

Honorable Amy Eddy
District Court Judge
Flathead County Justice Center
920 South Main
Kalispell, MT 59901
(406) 758-5667

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

<p>STATE OF MONTANA, <i>Plaintiff,</i> vs. JASON DAVID WELDELE, <i>Defendant.</i></p>	<p>Cause No. DC-20-363(A) ORDER TO FILE SENTENCING MEMORANDUM</p>
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On October 20, 2020, the Defendant was charged by *Information* with Deliberate Homicide. The Defendant subsequently filed a *Motion to Suppress Evidence: Miranda Violation; Motion to Suppress Evidence: Warrantless Arrest; Motion to Dismiss, or, in the alternative, Motion for Preliminary Examination; and Motion to Dismiss; Motion to Suppress Evidence and Dismiss Case with Prejudice*. These motions were set before the Court for an evidentiary hearing on January 21, 2021. However, prior to the hearing the Defendant requested a change of plea hearing. Accordingly, this matter came before the Court for a change of plea hearing on January 20, 2021, at 11:00 a.m.

The State filed an *Amended Information* charging the Defendant with Criminal Endangerment and the parties entered into a binding plea agreement pursuant to Mont. Code Ann. §§46-12-211(1)(a) and (b). Pursuant to the terms of the plea agreement, in exchange for the Defendant's no contest plea to the charge of Criminal Endangerment, the parties would recommend the Defendant be given a five-year suspended sentence. If the Court rejects the recommended sentence, the Defendant would be entitled to withdraw his no contest plea and the matter would proceed to trial. The plea agreement is silent as to whether the matter would proceed to trial on the Criminal Endangerment or Deliberate Homicide charge, and whether the Defendant would be able to renew his motions to suppress.

At the change of plea hearing the Court took judicial notice of the facts underlying the deliberate Homicide charge, which are as follows:

- (1) On October 16, 2020, at approximately 5:21 pm, Jason Weldele contacted the Flathead County Sheriff's Office to report suspicious activity at 222 Forest Hill Village in Kalispell.

- (2) Deputy O'Connell reported that Jason Weldele stated unknown suspects had entered his residence and placed pen cameras around his house, that his father was in the residence with him, and that he did not want law enforcement to respond.
- (3) According to the reports, the reported address corresponds with a trailer belonging to Jason Weldele's father, Dan Weldele.
- (4) At approximately 11:47 pm, the same evening, law enforcement received another call from the same phone number Jason Weldele had called from earlier. This time the caller advised of a building on fire, but was not able to confirm a street address.
- (5) According to the dispatch log, the caller stated, "I gotta go," prior to hanging up on dispatch. Dispatch reportedly called the number back, which went to voice mail. The caller's phone number plotted to a cell tower near Industrial Court.
- (6) Law enforcement and fire personnel responded to Industrial Court and 222 Forest Hill Village on October 16, 2020, and were on scene for approximately fifteen minutes starting at 11:52 pm. No fire or persons were located at 222 Forest Hill Village or the immediate area, which included the Industrial Court area.
- (7) On October 17, 2020, at approximately 2:07 am, law enforcement responded to a call of a structure fire at 222 Forest Hill Village.
- (8) Upon arrival, deputies observed flames coming from the residence. Jason Weldele was located outside the residence. Deputy O'Connell reports that Jason Weldele was acting erratic, was not understandable, and ran away when asked if other occupants were inside the burning residence.
- (9) The body of a deceased male adult, identified as Dan Weldele, was located inside the residence. According to the reports, the deceased was an elderly semiambulatory male who was unable to get around on his own or out of the residence without help.
- (10) Deputies observed a window screen to the window where the primary source of flames was emitting from the residence on the ground, and what was determined to be bed springs from a mattress laying against the window on the interior. A dresser and shelving were observed barricading the inside door of the residence.
- (11) It is reported that preliminary autopsy reports indicate that Dan Weldele ingested smoke and smoke inhalation caused his death.
- (12) A patdown of Jason Weldele's person resulted in a lighter and a shard of glass located in his pocket.

Motion and Affidavit for Leave to File an Information, pp. 3-4, filed 10/20/2020.

As counsel is aware, this Court routinely rejects the concept of binding plea agreements outright. However, due to the dramatic reduction in charges and the lenient recommended sentence, the Court agreed to defer a decision on whether or not to reject the plea agreement until the Court had an opportunity to review the Presentence Investigation. Mont. Code Ann. §46-12-211(2). The Court would then perhaps have an understanding as to how the recommended

sentence meets the State of Montana's sentencing policy in light of the above articulated facts. Mont. Code Ann. §46-18-101.

In order to further the Court's understanding, which at this point is quite limited, **the parties are further directed to file a written Sentencing Memorandum by February 12, 2021**, outlining, at a minimum, the following:

- (1) How, in light of the above-articulated facts, the recommended five-year suspended sentence meets the State of Montana's sentencing policy;
- (2) Whether, if the Court rejects the plea agreement and the Defendant withdraws the no contest plea, the case will proceed to trial on the Criminal Endangerment or Deliberate Homicide charge; and
- (3) Whether, if the Court rejects the plea agreement, the Defendant withdraws the no contest plea, and the case proceeds to trial on the Criminal Endangerment charge, the Defendant has waived his right to pursue his motions to suppress.

DATED AND ELECTRONICALLY SIGNED AS NOTED BELOW.