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

STATE OF OREGON,	)	Case No. 21CR47755
	)	
Plaintiff,	)	
	)	DEFENDANT’S MOTION FOR
v.	)	RELEASE
	)	
IAN MACKENZIE CRANSTON,	)	
	)	ORAL ARGUMENT AND
Defendant.	)	EVIDENTIARY HEARING
	)	REQUESTED

**MOTION**

Defendant Ian Cranston, through his counsel, respectfully moves this Court for an order providing for his release pursuant to such terms and conditions as are deemed appropriate by the Court. The grounds for this motion are set forth in the Points and Authorities below, which are hereby incorporated by reference herein, and by the evidence to be presented at the hearing on this motion. The defense requests a hearing and estimates that one half-day will be needed for the presentation of evidence and argument. Official court reporting services are requested.

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## POINTS AND AUTHORITIES

### I. INTRODUCTION

The evidence in this case does not meet the high standard established under Oregon constitutional and statutory law for a defendant to be held without bail.<sup>1</sup> The defense therefore respectfully requests that Mr. Cranston be released on such terms and conditions as the Court considers appropriate.

### II. LEGAL STANDARD

Oregon law recognizes that the pretrial confinement of a defendant is itself a serious deprivation, and that if it is to occur it must be based on a correspondingly weighty evidentiary showing. *See Rico-Villalobos v. Giusto*, 339 Or 197, 208, 118 P3d 246 (2005) (“[T]he text of Article I, section 14 [of the Oregon Constitution] shows that the framers of the provision wanted to establish a high threshold of proof before a person could be held without bail, even when charged with murder . . . .”); *In re Haynes*, 290 Or 75, 81, 619 P2d 632 (1980) (“Both constitution and code recognize pretrial imprisonment itself, sometimes necessary, to be a heavy burden on one not convicted of crime . . . .”); *id.* at 79 (invoking the evidentiary standard set forth in Jeff Thaler, *Punishing the Innocent: The Need for Due Process and the Presumption of Innocence Prior to Trial*, 1978 Wisc L Rev 441); Thaler, 1978 Wisc L Rev at 473-74 (“The hearing’s purpose is to obtain a more accurate determination of legal guilt before an accused can be further detained for trial and to place

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<sup>1</sup> For convenience and consistent with common practice, in this memorandum the defense will use the term “bail” to refer to the availability of pretrial release notwithstanding the Oregon legislature’s discontinuance of that word. *See Rico-Villalobos v. Giusto*, 339 Or 197, 200 n 2, 118 P3d 246 (2005).

1 certain burdens on the prosecutor who attempts to continue the pretrial detention of an  
2 accused.”).

3 Accordingly, under Oregon law a defendant charged with murder is placed into one  
4 of two categories. If the court independently concludes that the evidence demonstrates a  
5 strong likelihood of conviction of murder at trial, the defendant is held without bail. *See*  
6 ORS 135.240(2)(a) (“When the defendant is charged with murder . . . release shall be denied  
7 when the proof is evident or the presumption strong that the person is guilty.”); Or Const,  
8 Art I, §§14, 43. Otherwise, the defendant is to be evaluated for release pursuant to the  
9 statutory criteria applicable to other offenses. *See* ORS 135.240(2)(b).  
10

11 In this determination, the presumption is in favor of bail, and “[t]he State has the  
12 burden of proof by clear and convincing evidence.” *Collins v. Foster*, 299 Or 90, 96, 698  
13 P2d 953 (1985). For release to be denied, “[t]he likelihood of guilt must be more than ‘fair,’  
14 it must be ‘strong,’” and “[i]t must, of course, be guilt specifically of murder, not merely of  
15 some degree of culpable homicide.” *Haynes*, 290 Or at 75; *see also* Thaler, 1978 Wisc L  
16 Rev at 482 (“The prosecutor must prove by clear and convincing evidence that there is a  
17 substantial likelihood that [the defendant] would be convicted after a trial.”). In this analysis,  
18 the fact that a grand jury has returned an indictment is not treated as prima facie evidence in  
19 the State’s favor. *Rico-Villalobos*, 339 Or at 210.  
20

