

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Eighth Judicial District**

A. PERSONAL INFORMATION

1. Full Name: **Steven Brian Bolstad**

a. What name do you commonly go by? **Steve**

2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**

3. Home Address: [REDACTED]

4. **(Please red**

5. Home Phone: [REDACTED]

6. Office Address: **Great Falls Civic Center, Municipal Court #2, Park Drive South, Great Falls
MT, 59405**

7. Phone: **(406) 771-1380**

8. Length of residence in Montana: **54 years (life)**

9. Place of residence for the last five years:

Dates

City

State

2003-Present

Great Falls

MT

B. EDUCATIONAL BACKGROUND

7. List the names and location of schools attended beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Great Falls High School	Great Falls MT	1984	Diploma
University of Montana	Missoula MT	1984-85	Transferred
Montana State University	Bozeman MT	1985-1989	B.A. History (Honors)
U of M School of Law	Missoula MT	1997-2000	J.D.

8. List any scholarships, awards, honors and citations that you have received:

Richard B. Landis Award for International Outstanding Lieutenant Governor for Key Club International

Phi Alpha Theta History Honor Society

Kappa Delta Pi Education Honor Society

Taft Fellowship for Educators for Montana Tribal Politics, Tribal Government

State and Northwestern Champion ABA Client Counseling Competition, 1997

Teaching Assistant for the Criminal Defense Clinic, 1999-2000

Distinguished Service Award Cascade County Conservation District 2004

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

No.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Montana Supreme Court	2000
US. District Court, Dist. of Montana	2000

11. Indicate your present employment. (List professional partners or associates, if any). **Municipal Court Judge for the City of Great Falls.**

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Elk River Law Office	Intern	1997-2000
Elk River Law Office	Associate	2000-2003
Cascade County Attorney's Office	Civil/Crim	2003-2014
Larsen Law Firm, Great Falls	Part-time Assoc.	2010-2012
Great Falls Municipal Court	Judge	2014- Present

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

NA

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

Great Falls Municipal Court is a Court of Limited Jurisdiction with jurisdiction over misdemeanor criminal offenses traffic violations within the city limits. It also has exclusive jurisdiction over all City Ordinances and limited civil jurisdiction.

I preside over the Court five days a week.

90% Criminal and Traffic

10% Civil, mostly in the form of Orders of Protection

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

I guest lectured at MSUB regarding the basics of Indian law.

I served in the Montana House of Representatives as an appointment to fulfill a term.

I am currently a trainer of new judges for Courts of Limited Jurisdiction. I act as instructor and mentor by providing support to new judges.

I serve on the Legislative Committee for the Montana Magistrates Association. I have lobbied for two terms, which includes testifying before both houses of the Montana Legislature. I serve on the Commission for Courts of Limited Jurisdiction.

16. If you specialize in any field of law, what is your specialty?

My emphasis in law school was Indian Law, but my specialty, if any, for most of my practice has been criminal law.

17. Do you regularly appear in court? **Yes, daily for the last six years.**

What percentage of your appearance in the last five years was in:

Federal court		%
State or local courts of record	100	%
Administrative bodies		%
Other		%

18. During the last five years, what percentage of your practice has been trial practice?

60%

19. How frequently have you appeared in court?

Daily for the last six years. Before taking the bench in my current position, I appeared at least three times per week.

20. How frequently have you appeared at administrative hearings? **NA**

21. What percentage of your practice involving litigation has been:

Civil	<u>5</u>	%
Criminal	<u>95</u>	%
Other		%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

NA

23. State the number of jury trials that you have tried to conclusion in the last ten years.

11 as Judge
4 as Prosecutor

24. State the number of non-jury trials that you have tried in the last ten years.

As Municipal Court Judge, I try approximately 30 bench trials per month.

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

NA.

