



ORIGINAL

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08/09/2022

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 21-0657

Daniel E. Newby/AO#3030537  
Montana State Prison  
700 Conley Lake Rd.  
Deer Lodge MT, 59722

FILED

AUG 08 2022

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

CASE<sup>3</sup>. DA- 21-0657

IN THE SUPREME COURT OF THE STATE OF MONTANA

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Daniel E. Newby, Pro Se	)	Breif of appellant
appellant.	)	
VS.	)	
STATE OF MONTANA ,	)	
appellee	)	

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On appeal from the Montana 16th Judicial District court, from the county of Custer.

Presiding over this matter was Honorable Judge Michael B. Hayworth, and the Honorable Nickolas C. Murnion. Prosecution was represented by Wyatt A. Glade.

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## CRITERIA OF LAW

1. Denial of DUE PROCESS: Allen V. Howley: 74 Fed.Appx.457(6thCir. 2007)
2. Accusatory process: Chester V. California 355 F.2d, 788, 786,(9th Cir. 1966) In Re Murchison; 349 US 137 (1955), Carter V. Golaza:491 F.3d 1110,1131, (9th Cir. 2007); Quoting Withrow V. Larkin: 421 US 47 citing; IN RE Tamey V. Ohio: 273 US 510,523, (1972).
3. Conflict of interest: Pardis V. Arave 20 F.3d 950, 958, (9th cir. 1994).
4. Criminal magnitude: US V. Hollis; 718 F.3d.950, 958(9th Cir. 1983.)
5. Life and Liberty USC§76 §b.

## STATEMENT OF ISSUE

1. Was there prejudicial, prosecutorial misconduct by the state attorney (Glade) for the malicious prosecution of Newby?
2. Did the honorable Judge Hayworth sift through and sit on all the states information and evidence, the issued arrest warrants for these matters deeming newby Guilty from the start, and therefore by sitting in on the [ACCUSATORY PROCESS] causing the honorable judge to have a direct bias towards Newby.
3. Did the Honorable Judge Hayworth thereby create a conflict of interest by sitting on Newbys Family court matter as well as all 3 of his criminal proceedings simultaneously and remained a biased judge whilst remaining judge with a known conflict of interest therefore violation his oath of office by practicing law from the bench.

## STATEMENT OF FACTS

On april 15, 2020 Newby Allegedly entered the walmart store in search of his girlfriend(C.F). After Newby had located C.F, he asked her to leave with him and when she refused

When she refused Newby, allegedly choked G.F and took away her cell phone, and then left. Newby then entered the sore a second time where he was, then arrested. Newby was charged with strangulation of a partner/family member. (cr-301-2020-17) later ammended to DC - 2020 - 38. Discovery Indicates G.F the following day had called dispatch and had asked for the cgrages to be dropped against Newby to which she was informed that the state was pursuing felony charges and they couldnt be dropped. The state filed for leave to file information in DC-2020-38 on May 12, 2020.

On February 4, 2020 CFS work Sleight conducted an interview with CF who stated the previous night became upset and through a heavy dining room chair at her. Cf also stated that Newby became upset with CN. His 2 month old daughter and shook her and at this time Newby entered his home he had reportedly gotten off work early, and came home. Newby became beligerent and disrespectful in speech and outward behavior towards Sleight. Regional Director Eric Barnosky sent officerrrs to Newbys home when Sleight had stopped answering his texts and Newby was taken to the county jail where he was told they had a warrant to get a urine sample from him or he would be jailed. Newby then Concentered to a U.A which later tested posotive for Mathamphetamin, amphetamines, and THC. CF, and CN were taken to holy rosary health care center whebn C.N was given a number of phisical examination including MRI, and brain scan which indicated no abnormalities, and no signs of of abuse or neglect. Follow up appointments concluded the same results. As they state couldnt pursue the original child abuse investigation they ordered a test of Cns Hair follicle to see if they could get newby for a different felony. As Newby tested posotive for drugs CNs hair follicle also did for Methamphetamine, and THC.

On March 8, 9, 2020 JFV and AM(Witness) told jfvs' mom they were going to hang out with a friend named AVERY: at 10:00 pm on a school night. It should be noted it was cold outside with snow on the ground yet the girls walked the approximately 5 miles to Newbys home(3408 Butler Street) upon arrivall it was said both girls had se with Newby AM being first, Then JFV and then they left. It should be noted Am denies it

where as JFV sais AM did have sex with Newby. Am was 16 at the time. The girls left and Newby allegedlt texted the girls "round 2" (discover statement). The two girls did come back whgere they reportedly had sexwith Newby and another adult male. for appro. 33 hours. They left newbys home shortly after and at first national pawn shaop the girls were picked up by a police officer, and both girls were issued curfew violations. JFV if she was infact raped had an opportune time to adress such allegations as she was in the presence of law enforcement however she waited unitil her mother began to punish her when she made these claims against Newby. It should also be noted from AMs statement that JFV has a history with males similar in age with newby. who was also reportedly drunk and (see discovery) in and out of sleep when theses claims were being made. JFV on the same day that she was allegedly raped by Newby who(wasnt wearing a condom) was interviewed by an officer and a SANE rape kit analysis was done and indicated NO MALE DNA On August 25 2020, after 5 months of waiting in which Newby remianed law abiding the entire time the state filed for leave to file information and issued an arrest warrant for Newby.

