

I. Introduction.

The Defendants have filed an *Amended Motion to Dismiss*, which is substantively identical to their *Brief in Support of Motion to Dismiss* (Ct. Doc. #16) but for the addition of new legal authority, an amended legal standard, and the introduction of an additional rhetorical paragraph. The State addresses the Uniform District Court Rules before addressing each issue in turn. For the convenience of the District Court, the State restates its previous arguments herein without change, with the Defendants' new arguments addressed at §§ III(a), III(c), and III(d).

II. Procedural background.

**a. *State of Montana v. Jesse Michael Boyd* (DC-29-2022-23).
State of Montana v. Bethany Grace Boyd (DC-29-2022-24).
State of Montana v. Carter Norman Phillips (DC-29-2022-22).**

1. On November 28, 2022, the State of Montana filed a *Motion for Leave to File Information and Affidavit in Support* (hereinafter "*MFL*") seeking to charge the Defendants, Jesse Michael Boyd, Bethany Grace Boyd, and Carter Norman Phillips with Assault with a Weapon, a felony in violation of §§ 45-5-213(1)(a) and (2)(a), MCA. *MFL* at pp. 1-4 (Ct. Doc. #1). The facts which form the basis for the charges are set forth in the *MFL* and are incorporated herein by reference.

2. On November 28, 2022, the District Court reviewed the *MFL* and determined that there was sufficient probable cause to support the charges against each of the Defendants. *Or.* at p. 1 (Ct. Doc. #2). The State's *Information* was filed the same day. *Info.* at pp. 1-2 (Ct. Doc. #3).
3. On January 3, 2023, the State filed an *Unopposed Motion for Joinder* (Ct. Doc. #12) consolidating each of the Defendants' cases. The District Court granted the *Motion for Joinder* on January 4, 2023. *Or.* at pp. 1-5 (Ct. Doc. #13).

b. *State of Montana v. Eric Anthony Trent* (DC-29-2022-26).

1. On January 3, 2023, the State filed an *MFL* seeking to charge the Defendant Eric Anthony Trent with Accountability for Assault with a Weapon, a felony in violation of §§ 45-5-213(1)(a) and (2)(a), 45-2-301 and 302. *MFL* at pp. 1-4 (Ct. Doc. #1). The facts which form the basis for the charges are set forth in the *MFL* and are incorporated herein by reference.
2. On January 3, 2023, the District Court reviewed the *MFL* and determined that there was sufficient probable cause to support the charges. *Order* at p. 1 (Ct. Doc. #2). The State's *Information* was filed the same day. *Info.* at pp. 1-2 (Ct. Doc. #3).

3. On January 3, 2023, the State filed an *Unopposed Motion for Joinder* (Ct. Doc. #7) consolidating each of the Defendants' cases. The District Court granted the *Motion for Joinder* on January 4, 2023. *Or.* at pp. 1-5 (Ct. Doc. #9).

III. Discussion.

- a. **The District Court should require defense counsel to adhere to the Uniform District Court Rules in all future court filings.**

The Defendants argue that “the statute cited in their original motion (§ 46-13-401) unfortunately created an opening for the State to muddy the waters with a secondary issue (i.e., whether § 46-13-401 authorizes defendants to move for dismissal).” *Am. Mot* at p. 2. Stated another way, the Defendants failed to provide the District Court with appropriate authority, got called out by the State, and now seek to remedy that failure through an amended motion.

Rule 2(b) of the Uniform District Court Rules governs appropriate motions practice and allows for a motion, a response, and a reply. No other court filings are permitted, and it is well settled that new arguments cannot be presented in a reply brief. *Kapor v. RJC Inv., Inc.*, 2019 MT 41, ¶ 29, 394 Mont. 311, 434 P.3d 869 (Applying M.R. App. P. 12(3) equally to District Court); See also *State v. Sebastian*, 2013 MT 347, ¶ 26, 372 Mont. 522, 313 P.3d 198 (citing *State v. Sattler*, 1998 MT 57, ¶ 47, 288 Mont. 79, 956 P.2d 54; *State v. Hagen*, 283 Mont. 156, 159, 939 P.2d 994, 996 (1997)). The rationale underlying

this Rule is that it is unfair to allow a party to raise arguments in a reply brief to which the opposing party does not have an opportunity to respond. *Sattler*, ¶ 47.

On this occasion the State will address the new “authority” presented in the Defendants’ *Amended Motion to Dismiss* rather than move to have it struck for failing to abide by the Uniform District Court Rules. However, the State is entitled to a fair trial and briefing should not be permitted to continue *ad infinitum*. The District Court should require defense counsel to adhere to the Uniform District Court Rules in all future court filings.

b. The District Court should deny the Defendants’ *Amended Motion to Dismiss* because it is premature.