21 Any defense or affirmative defense raised by the defendant must be considered in  
22 determining whether the State has proven the necessary “strong” likelihood of a murder  
23 conviction. *See* Thaler, 1978 Wisc L Rev at 476 (describing right “to present affirmative  
24 defenses”); *id.* at 482 (describing situation that arises when defendant “asserts that he acted

1 in self-defense”); *State v. McDaniel*, 251 Or App 345, 346, 283 P3d 414 (2012) (in MJOA  
2 context, state must overcome a defense if the law places the burden on the state as to that  
3 defense).

### 4 III. SUMMARY

5 In this case, the State has charged Ian Cranston with second-degree murder on the  
6 theory that he allegedly “intentionally cause[d] the death of” Barry Washington. Indictment  
7 (Amended) at 1; *see also* ORS 163.115(1)(a). This requires the State to prove that Cranston  
8 “act[ed] with a conscious objective to cause” Washington’s death. ORS 161.085(7).  
9 Additionally, with the defense of self-defense having been raised,<sup>2</sup> the State has the burden  
10 of proving that that defense does not apply. ORS 161.055(1).  
11

12 As set forth below, the evidence in this case will demonstrate that the State cannot  
13 meet its burden as to either of these issues.

### 14 IV. EVIDENCE

15 The evidence that will be presented at the hearing on this motion, which will consist  
16 primarily of video footage and descriptions of the accounts of firsthand witnesses, will be as  
17 follows. (Defense counsel is not aware of any basis for dispute with respect to any of the  
18 facts set forth below.)  
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23 <sup>2</sup> To the extent not previously raised, the defense hereby raises the defense of self-defense.  
24 *See* ORS 161.055 (“... ‘Raised by the defendant’ [includes] notice in writing to the state  
before commencement of trial . . .”).

1       **A. Initial Encounter Between the Two Groups**

2           On the night of the incident—September 18, 2021, crossing into the morning of  
3       September 19—Ian Cranston went to the Capitol bar in Bend with his fiancée Allison Butler  
4       and their friend Tyler Smith.<sup>3</sup>

5           Barry Washington was also at the Capitol that night. In the time leading up to the  
6       incident with the Cranston group, he was behaving erratically and aggressively. At  
7       approximately 11:30 pm, Washington—whose blood-alcohol level would later be measured  
8       at 0.195%—approached a group of three police officers and shouted “Fuck the police!” and  
9       “Y’all a bunch of bitches!”, then “put both hands up with middle fingers pointed in [their]  
10      direction for multiple seconds.”<sup>4</sup>

11           About half an hour later, at a time when Cranston and his fiancée Butler were briefly  
12      separated, Washington approached Butler and expressed an interest in her. Butler,  
13      apparently flattered, smiled and told Washington she was engaged, showing him her ring.  
14      Washington gave Butler a hug, which she returned, and then the two separated.  
15

16       **B. Second Encounter Outside the Capitol**

17           About two minutes later, Washington left the Capitol. Two minutes after that,  
18      Cranston, Butler and Smith left the building and walked about 15 yards up the street, where  
19      they stood together talking.  
20

21  
22  
23      <sup>3</sup> Cranston consumed alcohol in moderation during the evening, but was at no point  
24      intoxicated. A test taken after the incident disclosed no evidence of impairment.

<sup>4</sup> Quotations are from police reports produced in discovery.

1           Less than a minute after they got outside, Washington walked up to the group. At  
2 this point, Washington verbally propositioned Butler, who five minutes previously had  
3 respectfully declined his initial overture and who was now standing with the fiancé she had  
4 told him about. Butler once again declined, and the group asked Washington to leave them  
5 alone. Washington refused this request and continued to press the issue with Butler. There  
6 followed an extended period during which the group continued to ask Washington to leave  
7 them alone, and he continued to refuse.

