IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19-0350

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSEPH MICHAEL CROWELL,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Robert B. Allison, Presiding

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STATEMENT OF THE ISSUES

1. Was sufficient evidence presented at trial to prove that Crowell committed aggravated assault?

2. Did the district court properly credit Crowell's aggravated assault sentence with the 397 days time served in Flathead County?

STATEMENT OF THE CASE

Appellant Joseph Michael Crowell (Crowell) appeals from his judgment of conviction and sentence for felony aggravated assault committed against Linda Ravicher (Linda). (D.C. Docs. 47, 57, 61; Tr. at 775-77; 4/18/19 Tr. at 22.)

On June 10, 2015, the day after the attack on Linda, authorities in Cowlitz County, Washington, arrested Crowell driving Linda's car and charged him with possession of a stolen vehicle, eluding, three counts of assault on a peace officer (for ramming patrol cars with his stolen vehicle while officers attempted to stop Crowell), malicious mischief, and DUI. (*See* D.C. Doc. 54 at 6 (PSI).) Crowell pleaded guilty and was sentenced to 33 months in prison for those crimes. (*See* D.C. Doc. 54 at 3, Br. of Appellant at App. E (*State of Washington v. Crowell*, Case # 15-1-00647-6, Case Information at 2).) Crowell served a total of 33 months in Washington—from arrest, through prosecution, plea, and judgment, to his prison term and release—after which the State served the arrest warrant and extradited

Crowell to Montana on March 18, 2018, for trial in Flathead County. (D.C. Docs. 6, 54 at 1-2, 6; *see* Br. of Appellant at 2, 19 (conceding warrant was served in March 2018 after Crowell "fully served his Washington sentence").)

Sentence and judgment

The district court sentenced Crowell as a persistent felony offender (PFO) to 50 years in Montana State Prison (MSP), none suspended, granted 397 days credit for time served (March 18, 2018 through April 18, 2019), waived certain financial conditions based on inability to pay, imposed victim restitution in the total amount of $97,014.20 (to Linda and to the Crime Victim Compensation program), and recommended conditions of parole. (D.C. Doc. 57 at 2-5; 4/18/19 Tr. at 22.)

The district court's reasons for imposing sentence included in large part the nature of the offense which resulted "in life-long and permanent disabilities to the victim" and Crowell's extensive "criminal history consisting of multiple and often violent offenses." (D.C. Doc. 57 at 1; *see* 4/18/19 Tr. at 19-22.) The district court also made the specific finding that Crowell was "dangerous" as shown by his established "pattern of violence in his interactions with women wherein he initially demonstrates a rather jovial and friendly presentation, but, upon being argued with or told something he does not like to hear, resorts to violence." (D.C. Doc. 57 at 2.) Based on that, the court was concerned that Crowell would "at some future point engage in potentially lethal violence involving a female victim." (*Id.*)

The district court found that "the harm to Ms. Ravicher was life-altering. She had to retire early . . . she is impaired to this day, and will probably go to her grave with those impairments." (4/18/19 Tr. at 21.) The State established Linda's serious bodily injuries through the evidence at trial. (Tr. at 205-13, 262-64 (Linda), 341-61 (Judy Windauer); *see* State's Exs. 7-13[1] (photos of Linda in hospital).) Linda also submitted a victim impact statement at sentencing describing the injuries she suffered:

> In addition to a permanent Traumatic Brain Injury (TBI) I received as a result of that assault, I also suffered damage to my back, causing a herniated disc pressing against my sciatic nerve, and damage to my gall bladder, required surgery to remove it as a result of my injuries. Although the herniated disc and damaged gall bladder both required surgery, resulting in 6 weeks off from work (each surgery) of which was unpaid time, as I had used all of my accumulated sick leave recuperating from the physical damages I received during the assault (bruising, lacerations, brain injury, eye injury), the physical injury that has most impacted my life and welfare is the Traumatic Brain Injury I received. The emotional, physical, spiritual, cognitive, and financial stresses resulting from the TBI have been life altering.

(D.C. Doc. 54 (Victim Impact Letter); *see* 4/18/19 Tr. at 4.)

[1] Photographs admitted at trial as State's Exhibits 5, 7-28, and 36 were transmitted to the Court in digital format on a flash drive. (*See* 6/14/21 notice of filing additional exhibits, DA 19-0350.)

Credit for time served

At sentencing, Crowell requested credit for 1,408 days of time served, counting every day he spent incarcerated in Washington after his June 10, 2015, arrest and every day he spent incarcerated in Montana after being served with the warrant for arrest and extradited in this case on March 18, 2018. (4/18/19 Tr. at 13-17.) Crowell testified at trial about his arrest and the offenses he committed in Washington shortly after assaulting Linda and fleeing from Montana in the vehicle he stole from her; he testified to the sentence he had served in Washington after his guilty pleas and "before they finally let me loose because of warrants out of Montana." (Tr. at 551-54.) At sentencing, Crowell acknowledged the charges for which he had been "doing time . . . in Washington . . . during that time, that three years." (4/18/19 Tr. at 17.) As counsel acknowledged at sentencing, "Crowell served approximately three years for these offenses in the state of Washington." (*Id*. at 12.) Before trial, too, counsel had referenced Crowell's Washington crimes and incarceration: "he got a bunch of Washington charges and was in jail—got three years over there. We're not objecting to that coming in . . . because it's part of the transaction, so that should be fin[e], no issue there." (1/23/19 Tr. at 7.)

After Crowell was taken into custody in Washington, the State charged him with aggravated assault in Flathead County on July 15, 2015; an arrest warrant was issued—but not served—that same day. (D.C. Docs. 1-4.) The presentence

investigation report (PSI) reflects that Crowell "was sentenced to prison [in Washington] then was extradited to Montana to answer the current charge on March 18, 2018." (D.C. Doc. 54 at 6; *see* D.C. Docs. 5-6, Case Register Report.) Also, Crowell was "ARRESTED 03/18/18," and served 397 days in jail as of the sentencing dated, April 18, 2019. (D.C. Doc. 54 at 1.)

Based on the information on Crowell's pretrial incarceration in Montana, the State asked the district court to "deny Mr. Crowell's motion for credit for the 1,408 days, and instead award credit of 397, **the date from which Mr. Crowell was served with the warrant in this matter**." (4/18/19 Tr. at 15-16 (emphasis added).) "The credit shall run from when Mr. Crowell was **served with the warrant in this matter**, which was the March 18, 2018 date, much as in [his 2008 probation revocation] case when Mr. Crowell received credit for the time in custody on that petition to revoke." (*Id*. at 15 (emphasis added); *see* Br. of Appellant at App. D (district court documents in DC-08-168B showing 243 days credit for time served between March and November 2018; June 10, 2015 bench warrant served and filed March 20, 2018).) Thus, the district court had not previously awarded Crowell credit against his 2008 probation revocation sentence for "the time spent in custody when in Washington on those other charges;" the State asked the court to make the same finding in this matter; and that's what the court did. (4/18/19 Tr. at 14-15, 22.)

