IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0127

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CHRISTOPHER ROBIN LEDEAU,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, The Honorable John A. Kutzman, Presiding

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STATEMENT OF THE ISSUE

Whether the district court abused its discretion when it imposed special probation conditions that seek to rehabilitate Ledeau and protect M.E., the victim of Ledeau's two felony partner family member assault convictions.

STATEMENT OF THE CASE

On October 25, 2021, the State charged Appellant Christopher Robin Ledeau, by Information, with Burglary, a felony, in violation of Mont. Code Ann. § 45-6-204(1)(a), Partner or Family Member Assault (PFMA) (3rd or subsequent offense), a felony, in violation of Mont. Code Ann. § 45-5-206(1)(c), and Criminal Mischief, a misdemeanor, in violation of Mont. Code Ann. § 45-6-101(1)(a). (Doc. 3.)

On June 7, 2022, Ledeau, pursuant to a plea agreement,[1] pled guilty to felony PFMA as charged in the Information. (Docs. 16, 20.) The district court committed Ledeau to the Department of Corrections for a term of 3 years with all but 30 days suspended[2] and imposed various conditions including, Condition 29 and Condition 31, both of which Ledeau challenges on appeal. (Doc. 30 at 2, 9.)

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[1] In exchange for Ledeau's guilty plea to felony PFMA, the State dismissed the Burglary and Criminal Mischief charges. (Doc. 16 at 4.)

[2] The sentence imposed was ordered to run consecutive to the sentence imposed in Cause No. DDC-20-725, Ledeau's related revocation proceeding. (Doc. 16 at 2; Doc. 30 at 2.)

STATEMENT OF THE FACTS

I. The offense

In June 2021, Ledeau was convicted of his first felony PFMA against his then-girlfriend, M.E. (Doc. 15 at 6; Doc 21 at 2-4; 7/19/22 Tr. at 14.) As part of his sentence, Ledeau was ordered to have no contact with M.E. (*Id.*)

Yet, three months later, on September 23, 2021, Ledeau went to M.E.'s[3] home, and angrily yelled at her "to let him in." (Doc. 1 at 2.) When M.E. refused, Ledeau threatened to "make it worse." (*Id*.) Ledeau then "picked up a large rock," and began yelling that "he would start breaking her windows if she did not allow him inside." (*Id*.) M.E. repeatedly told Ledeau to leave. (*Id*.)

Instead, Ledeau threw a rock through M.E.'s window. (*Id*.) Ledeau then ripped the screen off a window and entered M.E.'s home. (*Id*.) Afraid that Ledeau would "hurt her again," M.E. fled her home, screaming. (*Id*.) M.E. eventually found refuge at her neighbor's house and Ledeau ran away. (*Id*. at 2-3.)

II. Sentencing

At the July 19, 2022 sentencing hearing, the district court inquired about probation conditions recommended in Ledeau's Presentence Investigation Report (PSI) that the district court had not previously seen before:

[3] At this time, M.E. was reportedly Ledeau's ex-girlfriend. (*Id*. at 2.)

29. Probation and Parole Officer may conduct a search of electronic devices, to include, cell phone, personal computer, and social media, if reasonable suspicion exists that the Defendant is attempting to contact the victim in violation of the Defendant[']s conditions of supervision.

30. The Defendant must enter and complete a Victim Impact Listen and Learn Programming and Victim Impact Panel.

31. The Defendant shall sign and abide by an Intimate Partner Disclosure and an Offensive Contact Contract[4] provided by his/her Probation and Parole Officer if required by his supervising Officer.[5]

(Doc. 21 at 10.) In response, the State offered to continue the sentencing hearing so that Probation Officer Heather Moore would be available to testify about the new conditions. (7/19/22 Tr. at 13.) Over Ledeau's objection, the district court continued the sentencing hearing, explaining:

> P.O. Moore is obviously quite troubled by what happened here. She's gone to the extra trouble of warning repeatedly in the PSI that Mr. Ledeau committed this offense against [M.E.] while he was on probation for [a] previous PFMA against [M.E.]. And Judge Parker told them no contact with the victim, and he went right ahead and did it anyway, which I guess is part of the revocation proceeding pending in front of Judge Parker. So, in addition to these additional warnings that I don't always see in these PSIs, I've also got some conditions that I haven't seen before that an experienced Probation Officer thinks are necessary in order to protect society and [M.E.] in this case. And I

[4] Ledeau does not challenge the portion of Condition 31 that requires him to abide by the Offensive Contact Contract. (Appellant's Br. at 5.)

