

FILED

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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 23-0475



ORIGINAL

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DEC 12 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT FOR THE STATE OF MONTANA

Cause No. DA ²³25-0475

PAMELA JO POLEJEWSKI

Plaintiff and Appellant

Vs

OPENING BRIEF
LEGAL
MISREPRESENTATION

STATE OF MONTANA and TYLER FRIES

Defendant and Appellee

Cascade County BDV-23-0225

Order appealed from attached as Exhibit 1 to Notice of Appeal

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....i.-iii.

CERTIFICATE OF COMPLIANCE.....iv.

CERTIFICATE OF SERVICE.....v.

STATEMENT OF THE CASE.....vii.

STATEMENT OF FACTS.....viii.

STATEMENT OF ISSUES.....p.1.-2.

SUMMARY OF THE ARGUMENT.....p.3.

ARGUMENTS.....p.6.

CONCLUSION STATING TYPES OF RELIEF.....p.31

AUTHORITIES

Montana Rules of Professional Conduct Rule 4.1 (a) 8.4(c).....	p.1.p.5.
Rule 6.1.....	p.5.
Restatement of Second Torts.....	p.1.
Common Law.....	p.1.p.2.
Constitutional law violation of 4th Amendment "fruit of poisonous tree doctrine".	p.3.p.4.p.18.p.20
Res judicata.....	p.3.p.24
Strickland vs. Washington.....	p.4.p.8
Montana Constitution Article II 24 Rights of the accused.....	p.4.
Sixth Amendment to the US Constitution Right to Assistance of Counsel.....	p.4.p.5.p.6.p.7.p.8
American Bar Association.....	p.5.p.9.
Conflict of Interest	p.5.p.24
ACLU vs Montana Public Defender class action lawsuit.....	p.5.
Montana Public Defender Act 2005	p.6
Title 47 of the Montana Code.....	p.6
Gideon vs Wainwright 1963 United States Supreme Court case.....	p.7
MCA 47-1-104 (4).....	p.7.
American Bar Association Standards for Criminal Justice Prosecution Function and defense function 1993.....	p.9

AUTHORITIES

American Bar Association 4-1.3 (a).....p.9.
4.3-2 4-3.6.....p.9.

Senate Bill 320.....p.10.

MCA 27-1-434.....p.10.p.27.p.31

Montana Constitution Article II Section 11 and 12.....p.18p.19p.20

Fourteenth Amendment US Constitution.....p.18

Montana Supreme Court State vs. Brown.....p.19

State vs. Hardway 2001 MT 252 51, 307 Mont. 139 51, 36 P.3d 900.....p.20 p.21

State vs Pipkin 1998MT 143, 12, 289 Mont. 240 12 961 P.2d , 733, 12.....p.20

State vs New 1996 276 Mont. 529, 535-36, 917 P.2d 919.....p.20

US Supreme Court Murray vs United States 1988...487 US 533, 108 S Ct. 2529
101 L.Ed.2d 472.....p.20

City of Whitefish vs Large 2003 MT 322 4, 318 Mont. 310 , 14 80 P.3d 427, 14.....p.21

State vs. Scheetz 286 Mont. 41, 46, 950 P.2d 722, 724 (1997)..... P.21

State vs. Hubbei (1997) 286 Mont. 200, 209, 951 P.2d 971, 977.....p.21

State vs. Elison 2000 MT 288, 49, 302, Mont. 22228, 49, 14 P.3d, 456, 49.....p.21

State vs. Bassett 1999 MT 109, 294, Mont. 327, 982 P.2d 410.....p.22

State vs. New (1996) 276 Mont. 529, 535-36, 917 P.3d 919, 923.....p.22

Change of Venue.....p.24

AUTHORITIES

Rule 12 (b) (1).....p.25

State vs. Santoro 446, P.3d 1141 (Mont. 2019).....p.25

Strickland vs. Washington 466 US 668 (1984)p.26

Secrease vs. State 493 P.3d 335 (Mont. 2021).....p.26

Greater Missoula Area Fed; n Childhood Educators vs. Child Start, Inc. 2009 MT....p.32

Wyo-Ben, Inc. vs Bixby 2014 MT.....p.32

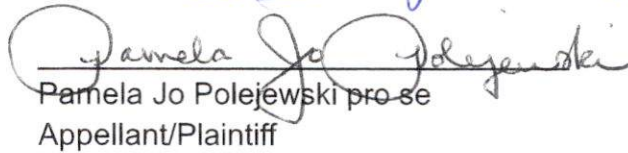
Plan Helena, Inc. vs Helena Reg'l Airport Bd. 2010 MT.....p.32

CERTIFICATE OF COMPLIANCE

I, Pamela Jo Polejewski, pro se litigant, the undersigned certify that the OPENING BRIEF LEGAL MISREPRESENTATION is double space, Roman, proportionately spaced and that the total word count excluding the table of contents, table of citations, certificate of service, certificate of compliance and any appendix are 8972 words.

Dated December 10th, 2023




Pamela Jo Polejewski pro se
Appellant/Plaintiff


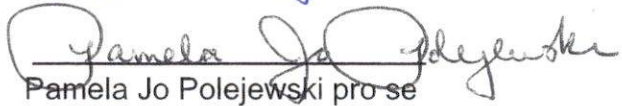
CERTIFICATE OF SERVICE

I, Pamela Jo Polejewski, the undersigned, certify that I served the Appellant

Opening Brief regarding Legal Misrepresentation by placing in the US mail to;

Sarah Mazanee
State Bar 12469
Department of Administration
Risk Management and tort Defense Division
1625 11th Ave
PO Box 200124
Helena, MT 59620-0124

Dated December 10th, 2023



Pamela Jo Polejewski pro se
Appellant/Plaintiff

STATEMENT OF THE CASE

Fire on Plaintiff's property May 6th, 2020

Law enforcement used the fire as a pretext to begin a way to start criminal proceedings against the Plaintiff

Law enforcement once on the property May 6th, 2020 never left until May 12th, 2020

Plaintiff and supporters were barred from her property and caring for her animals

Law enforcement once on the property May 6th, 2020 never left until May 12th, 2020 taking pictures during three disasters as a way to criminalize Plaintiff during a fire, torrential downpour of rain and a mob of people all flooding to the property that were not fire fighters

Plaintiff and her supporters coming to help were banned from the property and from caring for the animals by Cascade County Officials

Law enforcement falsely stated they had a warrant on May 7th, 2020 0800 am and the property and the animals were now the property of Cascade County....they refused to produce the warrant as they had no such warrant at that time

The warrant and the means used to obtain it was to be scrutinized by Tyler Fries but he failed to argue this issue

The Judge on this case issued the warrant on May 7th, 2020 approx 12:pm...in four hours from 0800 am until 12:pm me and my supporters would have had all the animals cared for as all the supplies needed were on the property but were physically obstructed from doing so as they were going around taking pictures to fulfill their false narrative and agenda to criminalize Plaintiff

