AUSTIN KNUDSEN
Montana Attorney General
KATIE F. SCHULZ
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
Fax: 406-444-3549
kschulz@mt.gov

COUNSEL FOR RESPONDENT

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 21-0546

PATRICK STEVEN BRYAN, II,

Petitioner,

v.

JESSE SLAUGHTER, Cascade County Sheriff,

Respondent.

STATE'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

In compliance with this Court's November 8, 2021 Order, the Attorney General's Office responds to the Petition for a Writ of Habeas Corpus filed by Petitioner, Patrick Steven Bryan, II (Bryan). Bryan petitions for relief from Cause

No. CDC-21-660, originating in the Eighth Judicial District, Cascade County, Montana.

As part of its response, the State submits, and incorporates by reference, relevant documents from Bryan's Eighth Judicial District Court Cause No. CDC-21-660. (*See* attached Appendices A-C.) The State requests that this Court take judicial notice of those documents pursuant to Mont. R. Evid. 202(b)(6) (Court may take judicial notice of records from any Montana court) and Mont. R. Evid. 201(b)(2) (Court may take judicial notice of facts "not subject to reasonable dispute," as they are "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned"); and Mont. R. Evid. 201(d) ("A court shall take judicial notice if requested by a party and supplied with the necessary information.").

BACKGROUND AND PROCEDURAL HISTORY

On September 6, 2021, Patrick Steven Bryan, II, was driving his roommate's vehicle with a female passenger, V.C. (Pet-App. 1.) According to V.C., Bryan had consumed a bottle of "Fireball" and was driving crazy. (*Id*.) Bryan crashed into multiple concrete barriers where Keogh Street intersects Bay Drive in Great Falls and launched the vehicle over the embankment onto River's Edge Trail. (*Id*.) Witnesses saw a male, later identified as Bryan, fleeing on foot away from the

smoking vehicle, leaving V.C. inside. (*Id*.) V.C. managed to crawl out of the wrecked vehicle just before it burst into flames. (*Id*.) V.C. suffered a deep, wide cut to her right bicep. (*Id*.) Great Falls Police Department (GFPD) officers searched the area for Bryan but were not able to locate him. (*Id*.)

The next day, the registered owner of the wrecked vehicle contacted GFPD and explained she had given the vehicle to her brother, who was Bryan's roommate. (Pet-App. 1.) Officers located Bryan at the address of the vehicle's registered owner. (*Id*.) Bryan matched the physical description of the male who ran from the crash scene. (*Id*.) Bryan had multiple small injuries on his hands and arms and Bryan said he had a fractured right foot, but did not disclose how the injuries had occurred. (*Id*.) Officers also discovered that Bryan's driver's license was suspended. (*Id*.)

Bryan was charged with Count I, felony criminal endangerment, Count II, reckless driving, Count III, driving while suspended, Count IV, failure to notify owner of damage to property, and Count V, failure to give immediate notice of accidence by quickest means. (Pet-App. 1.)

Bryan appeared before the Honorable David J. Grubich, District Court Judge, for an initial appearance on September 8, 2021. (Pet-App. 2; 9/8/21 Tr. (*see* Resp-App. A.).) Bryan's counsel argued that Bryan could not afford a $15,000 bail and asked the court to release him on his own recognizance (OR) or set his

bail no higher than $5,000. (*Id*.) Bryan also stated he would comply with conditions, including a chemical dependency evaluation and alcohol monitoring. (*Id*.) Bryan asserted the following factors in support of his request: his offense was nonviolent; he was employed as a painter; he has an appointment for surgery on his foot; he has ties to the community; he has four children that he supports; he has never failed to appear for court; he has one prior misdemeanor conviction; and, while he has a pending DUI in Havre from March, he thought it was being dismissed. (*Id*.)

The State asserted that $15,000 bail was appropriate given the nature of the offense, including the injury to V.C. and the risk to others, and the fact that Bryan fled the scene. (Resp-App. A.) The State argued that Bryan's actions made him a danger to the community. (*Id*.) Following arguments, the court stated:

> Considering the bond factors in 46-9-301, there's a few factors I'm considering here, that is obviously compliance. We want to ensure compliance and attendance at the proceeding, protect persons from bodily injury. At least we're aware of the second instance, at least that was discussed, where there's an alleged DUI. This was a situation where a lot of people were really lucky. So I want to make it commensurate with the nature of the offense, as well as all his ties, his family relationships.
>
> I'm going to lower your bond sir, some. I'm not going to give you an OR, and I'm not going to lower it as much as $5,000.
>
> I'm going to set your bond at $10,000, but I am also going to require the alcohol monitoring. And I'm also going to require that you get that chemical dependency evaluation and follow all recommendations, and that [must] be done within 30 days.

