

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0417

STATE OF MONTANA,

Plaintiff and Appellee,

v.

TRINA ROE,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, The Honorable John W. Larson, Presiding

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STATEMENT OF THE ISSUES

1. Whether the justice court properly exercised its discretion in imposing alcohol monitoring as a pretrial condition of release in Appellant Trina Roe's case for a second offense Aggravated Driving Under the Influence (DUI).
2. Whether the justice court imposed a legal sentence for a second offense DUI.

STATEMENT OF THE CASE

On December 15, 2022, a deputy with the Missoula County Sheriff's Office (MCSO) filed a notice to appear and complaint in justice court charging Appellant Trina Roe (Roe) with the offense of Aggravated Driving Under the Influence (DUI), a second offense, for operating a vehicle on Highway 93 South at 6:40 a.m., while under the influence of alcohol and with a breath alcohol level over .160. (Unnumbered Doc.,¹ 12/15/22 citation (sealed).) Roe made her initial appearance in justice court on December 20, 2022, and pled not guilty. (Doc. 1 at 44.)

The parties reached a plea agreement. (Doc. 1 at 36-38, 3/8/23 Plea Agreement, attached as App. A.) The State agreed to amend the charge from Aggravated DUI (2nd offense) to DUI (2nd offense) and to recommend a sentence

¹ The district court record transmitted to this Court includes a folder labeled "DC-23-217 Lodged and sealed," which contains unnumbered items containing confidential and/or protected information, including a copy of the citation.

of one year in jail with all but seven days suspended, a fine of \$1,200, and a surcharge of \$85. (*Id.*) The agreement provided “that the recommended sentence is the appropriate disposition of the case pursuant to § 46-12-211(1)(b), MCA.” (*Id.*) Roe acknowledged she was able and willing to pay all financial obligations. (*Id.* at 38.)

At a March 14, 2023 hearing, Roe asked to change her plea to guilty and submitted the executed plea agreement to the court. (Transcript (Tr.) 2² at 00:25-00:41.) The State amended the charge as agreed. (Doc. 1 at 33; Tr. 2 at 01:23-01:58.) Roe provided the factual basis for the offense and pled guilty. (Tr. 2 at 02:30-02:45.) Roe confirmed she had one prior DUI conviction, and the court accepted her guilty plea. (Tr. 2 at 02:46-03:03.)

Before sentencing, Roe filed a “Motion and Brief Objecting to Pretrial Alcohol Monitoring Costs,” stating the issues as: (1) “MCA 61-8-1010(2)(a) Requires a Conviction Before An Alcohol Monitoring Program And The Associated Fees Are Imposed[;]” and (2) “MCA 46-9-108(1)(i) Does Not Authorize Imposition of Costs For Alcohol Monitoring.” (Doc. 1 at 14-18.) Roe

² The transcripts, or recordings, of the justice court proceedings were filed on a disk with this Court on August 14, 2023, which contains four separate recordings labeled by the justice court as (1) Initial Appearance, (2) Omni Part 1, (3) Omni Part 2, and (4) Change of Plea. The State will refer to these transcripts/recordings as Tr. 1, Tr. 2, Tr. 3, and Tr. 4, respectively.

argued that alcohol monitoring as a pretrial condition of release was improper, stating:

There was no mental health or chemical dependency assessment of the Defendant prior to the imposition of this penalty [of alcohol monitoring] and no explanation as to why the typical condition of no alcohol use, along with pre-trial services, was insufficient. This is a second offense but the prior offense was in 2016. The Defendant has no other criminal history. There was absolutely no evidence that the Defendant was a daily drinker nor was there any other inquiry made to justify the daily monitoring.

(*Id.* at 14-15.) Further, in the conclusion of the brief, Roe argued “she should be relieved of the required alcohol monitoring during the 45 day hard suspension of her driver’s license so that a probationary license can be immediately issued.” (*Id.* at 17.) The State filed a response to Roe’s motion and brief. (*Id.* at 24-32.) Roe submitted a reply brief. (*Id.* at 19-23.)

The justice court issued an order on April 10, 2023 (*id.* at 12-13), denying Roe’s motion, ruling (1) under Mont. Code Ann. § 46-9-108, when a person is charged with a second or subsequent DUI offense, due to public safety concerns, a chemical dependency evaluation is not required prior to imposing alcohol monitoring as a pretrial condition of release; and (2) the postconviction suspension of Roe’s driver’s license, and the requirements for obtaining a probationary license during the statutorily mandated 45-day hard suspension, are administered and controlled by the Montana Department of Justice, Motor Vehicle Division (MVD),

and courts lack the power to impose a condition of sentence contravening MVD's requirements. (*Id.* at 12-13.)

