IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0165

STATE OF MONTANA,

Plaintiff and Appellee,

v.

BRUCE SCHRODER,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eighteenth Judicial District Court,
Gallatin County, The Honorable Peter B. Ohman, Presiding

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ISSUE PRESENTED

Whether the district court correctly imposed restitution based on substantial evidence.

STATEMENT OF THE CASE

The State charged Appellant Bruce Schroder with felony criminal mischief, in violation of Mont. Code Ann. § 45-6-101(1)(a), alleging that Schroder damaged Jamie Hauge's vehicle when he ripped off the Uber sign from her car door, causing over $1,500 in damage. (Doc. 3.)

The State offered to resolve the case by agreeing to amend the Information to misdemeanor criminal mischief and further agreeing to recommend a six-month deferred sentence. (Doc. 47, State's Ex. 1.) The offer was contingent on Schroder agreeing to "pay restitution in whole in any amount determined by the Court through a restitution hearing[.]" (*Id.)* More restitution conditions were specified:

> 5. The Defendant may argue for a different sentence that he feels is appropriate. However, the requirement to pay restitution in the amount determined by the Court after the contested restitution hearing is a jointly recommended condition.
>
> **6. The Defendant also recognizes that restitution may be order[ed] in an amount exceeding the $1500.00 misdemeanor amount. Through this plea agreement the Defendant is agreeing to pay restitution in any amount determined by the Court, up to the $4,930.07 as requested by Jamie Hauge.**

(*Id*., emphasis in original.) The offer was open until October 22, 2021. (*Id*.) On that date, Schroder moved to set a change of plea hearing, explaining that the "State and the Defendant have reached an agreement regarding the resolution of this matter." (Doc. 45.)

Accordingly, the State filed an Amended Information charging Schroder with misdemeanor criminal mischief, Schroder signed an Acknowledgement and Waiver of Rights by Plea of Guilty,[1] and, after affirming his understanding of all the documents associated with his plea, Schroder pleaded guilty to misdemeanor criminal mischief. (Docs. 48-49; 11/9/21 Tr. at 1-6.)

The district court accepted the guilty plea and sentenced Schroder to a 6-month deferred sentence. The court further ordered Schroder to pay $1,854.20 in restitution and a restitution fee of $185, for a total financial obligation of $2,039.20. The court allowed Schroder to pay in $340 per month installments in the 6-month period. (Doc. 62 at 5-6.)

[1]In this document, Schroder further initialed and affirmed that "I may be required to pay restitution and court costs and assessments provided by law." (Doc. 49.)

STATEMENT OF THE FACTS

I. The offense

On November 23, 2019, after the Cat-Griz game, Schroder was attempting to get an Uber in downtown Bozeman, but some college women took the vehicle he requested, driven by Hauge. (9/9/21 Tr. at 6-8.) As Schroder explained at the change of plea hearing, he "pulled the magnetic [Uber] sign off the side" of Hauge's vehicle, and then "walked around the car [banging sounds were made by the Defendant]." (*Id*. at 7.) Then, walking to the other side of the vehicle, Schroder "pulled the door sign—the magnetic sign—off that side of her car, too." (*Id*.) Schroder saw a police officer standing nearby, handed over the Uber signs, and offered to pay for them.[2] The officer confirmed Schroder's identity and told him to leave the area. (*Id*. at 7-8.)

II. The change of plea

During the change of plea, Schroder admitted, "I did damage to the car." (*Id*. at 11.) The Court further inquired:

> **COURT**: When you pulled off the Uber sign, you damaged the vehicle, correct?
>
> **SCHRODER**: Yes, sir.

[2]While Schroder repeatedly testified he pulled two signs off, the victim Hauge testified at sentencing that he tore only one sign off.

COURT: And you knew what you were doing when you pulled the Uber sign off, correct?

SCHRODER: I knew what I was doing.

(*Id*.)

Next, defense counsel explained there was a possible restitution issue as to the extent of the damage to the vehicle. Defense counsel explained that Schroder was only "acknowledging that he caused the damage by removing the sign[,]" not from any other damage alleged. (*Id*. at 12.) The district court agreed, explaining that the Information only charged, and Schroder only pleaded to, pulling off the Uber sign and "causing several scratch marks on the [vehicle]," not any additional scratches independent of damage from the removal of the Uber signs. (*Id*. at 13.)

