

IN THE SUPREME COURT OF THE STATE OF MONTANA
Cause No. DA 23-0200

MARK HUELSKAMP,

Defendant/Appellant/Cross-Appellee,

v.

MATTHEW OLDS,

Plaintiff/Appellee/Cross-Appellant

APPENDIX TO ANSWER BRIEF AND CROSS-APPEAL BRIEF

On Appeal from the Fourth Judicial District Court, Missoula County
Cause No. DV-19-1036
The Honorable Jason Marks, Presiding

APPEARANCES:

Carey B. Schmidt
David C. Berkoff
SCHMIDT BERKOFF, PLLC
1917 South Higgins Avenue
Missoula, MT 59801
Telephone: (406) 552-1450
carey@blackfootlaw.com
david@blackfootlaw.com

*For Plaintiff/Appellee/Cross-Appellant,
Matthew Olds*

Scott M. Stearns
Zach A. Franz
BOON KARLBERG P.C.
201 west main, Suite 300
P.O. Box 9199
Missoula, MT 59807-9199
Telephone: (406)-543-6646
sstearns@boonkarlberg.com
zfranz@boonkarlberg.com
*For Defendant/Appellant/Cross-Appellee,
Mark Huelskamp*

Table of Contents

Appendix	Document	Date
9	Order Granting Defendants Motion to Reduce Punitive Damages Award (Doc. 105)	Jan. 26, 2023
10	Trial Ruling on Punitive Damages Discovery	March 2, 2021
11	Trial Ruling on Punitive Damage Cross-Exam	Nov. 19, 2021

Hon. Jason Marks, District Court Judge
Fourth Judicial District, Dept. No. 4
Missoula County Courthouse
200 West Broadway
Missoula, Montana 59802
(406) 258-4774

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

MATTHEW OLDS,

Plaintiff,

v.

MARK HUELSKAMP,

Defendant.

Dept. No. 4
Cause No. DV-19-1036

**ORDER GRANTING
DEFENDANT'S MOTION TO
REDUCE PUNITIVE DAMAGES
AWARD**

This matter comes before the Court on Defendant Mark Huelskamp's *Motion to Reduce Punitive Damages Award* ("Motion to Decrease") and Plaintiff Matthew Olds' *Motion to Increase Punitive Damages Award* ("Motion to Increase"). The Court has considered both motions, Huelskamp's Brief in Support, Olds' Response Brief Opposing Motion to Decrease & Brief in Support of Motion to Increase, Huelskamp's Reply & Response to Motion to Increase, and Olds' Reply thereto. The matter has been fully briefed by the parties and is ready for ruling.

ORDERS

(1) The Court GRANTS the Defendant's *Motion to Decrease*.

(2) The Court DENIES the Plaintiff's *Motion to Increase*.

MEMORANDUM

I. BACKGROUND

The procedural background of this matter was set out in the Court's Order Granting Plaintiff's Motion for Attorney Fees & Setting a Reasonableness Hearing (Doc. No. 95). Of importance here are the circumstances giving rise to the suit. Olds and Huelskamp both live on Horseback Ridge Road and Huelskamp allegedly was growing frustrated with his neighbors—including Olds—speeding in the neighborhood. On July 18, 2018, the parties were driving in opposite directions on said road. Compl. at 2, ¶ 7, Sept. 20, 2019, DV-19-1036 (Doc. No. 1). Olds alleged that Huelskamp flipped him off and that the parties then both stopped their respective vehicles. Compl. at 2, ¶ 7. At that point, Olds averred that Huelskamp exited his vehicle, approached him, and pointed a loaded pistol at his face. Compl. at 2, ¶ 7. Olds asserts that he “chided” Huelskamp for pointing a gun at him, and in response, Huelskamp struck him in the face with his fist. Compl. at 2, ¶ 7.

On November 19, 2021, a jury found that Huelskamp committed the torts of Assault and Battery against Olds. The jury awarded Olds compensatory damages in the amount of \$13,700. Additionally, after a brief post-trial punitive damages

1 hearing, the jury found that Huelskamp's conduct toward Olds was committed with
2 malice and awarded Olds punitive damages in the amount of \$75,000. Now,
3 Huelskamp moves this Court to reduce the punitive damages award and Olds moves
4 this Court to increase the punitive damages award.

5 **II. LEGAL ANALYSIS**

6 **A. Legal Standard**

7 Under Mont. Code Ann. § 27-1-221, the Court must review a jury's award of
8 punitive damages.
9

10 The judge shall review a jury award of punitive damages, giving
11 consideration to each of the matters listed in subsection (7)(b). If after
12 review the judge determines that the jury award of punitive damages
13 should be increased or decreased, the judge may do so. The judge shall
14 clearly state reasons for increasing, decreasing, or not increasing or
decreasing the punitive damages award of the jury in findings of fact
and conclusions of law, demonstrating consideration of each of the
factors listed in subsection (7)(b).

15 Mont. Code Ann. § 27-1-221(7)(c) (2021).

16 The statutory factors that the Court must consider in reviewing a jury's award
17 of punitive damages are:

- 18 (i) the nature and reprehensibility of the defendant's wrongdoing;
- 19 (ii) the extent of the defendant's wrongdoing;
- 20 (iii) the intent of the defendant in committing the wrong;
- 21 (iv) the profitability of the defendant's wrongdoing, if applicable;
- 22 (v) the amount of actual damages awarded by the jury;
- 23 (vi) the defendant's net worth;
- (vii) previous awards of punitive or exemplary damages against the
defendant based upon the same wrongful act;
- (viii) potential or prior criminal sanctions against the defendant based
upon the same wrongful act; and

1 (ix) any other circumstances that may operate to increase or reduce,
2 without wholly defeating, punitive damages.

3 Mont. Code Ann. § 27-1-221(7)(b).

4 **B. Analysis**

5 Huelskamp argues that the subsection (7)(b) factors weigh in favor of a
6 reduction to the punitive damages award from \$75,000 to \$25,000. Def.’s Br. in
7 Supp. of Mot. to Reduce at 2, Nov. 24, 2021, No. DV-19-1036 (Doc. No. 64). On
8 the other side, Olds argues that Huelskamp’s *Motion to Reduce* lacks factual or legal
9 merit, that no justification for a reduction exists, and that Huelskamp’s conduct
10 actually warrants a slight increase in the award of punitive damages to \$85,000. Pls.’
11 Resp. Br. in Opp. of Mot. to Reduce & Br. in Supp. of Mot. to Increase at 16, Nov.
12 30, 2021, No. DV-19-1036 [hereinafter Pls.’ Resp. Br.] (Doc. No. 66). To determine
13 whether the jury’s award of punitive damages should be increased, decreased, or
14 remain unchanged, the Court, pursuant to Mont. Code Ann. § 27-1-221(7)(c), will
15 consider each of the subsection (7)(b) factors and clearly state its reasoning for
16 ultimately decreasing the award in this matter. *See Marie Deonier & Assocs. v. Paul*
17 *Revere Life Ins. Co.*, 2004 MT 297, ¶ 42, 323 Mont. 387, 101 P.3d 742.