On April 11, 2023, the justice court imposed a sentence of one year in jail with all but seven days suspended and gave Roe credit for having served one day. (*Id.* at 5-6; Tr. 4 at 19:36-20:21). The court imposed a fine of \$1,200 with a surcharge of \$85, and agreed, upon proof, to give Roe credit against the fine for her out-of-pocket costs for the ACT portion of the program with Starr Counseling. (Doc. 1 at 5; Tr. 4 at 20:21-21:08.) The court imposed misdemeanor probation as a condition of the sentence and read Roe the conditions of misdemeanor probation. (Tr. 4 at 21:09-23:20.) The court stayed imposition of the sentence. (Tr. 4 at 23:23-23:27.) Roe appealed her case to the district court. (Doc. 1 at 1-2.)

In the district court, Roe filed a motion and brief on April 28, 2023 (Doc. 4), stating that her appeal was "expanded . . . to include a dismissal of the case because of a violation of her Constitutional right to counsel, the violation of the presumption of innocence, and Double Jeopardy." (*Id.* at 2.) The State filed its response brief on May 11, 2023. (Doc. 6.)

The district court held a hearing on June 7, 2023. (6/7/23 Tr., attached as App. B.) The parties made oral arguments. (*Id.* at 4-10.) The district court issued an order affirming the justice court's authority to impose alcohol monitoring as a pretrial condition of release and concluded that, if the alcohol monitoring had

created a financial hardship, then Roe could have addressed that through Missoula Correctional Services. (Doc. 18.)

STATEMENT OF THE FACTS

At 6:40 a.m., on December 15, 2022, MCSO Deputy Hash observed a vehicle spin out of control, rotate 180 degrees, and come to a stop pointing southbound in the northbound lane of Highway 93 South in Missoula County. (Doc. 6 at 1-2.)³ The vehicle remained stopped, and Deputy Hash made contact with the driver, who he identified as Roe. (*Id.* at 2.) Deputy Hash immediately smelled the overwhelming odor of alcohol and began a DUI investigation. (*Id.*) As a result of his investigation, Deputy Hash arrested Roe and transported her to jail where, having been read the Montana Implied Consent Advisory, she consented to provide breath samples. (*Id.*) The breath testing instrument showed her alcohol level was .211, more than twice, and closer to three times, the legal limit. (*Id.*) Roe had a prior DUI conviction in 2016 in Ravalli County. (*Id.*)

At her initial appearance in justice court on December 20, 2022, Roe confirmed that she had been present when the court read everyone their rights and

³ Because Roe pled guilty, the facts leading to the issuance of the citation are taken from the State's 6/11/23 Response to Defendant's Motion to Dismiss. (Doc. 6.)

that she understood those rights. (Tr. 1 at 00:16-00:20.) The court informed Roe of the charge against her and the maximum possible penalties. (Tr. 1 at 00:22-01:00.) The court asked Roe if she wanted an attorney to assist her, and Roe requested a public defender. (Tr. 1 at 01:00-01:06.) The court entered a not guilty plea and appointed counsel from the public defender's office. (Tr. 1 at 01:06-01:10.) Since Roe had posted bond, the court informed her that she would continue to be released on that bond. (Tr. 1 at 01:07-01:33.)

The court informed Roe that, because she was charged with a second DUI offense and the level of alcohol in her system was alleged to be more than twice the legal limit, her continued release on bond would be subject to several conditions, including that Roe not possess or consume alcohol and not enter any bar or casino, that she participate in alcohol monitoring, and that she participate in pretrial supervision. (Tr. 1 at 03:05-03:34.)

The court discussed with Roe two options available for alcohol monitoring through the pretrial supervision program: the more restrictive transdermal alcohol

monitoring unit⁴ or the less restrictive facial recognition breathalyzer unit.⁵ (Tr. 1 at 03:35-03:45.) The court asked Roe where she resided and whether she had good cellular phone service at her residence, and Roe responded that she lived in Stevensville and had good cellular phone service at her residence. (Tr. 1 at 03:46-03:51.)