The district court found that the appropriate credit for time served, 397 days from March 18, 2018 through April 18, 2019, was based on "when the warrant in this matter was served." (4/18/19 Tr. at 22.) The court was "not inclined to give credit for time served in this matter for separate crimes" Crowell committed in Washington. (*Id.*; *see* D.C. Docs. 54 at 1, 3-4, 6; 57 at 5.)

STATEMENT OF THE FACTS

Linda lived in Kila, Montana, at "205 Dye Ranch Loop," in Flathead County. (Tr. at 171-72.) At 9:10 p.m. on June 9, 2015, dispatch received a 911 call from Linda's house. (Tr. at 159-62, 164; Ex. 1.)

The female caller was Linda's adult adopted daughter, Amber Nicole Smelt. (Tr. at 167, 740-42, 763.) On the call, Amber was in obvious distress, breathing heavily, screaming, and having difficulty getting out comprehensible words. Amber did manage to yell "come quick . . . Dye Ranch Road . . . Kila, Montana." (Ex. 1; Tr. at 164-65, 289-90, 321.) A male voice could be heard in the background saying a few inaudible words, followed by two clear ones near the end, telling Amber to "come on." (Ex. 1.) The male on the call was Crowell—Amber repeatedly screamed "Joe, please, Joe, no, Joe, please, Joe, please, Joe . . ." before the line went dead, a minute into the call. (Ex. 1; Tr. at 307.)

Officers were dispatched and, when they arrived, they found a three-year old girl[2] in a highchair on the first floor watching cartoons. (Tr. at 290-91, 311-14; Exs. 14-15.) Upstairs they found signs of a struggle and disturbance: the bathroom door broken in, blood on the door, a broken bedframe, and the phone on the floor with its batteries removed. (Tr. at 291-92, 298-99, 312-21; Exs. 5, 16-28.) No one else was in the house. Back downstairs, A.B. told police that "mommy and Joe were in a fight." (Tr. at 293, 300, 310, 328, 525, 527-28.) The officer surmised from the damage upstairs that "some kind of a physical disturbance had occurred," "a recent struggle—recent disturbance." (Tr. at 311-12, 317.)

It is undisputed that Linda suffered "serious bodily injury" from the attack on June 9, 2015. (*See* Tr. at 328, 744; Br. of Appellant at 20.) Linda was found at a neighbor's house, seriously injured, dazed, incoherent, and with no memory of what happened or how she got there. Another neighbor, E.R. nurse Windauer, observed Linda's obvious physical trauma and signs of serious head injury: Linda's face was very swollen, she had "raccoon eyes" that were "very, very dark and purple," there was dried blood all over the front of her face and down the side, there were red marks on her arms, her pulse was weak and "thready," she complained of a severe headache and that "she hurt all over," and she vomited twice while waiting for the helicopter to the hospital. (Tr. at 349-51, 353-54,

[2] Amber's daughter and Linda's granddaughter/foster child, A.B.

357-58; *see* Exs. 7-13.) Windauer's description of Linda's head injuries were consistent with "photos of Linda that show real red eyes" (Tr. at 357; *see* Exs. 7-9), as well as with statements of A.B. in her forensic interview—admitted without objection from Crowell—describing what A.B. saw happen that night: "Grandma got a red eye." (Tr. at 140, 357-58, 381-82, 415-17, 422-23, 430, 438-39; Ex. 29.)

The jury heard Windauer's testimony that Linda was confused, did not know what happened, and appeared to have suffered a head injury. (Tr. at 349-51.) Linda kept repeating three things: that she "hurt," what about A.B., and "what happened to me." (Tr. at 349-50, 353-54.) Windauer had no idea what had happened: "I could not get any information from [Linda] whatsoever, and I had no clue, just that she had been traumatized." (Tr. at 355, 358.)

From Linda's injuries and the circumstances, however, "it was obvious that Linda had been physically assaulted." (Tr. at 328.) A.B. also described the effects of the physical assault that she witnessed: that Grandma was "laying down" and "Grandma was sleeping," that Mommy said "Grandma, get up," that A.B. was crying "for Grandma," that A.B. "waked her up," and Grandma "went somewhere else." (Tr. at 153, 426-27, 429, 438, 544; Ex. 29.)

The only question at trial was whether it was Crowell who caused Linda's concededly serious bodily injuries. The proof that Crowell did it was comprised of conflicting direct evidence in the form of his own admissions in an interview with

police in Washington and A.B.'s statements in her forensic interview, as well as transactional and circumstantial evidence—all admitted without objection.

On the evening of June 9, 2015, Linda picked up A.B. from daycare, got home from work, and set about getting the dinner ready and the dogs fed. (Tr. at 204-06.) Because of the traumatic brain injury she suffered, those were the last memories Linda had of that horrible night. Crowell and Amber were not back yet—they were usually out during the days and often late into the night, ostensibly looking for work or a place to live, but more likely getting drugs, partying, or drinking. (Tr. at 192-94, 227-28, 555-56, 558, 563-64, 577-78, 582-83, 593-94.) By Crowell's own admission: "I don't know if there was ever not any alcohol use that I know as far as like, day-to-day. There was always some drinking going on between us." (Tr. at 577.)

Linda could not remember and could not say at trial how she had been so severely injured or who did it to her, only that she had been. (Tr. at 212-13, 261-65.) The three-year old, A.B., could not have done it. That left either Crowell—a strong, physical, and active man who was 6 feet tall and 225 pounds—or Amber—she was a "tiny thing," about 5'4" and a hundred pounds, who was recovering from a recent miscarriage and invasive medical procedures, and who had never been physically violent with Linda in the past. (Tr. at 187-192, 213-15, 223-24, 281-82, 286, 509, 656, 725, 738, 771; D.C. Doc. 54 at 1.)

Amber did not testify at trial and her whereabouts were not known or explained. But the jury knew from the 911 call that Amber was in the house, in extreme distress, and screaming for Crowell to stop doing something. That Amber called 911, together with evidence of the physical struggle or disturbance, the broken open bathroom door, and the disabled phone, was all circumstantial evidence that it was Crowell, and not Amber, who assaulted Linda. Moreover, the circumstantial evidence that Crowell was apparently coming after Amber to stop the 911 call and then fled from the scene in Linda's brand-new Subaru showed that he was conscious of his own guilt for assaulting Linda and did not want to get caught.

