

APPENDICES

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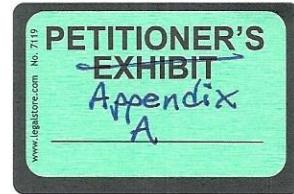
¹ Each appendix is a true and accurate copy. Petitioner's date of birth and social security number have been redacted in appendices A and C. Appendices were exhibits in the Missouri appellate courts. A copy of appendices A to I which were filed in the Missouri Court of Appeals, Eastern District and the Missouri Supreme Court are not filed in this petition because that would result in two additional copies of the same appendix.

In addition, the page numbering of the appendices in the booklet and the electronic filing is different and thus cross-references are provided. The page numbering of the appendices in the booklet includes the letter 'a' and the electronic filing includes the letter 'e'. The appendices in the electronic filing have an appendix sticker and the page numbers are handwritten.

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WARRANT FOR ARREST

STATE OF MISSOURI)
COUNTY OF LINCOLN)
ss

le

IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSOURI
ASSOCIATE JUDGE DIVISION
45th JUDICIAL CIRCUIT

STATE OF MISSOURI,)
Plaintiff,)
vs.) Case No. 21L6-CR00158
MICHALENE HAGAN,)
Defendant.)

STATE OF MISSOURI TO ANY PEACE OFFICER IN THE STATE OF MISSOURI:

THE COURT, HAVING FOUND PROBABLE CAUSE:

YOU ARE HEREBY COMMANDED to arrest

MICHALENE (X) HAGAN
221 Clark Drive
Troy MO, 63379

who is charged with the following felony:

COUNT I

**DELIVERY OF CONTROLLED SUBSTANCE EXCEPT 35 GRAMS OR LESS OF
MARIJUANA OR SYNTHETIC CANNABINOID**

The defendant, **MICHALENE (X) HAGAN**, in violation of Section 579.020, RSMo, committed the class C felony of delivery of a controlled substance, punishable upon conviction under Sections 558.002 and 558.011, RSMo, in that on or about December 9, 2019, in the County of Lincoln, State of Missouri, the defendant, with the intent to distribute knowingly possessed methamphetamine, a controlled substance, knowing of its presence and nature.

The range punishment for a class C felony is imprisonment in the custody of the Missouri Department of Corrections for a term of years not less than three (3) years and not to exceed ten (10) years; or by a fine not to exceed ten thousand dollars (\$10,000); or by both imprisonment

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and a fine. If money or property has been gained through the commission of the crime, any fine imposed may be not more than double the amount of the offender's gain from the commission of the crime.

Missouri Charge Code: 579.020-004Y20203571.0

COUNT II
UNLAWFUL POSSESSION, TRANSPORT, MANUFACTURE, REPAIR OR SALE OF
ILLEGAL WEAPON

The defendant, **MICHALENE (X) HAGAN**, in violation of Section 571.020.1, RSMo, committed the class D felony of unlawful possession of an explosive weapon, punishable upon conviction under Sections 558.011 and (558.002), RSMo, in that on or about February 12, 2021, in the County of Lincoln, State of Missouri, the defendant knowingly possessed an explosive weapon, namely a homemade pipe bomb.

The range punishment for a class D felony is imprisonment in the custody of the Missouri Department of Corrections for a term of years not less than two (2) years and not to exceed seven (7) years; or by imprisonment for a special term not to exceed one (1) year in the county jail or other authorized penal institution; or by a fine not to exceed ten thousand dollars (\$10,000); or by both imprisonment and a fine. If money or property has been gained through the commission of the crime, any fine imposed may be not more than double the amount of the offender's gain from the commission of the crime.

Missouri Charge Code: 571.020-001Y20175299.0

The alleged charges have been committed within the jurisdiction of this Court and in violation of the laws of the State of Missouri, and to bring him forthwith before this Court to be here dealt with in accordance with law; and you, the officer serving this warrant, shall forthwith make return hereto to the Court.

WITNESS the Honorable Gregory Allsberry, Judge of the said Court and the Seal thereof, issued in the County and State aforesaid on this 12 day of February, 2021.



3e

Douglas K. Allbury

JUDGE

Bond is authorized at \$1,000,000 cash only

4e
RETURN:

Executed the within warrant in my County of Lincoln and in the State of Missouri on this _____ day of _____, 20____, by arresting the within named and producing said person before the said Court.

Officer	Badge No.
---------	-----------

Defendant posted bond and given Court date of _____.

(Complete the following return when defendant arrested and bond posted in another county.)

Defendant arrested in _____, City or County, posted bond as authorized, and given court date of _____.

Dispatch

**IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSOURI
ASSOCIATE JUDGE DIVISION
45th JUDICIAL CIRCUIT**

STATE OF MISSOURI,
Plaintiff,

VS.

**MICHALEN HAGAN,
Defendant.**



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FELONY COMPLAINT

Comes now, the Assistant Prosecuting Attorney of the County of Lincoln, State of Missouri, being duly sworn upon my oath and upon information and belief, and states that there is probable cause to believe that on or about February 12, 2021, the accused committed the following crime(s):

COUNT I

**DELIVERY OF CONTROLLED SUBSTANCE EXCEPT 35 GRAMS OR LESS OF
MARIJUANA OR SYNTHETIC CANNABINOID**

The defendant, **MICHALENE (X) HAGAN**, in violation of Section 579.020, RSMo, committed the class C felony of delivery of a controlled substance, punishable upon conviction under Sections 558.002 and 558.011, RSMo, in that on or about December 9, 2019, in the County of Lincoln, State of Missouri, the defendant, with the intent to distribute knowingly possessed methamphetamine, a controlled substance, knowing of its presence and nature.

The range punishment for a class C felony is imprisonment in the custody of the Missouri Department of Corrections for a term of years not less than three (3) years and not to exceed ten (10) years; or by a fine not to exceed ten thousand dollars (\$10,000); or by both imprisonment and a fine. If money or property has been gained through the commission of the crime, any fine imposed may be not more than double the amount of the offender's gain from the commission of the crime.

Missouri Charge Code: 579.020-004Y202035710

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COUNT II
UNLAWFUL POSSESSION, TRANSPORT, MANUFACTURE, REPAIR OR SALE OF
ILLEGAL WEAPON

The defendant, **MICHALENE (X) HAGAN**, in violation of Section 571.020.1, RSMo, committed the class D felony of unlawful possession of an explosive weapon, punishable upon conviction under Sections 558.011 and (558.002), RSMo, in that on or about February 12, 2021, in the County of Lincoln, State of Missouri, the defendant knowingly possessed an explosive weapon, namely a homemade pipe bomb.

The range punishment for a class D felony is imprisonment in the custody of the Missouri Department of Corrections for a term of years not less than two (2) years and not to exceed seven (7) years; or by imprisonment for a special term not to exceed one (1) year in the county jail or other authorized penal institution; or by a fine not to exceed ten thousand dollars (\$10,000); or by both imprisonment and a fine. If money or property has been gained through the commission of the crime, any fine imposed may be not more than double the amount of the offender's gain from the commission of the crime.

