No. DA 19-0546

IN THE
SUPREME COURT OF THE STATE OF MONTANA

ZACHARY SCOTT BUCKLES, DECEASED, BY AND THROUGH HIS PERSONAL REPRESENTATIVE, NICOLE R. BUCKLES, AND NICOLE R. BUCKLES, PERSONAL REPRESENTATIVE, ON BEHALF OF THE HEIRS OF ZACHARY SCOTT BUCKLES,

Plaintiffs/Appellees,

VS.

CONTINENTAL RESOURCES, INC., BH FLOWTEST, INC., BLACK ROCK TESTING, INC., JANSON PALMER DBA BLACK GOLD TESTING, AND DOES I-V,

Defendants/Appellees.

ON APPEAL FROM THE MONTANA SEVENTH JUDICIAL DISTRICT COURT,
RICHLAND COUNTY, HON. OLIVIA RIEGER, CASE NO. DV 2015-14

DEFENDANT/APPELLANT BH FLOWTEST, INC.'S REPLY BRIEF

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REPLY TO STATEMENT OF THE ISSUE

The sole issue on appeal is whether the District Court erred in concluding that Montana law applies to a fatal accident occurring within the geographical borders of North Dakota? In other words, do Montana workplace safety laws apply to North Dakota workplaces? Do businesses in North Dakota have to comply with Montana while doing business in North Dakota?

REPLY TO STATEMENT OF THE CASE

The parties obviously disagree about many of the relevant legal implications of this matter. Buckles' brief in opposition makes it apparent. That fundamental disagreement in perspective is seen in each of the sections of the parties' filings.

From BH Flowtest's perspective, this case is very straightforward. Following several weeks on the job site in North Dakota, Zachary Buckles passed away. This occurred without witnesses – sometime in the night or morning – and left all of the parties struggling to piece together what happened.

Contrary to Buckles' argument on appeal, this case does not deal with employment. As explained in the fact section of the opening brief and reiterated below, the parties are connected to one another through subcontractor agreements. BH Flowtest, despite the arguments to the contrary, did not 'hire' a Montana employee. *See, e.g.* Buckles' Br. at 1.

Similarly, neither this case nor BH Flowtest's argument constitutes an

"assault" on Montana law. *Id.* Rather, BH Flowtest seeks relief from this Court in order to avoid forum shopping and ensure that parties in future business relationships have some reasonable understanding as to what their obligations are.

Buckles is correct that BH Flowtest has "consistently" advanced the argument that North Dakota law applies "since 2015." Buckles' Br. at 2. Where Buckles is wrong is that the trial court order subject to this appeal is the "law of this case" because it implies that this Court is somehow bound by a decision that is not in line with Montana law. *Id.* To put a finer point on it, the issue pending before this Court is whether it is appropriate to apply Montana law to an oil well site in North Dakota, something which this Court is more than capable of addressing in order to safeguard the parties' rights.

REPLY TO STATEMENT OF THE FACTS

Before turning to the argument, BH Flowtest must correct a few statements of fact that were raised by Buckles.

Initially, Buckles states as a fact that Buckles was a resident of Glasgow, Montana and that Janson Palmer, d/b/a Black Gold Testing ("Black Gold") "dispatched" Buckles from Buckles' home in Glasgow, Montana to work in North Dakota. Buckles' Br. at 3. This statement may be partly true, but it omits the fact that Buckles had been in North Dakota for several weeks prior to his death and was living in North Dakota with Mr. Palmer at the time of the death. BH Flowtest App.

4, 27:20-24 (Janson Palmer testifying that he and Buckles lived onsite at the tank battery in North Dakota).

Later, Buckles argues that BH Flowtest was doing business in Montana and had a principal place of business in Montana. Buckles' Br. at 3. To support this, Buckles cites BH Flowtest's answer. BRAPP. 3, ¶¶ 4 and 11. This is an odd citation, because BH Flowtest's answer at those paragraphs states in relevant part, "BH Flowtest denies that its principal place of business is in Sidney, Montana. At all relevant times to this case, BH Flowtest's business operations were in North Dakota." BRAPP. 3, ¶ 4. In other words, Buckles' citation does not support Buckles' statement. At the time of Mr. Buckles' passing, BH Flowtest primarily conducted business in North Dakota, not Montana. *Id.*

Buckles also cites the master service agreement ("MSA") that BH Flowtest had in place with Continental Resources, Inc. ("CRI") (SAPP. 3, at Response to RFP No. 1, Bates No. 00001-00006). Again, the MSA does not support Buckles' statement. CRI and BH Flowtest entered the MSA for the purpose of doing work primarily in North Dakota and North Dakota was the location of the work that is the subject of this lawsuit. The only reference in the MSA to a state is to the State of Oklahoma, not Montana. SAPP. 3, at Response to RFP No. 1, Bates No. 00002 ("This Contract shall be governed by the laws of the State of Oklahoma").