[5] The conditions are also at issue in *State v. Wells*, DA 22-0668.

> doubt that P.O. Moore would have recommended those, unless she thought they were appropriate.

(7/19/22 Tr. at 13-14.) Between the date of the new sentencing hearing, the district court ordered the State to file a sentencing memorandum explaining the conditions. (*Id*. at 14-15.)

As the parties explained, the conditions listed as 29, 30, 31 in Ledeau's PSI are conditions created as part of a pilot project in Cascade County. (11/29/22 Tr. at 8-9; Appellant's App. B.) Adult Probation and Parole recommends the conditions for probationers who will be supervised by the Domestic Violence Supervision Unit (Unit). (Appellant's App. B.) "Because domestic violence is a pattern of behaviors that [the probationer has] learned and chosen to engage in, any present or future intimate partners are considered at risk of becoming a victim of [the petitioner's] violence." (*Id*.) Accordingly, through these pilot conditions, the purpose of the Unit, therefore, is to: "(1) enhance the safety of [the probationer's] victim(s) and the community; (2) assist [the probationer] in accepting responsibility and accountability for [the probationer's] violent behavior; and (3) assist [the probationer] in ending [the probationer's] violent behavior." (*Id*.)

To that end, Condition 29 authorizes, upon "reasonable suspicion that the offender is attempting unauthorized contact," the probation officer to search electronic devices of the probationer. (Doc. 23 at 4.) The purpose of the condition relating to electronic usage to contact victims, is because evidence exists "that an

increasing number of violent offenders are now reaching out through phone, social media, and electronic means to intimidate, harass, and contact their victims." (*Id*.) Condition 29 also provides probation officers the ability to enforce the no contact with the victim condition.[6] (*Id*.)

As for Condition 31, and its accompanying Intimate Partner Disclosure, it seeks to "enhance[] the safety of potential victims" by requiring the probationer to provide his probation officer with the name, address, and telephone number for a person that the probationer is romantically involved[7] with. (Appellant's App. B.) As the State explained, domestic violence "is often cyclical and repetitive over time from relationship to relationship," and "does not typically stop until the offender is given appropriate programming (Batterer's Intervention), and the victim is given resources and services to educate and empower when necessary." (Doc. 23 at 5.) Moreover, often in new relationships, offenders will "begin to escalate" with those partners who are "unaware of their conviction and available services." (*Id*.)

As part of Condition 31, the probationer is also required to disclose all public information relating to the probationer's domestic violence history.

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[6] The no contact condition is listed as condition number 23 in Ledeau's judgment. (Doc. 30 at 8.)

[7] Romantically involved refers to a current or future "dating, girlfriend, wife, or other sexual/romantic relationship." (Appellant's App. B.)

(Appellant's App. B.) The Unit will contact a reported partner[8] to confirm that the probationer's history has been shared and will provide the partner with information about the probationer's conditions and available community resources. (*Id.*)

The State argued that all three conditions[9] "are necessary and valuable not only to ensure successful rehabilitation, but also to help ensure victim and community safety." (Doc. 23 at 2.) The State then asserted that the district court should impose them, here, because Ledeau has significant history of PFMA convictions, with the instant offense being his fifth. (Doc. 21 at 2; Doc. 23 at 3.)

At the November 29, 2022 sentencing hearing, Ledeau reiterated his nexus and constitutional objections to the conditions. (11/29/22 Tr.; Docs. 24, 25.) In response, the district court stated, in part:

> I'm not comfortable with (29), (30), or (31) and I believe [Ledeau has] raised substantial questions about each one of them . . . But if I sustain your objections, they quite likely don't wind up in front of the Montana Supreme Court, and we don't find out what the Supreme Court thinks about it.

