

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY**

STATE OF OREGON,)	Case No. 21CR61225
)	DA No. 2441395-2
Plaintiff,)	
)	
v.)	STATE'S MEMORANDUM IN SUPPORT
)	OF MOTION TO DEEM OFFENSES NOT
TUSITALA JOHN TOESE,)	RELEASABLE UNDER ORS 135.240
)	
Defendant)	
)	

Comes now the State of Oregon represented by Multnomah County District Attorney Mike Schmidt, by and through Senior Deputy District Attorney Nathan Vasquez respectfully submits this memorandum in support of the state's motion to deem offenses not releasable under ORS 135.240(4).

INTRODUCTION

The above-named defendant is charged by indictment with Assault II x 3, Assault III x 2, Unlawful Use of a Weapon x 2, Criminal Mischief I x 2, and Riot x 2.

These charges stem from allegations that on August 22, 2021, the defendant helped organize a political rally in the Portland Metro area. At this event, the defendant and his associates were confronted by a group of counter protesters. The defendant directed his associates through his words and actions to assault the counter protesters. Please see "Attachment A".

The state now moves this court to find under ORS 135.240(4)–(6) that the offense with which Defendant is currently charged are violent felonies and are not releasable due to a risk of physical injury to both the victim and the public. For the reasons that follow, there is clear and convincing evidence that Defendant presents a danger of physical injury to members of the

1 public, and the court should therefore find these violent felony offenses not releasable under
2 ORS 135.240(4).

3 FACTS

4 Please see "Attachment A" for a detailed summary of the evidence the state will present
5 at the hearing through the testimony of Detective Joseph Cox.
6

7 OTHER EVIDENCE DEMONSTRATING DANGEROUSNESS

8 Defendant has engaged in a long-running pattern of assaultive behavior associated with
9 his political violence. This pattern of behavior began as early as 2017 and includes the
10 defendant assaulting various people with political views oppositional to his own. The defendant
11 has repeatedly been a central figure in violent clashes which have taken place in the Portland
12 Metro Area, Seattle, and other locations around the country. In recent years the defendant has
13 been observed carrying weapons such as baseball bats and was shot during a violent encounter
14 connected with another political event in Olympia, Washington on September 4, 2021
15 (approximately two weeks after the underlying crimes in this case).
16

17 CRIMINAL HISTORY

18 The defendant has the following arrests and convictions:

- 19 1. 17-CR55661: Disorderly Conduct, Arrested August 6, 2017 in Portland dismissed
20 per plea on Harassment Case below;
- 21 2. 17-CR81497: Harassment, Arrested on December 9, 2017 in Portland, convicted on
22 February 13, 2018 via plea, probation revoked and jail imposed on October 24,
23 2019;
- 24 3. Bail Jumping 2019 Conviction Washington State;
25

4. Obstruction of Law Enforcement Officer 2019 Conviction Washington State;
5. Bail Jumping 2019 Conviction Washington State;
6. 18-CR43660: Arrested for Assault III based on a June 8, 2018 incident, pled guilty to Assault IV January 14, 2020, probation revoked October 20, 2020;

LAW & ARGUMENT

The state has moved this court to deem the violent felonies with which Defendant is charged not releasable under ORS 135.240(4). This section of the memorandum will explain the law applicable to a preventative detention hearing under ORS 135.240, address the legal basis for the state to offer hearsay evidence in the preventative detention hearing, and present the reasons why the court should find the state has met its burden in this case. For the following reasons, there is clear and convincing evidence that Defendant presents a danger of physical injury to members of the public, and the court should therefore find the violent felony offenses with which he is charged are not releasable under ORS 135.240(4).

I. Preventative Detention Hearings – ORS 135.240.

Bail on criminal offenses is a matter of right under Oregon law with a few important exceptions.¹ *See Or Const, Art I sec 14; Or Const, Art I sec 43.* One exception relevant to this case is found in Article I section 43 of the Oregon Constitution, which provides “violent felonies shall not be bailable when a court has determined there is probable cause to believe the criminal defendant committed the crime, and the court finds, by clear and convincing evidence, that there is danger of physical injury or sexual victimization to the victim or members of the public by the criminal defendant while on release.” *Or Const, Art I, sec*

¹ There is not a federal constitutional right to bail on a criminal offense. There is only a federal constitutional right that bail, if imposed, not be excessive. *US v. Salerno*, 481 US 739, 753-755 (1987).