Cascade County Officials and affiliates immediately started removing animals with out due process, citations or justification for this enactment starting May 7th, 2020

May 8th, 2020 I submitted a letter to Cascade County prosecutors not to kill any animals as some with medical conditions were receiving Veterinary attention....this was also stated to law enforcement on May 6th, 2020....that same day they killed a dog by the name of NavaJo without any hesitation or due process under the law

Cascade County Officials immediately started killing animals before any hearings or input from Plaintiff's veterinarian even though Plaintiff petitioned the court for hearings and notified them the animals were under Veterinary supervision on May 8th, 2020 and May 18th, 2020

Cascade County Officials killed animals before any criminal charges had been filed and Plaintiff filed counterclaims about all the constitutional rights that were being violated May 14th, 2020

Cascade County Officials in retaliation filed criminal charges on May 15th, 2020 and sent out multiple sheriff vehicles to come arrest Plaintiff

A miniature pony that was eating and trotting around prior to the raid in my custody was murdered May 18th, 2020 on some other premises claiming he was no longer walking or eating in their custody

Plaintiff petitioned for a animal welfare hearing again trying to prevent harm coming to the animals seized by Cascade County Officials and affiliates May 18th, 2020

Tyler Fries Public Defender assigned to the case May 22nd, 2020

Tyler Fries contacted Plaintiff by telephone and I stated Cascade County Officials and affiliates were on my property illegally and he assured me he would be raising that constitutional right violation

May 26th, 2020 a hearing was held at the Cascade County Prosecutors request ...procedurally I should have been allowed to present my case first as I had petitioned for a hearing May 18th,2020....all of the documents, photographs, exhibits, affidavits, list of witnesses I had given to Tyler Fries were never used in my defense...among all the other deficiencies argued about his substandard performance as a defense attorney

Tyler Fries did not raise any objections or make any constitutional arguments...he did not argue the illegal search and seizure of my property which started all the unlawful proceedings against the Plaintiff and resulted in the needless death and destruction of Plaintiff's animals

STATEMENT OF FACTS

Proceedings started after a fire on May 6th, 2020

Proceedings started after an illegal search and seizure

May 18th, 2020 Plaintiff petitioned for an animal welfare hearing

May 22nd, 2020 Tyler Fries Public Defender was assigned to the case

May 26th, 2020 a hearing was held that has been called many things;

Evidentiary hearing

"Cost for caring" for animals that had no reason to be remove let alone on unlawful foundations

Civil hearing for seizures without citations and due process and before their are any criminal convictions "cart before the horse"

Where a citizen sustains a huge amount of damages that can never be replaced upon adjudication of criminal charges which is a huge due process violation

Ultimately Tyler Fries demonstrated substandard professional ethical performance as a defense attorney by basically not putting forth any type of defense at all

Tyler Fries put in a request to the court to be removed from the civil proceedings after he cost the Plaintiff her whole case and was released in June 2020

Plaintiff went on to try to correct all his deficiencies in not arguing any constitutional violations but was met with res judicata

Tyler Fries assured Plaintiff he would again raise the unconstitutional search and seizure of May 6th, 2020 at the trial court

Trial was scheduled for August 5th, 2020

One week before trial i brought up the issue of arguing the unconstitutional and unlawful search and seizure of May 6th, 2020 and he said he was going to "infer" it to the jury and I became upset

A hearing was scheduled to address this refusal by Tyler Fries to represent his client as she has insisted on since the beginning of the case in the District Court June 28th, 2020

Tyler Fries was removed as the Attorney on the case and he even admitted his error(s)

INTRODUCTION THAT THIS IS A FRAUD, MISREPRESENTATION, NEGLIGENCE,
INEFFECTIVE ASSISTANCE OF LEGAL COUNSEL COMPLAINT ON APPEAL

Questions of duty by Montana rules of Professional Conduct Model Rules 4.1 (a) and 8.4 (c) when a Plaintiff is claiming negligent misrepresentation and extends that duty to tort law, Restatement of (Second) of Torts, constitutional law and Common Law. A lawyer owes their client a duty of reasonable care under the circumstances by virtue of the Model Rules 4.1(a) and 8.4 (c). Ethic Rules impose on lawyers an obligation of honesty and to the reasonableness of a defendant's (the Plaintiff) reliance on a lawyer's representation. A lawyer's violation of ethical rules and profession conduct rules is sufficient to establish a breach of fiduciary duty leading to liability for fraud if the remaining elements of the cause of action can be proven. Plaintiff asserts the case within the case that the outcome would of been much better in the underlying matter had the attorney not breached the standard of care.

STATEMENT OF THE ISSUES

1. Review de novo for Erroneous dismissal of misrepresentation complaint because of lack of subject matter jurisdiction when state courts are presumed to have power to hear any claim arising under federal or state laws
2. Review de novo for When an attorney violates his duty to address an unlawful search and seizure of his client's person and possessions and the unlawful search warrant.
3. Review de novo that the Judge that issued the search warrant obtained by unlawful

means should have recused herself from this misrepresentation complaint for conflict of interest due to the presence of bias in possibly trying to protect the warrant she issued

4. Review de novo for when the conflict of interest was brought forward the Judge erroneously denied recusing herself for conflict of interest

5. Review de novo for when conflict of interest was brought forward the Judge erroneously denied a change of venue motion filed by Appellant

6. Review de novo the Judge's denial of a Stay of Judgment pending more information coming forward on the illegal search and seizure of Appellant's premises in another District Court proceeding. (A competent defense attorney is actually doing the job the first attorney on the case neglected to do so therefore the misrepresentation claim against the defendant)

7. Review de novo the Judge erroneously denied allowing an Amending of the Complaint and supplementing the pleadings in the early stages of the case before briefing on the merits and before a trial setting that can be done by a leave of court petition

8. Review de novo the Judge erroneously ruled on my request to have the truth of the matters revealed in a court proceeding or through discovery stating that she has no jurisdiction over finding out the facts of a case regarding constitutional law violations

9. Review de novo the Judge erroneously ruled to dismiss because Appellant wasn't initially making a demand for monetary compensation as relief for having her constitutional rights violated by misrepresentation. An issue that can be amended with an Amended Complaint

SUMMARY OF THE ARGUMENTS

Defense Attorneys fundamentally have a duty to protect the rights of the accused.

A lawyer should always pursue the truth. The Courts could look to the Common Law of bad faith in legal misrepresentation by an attorney and the reasonable basis concept.

The Common Law of Misrepresentation is relevant in this case. Tyler Fries' Public Defender falsely assured his client he would argue the unconstitutionality of the illegal search and seizure of his client's premises and he failed to do so. The defendant Tyler Fries knew about the illegal search and seizure and by omitting this constitutional argument in a District court hearing he allowed the "fruit from a poisonous tree" to move forward. The Plaintiff has been trying to fight this due to his act of negligence by omission for the last four years. The first thing the new defense attorneys did that got assigned to the case was to file a motion to suppress evidence based on an illegal search and seizure with a motion to dismiss. Plaintiff has had four years of losing legal battles in the courts because of res judicata claims. This all could have been prevented had Tyler Fries argued the constitutional arguments initially in 2020.