III. The sentencing/restitution hearing

Hauge testified at the restitution/sentencing hearing about the damage done to her car by Schroder. (2/15/22 Tr. at 6.) She explained an estimate from Ressler Motors which assessed the damage at $4,930.07, including the total cost of the vehicle damage at $3,974 and the estimate for a rental car for 10 days at $956.07. (*Id*. at 9-10.) Hauge explained that Schroder originally went to the front of her vehicle and was attempting to rip off her license plate, and then went to the back of the vehicle and started "pounding on the back of my car." (*Id*. at 12-13.) Hauge admitted she "wasn't able to see what he was doing" behind her vehicle but

discovered the additional damage the next day. (*Id*. at 13.) She also testified about the scratching damage caused by removal of her Uber sign. (*Id*. at 15-16.)

The district court explained:

> Mrs. Hauge, this has been the problem for me in this case. So the State decided to file an amended information here, so they changed the charge from a felony to a misdemeanor. Then, they just said—in the amended information—that he caused damage to your vehicle by ripping an Uber magnetic sign off and causing several scratch marks to your vehicle. So what I'm left with is that—and then, when we did his—when he pled guilty, he said he damaged your car when he pulled the Uber sign off, and he knew what he was doing when he pulled the Uber sign off. That's what he pled to. Then, I asked the State later that—you know, I said he's just admitting to pulling off the Uber sign. Then, I said that I'm limited to what I can do here because all he's pled to is pulling off the Uber sign. The State said that's the way that it's charged. That's what I have to work with here. I don't have all these other damages that he's admitted to, and the State was okay with that. I'm just letting you know what I can do here today. I'll try and figure out what I can do for restitution, but that's the way that the case ended up in front of me. All right?

(*Id*. at 21-22.) Hauge affirmed she understood and further explained that the only Uber sign that Schroder took off was from the passenger side door. (*Id*. at 22.)

For his part, Schroder affirmed that he received $1,397 in monthly government benefits as his income, and his rent was approximately $500 per month. (*Id*. at 25.) He offered that he didn't "save anything" from his paychecks. (*Id*. at 25-26.)

During argument, defense counsel contested the $4,930.07 amount requested by the State, explaining that Hauge could not tell what Schroder was doing in the

back of the vehicle, thus there was no real explanation for the scratching damage back there, even with Schroder's and Hauge's account of "banging" on the back of the vehicle. (*Id*. at 31.) Defense counsel argued that if "the $5,000 [requested by the State] were ordered, the Court has six months of jurisdiction over this Defendant, and that would require, approximately, $830 a month to be paid." (*Id*. at 33.) Defense counsel argued that this case was like *State v. Lodahl*, 2021 MT 156, 404 Mont. 362, 491 P.3d 661, where the defendant was in a "dire" financial situation and didn't have the ability to pay. (*Id.)*

The State countered that the $4,930.07 restitution amount could be imposed pursuant to the plea agreement. The State argued a "causal relationship" existed between Schroder's conduct and the additional scratches and damage to Hauge's vehicle. (*Id*. at 34.)

The district court ruled it would only assess damage related to Schroder's ripping off of the Uber sign. (*Id*. at 38.) Accordingly, the district court calculated the labor from the car company assessing the damage and the scratching damage on the passenger door from the Uber sign. (*Id*. at 39.) Then the court reduced the rental rate estimate to 1/3 of its original estimate, bringing the total restitution to $1,854.20. (*Id*. at 39-41.)

Next, the State then fulfilled its promise from the plea agreement and summarized its proposed recommendations for sentence. (*Id*. at 41-42.) As part of its recommendations, the State explained that Schroder should "pay the restitution that the Court has just determined[.]" (*Id*. at 41.) Defense counsel responded, "Your Honor, we would agree with that recommendation. That was the joint recommendation in the plea agreement." (*Id*. at 42.)