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

None in the last five years, but while in private practice I litigated a claim for an estate of a Crow Tribal Member in the Department of Interior, Bureau of Indian Affairs.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

Court Clerks of Limited Juris.	Spring 2018	Orders of Protection Nuts and Bolts
	Spring 2019	Nuts and Bolts
Cascade County Self-Help Clinic Intro to	Winter 2018	Search and Seizure with Fed. Def. Tony Gallagher
Criminal Law CLE	April 10, 2015	Montana State Bar CLE Institute

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

Montana Magistrates Association **Parliamentarian**
Education Committee
Legislative Committee

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

Since taking the bench, I have not been involved in any organizations or clubs. Prior to my time as a judge, I was involved in the following:

Great Falls Kiwanis Club	2003-2010
Boys and Girls Club Football Coach	2005-2007
Weed and Seed Steering Committee	2007-2012
RSVP Commodity Deliveries	2009-2012
Great Falls Pre-Release Board of Directors	2010-2012
Prescription Drug Task Force	2008-2014
Neighborworks Community Leadership Seminar/Activity	2010-2014

30. Have you ever run for or held public office or sought a judicial appointment? If so, provide the details.

Yes. Montana House of Representatives, District 24. I was appointed in 2008 to fill Eve Franklin's Representative position when she was appointed by Governor Schweitzer to be the Senior Care Ombudsman. I unsuccessfully ran for the seat against Brian Hoven, who holds the seat now. Also, I was appointed and then elected to Great Falls Neighborhood Council #8 from

2007-2011. Finally, I was appointed by the Great Falls City Council to fill Judge Nancy Luth's term in the Great Falls Municipal Court. I have won two elections for that bench since my appointment.

31. Explain your philosophy of public involvement and practice of giving your time to community service.

The strength of a democratic society depends on the generosity of its members to assist in promoting the health, welfare, and standard of living for citizens. All people possess gifts and abilities which should be shared for the good of their families, neighborhoods, cities, states, and our country. Government relies on the strength and generosity of the population and individual citizens to ensure that our society does not decay from within and to provide a promising future.

My Mother was a nurse at the old Columbus Hospital and then an Office Nurse for Dr. John T. Molloy. My Father was a Great Falls Fireman and later a fire instructor for the State of Montana. They encouraged me to use my gifts and abilities to help others and to be active in our community and groups such as cub scouts, sporting activities, and through my school and church. Additionally, throughout my education in the Great Falls Public Schools, I was lucky enough to have teachers who believed in President Kennedy's call to service and who were not afraid to encourage their students to answer the call. Beginning as a freshman, I was involved in student government and was a volunteer referee for our youth basketball program in Great Falls. Throughout high school I was very active in Student Council and Key Club, completing many hours of community service and service to my school. During college it was necessary to work, so I was not very active in service organizations. However, immediately following my graduation, I became a teacher and coach in a small Montana town. During my teaching tenure, I served on the Volunteer Fire Department, coached all sports from Kindergarten (T-ball) to High School (all sports). I found that the more I gave to my community the more I felt fulfilled. After six years of teaching and coaching, I decided to go to law school where I competed for the school in the ABA Client Counseling Competition and served in the Student Bar Association, the Native American Law Students Association and worked at the Jameson Law Library part time.

After admission to the Bar, I was active in Kiwanis where we read to third graders for an hour weekly and provided other community service. I also helped our Retired Senior Volunteer Program deliver commodities to those who needed food. Finally, I was involved with establishing a prescription drug take back program in Great Falls and with Weed 'n' Seed program to work on reduction of crime and strengthening our neighborhoods. I have also been active with Neighbor Works Great Falls, where my wife is a counselor. I have taken part in several of their volunteer activities and still try to participate when I do not think it will conflict with my job as Municipal Judge.

E. PROFESSIONAL CONDUCT AND ETHICS

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No.

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No.

