

PR 20-0011

FILED

10/02/2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

LYN FRICKER
CLERK OF DISTRICT COURT
Case Number: PR 20-0011

FILED BY *Paula Johnson*

2020 SEP 28 P 3:59

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FILED

OCT 02 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

9 **MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY**
10 **BEFORE THE HONORABLE DEBORAH KIM CHRISTOPHER**

11 STATE OF MONTANA, Plaintiff, v. 12 PAUL LEE ROSS SR., Defendant.	Cause No. DC-18-208 MOTION FOR DISQUALIFICATION FOR CAUSE
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13
14 The undersigned hereby moves to disqualify for cause the Honorable Deborah Kim
15 Christopher. See § 3-1-805, MCA. An affidavit for disqualification and certificate of counsel of
16 record that the affidavit has been made in good faith have been filed concurrently with this
17 motion.

18 **I. FACTUAL BACKGROUND**

19 Defendant is charged with burglary in Cause Nos. DC-18-110 and DC-18-208.
20 Defendant is charged with bail jumping in DC-19-101 for not appearing for his trial in DC-18-
21 110 and DC-18-208. On September 14, 2020, defense counsel received the State's Witness and
22 Exhibit list including The Honorable Deborah Kim Christopher as a witness for the State in DC-
23 19-101. Judge Christopher is scheduled to preside over Defendant's trial in DC-19-101, DC-18-
24 110, and DC-18-208 on October 13, 2020.

25 Defendant has also filed a Motion to Dismiss the above matter, and briefing for this
motion is scheduled to conclude on September 28, 2020.

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1 **II. JUDGE CHRISTOPHER MUST BE RECUSED FOR CAUSE**

2 Montana Code Annotated § 3-1-805(1) states that “[w]henver a party to any proceeding
3 in any court shall file an affidavit alleging facts showing personal bias or prejudice of the
4 presiding judge, such judge shall proceed no further in the cause.” Accordingly, “[t]he affidavit
5 for disqualification must be filed more than thirty (30) days before the date set for hearing or
6 trial.” MCA § 3-1-805(1)(a). Further, “[t]he affidavit shall be accompanied by a certificate of
7 counsel of record that the affidavit has been made in good faith. An affidavit will be deemed not
8 to have been made in good faith if it is based solely on rulings in the case which can be
9 addressed in an appeal from the final judgment.” MCA § 3-1-805(1)(b).

10 Concurrent to this motion, defense counsel has filed an affidavit alleging facts showing
11 personal bias or prejudice of the presiding judge. The affidavit for disqualification is not being
12 filed more than thirty (30) days before both the date of the conclusion of briefing on the pending
13 Motion to Dismiss and the scheduled Jury Trial in this case. However, this requirement would
14 have been impossible for defense counsel to comply with. Defense counsel learned that Judge
15 Christopher would be called as a State’s witness in DC-19-101 when the State filed its Witness
16 and Exhibit list on September 14, 2020, within 30 days of an anticipated ruling on the Motion to
17 Dismiss and the Jury Trial. Defendant has attached a certificate of counsel of record that the
18 affidavit has been made in good faith.

19 Judge Christopher being called as a witness against the interests of the Defendant results
20 in an inherent and unconstitutional bias and prejudice against Defendant requiring recusal.
21 Recusal is required under the due process clause

22 when “the probability of actual bias on the part of the judge or
23 decisionmaker is too high to be constitutionally tolerable.” “The
24 inquiring is an objective one. The Court asks not whether the judge
25 is actually, subjectively biased, but whether the average judge in
his position is ‘likely’ to be neutral, or whether there is an
unconstitutional potential for bias.” Stated another way, “[t]he
proper constitutional inquiry is whether sitting on the case . . .
would offer a possible temptation to the average . . . judge to . . .
lead him not to hold the balance nice, clear and true.” Under this
objective standard, recusal may be required “whether or not actual
bias exists or can be proved.” The temptation not to hold the
balance nice, clear, and true may arise from “a direct, personal,
substantial, pecuniary interest” in the outcome of the case, or from
other “interests that tempt adjudicators to disregard neutrality.”