- 1.) The defendant presented to the plaintiff that he was going to argue the illegal search and seizure
- 2.) The defendant did not raise the constitutional argument so his representation was false
- 3.) The defendant knew the representation was false or he was reckless about its truth. Defendant admitted it in a hearing where i requested he be removed as the attorney on record due to his negligence by omission
- 4.) The defendant knew the plaintiff had emphasized to argue the illegal search and seizure immediately and defendant assured plaintiff he would
- 5.) The plaintiff relied on her attorney the defendant to keep his word

- 6.) The plaintiff was harmed by the reliance on her attorney to make constitutional argument he failed to do
- 7.) The plaintiff's reliance on the defendant's representation was a substantial factor in causing the irreparable harm sustained

Whether characterizing it as fraud or misrepresentation a plaintiff seeking a right to the damages inflicted upon her by someone else's neglect must show she had a right to rely on that information or that it was reasonable to rely on that information and that this caused damages.

Relief for damages A court has the authority to grant punitive damages as they deem appropriate Relief in criminal proceedings for ineffective assistance of counsel the Montana Supreme Court has ordered to have a new trial. Strickland vs Washington Montana Constitution Article II S 24 Rights of the accused

The Sixth Amendment to the US Constitution guarantees the right to assistance of counsel /attorney in criminal cases. All proceedings in this case stemmed from an illegal search and seizure of Plaintiff's property. The "fruit of the poisonous tree" was used in an Evidentiary Hearing May 26th, 2020 to begin civil and criminal proceedings.

Ultimately, caused the horrific death of many of Plaintiff's animals at the hands of Cascade County Officials without constitutional protections and due process. Tyler Fries was at this hearing as the attorney on record appointed to represent the Plaintiff. Tyler Fries assured his client he would argue the constitutional violations that were occurring because of the illegal search and seizure of May 6th, 2020. In fact, he did the opposite and accepted discovery that was coming in over a fax during the course of the hearing

instead of arguing the evidence being submitted was out of context and unlawfully obtained.

Amend the pleadings Rule 8 A. (2)

Amend the complaint Rule 8 A. (1)(2)

Amending is a matter allowed by law by a leave of court petition to the court requesting to Amend the Complaint

See Montana Rules for Professional Conduct

Rule 8.4 in Montana in all professional functions a lawyer should be competent, prompt and diligent

Rule 6.1

The Montana Rules for Professional Conduct and the American Bar Association's Standards for Criminal Justice help inform and guide the conduct of all attorneys. The American Bar Association developed standards which define the responsibilities of defense in criminal cases and all proceedings in association with the case. The Courts recognize that "prevailing norms of practice as reflected in the American Bar Association standards and the like.....ae guides to determining what is reasonable." These standards serve as useful benchmarks for The Office of Public Defenders to help define what constitutes "reasonably effective assistance" as required by the Sixth Amendment and Article II 24 of the Montana Constitution.

The constitutional right to appointed counsel requires the attorney to be free of conflicts of interest. The existence of an actual conflict of interest can invalidate a conviction and require a new trial. A conflict of interest can occur when a court appointed attorney has an excessive caseload. See ACLU vs Montana Public

defenders class action lawsuit February 14th, 2002 “alleging that the indigent defense services in seven counties are constitutionally deficient”.

ARGUMENTS

I. CONSTITUTIONAL DUTIES OF THE OFFICE OF THE STATE PUBLIC DEFENDER

State and Federal constitutional provisions guarantee the right to the assistance of counsel to persons involved in criminal and civil cases. In this case scenario it is blurred as to when a civil proceeding becomes a criminal proceeding. Both proceedings started with an unconstitutional act of an illegal search and seizure of Plaintiff’s property May 6th, 2020 until May 12th, 2020. The Montana Public Defender Act, enacted in 2005 and set out in Title 47 of the Montana Code, codified the right to counsel in criminal and civil cases. Title 47 establishes the mechanisms by which courts may order the Office of the State Public Defender to assign attorneys to represent persons who have the right to assistance of counsel. The constitutional guarantee of the right to counsel has been held to require effective assistance of counsel. This guarantee applies to every criminal (quasi criminal) prosecution, without regard to whether counsel is retained or appointed. The Office of Public Defender has a duty , rooted in the constitutions , to provide its clients with effective representation.

The Sixth Amendment to the United States Constitution guarantees the right to the assistance of an attorney in criminal cases: “[i]n all criminal prosecutions, the accused shall enjoy the right....to have the Assistance of Counsel for his defense.” Article II 24 of

the Montana Constitution also expressly guarantees the right to an attorney in criminal cases: “in all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel.” In Gideon vs Wainwright, a landmark 1963 decision in the US Supreme Court held that under the Sixth Amendment, a person who “in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”

The Montana Supreme Court has adopted and applied the rules announced in the Gideon line of cases. The constitutional right to counsel in criminal case has also been codified. Sec 47-1-104(4) MCA includes on direct appeal. This right to the assistance of counsel attaches when a prosecution commences, either by way of formal charge, preliminary hearing, information, or arraignment such as the May 26th, 2020 evidentiary hearing. Once the right to counsel attaches, the accused is entitled to the presence of appointed counsel during any “critical stage.” “Critical stages” are proceedings between an individual and agents of the State (whether “formal” or “informal,” in court or out),....that amount to “trial-like confrontations”, at which counsel would help the accused “in coping with legal problems ormeeting his adversary. Events which may

constitute critical stages for which counsel should present include:

- Preliminary hearings*****May 26th, 2020

- Arraignments

- During the pre-trial period between arraignment until the trial

- Trials

- Sentencing

Direct appeal

It has long been recognized that “the right to counsel is the right to the effective assistance of counsel.” Mere formal appointment of an attorney does not satisfy the constitutional guarantee of effective representation. “[T]he assistance must be effective to give the true meaning to that right and to the right to a fair trial. “ The Montana Supreme Court recently reiterated that “[a]bsent effective assistance of counsel, the right to counsel is “nothing more than a procedural formality.” According to the US Supreme Court, “[t]hat a person who happens to be a lawyer is present at trial alongside the accused ... is not enough to satisfy the constitutional command. The sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel’s playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney...who plays the role necessary to ensure that the trial is fair. Tyler Fries fails miserably on all fronts as a defense attorney who failed to raise even the most basics of a legal defense. It is a critically important consideration of what effective representation is .A Defendant may be able to get her conviction reversed, or get a sentence vacated, if she can demonstrate that the attorney assigned to the case provided ineffective representation, in violation of the constitutional right to counsel. In Strickland vs Washington the seminal case on issues of ineffective assistance claims, the US Supreme Court established a two part test. 1.) Performance basedThe proper measure of attorney performance

The defendant's attorney has tried to use "straw man arguments" "gaslighting" to somehow make this about the Plaintiff's guilt . Guilt that has never been substantiated in a court of law therefore she fails miserably to manipulate this case to make it about the Plaintiff. The real legal issue here is about addressing the fact Tyler Fries misrepresented his client by his negligence and poor performance as an attorney.