18 *i. The nature and reprehensibility of the defendant’s wrongdoing*

19
20 Huelskamp argues that the “context” of the altercation giving rise to the suit
21 decreases the reprehensibility of his wrongdoing. Specifically, he asserts that Olds
22 was the person who “first extended his middle finger, and then stopped and backed
23

1 up his truck” with the intent of engaging in a confrontation, and that “all parties agree
2 that the encounter at issue began mutually.” Def.’s Br. in Supp. of Mot. to Reduce
3 at 2. However, it is clear from the briefing that Olds does not agree with that version
4 of events, nor did the jury. In fact, Olds alleges that he “did not flip [Huelskamp]
5 off,” and that nothing in the record supports the claim that he stopped to specifically
6 engage in a confrontation. Pls.’ Resp. Br. at 4–5. Even assuming that Olds behaved
7 in a provocative fashion, nothing Huelskamp alleges would justify introducing a
8 weapon to the situation.
9

10 “A District Court’s discretion to increase or decrease a jury’s verdict is not
11 unlimited and must be supported by the statutorily prescribed criteria, by findings of
12 fact which are supported by substantial evidence, and by findings of fact which are
13 *not inconsistent with findings that are implicit in the jury’s verdict.*” *Marie Deonier*
14 *& Assocs.*, ¶ 38 (emphasis added). Huelskamp argues that “it is not possible to
15 discern what the jury believed from a series of check marks. The only thing ‘implicit’
16 in the verdict is that eight jurors believed Huelskamp caused reasonable
17 apprehension of bodily injury to [Olds] and contacted [Olds] in a harmful or
18 offensive manner.” Def.’s Reply Br & Resp. to Pls.’ Motion to Increase at 2, Dec. 6,
19 2021, No. DV-19-1036 [hereinafter Def.’s Reply Br.] (Doc. No. 70). This argument
20 is unavailing and inconsistent with Montana caselaw.
21
22
23

1 Here, under the clear and convincing legal standard, the jury found that
2 Huelskamp committed the torts of Assault and Battery against Olds and that Olds
3 was not negligent. Importantly, at trial, Olds' counsel argued to the jury that the
4 Assault was Huelskamp's use of a gun to threaten him, and the Battery was
5 Huelskamp's act of punching Olds in the face. This version of events was further
6 reflected in the jury instructions. Additionally, the jury found that Huelskamp's
7 conduct toward Olds was committed with malice and awarded Olds punitive
8 damages in the amount of \$75,000. Accordingly, because the jury found for Olds
9 based on his version of events, there are at least two findings that are implicit in the
10 jury's verdict: (1) Huelskamp committed an Assault on Olds by pointing a gun at his
11 face; and (2) Huelskamp committed a Battery on Olds by striking him in the face
12 with his hand.
13

14 Crimes marked by violence are more serious than non-violent crimes. *BMW*
15 *of North Am., Inc. v. Gore*, 517 U.S. 559, 575–76 (1996). Striking a person in the
16 face certainly qualifies as a violent crime. Further, any scenario that results in one
17 person unjustifiably pointing a deadly weapon at another—no matter what the
18 underlying context may be—unquestionably crosses the line. Accordingly, the Court
19 finds that the nature of Huelskamp's torts were extremely reprehensible. Therefore,
20 this factor weighs in favor of not changing the jury's determination of punitive
21 damages.
22
23

1 ii. *The extent of the defendant's wrongdoing*

2 The parties paint different pictures regarding the extent of Huelskamp's
3 wrongdoing. Considering the briefing in sum, the parties largely use this factor to
4 debate whether or not Huelskamp "harmed, harassed, confronted, or [] contacted Mr.
5 Olds in the past three and a half years" after the July 18, 2018 Assault and Battery.
6 Def.'s Br. in Supp. of Mot. to Reduce at 3. Huelskamp contends that was an "isolated
7 incident" in his 67 years, that he has not engaged with Olds again, and that he "has
8 learned his lesson." Def.'s Br. in Supp. of Mot. to Reduce at 3. Olds disagrees. He
9 asserts that Huelskamp continues to harass him and his family. Both parties discuss
10 two instances: (1) an August 2021 video depicting Huelskamp driving with his
11 girlfriend past Olds and his family while one or both of them flipped the Olds family
12 off; and (2) an April 2021 HOA Zoom meeting in which Huelskamp was belligerent
13 towards Olds and in general.
14

15 Again, this Court's determination must be ". . . supported by the statutorily
16 prescribed criteria, *by findings of fact which are supported by substantial evidence,*
17 *and by findings of fact which are not inconsistent with findings that are implicit in*
18 *the jury's verdict.*" *Marie Deonier & Assocs.*, ¶ 38 (emphasis added). While this
19 Court deemed the August 2021 video and the April 2021 recording inadmissible at
20 trial, the Court has reviewed it. Accordingly, the evidence supports a finding of fact
21 that Huelskamp has had negative contact with Olds since the July 2018 incident.
22 Although the Court suspects inappropriate behavior may be taking place on both
23

1 sides, and notes that Huelskamp’s criminal record was clean prior to this matter, the
2 substantial evidence reviewed by the Court supports a finding that the July 2018
3 incident—while far more egregious than anything that has taken place since—was
4 not isolated. Therefore, this factor weighs in favor of not changing the jury’s
5 determination of punitive damages.

6 *iii. The intent of the defendant in committing the wrong*

7 Huelskamp argues that his intent was to “address Mr. Olds’ repeated disregard
8 of a speed limit that nobody else can or will enforce.” Def.’s Br. in Supp. of Mot. to
9 Reduce at 3. However, Olds argues that the Assault and Battery was not prompted
10 by speeding. Instead, Olds argues that Huelskamp’s intent was to act as a “self-
11 appointed neighborhood cop entitled, after living in the neighborhood for 40 years,
12 to determine who came and went on Horseback Ridge Road.” Pls.’ Resp. Br. at 8.