The justice court imposed the less restrictive form of alcohol monitoring, remote breath testing. (Doc. 1 at 44, 12/20/22 Minutes of Misdemeanor Arraignment and Condition of Release, attached as App. C; Tr. 1 at 03:51-04:09.) The court expressly informed Roe that pretrial supervision program staff would discuss with her the fees associated with their services, including alcohol monitoring and her eligibility for sliding-scale, or reduced, fees. (Tr. 1 at 04:10-04:50.)

After Roe pled guilty on March 14, 2023, the court advised the parties that it would not follow the plea agreement because it did not include misdemeanor probation as a condition of sentence. (Tr. 2 at 03:03-04:36.) The court explained

⁴ Mont. Code Ann. § 46-9-108(1)(i)(i); Mont. Admin. R. 23.18.301(2) (instrument securely located in close proximity to skin and capable of remotely sampling sweat for transdermal alcohol concentration).

⁵ Mont. Code Ann. § 46-9-108(1)(i)(ii); Mont. Admin. R. 23.18.301(11) (mobile breath alcohol testing device capable of scheduling tests throughout day to detect and verify presence and level of alcohol in testing person's body). Facial recognition of the person testing is required by Mont. Code Ann. § 46-9-108(1)(i)(ii).

that it was its standard practice to impose misdemeanor probation on all second and third offense DUIs, and that it would impose probation in Roe's case. (Tr. 2 at 03:58-04:37.)

While making sentencing arguments, Roe requested that the court give her credit toward, or waive, the alcohol monitoring that would be required by MVD during the mandatory 45-day hard suspension period that MVD imposes following a second DUI conviction. (Tr. 2 at 05:45-06:22). Roe also raised for the first time whether the court had authority to impose alcohol monitoring as a pretrial condition of release, arguing that a conviction was required before alcohol monitoring could be imposed. (*Id.*) Roe argue that because she had complied with the pretrial alcohol monitoring, and because she wanted to be immediately eligible for a probationary driver's license upon conviction, the court should give her credit for the time she spent on pretrial alcohol monitoring toward, or in lieu of, the monitoring MVD would require during its 45-day hard suspension. (*Id.*)

The court informed Roe that it was the longstanding protocol of the justice court at an initial appearance on all second and third offense DUIs to impose some form of alcohol monitoring as a pretrial condition of release. (Tr. 2 at 06:25-07:46.) The court also informed Roe it had no authority to credit or substitute the pretrial alcohol monitoring for MVD's postconviction administrative requirement

of continuous alcohol monitoring during the hard suspension period. (Tr. 2 at 09:00-10:15.)

After making arguments regarding sentencing, Roe and her attorney met privately, and, upon return, Roe stated she did not object to misdemeanor probation as a condition of sentence. (Tr. 3 at 02:00-02:10.) Roe informed the court that she wanted to submit a brief “on the issue of pretrial monitoring” (Tr. 3 at 06:24-06:34) and “whether she gets credit for the suspension” (Tr. 3 at 07:25-07:39). Regarding the power of the court to impose alcohol monitoring as a pretrial condition of release, counsel for Roe specifically stated, “If there’s some authority, um, in the statute, just tell me what it is and I’m happy, I’m happy to, to accept that. But I, I haven’t found that, as of yet.” (Tr. 3 at 07:40-07:55.) In response, the court read out loud Mont. Code Ann. § 46-9-108(1)(i). (Tr. 3 08:35-09:54.) Counsel for Roe responded, “I will look it over.” (Tr. 3 at 10:00-10:06.)

When the parties appeared on April 11, 2023, the justice court asked Roe how she wished to proceed, and Roe’s counsel stated: “The, uh, I think the intent here is we want to uh enter a conditional plea and, um, I guess I would broaden—it’s the same issues—but just broaden it in terms of requesting a dismissal based on the violation of the presumption of innocence, um, given that she didn’t have counsel when this, uh, monitoring program was assessed.” (Tr. 4 at 01:05-01:35.) Roe did not move the justice court to dismiss her case. (*See generally* Tr. 4.)

Although she had not withdrawn her guilty plea entered on March 14, 2023, Roe again entered a guilty plea, stating that it was under Mont. Code Ann. § 46-12-204(3), that she was reserving her right to appeal, and that if successful on appeal she reserved the right to withdraw her guilty plea and to presumably proceed to trial. (Tr. 4 at 17:12-18:45.)