1 *Reichert v. State*, 2012 MT 111, ¶ 28, 365 Mont. 92, 278 P.3d 455 (internal citations omitted). In
2 the present case, DC-19-101, Judge Christopher is being called to present evidence for the State
3 and act in the interests of the State against Defendant. Judge Christopher testifying against the
4 interests of Defendant is the essence of bias. The reality is that, if Judge Christopher proceeds as
5 presiding judge on this case, it would require she simultaneously present testimony while making
6 rulings on the admissibility of that testimony or any other evidence proffered throughout the
7 duration of the case.

8 Any attempts to argue a jurist could simultaneously provide evidence against a Defendant
9 while remaining a neutral adjudicator are unconscionable. Once established, the bias and
10 prejudice of Judge Christopher towards Defendant is incurable, and substitution of Judge
11 Christopher is the only appropriate remedy.

12 **III. JUDGE CHRISTOPHER'S RECUSAL IS REQUIRED IN ALL THREE** 13 **MATTERS**

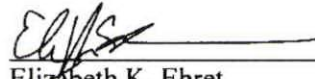
14 Because of the marked connection between the events in DC-18-110 and DC-18-208, and
15 Judge Christopher's pending testimony in DC-19-101, recusal is required in all three matters.
16 Defendant was charged for Bail Jumping because he is alleged to have missed his trial in DC-18-
17 110 and DC-18-208. Any observations Judge Christopher might make about his conduct during
18 those earlier matters would then be used by her, against Defendant, during her testimony in DC-
19 19-101. Once it has been established Judge Christopher is biased or prejudiced against the
20 Defendant in one matter, it would be impossible for an objective observer to expect any jurist to
21 be able to compartmentalize their bias or prejudice. This is especially true for contemporaneous
22 proceedings. Judge Christopher's bias and prejudice against Defendant in DC-19-101 flows from
23 DC-18-110 and DC-18-208, and the actual bias and potential for bias is too high to permit Judge
24 Christopher to remain as presiding judge on any of the three matters.

25 **IV. CONCLUSION**

For the reasons stated above, Defendant respectfully requests that Judge Christopher
recuse herself from this case. If Judge Christopher does not voluntarily recuse herself,
Defendant moves for the matter to be referred to the Montana Supreme Court and for Judge
Christopher to be disqualified for cause.

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Respectfully submitted this 28th day of September, 2020.



Elizabeth K. Ehret
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that on the 28th day of September, 2020, a true and accurate copy of the foregoing Motion for Disqualification for Cause was delivered to the following:

Delivery Type: Hand Delivery
Benjamin R. Anciaux
Lake County Attorney's Office



Office of State Public Defender

STATE OF MONTANA ss
County of Lake

I do hereby certify that the document to which this certificate is affixed is a true, correct and compared copy of the original on file in the office of the Clerk of the District Court.

WITNESS my hand and seal of the District Court of Lake County this 28th day of Sept 2020

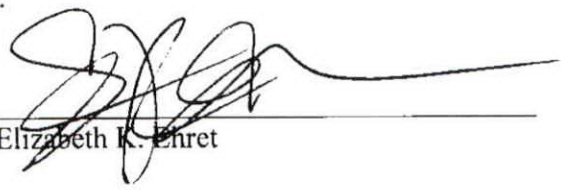
Lyn Pricker, Clerk of Court, Lake County, Montana
Court Seal By [Signature]
Deputy Clerk

