

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. DA 20-0095

STATE OF MONTANA,
Plaintiff and Appellee,

vs.

INNA VIKTOROVNA POSTOLNIKOVA,
Defendant and Appellant.

APPELLANT'S *ANDERS* BRIEF

On Appeal from the First Judicial District Court, Lewis and Clark County,
Hon. James P. Reynolds, Presiding.

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STATEMENT OF THE ISSUES

- 1. Whether Appellant’s counsel has met the criteria set forth in Mont. Code Ann. § 46-8-103 and *Anders v. California*, 386 U.S. 738 (1967) and be permitted to withdraw from this matter.**

STATEMENT OF THE CASE & FACTS

On August 17, 2018 Chrisman was charged with driving under the influence of drugs. The matter went to trial in Municipal Court for the City of Helena on July 16, 2019.

At trial, testimony was provided by Helena Police Officers that Chrisman was found unconscious in her car at, “the Holiday gas station on Euclid.” The witnesses identified themselves to the jury as Helena Police Officers and provided testimony of the location of the arrest on Euclid Ave.

Following the City’s case in chief, Chrisman moved for a directed verdict on the basis that the City had failed to prove the element of jurisdiction. Essentially, Chrisman argued there was no specific testimony that the crime occurred within Lewis and Clark County, and/or in the City of Helena since the City did not ask the specific question if the crime occurred within Helena City, Lewis and Clark County, State of Montana.

The City argued the court could take judicial notice of the fact that the Holiday gas station on Euclid is within the city limits of Helena, and in Lewis and Clark County.

The judge denied Chrisman's motion.

The jury returned a guilty verdict. Chrisman made a timely appeal to the District Court and the District Court affirmed the Municipal Court's ruling.

Chrisman filed a timely appeal.

ARGUMENT

I. COUNSEL FOR APPELLANT CHRISMAN SHOULD BE PERMITTED TO WITHDRAW FROM THIS CAUSE IN ACCORDANCE WITH *ANDERS V. CALIFORNIA* AND MONTANA CODE ANNOTATED § 46-8-103.

An appellant is guaranteed the right to fair representation by counsel through the Sixth and Fourteenth Amendments of the United States Constitution. *Anders v. State of California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400 (1967). The State of Montana protects these same rights through Article II §§ 16 and 17 of the Montana Constitution, and Mont. Code Ann. § 41-3-425(2019). Counsel for an appeal should advocate on behalf of his client; however, if after a conscientious examination of the facts and law of

the appeal counsel finds the case to be wholly frivolous, he should advise the Court and request permission to withdraw. *Anders*, 386 U.S. at 744.

In seeking permission to withdraw, counsel must protect the rights of the client by accompanying his motion to withdraw with a brief referencing anything on the record which might arguably support an appeal. *Id.* Counsel must provide a copy of the motion and brief to the appellant and the Court must afford the appellant time to respond to the motion and brief. *Id.* Further, the memorandum or brief must include a summary of the procedural history of the case and any jurisdictional problems with the appeal along with citations to the record and the law related to each issue. *Id.*

An *Anders* Brief is not intended to force counsel to argue against his client; rather, it is meant to assist the Court with review of the case. *Anders*, 86 U.S. at 745. After receipt of the Motion and Brief the court, not counsel, then conducts a full examination of the proceedings to decide whether or not the case is wholly frivolous. *Anders*, 386 U.S. at 744. An *Anders* Brief is intended to assist the court in a vigorous review of the law and record with the assistance of references and legal authorities provided by counsel. *Id.*

After conducting a diligent review of the District Court record, hearing transcripts and applicable law in this matter, counsel has not discovered any non-frivolous issue appropriate for appeal. Without arguing

against his client, counsel is obligated to maintain candor with the Court and provide this brief pursuant to the requirements provided in *Anders* and any relevant Montana law.

II. THE RECORD MAY SUPPORT CHRISMAN’S ASSERTION THAT THE DISTRICT COURT ERRED WHEN IT DENIED HER MOTION TO DISMISS FOR LACK OF JURISDICTION.

A. Standard of Review

A challenge to the sufficiency of evidence to sustain a conviction is a question of law reviewed *de novo*. *City of Bozeman v. McCarthy*, 2019 MT 209, ¶ 12, 397 Mont. 134, 447 P.3d 1048. “The standard is whether, when viewed in the light most favorable to the prosecution, sufficient evidence exists upon which the trier of fact could have rationally found all essential elements of the crime proven beyond a reasonable doubt.” *Id.*

B. Discussion

An accused has a right to a speedy and public trial in the jurisdiction where the crime occurred. *City of Helena v. Frankforter*, 2018 MT 193, ¶ 9, 392 Mont. 277, 423 P.3d 581; Mont. Const. Art. II § 24. Jurisdiction is an element which must be proved by the State beyond reasonable doubt, and may not be waived by the defendant. *Id.* at ¶ 11. The Helena Municipal court has jurisdiction within Lewis and Clark County. *Id.*

Here Defendant may argue, there was insufficient evidence for the jury to come to the conclusion the State did not prove the element of jurisdiction beyond reasonable doubt.

CONCLUSION

A diligent examination of the District Court record and research on the applicable law leads counsel to conclude that Appellant Defendant's appeal has no merit. The Court should grant the undersigned's motion to withdraw as counsel on direct appeal pursuant to the framework set forth in *Anders*.

Respectfully submitted this 29 day of April, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman Text Typeface of 14 point; is double-spaced except for footnotes and for quoted and indented material; and the word count is calculated by Microsoft Word for Windows is 1550 words, excluding Table of Contents, Table of authorities, Certificate of Service, & Certificate of Compliance.

CERTIFICATE OF SERVICE

I, Daniel V. Biddulph, hereby certify a true and accurate copy of the foregoing, ANDERS BRIEF, to the following on April 29, 2021:

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APPENDIX

Order on Appeal.....App. A

CERTIFICATE OF SERVICE

I, Daniel Vance Biddulph, hereby certify that I have served true and accurate copies of the foregoing Brief - Anders to the following on 04-29-2021:

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