

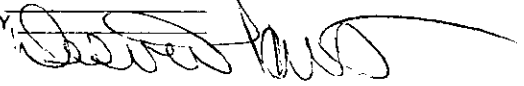
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED

MAR 15 2022

Valerie J Hornsveld

CLERK
DEPUTY



**MONTANA FIRST JUDICIAL DISTRICT COURT
BROADWATER COUNTY**

<p>THE STATE OF MONTANA, Plaintiff, v. LLOYD BARRUS, Defendant.</p>	<p>Cause No.: CDC-2017-15 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON SENTENCING UNDER MONT. CODE ANN. § 46-14-311</p>
---	---

An evidentiary hearing on whether Defendant Lloyd Mortier Barrus should be sentenced pursuant to Mont. Code Ann. § 46-14-311 was held on January 21 and 24, 2022. Daniel Guzynski and Stephanie D. Robles represented the State, and Craig Shannon and Greg A. Jackson represented Defendant. Defendant attended the hearing in person. Dr. Virginia Hill and Dr. Alan Newman testified. Several exhibits were admitted. From the testimony, the exhibits and the court record, the Court makes the following:

////

1 **FINDINGS OF FACT**

2 1. Following a jury trial held on September 7-21, 2021,
3 Defendant was convicted of Count I: Deliberate Homicide (Accountability),
4 Count II: Attempted Deliberate Homicide (Accountability); and Count III:
5 Attempted Deliberate Homicide (Accountability).

6 2. The Defendant faces a maximum punishment of life in
7 prison without the possibility of parole for each offense.

8 3. Dr. Virginia Hill is a recently retired forensic psychiatrist for
9 the Montana State Hospital. She is Board Certified in Forensic and General
10 Psychiatry. Dr. Hill worked at the Montana State Hospital from 1986 until her
11 retirement at the end of 2021.

12 4. Defendant has been at the Montana State Hospital since
13 December 27, 2017. Dr. Hill and Dr. Timothy Casey, staff psychologist,
14 evaluated Defendant and diagnosed him with Delusional Disorder, Persecutory
15 Type; Mixed Personality Disorder with Antisocial and Narcissistic Features;
16 Alcohol Use Disorder; and Cannabis Use Disorder in a report dated May 11,
17 2018. Ex. B. Hill and Case concluded that Defendant was believed to have the
18 capacity to act with knowledge or purpose at the time of the crimes. Id.
19 Defendant was found not fit to stand trial. Id.

20 5. The defense never filed a notice of intent to offer evidence at
21 trial of the defense that, because of a mental disease or disorder, Defendant did
22 not have a particular state of mind that is an essential element of the crimes
23 charged.

24 6. However, the defense did file a notice of intent to rely on
25 Mont. Code Ann. § 46-14-311 if Defendant were convicted.

1 7. According to Dr. Hill, a fitness to proceed determination is
2 an “in the moment” examination to determine fitness at the time of the
3 evaluation. The standard under Mont. Code Ann. § 46-14-311 relates to a “time
4 of crime” evaluation.

5 8. After Defendant was found unfit to proceed, Dr. Hill created
6 an individualized treatment plan for Defendant designed to restore him to fitness.
7 The treatment plan included prescribing antipsychotic medications to Defendant.
8 Defendant refused to take any medication.

9 9. Following a hearing held pursuant to *Sell v. United States*,
10 539 U.S. 166 (2003), the Court entered findings, conclusions and an order
11 allowing the State Hospital to involuntarily medicate Defendant to restore
12 Defendant’s competency to stand trial. The plan was affirmed by the Montana
13 Supreme Court.

14 10. The treatment plan and involuntary medication worked well.
15 Defendant was restored to fitness within four months of his first injection of
16 antipsychotic medication. See DPHHS Interim Update Report dated Feb. 27,
17 2020; DPHHS Report dated June 12, 2020, p. 7.

18 11. Dr. Alan Newman is Board Certified in General Psychiatry
19 and Forensic Psychiatry. Dr. Newman has extensive experience in maximum
20 security, inpatient forensic facilities, and in prisons. Dr. Newman is chair of the
21 California Pacific Medical Center Department of Psychiatry and Director of its
22 Psychiatry Residency Training Program and Undergraduate Medical Education.
23 Dr. Newman has extensive experience evaluating and treating patients and
24 supervising psychiatry residents. His CV includes multiple published articles and
25 reports.