SUMMARY OF THE ARGUMENT

At a defendant's initial appearance for a second or subsequent DUI offense, Montana courts have broad discretion to impose conditions of release, including some form of alcohol monitoring. The purpose of conditions of release, in addition to ensuring that defendants appear for court, is to protect public health and welfare by reducing the alarming⁶ number of people on Montana's highways who drive

⁶ K. Smith and M. Cetera, *Worst States For Drunk Driving in 2025*, Forbes Advisor (Jan. 3, 2025) <https://www.forbes.com/advisor/car-insurance/worst-states-for-drunk-driving/>

Top 10 Worst States For Drunk Driving

1. Montana

Montana's score: 100 out of 100

- Montana ranks as the worst state for drunk driving, with 8.57 drunk drivers involved in fatal crashes for every 100,000 licensed drivers, and 7.14 people killed in crashes involving a drunk driver for every 100,000 state residents. Both rates are the highest in the nation.
- More than two-fifths (43.51%) of traffic deaths in Montana are caused by drunk drivers, the highest in the nation. (Cont'd.)

under the influence of alcohol and/or drugs and, in the case of repeat offenders, to ensure compliance when a court orders a defendant to not possess or consume alcohol or drugs. The justice court in this case assessed the individualized information in its possession—that Roe had a prior DUI conviction, had allegedly operated a motor vehicle with a BAC of .160 or greater at 6:40 a.m., and was charged with Aggravated DUI (2nd offense)—and properly imposed the least restrictive form of alcohol monitoring as a pretrial condition of release. At no time prior to entering a guilty plea did Roe seek to modify this condition of release.

When the justice court sentenced Roe, it imposed a legal sentence. Roe argues without citation to authority that because the justice court improperly ordered alcohol monitoring as a pretrial condition of release, to remedy the wrong, this Court should hold that she was entitled to credit toward the fine imposed for her out-of-pocket costs associated with alcohol monitoring as a pretrial condition of release. Even if this Court were to hold that the justice court erred in requiring alcohol monitoring as a pretrial condition of release, there is no authority for the

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- Underage drinkers are also at high risk in Montana. The state has the worst rate of drunk drivers under age 21 involved in fatal crashes (1.17 per 100,000 licensed drivers).
 - Big Sky Country has the 11th highest number of DUI arrests per 100,000 licensed drivers (450.50).

remedy Roe seeks. Moreover, a careful review of the plea agreement and record shows that Roe presented no testimony or documentation to demonstrate that she made any payments, or requested consideration for a reduced fee, from the pretrial supervision program that provided the alcohol monitoring.

ARGUMENT

I. Standard of review

“Courts have the statutory authority to impose conditions of release on bail.” *Grafft v. Mont. Fourth Judicial Dist. Ct.*, 2021 MT 201, ¶ 15, 405 Mont. 192, 492 P.3d 1213. “Since the matter is one within the discretion of the court we should not be inclined to disturb its ruling unless a clear abuse of such discretion appears.” *Id.* ¶ 11 (citation omitted).

“Whether a sentence is legal is a question of law subject to de novo review. Our review of legality is generally confined to determining: whether the sentence falls within the statutory parameters, whether the district court had statutory authority to impose the sentence, and whether the [lower] court followed the affirmative mandates of the applicable sentencing statutes.” *State v. Ingram*, 2020 MT 327, ¶ 8, 402 Mont. 374, 478 P.3d 799 (citations omitted).

II. The justice court properly exercised its discretion by imposing alcohol monitoring as a pretrial condition of release.

Roe asserts that justice court “exceeded its authority” by imposing alcohol monitoring as a pretrial condition of release because it did so “without an individualized assessment.” (Appellant’s Br. at 15.) In 2021, prior to Roe’s second offense, however, the legislature amended Mont. Code Ann. § 46-9-108(1)(i) to expressly recognize the longstanding power of courts to impose alcohol monitoring as a pretrial condition of release, and added the following language:

(1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

...

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription. *The court may require an alcohol monitoring device that can detect the usage of alcohol by an individual and includes but is not limited to:*

- (i) a transdermal alcohol monitoring unit; or*
- (ii) a facial recognition breathalyzer unit.*

Mont. Code Ann. § 46-9-108(1) (2021) (emphasis added); 2021 Mont. Laws, ch. 412, § 1. Additionally, the legislature in 2021 directly addressed the cost of alcohol monitoring imposed as a pretrial condition of release by enacting Mont. Code Ann. § 46-9-108(2)(b), which states in relevant part:

If . . . alcohol monitoring under subsection (1)(i) is imposed, the court shall specify the terms under which the monitoring must be

performed. The court may require as a condition of release that the defendant pay for the costs of . . . alcohol monitoring. If the defendant has not paid for . . . alcohol monitoring as a condition of release, on conviction, the court shall require as a condition of the sentence that the defendant reimburse the providing agency for the costs of . . . alcohol monitoring, unless the court determines that the defendant is not or will not be able to pay the costs.