Some evidence, however, potentially implicated Amber in the assault, at least as an accomplice with Crowell. Specifically, A.B. said in her forensic interview that "Mommy kicked Grandma" and, also, that she hit Linda with a rock—although A.B. said "Joe" did those things too. (Ex. 29; *see* Tr. at 417-19, 424, 430, 432, 436, 438-39.) While the incident was still fresh in his mind, however, Crowell put no blame or responsibility for Linda's injuries on Amber—his story ranged from Linda "was fine" to admitting that he pushed her over the table, smashed her face on the floor, and left her there unconscious. (Tr. at 506, 511-15, 660-61.) But at trial Crowell changed his tune again and put all of the blame on Amber, testifying that he came back into the house after a walk or smoking a cigarette to find Amber,

barefoot, stomping on Linda's head on the kitchen floor. (Tr. at 150-51, 598-600, 639, 674.)

Regarding Crowell's commission of the crime, the jury knew from the 911 call that he was at Linda's house—Amber repeatedly said his name, pleaded with him, and he told Amber to "come on." (Ex. 1.) Crowell admitted that he was there that night, both to the police and at trial. In those two statements, Crowell told a number of evolving stories about what happened, first, to the police in Washington on the day after the assault on Linda, and a much different story at trial three-and-a-half years later, after he had had plenty of time to think about it. (Tr. at 506, 511-15, 660-61.)

First, Crowell told police that Linda "was fine, there were no problems" when he and Amber left her and drove away in Linda's new car on their escapade—basically playing dumb for the cops as if nothing had happened, as if Linda was not injured when he was there, and as if neither he nor Amber did anything wrong or anything to hurt Linda. (Tr. at 506.) When the officer told Crowell that Linda had sustained some injuries, he played even dumber and "surmised that . . . Linda has a lot of dogs and thought she might have tripped over one of them and fell down the stairs." (*Id*.) And Crowell claimed ignorance about any damage to Linda's house, saying "he didn't know how it occurred—or he

didn't remember," and maybe one of the headboards of a bed was already broken. (Tr. at 510-11.)

Crowell did tell the police that he was angry with Linda when he and Amber left, that they had a disagreement about what he was supposed to do, and that Linda owed him $1000. (Tr. at 509-10.) In exchange, "to even the debt," Crowell said he took Linda's car, her new Subaru. (Tr. at 510.) Then Crowell's story began to change, and the Washington officers confronted Crowell about the discrepancies—it seemed like "there was something he wasn't telling [us]." (Tr. at 511, 521.)

Crowell said he had lied earlier about what had happened because he was sticking up for Amber, but he was not going to do that anymore and he apologized to the officers. (Tr. at 512, 525, 538.) With this change of heart, Crowell told police that he had lied to them about what happened to Linda. (*Id*.) Crowell said that he pushed Linda really hard over a dining room table with two hands and she flew "up over the table and then flipped upside down on the other side and then hit the hardwood floor on the other side with her face." (Tr. at 512-14.) The officer quoted Crowell's new account from the transcript of Crowell's interview (not admitted into evidence):

> I pushed her really hard and she hit the table, and then fell off, and then she hit her head. And I was like, oh, my God, I think it knocked her out, I mean she hit her face. And I'm like—I mean she . . . hit it pretty hard.

. . . .

> She rolled and then hit her face . . . on the . . . hardwood floor. And I'm like, oh, my God—I mean, like, on her side. And I'm like, oh, my God. I went over to her and I was like, fuckin, why do you have to be such a bitch? I yelled at her something, and then I left, and [A.B.] was yelling and crying.
>
> . . . .
>
> She hit the ground and she was like, ahh. And I'm like, fuck, you know? I freaked out. And I was like, uh, Nicole, we gotta leave, let's go, let's go right now, we gotta get out of here, you know, and whatever. Because . . . I think it knocked her out because she was—I mean she hit the ground pretty hard. I mean I didn't mean to hurt her, I just . . . freaked out, man.
>
> . . . .
>
> I was pissed off, I was like, enough work, enough of your puppy dog shit—she raises yellow labs, and I just kind of snapped.

(Tr. at 514-15.)

After he pushed Linda over the table, Crowell told Amber "We gotta go, let's go, we gotta leave"—but he knew that "he should[have] stayed and waited for the police to arrive." (Tr. at 514.) Crowell knew that 911 had been called—he said Linda had the phone in her hand and was calling when he pushed her. (Tr. at 513, 515-16.) "I'm, like, oh, they'll be out here at 9:01[3] . . . she already called 911, they'll be out here." (Tr. at 516.) In regard to leaving A.B. at the house and Linda

[3] The 911 call that Amber made, Ex. 1, came in to dispatch at 9:10 p.m. (Tr. at 159-60, 288-89.)

in her condition, Crowell said that "eventually the police would show up and she would be fine." (Tr. at 515-16.)

In addition to Crowell's admission to police, the other direct evidence that Crowell caused Linda's injuries was the forensic interview of 3-year-old A.B. A.B. said she knew "Joe" and "he still [had] a name"—in contrast with "Mommy," who "doesn't have a name. . . . She's just mom." (Ex. 29; *see* Tr. at 386-87, 412-13, 424, 441.) Crowell explained at trial that he had a good relationship with A.B., with many occasions to be together, "a lot of time, watching cartoons, running around and stuff." (Tr. at 559-60, 580-81.) Crowell testified that A.B. was never confused about who he was. (Tr. at 581.) "She called me Joe, I believe, I don't remember her calling me much else. She might have just called me 'he' sometimes, but she must have called me Joe." (Tr. at 561.) Crowell also remarked about A.B.'s truthfulness, telling a story about when A.B. saw a mouse in the house and nobody else would believe her. (Tr. at 634-44.) Crowell testified that "she was right, there was a mouse" and that "you gotta listen to kids for some things." (*Id*.)

So, in addition to saying that Mommy kicked and hit Grandma, A.B. told the interviewer that something else happened: "He kicked her eye;" that "someone else [was] with Mommy" and that person had a name; "Dog kicked the eye;" and "someone else hit Grandma, too;" that someone else kicked Grandma; and that

"Grandma [got] kicked . . . more than one time." (Ex. 29; *see* Tr. at 417-18, 425, 435.) The interviewer tried to clarify:

> Q: Who hit Grandma, too?
>
> A: Um, Mommy, Joe.
>
> Q: Mommy?
>
> A: Yeah, and Joe, too.