- 1 6. The Honorable Deborah Kim Christopher is the District Court Judge presiding over
2 the pending trials in Cause Nos. DC-19-101, DC-18-110, and DC-18-208.
- 3 7. Cause No. DC-19-101 is charged as one count of Bail Jumping, a felony, under MCA
4 45-7-308.
- 5 8. Defendant was charged under Cause No. DC-19-101 because he allegedly failed to
6 appear for his trial in DC-18-110 and DC-18-208, both scheduled to commence on
7 April 8, 2019.
- 8 9. By acting as a witness for the State and providing evidence against Defendant, even if
9 under subpoena, the Honorable Christopher is exhibiting inherent bias and prejudice
10 against Defendant.
- 11 10. Because the Honorable Deborah Kim Christopher has been called as a witness for the
12 state in DC-19-101 to provide testimony as to Defendant's conduct in the proceedings
13 for DC-18-110 and DC-18-208, her bias and prejudice is inherent in all three causes.
14 Therefore, the Honorable Deborah Kim Christopher must be disqualified for cause in
15 all three matters, DC-19-101, DC-18-110, and DC-18-208.
- 16 11. Counsel has filed a Motion for Exclusion of Witnesses, and a brief in support of the
17 motion. As it is common practice in the Twentieth Judicial District for witnesses to be
18 excluded from the courtroom, it would be impossible for the Honorable Deborah Kim
19 Christopher to both preside over the matter and serve as a witness for the same.
- 20 12. This Affidavit is being filed with a supporting Motion for Disqualification for Cause.
- 21 13. This Affidavit is being filed in conjunction with a certificate of counsel of record that
22 the affidavit is being made in good faith.
- 23 14. This Affidavit is being filed in conformity with MCA 3-1-805—Disqualification for
24 Cause.
- 25 15. The Lake County Attorney filed the State's Witness and Exhibit List on September
14, 2020, thirty (30) days prior to the Trial date of October 13, 2020.
16. There is a pending Motion to Dismiss Cause No. DC-19-101 that is being briefed by
the parties. The Honorable Deborah Kim Christopher will not be able to rule on the
pending Motion to Dismiss until the conclusion of briefing, scheduled to conclude
September 28, 2020.
17. The undersigned Counsel of Record was unable to file the Affidavit and

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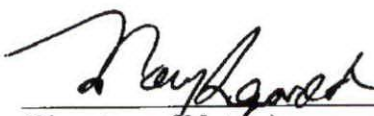
accompanying documents in support of disqualification for cause more than thirty (30) days before the Honorable Deborah Kim Christopher can issue a decision on the pending Motion to Dismiss and the date set for Trial as required under MCA 3-1-805 and requests a waiver of the requirement under MCA 3-1-805(1)(a) for good cause.

DATED this 28th day of September, 2020.


Elizabeth K. Ehret

State of Montana)
 ss.
County of Lake)

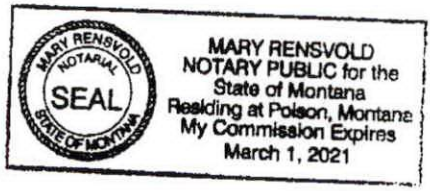
Signed and acknowledged before me on Sept. 28, 2020, by
Elizabeth Ehret



(Signature of Notary)

Mary Rensvold

(Printed Name of Notary)



Notary Public for the State of Montana
Residing at: Polson, Montana
My Commission Expires: 3/1/2021

STATE OF MONTANA } ss
County of Lake
I hereby certify that the document to which this certificate is affixed is a true, correct and compared copy of the original on file in the office of the Clerk of the District Court.
WITNESS my hand and seal of the District Court of Lake County this 28th day of Sept. 2020
Lyn Fricker, Clerk of Court, Lake County, Montana
Court Seal By Mary Rensvold
Deputy Clerk

State of Montana vs. PAUL LEE ROSS SR

Filed: 6/13/2018
 Subtype: Information

Status History

Open 6/13/2018

Prosecutors

ANCIAUX, BENJAMIN R. (Primary attorney) Send Notices

Defendants

Def. no. 1 ROSS, PAUL LEE SR

Attorneys

RICE, DIANNE	(No longer on case)	Do Not Send Notices
BEAR DON'T WALK, ELDENA	(Primary attorney)	Do Not Send Notices
EHRET, ELIZABETH	(No longer on case)	Do Not Send Notices
COOK, TOBY	(No longer on case)	Do Not Send Notices
LAUDON, STERLING		Send Notices

