IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Case No. DA 23-0475

PAMELA JO POLEJEWSKI

Appellant

Vs

STATE OF MONTANA

Appellees

APPELLANT'S REPLY BRIEF

Pamela Jo Polejewski pro se
Appellant
77 Wexford Lane
Great Falls, MT 594040
ppolejewski@yahoo.com

Sarah Mazanec
Attorney for Defendant
Risk Management Tort Defense
PO Box 200124
Helena, MT 59620-0124
496-444-3562
sarah.mazanec@mt.gov

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[4] Argersinger v. Hamlin, 407 U.S. 25, 37 (1972). The Court held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."

[5] Argersinger v. Hamlin, 407 U.S. 25, 33 (1972).

[6] The Court held that "the Sixth and Fourteenth Amendments to the United States Constitution require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense." Scott v. Illinois, 440 U.S. 367, 373-74 (1979).

[7] Alabama v. Shelton, 535 U.S. 654, 662 (2002).

[8] See, for example, State v. Craig, 274 Mont. 140, 906 P.2d 683, 688 (1995); State v. Buck, 2006 MT 81, ¶ 33, 331 Mont. 517, 134 P.3d 53; State v. Hansen, 273 Mont. 321, 903 P.2d 194 (1995); State v. Hanna, 2014 MT 346, 377 Mont. 418, 341 P.3d 629; State v. Swan, 199 Mont. 459, 467, 649 P.2d 1297, 1301-1302 (1982)(direct appeal).

[9] Brewer v. Williams, 430 US 387, 404 (1977) ("[T]he right to counsel does not depend upon a request by the defendant."); Carnley v. Cochran, 369 U.S. 506, 513 (1962) ("[W]here the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request.")

[10] Rothgery v. Gillespie County, 554 U.S. 191, 198 (2008); State v. Buck, 2006 MT 81, ¶ 33, 331 Mont. 517, 134 P.3d 53; State v. Scheffer, 2010 MT 73, ¶ 16, 355 Mont. 523, 230 P.3d 462.

[11] Rothgery v. Gillespie County, 554 U.S. 191, 212 n. 15 (2008). The Montana Supreme Court defined a critical stage in a proceeding as "any step of the proceeding where there is potential substantial prejudice to the defendant." State v. Robbins, 218 Mont. 107, 111, 708 P.2d 227, 231 (1985).

[12] Rothgery v. Gillespie County, 554 U.S. 191, 212 n. 15 (2008). The Montana Supreme Court defined a critical stage in a proceeding as "any step of the proceeding where there is potential substantial prejudice to the defendant." State v. Robbins, 218 Mont. 107, 111, 708 P.2d 227, 231 (1985).

[13] Coleman v. Alabama, 399 U.S. 1, 9-10 (1970).

[14] Coleman v. Alabama, 399 U.S. 1, 9-10 (1970).

[15] Lafler v. Cooper, 566 U.S. ___, 132 S.Ct. 1376, 1388 (2012); Missouri v. Frye, 566 U.S. ___, 132 S. Ct. 1399, 1407 (2012); Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473 (2010).

[16] Hamilton v. Alabama, 368 U.S. 52 (1961). The term "arraignment" means "the formal act of calling the defendant into open court to enter a plea answering a charge." Sec. 46-1-202(2), MCA.

[17] Brewer v. Williams, 430 U.S. 387, 398-399 (1977); Powell v. Alabama, 387 U.S. 45, 57 (1932).

[18] Sturgis v. Goldsmith, 796 F.2d 1103, 1109 (9th Cir. Ariz. 1986).

[19] Iowa v. Tovar, 541 U.S. 77, 81 (2004).

[20] Gideon v. Wainwright, 372 U.S. 335, 344-45 (1963); Argersinger v. Hamlin, 407 U.S. 25, 37, 40 (1972).

[21] Glover v. United States, 531 U.S. 198, 203-204 (2001); Mempa v. Rhay, 389 U.S. 128 (1967); and Wiggins v. Smith, 539 U.S. 510, 538 (2003).

[22] Miller v. State, 2011 Mont. LEXIS 280 (original proceeding).

[23] Douglas v. California, 372 U.S. 353, 357 (1963); State v. Swan, 199 Mont. 459, 467, 649 P.2d 1297, 1301-1302 (1982).