(11/29/22 Tr. at 15.) The district court then imposed sentence, including Conditions 29, 30, 31, based, in part, on the following reasoning:

> While, you were on probation for a prior PFMA, you went over to the victim's house and demanded to talk to her. When she didn't comply, you said you'd hurt her if she didn't let you in. You picked up a rock

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[8] For brevity, partner refers to any of the category of persons listed as "romantically involved" with on the Intimate Partner Disclosure.

[9] On appeal, Ledeau only challenges imposition of Condition 29 and Condition 31. (Appellant's Br. at 2.)

> and broke one of her windows, at which point she fled her own house, screaming.
>
> Your criminal history is eight misdemeanors and one felony. This will be your fifth PFMA. The prior felony was also a PFMA. AP&P's risk assessment indicates you're at high risk to re-offend. As I've already noted at the time that this happened, you were already on probation for a prior PFMA against the same victim. Which indicates to me that I might not be able to rely on you to abide by probation conditions.

(*Id*. at 20-21.)

SUMMARY OF THE ARGUMENT

The district court did not abuse its discretion when it imposed Conditions 29 and 31, which it had the statutory authority to impose. Ledeau has five PFMA convictions, with his only two felony convictions being felony PFMAs. Both felony PFMAs were committed against M.E. The instant offense occurred within months of being sentenced on his first felony PFMA involving M.E. Despite being ordered to have no contact with M.E., Ledeau went to M.E.'s home. When she refused to let him, Ledeau took matters into his own hands, first throwing a rock through her window and then by ripping a screen off the window so he could enter the house. M.E. fled her house, screaming.

Accordingly, Condition 29, which allows probation officers to ensure compliance with the no contact condition, by authorizing a search of Ledeau's electronic devices should reasonable suspicion exist that he attempted to contact

M.E. in violation of the no contact condition, is reasonably related to Ledeau's criminal history and the offense of conviction. Condition 29 also is not overbroad or unduly punitive. Ledeau is on notice of what can be searched, and reasonable suspicion must still exist that Ledeau is violating a specific condition—the no contact condition—before a probation officer may search Ledeau's electronic devices. Because Condition 29 complies with the reasonable suspicion standard constitutionally required for searches of probationers and their property, Condition 29 does not violate either the federal or Montana constitutions.

Condition 31, likewise, is reasonably related to Ledeau's criminal history and the offense of conviction. Nor is Condition 31 overbroad or unduly punitive. Ledeau has chronically abused at least one partner, M.E., with the record implicitly supporting that Ledeau has abused more than M.E. Four of Ledeau's five PFMA convictions have occurred within the last five years. Condition 31, which requires Ledeau to disclose his publicly available domestic violence history to current or future people he is dating, in a relationship with, or intimate with, seeks to hold Ledeau accountable for his criminal behavior while ensuring that those he is involved with are aware of his history so that they know resources are available to them should they need them. Ledeau is also required to disclose that person's identity, address, and phone number to his probation officer, which again, ensures the safety of the community and helps rehabilitate Ledeau.

Finally, Condition 31 is not unconstitutional. Condition 31 does not impermissibly compel Ledeau's speech because Ledeau is not required to endorse a particular viewpoint. Instead, Ledeau is required to disclose his publicly available domestic violence history, which is factual, noncontroversial information. Nor does Condition 31 impermissibly infringe on Ledeau's right to privacy or his freedom of association. Condition 31 still allows Ledeau to engage in relationships of all sorts with others. This Court should affirm these sentencing conditions.

STANDARDS OF REVIEW

This Court reviews for legality a condition imposed in a criminal sentence. *State v. Johnson*, 2023 MT 143, ¶ 6, 413 Mont. 114, 533 P.3d 335. "A condition is illegal when there exists no statutory authority to impose it, where the condition exceeds the limits of the relevant sentencing statute, or where the court fails to 'adhere to the affirmative mandates of the applicable sentencing statutes.'" *State v. Hotchkiss*, 2020 MT 269, ¶ 11, 402 Mont. 1, 474 P.3d 1273 (citation omitted).

If this Court concludes the sentence condition is legal, this Court then reviews for abuse of discretion the reasonableness of the conditions or restrictions imposed. *Johnson*, ¶ 6. A district court abuses its discretion when it acts arbitrarily without conscientious judgment or exceeds the bounds of reason. *Id.*

This Court reviews de novo an appellant's claim that a sentence violates a constitutional provision. *State v. Ber Lee Yang*, 2019 MT 266, ¶ 8, 397 Mont. 486, 452 P.3d 897.