(Ex. 29; *see* Tr. at 755.) A.B. said that "Joe hit Grandma with . . . a rock . . . . He was banging in the rock." (Ex. 29; *see* Tr. at 755-56.) A.B. confirmed with the interviewer that she "saw Mom and Joe hit . . . Grandma . . . and she got a red eye." (Ex. 29; *see* Tr. at 756.) A.B. confirmed that "Grandma had a red eye and that she got kicked and hit," that "Joe" did that to her, and not "someone else." (Ex. 29; *see* Tr. at 439.)

In addition to the direct testimony that Crowell assaulted Linda, the circumstantial evidence clearly put Crowell at the scene with motive and opportunity, and demonstrated his flight and consciousness of guilt. In addition, Crowell was right-handed, and the officer who interviewed him observed some swelling and scabbing on Crowell's hands, specifically noting that Crowell's "right hand was noticeably more swollen than the left." (Tr. at 507-09, 532-33; Ex. 36.) Crowell cross-examined the officer as follows:

> Q: The purpose of asking about whether he was right-handed was to make a determination of whether there were injuries to that hand that

> could have come from a fight or from striking somebody or something.
>
> A. Yeah. The idea being that in general somebody's going to use their dominant hand to do an activity. . . . So I had noticed that swelling there, so I indicated that because that could be a source. And in an assault if someone uses their primary hand to strike somebody that could create swelling.

(Tr. at 532.)

Jury instructions

In the face of the above evidence—some of it undisputed, some of it conflicting, and all of it admitted without objection—the jury was tasked with determining the credibility of Crowell and the other witnesses and the weight to be given to the evidence, as instructed by the district court:

> You are the sole judges of the credibility, that is, the believability, of all the witnesses testifying in this case, and of the weight, that is, the importance, to be given their testimony. . . . The evidence presented by one witness whom you believe is sufficient for the proof of any fact in this case.

(D.C. Doc. 46 (Instr. 5).) The court instructed the jury on the difference between direct and circumstantial evidence and that both "are acceptable as means of proof. Neither is entitled to greater weight than the other." (*Id*. (Instr. 8).) Other instructions pertinent to the jury's weight and credibility determinations included:

> When circumstantial evidence is susceptible to two interpretations, one that supports guilt and the other that supports innocence, the jury determines which is most reasonable.

> You are instructed that circumstantial evidence may be used to determine the existence of a particular mental state. You may infer mental state from what the Defendant does and says and from all the facts and circumstances involved.
>
> In deciding the believability and weight to be given the testimony of a witness, you may consider evidence of any other statement or statements made by the witness which is inconsistent with the witness's testimony at this trial. This evidence may be considered by you for the purposes of testing the believability and weight of the witness's testimony or to establish the truth of these statements as the jury shall determine.

(D.C. Doc. 46 (Instrs. 9-11).)

The district court instructed the jury on consideration of A.B.'s unobjected forensic interview:

> A child is not disqualified as a witness simply by reason of age. There is no precise age which determines a child's competency. Instead, competency depends upon the child's capacity and intelligence, understanding of the difference between truth and falsehood, and appreciation of his/her duty to tell the truth.
>
> As with other witnesses, you are the sole judge of the credibility of a child who testifies. You may consider not only the child's age but the demeanor, capacity to observe facts and to recollect them, ability to understand questions put to the child and the ability to answer them intelligently, whether the child impresses you as having an accurate memory and recollection, whether the child impresses you as a truth-telling individual, and any other facts and circumstances which impress you as significant in determining the child's credibility. On the basis of your consideration you may give the child's testimony such weight as you in your judgment think it is entitled.

(D.C. Doc. 46 (Instr. 12).) The court instructed the jury on how to weigh and consider Crowell's confessions and admissions:

> A confession, as applied in criminal law, is a statement by a person made after the offense was committed that he/she committed or participated in the commission of a crime.
>
> An admission is a statement made by the accused, direct or implied, of facts pertinent to the issue, and tending, in connection with proof of other facts, to prove his/her guilt. A conviction cannot be based on an admission or confession alone.
>
> The circumstances under which the statement was made may be considered in determining its credibility or weight. You are the exclusive judges as to whether an admission or a confession was made by the Defendant, and if so, whether such statement is true in whole or in part. If you should find that any such statement is entirely untrue, you must reject it. If you find it is true in part, you may consider that part which you find to be true.

(*Id*. (Instr. 13).)

Motion to dismiss for insufficient evidence

At the close of the State's case and before Crowell testified on his own behalf, Crowell moved for a "directed verdict." (Tr. at 543-46.) Crowell argued that the evidence was insufficient in three regards: first, A.B.'s statements in the forensic interview tended to show that Amber was the perpetrator and not Crowell; second, in his interview, what Crowell said happened, and how, was inconsistent with other evidence; and third, the case was investigated improperly, in particular because of the absence of any information from or about Amber as a witness. (*Id*.) Crowell did not challenge the evidence of Linda's injuries, which the State summarized in its response. (Tr. at 546-47.)

Regarding Crowell's commission of the crime, the prosecutor emphasized the direct evidence in A.B.'s forensic interview in which she stated "that mommy and Joe kicked gramma." (Tr. at 547.) In addition,

> There's also the statements from the Defendant in which he informs the detective that he snapped, he shoved Linda Ravicher over a table, she hit her head, that she was unconscious, that it was very hard, that it was forceful, that she flew.
>
> And then we have evidence of consciousness of guilt, the Defendant is found in Linda Ravicher's vehicle in Cowlitz County, [Washington] ramming sheriff's office deputies, and that that evidence is consciousness of guilt, evidence that he fled from the area he believed that he had harmed Linda Ravicher so seriously.

(Tr. at 547-48.)

The district court denied Crowell's motion. (Tr. at 548.) "I find that there's enough evidence there for this—I'm not going to take this away from the jury, I will let them make that determination." (*Id*.)

Regarding Crowell's arguments made in support of the motion, however, the court noted: "I think you certainly make some good arguments that will be excellent in closing." (Tr. at 548.) Crowell made those arguments in closing, emphasizing four main topics: A.B.'s forensic interview; Linda's own testimony ("we agree this was serious bodily injury . . . . But who caused it?"); Crowell's statements and admissions; and "the flawed investigation." (*See* Tr. at 743-44.) Crowell spent the bulk of his closing argument attacking A.B.'s interview (Tr. at

744-60), followed by a little bit each on Linda (Tr. at 760-62), Crowell's admissions (Tr. at 763-65), and the investigation. (Tr. at 765-67.)