II . ADDRESSING PAST HISTORY COMMENTS BY STATE ATTORNEY

This attorney goes into past history which is unlawful, unethical and irrelevant in a court of law that is taken out of context and therefore false .Thus, it is not even accurate information to be used against the Plaintiff. Senate Bill 320 was created to be used against the Plaintiff.

III. SENATE BILL 320 MCA 27-1-434 HAS NOT BEEN ESTABLISHED TO BE CONSTITUTIONAL ON ITS FACE OR AS APPLIED TO THIS CASE
IT IS A CASE OF FIRST IMPRESSION
THERE IS NO CASE LAW ESTABLISHING ITS CREDIBILITY

This attorney fails to mention my case is a case of first impression. MCA 27-1-434 has not been proven to be constitutional on its face or as it was applied in my case, Statutes are only "assumed" to be constitutional until they are challenged by ethical, professional and competent attorneys which is currently taking place in my case. This attorney cannot assert her statements are substantiated facts when her client did nothing to address the unconstitutionality of MCA 27-1-434 on its face or as it was applied. Therefore, she falsely claims these are settled matters of law and they are

from it as the constitutional arguments are coming forth from the defense attorneys presently on my case(s). The current defense attorneys are demonstrating what attorneys actually doing their job to defend their client looks like. In the first order of business they filed a Motion to Suppress Evidence and a Motion to Dismiss which will change the trajectory of my whole case(s).

III. SENATE BILL 320 IS GROSS ABUSE OF POWER AND GOVERNMENT OVERREACH UNDER COLOR OF LAW

This State attorney neglected to mention I had filed an Animal Welfare Hearing on May 18th, 2020 where my own Veterinarian could give her input on the animals. Instead the State uses people that were "on their payroll" to give testimonies beneficial to the State. The fact this is a very questionable unethical practice also signifies unconstitutional biases and due process right violations. A Montana citizen has every right to second opinions in her defense before animals are ruthlessly murdered. This did not transpire in this case. What a joke this attorney calls it a "cost for caring" hearing. It is actually an unconstitutional "cost for killing" of a citizen's property without due process. This attorney states by "preponderance of the evidence" animals were subjected to cruelty. This attorney neglects to state her client Tyler Fries did absolutely nothing to intervene on this false assertion so of course unjust judgments get rendered. Unjust judgments are extremely damaging to both the Plaintiff and her animals. Tyler Fries' lack of defense resulted in many more of Plaintiff's animals being murdered by the

- 5.) Excessive fines and fees are unconstitutional that are a part of the unconstitutional bill
- 6.) Plaintiff should have never been fined personally by the County it should have come from the nonprofit entity
- 7.) Cruel and unusual punishment by the fact Plaintiffs animals were not surviving under the cruelty and neglect by Cascade County Officials immediately after the illegal seizure. Within a short period of time at least 25 animals were tortured and killed by the State that Plaintiff could inadvertently find documentation for and many more that have been hidden from the public
- 8.) Did not obtain discovery prior to the May 26th, 2020 evidentiary hearing but was allowing it to be faxed into the meeting
- 9.) Defendant was not allowed to have access to discovery so she could build her own defense as this attorney did not put on any type of defense.
- 10.) Defendant had given Tyler Fries over 12 folders of photographs, documentation, affidavits and medical records he was to use in her defense at the evidentiary hearing that he never even referred to
- 11.) Did not raise appropriate objections
- 12.) Allowed unlawful statements to be made about the Defendant that were false
- 13.) Never called for any of my witnesses
- 14.) Did not put in a motion to continue if he was not prepared for the hearing
- 15.) Never brought forth that the premises was being used as a 501c3 nonprofit refuge with a NO KILL mission statement
- 16.) Haven't been allowed to go to trial for four years now because of Tyler Fries negligence and misrepresentation
Plus, many more and the damages continue to accrue daily
- 17.) Have lost my home
- 18.) They are trying to take my professional status
- 19.) They are trying to take my land
- 20.) They are trying to get me ousted from standing up for my rights in the judicial system
As Tyler Fries stood by and did this nothing and his attorney tries to "gaslight" the Plaintiff

V. IT IS THE PLOT OF THE OPPOSING PARTY TO "GASLIGHT" PLAINTIFF AS MANIPULATION TO KEEP THE FOCUS OFF THEIR MISDEEDS

Here are more arguments this State attorney puts forth that are taken out of context. "Gaslighting", that this District Court Judge erroneously signs off on are as follows;

An appeal regarding Tyler Fries inadequacy was filed with the Montana Supreme Court June 1st, 2020 appealing to the Court the unconstitutionality of the entire case scenario starting with May 6th, 2020.

Yes, I have been in and out of Court proceedings filing for appeals of judgments

Yes, I filed a "motion for reconsideration" regarding the forfeiture order and requesting

preliminary injunctions so more animals were not getting ruthlessly and needlessly murdered by the State. The needless deaths of these animals were hidden from the courtrooms and from the public .The newspaper accounts were distributing false information as a spokesperson for the State. This evidence regarding the animals being murdered by the State was outlined in an ongoing tally documented by Detective Krause

.It brought it forward as new evidence of the ongoing animal cruelty by the State.

February 18th, 2020 a new hearing was held in the District Court where I participated in oral argument with the State County Prosecutor currently on the case at the time. She has since been replaced with another County Prosecutor.

In summary this State attorney for the defendant Tyler Fries is trying to insinuate this is

all because of my guilt in the matter, in fact, it demonstrates the very opposite, It signifies

the Plaintiff is fighting for the life of her animals and for justice. The Plaintiff is fighting to have the full truth of the matters be revealed instead of the State being able to hide under

the cloak of blatantly false information with no accountability for their actions. In other words against all odds I have had to go back and act as my own attorney because Tyler Fries failed to act as a professional defense attorney. To sum it up Tyler Fries did absolutely nothing in the May 26th, 2020 hearing as was previously listed in this brief.

What all the courts ruled and why my attempts were met with insurmountable odds of ever being successful falls on the failure of Tyler Fries. The Courts all stated the constitutional arguments all needed to first be raised in the District Court at the May 26th,

2020 hearing or in motions before the court. Constitutional arguments cannot be raised in the courts at a later date once that opportunity has passed because they are later barred by res judicata. That is the fact of the matter. Tyler Fries failed to do his job and all my attempts to amend his failure were denied by res judicata. Another attorney Mike Klinkhammer also tried to help iron this mess out and he pointed out I was left with a total

train wreck because of the lack of representation by Tyler Fries. A train wreck I never stopped trying to clean up which indicates I am not a guilty party but one in pursuit of the

truth. EXHIBIT A. Attorney Klinkhammer about Tyler Fries substandard performance.