(Resp-App. A at 6.) The court included additional conditions in its written order following the initial appearance (*e.g.*, cannot consume alcohol/drugs; cannot enter places where alcohol is sold; must comply with curfew (8 p.m. to 6 a.m.).) (Pet. App. 2.)

At his September 30, 2021 arraignment, Bryan did not ask the court to reconsider his bail. (*See* Resp-App. B.) On October 8, 2021, Bryan filed a Motion to Set Bail Reduction Hearing, wherein he stated he was indigent and could not afford the $10,000 bail. (*See* Resp-App. C.)

A hearing was held on Bryan's motion on October 19, 2021, in front of the Honorable John Kutzman, District Court Judge. (Pet-App. 3.) Bryan testified that he had been unable to post the $10,000 bail and asked the court to release him OR. (*Id*.) Bryan did not ask for a reduction in bail and did not testify about his financial status/resources. (*Id*.) Bryan reiterated nearly the same factors he had asserted at his initial hearing (*e.g.*, works for his stepfather renovating/painting hotels and as a bouncer at a bar; pays rent for an apartment in Sun Prairie; stays for free at the hotels he is working on; has family in the area (stepfather, mother, siblings); provides support for his 13-year-old child; works in the jail kitchen.) (*Id*.)

Bryan stated he has never failed to appear for court and was convicted of misdemeanor criminal mischief when he was 18 years old. (Pet-App. 3.) Bryan stated that he had an appointment with a doctor scheduled two days after he was

arrested to discuss elective surgery on his foot. (*Id*.) Bryan explained that he gets rides to work from his roommate or his stepfather because he does not have a vehicle. (*Id*.)

In rendering its ruling, the court noted Bryan was accused of endangering V.C. and others when he crashed and left V.C. inside a burning vehicle. (Pet-App. 3.) The court also pointed to Bryan fleeing the scene to avoid the consequences of his actions. (*Id*.) The court determined that the nature of the offense involved both danger to others and flight, and concluded that "I'm not convinced that Judge Grubich got this wrong when he set this bail in the amount of $10,000. So, this [OR] relief request is denied." (*Id*. at 15-16.)

Open discussion after the court's ruling revealed that Bryan also had a $800 bail set in a pending case in Havre. (Pet-App. 3 at 16-17.) Although his counsel stated at the initial appearance that he had a pending DUI in Havre, Bryan told Judge Stutzman it was for driving while suspended and he was "trying to get my life straight and take care of my legal matters." (*Id*.) The court agreed that the $10,000 bail would be concurrent to the other bail, but reiterated that while his counsel had made a "forceful presentation," it was not persuaded to reduce Bryan's bail or release him OR. (*Id*.)

PETITIONER'S ALLEGATIONS

In his habeas petition, Bryan asserts that the district court's order denying his motion to be released OR constituted an unlawful restraint.

STANDARD OF REVIEW

Montana Code Annotated § 46-22-101(1) allows a person who is incarcerated or restrained of liberty to apply for a "writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint." State habeas relief "is available only to those persons, or on behalf of those persons, unlawfully imprisoned or restrained of their liberty, and is independent of the legal proceeding under which the detention is sought to be justified." *Miller v. Eleventh Judicial Dist. Court*, 2007 MT 58, ¶ 4, 336 Mont. 207, 154 P.3d 1186 (fundamental purpose of habeas corpus is to remedy "illegal" restraint or "imprisonment"); *Lott v. State*, 2006 MT 279, 334 Mont. 270, 150 P.3d 337.

When a defendant petitions this Court for a writ of habeas corpus challenging the district court's order regarding bail, this Court determines if the person is being restrained illegally. *Miller*, ¶ 4. In state habeas matters, the petitioner carries the "burden of proof or the burden of persuasion."

