

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0406

<p>STATE OF MONTANA,</p> <p>Appellee, Plaintiff,</p> <p>vs.</p> <p>CLINT CHARLES WEATHERELL,</p> <p>Appellant, Defendant.</p>	<p>BRIEF OF APPELLANT</p>
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Appeal from the Twentieth Judicial District Court Lake County
in Polson, MT
Cause No. DC-08-14
The Honorable Deborah Kim Christopher, presiding Judge

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I. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Should the defendant's second conviction be dismissed on account of double jeopardy?

II. STATEMENT OF THE CASE AND STATEMENT OF FACTS

As the case is not fact intensive, the "Statement of the Case," outlining the procedural disposition below, and the "Statement of Facts" are combined.¹

Clint Weatherell was charged by Information dated January 22, 2008 (App. I, Information) with:

[Count I] "On or about January 3, 2008 in Lake County, Montana, the defendant, who is over the age of 18, purposely or knowingly caused bodily injury to another, MG, who is 2 years old." [Assault on a Minor, a felony, M.C.A. §45-5-212²]; and

[Count II] "On or about January 3, 2008 in Lake County, Montana, the defendant knowingly engaged in conduct which creates a substantial risk of death or serious bodily injury to another, MG, who is 2 years old." [Criminal Endangerment, a felony, M.C.A. §45-5-207]; and

[Count III] "On or about January 3, 2008 in Lake County,

¹ The narrative is based on the record – the Appendix includes the Information, the plea agreement, the pertinent district court orders and excerpts of the applicable statutory texts.

² See, App. 11, M.C.A. §45-5-212.

Montana, the defendant purposely or knowingly caused bodily injury to a family member, MG, who is 2 years old, and the defendant lives with MG and his mother as the mother's boyfriend." [Partner or Family Member Assault, First Offense, a misdemeanor, M.C.A. §45-5-206(1)(a)³].

Weatherell pleaded "not guilty" to Counts I & II, but voluntarily entered an Alford plea⁴ to Count III that was accepted by the district court without any objection by the State (App. 2, Minute Entry, February 7, 2008). Thereafter, Weatherell moved to dismiss Counts I and II on the basis of double jeopardy; his motion was denied by the district court (App. 3, Minute Entry, June 3, 2008).

Weatherell, faced with trial on Counts I & II – predicated on the same transaction that was the basis for his Alford plea (Count III) – on March 25, 2009 entered into a plea agreement with the State to the effect that the State would dismiss with prejudice Count II and Weatherell would plead guilty to Count I, reserving⁵ all of Weatherell's claims of double jeopardy for appeal. The plea

³ See, App. 12, M.C.A. §45-5-206(1)(a).

⁴ See, App. 10, M.C.A. §§46-12-204, 46-12-212(2); *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

⁵ App. 4, Acknowledgment of Rights and Plea Agreement, March 25, 2009, p. 5 (appeal reservation), pp.5-6 ¶¶ 1, 2, 3 (guilty plea and dismissal).

agreement was approved by the district court (App. 5, Minute Entry, April 13, 2009), which thereafter conducted a sentencing hearing (App. 6, Minute Entry, May 28, 2009) and issued its judgment (App. 7, Judgment and Commitment, June 1, 2009).

Clint Weatherell is now before this Court convicted of two crimes that arise from a single transaction, that involve exactly the same facts, and that are both a species of assault. Clint Weatherell asks the Court to vacate the second conviction on the basis of double jeopardy.

III. ARGUMENT

A. Summary of the Argument

Section 46–11–410(1) M.C.A. allows a defendant to be charged with multiple offenses based on a single transaction; however, §46–11–410(2) M.C.A. provides a defendant “. . . may not, be convicted of more than one offense . . .” if any one of five circumstances are present. Here the Defendant was convicted of two variants of assault that are identical except for the characterization of the victim as either a minor or as a minor family member. M.C.A. 46–11–410(2)(d) bars a second conviction in this case.

If the statutory provisions do not bar the second conviction in this case, Article II, §25 and other provisions of the Montana Constitution do. The scope of §25 has not been fully explored. The text is different from the double jeopardy provisions of the United States Constitution, indicating §25's scope is broader than the federal provisions. The Court has consistently applied §25 to bar convictions in Montana, arising from one transaction, when there has been a prior conviction of a similar crime in another jurisdiction. It is anomalous – and a denial of due process and of the equal protection of the laws – that Montana citizens are

protected from prosecution of Montana crimes when there has been a conviction of a similar crime in another jurisdiction, yet may be convicted in Montana Courts of multiple, similar Montana crimes arising from a single transaction.

B. Standard of Review.

With respect to a motion to dismiss a criminal action, this Court's standard of review is plenary. *State v. Mallak*, 2005 MT 49 ¶ 13, 326 Mont. 165, 109 P.3d 209.

A district court's decision to grant or deny a defendant's motion to dismiss a charge on the basis of double jeopardy presents a question of law that this Court reviews for correctness. *State v. Neufeld*, 2009 MT 235 ¶ 10, 351 Mont. 389, 212 P.3d 1063; *State v. Cech*, 2007 MT 184, ¶ 7, 338 Mont. 330, 167 P.3d 389.

C. It was Error Not to Dismiss on Account of Double Jeopardy.

I. General Considerations.

Protection against double jeopardy arises under the Federal Constitution, Fifth Amendment (applicable to the states through the Fourteenth Amendment), and Article II, §25 of the Montana Constitution (App. 8), as well as the statutes in the State of Montana (App. 9, M.C.A. §46-11-410). Obviously, the correct

analysis starts with the Montana statutes, as constitutional provisions need not be considered if the Montana statutes provide adequate relief. *State v Russell*, 2008 MT 417, ¶ 19, 347 Mont 301, 198 P.3d 271.

Pertinent to any analysis or argument is the nature of the crimes charged.

Counts I and III of the information are worded substantially the same:

[Count I] On or about January 3, 2008 in Lake County, Montana, the defendant, *who is over the age of 18*, purposely or knowingly caused bodily injury to another, MG, who is 2 years old.

[Count III] On or about January 3, 2008 in Lake County, Montana, the defendant purposely or knowingly caused bodily injury to *a family member*, MG, who is 2 years old, *and the defendant lives with MG and his mother as the mother's boyfriend*.

The differences between the charges are italicized. Obviously, the Defendant's Alford plea to Count III mirrors every fact that is alleged in Count I, except that the Defendant is over the age of 18. However, it is implicit as to all counts in this prosecution that the Defendant is over the age 18, *i.e.*, a person of majority. ⁶

⁶ See, M.C.A. §41-1-101 "(1) Minors are: (a) males under 18 years of age;(b) females under 18 years of age. (2) All other persons are adults." See also, M.C.A. §41-5-103(1)

If the Defendant were not over the age of 18, exclusive jurisdiction would have been in the Youth Court, M.C.A. §41-5-203 and leave to file an information under the restrictions of M.C.A. §41-5-206 would have been

Likewise, everything charged in Count I is mirrored in Count III, except that the assault alleged is against another (a minor) who is a family member.