Charges

No.	Revision	Statute	Description
1 Original:	201601	45-6-204(1)	Burglary
2 Original:	201601	45-6-204(1)	Burglary

Judge History

Date	Judge	Reason for Removal
6/13/2018	Christopher, Deborah K.	Current
6/13/2018	Manley, James A	Companion Case

Register of Actions

Def.	Doc. Seq.	Entered	Filed	Text	Judge
1	1.000	06/13/2018	06/13/2018	Motion and Affidavit For Leave to File an Information	Christopher, Deborah K.
1	2.000	06/13/2018	06/13/2018	Order	Christopher, Deborah K.
1	3.000	06/13/2018	06/13/2018	Information	Christopher, Deborah K.
1	4.000	06/21/2018	06/21/2018	Minute Entry	Christopher, Deborah K.
1	5.000	06/26/2018	06/25/2018	Notice of Appearance and Discovery Request	Christopher, Deborah K.
1	6.000	06/26/2018	06/26/2018	Defendant's Acknowledgment of Rights	Christopher, Deborah K.
1	7.000	07/05/2018	07/05/2018	Minute Entry	Christopher, Deborah K.
1	8.000	07/05/2018	07/05/2018	Jury Trial Setting Order (OH 9/13/18 & JT 11/26/18)	Christopher, Deborah K.
1	9.000	08/13/2018	08/13/2018	Acknowledgment of Rights and Plea Agreement	Christopher, Deborah K.
1	10.000	08/16/2018	08/16/2018	Minute Entry	Christopher, Deborah K.
1	11.000	09/20/2018	09/20/2018	Minute Entry	Christopher, Deborah K.
1	12.000	09/27/2018	09/27/2018	Minute Entry	Christopher, Deborah K.
1	13.000	10/04/2018	10/04/2018	Pre-Sentence Investigation	Christopher, Deborah K.
1	14.000	10/11/2018	10/11/2018	Minute Entry	Christopher, Deborah K.
1	15.000	10/15/2018	10/15/2018	Second Jury Trial Setting Order (OH 11/08/18 & JT 02/11/19)	Christopher, Deborah K.
1	16.000	11/08/2018	11/08/2018	Minute Entry	Christopher, Deborah K.