Kovash v. Salmonsen, 394 Mont. 387, 432 P.3d 700 (2018) (citing *In Re Hart*, 178 Mont. 235, 249, 583 P.2d 411, 419 (1978)). As this Court explained,

> [T]he burden rests on one seeking discharge on a writ of habeas corpus to sustain the allegations of his petition, to make out a prima facie case, [and] to prove the facts or establish grounds entitling him to relief[.]
>
> He has the burden of proving the violation, deprivation, infringement, or denial of his constitutional, statutory, or legal rights generally, or denial of due process of law[.]

Id.; *Miller*, ¶ 14; *McCulley v. Eighteenth Judicial Dist. Court*, 368 Mont. 413, 309 P.3d 1015 (2012) (when conducting *de novo* review for habeas relief concerning bail, this Court's role is not to set bail; Court "simply determine[s] whether [the petitioner] is unlawfully imprisoned or restrained of her liberty.").

STATE'S RESPONSE

I. Bryan's due process claim is not properly before this Court.

In his motion for bail reduction, Bryan did not present any legal authority or argument. (Resp-App. C.) At the October 19, 2021 hearing, Bryan focused on the statutory factors to consider when setting reasonable bail. (Pet-App. 3 at 11.) Bryan made one passing reference to the Eighth Amendment and another passing reference to "persuasive authority out of New Mexico" that states a pretrial release

decision may not be based solely on the severity of the offense charged. (*Id*. at 12-13.) Bryan did not, as he does in his petition to this Court, assert that his right to due process was violated. (*Id*. at 9-14.) Bryan also did not advance the policy arguments he adds at the end of his petition to the district court. (*Id*. at 15-16.)

While a habeas proceeding filed with this Court is deemed independent of the bail proceedings below, this Court still reviews the record and arguments made in district court. It is fundamentally unfair for a defendant to challenge a bail determination based upon constitutional objections not raised in district court. *Cf. Ingraham v. State*, 284 Mont. 481, 487 (1997) (holding that constitutional objections not raised in district court were waived), *reversed in part on other grounds by Miller*, ¶ 5.

This Court should decline to address Bryan's due process claim because he did not raise it to the district court. If habeas petitioners challenging bail determinations are not constrained by the arguments made in district court, defendants will have no incentive to make appropriate arguments in district court. Nonetheless, should this Court consider Bryan's due process argument, the record establishes that the imposition of $10,000 bail and, later, the order declining to release Bryan OR, were not the result of unfair procedures or in violation of Montana law or Bryan's constitutional rights.

II. Bryan is not being unlawfully restrained.

Article II, section 21, of the Montana Constitution provides that "[a]ll persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great." Mont. Const. art. II, § 21. In addition, excessive bail may not be imposed. *See* U.S. Const. amend. VIII; Mont. Const. art. II, § 22.

Prior to a verdict, the district court "shall authorize" the defendant's release "upon reasonable conditions" to ensure the defendant will appear and to protect the safety of the community. Mont. Code Ann. § 46-9-106(1). Reasonable conditions include posting bail. Mont Code Ann. § 46-9-108(1)(k). When considering whether to release a defendant at his initial appearance, a district court "shall take into account" the following factors:

> (a) the nature and circumstances of the offense charged, including whether the offense involved the use of force or violence;
>
> (b) the history and characteristics of the defendant, including:
>
> (i) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse, criminal history, and record concerning the appearance at court proceedings; and
>
> (ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentencing for an offense;

(c) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and

(d) the property available as collateral for the defendant's release to determine if it will reasonably ensure the appearance of the defendant as required.

Mont. Code Ann. § 46-9-109(2). Upon motion of either party, the court may hold a hearing to determine whether the bail amount set at the initial hearing was "appropriate." Mont. Code Ann. § 46-9-109(3). If bail is deemed necessary, it must be:

(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.

Mont. Code Ann. § 46-9-301.

"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." *State v. Spady*, 2015 MT 218, ¶ 34, 380 Mont. 179, 354 P.3d 590 (citing *Bell v. Wolfish*, 441 U.S. 520, 539 (1979); *United States v. Salerno*, 481 U.S. 739, 748 (1987)). As this Court has explained, "in order to protect the rights of a person who is accused of a non-capital crime, the law requires that such person shall be released pending trial if reasonable conditions can be imposed to protect the community or any particular individual," and such conditions include "reasonable bail." *Miller*, ¶ 8 (citing Mont. Code Ann. §§ 46-9-106, -108, -111). In addition, "state law and due process considerations require that the court conduct an individualized assessment of the appropriateness of the condition for each defendant." *Spady*, ¶ 36 (citing Mont. Code Ann. §§ 46-9-108(2), -109(2); *Salerno*, 481 U.S. at 751).