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

I was arrested during Cat-Griz weekend of 1988 in Missoula. I was in an alley with a college friend when we saw a patrol car. My friend and I stepped behind a dumpster and poured our drinks on the ground hoping to avoid an Open Container citation. The officer arrested us for Urinating in Public. The next morning, (Sunday) my friend and I appeared in front of the Honorable Wally Clarke and pleaded not guilty. Judge Clarke told us that he would reduce our bond to \$25 and that if we forfeited the \$25 and stayed out of trouble in Missoula, the matter would never be on our record. I have now reported it in my application for admission to the Bar, when I applied to work as a Deputy County Attorney, as a Municipal Court Judge, and now, in this application. I have not had any other arrest in my lifetime, although I still go to Cat-Griz games.

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty, and/or unethical conduct? If so, provide the details.

No.

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No.

F. BUSINESS AND FINANCIAL INFORMATION

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

No.

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

NA.

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

NA.

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

No.

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes.

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?

X Yes No

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?

___ Yes X No

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No

G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

As Municipal Court Judge, I have presided over motions hearings every Tuesday. Motions to Dismiss and Suppress are heard during these hearings. Until just recently, I researched and drafted my own orders and Findings of Fact/Conclusions of Law. Because of the volume of work, I now have the parties present proposed FoFCoLs. While I often adapt and use prior orders, some require additional research. I do not have a clerk, so I do all of my writing and research.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

Although I have not done so in the last five years, I was involved in drafting codes and a Constitution for the Crow Tribe when I worked for Elk River Law.

As a Judge I have drafted documents for use in arraignments and trials.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable. The writing sample should be as recent as possible.
48. What percentage of your practice for the last five years has involved research and legal writing?
25 %.
49. Are you competent in the use of Westlaw and/or Lexis?

Both.

H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

Since I was a young boy, my main interest in life has been Montana History. This includes the culture and history of the tribes contained within the boundaries of Montana. I enjoy reading about and visiting points of interest within this great state. As a boy, I often traveled with my father and my family to many points of interest and of historical significance around Montana. He instilled in me a respect for our native people and for their culture and the beauty of the land. In college and law school I took a fair number of classes dealing with Native American subjects and law, and as a teacher I developed and taught several curriculums involving the tribes, and tried to instill in my students an understanding or at least a respect for all.

I also enjoy working on genealogy and spending time with my wife and our dogs and extended family. There are many things to enjoy right here in Montana. I would like to see most, if not all of them.

51. Describe the jobs that you have held during your lifetime.

My first job was during my freshman year of high school, when I volunteered as an Official for our YMCA youth basketball program. As a high school student, I worked different labor jobs and for Howard's Pizza here in Great Falls.

During college, I worked at the Grizzly Pool and at Haynes Hall in Bozeman as a work-study janitor. I also worked two years for the Hinky Dinky Store Convenience Store off campus, where we boasted some of the highest beer sales until the drinking age changed. I also worked at Stageline Pizza in Bozeman.

Following college, I taught high school and junior high history and English for Fromberg Public Schools. I also coached junior high football and basketball and worked with the drama team. During my first summer between school years, I herded sheep for the Blue Pines Ranch in Edgar Montana. They needed a sheepherder and I needed a job. It was a learning experience from the beginning, and by the end I was glad to have teaching as my full-time job.

After two years of teaching, I drove by myself to Alaska to seek employment. I visited Anchorage and Fairbanks and decided that I really wanted to return to Montana. While enroute through the inland passage, I stopped and worked in a salmon processing unit in Ketchikan with a friend who was working through law school. When I returned to Montana, I was too late for a full-time teaching job, so I was a substitute teacher, and I drove a fire-crew bus on a forest fire near Troy Montana. Later that year, I also worked part time at K-Mart, starting in Health and Beauty Aids and then moving to Sporting Goods/ Automotive.

After my year off, I got another teaching job in Belfry, Montana where I taught for four years. There I taught high school history and English. I also coached football, basketball (girls and boys), and track. I also drove the school bus and advised the Student Council and yearbook. In my spare time I coached T-ball for kindergartners and served on the Belfry Volunteer Fire Department. As a volunteer fireman, I was the Training Officer and the Assistant Chief. During the summers we contracted with the US Forest Service and I served as an engine boss. I fought various fires for several seasons within Montana.