The elements that are usually the central focus of alleged criminal activity – the degree of intent and the harm – are the same for Counts I and III. Both charges alleged that the Defendant “purposely or knowingly caused bodily injury” to MG. The only difference is in characterizing MG as either a minor or a minor family member.

The same distinctions are in the statutes upon which the Information is based. M.C.A. §45-5-212 (Count I)(App. 11, Assault on a Minor) requires a predicate assault under M.C.A. §45-5-201 (App. 11, M.C.A. §45-5-201 Assault⁷) and that “. . . at the time of the offense, the victim is under 14 years of age and the offender is 18 years of age or older” (App. 11, M.C.A. §45-5-212 Assault on a Minor).

required for any prosecution of a minor in the district court. Needless to say, the prosecution and defense counsel, as well as the district court, would have been remiss in participating in a case against a minor in district court, absent compliance with M.C.A. §41-5-206.

⁷ See, App. 11, M.C.A. §45-5-201 Assault, “A person commits the offense of assault if the person: (a) purposely or knowingly causes bodily injury to another . . .

M.C.A. §45-5-206 (Count III)(App. 12, M.C.A. §45-5-206, Partner or family member assault . . .) does not incorporate M.C.A. §45-5-201 (App.11, Assault) by reference, but rather lays out the same essential elements as M.C.A. §45-5-201 except that the assault is “to a partner or family member” rather than “to another.” Specifically, M.C.A. §45-5-206 (Count III) provides, in pertinent part: “A person commits the offense of partner or family member assault if the person: (a) purposely or knowingly causes bodily injury to a partner or family member” (App. 12, M.C.A. §45-5-206, Partner or family member assault . . .).

Effectively, the distinction between the charges against the Defendant rests not on any difference in the activity of the Defendant (one instance of purposely or knowingly causing bodily injury). Instead, it is the characterization of the victim as a minor or as a minor family member that resulted in two convictions. One can conceive of a number of reasonable and worthy classifications the legislature could create to characterize a victim, such as: disabled, mentally impaired, health worker, while at a polling place, while walking within 500 feet of a school or church, over the age of 55. While the creation of such crimes may be allowable, it is fundamentally unfair to subject a defendant to multiple

convictions for the same transaction because the victim has multiple characteristics. This is particularly so in this case. The Defendant was charged under the first offender provisions of the Partner and family member assault statute (Count III) and forthrightly entered an Alford plea to that charge, thereby subjecting himself to immediate jeopardy.⁸ Presumably, the legislature intended that first offenders should have some leniency, rather than be placed in jeopardy for additional charges for the same transaction based on the same actions and intent.

2. Statutory Double Jeopardy Provisions.

Double jeopardy provisions are presently codified at M.C.A. §46-11-410 (App. 9), which provides:

46-11-410 multiple charges.

- (1) When the same transaction may establish the commission of more than one offense, the person charged with the conduct may be prosecuted for each offense.

⁸ “As a general rule, jeopardy attaches in a criminal case at the time the district court accepts the defendant’s guilty plea.” *State v. Neufeld*, 2009 MT 235, ¶37, 351 Mont. 389, 212 P.3d 1063 (Leaphart concurring, citing federal cases, *e.g.*, *U.S. v. Patterson*, 381 F. 3d 859 (9th Cir. 2004), and others).

- (2) A defendant may not, however, be convicted of more than one offense if:
- (a) one offense is included in the other;
 - (b) one offense consists only of a conspiracy or other form of preparation to commit the other;
 - (c) inconsistent findings of fact are required to establish the commission of the offenses;
 - (d) the offenses differ only in that one is defined to prohibit a specific instance of the conduct; or
 - (e) the offense is defined to prohibit the continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that a specific period of conduct constitutes separate offenses (emphasis added).

While the prosecution has discretion to file multiple charges under M.C.A. §46-11-410(1) it does not follow that it should, or that the defendant may be convicted of the multiple charges. M.C.A. §46-11-410(2) unequivocally protects the defendant from multiple convictions in the circumstances listed.

This provision comes directly from the American Law Institute (ALI) Model Penal Code 1972⁹ and was first enacted into law in Montana as R.C.M. 1947, 95-1711(2), then renumbered as M.C.A. §46-11-502. In 1991 these provisions were moved to M.C.A. §46-11-410.

⁹ See, 10A Uniform Laws, "Model Penal Code" (West), §1.07.

Subsection (d), when originally enacted, was identical to Model Penal Code §1.07 and in the former M.C.A. §46–11–502(4) provided:

(4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally, and the other to prohibit a specific instance of such conduct; or . . .

This was the wording of the statute in the 1987 version of M.C.A. §46–11–502.

Amendments to the criminal procedure section were made in 1991, and the provisions of M.C.A. §46–11–502 (1987) were moved to M.C.A. §46–11–410.

The Comments (1991) to M.C.A. §46–11–410 provide:

Commission Comments.

1991 Comment: This statute *preserves* 1987 M.C.A. 46–11–502. . . . Adoption of this statute should not result in a change in either practice or procedure (emphasis added).

Compiler’s Comments.

1991 Amendment: In (2)(d), after “prohibit a,” deleted “designated kind of conduct generally and the other to prohibit a”; and made minor changes in style.

Thus, even though the language in M.C.A. §46–11–410(2)(d), M.C.A., was changed from

the offenses differ only in that one is defined to prohibit a designated kind of conduct generally, and the other to prohibit a specific instance of such conduct; or . . .

to:

the offenses differ only in that one is defined to prohibit a specific instance of the conduct; or ...

the intent of the 1991 amendments was to *preserve* the statute as it existed in 1987, simply moving it to §46–11–502, M.C.A., without a change of substance. The changes made to (2)(d) were cosmetic changes, not intended to result in a change in either practice or procedure.

An additional point should be stressed. M.C.A. §46–11–502(2)(d) is one of five (5) categories of cases that are designated to protect a defendant from multiple convictions. The categories are separated by “or”, so they are alternative to each other. While most double jeopardy cases involve questions of “included offenses”¹⁰, (2)(d) is not mere surplusage and is separate and distinct from, and not subsumed by, the more common “included offense” analysis.

These distinctions are important, because the principal case discussing this provision considered the former language. *See, State v. Hall* (1986), 224 Mont. 187, 728 P.2d 1339, 1341–42, reversed on other grounds in *Montana v. Hall*, 481 U.S. 400, 107 S. CT. 1825, 95 L. Ed.2d 354 (1987)¹¹.

The facts in *State v. Hall* were that Hall was charged with sexual assault and

¹⁰ M.C.A. §46–11–502(2)(a); *See, e.g., State v. Beavers*, 1999 MT 260, 296 Mont. 340, 987 P.2d 371.

