this does go to trial.

5 The -- I did indicate that all motions in
6 limine, I put 14 days prior to trial, just because of
7 the expedited scheduling status, and then the
8 appropriate disposition date I designated as the final
9 pretrial conference.

10 I -- we do anticipate that all of our motions
11 will be due on the same date, so I guess the rest of
12 the scheduling dates will flow from that.

13 THE COURT: Fair enough, Ms. Hammond.

14 I look forward to seeing the filing of the
15 written omnibus hearing memorandum, and will review and
16 sign, as appropriate. I appreciate that you have
17 reviewed those dates.

18 Any objection from the State?

19 MR. JENNINGS: No, Your Honor. (Shakes head
20 negatively)

21 THE COURT: Okay. So, do get -- do get that
22 omnibus hearing memorandum filed, and the Court will
23 issue it in due course.

24 MS. HAMMOND: (Nods head affirmatively.) We
25 will, Your Honor. Thank you.

1 THE COURT: And, so, now let's turn to matters
2 of bail.

3 MS. HAMMOND: Your Honor, I -- I did file with
4 this Court a pretty detailed -- essentially, a point
5 brief regarding our bail arguments. Because there are
6 so many constitutional arguments that are implicated by
7 the continuing custodial status of Mr. Bryant, I felt
8 like it made sense to put -- put it on paper, and to
9 give the Court a little bit more context.

10 I understand that Mr. Bryant's mother is
11 present in court, that is where he would be living if
12 released.

13 I think Officer Smith's report gives the Court
14 important and appropriate background information
15 regarding Mr. Bryant's life-long ties to the community,
16 as well as relevant information regarding his
17 investigation.

18 The PSA score, of course, is Level 1 Passive.
19 He has no criminal history. In addition, I would note
20 that we had attached the letter that Ms. Harp provided
21 us. Mr. Coolidge is, I know, in court, we can see him,
22 he has another letter that we --

23 THE COURT: You may approach.

24 MS. HAMMOND: -- just received right after the
25 filing of this brief that was written by three

1 additional council members; Jesse Ramos, Sandra
2 Vasecka, and John Contos. And Mr. Coolidge is
3 providing that to the Court, as well.

4 We would ask that that letter also be lodged
5 in the Court file and placed on the record. And I'm
6 sure the Court wants a few minutes to read that letter.

7 THE COURT: Thank you, Ms. Hammond.

8 I have had an opportunity to review the some
9 28 pages for the motion for bail reduction that was
10 filed earlier today, and I am reviewing the letter that
11 Mr. Coolidge provided dated February 27th from council
12 members Ramos, Vasecka, Contos.

13 (Reading documents)

14 Okay. Any further arguments related either to
15 bail or the letters?

16 MR. COOLIDGE: If Ms. --

17 MS. HAMMOND: I'll hand it over to Mr.
18 Coolidge, Your Honor.

19 MR. COOLIDGE: Yeah. So, the only thing I
20 would add is that Councilperson Ramos is here in court
21 today, if that is the concern of the Court, but I think
22 that Ms. Hammond laid it out very well.

23 THE COURT: All right. So, was there an
24 ability to get a mental health evaluation for
25 Mr. Bryant, or for him to provide a copy of any mental

1 health -- a prior mental health evaluation?

2 MS. HAMMOND: Your Honor, I would note, as
3 detailed in our motion regarding bail, we are objecting
4 to that disclosure and dissemination based upon
5 Mr. Bryant's constitutional right to privacy, as
6 recognized by the Montana Constitution, Article II,
7 Section 10. Also, based upon his right to privacy, as
8 articulated in *Rowe versus Wade*, and that progeny of
9 cases, under the due process clause of the Fourteenth
10 Amendment. That line of cases is cited in our motion.

11 I -- I can note, and we did include in the
12 motion relative to that, a condition regarding Montana
13 Code Annotated, the bail statute, specifically Section
14 46-9-301, Subdivision -- sorry, my -- Subdivision (10),
15 that Mr. Bryant is and has been engaged in services,
16 mental health services, through the VA, and has a
17 long-standing relationship with treatment providers
18 there.

19 He can't participate in that program while
20 he's in custody, so his continued custodial status
21 really militates against his ability to seek ongoing
22 treatment as contemplated by the statute. But in terms
23 of providing a mental health evaluation, respectfully
24 we -- we are objecting to that.

25 MR. COOLIDGE: And if I may supplement, Your

1 Honor.

2 I can say that we have received records, and
3 we've worked with Brandon and his treatment providers
4 and case management, and we can assure the Court that
5 Brandon would reengage treatment just as -- or services
6 with the VA just as he was before his arrest.

7 THE DEFENDANT: Absolutely.

8 MS. HAMMOND: He also has a support dog, Your
9 Honor, that he, you know, can't have contact with while
10 he's in custody. So, that's another point to consider
11 relative to Subsection (10) of the bail statute.

12 THE COURT: So, I -- I'm in a bit of a
13 quandary, in that Mr. Bryant, through counsel, has made
14 many statements about his mental health, but I have no
15 independent indicia that there is any mental health
16 issues. And, so, part of my purpose in requesting the
17 mental health evaluation, or some records which would
18 indicate mental health considerations -- which I'm not
19 necessarily doubting, but I have no proof of them,
20 either, and I'm -- I'm now forced to rely upon counsel
21 and their statements.

22 Which counsel do have a requirement of candor
23 to the Court, and -- and I have certainly found both of
24 you to be honorable and truthful and candid to the
25 Court, but, again, I'm left with nothing to -- to help

1 establish Mr. Bryant's mental health status.

2 MS. HAMMOND: I guess, Your Honor, just in
3 response to that, too, and I know that the motion is
4 pending and we don't yet have the prosecution's
5 response, but the concern is that -- we understand his
6 request to that, the request for that confidential
7 medical information is in response to this affidavit
8 that is -- that has been provided by the prosecution.

9 And, I mean, we have noted repeatedly in both
10 of our motions all of the concerns -- the factual
11 concerns, in particular, that we have regarding those
12 allegations, and the probable cause determination
13 concerns that we have.

14 So, I -- I think, especially Mr. Bryant,
15 situated as he is without any conviction of any sort,
16 is really in a situation where, I mean, a mental health
17 evaluation, again, the -- the right to privacy, but,
18 also, you know, there are these overarching rights to
19 due process and against self-incrimination, which is
20 also noted in both of our motions.

21 So, based upon those overarching concerns --
22 and these are issues and concerns that have been
23 recognized by the Montana Supreme Court and by the
24 United States Supreme Court. I think that all is
25 contemplated by the Montana bail statute, because of

1 these overarching constitutional concerns, is that the
2 question of whether or not he can continue to receive
3 mental health treatment as he was prior to being in
4 custody.

5 And I -- you know, Mr. Coolidge and I are both
6 officers of the Court, we both, you know, have been in
7 contact with Brandon, with his mother, and received
8 information confirming that he has been in contact and
9 engaging in treatment for quite some time with the VA.

10 So, I guess, you know, this is a -- this is a
11 constitutional issue that we really -- I think we
12 wouldn't be doing our job adequately if we allowed --
13 allowed that -- the dissemination of that kind of
14 confidential medical information.

15 THE COURT: Okay. Thank you, Ms. Hammond.

16 Mr. Jennings.

17 MR. JENNINGS: Your Honor, this is the third
18 week in a row with the same arguments. Mr. Bryant is
19 -- has expressed, both to law enforcement and through
20 his many, many videos that are posted online, his
21 mental health issues, that he's essentially
22 experiencing a mental health crisis, and in the midst
23 of this crisis he's making these threatening statements
24 online and acting in a menacing manner before the city
25 council.

1 He certainly is not obligated to do a mental
2 health evaluation; but without that information to this
3 Court, you do not have sufficient information to
4 analyze whether he is a danger to the public, or
5 whether he is getting his mental health treatment.

6 I would refer you, again, to 46-9-301, and
7 there are two particular issues that the State relies
8 upon when we are arguing bail in this situation: The
9 first is one of the factors that the Court gets to
10 consider is whether the bail is sufficient to protect
11 any person from bodily injury, and another one is
12 considerate of the defendant's mental health status and
13 the defendant's participation in a mental health
14 treatment program.

15 Certainly, I have no reason to doubt Ms.
16 Hammond and Mr. Coolidge that he has experienced or had
17 treatment in the past, but we need those records to
18 understand what exactly is going on with him.

19 It does appear that the Court is accepting
20 some outside information in setting bail, or looking at
21 the merits of this case, and I have here what's a
22 transcript from the video that's at issue. I think it
23 would be really helpful for the Court to
24 understand exactly what the --

25 THE COURT: You may approach.

1 MS. HAMMOND: I didn't hear what Mr. Jennings
2 has.

3 THE COURT: So, I would have you, Mr.
4 Jennings, go ahead --

5 MR. COOLIDGE: Ms. Hammond, he's presenting a
6 transcript of the video at issue.

7 MS. HAMMOND: And, Your Honor, we would object
8 to this. There has been no requisite foundation
9 establishing where this transcript comes from, where
10 the -- the video comes from.

11 MR. JENNINGS: Your Honor, the alternative is
12 that I would be happy to pull up my computer and play
13 it online. (Nods head affirmatively)

14 MS. HAMMOND: And, Your Honor, we would object
15 to that, as well. I mean, there is no foundational --
16 there is no foundational --

17 THE COURT: So, Ms. Hammond -- Ms. Hammond.

18 MS. HAMMOND: -- evidentiary --

19 THE COURT: We -- Ms. Hammond.

20 MS. HAMMOND: I understood -- I'm sorry. It's
21 hard just over video.

22 THE COURT: We are at a bail hearing. This is
23 not a full-blown trial on the merits.

24 I am reviewing the material provided by the
25 county -- or, excuse me, by the State with the same

1 level of review that I am providing the exhibits that
2 were submitted with your motion for bail --

3 MR. COOLIDGE: So --

4 THE COURT: -- reduction.

5 MR. COOLIDGE: Judge -- I'm sorry.

6 THE COURT: And I am just trying to get an
7 understanding for both what has been said, or at least
8 alleged to be said, and a better understanding for the
9 community safety aspect, which is, I think, the key
10 part of this case.

11 MR. COOLIDGE: And --

12 THE COURT: So, Mr. Coolidge.

13 MR. COOLIDGE: So, Your Honor, I know
14 Ms. Hammond has not have an opportunity to see the
15 transcript. I am very familiar with the evidence of
16 the case, and I can say that the transcript that's
17 before the Court has been selected and taken out of
18 context, and is not a full -- it's not a full
19 reflection of what's in the video.

20 Which is one of the things that we raised in
21 our brief, to highlight the fact that what is being
22 shown to you as being disseminated from Brandon Bryant
23 is not what was actually disseminated from Brandon
24 Bryant.

25 So, when the State says that this is proof

1 that he is dangerous, and Ms. Hammond raises points
2 about how we don't have any proof that this came from
3 Brandon Bryant, I think that reflects the point that
4 what you're reading is not fully contextual, it's taken
5 out of context, and it may have even originated or been
6 disseminated by Brandon Bryant.

7 MR. JENNINGS: I'm --

8 MR. COOLIDGE: So, saying that this is proof
9 that Brandon Bryant is dangerous, I think, overlooks
10 the fact that there have not been these baseline
11 foundational standards met to show that they even came
12 from Brandon Bryant.

13 MR. JENNINGS: And, Your Honor, if the State
14 could be heard to provide some context. Because I do
15 think that's very important, and I want to be as candid
16 as possible for the Court.

17 There is a video that is online, and it's --
18 it's almost 13 minutes long. I've watched it
19 repeatedly, and I find no indication of any hiccup in
20 the verbal dialog or any adjustment of the camera that
21 would indicate that it's edited in any way. I
22 understand the video that they are talking about, and
23 that is not the video that this transcript is from.

24 I also want to be clear that this is my effort
25 of taking a transcript and typing it. I fully

1 recognize there may be some typos and other errors in
2 here on specific words or punctuation; however, this is
3 the substance of the issue before the Court.

4 I also agree, this is not proof, Your Honor.
5 Proof comes at trial through testimony and witnesses,
6 and the State is at a disadvantage in that there's been
7 a brief filed, both today and last week, minutes before
8 I walk into court, where the State doesn't have any
9 opportunity to provide this Court with other
10 information.

11 I did my best before coming here today to make
12 sure that I could provide the Court the reasons for our
13 bail arguments. From the State's perspective, very
14 serious threats were made on these videos. We don't
15 have any other information about Mr. Bryant's mental
16 health status.

17 I would love to learn that. I would love to
18 learn the perspective of Mr. Bryant and his mental
19 health diagnoses to understand if he is a risk to the
20 public, or not. Without that, we only have his
21 representations and the videos that have been posted
22 online.

23 This video, Your Honor, is posted on a website
24 called "Pick Your Battles." The State will concede
25 that there have been videos posted on the website since

1 Mr. Brandon -- Mr. Bryant was arrested. This is a
2 website being maintained by another person. I want to
3 acknowledge that before the Court.

4 This video starts with Mr. Bryant turning a
5 light on, shining it in his face and saying, "Just so
6 you know it's me." The wording that you see comes
7 after that. The State has no reason to doubt its
8 authenticity or foundation, but this is the substance
9 of the current concerns that the State has.

10 While I understand there may be three city
11 council members that provided a letter today, I don't
12 believe those are the city council members that are a
13 victim in this offense. There are also other city
14 council members, Your Honor, that are terrified over
15 these statements about eliminating people,
16 exterminating people, and talking about submitting or
17 dying. All in light of both military issues,
18 Mr. Bryant's ex-wife, and, most importantly, the issues
19 before the city council.

20 Until this Court gets more information about
21 the risk to the public or Mr. Bryant's mental health
22 status, release is not appropriate, or bond should not
23 be reduced.

24 MR. COOLIDGE: And, Judge, I would --

25 THE COURT: Last words, Mr. Coolidge.

1 MR. COOLIDGE: I don't mean to take time away
2 from Ms. Hammond, but I would point out that there are
3 three council members who join in that letter, and a
4 separate letter from Heather Harp, who is a fourth
5 council member, saying that they do not view Brandon as
6 a threat. And all we are hearing is secondhand
7 information about how some people do feel he is a
8 threat, but we don't have any documentation of that
9 before the Court today.

10 We have Mr. Ramos, who is the only council
11 member who is, I believe, in the court, and he does not
12 feel Brandon is a threat. So, it speaks to our bond
13 argument that we don't think that the alleged victims
14 view him as a threat.

15 THE COURT: Any further last words, --

16 MS. HAMMOND: And, Your Honor --

17 THE COURT: -- Ms. Hammond?

18 MS. HAMMOND: I'm sorry to pile on here, but I
19 just want to cite United States versus Salerno, that is
20 the United States Supreme Court case that's cited in
21 our brief on Page 11, 481 U.S. 739. It -- it does
22 indicate that a court can set a very high bail but only
23 when certain procedural rights have been guaranteed to
24 the accused.

25 There, the United States Supreme Court was

1 reviewing the 1984 Federal Bail Reform Act, which
2 allows for a contested hearing on these issues, which
3 allows for cross-examination of witnesses on these
4 issues, which allows the defense to call witnesses, and
5 which also requires that the court make a bail finding
6 by clear and convincing standards.

7 That is the -- this process, with the
8 prosecution offering evidence that comes from some
9 social media platform that they haven't obtained by way
10 of search warrant or by subpoena duces tecum, in no way
11 complies with the requirements that have been set out
12 by the United States Supreme Court, and that have been
13 the requirements regarding bail hearings since 1987.

14 I would also note that another United States
15 Supreme Court opinion that we cite in our brief is
16 Estelle versus Smith. That's the United States Supreme
17 Court opinion that appears on Pages 8 and 9 of our
18 motion. The cite is 451 United States 454.

19 That deals with a post-conviction ordering of
20 a mental health evaluation by the court in a death
21 penalty case, and the United States Supreme Court
22 overturned that death -- that death penalty in -- in
23 that case, it's from 1981, because the ordering and
24 compelling of the defendant, who had been convicted of
25 murder, could not be used against him in -- in the --

1 in those proceedings for the court to make a decision
2 as to whether or not the defendant there should be put
3 to death.

4 It talks about the confrontation clause and
5 the right against -- excuse me. It talks about the
6 right against self-incrimination -- not the
7 confrontation clause -- and the fact that an accused
8 cannot be compelled to provide evidence against
9 himself.

10 That is what counsel is asking us to do.
11 He's -- he's saying, "I think there is a mental health
12 crisis," without any proof, without any -- any
13 professional evaluation at all, and then demanding that
14 -- I mean, it really tracks the Estelle versus Smith
15 United States --

16 THE COURT: Ms. Hammond.

17 MS. HAMMOND: -- court opinion. Okay. Sorry.

18 THE COURT: Ms. Hammond, thank you.

19 MS. HAMMOND: Yes.

20 THE COURT: The Court is going to leave bail
21 as is at \$100,000. I will tell you that the Court's
22 chief concern is Mr. Bryant's danger to the community
23 and the community's safety, given, regardless of where
24 posted, how posted, who posted, I haven't heard
25 Mr. Bryant deny that those statements may be his.

1 And --

2 MS. HAMMOND: He pled not guilty, Your
3 Honor --

4 THE COURT: -- because -- because of how
5 concerning those statements are, the Court is going to
6 keep the bail in place. I will say, also, that mental
7 health is an issue in this case. Because defense has
8 placed mental health at issue by alleging that
9 Mr. Bryant suffers from PTSD, depression, and other
10 matters, I want confirmation.

11 I am not asking to have detailed notes, I want
12 diagnosis and recommendation. Because it would be my
13 intention, as a part of any release conditions, to
14 require Mr. Bryant to complete any recommendations of a
15 mental health evaluation, which would then limit his
16 potential -- the community safety issues.

17 And, so, the -- the keys to the jail are in
18 Mr. Bryant's hands.

19 (Discussion off the record.)

20 THE DEFENDANT: Sir, may I say something?

21 THE COURT: You may.

22 MS. HAMMOND: If I could just --

23 (Discussion off the record.)

24 THE DEFENDANT: Thank you, sir.

25 MS. HAMMOND: Thank you, Your Honor.

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THE COURT: Thank you, Mr. Bryant.

Thank you, Ms. Hammond.

MS. HAMMOND: Thank you.

(Proceedings concluded at 2:04 p.m.)

CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 03-06-2020:

Matthew C. Jennings (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Melanie Dodge on behalf of Jacob Daniel Coolidge
Dated: 03-06-2020

Robin B. Hammond
Office of State Public Defender
Regional Office, Region 2
610 N. Woody
Missoula, MT 59802
Phone: (406) 523-5140

Attorney for Defendant

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

<p>STATE OF MONTANA, Plaintiff, v. BRANDON BRYANT, Defendant.</p>	<p>Cause No. DC-20-70 MOTION TO CONTINUE MOTION DEADLINE UNOPPOSED</p>
---	---

Defendant moves to continue the Motions Deadline for the filing of his opening briefs noticed in the previously filed Omnibus Memorandum from Monday, March 9, 2020, to Friday, March 13, 2020.

The reason for this request is that the defense just received the recording of Mr. Bryant's statement to Missoula Police Officer Smith this morning from the State. Counsel for Defendant needs additional time to evaluate the video and to determine what motions, if any, need to be filed in this case.

Matt Jennings, the Prosecuting Attorney, has been contacted concerning this request and does not object to this motion.

Respectfully submitted this 9th day of March, 2020.

/S/ROBIN HAMMOND
Attorney for Brandon Bryant

CERTIFICATE OF SERVICE

I, Robin B. Hammond, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion - Unopposed to the following on 03-09-2020:

Jacob Daniel Coolidge (Attorney)
610 Woody Street
Missoula MT 59802
Representing: Brandon Howard Bryant
Service Method: eService

Matthew C. Jennings (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically Signed By: Robin B. Hammond
Dated: 03-09-2020

Hon. Shane Vannatta
District Court Judge
Fourth Judicial District Court, Missoula County
220 W. Broadway St.
Missoula, MT 59802

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

<p>STATE OF MONTANA, Plaintiff, v. BRANDON BRYANT, Defendant.</p>	<p>Cause No. DC-20-70 ORDER CONTINUING MOTIONS DEADLINE</p>
--	--

Defendant moved to continue the Motions Deadline currently set for March 9, 2020. There appearing to be good cause for this request, the motion is granted.

IT IS HEREBY ORDERED that the Motions Deadlines in the above-captioned case are modified as follows:

Defendant’s Opening Briefs in all motions noticed in the previously filed Omnibus Memorandum, are due on Friday, March 13, 2020.

The State’s Reply Briefs are due on Friday, March 27, 2020.

Defendant’s Reply Briefs are due on Friday, April 3, 2020.