ARGUMENT

I. The district court did not abuse its discretion when it imposed Condition 29 and Condition 31, nor is either condition unconstitutional.

"[P]robationers do not enjoy the absolute liberty and heightened expectations of privacy afforded every Montana citizen; rather, they are subject to conditional liberty properly dependent upon special restrictions." *State v. Moody*, 2006 MT 305, ¶ 19, 334 Mont. 517, 148 P.3d 662; *see also* Mont. Code Ann. § 46-18-801(1). To that end, a sentencing judge may impose any reasonable restrictions or conditions during the suspended portion of an offender's sentence that are "considered necessary for rehabilitation or for the protection of the victim or society." *Johnson*, ¶ 7 (quoting Mont. Code Ann. § 46-18-201(4)(p)).

Because a sentencing judge's discretion is broad, this Court affords great deference to the sentencing court. *State v. Melton*, 2012 MT 84, ¶ 18, 364 Mont. 482, 276 P.3d 900 (citation omitted). This Court generally will affirm a restriction or condition imposed by the district court "so long as the restriction or condition has some correlation or connection—i.e., nexus—to the underlying offense or to

the offender himself." *Melton*¸¶ 18 (citations omitted). "If the restriction or condition at issue is overly broad or unduly punitive, or if the required nexus is absent or exceedingly tenuous, [this Court] will reverse." *Johnson*, ¶ 7 (citing *Melton*, ¶ 18).

A. The district court did not abuse its discretion when it imposed Condition 29.

1. The scope of Condition 29 does not go beyond what is reasonably related to Ledeau's criminal history and the offense of which he was convicted.

Condition 29 affords a probation officer a means to address any offensive contact with the victim before it results in a potentially violent encounter. The district court had statutory authority to impose any reasonable condition necessary for Ledeau's rehabilitation or the protection of the victim and society. *See* Mont. Code Ann. §§ 46-18-201(4), -202(1)(g).

Here, Ledeau committed the instant offense within three months of being convicted of another felony PFMA that involved the same victim, M.E. Despite being ordered to not have contact with M.E., Ledeau went to M.E.'s home. When M.E. refused to let him in, Ledeau threw a rock through her window and then broke a window screen so he could gain access to the house. M.E., afraid Ledeau would harm her *again,* fled to her neighbor's house.

Ledeau's contact with M.E. did not end there, though. Even though he remained under conditions to not contact M.E., Ledeau continued to do so while

detained pending resolution of the instant offense. (Appellant's Br. at 4; Doc. 5 at 2, Doc. 21 at 4.) In other words, the record clearly supports that Ledeau remains undeterred from contacting M.E. simply by being ordered to not do so. Condition 29, as an enforcement provision to the no contact condition, therefore, is more than reasonably related to Ledeau and the offense of conviction.

Nonetheless, Ledeau contends that Condition 29 is "tenuous" and "overly broad" because Ledeau did not commit the instant offense using electronic communication nor does the offense of PFMA have an electronic devices requirement. (Appellant's Br. at 13, 28-31.) Notably, however, Ledeau does not contest the inclusion of the no contact condition that includes electronic communication:

> The Defendant shall not knowingly have any contact, oral, written, electronic or through a third party, with the victim(s) unless such contact is voluntarily initiated by the victim(s) through the Department of Corrections. DOC staff may notify victims about the availability of opportunities for facilitated contact with their offenders without being considered "third parties."

(Doc. 30 at 8.) Regardless, Ledeau's assertions are undermined by this Court's decision in *Hotchkiss*.

In *Hotchkiss*, after Hotchkiss pled guilty to sexually assaulting his girlfriend's 13-year-old daughter, the district court imposed probation conditions that, in pertinent part, required Hotchkiss to have prior permission to access the internet, restricted Hotchkiss's ability to possess a computer, and prohibited

Hotchkiss from having access to a cell phone with internet capabilities without prior permission. *Hotchkiss*, ¶ 7.