14 Again, the Court relies on “. . . findings of fact which are not inconsistent with
15 findings that are implicit in the jury’s verdict.” *Marie Deonier & Assocs.*, ¶ 38.
16 Importantly, Olds testified at trial that during the July 2018 incident Huelskamp was
17 yelling at him about “not belonging up here” and saying “you don’t live up here.”
18 Pls.’ Resp. Br. at 8. By finding for Olds at trial, the Court infers that the jury
19 implicitly accepted Olds’ version of events as true. As such, the Court presumes that
20 Huelskamp’s intent was informed by his obvious dislike of Olds.
21

22 Further, whatever Huelskamp’s underlying intent was on July 18, 2018, a jury
23 found him guilty of Assault and Battery, two *intentional* torts. Accordingly, at the

1 very least, it is implicit in the jury's verdict that Huelskamp: (1) intended to cause
2 reasonable apprehension of imminent harm by pointing a gun at Olds; and (2)
3 intended to cause harmful contact with Olds by striking him in the face. This weighs
4 against Huelskamp. Also, to be clear, even if Huelskamp's intent was to address and
5 enforce the speed limit, he had no authority to do so, and his conduct unnecessarily—
6 and reprehensibly—escalated the situation into a violent one. Therefore, the Court
7 is satisfied that this factor weighs in favor of not changing the jury's determination
8 of punitive damages.
9

10 *iv. The profitability of the defendant's wrongdoing, if applicable*

11 The Court does not find this factor applicable as Huelskamp has not, and could
12 not have, profited from his confrontation with Olds.

13 *v. The amount of actual damages awarded by the jury*

14 “The Due Process Clause of the Fourteenth Amendment prohibits the
15 imposition of grossly excessive or arbitrary punishments on a tortfeasor.” *State Farm*
16 *Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003) (internal citations
17 omitted). “When an award of punitive damages can fairly be categorized as ‘grossly
18 excessive’ in relation to a state’s interests in punishment and deterrence, it enters
19 ‘the zone of arbitrariness that violates the Due Process Clause of the Fourteenth
20 Amendment.’” *Seltzer v. Morton*, 2007 MT 62, ¶ 149, 336 Mont. 225, 154 P.3d 561
21 (citing *Gore*, 517 U.S. at 417). Huelskamp argues that, while the jury awarded
22 \$13,700 in compensatory damages, “the only hard damages proved in this case were
23

1 the inflated \$3,200 in medical bills.” Def.’s Br. in Supp. of Mot. to Reduce at 5.
2 Accordingly, he argues that the ratio of “hard damages” to punitive damages is
3 approximately 23:1, making the punitive damages awarded excessive.

4 The Court takes issue with Huelskamp’s argument for two reasons. First, the
5 Court is unable to find any support for the assertion that “other damages” do not
6 constitute “actual damages” in the context of determining the compensatory
7 damages to punitive damages ratio. To the contrary, both the United States Supreme
8 Court and the Montana Supreme Court have considered the amount of emotional
9 distress, loss of course of established life, and reputational damages in determining
10 the compensatory damages to punitive damages ratio. *See, e.g., Campbell*, 538 U.S.
11 at 426; *Seltzer*, ¶¶ 93–102. Here, Olds was awarded \$13,700 in compensatory
12 damages: \$3,200 for medical costs and \$10,500 for “other damages.” Because
13 Huelskamp objected to a Special Verdict, which would have described damages in
14 specific categories, it is unclear whether the \$10,500 amount was for loss of
15 established course of life, emotional distress, expenses, or pain and suffering.
16 Accordingly, the total compensatory damages (\$13,700) should be divided into the
17 total punitive damages award (\$75,000) to determine the correct ratio. That division
18 results in a 5.474:1 ratio—not 23:1.

19 The Montana Supreme Court has upheld punitive damage awards in the 5:1
20 and 9:1 range. *See, e.g., Marie Deonier & Assocs.*, ¶¶ 37–67 (reversing the district
21
22
23

1 court's reduction of punitive damages and allowing the jury's 6.7:1 ratio to stand);
2 *Estate of Cote v. Smith-Cote*, 2019 MT 10, 394 Mont. 68, ¶ 42, 433 P.3d 221
3 (affirming a punitive damages award with a 4.38:1 ratio); *McCulley v. U.S. Bank of*
4 *Montana*, 2015 MT 100, ¶ 54, 378 Mont. 462, 347 P.3d 247 (stating that a ratio of
5 5:1 "fits comfortably within the single-digit instructive numerical guidelines.");
6 *Seltzer*, ¶ 199 (upholding a 9:1 ratio allowed by the district court). Therefore, the
7 Court is not persuaded by Huelskamp's assertion that only the "hard damages" (*i.e.*,
8 medical expenses) in the amount of \$3,200 may be used to calculate the ratio, and
9 the Court does not find that the jury's punitive damage award violates due process
10 principles as it results in a ratio within the range of ratios upheld by the Montana
11 Supreme Court.

12
13 Second, assuming *arguendo* that Olds was only awarded \$3,200 in
14 compensatory damages as opposed to \$13,700, the United States Supreme Court has
15 held that due process is not disturbed where the ratio of punitive to actual damages
16 exceeds the single digit realm in small dollar cases involving violent or egregious
17 conduct. *Campbell*, 538 U.S. at 425 (stating "because there are no rigid benchmarks
18 that a punitive damages award may not surpass, ratios greater than those we have
19 previously upheld may comport with due process *where a particularly egregious act*
20 *has resulted in only a small amount of economic damages.*") (internal citations
21
22
23

1 omitted) (emphasis added).¹ The *Campbell* Court emphasized that the precise award
2 must be based on the specific circumstances of the defendant’s conduct and the
3 resulting harm to the plaintiff, stating “[i]n sum, courts must ensure that the measure
4 of punishment is both reasonable and proportionate to the amount of harm to the
5 plaintiff and to the general damages recovered.” *Id.* In *Campbell*, the United States
6 Supreme Court found that there was a presumption against an award that had a 145:1
7 ratio. *Id.* at 426. It reasoned that the compensatory award was substantial as the
8 plaintiffs were awarded \$ 1 million for 1.5 years of emotional distress. It
9 characterized this award as “complete compensation,” and noted that the harm arose
10 “from a transaction in the economic realm, not from some physical assault or trauma;
11 there were no physical injuries” *Id.*

12
13 Here, the Court has already determined that Huelskamp’s conduct was
14 egregious. The compensatory damages in the amount of \$13,700 certainly qualifies
15 as “small dollar” when compared to the \$ 1 million award in *Campbell*. Also, unlike
16 *Campbell*, a physical assault did take place here, which resulted in physical injuries
17 to Olds, as well as him and his family experiencing feelings of insecurity in their
18 own home and neighborhood. Accordingly, even if only the \$3,200 specific to
19 medical damages was considered the total compensatory damages here, the jury’s
20 punitive damage award of \$75,000 would not violate due process principals in this
21
22

23 ¹ The *Campbell* Court went on to state that the converse is also true such that high compensatory damages may necessitate a lesser punitive damage award under the due process guarantee.