State of Montana vs. PAUL LEE ROSS SR

Register of Actions

Def.	Doc. Seq.	Entered	Filed	Text	Judge
1	17.000	11/29/2018	11/29/2018	Minute Entry	Christopher, Deborah K.
1	18.000	12/20/2018	12/20/2018	Minute Entry	Christopher, Deborah K.
1	19.000	01/10/2019	01/10/2019	Minute Entry	Christopher, Deborah K.
1	20.000	01/24/2019	01/24/2019	Defendant's Motion in Limine and Brief in Support	Christopher, Deborah K.
1	21.000	01/24/2019	01/24/2019	Defendant's Expert Witness Disclosure for Dr. River	Christopher, Deborah K.
1	22.000	01/25/2019	01/25/2019	State's Response to Defendant's Motion in Limine	Christopher, Deborah K.
1	23.000	01/25/2019	01/25/2019	State's List of Witnesses and Exhibits	Christopher, Deborah K.
1	24.000	01/31/2019	01/31/2019	Minute Entry	Christopher, Deborah K.
1	25.000	01/31/2019	01/31/2019	Defendant's Acknowledgment of Delay for Speedy Trial Purposes	Christopher, Deborah K.
1	26.000	01/31/2019	01/31/2019	Defendant's Motion to Continue	Christopher, Deborah K.
1	27.000	02/04/2019	02/04/2019	Order Granting Motion to Continue	Christopher, Deborah K.
1	28.000	02/04/2019	02/04/2019	Third Jury Trial Setting Order (JT 04/08/19 OH 02/07/19)	Christopher, Deborah K.
1	29.000	02/05/2019	02/05/2019	Defendant's Objections to State's List of Witnesses and Exhibits	Christopher, Deborah K.
1	30.000	02/07/2019	02/07/2019	Minute Entry	Christopher, Deborah K.
1	31.000	02/07/2019	02/07/2019	Omnibus Hearing and Pretrial Order	Christopher, Deborah K.
1	32.000	02/13/2019	02/13/2019	State's Request for Jury Instructions	Christopher, Deborah K.
1	33.000	02/14/2019	02/14/2019	Minute Entry	Christopher, Deborah K.
1	34.000	03/05/2019	03/05/2019	Defendant's Proposed Jury Instructions	Christopher, Deborah K.
1	35.000	03/14/2019	03/14/2019	Subpoenas Issued: Ed Dumont FTP: Flathead Tribal Law Enforcement, Nathan White LCSO, John Todd LCSO, Patrick Nobles MPD: St. Ignatius Police Department, Russell Ward LCSO, Matt Finley LCSO, Corey White RPD: Lake County Sheriff's Office, Steve Larson LCSO, Jason Miller, Wayne Scammon, Rod Richardson, and Sherry Lervik	Christopher, Deborah K.
1	36.000	03/14/2019	03/14/2019	Defendant's Witness and Exhibit List	Christopher, Deborah K.
1	37.000	03/28/2019	03/28/2019	Subpoena and Returns (Jason Miller, Wayne Scammon, Ed Dumont, Corey White, Patrick Nobles, Rod Richardson, Sherry Lervik)	Christopher, Deborah K.
1	38.000	04/01/2019	04/01/2019	Order Granting Defendant's Motion in Limine	Christopher, Deborah K.
1	39.000	04/01/2019	04/01/2019	Notice of Appearance by Co-Counsel for Defendant	Christopher, Deborah K.
1	40.000	04/03/2019	04/03/2019	Defendant's Proposed Verdict Form	Christopher, Deborah K.
1	41.000	04/09/2019	04/09/2019	issued warrant of arrest	Christopher, Deborah K.
1	42.000	01/13/2020	01/13/2020	Warrant of Arrest & Return	Christopher, Deborah K.
1	43.000	01/14/2020	01/14/2020	Notice of Reassignment of Counsel	Christopher, Deborah K.
1	44.000	01/16/2020	01/16/2020	Minute Entry Hearing type: Sentencing Hearing date: 1/16/2020 Time: 9:00 am Court reporter: Connie Costanza	Christopher, Deborah K.
1	45.000	03/18/2020	03/18/2020	Unopposed Motion for Release on Own Recognizance	Christopher, Deborah K.

State of Montana vs. PAUL LEE ROSS SR

Register of Actions

Def.	Doc. Seq.	Entered	Filed	Text	Judge
1	46.000	03/18/2020	03/18/2020	Order Releasing Defendant on Own Recognizance	Christopher, Deborah K.
1	47.000	03/25/2020	03/25/2020	Notice (L&M Cont. 04/02)	Christopher, Deborah K.
1	48.000	04/01/2020	04/01/2020	Defendant's Unopposed Motion to Continue Status Hearing	Christopher, Deborah K.
1	49.000	04/02/2020	04/02/2020	Order Continuing Status Hearing (6/4/20)	Christopher, Deborah K.
1	50.000	06/04/2020	06/04/2020	Minute Entry Hearing type: Status Hearing Hearing date: 6/4/2020 Time: 8:27 am Court reporter: Barb Marshall	Christopher, Deborah K.
1	51.000	06/04/2020	06/04/2020	Fourth Jury Trial Setting Order	Christopher, Deborah K.
1	52.000	09/09/2020	09/09/2020	Notice of Appearance	Christopher, Deborah K.
1	53.000	09/28/2020	09/28/2020	Defendant's Motion for Disqualification for Cause	Christopher, Deborah K.
1	54.000	09/28/2020	09/28/2020	Affidavit for Disqualification for Cause	Christopher, Deborah K.
1	55.000	09/28/2020	09/28/2020	Certificate of Good Faith of Counsel	Christopher, Deborah K.