This Court reversed with directions for the district court to modify Hotchkiss's conditions to not include language requiring Hotchkiss to receive prior permission before accessing the internet or possessing certain electronic devices. *Id*. ¶¶ 18, 22. This Court reasoned that the challenged conditions went "beyond what is reasonably related to Hotchkiss's criminal history, and the offense of which he was convicted, which was not committed using any type of electronic device." *Id*. ¶ 18. This Court, however, did "recognize [that Hotchkiss's] *usage* of the internet and electronic devices warrant appropriate monitoring on conditional release, given the nature of his offense and the other conditions imposed." *Id*. ¶ 19 (emphasis in original).

Here, like Hotchkiss, Ledeau was convicted of a crime that does not have an electronic device usage element. Like Hotchkiss, Ledeau also admittedly did not commit the offense using electronic communication. Nonetheless, this Court, in *Hotchkiss*, found the conditions that monitor Hotchkiss's internet and electronic device usage were appropriate. This logic supports that, here, it is reasonable for the district court to authorize probation officers a means to ensure that Ledeau is not contacting M.E. should reasonable suspicion arise that Ledeau is attempting to do so in violation of the no contact condition. This is especially significant for an

offender, like Ledeau, who has already violated his previous probation conditions by contacting M.E., resulting in him committing the instant offense, and then continuing to contact M.E. while he was detained pending resolution of his case.

Condition 29 also is not overbroad. Ledeau is on notice regarding what can be searched. The nature of the search is further constrained by the requirement that reasonable suspicion exists that Ledeau has attempted to violate *a specific condition*, the no contact condition, *using electronic communication*. Ledeau's contention that probation officers will take advantage of Ledeau's device and search every application on the phone, including Ledeau's credit card information, is pure speculation. (*See* Appellant's Br. at 22.) Ledeau's speculation also disregards that he can challenge searches conducted pursuant to Condition 29 that result in incriminating information. In other words, simply because a search conducted pursuant to Condition 29 may be later found to have exceeded the scope of Condition 29, that does not mean Condition 29, as written, is overbroad.

Ledeau's argument that the condition is also overbroad because M.E. can provide law enforcement access to her phone disregards that M.E. may not be the person reporting the contact between Ledeau and M.E. It also disregards that Ledeau is the person on probation, where his liberties are naturally limited due to his criminal behavior.

Nor is Condition 29 unduly punitive. Indeed, Condition 29 provides Ledeau increased notice of his probation officer's ability to search his electronic devices if reasonable suspicion exists that he has used electronic communication to attempt to contact M.E. in violation of the no contact condition. As the district court aptly noted, a probation officer would already have that ability to conduct such a search under those circumstances. Accordingly, because Condition 29 is reasonably related to Ledeau and the offense of conviction, and is not overbroad or unduly punitive, the district court did not abuse its discretion when it imposed the condition.

2. Condition 29 does not violate the Fourth Amendment of the United States Constitution or article II, section 11, of the Montana Constitution.

As part of his overbreadth argument and as a standalone argument, Ledeau asserts that Condition 29 authorizes an unconstitutional search of private digital data. (Appellant's Br. at 11.) Ledeau's argument that Condition 29 is overbroad based on applicable constitutional search standards, however, is without merit. Relying on the reasonable suspicion standard for warrantless probation conditions, which will be discussed further below, does not, itself, establish that Condition 29 is overly broad.

Nor is Condition 29, itself, unconstitutional. The Fourth Amendment of the United States Constitution and article II, section 11, of the Montana Constitution

protect individuals from unreasonable searches and seizures. Probation searches, however, "do not necessarily violate the Fourth Amendment when conducted pursuant to state law and supported by reasonable suspicion to believe contraband would be found." *State v. Fischer*, 2014 MT 112, ¶ 10, 374 Mont. 533, 323 P.3d 891 (citing *Griffin v. Wis.*, 483 U.S. 868, 878 (1987)).