1 43(1)(b). ORS 135.240(4) has codified this constitutional provision.² The term “violent
2 felony” includes a felony offense in which there was an actual or threatened serious physical
3 injury to the victim, or a felony sexual offense. ORS 135.240(6).

4 In *State v. Slight*, the Oregon Court of Appeals analyzed the operation and application of
5 ORS 135.240(4). 301 Ore App 237, 248 (2019). According to *Slight*, ORS 135.240(4)
6 requires the court to make two determinations. *Id.* The first is whether there is probable
7 cause to believe the defendant committed a violent felony, which is satisfied if the defendant
8 is charged with a violent felony by indictment. *Id.* The second is whether there is clear and
9 convincing evidence that there is a danger of physical injury or sexual victimization to the
10 victim or members of the public by the defendant while on release. *Id.*

12 *Slight* instructs that ORS 135.240(4) requires an evidentiary hearing, if requested by the
13 defendant, at which the state has the burden of proof. *Id.* at 248-249. The rules of evidence
14 do not apply at that evidentiary hearing. *Id.* at 250. However, the unilateral assertions of
15 counsel are not “evidence” on which the court can base its decision. *Id.* at 254.

16 Illustrating this last point, in *Slight* the prosecutor orally advised the court of the
17 underlying facts of the case in argument, but offered no exhibits or other witnesses to support
18 that oral assertion at the hearing. *Id.* at 254. In addition to the prosecutor’s oral recitation of
19 the facts during argument, the state read into the record a written statement from the victim’s
20 mother, in which she expressed a fear she would not be safe if the defendant were released,
21 and discussed both the charges in the indictment and the defendant’s criminal history. *Id.* at
22

23
24 ² ORS 135.240(4)(a) Except as otherwise provided in subsection (5) of this section, when the defendant is charged
with a violent felony, release shall be denied if the court finds:

- 25 (A) Except when the defendant is charged by indictment, that there is probable cause to believe that the
defendant committed the crime; and
(B) By clear and convincing evidence, that there is a danger of physical injury or sexual victimization to
the victim or members of the public by the defendant while on release.

1 254. The Court of Appeals held that the prosecutor's statements during oral argument were
2 not evidence, but nevertheless held that the remaining evidence in the record, which included
3 the defendant's criminal history, the charges in the indictment, and victim statement, was
4 sufficient as a matter of law to render the crimes charged not releasable under ORS
5 135.240(4). *Id.* at 255.

6 **II. Hearsay Evidence is Admissible in a Preventative Detention Hearing.**

7
8 Preventative detention hearings are described in ORS 135.240. ORS 135.240(2)
9 describes preventative detention hearings when a defendant is charged with murder or treason.
10 ORS 135.240(4) describes preventative detention hearings when a defendant is charged with a
11 "violent felony." As discussed further below, preventative detention hearings are classified as
12 "security release hearings" under Oregon law. Therefore, per OEC 101(4)(h), the rules of
13 evidence, including the hearsay rules, do not apply in preventative detention hearings.

14 The Oregon Supreme Court reviewed whether the state may rely on hearsay testimony
15 in a murder preventative detention hearing in *Oswaldo Rico-Villalobos v. Bernie Guisto*, 339 Or
16 197 (2005). In that case, the defendant was charged by indictment with murder and requested a
17 bail hearing. *Id.* at 199. At the bail hearing, the state presented its evidence through the
18 testimony of one witness, the police detective in charge of the murder investigation. *Id.* The
19 detective outlined a variety of evidence including his own observations, witness statements, the
20 autopsy report, and associated lab reports. *Id.* The defense objected to much of the state's
21 evidence claiming that the state could not rely on hearsay statements at the bail hearing, and
22 without them, the state failed to meet its burden of proof. *Id.* at 200.
23
24
25

1 The Supreme Court first analyzed the statutory basis to allow hearsay in a preventative
2 detention hearing, noting that OEC 101(4)(g)³ provides that with the exception of rules
3 governing privilege, the Oregon Evidence Code does not apply to “proceedings under ORS
4 chapter 135 relating to *** security release *** [.]” *Id.* at 203. The court concluded that
5 because the murder preventative detention hearing constituted a security release hearing under
6 ORS chapter 135, the Oregon Evidence Code did not prohibit the state from utilizing hearsay
7 evidence. *Id.* at 203-204.