The court explained that it believed it had "come up with a restitution figure that accurately reflects what [Schroder] pled to. While that's less than what Mrs. Hauge was seeking, it is what the Court had in front of it, with respect to evidence and, also, with respect to his allocution. The Court is comfortable with that restitution amount." (*Id*. at 43.) The Court continued:

> The Defendant shall pay the following—I'm going to waive the fees here and just have him pay restitution.
>
> Really, Mr. Schroder, I could order you to pay all these court fees and order you to pay for [defense counsel's] representation, and everything like that. I know you disagree with what the restitution is, but I think I also adjusted it fairly. So I want you to pay the restitution, and that's a priority here. How much money—you have—so your total financial obligation to the court is $2,039.20. You have six months to pay that off. You can do time payments, but you're going to have to get it done here in six months, so you would have to pay $340 a month. That's what I'm going to order because that's how much time we have for you to pay it off. When do you think you can make the first payment, and just pay as much as you can as quickly as you can?

(*Id*. at 44.) Schroder testified he could do $100 a month. (*Id*. at 45.) Next, defense counsel backtracked from the joint restitution recommendation, arguing again that *Lodahl* applied, explaining:

> That was an extreme example where Ms. Lodahl had very, very, very little income—I think less than Mr. Schroder has—and her restitution was far higher. But I think that it still applies, and the monthly payment—Mr. Schroder testified he can't work. He's disabled, so he receives $1,300.[3]

(*Id*. at 46.) The district court explained he had no further information about Schroder's assets and further clarified that he was not ordering payment out of Schroder's SSI benefits. (*Id*. at 46-47.) The court continued:

> The Court believes that it can order this and is doing so. Also, the Court's not garnishing his wages, or anything like that. I know the Court needs to consider an ability to pay for restitution. This came in at a restitution amount of $4,900. He got a restitution amount of $1,854 plus a restitution fee of $185, so that's [the] sentence of the Court here today.

(*Id*. at 47.)

SUMMARY OF THE ARGUMENT

The record shows that the district court properly found the restitution amount by a preponderance of the evidence after considering the car company's estimates in conjunction with Hauge's testimony. Additionally, after considering

[3]Schroder testified he actually receives a total of $1,397 per month (2/15/22 Tr. at 25.)

Schroder's ability to pay, the district court correctly imposed $340 monthly payments for the duration of Schroder's six-month sentence. Schroder has not established any error. This Court should affirm the district court's restitution order.

STANDARD OF REVIEW

Restitution orders present mixed questions of law and fact, which this Court reviews de novo. *State v. Cleveland*, 2018 MT 199, ¶ 7, 392 Mont. 338, 423 P.3d 1074. The Court reviews the appropriateness of imposing restitution for correctness and the district court's findings regarding the amount of restitution to determine whether they are clearly erroneous. *Cleveland*, ¶ 7; *State v. Pierre*, 2020 MT 160, ¶ 10, 400 Mont. 283, 466 P.3d 494 (restitution orders are reviewed for compliance with Mont. Code Ann. §§ 46-18-241 through -249). This Court finds clear error where the findings are not supported by substantial evidence. *State v. Dodson*, 2011 MT 302, ¶ 8, 363 Mont. 63, 265 P.3d 1254. Evidence is substantial if "a reasonable mind might accept it as adequate to support a conclusion." *Id.* (citation omitted).

ARGUMENT

I. The district court properly found, by a preponderance of the evidence, the damage to Hauge's vehicle.

Schroder raises a non-issue in arguing insufficient evidence existed to support restitution for damage to the back of Hauge's vehicle. (Appellant's Br. at 28-30.) As to the actual damage, the district court repeatedly stated it was only considering the scratching damage from Schroder ripping off the Uber sign on the side passenger door. The court did not include in its restitution award any other possible damage.

To the extent Schroder argues that the amount of restitution actually determined was not proved by a preponderance of the evidence based on the Ressler car company's estimate in conjunction with Hauge's testimony, such a claim is waived. Any such claim raised on appeal challenging the actual pecuniary loss assessed neither challenges the facial legality of Schroder's restitution obligation, nor the facial constitutionality of the authorizing restitution statutes. Thus, the claim is unpreserved without exception. *See* Mont. Code Ann. §§ 46-18-201(5), -241(1); *State v. Thibeault*, 2021 MT 162, ¶ 9, 404 Mont. 476, 490 P.3d 105 ("[U]npreserved assertions of error that a particular sentence or sentencing condition was either facially illegal (i.e., of a type or character not authorized by statute or otherwise in excess of the statutorily authorized range or

limit for that type of sentence or condition), or facially legal but authorized by a facially unconstitutional statute, are subject to review for the first time on appeal."); *State v. Lenihan*, 184, Mont. 338, 343, 602 P.2d 997, 1000 (1979) ("better rule [is] to allow an appellate court to review any sentence imposed in a criminal case, if it is alleged that such sentence is illegal or exceeds statutory mandates, even if no objection is made at the time of sentencing.").