¹¹ *State v. Hall* went to the U.S. Supreme Court on whether trial for sexual assault, after reversal of an incest conviction on grounds unrelated to guilt or innocence, offended federal double jeopardy clause. Interpretation of Montana’s statutes was not addressed.

incest. The court, in referring to the provisions which now are M.C.A. §46-11-410(2)(d), stated as follows:

In analyzing the “general” and the “specific” conduct language, we note that the prosecution’s proof of “sexual contact” is the same in both the incest statute and the sexual assault statute ...

As applied to *Hall*, the statutory elements of incest are (1) sexual contact, (2) knowingly, (3) with a stepdaughter. The elements of sexual assault are (1) sexual contact, (2) knowingly, (3) with another without consent. Under the facts of this case, “without consent” requires no separate proof as an element of sexual assault, because the stepdaughter was, at the time of the offense, under the age of 16 and the offender was more than three years older than the victim ...

The first two elements of each offense are identical. The third element defines the victim. The victim of Hall’s knowing sexual contact was a 12-year-old stepdaughter. Therefore, under §46-11-502(4),¹² the “designated kind of conduct generally” refers to the sexual assault of anyone. The “specific” instance of such conduct refers to sexual assault of Hall’s stepdaughter . . .

. . . A second prosecution of Hall for sexual assault would be based upon the same sexual contact with the same victim on the same dates as alleged in the incest charge. Hall’s series of acts, which were necessary to convict Hall of incest, are the same series of acts which are necessary to convict Hall of sexual assault . . .

In this case the Defendant engaged in only one course of action against one victim, on one occasion, but he has been convicted of two crimes based on the

¹² Presently M.C.A. §46-11-410(2)(d)

same act of purposely or knowingly causing bodily injury to the victim, MG. Counts I and III differ only in the status of the victim, as either a minor “family member,” or a “minor.”

M.C.A. § 46–11–410(2)(d) can be considered to operate in two specific ways.

First, both Counts I and III are specific versions of the general crime of assault (M.C.A. §45–5–201). Conviction on Count III bars prosecution for assault (M.C.A. §45–5–201, M.C.A.), as Count III is but a species, or specific version, of assault. *State v. Hall, supra*; M.C.A. §46–11–410(2)(d). Count I requires as a predicate that the defendant “. . . commits an offense under 45–5–201 . . .” Logically, if a defendant cannot be put in jeopardy for the predicate crime (assault), he cannot be put in jeopardy for another species of, or more specific version of, the predicate crime (assault on a minor).

Secondly, following a construction parallel to that quoted above in *State v. Hall*, the victim of the Defendant’s purposely or knowingly causing bodily injury was a 2 year old family member. Therefore, the “designated kind of conduct generally” refers to an assault (M.C.A. §45–5–201) of any minor (M.C.A. §45–5–212, M.C.A.); while the “specific” instance of such conduct refers to assault of the Defendant’s minor family member (M.C.A. §45–5–206).

3. Montana Constitutional Considerations.

While Defendant believes his second conviction should be dismissed on the statutory grounds explained above, and that any constitutional questions need not be addressed, Defendant advances such an argument in the event that the Court

does not agree with Defendant's statutory analysis.

The Montana Constitution's double jeopardy provision, Article II §25 (App. 8), is different from, and more extensive than, the federal constitutional double jeopardy provision, in that it extends double jeopardy protection in connection with crimes committed in any jurisdiction. The different, and broader, wording evidences a more expansive intent behind the Montana provision.

In the multi-jurisdictional context, involving one transaction, double jeopardy has been found repeatedly, even though the similarity between the crime that is the basis of conviction in the other jurisdiction and a Montana crime may be substantially less than the similarity between Counts I and III in this case. *See e.g., State v. Neufeld*, 2009 MT 235, 373 Mont. 389, 212 P.3d 1063 (Montana prosecution dismissed; defendant not charged with offenses with identical elements in federal and state courts, but Montana sought to punish him for the same conduct and the crimes were equivalent as they involved the same time, same conduct and the same victim).

The policy expressed by Article II §25 is also implemented by M.C.A. § 46-11-504 that prohibits a second conviction if there is a previous conviction arising from the same transaction in another jurisdiction (including another Montana jurisdiction). *See, State v. Tadewaldt* (1996), 277 Mont. 261, 922 P.2d 463.

The Defendant in this case is in the anomalous position that had he been tried in two jurisdictions, including two Montana jurisdictions, his plea to the Count III crime would have barred a conviction of the Count I crime in any action in any other jurisdiction, because the Count I crime arose from the same

transaction as the Count III crime. M.C.A. § 46-11-504. Yet in this case, the Defendant, whose Alford plea to the single transaction involved in the case was accepted by the Court, without objection by the State, is subjected to a second conviction on the exact same transaction.

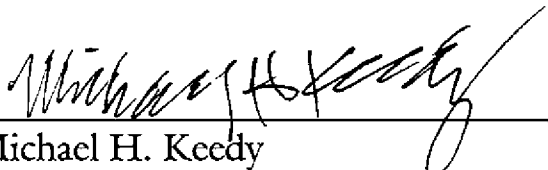
Protection from multiple convictions arising from the same transaction is inherent in Article II, § 25, as evidenced by enactment of M.C.A. 45-11-504. Although M.C.A. 45-11-504 is not directly applicable in this single jurisdiction situation, Article II, § 25 itself should provide that protection. If it does not, then this Defendant is denied due process and the equal protection of the law because he can be repeatedly punished for the same transaction, when a defendant in a multi-jurisdictional situation may not be so punished.

IV. CONCLUSION.

Defendant was placed in jeopardy by his Alford plea for one crime (Count III). He should not have been subjected to other crimes (Count I) that are a merely variants of the crime that placed him in jeopardy and arise from the same transaction, involving the same intent, the same conduct and the same victim. Defendant's conviction on Count I should be reversed (vacated).

RESPECTFULLY SUBMITTED this 14th day of September 2009.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that the Brief of Appellant and supporting documentation is printed with a proportionately spaced Galliard BT roman text typeface of 14 points; is double spaced; and the word count calculated by WordPerfect 6.1 for Windows is not more than 10,000 words (5,000 for reply), not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

DATED this 14th day of September 2009.