1 12. On October 29, 2021, the Court ordered Dr. Newman to
2 conduct a psychological evaluation of Defendant for the purpose of determining
3 whether Defendant was unable to appreciate the criminality of his behavior or
4 unable to conform his behavior to the requirements of law during the commission
5 of the offenses for which he had been convicted.

6 13. Defendant has suffered from delusional disorder for most of
7 his adult life. Dr. Hill and Dr. Newman agree Defendant's condition can be
8 managed with anti-psychotic medications, but it cannot be cured. Defendant's
9 delusions are currently "muted" by the antipsychotic drugs he is taking.

10 14. In March 2000, Defendant was arrested in California after a
11 shootout, pursuit, and standoff with police in the California desert. Defendant
12 and his adult son Jeffrey Barrus led officers on a high-speed vehicle chase and
13 shot at officers from the moving vehicle. They abandoned their vehicle in Death
14 Valley and ran into the hills. A California Highway Patrol helicopter was struck
15 by their gunfire and made an emergency landing. After a standoff in a remote
16 area, Defendant and his son Jeffrey eventually surrendered to law enforcement.

17 15. Defendant was charged with multiple felonies in the
18 California case. Defendant was found unfit to proceed and was diagnosed with
19 Delusional Disorder. He was ordered to take antipsychotic medication. He did
20 not willingly take the medication but did not physically resist and took the
21 medication when ordered.

22 16. Defendant was restored to fitness, pled guilty pursuant to a
23 plea bargain, and was sent to prison in California in 2002. He stopped taking the
24 antipsychotic medications when he was sent to prison.

25 //

1 17. Defendant was not treated for his Delusional Disorder
2 during his prison time in California.

3 18. Defendant was released from prison in California in January
4 2013. His sentence and parole expired on January 3, 2016. Defendant was not
5 arrested for any crime between his release in 2013 and the crimes charged in
6 Montana in May 2017.

7 19. Pursuant to his treatment plan in this case, Defendant
8 received involuntary injections of Zyprexa from February 2, 2020, until January
9 12, 2022. Defendant now takes Risperdal by mouth. According to Dr. Hill,
10 Defendant still has a negative attitude to medication but began taking the drug
11 orally after Dr. Hill informed him that he would have to do so in order to remain
12 at the Montana State Hospital.

13 20. Defendant would refuse to take antipsychotics if he had
14 unfettered decision-making. Nonetheless, Defendant has chosen to take the
15 medications because it facilitates his remaining at the State Hospital.

16 21. Dr. Hill opined that Defendant meets the criteria to be
17 sentenced under Mont. Code Ann. § 46-14-311. She believes that he “knew” his
18 actions on May 16, 2017, were criminal, but that he was unable to “appreciate”
19 the criminality of his behavior. She further opined that Defendant’s ability to
20 conform his behavior to the requirements of the law, was impaired.

21 22. Dr. Newman has experience interpreting Montana’s
22 statutory scheme for sentencing those who are guilty but mentally ill. Dr.
23 Newman disagrees with the conclusions of Dr. Hill. Newman opined that,
24 practically speaking, “knowing” and “appreciate the criminality” are quite

25 //

1 similar. The inability to conform to the law means the person knew his actions
2 were wrong but he was unable to conform.

3 23. Dr. Newman concluded that there was no evidence that
4 Defendant's delusional disorder was the cause of his crimes.

5 24. Dr. Newman admitted that his report contains erroneous
6 statements about the amount Defendant drank that night. Dr. Newman
7 nonetheless opined that Defendant's voluntary intoxication was a precipitating
8 factor of Defendant's criminal acts.

9 25. Dr. Newman concluded that, at the time of the offenses,
10 Defendant had the ability to appreciate the criminality of his actions. Newman
11 also concluded that Defendant had the ability to conform his behaviors to the
12 requirements of law.

13 26. As evidenced by Defendant's manifesto and his statements
14 throughout this case, Defendant harbors anti-government sentiment. Defendant
15 has also often felt harassed by law enforcement, although he also professes to get
16 along well with some law enforcement, such as the police in Bakersfield,
17 California. These beliefs are not delusional in and of themselves.

