
IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT No. DA 21-0367

MATTHEW RYAN AILER,

Defendant and Appellant,

v.

STATE OF MONTANA,

Plaintiff and Appellee,

FILED

SEP 17 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLANT'S OPPOSED MOTION TO SUPPLEMENT THE RECORD

COMES NOW, Matthew Ryan Ailer, Appellant, respectfully moves this Court for an Order supplementing the record in this appeal.

This appeal arises from a district court's denial of an APPLICATION FOR THE RELEASE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION (CCJI) in Ailer v. State, district court cause number DV-21-480.

The grounds and reason for this Motion to supplement the record is discussed below:

I. The Appellant (Matthew) and the Appellee (The State) cited the record, submitted documents and transcripts, and provided a case register report from the following three collateral proceedings in their filings in DV-21-480:

- (1) Montana Workers' Compensation Court (WCC), No. 2013-3275.

- (2) Montana First Judicial District Court, Lewis and Clark County; Ailer v. State, cause number CDV-2019-514.
- (3) Montana First Judicial District Court, Lewis and Clark County; State v. Ailer, cause number CDC-2014-98.

The Application itself is concerned with issues arising from these court cases and supplementing the record with all docket filings including the exhibits that are attached will give this Court a complete record on these issues that were presented in DV-21-480.

II. On February 2, 2016, Montana State Fund (MSF) Attorney Greg Overturf submitted an APPLICATION FOR THE RELEASE OF CCJI to the Court of the Honorable Judge Defann Cooney, attached hereto as **Exhibit A**. On February 4, 2016, The Honorable Judge Defann Cooney issued an Order for the Montana Department of Justice to release all information to MSF related to the prosecution of Matthew Ailer in CDC 2014-98, attached hereto as **Exhibit B**.

The State supported MSF's Application by agreeing that much of the information sought had already been publically disclosed during Matthew's criminal trial, that the file was necessary to provide the MSF with information to defend its position in the Workers' Compensation Court, and that any demands of Matthew's individual privacy clearly did not exceed the merits of public disclosure. However, the State did not support Matthew having the State's file that had already been determined by The Honorable Judge Defann Cooney as information that can be disclosed and that individual privacy

did not apply when granting MSF's Application For The Release Of Confidential Information. Matthew's reasons for the Application For The Release Of Confidential Criminal Justice Information are the same as MSF and the State. This file is necessary to provide Matthew with the information to defend his position in the WCC and in the current Post Conviction Relief Appeal (CDV-2019-514) just as MSF and the State has unfairly used this same information to defend their position.

In State v. Ailer; cause number CDC-2014-98, Ailer v. State; cause number CDV-2019-514, the State provided MSF with the following evidence that Matthew did not commit theft, that State witnesses Jeff Russell and Chelsea Chafee were not credible, that there was no staged accident, that MSF Fraud Investigator Buchanan promised immunity to Russell in exchange for his false testimony, and that "Agent Poppler contacted AAG Cochenour regarding the missing exculpatory information provided by Miller to Investigator Buchanan and the promises made to Russell. AAG Cochenour told Agent Poppler that she would not prosecute Ailer due to lack of evidence and the handling of the case file by SF." (Poppler's Report Findings, see Exhibit C).

1. Agent Poppler's Investigative Report, attached hereto as **Exhibit C**.
2. Trial Counsel Martin Judnich's Recorded Interview with Agent Poppler on July 22, 2014, attached hereto as **Exhibit D**.
3. Judnich's Recorded Interview with Agent Butch Huesby on July 22, 2014, attached hereto as **Exhibit E**.

4. Poppler's May 22, 2012 Recorded Interview with Former Garden City Janitorial Owner Cory Miller, attached hereto as **Exhibit F**.
5. MSF Fraud Investigator Gaylen Buchanan's Interview with L. Wisse, attached hereto as **Exhibit G**.
6. Miller's Interview with the neighbors of Wisse, attached hereto as **Exhibit H**.

This evidence directly contradicted the State's filings in State v. Ailer, 2018 MT 18, cause number DA 16-0240. There is additional exculpatory evidence that the State is withholding from Matthew preventing him from defending his position in the current Post Conviction Relief Appeal, cause number CDV-2019-514.

II. The State made improper and inaccurate statements from cause numbers CDV-2019-514 and CDC-2014-98 when submitting their filing in DV-21-480. One example of The State and AAG Melissa Broch providing an improper and inaccurate statement: "After Petitioner was found guilty but before sentencing, the prosecutor learned from Petitioner's time of injury employer that someone posted confidential criminal justice information related to Petitioner's case on the internet, including social security numbers and birth dates of witnesses." (State's Motion For Relief From Final Order Pursuant To Mont. R. Civ. Pro 60(B) – Page 2:1-4). However, in CDC-2014-98, the State and Former AAG Mary Cochenour filed "State's Notice of Additional Material Regarding Release Of Confidential Criminal Justice Information" with a statement from Miller that did not

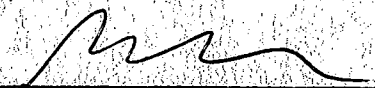
mention social security numbers or birth dates of witnesses. (Doc. 203). Additionally, the State filed "State's Motion For Order, Preventing Dissemination of Confidential Criminal Justice Information Related To This Case And Request For A Hearing". The State attached thirty-eight (38) pages of a online petition which did not contain any social security numbers or birth dates of witnesses. (Doc. 190, CDC-2014-98).

Supplementing the record will reflect more accurate facts and contradict AAG Broch's improper and inaccurate statements.

Find truth, seek justice in that order because you cannot seek justice without first knowing the truth. And, if the truth is hidden, or obscured, by falsehoods and outright lies, you will never find justice. Supplementing the record is critical to search for the truth and with a complete record will ensure fairness.

Therefore, the Appellant respectfully requests this Court to order the record in this matter be supplemented with the complete docket filings in State v. Ailer, cause number CDC-2014-98; Ailer v. State, cause number CDV-2019-514; and Montana Workers' Compensation Court, WCC No. 2013-3275. Opposing counsel Appellate Services Bureau Chief TAMMY K PLUBELL has been contacted and **does object**.

Respectfully submitted this 13th day of September, 2021.

By: 

Matthew Ryan Ailer
Defendant and Appellant

CERTIFICATE OF SERVICE

I, Matthew, hereby certify that I have served true and accurate copy of the foregoing **APPELLANT'S UNOPPOSED MOTION TO SUPPLEMENT THE RECORD** with the clerk of the Montana Supreme Court and that I have served true and accurate copies of the **APPELLANT'S UNOPPOSED MOTION TO SUPPLEMENT THE RECORD** to each party by the following means:

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DATED this 13th day of September, 2021.

By: 

Matthew Ryan Ailer
Defendant and Appellant