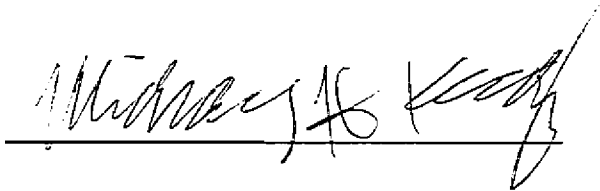
Michael H. Keedy, Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have filed a true and accurate copy of the foregoing BRIEF OF APPELLANT with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing BRIEF OF APPELLANT upon the Clerk of the District Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, as follows:

Mark A. Russell	<input type="checkbox"/> U.S. Mail, first class postage
Lake County Attorney's Office	<input type="checkbox"/> Facsimile
106 Fourth Avenue East	<input type="checkbox"/> Hand delivery
Polson, Montana 59860-2183	<input type="checkbox"/> Federal Express
Attorneys for the State of Montana	

Clerk of the 20 th Judicial District	<input type="checkbox"/> U.S. Mail, first class postage
Court	<input type="checkbox"/> Facsimile
106 Fourth Avenue East	<input type="checkbox"/> Hand delivery
Polson, Montana 59860	<input type="checkbox"/> Federal Express



IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0406

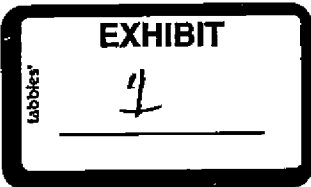
<p>STATE OF MONTANA,</p> <p>Appellee, Plaintiff,</p> <p>vs.</p> <p>CLINT CHARLES WEATHERELL,</p> <p>Appellant, Defendant.</p>	<p>APPENDIX</p>
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Appeal from the Twentieth Judicial District Court Lake County, Polson, MT
Cause No. DC-08-14
The Honorable Deborah Kim Christopher, presiding Judge

No. Description

1. INFORMATION, dated January 22, 2008;
2. MINUTE ENTRY – Accepting Alford Plea (Count III), “Not Guilty” pleas (Counts I & II), dated February 7, 2008;
3. ORDER DENYING DEFENDANT’S MOTION TO DISMISS, dated June 3, 2008;
4. ACKNOWLEDGMENT OF RIGHTS & PLEA AGREEMENT, dated March 25, 2009;

5. MINUTE ENTRY – Accepting Acknowledgment of Rights & Plea Agreement, accepting “Guilty” plea (Count I), dated April 13, 2009;
6. MINUTE ENTRY – Concerning sentencing, dated May 28, 2009;
7. JUDGMENT AND COMMITMENT, dated June 1, 2009;
8. Montana Constitution, Article II (Declaration of Rights) § 25;
9. M.C.A. §46–11–410, Multiple charges;
10. M.C.A. §46–12–204, Plea alternatives (excerpt); §46–12–212(2) Determining the accuracy of the plea;
11. M.C.A. §45–5–212, Assault on minor; §45–5–201, Assault; and
12. M.C.A. §45–5–206, Partner or family member assault – penalty (excerpt).



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LAKE COUNTY ATTORNEY'S OFFICE
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RECEIVED JAN 28 2008

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

THE STATE OF MONTANA, *
 *
 Plaintiff, * CAUSE NO. DC-08-14
 *
 -vs- * INFORMATION
 *
 CLINT CHARLES WEATHERELL, *
 *
 Defendant. *
 *
 * * * * *

In the District Court of the Twentieth Judicial Dis-
trict of the State of Montana, the Defendant is charged by
Plaintiff with committing the offenses of ASSAULT ON A MINOR, a
Felony, Count I, under MCA 45-5-212, with a maximum penalty
provided by law of imprisonment in the state prison for 5 years
and fined \$50,000; CRIMINAL ENDANGERMENT, a Felony, Count II,
under MCA 45-5-207, with a maximum penalty provided by law of
imprisonment in the state prison for 10 years and a \$50,000

1 fine; and PARTNER OR FAMILY MEMBER ASSAULT, First Offense, a
2 Misdemeanor, Count III, under MCA 45-5-206(1) (a), with a maximum
3 penalty provided by law of imprisonment in the county jail for
4 a term of 1 year and fined \$1000. The facts constituting the
5 offenses are:
6

7 COUNT I

8 On or about January 3, 2008 in Lake County, Montana,
9 the Defendant, who is over the age of 18 years, purposely or
10 knowingly caused bodily injury to another, M.G., who is two
11 years old.
12

13 COUNT II

14 On or about January 3, 2008 in Lake County, Montana,
15 the Defendant, knowingly engaged in conduct that creates a
16 substantial risk of death or serious bodily injury to another,
17 M.G., who is two years old.
18

19 COUNT III

20 On or about January 3, 2008 in Lake County, Montana,
21 the Defendant, purposely or knowingly caused bodily injury to a
22 family member, M.G., who is two years old, and the Defendant
23 lives with M.G. and his mother as the mother's boyfriend.
24

25 INFORMATION

Page 2

1 NAME OF WITNESSES FOR THE STATE:

2 M.G.

3 Rosanna Learn

4 Erica Dentler

5 Jan K., ER nurse, St. Joseph Hospital

6 Dr. Nathaniel Buffington, St. Joseph Hospital

7 Brenda Olsen, St. Joseph Hospital

8 Judy Dark, Department of Public Health and Human Services

9 Lance Ewers, Lake County Sheriff's Office

10 Mike Gehl, Lake County Sheriff's Office

11 Anthony Dentler, Polson Police Department

12 Any witnesses called by the Defendant

13 Names of additional witnesses to be added when known.

14 Presented upon leave granted upon motion to file an
15 information direct.

16 

17 MARK A. RUSSELL
18 Deputy County Attorney

19 Filed this 22 day of January, 2008.

20 LYN FRICKER, Clerk of Court

21 _____
22 By: _____
23 Deputy

24 INFORMATION

25 Page 3



RECEIVED FEB 13 2008

DC-08/-14

State of Montana, Plaintiff

-vs-

Clint C. Weatherell, Defendant

MINUTE ENTRY

This matter came before the Court for arraignment. Defendant present with counsel Michael H. Keedy; State represented by J Cory Allen, Deputy County Attorney for Mark A. Russell, Deputy County Attorney.

Defendant has been advised of his rights. Reading of Information is waived. Information has been received and reviewed. Defendant is aware of his rights and the charge and possible punishment. Ready to enter plea, Defendant pleads NOT GUILTY to the charge of ASSAULT ON A MINOR, a Felony, and CRIMINAL ENDANGERMENT, a Felony, to the offense of PARTNER OR FAMILY MEMBER ASSAULT, a Misdemeanor, the Defendant enters an Alford Plea. The plea is entered and the case will be set for trial. At this time the Court will sentence the Defendant after the felony matters have been resolved.

The Court sets this matter for omnibus hearing on April 3, 2008 at 9:00 a.m.

Done this 7th day of February, 2008 with the Honorable Deborah Kim Christopher, presiding.

Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
CR: cc

cc: County Attorney

Michael Keedy



1 HON. DEBORAH KIM CHRISTOPHER
2 20th Judicial District Court
3 Lake County Courthouse
4 106 Fourth Avenue E
5 Polson, MT 59860
6 (406) 883-7360

RECEIVED JUN 05 2008

7 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

8 STATE OF MONTANA,

Cause No. DC 08-14

9 Plaintiff,

ORDER DENYING DEFENDANT'S MOTION
TO DISMISS

10 vs.

11 CLINT CHARLES WEATHERELL,

12 Defendant.
13

14
15 The above cause came before the Court upon Defendant's Motion to Dismiss on April 10,
16 2008. Plaintiff filed a response on April 28, 2008. Defendant filed a reply on May 14, 2008.
17 The Court has considered the request and the pleadings on file in this matter and now enters the
18 following:

19 **ORDER**

20 Defendant's Motion to Dismiss is hereby **DENIED**.

21 The charges filed are within the discretion of the State. The affidavit filed in support of the
22 Motion for Leave to File an Information contains probable cause to believe that the offense alleged
23 were committed by the Defendant. Those allegations and the accompanying charges contain

24 ///

25 ///

1 different elements of proof not included in the other charges when considering the provisions of
2 §46-11-410 (2)(a) MCA.