Missouri Charge Code: 571.020-001Y202052990

The facts that form the basis for this information and belief are contained in the attached statement of facts concerning this matter, which statement is made apart hereof and are submitted herewith as a basis upon which this Court may find the existence of probable cause for the issuance of the warrant.

WHEREFORE, the Assistant Prosecuting Attorney prays that an arrest warrant be issued as provided by law.

/s/ Tamma E. Keim

Tamma E. Keim, Bar #62646
Assistant Prosecuting Attorney
P. O. Box 319
Troy, MO 63379
(636) 528-8571

IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSOURI

STATE OF MISSOURI

Plaintiff

VS.

Case No: 2021-01729

Michalene Hagen,
221 Clark Drive,
Troy, MO 63379

White / Female

Height: 5'03" / Weight: 135

Defendant

PETITIONER'S
EXHIBIT
Appendix
C

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electronically Filed - LINCOLN COUNTY - February 17, 2021 - 03:55 PM

PROBABLE CAUSE STATEMENT

STATE OF MISSOURI

] ss

COUNTY OF LINCOLN

I, J. Alfaro DSN 181, an officer with the Troy Missouri Police Department, knowing that false statements on this form are punishable by law, state that the facts contained herein are true to the best of my knowledge, information, and belief.

I have probable cause to believe that on 02/12/2021 at approximately 0030 hours, I was dispatched to Victory Lane, 1760 State Highway 47, Troy, Lincoln County, MO 63379 in reference to a possible road rage incident in which the caller claimed to have been run off of the road by a black pickup truck, bearing Missouri license plate 3DDR96, and upon making contact with the driver of the truck identified as Michalene Hagen I believe she committed the following criminal offenses.

The facts supporting this belief are as follows:

1. on 02/12/2021 at approximately 0030 hours, I was dispatched to Victory Lane, 1760 State Highway 47, Troy, Lincoln County, MO 63379 in reference to a possible road rage incident in which the caller claimed to have been run off of the road by a black pickup truck, bearing Missouri license plate 3DDR96, and upon making contact with the driver of the truck identified as Michalene Hagen I believe she committed the following criminal offenses.
2. Upon arrival, I observed the vehicle parked in a parking stall, facing the north side of the Victory Lane building. I made contact with Hagen and asked if she knew why I was making contact with her. Hagen stated, "probably because she was falling asleep while driving and almost hit another car."
3. I observed Hagen leaning forward and concealing her hands. I asked Hagen to step out of the vehicle. When Hagen stepped out of the vehicle, I asked for consent to search her coat pockets. Hagen gave verbal consent and said yes.

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4. While searching the left coat pocket of Hagen, I located a black, zippered bag with multi-colored hearts. I asked Hagen if I could open the bag and she verbally stated yes. Upon opening the bag, I located three (3) clear, plastic bags containing a crystalline substance which in my training and experience is known to be methamphetamine. I also located two packages of empty, glass vial containers. One (1) package contained five (5) glass vials and the other package contained seven (7) glass vials.
5. I advised Hagen she was under arrest, advised her of Miranda and asked her what was in the clear, plastic bags. Hagen stated, the two smaller bags contained methamphetamine and the larger, clear plastic bag contained rock salt. Hagen stated, "I bought \$400 worth from a guy in St. Charles and he ripped me off." A field test of the crystalline substance from one of the clear, plastic bags showed a clear and positive indication for the presence of methamphetamine. The individual weight of the three clear plastic bags is approximately as follows; 1.94 grams, 3.86 grams, 37.78 grams
6. Due to Hagen's arrest, an inventory search of her vehicle was conducted prior to the arrival of a tow company. During the inventory search, I located a dark colored, metal pipe in the front, passenger's seat of the vehicle, which was approximately 15.75 inches in length. The pipe was capped on one end and blocked on the other end. The pipe appeared to be a homemade pipe bomb. After locating this, I immediately stepped away from the vehicle and contacted the St. Charles County Bomb Squad.
7. St. Charles County Bomb Squad arrived on scene and identified the device as a potential homemade, explosive device. St. Charles County Bomb Squad employed a controlled detonation of the device and they located/identified the device to contain alleged gunpowder, copper ball bearings and .22 caliber bullets.
8. With my training and experience and the way the suspected narcotics were packaged, I believe Hagen was/is distributing illegal narcotics.
9. I believe the defendant would not appear in court in response to a criminal summons and/or the defendant poses a danger to victim(s), the community, or another person for the following reason(s):

Hagen showed no regard for community or Officer safety by possessing a homemade, explosive and possessing dangerous narcotics with the intention of distribution.

10. It should be noted; Hagen pled guilty to Assault 3rd Degree on 07/15/1999, Possession of a Controlled Substance on 05/05/1999, Possession of a Controlled Substance on 08/06/1999, Possession of a Controlled Substance on 02/09/1999, Distribution/Delivery/Manufacturing of a Controlled Substance on 11/08/1999. Hagen is currently charged in Warren County for Delivery of a Controlled Substance x3 in reference to case number 19BB-CR00970
11. Since this affidavit is submitted only for the purpose of securing an arrest warrant, I have not set forth each and every fact known to me concerning this investigation. I have included what I believe are facts sufficient in establishing probable cause for this arrest warrant.

Officer. J. Alfaro, 181
OFFICER NAME, DSN


181
Signature
Jonathan Alfaro

Subscribed and sworn to before me on this _____ day of _____, 20_____. 9e

Notary's Name

IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSOURI
ASSOCIATE CIRCUIT DIVISION

State of Missouri, Plaintiff v.

Case No. 21 L6-CR 00158

PETITIONER'S
EXHIBIT
Appendix
D

Michalene Hagan
Defendant

ORDER UPON INITIAL APPEARANCE/ARRAIGNMENT

10e

INITIAL APPEARANCE/ARRAIGNMENT – Deft appears upon summons or after having been released upon bond conditions. Deft enters a plea of not guilty to all misdemeanor charges, if any.

INITIAL APPEARANCE/ARRAIGNMENT after Defendant was jailed on a warrant. Defendant enters a plea of not guilty to all misdemeanor charges, if any.

Defendant was informed of the charge(s), right to remain silent, right to counsel, of his/her bond, and conditions of release. Defendant was informed that a warrant for arrest may be issued immediately upon any violation of a condition of release or violation of law while released on bond.

Legal Counsel:

Defendant indicates intent to retain counsel. Defendant appears with counsel
 Defendant has filed/will file a Public Defender application Due process requires appointment of counsel if Deft is indigent and requests counsel because: Deft is charged with a felony

Deft is charged with a misd. and is confined or the case will probably result in jail upon conviction and State does not waive jail sentence Deft is unable to adequately present own defense Deft has been taken into custody as a sexually violent predator Due to gravity of the charge(s) and other circumstances surrounding Deft, failure to appoint counsel may result in injustice to the Deft.

Bond: (Or, if marked: _____ A summons was issued)

The Court does not reduce bond – Defendant does not request any changes.
 The Court reduces the bond to O.R. (promise to appear). Deft. to be released from jail on this case.
 The Court amends the Bond as per Bond Memorandum and Order.
 The Court denies bond reduction/amendment at this time. Defendant informed of the right to a release hearing pursuant to Rule 33.05. The hearing shall occur as soon as practicable but no later than seven working days after the initial appearance, absent good cause shown by the parties or the court.