During law school I worked at the Jameson Law Library. I worked the counter and assisted in shelving the research material. During my third year I worked as a TA with the Criminal Defense Clinic. During the summers, I was an intern at Elk River Law in Billings Montana, where I worked on drafting a fish and game code and a criminal code for the Crow Tribe. I was also responsible for research and writing. We had several cases and appeals at the state and federal level.

Following my admission, I continued working for Elk River Law for Sam Painter and Majel Russell. We represented the Crow Tribe and did some work for other tribes in housing, gaming, and general civil work. I personally concentrated much of my work on Indian Child Welfare Cases and some civil cases including personal injury work at the state level.

After three years at Elk River Law I returned to Great Falls, my birthplace, and worked for Cascade County Attorney's Office in the Civil Division. In that capacity I represented the County in many different venues. After several years I switched to criminal prosecution where I prosecuted everything from animal abuse to homicide. After eleven years, I was appointed to my current position of Municipal Court Judge, where I have won two elections so far.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

NA.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

From the time I could read, I have had a keen interest in US and Montana history. As a young person, I read whatever I could get my hands on that dealt with our founders, Presidents, or Native American leaders. I grew up with an innocent reverence for the United States and our expansion. As a young man, I started to notice things which made me lose my innocence. My parents would watch the nightly news reports of Vietnam and the political and social struggles in the US. I began to question many things that I had learned. Then, when I was

in middle school, I watched the movie *Gideon's Trumpet* with Henry Fonda.

The movie impressed upon me the struggle of indigent peoples in our justice system and how prior to Gideon v. Wainwright, not all defendants were provided counsel. For some reason, this movie solidified many of my observations and lessons I had learned as a child. I found that the real heroes were those who have fought injustice throughout our history. I also realized that the justice system and the law were the most effective forum to fight the injustices inflicted upon citizens in our society.

Throughout high school and my undergraduate studies, I learned of the injustices upon which our country was founded. Slavery, exploitation of Native American peoples and lands, and the inhumane treatment of the Chinese and Latinos. All were part of the foundation of this country. I realized that the most effective way to rectify these injustices was through the justice system, and I became interested in studying law.

I became a prosecutor because I believed I could best protect an individual's rights by ensuring that my cases had solid, admissible evidence and that the Defendants were treated fairly and given their Constitutional protections. To me, it was about seeking the truth, not obtaining a conviction. I learned that, although my responsibility as a prosecutor was important in the justice system, the role of the Judge was critical and held the whole system together. The Judge must ensure an even playing field for every person no matter color, creed, wealth, or family lineage.

Our country has seen our past injustices culminate in the dramatic events of this past spring and summer. The social upheaval and political unrest have made our justice system more relevant than possibly any other time in our history. While it is not the most perfect system, it is designed to be the fairest. Citizens of many different interests are looking to the justice system for leadership and protection from long lasting inequalities. These citizens must be given an equal seat in the halls of justice. I believe that I am a person who can help provide the opportunity. I will always remember Clarence Gideon in the form of Henry Fonda, but I will always remember the cause that he fought for as a real enduring facet of our justice system.

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

A district court judge must be intelligent and have a good work ethic. Law is an ever-changing and expanding discipline and to stay current and maintain a fair courtroom, a district judge should be current on changes and trends in the law. Furthermore, a judge must be cognizant of current events and trends within the Courts and in our society. A decision made in a vacuum will not have the relevance of an informed decision.

A district judge must also be decisive and humble. A judge must make decisions. Sometimes those decisions are overturned, but a judge must not be paralyzed by a fear of making the wrong decision. Such an emotion could back up the court docket and make the judge indecisive to the point where they are ineffective.

A district judge must also be compassionate and humble. A judge must understand the human condition and be humble enough to act on that understanding. Although in a very important position in our society, a judge must never believe he or she is above the people. Rather, a judge is a public servant and, in that position, must treat all human beings equally

no matter the condition or the person.