8           At 12:09 a.m., Washington suddenly and without any provocation attacked Cranston.  
9 The 6'1", 212-pound Washington struck the much smaller Cranston with two powerful,  
10 closed-fist blows to the head, with the second coming as Cranston was falling from the force  
11 of the first. These blows would later be determined to have caused Cranston a head injury,  
12 facial contusion, multiple lacerations in the area of his eye, blurred vision, and a  
13 hemotympanum (bleeding within the ear). The blows came without any warning, as is  
14 evident from Cranston's body position—standing in a deferential posture, with his hands at  
15 his sides—in the instant before Washington struck him.

16           As a stunned Cranston managed to get back to his feet, Washington raised his arm  
17 and made a series of threatening gestures toward him. By this time Cranston was holding a  
18 firearm, which he was carrying lawfully pursuant to a concealed handgun license, and which  
19 he had drawn after Washington had begun striking him in the head. Cranston displayed the  
20 weapon to Washington, in what the video evidence clearly indicates was an attempt to deter  
21 Washington from continuing the assault.  
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1 Washington was completely undeterred by the sight of Cranston's handgun, and  
2 continued threatening Cranston through aggressive words and gestures. At about this time  
3 Butler pulled out her cell phone and began recording, in another effort to deter Washington.  
4 Again, Washington was undeterred. The video shows him grabbing and shoving Butler, with  
5 the result that the footage is briefly shaken.

6 At this point Smith stepped in and tried to push Washington away from Butler.  
7 Washington, still undeterred by anything the group had been doing, turned and squared  
8 toward Smith and Cranston. He lunged towards Smith and punched him in the face. Then,  
9 Washington turned at and squared toward Cranston, who was standing only a few feet away  
10 with his handgun still drawn and visible. It was at this point that Cranston finally fired a  
11 single shot at Washington. The round struck Washington in his midsection, stopping the  
12 assault.  
13

14 Once it became clear that the threat had ended, Cranston immediately moved to  
15 Washington and began rendering aid and calling for help. When police arrived some  
16 minutes later, Cranston was still rendering aid to Washington. He promptly identified  
17 himself to the police as the person who had fired the weapon, and cooperated in all respects  
18 as directed.  
19

20 Upon viewing Cranston's injuries, the police concluded that medical attention was  
21 necessary. At first, they called for emergency medical technicians to meet them at the  
22 precinct. When the EMTs arrived, they concluded that it was necessary to take Cranston to  
23 the hospital for evaluation. The medical personnel decided that a CT scan and other  
24

1 procedures were necessary, and Cranston was ultimately diagnosed with the injuries  
2 discussed above.

3 Cranston was initially booked on a charge of second-degree manslaughter. That  
4 charge was eventually increased to second-degree murder, the basis on which the State is  
5 presently seeking to have Cranston held without bail.

## 6 V. DISCUSSION

7 The evidence set forth above will not be sufficient for the State to satisfy its burden  
8 of proving, by clear and convincing evidence, that there is a “strong likelihood” that Ian  
9 Cranston will be convicted of murder. If the State fails to satisfy this burden as to any  
10 element necessary to its case, bail cannot be denied. As demonstrated above, the State’s  
11 evidence fails on two separate and independent grounds: proof of a deliberate, conscious  
12 objective to cause Washington’s death; and disproof of self-defense.  
13

14 With respect to the first of these: the State’s evidence will fall far short of  
15 establishing by clear and convincing evidence that Cranston had the conscious objective of  
16 causing Washington’s death. The firing of a shot at an attacker does not by itself establish a  
17 conscious objective to cause death. Every trained law enforcement officer in Oregon and  
18 elsewhere knows and testifies that the objective of firing a shot at a threatening person is to  
19 stop that threat, and that although the death of the subject is a significant possibility, it is not  
20 the objective.  
21

22 Accordingly, something more than the fact of a shot is required to prove that a  
23 person had the conscious objective to cause another’s death. In this case, there is no such  
24 evidence, and in fact such evidence as there is points in the opposite direction. After firing a



1 single shot at the attacking Washington, Cranston, who still had multiple rounds in his  
2 firearm, took no further action against Washington but instead went immediately to him to  
3 render aid.