"The constitutional justification for dispensing with the more stringent warrant and accompanying probable cause requirements" is because probationers, unlike ordinary citizens, "have significantly diminished subjective and objective expectations of privacy" because:

> (1) the nature of probation as criminal punishment in the form of conditional liberty granted as a matter of sentencing grace; (2) their resulting awareness and expectation that they will thus be subject to extraordinary government scrutiny while on probation; (3) the government's offsetting special needs and compelling interests in probationer rehabilitation and public safety through close monitoring and enforcement of compliance with conditions of probation and the criminal law; and (4) recognition that probationers are more likely than ordinary citizens to violate the law and have greater incentive to attempt to conceal such violations and immediately dispose of incriminating evidence.

State v. Peoples, 2022 MT 4, ¶ 17, 407 Mont. 84, 502 P.3d 129 (citations omitted).

Despite Ledeau's contention otherwise, searches authorized based on Condition 29 do not equate to Ledeau "relinquish[ing] his expectation of privacy in his personal digital data." (Appellant's Br. at 13.) Condition 29 authorizes a search of Ledeau's electronic devices upon *reasonable suspicion* that he has *attempted to*

contact M.E. Condition 29, therefore, accurately recognizes, as this Court continually has, that Ledeau, as a probationer, has a significantly diminished expectation of privacy and is not "entitled to the full breadth of constitutional privacy protection." *Peoples*, ¶ 17.

Ledeau's argument that Condition 29, on its face, does not satisfy the probation search exception is equally unavailing. The probation search warrant exception allows a probation officer to:

> search a probationer's residence and property, or cause them to be searched by another officer, without a warrant or probable cause for evidence of violation of a probation condition or the criminal law if: (1) such searches are generally authorized by an established state law regulatory scheme that furthers the special government interests in rehabilitating probationers and protecting the public from further criminal activity by ensuring compliance with related conditions of probation and the criminal law; (2) the probation officer has reasonable cause to suspect, based on awareness of articulable facts, under the totality of the circumstances that the probationer may be in violation of his or her probation conditions or the criminal law; and (3) the warrantless search is limited in scope to the reasonable suspicion that justified it in the first instance except to the extent that new or additional cause may arise within the lawful scope of the initial search.

Peoples, ¶ 17 (citations omitted).

Ledeau seemingly argues that because "[c]ell phones have become storage devices for all manner of private information," that the warrant and accompanying probable cause requirements must be satisfied before a probation officer may search Ledeau's cell phone. (Br. at 14 (quoting *State v. Mefford*, 2022 MT 185, ¶ 15,

410 Mont. 146, 517 P.3d 210)). In support of his argument, Ledeau relies heavily on *Riley v. California*, 573 U.S. 373 (2014). Ledeau's reliance on *Riley*, however, is misplaced. In *Riley*, this Court held that a search of the digital contents of a phone generally must be done pursuant to a search warrant even when the search occurs subsequent to the person's[10] arrest. *Riley*, 573 U.S. at 401. Ledeau, as a probationer, has a diminished expectation of privacy. Ledeau's cell phone, therefore, is not entitled to the protections of a cell phone owned by an ordinary citizen.

Ledeau's argument that searches may occur pursuant to Condition 29 that may subsequently be found illegal does not equate to Condition 29, itself, being unconstitutional. In support of his argument, Ledeau hypothesizes that if M.E. receives messages from a burner phone, she may report that she suspects it is Ledeau, and that would authorize his probation officer to conduct a blanket search throughout his entire phone. (Appellant's Br. at 22.) Setting aside Ledeau's pure speculation that a probation officer would utilize their time to explore all applications of Ledeau's phone, should such a search happen *and* that search yield incriminating evidence, Ledeau would be able to contest such evidence. Indeed, Ledeau would have the ability to challenge all searches conducted pursuant to Condition 29 should charges or a revocation proceeding be brought against him

[10] The defendants in *Riley* were not probationers when the digital date of their cell phones were searched incident to their respective arrests. *Riley*, 573 U.S. at 378-81.

based off evidence discovered as part of that search. The district court did not abuse its discretion when it imposed Condition 29.

B. The district court did not abuse its discretion when it imposed Condition 31.

1. The scope of Condition 31 is reasonably related to the offense of which Ledeau was convicted and his criminal history.