A district judge must be also respectful and humble. A courtroom is a venue that provides citizens a place to have their grievances addressed and to resolve some of society's most relevant problems. In that respect, the judge should set the tone by being fair and respectful to the parties and their attorneys. Expecting parties to respect one another without the judge showing respect to them is an exercise in futility.

Finally, a district judge must be a model of lawfulness and humility. Judges live in communities and play particularly important roles in those communities. Therefore, the judge should be law abiding and aware that they are to be examples and reflect the honor of the justice system. To make decisions that people believe in, a judge must first earn their respect. This is only earned through the judge's own actions and his or her ability to "walk the walk."

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

The foundation of law in the United States has been developing for more than 244 years. This foundation has flexed and changed with events and as time has progressed. Some changes have been smooth and some through social upheaval. Our legislative branches tailor laws that conform to the times and the changes in social mores and technology. It is up to the judicial branch to interpret and give these laws meaning in the context of modern society without legislating law from the bench and invading the purview of the legislature.

No two cases in the law are the same. Therefore, the facts of each case must be evaluated separately to distinguish the differences of those cases. The judge must decide the applicable law and apply it in the backdrop of current circumstances, again without changing the law's very nature. Consistency in a judge's exercise of this ability will make our justice system consistent and fair though there is an ever-changing body of law.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

I was born and raised in Great Falls, Montana. I received an excellent education here and enjoyed a privileged life in that my basic needs were met. I had two parents, I went to school, and although I had to work my way through, I was able to go to college and law school. I had such a strong pride and love for my family and hometown that I returned to Great Falls when given the opportunity for public service.

As a result of my life experience, I have the knowledge and experience to give back to my community after all I have gained from it. I have worked many places and traveled many places, and met many different type of people. In each circumstance, I have learned something that I would bring to the bench.

I have a desire to see that no person is treated unfairly or disparately in Great Falls. As a Municipal Court Judge for the past six years I have endeavored to exercise this desire in dealing with misdemeanors and traffic tickets. I would like to have the opportunity to practice on a different field where the stakes are higher for individuals and in different areas of

the law.

I want to be a district court Judge here in Great Falls to give back to the community on a scale more commiserate with the advantages it has provided me. No matter what happens, I will continue to be a public servant, but to be able to serve in this capacity, would make my professional life complete.

57. What items or events in your career have distinguished you or of which you are most proud?

As a prosecutor I was co-counsel on two different homicide convictions which have left an indelible impression on my life. One victim was a toddler and the other was a young adult. Playing my part to bring justice to the families of these victims and convicting the Defendants was an important part of my time at the Cascade County Attorney's Office.

Being selected by the Great Falls City Commission to be the Municipal Court Judge was another high point in my career. I have served the City of Great Falls for the past six years in a Court that sees on average 10-13,000 filings a year. It has been a grind, but every day has been different and has brought new high points. Any time an individual completes treatment or does something as simple as get a driver's license, I have a new high point. I have truly learned to celebrate small victories with many of my defendants. I really feel accomplishment when I see a "frequent flyer" become an active member of our community and greet me on the street and tell me how well he or she is doing. I know it is not all me, but just knowing I helped, gives me pride.

Finally, our establishment of a Mental Health Treatment Court has been one of the best and most trying events in my career. With a few people from the City Attorney's Office, the Office of Public Defender, Great Falls Police Department, and two mental health providers in our community, we were able to establish a Mental Health Treatment Court. Our philosophy is to deal with consumers who are starting to have brushes with the justice system and try to get them into programs and maintain their programs for a period. The outcome has been mixed, and sometimes very agonizing, but we have learned much along the way. I am most proud that together, we were able to develop a forum for people who often are not given a fair shake in other forums. In return I have a deeper understanding of those who may be disenfranchised and their opportunities in the justice system.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

I am a very passionate person when it comes to my integrity. I try my best to always be a model for others. Nevertheless, when my integrity is impugned, I do my best to prove the opposite. As a Municipal Court Judge, I have been called many things by prisoners. Usually it ends in a contempt sentence but other than the slight to the Court, it does not bother me personally. Being called a liar or having someone accuse me of being racist or biased makes me want to immediately prove them wrong.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

I am a cancer survivor. From that experience, I have learned that we only get one shot in this life and that we need to make the most of it. I believe the best way to get the most of that life is through service to my community and the people in it.