Scheduling:

Application for change of judge granted/denied.
 Bond reduction hearing on 2/23/21 at 8:30 a.m./p.m.
Prosecuting Attorney to notify victim(s) if necessary.
Case continued (at request of _____) to _____ at _____ a.m./p.m. for:
 announcement announcement regarding counsel bench trial
 bond appearance disposition preliminary hearing screening for alternative court provide proof of compliance: _____ other: _____

Defendant has filed a written request for a speedy trial. Jury trial to be held within 120 days of the date of Defendant's arraignment or request or an order granting a change of venue, whichever occurs later, said latest date being: _____

Case scheduled for jury trial _____ days beginning on _____ at 8:30 a.m.
Pretrial conference scheduled for _____ at _____ a.m./p.m.

Updated address: _____

Other: _____

So ordered: Judge: Troy Aleske Date: February 18, 2021

IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSOURI
ASSOCIATE CIRCUIT DIVISION

7
PETITIONER'S
EXHIBIT
Appendix
E

State of Missouri, Plaintiff

v.

Case No. 21 L6-CR 05158

Michalene X Hagan
Defendant

BOND MEMORANDUM AND ORDER

11e
The parties agreed to bond reduction/amendment as set forth below.

Hearing was held. The Rules of Evidence are inapplicable (S.Ct. Rule 33.07.) The Court considered the following factors and made the following findings regarding those factors:

1. Ability to Pay. Is employed *clean house* full time part time Unemployed
(Rate of pay: \$ 1 Liquid assets: _____)

2. Defendant's age: 19 or younger 20-29 30+ 46

3. Defendant's family ties. Single Other: *married - separated* # and ages of dependent children who reside with Defendant: 6 & 8 yr old

4. Length of residence in community Under 12 months 12 months or more

5. Current charge(s) include an A or B felony? Yes No

6. Defendant on probation or parole at time of current offense(s)? (Yes) No

7. Character and record of convictions. One or more prior felony or misd convictions No priors
Prior convictions for the same charge(s)? Yes No
1999 assault 3d + poss C & dist 1 C

8. Record of appearance at court proceedings. Two or more FTAs One FTA No FTAs

9. Mental condition and history of substance abuse. Both mental health issues and substance abuse:
Mental health issues Substance abuse issues

10. Nature and circumstances of the offense and the weight of evidence against Defendant

11. Unusual safety concerns for victims and witnesses:
dangerous & pipe bomb

After consideration of the evidence presented on the above factors, the Court

(Amends the bond as follows: (O.R. (promise to appear) – Defendant to be released from jail on this case

(\$ _____ (cash only (10% authorized (cash or surety

(property _____

(Places Defendant in the custody of _____ who has
agreed to supervise Defendant and assure his/her appearance

Special conditions: no contact with victim no unlawful contact with victim
 GPS monitoring and SCRAM contin alcohol monitoring before release (C.O. authorized to walk defendant to Rise Up)/within 48 hours after release with the following inclusion/exclusion

12e

zones:

House arrest with the following exceptions: travel to and from court, doctor's office, attorney's office, work, and:

remote breath monitoring controlled substance test monitoring
 EDVES within 72 hours Not possess alcohol, or any controlled substance w/o valid prescription.
 Restriction on travel: surrender passport not travel outside State of Missouri
 Report every _____ days, starting on _____, to: LCPA's office _____
 Actively seek/maintain employment or commence an education program: _____
 Curfew: remain at home between the hours of _____ p.m. and _____ a.m.
 Not possess a firearm or other deadly weapon
 Undergo medical, psychological or psychiatric treatment as follows: _____

Work release if approved by the sheriff

Other: _____

The Court finds that the above listed conditions are *the least restrictive* for the facts of this case.

The Court denies any change in the bond, finding that the clear and convincing evidence is that the current conditions are the **least restrictive to secure appearance and safety**.

Under subsection (d) of S. Ct. Rule 33.01(d) the court finds by clear and convincing evidence that **NO BOND** and conditions will secure the safety of the community because

In the event that NO BOND is approved and Defendant has filed a written request for a speedy trial, jury trial to be held within 120 days of the date of Defendant's arraignment or request or an order granting a change of venue, whichever occurs later, said latest date being: _____

Scheduling: Case continued (at request of _____) to 3/16/21 at 8:30 a.m./p.m. for:
 announcement announcement regarding counsel bench trial bond appearance
 disposition preliminary hearing screening for alternative court provide proof of compliance: _____ other: _____

Case scheduled for jury trial _____ days beginning on _____ at 8:30 a.m. Pretrial conference scheduled for _____ at _____ a.m./p.m.

Address update: _____

Other: _____

Prosecuting Attorney

Defendant's Attorney/Bar #

Defendant

So ordered: Judge: Greg Alber

Date: February 23, 2021

425.04.1 CONTROLLED SUBSTANCES: DELIVERY

1. DELIVERY OF A CONTROLLED SUBSTANCE OR
MORE THAN 35 GRAMS OF MARIJUANA OR
SYNTHETIC CANNABINOID

(As to Count _____, if) (If) you find and believe from the evidence beyond a reasonable doubt:

First, that (on) (on or about) [date], in the State of Missouri, the defendant knowingly (distributed) (delivered) (sold) ([name of controlled substance]) ((more than 35 grams of (marijuana) (synthetic cannabinoid)), a controlled substance, to [name of person or otherwise describe], and

Second, that defendant (knew) (or) (was aware) that the substance defendant (distributed) (delivered) (sold) was ([name of controlled substance]) (a controlled substance),

(Third, that at that time, [name of person to whom the controlled substance was distributed or delivered] was less than seventeen years of age, and

Fourth, that at that time, [name of person to whom the controlled substance was distributed or delivered] was at least two years younger than the defendant,)

then you will find the defendant guilty (under Count _____) of delivery of (a controlled substance) ((more than 35 grams of (marijuana) (synthetic cannabinoid)).



13e

(4e)

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense.

2. DELIVERY OF 35 GRAMS OR LESS OF MARIJUANA OR SYNTHETIC CANNABINOID

((As to Count _____, if) (If) you do not find the defendant guilty of delivery of more than 35 grams of (marijuana) (synthetic cannabinoid) under Instruction No. _____, you must consider whether the defendant is guilty of delivery of (marijuana) (synthetic cannabinoid) under this instruction.)

(As to Count _____, if) (If) you find and believe from the evidence beyond a reasonable doubt:

First, that (on) (on or about) [date], in the State of Missouri, the defendant knowingly (distributed) (delivered) (sold) (marijuana) (synthetic cannabinoid), a controlled substance, to [name of person or otherwise describe], and

Second, that defendant (knew) (or) (was aware) that the substance defendant (distributed) (delivered) (sold) was (marijuana) (synthetic cannabinoid),

(Third, that at that time, [name of person to whom the marijuana or synthetic cannabinoid was distributed or delivered] was less than seventeen years of age,

Fourth, that at that time, [name of person to whom the marijuana or synthetic cannabinoid was distributed or delivered] was at least two years younger than the defendant,)

then you will find the defendant guilty (under Count _____) of delivery of (marijuana) (synthetic cannabinoid).