#### STANDARD OF REVIEW

On appeal sever question should be raised as to the credibility of alleged witmess and victim statement. The lack of states evidence to even bigin to prosecute Newby and then the states intention to prosecute Newby. It should be noted for the record of this court that the prosecuting attorney threaten newby with additional charges of tampering with a witness, whom he told on the phone to his girlfriend that he wanted to take all of his charges to trail including the one against CF. Cf asked newby on call that was recorded at the custer county jail, what he wanted her to do if she had to testify, Newby responded tell the "truth" when she agreed to do that she was in no way being tampered with and it would have been her own free will to testify against Newby who posed

no threat to her person as his bail was set at \$200,000 and was sure even if he won he would still be waiting a long time. this threat was made to Newby and his attorney on a video court through zoom for a nother hearing against newby. Counsel faile d to object to a direct threat. Newbys asks why the state had waited to chrage Newby then charged him back to back to back.(50 and 57 days in between. It seems that the state was in fact lacking evidence to charge newby who claims in DC-2020-38 Video evidence alone would prove his innoce. then also why the state went fishing for charges when the original charge of child abuse would never hold up in court as medical records prove it was impossible that Newby could have shaken CN the way CF stated he did. Newby did test posotive for meth and thc, but how come CF was never U.Ad until it wasn convineient for methamphetamine to be out of her system. It should be noted CF was on her phone fidgity and very distracted to the point where the paternal grandparents had to answer basic questions to which she couldnt focus enough to answer. CF obviously lied to CFS about Newby shaking CN and She also tried to recant her stateent that Newby choked her. At this point it seems that the prosecutions cases were one real question from fallling away, so the state after Newbys intention was to take all theses charges to trial then even with no DNA evidence and holes in both the witnesses story, and the victims alone they filed for information in DC-2020-72. Newbys MAXimum sentence went from 10 years to a 100 which the state hoped would scare newby away from going to trial. It is most always the truth when a person takes his charges to trail if they lose the state will almost always ask for the maimum penalty. This sounds like the state maliciously prosecuted Newby threatened additional charges if he wouldnt just take a plea deal (review of court transcripts would confrim this allegation.) Judge Hayworth was very well aware that DC-2020-50 should have and could have been filed at Newbys DC-2020-38 hearin as february 4th 2020 was long before april 5 2020 other alleged crimes. However the judge allowed the state to maliciously prosecute newby which constitutes his oath of office was violated. The Honorable Judge acted as a second prosecutor also know as practicing law from the bench Pursuant to 28 USC§253,254 thereby creating a direct

bias towards Newby. Also Judge Hayworth had a personal interest in the outcome in Both Newbys Family court matter and in all 3 of newbys felony matters as he was actively presiding over all them. Judge hayworth sat on and sifted through the states information and deemed Newby GUILTY from the beginning as he also signed both warrants of arrest. The Honorable judge active did this 3 separate times . He violated his office by remaining judge over Newbys cases even though he knew of the created conflict of interest stemming from his bias. Judge Haywroth allowed a prosecutor to threaten or intimidate a presumably innocent man, he violated Newbys Due Process rights, and showed a direct and actual bias towards Newby and all of his cases

#### ARGUMENT IN SUPPORT.

IN DC-2020-38 The alleged victim CF contacted law enforcement on her own accord after Newbys arrest and attempted to have all the charges against him dropped. Custer county detention told her that she was not able to recant her statement as the state was actively seeking a felony charge against Newby. In a phone call at CCDC(recorded) Newby told CF that he wanted to take his charges to trial. Knowing Newby was most likely going to prison she asked when and if she was called to testify what she should do to which he replied that she must tell the truth. Later in a hearing the prosecution on the record states that if Newby took a plea deal that he(wyatt a Glade) wouldnt pursue any additional charges. Obviously an attempt to scare newby from going to trial. N Newby was in fact scared as he was already facing three serious felonies he overlooked that if he was found innocent that the state could not infact pursue any more felonies stemming off of the matter. Newby contends vidoe evidence alone would have made him a innocent man. Cfs attempt to take back her lie so she wouldnt be homeless and the video will prove his innocence. Here Newbys Counsel fails to object and goes right along with the states threat to newby instead of advising him that what the state just did was illegal as they were threatening or coercive

In DC-2020-50 Newby will point out that the states initial investigation was for

an alleged child abuse charge as CF Blaintantly lied to CFS that Newby Shook His 2 month old daughter at their residence. There was very thorough investigations done as to these allegations and brain scans concluded the baby was very healthy minus her sleeping in a car seat, showing Cf did not possess basic enough parenting skills to know that its the number one cause of S.I.D.S. Brain scans concluded no abnormalities proving that there was no way Newby physically shook CN the way she states. Here Newby contends the reason he through a heavy dining room chair was because CF was smoking meth in their bedroom as their daughter slept in her car seat. Newby also contends Cf has a severe mental health diagnosis and is extremely manipulative and a compulsive liar, her diagnosis is in CFS report in DC-2020-50s discovery. Newby contends freely with this high court that the only reason CF ever makes claims against him is because she is trying to get things from falling on her shoulders.