ELECTRONICALLY SIGNED AND DATED BELOW

Cc: Robin Hammond, Assistant Public Defender
Matt Jennings, Prosecuting Attorney

CERTIFICATE OF SERVICE

I, Robin B. Hammond, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion - Unopposed to the following on 03-09-2020:

Jacob Daniel Coolidge (Attorney)
610 Woody Street
Missoula MT 59802
Representing: Brandon Howard Bryant
Service Method: eService

Matthew C. Jennings (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically Signed By: Robin B. Hammond
Dated: 03-09-2020

BAIL BOND No. CF150-70332826
(POWER OF ATTORNEY WITH THIS NUMBER MUST BE ATTACHED)

BONDSQUAD/LINDA WOLFE
2637 BUNKHOUSE PL.
MISSOULA MT 59808
(C) 406.207.1467

IN THE District
Municipal, Justice, District Court

FOR Missoula
CITY OF Missoula
STATE OF MONTANA, Plaintiff

COURT STATE OF MONTANA
FILED MAR 13 2020
SHIRLEY E. FAUST, CLERK
By [Signature] Deputy

Brandon Bryant
Defendant

CASE NO. DC-2070
depts

An order having been made on the 13 day of March, 2020
in the Court aforesaid, that _____
(Defendant)

be held to answer upon a charge of Threats in official/political matters
(State Briefly Nature of Crime)

upon which he has been duly admitted to bail in the sum of 100,000 Dollars.

Now we, the **Crum and Forster Insurance Company**, as surety, duly authorized to
transact business as surety, in the State of Montana, hereby undertake that the above named
Brandon Bryant
(Defendant)

will appear and answer the charge above mentioned in whatever Court it may be prosecuted, and will
at all times hold himself amenable to the orders and process of the Court, pursuant to Montana Code
Annotated 45-9-401(2). Upon conviction, the defendant cannot be released on this bond without
express permission of surety. If defendant fails to comply with the conditions herein we will pay to the
Missoula the sum of 100,000 Dollars.
(City or State)

Dated this 13 day of March, 2020

By Linda Wolfe
Attorney-in-Fact

CRUM & FORSTER INDEMNITY COMPANY
10350 Richmond Ave., Suite 300 - Houston, TX 77042
P.O. Box 2807 - Houston, Texas 77252-2807
(713) 954-8100 - (713) 954-8589 FAX

Brandon Bryant

**CERTIFICATE OF DISCHARGE
OF BOND**

POWER NO. CF150-70332826

BOND AMT. \$ 100,000

This is to certify that on or about the _____ day of _____, I examined the records of
_____ Court/Case No. _____ and found that the bond with corresponding power number

above has been discharged of record by reason of the following disposition: Pled Guilty Found Guilty
 Case Dismissed Forfeiture Paid Other _____

Date of Discharge _____ Person rendering decision _____

Witness my hand and official seal this _____ day of _____

Title _____

By _____

Bond Amount 100,000
Appearance Date _____
Defendant _____
Court _____
City _____
State _____
Offense _____
If rewrite, original # _____

Executing Agent Linda Wolfe

TO THE CLERK OF THE COURT

Please check your records for the bond listed above. When the bond has
been exonerated, please enter the date of exoneration, sign and return this
form to us at:

BONDSQUAD/LINDA WOLFE
2637 BUNKHOUSE PL/MISSOULA MT 59808

CRUM & FORSTER INDEMNITY COMPANY
11490 Westheimer Rd., Suite 300 • Houston, TX 77077
P.O. Box 2807 • Houston, Texas 77252-2807
(713) 954-8100 (713) 954-8389 FAX

POWER OF ATTORNEY

POWER NO.

CF150-70332826

POWER AMOUNT \$

150,000.00

This Power of Attorney is granted pursuant to Article XI section 11.05 of the By-Laws of CRUM & FORSTER INDEMNITY COMPANY as now in full force and effect. Article XI section 11.05 Policies, Bonds Recognizances, Stipulations, Consents of Surety, Underwriting, Undertakings, and Instruments relating Thereto. Insurance policies, bonds, recognizances, stipulations, consents of surety and underwriting undertakings of the Corporation, and releases, agreements and other writings relating in any way thereto or to any claim or loss thereunder, shall be signed in the name and on behalf of the corporation (a) by the Chairman of the Board, the President, or a Vice President; or (b) by an Attorney-In-Fact for the Corporation appointed and authorized by the Chairman of the Board, the President or Vice President to make such signature provided that any such delegation of power be limited to routine matters; or (c) by such other officers or representatives as the Board of Directors may from time to time determine. The seal of the Corporation shall, if appropriate, be affixed thereto by any such officer. Attorney-In-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitations, fines, restitution, payments or penalties of any other condition imposed by a court not specifically related to court appearance.

This Power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal Bonds or Immigration Bonds. This power void if altered or erased, void if used with other powers of this Company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once.

The obligation of the Company shall not exceed the sum of *****One Hundred Fifty Thousand Dollars and Zero Cents***** and provided this Power of Attorney is filed with the bond and retained as a part of the court records. The said Attorney-In-Fact is hereby authorized to insert in this Power of Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, CRUM & FORSTER INDEMNITY COMPANY has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this 13 of March 2020

Bond Amount \$ 100,000 Gross Premium \$ 10,000

Defendant Brandon Bryant

Charges Official & Political Threats

Court District # 5

Case No. OC-2070

City Missoula State MT

If rewrite, original No. _____

Executing agent Linda Walsh
NAME



By [Signature]
Michael Ziemer
Senior Vice President

VOID IF NOT ISSUED BY: 07/31/2020

FOR STATE USE ONLY
NOT VALID IF USED IN FEDERAL COURT

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES A SECURITY BACKER

S-0075CF REV. (06/18)

COURT COPY

Jacob Coolidge
Office of State Public Defender
Regional Office, Region 2
610 N. Woody
Missoula, MT 59802
Phone: (406) 523-5140

Attorney for Defendant

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA, Plaintiff, v. BRANDON HOWARD BRYANT, Defendant.	Cause No. DC-20-70 MOTION TO AMEND CONDITIONS OF RELEASE.
---	---

COMES NOW, Brandon Howard Bryant, by and through his counsel of record, Jacob Coolidge, hereby respectfully moves the Court to amend Defendant's conditions of release specifically Condition #11 to read as follows:

Defendant is restrained from being present or in attendance at any properties where the city council, mayor, or Missoula Redevelopment (urban renewal) operations and services are present, such as the city council/Missoula Redevelopment Office building properties or on any city hall property, except if he must attend municipal court in city hall, he may do so with a police escort by first contacting the city police department by telephone or email or through a third party.

Counsel for State has been contacted and does not object to this request.

Respectfully submitted this 19th day of March, 2020.

/s/Jacob Coolidge
Jacob Coolidge
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to the following on 03-19-2020:

Robin B. Hammond (Attorney)
610 Woody St.
Missoula MT 59802
Representing: Brandon Howard Bryant
Service Method: eService

Matthew C. Jennings (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Brianna Kessler on behalf of Jacob Daniel Coolidge
Dated: 03-19-2020

Hon. Shane A. Vannatta
Fourth Judicial District Court, Dept. 5
Missoula County
200 W. Broadway St.
Missoula, MT 59802

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA, Plaintiff, v. BRANDON HOWARD BRYANT, Defendant.	Cause No. DC-20-70 ORDER AMENDING CONDITIONS OF RELEASE
---	---

UPON MOTION of the Defendant filed the 19th day of March, 2020, and for good cause shown,
IT IS HERERBY ORDERED Defendant's Condition #11 is amended to read as follows:

Defendant is restrained from being present or in attendance at any properties where the city council, mayor, or Missoula Redevelopment (urban renewal) operations and services are present, such as the city council/Missoula Redevelopment Office building properties or on any city hall property, except if he must attend municipal court in city hall, he may do so with a police escort by first contacting the city police department by telephone or email or through a third party.

ELETRONICALLY SIGNED AND DATED BELOW

Cc: Jacob Coolidge, Assistant Public Defender
Matt Jennings, Prosecuting Attorney

MONTANA DISTRICT COURT
MISSOULA COUNTY

MINUTE ENTRY

Date: 04/02/2020 02:00 PM

Hearing Type: Conference - Final Pre-Trial

Case Number: DC-32-2020-0000070-IN

Presiding Judge: Shane Vannatta

**State of Montana vs. Brandon Bryant
Charge(s):**

Department: 5

Threats/Improper Influence In Official/Political Matters

Appearances: Presiding Judicial Officer: Shane Vannatta, Judge. Prosecution Attorney, Selene M Koepke, appears telephonically. Public Defender Attorneys, Robin B. Hammond and Jacob Coolidge, appear telephonically for Defendant, Brandon Howard Bryant, who appears telephonically. Also attending: Julie Pesanti Delong, Court Reporter, appears telephonically; Michael Evjen, Court Clerk.

Counsel for the Defendant advised they will not be ready for the April trial date and possibly not ready for the back-up date in May. Ms. Hammond requested the trial be rescheduled for some time in the early fall which was not opposed and granted. The previously scheduled trial dates of April 27, 2020 and May 18, 2020 along with all pre-trial deadlines associated with said trials are vacated. The jury trial is rescheduled for **Monday, September 28, 2020 at 9:00 AM**, the final pre-trial conference will be held **Thursday, September 3, 2020 at 2:00 PM** and the jury instruction conference will be held **Friday, September 25, 2020 at 9:00 AM**. Jury instructions are due September 18, 2020 and objection if any will be due September 24, 2020.

cc: Co. Atty – Jennings
PD - Hammond

Jacob Coolidge
Office of State Public Defender
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Attorney for Defendant

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA, Plaintiff,	Dept. 5 Cause No. DC-20-70
v. BRANDON HOWARD BRYANT, Defendant.	DEFENDANT'S UNOPPOSED MOTION TO MODIFY HIS CONDITIONS OF RELEASE

COMES NOW, Brandon Howard Bryant, by and through his counsel of record, Jacob Coolidge, hereby respectfully moves the Court for an Order to modify the Defendant's conditions of release. Specifically, Bryant moves the Court to amend Condition #2, which reads, "Defendant shall not leave Missoula County, Montana, without written permission of this Court." Bryant moves the Court to amend Condition #2 to read, "Defendant is allowed to travel throughout Montana, but shall not leave the state of Montana, without written permission of this Court."

Counsel for the State, Matt Jennings, has been contacted by email and does not object.

Respectfully submitted this 9th day of June, 2020.

/s/ Jacob Coolidge
Jacob Coolidge
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to Amend to the following on 06-09-2020:

Matthew C. Jennings (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Melanie Dodge on behalf of Jacob Daniel Coolidge
Dated: 06-09-2020

Hon. Shane A. Vannatta
Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA, Plaintiff, v. BRANDON HOWARD BRYANT, Defendant.	Dept. 5 Cause No. DC-20-70 ORDER MODIFYING DEFENDANT'S CONDITIONS OF RELEASE
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UPON UNOPPOSED MOTION of the Defendant and for good cause shown,

IT IS HEREBY ORDERED that Condition #2, is modified to read, "Defendant is allowed to travel throughout Montana, but shall not leave the state of Montana, without written permission of this Court." All other conditions imposed remain as set.

ELECTRONICALLY SIGNED AND DATED BELOW.

Cc: Jacob Coolidge and Robin Hammond, Assistant Public Defender
Missoula Prosecuting Attorney

Electronically Signed By:
Hon. Judge Shane A. Vannatta
Tue, Jun 09 2020 01:09:29 PM

Hon. Shane A. Vannatta
District Court Judge, Dept. 5
Missoula County Courthouse
200 W Broadway St
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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

BRANDON BRYANT,

Defendant.

Dept. 5

Cause No.: DC-20-70

ORDER REGARDING TRIAL

The Montana Supreme Court directed District Courts to establish jury trial plans under the State of Montana's COVID-19 restrictions. The Fourth Judicial District Court judges are working closely with the Montana Supreme Court Office of Court Administrator, Missoula County, and public health agencies to commence jury trials in July 2020.

A site survey of the Missoula County Courthouse determined that COVID-19 public health restrictions only allow for one jury trial at a time (with social distancing requirements). Because of these capacity limitations, the Fourth Judicial District Court judges will rotate jury trial weeks beginning July 2020 and continuing through the foreseeable future.

Department 5's next available jury trial week is November 30, 2020. The Court prioritized the cases on **Exhibit A** for trial. The cases shall be tried in the

listed order on the date indicated. If a higher priority case resolves, the parties shall be prepared for trial on the next listed case. When a case proceeds to trial, all lower priority cases will be continued to subsequent trial weeks and prioritized accordingly.

The Court is providing the parties with a firm trial date sufficiently in advance to allow for comprehensive and timely discovery, disclosure, and motion practice in order to accomplish this objective. **Absent extraordinary circumstances – which circumstances do not include failure to timely prepare or anticipate deadlines, busy schedules, administrative delays, expert witness availability, etc. – the Court will not grant continuances of the trial date, notwithstanding stipulation by the parties.** Counsel must notify the State Crime Lab, expert witnesses, and other interested persons of the trial date to facilitate compliance with this Order. Out-of-State witnesses and crime lab witness will testify via video (Zoom).

Juvenile trials take priority. The defendants that are incarcerated take priority after that. **The parties must prepare for multiple trials at the same time** and they are encouraged to start that process now and prepare accordingly.

In order reduce the number of jurors called to the courthouse and reduce the time expended by voir dire (thereby reducing potential exposure to the COVID-19 virus), the Court will require counsel to meet and confer **prior to the Final Pretrial Conference (at least 45 days before trial)** to develop a supplemental questionnaire to be sent to the potential jury when they are summoned. The

questionnaire shall be sent to the Court and Clerk following the Final Pretrial Conference. The proposed supplemental questionnaire shall include screening questions for COVID-19.

At the Conference to Resolve Jury Instructions and Trial Exhibits, the Court will process preliminary for-cause challenges to the jury pool based on the supplemental questionnaire.

ORDER

Based upon the above, IT IS HEREBY ORDERED that:

1. **All hearings in this case are vacated.**
2. Jury Trial is set for **Monday, November 30, 2020, at 9:00 AM.**
3. If a higher priority case goes to trial, this case will be set on

Department 5’s next jury trial date as depicted below.

4. The following pre-trial deadlines apply for each trial date:

<i>JURY TRIAL</i>	<i>PRE-TRIAL DEADLINES</i>
<u>Monday, November 30, 2020</u> (*Jury Selection: Monday, November 30, 2020 at 9 AM)	Final Pre-Trial Conf: Oct 15, 2020 @ 2 PM Supp. Jury Questionnaire: Oct 16, 2020 Jury Instructions Due: Nov 13, 2020 Instruction Objections Due: Nov 18, 2020 Conf re Jury Instructions, Trial Exhibits and For-Cause Challenges: Nov 20, 2020 @ 9 AM
<u>Monday, January 25, 2021</u> (*Jury Selection: Friday, January 22, 2021 at 1:30 PM)	Final Pre-Trial Conf: Dec 10, 2020 @ 2 PM Supp. Jury Questionnaire: Dec 11, 2020 Jury Instructions Due: Jan 14, 2021 Instruction Objections Due: Jan 21, 2021 Conf re Jury Instructions, Trial Exhibits and For-Cause Challenges: Jan 22, 2021 @ 9 AM

<u>Monday, March 29, 2021</u> (*Jury Selection: Monday, March 29, 2021 at 9 AM)	Final Pre-Trial Conf: Feb 11, 2021 @ 2 PM Supp. Jury Questionnaire: February 12, 2021 Jury Instructions Due: Mar 18, 2021 Objections Due: Thurs, Mar 25, 2021 Conf. re Jury Instructions, Trial Exhibits and For-Cause Challenges: Mar 26, 2021 @ 9 AM
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ELECTRONICALLY SIGNED AND DATED BELOW.

Exhibit A

Department 5 Jury Trial Schedule and Trial Priority

NOVEMBER 30, 2020 – Department 5

Priority #	Judge	Defendant	Case #	Prosecutor	Defense Counsel	# of Days
1	Vannatta	Sherry	DJ-19-27	Handelman	Lyday	3
2	Vannatta	Crocker (C)	DC-19-375	Mickelson	Wilson	4
3	Vannatta	Burd (C)	DC-20-150	Paddock	Coolidge	3
4	Vannatta	Doney (C)	DC-20-198	Williams	Wilson	5
5	Vannatta	Birks (C)	DC-20-327	Jennings	Gibadlo	2
6	Vannatta	Trevino	DC-17-320	Lowney	Kauffman	5
7	Vannatta	Melicia	DC-18-651	Kilby	Lyday	3
8	Vannatta	Lozeau	DC-19-26	Lowney	Lockhart	3
9	Vannatta	Fenstermaker	DC-19-87	Kilby	Greenwell	2
10	Vannatta	Standingrock	DC-19-91	Williams	Hammond	3
11	Vannatta	Flannery	DC-19-114	Pabst	Sandefur	3
12	Vannatta	Reinbolt	DC-19-154	McCubbin	Wilson	2
13	Vannatta	Marchetta	DC-19-160	McCubbin	Kauffman	5
14	Vannatta	Finch	DC-19-197	McCubbin	Coolidge	1
15	Vannatta	Pamin	DC-19-198	Koepke	Tipp	3
16	Vannatta	Montalvo	DC-19-227	McCubbin	Womack	2
17	Vannatta	Eldeen	DC-19-331	Kilby	Sandefur	2
18	Vannatta	Haygood	DC-19-352	Buchler	Hammond	5
19	Vannatta	Finch	DC-19-359	Jennings	Coolidge	2
20	Vannatta	Hutson	DC-19-403	Williams	Hammond	3
21	Vannatta	James	DC-19-407	Kilby	Hammond	2
22	Vannatta	Johnson	DC-19-409	Williams	Greenwell	2
23	Vannatta	Butler	DC-19-436	Koepke	Hammond	3
24	Vannatta	Pyette	DC-19-458	Koepke	Greenwell	3
25	Vannatta	Charlo	DC-19-491	Kilby	Coolidge	2
26	Vannatta	Raymond	DC-19-506	Jennings	Smith	2
27	Vannatta	Davis	DC-19-507	McCubbin	Jenks	3
28	Vannatta	Reinbolt	DC-19-536	McCubbin	Wilson	2
29	Vannatta	Wells	DC-19-599	Jennings	Gibadlo	2
30	Vannatta	Finley	DC-19-676	Koepke	Gibadlo	2
31	Vannatta	Browne	DC-19-680	Bloom	Gibadlo	2
32	Vannatta	Frye	DC-19-707	Lincoln	Wilson	3
33	Vannatta	Baier	DC-20-13	Williams	Gibadlo	2
34	Vannatta	Moser	DC-20-14	Paddock	Coolidge	2
35	Vannatta	Lafley	DC-20-29	Jennings	Maser	4
36	Vannatta	Miner	DC-20-37	Jennings	Lyday	2
37	Vannatta	Hughes	DC-20-47	Bloom	Gibadlo	2
38	Vannatta	Spotorno	DC-20-55	Kilby	Smith	2
39	Vannatta	Bryant	DC-20-70	Jennings	Hammond	3
40	Vannatta	Bishop	DC-20-76	Lowney	Stevenson	2
41	Vannatta	Finch	DC-20-95	Jennings	Coolidge	2

JANUARY 25, 2021 – Department 5

(*All priority cases from previous jury term November 30, 2020 not completed shall be set-over and re-prioritized beginning at position #2)

Priority #	Judge	Defendant	Case #	Prosecutor	Defense Counsel	# of Days
1	Vannatta	Harris (C)	DC-16-217	Jennings	Hammond	4-5
2	Vannatta	Wright (C)	DC-19-674	Jennings	Burbridge	8
3	Vannatta	Kaufman (C)	DC-20-220	Jennings	Hammond	3
4	Vannatta	Anderson	DC-17-53	Lincoln	Lyday	3
5	Vannatta	Charlo	DC-18-708	Kilby	Cotter	1
6	Vannatta	Hardin	DC-19-479	Williams	Mandelko	3
7	Vannatta	Ryerson	DC-19-632	Kilby	Gibadlo	2
8	Vannatta	Langley	DC-20-34	Lowney	Kauffman	3
9	Vannatta	Birks	DC-20-96	Jennings	Gibadlo	2
10	Vannatta	Moreno	DC-20-167	Kilby	Jenks	2
11	Vannatta	Yarozeski	DC-20-277	Kilby	Coolidge	2

MARCH 29, 2021 – Department 5

(*All priority cases from previous jury term January 25, 2021 not completed shall be set-over and re-prioritized beginning at position #2)

Priority #	Judge	Defendant	Case #	Prosecutor	Defense Counsel	# of Days
1	Vannatta	Harwell	DC-19-478	Lowney	Smith	5

Hon. Shane A. Vannatta
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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

BRANDON HOWARD BRYANT,

Defendant.

Dept. 5

Cause No.: DC-20-70

OPINION AND ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS

The above cause came before the Court upon a *Motion to Dismiss* (Dkt # 9) filed by Defendant Brandon Howard Bryant on February 20, 2020. The State filed a Response (Dkt # 13) on February 28, 2020. Defendant's Reply (Dkt # 15) was filed on March 6, 2020. The Court has considered the motion, the briefs and the pleadings on file in this matter and now enters the following:

ORDER

Based upon the following, Defendant's *Motion to Dismiss* (Dkt # 9) is DENIED.

BACKGROUND

The State of Montana has filed a single felony count against Defendant Bryant – Count I: Threats/Improper Influence in Official and Political Matters in

violation of Montana law, namely: Mont. Code Ann. 45-7-102. The charge is based upon the following alleged facts:

On January 29, 2020, during a training with Missoula Police Officer Smith, multiple Missoula City Council members brought to Officer Smith's attention a male who had disrupted their meetings and was acting in an intimidating manner. They were disturbed by the fact that he brought a large walking staff with him that he banged on the table during the public speaking process. At one point during a November 18, 2019 meeting, the mayor had to temporarily adjourn the meeting because the male was yelling at the council. During a January 8, 2020 City Council meeting, the individual provided public comment against Tax Increment Financing ("TIF") and other matters. The individual had a stick with him while providing comment, stating he had sworn an oath to not kill another human being again, and made statements regarding TIF ending people's lives in ways worse than death.