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense.

Notes on Use

1. Section 579.020.1(1), RSMo 2016. This is a revision of MAI-CR 3d 325.04.1 (1-1-05). This instruction applies to offenses committed on or after January 1, 2017. This offense was formerly located in Sections 195.211 and 195.212, RSMo.

2. Section 579.020, RSMo 2016, makes it unlawful for any person to knowingly distribute or deliver a controlled substance, attempt to do so, possess with intent to do so or knowingly permit a minor to purchase or transport illegally obtained controlled substances. This instruction submits the offense of delivery of a controlled substance. Use part 1 of this instruction labeled **DELIVERY OF A CONTROLLED SUBSTANCE OR MORE THAN 35 GRAMS OF MARIJUANA OR SYNTHETIC CANNABINOID** to submit the offense of delivery of any controlled substance other than marijuana or synthetic cannabinoid or when the controlled substance is more than 35 grams of marijuana or synthetic cannabinoid. Use part 2 of this instruction labeled **DELIVERY OF 35 GRAMS OR LESS OF MARIJUANA OR SYNTHETIC CANNABINOID** to submit the offense of

**426.18 UNLAWFUL POSSESSION, MANUFACTURE,
TRANSPORT, REPAIR OR SALE OF CERTAIN
WEAPONS**

(As to Count _____, if) (If) you find and believe from the evidence beyond a reasonable doubt:



16e

First, that (on) (on or about) [date], in the State of Missouri, the defendant knowingly (possessed) (manufactured) (transported) (repaired) (sold) [Describe the item, such as "grenade" or "plastic milk bottle fashioned into homemade silencer."], and

Second, that the item (possessed) (manufactured) (transported) (repaired) (sold) was [Insert one of the following. Omit brackets and number.]

- [1] an explosive weapon,
- [2] (a) (an) ((explosive) (incendiary) (poison)) ((substance) (or) (material)),
- [3] a machine gun,
- [4] a gas gun,
- [5] a short barreled (rifle) (shotgun),
- [6] a firearm silencer,
- [7] a switchblade knife,
- [8] a (bullet) (projectile) that explodes or detonates upon impact because of an independent explosive charge after having been shot from a firearm,
- [9] knuckles,

and,

17e

Third, that defendant (knew) (or) (was aware) that the item (possessed) (manufactured) (transported) (repaired) (sold) was [Insert one of the following. Omit brackets and number.]

- [1] an explosive weapon,
- [2] (a) (an) ((explosive) (incendiary) (poison)) ((substance) (material)),
- [3] a machine gun,
- [4] a gas gun,
- [5] a short barreled (rifle) (shotgun),
- [6] a firearm silencer,
- [7] a switchblade knife,
- [8] a (bullet) (projectile) that explodes or detonates upon impact because of an independent explosive charge after having been shot from a firearm,
- [9] knuckles,

(and)

(Fourth, that the defendant (possessed) (manufactured) (transported) (repaired) (sold) the ((explosive) (incendiary) (poison)) ((substance) (material)) with the purpose to (possess) (manufacture) (sell) an explosive weapon,)

then you will find the defendant guilty (under Count _____) of unlawful (possession) (manufacture) (transport) (repair) (sale) of a weapon.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense.

(As used in this instruction, the term "possessed" means having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if the person has the object on his or her person or within easy reach and convenient control. A person has constructive possession if the person has the power and the intention at the given time to exercise dominion or control over the object either directly or through another person or persons. (Possession may also be sole or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint.))

(As used in this instruction, the term "explosive weapon" means any explosive, incendiary, or poison gas bomb or similar device designed or adapted for the purpose of inflicting death, serious physical injury, or substantial property damage; or any device designed or adapted for delivering or shooting such a weapon.)

(As used in this instruction, the term "machine gun" means any firearm that is capable of firing more than one shot automatically, without manual reloading, by a single function of the trigger.)

(As used in this instruction, the term "gas gun" means any gas ejection device, weapon, cartridge, container or contrivance other than a gas bomb, that is designed or adapted for the purpose of

lae

ejecting any poison gas that will cause death or serious physical injury, but not any device that ejects a repellent or temporary incapacitating substance.)

(As used in this instruction, the term "rifle" means any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of the trigger.)

(As used in this instruction, the term "shotgun" means any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire a number of shot or single projectile through a smooth bore barrel by a single function of the trigger.)

(As used in this instruction, the term "short barrel" means a barrel length of less than sixteen inches for a rifle and eighteen inches for a shotgun, both measured from the face of the bolt or standing breech, or an overall rifle or shotgun length of less than twenty-six inches.)

(As used in this instruction, the term "firearm" means any weapon that is designed or adapted to expel a projectile by the action of an explosive.)

(As used in this instruction, the term "firearm silencer" means any instrument, attachment, or appliance that is designed or adapted to muffle the noise made by the firing of any firearm.)

(As used in this instruction, the term "switchblade knife" means any knife which has a blade that folds or closes into the handle or sheath, and (a) that opens automatically by pressure applied to a button or other device located on the handle; or (b)

that opens or releases from the handle or sheath by the force of gravity or by the application of centrifugal force.)

(As used in this instruction, the term "knuckles" means any instrument that consists of finger rings or guards made of a hard substance that is designed or adapted for the purpose of inflicting serious physical injury or death by striking a person with a fist enclosed in the knuckles.)

(As used in this instruction, the term "serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.)

Notes on Use

1. Section 571.020, RSMo 2016. This is a revision of MAI-CR 3d 331.32 (1-1-05). This is a revision to the Notes on Use only and applies to offenses committed on or after January 1, 2017.

2. Possessing, manufacturing, transporting, repairing or selling illegal weapons is a class C felony if the weapon is an explosive weapon; an explosive, incendiary or poison substance or material; a machine gun; a gas gun; a short barreled rifle or shotgun; or a firearm silencer. It is a class A misdemeanor if the weapon is a switchblade knife; a firearm silencer; or knuckles.

IN THE ASSOCIATE CIRCUIT COURT OF LINCOLN COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,) Cause No. 21L6-CR00158
Plaintiff)
)
) Division No. III
v.)
)
MICHALENE HAGAN,)
Defendant)



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ENTRY OF APPEARANCE

Undersigned counsel hereby enters his appearance as counsel of record on behalf of Defendant in the above-captioned cause.

Respectfully submitted,

/s/ Lou Horwitz

Louis Horwitz, Mo Bar No. 56155
Lou Horwitz L.L.C.
1 Mid Rivers Mall Drive, Suite 280
St. Peters, MO 63376
Tel: 636-279-1532
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Email: LouHorwitzLLC@att.net

Certificate of Service

I certify that on this 9th day of March, 2021, a true copy of the above and foregoing was electronically served via the Missouri eFiling System to the Lincoln County Prosecuting Attorney's office, 45 Business Park Drive, P.O. Box 319, Troy, MO 63379.

/s/ Lou Horwitz

Louis Horwitz

Document: Mo. Sup. Ct. R. 33.01



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Mo. Sup. Ct. R. 33.01

[Copy Citation](#)

RULES CURRENT THROUGH May 24, 2021.