The purpose of Condition 31 and the corresponding Intimate Partner Disclosure is to: "(1) Enhance the safety of your victim(s) and the community; (2) assist you in accepting responsibility and accountability for your violent behavior; and (3) assist you in ending your violent behavior." (Appellant's App. B.) The district court had statutory authority to impose any reasonable condition necessary for Ledeau's rehabilitation or the protection of the victim and society. *See* Mont. Code Ann. §§ 46-18-201(4), -202(1)(g).

Ledeau contends that the nexus between Condition 31 and Ledeau's criminal history and offense of conviction is inadequate. (Appellant's Br. at 40.) Although the record is silent to whom the victim(s) of the first three PFMAs are, the record is clear that Ledeau has five PFMA convictions and obtained four of those five convictions in five years, with the last two being felony PFMAs against the same victim, M.E., and occurring within a year of each other. (Doc. 21 at 2.) The alarming rate at which Ledeau commits PFMAs supports that he is in need of conditions that are specifically created to target his violent behaviors towards those

he is involved with. Condition 31 does just that by requiring Ledeau to be accountable for his violent behaviors by disclosing his domestic violence history, that is publicly available to his partner(s), and sharing the contact information of those partner(s) to his probation officer to ensure those partner(s)' safety.

Ledeau's argument that he has not "abused women with whom he is simply romantically involved," but rather has only abused women he has been in long term relationships, is not supported by the record. (Appellant's Br. at 40.) The record is silent as to the nature and length of Ledeau's and M.E.'s relationship. The record only reflects that he committed one felony PFMA against M.E. when they were together and then committed the instant felony PFMA when they were broken up. Nor does the length of the relationship matter. At a minimum, Ledeau has chronically abused one partner, with the record implicitly suggesting by not asserting that M.E. was the victim of the other offenses, that he had abused more than one partner.

Ledeau argues that the condition is overbroad because "intimate partner" is not clearly set out and includes partners outside those recognized by Mont. Code Ann. § 45-5-206. (Appellant's Br. 40-43.) Montana Code Annotated § 45-5-206(2)(b) defines "partners" as "spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship." Despite Ledeau's contention otherwise, the plain

meaning of "partners" for purposes of PFMA does include short term as well as long term relationships. Moreover, the "romantically involved" definition as stated in the Intimate Partner Disclosure effectively mirrors Mont. Code Ann. § 45-5-206(2)(b). Accordingly, Ledeau is put on notice that if he is dating a person, in an ongoing relationship with a person, or is intimately involved with a person, that person is required to know about his public domestic violence history and Ledeau is required to disclose the contact information and name of that person.

Nor is Condition 31 unduly punitive. Condition 31 requires Ledeau to disclose information about his domestic violence history that is publicly available. Ledeau is required to register as a violent offender, which is listed on a public website. Ledeau's public criminal history is also easily accessible with a simple online search. Therefore, Ledeau being required to share that publicly available history does not unduly punish him. Instead, it ensures that those he is or becomes involved with are made fully aware of his history to ensure his rehabilitation and the partner's safety. The district court did not abuse its discretion when it imposed Condition 31.

2. Condition 31 does not violate the First Amendment or article II, section 7, of the Montana Constitution.

Ledeau argues that having to disclose his PFMA conviction to his current intimate partner compels his speech in violation of the First Amendment. (Appellant's Br. at 38.) "Congress shall make no law . . . abridging the freedom of

speech." U.S. Const. amend. I. The Montana Constitution likewise provides that "[n]o law shall be passed impairing the freedom of speech or expression." Mont. Const. art. II, § 7. "[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

On occasion, the United States Supreme Court has "applied a lower level of scrutiny to laws that compel disclosures in certain contexts" such as when the disclosure is "factual, uncontroversial information." *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 768 (2018). Although the Supreme Court has notably applied this lower level of scrutiny in instances of compelled commercial speech, the same logic should apply here. *Id.* A probationer's speech may be compelled so long as the restriction is justified and not unduly burdensome and the information the restriction compels is factual and uncontroversial. *See id.*

The information that Condition 31 requires Ledeau to disclose is "factual, uncontroversial information." It is not requiring Ledeau to express or endorse a viewpoint. *See generally Wooley*. Condition 31 is requiring Ledeau to simply state his domestic violence history that is publicly available[11] and does not require that he disclose the underlying facts of any orders or convictions.