18 27. Defendant was aware that Marshall was very paranoid, and
19 that Marshall would become even more paranoid when he drank. Nonetheless,
20 the evidence at trial established that Defendant and his son Marshal drank
21 together on the afternoon and evening before the crimes occurred. Defendant has
22 consistently refused to detail the amount he personally drank. Defendant told Dr.
23 Newman he "did not remember" how much he drank.

24 28. On the night of the shooting, Marshall behaved erratically.
25 Marshall violated the conditions of his release on unrelated charges by

1 drinking alcohol. Marshall cut off his ankle monitor and handed it to Tara.
2 Marshall fired shots into a campfire and later into the ground at the camping area
3 where Tara and three of his children were. Defendant and Marshall left the
4 campground together twice that night. Marshall broke out a window in Tara's
5 vehicle when upset because he could not find the family in their tent and then
6 located them in the locked vehicle.

7 29. The evidence at trial established that Defendant also acted in
8 ways that made Tara and her children uncomfortable. During the week or so they
9 camped at Confederate Gulch campground, Defendant was concerned that he was
10 under surveillance by the FBI, the police, and a judge.

11 30. On the day of the crimes, Defendant and Marshall discussed
12 going to California. Defendant signed a copy of his "manifesto" for Tara and
13 warned Tara that she would not survive if she went with Marshall and Defendant.
14 Defendant also discussed the family being "militia" with his granddaughter. Tara
15 observed Defendant in possession of Marshall's handgun.

16 31. Marshall did not want to go to jail, and Defendant knew that
17 Marshall could be arrested and detained for violating the conditions of his
18 release.

19 32. Defendant admits, and all evidence establishes, that
20 Defendant drove the white Suburban as it sped past Deputy Moore. Defendant
21 was aware he had passed a law enforcement vehicle. Defendant did not stop
22 when pursued by Deputy Moore. Defendant continued to drive the Suburban
23 from the time he first encountered Deputy Moore until the final shootout in
24 Missoula County.

25 ////

1 33. Defendant has stated numerous times that Marshall began
2 shooting at Deputy Moore after Marshall stated to Defendant that they are
3 shooting at us.

4 34. After Marshall fired shots and disabled Moore's patrol
5 vehicle, Marshall asked Defendant to turn around and go back to Moore's vehicle
6 because Marshall "did not want to be charged with attempted murder". Marshall
7 asked to return two or three times. Defendant then turned the Suburban around
8 and returned to Moore's vehicle.

9 35. Defendant separately told both Hill and Newman that
10 Marshall jumped out of the vehicle and fired multiple shots into Moore's patrol
11 vehicle. This is consistent with the evidence presented at trial.

12 36. Marshall got back into the Suburban, shouted, "Go, go, go,
13 go, go", and Defendant drove away.

14 37. Defendant claims that he and Marshall had no conversation
15 during the remainder of the time they were pursued by law enforcement.
16 Defendant also contends he was unaware of Marshall's position when Marshall
17 fired shots from the vehicle, and that the shots fired from the vehicle were not
18 loud.

19 38. Defendant's versions of several aspects of events, such as
20 the amount Defendant drank, the lack of conversation with Marshall during the
21 hours they fled from law enforcement (which includes two accidents and a
22 resulting stop on a back road), and Defendant's lack of awareness of the weapon
23 and location from which Marshall fired, are not consistent with a forthright
24 description of what occurred.

25 //

1 39. The evidence establishes that Defendant knew he was
2 fleeing from law enforcement and fled to avoid arrest. Defendant also told Dr.
3 Newman he thought he and Marshall were doomed.

4 40. Defendant told Dr. Newman that, at the scene of the final
5 shootout with law enforcement, Marshall jumped out of the Suburban shooting
6 the M1A and/or the shotgun. Defendant got out and fired Marshall's Glock
7 handgun. Defendant told Newman he was not trying to kill cops.

8 41. Defendant knew Marshall had been shot when Marshall
9 stopped firing. He walked around the back of the Suburban and saw the M1A on
10 the ground. Defendant told Dr. Newman he thought about grabbing the M1A but
11 did not.