8
9 The court then turned to the substantive provisions of ORS 135.240(2)(a)⁴ and *Article I,*
10 *Section 14* of the Oregon Constitution⁵. *Id.* at 204. The court concluded that the legislature
11 intended the statute to be coextensive with *Article I, Section 14*, and that there is no substantive
12 difference between the two provisions. *Id.* at 205-206. The court then closely examined the
13 language contained in *Article I, Section 14* of the Oregon Constitution, and concluded that the
14 words themselves did not suggest any limit on the kind of evidence that would be admissible in
15 a proceeding to determine whether to allow bail. *Id.* at 208.

16 The court observed that prior Oregon case law had established that a grand jury
17 indictment, standing alone, was insufficient to support a decision to deny bail, *id.* at 210, but
18 nevertheless held that:

19
20 *Article I, section 14*, and our cases interpreting that provision,
21 place the burden on the state at the pretrial release hearing to
22 present evidence, direct or circumstantial, from which the trial
23 court can make an independent determination that evidence that
24 likely will be admissible at trial shows that the proof of
25 defendant’s guilt is “evident” or the “presumption strong”;

³ This subsection was renumbered to OEC 101(4)(h) after the Oregon Supreme Court issued *Rico-Villalobos*.

⁴ ORS 135.204(2)(a) states: When the defendant is charged with murder, aggravated murder or treason, release shall be denied when the proof is evident or the presumption strong that the person is guilty.

⁵ *Article I, Section 14* of the Oregon Constitution states: Offences, except murder, and treason, shall be bailable by sufficient sureties. Murder or treason, shall not be bailable, when the proof is evident, or the presumption strong.

1 however, that provision does not preclude the state from making
2 that showing by means of hearsay evidence. *Id.* at 213.

3 Therefore, the Oregon Supreme Court makes clear in *Villalobos* that the state may
4 present and rely on hearsay evidence in a preventative detention hearing where the defendant is
5 charged with murder or treason. ORS 135.240(2) dictates that if the state is unable to satisfy its
6 burden in the murder or treason preventative detention hearing under ORS 135.240(2)(a), the
7 “court *shall* determine the issue of release as provided in subsection (4) of this section. In
8 determining the issue of release under subsection (4) of this section, the court may consider any
9 evidence used in making the determination required by this subsection.” ORS 135.240(2)(b).
10 Clearly this statutory scheme contemplates that if hearsay evidence is admissible in a
11 preventative detention hearing under ORS 135.240(2), it is equally admissible in a preventative
12 detention hearing under ORS 135.240(4).
13

14 Furthermore, the Oregon Court of Appeals in *State v. Slight*, 201 Or App 237 (2019)
15 discussed the admissibility of hearsay evidence in preventative detention hearings in the context
16 of a violent felony hearing under ORS 135.240(4):

17 ORS 135.240(4)(c) provides that, in considering whether clear and
18 convincing evidence exists to deny release, “[t]he state has the
19 burden of producing evidence at the release hearing subject to
20 [OEC 101(4)].” OEC 101(4)(h), in turn, limits the applicability of
21 the Oregon Evidence Code in “[p]roceedings under ORS chapter
22 135 relating to conditional release, security release, release on
23 personal recognizance, or preliminary hearings, subject to ORS
24 135.173.” Specifically, for release hearings, OEC 101(4) excludes
25 “ORS 40.010 [OEC 100] to [OEC 412] and [OEC 601] to [OEC
 1008].”