SUMMARY OF THE ARGUMENT

Viewed in the light most favorable to the State, sufficient evidence was presented at trial for any rational trier of fact to find beyond a reasonable doubt that Crowell committed aggravated assault against Linda—A.B. said it and Crowell said it, and the circumstances supported it. All of the evidence against Crowell was admitted at trial without objection—including A.B.'s forensic interview and Crowell's admissions. It was the jury's sole province and obligation to weigh that evidence and judge the credibility of the witnesses, in accordance with the law and the district court's instructions.

This Court should reject Crowell's "inherently unreliable" and "legally insufficient" arguments because the case he relies upon (*State v. Giant*) does not apply, it does not stand for what Crowell says it does, and Crowell did nothing to preserve the issues even if it could apply. Instead, this Court must review only whether the evidence properly admitted and presented was sufficient to support the jury's guilty verdict without improperly reweighing the evidence or substituting its judgment.

The district court correctly granted 397 days of credit for time served on the instant charge—starting when Crowell was served with the warrant for arrest in

this case and extradited from Washington to Montana for prosecution in Flathead County. The 33 months Crowell served incarcerated on separate offenses in Washington was all credited to his Washington prison sentence and was all prior to Montana serving Crowell with the warrant for arrest in this case. No part of the Washington time is properly credited toward Crowell's sentence for the crime in this case—and Crowell's claim on appeal for 116 days credit in the middle of that 33 months defies the law and logic.

ARGUMENT

I. The evidence presented at trial was more than sufficient to convict Crowell of aggravated assault.

A. Standard of review

Whether evidence is sufficient to sustain a conviction presents a question of law that this Court reviews de novo. *State v. Dineen*, 2020 MT 193, ¶ 8, 400 Mont. 461, 469 P.3d 122. This Court reviews the sufficiency of the evidence in a criminal matter to determine whether, in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Potter*, 2008 MT 381, ¶¶ 15, 28, 347 Mont. 38, 197 P.3d 471. When considering the denial of a motion to dismiss for insufficient evidence, this Court will consider "the trial testimony and the evidence

properly before the jury." *State v. Giant*, 2001 MT 245, ¶ 10, 307 Mont. 74, 37 P.3d 49, *overruled on other grounds by State v. Swann*, 2007 MT 126, ¶ 18, 337 Mont. 326, 160 P.3d 51.

Conflicting evidence does not render evidence insufficient to support a conviction; instead, a jury determines which version of events prevails. *State v. McAlister*, 2016 MT 14, ¶ 12, 382 Mont. 129, 365 P.3d 1062 (citing *State v. Dewitz*, 2009 MT 202, ¶ 85, 351 Mont. 182, 212 P.3d 1040). The jury has the exclusive responsibility to determine the credibility and weight to be given conflicting evidence. *State v. Sanchez*, 2017 MT 192, ¶ 20, 388 Mont. 262, 399 P.3d 886. A jury must be allowed to consider collectively all facts and circumstances in determining guilt or innocence. *City of Missoula v. Zerbst*, 2020 MT 108, ¶ 23, 400 Mont. 46, 462 P.3d 1219. The Court's task on appeal is not to substitute its judgment of each witness's credibility for that of the jury, but rather to determine whether there was sufficient evidence to establish the offense. *State v. Ritesman*, 2018 MT 55, ¶ 11, 390 Mont. 399, 414 P.3d 261.

B. Viewed in the light most favorable to the prosecution, the evidence presented at trial was sufficient for the jury to find beyond a reasonable doubt that Crowell caused serious bodily injury to Linda.

Under Montana law, "[a] person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another or purposely[.]"

Potter, ¶ 29 (quoting Mont. Code Ann. § 45-5-202(1)). Here, the district court instructed the jury on the pertinent law and elements of the offense. (D.C. Doc. 46 (Instrs. 21-23).) The court instructed the jury on its role, authority, and duty to weigh the evidence, determine witness credibility, and how to consider circumstantial evidence, child testimony, and Crowell's admissions. (*Id.* (Instrs. 5, 8-13).)

In this case, there was sufficient evidence admitted into evidence—without objection—and presented to the jury to establish that Crowell committed aggravated assault. As this Court has described and applied the proper standard of review before:

> [A]lthough the evidence presented at Morrisey's trial was susceptible to multiple reasonable interpretations, some pointing to his guilt and others pointing to alternative explanations for his actions, this does not mean that the evidence was insufficient to support a verdict of guilty. It was the province of the jury to decide which interpretation of the evidence was most reasonable. . . . It was also the province of the jury to decide the credibility of each witness and the weight to be given their testimony and, in the event of conflicting evidence, to determine which will prevail. . . . Having reviewed the record, we hold that when all of the facts and circumstances are considered collectively and in the light most favorable to the prosecution, the circumstantial evidence in this case was of sufficient quality and quantity that a rational trier of fact could find beyond a reasonable doubt that Morrisey purposely or knowingly caused Dolana's death.

State v. Morrisey, 2009 MT 201, ¶ 98, 351 Mont. 144, 214 P.3d 708 (citations omitted).

In this case, both Crowell and A.B. said that Crowell did something to Linda to cause her undisputedly serious bodily injury. A.B. said Crowell kicked Linda

and/or hit her with a rock and Crowell admitted that he pushed her over a table. Both of them said something happened to Linda: she "got a red eye" or she hit her face hard on the floor, and she was sleeping or unconscious afterwards. In the face of conflicting testimony, the jury was the sole arbiter of whether to believe what A.B. and/or Crowell had said and to weigh the other circumstances which mostly pointed a rational finder of fact to Crowell's guilt. The jury was the sole judge of Crowell's credibility at trial.

The State did not have to prove, as an element of the offense, exactly how Crowell caused Linda's injuries, only that he did so. *City of Helena v. Strobel*, 2017 MT 55, ¶ 18, 387 Mont. 17, 390 P.3d 921 (did not have to prove specific conduct, i.e., that defendant "grabbed [victim] by the face or punched her"). The testimony of a single witness the jury finds credible is sufficient for proof of any fact—it could have been A.B. or it could have been Crowell himself. *State v. French*, 2018 MT 289, ¶ 16, 393 Mont. 364, 431 P.3d 332. The jury "has a prerogative to accept or reject testimony" and therefore must determine which of the competing interpretations of evidence is most reasonable. *Sanchez*, ¶ 18 (quoting *State v. Benson*, 1999 MT 324, ¶ 14, 297 Mont. 321, 992 P.2d 831). The jury, exclusively, draws inferences from circumstantial evidence and should determine its conclusions on elements of the crime if "warranted by the evidence

as a whole." *Sanchez*, ¶ 19 (quoting *State v. Kelly*, 2005 MT 200, ¶ 21, 328 Mont. 187, 119 P.3d 67).