12 42. Defendant ultimately chose to surrender rather than continue
13 to resist. Defendant was coherent and cooperative when he was taken into
14 custody.

15 43. After he was arrested, Defendant referred to himself as
16 "evil", and engaged in a rational conversation with the deputy who transported
17 him to Missoula. Defendant understood and retained information provided to
18 him by the deputy. Defendant did not report hallucinations or confusion or say
19 anything indicating he did not understand the circumstances or actions for which
20 he had been arrested. Defendant expressed surprise that he had not been shot by
21 law enforcement—his statements indicated an understanding that his actions
22 could well have provoked such response by officers.

23 44. Defendant was interviewed by news reporters while held in
24 jail in Missoula and made several unusual statements that the defense believe
25 indicate he was delusional. These statements were not made immediately before

1 or after the charged crimes. Defendant is also known to intentionally make
2 outrageous statements. For example, the September 11, 2020, report from Dr.
3 Casey and Dr. Hill states that defense counsel called with concern about
4 Defendant's continued fitness, stating that Defendant, in June 2020, again
5 discussed the illegality of plea bargains and told them he would only accept a
6 plea bargain of "time served and unsupervised probation". When asked about
7 these statements to counsel, Defendant told Hill and Casey he was being flippant
8 when he made the comment about the plea bargain he would accept, and told
9 Casey and Hill that he would review any plea bargain. Defendant stated that
10 "either way (plea bargain or trial)" the outcome was likely "a long time."

11 45. As noted previously, whether medicated or not, Defendant
12 has always acted appropriately and respectfully when in court during the
13 pendency of this case.

14 From these Findings of Fact, the Court makes the following:

15 **CONCLUSIONS OF LAW**

16 1. Montana Code Annotated § 46-14-311 (2017) provided:

17 (1) Whenever a defendant is convicted on a verdict of guilty...
18 and claims at the time of the omnibus hearing held pursuant to 46-
19 13-110. . .that at the time of the commission of the offense of which
20 convicted the defendant was suffering from a mental disease or
21 disorder. . .that rendered the defendant unable to appreciate the
22 criminality of the defendant's behavior or to conform the defendant's
23 behavior to the requirements of law, the sentencing court shall
24 consider any relevant evidence presented at the trial and shall also
25 consider the results of the presentence investigation required
pursuant to subsection (2).

(2) Under the circumstances referred to in subsection (1), the
sentencing court shall order a presentence investigation and a report

1 on the investigation pursuant to 46-18-111. The investigation must
2 include a mental evaluation by a person appointed by the director of
3 the department of public health and human services or the director's
4 designee. The evaluation must include an opinion as to whether the
5 defendant suffered from a mental disease or disorder or
6 developmental disability with the effect as described in subsection
7 (1). If the opinion concludes that the defendant did suffer from a
8 mental disease or disorder or developmental disability with the effect
as described in subsection (1), the evaluation must also include a
recommendation as to the care, custody, and treatment needs of the
defendant.

9 2. The procedure utilized in this case substantially conforms to
10 the Mont Code Ann. § 46-14-311 procedure. However, the parties asked that the
11 hearing on the applicability of Mont. Code Ann. § 46-14-311 be held prior to
12 receipt of the presentence investigation and the final sentencing hearing.

13 3. A defendant has the burden of proving he suffered from
14 mental disease or disorder at the time of the offense such that he was unable to
15 appreciate the criminality of his behavior or to conform his behavior to the
16 requirements of law. If a defendant satisfies all the requirements of § 46-14-311,
17 MCA, the sentencing court must sentence the defendant to DPHHS custody. The
18 Montana Supreme Court will not disturb a district court's conclusion regarding a
19 defendant's mental disease or defect, unless the conclusion is unsupported by the
20 record. *State v. Coburn*, 2018 MT 246, ¶ 19, 393 Mont. 73, 428 P.3d 243.

21 (citations omitted).

22 4. There is no disagreement that Defendant suffers from a
23 mental disorder—delusional disorder. The question is whether that disorder
24 rendered him unable to appreciate the criminality of his behavior or to conform
25 his behavior to the requirements of law.