Black Rock Testing, Inc. ("Black Rock") got it right in their opening brief:

"BH Flowtest… at all times relevant to the action had all its business operations in North Dakota." Black Rock's Br. at 5.

Buckles correctly states that BH Flowtest used a Sidney, Montana address in the MSA, its insurance policy, and state filings. Buckles' Br. at 4. However, Buckles omits that BH Flowtest obtained the insurance from a Fargo, North Dakota agency, that its insurance provides for workers compensation "for Montana *& North Dakota*" (emphasis added) and that BH Flowtest's registered agent in Montana had an address in Minot, North Dakota. SAPP. 5, Bates Nos. BH00014, BH00322, BH00324. These all point towards BH Flowtest mainly conducting business operations in North Dakota. *Id.*

While Buckles is correct that the OSHA inspection report shows a BH Flowtest address in Montana, the same report shows the "Site Address" in Alexander, North Dakota. SAPP. 5, Bates No. BH00078. It is undisputed that the site of the accident and death that is the subject of this lawsuit occurred in North Dakota, not Montana. *Id.*

Buckles then proceeds to recite facts regarding various defendants' contacts and operations within Montana, but this appeal does not concern Montana's general personal jurisdiction over any defendant. Buckles' Br. at 5-6. As shown below, CRI's and other defendants' general contacts with Montana have no bearing on whether Montana law should apply to a workplace accident in North Dakota. *Id.*

Moreover, Buckles fails to appreciate the differences between the defendants. While one of the defendants may have hired a Montana employee – something which appears to be fairly in dispute - BH Flowtest did not. While one of the defendants may have supervised Buckles from Montana, a fact that is *certainly* in dispute, BH Flowtest did not.

Buckles tries to have the facts both ways. Buckles oddly states, "the wrongful activity in this case occurred in Montana" before proceeding to list activities in North Dakota. Buckles' Br. at 7. Buckles admits that the allegations in the complaint concern the failure to "maintain a safe and secure work area"; something which was in North Dakota. *Id.*; *See also* BRAPP. 1 (Buckles' complaint). Buckles admits the allegations in the complaint are about "allowing an inherently dangerous and unsafe well site to be operated" in North Dakota. Buckles' Br. at 7; BRAPP. 1 (Buckles' complaint). Buckles admits the complaint allegations concern the failure "to provide adequate or appropriate air monitoring equipment for the tank gauging activities being performed by Zachary", which is, again, something occurring in North Dakota. Buckles' Br. at 7; BRAPP. 1 (Buckles' complaint).

Buckles does not dispute that the oil well site, the work area, the allegedly inherently dangerous activity, the location of where air monitoring equipment would have been used, the death, etc., all occurred in North Dakota. Rather, Buckles focuses on a supervision issue – presuming an employment relationship which hasn't

been proven – and the citizenship of the plaintiff as the grounds for applying Montana law. As explained below, neither Buckles' connection to Montana, nor other defendants' general contacts with Montana, overcome the presumption that North Dakota law applies to lawsuits over injuries occurring on oil well sites in North Dakota.

To state again, the critical conduct occurred in North Dakota, not Montana. Buckles was living in North Dakota at the time he died, not Montana. The allegedly inherently dangerous work was in North Dakota, not Montana. The alleged lack of appropriate air monitoring equipment occurred in North Dakota, not Montana. The oil well worksite was in North Dakota, not Montana.

Finally, as to the entity seeking this Court's relief, it is important to restate the following: BH Flowtest's principal place of business was North Dakota, not Montana. BH Flowtest did not employ a Montana worker to work on a North Dakota wellsite. BH Flowtest did not "take advantage of Montana workers" as incorrectly stated by Buckles. Noticeably absent from Buckles' brief are any facts of record showing supervision by BH Flowtest over Buckles' activities. It is because there are none.