Here, the verdict was undoubtedly warranted by the evidence as a whole and it was the jury's job—not Crowell's and not this Court's—to give weight where it was due, to accept or reject any statements or witness testimony as the jury saw fit, and to arrive at reasonable interpretations and inferences from the circumstantial evidence. Here, as in every case, the jury was free to accept the testimony of A.B. or Crowell which it considered to be credible and to disregard that which it did not find credible.

However, to do what Crowell suggests on appeal—essentially throw out entire categories of properly admitted evidence based on their supposed unreliability—turns the standard of review for sufficiency of evidence on its head. Where this Court must consider the evidence in the light most favorable to the State, Crowell takes the other extreme and asserts that "[c]onvictions based entirely on unreliable evidence cannot stand." (Br. of Appellant at 24 (citing *Giant*, ¶ 24).) *Giant* does not say that.

Giant created a very narrow exception to the "light most favorable" standard of review for determining sufficiency of the evidence. *Giant* presented the very special case and rendered the very narrow holding "that evidence of flight cannot be the sole corroboration of a prior inconsistent statement admitted as substantive

evidence of guilt"—essentially, that properly admitted evidence of prior inconsistent statements and flight, together, are "insufficient as a matter of law." *Giant*, ¶¶ 2, 39, 41.

Crowell misstates and misapplies the very specific and narrow holding of *Giant*. He asserts, out of context and without basis in authority, that Crowell's own admissions and A.B.'s forensic interview in this case are both "unreliable" evidence that should, as in *Giant*, add up to nothing and be deemed legally insufficient. Crowell's broad exaggerations are found nowhere in *Giant*, or in any other case. *Giant* applies only to the legal sufficiency of uncorroborated prior inconsistent statements, not to any evidence a defendant might decide in hindsight is "unreliable."

Despite Crowell's reliance on *Giant* as the overarching basis for his sufficiency of the evidence argument (*see* Br. of Appellant at 24-26, 31-33, 37-38), that case has no application here because no prior inconsistent statement of any witness was offered or admitted, under Rule 801(d)(1)(A), at Crowell's trial. There was no need for any *Giant*-style corroboration of any such statements. Thus, there is no issue of the "sufficiency as a matter of law" of any prior inconsistent statements, as was the narrow issue and holding in *Giant*.

Moreover, Crowell never raised *Giant* at trial and did not give the district court any opportunity to address any of the "reliability" or sufficiency as a matter

of law issues Crowell raises now for the first time on appeal. *See Giant*, ¶ 8 (Giant did object at trial). Applying the "light most favorable" standard of review, Crowell commented on the sufficiency of the evidence of A.B.'s interview and Crowell's admissions—but did not argue that such evidence was insufficient as a matter law under *Giant* or any other authority. (*See* Tr. at 543-46.) It is one thing to say, as Crowell did, that "the State has failed to meet its burden of proof, and I don't think that there's sufficient evidence" (Tr. at 546), and quite another to assert, which Crowell did not, that the evidence was insufficient as a matter of law due to issues of reliability and lack of corroboration and should be removed from the jury's consideration.

Therefore, Crowell did not properly preserve his argument for appeal because he did not raise a specific objection to the reliability or corroboration of any evidence under *Giant*. *See Benson*, ¶ 19. The objecting party must make its timely and specific objection known on the record—and Crowell did not do so. *State v. Clausell*, 2001 MT 62, ¶ 25, 305 Mont. 1, 22 P.3d 1111. The district court must be given an opportunity, where possible, to remedy errors such as Crowell raises here, and this Court will not put a court in error where it has not been given such a chance to correct itself. *Id.* If Crowell had any legitimate claim under *Giant* and had a basis for turning "jury credibility and weight questions into a question of law," *Giant*, ¶¶ 43-55 (Gray, C.J., and Rice, J., dissenting), then he should have

raised such a legal question prior to direct appeal so that the district court could consider whether such evidence should, as a matter of law, be excluded or the jury instructed to ignore it.

II. The district court correctly credited Crowell with the 397 days he was incarcerated in Montana after he completed his Washington prison sentence.

A. Standard of review and applicable law

This Court reviews a district court's sentence for legality. *State v. Parks*, 2019 MT 252, ¶ 7, 397 Mont. 408, 450 P.3d 889. A sentence is legal if it falls within the parameters set by applicable sentencing statutes and if the sentencing court adheres to the affirmative mandates of those statutes. *Id.* Legality is a question of law which this Court reviews de novo. *Id.*

Montana sentencing law has long provided that people "incarcerated on a bailable offense against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction[.]" Mont. Code Ann. § 46-18-403(1) (credit for incarceration prior to conviction); *see Killam v. Salmonsen*, 2021 MT 196, ¶ 15, ___ Mont. ___, ___ P.3d ___ ("Some version of this statute has existed since 1947. R.C.M. § 95-2215 (1947)."). Another statute, not applicable to this case, provides for credit for time served in the event of revocation of suspended or deferred imposition of sentence. Mont. Code Ann.

§ 46-18-203(7)(b) (in addition to considering "elapsed time . . . as a credit against the sentence," credit "must be allowed for time served in a detention center or for home arrest time already served"); *see, e.g.*, *State v. Allison*, 2008 MT 305, ¶¶ 11 n.1, 15, 346 Mont. 6, 192 P.3d 1135; *State v. Graves*, 2015 MT 262, ¶ 32, 381 Mont. 37, 355 P.3d 769.

In 2017, the Montana legislature enacted Mont. Code Ann. § 46-18-201(9), which provides: "When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing." Although this Court recently interpreted and applied § 46-18-201(9) in *Killam*, *supra*, and *State v. Mendoza*, 2021 MT 197, ___ Mont. ___, ___ P.3d ___, that statute does not apply to this case because Crowell committed his offense on June 9, 2015. The bill enacting § 46-18-201(9) expressly applied only to "offenses committed after June 30, 2017." 2017 Mont. Laws, ch. 321, §§ 24, 44 (H.B. 133, applicability); *see State v. Thomas*, 2019 MT 155, ¶¶ 3, 9, 14, 396 Mont. 284, 445 P.3d 777. This Court has consistently declared that the law in effect at the time an offense is committed controls as to the possible sentence for the offense, as well as the revocation of that sentence. *State v. Tracy*, 2005 MT 128, ¶ 16, 327 Mont. 220, 113 P.3d 297; *State v. Tirey*, 2010 MT 283,

¶ 26, 358 Mont. 510, 247 P.3d 701; *State v. Cook*, 2012 MT 34, ¶ 42, 364 Mont. 161, 272 P.3d 50. Thus, Crowell's case is governed by the parameters and affirmative mandates of Mont. Code Ann. § 46-18-403(1) as the applicable sentencing statute, along with the cases interpreting that statute since 1947.

