

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA-21-0075

STATE OF MONTANA,
Plaintiff-Appellee,

v.

ANTHONY WEIMER,
Defendant-Appellant.

REPLY BRIEF OF APPELLANT

On Appeal from the Eleventh Judicial District Court, Flathead County,
Judicial Officer Amy Poehling Eddy, Presiding

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SUMMARY OF REBUTTAL

The State's response fails to answer or argue the core issues raised in appellants opening brief, such as, written consent for waiver of a jury trial by all parties. The only decent argument the State made is the appropriateness of claims against Judge Hummel raised here on appeal. Further, the issues presented by the State ask the Defendant to point to record-based evidence to prove the criminal conduct committed by government employees employed within the State of Montana justice system, primarily intrinsically related to the felony criminal mischief accusation proceeded and continued against Weimer.

REBUTTAL

I. The State waives Weimer's claim that the district court violated sentencing policy and entered an invalid sentence.

The States 5th issue is futile as Weimer has not claimed the district court imposed a sentence that was not within sentencing parameters for individuals convicted of valid criminal mischief, neither that it was an illegal sentence. The Ten Commandments monument is religious and located on public property in violation of the Establishment Clauses, Constitutions both federal and State, including Montana State law.¹ Sentencing must remain neutral pursuant to § 46-18-

¹ § 1-1-540(3), MCA. The content of any writing, document, or record described in subsection (2) may not be censored solely because the writing, document, or record contains religious references, nor may any writings,

101(c), MCA. Judge Eddy convicted and sentenced Weimer in a manifested condoctorial bias, prejudice and harassment without respect to Weimer's faith pursuant to Montana Code of Judicial Conduct 2.3 and then threatened him with contempt of court. Judge Eddy's Sentence is not only invalid, it is also uncertain and not understandable.

II. The State waives Weimer's claim against Judge Eddy for depriving him of his constitutional rights under color of law commenced after denial of motion for new trial and sentencing.

The State does not answer even at face value that Judge Eddy did not commit an Article VI United States Constitution offense and then run amok in depriving Weimer of his constitutional rights under color of law. The State waives this claim.

III. The State waives Weimer's claim that district court officers withheld exculpatory evidences.

Weimer provided defense counsel and the prosecution multiple exculpatory evidences (Dist. Ct. 19, 27). The State does not argue that notice and warning was given prior to the action. None of any of the entire U.S. Congress (including U.S.

documents, or material be selected for display in order to advance a particular religious, partisan, or sectarian purpose.

§ 49-3-205(2), MCA. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. (2) A state or local facility may not be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan that has the effect of sanctioning discriminatory practices.

Senator Raymond Jon Tester of the State of Montana), the President of the United States (Donald John Trump), or the Department of Justice (William Pelham Barr) responded in answering the claims (Trial Tr. *p.* 174-175 *L.* 21-25, 1-3).

IV. Weimer's claim that his attorney, Gregory John Rapkoch, engaged in misconduct is record-based.

Record-based evidence that Mr. Rapkoch advocated to convict Weimer exists. Not only did Mr. Rapkoch not provide Weimer the probable cause and statements to properly face witness', he knew that Weimer was injured by the religious Ten Commandments but worked more towards preventing Weimer from exposing criminal government public servants spawned from Weimer's federal civil lawsuit.

When Mr. Rapkoch cross-examined Flathead County building maintenance manager David Covill about religious objection to the Ten Commandments monument, Mr. Covill stated:

- A. I've heard that there are religious objections in general, but not specifically with our monument, no, I have not heard that. (Trial Tr. *p.* 92 *L.* 23-25)

The word general defined affects or concerns all or most people, places, or things; widespread. Later in the trial, Mr. Rapkoch cross-examined Flathead County commissioner Mike Pence and asked if there were any disputes over the religious monument. Mr. Pence stated:

A. My recollection it was a very small group,
and I believe there was one communication in the
file relating to objection (Trial Tr. p. 110 L. 7-9)

Here, it is revealed that not only is there more public objection to this religious Ten Commandments, but that there is an actual communication in the file relating to objection. A competent and effective attorney would have requested that that evidence be produced and presented to the court. But Mr. Rapkoch focused on his plans to overthrow his own affirmative defense. First, at the disclosure of the abatement of a nuisance defense, he automatically inferred that Weimer removed the Ten Commandments, in turn removing Weimer's 5th Amendment right to remain silent. Second, even though Mr. Rapkoch clarified that the Ten Commandments monument are offensive to Weimer's senses, he jeopardized Weimer by not asking how the Ten Commandments are specially injurious to him—the requirement for a person to abate a public nuisance and, if necessary, destroy it—neither at trial nor preceding, even though raised in his response to the States motion in limine (Dist. Ct. 27). And third, Mr. Rapkoch used his mens rea for “value” and “ownership” instead of what he wrote in his response. *Id.* Weimer could not have acted with criminal intent, because his goal was not to damage or destroy the Ten Commandments in moving it (Trial Tr. p. 178 L. 1-2). Further, Weimer drove to the Kalispell Police Department and told the arresting officer that he was there to speak with the police chief (Trial Tr. p. 180 L. 1-2). Here, Mr.