I have had many different life experiences. My belief as a young man was that the more experiences I had, the better I would understand and respect all people. I never dreamed of moving out of the State of Montana or even the City of Great Falls, although I did when I went to college and was teaching. I have had many opportunities and privileges provided to me by the people and by my community. I am now in a stage of my life to give back to them. If appointed to this position, I will endeavor to give the position and the Court the respect and honor which, in my opinion, is due a Montana District Court.

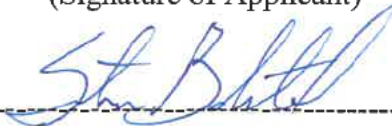
CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 8th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

(Date)

8/21/20

(Signature of Applicant)



A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Friday, August 21, 2020.

Mail the signed original to:

**Office of Court Administrator
c/o Lois Menzies
P.O. Box 203005
Helena, MT 59620-3005**

Send the electronic copy to: mtsupremecourt@mt.gov

IN THE MUNICIPAL COURT, CITY OF GREAT FALLS, STATE OF
MONTANA

BEFORE THE HONORABLE JUDGE STEVEN B. BOLSTAD

STATE OF MONTANA,

Plaintiff,

vs.

AMY ELIZABETH POPICHAK,

Defendant.

) Docket No.: 275-19-7297

) **ORDER DENYING DEFENDANT'S**
) **MOTION TO DISMISS**

On November 12, 2019 at approximately 9:04, Great Falls Police Officers Bott and Torres were dispatched to an automobile accident at 401 36th Ave. NE, in Great Falls, Montana. Upon arrival, Officer Bott observed a white, Honda, Civic with severe rear end damage and a trail of parts and pieces evidently leading to a black Ford Expedition, parked about a half-block away. It also appeared the Expedition also struck several mail boxes. Witnesses stated that the destruction was caused by the SUV. Officer Bott made contact with the driver of the SUV and identified her as the Defendant, Amy Popichak. Ms. Popichak stated that she had been texting when she struck the car.

Upon making contact, Officer Bott smelled the odor of a digested alcoholic beverage coming from the Defendant. Officer Bott asked the Defendant for her driver's license, insurance and registration, but she was unable to find it. Her husband who had come to the scene was eventually able to find her purse and provide that information. Officer Bott also noted that the Defendant's speech was

slow and that she appeared to be having trouble concentrating on his questions. When he asked her where she was coming from; she stated from work. She said that she got off work at 5:30. When Officer Bott asked her what time it currently was, she stated around 10:00 p.m. She then admitted that she had a few alcoholic drinks at The Front. Officer Bott also noted that while he was speaking with her, the Defendant was having a difficult time with her balance.

Given this information, Officer Bott decided to ask the Defendant to perform SFST's. However, since it was raining and cold outside he decided that he was going to take her to the Police Department to perform the tests. The Defendant replied "Thank you." Multiple times Officer Bott assured the Defendant that she was not under arrest and that out of fairness he was taking her to the GFPD for SFST's. He put her in the back of his patrol car, but did not handcuff her.

Defendant is moving to dismiss this matter on the premise that Officer Bott did not have probable cause at the scene to arrest the Defendant for DUI. She further argues that her detention and transport to the GFPD during investigation was, in fact, an arrest and that there was no probable cause. Finally, the Defendant argues that there were insufficient articulated facts to form the requisite particularized suspicion to have the Defendant perform SFST's.

Particularized Suspicion

Defendant argues that Officer Bott did not possess the requisite particularized suspicion to have her do the SFST's and provide blood/breath samples. Nevertheless, considering the facts and circumstances of the evening, it is clear that Officer Bott, through his own observations, had sufficient particularized suspicion to have the Defendant perform the tests.