3 DATED this 3rd day of June, 2008.

4
5 Deborah Kim Christopher

6

Deborah Kim Christopher
District Judge

7
8 pc: 6/3/2008
Mark Russell
Michael Keedy
9 le

EXHIBIT

tabbies

4

2008

LAKE COUNTY ATTORNEY'S OFFICE

Lake County Courthouse
106 Fourth Avenue East
Polson, MT 59860-2183
P: (406) 883-7245
F: (406) 883-7346

Michael H. Keedy
HENNING & KEEDY, P.L.L.C.
723 Fifth Avenue East, Suite 100
Kalispell, MT 59901
P: (406) 752-7122
F: (406) 752-3367

Attorney for Defendant

MONTANA TWENTIETH JUDICIAL DISTRICT, LAKE COUNTY

<p>STATE OF MONTANA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>CLINT CHARLES WEATHERELL,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">Cause No. DC-08-14</p> <p style="text-align: center;">ACKNOWLEDGMENT OF RIGHTS AND PLEA AGREEMENT</p>
--	---

ACKNOWLEDGMENT OF RIGHTS

I, CLINT CHARLES WEATHERELL, the Defendant in the above-entitled matter, have had an opportunity to examine the charges brought against me, including the investigative file, and after consultation with my attorney and being fully advised, acknowledge my rights, agree to plead guilty as hereinafter set forth.

I acknowledge that my attorney has explained to me and advised me of the following and I fully understand that:

1. I have the right to object to and move for the suppression of any evidence that may have been obtained in violation of the law or Constitution.

2. I have the right to plead not guilty, or to persist in that plea if it has already been made, and thereby place the burden of proof in proving my guilt upon the prosecution beyond a reasonable doubt as to all elements of the charges.

3. I have the right to a speedy and public trial by jury and at that trial I have the following rights:

- a. The right to the effective assistance of counsel;
- b. The right to confront and cross-examine witnesses against me;
- c. The right to testify;
- d. The right to call and have witnesses testify on my behalf;
- e. The right not to be compelled to incriminate myself;
- f. The right to have the charges proven beyond all reasonable doubt and to appeal a finding of guilty.
- g. The right to present instructions on lesser included offenses and the possibility that a jury might find me not guilty of the charges against me, but guilty of lesser included offenses; and
- h. The right to present a defense to the charges at trial including, but not limited to, alibi, self-defense, mental disease or defect, entrapment, compulsion, mistake and lack of specific intent.

4. I am charged with the offense of ASSAULT ON A MINOR, a Felony, Count I, under M.G.A. 45-5-212. The maximum penalty as provided by law is imprisonment in the state prison for 5 years and fined \$50,000.

5. I am also charged with the offense of CRIMINAL ENDANGERMENT, a Felony, Count II, under M.C.A. 45-5-207(1). The maximum penalty as provided by law is imprisonment in the state prison for 10 years and fined \$50,000.

6. I am also charged with the offense of PARTNER OR FAMILY MEMBER ASSAULT, First Offense, a Misdemeanor, Count III, under M.C.A. 45-5-206(1)(a). The maximum penalty as provided by law is imprisonment in the county jail for 1 year and fined \$1,000.

7. I understand that ASSAULT, a Misdemeanor, under M.C.A. 45-5-201, with a maximum penalty provided by law of imprisonment in the county jail for 6 months and fined \$500, may be a lesser included offense of ASSAULT ON A MINOR, a Felony.

8. I understand that NEGLIGENT ENDANGERMENT, a Misdemeanor, under M.C.A. 45-5-208, with a maximum penalty provided by law of imprisonment in the county jail for 1 year and fined \$1,000, may be a lesser included offense of CRIMINAL ENDANGERMENT.

9. I understand that there are no lesser included offenses of PARTNER OR FAMILY MEMBER ASSAULT, a Misdemeanor, under M.C.A. 45-5-206(1)(a).

10. By pleading guilty I will "waive" or give up those rights mentioned above.

11. I have had ample time and opportunity to discuss this case with my attorney, I have received the full benefit of my attorney's advice, and I am satisfied with the services of my attorney.

12. I am not suffering from any mental disease or defect, or any emotional disability, nor am I acting under the influence of alcohol, drugs or

prescription medicine that would preclude me from making any knowing, intelligent and voluntary decision or plea.

13. I have not been threatened, coerced, forced, intimidated, or influenced in any way.

14. I have entered into this agreement freely and voluntarily and with full knowledge of its terms and conditions.

15. I understand that a plea agreement is an agreement between a defendant and a prosecutor and that the Court may not necessarily participate in the making of such an agreement, nor is the Court bound by such an agreement.

16. I have discussed the sentencing laws of this State contained in Title 46, Chapter 18 of the Montana Code Annotated with my attorney, and have been advised of the most severe sentences that can be imposed.

17. I have considered the most severe sentences that could be imposed.

18. I understand that the sentences to be imposed are within the sole discretion of the sentencing judge.

19. I understand that this agreement is limited to the Lake County Attorney's Office and cannot bind other state, local or federal prosecuting authorities.

20. This agreement encompasses all of the understandings of the parties. No other promises have been made to me other than those specified in the plea agreement.

DATED this 25 day of March, 2009.

Clint Weatherell

CLINT CHARLES WEATHERELL
Defendant

AFFIDAVIT OF ATTORNEY

I, MICHAEL KEEDY, a member of the Bar admitted to practice law in the State of Montana, hereby certify that I have reviewed each question on the above mentioned Acknowledgment of Rights with CLINT CHARLES WEATHERELL and my signature below hereby appears to attest to the fact that the answers were completed in my presence with full knowledge of the Defendant, and is tendered to the Court as a certification by me of our complete understanding of this Verified Acknowledgment of Rights and Plea Agreement.

NOTICE

This plea agreement is entered pursuant to M.C.A. 46-12-211(1)(b). The Court will accept or reject the plea agreement at the time of the change of plea; but the Court may reserve the right to reject the plea agreement after review of the pre-sentence report. If the Court does reject the plea agreement, the Court shall advise the parties accordingly and afford the Defendant an opportunity to withdraw his plea.

Defendant reserves the right to appeal the Court's denial of his Motion to Dismiss, filed herein on April 10, 2008.

PLEA AGREEMENT

THIS AGREEMENT is made and entered by and between CLINT CHARLES WEATHERELL, hereinafter referred to as "Defendant", MICHAEL KEEDY, his attorney, and MARK A. RUSSELL, Deputy County Attorney for Lake County, Montana, hereinafter referred to as "State".