Rapkoch never argued Weimer's innocence under his provided mens rea where Weimer's mental state was in good faith and without knowledge of incriminatory circumstances, neither did he admit into the record the exculpatory documents provided him showing provocation. Mr. Rapkoch went beyond ineffective assistance of counsel and into the realm of criminality when he advocated that Weimer be convicted, and of, either a felony or misdemeanor (Trial Tr. p. 164 L. 15-22):

- A. So I think on those three legal points the evidence is insufficient so sustain a conviction. The first two I think would go to acquittal in total, I think the third -- and we are talking about mens rea as to value -- would be the difference between the possibility of a felony conviction. If that wasn't met I think a misdemeanor conviction could still be possible.

Here, Weimer surpasses the States demand of the requirements of the two-prong burden in *Strickland v. Washington*, 466 U.S. 668 (1984). *Whitlow v. State*, 2008 MT 140, ¶ 10, 343 Mont. 90, 183 P.3d 861. (App. Resp. p. 24).

V. Misconduct by public servants employed within the criminal justice system.

A. Assistant Attorney General, Montana, Tammy K. Plubell

The States officially filed response shows Ms. Plubell to be a simple-minded individual. In special defense, Appellants opening brief was filed under oath. But further, in Ms. Plubell's response brief, she commits deceit. Ms. Plubell writes that Weimer attempted to file an Affidavit of Disqualification for Cause of Judge Eddy

as a “*Pro Se*” litigant (App. Resp. *p.* 23). However, this is deceit. The district court officers, including Flathead County clerk of court Peggy L. Allison, colluded in preventing Weimer from defending himself in his own person in *Propria Persona*. The relation between *Pro Per* and *Pro Se* have the same meaning—for one’s self—but they operate under different applications. When Ms. Plubell wrote Weimer attempted to file “*Pro Se*” in her response brief, as so also the district court, she implied that Weimer attempted to file as if he did not have an attorney. *Pro Se* defined:

Pro Se /pròw síy/. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court.
Black’s Law Dictionary 5th edition *p.* 1099, abridged *p.* 638.

When Weimer filed in *Propria Persona* (*i.e.* In *Pro Per*, *Pro Per* or *P.P.*) as shown under signature, outside and separately from in a court hearing (App. Resp. Append. A), it inherently showed the court that he is authorized himself to defend himself.

Although crafted in the record furtively without ability to attain a court reporter’s transcript from the attorney conference hearing on 21st October, 2020. District court officers refused to show the State law that prevented Weimer from filing in *propria persona* in his own defense. In the district court there is none in criminal matters as it would violate the rights of the accused under the Sixth

Amendment to the United States Constitution and Art. II, section 24, of the Montana Constitution.²

Clerk Ms. Allison's rejection letter with uncited State law is not supported by MCA statute.³ Below are the only statutes addressing representation and are not applicable at the district court level in criminal matters.

§ 37-61-416, MCA. A party to a civil action who is of legal age may prosecute or defend the action in person or by attorney at the party's election unless the party has been judicially declared to be incompetent to manage the party's affairs. If a party has an attorney in the action, the party may not appear or act in person when an attorney may appear or act either by special provisions of law or by the course and practice of the court.

And

Mont. Rules App. Pro. 10 (c) A party to an appeal or original proceeding who is represented by counsel may not file pleadings, motions, or documents on the party's own behalf, except that a party may file a motion for substitution or removal of counsel.

At issue here, these statutes are not applicable in an action containing criminal accusation at the trial court level. Weimer was deprived of his right to defend himself against a contemptible creature presiding over the case.

Furthermore, Weimer objected to the State's attack that he acted because of frustration with federal government (Sent. Tr. *p.* 12). In any case, it is impossible. Frustration entails irrationality. Here, Weimer provided notice and warning to the U. S. government prior to his action which could only conduce provocation. Here,

² *State v. Marquart*, 2020 MT 1, ¶ 28, 398 Mont. 233, 455 P.3d 460.

³ Dist. Ct. 31

Mr. Rapkoch, the State and Judge Eddy worked to furtively keep Weimer's provided documents from the record, warranting his defense.

The States response at the hand of Ms. Plubell created for herself liability from deceit and colludes to deceive this Court and Defendant.