The district court adhered to the relevant statutory provisions when determining whether to release Bryan OR at his initial appearance and at the hearing on October 19, 2020. *See* Mont. Code Ann. §§ 46-9-109(2) and -301. These procedural safeguards mirror those the United States Supreme Court determined did not violate the Due Process Clause. *Salerno*, 481 U.S. at 746-52.

Bryan argues that the district court failed to presume he was innocent because it noted the nature of his offense during its analysis. Such an argument ignores that a person's presumption of innocence does not prevent the State from obtaining a warrant of arrest based on probable cause. *Wolfish*, 441 U.S. at 533 (holding that "[t]he presumption of innocence is a doctrine that allocates the burden of proof in criminal trials" and suggesting that pretrial detention is not punishment if related to a legitimate governmental objective).

The presumption of innocence forms the basis for a person's right to reasonable bail for non-capital offenses, it does not prevent a court from setting reasonable conditions. As this Court has explained, "[t]he purpose of bail is to honor the presumption of innocence while ensuring the defendant's presence at trial." *Billings v. Layzell*, 242 Mont. 145, 150, 789 P.2d 221, 224 (1990); *Stack v. Boyle*, 342 U.S. 1, 4 (1951) ("Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."). Considering the nature of the offense does not subsume a defendant's presumption of innocence, just as being arrested does not negate a person's presumption of innocence. That presumption remains attached to the defendant through trial.

The presumption of innocence does not prohibit a court from examining all relevant criteria when determining what "reasonable conditions [will] ensure the

appearance of the defendant and protect the safety of the community." Mont. Code Ann. § 46-9-106(1). Moreover, this Court, and the relevant statutes, specifically direct lower courts to consider the nature of the offense when deciding whether to release a defendant pending trial, as well as when setting the appropriate bail amount. *See* Mont. Code Ann. §§ 46-9-109(2)(a) and -301(5); *Miller*, ¶ 13 ("The serious nature of the allegations, and a defendant's proven unwillingness to follow the law, can be important factors to consider in setting bail and fixing conditions of release.").

It is undisputed that Bryan was lawfully arrested and detained based on a probable cause determination that he had committed felony criminal endangerment, reckless driving, driving while suspended, failure to notify owner of damage to property, and failure to give immediate notice of accidence by quickest means. The supporting evidence for the charges included V.C. stating Bryan was intoxicated when he crashed. Witnesses saw Bryan run from the crash, leaving V.C. injured and inside a burning vehicle. Bryan's flight not only exacerbated the risk of V.C.'s death, but was also reasonably interpreted as evidence of poor character for trying to avoid responsibility for his actions.

Bryan was represented by counsel at all his hearings. He had at least two bites at the apple regarding bail, where he presented evidence and argument. During both hearings, the court considered Bryan's individual circumstances when

setting the amount of bail. These circumstances included his assertions of indigency and ties to the community, as well as the nature of the allegations against him (including alleged intoxication and fleeing the scene), and that he had a pending case in Havre for DUI and/or driving while suspended when he allegedly crashed his roommate's car.

Bryan was not denied due process. *See, e.g., Pines v. Green*, 392 Mont. 555, 421 P.3d 265 (2018) (no due process violation when, immediately following arrest, defendant appeared before the court with representation of counsel for the setting of bail and also had opportunity for reduction of bail). The hallmarks of procedural due process are notice and the opportunity to be heard. *State v. Johns*, 2019 MT 292, ¶ 22, 398 Mont. 152, 454 P.3d 692 ("Due process guarantees that every person be given an opportunity to 'explain, argue, and rebut' any information that may lead to a deprivation of life, liberty, or property.").

Bryan faults the State for not presenting any additional evidence other than the charges. (Pet. at 12.) However, many of the relevant factors at Mont. Code Ann. §§ 46-9-109(2) and -301 must be established by testimony or evidence from the defendant, particularly his financial abilities, ties to the community, health issues, and employment status. The record establishes that when Bryan's initial request for $5,000 bail or an OR release was considered, but denied, the court considered the relevant criteria and made an individualized assessment of what

"reasonable conditions" were necessary to ensure his appearance and protect the community. Similarly, at the October 19 hearing, the court considered the relevant factors and concluded that the $10,000 bail was appropriate in Bryan's case.