The parties hereby stipulate and agree as follows:

1. The Defendant shall enter his plea of guilty to the offense of ASSAULT ON A MINOR, a Felony, Count I, under M.C.A. 45-5-212, and shall stipulate that the facts contained in the Motion and Affidavit in Support of

Motion for Leave to File an Information establish a factual basis to support the Defendant's plea of guilty.

2. The Defendant previously entered an *Alford* plea to the offense of PARTNER OR FAMILY MEMBER ASSAULT, a Misdemeanor, Count III, under M.C.A. 45-5-206(1)(a).

3. The State shall dismiss with prejudice the offense of CRIMINAL ENDANGERMENT, a Felony, Count II, under M.C.A. 45-5-207(1).

4. The State shall recommend that the Defendant be committed to the Montana Department of Corrections (D.O.C.) for a term of 5 years on Count I, with 3 years of that time suspended.

5. The State shall recommend that the Defendant be sentenced to 1 year in the Lake County Jail, on Count III, with all of that time suspended but 30 days, and that the aforementioned sentences be served consecutively.

6. The Defendant expressly reserves the right to offer contrary sentencing recommendations, to wit: that the entirety of his commitment to the D.O.C. be suspended; and, that the aforementioned sentences be served concurrently.

7. The Defendant may be afforded the opportunity, at his option and expense, to discharge via house arrest any jail time imposed upon him and not suspended by the Court. The (State does not oppose) his doing so at the Sheridan County Detention Center, Plentywood, Montana, inasmuch as the Defendant now lives and works there, as long as the Defendant makes satisfactory payment arrangements therefor in advance. Because the Defendant's current work schedule consists of five (5) days "on" followed by three (3) days "off," he may be afforded the opportunity to discharge his ordered jail time, if any, in accordance with that schedule, i.e., in 3-day increments. The Defendant shall document, to the Court's satisfaction, that he has served any such jail time required by the Court and not suspended.


If the pre-sentence investigation reveals one or more felony convictions and/or two or more misdemeanor convictions previously unknown to the State, that in the opinion of the undersigned counsel for the State render this plea agreement inappropriate, the State shall have the right to withdraw from this plea agreement and proceed as if this agreement had not been entered.


The Defendant fully understands his rights, both constitutional and statutory, of which he was advised at the initial appearance in this cause and further understands that by pleading guilty in accordance with this agreement he hereby waives said rights.

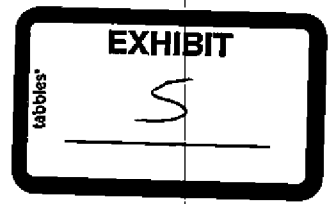
Prior to signing this agreement, the Defendant has consulted with his attorney as to his statutory and constitutional rights and any defenses or motions he could file herein. The Defendant hereby states his plea in this cause is voluntary, and that he fully understands the terms and conditions of this agreement.

DATED this 25 of March, 2009.


CLINT CHARLES WEATHERELL
Defendant


MICHAEL KEEDY
Affirmative Defendant


MARK A. RUSSELL
Deputy County Attorney



EXHIBIT

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APR 9 1 2009

DC-08-14

State of Montana, Plaintiff
-vs-
Clint Charles Weatherell, Defendant

MINUTE ENTRY

This matter came before the Court for change of plea. Defendant present with counsel Michael H. Keedy; State represented by Mark A. Russell, Deputy County Attorney.

Acknowledgement of Rights and Plea Agreement ordered filed. The Court has reviewed and accepts the plea agreement. Defendant sworn and understands the rights he is waiving. The Court inquires. Defendant admits committing the offense of ASSAULT ON A MINOR, a Felony and the Defendant previously entered an Alford plea to the offense of PARTNER OR FAMILY MEMBER ASSAULT, a Misdemeanor. The Court makes its findings, accepts the plea and finds the defendant GUILTY of the charge. Bench Trial is vacated.

PSI ordered. Sentencing is set for Thursday, May 28, 2009 at 9:00 AM.

Done this 13th day of April, 2009 with the Honorable Deborah Kim Christopher, presiding.

Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
CR: cc

cc: County Attorney

Michael Keedy

Probation

Sheriff

EXHIBIT

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DC-08-14

State of Montana, Plaintiff
-vs-
Clint Charles Weatherell, Defendant

MINUTE ENTRY

This matter came before the Court for sentencing. Defendant present with counsel, Michael H. Keedy; State represented by Mark A. Russell, Deputy County Attorney.

PSI has been received and reviewed. Parties make additions or corrections. State would like to call a witness before proceeding to sentencing.

State calls: Mike Geil, sworn and testifies, direct, State's Exhibit 1, is offered and admitted, cross, redirect. Witness may step down. State has no further witnesses and will make recommendations for sentence.

Defendant will be calling witnesses before making recommendations.

Defendant calls: Kenneth Learn, sworn and testifies, direct, cross, no redirect. Witness may step down.

Defendant calls: Rosanna Learn, sworn and testifies, direct, Defendant's Exhibit A is offered and admitted, but is to be attached to the PSI and sealed. Defendant's Exhibit B is offered and admitted and is also to be attached to the PSI, Defendant's Exhibit C is offered and admitted, Defendant's Exhibit D is offered and admitted, cross, redirect. Witness may step down.

Defendant calls: Chuck Ripley, sworn and testifies, direct, Defendant's Exhibit E is offered and admitted, cross, no redirect. Witness may step down.

Defendant calls: Clint Weatherell, sworn and testifies, direct, Defendant's Exhibit F is offered and admitted, Defendant's Exhibit's G and H are offered and admitted, cross, no redirect. Witness may step down. Defendant has no further witnesses and will make recommendations for sentence.

Recess 11:05 a.m. to 11:20 a.m.

11:20 a.m. All parties present.

For the offense of ASSAULT ON A MINOR, Count I, a Felony, the Court commits

the Defendant to the DOC for a term of five (5) years with all that time suspended, for the offense of PARTNER FAMILY MEMBER ASSAULT, Count III, a Misdemeanor, the Court commits the Defendant to the LCJ for a term of one (1) year all suspended by thirty (30) days which may be served in Sheridan County Detention Center, in Plentywood, MT, if paid and arranged by the Defendant. The Court is imposing two additional conditions which are the Defendant is to contact Intermountain Childrens Home in Helena and attend a seminar and the Defendant is to look at the evidence pictures once a month. The Court will provide the contact information. Once the Defendant has completed his obligation to the IMCH in Helena a report should be sent back to the Court. The Court is striking condition #3 for the purposes of the Defendant's work.

All conditions of probation, fines and surcharges in the Plea agreement and all conditions by the probation office are incorporated by reference.

Done this 28th day of May, 2009 with the Honorable Deborah Kim Christopher presiding.