1 5. Dr. Newman opined that “knowingly” and “appreciating the
2 criminality” are similar. In the opinion of Dr. Newman, Defendant was able to
3 appreciate the criminality of his behavior and able to conform his behavior to the
4 requirements of law.

5 6. Montana Supreme Court cases contain similar
6 interpretations of the ability to appreciate the criminality. In *State v. Tibbitts*, 226
7 Mont. 36, 733 P.2d 1288 (1987), Tibbitts got into an argument with the victim.
8 Tibbitts picked up a bottle, hit the victim twice with it, and then kicked the victim
9 while he was lying on the ground. The victim died. Tibbitts had been diagnosed
10 as schizophrenic and had previously committed himself to mental institutions.
11 The psychiatrist from the State Hospital testified that Tibbitts could become
12 psychotic at times but opined that Tibbitts acted knowingly. At sentencing, the
13 district court rejected a claim that Tibbitts should be sentenced under Mont. Code
14 Ann. § 46-14-311. The Montana Supreme Court stated,

15 We affirm the District Court’s conclusion that Mr. Tibbitts was able
16 to appreciate the criminality of his conduct or conform his conduct to
17 the requirements of the law at the time of the commission of the
18 offense in accordance with *Doney* [636 P.2d 1377, 1385 (1981)] and
19 *Korell* [213 Mont. 316, 690 P.2d 992 (1984)]. A police officer
20 testified that Mr. Tibbitts seemed to understand what was going on
21 around him following the incident. Mr. Tibbitts also testified in a
22 calm and understanding manner of the events leading up to the attack
23 and the examining psychiatrist testified that he believed Mr. Tibbitts
fit within the “knowingly” definition of Section 45-2-101(33), MCA,
when he committed the homicide. Accordingly the requirements of
Sections 46-14-311 and -312, MCA have been met.

24 *Tibbitts*, 226 Mont. 36, at 41-42, 733 P.2d, 1292.

25 //

1 7. Similarly, in *State v. Spell*, 2017 MT 266, 389 Mont. 172,
2 404 P.3d 725, the defendant pled guilty to deliberate homicide. Defendant Spell
3 is developmentally disabled with an IQ of 70. The district court considered the
4 application of Mont. Code Ann. 46-14-311. An expert witness testified that Spell
5 could appreciate the difference between right and wrong but that, because of his
6 intellectual disabilities, his intoxication at the time of the crime, and his
7 subservient relationship with a codefendant, he could not conform his conduct to
8 the law. The district court held that 46-14-311 did not apply and sentenced Spell
9 to 100 years in prison. The Montana Supreme Court upheld the sentence, citing
10 facts in the record indicating Spell could appreciate the criminality of his conduct
11 and had the capacity to conform his behavior to the requirements of the law. The
12 Supreme Court found the district court did not abuse its discretion:

13 because evidence in the record supports its conclusion that Spell's
14 intellectual disability did not prevent him from being able to
15 appreciate his behavior and conform his conduct to the law.
16 Although Spell's intellectual disability made him susceptible to
17 Waters' influence, Spell knew his actions were wrong and he had the
 ability to stop himself from kidnapping and killing Arnold.

18 *Id.* ¶ 34.

19 8. In the opinion of Dr. Newman, Defendant was able to
20 appreciate the criminality of his behavior and he was able to conform his
21 behavior to the requirements of law.

22 9. Dr. Hill disagrees and opines that Defendant meets the
23 criteria to be sentenced under Mont. Code Ann. § 46-14-311. She believes that
24 he "knew" his actions on May 16, 2017, were criminal, but that he was unable to
25 "appreciate" the criminality of his behavior. She further concluded that

1 Defendant's ability to conform his behavior to the requirements of the law was
2 impaired.

3 10. The Court must evaluate the persuasiveness of two opposed
4 expert opinions. Dr. Hill has had extensive exposure to Defendant and his
5 behaviors. She treated Defendant for over four years. On the other hand, it
6 appeared at the hearing that Dr. Hill has become an advocate for her patient.

7 11. Dr. Newman is a highly regarded and highly qualified
8 evaluator who has less day-to-day knowledge of Defendant. However, his
9 opinion also is not clouded by a long-term doctor/patient relationship.

10 12. The Court finds Dr. Newman's opinion to be more
11 persuasive, particularly when considered with the other evidence in the case.