This attorney also falsely asserts I requested post conviction relief from my criminal trial. Again she uses deflection and "rabbit trails" in order to keep the focus off the real issues being brought forward in a Misrepresentation Complaint. The real focus is her client's failure to effectively represent his client. This negligence has caused all the damages. Damages she touts as matters of settled law. Damages that are due to defendant's failures to argue these initially in the District Court May 26th, 2020. She refers to a Montana Supreme Court Order but takes it out of context that what the Court was saying . The Order states that the constitutional arguments were not argued in the lower courts; they could not now be raised on appeals in the higher court. Tyler Fries failed to raise the constitutional arguments in the District Court so of course wrong judgments will be rendered as a consequence of this failure. Again, this attorney places the failure of her client's performance on the back of the plaintiff as if it is because of the plaintiff these unjust judgments were made. I have to constantly bring the focus back to the real legal argument in retaliation for her attempts to insinuate the plaintiff is guilty of crimes which have not lawfully been established by true triers of fact. The maneuver the State attorney uses is called "Gaslighting."

VI. JUDGE HAD A CONFLICT OF INTEREST TO BE INVOLVED IN THIS CASE

The real crime here is the fact a District Court Judge used these “straw man arguments”

to hide behind instead of addressing the Misrepresentation Complaint. The fact that unlawful judgements that have been inflicted because of the misrepresentation. These cannot stand as a matter of justice. I argue the District Court Judge had a bias from the beginning. It was a Conflict of Interest for her to be involved in any aspect of my case (s.) I am contesting the Civil and Criminal proceedings all started with an illegal search and seizure of my premises May 6th, 2020. This Judge issued the warrant unlawfully obtained May 7h, 2020.

VII. THE CURRENT DEFENSE ATTORNEY IS EFFECTIVELY ARGUING THE UNCONSTITUTIONAL SEARCH AND SEIZURE OF PLAINTIFF'S PROPERTY

The following is statements from a brief submitted to the District Court by my current defense attorney; “Deputies with Cascade County began searching the Defendant’s (Plaintiff’s) property and taking photos well before this Search Warrant was issued,

having used the structure fire as a pretext to begin their criminal investigation. The

Defendant noted that law enforcement officers were on her property prior to the issuance

of any warrant and the reports made by officers involved support this contention. None of

the photos provided to the Defendant in Discovery have time stamps and conveniently

none of the deputies that were on the Defendant’s property conducting an investigation

prior to the issuance of a search warrant were equipped with body cameras, thus no footage exists.

Defendant (Plaintiff) 's right to individual privacy from government intrusion and right to be free from unreasonable searches and seizures under ArticleII, Section 11 and 12 of

the Montana Constitution were violated by law enforcement in this case. Law

Enforcement unlawfully entered her property and gathered evidence prior to the

issuance of a lawful search warrant. As such, the exclusionary rule applies, and all

evidence gathered prior to the issuance of a lawful search warrant must be suppressed.

Furthermore, the "fruit of the poisonous tree" doctrine applies in this case as the invasion

of the Defendant's rights to privacy and unlawful search that was conducted lead to the

discovery evidence tainted by this unlawful search.

Pursuant to the Fourth and Fourteenth Amendments to the United States Constitution:

The right of the people to be secure in their persons, houses, papers and effects, against

unreasonable searches and seizures, shall not be violated and no Warrants shall be

issue, but upon probable cause, supported by oath or affirmation, and particularly

describing the place to be searched, and the persons or things to be seized.

The Montana Constitution further adopts this provision in Article II, Section 11. The

Montana Supreme Court in State vs Brown, has held Article II, Section 10 is to be considered in conjunction with Article II, Section 11 and provisions prohibiting unreasonable searches and seizures in analysis of a search and seizure issue implicating the right to privacy for Montana citizens. The Montana Constitution, going further in its protections than its federal counterpart provides:

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

The Montana Supreme Court, based on the provisions of the Montana Constitution, namely Article II, Section 10 and 11, has clearly and without question established a "Warrant requirement" as the general rule governing all searches and seizures and in conjunction with Montana's broader protections against unreasonable searches and seizures and to protect the privacy rights of Montana citizens. Precedent has clearly established that Montana's Constitution offers citizens greater rights to privacy and provides broader protection than that of what is provided by the Fourth Amendment. Furthermore, the Court has held that the range of warrantless searches which may be

lawfully conducted under the Montana Constitution is narrower than the corresponding range of searches that may be lawfully conducted pursuant to the federal Fourth Amendment. *State vs. Hardway* 2001 MT 252 51, 307 Mont. 139 51, 36 P.3d 900. Precedent also clearly provides that any search absent a lawful warrant is per se unreasonable. As well as providing broader protections than the 4th Amendment, the Montana Constitution 's Article II, section 10 has resulted in the Montana Supreme Court's recognition of a correspondingly narrower range of exceptions to the Article II, Section 11 warrant requirement than the broader range recognized under the 4th Amendment. In order to deter "future unlawful police conduct", evidence obtained through a search and seizure which violates the 4th Amendment and Montana's corresponding rights to privacy is inadmissible in criminal proceedings (evidentiary hearings are part of criminal proceedings where the evidence gathered will be used against the Defendant). *State vs Pipkin*, 19988 MT 143 12, 289 Mont. 240 12 961 P.2d 733, 12. Furthermore, the "fruit of the poisonous tree" doctrine forbids the use of evidence which comes to light as a result of the exploitation of an initial illegal act by the police. See *State vs New* (1996) 276 Mont. 529, 535-36, 917, P.2d 919(quoting US Supreme Court decision *Murray vs United States* (1988) 487 US 533, 108 S. Ct. 2529, 101 L.Ed.2d 472, stating that police should be placed in the same, not worse, position once tainted evidence is exercised).

In analyzing whether or not there was an unlawful search a court must decide whether

a person has standing or whether a person has a reasonable expectation of privacy and whether that expectation is one society is willing to recognize as objectively reasonable.

