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COUNSEL FOR PLAINTIFF AND APPELLEE

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
OVERLENGTH BRIEF AND DECLARATION IN SUPPORT**

Pursuant to Mont. R. App. P. 12(10), and in compliance with Mont. R. App.
P. 16, Appellee State of Montana moves this Court for leave to file an overlength

response brief. The State requests leave to file a brief of no more than 16,987 words, which is the number of words Appellant used in his opening brief.

The State recognizes that motions to file overlength briefs “will not be routinely granted.” Mont. R. App. P. 12(10). But, as Appellant has already pointed out, this is an unusual case, with an extraordinarily large record. The record relevant to the issues on appeal includes transcripts of a 2-day suppression hearing and a 9-day trial, 400 district court documents, and voluminous exhibits.

Hardy was convicted of two counts of homicide for offenses that occurred in 2013, but were not reported until 2016, and two counts of solicitation to commit homicide based on statements he made while incarcerated after he was charged with the two homicide offenses. Because the only portion of any bodies that could be located were burned bone fragments that could not be DNA tested, substantial evidence was necessary to demonstrate that the two victims were dead. To do so, the State presented many witnesses, in addition to physical evidence and complex financial records. In addition, four inmates provided statements to law enforcement, which formed the basis for the two solicitation charges. The inmates’ statements were also used in support of two search warrants and were admitted at trial. The facts concerning each inmate are different and must be thoroughly discussed to respond to the issues raised on appeal.

Appellant has raised four issues on appeal, which require a comprehensive response. In Appellant's first claim, he argues that two of the inmates became government agents, so evidence that came from the inmates was improperly admitted at trial. Responding to that claim requires a detailed discussion of the testimony presented during a two-day suppression hearing, the voluminous records admitted at that hearing, the district court's 36-page order denying the suppression motion, and the evidence presented at trial that related to the inmates. Additionally, the first claim raises an issue that has not been addressed by this Court and requires a thorough discussion of United States Supreme Court case law and out-of-jurisdiction cases. Finally, given the possibility that this Court could conclude that the admission of some of the evidence was erroneous, it is also necessary for the State to address harmless error. That requires a detailed discussion of the evidence that was presented at the nine-day trial and an analysis of when and how evidence potentially related to the inmates was obtained.

Hardy raises three additional claims in which he challenges the jury instructions, argues that his constitutional rights were violated by the district court's ruling concerning the one inmate who did not testify at trial, and argues that several unrelated events during the trial constituted prosecutorial misconduct. Responding to each of these claims requires a detailed discussion of the record.

In drafting the State's response, counsel for the State has written over 19,000 words. Counsel has repeatedly edited to remove words and plans to file a brief of no more than 16,987 words because that is the number of words in Appellant's opening brief. The State cannot adequately respond to the claims raised by Appellant in fewer words.

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

Respectfully submitted this 29th day of September, 2022.

AUSTIN KNUDSEN
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By: /s/ Mardell Ployhar
MARDELL PLOYHAR
Assistant Attorney General

DECLARATION

Pursuant to Mont. Code Ann. § 1-6-105, I, Mardell Ployhar, hereby declare as follows:

1. I am a licensed, practicing attorney in the State of Montana, and am currently employed by the Montana Department of Justice, Office of Attorney General, Appellate Services Bureau, as an Assistant Attorney General.

2. In my capacity as Assistant Attorney General, I have been assigned to handle the above-entitled matter.

3. The record in this case involves transcripts from a 2-day suppression hearing, 336 pages of exhibits submitted at a suppression hearing, transcripts from the 9-day trial, over 400 district court documents, and 2 boxes of physical evidence.

4. As Appellant's counsel noted in her motion for an overlength brief, a substantial portion of Appellant's opening brief involves a novel and factually complex issue. The State cannot respond to that issue adequately without a detailed discussion of the record and a thorough discussion of the case law.

5. I have spent considerable time reviewing the record in this case and drafting my response. I have written more than 19,000 words, but have repeatedly edited the brief to eliminate unnecessary words. I believe that I can edit the brief to be no more than 16,987 words, but that I cannot adequately respond to Appellant's claims in fewer words.

5. I will work diligently to edit the brief and file a brief no longer than necessary.

6. In 14 years of appellate practice, this is the first time that I have moved for permission to file an overlength brief.

7. Opposing counsel has been contacted and does not object.

8. I hereby declare under penalty of perjury under the laws of the United States of America and the State of Montana that the foregoing is true and correct.

Respectfully submitted this 29th day of September, 2022.

/s/ Mardell Ployhar
MARDELL PLOYHAR

CERTIFICATE OF SERVICE

I, Mardell Lynn Ployhar, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 09-29-2022:

Kirsten H. Pabst (Govt Attorney)
200 W. Broadway
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Representing: State of Montana
Service Method: eService

Tammy Ann Hinderman (Attorney)
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Electronically signed by LaRay Jenks on behalf of Mardell Lynn Ployhar
Dated: 09-29-2022