1 matter because, under the totality of the circumstances, it is reasonable and
2 proportionate. Therefore, the compensatory damages here do not “already contain
3 [a] punitive element,” and the Court is satisfied that this factor weighs in favor of
4 not changing the jury’s determination of punitive damages. *Id.*

5 *vi. The defendant’s net worth*

6 In Montana, punitive damage awards are capped at 3% of a defendant’s net
7 worth. Mont. Code Ann. § 27-1-220 (2021) (stating “[a]n award for punitive
8 damages may not exceed \$10 million or 3% of a defendant’s net worth, whichever
9 is less.”). Here, the jury’s punitive damage award of \$75,000 does not exceed the
10 statutory cap. In fact, according to Huelskamp’s own calculation, the jury could have
11 awarded up to \$85,000 in punitive damages based on his net worth as presented at
12 trial.² Def.’s Br. in Supp. of Mot. to Reduce at 6. Generally speaking, under this
13 factor, the Court is disinclined to change a jury’s award of damages so long as it is
14 within the statutory cap. Therefore, the Court is satisfied that this factor weighs in
15 favor of not changing the jury’s determination of punitive damages.
16
17

18 *vii. Previous awards of punitive or exemplary damages against the*
19 *defendant based upon the same wrongful act*

20 The record indicates that no previous punitive or exemplary damages award
21 was entered against Huelskamp based upon the same wrongful conduct (*i.e.*, Assault
22

23 ² While Olds argues that Huelskamp’s net worth was underreported and not up to date, the only
evidence with regard to his net worth is that presented at the punitive damages phase of the trial.

1 and Battery on Olds). Huelskamp argues that he is not a repeat offender and that a
2 large punitive damage award is unnecessary to deter future wrongful conduct. Olds
3 argues that, because no previous damages award exists, this factor is not relevant. A
4 party's "lack of a profit motive or a history of misconduct does not 'reduce the high
5 level of reprehensibility already established by the other aspects of [that party's]
6 misconduct.'" *Estate of Cote*, ¶ 81 (McKinnon, J., dissenting) (citing *Seltzer*, ¶ 174).
7 Here, while the Court acknowledges that Huelskamp was not motivated by profit
8 and he does not have a criminal history, it previously established that his conduct
9 was reprehensible and violent. Therefore, the Court is satisfied that this factor
10 weighs in favor of not changing the jury's determination of punitive damages.
11

12 *viii. Potential or prior criminal sanctions against the defendant*
13 *based upon the same wrongful act*

14 Huelskamp argues that he was already sufficiently punished by the "system
15 specifically designed to punish him" via criminal sanction. Def.'s Br. in Supp. of
16 Mot. to Reduce at 6. In response, Olds argues that Huelskamp was never properly
17 sanctioned in the criminal system for the act of pointing a firearm at him; rather, he
18 argues that Huelskamp's no contest plea to a misdemeanor Assault charge was not
19 a sufficient punishment, especially considering his record was expunged after
20 payment of a \$50 fine. Pls.' Resp. Br. at 14. Further, Olds argues that the jury's
21 punitive damage award reflects that sentiment. Pls.' Resp. Br. at 14.
22
23

1 In response to Olds’ argument, Huelskamp again asserts that Olds “ha[s] not
2 proven that he *did* wield a firearm . . . the special verdict form is entirely consistent
3 with a determination that ‘popping’ Plaintiff in the nose, as described by Huelskamp,
4 constituted both assault and battery.” Def.’s Reply Br. at 8 (emphasis in original).
5 As the Court previously held, it is implicit in the jury’s verdict that Huelskamp
6 assaulted Olds by pointing a gun at his face. *See Marie Deonier & Assoc.*, ¶ 66.
7 While the Court acknowledges that Huelskamp was criminally sanctioned for the
8 conduct underlying his Battery, it finds Olds’ argument persuasive: as repeated
9 several times throughout, brandishing a firearm is reprehensible and certainly
10 criminally sanctionable conduct. Further, the Court respects the jury’s determination
11 that \$75,000 was an appropriate punitive sanction for such conduct. Therefore, the
12 Court is satisfied that this factor weighs in favor of not changing the jury’s
13 determination of punitive damages.
14

15 *ix. Any other circumstances that may operate to increase or reduce,*
16 *without wholly defeating, punitive damages*

17 Under this factor, Huelskamp argues that the following should be considered
18 and weigh in favor of reducing the punitive damage award: (1) Huelskamp
19 intended to rely heavily on his expert whom the Court barred from testifying due to
20 late disclosure; (2) Huelskamp has lived on Horseback Ridge Road for 40 years
21 without similar incident; and (3) “Mr. Olds’ role in goading Mr. Huelskamp,
22 including the middle finger gesture”. Def.’s Br. in Supp. of Mot. to Reduce at
23

1 7–8. The Court agrees with Olds that the substance of Huelskamp’s argument
2 under this factor is inappropriate and without merit.

3 As to one, Huelskamp’s failure to comply with this Court’s rules on expert
4 disclosure does not justify a reduction in punitive damages—this was a discovery
5 error attributable to Huelskamp, and Heulskamp’s own testimony established that
6 he was not justified in committing the Battery. As to two, and as previously noted,
7 Huelskamp’s clean record does not take away from his violent conduct on July 18,
8 2018. *See Estate of Cote*, ¶ 81 (McKinnon, J., dissenting) (citing *Seltzer*, ¶ 174).
9 Finally, as to three, yet again Huelskamp misunderstands the findings implicit in
10 the jury’s verdict: Olds was found to be *not negligent* regarding the events on July
11 18, 2018. Accordingly, the jury did not find that Olds was in any way responsible
12 for the events on July 18, 2018, rendering the argument that Olds “goaded”
13 Huelskamp into committing Assault and Battery unpersuasive.
14

15 However, the Court does agree with Huelskamp on a matter that proves to
16 be dispositive: the goal of punitive damages. Huelskamp argues that a large
17 punitive damage award could undermine the goal of deterrence. Def.’s Br. in Supp.
18 of Mot. to Reduce at 8. As previously stated under the Court’s analysis of
19 subsection (7)(b)(v), “[w]hen an award of punitive damages can fairly be
20 categorized as ‘grossly excessive’ in relation to a state’s interests in punishment
21 and deterrence, it enters ‘the zone of arbitrariness that violates the Due Process
22
23

1 Clause of the Fourteenth Amendment.” *Seltzer*, ¶ 149 (citing *Gore*, 517 U.S. at
2 417). “To the extent an award is grossly excessive, it furthers no legitimate purpose
3 and constitutes an arbitrary deprivation of property.” *Campbell*, 538 U.S. at 417.