B. Under Mont. Code Ann. § 46-18-403(1), Crowell received credit for the time he served "incarcerated on" the bailable offense of aggravated assault in Flathead County starting on March 18, 2018, and ending when "judgment of imprisonment [was] rendered" against him.

This Court has consistently read the plain language of § 46-18-403(1)—"incarcerated on a bailable offense [for which] a judgment of imprisonment is rendered"—to mean that each day of incarceration must be credited to a defendant's sentence, but "only if that incarceration was directly related to the offense for which the sentence [was] imposed." *State v. Kime*, 2002 MT 38, ¶ 16, 308 Mont. 341, 43 P.3d 290, *overruled in part on other grounds by State v. Herman*, 2008 MT 187, ¶ 12, 343 Mont. 494, 188 P.3d 978. Conversely, "[a] defendant is not entitled to receive credit for pre-conviction time served on an offense if he is not incarcerated for that particular offense." *State v. Henderson*, 2008 MT 230, ¶ 9, 344 Mont. 371, 188 P.3d 1011 (citing *State v. Erickson*, 2005 MT 276, ¶ 25, 329 Mont. 192, 124 P.3d 119 (no credit where defendant "not incarcerated on that charge")). The Court's plain reading of the statute only makes sense as there would be no logical or penological basis to grant credit against a

prison sentence for pretrial incarceration that has little or nothing to do with the offense at issue. Put another way, this Court has recently said that "[t]he sentencing court must determine **for what charge the defendant was being detained** and **if the charge is bailable**." *Parks*, ¶ 13 (emphasis added) (citing *State v. Hornstein*, 2010 MT 75, ¶ 17, 356 Mont. 14, 229 P.3d 1206; *Kime*, ¶¶ 13, 16).

Once a judgment of imprisonment has been entered for a "bailable offense"—plainly any non-death-penalty offense, Mont. Code Ann. § 46-9-102(1), *State v. Race*, 285 Mont. 177, 181-82, 946 P.2d 641, 643-44 (1997)—a person is entitled to credit for each day of incarceration prior to and after the conviction. *State v. McDowell*, 2011 MT 75, ¶ 27, 360 Mont. 83, 253 P.3d 812; *Hornstein*, ¶¶ 12-13. The Court has stated a number of rationales for the rule, including that:

> It is not within the contemplation of the statutes which provide credit for incarceration prior to conviction that a defendant should receive credit for incarceration time served by the defendant on the conviction of another offense. Otherwise, a second offender would be entitled to receive credit on a basis not available to a first offender.

In re Davis, 1979 Mont. LEXIS 800, at *1, *4-5 (No. 14240, Apr. 23, 1979) (opinion and order on original proceeding/amended petition for postconviction relief). The Court has also declared that:

> [T]he general purpose of § 46-18-403(1), MCA, is to eliminate the disparity of treatment between indigent and nonindigent defendants. In other words, credit for time served is given so as not to penalize indigent defendants who are unable to post bail and must remain in custody until they are sentenced when nonindigent defendants may secure their release and remain free during that time period. That

> purpose is not served by crediting a defendant's sentence for time served where the defendant would not have been released from custody had he or she been able to post bail in any event as a result of being held on a sentence related to an earlier offense.

Kime, ¶ 15; *see Parks*, ¶ 10; *Hornstein*, ¶ 13. Furthermore, the Ninth Circuit has said: "The origin of the modern concept of pre-conviction jail time credit upon the term of the ultimate sentence of imprisonment is of legislative grace and not a constitutional guarantee." *Gray v. Warden of Montana State Prison*, 523 F.2d 989, 990 (9th Cir. 1975).

Applying § 46-18-403(1) in *Parks*, this Court determined from the record that Parks was being held in Silver Bow County jail on "**both** the Deer Lodge County and Silver Bow County charges, and that **both** were bailable offenses, [and therefore] conclude[d] that Parks was entitled to credit for the twenty-two days he served in Silver Bow County." *Parks*, ¶ 13 (emphasis added). As *Parks* shows, an offender could be detained for—that is, "incarcerated on"—more than one separate bailable offense at a time and such time would be creditable to each offense to which it is directly related.

Although "[g]ranting double credit does not serve the intended purpose of § 46-18-403 . . . a defendant may be entitled to receive credit for a **single period of presentence incarceration** on separate bailable offenses." *Parks*, ¶ 11 (emphasis added) (citing *State v. Pavey*, 2010 MT 104, ¶ 25, 356 Mont. 248, 231 P.3d 1104; *Erickson*, ¶¶ 22-24 (if the defendant's bond had been formally revoked, he would

have been incarcerated on two unrelated charges simultaneously and entitled to receive credit for time served on each charge)); *Hornstein*, ¶ 18 (double credit due to the Parole Board's classification of parolee's incarceration on new charges while on parole).

Thus, applying § 46-18-403(1) here, as interpreted in *Parks* and *Kime*—that is, determining "for what charge the defendant was being detained," *Parks*, ¶ 13, and whether the incarceration was "directly related to the offense for which the sentence [was] imposed," *Kime*, ¶ 16—Crowell is not entitled to credit toward his prison sentence imposed for the aggravated assault of Linda based on his incarceration in Washington on other, unrelated offenses. At the time, Crowell was not incarcerated on the bailable offense for which judgment of imprisonment was rendered in this case. Crowell was not arrested or incarcerated on the Montana aggravated assault offense until the State served and executed the arrest warrant and extradited Crowell on March 18, 2018. By that time, Crowell had completed, discharged, and fully served his 33-month sentence, for which he received full credit for all of his pretrial and postconviction incarceration in Washington, from June 10, 2015 until March 18, 2018.

During that time, Crowell was "being detained," *Parks*, ¶ 13, continuously on the Washington charges only. The Information, bail amount, and arrest warrant issued in this case on July 15, 2015, gave the State the legal authority to arrest

Crowell and thereby hold, detain, or incarcerate him, but issuance alone did not effectuate "arrest" or "incarceration on" the Flathead County bailable offense. Until it was served and executed, the warrant did not, as argued by Crowell, "stake[] a claim" to his incarceration in Washington. (Br. of Appellant at 46.)

Here, the district court correctly granted credit for all the time Crowell served in jail after the State of Montana served the arrest warrant and extradited him from Washington on March 18, 2018. The district court did not err. Crowell concedes that was the date the arrest warrant was served and does not challenge the proper grant of 397 days credit for time served.