On January 30, 2020, Officer Smith was informed via a January 29 email by council president Bryan von Lossberg that another council member had found a YouTube video of the male, who identified himself in the title of the video as Defendant Brandon Bryant. Mr. von Lossberg forwarded a link to that video, which is entitled "Brandon Bryant Promises to 'Eliminate' People Over the Next Year." The description of the video says Brandon Bryant identifies people for extermination including the entire Missoula City Council and people in the military that he worked with, saying that he is "preparing" his soul to make those people "submit" and "die." The video states that the "entire City Council had sold out Missoula to the highest bidder and what's going to happen to the people that had wronged everyone don't step aside and put their tails between their legs and run, because over the next year, all those people who have wronged others who have discriminated against others because of class, race, gender or creed... will be eliminated." While it is unclear who he is next referring to the video, Mr. Bryant states he will hunt people and exterminate them, that he will eliminate "wretched filth." Mr. Bryant stated that "all you deserve to be eliminated, and I will do it and if you

remove me from this life I get to choose my next incarnation and I will hunt you down so not even the stones will hide you.” He says “I will eliminate you from the fabric of reality and you will never see another life again. That is my promise. This is what I am preparing my soul to do...you will submit...you will die.”

One of the videos posted on YouTube contains the video described above combined with a video of Defendant’s public comments to the Missoula City Council.

The videos were very concerning to Mr. Von Lossberg and fellow council member Gwen Jones.

Mr. Bryant's YouTube account username is Pick YourBattles (sic) and a search of other videos he posted under that user name include one where he talks about killing his ex-wife, and another video titled "Brandon Bryant says he will kill his enemies" and "Brandon Bryant - I will set the example."

Officer Smith interviewed Mr. Bryant. Mr. Bryant stated that he made the video to get a response. While Mr. Bryant admitted to making the videos and posting them, he stated that the username Pick YourBattles was actually used by a former colleague and used to portray him in a negative light.

Motion and Affidavit for Leave to File Information (Dkt # 1) filed February 7, 2020.

ANALYSIS

Defendant Bryant seeks the dismissal of the Information and charge based on two grounds: (1) that the Motion and Affidavit fails to articulate an offense, or (2) that the statute under which he has been charged violates his right to free speech, is overbroad, and/or is vague as applied to Defendant Bryant.

A prosecution of offenses charged in district court must be by indictment or information. [Mont. Code Ann. § 46-11-102](#). The prosecutor may apply directly to the district court for permission to file an information against a named defendant.

[Mont. Code Ann. § 46-11-201](#). An application must be by affidavit supported by evidence that the judge may require. *Id.* If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge shall grant leave to file the information, otherwise the application is denied. *Id.*

“A defendant has no vested right to a particular procedure for the probable cause determination.” [State v. Strobel, 268 Mont. 129, 132, 885 P.2d 503, 505 \(1994\)](#). Montana law permits the prosecutor to select a method of charging. *Id.*

“The sufficiency of charging documents is established by reading the information together with the affidavit in support of the motion for leave to file the information.” [State v. Elliott, 2002 MT 26, ¶ 26, 308 Mont. 227, 232, 43 P.3d 279, 283](#). “A showing of a mere probability that a defendant committed the offense charged is sufficient to establish probable cause to file an information” [Renenger v. State, 2018 MT 228, ¶ 15, 392 Mont. 495, 502, 426 P.3d 559, 565-66](#). The Montana Supreme Court has “defined probable cause for prosecution as ‘reasonable grounds for suspicion, supported by circumstances reasonably strong in themselves to warrant a reasonably prudent and cautious [person] to believe that the accused is guilty of the offense charged.’” [White v. State, 2013 MT 187, ¶ 36, 371 Mont. 1, 11-12, 305 P.3d 795, 804](#). “The District Judge is to use common sense to determine whether probable cause exists.” [Renenger, ¶ 15](#).

In this case, Defendant Bryant was charged with a violation of Mont. Code Ann. § 45-7-102, which provides in pertinent part:

Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if the person purposely or knowingly:

(a) ... (ii) threatens harm to any public servant, to the public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the public servant's decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

[Mont. Code Ann. § 45-7-102](#). The model criminal jury instruction for this crime outlines the following elements:

To convict the Defendant of the charge of threat and other improper influence in [official] [political] matter, the State must prove the following elements:

1. That the Defendant threatened harm to (any person) (the person's spouse, child, parent, or sibling) (the person's property); and
2. That the Defendant did so with the purpose to influence the (decision) (opinion) (recommendation) (vote) (other exercise of discretion) as a (public servant) (party official) (voter); and
3. That the Defendant acted purposely or knowingly[.]

Mont. Crim. Jury Inst. 7-102(a) (2009).

A. Probable Cause for the Prosecution to Bring the Charge

Defendant Bryant argues that the prosecution's Affidavit asserts a conclusion without proof. He asserts that the prosecution has failed to follow basic rules of evidence to support the allegation that the YouTube account here at issue was associated with Defendant Bryant.

Although the prosecution must support the Affidavit with evidence, the evidence in the Affidavit is not held to the same rigorous evidentiary requirements as those at trial. Specifically, the allegations of fact in the Affidavit need not meet

the strict requirements of admissibility required by the Montana Rules of Evidence. [Mont. R. Evid. 101\(c\)\(3\)](#). Issues of admissibility are left for trial of the matter. [Renenger v. State, 2018 MT 228, ¶ 15, 392 Mont. 495, 502, 426 P.3d 559, 566](#) (“It is not required that information in the affidavit supporting a charge, which might later be found inadmissible at trial, be excised before a determination of probable cause is made.”)

More importantly, issues of fact cannot be addressed in a pre-trial motion in a criminal matter. See [State v. Nichols, 1998 MT 271, ¶ 8, 291 Mont. 367, 370, 970 P.2d 79, 80](#). A Court cannot dismiss charges on an assumption from Defendant that the State will not be able to produce sufficient evidence to support its charge. *Id.*, ¶ 9. Issues of fact are left for determination at trial.

The Court has carefully reviewed the factual allegations contained in the *Motion and Affidavit for Leave to File Information* (Dkt # 1) filed February 7, 2020. In comparing the factual allegations with the elements, the state has alleged sufficient facts to meet the probable cause requirement that address the elements of the crime as charged:

Elements	Factual Allegations
Threatens harm to a public servant	[Defendant Bryant states in the video that:] “the entire City Council had sold out Missoula to the highest bidder and what’s going to happen to the people that had wronged everyone don’t step aside and put their tails between their legs and run, because over the next year, all those people who have wronged others who have discriminated against others because of

	class, race, gender or creed... will be eliminated. “This is what I am preparing my soul to do...you will submit... you will die. ”
With the purpose to influence the public servant’s decision, . . . vote, or other exercise of discretion.	[Defendant Bryant] had a stick with him while providing comment , stating he had sworn an oath to not kill another human being again, and made statements regarding TIF ending people’s lives in ways worse than death.
Acting purposely or knowingly	Mr. Bryant stated that he made the video to get a response. . . . Mr. Bryant admitted to making the videos and posting them . . .

Although Defendant Bryant may not have been explicit in the alleged threat – i.e. it is not alleged that Defendant Bryant said that he would kill a City Council Member if he/she didn’t change his/her vote on the Tax Increment Finance issue – the prosecution is entitled to rely upon circumstantial evidence for the influence element. [Mont. Code Ann. § 26-1-102](#) (“‘Circumstantial evidence’ is that which tends to establish a fact by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence.”) “When circumstantial evidence is susceptible to differing interpretations, it not an issue to be determined in a motion to dismiss for lack of probable cause; it is within the province of the jury to determine which will prevail.” [State v. Elliott, 2002 MT 26, ¶ 36, 308 Mont. 227, 234, 43 P.3d 279, 285.](#)

Finally, the ownership of, or association with, the YouTube account is not the issue; rather the statements made in the video by Defendant Bryant (as well as

his statements later to law enforcement) are the evidence supporting probable cause. Defendant Bryant does not deny that he is depicted in the video and made the statements captured by the video. As alleged, he made the statements to provoke a response. The response he wished to provoke could logically be a change in a councilperson's vote or some other modification of the TIF policy.

Whether the evidence is sufficient for a jury to convict is a question only for that jury. It is inappropriate for the Court at this point to impose its views in territory that clearly belongs to the jury, that is, questions of fact. "If a trial is by jury, all questions of fact . . . must be decided by the jury, and all evidence thereon must be addressed to them". [Mont. Code Ann. § 26-1-202](#).

B. Defendant's Alleged Conduct is Not Protected by the First Amendment Protection for Freedom of Speech.

Both the First Amendment to the United States Constitution and Article II, Section 7 of the Montana Constitution protect the right to free speech. Both constitutional provisions prohibit the passage of laws which impair or abridge freedom of speech. Freedom of speech "is a fundamental personal right and essential to the common quest for truth and the vitality of society as a whole." [State v. Dugan, 2013 MT 38, ¶ 18, 369 Mont. 39, 44, 303 P.3d 755, 761](#), citing [St. James Healthcare v. Cole, 2008 MT 44, ¶ 26, 341 Mont. 368, 178 P.3d 696](#) (quoting [Bose Corp. v. Consumers Union, 466 U.S. 485, 503-04 \(1984\)](#)).

However, both the U.S. and Montana Supreme Courts have made clear that the First Amendment does not prevent states from placing reasonable restrictions

on speech that constitutes “true threats” and other types of unprotected speech like “fighting words.” Dugan, ¶ 26. As the Montana Supreme Court stated “[i]t has been clear since this Court’s earliest decisions concerning the freedom of speech that the state may sometimes curtail speech when necessary to advance a significant and legitimate state interest.” [State v. Lance, 222 Mont. 92, 103, 721 P.2d 1258, 1266 \(1986\)](#), citing *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984).

“True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” [Virginia v. Black, 538 U.S. 343, 359-60, 123 S. Ct. 1536, 1547-48 \(2003\)](#). The court in *Virginia* further defined true threat as follows:

The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats “protects individuals from the fear of violence” and “from the disruption that fear engenders,” in addition to protecting people “from the possibility that the threatened violence will occur.” [*Internal citation omitted.*] Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.

Id. at 360, 123 S. Ct. at 1548.

The Montana Supreme Court held in *Lance* that threatening letters in which a person described plans to take hostages to gain media attention was not protected speech. *Lance*, 222 Mont. at 96-97, 721 P.2d at 1261-62. The Court determined that “the State has a substantial, if not overwhelming, interest in preventing

intimidation of the public and the resulting fear and anxiety caused by these terroristic-type threats.” *Id.*, at 103, 721 P.2d at 1266.

Defendant Bryant’s words such as “you will submit...you will die” in the context of his screaming and waving a stick at City Council meetings may be characterized as true threats not protected by the right to free speech. Moreover (as alleged), they were intended to provoke a response. Defendant should be unsurprised that the response his threats provoked was the subject Information and criminal charge.

1. The criminal statute (Mont. Code Ann. § 45-7-102) as written is not overly broad.

The overbreadth doctrine “is an exception to the general rule that statutes are evaluated in light of the situation and facts before the court.” [*State v. Spottedbear*, 2016 MT 243, ¶ 15, 385 Mont. 68, 72, 380 P.3d 810, 815](#). “An over-broad statute is one that is designed to burden or punish activities which are not constitutionally protected, but the statute includes within its scope activities which are protected by the First Amendment.” *Dugan*, ¶ 52. The Montana Supreme Court has clarified that “a statute is unconstitutionally overbroad only if its overbreadth is not only “real, but substantial as well, judged in relation to the statute’s plainly legitimate sweep.” [*Spottedbear*, ¶ 15](#), citing *State v. Lilburn*, 265 Mont. 258, 264-265, 875 P.2d 1036, 1040 (1994) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)). The test for overbreadth therefore “is not whether hypothetical remote situations exist, but whether there is a significant possibility that the law will be

unconstitutionally applied.” *Spottedbear*, ¶ 16. “When there is no realistic danger or significant possibility that First Amendment protections will be meaningfully compromised, [the Montana Supreme Court has] held consistently that any unconstitutional application of a statute should be addressed on a ‘case-by-case’ basis.” *Id.*

Section 45-7-102 does not compromise Defendant Bryant’s right to legitimate free speech. Rather § 45-7-102 makes it illegal only to threaten harm with the purpose to influence another public servant, party official, or voter. A “threat” under Montana criminal law and relevant to this case “means a menace, however communicated, to . . . inflict physical harm on the person threatened or any other person or property.” [Mont. Code Ann. § 45-2-101\(76\)\(a\)](#). The definition of threat includes other methods of making a threat, but none of them could be construed to ever punish a person for simply disagreeing with a public official, not voting for someone, or publishing a critical opinion article in a newspaper.

Disagreeing with a person, voting against them, or writing a critical opinion piece is clearly constitutional and in no way prohibited by § 45-7-102. It is fundamentally clear under both U.S. and Montana law that any citizen can express their disapproval or disagreement of a public official or their opinions. Any citizen can engage with his or her government and disagree, express themselves, provide public comment, be angry, emotional, upset or frustrated about policy decisions—all within constitutional parameters as protected free speech. Not only is such

expression allowed, but it is fundamentally necessary to the functioning of our democracy.

But equally necessary is that all constituents and public officials be able to engage in vigorous debate and have disagreements without fear for their own safety or safety of their families. There is no place for threats or intimidation in civil dialogue. Defendant Bryant is alleged to have crossed the line from civil dialogue to threats and intimidation.

Defendant Bryant's claim to have engaged in political hyperbole, rather than engaging in true threats, may carry the day . . . at trial. However, to the Court's ear, (and as a preliminary matter) Defendant Bryant's statements and actions can be properly characterized as more than mere hyperbole. Indeed, the Motion and Affidavit for Leave to File Information recites the fear felt by many in the Missoula City Council resulting from the comments of Defendant Bryant and his video statements. There is ample case law supporting the legitimate purpose and focus of statutes such as § 45-7-102 to prevent the type of intimidation alleged here. [State v. Ross, 269 Mont. 347, 356, 889 P.2d 161, 166 \(1995\)](#); [see also State v. Cleland, 246 Mont. 165, 170-71, 803 P.2d 1093, 1096 \(1990\)](#) (threats made under circumstances that reasonably tended to produce a fear that the threats would be carried out are not protected under the constitutional principles of free speech); [Lance, 222 Mont. 92, 721 P.2d 1258](#) (threats of the kind prohibited by the Intimidation statute are not speech protected by the First Amendment); [State v. Wurtz, 195 Mont. 226, 636 P.2d 246 \(1981\)](#) (Intimidation statute was not

unconstitutional as applied to a defendant who threatened to rape a pedestrian after she had seen him following her).

2. Mont. Code Ann. § 45-7-102 is neither facially vague, nor vague as applied to Defendant.

“A vagueness challenge to a statute may be maintained under two different theories: (1) because the statute is so vague that it is rendered void on its face; or (2) because it is vague as applied in a particular situation.” [Dugan, ¶ 66](#). A statute is void on its face “if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.” [Id., ¶ 67](#).

Defendant Bryant argues that the subject statute is vague because the “purpose to influence” is unclear. Specifically, Defendant argues that there is no indication that any threats were directed to a particular person. Unlike in *Spottedbear* where the defendant specifically threatened the family of a police officer, Defendant notes that there was no letter sent, no email forwarded, or no text forwarded. [Spottedbear, ¶ 4](#). Instead, Defendant’s video was placed on YouTube by a party other than Defendant Bryant.

Defendant Bryant’s argument is more pointed to the sufficiency of the State’s evidence than to whether the statute is vague or vague as applied to Defendant. As previously noted, the subject video clearly depicts Defendant Bryant and contains his statements. It would appear on its face that Defendant Bryant was trying to influence someone; there must have been some purpose behind Defendant Bryant’s creation of the video in the first place. He may argue at

trial that his purpose was something other than to influence the parties he was threatening. However, that element of § 45-7-102 must be determined by the jury, not this Court on a pretrial motion. [Spottedbear, ¶ 23](#) (“the elements of a charged offense are factual in nature and their existence must be determined by the jury”).

The Montana and U.S. Supreme Courts have specified that if the challenged statute is reasonably clear in its application to the conduct of the person bringing the challenge, it cannot be stricken on its face for vagueness. [State v. Nye, 283 Mont. 505, 513, 943 P.2d 96, 101-02 \(1997\)](#). In *Nye*, the Montana Supreme Court dealt with a challenge to Montana’s malicious intimidation statute which makes it a criminal offense to purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend: cause bodily injury to another, reasonable apprehension of bodily injury in another, or damage to property. *Nye*, 283 Mont. at 513, 943 P.2d at 101; [Mont. Code Ann. § 45-5-221](#). The Court found that terms like “annoy” and “offend” have commonly understood meanings. *Id.* The Court presumed that a reasonable person of average intelligence would comprehend their meaning. *Id.* The Court also clarified that the statute only punished a person when it was their intent to annoy or offend another person. *Id.*, 283 Mont. at 514, 943 P.2d at 102.

Like in *Nye*, the operative words “with the purpose to influence” have reasonably determinable and comprehensible meaning. – to effect change. A jury may determine that his alleged threats were made to change the mind of the City Council (or individual councilpersons) regarding TIF. The objective is appropriate;

the method (alleged threats of harm) were not. Section 45-7-102 provides actual notice to any reasonable person of average intelligence that threats to harm with the requisite mental state are prohibited.

ELECTRONICALLY SIGNED AND DATED BELOW.

MONTANA DISTRICT COURT
MISSOULA COUNTY

MINUTE ENTRY

Date: 10/15/2020 02:00 PM

Hearing Type: Conference - Final
Pre-Trial

Case Number: DC-32-2020-0000070-IN

Presiding Judge: Shane Vannatta

**State of Montana vs. Brandon Bryant
Charge(s):**

Department: 5

Threats/Improper Influence In Official/Political Matters

Appearances: Presiding Judicial Officer: Shane Vannatta, Judge. Prosecution appears by Prosecution Attorney, Matt Jennings. Attorney, Robin B. Hammond, appears with Defendant, Brandon Howard Bryant. Also attending: Julie Pesanti Delong – Court Reporter; C.J. – Court Clerk.

The Defendant appeared telephonically; counsel appeared by video.

Ms. Hammond moved the Court to continue the jury trial and advised two weeks may be needed for trial. There being no objection by the State, the Court vacated the trial and associated dates. The Court directed counsel to notify the Court if the trial will exceed five days and set the following hearings and deadlines:

- Conference - Final Pre-Trial on Thursday, December 10, 2020 at 2:00 PM.
- Conference - In-Chambers on Tuesday, January 19, 2021 at 10:30 AM.
- Jury Trial to commence on Friday, January 22, 2021 at 1:30 PM.
- Supplemental jury questionnaires are due December 11, 2020.
- Proposed jury instructions are due January 5, 2021; objections are due January 12, 2021.

cc: Counsel

MONTANA DISTRICT COURT
MISSOULA COUNTY

MINUTE ENTRY

Date: 12/10/2020 02:00 PM

Hearing Type: Conference - Final
Pre-Trial

Case Number: DC-32-2020-0000070-IN

Presiding Judge: Shane Vannatta

**State of Montana vs. Brandon Bryant
Charge(s):**

Department: 5

Threats/Improper Influence In Official/Political Matters

Appearances: Presiding Judicial Officer: Shane Vannatta, Judge. Prosecution appears by Prosecution Attorney, Meghann Paddock. Attorney, Robin B. Hammond, appears with Defendant, Brandon Howard Bryant. Also attending: Julie Pesanti DeLong – Court Reporter; C.J. – Court Clerk.

The Defendant appeared telephonically; counsel appeared by video.

Ms. Hammond moved the Court to continue the jury trial to summer of 2021, which was not opposed. The Court then vacated the jury trial and associated dates and set the following hearings and deadlines:

- Conference - Final Pre-Trial on Thursday, May 20, 2021 at 2:00 PM.
- Conference - In-Chambers on Friday, July 2, 2021 at 9:00 AM.
- Jury Trial to commence on Tuesday, July 6, 2021 at 9:00 AM.
- Supplemental jury questionnaires are due May 21, 2021.
- Proposed jury instructions are due June 22, 2021; objections are due June 29, 2021.

cc: Counsel

MONTANA DISTRICT COURT
MISSOULA COUNTY

MINUTE ENTRY

Date: 05/20/2021 02:00 PM

Hearing Type: Conference - Final
Pre-Trial

Case Number: DC-32-2020-0000070-IN

Presiding Judge: Shane Vannatta

**State of Montana vs. Brandon Bryant
Charge(s):**

Department: 5

Threats/Improper Influence In Official/Political Matters

Appearances: Presiding Judicial Officer: Shane Vannatta, Judge. Prosecution appears by Prosecution Attorney, Selene M Koepke. Attorney, Jacob Coolidge, appears with Defendant, Brandon Howard Bryant. Also attending: Julie Pesanti Delong – Court Reporter; C.J. – Court Clerk.

The Defendant and his counsel appeared by video.

Mr. Coolidge advised he is now representing the Defendant.

Counsel confirmed for trial, and the Court reiterated the pretrial activities and deadlines.

cc: Counsel

Jacob Coolidge
Office of State Public Defender
Regional Office, Region 2

Phone:

Attorney for Defendant

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA,
Plaintiff,
v.
BRANDON WAYNE BRYANT,
Defendant.