In DC-2020-72 Newby was here a 19 year old teenager working a full time job and fighting to get his child back in his home. Newby never claims to be perfect however he openly admits drug and alcohol addictions. Firstly the alleged victim has a known history for sleeping with other similarly situated men. See AM wit.state. The alleged victim and her friend fabricate a fictitious friend named Avery to which they wanted to go hang out with at 10pm on a school night in snowy weather with no ride. The mother allowed her 15 year old daughter and her friend to walk 5 miles through the snow to after the known curfew. Then the alleged victim walks all the way across town to i quote "I am going to get dick from Danny (appellant) tonight" and to do just what she intended to do, she lies and manipulates a drunk and half asleep Newby into believing she was 16, Counsel fails follow up these claims. This case in specific had no threats and no force used. The alleged victim on 2 occasions 1 in which Newby was sleeping in his own room. On her own accord, in fact the girl fabricates a lie to her mom walks all the way across town in the cold and enters Newby's room just to get what she wanted. It should be noted that the friend of JFV reported to police this wasn't the first time she has done this to another 19 year old. one to which she wouldn't name. None of this was



none of this ofcourse was entered in any of newby status hearing or presentence and again Newbys counsel did not advise him their was litteraly no case against him and failed to mention any of this information until after newby signed a guilty plea- that he couldnt retract. On the recorn even the state prosecutor said that he anticipated this matter going to trail. However Prosecution then flipped script and made Newby out to be an aggressor and that he forced himself on the victim. Newby contends the information in the victims statement compared to her victim impact statement are completely contradictory. yet he wasnt able to veiw his discovery until the day before his sentencing hearing.. This is the last thing the judge heard before handing down newbys sentence for 15 years. Counsel doesnt object to the blaintant lie witness statement confirmed JFV was bragging to AM how good hersexualencounter was . In this matter JFV clearly noticed a picture on AMs phone saw newby and how "cute he was" thenconfides in her friend that " I am going to get dick from Danny tonight." Parents should be heald accountable atleast to a certian aspect where they allow their children .She allows her daughter to leave the family home after know curfew in the cold toealk to a friends house she didnt even care to check if it was okay with there parents. hence this alleged crime would never have occured. If the parents of JFV had control over their child , which the victims mother claims she lost because of this, she would have never allowed her child and her friend to do what she did. This court has violated Newbys Due Process rights, an unaposed motion for default judgement was timely submitted to the court after they failed to plead or defend against Newby's motion to dismiss. This court allowed an illegal arrest under law. The court is presumed to know the law or atleast where to find it. The court has done this by sitting on and sifting through the states evidence and information also know as the [ACCUSATORY PROCESS] where the court found reason to believe Newby committed these crimes as charged in all three seperate filings of information ranging from 50, to 57 days apart from eachother totaling 107 consecutive days to one another. The court became a biased party and prejudicial upon finding Newby "guilty" of the alleged crimes, issued a

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warrant of arrest illegal because of the judicial bias. Newbys counsil violated Newby 6th ammendment by failing to consult with Newby prio any hearing or plea negotiations as well as failing to give Newby his discdoverly until after his change of plea hearing, even tjough newby had been rrequesting it since december 2020. and he also failed to diclose all the evedence the prosecution did turn over. Kotter failed to object to the conflict of interest and the judicial bias towards Newby as well as the threats or coersive methods used by the state attorney to obtain a guilty plea. at the sentencing hearin Kotter again didnt object to the falsified "facts" pinning Newby as the aggressor and doesnt metion to the court that the lack of criminality of these cases werre insufitient to bring these charges against Newby, and never viewd or reviewed testimony in Newbys defence from his friends and family. Here NNewby was in his own home and was being a productive member of society and has a huge support sytem, and a life. Newby has made mistakes but nothing as to deserve a 15 year sentence to prison. While on pre-trial monitering Newby made 1 mistake for smoking thc in 5 months. Newby heald his job and made every appointment for his drug patch, was making every possible visit with his child, and was attending weekly counseling for his mental health and chemical dependency, all to correct his past behaviors. It should be noted that Newby was jumping through all the hoops with his family court and was remaining law abiding as well as working and was doing above and beyond to do the right thing.

#### CONCLUSION OF BRIEF

Newby asks this high court to review the noted issue and violation as to the allegations made towards the custer county attorney Wyat a Glade, as well as to review the Honorable judge Hayworths prejudice, and judicial bias against newby. Newby also ask the court to veiw the criminality of these charges paired with the punishment handed down. Newby hereby reserves the right to raise any additional claims which may come to light at a later date or upon revieing all the discovery the county refuses to

send upon request so that he can properly defend this case to its fullest. This opening brief is being respectfully submitted under the penalty of perjury.

Daniel E Newby

*Daniel E Newby*