REPLY TO STANDARD OF REVIEW

BH Flowtest and Buckles agree: The standard of review of the District Court's decision that Montana law applies to a fatal accident occurring in North Dakota is

de novo.

SUMMARY OF REPLY

BH Flowtest is not asking this Court to overturn 20 years of Montana precedent. The opposite is true. BH Flowtest is relying on the 20-year-old precedent for the basis for its legal argument: North Dakota law presumptively applies because North Dakota is the place of injury. *Phillips v. General Motors Corp*., 2000 MT 55, ¶¶ 30-32, 298 Mont. 438, 995 P.2d 1002 (holding "[u]nder the Restatement (Second) approach, the local law of the place of injury…is presumptively applicable in a product liability and wrongful death action…").

Although *Phillips* held that Montana law applied, when the test articulated therein is applied to the unique situation here, the conclusion is that Montana law applies. *Id.*, ¶ 26 (requiring analysis driven by "the unique facts, issues, applicable law, and jurisdictions implicated in a particular case."). The differences in the unique facts, issues, applicable law, and jurisdictions implicated in *Phillips* compared to the instant case compel a different result: North Dakota law applies.

Buckles' relentless and unyielding focus on the citizenship of the parties and regurgitation of the fact that some of the parties were citizens of Montana shows how weak Buckles' arguments are when it comes to the rest of the Restatement factors that must be considered. Buckles' failure to distinguish between defendants and failure to offer facts supported by the record also betrays the weakness of

Buckles' arguments. *See* Buckles' Br. at 10 (referring to "Montana corporations that hire and supervise Montanans in Montana" without distinguishing between defendants and without any factual support or citation to the record); *Id.* (referring to "Montana companies hiring Montanans" without distinguishing between defendants and without any factual support and without any citation to the record).

This case deals with subcontracting entities. CRI contracted with BH Flowtest, who contracted with Black Rock, who contracted with Black Gold, who contracted with Dozer Well Testing (Buckles' company). BRAPP. 1, ¶4; BRAPP. 3; BRAPP 1, ¶ 5; BRAPP 2, ¶ 5; BRAPP 1, ¶ 6, R. 16, ¶ 6; BRAPP. 16.

Contrary to Buckles' argument, finding that North Dakota law applies to this case will do nothing to stop this Court's "legacy" and "history" of "protecting the citizens of this state over corporate profiteering…" Buckles' Br. at 10. That is not at issue here. Complying with Due Process and the Restatement approach articulated in *Phillips* to find that North Dakota law applies will do nothing to stop this Court from protecting citizens. In fact, finding that North Dakota law applies will protect Montana citizens and their businesses, as there is a risk that applying Montana law will cause businesses in North Dakota to no longer contract with Montana businesses for fear of being dragged into Montana courts to face Montana lawsuits applying Montana law to North Dakota oil wells.

Buckles' Due Process argument fails when it is considered from the other

perspective. Buckles makes much of the contention that the entity defendants cannot be allowed to use Montana resources (i.e. workers) to their benefit and avoid Montana law. However, that argument fails to consider the other side of the coin. Stated another way, when Montanans drive across the state line into North Dakota, North Dakota law applies, and everyone expects North Dakota law to apply in North Dakota. Montanans who drive into North Dakota do not expect to continue following Montana speed limit laws. It is an understood part of travel to another jurisdiction.

Buckles purposefully availed himself of North Dakota laws; he did not end up in North Dakota by coincidence. Buckles chose to enter into contracts to be performed in North Dakota. Buckles chose to work in North Dakota to earn money. The proposition and required presumption that North Dakota law applies in North Dakota is even stronger with respect to workplace safety laws than with speed limit laws used by way of example above, and this is consistent with *Phillips*: North Dakota oil well site operators cannot possibly, under traditional notions of fairness, be required to comply with all 50 state laws, and even foreign countries' laws, depending on the citizenship or domiciliary of any individual who has entered into contracts to be performed on the oil well site. In order for there to be consistency, it makes more logical sense for the law of the jurisdiction to apply absent circumstances which are just not present here.