Cause No. DC-20-70
DEFENDANT'S WITNESS LIST

COMES NOW, Brandon Wayne Bryant, by and through his counsel of record, Jacob Coolidge, hereby give notice of the below witnesses.

1. Bryan von Lossberg
bvonlossberg@ci.missoula.mt.us
2. Heidi West
hwest@ci.missoula.mt.us
3. Jordan Hess
jhess@ci.missoula.mt.us
4. Mirtha Becerra
mbecerra@ci.missoula.mt.us
5. Heather Harp
hharp@ci.missoula.mt.us
6. Gwen Jones
gjones@ci.missoula.mt.us
7. Amber Sherrill
sherrilla@ci.missoula.mt.us
8. Jesse L Ramos
jramos@ci.missoula.mt.us
9. Stacie M. Anderson
sanderson@ci.missoula.mt.us

10. John Contos
contosj@ci.missoula.mt.us
11. Sandra Vasecka
vaseckas@ci.missoula.mt.us
12. Julie Merritt
jmerritt@ci.missoula.mt.us
13. John Engen
435 Ryman
Missoula, MT 59802
(406) 552-6001
14. Any witnesses listed or called by the other parties or offered for foundation,
impeachment or rebuttal.
15. Any witnesses made know to the Defendant after this date.

Respectfully submitted this 10th day of June, 2021.

/s/Jacob Coolidge
Jacob Coolidge
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Witness and Exhibit List - Witness List to the following on 06-10-2021:

Matthew C. Jennings (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Brianna Kessler on behalf of Jacob Daniel Coolidge
Dated: 06-10-2021

1 MATT JENNINGS
Deputy County Attorney
2 KIRSTEN H. PABST
Missoula County Attorney
3 Missoula County Courthouse
4 Missoula, Montana 59802
(406) 258-4737
5 Attorneys for Plaintiff

6

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 STATE OF MONTANA,
Plaintiff,

9 -vs-

Dept. No. 5
Cause No. DC-20-70

10

11 BRANDON BRYANT,
Defendant,

MOTION AND AFFIDAVIT FOR
LEAVE TO FILE **AMENDED**
INFORMATION

12

13 STATE OF MONTANA)
:ss
14 County of Missoula)

15

16 MATT JENNINGS, Deputy County Attorney of Missoula County,

17 Montana, being first duly sworn, moves the Court for leave to file an

18 Information charging the above-named Defendant with allegedly committing

19 the offense(s) in Missoula County of:

20 COUNT I: THREATS/IMPROPER INFLUENCE IN OFFICIAL AND

21 POLITICAL MATTERS, a Felony, in violation of Montana law, namely: Mont.

22

Code Ann. 45-7-102.

1 **OR IN THE ALTERNATIVE**

2 **COUNT I: INTIMIDATION, a Felony, in violation of Montana law, namely:**
3 **Mont. Code Ann. 45-5-203.**

4 Montana Code Annotated 46-11-205 permits an Information to be
5 amended in matters of substance at any time, but not less than 5 days
6 before trial, provided the motion is filed in a timely manner and states the
7 nature of the amendment and is accompanied by an affidavit that shows the
8 existence of probable cause to support the amended charge. Here, the
9 amendment adds an alternative charge or Intimidation (bolded). The State
10 made some minimal and non-substantive changes to the original affidavit of
11 probable cause to clarify matters that were found after the original filing.
12 However, the affidavit is the same in all substantive respects.

13 The Motion is based upon the following facts which have been
14 obtained from reports of the law enforcement officers which, if true, I believe,
15 constitute sufficient probable cause to justify the filing of the charges. The
16 facts from those reports are as follows:

17 On January 29, 2020, during a training with Missoula Police Officer
18 Smith, multiple Missoula City Council members brought to Officer Smith's
19 attention a male who had disrupted their meetings and was acting in an
20 intimidating manner. They were disturbed by the fact that he brought a large
21 intimidating manner. They were disturbed by the fact that he brought a large
22 intimidating manner. They were disturbed by the fact that he brought a large

1 walking staff with him that he banged on the table during the public speaking
2 process. At one point during a November 18, 2019 meeting, the mayor had
3 to temporarily adjourn the meeting because the male was yelling at the
4 council. During a January 8, 2020 City Council meeting, the individual
5 provided public comment against Tax Increment Financing (“TIF”) and other
6 matters. The individual had a stick with him while providing comment,
7 stating he had sworn an oath to not kill another human being again, and
8 made statements regarding TIF ending people’s lives in ways worse than
9 death.
10

11 On January 30, 2020, Officer Smith was informed via a January 29
12 email by council president Bryan von Lossberg that another council member
13 had found a YouTube video of the male, who identified himself in the title of
14 the video as Defendant Brandon Bryant. Mr. von Lossberg forwarded a link
15 to that video, which is entitled “Brandon Bryant Promises to ‘Eliminate’
16 People Over the Next Year.” The description of the video says Brandon
17 Bryant identifies people for extermination including the entire Missoula City
18 Council and people in the military that he worked with, saying that he is
19 “preparing” his soul to make those people “submit” and “die.” The video
20 states that the “entire City Council had sold out Missoula to the highest
21 bidder and what’s going to happen to the people that had wronged everyone
22

1 don't step aside and put their tails between their legs and run, because over
2 the next year, all those people who have wronged others who have
3 discriminated against others because of class, race, gender or creed...will
4 be eliminated." While it is unclear who he is next referring to the video, Mr.
5 Bryant states he will hunt people and exterminate them, that he will eliminate
6 "wretched filth." Mr. Bryant stated that "all you deserve to be eliminated, and
7 I will do it and if you remove me from this life I get to choose my next
8 incarnation and I will hunt you down so not even the stones will hide you."
9 He says "I will eliminate you from the fabric of reality and you will never see
10 another life again. That is my promise. This is what I am preparing my soul
11 to do...you will submit...you will die."
12

13
14 The videos were very concerning to Mr. Von Lossberg and fellow
15 council members.

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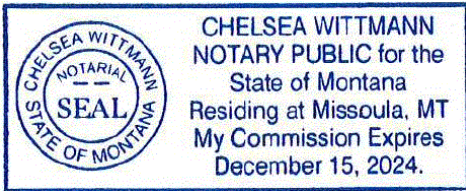
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Officer Smith interviewed Mr. Bryant. Mr. Bryant stated that he made the video to get a response. While Mr. Bryant admitted to making the videos and posting them, he stated that another person was also reposting the videos to portray him in a negative light.

DATED this 11th day of June, 2021.

/s/ Matt Jennings
MATT JENNINGS
Deputy County Attorney

SUBSCRIBED AND SWORN TO before me this 11th day of June, 2021.



[Handwritten Signature]
NOTARY PUBLIC FOR STATE OF MONTANA

CERTIFICATE OF SERVICE

I, Matthew C. Jennings, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion and Affidavit for Leave to File Information to the following on 06-11-2021:

Jacob Daniel Coolidge (Attorney)
610 Woody Street
Missoula MT 59802
Representing: Brandon Howard Bryant
Service Method: eService

Electronically signed by Chelsea Wittmann on behalf of Matthew C. Jennings
Dated: 06-11-2021

1 Hon. Shane A. Vannatta
2 District Court Judge, Dept. 5
3 Fourth Judicial District
4 Missoula County Courthouse
5 200 W Broadway St
6 Missoula, MT 59802-4292
7 406-258-4765

8 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

9 STATE OF MONTANA,
10 Plaintiff,

-vs-

Dept. No. 5
Cause No. DC-20-70

11 BRANDON BRYANT,
12 Defendant.

ORDER

13 Upon reading the foregoing Affidavit and Motion for Leave to File
14 Amended Information and it appearing that there is probable cause that the
15 Defendant above-named committed the crime(s) charged,

16 IT IS HEREBY ORDERED that leave be granted to the Deputy County
17 Attorney to file the Amended Information as prayed for.

18 Electronically Signed and Dated Below.
19
20
21
22

ORDER GRANTING LEAVE TO FILE INFORMATION

Electronically Signed By:
Hon. Judge Shane A. Vannatta
Mon, Jun 14 2021 10:54:34 AM

1 MATT JENNINGS
Deputy County Attorney
2 KIRSTEN H. PABST
Missoula County Attorney
3 Missoula County Courthouse
4 Missoula, Montana 59802
(406) 258-4737
5 Attorneys for Plaintiff

6 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

7
8 STATE OF MONTANA,
Plaintiff,

9 -vs-

10 BRANDON BRYANT,
Defendant.

Dept. No. 5

Cause No. DC-20-70

AMENDED INFORMATION

Total Possible MSP: **10 years**

Total Possible MCDF:

Total Possible Fine: **\$50,000**

13 MATT JENNINGS, Deputy County Attorney, deposes and says that on
14 or about the 18th day of November, 2019, in Missoula County, the Defendant
15 committed the offense of COUNT I: THREATS/IMPROPER INFLUENCE IN
16 OFFICIAL AND POLITICAL MATTERS, a Felony, in violation of Montana law,
17 namely: Mont. Code Ann. 45-7-102, punishable by 10 years MSP and/or
18 \$50,000 fine;

20 **OR IN THE ALTERNATIVE**

21 **COUNT I: INTIMIDATION, a Felony, in violation of Montana law, namely:**
22 **Mont. Code Ann. 45-5-203, punishable by 10 years and/or \$50,000 fine.**

1 The facts constituting the offense are:

2 COUNT I: On or about or between November 18, 2019 and January
3 31, 2020, the above-named Defendant purposely or knowingly threatened
4 harm to public servants, Missoula City Council members, with the purpose to
5 influence the public servants' decision, opinion, recommendation, vote, or
6 other exercise of discretion in an administrative proceeding.
7

8 **OR IN THE ALTERNATIVE:**

9 **COUNT I: On or about or between November 18, 2019 and January 31,**
10 **2020, the above-named Defendant, with the purpose to cause Missoula**
11 **City Council members to perform or to omit the performance of any**
12 **act, communicated to another, under circumstances that reasonably**
13 **tend to produce a fear that it will be carried out, a threat to perform**
14 **without lawful authority to inflict physical harm on the person**
15 **threatened or any other person.**
16

17 A list of possible witnesses for the state now known to the prosecution
18 is as follows:

19 Bryan Von Lossberg, MISSOULA, MT,
20 Gwen Jones, MISSOULA, MT,
21 Julie Merritt, MISSOULA, MT,
22 JAKE ROSLING, Missoula City Police Dept,
ETHAN SMITH, Missoula City Police Dept,

Any witness listed by Defendant,
Any witness necessary for foundation, rebuttal, impeachment and/or

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chain of custody.

Dated this 16th day of June, 2021.

/s/ Matt Jennings
MATT JENNINGS
Deputy County Attorney

CERTIFICATE OF SERVICE

I, Matthew C. Jennings, hereby certify that I have served true and accurate copies of the foregoing Information - Information to the following on 06-16-2021:

Jacob Daniel Coolidge (Attorney)
610 Woody Street
Missoula MT 59802
Representing: Brandon Howard Bryant
Service Method: eService

Electronically signed by Chelsea Wittmann on behalf of Matthew C. Jennings
Dated: 06-16-2021

Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802
(406) 258-4780

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA,

Plaintiff,

v.

BRANDON WAYNE BRYANT,

Defendant.

Judge Shane Vannatta

Cause No. DC-20-70

SUBPOENA

THE STATE OF MONTANA SENDS GREETINGS TO:

Detective Ethan Smith
Missoula Police Department
435 Ryman St.
Missoula, MT 59802
SmithN@ci.missoula.mt.us

GREETINGS: YOU ARE HEREBY SUMMONED to be and appear before the above named Court at the Missoula County Courthouse, located at 200 W. Broadway St., Missoula, on July 6-9, 2021 at 8:00 a.m. then and there to testify in the above entitled cause. Hereof fail not, under penalty of law.

WITNESS the Hon. Shane Vannatta, Judge, the hand of the clerk with the seal of said Court affixed at Missoula, Montana, this 18th day of June, 2021.



Shirley Faust
District Court Clerk

By: *Dadh Wingel*
Deputy

Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802
(406) 258-4780

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA, Plaintiff, v. BRANDON WAYNE BRYANT, Defendant.	Judge Shane Vannatta Cause No. DC-20-70 SUBPOENA
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THE STATE OF MONTANA SENDS GREETINGS TO:

Heather Harp
345 Burlington Ave.
Missoula, MT 59801
hharp@ci.missoula.mt.us

GREETINGS: YOU ARE HEREBY SUMMONED to be and appear before the above named Court at the Missoula County Courthouse, located at 200 W. Broadway St., Missoula, on July 6-9, 2021 at 8:00 a.m. then and there to testify in the above entitled cause. Hereof fail not, under penalty of law.

WITNESS the Hon. Shane Vannatta, Judge, the hand of the clerk with the seal of said Court affixed at Missoula, Montana, this 18th day of June, 2021.



Shirley Faust
District Court Clerk
By: Debbi Wingel
Deputy Clerk

Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802
(406) 258-4780

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA,
Plaintiff,
v.
BRANDON WAYNE BRYANT,
Defendant.

Judge Shane Vannatta
Cause No. DC-20-70
SUBPOENA

THE STATE OF MONTANA SENDS GREETINGS TO:

Jesse L Ramos
741 Sussex Ave. #101
Missoula, MT 59801
jramos@ci.missoula.mt.us

GREETINGS: YOU ARE HEREBY SUMMONED to be and appear before the above named Court at the Missoula County Courthouse, located at 200 W. Broadway St., Missoula, on July 6-9, 2021 at 8:00 a.m. then and there to testify in the above entitled cause. Hereof fail not, under penalty of law.

WITNESS the Hon. Shane Vannatta, Judge, the hand of the clerk with the seal of said Court affixed at Missoula, Montana, this 18th day of June, 2021.

COURT SEAL



Shirley Faust
District Court Clerk

By: _____

Ruth Wingel
Deputy Clerk

Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802
(406) 258-4780

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA,
Plaintiff,
v.
BRANDON WAYNE BRYANT,
Defendant.

Judge Shane Vannatta
Cause No. DC-20-70
SUBPOENA

THE STATE OF MONTANA SENDS GREETINGS TO:

John Contos
104 Erika Ct.
Missoula, MT 59803
contosj@ci.missoula.mt.us

GREETINGS: YOU ARE HEREBY SUMMONED to be and appear before the above named Court at the Missoula County Courthouse, located at 200 W. Broadway St., Missoula, on July 6-9, 2021 at 8:00 a.m. then and there to testify in the above entitled cause. Hereof fail not, under penalty of law.

WITNESS the Hon. Shane Vannatta, Judge, the hand of the clerk with the seal of said Court affixed at Missoula, Montana, this 18th day of June, 2021.



Shirley Faust
District Court Clerk

By: Deborah Wingel
Deputy Clerk

Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802
(406) 258-4780

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA,
Plaintiff,
v.
BRANDON WAYNE BRYANT,
Defendant.

Judge Shane Vannatta
Cause No. DC-20-70
SUBPOENA

THE STATE OF MONTANA SENDS GREETINGS TO:

**Sandra Vasecka
1835 Wyoming St.
Missoula, MT 59801
vaseckas@ci.missoula**

GREETINGS: YOU ARE HEREBY SUMMONED to be and appear before the above named Court at the Missoula County Courthouse, located at 200 W. Broadway St., Missoula, on July 6-9, 2021 at 8:00 a.m. then and there to testify in the above entitled cause. Hereof fail not, under penalty of law.

WITNESS the Hon. Shane Vannatta, Judge, the hand of the clerk with the seal of said Court affixed at Missoula, Montana, this 18th day of June, 2021.



Shirley Faust
District Court Clerk

By: *Ruth Wingel*
Deputy Clerk

Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802
(406) 258-4780

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA,

Plaintiff,

v.

BRANDON WAYNE BRYANT,

Defendant.

Judge Shane Vannatta

Cause No. DC-20-70

SUBPOENA

THE STATE OF MONTANA SENDS GREETINGS TO:

**Detective Ethan Smith
Missoula Police Department
435 Ryman St.
Missoula, MT 59802
SmithN@ci.missoula.mt.us**

GREETINGS: YOU ARE HEREBY SUMMONED to be and appear before the above named Court at the Missoula County Courthouse, located at 200 W. Broadway St., Missoula, on July 6-9, 2021 at 8:00 a.m. then and there to testify in the above entitled cause. Hereof fail not, under penalty of law.

WITNESS the Hon. Shane Vannatta, Judge, the hand of the clerk with the seal of said Court affixed at Missoula, Montana, this 18th day of June, 2021.




Shirley Faust
District Court Clerk

By: *Dadh Wingel*
Deputy

STATE OF MONTANA)
 :SS
County of Missoula)

I, Mark D. Beck, hereby certify
that I served the within subpoena by sending a copy of the original of this subpoena via email
attachment to Det. Ethan Smith at smithE@ci.missoula.mt.us, acceptance and receipt of which
was confirmed via email reply from Det. Ethan Smith,

Missoula, Montana, on 18 June, 2021, at 09:58 a.m.



CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Notice - Certificate of Service to the following on 06-21-2021:

Matthew C. Jennings (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Brianna Kessler on behalf of Jacob Daniel Coolidge
Dated: 06-21-2021

Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802
(406) 258-4780

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA, Plaintiff, v. BRANDON WAYNE BRYANT, Defendant.	Judge Shane Vannatta Cause No. DC-20-70 SUBPOENA
--	--

THE STATE OF MONTANA SENDS GREETINGS TO:

Heather Harp
345 Burlington Ave.
Missoula, MT 59801
hharp@ci.missoula.mt.us

GREETINGS: YOU ARE HEREBY SUMMONED to be and appear before the above named Court at the Missoula County Courthouse, located at 200 W. Broadway St., Missoula, on July 6-9, 2021 at 8:00 a.m. then and there to testify in the above entitled cause. Hereof fail not, under penalty of law.

WITNESS the Hon. Shane Vannatta, Judge, the hand of the clerk with the seal of said Court affixed at Missoula, Montana, this 18th day of June, 2021.

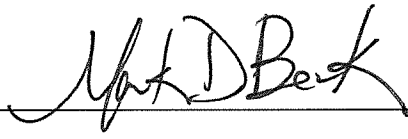


Shirley Faust
District Court Clerk
By: *Rebecca Santos*
Deputy Clerk

STATE OF MONTANA)
 :SS
County of Missoula)

I, Mark D. Beck, hereby certify
that I served the within subpoena by sending a copy of the original of this subpoena via email
attachment to Heather Harp at harph@ci.missoula.mt.us, acceptance and receipt of which was
confirmed via email reply from Heather Harp.

Missoula, Montana, on 18 June, 2021, at 11:39 a.m.



CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Notice - Certificate of Service to the following on 06-21-2021:

Matthew C. Jennings (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Brianna Kessler on behalf of Jacob Daniel Coolidge
Dated: 06-21-2021

Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802
(406) 258-4780

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA, Plaintiff, v. BRANDON WAYNE BRYANT, Defendant.	Judge Shane Vannatta Cause No. DC-20-70 SUBPOENA
--	--

THE STATE OF MONTANA SENDS GREETINGS TO:

Jesse L Ramos
741 Sussex Ave. #101
Missoula, MT 59801
jramos@ci.missoula.mt.us

GREETINGS: YOU ARE HEREBY SUMMONED to be and appear before the above named Court at the Missoula County Courthouse, located at 200 W. Broadway St., Missoula, on July 6-9, 2021 at 8:00 a.m. then and there to testify in the above entitled cause. Hereof fail not, under penalty of law.

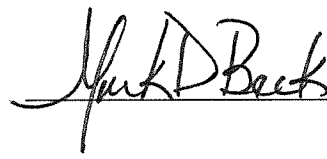
WITNESS the Hon. Shane Vannatta, Judge, the hand of the clerk with the seal of said Court affixed at Missoula, Montana, this 18th day of June, 2021.



Shirley Faust
District Court Clerk
By: *Ruth Wingel*
Deputy Clerk

STATE OF MONTANA)
 :SS
County of Missoula)

I, Mark D. Beck, hereby certify
that I served the within subpoena by sending a copy of the original of this subpoena via email
attachment to Jesse L. Ramos at ramosj@ci.missoula.mt.us, acceptance and receipt of which
was confirmed via email reply from Jesse L. Ramos
Missoula, Montana, on 18 June, 2021, at 10:36 a.m.



CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Notice - Certificate of Service to the following on 06-21-2021:

Matthew C. Jennings (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Brianna Kessler on behalf of Jacob Daniel Coolidge
Dated: 06-21-2021

Fourth Judicial District Court, Missoula County
200 W. Broadway St.
Missoula, MT 59802
(406) 258-4780

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA,
Plaintiff,
v.
BRANDON WAYNE BRYANT,
Defendant.

Judge Shane Vannatta
Cause No. DC-20-70
SUBPOENA

THE STATE OF MONTANA SENDS GREETINGS TO:

Jesse L Ramos
741 Sussex Ave. #101
Missoula, MT 59801
jramos@ci.missoula.mt.us

GREETINGS: YOU ARE HEREBY SUMMONED to be and appear before the above named Court at the Missoula County Courthouse, located at 200 W. Broadway St., Missoula, on July 6-9, 2021 at 8:00 a.m. then and there to testify in the above entitled cause. Hereof fail not, under penalty of law.

WITNESS the Hon. Shane Vannatta, Judge, the hand of the clerk with the seal of said Court affixed at Missoula, Montana, this 18th day of June, 2021.