23 Despite the fact that significant portions of the evidence code have
24 been excluded from applicability to a release hearing, the
25 legislature has clearly mandated that such decisions be based on
 evidence. Importantly, one statutory provision regarding evidence
 not exempted from release hearings is ORS 41.010, which defines
 judicial evidence as “the means, sanctioned by law, of ascertaining

1 in a judicial proceeding the truth respecting a question of fact.
2 Proof is the effect of evidence, the establishment of the fact by
3 evidence.” *Slight*, 301 Or App at 250.

4 This quote illustrates that, for the Oregon Court of Appeals, the fact that preventative
5 detention hearings are “release hearings” triggering the application of OEC 101(4)(h) is non-
6 controversial, and given *Villalobos*, it makes sense that this would be referenced as well-settled
7 law.

8 In conclusion, *Villalobos*, *Slight*, and the procedural structure established in ORS
9 135.240, make clear that preventative detention hearings are proceedings under ORS chapter
10 135 relating to security release. As such, OEC 101(4)(h) renders the hearsay rules inapplicable
11 to these hearings. Therefore, the state may present and rely on hearsay evidence to satisfy its
12 burden in an ORS 135.240 preventative detention hearing.

13 **III. The Violent Felonies with Which Defendant is Charged are Not Releasable Under**
14 **Oregon Law.**

15 1. *Defendant is Charged with Violent Felonies within the meaning of ORS 135.240(6).*

16 In this case, Defendant is charged by indictment with, among other offenses, Assault II,
17 Assault III, Riot, and Unlawful Use of a Weapon.

18 Multnomah County Presiding Judge Order 2100-00000 (hereinafter “PJO”) provides a
19 list of charges “considered to be violent felonies for purposes of ORS 135.240(6)”. The list of
20 charges provided in the PJO includes only those felony offenses for which “serious physical
21 injury” is an element. *Id.* However, the PJO does *not* limit a violent felony determination to
22 only the crimes enumerated in the list. Per ORS 135.240(6), a violent felony is any “felony
23 offense in which there was an actual or threatened serious physical injury to the victim....” The
24 offenses with which Defendant is charged are violent felonies within the meaning of ORS
25

1 135.240(6) as is demonstrated by the facts contained in Attachment A and by the testimony of
2 Detective Joseph Cox at the hearing on the matter.

3 Defendant was charged and indicted under an “aid and abet” theory under ORS 161.155
4 with respect to the Assault II, Assault III, and Unlawful Use of a Weapon charges based on his
5 directing a large group to attack a person—who was unarmed and unable to escape—with
6 chemical irritants, blunt objects, and paintball guns. There is no exception in either the PJO or
7 in ORS 135.240 that limits a violent felony determination for charges under which a defendant
8 is charged under an “aid and abet” theory. All that the statute requires is that there is sufficient
9 evidence from which the Court can determine whether, in the course of the charged conduct,
10 there was “actual or threatened serious physical injury to the victim.” ORS 135.240(6).
11

12 In this case, as the information contained in Attachment A and the testimony of
13 Detective Cox demonstrate, Defendant made overt threats of physical violence on the date of
14 the incident even before the two groups clashed on 122nd Ave. When the clash did occur,
15 Defendant was a central inciting figure in the ensuing violence. It was Defendant who identified
16 the victim of the various assault and weapons offenses as he sat in his truck. And it was
17 Defendant who incited the others in the group to subject the victim to a tangible threat of
18 serious physical injury by subjecting him to the sustained fire from paintball guns and chemical
19 irritants and physical assault by means of a dangerous weapon.
20

21 *2. There is Clear and Convincing Evidence That There is a DANGER OF*
22 *PHYSICAL INJURY TO MEMBERS OF THE PUBLIC by Defendant While on*
Release.