The claim would also fail on the merits. When a PSI is not requested, the court shall accept evidence of the victim's loss at the time of sentencing. *See* Mont. Code Ann. § 46-18-242(2). Courts may use reasonable methods based on the best evidence available to calculate uncertain pecuniary losses. *Dodson*, ¶ 12 (citations omitted). These methods include a reasonably close estimate of the loss. *State v. Benoit*, 2002 MT 166, ¶ 29, 310 Mont. 449, 51 P.3d 495. District courts may rely upon a victim's estimate of loss to determine the level of restitution. *State v. Hill*, 2016 MT 219, ¶ 11, 385 Mont. 486, 380 P.3d 748. Here, the district court calculated Schroder's restitution obligation using reasonable methods based on the best evidence available. There was more than a preponderance of the evidence, including Hauge's testimony and the estimate from the car company— to establish the $1,854.20 in damage, including the district court's examination of the material cost of fixing damage relating to Schroder's

tearing off of the Uber sign, along with a calculation based on a rental car assessment and labor costs.

II. Schroder's argument that a PSI containing an offender's list of assets was required in this case fails.

Schroder acknowledges he was convicted of a misdemeanor but argues that this Court should "apply the laws mandating an assessment of the Appellant's assets prior to sentencing [for felonies]." (Appellant's Br. at 33.) Schroder additionally contends that the district court should have "stop[ped] the sentencing hearing and reset it for another time[,]" to order a Presentence Investigation Report (PSI) with a list of assets, notwithstanding he never objected or raised any issue with the district court. (*Id*. at 35.)

Like his first-raised issue, this claim is waived. This Court has consistently "held that a sentence is not illegal if it falls within statutory parameters." *State v. Kotwicki*, 2007 MT 17, ¶ 13, 335 Mont. 344, 151 P.3d 892. As this Court stated in *Kotwicki*, "a sentencing court's failure to abide by a statutory requirement rises to an objectionable sentence, not necessarily an illegal one that would invoke the *Lenihan* exception." *Id.* Schroder's claim that the district court failed to follow a statutory directive raises a potentially objectionable sentence, thus his claim is not applicable for *Lenihan* review on appeal.

The claim would also fail on the merits. First, a PSI specifically containing a list of the offender's assets was never requested. A PSI is only completed "if requested pursuant to 46-18-111[.]" Mont. Code Ann. § 46-18-242(1). It is well-settled that when there is no presentence investigation, as in the present case, "'the court shall accept evidence of the victim's loss at the time of sentencing.'" *State v. McClelland*, 2015 MT 281, ¶ 10, 381 Mont. 164, 357 P.3d 906 (quoting Mont. Code Ann. § 46-18-242(2)); *State v. Dodge*, 2017 MT 318, ¶ 9, 390 Mont. 69, 408 P.3d 510.

Second, from the point of the change of plea to the restitution/sentencing hearing, Schroder was never subject to any felony offense, thus a PSI containing a list of assets was not statutorily required. Under Mont. Code Ann. § 46-18-111(1), a PSI is only completed "[u]pon the acceptance of a plea or upon a verdict or finding of guilty to one or more *felony* offenses, except as provided in subsection (1)(d)[.]" (Emphasis added.) Indeed, "[t]he district court may order a presentence investigation for a defendant convicted of a *misdemeanor only* if the defendant was convicted of a misdemeanor that the State originally charged as a sexual or violent

offense as defined in 46-23-502." Mont. Code Ann. § 46-18-111(2) (emphasis added.)[4]

Third, the mere fact that there was a restitution hearing on a misdemeanor did not require a PSI be prepared when Schroder specifically agreed to pay restitution in his plea agreement. Under Mont. Code Ann. § 46-18-111(1)(d), a PSI is required "if the defendant is convicted of a crime for which a victim or entity may be entitled to restitution, and the amount of restitution is not contained in a plea agreement[.]" Mont. Code Ann. § 46-18-111(1)(d). Subsection (1)(d) does not apply here because Schroder agreed "**that restitution may be order[ed] in an amount exceeding the $1500.00 misdemeanor amount. Through this plea agreement the Defendant is agreeing to pay restitution in any amount determined by the Court, up to the $4,930.07 as requested by Jamie Hauge."** (Doc. 47, Ex. 1, emphasis in original.) And, as part of his bargained for exchange, Schroder repeatedly affirmed that the restitution decided by the court would be a joint recommendation.