City of Whitefish vs Large 2003 MT 322 14, 318 Mont. 310, 14, 80 P.3d 427, 14. In

Hardaway, the court held that "a search is some means of gathering evidence which

infringes upon a person's reasonable expectation of privacy." Hardaway at 16. In State

vs Scheetz 286 Mont. 41, 46, 950 P.2d 722, 724 (1997), the court held that "a search

occurs when the govt infringes upon an individual's expectation of privacy that society

considers objectively reasonable." The factors a court looks at when examining whether

there is a legitimate expectation of privacy include the place of the investigation, the

control exercised by the person over the property being investigated, and the extent to

which the person took measures to shield the property from public view. State vs. Hubbei

(1997) 286 Mont. 200, 209, 951 P.2d 971, 977. The Montana Supreme Court has also

held that "placing an object beyond the purview of the public in a place from which the

person has the right to exclude others evidences an actual or subjective expectation of

privacy. State vs Elison 2000 MT 288, 49, 302 Mont. 22228, 49, 14 P.3d 456, 49. Law

enforcement used the fire that occurred on the Defendant's (Plaintiffs) property as a

pretext to begin to collect evidence to not only establish probable cause for the warrant,

but also continued to enter the property and collect evidence to charge the Defendant with crimes prior to any warrant being issued. In *State vs. Bassett* 1999 MT 109, 294 Mont. 327, 982 P.2d 410, the Montana Supreme Court made it clear that a person has a reasonable expectation of privacy in their home and that this expectation continues in homes damaged by fire. The court pointed out that although firefighters are justified, and

even expected, to enter a home and property to extinguish a fire, this does not mean that

Montanans reasonably expect that the sanctity of their home will now be open to other government officers to search for evidence of other, unrelated criminal activity simply because firefighters were already legitimately on the premises. The Montana Supreme Court actually found the idea that successive and unrelated (to the fire) entries into the

property by officials other than the responding firefighters for "any reason or no reason at

all" was "outrageous." *Id* at 38.

It should be noted that a search warrant for the Defendant's property was not executed until 12:02 P.M. on May 7th, 2020. Any evidence stemming from this initial illegal police activity must also be suppressed pursuant to *New. State vs New* (1996) 276 Mont. 529, 535-36, 917 P.2d 919, 923. It should be noted that law enforcement's role at the scene after fire authorities showed up, including a fire investigator from DOJ, has never been fully or adequately explained. (Other than they were there to find reasons to incriminate

the defendant. It took over a week of ransacking the property unsupervised until May 14th, 2020 they came up with charges in retaliation to me filing the unconstitutional search and seizure Complaint against Cascade County Officials and Affiliates May 14th, 2020.)

Instead, they (law enforcement) saw a chaotic scene at which the Defendant did what she needed to do with her animals in order to attempt to keep them safe. This also included animals running loose on her property, which i not illegal, and two dogs having health issues in the middle of chaos, also, not dispositive of illegal acts. Instead of doing their duties, however , these deputies instead began a criminal investigation without a valid warrant. Deputies did not articulate facts sufficient to establish probable cause or even reasonable suspicion that a crime had occurred.None of these assertions or

observations rise to the level of probable cause that a crime had been, was being, or was

about to be committed. The Defendant asserts that without the illegally taken photographs, probable cause would not have existed for a search warrant, and thus the exclusionary rule should apply here to any evidence that ultimately was the fruit of this illegal search and the photos taken during. Cascade law enforcement reports all contradict themselves as they try to cover up the truth of the illegal search and seizure they committed. Submitted by Plaintiff's current Defense Attorney.

VIII. DEFENDANT'S MISREPRESENTATION BY OMISSION PUT PLAINTIFF ON A PATH OF RES JUDICATA CLAIMS FOR THE NEXT FOUR YEARS

Tyler Fries was negligent in not representing his client by not arguing the Constitutional Violations of an illegal search and seizure. This illegal enactment was inflicted on his client by Cascade County Officials and affiliates. Tyler Fries allowed the illegal evidence to be circulated by the Tribune, across social media and was posted on the PETA website. Tyler Fries allowed the illegal evidence to be used by Cascade County Officials to recklessly and horrifically go on to murder a vast number of the Plaintiff's animals she has every right to recover upon adjudication of any charges. Tyler Fries stepped back and watched the Plaintiff for the next four years try to argue what he failed to do. All constitutional arguments were barred by res judicata claims after the May 26th evidentiary hearing.. As an attorney he would've known that was a nowhere scene for the Plaintiff to attempt to rectify after the fact due to his negligence.

IX. THE JUDGE HAD A CONFLICT OF INTEREST TO BE INVOLVED IN THIS COMPLAINT JUDGE DENIED CHANGE OF VENUE MOTION BY PLAINTIFF

Judge Best was the Judge that issued the warrant which I argue makes her biased in protecting the warrant she issued. Therefore, she had a Conflict of Interest in remaining in this case. Plaintiff submitted a Motion for a Change of Venue which she erroneously denied. Plaintiff raised a Conflict of Interest for this Judge to be involved in this case but she refused to excuse herself.

X. STATE AND FEDERAL COURTS HAVE JURISDICTION OVER STATUTORY LAWS, STATE LAWS AND FEDERAL LAWS AND QUESTIONS OF CONSTITUTIONAL RIGHT VIOLATIONS

Under Rule 12 (b) (1) the Court must take all well-pled factual assertions as true and in light most favorable to the claimant. A state and federal court has jurisdiction over statutory laws, state laws and federal laws. The Montana Supreme Court takes legal misrepresentation complaints very seriously because they violate constitutional rights . The Montana Supreme Court holds attorneys accountable for effective legal representation under the US Constitution and the Montana Constitution. Plaintiff reiterates the defendant did not argue the unconstitutional violation of an illegal search and search on her property starting with May 6th, 2020. In fact he did not do anything indicative of a professional ethical defense attorney as previously listed. The Montana Supreme Court acknowledges that both the Sixth Amendment and Article II, Section 24 of the Montana Constitution guarantee an accused (defendant) the right to effective assistance of counsel. State vs Santoro 446 P.3d 1141 (Mont. 2019) The State will argue the Evidentiary Hearing of May 26th, 2020 is a civil proceeding without a sentencing. That is contested; it is actually a quasi criminal proceedings falsely used as a civil proceeding. The evidence gathered from the illegal and seizure raid of May 26th, 2020 is also being used as evidence in the criminal trial. Therefore, it is a criminal evidentiary hearing that is currently being contested as unlawful and unconstitutional

and the "fruits of the poisonous tree" cannot be used in any proceedings. If the criminal proceedings started with an unconstitutional undertaking so did the so called civil/criminal proceedings .Thus Tyler Fries performance as an attorney (i) his performance was deficient in not arguing the unconstitutionality of the illegal search and seizure that started all proceedings associated with this holistic case scenario (ii) falls below an objective standard of reasonableness (iii) Plaintiff has established prejudice by demonstrating that there was a reasonable probability the outcome of the proceedings would have been different if Tyler Fries would have done what the current defense attorneys are doing right now which is protesting the illegal search and seizure of Plaintiff's property Strickland vs Washington 466 US 668 (1984). The Montana Supreme Court will review an attorney's performance on appeal if there is "no plausible justification for failing to raise objections or constitutional arguments that resulted in lowering the State's burden of proof. The Montana Supreme Court has ruled that counsel's failure to raise objections or pertinent constitutional arguments in the initial proceedings is a deficient performance by an attorney. And if not for that very serious error , there is a reasonable probability the result of the trial, proceeding, hearing ect would have been different. The Montana Supreme Court has reversed and remanded for new trials under effective assistance of counsel. Secrease vs State 493 P3d 335 (Mont 2021) What remains to be revealed but is forthcoming is the unconstitutionality of

Senate Bill 320 MCA 27-1-434 on its face or as applied in the Plaintiff's cases. That is why a Stay of Judgment would be appropriate until all the constitutional arguments surrounding Plaintiff's cases(all associated with the illegal search and seizure) have been addressed. Additional constitutional legal arguments are currently in the works squashing the State's argument Plaintiff's cases are in the past and matters of settled law. Far from it as the legal counter battles have only just begun.