The effective date of these amendments to Mont. Code Ann. § 46-9-108 was July 1, 2021 (2021 Mont. Laws, ch. 412, § 2), and the 2021 version of the statute controls in Roe’s case.

Montana Code Annotated § 46-9-108(1)(i) does not require that a chemical dependency or mental health assessment be performed before a court may impose alcohol monitoring as a pretrial condition of release. Indeed, subsection (j), which was enacted in 2013,⁷ allows a court, either separately from or in addition to any alcohol and/or drug monitoring, to impose a pretrial condition of release requiring a defendant to undergo and comply with mental health and/or chemical dependency assessment. Mont. Code Ann. § 46-9-108(1)(j).

In *Miller v. Eleventh Judicial Dist. Court*, 2007 MT 58, ¶ 7, 336 Mont. 207, 154 P.3d 1186, this Court stated, “Section 46-9-106, MCA, provides that before a verdict has been rendered, the court shall authorize the release of the defendant upon reasonable conditions that ensure the safety of the community or of any

⁷ 2013 Mont. Laws, ch. 209, § 2.

person.” Montana Code Annotated § 46-9-108 “contains a non-exclusive list of conditions that may be imposed to ensure the safety of the community,” which “includes the imposition of bail” under Mont. Code Ann. § 46-9-108(1). *Id.* While courts have broad discretion in fashioning pretrial conditions of release, they must be the least restrictive conditions necessary to meet the goals of public safety and the appearance of the defendant. *Id.*; *see also Bryan v. Slaughter*, No. OP 21-0564, 2021 Mont. LEXIS 1004 (Dec. 9, 2021) (“A defendant’s wealth or financial circumstances should not be the determining factor in whether the defendant secures conditional pretrial release. The decision should be whether the defendant is of such high risk he should be incarcerated pending trial.”).

As this Court touched on in *Bryan*, in 2017 the legislature mandated the implementation of a pretrial program to be used by courts to “assign release conditions and determine placement options.” Mont. Code Ann. §§ 3-1-708, 46-9-109. In the development of the pilot Pretrial Program,⁸ the Office of the Court Administrator (OCA), under the supervision of this Court, clearly recognized the greater level of risk to public safety that is posed by persons charged with second and subsequent DUI offenses and included the following language in OCA’s

⁸ <https://courts.mt.gov/cao/Pretrial/>

publication entitled “Release Conditions Matrix”:⁹ “When the defendant’s charges are a second or subsequent [DUI], the release conditions automatically default to at least Release Level 2 *and include substance testing.*” (Emphasis added.)

Roe argues that before the justice court could impose alcohol monitoring as a pretrial condition of her release, it was required to “conduct an individualized assessment[,]” to question her “about her unique circumstances and determin[e] whether the monitoring was necessary, practical, and financially feasible,” and to determine that “the other conditions that prohibited alcohol use and entering bars and casinos were thus insufficient.” (Appellant’s Br. at 9-10.) In support of her argument, Roe cites a single case, *State v. Spady*, 2015 MT 218, 380 Mont. 179, 354 P.3d 590, in which a court had ordered a defendant to participate in a 24/7 Program under Title 44 as a pretrial condition of release.

Unlike *Spady*, the justice court did not order Roe to participate in a 24/7 Program—Missoula County does not participate in a 24/7 Program.¹⁰ Missoula County provides a much broader pretrial supervision program—prior to 2024 through a contract with the nonprofit organization Missoula Correctional Services

⁹ <https://courts.mt.gov/external/pretrial/docs/pretrial-dmf.pdf> (1/1/2022 “Montana Pretrial Release Conditions Matrix (November 2021) at 3.)

¹⁰ Source: <https://dojmt.gov/247-sobriety-program/>

and now directly under the governmental umbrella of Missoula County¹¹—which may include, but is not limited to, alcohol monitoring under Mont. Code Ann. § 46-9-108(1)(i). Missoula County likewise participates in OCA’s pilot Pretrial Program.¹² In Roe’s case, the justice court imposed pretrial conditions of release, including pretrial supervision and alcohol monitoring via a facial recognition breathalyzer unit, as authorized by Mont. Code Ann. § 46-9-108(1)(i)(ii).