Bryan's reliance upon *In re Humphrey*, 19 Cal. App. 5th 1006, 1044 (2018), is not compelling because in that case the issue was the trial court's "unquestioning reliance upon the bail schedule without consideration of a defendant's ability to pay, as well as other individualized factors bearing upon his or her dangerousness and/or risk of flight." Here, the district court did not unquestioningly rely upon a bail schedule, but appropriately assessed Bryan's individual circumstances and history along with the nature of the offense. *See Spady*, ¶ 15; *Salerno*, 481 U.S. at 751.

Bryan was afforded fundamentally fair procedures. Bryan was represented by counsel at all times and had at least two different opportunities to "explain, argue, and rebut" the State's position on bail. There is no question that the district court, at both hearings, made individual assessments of Bryan pursuant to relevant statutory factors. The court's order denying his request for OR did not punish Bryan for his inability to post bail. As this Court has explained, although "it is true that bail cannot be imposed based solely on indigency, it does not follow that bail

may never be imposed upon an indigent person." *Vasquez v. Eleventh Judicial Dist. Court*, 2009 Mont. LEXIS 834, ¶ 6 (internal citation omitted).

The district court's order denying Bryan's OR request did not constitute a violation of the Eighth Amendment. (Pet. at 14-15.) Bryan's argument that the State did not present evidence is inaccurate. Moreover, the State certainly did not waive its interests in protecting society. (*Id*.) While Bryan appeals from the court's order denying him an OR release, he also faults the court for not lowering his bail. However, Bryan did not ask for a reduction of bail at the October 19, 2020 hearing.

Bryan is incorrect when he asserts that he "checked every factor" to justify releasing him OR. (Pet. at 15.) Bryan's argument ignores that, in addition to his ties to the community and lack of prior felony conviction or failure to appear, the court was also presented with evidence that justified denying his OR request: nature of offense (driving while intoxicated; crashing; causing significant injury to his passenger; leaving passenger in burning vehicle); fleeing the scene to avoid responsibility; and committing the offense while a DUI/driving while suspended case was pending. These serious charges required Judge Kutzman to protect potential victims and the public. It was also reasonable for the court to consider Bryan's actions of trying to avoid responsibility by fleeing the scene when setting bail.

Bryan has not established that the court's order denying his OR request violated either the Eighth or Fourteenth Amendments. Bryan has not met his burden of presenting a sufficient record "to make a prima facie showing" that he is being unlawfully restrained. *Miller*, ¶ 14 (to obtain habeas relief petitioner must establish the lower court's order "constituted a violation, deprivation, infringement, or denial of his constitutional, statutory, or legal rights"); *In re Hart*, 178 Mont. 235, 249-50, 583 P.2d 411, 418-19 (1978) (to "sustain the allegations of his petition, to make out a prima facie case, to prove the facts or establish ground entitling him to relief, to overcome the presumption of validity and regularity of proceeding, and to show the invalidity of the judgment or sentence which he attacks").

CONCLUSION

Bryan's Petition for habeas corpus relief should be denied.

Respectfully submitted this 26th day of November, 2021.

AUSTIN KNUDSEN
Montana Attorney General
Justice Building
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: */s/ Katie F. Schulz*
KATIE F. SCHULZ
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 14 of the Montana Rules of Appellate Procedure, I certify that this response to writ is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,922 excluding certificate of service and certificate of compliance.

/s/ Katie F. Schulz
KATIE F. SCHULZ

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 21-0546

PATRICK STEVEN BRYAN, II,

Petitioner,

v.

JESSE SLAUGHTER, Cascade County Sheriff,

Respondent.

APPENDIX

CERTIFICATE OF SERVICE

I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 11-26-2021:

Daylon Nathaniel Martin (Attorney)
615 2nd Ave. N.
FL 3
Great Falls MT 59401
Representing: Patrick Steven Bryan, II
Service Method: eService

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: Jesse Slaughter
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: Jesse Slaughter
Service Method: eService

Colleen Elizabeth Ambrose (Attorney)
5 South Last Chance Gulch
P.O. Box 201301
Helena MT 59620-1301
Representing: Jesse Slaughter
Service Method: eService

John A. Kutzman (Respondent)
Eighth Judicial District Court
415 2nd Ave. N.
Great Falls MT 59401
Service Method: Conventional

Electronically signed by Wendi Waterman on behalf of Kathryn Fey Schulz
Dated: 11-26-2021