XI. BECAUSE CONSTITUTIONAL RIGHTS ARE BEING VIOLATED
THERE ARE NO MATTERS OF SETTLED LAW AT THIS POINT

I have never asked the District Court to intercede in the pending criminal proceeding. It is laughable that that is even being used as a plausible argument . First of all the criminal defense attorneys in place are doing an excellent job and are more than capable of addressing the criminal trial proceedings. Therefore, it does not make any sense the plaintiff would meddle in their defense strategies. Again this is a blatant attempt to take the focus off her client and again make it about the plaintiff which is not the crux of the matter in this Complaint.

The State attorney, because she takes everything out of context, argues the District Court Judge does not have jurisdiction to interfere "with proceedings." What proceedings is she even talking about??? I did not ask any District Court Judge to interfere with any court proceedings. What is being asked of the District Court Judge is to conduct a

Misrepresentation Complaint and not be biased in her approach. I believe the Judge demonstrates she has been biased from day one. A quick review of the record demonstrates Judge Best was the Judge that signed for a warrant days after Cascade County law enforcement had already taken over plaintiff's property and the animals stating "they are now the property of Cascade County." Plaintiff and her supporters were physically blocked from the property and from taking care of the animals. Tyler Fries allowed these unconstitutional maneuvers to go unchallenged.

Post conviction relief is being argued by the State as not being allowed under a civil forfeiture, also falsely called a "cost for caring" hearing also called a criminal evidentiary hearing. It appears SB 320 turns into whatever useful tool the State wants to call it. It is under scrutiny as being too vague and broad to be allowed to stand as a constitutional statutory law. It is going to be challenged as a criminal proceeding masquerading as a civil proceeding. I asked this Judge to Stay proceedings in this Court until all the constitutional challenges have come forth from the new defense attorneys on the case. The constitutional arguments will be heard in the District Court trial proceedings rendering new judgments and new verdicts. It would only make sense for the Judge in this case to wait and see what comes out of other associated court proceedings before she rushes to judgment. If MCA 27-1-434 gets challenged as actually being a criminal proceeding then post conviction relief is warranted. Since my case is a case of first impression under MCA 27-1-434. Thus far, there has not been any adequate attorneys

involved in challenging the statute until now. the State can not maintain those challenges won't be coming because in fact they are. It is just in reference to Tyler Fries the constitutional challenges were not put forth because of his misrepresentation.

The state goes on to state the Plaintiff has not been "found guilty". Yet, the Plaintiff sustained all the following damages while being innocent of any crimes at this point in time;

- a.) loss of her home
- b.) loss of all of her possessions
- c.) loss of reputation
- d.) the emotional spiritual, and grief over the killing of innocent animals will last a lifetime
- e.) Cascade County threats, bullying and intimidation occur continually
- f.) physical health is deteriorating
- g.) loss of time
- h.) loss of freedoms
- i.) loss of trust with judicial system it is not about justice but winning at all costs to the accused
- j.) loss of trust with mankind
- k.) Therefore, because I fought for the truth instead of monetary gain this Complaint was erroneously dismissed without even the ability to amend . Have to wonder about the mindset of people in power positions and their motives for being there when they are so callous about the citizens rights being violated and the injustice these citizens accrual
- l.) attorneys, law enforcement, county officials and Veterinarians are the creators and the lobbyists behind these bills that are totally stripping away the rights of citizens

The State is erroneous to State the Misrepresentation Complaint is all about seeking review of issues decided on previous action. What part of her client's inability to put forth a defense against unconstitutional actions does she not comprehend? The judgment is not final in the civil proceedings because if the criminal proceedings are arguing the

enactments that instigated both proceedings are illegal the civil judgments will not be allowed to stand. The concept that unconstitutional proceedings with faulty foundations will not go unchallenged alludes this attorney. A Fundamental right every "accused" has is the right to pursue justice. The defense attorneys in place will now continue up the ranks by first attacking the unconstitutionality of the criminal proceedings. The civil proceedings were generated under the same unconstitutional argument that an illegal search and seizure transpired.. It will not go unchallenged, It will not stand as lawful. It will not stand as a final decision and a matter of law because it violated Montana and Federal Constitutional laws.

XII THIS JUDGE COULD HAVE RENDERED DIFFERENT JUDGMENT OTHER THAN A JUDGMENT TO DISMISS THE JUDGE JUST BASICALLY SIGNED OFF ON AN ORDER SUBMITTED BY THE STATE

District Court jurisdiction does entail making sure a citizen of this State's right to effective assistance of counsel is protected. That a citizen of the State of Montana's constitutional rights are not being violated. That is definitely under this district Court's jurisdiction. Unless her bias to defend the obtaining of an unlawful warrant is more in her best interest to protect than allowing the Plaintiff to proceed forward with this Complaint of Attorney Misrepresentation.

The Judge could have rendered different judgements. Judges have discretionary power to assess and grant damages if monetary relief is the only remedy for a Misrepresentation Complaint. The Judge could allow the Plaintiff to Amend her

Complaint if monetary relief is all she would grant.

A Change of Venue motion was denied by this Judge. If this Judge did not want to assume jurisdiction for this Complaint which she indicated when she routed the initial filings to three other Cascade County District Court Judges to assume jurisdiction. It was

denied by the Cascade County District Court Judges so I do not understand why she would deny having it sent to a Judge outside of Cascade County.

Heads up citizens of the State of Montana. I hope you are paying attention to the judicial system in place

CONCLUSION STATING RELIEF

What is not "moot" is unconstitutional arguments that are starting to manifest in the associated criminal proceedings. A court does not lack jurisdiction on common law, statutory law and on constitutional arguments that are currently in controversy. Common

law complaints that I was not effectively represented by the defendant. This violates my constitutional right to ethical professional counsel. It is my constitutional right to argue all

the judgments being rendered under MCA 27-1-434 are unconstitutional and not settled law. Foundationally there is a framework being established to appeal multiple issues

until all efforts are exhausted. It is erroneous for this Judge to dismiss the Complaint as

lacking subject matter jurisdiction on issues of constitutional violations. It is erroneous for

this Judge to render the subject matter of common law and constitutional violations as "moot." This Court has subject matter jurisdiction because the matters are still in controversy and are currently being brought forward by competent attorneys . The constitutional controversies are very much pertinent to this Complaint and will render past judgments as null and void.

Greater Missoula Area Fed;n Childhood Educators vs Child Start, Inc.
2009 MT

An issue is only "moot" if a court is unable to grant effective relief or to restore the parties

to their original positions due to an intervening event or change in circumstances. The intervening events are the present constitutional challenges that are getting submitted to the courts surrounding all the Plaintiffs constitutional rights violations under unconstitutional proceedings. I disagree with the State and the Judges stance that no relief is the only relief that can be obtained in this case.