COURT SEAL



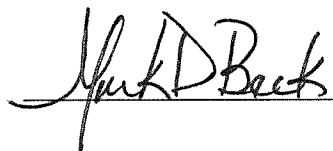
Shirley Faust
District Court Clerk

By: *Ruth Wingel*
Deputy Clerk

STATE OF MONTANA)
 :SS
County of Missoula)

I, Mark D. Beck, hereby certify
that I served the within subpoena by sending a copy of the original of this subpoena via email
attachment to Jesse L. Ramos at ramosj@ci.missoula.mt.us, acceptance and receipt of which
was confirmed via email reply from Jesse L. Ramos

Missoula, Montana, on 18 June, 2021, at 10:36 a.m.



CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Notice - Certificate of Service to the following on 06-21-2021:

Matthew C. Jennings (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Brianna Kessler on behalf of Jacob Daniel Coolidge
Dated: 06-21-2021

1 MATT JENNINGS
Chief Deputy County Attorney
2 KIRSTEN PABST
Missoula County Attorney
3 Missoula County Courthouse
Missoula, Montana 59802
4 (406) 258-4737
ATTORNEYS FOR PLAINTIFF
5

6
7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 STATE OF MONTANA,

Dept. No. 5

9 Plaintiff,

Cause No. DC-20-70

10 -vs-

**NOTICE OF STATE'S PROPOSED
JURY INSTRUCTIONS**

11 BRANDON BRYANT,

12 Defendant.

13 COMES NOW MATT JENNINGS, Deputy County Attorney of Missoula, Montana,
14 and offers the following State's Proposed Jury Instructions numbered 1 through 21 and
15 verdict form. Both a cited and a clean copy are being filed.

16 DATED this 18th day of June, 2021.

17 /s/ Matt Williams
MATT WILLIAMS
18 Deputy County Attorney
19
20
21
22
23

INSTRUCTION NO. _____

Preliminary Instruction 1

It is important that as jurors and officers of this Court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the Court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of this trial. In fairness to the Defendant and to the State of Montana, you should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instructions and after the attorneys' final arguments. You may only enter into discussion about this case with the other members of the jury after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, leave and report the incident to me as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened. You should not talk to your fellow jurors about anything that you feel necessary to bring to the attention of the judge.

Third, although it is a normal human tendency to talk and visit with people, both at home and in public, you may not, during the time you serve on this jury, talk with any of the parties or their attorneys or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial you may not make any investigation of this case or inquiry outside of the courtroom on your own. You may not go to any place mentioned in the testimony without explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias, research online, using Google, Yahoo, Bing, or any other Internet search engine, or use other reference materials or other sources of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. News accounts may be incomplete or may contain matters that are not proper evidence for your consideration. This prohibition extends to all forms of communication, whether in person, written, or through any electronic device or media, such as the telephone, a cell phone, computer, the Internet, any Internet service, any text or instant messaging service, and any Internet chat room, blog, or website such as Facebook, YouTube, and Twitter or other social media. You must base your verdict solely on what is presented in Court. You are now sworn jurors in this case, and you will hear the evidence and thus be in a better position than anyone else to know the true facts.

Sixth, if during the course of the trial there is reason to believe any of these rules have been violated, I will make inquiry of individual jurors and take appropriate action.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-101 (2009), modified and updated re social media language.
Plaintiff's Proposed Instruction No. 1 Defendant's Proposed Inst. No. _____
Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Preliminary Instruction 2

Ladies and Gentlemen of the Jury:

It is my duty to instruct the jury on the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you.

No remarks I make or instructions I give are intended to express my opinion as to the facts in this case or what verdict you should return.

You should take the law in this case from my instructions alone. You should not accept anyone else's version as to what the law is in this case. You should not decide this case contrary to these instructions, even though you might believe the law ought to be otherwise. Counsel, however, may comment and argue to the jury upon the law as given in these instructions. If, in these instructions, any rule, direction or idea is stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. You are not to single out any sentence or any individual point or instruction and ignore the others. You are to consider all of the instructions as a whole and are to regard each in the light of all the others. The order in which the instructions are given has no significance as to their relative importance.

The function of the jury is to decide the issues of fact resulting from the charges filed in this Court by the State and the Defendant's plea of "not guilty" to the charges. You must perform this duty uninfluenced by passion or prejudice. You must not be biased against a Defendant because the Defendant has been arrested for this offense, or because charges have been filed, or because the Defendant has been brought before the Court to stand trial. None of these facts is evidence of guilt, and you are not permitted to infer or to speculate from any or all of them that the Defendant is more likely to be guilty than innocent.

You are to be governed solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the State and the Defendant have a right to demand, and they do demand and expect, that you will act conscientiously and dispassionately in considering and weighing the evidence and applying the law of the case.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-102 (2009)

Plaintiff's Proposed Instruction No. 2 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

Preliminary Instruction 3

You are the sole judges of the credibility, that is, the believability, of all the witnesses testifying in this case, and of the weight, that is, the importance, to be given their testimony. In judging the effect of evidence, you must be fair and impartial and not arbitrary. While you have discretion in judging the effect of evidence, you must exercise that discretion in accordance with these instructions.

The evidence presented by one witness whom you believe is sufficient for the proof of any fact in this case.

You are not bound to decide any fact based upon the testimony of a larger number of witnesses whose testimony does not convince you against the testimony of a smaller number of witnesses (or against a presumption), or other evidence which does convince you.

In determining what the facts are in the case, it may be necessary for you to determine what weight should be given to the testimony of each witness. To do this you should carefully consider all the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to indicate whether a witness is worthy of belief. You may consider:

1. The appearance of the witnesses on the stand, their manner of testifying, their apparent candor, their apparent fairness, their apparent intelligence, their knowledge and means of knowledge on the subject upon which they have testified.
2. Whether the witnesses have an interest in the outcome of the case or any motive, bias, or prejudice.
3. The extent to which the witnesses are either supported or contradicted by other evidence in the case.
4. The capacity of the witnesses to perceive and communicate information.

5. Proof that the witness has a bad character for truthfulness.

If you believe that any witness has willfully testified falsely as to any material matter in the case, you must reject such testimony as you believe to have been false and you have the right to view the rest of the testimony with distrust and in your discretion disregard it, unless, after examination of all the evidence, you find such testimony worthy of belief. This rule does not apply if, a witness:

1. unintentionally commits an error in the witness' testimony, or
2. is unintentionally mistaken as to some matters or facts about which the witness testifies, or
3. gives evidence concerning matters not material in this case without intention of deceiving the Court or jury.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-103 (2009)

Plaintiff's Proposed Instruction No. 3 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Preliminary Instruction 4

An Information has been filed charging the Defendant, BRANDON BRYANT, with the offenses of:

COUNT I—THREATS/IMPROPER INFLUENCE IN OFFICIAL AND POLITICAL MATTERS;

or in the alternative

COUNT I--INTIMIDATION

All counts are alleged to have been committed in Missoula County, State of Montana on or about or between November 18, 2019 and January 31, 2020. The Defendant has pled not guilty. The jury's task in this case is to decide whether the Defendant is guilty or not guilty based upon the evidence and the law as stated in my instructions. These are some of the rules of law that you must follow:

1. The filing of an Information is simply a part of the legal process to bring this case into Court for trial and to notify the Defendant of the charges against him. Neither the Information nor the charges contained therein are to be taken by you as any indication, evidence or proof that the Defendant is guilty of any offense.
2. By a plea of not guilty, the Defendant denies every allegation of the charge.
3. The State of Montana has the burden of proving the guilt of the Defendant beyond a reasonable doubt. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would rely and act upon it in the most important of his or her own affairs. Beyond a reasonable doubt does not mean beyond any doubt or beyond a shadow of a doubt.
4. The Defendant is presumed to be innocent of the charge against her. This presumption remains with her throughout every stage of the trial and during your deliberations on the verdict. It is not overcome unless from all the evidence in the

case you are convinced beyond a reasonable doubt that the Defendant is guilty.
The Defendant is not required to prove his innocence or present any evidence.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-104 (2009)

Plaintiff's Proposed Instruction No. 4 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Function of Bailiff and Questions to Court

During the trial, the bailiff will keep you together and will prevent inappropriate conversations between you and any other persons. The bailiff will see to your needs during the trial. However, the bailiff cannot answer any questions about this case or provide you with any information, books or materials, as I have strictly forbidden the bailiff to do so.

I will instruct you on the laws you must apply to the evidence presented in the case in order to reach a verdict, both orally and by giving you a set of written instructions which you will take with you during your deliberations. These instructions are intended to cover all necessary laws which are pertinent to the case.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-105 (2009)

Plaintiff's Proposed Instruction No. 5 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Jury Deliberation

The law requires the jury verdict in this case to be unanimous. Thus, all twelve of you must agree that the defendant is either guilty or not guilty in order to reach a verdict.

When you are taken to the jury room to begin your deliberations, you should first select a foreperson. The foreperson should see to it that jury discussion goes forward in a sensible and orderly fashion and that each juror has the opportunity to discuss the issues fully and fairly. The attitude and conduct of jurors at the beginning of their deliberations is very important. At that time, it is usually not helpful for any juror to make a strong expression of opinion or to stand for a certain verdict. Such a juror may be unwilling to change an opinion even if it is later thought to be incorrect.

The jurors have a duty to consult with one another and to deliberate for the purpose of reaching an agreement, if it can be done without violence to individual judgment. This means that you may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case together with the law which relates to this case as contained in the instructions.

In the course of deliberation, a juror has a right to re-examine prior held views and opinions if the juror is convinced to do so by fair and honest discussion by any member or members of the jury, based upon the evidence the jury saw and heard in the trial and the law as given you in these instructions.

However, no juror should surrender an honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the Defendant because the majority of the jury feels otherwise, or for the purpose of returning a unanimous verdict or to prevent a mistrial. Your foreperson must sign any verdict upon which you agree.

GIVEN: _____

DISTRICT JUDGE

SOURCE:MCJI 1-106 (2009)

Plaintiff's Proposed Instruction No. 6 Defendant's Proposed Instruction No.

Given as Instruction No. Refused Withdrawn By

INSTRUCTION NO. _____

Voluntary Act

A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes and which is physically capable of being performed.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-107 (2009)

Plaintiff's Proposed Instruction No. 7 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Evidence: Direct and Circumstantial

There are two kinds of evidence: direct and circumstantial.

Direct evidence is when a witness testifies directly of his/her knowledge of the main fact or facts to be proven.

Circumstantial evidence is proof from which the Jury may infer other and connective facts which follow according to common experience.

Both direct evidence and circumstantial evidence are acceptable as means of proof. Neither is entitled to greater weight than the other.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-117 (2009)

Plaintiff's Proposed Instruction No. 8 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. __

Evidence: Solely Circumstantial

When circumstantial evidence is susceptible to two interpretations, one that supports guilt and the other that supports innocence, the jury determines which is most reasonable.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-117(a) (2009)

Plaintiff's Proposed Instruction No. 9 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. ____

Evidence - Weight

In deciding the believability and weight to be given the testimony of a witness, you may consider evidence of any other statement or statements made by the witness which is inconsistent with the witness's testimony at this trial.

This evidence may be considered by you for the purposes of testing the believability and weight of the witness's testimony or to establish the truth of these statements as the jury shall determine.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-118 (2009)

Plaintiff's Proposed Instruction No. 10 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Constitutional Right of Defendant Not to Testify

In deciding whether or not to testify, the Defendant may choose to rely on the state of the evidence and upon the failure, if any, of the State to prove beyond a reasonable doubt every essential element of the charge against him.

A Defendant in a criminal trial has a constitutional right not to testify. You must not draw any inference from the fact that a Defendant does not testify. Further, you must neither discuss this matter nor permit it to enter into your deliberations in any way.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-122 (2009)

Plaintiff's Proposed Instruction No. 11 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. ____

Admissions or Confessions

A statement made by a Defendant other than at this trial may be an admission or a confession.

A confession, as applied in criminal law, is a statement by a person made after the offense was committed that he/she committed or participated in the commission of a crime. An admission is a statement made by the accused, direct or implied, of facts pertinent to the issue, and tending, in connection with proof of other facts, to prove his/her guilt. A conviction cannot be based on an admission or confession alone.

The circumstances under which the statement was made may be considered in determining its credibility or weight. You are the exclusive judges as to whether an admission or a confession was made by the Defendant, and if so, whether such statement is true in whole or in part. If you should find that any such statement is entirely untrue, you must reject it. If you find it is true in part, you may consider that part which you find to be true.

Evidence of an unrecorded oral admission or oral confession of the Defendant should be viewed with caution.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-119 (2009)

Plaintiff's Proposed Instruction No. 12 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Knowingly

A person acts knowingly when the person is aware there exists a high probability that the person's conduct will cause a specific result.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 2-104 (2009)

Plaintiff's Proposed Instruction No. 13 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Purposely

A person acts purposely when it is the person's conscious object to cause such a result.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 2-106 (2009)

Plaintiff's Proposed Instruction No. 14 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Mental State Inference

Purpose and knowledge ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the Defendant's state of mind, including his/her purpose and knowledge, from the Defendant's acts and all other facts and circumstances in evidence which indicate his/her state of mind.

Circumstantial evidence may be used to determine the existence of a particular mental state. You may infer mental state from what the Defendant does and says and from all the facts and circumstances involved.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 2-108 (2009) and MCJI 1-117(b) (2009)

Plaintiff's Proposed Instruction No. 15 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Threats and Other Improper Influence in Official and Political Matters

A person commits the offense of threats and other improper influence in official and political matters if that person purposely or knowingly threatens harm to any public servant, with the purpose to influence the public servant's decision, opinion, recommendation, vote, or other exercise of discretion.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 7-102 (2009); MCA §45-7-102

Plaintiff's Proposed Instruction No. 16 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. __

Issues in Threats and Other Improper Influence in Official and Political Matters

To convict the Defendant of the charge of threats and other improper influence in official and political matters, the State must prove the following elements:

1. That the Defendant threatened harm to Missoula City Council members;

AND

2. That the Defendant did so with the purpose to influence the decision of Missoula City Council Member, public servants;

AND

3. That the Defendant acted purposely or knowingly.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 7-102(a) (2009)

Plaintiff's Proposed Instruction No. 17 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Intimidation: Threat of Harm

A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, the person communicates, without lawful authority, and under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to inflict physical harm on the person threatened or any other person.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 5-109 (2009)

Plaintiff's Proposed Instruction No. 18 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Issues in Intimidation

To convict the Defendant of the charge of intimidation, the State must prove the following elements:

1. That the Defendant communicated a threat to inflict physical harm on Missoula City Council members;

AND

2. That the Defendant was without legal authority to perform the threatened act;

AND

3. That the circumstances reasonably tended to produce a fear that the threat would be carried out;

AND

4. That the Defendant had the purpose to cause the alleged victim to perform or omit the performance of any act.

If you find from your consideration of all the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 5-109(a) (2009)

Plaintiff's Proposed Instruction No. 19 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. ____

Threat

For the purposes of this trial, you are instructed that a “threat” means a menace, however communicated, to inflict physical harm on the person threatened or any other person or property. In determining whether Mr. Bryant intended to communicate a threat, the question is not whether one could reasonably interpret Mr. Bryant’s actions and statements as threats. Rather, the question is whether the actions and statements on their face and in the context in which they were conveyed, in fact, constitute true threats.

You are further instructed that a “true threat” is a statement or statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker need not actually intend to carry out the threat. The prohibition on true threats protects individuals from the fear of violence and from the possibility that the threatened violence will occur. A “true threat” is not constitutionally protected speech.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 45-2-101(76)(a); *State v. Ross*, 269 Mont. 347, 360, 889 P.2d 161; *State v. Lance*, 222 Mont. 92, 103, 721 P.2d 1258, 1266 (1986); *Virginia v. Black*, 538 U.S. 343, 359-60, 123 S. Ct. 1536, 1547-48 (2003).

Plaintiff’s Proposed Instruction No. 20 Defendant’s Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. __

Public Servant

A "Public Servant" means an officer or employee of government. The term "Public Servant" includes one who has been elected or designated to become a public servant.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 45-2-101(64(a)); State v. Heffner, 1998 MT 181, ¶ 23, 290 Mont. 114, 964 P.2d 736.

Plaintiff's Proposed Instruction No. 21 Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Preliminary Instruction 1

It is important that as jurors and officers of this Court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the Court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of this trial. In fairness to the Defendant and to the State of Montana, you should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instructions and after the attorneys' final arguments. You may only enter into discussion about this case with the other members of the jury after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, leave and report the incident to me as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened. You should not talk to your fellow jurors about anything that you feel necessary to bring to the attention of the judge.

Third, although it is a normal human tendency to talk and visit with people, both at home and in public, you may not, during the time you serve on this jury, talk with any of the parties or their attorneys or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial you may not make any investigation of this case or inquiry outside of the courtroom on your own. You may not go to any place mentioned in the testimony without explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias, research online, using Google, Yahoo, Bing, or any other Internet search engine, or use other reference materials or other sources of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. News accounts may be incomplete or may contain matters that are not proper evidence for your consideration. This prohibition extends to all forms of communication, whether in person, written, or through any electronic device or media, such as the telephone, a cell phone, computer, the Internet, any Internet service, any text or instant messaging service, and any Internet chat room, blog, or website such as Facebook, YouTube, and Twitter or other social media. You must base your verdict solely on what is presented in Court. You are now sworn jurors in this case, and you will hear the evidence and thus be in a better position than anyone else to know the true facts.

Sixth, if during the course of the trial there is reason to believe any of these rules have been violated, I will make inquiry of individual jurors and take appropriate action.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Preliminary Instruction 2

Ladies and Gentlemen of the Jury:

It is my duty to instruct the jury on the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you.

No remarks I make or instructions I give are intended to express my opinion as to the facts in this case or what verdict you should return.

You should take the law in this case from my instructions alone. You should not accept anyone else's version as to what the law is in this case. You should not decide this case contrary to these instructions, even though you might believe the law ought to be otherwise. Counsel, however, may comment and argue to the jury upon the law as given in these instructions. If, in these instructions, any rule, direction or idea is stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. You are not to single out any sentence or any individual point or instruction and ignore the others. You are to consider all of the instructions as a whole and are to regard each in the light of all the others. The order in which the instructions are given has no significance as to their relative importance.

The function of the jury is to decide the issues of fact resulting from the charges filed in this Court by the State and the Defendant's plea of "not guilty" to the charges. You must perform this duty uninfluenced by passion or prejudice. You must not be biased against a Defendant because the Defendant has been arrested for this offense, or because charges have been filed, or because the Defendant has been brought before the Court to stand trial. None of these facts is evidence of guilt, and you are not permitted to infer or to speculate from any or all of them that the Defendant is more likely to be guilty than innocent.

You are to be governed solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the State and the Defendant have a right to demand, and they do demand and expect, that you will act conscientiously and dispassionately in considering and weighing the evidence and applying the law of the case.

GIVEN: _____
DISTRICT JUDGE

Preliminary Instruction 3

You are the sole judges of the credibility, that is, the believability, of all the witnesses testifying in this case, and of the weight, that is, the importance, to be given their testimony. In judging the effect of evidence, you must be fair and impartial and not arbitrary. While you have discretion in judging the effect of evidence, you must exercise that discretion in accordance with these instructions.

The evidence presented by one witness whom you believe is sufficient for the proof of any fact in this case.

You are not bound to decide any fact based upon the testimony of a larger number of witnesses whose testimony does not convince you against the testimony of a smaller number of witnesses (or against a presumption), or other evidence which does convince you.

In determining what the facts are in the case, it may be necessary for you to determine what weight should be given to the testimony of each witness. To do this you should carefully consider all the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to indicate whether a witness is worthy of belief. You may consider:

1. The appearance of the witnesses on the stand, their manner of testifying, their apparent candor, their apparent fairness, their apparent intelligence, their knowledge and means of knowledge on the subject upon which they have testified.
2. Whether the witnesses have an interest in the outcome of the case or any motive, bias, or prejudice.
3. The extent to which the witnesses are either supported or contradicted by other evidence in the case.
4. The capacity of the witnesses to perceive and communicate information.

5. Proof that the witness has a bad character for truthfulness.

If you believe that any witness has willfully testified falsely as to any material matter in the case, you must reject such testimony as you believe to have been false and you have the right to view the rest of the testimony with distrust and in your discretion disregard it, unless, after examination of all the evidence, you find such testimony worthy of belief. This rule does not apply if, a witness:

1. unintentionally commits an error in the witness' testimony, or
2. is unintentionally mistaken as to some matters or facts about which the witness testifies, or
3. gives evidence concerning matters not material in this case without intention of deceiving the Court or jury.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Preliminary Instruction 4

An Information has been filed charging the Defendant, BRANDON BRYANT, with the offenses of:

COUNT I—THREATS/IMPROPER INFLUENCE IN OFFICIAL AND POLITICAL MATTERS;

or in the alternative

COUNT I--INTIMIDATION

All counts are alleged to have been committed in Missoula County, State of Montana on or about or between November 18, 2019 and January 31, 2020. The Defendant has pled not guilty. The jury's task in this case is to decide whether the Defendant is guilty or not guilty based upon the evidence and the law as stated in my instructions. These are some of the rules of law that you must follow:

1. The filing of an Information is simply a part of the legal process to bring this case into Court for trial and to notify the Defendant of the charges against him. Neither the Information nor the charges contained therein are to be taken by you as any indication, evidence or proof that the Defendant is guilty of any offense.
2. By a plea of not guilty, the Defendant denies every allegation of the charge.
3. The State of Montana has the burden of proving the guilt of the Defendant beyond a reasonable doubt. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would rely and act upon it in the most important of his or her own affairs. Beyond a reasonable doubt does not mean beyond any doubt or beyond a shadow of a doubt.
4. The Defendant is presumed to be innocent of the charge against her. This presumption remains with her throughout every stage of the trial and during your deliberations on the verdict. It is not overcome unless from all the evidence in the

case you are convinced beyond a reasonable doubt that the Defendant is guilty.
The Defendant is not required to prove his innocence or present any evidence.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Function of Bailiff and Questions to Court

During the trial, the bailiff will keep you together and will prevent inappropriate conversations between you and any other persons. The bailiff will see to your needs during the trial. However, the bailiff cannot answer any questions about this case or provide you with any information, books or materials, as I have strictly forbidden the bailiff to do so.