4 Here, although the Court finds factors i–viii weigh in favor of leaving the
5 jury’s punitive damage award undisturbed, it ultimately finds the total amount that
6 Huelskamp would be required to pay in this matter would be violative of the Due
7 Process Clause. Stated differently, the Court reiterates that it found the award of
8 punitive damages, on its own, did not violate the Due Process Clause. However,
9 the Court finds that should Huelskamp be ordered to pay the attorneys’ fees
10 ordered by the Court (\$91,300) plus the jury’s award of punitive damages
11 (\$75,000), the total amount (\$166,300), well more than 3% of his net worth, would
12 be grossly excessive as compared to the interest in punishing Huelskamp and
13 deterring him from any similar conduct. To remedy this issue, the Court orders that
14 the jury’s award of punitive damages be reduced to \$13,700. The Court feels that
15 essentially doubling the damages awarded to Olds is sufficiently punitive in light
16 of the attorney’s fees award.

17
18
19 Finally, to note, the Court finds that the award of attorneys’ fees under
20 Mont. Code Ann. § 27-1-722(4) to be punitive. The Montana Legislature added
21 subsection (4) requiring the prevailing party to receive attorneys’ fees in an action
22 where the civil justifiable use of force defense is asserted. It stands to reason that
23

1 the inclusion of that requirement is a consequence of asserting the civil justifiable
2 use of force defense. Here, that consequence has resulted in a punitive effect on
3 Huelskamp in that he must pay Olds' attorneys in the amount of \$91,300. For that
4 reason, the Court decreases the jury's punitive damage award in an effort to
5 prevent Huelskamp from being financially punished twice for the same conduct.

6 **III. Conclusion**

7 Although the Court believes factors i–viii of Mont. Code Ann. § 27-1-
8 221(7)(b) weigh in favor of leaving the jury's determination of punitive damages
9 undisturbed, factor ix supports a reduction in the punitive damage award. The Court
10 finds that factor ix is dispositive because without a reduction of the jury's punitive
11 damage award the Court believes that Huelskamp's constitutional rights under the
12 Due Process Clause would be infringed. Accordingly, the Court denies Olds' *Motion*
13 *to Increase*, grants Huelskamp's *Motion to Reduce*, and orders that the punitive
14 damages in this matter be reduced to \$13,700.
15
16

17 **ELECTRONICALLY SIGNED AND DATED BELOW**

18 cc: Carey B. Schmidt, Esq.
19 David C. Berkoff, Esq.
20 Zachary A. Franz, Esq.
21 Scott M. Stearns, Esq.
22
23

MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

MATTHEW PAUL OLDS,

Plaintiff,

vs.

Cause No. DV-19-1036

MARK HUELSKAMP,

Defendant.

Taken at 200 West Broadway
Missoula, Montana
March 2, 2021

TRANSCRIPT OF PROCEEDINGS

The Honorable Jason Marks, presiding

A P P E A R A N C E S

CAREY SCHMIDT, Esq.

DAVID BERKOFF, Esq., of Schmidt Berkoff, PLLC, 1917 S. Higgins
Avenue, Missoula, Montana 59801

appearing on behalf of the Plaintiff.

SCOTT STEARNS, Esq.

ZACK FRANZ, Esq., of Boone Karlberg, P.C., 201 West Main, Suite
300, Missoula, Montana 59807

appearing on behalf of the Defendant.

Reported by Catherine A. Rebish
Official Court Reporter
406 258-4738

NOTE: Court transcripts are the proprietary work of the
court reporter. Copies must be obtained from the reporter as
set forth in MCA 3-5-604.

1 MARCH 2, 2021

2 THE COURT: Calling DV 19-1036, Olds versus
3 Huelskamp. I got Mr. Stearns and I believe Mr. Schmidt on.

4 MR. SCHMIDT: I'm on, Your Honor. Some reason my
5 video is cut out.

6 THE COURT: That's all right. I can work with
7 that. This is on for status. I know there's a couple
8 outstanding matters, as well as we need to figure out how to
9 get this case to trial. But in terms of the outstanding
10 discovery issue that's going on, Mr. Schmidt, can you enlighten
11 me as to why you need the level of detail you seem to be
12 requesting?

13 MR. SCHMIDT: Certainly, Your Honor. You know,
14 obviously this case is largely about punitive damages. The
15 statutory elements of punitive damages require that we present
16 evidence regarding the net worth of the defendant if we are
17 going to seek those -- that amount of money. We have to be
18 prepared to present it. The hearing is meant to occur
19 immediately after the testimony and the trial basically on
20 the -- as to whether we're entitled to have it. We need to be
21 prepared to present that evidence. We can't keep a jury
22 sitting around, assuming that the jury --

23 THE COURT: I don't disagree with that, Mr.
24 Schmidt. And I certainly am willing to let you engage in
25 discovery beyond what Mr. Stearns would like you to. I am,

1 however, perplexed at the need for essentially like an itemized
2 inventory of everything as opposed to X value in real estate or
3 X value in guns or X value in jewelry. Can you tell me why you
4 would need information beyond like the total value per
5 category?

6 MR. SCHMIDT: Well, I think, certainly, I think we
7 need to be able to examine the information ourself. Obviously
8 in this case we have had a significant dispute of fact with
9 regard to a lot of things. Frankly, one party is not telling
10 the truth and one party is. We obviously contend that our
11 client is telling the truth. Because of that it makes it hard
12 for us to trust the defendant in this matter to give us that
13 information accurately. And we do not want to be misled.

14 THE COURT: How would an itemized accounting help
15 you with that problem? I mean, for all you know, he's going to
16 claim he doesn't have any of something and I guess that's where
17 I'm just confused because I do think it is a valid concern
18 about how time consuming a like detailed, itemized inventory of
19 property is going to be. So that's what I'm trying to get at,
20 Mr. Schmidt.