23 Turning to the second prong under ORS 135.240(4)(a)(B), there is clear and convincing
24 evidence in this case that there is a danger of physical injury to members of the public by
25 Defendant while on release. As the testimony of Officer Branden Combs that the State
expects to present at the hearing on the matter will demonstrate, for at least the past four

1 years, the defendant has repeatedly engaged in acts of violence. In recent years, his actions
2 have continued to escalate, becoming more violent, more organized, and more dangerous to
3 the public. Despite convictions, probation efforts, and jail sanctions the defendant has only
4 increased his violent actions. The defendant also enjoys and benefits from his violent
5 reputation, as evidenced by the fact that he receives funds to travel around the nation to attend
6 a variety of politically motivated rallies and engage in various acts of violence. The
7 defendant's escalating pattern of violence creates a clear danger to the public.
8

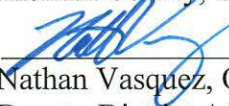
9 **CONCLUSION**

10 For the foregoing reasons, the court should find, pursuant to ORS 135.240(4)–(6), that
11 the violent felonies with which Defendant is charged are not releasable under Oregon Law.
12

13 Respectfully submitted this 31st day of March 2022.

14 Regards,

15 MIKE SCHIMDT
16 District Attorney
17 Multnomah County, Oregon

18 By: 
19 Nathan Vasquez, OSB# 014437
20 Deputy District Attorney
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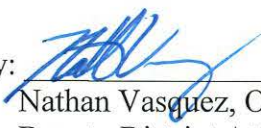
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CERTIFICATE OF SERVICE / TRUE COPY

I, Nathan Vasquez, hereby certify that, on 31st day of March, 2022, I served a true copy of the STATE'S MEMORANDUM IN SUPPORT OF MOTION TO DEEM OFFENSES NOT RELEASABLE UNDER ORS 135.240, on counsel for the defendant via email.

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: 
Nathan Vasquez, OSB# 014437
Deputy District Attorney

FILED

MAR 23 2022

CIRCUIT COURT

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

THE STATE OF OREGON

C# 21-CR-61225
DA# 2441395-2
Crime Report: PP 21-681328

21CR61225
AF
Affidavit
15024875

Plaintiff,
v.

AFFIDAVIT IN SUPPORT OF
APPLICATION FOR VIOLENT
FELONY DETERMINATION



TUSITALA JOHN TOESE

Defendant(s).

I, NATHAN T. VASQUEZ, having been first duly sworn, depose and say that the accompanying accusatory instrument is based upon the information set forth below, which is true as I verily believe. That I am employed as a Deputy District Attorney for Multnomah County, Oregon. That in the course of my duties, I have read the incident report(s) that I know to have been prepared by the Portland Police Bureau Officers Joseph Cox and Matthew Jacobsen and the corresponding video evidence concerning this investigation of criminal acts in Multnomah County, Oregon, committed by TUSITALA JOHN TOESE (hereinafter, "Defendant"). The following is taken from those materials, the defendant's prior cases in Multnomah County and a review of the defendant's criminal record:

On August 22, 2021 a political rally was held in the parking lot of an empty K-Mart department store located near the intersection of NE 122nd Ave. and Sandy Blvd. The event originally had been planned to occur at Portland's waterfront, but was moved when it became apparent that a counter protest by an opposing group would respond to the event. Defendant was one of the primary organizers of the rally and acted as the emcee for the event, introducing new speakers and delivering speeches of his own to the gathered crowd. Several members of the crowd were wearing tactical, armored vests and other equipment and were openly carrying paintball guns and other weapons including baseball bats, explosive devices, bear spray, firearms, and other blunt weapons. During his speeches, Defendant made the following statements:

- In reference to perceived disdain for his group's political ideology by Portland's elected officials: "You want to keep on poking a sleeping bear, guess what? It's going to rise up and it's going to be 1776 up in this bitch."
- While speaking on his beliefs with respect to the Second Amendment: "An armed society is a polite society, and guess what? Antifa is taking so long to march here because they know these people love pew-pews [referring to firearms]. And you're going to mess around and find out, the wrong way."
- In reference to generalized remarks regarding Defendant's belief that Antifa maintained an agenda to strip him of various unspecified rights: "If you want to have our freedom, you're going to have to put all of us six-feet-under. Take it from me. Because it ain't happening that easy. We're going to give you a run for that money.... We're going to still be waving this flag because there is (sic.) a bunch of Proud Boys, a bunch of veterans, a bunch of patriots that are standing here on this property that are ready to go battle for this. So try us. Fuck around and find out."