I will instruct you on the laws you must apply to the evidence presented in the case in order to reach a verdict, both orally and by giving you a set of written instructions which you will take with you during your deliberations. These instructions are intended to cover all necessary laws which are pertinent to the case.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Jury Deliberation

The law requires the jury verdict in this case to be unanimous. Thus, all twelve of you must agree that the defendant is either guilty or not guilty in order to reach a verdict.

When you are taken to the jury room to begin your deliberations, you should first select a foreperson. The foreperson should see to it that jury discussion goes forward in a sensible and orderly fashion and that each juror has the opportunity to discuss the issues fully and fairly. The attitude and conduct of jurors at the beginning of their deliberations is very important. At that time, it is usually not helpful for any juror to make a strong expression of opinion or to stand for a certain verdict. Such a juror may be unwilling to change an opinion even if it is later thought to be incorrect.

The jurors have a duty to consult with one another and to deliberate for the purpose of reaching an agreement, if it can be done without violence to individual judgment. This means that you may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case together with the law which relates to this case as contained in the instructions.

In the course of deliberation, a juror has a right to re-examine prior held views and opinions if the juror is convinced to do so by fair and honest discussion by any member or members of the jury, based upon the evidence the jury saw and heard in the trial and the law as given you in these instructions.

However, no juror should surrender an honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the Defendant because the majority of the jury feels otherwise, or for the purpose of returning a unanimous verdict or to prevent a mistrial. Your foreperson must sign any verdict upon which you agree.

GIVEN: _____

DISTRICT JUDGE

INSTRUCTION NO. _____

Voluntary Act

A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes and which is physically capable of being performed.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Evidence: Direct and Circumstantial

There are two kinds of evidence: direct and circumstantial.

Direct evidence is when a witness testifies directly of his/her knowledge of the main fact or facts to be proven.

Circumstantial evidence is proof from which the Jury may infer other and connective facts which follow according to common experience.

Both direct evidence and circumstantial evidence are acceptable as means of proof. Neither is entitled to greater weight than the other.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. __

Evidence: Solely Circumstantial

When circumstantial evidence is susceptible to two interpretations, one that supports guilt and the other that supports innocence, the jury determines which is most reasonable.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. ____

Evidence - Weight

In deciding the believability and weight to be given the testimony of a witness, you may consider evidence of any other statement or statements made by the witness which is inconsistent with the witness's testimony at this trial.

This evidence may be considered by you for the purposes of testing the believability and weight of the witness's testimony or to establish the truth of these statements as the jury shall determine.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Constitutional Right of Defendant Not to Testify

In deciding whether or not to testify, the Defendant may choose to rely on the state of the evidence and upon the failure, if any, of the State to prove beyond a reasonable doubt every essential element of the charge against him.

A Defendant in a criminal trial has a constitutional right not to testify. You must not draw any inference from the fact that a Defendant does not testify. Further, you must neither discuss this matter nor permit it to enter into your deliberations in any way.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. ____

Admissions or Confessions

A statement made by a Defendant other than at this trial may be an admission or a confession.

A confession, as applied in criminal law, is a statement by a person made after the offense was committed that he/she committed or participated in the commission of a crime. An admission is a statement made by the accused, direct or implied, of facts pertinent to the issue, and tending, in connection with proof of other facts, to prove his/her guilt. A conviction cannot be based on an admission or confession alone.

The circumstances under which the statement was made may be considered in determining its credibility or weight. You are the exclusive judges as to whether an admission or a confession was made by the Defendant, and if so, whether such statement is true in whole or in part. If you should find that any such statement is entirely untrue, you must reject it. If you find it is true in part, you may consider that part which you find to be true.

Evidence of an unrecorded oral admission or oral confession of the Defendant should be viewed with caution.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Knowingly

A person acts knowingly when the person is aware there exists a high probability that the person's conduct will cause a specific result.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Purposely

A person acts purposely when it is the person's conscious object to cause such a result.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Mental State Inference

Purpose and knowledge ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the Defendant's state of mind, including his/her purpose and knowledge, from the Defendant's acts and all other facts and circumstances in evidence which indicate his/her state of mind.

Circumstantial evidence may be used to determine the existence of a particular mental state. You may infer mental state from what the Defendant does and says and from all the facts and circumstances involved.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Threats and Other Improper Influence in Official and Political Matters

A person commits the offense of threats and other improper influence in official and political matters if that person purposely or knowingly threatens harm to any public servant, with the purpose to influence the public servant's decision, opinion, recommendation, vote, or other exercise of discretion.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. __

Issues in Threats and Other Improper Influence in Official and Political Matters

To convict the Defendant of the charge of threats and other improper influence in official and political matters, the State must prove the following elements:

1. That the Defendant threatened harm to Missoula City Council members;

AND

2. That the Defendant did so with the purpose to influence the decision of Missoula City Council members, public servants;

AND

3. That the Defendant acted purposely or knowingly.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Intimidation: Threat of Harm

A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, the person communicates, without lawful authority, and under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to inflict physical harm on the person threatened or any other person.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Issues in Intimidation

To convict the Defendant of the charge of intimidation, the State must prove the following elements:

1. That the Defendant communicated a threat to inflict physical harm on City Council members;

AND

2. That the Defendant was without legal authority to perform the threatened act;

AND

3. That the circumstances reasonably tended to produce a fear that the threat would be carried out;

AND

4. That the Defendant had the purpose to cause the alleged victim to perform or omit the performance of any act.

If you find from your consideration of all the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. __

Threat

For the purposes of this trial, you are instructed that a “threat” means a menace, however communicated, to inflict physical harm on the person threatened or any other person or property. In determining whether Mr. Bryant intended to communicate a threat, the question is not whether one could reasonably interpret Mr. Bryant’s actions and statements as threats. Rather, the question is whether the actions and statements on their face and in the context in which they were conveyed, in fact, constitute true threats.

You are further instructed that a “true threat” is a statement or statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker need not actually intend to carry out the threat. The prohibition on true threats protects individuals from the fear of violence and from the possibility that the threatened violence will occur. A “true threat” is not constitutionally protected speech.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. __

Public Servant

A "Public Servant" means an officer or employee of government. The term "Public Servant" includes one who has been elected or designated to become a public servant.

GIVEN: _____
DISTRICT JUDGE

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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA,

Plaintiff,

-vs-

BRANDON BRYANT,

Defendant.

Cause No. DC-20-70 (Dept. 5)

VERDICT

We the jury, duly empanelled and sworn to try the issues in the above-entitled cause, enter the following unanimous verdict:

To the charge of **Count I – Threats/Improper Influence in Official and Political matters:**

(Write on the above line "guilty" or "not guilty")

OR IN THE ALTERNATIVE (choose one or the other, but not both):

To the charge of **Count I – Intimidation:**

(Write on the above line "guilty" or "not guilty")

DATED this _____ day of _____, 2021.

FOREPERSON

CERTIFICATE OF SERVICE

I, Matthew C. Jennings, hereby certify that I have served true and accurate copies of the foregoing Jury Instructions - Proposed Jury Instructions to the following on 06-21-2021:

Jacob Daniel Coolidge (Attorney)
610 Woody Street
Missoula MT 59802
Representing: Brandon Howard Bryant
Service Method: eService

Electronically signed by Nichole Kercher on behalf of Matthew C. Jennings
Dated: 06-21-2021

Jacob Coolidge
Office of State Public Defender
610 Woody Street
Missoula, MT 59802
Attorney for Defendant

FILED

06/22/2021

Shirley Faust
CLERK

Missoula County District Court
STATE OF MONTANA

By: Ashley Ward
DC-32-2020-0000070-IN
Vannatta, Shane
44.00

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA, Plaintiff, v. BRANDON WAYNE BRYANT, Defendant.	Cause No. DC-20-70 NOTICE OF DEFNDANT'S PROPOSED JURY INSTRUCTIONS
--	--

COMES NOW, Jacob Coolidge, attorney for the Defendant, and offers the following Defendant's Proposed Jury Instructions numbered 1 and 2. Both a cited and clean copy are filed.

Defendant does not object to most of the State's proposed instructions. Defendant reserves the right to object to the knowingly and purposely instructions by the currently set jury objection deadline. Should Defendant object to those instructions, alternative instructions would be proposed as part of an objection.

Defendant also objects to State's proposed instruction number 20 ("Threat"). Defendant intends to brief his objection to the jury instruction, along with a proposed alternative jury instruction to define the term "Threat." Defendant will have said objection briefed and proposed alternative instruction filed by the jury objection deadline. Defense counsel intends to send the proposed alternative instruction to the State prior to the objection deadline and filing of alternative instruction to allow the State adequate time to respond to the proposed instruction by the objection deadline.

DATED this 22 day of June, 2021.

/s/ Jake Coolidge
Jacob Coolidge
Attorney For Defendant

INSTRUCTION NO. ____

Defendant is charged in Count 1 of the information with the crime of threats and improper influence in political matters, a violation, on or about a period of time between November 18, 2019 and January 31, 2020. Defendant is charged in Count 2, in the alternative, with intimidation, on or about a period of time between November 18, 2019 and January 31, 2020.

In order to find the Defendant guilty, it is necessary for the prosecution to prove beyond a reasonable doubt the commission of a specific act constituting the crime within the period alleged. Also, in order to find the Defendant guilty, you must unanimously agree upon the commission of the same specific act constituting the crime within the period alleged. It is not necessary that the particular act committed so agreed upon be stated in the verdict.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-106(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Continuous Conduct, No. 1-106(a), 2009) Source and Comment]

SOURCE: *State v. Weaver*, 290 Mont. 58, 964 P.2d 713 (1998).

COMMENT: If the Defendant is charged with a specific conduct over a period of time it is necessary to give an additional instruction that requires the jury to unanimously find that the Defendant committed the alleged act or acts during the specific time frame. Examples of the format suggested by the Supreme Court in *Weaver* appear above.

INSTRUCTION NO. _____

Alternative Charges

The Defendant is charged in Count 1 with the crime of Threats and Improper Influence in Political Matters and in Count 2 with the crime of Intimidation. These charges are made in the alternative and in effect allege that the Defendant committed an unlawful act which constitutes either the crime of Threats and Improper Influence in Political Matters or the crime of Intimidation. If you find that the Defendant committed an act or acts constituting one of the crimes so charged, you then must determine which of the offenses so charged was thereby committed.

In order to find the Defendant guilty you must all agree as to the particular offense committed. If you find the Defendant guilty of one of the alternative offenses, you cannot find him guilty of the other.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-108 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. ____

Defendant is charged in Count 1 of the information with the crime of threats and improper influence in political matters, a violation, on or about a period of time between November 18, 2019 and January 31, 2020. Defendant is charged in Count 2, in the alternative, with intimidation, on or about a period of time between November 18, 2019 and January 31, 2020.

In order to find the Defendant guilty, it is necessary for the prosecution to prove beyond a reasonable doubt the commission of a specific act constituting the crime within the period alleged. Also, in order to find the Defendant guilty, you must unanimously agree upon the commission of the same specific act constituting the crime within the period alleged. It is not necessary that the particular act committed so agreed upon be stated in the verdict.

GIVEN: _____
DISTRICT JUDGE

INSTRUCTION NO. _____

Alternative Charges

The Defendant is charged in Count 1 with the crime of Threats and Improper Influence in Political Matters and in Count 2 with the crime of Intimidation. These charges are made in the alternative and in effect allege that the Defendant committed an unlawful act which constitutes either the crime of Threats and Improper Influence in Political Matters or the crime of Intimidation. If you find that the Defendant committed an act or acts constituting one of the crimes so charged, you then must determine which of the offenses so charged was thereby committed.

In order to find the Defendant guilty you must all agree as to the particular offense committed. If you find the Defendant guilty of one of the alternative offenses, you cannot find him guilty of the other.

GIVEN: _____
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Jury Instructions - Proposed Jury Instructions to the following on 06-22-2021:

Matthew C. Jennings (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Brianna Kessler on behalf of Jacob Daniel Coolidge
Dated: 06-22-2021

1 MATT JENNINGS
2 Deputy County Attorneys
3 KIRSTEN H. PABST
4 Missoula County Attorney
5 200 West Broadway
6 Missoula, Montana 59802
7 mjennings@missoulacounty.us
8 Ph. (406) 258-4737
9 Attorneys for Missoula County

10 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

11 STATE OF MONTANA,

12 Plaintiff,

13 vs.

14 BRANDON BRYANT,

15 Defendant,

Dept. 5
Cause No. DC-20-70

MOTION IN LIMINE

16 Comes now, MATT JENNINGS, Deputy County Attorney of Missoula
17 County, and files this Motion in Limine.

INTRODUCTION

18 On June 11, 2021 Defendant filed a witness and exhibit list which
19 included the entire current Missoula City Council. Three of those city council
20 members were not council members at almost all times relevant to this case
21 and should be precluded from testifying at trial because they lack personal
22 knowledge of the alleged offenses, and any after-the-fact opinions or
23 observations they may have are inadmissible and irrelevant. Amber Sherril,
24 John Contos and Sandra Vasecka were sworn into the Missoula City Council
25 on January 6, 2020. See Missoulian Article, attached as Exhibit 1.
26
27
28

1 The allegations in this case are that Brandon Bryant was making threats
2 at City Council meetings and through YouTube videos in late 2019 about
3 decisions the Missoula City Council had recently made about development in
4 the community. The threats were toward people (including council members)
5 who had betrayed him, and he threatened he would harm them. These
6 threats are not applicable to City Council members who were not on the
7 council when he made these threats. Bryant did appear at one city council
8 meeting in January 2020, after the new council members were sworn in.
9 Additionally, the Information identifies a date range of the threats through
10 January 2020. However, the date range in January reflects only the time
11 period in which the City Council members learned of the threat and
12 experienced fear. The January meeting in which Bryant attended is relevant
13 only to demonstrate Defendant's mental state and that the threats were made
14 under circumstances that reasonably tended to produce a fear that they
15 would be carried out. See i.e. MCJI 5-109. The three council members that
16 were not on the City Council before January 2020 lack personal knowledge to
17 testify in this case because they were not on the council when he made the
18 threats and are not victims as alleged in the Amended Information.

19 Second, defense witnesses should be prohibited from offering opinion
20 testimony pursuant to Rule 702.

21 Third, defense witnesses should be prohibited from offering evidence of
22 Bryant's PTSD, Traumatic Brain Injury or military service as those matters are
23 all inadmissible.

24 Lastly, Defendant should be prohibited from offering evidence of good
25 character because he did not disclose any good character witnesses.
26
27
28

LEGAL STANDARD

As the Montana Supreme Court has noted:

While motions in limine are not provided for in either the statutes or court rules, they have been recognized as valid and useful procedures by this Court in numerous cases.

The Latin phrase “in limine” means “at the threshold” or “in the beginning” and was used at early common law to denote motions that were preliminary in character. Currently, however, the term is used to denote motions made before or even during trial to forbid certain lines of inquiry or limit or prohibit the use of particular evidence.

State v. Lias, 218 Mont. 124, 128, 706 P.2d 500, 503 (1985) (Hunt, J. dissenting) (citing William F. Crowley, *Montana Pleading and Practice Forms*, p. 99 (1983)).

Moreover, the purpose of a motion in limine is:

to prevent the introduction of evidence, which is irrelevant, immaterial, or unfairly prejudicial. Accordingly, the authority to grant or deny a motion in limine rests in the inherent power of the court to admit or exclude evidence and to take such precautions as are necessary to afford a fair trial for all parties.

Cooper v. Hanson, 2010 MT 113, ¶ 38, 356 Mont. 309, 234 P.3d 59 (quoting *State v. Krause*, 2002 MT 63, ¶ 32, 309 Mont. 174, 44 P.3d 493).

The Court further stated in *Cooper* that counsel may want:

to avoid objecting to improper arguments in front of the jury, as such objections only underscore the inappropriate points made by opposing counsel. We have historically encouraged the filing of motions in limine for precisely this reason.

Cooper, ¶ 38; *State v. Ankeny*, 2010 MT 224, ¶¶ 36-38, 358 Mont. 32, 243 P.3d

1 391.

2 **ARGUMENT**

3 **I. Defendant should be prohibited from offering testimony of**
4 **City Council members who were not on the City Council at**
5 **relevant times to this case.**

6 Individuals who were elected to office after Brandon Bryant made his
7 threatening statements at a City Council meeting and through YouTube
8 videos should not be allowed to testify at trial.

9 “A witness may not testify as to a matter unless evidence is introduced
10 sufficient to support a finding that the witness has personal knowledge of the
11 matter.” Mont. R. Evid. 602. “This ‘personal knowledge’ must be based on
12 ‘firsthand observation or experience, as distinguished from a belief based on
13 what someone else has said.’” *Smith v. Burlington N. & Santa Fe Ry. Co.*,
14 2008 MT 225, ¶ 39, 344 Mont. 278, 292, 187 P.3d 639, 649. Furthermore,
15 “[r]elevant evidence means evidence having any tendency to make the
16 existence of any fact that is of consequence to the determination of the action
17 more probable or less probable than it would be without the evidence.” Mont.
18 R. Evid. 401. “Evidence which is not relevant is not admissible.” Mont. R.
19 Evid. 402. Rule 403 provides:

20 Although relevant, evidence outweighed by the danger of unfair
21 prejudice, confusion of the issues, or misleading the jury, or by
22 considerations of undue delay, waste of time, or needless
23 presentation of cumulative evidence.

24 Lastly, Rule 701 limits a lay witness offering testimony in the form of
25 opinions or inferences to those opinions or inferences which are (a) rationally
26 based on the perception of the witness and (b) helpful to a clear
27 understanding of the witness’s testimony or the determination of the case.
28

1 Here, any feelings, opinions, or observations that City Council members
2 who were sworn in in January 2020 are inadmissible and irrelevant because
3 they were not “public servants” or witnesses or victims of the offenses alleged
4 in the Amended Information during the period in which Bryant made threats.
5 They also would constitute inadmissible opinions that embrace ultimate
6 issues to be decided upon by the jury. It is true that some of the issues that
7 Bryant was trying to influence through his threats existed beyond December
8 2019, but the threats were clearly directed at those in office in December
9 2019 and exclude those that were sworn in weeks later. Additionally, Bryant
10 testified at one council meeting in January 2020 where he carried a stick and
11 was menacing. He did not make an explicit threat at that meeting. That
12 meeting is relevant to show his mental state--that he had acted with
13 knowledge or purpose that others would believe his threats would be carried
14 out. Bryant was angered by actions that the City Council took in 2019 and
15 wanted them to change their minds, the council members taking office in
16 2020 simply cannot be considered victims of this offense since they were not
17 public servants during the significant and material times that Bryant made
18 threats. Any testimony or opinions they may offer lack personal knowledge of
19 the issues Bryant complains about, his history of attending City Council
20 meetings, and the opinions would be inadmissible lay opinions about other
21 people’s fear.
22

23 **II. Defendant and his witnesses should be prohibited from**
24 **offering any opinion evidence about the outcome of the case**
25 **or making statements not based on personal knowledge.**

26 On February 27, 2020, three Missoula City Council members wrote a
27 letter opining on several matters related to this case. Attached as Exhibit 2.
28 Those three witnesses are all listed as Defense witnesses. The opinions

1 include, but are not limited to opinions that Bryant was using his voice to
2 make an impact in the community, that other citizens now fear political
3 retribution, that Bryant was using the videos to purge himself of negative
4 thoughts, that Bryant suffers from PTSD and traumatic brain injuries, that
5 Bryant is not a threat to safety, that Bryant should not be jailed, that Bryant
6 has no criminal history, that the case should be handled through the mental
7 health system, that jailing Bryant will have devastating consequences.

8 While these witnesses are entitled to those opinions, they are not
9 entitled to voice them at trial since they are inadmissible under Rule 701, M.
10 R. Evid., and irrelevant to the issues in the case. These opinions also
11 embrace and ultimate issue—whether Bryant should be convicted of an
12 offense—which is not permitted under Rule 704 (“Testimony in the form of an
13 opinion or inference otherwise admissible is not objectionable because it
14 embraces an ultimate issue to be decided by the trier of fact.”)