**MO - Missouri State & Federal Court Rules SUPREME COURT RULES RULES OF CRIMINAL
PROCEDURE RULE 33. MISDEMEANORS OR FELONIES--RELEASE PENDING FURTHER PROCEEDINGS**

33.01. Misdemeanors or Felonies--Right to Release--Conditions

(a) A defendant charged with a bailable offense shall be entitled to be released from custody pending trial or other stage of the criminal proceedings.

(b) The defendant's release shall be upon the conditions that:

(1) The defendant will appear in the court in which the case is prosecuted or appealed, from time to time as required to answer the criminal charge;

(2) The defendant will submit to the orders, judgment and sentence, and process of the court having jurisdiction over the defendant;

(3) The defendant shall not commit any new offenses and shall not tamper with any victim or witness in the case, nor have any person do so on the defendant's behalf; and

(4) The defendant will comply fully with any and all conditions imposed by the court in granting release.

(c) The court shall release the defendant on the defendant's own recognizance subject only to the conditions under subsection (b) with no additional conditions of release unless the court determines such release will not secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses. If the court so determines, it shall set and impose additional conditions of release pursuant to this subsection.

The court shall set and impose the least restrictive condition or combination of conditions of release, and the court shall not set or impose any condition or combination of conditions of release greater than necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.

When considering the least restrictive condition or combination of conditions of release to set and impose, the court shall first consider non-monetary conditions. Should the court determine non-monetary conditions alone will not secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses, then the court may consider monetary conditions or a combination of non-monetary and monetary conditions to satisfy the foregoing. After considering the defendant's ability to pay, a monetary condition fixed at more than is necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses, is impermissible.

If the court determines additional conditions of release are required pursuant to this subsection, it shall set and impose one or more of the following conditions of release:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place restrictions on the travel, association, or place of abode of the defendant during the period of release, including the holding by the court of the defendant's passport;

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(3) Require the defendant to report regularly to some officer of the court or peace officer, in such manner as the court directs;

(4) Require the use of electronic monitoring of defendant's location, the testing of defendant for drug or alcohol use, or the installation and use of ignition interlock devices. The court may order the eligible defendant to pay all or a portion of the costs of such conditions, but the court shall consider how best to minimize the costs to the defendant and waive the costs for an eligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs;

(5) Require the defendant to seek employment, to maintain employment, or to maintain or commence an educational program;

(6) Require the defendant to comply with a specified curfew;

(7) Require the defendant to refrain from possessing a firearm or other deadly weapon;

(8) Require the defendant to abstain from possession or use of alcohol or any controlled substance without a physician's prescription;

(9) Require the defendant to undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency and remain in a specified institution if required for that purpose;

(10) Require the defendant to return to custody for specified hours following release for employment, school, treatment, or other limited purpose;

(11) Require the defendant to be placed on home supervision with or without the use of an electronic monitoring device. The court may order the eligible defendant to pay all or a portion of the costs of the electronic monitoring, but the court shall consider how best to minimize the costs of such condition to the defendant and waive the costs for an eligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs;

(12) Require the defendant to execute a monetary bond in a stated amount wherein the defendant promises to pay to the court the stated amount should the defendant fail to appear or abide by the conditions of release;

(13) Require the execution of a monetary bond in a stated amount with sufficient sureties, or the deposit in the registry of the court of a sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision;

(14) Require the execution of a monetary bond in a stated amount and the deposit in the registry of the court of 10 percent, or such lesser sum as the court directs, of such sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision;

(15) Require the deposit of a property bond of sufficient value as approved and directed by the court;

(16) Impose other conditions necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.

(d) Should the court determine upon clear and convincing evidence that no combination of non-monetary conditions and monetary conditions will secure the safety of the community or other person, including but not limited to the crime victims and witnesses, then the court shall order the defendant detained pending trial or any other stage of the criminal proceedings. A defendant so detained shall, upon written request filed after arraignment, be entitled to a trial which begins within 120 days of the defendant's request or within 120 days of an order granting a change of venue, whichever occurs later. Any request by the defendant to continue the trial beyond the 120 days shall be considered a waiver by the defendant of the right to have the trial conducted within 120 days.

(e) In determining whether to detain the defendant pursuant to subsection (d) or release the defendant with a condition or combination of conditions of release, if any, pursuant to subsection (c), the court shall base its

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determination on the individual circumstances of the defendant and the case. Based on available information, the court shall take into account: the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, including ability to pay, character, and mental condition; the length of the defendant's residence in the community; the defendant's record of convictions; the defendant's record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; whether the defendant was on probation, parole or release pending trial or appeal at the time the offense for which the court is considering detention or release was committed; and any validated evidentiary-based risk assessment tool approved by the Supreme Court of Missouri.

(f) A court detaining or releasing the defendant under this Rule shall enter an order stating the condition or combination of conditions of release, if any, set and imposed by the court. If the defendant is detained and unable to comply with any condition of release, the defendant shall have the right to a release hearing pursuant to Rule 33.05. At any hearing conducted under Rule 33, the court shall permit but not require either party to make a record on the defendant's financial status and ability to pay any monetary condition or other relevant issue. At such hearing, the court shall also make written or oral findings on the record supporting the reasons for detention or conditions set and imposed. The court shall inform the defendant of the conditions set and imposed, if any, and that the conditions of release may be revoked and the defendant detained until trial or other stage of the criminal proceedings for violation of any of the conditions of release and that a warrant for the defendant's arrest may be issued immediately upon notification to the court of any such violation.

History

Adopted June 13, 1979, eff. Jan. 1, 1980; Amended May 18, 1981, eff. Jan. 1, 1982; Amended Jan. 25, 1994, eff. Sept. 1, 1994; Amended July 1, 2019; Amended June 30, 2019, eff. Jan. 1, 2020.

▼ Annotations

Commentary

COMMENT

Paragraph (a)--Compare: Prior Rule 21.07, prior Rule 21.12 and Section 544.455-1, RSMo 1978.

Paragraph (b)--Compare: Prior Rule 21.12 and Section 544.455-1, RSMo 1978.

Paragraph (c)--Compare: Prior Rule 32.05 and Section 544.455-1, RSMo 1978.

Paragraph (d)--Compare: Section 544.455-1, RSMo 1978.

Paragraph (e)--Compare: Section 544.455-2, RSMo 1978.

Paragraph (f)--Compare: Section 544.455-3, RSMo 1978.

Case Notes

Document: Mo. Sup. Ct. R. 33.02

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Mo. Sup. Ct. R. 33.02**Copy Citation**

RULES CURRENT THROUGH May 24, 2021.

**MO - Missouri State & Federal Court Rules SUPREME COURT RULES RULES OF CRIMINAL
PROCEDURE RULE 33. MISDEMEANORS OR FELONIES--RELEASE PENDING FURTHER PROCEEDINGS****33.02. Misdemeanors or Felonies--Warrant for Arrest--Conditions to be Stated on Warrant**

The court, or clerk at the court's direction for a specific warrant, issuing a warrant for the arrest of any defendant shall state the condition or combination of conditions of release, if any, on the warrant for arrest.