- In reference to a perceived belief that Antifa would appear at the rally: “Well guess what’s going to happen to your fascist heroes today if they show up and try to attack somebody. They’re going to get an ass whooping.”

During the speeches, a small group of counter protesters had assembled on the outside of the parking lot along 122nd Ave. Several of the rally-goers approached the group and began to engage in arguments regarding the two groups’ opposing ideologies. As a larger portion of the rally group began to engage with the counter protesters, Defendant approached and told those present from the rally to return to the stage. He specifically stated that the only ones who should remain by the counter protesters were “guys that are geared up, six at least”—referring to members of the rally group wearing tactical gear and carrying weapons including paintball guns, firearms, blunt weapons, explosive devices, and bear spray—and told the others again to go back to the stage area.

Approximately an hour and a half after the rally began, additional counter protesters arrived at the location, approaching on foot as well as pulling into the parking lot in a de-commissioned Metro West Ambulance van. Members of the group from the rally immediately began attacking the van and its occupants with paintballs, mace, and blunt weapons, causing extensive damage to the windows, tires, and vehicle body. The van’s occupants fled on foot and the van rolled into a small patch of bushes nearby. Members of the rally-group then pursued the counter protesters south on 122nd Ave. firing paintball guns, using bear spray, and throwing explosive devices and other objects at the counter protesters who were also throwing explosives, smoke bombs, and paint-filled projectiles.

As the initial clash occurred, Defendant, in the rear of the rally-group, gave orders to have other rally-goers return to defend the stage that had been set up for the rally in the parking lot. As a large portion of the rally-group returned to the K-Mart parking lot, Defendant assembled a smaller group armed with paintball guns and tactical gear that moved through an alleyway at the back end of the parking lot, looping around back to 122nd Ave. where they were able to approach the counter-protest group from the side. The smaller rally group, including Defendant, then began shouting “Fuck Antifa” repeatedly as others in the group opened fire with paintball guns on the counter-protesters standing on 122nd. The counter protest group again retreated south on 122nd and Defendant waved to his smaller group, still armed with paintball guns, bear spray, explosives and other blunt weapons, signaling that they should pursue. The two groups exchanged paintball-gun fire and chemical sprays, and threw various explosive and paint-filled projectiles at one another as they moved along 122nd Ave. toward nearby Parkrose High School.

As the two groups reached a parking lot at the southeast corner of Parkrose High School, Defendant noticed a Silver Honda Ridgeline with shields and cases of water in the bed. Defendant identified the truck as a counter-protester support vehicle and shouted to others present “He’s Antifa”, repeating the call several times. There was one occupant inside the truck. Defendant approached the vehicle and, using a bat he had carried with him from the K-Mart parking lot, broke out the driver’s side window. Defendant then signaled to others from the rally group to approach the vehicle, inciting the rally members to attack the truck and assault the driver. Defendant can be heard on video yelling to others present “He’s Antifa, he’s Antifa” and can be seen gesturing toward the vehicle with his baseball bat. Members of the rally group then began breaking out the remaining windows to the truck, popping its tires, and attacking the driver.

At least three rally group members standing on the passenger side of the vehicle fired paintballs into at the vehicle’s occupant as he attempted to hide inside the vehicle. Defendant stood just behind the line of paintball shooters and continued shouting to others in the area inciting them to attack the vehicle’s

1 occupant. Another member of the rally group then climbed into the vehicle and directly assaulted the
2 occupant, striking him repeatedly with an armored motorcycle glove and kicking him. Others
3 surrounded the vehicle and sprayed the occupant with mace and bear spray. Eventually, a member of the
4 rally group was able to assist the occupant in getting out of the vehicle. The occupant ran from the
vehicle, was shoved violently from behind by a rally group member, but was able to escape to the
opposite side of the parking lot where the majority of the counter protest group had assembled.

5 After the occupant of the Silver Ridgeline escaped, and on Defendant's command to "fall back", the
6 rally-group began to move back toward the K-Mart parking lot to the north. As the rally group re-
7 grouped, Defendant began a call-and-response style chant of "Fuck around, Find out" and "Fuck Antifa"
8 yelling out the phrases while other rally group members joined in. Prior to departing the Parkrose High
School parking lot, Defendant stopped and spoke to several of the independent streamers and journalists
9 who had followed the two groups from the K-Mart parking lot making the following statement as he
addressed them:

- 10 • "That's our message for you Antifa: the Americans are coming out and they're sick and tired
of this shit. If we have to fight fire with fire we're going to fucking do it. Fuck Antifa."