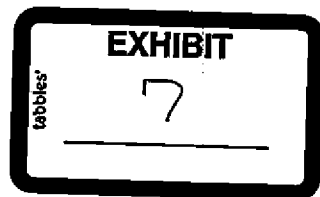
Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
CR: cc

cc: County Attorney

Michael Keedy

Sheriff

Probation Office



RECEIVED JUN 03 2009
CLERK OF DISTRICT COURT
JUN 03 2009 11:32
CLINT CHARLES WEATHERELL

1 Deborah Kim Christopher
2 District Judge
3 Lake County Courthouse
4 106 Fourth Avenue East
5 Polson, MT 59860-2171

7 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

8 THE STATE OF MONTANA, *
9 Plaintiff, * CAUSE NO. DC-08-14
10 vs. * JUDGMENT AND COMMITMENT
11 CLINT CHARLES WEATHERELL, *
12 Defendant. *
13 * * * * *
14 * * * * *

15 The Defendant, CLINT CHARLES WEATHERELL, having been
16 convicted in this Court by plea of guilty to the offense of
17 ASSAULT ON A MINOR, a Felony, Count I, under MCA 45-5-212, and
18 an Alford plea to the offense of PARTNER OR FAMILY MEMBER
19 ASSAULT, a Misdemeanor, Count III, under MCA 45-5-206(1)(a),
20 committed in the County of Lake, State of Montana, IT IS
21 ADJUDGED AND DECREED, that the Defendant is guilty of the
22 offenses charged.
23

1 IT IS ORDERED that the offense of CRIMINAL
2 ENDANGERMENT, a Felony, Count II, under MCA 45-5-212, is
3 dismissed.

4 THE COURT ORDERS that the Defendant shall be sentenced
5 to the Department of Corrections for a term of five (5) years
6 with all suspended, on Count I.

7 THE COURT FURTHER ORDERS that the Defendant shall be
8 sentenced to the Lake County Jail for a term of one (1) year
9 with all suspended except thirty (30) days. The sentence imposed
10 on Count III shall run consecutive with the sentence imposed on
11 Count I. The Defendant shall be afforded the opportunity, at his
12 option and expense to serve the jail time at the Sheridan County
13 Detention Center in Plentywood, Montana within one (1) year of
14 sentencing.

15 The Defendant shall receive credit for time served on
16 these offenses of 1 day.

17 THE COURT FURTHER ORDERS that in addition to the
18 conditions on the suspended portion of the sentence, the
19 following conditions shall apply:

20
21
22
23 ///

24
25 JUDGMENT Page 2

1 1. The Defendant shall attend a training session at
2 the Intermountain Children's Home and provide proof of
3 attendance within one (1) year of sentencing.
4

5 2. The Defendant shall look at the evidence
6 pictures of the victim at least once a month.

7 THE COURT FURTHER ORDERS that the suspended portion of
8 the sentence shall be upon the following conditions:

9 1. The Defendant be placed under the supervision of
10 the Department of Corrections, subject to all rules and
11 regulations of the Adult Probation & Parole Bureau.
12

13 2. The offender must obtain prior approval from his
14 supervising officer before taking up residence in any location.
15 The offender shall not change his place of residence without
16 first obtaining written permission from his supervising officer
17 or the officer's designee. The offender must make the residence
18 open and available to an officer for a home visit or for a
19 search upon reasonable suspicion. The offender will not own
20 dangerous or vicious animals and will not use any device that
21 would hinder an officer from visiting or searching the
22 residence.
23

24
25 JUDGMENT

Page 3

1 3. The offender must obtain permission from his
2 supervising officer or the officer's designee before leaving his
3 assigned district. If the offender maintains his current job, he
4 may leave the assigned district for employment purposes.
5

6 4. The offender must seek and maintain employment
7 or maintain a program approved by the Board of Pardons and
8 Parole or the supervising officer. Unless otherwise directed by
9 his supervising officer, the offender must inform his employer
10 and any other person or entity, as determined by the supervising
11 officer, of his status on probation, parole, or other community
12 supervision.
13

14 5. Unless otherwise directed, the offender must
15 submit written monthly reports to his supervising officer on
16 forms provided by the probation and parole bureau. The offender
17 must personally contact his supervising officer or designee when
18 directed by the officer.
19

20 6. The offender is prohibited from using, owning,
21 possessing, transferring, or controlling any firearm, ammunition
22 (including black powder), weapon, or chemical agent such as
23 oleoresin capsicum or pepper spray.
24

25 JUDGMENT

Page 4

1 7. The offender must obtain permission from his
2 supervising officer before engaging in a business, purchasing
3 real property, purchasing an automobile, or incurring a debt.
4

5 8. Upon reasonable suspicion that the offender has
6 violated the conditions of supervision, a probation and parole
7 officer may search the person, vehicle, and residence of the
8 offender, and the offender must submit to such search. A
9 probation and parole officer may authorize a law enforcement
10 agency to conduct a search, provided the probation and parole
11 officer determines reasonable suspicion exists that the offender
12 has violated the conditions of supervision.
13

14 9. The offender must comply with all municipal,
15 county, state, and federal laws and ordinances and shall conduct
16 himself as a good citizen. The offender is required, within 72
17 hours, to report any arrest or contact with law enforcement to
18 his supervising officer or designee. The offender must be
19 cooperative and truthful in all communications and dealings with
20 any probation and parole officer and with any law enforcement
21 agency.
22

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24

25 JUDGMENT

Page 5

1 10. The offender is prohibited from using or
2 possessing alcoholic beverages and illegal drugs. The offender
3 is required to submit to bodily fluid testing for drugs or
4 alcohol on a random or routine basis and without reasonable
5 suspicion.
6

7 11. The offender is prohibited from gambling.

8 12. The offender shall pay all fines, fees, and
9 restitution ordered by the sentencing court.

10 13. The Probation & Parole Officer will determine
11 the amount of payments if the offender is on supervision;
12 otherwise, the DOC will take a portion of the offender's inmate
13 account if the offender is incarcerated. All restitution
14 payments will be made by money order or cashiers check and sent
15 to the Department of Corrections, Collection Unit, P.O. Box
16 201350, Helena, MT 59620. The Defendant will be assessed a 10%
17 administration fee on all restitution ordered. All of the
18 methods for collection of restitution provided under §46-18-241
19 through §46-18-249, MCA, shall apply, including garnishment of
20 wages and interception of tax refunds. Pursuant to
21 §46-18-244(6)(b), MCA, the Defendant shall sign a statement
22
23
24

25 JUDGMENT

Page 6

1 allowing any employer to garnish up to 25% of his/her wages.
2 The Defendant will continue to make monthly restitution payments
3 until he/she has paid full restitution, even after incarceration
4 or supervision has ended.
5

6 14. The Defendant shall pay to the DOC a \$50 fee at
7 the time that the PSI report is completed unless the court
8 determines that the Defendant is not able to pay the fee within
9 a reasonable time per §46-18-111, MCA. The Defendant is to
10 submit this payment to the Department of Corrections Collection
11 Unit, P.O. Box 201350, Helena, MT 59620.
12

13 15. The Defendant shall pay \$500 to 1st Step in
14 Missoula. 1st Step is a program that provides education in the
15 area of child abuse and assists law enforcement in investigating
16 allegations of child abuse. Payment was received by the Lake
17 County Attorney's Office on or before the date of sentencing.
18

19 16. The Defendant shall be fined the sum of \$100 on
20 Count III, over and above any credit for pre-conviction
21 incarceration and victim/witness assistance surcharges of \$50 on
22 Count I and \$50 on Count III totaling \$100 for victim/witness
23 surcharges.
24

25 JUDGMENT

Page 7

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17. The following fees are statutorily mandated:

a. Supervision fees (§46-23-1031, MCA) of \$21 per month in the form of money order or cashiers check to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620 (\$50 per month if the Defendant is sentenced under §45-9-202, MCA).

b. Surcharge of the greater of \$20 or 10% of the fine for each felony offense totaling \$50* on Count I. (* this was \$20 in the plea agreement)

c. Surcharge of \$15 for each misdemeanor.

d. \$10 per count for a court information technology fee (§3-1-317, MCA) totaling \$20.