12 13. The Court has carefully considered the evidence presented
13 from the *Sell* hearing through the trial. There are facts indicating that Defendant
14 was paranoid in the days leading up to the crimes. However, there is scant
15 evidence to support a finding that Defendant did not appreciate the criminality of
16 his actions on May 16, 2017.

17 14. Defendant has given multiple interviews to evaluators and
18 treaters at the Montana State Hospital. In these statements, Defendant has
19 minimized his drinking and his behavior at the campground on the evening
20 preceding the offenses.

21 15. Nonetheless, his statements are clear that he was aware he
22 passed a law enforcement vehicle while speeding. He was aware that he was
23 pursued by the law enforcement vehicle. Defendant was aware that Marshall had
24 violated the conditions of his release on other charges and would likely be
25 arrested. Defendant's son, Marshall, indicated that they were shooting at them.

1 Defendant knew Marshall fired on the pursuing law enforcement vehicle.
2 Marshall then stated that he “did not want to be charged with attempted murder”
3 and asked Defendant to return to the scene. Marshall asked him to return two or
4 three times. Defendant turned the vehicle around, transported Marshall back to
5 Deputy Moore’s vehicle, watched Marshall fire multiple rifle shots into the
6 vehicle, allowed Marshall to get back into Defendant’s suburban, and began
7 driving the Suburban on a flight from law enforcement that would last for hours.

8 16. Defendant’s own statements indicate he and Marshall
9 returned because Marshall did not want to face criminal charges. This is
10 evidence of Defendant’s appreciation of the criminality of their actions. The only
11 reasonable interpretation of this statement is that Marshall did not intend to leave
12 a witness. Defendant has provided no delusional explanation for his participation
13 in the killing of Deputy Moore.

14 17. Similarly, Defendant continued driving as fast as he could to
15 escape pursuing law enforcement while Marshall fired at them. Defendant may
16 well have felt doomed, but that is a reasonable reaction to participation in the
17 homicide of a law enforcement officer and the flight thereafter.

18 18. Many miles later, Defendant and his son were forced to stop
19 the Suburban after a third tire on the vehicle was flattened by a stop strip.
20 Defendant chose to grab a handgun and fire in the direction of law enforcement.
21 (Defendant has stated he did not intend to shoot a cop.) Once Defendant was
22 wounded in the finger and had difficulty with the weapon, he threw the handgun
23 aside. Defendant knew Marshall had been shot when the firing stopped.
24 Defendant did not immediately obey law enforcement commands. As he himself
25 has stated, he thought about picking up the M1A but chose not to. He made a

1 rational choice to leave the rifle on the ground and begin to follow law
2 enforcement commands.


3 19. Defendant also immediately complied upon arrest. He made
4 statements indicating he knew he had committed a crime. He expressed surprise
5 that he had not been shot. He also carried on a rational conversation with the
6 deputy who transported him to Missoula, retaining and exchanging information.

7 20. The defense has failed to meet its burden to show that
8 Defendant did not appreciate the criminality of his behavior or that he was unable
9 to conform his behavior to the requirements of the law.

10 For the foregoing reasons, the Court concludes that Defendant's
11 sentencing is not subject to Mont. Code Ann. § 46-14-311. He shall be sentenced
12 as provided in Title 46, chapter 18. Mont. Code Ann. § 46-14-312(1).

13 **IT IS SO ORDERED.**

14 DATED this 15 day of March 2022.

15
16 
17 KATHY SEELEY
18 District Court Judge
19
20
21
22
23
24
25

1 **The Clerk of Court is directed to deliver conformed copies to the following:**

2 cc: Daniel Guzynski / Stephanie D. Robles, Assistant Attorneys General
3 via email to: dguzynski@mt.gov / stephanie.robles@mt.gov

4 Broadwater County Attorney's Office
5 hand-delivered

6 Gregory A. Jackson, Esq.
7 via email to: gaj@jacksonlawfirm.com

8 Craig Shannon, Esq.
9 craigkevinshannon@gmail.com

10 KS/tm/BWC CDC-2017-15 State v. Barrus - Findings of Fact, Conclusions of Law, and Order on Sentencing under Mont. Code Ann. § 46-
11 14-311.doc