Buckles' argument that applying Montana law to the North Dakota oil well

site would not be arbitrary or fundamentally unfair because some of the parties here are citizens or residents of Montana misses the point: Applying Montana workplace safety laws to a North Dakota workplace would violate Due Process and is not in keeping with *Phillips*.

ARGUMENT

I. The District Court Incorrectly Determined Montana Law Applies.

BH Flowtest, Buckles, and Black Rock all agree that actual conflicts exist between North Dakota and Montana law. The parties disagree on whether the conflict weighs in favor of the application of Montana or North Dakota law.

Buckles states that this case is "an even more compelling case for the application of Montana law" than *Phillips*. Buckles' Br. at 15. Nothing could be further from the truth. *Phillips* is different from this case in all material characteristics. The only similarity between *Phillips* and this case is the plaintiffs' Montana citizenship. Unfortunately for Buckles, the citizenship of the plaintiff does not control the outcome of the choice of law analysis. Almost every factor comes out differently in this case compared to *Phillips*.

As Black Rock and BH Flowtest correctly noted, and Buckles failed to appreciate, is that North Dakota law presumptively applies to this case and Buckles has the burden to overcome that presumption. *Phillips*, 2000 MT 55, ¶ 30 ("Sections 146 and 175 provide that the rights and liabilities of the parties are to be determined

in accordance with the law of the state where the injury occurred unless, with respect to a particular issue, another state has a more significant relationship.").

The only fact Buckles uses to overcome the presumption that North Dakota law applies is that Buckles was a citizen of Montana. This is insufficient. Buckles also tries to argue that because CRI may have supervised or controlled the workplace from Montana, then BH Flowtest should be subjected to Montana law. This appears to be Buckles' argument even though BH Flowtest did not supervise or control the workplace from Montana.

It would be a violation of basic fairness, Due Process, and the Montana and U.S. Constitutions to apply Montana laws to BH Flowtest based on the actions or inactions of a third party. Buckles makes this argument by repeatedly throughout the answer brief, tossing indiscriminate allegations against all defendants as if all defendants are one. *See* Buckles' Br. at 16-17 (referring to the "collective failure" of CRI, BH Flowtest, and Black Rock without distinction and without record support or citation and referring to "their Montana supervision and control…"). There simply was no "Montana supervision and control" by BH Flowtest. To the extent another defendant engaged in "Montana supervision and control" – which is disputed - that cannot be held against BH Flowtest.

Buckles states more unrelated facts about CRI to argue Montana law should apply to a lawsuit against BH Flowtest concerning a workplace injury in North

Dakota. Buckles' Br. at 17-18 (noting that CRI "owns and/or operates hundreds of well sites and tank batteries without regard to specific borders or boundaries… neither CRI nor BH Flowtest was limited to North Dakota in their quest to extract resources"). Buckles offers no legal citation to support the proposition that CRI's and BH Flowtest's work which is wholly unrelated to the facts of this lawsuit should control the choice of law issue in this case. Of course, there is none. Not a single *Phillips* / Restatement factor suggests that the choice of law issue should be decided on whether defendants do unrelated business in one of the states. Every factor relates to the specific lawsuit at issue, the specific facts of the case, the specific laws that apply, and the parties to the lawsuit. The factors do not suggest that the choice of law issue should be decided based on unrelated work performed by one of the defendants in a state.

Buckles' argument on this point is an admission that Buckles has no valid arguments. The only reason to argue that Montana law should apply to a North Dakota oil well site because the defendants work on oil well sites in multiple states is because no valid legal arguments exist.

II. The Restatement Factors Weigh in Favor of North Dakota Law.

All factors from the Restatement, as adopted by *Phillips*, weigh in favor of the application of North Dakota law in this case.

Before proceeding to reply to Buckles' arguments on the Restatement factors,

BH Flowtest objects to the statements by Buckles throughout the brief about OSHA, OSHA violations, and OSHA requirements. Buckles' Br. at 16, 21 (noting that "OSHA required" certain things and arguing BH Flowtest can be held vicariously liable "for the violation of law and resulting harm"). OSHA did not find any violations on the part of BH Flowtest. BH Flowtest disagrees that it could be held liable for some other defendant's OSHA violations (if there are any), and contends that there are questions as to whether such violations would even be admissible – a determination to be made once the choice of law issue is settled.