21 MR. SCHMIDT: Well, certainly if --

22 THE COURT: Go ahead.

23 MR. SCHMIDT: One thing that I do think is
24 important with regard to an itemized list, obviously, is the
25 guns that Mr. Huelkamp has. I think that's relevant for a lot

1 of different reasons even beyond the punitives. Certainly
2 actual real estate property is not going to be difficult for
3 him to identify, you know, I don't think we need to have, you
4 know, like every \$300 item he owns. I guess what I'm looking
5 for is we would be willing to stipulate, I guess to items other
6 than guns, you know, under a thousand dollars, something like
7 that. We could agree to something like that. But for things
8 that have a significant value that are going to be of impact to
9 his net worth, I think it is important that we be able to
10 examine that. And you are correct. It's going to be difficult
11 for us to verify, we're not asking to go through his house and
12 see what he's got, or take a debtor's exam. What we're trying
13 to do is ensure -- and I trust Mr. Stearns to make sure that we
14 have sufficient detail from his client that he's somebody who
15 is an officer of the court, is going to be involved in this
16 matter and so we can see the level of detail that I think is
17 commensurate. We can't just have him put together a list and
18 expect that to be enough. We have to have some level of
19 detail.

20 THE COURT: Well, some level of detail for high
21 value items certainly seems more reasonable. Mr. Stearns, do
22 you have any other thoughts you want to add?

23 MR. STEARNS: Well, sure. I feel like a lot of
24 this has already been discovered. For instance, Mr. Schmidt
25 was able to ask all the questions about guns that he wanted to

1 during the deposition. So I don't put a listing of guns as a
2 necessity for complying with the punitive damages statute, and
3 when I look at that, which I have before me right now,
4 27-1-220, it says an award for punitive damages may not exceed
5 \$10,000,000 or three percent of a defendant's net worth,
6 whichever is less. We've offered to provide evidence of the
7 defendant's net worth and I don't think there's anything in the
8 statute or in the caselaw that says that that requires an
9 itemization. Nor do I think in a case where, under any telling
10 of the story, the medical expenses are under \$10,000. That
11 this is a three percent of defendant's net worth case even if
12 punitive damages goes right to the jury. And of course we said
13 in our briefing that we plan on moving for a directed verdict
14 on punitive damages because we don't believe this is a punitive
15 damages case at all.

16 So I certainly want to understand where the VIN
17 diagrams overlap where he gets to put on punitive damages, we
18 provided them with the net worth, while still saving the
19 exercise of itemization between two people that live in the
20 same neighborhood and intensely dislike each other and
21 shouldn't be sharing that information with one another. There
22 is no doubt that no one wants Mr. Olds to have that kind of
23 information about them, certainly on our side of the isle. So
24 there is a happy medium here. We tried to forge it if we
25 didn't find it. We'd certainly exercise or we'd certainly

1 appreciate the direction from The Court but we don't think we
2 have heard it yet from plaintiff.

3 THE COURT: So I mean, have you provided a net
4 worth figure?

5 MR. STEARNS: No, we've offered to do that with
6 The Court's guidance in the briefing. So the way I look at
7 it --

8 THE COURT: All right. So let me stop you there,
9 Mr. Stearns. How do you propose going about generating that
10 net worth figure?

11 MR. STEARNS: We would just look at the real
12 estate, you know, asset minus liability then there's the net
13 worth.

14 THE COURT: I think you got more than real estate
15 in question. I don't know what your client has. For all I
16 know he has a chest of gold buried in his backyard. Right. I
17 mean, we can't just stop at what the real estate is worth.
18 Certainly that's one component of it but you're going to have
19 to go beyond that.

20 MR. STEARNS: Understood. So trucks, motorcycles,
21 outbuildings.

22 THE COURT: Guns.

23 MR. STEARNS: Campers, stuff like that, I agree
24 that that's more than just the real estate. But yes, that
25 would be part of the net worth analysis. The worth of every

1 going to quite get you there. So I will need you and your
2 client to, if there are collectibles, for instance, provide
3 some information about how you arrived at the valuation. Does
4 that make sense?

5 MR. STEARNS: I believe so. We're not going to
6 have to go out and get a coin collection value. It would be, I
7 guess, how he values those types of things or are you asking --

8 THE COURT: So this is, once again, I'm just going
9 hypothetically here, because I have no idea what your client
10 has. But certainly, collectors I know have an idea of what
11 their collection is worth that is more than just the face value
12 of the items. I mean, I know somebody that collects fountain
13 pens, for crying out loud, and the value of the fancy old pen
14 in question is not 30 bucks or something, that it was purchased
15 for back in, you know, whenever. So what I'm trying to avoid
16 here is in the event there is valuable property that's not --
17 doesn't have a value on its face, I don't want any shenanigans
18 with valuation of it. Does that make sense?

19 MR. STEARNS: It does.

20 THE COURT: I want a good faith effort at valuing
21 the property and then if Mr. Schmidt is unhappy we will
22 readdress this.

23 MR. STEARNS: Can I ask one caveat with regard to
24 that, Your Honor?

25 THE COURT: Sure.

1 gun, and I can't remember exactly everything that was on the
2 itemized list, but it was -- it was way beyond what would be on
3 a net worth that would be required, for instance, from a bank
4 if you were going into a bank, saying, hey, I'd like to see if
5 I qualify for a mortgage.

6 THE COURT: All right. So here's what we're going
7 to do on this net worth issue. Mr. Stearns, I want you to
8 provide, first of all, what your client's net worth is, as we
9 discussed, and then provide Mr. Schmidt information about how
10 you arrived at that number, what the real estate value is, what
11 the value of his gun collection is, all those things. And
12 then, Mr. Schmidt, if you have concerns about the validity of
13 any of that, I'm happy to wade into the weeds on this. But I
14 think we need at least initial disclosure and I don't think an
15 exhaustive itemized list is reasonable for what we're trying to
16 accomplish here. But I'm happy to go beyond what I'm directing
17 right now. I just, at least want you to get that first piece
18 and see how satisfied or unsatisfied you are with that.
19 Certainly, Mr. Stearns, if your client does have a coin
20 collection or something that may require more detail in terms
21 of how you arrived at the valuation for what it's worth. If he
22 has got some -- I'm just throwing this out there as an example
23 because I have no idea what he may or may not collect, if he
24 has some rare penny that's actually worth a hundred dollars, I
25 mean, it's not just putting it down that it's a penny isn't

1 MR. STEARNS: I think this was in the briefing as
2 well, but we essentially asked that it be effectively under
3 seal. So it's one thing for Mr. Schmidt to have it, it's
4 another thing for Matt Olds to have it. Is there a happy
5 medium that can be forged there that I can communicate to my
6 client?