Wyo-Ben, Inc. vs Bixby 2014 MT

Plan Helena, Inc. vs Helena Reg'l Airport Auth. Bd. 2010 MT

There was no request for Injunctive relief in this Complaint only a Stay in Judgment until all the constitutional arguments surrounding Senate Bill 320 have been exposed.

These arguments are currently being brought forward. Included will be if SB 320 is even

a constitutional statute on its face or as it is applied in my case. . This same statute is

being used in other States and is recognized as being overly broad and vague that gives

govt entities abusive power and overreach. The constitutional challenges surrounding this statute has only begun. The constitutional arguments were not raised by the defendant Tyler Fries. The defendant's attorney tries to defend the unconstitutional arguments as "matters of settled" law which is fictitious.

The damages to the Plaintiff continue to accrue on a daily basis because of Tyler Fries

negligent misrepresentation. The Plaintiff has spent the last four years of her life in and out of courtroom proceedings trying to amend his complete failure as a defense attorney. Therefore, as much as the State wants to make this case about the Plaintiff the

accountability for legal misrepresentation needs to be placed on Tyler Fries. The state wants to erroneously state it is a "moot" subject because all the damage has already been done and there is nothing the Court can do about it which is a complete "cop out" and no Judge should sign off on that Order submitted by the State.

The Plaintiff can be adjudicated on the pending criminal allegations. The Plaintiff can establish in the enjoining criminal proceedings that the whole enactment by Cascade County Officials were unconstitutional starting on May 6th, 2020. Then the enjoining issue will be why were Plaintiff's property and animals removed and unethically murdered???? The fact remains, all of this chaos and destruction could have been prevented by Tyler Fries acting as a professional defense attorney and raising these

constitutional arguments four years ago. Tyler Fries negligence does not go away as "moot." This Court does have subject matter jurisdiction on matters of common law and constitutional right violations. The request for a Stay of Judgment is well founded based on the fact attorneys are currently in the process of redirecting all the constitutional violations involved in a holistic case approach. All case proceedings whether civil or Criminal enacted upon since May 6th, 2020 are unlawful and unconstitutional. This court

will be affected by those constitutional right violations so there are no dead issues at this

point in time. It should be further stated no Judge should dismiss or condone these unlawful court proceedings, attorney misrepresentation and the unjust decisions it rendered.

I humbly request this Complaint gets sent back to the District Court outside of Cascade County jurisdiction and have it go before an unbiased Judge. A Judge not involved in the unconstitutional undertakings that took place starting May 6th, 2020 and forward. By Leave of Court Plaintiff has the ability by matters of law to Amend her Complaint.

Plaintiff can include monetary relief if that is all the Courts will look at as relief.

In the alternative Stay the Judgment until the defense has time to make their constitutional arguments about all the proceedings that are beginning to surface at the

District Court level. Therefore, unjust judgments will need to be challenged and resolved.

Court's discretionary powers to help rectify unjust judgments and constitutional rights violations.

All of these Arguments indicate Tyler Fries did substandard legal representation that has cost the Plaintiff immensely . Matters of law that could have been addressed and resolved in May of 2020 but are still unresolved four years later. The damages this inflicted is horrendous for the Plaintiff.

Damages Plaintiff would have recovered and the collectability of those damages.

Direct Damages are those reasonably flowing from the tortious conduct, such as the value of a lost judgment and attorney fees incurred to fix Tyler Fries'

mistakes. Consequential damages are those losses that occur as a result of the direct loss, such as damage to Plaintiff;s reputation and other economic losses. The economic loss doctrine, which precludes recovery for purely economic losses in negligence actions are inapplicable to legal malpractice claims.

Actual damages not speculative

Punitive damages are recoverable with the standard of proof

Relief could of been addressed if the District Judge had been truly interested in not being biased against the Plaintiff


Respectfully submitted, Pamela Jo Polejewski pro se

Dated December 10th, 2023

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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 20-0306

RE: District Court Cases No. ADV-20-274 and BDV-20-276
Montana Eighth Judicial District Court, Cascade County
Honorable Gregory J. Pinsky

PAMELA JO POLEJEWSKI

Defendant and Appellant

v.

STATE OF MONTANA

Plaintiff and Appellee,

APPELLANT'S REPLY BRIEF

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EXHIBIT A

On May 18, 2020, the State filed its Petition for Animal Welfare and Cost of Care hearing. . App. p.1. The District Court conducted a hearing on May 26, 2020 in which the Court stated it would take up the consolidation of the two matters for judicial economy. Since DV-20-274 was the first matter filed, from that point, everything would be filed under that case number. App. p.7.

The odd thing was that as the Appellant was the moving party in DV-20-274, she should have been permitted the opportunity to present her case first. Instead, the State, the moving party in DV-20-276 presented its case in chief and the Appellant, who was present with counsel, apparently was not afforded an opportunity to present her case in chief. She was present with her legal counsel from the Office of the Public Defender who represented her in the criminal proceedings. Consequently the Appellant's concerns about the warrantless search, exculpatory evidence, and other issues she raised in her improperly motions to the Montana Supreme Court were not heard. Her business name of Hoofs, Paws and Claws, an animal rescue, was not introduced into evidence. The evidence of food for the animals at the site and the veterinarian care given the animals were not even attempted to be admitted into evidence.

At this point, the records become somewhat unclear. On June 1, 2020, in DV-20-276, the Appellant filed her Notice of Appeal. App. p. 2. On June 2, 2020, in DV-20-276, Appellant's counsel moved to withdraw as attorney of record. Id.

That motion was granted June 9, 2020. On June 30, 2020, the final Order issued in DV-20-276.

In DV-20-274, although the hearing on the Appellant's Complaint was held on May 26, 2020, the State's Answer to the Complaint was not filed until June 4, 2020. That is certainly unusual that a hearing is held before the answer to the complaint is filed. On June 5, 2020, the District Court issued its Findings of Fact, Conclusions of Law and Order on the Appellant's Complaint even though she had never been provided an opportunity to present her case in chief. On June 10, 2020, the District Court issued its Order of Forfeiture. App. p.3.

As is evident from the above, the Appellant's Notice of Appeal was actually only 5 days premature as the Findings of Fact, Conclusions of Law, and dispositive Order in DV-20-274 issued on June 5, 2020. App. p. 3. The improperly filed motions resulted in the Montana Supreme Court's June 30, 2020 Order. That Order denied the Appellant's right to appeal anything but the constitutional issues. As the presumption in Montana is that statutes are constitutional and the burden of proof on the movant is "beyond a reasonable doubt", the Appellant was left a virtually insurmountable task. Appellant's counsel, who made his initial appearance on July 17, 2020, undertook this matter without knowing the matter was confined to the constitutional issues. Appellant's counsel had only 11 days to prepared and file the