[4]Schroder's argument that a misdemeanor should be treated as a felony because the State "was originally seeking restitution of $4,930.07" is beside the point. Schroder tendered a guilty plea to a misdemeanor and the district court had declined to impose the amount the State requested to the extent it went beyond the damages from the actual ripping off of the Uber sign.

III. The district court properly imposed restitution after considering Schroder's ability to pay.

A. The issue of ability to pay is not properly before this Court.

The issue of whether the district court properly found Schroder had an ability to pay is not before this Court. First, Schroder agreed in his plea agreement that he would "pay restitution in any amount determined by the Court" and that "the requirement to pay restitution in the amount determined by the Court after the contested restitution hearing is a jointly recommended condition." (Doc. 47, Ex. 1.) Here, while defense counsel contested Schroder's ability to pay the $4,930.07 amount requested by the State, the district court substantially reduced the total amount to $1,854.20. Once the district court settled on a figure, both parties were required to—and did—jointly recommend that amount as part of the sentence pursuant to the plea agreement. (2/15/22 Tr. at 41-42.) But Schroder later backtracked on the $1,854.20 agreed-upon restitution and argued that he didn't have the ability to pay even that amount. This about-face on the restitution agreement—while retaining the benefits of the State's execution of the plea agreement—was improper and does not entitle Schroder to this Court's review of his claim on appeal. *See State v. Walker*, 2007 MT 205, ¶ 16, 338 Mont. 529, 167 P.3d 879 (declining to review the merits of a restitution claim where a defendant initially expressed a willingness to pay restitution, then used that assertion to "bargain for a lighter sentence").

Moreover, the State offered, and Schroder accepted, a substantial benefit of transferring a felony charge to a misdemeanor, and Schroder received the benefit of a fully deferred sentence. The only real condition was that Schroder agree to the disposition of the restitution amount ordered by the court. "Here, defendant is trying to enjoy all of the benefits of his plea bargaining arrangement without complying with it." *Sattler*, 170 Mont. at 37, 549 P.2d at 1081. But "Defendant, having received the benefit of plea bargaining in his case, is bound thereby. The State is entitled to be assured that defendant will be held to his bargain." *State v. Pepperling*, 177 Mont. 464, 473, 582 P.2d 341, 346 (1978).

Indeed, Montana law is clear: "A person who takes the benefit shall bear the burden." Mont. Code Ann. § 1-3-212. Accordingly, this Court will not lend its assistance to a defendant in escaping the obligations of a plea bargain after accepting its benefits. *State v. Nance*, 120 Mont. 152, 166, 184 P.2d 554, 561 (1947); *Sattler*, 170 Mont. at 37, 549 P.2d at 1081; *State v. Huttinger*, 182 Mont. 50, 62, 595 P.2d 363, 370 (1979); *State v. Arbgast*, 202 Mont. 220, 224, 656 P.2d 828, 830 (1983); *State v. Koepplin*, 213 Mont. 55, 64, 689 P.2d 921, 926 (1984); *State v. Radi*, 250 Mont. 155, 162-63, 818 P.2d 1203, 1208 (1991); *State v. Reynolds*, 253 Mont. 386, 392-93, 833 P.2d 153, 157 (1992); *State v. Coggins*, 257 Mont. 440, 443, 849 P.2d 1033, 1036 (1993); *State v. Milinovich*,

269 Mont. 68, 74, 887 P.2d 214, 217-18 (1994); *State v. Johnson*, 274 Mont. 124, 907 P.2d 150, 153 (1995); *State v. Bowley*, 282 Mont. 298, 310, 938 P.2d 592, 599 (1997); *State v. Schaff*, 1998 MT 104, ¶ 28, 288 Mont. 421, 958 P.2d 682. This Court should decline to review the merits of the claim, as Schroder remains bound by his plea agreement.