B. Kalispell Police Officer, John "Wiley" Fusaro

Officer Fusaro held Weimer from passage to speak with the police chief and then questioned Weimer without notice of right to remain silent. The following is in verbatim from KPD Watch Guard Body Camera recording:

WileyFusaro_202006271546_Body Cam, and disclosed as evidence (Dist. Ct. 20 p. 2 *Exhibit items* 2, 12; Dist. Ct. 23 p. 1 *Exhibit item* 2). Interaction occurring at approximately 15:45 hours the 27th of June, 2020.

K16: Hello.

Weimer: How are you doing?

K16: Good, Officer Fusaro with KPD, alright.

Weimer: Can I help you?

K16: Is that firearm loaded man?

Weimer: Uh, loaded as in the chamber?

K16: Yep.

Weimer: No sir.

K16: It's not?

Weimer: No sir.

K16: Okay, just keep it there for me, do you understand?

Weimer: Yes sir.

K16: K, the reason for the stop is we had a report that you ripped down some signs just on the south loop over there --.

Weimer: The ten commandments, sir, I'm here to see the police chief, right now sir.

K16: Okay, well were going to hold off on that alright, cause now I conducting an investigation, okay? I'm officer Fusaro with KPD,

alright, Mmmk. Any other firearms in the vehicle?

Weimer: I have one on my right-side sir.

K16: Okay, just leave them right there for me, do you understand?

Weimer: Yes sir.

K16: K, what's your name man?

Weimer: Anthony Weimer

K16: Anthony? License, K, passport. Where you coming from?

Weimer: Kalispell sir.

K16: You live here?

Weimer: I'm here sir.

K16: So, what's going on today?

Weimer: Umm... I don't know if it interferes with your investigation, but I'm a party involved in a federal lawsuit sir, umm... I don't know how to, I don't know how to tuh, tuh, you know as, as far as your investigation you will find out exactly what is going on, you will find out exactly what is the problem, Umm... you would have to contact the federal bureau of investigation tuh, tuh know.

K16: Yep, I hear yuh. K, just go head put this on your dashboard for me for a sec. Alright Anthony, you're going to follow my commands alright.

Weimer: Yep.

K16: Okay, so just unbuckle your seat belt, don't reach for any of that right-hand firearm, do you understand?

Weimer: Yes, yes.

K16: I want you to open your door and just step out of the vehicle for me. Face away from me.

Weimer: Can I turn my lights off?

K16: That's fine. Place your hands behind your back. Real quick. Spread your feet. K, so here's the deal man. K, just with the actions that we had.

Weimer: Mhmm.

K16: K... in that disturbance down south and your firearms... I'm going to remove those for now, just a safety thing for me and for you. Do you understand that?⁴

Weimer: Yep.

K16: You got him? [Placed in the care of KPD Officer Timothy Cronin]

⁴ Definition of Disturbance: *Law* - Interference with rights or property; molestation. Oxford Dictionaries: <https://www.lexico.com/en/definition/disturbance>.

Ending in arrest and incarceration of Mr. Weimer...

Here, Officer Fusaro claimed his investigation but never informed Weimer prior whether the disturbance was either criminal or civil. Then, as Officer Fusaro held Weimer in custody by refusing passage, he questioned him when asking “so, what’s going on today?”, without reading Weimer his *Miranda* rights to remain silent.⁵ Not only did Officer Fusaro interrogate Weimer while in custody after refusal of passage, he unprofessionally concluded his investigation after agreement to contact the FBI. This Court should sustain this plain error review claim.

C. Justice of the Peace, Flathead County, Eric Hummel

Even at Weimer’s initial appearance with Judge Hummel’s public disclosure to a false criminal record and providing advantage to the prosecution, a violation of official misconduct per § 45-7-401(1)(b) and (c), MCA.⁶ The State is correct in that Weimer’s claims against Judge Hummel’s misconduct are inappropriate for review on appeal. Such claims should be brought in a separate action.

D. The Prosecutrix, Stacy Lynn Boman

The States argument that Weimer could have filed a motion to dismiss due to a vindictive prosecution is shear shy of a lamb. District court officers deprived Weimer of his article II, Part II, § 24 Montana Constitutional right to defend

⁵ *Miranda*, 384 U.S. at 444 (1966)

⁶ <https://hungryhorsenews.com/news/2020/jul/01/man-charged-for-allegedly-ripping-out-10-10/>

himself as manifest in his move to disqualify Judge Eddy. The State at the hand of Ms. Boman, amended the charge after official knowledge the Ten Commandments is public property and being disclosed of Defendants affirmative defense of abatement of a nuisance. This behavior is of harassing and vengeful motives of a vindictive nature.

Ms. Boman did not ask how the Ten Commandments were specially injurious to Weimer during trial, nor did she file a motion to strike the affirmative defense. Her prosecution was continued maliciously.