Montana law provides that an officer “may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense”. *Mont. Code Ann. § 46-5-401*. In order to establish particularized suspicion, the State must show 1) objective data from which an officer can make certain inferences, and 2) a resulting particularized suspicion that the occupant of the motor vehicle is or has been engaged in wrongdoing or was a witness to criminal activity. *State v. Flynn 2011 MT 48 ¶ 7,; 359 Mont.376; 251 P.3d 143 citing Weer v. State 2010 MT 232 ¶10, 358 Mont. 130, 244P.3d311*. Furthermore, particularized suspicion is determined by examining the totality of the circumstances. *Id. Citing State v. Cooper 2010 MT 11, ¶ 7, 355 Mont. 80, 224 P.3d 636*. Additionally, for more than three decades since adopting the particularized suspicion standard in *State v. Gopher*, the Supreme Court’s articulated test for determining particularized suspicion has focused alone on what the officer knew, observed, inferred, and ultimately suspected. *State v. Flynn at ¶12 (cites omitted; emphasis added.)* The Court has been explicit that “an officer need not consider every possible innocent explanation or legal exception before concluding that particularized suspicion exists. *Id. at ¶11 citing State v. Clark, 2009MT 327, ¶13, 353 Mont. 1, 218 P.3d 483*.

Officer Bott testified that upon making contact with the Defendant he smelled the odor of alcoholic beverage coming from the Defendant. The Defendant admitted to causing the accident but claimed she was texting. Officer Bott also observed the Defendant had slow speech, and seemed to have a hard time concentrating on his questions including where she was coming from when the accident occurred. Further, Officer Bott observed that the Defendant did very poorly on the divided attention exercise and was unsteady on her feet. He also

testified that the Defendant admitted to consuming alcohol earlier at The Front. Taken in the totality of the circumstances including the scope and magnitude of the accident, there was sufficient particularized suspicion for Officer Bott to proceed with SFST's.

Detention and Arrest

“The Montana Supreme Court has previously held that roadside investigations are not custodial interrogations so long as officers keep the scope of an inquiry reasonably related to the purpose for which the investigation was initiated.” *State v. Larson*, 210 MT 236 ¶ 31 citing *State v. Elison*. (cites omitted). Furthermore, “the Court has explicitly declined to define specific time parameters for roadside investigatory stops, because reasonableness is dependent on specific circumstances.” *Id. citing State v. Nelson*, 2004 MT 310. Further, the Court has held that three elements must coexist before an arrest occurs: (1) authority to arrest, (2) assertion of that authority with the intention to affect an arrest, and (3) restraint of the person involved. *Anderson v. Department of Justice, Motor Vehicle Div.*, 275 Mont. 259, 912 P.2d 212, 215 (1996)

Considering the cold, rainy conditions that night, Officer Bott elected to have the Defendant perform the SFST's at the gymnasium at the GFPD. This was actually for the benefit of the Defendant who already appeared to be unsteady. When told this the Defendant replied “Thank you”. Officer Bott assured the Defendant multiple times that she was not under arrest, and even allowed the Defendant to be transported in the back of his patrol car without handcuffs. At hearing, Officer Bott testified that the Defendant consented to doing SFST's at the gymnasium and that he did not intend to arrest her at that point, but he was furthering his investigation. He further stated that if she had done well on the tests she would have been cited for the accident and the cell phone and released.

There is no evidence that Officer Bott ever strayed from his investigation which was initiated for the DUI. Additionally, although there was added time for the transport of the Defendant to the GFPD, it was a mere matter of additional minutes so the Defendant could perform the SFST's in a safe, warm environment, which would actually benefit, rather than hamper her performance. Officer Bott's multiple reassurances that she was not under arrest and her gratuity for this opportunity reinforce that Officer Bott was not asserting his authority with the intention of arrest. Therefore, taking the weather, the Defendant's consent, and Officer Bott's adherence to his investigation, it is evident there was no arrest.