15 It is reasonable for Jesse Ramos to testify that he did not experience
16 fear over Bryant’s statements. He was a City Council member at times
17 relevant to this case. However, neither he nor others may testify as to other
18 people’s perceptions or opine on how the case should be decided. Those are
19 matters left up to the jury.
20

21 **III. Defendant should be prohibited from offering any evidence**
22 **of irrelevant physical or mental conditions or life experiences**
23 **for which they lack personal knowledge and are subject to**
24 **expert opinions.**

25 Defendant is expected to offer evidence about his PTSD, TBI and
26 military service. See Exhibit 2. Defendant has not offered up any defense
27 related to a mental illness or inability to appreciate the criminality of his
28 conduct due to mental state or injury. Furthermore, Defendant has not

1 identified any witness that could offer fact or opinion testimony regarding
2 alleged PTSD or TBIs. Montana Code Annotated provides a procedure
3 related to mental health related defenses (see MCA § 46-14-202). See also §
4 46-15-323(3) (Defendant must provide notice of intention to introduce at trial
5 a defense of mental disease or disorder). Failure of a party to raise defenses
6 constitutes a waiver. 46-13-101(2). Those procedures were not raised or
7 followed here. Furthermore, evidence of mental health disorders would
8 require an expert because they are diagnoses obtained from treatment
9 providers who have specialized knowledge or skill. No experts have been
10 identified in this case. See Rule 702 (regarding expert opinions). Thus,
11 Defendant may not offer up a defense related to mental disorders at trial and
12 any mention or testimony related to PTSD or a TBI from military service is
13 subject to an expert opinion and no expert has been identified. Lastly, PTSD,
14 TBIs, or trying to label Bryant a war hero discusses his military service are all
15 matters that are irrelevant under rule 402 and would be used only to illicit
16 sympathy for defendant which is unfairly prejudicial under Rule 403 because
17 they would confuse or mislead the jury and are not related to elements of the
18 offense or affirmative defenses.

19 **IV. Defendant should be prohibited from offering any evidence**
20 **of good character.**

21 The Omnibus form was filed in this case on March 4, 2020. Dkt. 14.
22 The form noted that names and addresses of all witnesses of good character
23 along with written reports would be provided by March 30, 2020 (section VII
24 Affirmative Defenses). Mont. Code Ann. § 46-15-323 requires the defense to
25 provide written notice of the defendant's intention to introduce witnesses of
26 good character (among other affirmative defenses). Failure of a party to raise
27 defenses constitutes a waiver. 46-13-101(2). Defendant never provided any
28

1 notice of witnesses of good character and should not be permitted to do so
2 now.

3 DATED this 23rd day of June, 2021.

4
5 /s/ Matt Jennings
6 Matt Jennings
7 Deputy County Attorney
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https://missoulian.com/news/local/missoula-council-members-sworn-in/article_bbd70ba2-3e37-5c9c-bf53-fc7f4ee875f1.html

Missoula council members sworn in

PAUL HAMBY

Jan 6, 2020



City Councilwoman Amber Sherrill, Ward 4, signs her Oath of Office after being sworn in at the City Council chambers on Monday. Three new council members as well as three incumbents were sworn in during the ceremony.

BEN ALLAN SMITH, Missoulian

PAUL HAMBY

Three new Missoula City Council members took their oaths of office on Monday, joining three other incumbents in beginning four-year terms.

EXHIBIT
1

missoulian.com

Mayor John Engen swore in freshman council members Amber Sherrill of Ward 4, John Contos of Ward 5, and Sandra Vasecka of Ward 6 during a ceremony in the City Council Chambers attended by their friends and family.

“There is no requirement that everyone agree. There is a requirement that we listen to one another, that we learn from one another and that we respect one another,” said Engen prior to swearing in incumbent Heidi West of Ward 1.

West, along with Ward 2’s Mirtha Becerra and Gwen Jones of Ward 3, defeated candidates who entered November’s election as part of Team Liberty. The team, created on the initiative of Councilman Jesse Ramos as a way to add more diversity to the typically left-leaning City Council, saw two victories with Contos and Vasecka.

Sherrill, who has served as a board member on nonprofits and recently joined council member Jones to comment on tax reform before a state legislative committee, said the biggest challenges that the city faces are all connected.

“Whether you’re talking about land use planning, transportation or affordable housing, all of these are so intertwined. It’s going to be a challenge finding solutions, but I’m looking forward to it,” said Sherrill.

Sherrill also said she plans to follow through on her campaign promise to push for a local option sales tax focused on the city’s tourism sector.

After the ceremony, Vasecka said that “I really just want to relieve the burden on the taxpayers. That’s what I ran on, and that’s what I want to do.”

Vasecka said she and the other incoming City Council members have been hit with a “fire hose” of information during the past month of orientation.

“I’m still figuring out what I can do, versus what I want to do,” she said.

The newest City Council members attended their first council meeting that same night, and will begin sitting in on committee meetings Wednesday.

“There’s definitely going to be learning curve, and if anyone says different, then they’re lying,” Sherrill said.

During their first City Council meeting, Vasecka and Contos joined Ramos in voting against more than \$3 million in claims for services to the city. Sitting Missoula City Council President Bryan von Lossberg of Ward 1 earned a reelection to the position, with all City Council members agreeing on his nomination. The measure ultimately passed on a 9-3 vote.

Wednesday’s schedule includes reviewing the Fourth Street condominium project, which returned to committee following a public outcry during a December City Council meeting.

“That’s part of what the process is: weighing what the experts have to say with what the public asks of us,” Sherrill said.

Correction

This story has been updated to correct the members of Team Liberty. They are Council members John Contos and Sandra Vasecka.

Amber Sherrill did not run as a member of the team.



Councilmembers

(406) 334- 0785

435 Ryman St, Missoula, MT
59802

jramos@ci.missoula.mt.us; jcontos@ci.missoula.mt.us; svasecka@ci.missoula.mt.us

Contos

February 27, 2020

Reference Topic: Brandon Bryant

To Whom it May Concern,

On December 19, a video was posted to YouTube depicting Staff Sergeant Brandon Bryant threatening the Missoula City Council. Let us be very clear that we all condemn in the strongest possible terms any and all threats of violence against anyone. Prior to this, Brandon had been actively appearing at city council meetings speaking out about the use of Tax Increment Financing in Missoula. Brandon was attempting to fulfill his role as a responsible citizen and use his voice to make a positive impact in his community. Unfortunately, after an edited version of Brandon's video was sent to council members, the resulting fear caused citizen/council cooperation to grind to a standstill. After Brandon's arrest many community activists stated that they were wary about voicing their opinions in front of the council lest they be the next victims of what they perceived to be political retribution.

Brandon's Background as an internationally prominent whistleblower is a fundamental part of his story that must be communicated in order to understand Brandon and his actions. Brandon was a drone operator in the United States Air Force. After his honorable discharge he spoke out about his experience in the drone program. It is important to note that he never revealed any classified information or revealed sensitive security information in any way. Brandon's role as a whistleblower was more about revealing the attitudes and atmosphere on a drone base. Another cornerstone was discussing the very real battlefield trauma that drone operators are subjected to, even though they themselves can be thousands of miles away from the battlefield itself. Brandon's appearance on the BBC's Hard Talk was especially heartbreaking and gave listeners and viewers a glimpse into the ongoing struggle that drone operators face after being tasked with taking human lives for their country.

As a direct result of his traumatic experiences in service to the US military, Brandon has taken and maintained a vow of nonviolence. Sometimes he is prone to verbal outbursts which can be upsetting or unsettling for some. His YouTube videos occasionally contain language that can be disturbing or unflattering. For his part he maintains that he makes these video diaries as part of his therapeutic process, an attempt to vent off the fears and frustrations that bubble in his mind so that he can purge himself of negative thoughts and continue to heal and grow. Whatever conclusion one makes about Brandon's speech in his YouTube video diaries, an important consideration is that he never sent the video in question to the city council, instead his video was edited and appears to have been uploaded to a YouTube channel called "Pick Your Battles" without his permission to a channel that appears to not belong to him. It is quite clear and easily confirmable that it was not Brandon who sent the video in question to the City Council.

EXHIBIT

2

exhibitsicker.com

Our intention is to clear the air regarding the supposed threat presented by Brandon Bryant and bridge the gap that has been created between members of the city council and their constituents. While the contents of Brandon's video are not defensible, when watching the full, unedited version it is clear to us that this is not intended as a threat of physical violence, but a depiction of a spiritual struggle and a sincere call for political change. Moreover, Brandon suffers from PTSD and a Traumatic Brain Injury, both incurred during his service in the US Air Force, from which he was discharged honorably. It is clear to us that Brandon Bryant does not represent a threat to our safety. In other words, we as council members in no way feel that we are endangered by Mr. Bryant being released. Moreover, an unintended effect that his arrest and detention has on stifling citizen debate is measurable and regrettable as we know that this is simply an attempt to protect the elected officials of Missoula. As members of the Missoula City Council we wish to send a message in the strongest possible terms that the voices of the public are not only welcome at City Council meetings but required. Without an informed and engaged citizenry we are less able to function in our role as overseers of the city's affairs. We fully recognized and state that we are not speaking for the entire council and that our views on this matter are ours alone.

Being in the public eye and being decision makers in a community comes with great responsibility but it also has its downside. The council has many times been met with inappropriate verbal assaults during council meetings. Many of the constituents we represent face daily threats against them from folks in the community as part of their every day lives, such as our police officers, judges, attorneys, etc. They like us recognize that part of that comes with the job. We all believe in criminal justice reform and locking up a non-violent member of our community who is a military hero suffering from PTSD does not do our overcrowded jail or community any favors. We fully understood and supported Mr. Bryant's temporary barring from city council until all facts were realized but it is our belief that jailing a member of our community and subjecting him to the vicious revolving door of our criminal justice system is many steps too far. Mr. Bryant has no criminal history and is clearly working through personal struggles. It is our hope that he can find help through the mental health sector and not the prison system. In no way do we perceive him to be a threat to our safety or that of the community. We are firm believers in the 1st amendment and we deeply feel the future consequences of jailing an active citizen over a non violent offense will have devastating consequences.

Thank you for your time and please reach out with any thoughts, questions or concerns.

Sincerely,

Council Members,

Jesse Ramos, Sandra Vasecka, and John Contos

CERTIFICATE OF SERVICE

I, Matthew C. Jennings, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion in Limine to the following on 06-23-2021:

Jacob Daniel Coolidge (Attorney)
610 Woody Street
Missoula MT 59802
Representing: Brandon Howard Bryant
Service Method: eService

Electronically signed by Nichole Kercher on behalf of Matthew C. Jennings
Dated: 06-23-2021

1 Shirley E. Faust
Missoula County Clerk of Court
2 Fourth Judicial District
Missoula County Courthouse
3 Missoula, Montana 59802

4 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

5
6 STATE OF MONTANA,
7 Plaintiff,
8 -vs-
9 BRANDON BRYANT,
10 Defendant,

District Court - Dept 5
Cause No. DC-20-70
MASTER SUBPOENA

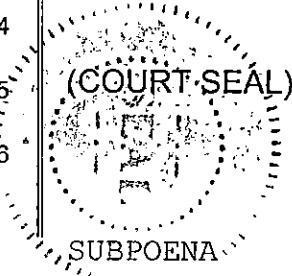
11 THE STATE OF MONTANA SENDS GREETINGS TO:

12
13 **Ethan Smith, Missoula City Police Dept.,**
14 **Bryan Von Lossberg, Missoula, MT**
15 **Gwen Jones, Missoula, MT**
Julie Merritt, Missoula, MT

16 YOU ARE ORDERED to appear before the District Court of the Fourth Judicial
17 District of the State of Montana, in and for the County of Missoula, at the Courthouse,
200 W. Broadway, Missoula, MT, **on the 6th through 9th day of July, 2021, at 9:00 AM**
18 to testify in a JURY TRIAL in the above-entitled action, now pending in the District Court
19 on the part of the Plaintiff. Disobedience of this order will be punished as a contempt by
20 this Court and you will also forfeit to the party aggrieved the sum of one hundred dollars
and all damages which may be sustained by your failure to attend. **This subpoena
remains in effect unless quashed or until Judgment, dismissal or other final
determination of the action by the Court even if the matter is postponed beyond
the date specified above.**

21 BY ORDER OF SHANE A VANNATTA, Judge of the Fourth Judicial District Court
22 - Dept 5, this 21 of June, 2021.

23 ATTEST, my hand and the seal of said Court, the day and year last above written.



SHIRLEY E. FAUST, Clerk
By: [Signature]
Deputy Clerk

46

Jacob Coolidge
Office of State Public Defender
Regional Office, Region 2
610 Woody Street
Missoula, MT 59802

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY
BEFORE THE HONORABLE SHANE VANNATTA

STATE OF MONTANA, Plaintiff, v. BRANDON WAYNE BRYANT, Defendant.	Cause No. DC-20-70 DEFENDANT'S MOTION TO EXCLUDE WITNESSES AND MOTION IN LIMINE
--	---

COMES NOW, Brandon Wayne Bryant, by and through his counsel of record, Jacob Coolidge, hereby respectfully moves the Court to exclude from the list of possible witnesses any Bryan Von Lossberg, Gwen Jones, and Julie Merritt as any testimony they may present is irrelevant and unfairly prejudicial. Alternatively, Defendant also argues against the admissibility of specific statements from witnesses should the Court not exclude them outright. Defendant also moves to exclude of any edited video that originates with Defendant.

Introduction

The facts are largely undisputed that a video of Defendant was edited and redistributed by a third party via a YouTube page called Pick Your Battles. Def. Ex. A. p. 5. That video was located by a member of city council in independent research of the defendant. Def. Ex. A. Although it is unclear exactly what conduct constitutes a crime, the State alleges that “on or about or in between November 18, 2019, and January 31, 2020” that Defendant engaged in behavior that constitutes a violation of MCA § 45-7-102. Information Dk. # 3. The State later charged in the alternative that the same conduct, over the same period, constituted Intimidation in violation of MCA § 45-5-203. Amended Information Dk. # 20.

Law and Argument

A. City Council members were not the intended recipients of the video, are irrelevant, and should be precluded from testifying.

I. Relevance

Montana Rules of Evidence, Rule 401 defines relevant evidence as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Mont. R. Evid. 401. The Montana Supreme Court has held that “any fact which makes probable the existence of another fact in controversy is relevant to prove the disputed facts.” *Rhodes v. Weigand*, 145 Mont. 542, 546, 404 P.2d 588 (1965). Therefore, it is implicit in that statement that facts do not make probable the existence of another fact in controversy are not relevant to prove the disputed fact. Montana Rules of Evidence, Rule 402 states that evidence which is not relevant is not admissible. Mont. R. Evid. 402.

Mr. Bryant has been charged with Intimidation under MCA 45-5-203 and Threats and Improper Influence in Political Matters under MCA 45-7-102. A crucial element in each offense is to relay a threat with the purpose to cause an individual or legislative body to commit or omit a specific act. Threats and improper influence in official and political matters criminalizes a threat to harm any person, spouse, child, parent, or sibling or person’s property “with the purpose to influence the persons decision, opinion, recommendation, vote, or other exercise of discretion as a public servant[.]” Mont. Code Ann. § 45-7-102. Intimidation criminalizes a threat to inflict physical harm “with the purpose to cause another to perform or to omit the performance of any act.” Mont. Code Ann. § 25-5-203. Both crimes require the intentional transmittal of the threat to a party for the purpose to impact their behavior.

Here, the video was distributed by a third party, not Defendant. The video that Defendant originally posted was taken by a third party, edited, and reposted. Defendant did not ask any person to send the video to any member of city council, nor did he intend for city council to hear his remarks. The investigating officer, Ethan Smith, found it “important to note [he] ha[s] not found any evidence that [Defendant] sent these videos to any city employees or directed them to anyone’s attention.” Def. Ex. A p. 5.

The alleged threat was made on a YouTube video that Defendant did not send to or intentionally distribute to city council. He also did not ask nor encourage the third party that edited and redistributed his video to do so. At no point did Defendant communicate to anyone with the purpose of causing someone to perform or omit an act or to influence city council’s policy decisions. Because they were not the intended recipient, city council was categorically not threatened by the performance of an unlawful act.

Further, Von Lossberg, Jones, and Merritt were not percipient witnesses to the alleged threat, and in fact, were only made aware of the alleged threat when Merritt conducted internet research on Defendant. Therefore, their testimony is not needed to establish any fact of consequence to the determination of this action, as the alleged threat is a video that was posted to YouTube. It is for these reasons that any testimony they may offer is irrelevant to the determination of this action, as they were neither threatened as required by the charged statutes nor were the percipient witnesses to the alleged threat.

II. Prejudice

Alternatively, Montana Rules of Evidence, Rule 403 governs the exclusion of evidence on grounds of prejudice, confusion, or waste of time. The rule provides that, although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Mont. R. Evid. 403.

Evidence in a criminal case is almost always prejudicial to the defendant; however, a problem arises when the evidence is *unfairly* prejudicial to the defendant. *State v. Hicks*, 2013 MT 50, 396 Mont. 165, 296 P.3d 1149. Evidence may be unfairly prejudicial if it arouses the jury's hostility or sympathy for one side without regard to its probative value, if it confuses or misleads the trier of fact, or if it unduly distracts from the main issues. The trial court has discretion to decide whether the danger of unfair prejudice substantially outweighs the evidence's probative value. *Id.*, at ¶ 24. The authority to grant or deny a motion in limine "rests in the inherent power of the court to admit or exclude evidence and to take such precautions as are necessary to afford a fair trial for all parties." *Hulse v. State, Dept. of Justice, Motor Vehicle Div.*, 1998 MT 108, ¶ 15, 289 Mont. 1, 961 P.2d 75.

Here, the aforementioned council members testimony is not relevant to any contested element of the crime as the video was never intentionally relayed to them. Because it was not relayed to them, they are not intended recipients of any deliberate threat and any testimony would not be probative of a necessary fact and highly prejudicial. Further, it would distract from the relevant inquiry in the case and confuse jurors. Even if the Court finds their testimony to be relevant, it should still be excluded because the probative value is dramatically outweighed the threat of unfair prejudice to Defendant.

B. Even if the Court allows Von Lossberg, Jones, and Merritt to testify, they need be prohibited from talking about their own subjective fear.

Even if the Court allows the testimony of Von Lossberg, Jones, and Merritt, Defendant requests they be precluded from discussing their own subjective fears of any Defendant's statements. Such testimony would only be relevant if the subjective fear of the alleged victims was necessary to establish the presence of a "true threat." Such an approach would render criminal threats an absolute liability offense that renders the subjective intent of the actor irrelevant (i.e. if someone is scared by anything anyone says, the speaker is criminal regardless of intent). However, the Supreme Court has roundly rejected such a low bar of criminal liability that relies on the fear of the recipient, be it subjective fear of the alleged victim or objective fear of a reasonable person.

In *Elonis v. United States*, rejected objective reasonable person standard in interpreting true threats.

Elonis's conviction, however, was premised solely on how his posts would be understood by a reasonable person. Such a "reasonable person" standard is a familiar feature of civil liability in tort law, but is inconsistent with "the conventional requirement of criminal conduct—awareness of some wrongdoing." Having liability turn on whether a "reasonable person" regards the communication as a threat—regardless of what the defendant thinks—"reduces culpability on the all-important element of the crime to negligence," and we "have long been reluctant to infer that a negligence standard was intended in criminal statutes. Under these principles, "what [Elonis] thinks" does matter.

575 U.S. 723 (2015) (internal citations omitted). The Montana Supreme Court has also restricted criminal liability in speech to the subjective intent of the speaker. The Court held that 45-8-213(1)(a) was constitutionally sound "because the statute only proscribes communications made 'with the purpose to terrify, intimidate, threaten, harass, annoy or offend. *State v. Dugan*, 2013 MT 38, ¶ 50. Both the United States and Montana Supreme Courts have expressly focused on the intent of the speaker as the lynchpin to justify the criminalization of speech. Only speech which is intended to threaten, by the subjective intent of the speaker, is criminal. If the courts refuse to recognize an objective reasonable person standard is too lenient of a standard of criminal liability, certainly subjective fear on behalf of the recipient is far too lenient, given it is a lesser standard than the reasonable person.

Here, Von Lossberg, Jones, and Merritt's own subjective response to Defendant's speech bears no relevance to his intent in making comments. The relevant inquiry at trial is whether Defendant intended to threaten city council, not whether parties who eventually heard the message were scared. Because the subjective fear of the eventual recipient is irrelevant to the speaker's intent, any statements regarding the council member's fear is inadmissible under Rule 402.

If the Court deems that it is relevant, it must be excluded under Rule 403 because the probative value is far outweighed by the danger of unfair prejudice and confusion of issues. If Von Lossberg, Jones, and Merritt testify to their own fear, it would cause jurors to confuse the standard of "true threats" that is specifically tailored to the intent of the speaker and does not consider the subjective fear of the recipient. Such confusion would lead the jurors to a lower level of criminal liability which is a constitutional violation that constitutes unfair prejudice.

C. Defendant moves to exclude the subject YouTube video, and any other video evidence, that was substantively edited by a third party.

There are two YouTube videos the State could play and allege a threat therein that feature Defendant speaking. One video is 14 minutes long. The other is just over four minutes long. The latter video was edited by a third party and reposted on the third party's YouTube channel. *See* Def. Ex. A pp. 4-5. *See also* State's Response to Motion to Dismiss, Dk. #13, p. 3.

("...Defendant asserts that YouTube channel is used by a former colleague trying to portray him in a negative light—which certainly seems to be true"). The four-minute video is significantly shorter than the original video created by Defendant. The four-minute video should not be allowed at trial because, in being substantially edited, it no longer reflects the original message produced by Defendant. The necessary context of the whole message is necessary for the jury to determine the ultimate question of fact: the Defendant's intent in his communications.