[11] As previously mentioned, Ledeau is already required to register as a violent offender, which is publicly available information. As is his criminal history as noted in the instant appellate proceeding.

Even if this Court concludes that Condition 31 unconstitutionally compels speech, the disclosure of Ledeau's PFMA conviction is narrowly tailored to support the compelling state interests of rehabilitating Ledeau and protecting society. As argued more extensively above, the purpose of both disclosures required under the Intimate Partner Disclosure is to help Ledeau to accept accountability for his violent behavior and to protect the community from Ledeau committing further abuse.

3. Condition 31 does not impermissibly impede on Ledeau's right to privacy or freedom of association.

Ledeau argues that Condition 31 requiring him to disclose the identity of a person he is romantically involved with violates his constitutional right to privacy and his freedom of association. (Appellant's Br. at 32.)

Article II, section 10, of the Montana Constitution affords individuals the right to privacy. The First Amendment to the United States's Constitution and article II, section 6, of the Montana Constitution protects freedom of association.

In support of his assertion that Condition 31 infringes on his right to privacy, Ledeau relies on the United States Supreme Court landmark decisions in *Griswold v. Connecticut*, 381 U.S. 479 (1965), *Eisenstadt v. Baird*, 405 U.S. 438 (1972), and *Lawrence v. Texas*, 539 U.S. 558 (2003). (Appellant's Br. at 33-34.) Although these cases do support that the United States Supreme Court has recognized the right to privacy in intimate relationships, the overarching theme of

these cases is that a person cannot be criminalized for consensual sex with a person of the same biological sex or for managing one's own reproductive health. *See Griswold*, 381 U.S. at 485-86; *Baird*, 405 U.S. 454; *Lawrence*, 539 U.S. at 578-79.

These cases did not contemplate the right to privacy a probationer, who has several domestic violence convictions, has in intimate relationships. Nor, under the reasoning of those cases, would that right to privacy extend to protecting intimate relationships in which one partner is abusing the other. Moreover, Condition 31 does not impermissibly infringe on Ledeau's right to privacy simply by disclosing the name, address, and phone number of a person he is dating, seeing intimately, or in a relationship with. Condition 31 does not require disclosure of the intimacies that Ledeau and that person share or other personal information about their relationship.

However, even if Condition 31 impermissibly infringes on Ledeau's right to privacy, "rehabilitation and the protection of the victim and society are compelling governmental interests." *State v. Guill*, 2011 MT 32, ¶ 68, 359 Mont. 225, 248 P.3d 826. Here, the record supports that Ledeau is a chronic abuser of his intimate partner(s). Having Ledeau disclose his PFMA to future intimate partners,

and disclose those partners to his probation officer,[12] holds Ledeau accountable, which supports his rehabilitation. It also protects society by ensuring that future partners are aware of their partners' conduct and that there are resources available should they need them to ensure their own safety.

Nor does Condition 31 prevent, as Ledeau argues, his ability to freely associate with others. (Appellant's Br. at 32-38.) Condition 31, by its language, does not preclude Ledeau from having relationships of all sorts with other people. Instead, Condition 31 requires that Ledeau simply engage in these relationships with open honesty about information that is publicly available concerning his domestic violence of previous partner(s).

To the extent that this Court views that the effect of Condition 31 does limit Ledeau's ability to associate with others, a sentencing court has express statutory authority to impose conditions that restrict an offender's rights of association and movement. *See* Mont. Code Ann. § 46-18-202(1)(c)-(d); *State v. Bullplume*, 2013 MT 169, ¶ 18, 370 Mont. 453, 305 P.3d 753. Condition 31 is not unconstitutional.

[12] Ledeau argues that the disclosure of intimate partners violates those partners' right to privacy. (Appellant's Br. at 36-37.) Ledeau, however, does not have standing to assert a constitutional violation on behalf of those partners. *See 350 Mont. v. State*, 2023 MT 87, ¶ 17, 412 Mont. 273, 529 P.3d 847.

CONCLUSION

This Court should affirm Ledeau's conviction and sentence.

Respectfully submitted this 27th day of August, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief 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 5,943 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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CERTIFICATE OF SERVICE

I, Cori Danielle Losing, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-27-2024:

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