7 THE COURT: Is there something in particular
8 you're concerned about?

9 MR. STEARNS: Well, these two individuals -- and I
10 think Mr. Schmidt would admit to this as well -- just don't get
11 along at all. And there's certain things that are fairly
12 private. And let's use the guns for instance. I don't think
13 that Mark Olds, if I were to ask him right now, or Mark
14 Huelskamp, if I were to ask him right now, would want Matt Olds
15 to know anything about coin collections, what kind of coins he
16 has, what kind of guns he has, those types of things, just from
17 a personal safety standpoint. Matt Olds I think has personal
18 safety concerns about Mark Huelskamp. So it's a two-way
19 street. I feel like a net worth number can be achieved between
20 counsel without inflaming a situation between two gentlemen
21 that aren't getting along with one another and probably won't
22 after this lawsuit ends as well.

23 THE COURT: Well, I certainly think Mr. Schmidt's
24 client is entitled to the net worth number and how that was
25 arrived at. I think he has to have some input as to whether he

1 has concerns about it. But I think the fact that I'm not
2 currently requiring any sort of itemized breakdown is
3 sufficient to ensure your client's privacy. And obviously real
4 estate and his vehicles are public record.

5 MR. STEARNS: Yeah.

6 THE COURT: So that is what it is. But I don't
7 think we really need to get into any sort of protective order
8 until the point where there's an issue where we're getting into
9 an itemized breakdown.

10 MR. STEARNS: Understood. I think that works.

11 THE COURT: I know there's also motions in limine
12 outstanding. I would generally tell the parties that absent
13 somebody opening the door, I'm going to exclude all the
14 character evidence and would exclude the guilty plea that went
15 along with the deferred sentence in Justice Court as I don't
16 think any of that is currently admissible. I will issue a
17 written order to cover everything before trial in this case
18 just so everybody is crystal clear. But for counsel's planning
19 purposes that's my broad brush take on the motions in limine.

20 MR. STEARNS: Thank you, Your Honor.

21 THE COURT: Let's talk about trial. Gentlemen, as
22 you know we have got this ongoing issue of criminal defendants
23 sitting in the jail taking up my trial slots because that's the
24 way it has to be. I do have this summer, one in June and one
25 in August. I have two, two-week trial settings because my

1 first setting cases on both of those are homicide cases that
2 are projected to last two weeks if they go to trial. Would you
3 be interested in being the backup on a second week so if the
4 homicide cases don't go to trial I can try a different criminal
5 case the first week and then have your case the second week?

6 MR. SCHMIDT: Yes, I think we could be talked into
7 that, Your Honor. Thank you.

8 MR. STEARNS: Yeah, I think that's fine. The
9 month of June does not look fine but everything else that you
10 were talking about sounds fine.

11 THE COURT: Well, if the month of June doesn't
12 look fine then we're looking at August. Because that's my
13 other two-week setting.

14 MR. SCHMIDT: Your Honor, which weeks in August
15 are we talking about?

16 THE COURT: So you would have -- I have to get on
17 the right month of my calendar. You would have the week of
18 August 16th or however much of that week you needed.

19 MR. SCHMIDT: Okay. I think I can -- I might have
20 to push a vacation but that's okay. We'll take it.

21 MR. STEARNS: The one thing I'll say is I'm
22 delivering a kid to college. I don't know what week it is but,
23 boy, that -- if it's right around there, would we be talking
24 about August 16, 17, 18 or would we be talking about August 18,
25 19, 20?

1 THE COURT: I would project 16, 17, 18.

2 MR. STEARNS: At the risk of delivering someone to
3 college, hopefully that's better than the end of the week but
4 let's cross our fingers.

5 THE COURT: All right. So I will tentatively put
6 you guys down for trial starting on August 16th. As I said,
7 and I'll have a follow-up hearing before then because we're
8 going to have to talk about how to pick a jury because that's
9 going to be a complication. And the clerk's office, I think is
10 already getting their torches and pitchforks ready as I'm
11 saying this, but we do have to work out some logistics as we
12 get closer. But I don't want to do all of that before I know
13 if you guys are going to actually get your trial to go. So
14 that's the trial setting. I'm going to put you on for a status
15 in this case on Tuesday, July 6th at 3:00 o'clock. And we'll
16 hash out some trial issues at that point.

17 MR. STEARNS: Thank you, Your Honor.

18 MR. SCHMIDT: Thank you Your Honor.

19 THE COURT: All right. Anything else you need me
20 to deal with today?

21 MR. STEARNS: No. In terms of the rulings you
22 said there will be some order following up?

23 THE COURT: On the motions in limine, yes, I feel
24 like I have discussed the discovery issue adequately but there
25 will be a written order just so everybody is totally clear

1 going into trial, but in terms of your trial prep or to the
2 degree it influences settlement negotiations, I wanted you to
3 have my big picture take on the issues you guys were briefing.

4 MR. SCHMIDT: Thank you, Your Honor.

5 THE COURT: And I don't imagine you'll get a
6 written order until June or so, just so you know.

7 MR. STEARNS: The only reason why I ask that is,
8 for instance, as to the expert witness issues involving Sean
9 Paul, I might need to be talking to people about their
10 availability for those trial dates but I'll let people know
11 about the trial dates regardless.

12 THE COURT: Okay. And I recognize it is a
13 monumental inconvenience for everyone to be a backup. But if,
14 with experts you can't have a backup date, let me know and I
15 think we're going to be coming to the end of COVID trial
16 settings this year and I'll be in a position to give you a
17 dedicated civil trial setting but it's probably going to be
18 January or so before we're there. So if you gentlemen talk and
19 that's something you'd rather have rather than being kind of in
20 limbo behind a criminal case that very well may go, I'm happy
21 to accommodate that, too, but I'll let you guys discuss that
22 and get back to me if that's something you'd rather have.

23 MR. SCHMIDT: Okay. Judge Marks, with regard to
24 the expert witness, currently there is a Motion to Exclude. Do
25 you have any thoughts, at least initial thoughts whether that's

1 going to be granted or denied?

2 THE COURT: I think that is probably going to be
3 denied. But I actually -- that's one I have to sit down and
4 work through a little bit more but I'm leaning toward denying
5 that.

6 MR. SCHMIDT: Okay. Great. Thank you, Your
7 Honor.

8 THE COURT: All right. Thank you both.

9 MR. STEARNS: Thank you.

10 (Whereupon, the hearing was concluded.)

11 * * * * *

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 ordered to pay additional court costs. This is where I have to
2 do math; a \$10 fine and \$85 surcharge and a fine in the amount
3 of \$50,000 (sic). So \$235 worth of surcharges on top of the
4 restitution. You can also take judicial notice of it because
5 the way Montana's criminal procedure code works, he was not
6 charged at the time with assault with a weapon or anything else
7 related to the pistol and cannot now be charged with that now
8 in the future.

9 MR. STEARNS: Thank you, Your Honor.

10 THE COURT: And during discovery counsel
11 established Mr. Huelkamp's net worth, which is relevant to
12 this. Who will provide that to the jury?