The two forms of alcohol monitoring provided for under Mont. Code Ann. § 46-9-108(1)(i)(i) and (ii) are less stringent forms of monitoring than those required in a 24/7 Program and are, in fact, referred to in the 24/7 Program statutes as “[h]ardship testing methodologies.” Mont. Code Ann. § 44-4-1203(2)(c). And unlike Roe, who the court placed on a remote breathalyzer unit with only two tests required per day, a person in a 24/7 Program who is permitted to test with a remote breath test device is subject to “between three and six tests per day, with two of the tests twelve hours apart.” Mont. Admin. R. 23.18.313(6).

The primary testing method for an official 24/7 Program requires a defendant to travel twice a day, roughly 12 hours apart, to appear in-person at a central location and to provide a breath sample in the presence of a person

¹¹ Source: https://missoulain.com/news/local/crime-courts/article_677caa48-13ca-11ef-8090-bb15112012c7.html (attached as App. D).

¹² Source: <https://courts.mt.gov/external/pretrial/docs/timeline.pdf> (3/28/2024 “Timeline of Significant Events, Milestones” at 3.)

authorized to administer the test, and in the case of a positive test, to wait 20 minutes and provide a confirmatory test. Mont. Code. Ann. § 44-4-1203(2)(b); Mont. Admin. R. 23.18.302(3) (“A participant shall report for twice-daily breath tests or, in cases of hardship, submit to a hardship testing methodology for the length of time ordered by the court[.]”) A core component of a 24/7 Program is to use a testing method that “best facilitates the ability to apply immediate sanctions for noncompliance[.]” Mont. Code Ann. § 44-4-1203(2)(a)(i). An “immediate sanction” is defined as a “sanction that is applied within minutes of a noncompliant test event” and a “timely sanction” is defined as a “sanction that is applied as soon as practical following a noncompliant test event.” Mont. Code Ann. §§ 44-4-1202(3)(d) and (h). In layman’s terms, if a defendant in a 24/7 Program submits a positive test, an immediate sanction could include the arrest of the defendant who would be held in jail pending an appearance before the court, and among the sanctions that the court could impose is additional pretrial jail time.

The process of imposing sanctions for pretrial violations in a 24/7 Program, however, is very different from the process that must take place following a violation of a condition of release imposed under Mont. Code Ann. § 46-9-108. As this Court pointed out in *State v. Baldwin*, 2024 MT 199, ¶ 20, 418 Mont. 70, 555 P.3d 748 (2024), Mont. Code Ann. § 46-9-503(1) delineates the procedure that must take place when a violation of a condition of release occurs: First, the

prosecutor has the discretion to “make a written motion to the court for revocation of the order of release.” Mont. Code Ann. § 46-9-503(1). If the prosecutor chooses to file a motion for revocation, the court has the discretion to “issue a warrant for the arrest of a defendant charged with violating a condition of release[,]” and “[u]pon arrest, the defendant must be brought before a judge in accordance with 46-7-101[,]” Mont. Code Ann. § 46-9-503(1), “who may then revoke [the defendant’s] release, order bond forfeiture[,]” and impose a new bond. *Baldwin*, ¶ 20. Alternatively, the court may forego an arrest warrant and issue a notice to appear to the defendant requiring him or her to appear before the court at a specific date and time to address the motion for revocation.

Even though the justice court did not order alcohol testing under the 24/7 statutes, the State disagrees with Roe’s assertion that an individualized assessment as this Court described in *Spady* was not conducted in her case. In *Spady*, this court described the level of assessment a court is required to make before 24/7 can be imposed as a pretrial condition of release, stating:

The imposition of the 24/7 Sobriety Program can be an appropriate condition of release. However, enrollment in the program is discretionary, not automatic, and a court must consider an individual’s unique circumstances prior to imposing the testing requirement. A judge should conduct an individualized assessment to consider factors such as prior alcohol-related arrests, whether the defendant’s history and circumstances suggest an increased risk to the community, and whether the defendant is financially able to pay the fees associated with testing. Indeed, in 2013, the Montana Legislature

codified an aspect of this assessment, permitting other testing methodologies when the program presents a hardship for an individual or when a program participant requires less stringent testing requirements. 2013 Mont. Laws, ch. 309; § 44-4-1203(2), MCA (2013).

Spady, ¶ 38. The Court held that “state law and due process considerations require the court to condition pretrial release on participation in the 24/7 Sobriety Program only after conducting an individualized assessment to determine if each defendant is an appropriate candidate for the program.” *Id.* at ¶ 45.