4 Other than the fact of the shot itself—which, again, is legally insufficient to establish  
5 a conscious objective to cause death—there is no evidence whatsoever as to that necessary  
6 element. The fact of the shot, without more, may be deemed sufficient to establish that  
7 Cranston took an action that created a substantial risk of causing Washington’s death. But  
8 that fact, even assuming no applicable defenses, would at most constitute proof of  
9 manslaughter, not intentional murder. *See Haynes*, 290 Or at 79 (“The likelihood of guilt  
10 must be more than “fair,” it must be “strong,” before release can be denied under ORS  
11 135.240(2). *It must, of course, be guilt specifically of murder, not merely of some degree of*  
12 *culpable homicide.*”) (emphasis added).  
13

14 Accordingly, even considering solely the elements of the State’s prima facie case and  
15 without considering any defense, the State cannot meet the burden it must meet to deny bail.

16 Additionally, the State cannot meet its burden of disproving self-defense by clear and  
17 convincing evidence, and that is a separate and independent basis to reject the State’s effort  
18 to deny bail.  
19

20 As set forth above, Washington committed a violent, wholly unprovoked assault  
21 against Cranston. Washington had absolutely no right or justification to do that. And  
22 Cranston had no legal obligation to allow a large, powerful man to continue viciously  
23 striking him in the head.  
24

1 Nor was Cranston obligated to attempt to defend himself physically against the much  
2 stronger Washington. After Washington began the assault and gave every indication of an  
3 intent to continue it, Cranston had a clear legal right to draw his firearm in an attempt to  
4 deter his attacker. As the indisputable video evidence shows, the single shot was fired only  
5 after Washington—having clearly seen that Cranston was armed—disregarded that fact and,  
6 completely undeterred, continued his assaultive conduct.

7 The State has the right to attempt to prove that Ian Cranston is guilty of intentional  
8 murder, and nothing in this proceeding will affect the State’s ability to do so. *See Haynes*,  
9 290 Or at 88. The sole issue is whether the State can meet the high burden necessary to  
10 justify the complete denial of any possibility of pretrial release. For the reasons set forth  
11 above, it cannot.

## 12 VI. CONCLUSION

13 For the foregoing reasons, the defense respectfully requests that this Court, following  
14 the hearing, find that the State has not met the burden necessary to justify the denial of bail,  
15 and that it proceed to a determination of release pursuant to the statutory criteria.

16 DATED this 30th day of December 2021.

17  
18  
19  
20 s/Kevin Sali  
21 KEVIN SALI OSB #044065  
22 kevin@salilaw.com  
23 Attorney for Defendant Ian Cranston  
24

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused a true copy of the foregoing DEFENDANT’S MOTION FOR  
3 RELEASE to be served on:

4 Brooks McClain	<input type="checkbox"/>	By hand delivery
Deschutes County District Attorney's Office	<input type="checkbox"/>	By first-class mail*
5 Deschutes Co Courthouse	<input checked="" type="checkbox"/>	By e-mail
1164 NW Bond St	<input type="checkbox"/>	By overnight mail
6 Bend OR 97703	<input checked="" type="checkbox"/>	By electronic service
brooks.mcclain@dcdca.us	<input type="checkbox"/>	

7  
8 \*With first-class postage prepaid and deposited in Portland, OR.

9 DATED this 30th day of December 2021.

10  
11 **KEVIN SALI LLC**

12  
13 By: s/Kevin Sali  
14 KEVIN SALI OSB #044065