In conclusion, given the totality of the circumstances, Officer Bott had sufficient particularized suspicion to request that the Defendant perform SFST's. Additionally, given the weather conditions and the Defendant's condition, Officer Bott's had reason to request the Defendant perform the tests in a warm and dry environment. The Defendant's multiple expressions of gratitude and Officer Bott's testimony make it clear that neither she, nor Officer Bott, believed she was under arrest at that time. Finally, given the information that Officer Bott was able to collect in his investigation, there was also probable cause to arrest the Defendant for DUI.

Therefore, considering all of the evidence available at the suppression hearing, the Motion to Suppress and Dismiss is DENIED.

Dated this 24th day of February, 2020

Steven B. Bolstad, Municipal Court Judge

IN THE MUNICIPAL COURT, CITY OF GREAT FALLS, STATE OF
MONTANA
BEFORE THE HONORABLE JUDGE STEVEN B. BOLSTAD

STATE OF MONTANA,

Plaintiff,

vs.

MAEMIE ALLDERDICE,

Defendant

) Docket No.: 14-2925

) **ORDER DENYING DEFENDANT'S**
) **MOTION TO SUPPRESS BLOOD**
) **RESULTS FOR BAC.**

On May 5, 2014, GFPD Officer Munkres was dispatched to Loaf and Jug on 1400 10th Ave. South for a report of a female passed out in a running vehicle. Upon arrival, Munkres found a woman passed out in a running vehicle and accordingly tried to rouse her. She opened her eyes briefly then went back to sleep. GFPD Officer Fleming, who also responded, broke the vehicle window to make contact with her. When, Officer Munkres asked her name, she stared blankly at him. Medical staff was called, and as they helped her out of the vehicle, she became slightly combative. Officer Munkres detected the odor of alcoholic beverage coming from her. At the hospital she became a little more alert. She admitted to hospital staff that she had a little to drink. The driver's speech was slurred and hard to understand at times and Officer Munkres observed that her eyes

were very glossy. He could still smell the odor of alcohol. Officer Munkres read her the Implied Consent Advisory. The female acknowledged that she understood the advisory. Officer Munkres then asked her to take a blood test to which the female did not reply, but simply ignored his question. Officer Munkres then, believing he had the right under implied consent, asked the medical staff to take a blood test of the female. She did not fight the blood test, but continued her silence. The female driver was identified as the Defendant, Maemie Allderdice. Ms. Allderdice, by and through her attorney, has asked this Court to suppress the blood test for lack of her consent to the blood test.

Pursuant to Montana law, motor vehicle drivers on public roadways give their implied consent to a blood draw or a breath test upon particularized suspicion. *Mont. Code Ann § 61-8-402*. Drivers may revoke their consent, which then may result in a suspension of the license. *Id.* In this matter, the Court finds that Officer Munkres had sufficient particularized suspicion in Defendant's speech, glossy eyes, medical condition and her odor of alcohol so that is not at issue. The issue is whether the Defendant withdrew her consent by ignoring the request for a blood test by Officer Munkres.

This question has already been litigated in the 21st District Court. In *State v. Aden*, the Ravalli District Court found that a woman who was in similar circumstances as the Defendant in this case, gave consent even though she played "possum" to the request of a highway patrol trooper. *State v. Aden, 2006 Mont. Dist. LEXIS 1156 (Mont. Dist. Ct. 2006)*. In that case, as in this matter, the Defendant did not object, withdraw, or fight the blood test. She silently complied, neither answering, nor showing any verbal or non verbal signs that she was actually revoking her consent. Without some affirmative act showing the withdrawal of the Defendant's consent, the Court finds she gave tacit consent.

With an implied consent, there has to be some action, whether verbal or non-verbal that withdraws it. Simply ignoring the question is not sufficient to withdraw implied consent.

Therefore the defendant's motion to suppress the blood test results is DENIED.

Dated this 27th day of August, 2014

Steven B. Bolstad, Municipal Court Judge