18. If the Defendant is convicted of a crime listed in §46-23-502(13), MCA, he must register as a violent offender.

19. The Defendant shall obtain a mental health evaluation/assessment by a state approved evaluator if deemed necessary by his probation officer. The Defendant must pay for the evaluation and follow all of the evaluator's treatment recommendations.

///

JUDGMENT

1 20. The Defendant shall successfully complete
2 Cognitive Principles & Restructuring (CP&R) or similar cognitive
3 and behavioral modification program.

4 21. The Defendant shall not possess or use any
5 electronic device or scanner capable of listening to law
6 enforcement communications.

7 22. The Defendant will not associate with
8 probationers, parolees, prison inmates, or persons in the
9 custody of any law enforcement agency without prior approval
10 from the Probation & Parole Officer. The Defendant will not
11 associate with persons as ordered by the court or BOPP.

12 23. The Defendant will enter and complete a
13 parenting class to provide him with the proper tools to become
14 a more appropriate parent and role model.

15 THE COURT STATES its reasons for said sentence are that
16 it conforms to the plea agreement, it provides punishment to the
17 Defendant and it affords him an opportunity for rehabilitation.

18 If either party believes that the written Judgment
19 filed herein does not conform to the oral pronouncement of this
20 Court at the time of sentencing, either the Defendant or the

21
22
23
24
25 JUDGMENT

Page 9

1 State may request a hearing to modify the written, filed
2 Judgment. This request must be made by either the State or the
3 Defendant within 120 days of the filing of the written Judgment.
4 In the event such a request is made, a hearing will be held to
5 consider the motion at which the Defendant must be present
6 unless Defendant waives the right to be present. If no request
7 for modification is filed by either the State or the Defendant
8 within 120 days, the right to a modification hearing shall be
9 waived.
10

11 DATED this 28th day of May, 2008.

12 SIGNED this 1st day of ^{June} ~~May~~, 2008.

13
14 DEBORAH KIM CHRISTOPHER

15
16 _____
17 JUDGE OF THE DISTRICT COURT
18 Deborah Kim Christopher, Presiding
19
20
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25

JUDGMENT

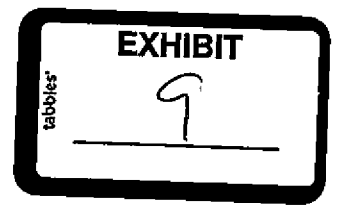
Page 10



THE CONSTITUTION OF THE STATE OF MONTANA
ARTICLE II. DECLARATION OF RIGHTS

Section 25. Self-incrimination and double jeopardy

No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.



MONTANA CODE ANNOTATED
TITLE 46. CRIMINAL PROCEDURE
CHAPTER 11. COMMENCEMENT OF PROSECUTION
PART 4. THE CHARGE
46-11-410. Multiple charges

(1) When the same transaction may establish the commission of more than one offense, a person charged with the conduct may be prosecuted for each offense.

(2) A defendant may not, however, be convicted of more than one offense if:

- (a) one offense is included in the other;
- (b) one offense consists only of a conspiracy or other form of preparation to commit the other;
- (c) inconsistent findings of fact are required to establish the commission of the offenses;
- (d) the offenses differ only in that one is defined to prohibit a specific instance of the conduct; or
- (e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of the conduct constitute separate offenses.

Commission Comments

1991 Comment: This statute preserves 1987 MCA 46-11-502. While this code provision establishes some of the protections against double jeopardy, the Commission felt it was better placed in a statute related to the charge. The statute

recognizes that there may be several charges arising from a single criminal transaction. The statute also states those instances in which convictions for those several offenses are not permitted because of the double jeopardy protection. Adoption of this statute should not result in a change in either practice or procedure.

Compiler's Comments

1991 Amendment: In (2)(d), after "prohibit a", deleted "designated kind of conduct generally and the other to prohibit a"; and made minor changes in style.

EXHIBIT
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MONTANA CODE ANNOTATED
TITLE 46. CRIMINAL PROCEDURE
CHAPTER 12. ARRAIGNMENT OF DEFENDANT
PART 2. PROCEDURE ON ARRAIGNMENT
46-12-204. Plea alternatives

(1) A defendant may plead guilty, not guilty, or, with the consent of the court and the prosecutor, nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) The court may not accept a plea of guilty or nolo contendere without first determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(3) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or nolo contendere, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea. . . .

46-12-212. Determining accuracy of plea

(1) The court may not accept a guilty plea without determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in incarceration.

(2) A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty or may, with the consent of the court and the prosecutor, enter a plea of nolo contendere to the offense if the defendant considers the plea to be in the defendant's best interest and the court determines that there is a factual basis for the plea.



MONTANA CODE ANNOTATED
TITLE 45. CRIMES
CHAPTER 5. OFFENSES AGAINST THE PERSON
PART 2. ASSAULT AND RELATED OFFENSES
45-5-212. Assault on minor

- (1) A person commits the offense of assault on a minor if the person commits an offense under 45-5-201¹, and at the time of the offense, the victim is under 14 years of age and the offender is 18 years of age or older.
- (2) A person convicted of assault on a minor shall be imprisoned in a state prison for a term not to exceed 5 years or be fined not more than \$50,000, or both.

¹ **45-5-201. Assault.**

- (1) A person commits the offense of assault if the person:
 - (a) purposely or knowingly causes bodily injury to another;
 - (b) negligently causes bodily injury to another with a weapon;
 - (c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or
 - (d) purposely or knowingly causes reasonable apprehension of bodily injury in another.
- (2) A person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

EXHIBIT

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MONTANA CODE ANNOTATED

TITLE 45. CRIMES

CHAPTER 5. OFFENSES AGAINST THE PERSON

PART 2. ASSAULT AND RELATED OFFENSES

45-5-206. Partner or family member assault -- penalty

(1) A person commits the offense of partner or family member assault if the person:

- (a) purposely or knowingly causes bodily injury to a partner or family member;
- (b) negligently causes bodily injury to a partner or family member with a weapon; or
- (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

- (a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.
- (b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a)

(i) An offender convicted of partner or family member assault shall be fined an amount not less than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense. . . .