The four-minute video is irrelevant to the Defendant's intent and therefore irrelevant in the subject matter and need be suppressed. If the Court deems the video substantially edited by a third party to be relevant, it need be excluded because its probative value is outweighed by its risk of unfair prejudice.

In addition to moving to exclude the four minute video, the Court must suppress any other videos that have been edited by a third party, including any video that transposes city council

meetings and any out of council statements made by Defendant. Such videos are wholly irrelevant to Bryant's intent in conveying the alleged threat and only serve to confuse the jury and distract them from temporal separation of the alleged incidents. Such misleading and confusing of the jury is precisely what rule 403 disallows.

D. The State may not reference any acts perpetrated by other parties or speculate as to what may have occurred but did not.

Defendant respectfully moves the Court to direct the State to not reference or analogize any of Defendant's alleged conduct to any other unrelated acts of violence perpetrated by other individuals. Potential examples the State should be barred from comparing Defendant's conduct to should include, but not be limited to, any public shootings, mass acts of violence, the January 6, 2021 events at the United States Capital, or any other wholly unrelated incidents. Such incidents are irrelevant to the intent of Defendant in any communications that allegedly constitute a threat. Further, even if the Court deemed such comparisons or analogies to have any probative value, that value is significantly outweighed by the risk of unfair prejudice. If such events are mentioned, jurors would associate negative emotions with acts of violence perpetrated by others with Defendant, even though he had no cause in them and is not alleged to have committed such an offense. Defendant respectfully requests the Court to direct the State that the exclusion of such irrelevant comparisons or analogies should attach to voir dire as well as the trial itself.

Defendant also moves the Court to exclude any testimony or speculation about what might have or could have happened but for government intervention in the case. Any speculation about what Defendant might have done is irrelevant and inadmissible. Defendant moves the Court to admonish the State prior to trial, and outside of the presence of the jury, that such speculation would be a direct violation of the Court's order.

Respectfully submitted this 28th day of June, 2021.

_____/s/ Jake Coolidge_____
Jacob Coolidge
Attorney for Defendant



Case Report Compact

Print Date/Time: 02/11/2020 10:39
 Login ID: mc/coller
 Case Number: 2020-00004302

ORI Number: Missoula City Police Department
 MT0320100

Case Details:

Case Number: 2020-00004302 Incident Type: Intimidation
 Location: 140 W PINE ST Occured From: 11/18/2019 18:30
 MISSOULA,MT 59802 Occured Thru: 01/08/2020 15:00
 Reported Date: 01/30/2020 15:10 Thursday
 Reporting Officer ID: C345-Smith Status: Complete Status Date: 02/04/2020
 Assigned Bureau: Detective Disposition: 6A.Pending Disposition Date: 02/06/2020
 Prosecutor-Review

Case Assignments:

Assigned Officer	Assignment Date/Time	Assignment Type	Assigned By Officer	Due Date/Time
C345-Smith	02/04/2020 07:27	Follow Up	C285-Caton	03/04/2020 07:27

Solvability Factors **Weight**
 E-Case Referral County Attorney (From MPD) 1.000
Total: 1.000

Offenses

No.	Group/ORI	Crime Code	Statute	Description	Counts
1	State	0835	45-5-203	Intimidation	1

Offense # 1

Group/ORI: State Crime Code: 0835 Statute: 45-5-203 Counts: 1 Attempt/ Commit Code: Committed
 Description: Intimidation Offense Date: 11/18/2019
 Scene Code: Government/Public Building Bias/Motivation: None
 Domestic Code: No
 Gang Related: No Sub-Code: MH - Yes
 IBR Seq. No: 1
 Special Circumstances: Not Applicable

Offender Suspected of Using

Alcohol: No
 Drugs: No
 Computer: Yes

Evidence Collected **Criminal Activity** **Tools Used** **Security Systems**
 None/Unknown (Gang Involvement)

Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
Informational	1	Rynearson, Rick					
Informational	2	Ledbetter, Jon	625 WINSLOW WY E Bainsbridge Island,WA 98110	(206)842-7633	Unknown	M	
Suspect	1	Bryant, Brandon	5106 VILLAGE VIEW WAY MISSOULA,MT 59803	(406)830-9659	Unknown	M	

Exhibit A



Case Report Compact

Print Date/Time: 02/11/2020 10:39
Login ID: mc\coller
Case Number: 2020-00004302

ORI Number: Missoula City Police Department
MT0320100

Subject # 1-Informational

Primary: No
Name: Rynearson, Rick

Subject # 2-Informational

Primary: No
Name: Ledbetter, Jon
Address: 625 WINSLOW WY E
Bainsbridge Island WA 98110
Primary Phone: (206)842-7633
Resident Status: Non-Resident
Race: Unknown
Sex: M
State:
Statement Type: Verbal

Subject # 1-Suspect

Primary: Yes
Name: Bryant, Brandon
Address: 5106 VILLAGE VIEW WAY
MISSOULA MT 59803
Primary Phone: (406)830-9659
Statement Type: Formal Video
Suspect Type: Suspect
Race: Unknown
Sex: M
Hair: Bald
State:

Arrests

Arrest No.	Name	Address	Date/Time	Type	Age
------------	------	---------	-----------	------	-----

Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
01/30/2020	Car Video/Photos	Recording-Audio/Visual			Multiple pictures of Mr. Bryant and his Facebook ramblings		

Seq #1

Property Codes: Property Type: Recording-Audio/Visual Date Received: 01/30/2020
Car Video/Photos Initial Value: \$0.00
Quantity: 15.000 Unit of Measure: Not Reported
Description: Multiple pictures of Mr. Bryant and his Facebook ramblings

Vehicles

No.	Role	Vehicle Type	Year	Make	Model	Color	License Plate	State
-----	------	--------------	------	------	-------	-------	---------------	-------

This supplemental report is just to add names of involved parties to this report.

Ethan Smith

Refer to county attorney



Missoula Police Department Police Report – Narrative

Report #:

Completed by:

Title:

I had requested this report be assigned back to me for follow up. On Friday, Jan. 31st, I was in communications with the city attorney's office regarding a trespass letter to be given to Mr. Bryant, the mayor's office and several city council members regarding this issue. I also reached out to deputy county attorney Suzy Boylan because she handles involuntary commitment hearings for the county attorney's office. Ms. Boylan was travelling on Friday but we spoke over the phone, at which point she advised me that I needed to have Mr. Bryant taken to St. Patrick hospital and evaluated by a mental health professional just to start the process of having him involuntarily committed, if in fact his threats to "exterminate" the city council were deemed a legitimate threat to harm others.

I was watching the news on Friday when I saw NBC Montana doing a story on several local citizens who were frustrated and outspoken against TIF funding issues, and Mr. Bryant was identified as one of several people featured on that story, although he was not quoted directly. That video can be viewed here:
<https://nbcmontana.com/news/local/missoula-residents-talk-tif>

I also spent some time reviewing other videos Mr. Bryant had posted to YouTube, in which he talks about having his son taken away from him, as well as numerous televised interviews in which he talks about being a drone pilot for the military. It was clear from the videos that Mr. Bryant was once portrayed as a "whistleblower" against the military and US government, and has actually been awarded for his actions by several European groups, and has been the subject of at least one play and two documentaries. He also has talked to some of those interviewers about his struggles with PTSD. I have found interviews with him in Rolling Stone magazine and other national news outlets as well.

Mr. Bryant is the subject of a Wikipedia page, found here:
[https://en.wikipedia.org/wiki/Brandon_Bryant_\(whistleblower\)](https://en.wikipedia.org/wiki/Brandon_Bryant_(whistleblower))

On Monday, I sent a text message to 406.830.9659, which was a cell phone number Mr. Bryant had contacted us on, identifying myself as a police officer and asking if I could speak to him over the phone. Mr. Bryant responded that he would prefer to speak to me in person and that "my (his) entire situation is complicated and very serious." We made arrangements for him to meet with me at our Catlin Street facility later that morning.

When Mr. Bryant arrived, he consented to a voluntary pat-down search of his person and an inspection of a tote bag he had with him. I interviewed Mr. Bryant in our "soft" interview room, and that conversation was recorded. The following is a summary of that conversation, but I have not had a chance to review the video.

I advised Mr. Bryant of my concerns about the video that had surfaced in which he talks about exterminating the city council, and that his videos had caused a lot of safety concerns in Missoula city government officials. He was understanding of that, and tried to distance himself from those safety concerns.

He told me he made the video "to get that response," and that "I (he) don't feel like I will cross the line," in regards to committing violence against any of the councilmembers.



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Mr. Bryant told me the username Pick YourBattles (sic) is actually used by a former military colleague named Rick Rynearson (pronounced Ray-near-son), and that Mr. Rynearson is the one who is uploading the videos in an effort to embarrass or portray Mr. Bryant in a negative light.

Mr. Bryant told me Mr. Rynearson used to serve with him in the military, and they both left the drone program when they had ethical concerns about their roles in combat. Both of them appeared at conferences and received recognition as “whistleblowers” and had a good friendship up until a few years ago. Mr. Bryant said he was invited by Mr. Rynearson to attend a conference in Texas, and relied on Mr. Rynearson to set up the travel and hotel arrangements at the conference. However, when he arrived he discovered that Mr. Rynearson had botched the entire event, and it created a tremendous amount of headaches for Mr. Bryant, who was critical of Mr. Rynearson. Since then, he said, Mr. Rynearson has been “stalking” him online, and at times posting what Mr. Bryant felt were his private videos and making them more public than Mr. Bryant intended them to be.

Mr. Bryant said he has filed a criminal complaint against Mr. Rynearson in the Seattle area, for this online “stalking,” and that Mr. Rynearson has some type of conditions of release related to this.

Mr. Bryant admitted to me that he uploaded those videos, but said he did so because it was therapeutic to him. He said talking about his frustrations helps him process them better. He did not intend for them to be made public by Mr. Rynearson, which would explain why almost all of the descriptions of the videos involving Mr. Bryant, uploaded by Pick YourBattles, are written in the third person. It’s important to note I have not found any evidence that he sent these videos to any city employees or directed them to anyone’s attention.

Mr. Bryant tried to distance himself from some of the more serious concerns in the video, saying he didn’t directly threaten to kill any councilmembers, although acknowledging that he was referring to the city council later in the video. He freely admits that he is just trying to get attention for his frustrations about the gentrification of Missoula. He said the “language (in the video) was there to incite a response” and that “I’m trying to be the boogeyman” to raise awareness of issues affecting the city. However, he went on to explain that he was so disenfranchised with his military service, that he later “swore an oath to do no violence” against anyone, and has no intention of hurting any councilmembers.

Mr. Bryant told me he grew up here, and his family has deep roots in Missoula, but he’s frustrated at how expensive it has become to live here. He grew disenfranchised with the military, and left it, only to return to his hometown to found himself homeless, unable to afford to live here, disabled and without a job.

Mr. Bryant told me he’s basically staying on a friend’s couch, and that his vehicle no longer runs after he lent it to someone who drove it to Seattle. He said it’s parked on the street in front of his friend’s house. Mr. Bryant walks with a slight limp, and uses the walking stick to help him, the same stick featured on a video from a Dec. 8th city council meeting which I later viewed, in which Mr. Bryant refers to the stick in a menacing manner. Mr. Bryant also has a service dog with him, but I did not question him as to why he needed the dog.

Mr. Bryant shared a lot of the challenges and frustrations he’s facing right now, which I inferred were contributing factors to his anger seen in the videos. He told me he has a son, but that his wife has taken his son and prevented him from seeing him. He met her when he lived overseas, and he said his wife maintains her native citizenship and has taken his son away from him and refused to allow him to have any contact. The authorities in her native country are of no help to him, and he says he’s actually been physically assaulted by law enforcement officers in her home country. He said he



Missoula Police Department Police Report – Narrative

tried to have the attorney who represented him in his whistleblower proceedings help him regain custody, but that they attorney wasn't much help.

Mr. Bryant maintains he's technically still in the military, although the details of his relationship with the military were difficult for me to understand. He apparently still qualifies for help from the Veterans Administration, and told me he goes to counseling there regularly. Mr. Bryant admitted to me he's suffered from depression in the past. He told me he's still fighting against the VA to have his physical disability recognized by both the VA and Social Security Administration, which is another source of frustration to him.

The primary sources of stress in Mr. Bryant's life including homelessness, not have a job, his inability to see his son, and lack of former recognition for his disability, or some type of disability payments. His basic view of society and specifically "the government" is that he fought for his country, and then became disillusioned with his military service, and then left, and they have since turned their back on him. Upon returning to his hometown, he then felt his local city government was ruining the town he grew up in, hence his outburst on the videos.

I offered to help Mr. Bryant with the issue of housing, but made it clear to him that it would be difficult for me to resolve some of the other areas that were causing him stress.

I then brought up the no-trespassing letter Mr. Nugent had written and provided me, and gave it to Mr. Bryant. I explained to him the contents of the letter, and that the city was not trying to stifle his ability to provide feedback on any matters before the council, and that he could submit written feedback through email or during the public comment period via having a friend deliver it. He was notified that he could conduct any business at city court, if necessary, with a police escort. Mr. Bryant did not express any frustration at why he was being trespassed from council chambers and appeared understanding of the situation.

The next day, another city employee found a video uploaded of Mr. Bryant's tirade against the city council in the Jan. 8th committee meeting, the one in which he brought his walking stick to the table, uploaded under the Pick YourBattles username, in which the MCAT video of our city council meetings was then merged with the original Dec. 4th video of Mr. Bryant making threatening comments. That video can be found here:

<https://www.youtube.com/watch?v=IAqrwQmAsoA>

Later in the week, Mr. Bryant notified me he was attempting "press charges" against Mr. Rynearson by contacting the local police department in Washington state where he believed Mr. Rynearson was still living. He asked me for permission to give my name and contact information to an officer there in case they needed to speak to me about the situation, which I said was fine. I got a phone call from a detective from the Bainbridge Island (WA) police department on Thursday afternoon, Feb. 5th. The detective's name was Jon Ledbetter, and he confirmed Mr. Rynearson was a resident there and characterized him as a local activist who sometimes drew the attention of law enforcement. We both discussed the situation and agreed that there didn't seem to be any criminal violations by either party at this point, as Mr. Rynearson was simply taking videos that Mr. Bryant had uploaded to the public domain.

I later made contact with Mr. Bryant over the phone to confirm that conversation with the detective had taken place so that he was aware it was followed up on. I also pressed him for the address where he is actually living, and he refused to tell me, instead giving me his mother's current address of 4015 S. Russell, Unit #305.



Missoula Police Department Police Report – Narrative

I asked Mr. Bryant some other questions, including whether he has access to firearms now, and he said he sold them all after being diagnosed with depression, out of concern for having suicidal thoughts. I also asked him if he would be willing to voluntarily go to St. Patrick Hospital to meet with a mental health counselor, but he declined, noting he still meets with a VA counselor, which he characterized as helpful in our discussion earlier in the week.

Mr. Bryant does have a lot of frustration at what he feels is the direction, and widening income disparities, affecting the city, and again articulated those to me. "I served my country and did everything right, and I'm being punished (by the government)," he told me over the phone. "All I want is to be a father to my son, and to help my community improve."

At this time, I'm referring this report to the Missoula County Attorney's Office for review regarding what criminal charges, if any, might be applicable, including Intimidation or Threats/Improper Influences in Political Matters, or an involuntary commitment.

Officer Ethan Smith
Missoula Police Department

**Report by Officer Ethan Smith
Missoula Police Department**

Earlier this month I was requested to provide safety/security training for the Missoula city council, which I had provided two years ago. During that training, which took place on Jan. 29th from 1:45 to 3:30 PM at city council chambers, multiple city council members brought to my attention a male who had disrupted their meetings and was acting in an intimidating manner. They were unable to tell me his name yesterday, but were disturbed by the fact that he brought a large walking staff with him that he banged on the table during the public speaking process. At one point during a Nov. 18th meeting, the mayor had to temporarily adjourn the meeting because the male was yelling at the council.

On Jan. 30th, I was informed via at Jan. 29th email by council president Bryan von Lossberg that another council member had found a YouTube video of the male, who identified himself in the title of the video as Brandon Bryant. Mr. von Lossberg forwarded a link to me to that video, which is entitled 'Brandon Bryant Promises to "Eliminate" People Over the Next Year'. The description of the video - presumably written by Mr. Bryant himself - says 'Brandon Bryant identifies people for "extermination" including the entire Missoula City Council and people in the military that he worked with, saying that he is "preparing" his soul to make those people "submit" and "die." ' He articulates ideas about killing people in the video.

The video can be found at:

<https://youtu.be/NC91pbGSgOM>

I believe Mr. Bryant put the words "Eliminate," "extermination," "submit" and "die" in quotation marks as a way to perhaps distance himself from any accusations that he is serious about these actions, but regardless, they were very concerning to Mr. von Lossberg and fellow council member Gwen Jones, and after viewing the video, I share their concerns.

Mr. Bryant's YouTube account username is Pick YourBattles (sic) and a search of other videos he posted under that user name include one where he talks about killing his ex-wife, and another video titled "Brandon Bryant says he will kill his enemies" and "Brandon Bryant - I will set the example"

Other online videos show Mr. Bryant was actually a speaker at TED Talks, in which he talks about killing 1,600 people via drones when he worked as a soldier in the US military, and another video in which he's interviewed by an NBC reporter for what appears to be a nationally televised show in which he talks about not feeling any more emotions. It appears likely to me that Mr. Bryant is suffering from PTSD.

The description of his interview with NBC is: "Former drone operator Brandon Bryant tells NBC's Richard Engel that he felt like he became a 'heartless' 'sociopath' under the drone program."

I also was able to locate two Facebook accounts owned by Mr. Bryant. One of them is

under Brandon Bryant and the other is under Brandon Wayne Bryant, that appears less active. The one under Brandon Bryant has a post from Dec. 2, 2019 in which he states that he "stepped away from this thing (Facebook) for a while....." but that "this will probably be my last message to you" and goes on to tell his family that "You failed me. Every. Single. One of You."

After viewing these posts and videos, I contacted Sgt. Stonesifer to brief him on my concerns, and he asked me to also notify Lt. Denton, which I did. Lt. Denton was familiar with Mr. Bryant due to his outburst at the Nov. 18th city council meeting, and staff emails regarding that.

I also providing a slide in our intel briefing, with two pictures of Mr. Bryant and a link to his YouTube video, and a description of a vehicle he reported to us last year when he was the victim of a hit and run. His last reported address to us is at 5106 Village View Way. I also emailed the patrol and detective divisions about this situation, with special attention to officers working the city council meetings.

Council members von Lossberg and Jones were advised that I intend to make contact with Mr. Bryant on Monday to advise him he's been trespassed permanently from city property, and they both said via email that this was acceptable to them and they felt it was the appropriate course of action. At this time I don't feel that there is any threat to any council member at their own personal residence, but the rest of the council, the mayor, as well as MPD command staff, have also been advised of the situation.

I have not done a threat assessment yet on Mr. Bryant, but will be doing one on Monday. I also noticed contact information for his mother in the prior CFS in which he reported the hit and run last year, and will attempt to work with her on Monday as well.

This report can be assigned back to me for follow up.

Officer Ethan Smith

CERTIFICATE OF SERVICE

I, Jacob Daniel Coolidge, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to the following on 06-28-2021:

Matthew C. Jennings (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Brianna Kessler on behalf of Jacob Daniel Coolidge
Dated: 06-28-2021

1 MATT JENNINGS
Chief Deputy County Attorney
2 KIRSTEN PABST
Missoula County Attorney
3 Missoula County Courthouse
Missoula, Montana 59802
4 (406) 258-4737
ATTORNEYS FOR PLAINTIFF
5

6
7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 STATE OF MONTANA,

9 Plaintiff,

10 -vs-

BRANDON WAYNE BRYANT,

11 Defendant.
12

Dept. No. 5

Cause No. DC-20-70

OBJECTION TO JURY INSTRUCTION

13 Defendant filed proposed jury instructions on June 22, 2021. The State
14 does not have substantive objections to the instructions, but the unanimity
15 instruction should include the bolded and underlined text:
16

17 In order to find the Defendant guilty, it is necessary for the
prosecution to prove beyond a reasonable doubt the commission
18 of a specific act **or acts** constituting the crime within the period
alleged. Also, in order to find the Defendant guilty, you must
19 unanimously agree upon the commission of the same specific act
or acts constituting the crime within the period alleged. It is not
20 necessary that the particular act **or acts** committed so agreed
upon be stated in the verdict.
21

22 Intimidation includes not only the threat itself, but also
23 circumstances that reasonably tend to produce a fear that it will be carried
out. Thus, there is one or more acts that are applicable to the offense and

1 acts should be stated in both the singular and plural. This is consistent
2 with the pattern jury instruction.

3
4 DATED this 29th day of June, 2021.

5 /s/ Matt JENNINGS
6 MATT JENNINGS
7 Deputy County Attorney
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CERTIFICATE OF SERVICE

I, Matthew C. Jennings, hereby certify that I have served true and accurate copies of the foregoing Notice - Objection to the following on 06-29-2021:

Jacob Daniel Coolidge (Attorney)
610 Woody Street
Missoula MT 59802
Representing: Brandon Howard Bryant
Service Method: eService

Electronically signed by Nichole Kercher on behalf of Matthew C. Jennings
Dated: 06-29-2021