And then, Weimer, on motion for a new trial, cited, *inter alia*, *Green v. Haskell County Board of Com'rs*, 568 F.3d 784 (10th Cir. 2009) (US den. pet. for writ of cert.), (D Reply Dist. Ct. 70 p. 8). The Appellee responds that Weimer had only rehashed what had already been argued. Although, this is not true.⁷ The U.S. Supreme Court denied Haskell County's writ of certiorari debunking precedent and amending the Justices misconduct. It caused the Ten Commandments to be removed because of religious advancement and promotion in violation of the Establishment Clause. Under Montana law, no lapse of time can legalize a public nuisance amounting to an actual obstruction of public right. § 27-30-201, MCA.

The prosecutrix was a frog in cold water boiled hot and the assistant attorney general jumped in with the lid sealing behind her.

⁷ See also, Weimer's opening brief at page 28.

VI. The State waives Weimer's claim of no written consent of waiver of a jury trial.

In addition to Weimer's 18 U.S. Code § 242 deprivation of rights under color of law complaint, Judge Eddy engaged in official misconduct. She violated her own scheduling order and stated Mr. Rapkoch signed the motion to continue to the contrary after Weimer informed her, he had not signed the motion (Min. Ent. Dist. Ct. 24). "Any motion to continue filed on the Defendant's behalf must be personally signed by the Defendant." (Sched. Order Dist. Ct. 11 at 4.). In correlation, the State's answer waives Weimer's raised claim that there has been no written consent by all parties to waive jury trial during hearing for motion for a new trial, sufficient for the interests of justice. Waiver of a jury trial was taken under advisement by the court. It never became official. Judge Eddy's intentional omission to provide the required written consent of the parties is not aligned with statute. *See*, § 46-16-110(3), MCA.⁸ Judge Eddy exceeded violating the Montana Code of Judicial Conduct and entered impropriety, conduct in violation of the law. *See*, App. Op. Brief *p.* 29 at IV. She ruled with the purpose to obtain an advantage for another. *See also*, Official Misconduct § 45-7-401, MCA.⁹

⁸ *State v. Lawrence*, 285 Mont. 140, 148-49, 948 P.2d 186, 191 (1997).

⁹ § 45-7-401, MCA (1)(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction; (b) knowingly performs an act in an official capacity that the public servant knows is forbidden by law; (c) with the purpose to obtain a personal advantage or an advantage for another, performs an act in excess of the public servant's lawful authority.

EFFECT OF AFFIRMATION

Affirming the conviction and sentence will violate Weimer's Constitutional rights and equal protection under the law. The imposed deferred sentence would still remain criminal justice information and Weimer could never become a juror.

REQUEST FOR ORAL ARGUMENT

Weimer respectfully requests that oral argument be heard in the matter should an issue with U.S. Supreme Court precedent be questioned.

CONCLUSION

From the issues set forth in opening brief and rebuttal herein, Weimer asks that this Court reverse the district court's conviction and sentence or remand for a jury trial.

Respectfully submitted this 23rd day of August, 2021.

I declare under penalty of perjury (MCA § 45-7-201) that the information contained herein and attached is accurate and true.

State of Montana

County of Flathead

SIGNED AND SWORN (OR AFFIRMED)

to before me on August 23, 2021

by Anthony C. Weimer

Lauren Markle

Notary Public for the State of MT

Printed name of notary Lauren Markle

Title or rank: Notary Public

Residing at Columbia Falls

My Commission Expires: 3/7/2025

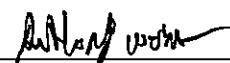
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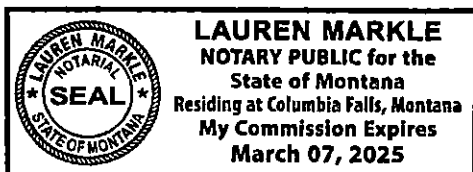
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Signature: 

ANTHONY C. WEIMER

Defendant-Appellant Counsel, Pro Se

Dated: 08/23/2021



CIRITIFICATE OF SERVICE

Pursuant to Mont. R. App. P. 10, I hereby certify that I have filed this REPLY BRIEF OF APPELLANT with the Clerk of the Supreme Court of Montana and that I have mailed or hand delivered a copy to each attorney of record on 08-23-2021 as follows:

OFFICE OF THE CLERK OF COURT

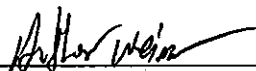
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ANTHONY C. WEIMER
Defendant-Appellant Counsel, Pro Se
Dated: 08/23/2021

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; 14 pages or less in length and is no more than 5,000 words, excluding certificate of service and certificate of compliance.

Dated this 23rd day of August, 2021.

Signature: .

ANTHONY C. WEIMER
Defendant-Appellant Counsel, Pro Se
Dated: 08/23/2021