B. Even on the merits, the claim would fail.

If this Court reaches the merits, the record shows that the district court engaged in a deliberative ability to pay analysis, reaching a correct result. The district court expressly stated, "I know the Court needs to consider an ability to pay for restitution." This is true because the criminal mischief statute requires the court to determine "the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution." Mont. Code Ann. § 45-6-101. Here, the district court substantially reduced the amount of restitution by appropriately limiting the scope of the damage. The district court considered Schroder's testimony about his total monthly income of $1,397 per month, and crafted a reasonable payment plan at $340 per month.

In *Lodahl*, the defendant Lodahl was a single mother of two young children. She suffered from bipolar disorder along with other mental disabilities. *Lodahl*, ¶ 7. Lodahl provided a budget which, in some monthly scenarios, her monthly income ($1,542-$1,742) was less than her expenses ($1,628, which included

internet, car payments, and phone payments). *Id*. The district court concluded that Lodahl nonetheless had disposable income because she paid for her son's phone, the internet, and an auto payment. *Id*. ¶ 27. The court ordered Lodahl to pay $6,152.49 in restitution in five months. *Id*. ¶ 10. This equates to $2,239.45 per month.

This Court reversed, explaining that having a phone, internet, and transportation are necessary to "interact and work with her children" by using internet for school, the phone to maintain contact for lack of daycare, and transportation to take the children to school. *Id*. ¶ 27. This Court reasoned that the district court was "absurd" for concluding that Lodahl could pay restitution from a small sliver of disposable income, which was not disposable because it was a necessary expense. *Id*. Accordingly, because Lodahl was in a "dire financial situation," the district court failed to appropriately waive restitution as unjust under the circumstances. *Id*.

Citing *Lodahl*, Schroder argues the district court was "equally absurd" in ordering restitution given the information before the court. (Appellant's Br. at 39.) But this case is not like *Lodahl*, where Lodahl's monthly restitution payments of $2,239.45 far outstripped even her monthly income, much less accounted for her monthly expenses. Here, instead, the district court substantially reduced the restitution to $1,854.20 to be paid over 6 months, or $340 per month. These $340

monthly payments are reasonable considering Schroder's $1,397 income. Schroder even conceded this distinction at sentencing. (2/15/22 Tr. at 46) ("That was an extreme example where Ms. Lodahl had very, very, very little income—I think less than Mr. Schroder has—and her restitution was far higher.")

What's more, in *Lodahl* this Court expressed particular concern about the restitution payments in light of several dependent children that Lodahl had to support. Here, as Schroder's counsel conceded, Schroder "does not have any children[.]" (2/15/22 Tr. at 33.) This is not the case either where the defendant has shown to "suffer[] debilitating mental health problems" nor is there any alleged problem with self-sufficiency such as having to "rely on earnings from [a dependent child] to meet [] expenses." *Lodahl*, ¶ 27. And here, Schroder did testify he had an ability to pay, albeit he argued he could only pay $100 per month, which the district court reasonably rejected. (*See* 2/15/22 Tr. at 45.) In sum, this is a different case than *Lodahl*, based on both the nature of the obligation and the circumstances of the offender. The district court was not "absurd" for ordering a reasonable restitution after thoroughly and fairly considering the evidence before it.

Schroder next argues that the district court should have "use[d] its discretion to extend restitution payments as permitted under Mont. Code Ann. § 46-18-246." (Appellant's Br. at 40.) Schroder never objected or asked the district court to extend the payments. (2/15/22 Tr. at 45-47.) To the contrary, Schroder's counsel

had earlier conceded that the "Court has six months of jurisdiction over this Defendant," as part of Schroder's argument that he could not pay the original amount as sought by the State, even in installments, in a six-month period. (*Id*. at 33.) In other words, both the court and the parties understood that, under the specific criminal mischief statute, "[f]ull payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted." Mont. Code Ann. § 45-6-101(2). The district court followed its statutory directive.

CONCLUSION

This Court should affirm.

Respectfully submitted this 27th day of September, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,538 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Roy Brown
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CERTIFICATE OF SERVICE

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