History

Adopted June 13, 1979, eff. Jan. 1, 1980; Amended July 1, 2019.

▼ Annotations**Commentary****COMMENT**

Compare: Prior Rule 32.02 and Sections 544.540 and 544.560, RSMo 1978.

Document: Mo. Sup. Ct. R. 33.05

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Mo. Sup. Ct. R. 33.05

[Copy Citation](#)

RULES CURRENT THROUGH May 24, 2021.

**MO - Missouri State & Federal Court Rules SUPREME COURT RULES RULES OF CRIMINAL
PROCEDURE RULE 33. MISDEMEANORS OR FELONIES--RELEASE PENDING FURTHER PROCEEDINGS**

33.05. Misdemeanors or Felonies--Release Hearing

A defendant who continues to be detained after the initial appearance under Rule 21.10 or Rule 22.08 shall have the defendant's detention or conditions of release reviewed at a hearing by the court subject to the right of a victim to be informed of and heard at the hearing. The hearing shall occur as soon as practicable but no later than seven days, excluding weekends and holidays, after the initial appearance, absent good cause shown by the parties or the court. At the hearing, the court shall determine if the defendant shall be detained or released as provided in Rule 33.01. Nothing herein shall prohibit a defendant from making subsequent application for review of the defendant's detention or conditions of release under Rule 33.01.

History

Adopted June 13, 1979, eff. Jan. 1, 1980; Amended July 1, 2019; Amended June 30, 2019, eff. Jan. 1, 2020.

▼ Annotations

Commentary

COMMENT

Compare: Prior Rule 32.08 and Section 544.455-4, RSMo 1978.

Document: Mo. Sup. Ct. R. 33.06

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Mo. Sup. Ct. R. 33.06

[Copy Citation](#)

RULES CURRENT THROUGH May 24, 2021.

**MO - Missouri State & Federal Court Rules SUPREME COURT RULES RULES OF CRIMINAL
PROCEDURE RULE 33. MISDEMEANORS OR FELONIES--RELEASE PENDING FURTHER PROCEEDINGS**

33.06. Misdemeanors or Felonies--Modification of Conditions of Release

(a) Upon motion by the state or by the defendant, or upon the court's own motion, the court, subject to the right of a victim to be informed of and be heard, and after notice to the parties and hearing, may modify the conditions of release when the court finds that:

- (1)** New, different, or additional requirements for release are necessary; or
- (2)** The conditions of release which have been set are excessive; or
- (3)** The defendant has failed to comply with or has violated the conditions of release; or
- (4)** The defendant has been convicted of the offense charged.

(b) When the conditions of release are increased by the court, or new conditions of release are set and imposed, the court may remand the defendant to the custody of the sheriff or other officer until compliance with the modified conditions. If the defendant is not in custody, the court may order that a warrant for the defendant's arrest be issued.

History

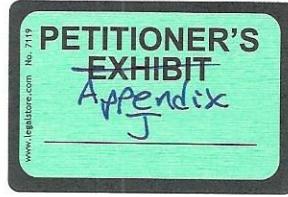
Adopted June 13, 1979, eff. Jan. 1, 1980; Amended July 1, 2019; Amended June 30, 2019, eff. Jan. 1, 2020.

▼ Annotations

Commentary

COMMENT

IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT



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STATE OF MISSOURI ex rel.)	Cause No.
MICHALENE HAGAN,)	(Re: Lincoln County
Relator,)	Case 21L6-CR00158)
)	
v.)	
)	
THE HONORABLE GREGORY)	
ALLSBERRY, Associate Circuit)	
Judge, 45th Judicial Circuit,)	
Lincoln County, Missouri,)	
Respondent.)	

WRIT SUMMARY

Parties and their attorneys:

Relator: Michalene Hagan.

Relator's attorney: Louis Horwitz, Lou Horwitz LLC, 1 Mid Rivers Mall Drive, Suite 280, St. Peters, MO 63376, tel: 636-279-1532, fax: 636-279-1632, email: LouHorwitzLLC@att.net.

Respondent: The Honorable Gregory Allsberry, Associate Circuit Judge, 45th Judicial Circuit, Lincoln County Courthouse, 45 Business Park Drive, Troy, MO 63379, tel: 636-528-6300, fax: 636-528-9168, email: gregory.allsberry@courts.mo.gov.

Respondent's attorney: Tamma Keim, Assistant Prosecuting Attorney, Lincoln County Prosecuting Attorney's Office, 45 Business Park Drive, Troy, MO 63379, tel: 636-528 8571, fax: 636-528-2152, email: tkeim@lcmopa.com.

Nature of underlying action: Criminal Complaint charging Relator with a class C felony of delivery of a controlled substance and a class D felony of unlawful possession of an explosive weapon.

Action of Respondent being challenged, including date thereof: On February 12, 2021, Respondent set bond at one million dollars, cash only on the initial warrant for arrest.

Relief sought by Relator: Relator seeks a writ of prohibition holding, as a matter of

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law and as applied, that a one million-dollar, cash-only bond on the initial warrant for arrest, regarding a class C felony delivery of a controlled substance and a class D felony unlawful possession of an explosive weapon, violates the Excessive Bail Clauses of the United States and the Missouri Constitutions.

Date case set: Case is not presently set for trial.

Any previous or pending writ proceeding: There is no previous or pending writ proceeding.

IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT



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STATE OF MISSOURI ex rel.)	Cause No.
MICHALENE HAGAN,)	(Re: Lincoln County
Relator,)	Case 21L6-CR00158)
)	
v.)	
)	
THE HONORABLE GREGORY)	
ALLSBERRY, Associate Circuit)	
Judge, 45th Judicial Circuit,)	
Lincoln County, Missouri,)	
Respondent.)	

PETITION FOR WRIT OF PROHIBITION¹

COMES NOW Michalene Hagan, Relator, by and through undersigned counsel, pursuant to Supreme Court Rule 97, and petitions the Court for a writ of prohibition based on the claim that, as a matter of law and as applied,

¹ Unless indicated otherwise, Missouri statutory and constitutional citations are to the electronic database published by the Missouri Revisor of Statutes, Cum. Supp. 2020, as of March 9, 2021. Citations for jury instructions are to the Missouri Approved Instructions-Criminal, Fourth Edition published by the Missouri Supreme Court Publications and available electronically through the Missouri Bar's website. Links or hyperlinks are not listed pursuant to Rule 103.04(b). All other citations are to LexisNexis 2021.

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Respondent's setting of a one million-dollar, cash-only bond on the initial warrant for arrest, regarding a class C felony delivery of a controlled substance and a class D felony unlawful possession of an explosive weapon, raises a reasonable inference that the Excessive Bail Clauses of the United States and the Missouri Constitutions were, in fact, violated.

Issues

- I. When a judge sets bond on the initial warrant for arrest, whether the Excessive Bail Clauses are preempted or stayed because of Rule 33.²
- II. Whether a one million-dollar, cash-only bond on the initial warrant for arrest, regarding a class C felony delivery of a controlled substance and a class D felony unlawful possession of an explosive weapon, violates the Excessive Bail Clauses of the United States and the Missouri Constitutions.