Interestingly, in Buckles' argument regarding the policies of Montana and North Dakota and differences in their respective laws, Buckles never once mentions the difference between Montana workplace safety laws and North Dakota workplace safety laws. However, Buckles has made references to worksite safety in numerous other court filings.

Buckles' complaint, and appellate briefs in the other appeals in this case, are rife with references to workplace safety. BRAPP. 1, ¶ 17 (complaint alleging duty to "maintain a safe oil well site and secure work area" in North Dakota); *Id.*, ¶ 18 (complaint referencing an "inherently dangerous and unsafe well site" in North Dakota); Buckles' opening brief dated June 21, 2019 in Montana Supreme Court No. DA 19-0162, p. 13 (noting that Buckles' legal pleadings allege defendants had a "Montana legal duty… to maintain a safe oil well site" and explaining the

"negligent conduct" as "failure to provide a safe workplace"); *Id.*, p. 15 (arguing Montana law regarding CRI's "obligations to provide… a safe and secure workplace."); *Id.*, p. 23 (explaining Montana law regarding general contractor / owner liability for injuries to subcontractor's employees).

Buckles' filings make clear that the primary issues of this case is whether the worksite in North Dakota was safe or not. As a result, any analysis of the choice of law must be focused on the issues inherent to that dispute.

Phillips came out in favor of Montana law because the policies of the forum, the policies of other interested states, the protection of justified expectations, the basic policies underlying the field of law, certainty, predictability, and uniformity of result, and ease in the determination and application of the law to be applied all weighed in favor of Montana law. Here, the opposite is true. They all weigh in favor of North Dakota law.

With respect to the justified expectations factor, Buckles argues that "certainly" a Montanan who is supervised from Montana and receives his paycheck in Montana would expect Montana law to apply to "anything related to his employment." Buckles' Br. at 27. Again, there was no employee or employment relationship between BH Flowtest or Black Rock and Buckles. All parties were businesses engaged in independent contractor relationships. If Buckles had any "justified expectation" those expectations would have been that when you enter

contracts to do work in North Dakota on an oil well site in North Dakota, then North Dakota laws will apply. It is not justified to expect that just because an individual is a Montanan, that the individual can drive across the border into North Dakota and be subject to Montana law.

Buckles utterly fails to meet the burden to prove that Montana has a more significant relationship to an injury on a North Dakota oil well site than North Dakota. In *Phillips*, despite the injury occurring in Kansas, the Court found that Kansas policy did not reach the injury because the injury that occurred in Kansas involved "neither a sale in Kansas nor an injury to a Kansas resident." *Phillips*, 2000 MT 55, ¶ 39. The opposite is true here: North Dakota policy assuredly reaches the injury here because oil site workplace safety laws in North Dakota do not depend on the citizenship of a worker. Buckles did nothing to rebut this obvious distinction from *Phillips* and did nothing to rebut the well-argued point by Black Rock about North Dakota's interest in regulating businesses that extract natural resources within North Dakota. *See* Black Rock's opening brief, pp. 19-20.

Another distinction between this case and *Phillips* is that here, North Dakota law does apply to these facts. In *Phillips*, the Court noted that "North Carolina law would not apply its own law to these facts" because North Carolina uses the place of injury standard and the injury occurred in Kansas. *Phillips*, 2000 MT 55, ¶ 72. Here, North Dakota would apply its own law to the facts of this case.

Finally, Buckles attempts to distinguish the federal case on the same facts that Buckles bases the entire argument: The contention that parties are Montanans. *See Otto v. Newfield Exploration Co*., 2016 WL 9461791 (D. Mont. July 26, 2016). Of course, that is the only fact that weighs in favor of Buckles. Again, though, the choice of law issue is not controlled by whether a party is a Montanan. The analysis must go deeper. When all the factors are considered, it is clear North Dakota law applies.

The bottom line is that North Dakota law presumptively applies to this case, and Buckles has failed to show otherwise. None of Buckles' arguments against the application of North Dakota law are compelling. The mere fact that Buckles was a citizen of Montana is not enough to overcome the presumption and the overriding weight of all other factors in favor of North Dakota law.

III. Application of North Dakota Law Complies with Due Process.

Buckles' only response to BH Flowtest's constitutional argument is based on a finding that Montana has the most significant relationship to the occurrence and the parties. Buckles' Br. at 37. Buckles is wrong that the choice of law analysis is the exact same as the constitutional analysis.