11 Upon return to the K-Mart parking lot, a portion of the rally group assembled around the support van
12 that the counter protesters had used and abandoned upon their initial arrival at the location. Defendant
13 approached the van from the inner part of the parking lot and shouted to those in the area "Boys, flip this
motherfucker over so they don't get to drive this bitch." Several of the rally group members took up
14 positions on the passenger side of the van and began to rock it in an attempt to flip it, but were largely
15 unsuccessful. Defendant then walked around the side of the van, shouted that the group needed to "get
low", and then joined in the effort. With Defendant's assistance, the group was then able to tip the van
onto its side.

16 At that point, the parking lot began to clear out. Defendant and several other members of the group
17 climbed into the back of a pickup truck which circled the parking lot before departing the area.

18 Approximately two weeks later, on September, 4, 2021, Defendant was involved in another incident
19 at an anti-vaccine rally held in Olympia, WA. News articles and open-source video of the incident show
20 Defendant and several others chasing members of an ideologically opposed group through the streets of
Olympia. Members of Defendant's group can be heard in the videos from the incident yelling "Fuck
21 Antifa" in a call-and-response style and can also be heard yelling threats such as "You better run you
fucking pussies" as they chased counter protesters down the street. Ultimately, Defendant and a group of
22 others pursued counter protesters to a bus station where Defendant received a gunshot wound to his
ankle from an unknown source.

23 Defendant, prior to the above-described incidents, has been involved in a large number of protest
24 events since 2017 and has been criminally charged in several jurisdictions in Washington and Oregon. In
Oregon, Defendant was first charged with Assault in the Fourth Degree, Harassment, and Disorderly
25 Conduct in the Second Degree in connection with an incident at a rally in which he punched a counter
protester in the face, unprovoked, on December 9, 2017. Defendant plead guilty to Harassment and was
26 placed on a probation in that case. That probation was revoked on October 29, 2019 and defendant was
sanctioned with 10 days in jail.

27 Defendant was also charged in Oregon with Assault in the Third Degree and Assault in the Fourth
28 Degree in connection with a 2018 protest event under Multnomah County Circuit Court case number

1 18CR43660. In March of 2018, approximately a week after indictment on those charges Defendant fled
2 the jurisdiction to American Samoa and was not arraigned on the charges until he returned to Oregon in
3 October of 2019 and was arrested at Portland International Airport. Ultimately, Defendant plead guilty
4 to the Assault in the Fourth Degree charge in that case and was placed on probation in January of 2020.
5 In October of 2020 that probation was revoked after Defendant failed to comply with several terms of
6 his probation, including having attended a rally in Downtown Portland in August of 2020. Defendant
7 was sentenced to a six month revocation in that case.

8 Defendant was also convicted on two counts of Bail Jumping and one count of Obstructing Law
9 Enforcement in Clark County, WA on January 8, 2019. More recently, Defendant has been charged in
10 Thurston County, WA with Obstructing Law Enforcement, Criminal Trespass in the Second Degree, and
11 Assault in the Third Degree in connection with an incident wherein a large number of protesters
12 unlawfully entered the grounds of the Governor's Mansion in Olympia, WA on January 6, 2021.

13
14
15 DATED this 2nd day of February, 2022.

16
17 MIKE SCHMIDT
18 District Attorney
19 Multnomah County, Oregon

20 By: [Signature]
21 NATHAN T. VASQUEZ, OSB# 014437
22 Deputy District Attorney

23 SUBSCRIBED AND SWORN TO BEFORE
24 ME ON THE ABOVE DATE:



29
30 Kelly L. Newkirk
31 X Notary Public for Oregon
32 My Commission Expires: 5/12/2023
33
34 _____ Deputy Clerk of the Circuit Court
35
36 _____ Judge of the Circuit Court