STATEMENT OF JURISDICTION³

“The supreme court and districts of the court of appeals may issue and determine original remedial writs.” Mo. Const. art. V, § 4.1.

“The supreme court may establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law.” Mo. Const. art. V, § 5.

² Exhibit I contains Rules 33.01, 33.02, 33.05, and 33.06.

³ Given the procedural posture of this claim, two additional preliminary matters will be mentioned herein: 1) Mootness and 2) Prohibition versus Mandamus.

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“Pursuant to these rules, applicable statutes and constitutional provisions, if a court fails to set conditions for release, or sets inadequate or excessive conditions, an accused or the state may seek remedial writ relief in a higher court pursuant to Rule 84.24.” Rule 33.09.

“No original remedial writ shall be issued by an appellate court in any case wherein adequate relief can be afforded by an appeal or by application for such writ to a lower court.” Rule 84.22(a).

“In all cases of final judgment rendered upon any indictment or information, an appeal to the proper appellate court shall be allowed to the defendant, provided,” Section 547.070.

An appeal is not an option for Relator because Respondent’s setting of a one million-dollar, cash-only bond on the initial warrant for arrest is not a judgment under Rule 74.01. See Rule 74.01(a) (stating, “[a] judgment is entered when a writing signed by the judge and denominated ‘judgment’ or ‘decree’ is filed.”) and exhibit A.

Mootness

“The mootness of a controversy is a threshold question in any appellate review of that controversy.” State ex rel. Chastain v. City of Kansas City, 968 S.W.2d 232, 237 (Mo. App. W.D. 1998).

“As a general rule, moot cases must be dismissed.”” Warlick v. Warlick, 294 S.W.3d 128, 130 (Mo. App. E.D. 2009) (internal citation omitted).

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“The public interest exception to mootness applies whenever a case presents an issue that (1) is of general public interest and importance, (2) will recur and (3) will evade appellate review in future live controversies.” Gurley v. Mo. Bd. of Private Investigator Exam’rs, 361 S.W.3d 406, 414 (Mo. banc 2012) (internal citation omitted).

Argument

One, counsel was unable to find a caselaw definition or dictionary definition for “of general public interest.” Id. The consequence is that its meaning must be determined on a case-by-case basis. That said, if Relator’s bond does not rise to the level “of general public interest and importance,” counsel was also unable to find any caselaw that provides guidance as to what is or would be the threshold amount necessary for Relator’s bond to be “of general public interest and importance.” Id.; Id.

Further, “[t]his Constitution[] . . . shall be the supreme law of the land[.]” U.S. Const. art. VI. And as applied to the time when bond is set on the initial warrant for arrest, counsel is not aware of any law stating that the Excessive Bail Clauses are preempted or stayed because of Rule 33.⁴

Two, this issue is likely to recur because, as a matter of custom and

⁴ “The hearing shall occur as soon as practicable but no later than seven days, excluding weekends and holidays, after the initial appearance, absent good cause shown by the parties or the court.” Rule 33.05.

practice, it seems quite common for bonds to be set on the initial warrants for arrest.

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Three, and more importantly, is the fact that this issue “will evade appellate review in future live controversies.” Id. Whether bond is amended at a subsequent bond hearing when defendant is present is irrelevant to and not part of Relator’s constitutional claim. Again, when bond is set on the initial warrant for arrest, counsel is not aware of any law stating that the Excessive Bail Clauses are preempted or stayed because of Rule 33.

Regarding a possible jury trial, bond, or the issue of bond, is not an element in either of the verdict directing instructions for Relator’s charges. See exhibits F and G. Regarding a possible guilty plea, “[t]he State is correct, however, to the extent it argues a guilty plea serves as a waiver of most nonjurisdictional errors that occurred prior to its entry, including constitutional challenges.” State v. Russell, 598 S.W.3d 133, 138 (Mo. banc 2020) (internal citation omitted); see also Soutee v. State, 51 S.W.3d 474, 480 (Mo. App. S.D. 2001) (stating, “[a] person who pleads guilty to a criminal offense has a right to challenge the sufficiency of the information or indictment by direct appeal.”).

Therefore, counsel submits that Relator’s Excessive Bail Clause claim satisfies the public interest exception to mootness.

Prohibition versus Mandamus

“Pursuant to these rules, applicable statutes and constitutional provisions, if a court fails to set conditions for release, or sets inadequate or excessive

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conditions, an accused or the state may seek remedial writ relief in a higher court pursuant to Rule 84.24.” Rule 33.09.

It is fundamental in the law of mandamus . . . that a prior express and specific demand be made of respondent of that which relator seeks, *and that a refusal of such demand occur*, before relator has any standing in court, or his application for the writ contains any ground for relief.

State ex rel. Healea v. Tucker, 545 S.W.3d 348, 353-354 (Mo. banc 2018) (internal citation omitted).

A writ of prohibition is appropriate: (1) to prevent the usurpation of judicial power when a lower court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted.

State ex rel. Strauser v. Martinez, 416 S.W.3d 798, 801 (Mo. banc 2014) (internal citation omitted).

“An abuse of discretion occurs if the circuit court’s decision ‘is clearly against the logic of the circumstance, is arbitrary and unreasonable, and indicates a lack of careful consideration.’” Id. (internal citations omitted).

Argument

At the time when any judge decides to set the bond on an initial warrant for arrest, it impossible for any defendant to make a specific demand to the judge

about the bond because the defendant is not a part of that process.⁵ Tucker, 545 S.W.3d at 353.

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Since a petition for a writ of mandamus is not an option, the only possible writ is a writ of prohibition to remedy an abuse of discretion. Martinez, 416 S.W.3d at 801. Relator submits that a finding that the Excessive Bail Clauses have been violated would, in turn, establish that there was an abuse of discretion.

STATEMENT OF THE FACTS⁶

On February 12, 2021, Respondent signed the initial warrant for arrest and decided to set bond at one million dollars, cash only. See exhibit A, pp. 2-3.

On February 17, 2021, the State filed a Complaint against Relator. See exhibit B. The Complaint charges two counts. Id. One count is a class C felony of delivery of a controlled substance and the other count is a class D felony of unlawful possession of an explosive weapon. Id.

On February 17, 2021, the State filed a Probable Cause Statement. See exhibit C. Information pertaining to Relator's criminal history is contained in paragraph ten. Id. at p. 8. None of the offenses in paragraph ten and neither of the

⁵ In addition, the constitutional propriety of not setting a bond on an initial warrant for arrest (excluding probation cases) is not embedded, in any way, in Relator's claim.

⁶ Relator's social security number and date of birth have been redacted in exhibits A and C.

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charges in the Complaint would be considered a dangerous felony as defined by law. Section 556.061(19).

On February 18, 2021, since Relator does not have one million dollars cash, Relator appeared in custody for the initial appearance. See exhibit D. Respondent set a bond hearing for February 23, 2021. Id.

On February 23, 2021, Respondent held a hearing and there was no change to the bond. See exhibit E.

Relator's address is located in the county where the charges are pending. See exhibit A, p.1 and exhibit C, p.7.