Buckles states that BH Flowtest "makes no meaningful attempt to explain how or why applying the law of the state of Montana would be 'arbitrary' or 'fundamentally unfair,' considering…" before proceeding to recite incorrect statements about Montanans doing business in Montanan and hiring Montanans.

Despite Buckles' repeated talismanic incantations about Montanans hiring Montanans, the fact remains that North Dakota workplace safety laws apply to North Dakota oil well sites. The undisputed fact is that the subject of this lawsuit is a death which occurred on an oil well site in North Dakota.

If Buckles' argument held water, North Dakota could never apply North Dakota law to the oil well sites in North Dakota if a citizen from another state was working on the oil well site. It is arbitrary and fundamentally unfair and a violation of Due Process to apply Montana workplace safety laws to a business like BH Flowtest doing business in North Dakota and those working on a North Dakota oil well site. Doing so would create a new duty of all oil well site operators in North Dakota - they would need to inquire as to the citizenship of every worker (which might raise other issues) and then comply with the law of whatever state or country the worker offers in response to the question. The resulting inconsistencies and potential harm are obvious.

Finally, it is fundamentally unfair to punish a business doing business in North Dakota for something that might be a violation of law in Montana but is legal in North Dakota. For example, In *Thompson v. Allianz Life Ins. Co. of N. Am.*, 330 F.R.D. 219 (D. Minn. 2019), an annuity beneficiary brought a putative class action against an insurer for breach of contract. The insurance company argued "that its annuities are subject to approval by state insurance regulators, and the contracts vary

from state to state as a result, making the application of a single state's contract law to those annuities constitutionally impermissible." *Id.*, 330 F.R.D. at 223. For that reason the Court found "that Minnesota law cannot be constitutionally applied to all members of the putative class." *Id.*

Just as it would be unconstitutional to apply Minnesota annuity laws to annuities in other states, it would be unconstitutional to apply Montana law to an oil well site in North Dakota under the facts of this case. Each of the parties in this case availed themselves to the benefits of doing business in North Dakota. As all parties agree, there is a conflict between Montana and North Dakota law with respect to the issues in this case. "When considering fairness in this context, an important element is the expectation of the parties." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 822, 105 S. Ct. 2965, 2979–80, 86 L. Ed. 2d 628 (1985). "The touchstone here is the reasonable expectation of the parties." *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 333, 101 S. Ct. 633, 651, 66 L. Ed. 2d 521 (1981).

Courts and scholars note that parties who do business in one state expect to be bound by that state's laws, not some other state's laws. *See, e.g., Util. Consumers' Action Network v. Sprint Sols., Inc.*, 259 F.R.D. 484, 487 (S.D. Cal. 2009) ("It is reasonable to assume that when non-California-residents entered into contracts with the Defendants, they were availing themselves of the laws of their states, the defendant's home states or the state that was designated in the contract, rather than

California statutory law."); Scott Fruehwald, *The Rehnquist Court and Horizontal Federalism: An Evaluation and A Proposal for Moderate Constitutional Constraints on Horizontal Federalism,* 81 Denv. U. L. Rev. 289, 318 (2003) (explaining that the question of whether the application of another state's laws violates due process requires a "no" answer to the following questions: "Has the court enjoined an action that is legal in another state?" and "Does the injunction control activities in another state?").

The parties submitted themselves to the laws in North Dakota. Changing the scope after the fact is just not consistent with Due Process or this Court's prior rulings.

CONCLUSION

The District Court erred when it concluded that Montana law should apply to the wrongful death action pursued by the plaintiffs. The well site, Buckles' work, the alleged accident, and Buckles' passing all occurred in North Dakota. The presumption of applicability of North Dakota law falls in line with both the *Conflict of Laws* analysis outlined above and the constraints of Due Process.

WHEREFORE, Defendant/Appellant BH Flowtest, Inc. respectfully requests this Court to overrule the District Court and order that North Dakota law apply to this matter.

Dated this 5th day of March 2020.

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I hereby certify that the foregoing document was served upon counsel of record using the Montana Supreme Court electronic delivery, with the exception of the following *pro se* Defendant, who was served by US Mail this 5th day of March 2020 at the following address:

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Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is less than 5,000, excluding Table of Contents, Table of Authorities, Certificate of Compliance and Certificate of Service.

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