In Montana, “[t]he prosecutor may apply directly to the district court for permission to file an information against a named defendant.” § 46-11-201(1), MCA. “An application must be by affidavit supported by evidence that the judge...may require.” § 46-11-201(2), MCA. 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 preliminary hearing but rather has a right to an independent judicial finding of probable cause. *State v. Farnsworth*, 240 Mont. 328, 332, 783 P.2d 1365, 1368 (1989) (citing *State v.*

Higley, 190 Mont. 412, 419, 621 P.2d 1043, 1048 (1980) and *Gerstein v. Pugh*, 420 U.S. 103, 95 S. Ct. 854, 43 L.Ed.2d 54 (1975)). Once the district court determines that sufficient probable cause exists, the State has no further burden of proof until trial. *State v. Tichenor*, 2002 MT 311, ¶ 22, 313 Mont. 95, 60 P.3d 454. A defendant’s challenge to the evidence through a pretrial motion to dismiss is “premature because such a challenge can only be made after the State had an opportunity to present its evidence to the trier of fact.” *Id* (Emphasis supplied, citing *State v. Nichols*, 1998 MT 271 ¶ 4, 291 Mont. 271, 291 Mont. 367, 970 P.2d 79).

On November 28, 2022, the District Court found that sufficient probable cause existed to support the charge of Assault with a Weapon against Jesse Boyd, Bethany Boyd, and Carter Phillips. *Or.* at p.1. (Ct. Doc. #2). On January 4, 2023, the District Court found that sufficient probable cause existed to support the charge of Accountability for Assault with a Weapon against Eric Trent. *Or.* at p.1. (Ct. Doc. #2). Having done so, the State has no further burden of proof until trial. *Tichenor* at ¶ 22. As such, the Defendants may not challenge the sufficiency of the charging documents, and they are not entitled to a hearing. The Defendants’ *Amended Motion to Dismiss* must therefore be DENIED.

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c. The District Court should deny the Defendants' *Amended Motion to Dismiss* because the Defendants are not permitted to seek relief under § 46-13-401, MCA.

The court may, **either on its own motion or upon the application of the prosecuting attorney and in furtherance of justice**, order a complaint, information, or indictment to be dismissed. However, the court may not order a dismissal of a complaint, information, or indictment, or a count contained in a complaint, information, or indictment, charging a felony, unless good cause for dismissal is shown and the reasons for the dismissal are set forth in an order entered upon the minutes.

§ 46-13-401(1), MCA (Emphasis supplied).

The Defendants initially based their *Motion to Dismiss* on § 46-13-401, MCA. *Mot.* at p.1. However, § 46-13-401, MCA, only allows for dismissal of a case on the District Court's "own motion" or at the request of the prosecution. Criminal defendants are not permitted to use § 46-13-401, MCA, to seek dismissal in a felony case prior to trial.

In their *Amended Motion* the Defendants now also argue that "nothing" in § 46-13-401, MCA, "precludes the Defendants from presenting grounds for dismissal to the Court to exercise its authority to dismiss the pending charges under § 46-13-401, MCA." *Am. Mot.* at p.2. However, in the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." § 1-2-101, MCA. The language of § 46-13-401, MCA, is specific to the prosecuting attorney and to the District Court. The

District Court cannot grant to the Defendants a right which the legislature did not intend. As such, the Defendants' *Motions to Dismiss* must therefore be DENIED.

d. The District Court should deny the Defendants' Amended Motion to Dismiss because § 46-13-101(3), MCA, does not provide authority for a motion to dismiss.

The court, for cause shown, may grant relief from any waiver provided by this section. Lack of jurisdiction or the failure of a charging document to state an offense is a nonwaivable defect and must be noticed by the court at any time during the pendency of a proceeding.

§ 46-13-101(3), MCA.

As new "authority" the Defendants argue that they have a direct right to seek dismissal of a case pursuant to § 46-13-101(3), MCA. *Am. Br.* at pp. 2-3. However, § 46-13-101(3), MCA, does **not** provide authority for the dismissal of a case. The statute simply provides authority for when relief may be granted from the waiver set forth in § 46-13-101(1), MCA. The statute's reference to "the failure of a charging document to state an offense" refers to a challenge to the sufficiency of the charging documents as provided in § 46-11-401, MCA¹. See *State v. Brogan*, 261 Mont. 79, 85-86, 862 P.2d 19, 23 (1993).

In pertinent part, § 46-11-401, MCA, provides:

(1) The charge must be in writing and in the name of the state or the appropriate county or municipality and must specify the court

¹ Rather than have the Defendants seek to amend their *Motion to Dismiss* a second time, the State will address § 46-11-401, MCA, which serves as the **only** statutory basis to dismiss a charge pretrial.

in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

...