On March 9, 2021, undersigned counsel filed his entry of appearance. See exhibit H.

RELIEF SOUGHT

Relator seeks a writ of prohibition holding, as a matter of law and as applied, that a one million-dollar, cash-only bond on the initial warrant for arrest, regarding a class C felony delivery of a controlled substance and a class D felony unlawful possession of an explosive weapon, violates the Excessive Bail Clauses of the United States and the Missouri Constitutions.

STATEMENT OF THE REASONS WHY THE WRIT SHOULD ISSUE

Issue I

Regarding when a judge sets bond on the initial warrant for arrest, whether the Excessive Bail Clauses are preempted or stayed because of Rule 33, counsel is

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not aware of any law stating that the Excessive Bail Clauses are preempted or stayed because of Rule 33.

On February 12, 2021, Respondent signed the initial warrant for arrest and decided to set bond at one million dollars, cash only. See exhibit A, pp. 2-3.

“Pursuant to these rules, applicable statutes and constitutional provisions, if a court fails to set conditions for release, or sets inadequate or excessive conditions, an accused or the state may seek remedial writ relief in a higher court pursuant to Rule 84.24.” Rule 33.09.

In response to the Respondent’s February 12, 2021 decision to set bond on the initial warrant for arrest at one million dollars, cash only, combined with the fact that there appears to be no law stating that the Excessive Bail Clauses are preempted or stayed because of Rule 33, Relator, believing the bond set on February 12, 2021 was, is, and always will be excessive, “may seek remedial writ relief in a higher court pursuant to Rule 84.24.” Rule 33.09.

Absent a preemption or stay of the Excessive Bail Clauses, Rule 33.05 is rendered irrelevant at the time when a judge sets a bond on the initial warrant for arrest. See Rule 33.05. Again, whether bond is amended at a subsequent bond hearing when defendant is present is irrelevant to and not part of Relator’s constitutional claim.

Issue II

Regarding “[w]hether a one million-dollar, cash-only bond on the initial warrant for arrest, regarding a class C felony delivery of a controlled substance

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and a class D felony unlawful possession of an explosive weapon, violates the Excessive Bail Clauses of the United States and the Missouri Constitutions[,]” the writ should issue because “Representative Livermore’s 1789 question, ‘What is meant by the terms excessive bail?,’ either in a broad sense or as applied to [Relator’s] case” has not been answered by the United States Supreme Court in over 230 years. Johnson v. Missouri, *petition for cert. filed* (U.S. June 22, 2011) (No. 10-1550) (questions presented for review) (quoting 1 Annals of Cong. 754 (1789) (J. Gales ed. 1834) (statement of Rep. Livermore)), *cert. denied* (Oct. 3, 2011).

Excessive Bail Clauses

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. “That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” Mo. Const. art. I, § 21.

“[T]he Eighth Amendment’s proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment.” Schilb v. Kuebel, 404 U.S. 357, 365 (1971).

United States Supreme Court Caselaw

“The Supreme Court has directly addressed the [Excessive Bail] Clause only three times since its adoption.” Galen v. County of Los Angeles, 477 F.3d 652, 659 (9th Cir. 2007). The three cases are Stack v. Boyle, 342 U.S. 1 (1951);

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Carlson v. Landon, 342 U.S. 524 (1952); and United States v. Salerno, 481 U.S.

739 (1987). Id.

“[N]one of the [above] cases dealt directly with whether or not the amount of a defendant’s bail was constitutionally excessive.” Johnson v. Missouri, *petition for cert. filed* (U.S. June 22, 2011) (No. 10-1550, p. 2), *cert. denied* (Oct. 3, 2011).

In 1951, in a federal case, the Court “did not reach the question of excessiveness because it concluded ‘that bail ha[d] not been fixed by proper methods.’” Johnson v. Missouri, *petition for cert. filed* (U.S. June 22, 2011) (No. 10-1550, pp. 2-3), *cert. denied* (Oct. 3, 2011); Stack v. Boyle, 342 U.S. 1, 7 (1951). At that time, an incomplete definition was, “[b]ail set at a figure higher than an amount reasonably calculated to fulfill this purpose is ‘excessive’ under the Eighth Amendment.” Boyle, 342 U.S. at 5. This incomplete definition was later determined to be *dictum* in Salerno.

Carlson v. Landon “was a civil case dealing with deportation which held that ‘the Eighth Amendment [did] not require that bail be allowed under the circumstances of these cases.’” Carlson v. Landon, 342 U.S. 524 (1952).

And in 1987, the Court “determined that pretrial detention on the basis of future dangerousness under the Bail Reform Act was constitutional on its face.” United States v. Salerno, 481 U.S. 739 (1987). Further, Salerno critically distinguished Boyle by stating that Boyle’s incomplete definition is *dictum*. Salerno, 481 U.S. at 753. Specifically, “bail set at a figure higher than an amount

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reasonably calculated [to ensure the defendant's presence at trial] is "excessive" under the Eighth Amendment[]'" is dictum. Id. at 752; Id. at 753.

Missouri Caselaw

The bail bond must be fixed with a view to giving the prisoner his liberty, not for the purpose of keeping him in jail. If, in order to keep him in custody, the bond is ordered at a sum so large that the prisoner cannot furnish it the order violates Section 24, Article II, of the Constitution. For that is saying the offense is not bailable when the Constitution says it is.

State ex rel. Corella v. Miles, 262 S.W. 364, 365 (Mo. 1924).

"The only legitimate purpose in setting bail is to ensure the accused's appearance at trial, and any amount in addition to that figure is excessive." State v. Dodson, 556 S.W.2d 938, 944 (Mo.App. 1977).

CONCLUSION

"Can an indigent be denied freedom, where a wealthy man would not, because he does not happen to have enough property to pledge for his freedom?" Bandy v. United States, 81 S. Ct. 197, 198 (Douglas, Circuit Justice, 1960).

"Representative Livermore's 1789 question, 'What is meant by the terms excessive bail?'" is "a question that is important to all defendants, but is of particular importance to those who can lay claim to only the most meager resources, and are consequently more vulnerable." Johnson v. Missouri, *petition for cert. filed* (U.S. June 22, 2011) (No. 10-1550) (questions presented for review)

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(quoting 1 Annals of Cong. 754 (1789) (J. Gales ed. 1834) (statement of Rep. Livermore)), *cert. denied* (Oct. 3, 2011); Id.

In short, the writ should issue because the setting of a bond on the initial warrant for arrest would seem to satisfy the “public interest exception to mootness[;]” it appears that no law preempts or stays the Excessive Bail Clauses at this stage; and thus, a one million-dollar, cash-only bond regarding a class C felony delivery of a controlled substance and a class D felony unlawful possession of an explosive weapon, raises a reasonable inference that the Excessive Bail Clauses of the United States and the Missouri Constitutions were, in fact, violated. Gurley, 361 S.W.3d at 414.

Respectfully submitted,

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Certificate of Service

I certify that on this 11th day of March, 2021, a true copy of the above and foregoing was electronically filed with the Clerk of the Court via the Missouri

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eFiling System and served via electronic mail to the parties and attorneys listed below.

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