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COUNSEL FOR STATE

**MONTANA FIFTH JUDICIAL DISTRICT COURT
 MADISON COUNTY**

<p>STATE OF MONTANA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>JESSE MICHAEL BOYD, BETHANY GRACE BOYD, CARTER NORMAN PHILLIPS, ERIC ANTHONY TRENT,</p> <p style="text-align: center;">Defendant(s).</p>	<p>Cause No(s). DC-29-2022-23 DC-29-2022-24 DC-29-2022-22 DC-29-2022-26</p> <p>STATE'S RESPONSE TO DEFENDANT'S MOTION MODIFY CONDITIONS OF RELEASE</p>
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COMES NOW the State of Montana, by and through Assistant Attorney General Thorin A. Geist and Madison County Attorney David Buchler, and hereby responds to the Defendants' *Motion to Modify Conditions of Release* (Ct. Doc. #17) and *Brief in Support of Motion to Modify Conditions of Release* (Ct. Doc. #18).

I. 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).

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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).

II. Discussion.

a. The District Court should grant the Defendant's *Motion to Modify Conditions of Release* in part.

The Defendants argue that the State engaged in “at least” three violations of their constitutional rights and that they are therefore entitled to a reduction in bail and the removal of the GPS monitoring requirement. *Mot.*

at pp.1-2; *Br.* at pp. 1-7. Each argument is addressed in turn, as is the Defendants request for oral argument.

1. The Defendants constitutional right to counsel has not been violated.

The Defendants argue that their due process rights were violated because they did not have counsel at their arraignment in Justice Court. *Br.* at pp. 4-5. As authority, the Defendants cite to *Michigan v. Jackson*, 475 U.S. 625, 629, 106 S. Ct. 1404 (1986), for the proposition that “the right to counsel attaches at the initial appearance before a judicial officer.” *Id.* However, *Jackson* was expressly **overruled** in *Montejo v. Louisiana*, 566 U.S. 778, 793-797, 129 S. Ct. 2079, 173 L. Ed. 2d 955 (2009), and the Montana Supreme Court has made clear that the arraignment is not a critical stage requiring the assistance of counsel.

In *Montejo*, the United States Supreme Court noted that the rule established in *Jackson* was created “to preclude the State from badgering defendants into waiving their previously asserted rights.” *Id.* Overruling *Jackson*, the Supreme Court held that what matters for purposes of *Miranda*¹ “is what happens when the defendant is approached for interrogation, and (if he consents) what happens during the interrogation – not what happened at any preliminary hearing.” *Id.*

¹ Including the right to counsel.

Here, the Defendants have not argued that the State failed to advise the Defendants that they had the right to counsel, that they were subjected to interrogation without counsel, or that the Justice Court failed to advise them of their right to counsel as is **required** pursuant to § 46-8-101, MCA. Instead, the Defendants crassly argue that the “arraignment was an orgy of prosecution and anti-defendant remarks and representations” and that they had the right to the assistance of counsel when the Justice Court set bail. *Br.* at p.5. However, the “law is well settled that a defendant is not entitled to the assistance of counsel at the initial appearance because the initial appearance is not a critical stage of the prosecution in Montana.” *State v. Farnsworth*, 240 Mont. 328, 333, 783 P.2d 1365, 1368 (1990) (Noting that *Coleman v. Alabama*, 399 U.S. 1., 90 S. Ct. 1999 (1970) did not designate the setting of bail as a critical stage entitling the defendant to counsel); *State v. Sor-Lokken*, 246 Mont. 70, 803 P.2d 638. The Defendants constitutional right to counsel has not been violated and on this basis the Defendants *Motion to Modify Conditions of Release* should be DENIED.

2. The Defendants’ bail is not excessive because it has already been posted and the issue is therefore moot.

That bail may not be excessive is a fundamental, constitutional principle. U.S. Const. Amend. VIII; Art. II, Sec. 22, Mont. Const. To insure [sic] that bail is not excessive, the Montana courts are constrained in setting bail by the eleven factors listed in § 46-9-301, MCA. Within these restrictions, the amount of bail is left to the sound discretion of the trial court and will be upheld if

reasonable.

Grafft v. Mont. Fourth Judicial Dist. Court, 2021 MT 201, ¶ 14, 405 Mont. 192, 492 P.3d 1213.

Criminal defendants “may seek relief if and when bail is considered excessive by process for writ of habeas corpus.” *State v. McLeod*, 131 Mont. 478, 490-491, 311 P.3d 400, 407; See also § 46-22-103, MCA. However, “[a] petition for writ of habeas corpus is moot once the defendant is no longer in custody.” *Grafft* at ¶ 17² (citing *Wier v. Lincoln Cnty. Sheriff's Dep't*, 278 Mont. 473, 475, 925 P.2d 1172, 1173 (1996)).

The Defendants argue that their constitutional right to be free from unreasonable bail has been violated and that they are entitled to have their bonds reduced. *Br.* at pp. 6-7. However, each of the Defendants have **already** posted bonds through an appropriate surety company and have been released from custody. As such, the Defendants are not entitled to a reduction in bail and their request to reduce bail is moot. The Defendants constitutional right to be free from excessive bail has not been violated and on this basis the Defendants *Motion to Modify Conditions of Release* should be DENIED.

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² A case cited by the Defendants.

3. The State does not oppose the Defendants release from the GPS monitoring requirement provided they do not return to the victim's property.

The Defendants argue that they should be relieved of the GPS monitoring requirement and that the State illegally held them in custody because GPS monitors were not available. *Br.* at pp. 6-7. First, it is not the State's responsibility to assist the Defendants in complying with bail conditions, and the Defendants have cited no authority to the contrary. Second, had the Defendants bothered to comply with Montana Uniform District Court Rule 2(a) they would have discovered that the State does not oppose the request to remove their GPS monitors.

III. Conclusion.

Based on the foregoing, the State of Montana respectfully requests that the Defendant's *Motion to Modify Conditions of Release* be denied as to the request to reduce bail and granted as to the request to remove the GPS monitoring requirements.

DATED this 18 day of January 2023.

By: _____


THORIN A. GEIST

DAVID BUCHLER

Attorney for the State of Montana

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of January 2023, a true and correct copy of the foregoing document was served:

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Attorney for the Defendant

By: Maggie Sowisdral
Paralegal

³ Courtesy copy provided pending admission to Montana bar *pro hac vice*.

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 01-18-2023:

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Electronically signed by Maggie Sowisdral on behalf of Thorin Aidan Geist
Dated: 01-18-2023