(5) The court, on motion of the defendant, may strike surplusage from an indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant.

§ 46-11-401(1), (5)-(6), MCA,

The Defendant's have not presented a challenge to the form of the charges under § 46-11-401, MCA, and the District Court has already determined that sufficient probable cause existed to charge each of the Defendants. *OGI* at p.1 (Ct. Doc. #2). *State v. Duman*, 2021 MT 213N, ¶ 11, 405 Mont. 538, 494 P.3d 361 (Noting that the lower court's determination of probable cause was an "implicit finding over the overall of sufficiency of the charging documents.")² Even if the charging documents were insufficient, the remedy is not dismissal of the case with prejudice. Montana law allows the State to amend the charges prior to trial pursuant to § 46-11-205, MCA. The Defendants' *Amended Motion to Dismiss* should be DENIED.

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² Nonbinding, but instructive.

e. The District Court should deny the Defendants' Amended Motion to Dismiss because probable cause is not a prerequisite to jurisdiction.

As new "authority" the Defendants argue that a "showing of probable cause is a jurisdictional threshold" which the District Court must consider and that can be raised at any point in the proceeding. *Am. Br.* at p.4 (Citing *State v. Davis*, 210 Mont. 28, 681 P.2d 42 (1984)). However, the Montana Supreme Court has made clear:

Jurisdiction refers to a court's power -- as established by constitution or statute -- to adjudicate a case. *United States v. Cotton*, 535 U.S. 625, 630, 122 S. Ct. 1781, 1785, 152 L. Ed. 2d 860 (2002); *BNSF Ry. Co. v. Cringle*, 2010 MT 290, ¶ 15, 359 Mont. 20, 247 P.3d 706 ("Subject matter jurisdiction involves the court's fundamental authority to hear and adjudicate cases or proceedings."). In *Cotton*, the Court rejected an argument that defects in a charging document may deprive a court of its power to adjudicate a case.

Several state courts have had occasion to rule on the issue clarified in *Cotton*. See e.g. *Ex parte Seymour*, 946 So. 2d 536, 538 (Ala. 2006) (collecting state cases); *Patton v. State*, 964 So. 2d 1247, 1250 (Ala. Crim. App. 2007) (holding that the defendant's challenge to the informations against him, "although couched in jurisdictional terms, is not truly jurisdictional"); *State v. Maldonado*, 223 Ariz. 309, 223 P.3d 653, 655 (Ariz. 2010) (rejecting the suggestion that a defective information in itself deprives a court of subject matter jurisdiction); *State v. Morgan*, 181 Ohio App. 3d 747, 2009 Ohio 1370, 910 N.E.2d 1075, 1083 (Ohio Ct. App. 2009) (holding that the defendant's guilty plea waived alleged defects in the indictment); *State v. Daniel*, 222 Ore. App. 362, 193 P.3d 1021, 1024-25 (Or. Ct. App. 2008) (overruling earlier cases and holding that a defect in an indictment is not a jurisdictional error).

Consistent with these authorities, **we hold that whether the information included allegations establishing probable cause to support the charge against Spreadbury is not a jurisdictional issue.** We hereby overrule the contrary statements made in *Davis* and *Thompson* to the extent they conflict with *Cotton*. The issue in this case is "the *preclusive* effect to be given the plea agreement, not the *jurisdiction* of the court." See *United States v. Castillo*, 496 F.3d 947, 956 (9th Cir. 2007).

State v. Spreadbury, 2011 MT 176, ¶¶ 8-10, 361 Mont. 253, 257 P.3d 392 (Emphasis supplied).

The Defendants' reliance on *Davis* is misplaced. Probable cause is not a jurisdictional prerequisite, and even if it were, the District Court has already determined that sufficient probable cause exists to support the charges. *OGL* at p.1 (Ct. Doc. #2). The Defendants' *Amended Motion to Dismiss* should be DENIED.

f. The District Court should deny the Defendants' *Amended Motion to Dismiss* because the charging documents are legally sufficient.

The Montana Supreme Court has held:

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. Evidence to establish probable cause need not be as complete as the evidence necessary to establish guilt. The supporting affidavit does not have to make out a *prima facie* case that the defendant committed an offense; rather, a **probability** that the defendant committed the offense is sufficient. Nonetheless, the information must reasonably apprise the accused of the charges against him to enable him the opportunity to prepare a defense. We apply the common understanding rule to determine if the charging language of a

document allows a person to understand the charges against him. Under this standard, the test of the sufficiency of a charging document is whether the defendant is apprised of the charges and whether he will be surprised.

State v. Giffin, 2021 MT 190, ¶ 15, 405 Mont. 78, 491 P.3d 1288 (internal quotes and citations omitted, emphasis supplied).