On appeal, Crowell argues that he should be granted an additional 116 days of credit for time he was incarcerated in Washington, but less than all of the 33 months that he served on his Washington judgment and sentence. Crowell apparently bases this claim on the fact that he was "charged by Flathead [C]ounty" on July 15, 2015, and that charging the crime and issuing a warrant, without more, made Crowell's incarceration in Washington "directly related to [his] Montana prosecution," in effect "stak[ing] a claim" to his Washington incarceration. (Br. of Appellant at 41-42, 46.)

Such claims are without merit under the Court's plain reading of § 46-18-403(1). Crowell did not serve a "single period of pretrial incarceration" on both the Washington and Montana offenses, *Parks*, ¶ 11; rather, he served two distinct

periods of incarceration—one directly related to his Washington charges and the other directly related to the Montana charges.

The fact that criminal charges had been filed and were pending against Crowell in Flathead County at the time he was incarcerated in Washington for his other criminal conduct does not equate to being "incarcerated on" the Flathead charges. Even if Mont. Code Ann. § 46-18-201(9) applied to Crowell's offense committed in 2015, in accordance with the analysis of that statute in *Killam*, Crowell would not be entitled to any additional credit toward his aggravated assault sentence.

As Crowell admits, the State of Montana did not serve the warrant and extradite him until after his Washington sentence was complete. Thus, Montana did not "arrest" or "incarcerate" Crowell until March 18, 2018, when his Washington incarceration and sentence were discharged. Crowell was granted credit for every day of incarceration before that date under the Washington judgment and every day of incarceration following that date pursuant to the Flathead County sentence in this case.

The State waited for Washington to prosecute Crowell, sentence him, and for him to discharge his prison sentence before arresting Crowell, extraditing him, and bringing him to Montana for prosecution for the aggravated assault. Only at

that time was Crowell "incarcerated on" this bailable offense, and he received every day of credit he was due when the district court sentenced him.

Crowell's reliance on the few cases that deal with credit for time served involving incarceration in other states is unavailing. *See Allison*, *supra*; *State v. Milligan*, 2008 MT 375, 346 Mont. 491, 197 P. 3d 956; and *Graves*, *supra*. (Br. of Appellant at 44-46, 48.) First, *Milligan* was based on a concession by the State that credit should be granted for the 37 days defendant was incarcerated in Idaho when he was arrested on a Montana bench warrant for his failure to appear in court. *Milligan*, ¶¶ 12, 15, 32-33. Of course, Milligan was due credit for being arrested and detained in Idaho on Montana's warrant—that is, "incarceration on a bailable offense" which was directly related to the Montana charges. *Milligan* is distinguishable from this case because Washington authorities arrested and detained Crowell on crimes committed in Washington, not the aggravated assault in Montana. Unlike *Milligan*, Crowell was not arrested by Washington at the behest of the State or based on execution or service of the Flathead County warrant. Crowell's Washington prosecution was entirely separate from his Montana prosecution: Crowell was tried, sentenced, and imprisoned in Washington, and his Montana arrest warrant was not served until he had done his time there.

Second, the other two cases, *Allison* and *Graves*, involved statutory credit for time served upon revocation of suspended sentences under Mont. Code Ann. § 46-18-203(7)(b), not credit for time served while "incarcerated on a bailable offense" under § 46-18-403(1). *See Allison*, ¶¶ 11 n.1, 15, *Graves*, ¶ 32. These distinct credit statutes recognize the fundamental nature of revocation proceedings as civil matters as opposed to criminal "offenses." *State v. Howard*, 2020 MT 279, ¶ 13, 402 Mont. 54, 475 P.3d 392. Moreover, Crowell's attempt to extend these cases to his situation "confuses the procedural rights which arise following an arrest for an offense and those which arise following an arrest pursuant to a petition to revoke probation." *State v. Swan*, 220 Mont. 162, 164-65, 713 P.2d 1003, 1005 (1986). *Graves* and *Allison* dealt with credit under an entirely different statute than this case, without interpreting, let alone citing, Mont. Code Ann. § 46-18-403(1). Hence, contrary to Crowell's argument on appeal, *Allison* and *Graves* provide no reasoning, analysis, or holding about the proper application of § 46-18-403(1) and are of little if any value to Crowell as precedent.

Third, the factual bases for the holdings in *Milligan*, *Allison*, and *Graves* support the district court's grant of credit in this case. As discussed above, *Milligan* is distinguishable and of no help to Crowell.

Graves is also distinguishable. There the State could have extradited Graves "at any time after Oregon released him to appear in Missoula, and he would have

received credit for time served as soon as he was extradited. Thus, how much credit Graves would receive for time served depended only on when Montana extradited him." *Graves*, ¶¶ 33-35. Despite Graves being "released," however, the State did not execute the arrest warrant and extradite Graves for 17 months, and the sentencing court erred by "failing to give Graves credit for time served while he was incarcerated [in Oregon] awaiting extradition to Montana." *Graves*, ¶ 36. Nothing in the record here shows that the Washington authorities "released" Crowell to appear in Montana at any time prior to March 18, 2018, at which point Crowell had completed the 33-month prison sentence he was liable for in Washington, and the State executed the arrest warrant and extradited Crowell for prosecution in Flathead County. Thus, the district court here granted Crowell the same credit this Court ordered for Graves on remand: "credit for time served from the date [the other state] released him to appear in [Montana.]" *Graves*, ¶ 35.

Finally, the facts in *Allison* are very similar to the situation in this case and militate against Crowell. In *Allison*, this Court found and concluded that: "All the evidence in the record supports the conclusion that the time Allison served in Deschutes County was related to his Oregon crimes, not his Montana sentence." *Allison*, ¶ 13. This Court affirmed the district court's grant of credit "only for the time served since 'the time the State of Montana put a hold on him for violation of the terms of his Montana probation.'" *Allison*, ¶ 8. Similarly here, the district court

granted Crowell credit for all the time he served after the State extradited Crowell and thereby "put a hold" and detained him on the Flathead County aggravated assault charge.

In the plain words of the statute, Crowell was given credit for every day he was "incarcerated on" the bailable offense of aggravated assault for which "judgment of imprisonment [was] rendered" against him in this case. Mont. Code Ann. § 46-18-403(1). Crowell received all the credit for time served which was legally due.

CONCLUSION

This Court should affirm Crowell's judgement of conviction for felony aggravated assault and his 50-year PFO sentence.

Respectfully submitted this 13th day of September, 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 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 9,790 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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CERTIFICATE OF SERVICE

I, Jonathan Mark Krauss, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-13-2021:

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