Therefore, assuming a court is in a jurisdiction with a 24/7 Program in place, before the court imposes that jurisdiction’s 24/7 Program as a pretrial condition of release, the court should consider (1) prior alcohol-related arrests, (2) whether the defendant’s history and circumstances “suggest an increased risk to the community,” and (3) whether the defendant is financially able to pay the fee associated with testing. If, in consideration of these factors, the court determines that a less stringent form of testing will accomplish the same goal as the 24/7 Program (public safety and showing up for court), then the court must impose the less stringent form of testing.

At the time of Roe’s initial appearance, the justice court possessed the citation issued by the arresting officer containing individualized information specific to Roe from which the court could assess her age, her address, her employment status, and the name of the employer for whom she worked. From the

face of the citation, the justice court could assess that Roe was alleged to have operated a motor vehicle on a way of the state open to the public (specifically, US Highway 93 South) with a BAC of .160 or greater, that Roe had a previous conviction for DUI thereby making the current offense a second, and that the offense occurred at 6:40 a.m. in the morning. The justice court also assessed that Roe had posted bond and had been released from jail following her arrest.

From its assessment of the individualized set of information, the justice court possessed sufficient information to assess Roe's circumstances and determine that (1) she had a prior DUI conviction about 6 years earlier; (2) she was driving a vehicle at 6:40 am in the morning with a BAC of .160 or greater strongly suggesting a higher risk to the community; and (3) she was employed, posted bond and, if unable to pay the cost, could apply for assistance with pretrial services. All of the assessment elements required by *Spady* were present, and the justice court properly exercised its discretion to impose alcohol monitoring as a pretrial condition of Roe's release. Moreover, in doing so, the justice court adhered to its standard practice of imposing alcohol monitoring in all second and subsequent DUI offenses and adhered to OCA's "Release Conditions Matrix" recommending monitoring for second and subsequent offense DUIs.

Roe emphasizes that the justice court failed to determine whether she "regularly drank alcohol or needed the daily monitoring" (App. Br. at 6) and

whether the other pretrial conditions of release requiring her to not drink and to not enter bars were, by themselves, insufficient (Doc. 1 at 14-15). First, because most initial appearances, like Roe's, in Montana courts of limited jurisdiction occur before a defendant is represented by a private or court-appointed attorney, it would be inappropriate for the court to question a defendant to elicit information that could be incriminating and/or directly, or even indirectly, related to the facts of the pending case. Secondly, as Helena Municipal Court Judge Bob Wood informed legislators in a 2011 letter, "As a judge, it was extremely frustrating to order repeat DUI offenders to abstain from drinking alcohol and going to bars as a condition of bond With no means of ensuring compliance, offenders often ignored the conditions of bond unless they were caught again, committing another crime, and jailed." Mont. H. Jud. Comm., *Montana 24/7 Sobriety Program Act: Hearing on HB 106*, Ex. (juh14a06). The "no alcohol and no bars" conditions provide Montana courts with no realistic means of enforcement. In the same way that a 24/7 Program was intended by the legislature to give courts a mechanism to enforce the "no alcohol" condition in the most stringent way possible, the legislature intended to give courts a mechanism of enforcement by expressly adding alcohol monitoring, completely independent of any 24/7 Program, as a pretrial condition release under Mont. Code Ann. § 46-9-108(1)(i).

The justice court properly exercised its discretion in requiring alcohol monitoring as pretrial condition of release, and the form of alcohol monitoring that it required was the least restrictive option available. Moreover, it is important that this Court take notice that at no time prior to pleading guilty did Roe file a motion requesting that the conditions of her release be modified. Montana Code Annotated § 46-9-108(3) plainly states: “At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion *or upon the motion of either party.*” (Emphasis added.)

III. The justice court imposed a legal sentence.

Montana Code Annotated § 61-8-1007(1)(a) provides in relevant part that a person convicted of a DUI shall be punished “(ii) for a second offense, by imprisonment for not less than 7 days or more than 1 year and by a fine of not less than \$1,200 or more than \$2,000.” The justice court in Roe’s case imposed a sentence of 1 year jail with all but 7 days suspended (with credit for 1 day already served) and a fine of \$1200. This sentence falls squarely within the statutory parameters, the justice court had statutory authority to impose this sentence, and the justice court followed the affirmative mandates of the DUI sentencing statutes. *State v. Ingram*, 2020 MT 327, ¶ 8, 402 Mont. 374, 478 P.3d 799 (citations omitted). Roe makes no argument to the contrary.

