

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19-0471

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CARESSA JILL HARDY, aka

GLENN LEE DIBLEY,

Defendant and Appellant.

**UNOPPOSED MOTION FOR LEAVE TO FILE AN
OVER-LENGTH BRIEF AND DECLARATION IN SUPPORT**

Pursuant to Mont. R. App. P. 12(1) and in compliance with Mont. R. App. P. 16, Appellant Caressa Jill Hardy a/k/a Glenn Lee Dibley moves this Court for leave to file an over-length Appellant's opening brief. Appellant requests leave to file a brief of no more than 16,987 words. The brief in its final form is attached hereto as an appendix.

"Motions to file over-length briefs . . . will not be routinely granted." Mont. R. App. P. 12(10). This case is not a routine case. Glenn's jury trial lasted nine days. He was convicted of two counts of deliberate homicide that allegedly occurred in 2013. The alleged victims' bodies were never found. He was also convicted of two counts of

solicitation to deliberate homicide involving two separate incidents that allegedly occurred while he was incarcerated pretrial on the homicide charges.

The record in this case is voluminous: the transcripts are 2,580 pages long and the electronic district court record consists of 3,333 pages plus thousands of pages of trial exhibits, including numerous photographs and financial and other account records presented as circumstantial evidence to show the victims were, in fact, dead.

Much of the opening brief addresses Appellant's first issue, the court's denial of Glenn's motion to suppress incriminating statements deliberately elicited from him by jailhouse informants after his right to counsel attached and with the knowledge and apparent approval of the State. The court held a two-day suppression hearing and issued a 36-page order denying this motion. (*See* D.C. Doc. 338.) Appellant's argument on appeal involves legal issues of first impression in Montana and is fact-intensive. Leave is necessary to adequately analyze this issue while addressing the other potentially meritorious, record-based issues on appeal.

Specifically, Appellant wishes to raise three additional record-based issues on appeal:

Appellant's second issue involves Glenn's proposed jury instruction regarding jailhouse informant testimony, which the district court refused to give. (*See* D.C. Doc. 315, Instr. No. 39; D.C. Doc. 367.) Although this Court has addressed the need for such instructions in other cases, it has not done so in the context of a case like this one, where the *only* evidence supporting Glenn's solicitation charges consisted of the testimony of jailhouse informants, and two of his prior cellmates testified Glenn confessed to the murders and corroborated portions of the State's alleged eyewitness's story about the homicides—a story which was set forth in Glenn's paperwork regarding the case to which his cellmates had access.

Appellant's third issue addresses the district court's refusal to allow defense counsel to make a closing argument commenting on—and the court's instructions to the jury to disregard—the State's failure to call a witness, one of the alleged solicitees, to testify at trial after the State promised to call the witness and paraphrased the witness's out-of-court statements in the opening statement.

Appellant's final argument asks this Court to exercise its discretionary power to review under the plain error doctrine multiple instances of prosecutorial misconduct throughout Glenn's trial, including calling the jury's attention to and eliciting inadmissible testimony and evidence, including evidence that was the subject of the district court's pretrial order in limine, D.C. Doc. 155, amended by D.C. Doc. 267; eliciting testimony vouching for the credibility of the State's alleged "eyewitness;" and misusing opening statement and making an improper closing argument. Glenn argues that misconduct, in combination with the other errors above, rendered his trial fundamentally unfair.

The undersigned has taken substantial measures to edit and reduce the length of the brief. However, given the serious nature of the charges and life sentences imposed here, the size of the record, and the novelty and complexity of the issues presented, the undersigned does not believe the brief can be reduced more without sacrificing the discussion of relevant and potentially-meritorious issues and impairing Glenn's right to effective assistance of counsel on appeal.

Opposing counsel has been contacted concerning this motion and does not object.

Respectfully submitted this 4th day of May, 2022.

OFFICE OF STATE PUBLIC DEFENDER
APPELLATE DEFENDER DIVISION
P.O. Box 200147
Helena, MT 59620-0147

By: /s/ Tammy A. Hinderman
TAMMY A. HINDERMAN
Assistant Appellate Defender

I, Tammy A. Hinderman, pursuant to M. R. App. P. 26(2) and Mont. Code Ann. § 1-1-203(1), declare:

1. I am a licensed, practicing attorney in the State of Montana. I am an Assistant Appellate Defender with the Appellate Defender Division of the Office of State Public Defender.

2. I have been assigned to represent Appellant in *State v. Hardy*, DA 19-0471.

3. I worked diligently to choose a small number of potentially meritorious issues to raise on appeal, and to write concisely, reducing the length of the argument regarding the issues substantially while maintaining a complete discussion of the relevant legal issues. I have asked other members of our staff to review the brief and to assist with editing the brief. I believe I cannot reduce the number of words more without sacrificing the quality of the brief and the quality of the assistance of counsel to which my client is entitled on appeal.

4. A substantial portion of the brief involves a novel and factually complex issue of first impression in Montana, the denial of my client's motion to suppress incriminating statements he allegedly made to jailhouse informants after his right to counsel had attached and with

the knowledge and apparent approval of the State. Notably, the district court's order denying that motion was 36 pages long.

5. I believe all four issues raised in the attached brief are appropriate for review on direct appeal and must be raised in this proceeding or forfeited.

6. The State has been contacted and does not object to this request.

7. I declare under penalty of perjury that the above is true and correct.

/s/ Tammy A. Hinderman
Tammy A. Hinderman

May 4, 2022
Date

CERTIFICATE OF SERVICE

I, Tammy Ann Hinderman, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 05-04-2022:

Kirsten H. Pabst (Govt Attorney)
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Electronically signed by Pamela S. Rossi on behalf of Tammy Ann Hinderman
Dated: 05-04-2022