The Defendants' perception of the facts stated in the charging documents is irrelevant. The question is whether the facts lay out a probability that the Defendants committed the offenses for which they have been charged and whether they are apprised of the charges against them. Here, the District Court has already determined that sufficient probable cause exists and the Defendants' *Amended Motion to Dismiss* must therefore be DENIED.

g. The District Court should deny the Defendants' *Amended Motion to Dismiss* because § 45-3-112, MCA, does not create an independent duty for law enforcement investigation in justifiable use of force cases.

When an investigation is conducted by a peace officer of an incident that appears to have or is alleged to have involved justifiable use of force, the investigation must be conducted so as to disclose all evidence, including testimony concerning the alleged offense and that might support the apparent or alleged justifiable use of force.

§ 45-3-112, MCA.

The Defendants argue that the cases against them should be dismissed because law enforcement failed to comply with § 45-3-112, MCA. *Br.* at pp. 6-10. However, the Montana Supreme Court has expressly held that law

enforcement officers “do not have an affirmative duty to search out favorable evidence for the defendant.” *State v. Wagner*, 2013 MT 47, ¶ 31, 369 Mont. 139, 296 P.3d 1142 (citing *State v. Sadowski*, 247 Mont. 63, 79, 805 P.2d 537, 547 (1991)). The Supreme Court also made clear that § 45-3-112, MCA, does **not** impose an “independent duty for law enforcement to investigate cases involving justifiable use of force.” *Id* (citing *State v. Cooksey*, 2012 MT 226, ¶ 34, 366 Mont. 346, 286 P.3d 1174). “Instead, we determined [that] the statute reflects long-established obligations regarding the prosecution's duty to provide to the defense any exculpatory evidence *in the government's possession*. *Id* (Emphasis in the original). As such, the Defendants’ *Amended Motion to Dismiss* must therefore be DENIED.

h. The District Court should deny the Defendants’ *Amended Motion to Dismiss* because ARM 23.13.203 does not provide a basis for dismissal.

The Defendants argue that the District Court should dismiss the charges because law enforcement engaged in misconduct by violating ARM 23.13.203. *Br.* at pp. 14-15. Specifically, the Defendants argue that law enforcement: (1) relied on “self-interested hearsay and one-sided assessment of the facts; and (2) failed to act impartially. *Id.* However, ARM 23.13.203 does not create an independent basis to dismiss a felony case.

The Montana Supreme Court has held:

Administrative agencies enjoy only those powers specifically conferred upon them by the Legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. It is axiomatic in Montana law that administrative regulation cannot change a statute. Rules adopted by administrative agencies which conflict with statutory requirements or exceed authority provided by statute are invalid.

Mont. Indep. Living Project v. State, DOT, 2019 MT 298, ¶ 31, 398 Mont. 204, 454 P.3d 1216.

The Defendants fail to provide the District Court with an evidentiary basis to support their allegations of misconduct, nor are they entitled to one. *Farnsworth*, 240 Mont. at 332, 783 P.2d at 1368; See also *State v. High Elk*, 2006 MT 6, ¶ 17, 330 Mont. 259, 127 P.3d 432 (Holding that a lawyer's statements are not evidence.) However, even assuming *arguendo* that a violation of ARM 23.13.203 occurred, the rule does not create an independent basis for dismissal of a criminal case, especially when no such motion is authorized by statute. If the Defendants believe that there has been a violation of ARM 23.13.203, then their exclusive remedy is to file a complaint under ARM 23.13.701 et seq. As such, the Defendants' *Amended Motion to Dismiss* must therefore be DENIED.

i. The District Court should deny the Defendants' request for a hearing for the reason that they are not entitled to one.

The Defendants' request that the District Court set a "hearing" on their *Motion to Dismiss. Br.* at p.15. However, the Defendants fail to cite any

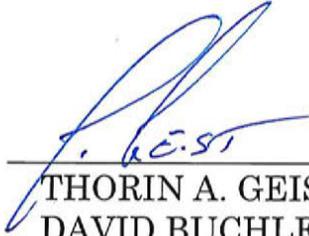
authority that would permit a hearing, and Montana law is clear that they are not entitled to one. As noted above, the District Court has already determined that sufficient probable cause exists to support the charges and the Montana Supreme court has made clear that the State has no further burden of proof until trial. The Defendants are not entitled to an evidentiary hearing to contest the probable cause determination. The Defendants' request for a hearing on their *Amended Motion to Dismiss* must be DENIED.

IV. Conclusion.

Based on the foregoing, the State of Montana respectfully requests that the Defendants *Amended Motion to Dismiss* be DENIED.

DATED this 3 day of February, 2023.

By: _____


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CERTIFICATE OF SERVICE

I, Thorin Aidan Geist, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response Brief to the following on 02-03-2023:

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