Regarding the sentence, however, Roe argues that “the most efficient means to remedy the error and injustice [caused by the justice court’s unauthorized imposition of alcohol monitoring as a pretrial condition of release] is for [her] judgment to credit and apply the amount she paid for the unauthorized monitoring against her \$1200 fine.” (App. Br. at 15.) Even if this Court determines that the imposition of alcohol monitoring as pretrial condition of release was unauthorized or otherwise improper, Roe presents no legal authority to support her contention that this Court can “remedy the error and injustice” by “revers[ing] and remand[ing] for a hearing for the justice court to determine the precise amount [Roe] paid for alcohol monitoring—and for which she is due credit—and to give [her] the opportunity to withdraw her if she so chooses.” (*Id.* at 15-16 (emphasis added).)

The only statutory authority whereby a court to is required to give credit toward a fine is Mont. Code Ann. § 46-18-406, which provides in relevant part:

(1)(a) A person incarcerated on a bailable offense against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction, except that the time allowed as a credit may not exceed the term of the prison sentence rendered.

(b) For the purposes of subsection (1)(a), incarceration includes time spent in a residential treatment facility under the order of a court.

(2) A person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense may be allowed a credit for each day of incarceration prior to

conviction, except that the amount allowed or credited may not exceed the amount of the fine. ...

Requiring a twice-daily remote breath test on a portable unit is not “time spent in a residential treatment facility under the order of a court.” Roe cites no authority in support of her argument that “she is due credit” against her fine for the cost pretrial alcohol monitoring.

Further, Roe points to the plea agreement filed in justice court and asserts that “there was no dispute among the parties that [she] had to pay hundreds of dollars” for remote alcohol monitoring. (App. Br. at 15.) This assertion is incorrect.

The plea agreement filed in justice court expressly states:

Defendant has provided confirmation of payment for the ACT program and 12 months of monitoring through Starr Counseling and Addiction Services in the amount of \$995. Defendant shall receive monetary credit against fines for payment and completion of the ACT program and monitoring services.

The letter dated March 14, 2023, from Starr Counseling that was sent to Roe’s attorney and that was filed with justice court on April 11, 2023,¹³ states that Roe “completed Level One Treatment with me on March 8th, 2023” and that Roe “will do follow up care with me once a month for 12 months” as is required by Mont.

Code Ann. § 61-8-1009(9)(a) (on second or subsequent DUI conviction, treatment

¹³ See folder in District Court record labeled “DC-23-217 Lodged and sealed” which contains unnumbered items with confidential and/or protected information, including a two-page document labeled “Ticket and Treatment Letter.”

program must be followed by monthly monitoring by chemical dependency counselor for period of at least 1 year). The amount of \$995 that the plea agreement acknowledged was paid to Starr Counseling, and not to Missoula Correctional Services, the entity that provided pretrial remote breath testing to Roe. Roe presented no testimony or documentation of any payments she made to Missoula Correctional Services for pretrial alcohol monitoring. And, similarly, Roe presented no testimony or documentation that she submitted a request to Missoula Correctional Services to reduce or waive the cost of pretrial alcohol monitoring.

Roe has failed to prove that the justice court was legally required to credit the fine for any amount she paid for pretrial alcohol monitoring, which was a pretrial condition of release. And even if Roe could overcome this hurdle, she has not provided any documentation to support what amount, if any, that she paid to Missoula Correctional Services for pretrial alcohol monitoring.

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CONCLUSION

This Court should affirm the rulings of the district and justice courts that Roe was properly placed on alcohol monitoring as a pretrial condition of release and remand this matter to justice court for commencement of the sentence.

Respectfully submitted this 11th day of May, 2025.

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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 6,223 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ Carrie Garber
CARRIE GARBER

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0417

STATE OF MONTANA,

Plaintiff and Appellee,

v.

TRINA ROE,

Defendant and Appellant.

APPENDICES

Plea Agreement, March 8, 2023	Appendix A
Transcript, June 7, 2023	Appendix B
Minutes of Misdemeanor Arraignment and Condition of Release, December 20, 2022	Appendix C
Missoulian, <i>Missoula pretrial moves in-house, no longer with Missoula Correctional Services</i> , published May 17, 2024	Appendix D

CERTIFICATE OF SERVICE

I, Carrie L. Garber, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 05-06-2025:

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