13 MR. STEARNS: I have two extra copies if I give
14 them both then I'm struggling a little bit, so just the one,
15 Your Honor?

16 THE COURT: Just the one is fine.

17 MR. STEARNS: Okay.

18 THE COURT: With that, I will have counsel make
19 brief argument with regard to appropriate punitive damages in
20 this case. I will send you down to discuss that. As I said,
21 you can let Darcy know if you want dinner and I will create a
22 punitive damages verdict form to send down to you for you to
23 fill out. With that, let's go to plaintiff.

24 MR. BERKOFF: Your Honor, I'd like to clarify
25 something. Did I mishear you when you said the fine was

1 \$50,000 or \$50?

2 THE COURT: \$50.

3 MR. STEARNS: He didn't say \$50.

4 THE COURT: If I said 50,000 I totally misspoke.
5 \$50. For a total of \$235 in court charges. I apologize. It's
6 been a long day. Thank you for catching that.

7 MR. BERKOFF: Do we need to lay any foundation for
8 the net worth?

9 THE COURT: You both stipulated to that as
10 provided in discovery, correct?

11 MR. SCHMIDT: It was provided in discovery but we
12 don't think it's accurate, Your Honor.

13 THE COURT: Well, unless you have information to
14 contradict it.

15 MR. SCHMIDT: We do.

16 THE COURT: All right. Well, then make your
17 argument.

18 MR. BERKOFF: Your Honor, how do we want to do
19 this? You want me to put a witness on the stand?

20 THE COURT: Sure.

21 MR. BERKOFF: Plaintiff calls Mr. Huelskamp.

22 THE COURT: If you'd come forward and be sworn.
23 Thereupon,

24 MARK HUELSKAMP,

25 a witness of lawful age, having been first duly sworn to tell

1 the truth, the whole truth, and nothing but the truth,
2 testified upon his oath as follows:

3 EXAMINATION

4 BY MR. BERKOFF:

5 Q. Mr. Huelskamp, do you have in your hand your financial
6 statement that you signed on April 20th, 2021 according to the
7 second page, correct?

8 A. Yes.

9 Q. And on the first page you note in your real estate
10 assets a value of the properties, your lot, your Maxville
11 property and your primary residence from 2018, correct?

12 A. Yes.

13 Q. You would agree with me that the value of real estate
14 in Western Montana has gone up significantly since 2018?

15 A. Yes, it has.

16 MR. STEARNS: Your Honor, my objection is as it
17 says of July 18, 2018 is self-explanatory here in terms of when
18 this happened.

19 THE COURT: I would agree.

20 MR. STEARNS: This entire line of questioning is
21 inappropriate under the law.

22 THE COURT: And Mr. Berkoff, I completely
23 understand where you're going with this but unless you have a
24 market analysis from a real estate agent we're going to go with
25 the number as of 2018.

1 MR. BERKOFF: Then I think we have nothing
2 further.

3 THE COURT: All right. You can go ahead and step
4 down. All right. So let's go to argument regarding punitive
5 damages.

6 MR. BERKOFF: Thank you, Your Honor. You know the
7 case. You know the facts. I'm not going to keep you here for
8 a long time. You heard what happened in the criminal matter.
9 Mr. Huelkamp got a slap on the wrist for pulling a gun on
10 someone. That's not fair. We ask that you do something and
11 send him a message and make this right. Thank you.

12 MR. STEARNS: I told you in voir dire that I
13 learned a lot about sitting on a jury from my wife having sat
14 on one in April. And she told me how annoyed she was when she
15 came back from that experience that she didn't get to find out
16 the rest of the story. You're in the interesting position here
17 today because of the type of verdict and the way that you
18 answered the questions that you actually do get to hear the
19 rest of the story when jurors don't normally get that
20 opportunity.

21 This was not a slap on the wrist situation. This
22 was extensively investigated. The county attorney's office
23 looked at it to far more of an extent after Deputy Sullivan.

24 MR. BERKOFF: Objection, Your Honor.

25 THE COURT: I'm going to allow the argument.

1 MR. STEARNS: After the Deputy County Attorney got
2 to speak to both parties, the deputies, there was a
3 determination no probable cause to charge anything with regard
4 to felony assault with a weapon, a much lower standard than the
5 clear and convincing standard that you were grappling with --

6 THE COURT: Mr. Stearns, I'm going to stop you on
7 the prosecutorial decision making because that is not an
8 accurate reflection of how that works.

9 MR. STEARNS: With regard to the prosecution,
10 though, the charge was misdemeanor assault. The suggestion in
11 closing argument was this was all about guns and avoiding a
12 felony assault with a weapon. That was never the case at all.
13 This particular situation Mr. Huelskamp didn't even hire an
14 attorney on the criminal defense --

15 MR. BERKOFF: Objection, facts not in record.

16 THE COURT: I'm going to allow it. Just go ahead,
17 Mr. Stearns.

18 MR. STEARNS: He didn't hire an attorney. He met
19 with the prosecutor, Caitlin Williams, talked it through,
20 agreed to pay the medical expenses. Those numbers were the
21 precise numbers by the way, the numbers that the judge detailed
22 for you, the dollars and cents, why you didn't get the bills.
23 He stood up to this and agreed to it throughout the process.
24 This wasn't someone who was shirking responsibility at any
25 point. It wasn't someone who wasn't feeling bad about the

1 situation, as he said during his deposition, I didn't want
2 anyone to get hurt. That was never my intent. And people
3 understood that at the time. He has thought about this every
4 day since, both in the criminal context and now today. He
5 appreciates your jury service. We appreciate your jury
6 service. But it would be inappropriate to go again, as the
7 juror said, the potential juror on Wednesday, what does money
8 solve in these situations? It's not going to help them be
9 better neighbors up there. I hope what we have today is
10 closure and that everyone can move on with their lives starting
11 first thing tomorrow. Mr. Huelskamp pledges to do that.
12 Please recognize what Montana law is about doing things that
13 include the nature, the intent, the amount of actual damages,
14 follow the jury instructions.

15 This is not an Enron type situation. It was never
16 meant to turn into what it's turned into here. Mr. Huelskamp
17 is sorry. He's been sorry from the get-go, which is why he did
18 what he did at the criminal level. And it's why he said sorry
19 again, when he was sitting in that chair yesterday. He
20 appreciates your jury service. We all do. Thank you for,
21 again, your service.

22 THE COURT: All right. Folks, go ahead with Darcy
23 back down to the jury room. I will have a separate verdict
24 form with you shortly.

25 (Jury exits.)