[24] Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973).

[25] Ranta v. State, 1998 MT 95, 288 Mont. 391, 958 P.2d 670 (pursuant to Article II, §24 of the Montana Constitution.)

[26] Brady v. United States, 397 U.S. 742 (1970); Iowa v. Tovar, 541 U.S. 77 (2004).

[27] Faretta v. California, 422 U.S. 806 (1975); State v. Colt, 255 Mont. 399, 843 P.2d 747 (1992). A court may order that counsel be assigned to represent an accused who is competent enough to stand trial but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves. Indiana v. Edwards, 554 U.S. 164 (2008).

[28] This axiom has been expressed in McMann v. Richardson, 397 U.S. 759, 771, n. 14 (1970); State v. Johnson, 221 Mont. 384, 719 P.2d 771 (1986); and, State v. Craig, 274 Mont. 140, 906 P.2d 683, 688 (1995).

[29] State v. Jones, 278 Mont. 121, 125, 923 P.2d 560, 562-63 (1996). See also, Avery v. Alabama, 308 U.S. 444, 446 (1940).

[30] Avery v. Batista, 2014 MT 266, ¶25, 376 Mont. 404, 336 P.3d 924.

[31] Strickland v. Washington, 466 U.S. 668, 685 (1984).

[32] Lafler v. Cooper, 566 U.S. ___, 132 S.Ct. 1376, 1385 (2012).

[33] Evitts v. Lucey, 469 U.S. 387, 396 (1985) (due process requires effective assistance of counsel during first appeal as of right); Hans v. State, 283 Mont. 379, 942 P.2d 674 (1997)(A defendant has a right to the assistance of counsel on a first appeal. The right to counsel on appeal includes the right to effective assistance of counsel.)

[34] A criminal defendant has the right to effective assistance of counsel at a sentence review hearing. Avery v. Batista, 2014 MT 266, ¶ 25, 376 Mont. 404, 336 P.3d 924.

[35] The Montana Supreme Court adopted the two-part test in State v. Boyer, 215 Mont. 143, 695 P.2d 829 (1985).

[36] 466 U.S. at 687, 688.

[37] 466 U.S. at 688.

[38] Padilla v. Kentucky, 559 U.S. 356, 366-67 (2010); see also, Missouri v. Frye, 566 U.S., ___, 132 S.Ct. 1399, 1408 (2012)(ABA standards "can be important guides").

[39] In February 2015, the ABA approved a fourth edition of the defense standards. Unless otherwise noted, this Memo will address the 3rd edition of the Standards, as these are the Standards which courts have analyzed and applied.

[40] State v. Lone Elk, 2005 MT 56, ¶ 13, 326 Mont. 214, 108 P.3d 500; Bousley v. United States, 523 U.S. 614, 618, (1998).

[41] Hill v. Lockhart, 474 U.S. 52 (1985).

[42] Rose v. State, 2013 MT 161, ¶21, 370 Mont. 398, 304 P.3d 387, quoting Lafler v. Cooper, 566 U.S. ___, 132 S.Ct. 1376, 1387 (2012); see also, Padilla v. Kentucky, 559 U.S. 356, 364 (2010).

[43] Missouri v. Frye, 566 U.S., ___, 132 S. Ct. 1399, 1407 (2012).

[44] Rose v. State, 2013 MT 161, ¶21, 370 Mont. 398, 304 P.3d 387, citing Missouri v. Frye, 566 U.S., ___, 132 S.Ct. 1399, at 1407.

[45] This Standard provides:

> (b) To aid the defendant in reaching a decision, defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and address considerations deemed important by defense counsel or the defendant in reaching a decision. Defense counsel should not recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed.

[46] Bone v. State, 284 Mont. 293, 307-308, 944 P.2d 734, 742-43 (1997).

[47] Comment, ABA Standards for Criminal Justice Pleas of Guilty (ABA, 3d. ed. 1999), Standard 14-3.2, at 123.

[48] Standard 4-6.1(b), ABA *Standards for Criminal Justice: Prosecution Function and Defense Function* (4th ed., 2015) provides:

> (b) In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client, and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed. Such study should include discussion with the client and an analysis of relevant law, the prosecution's evidence, and potential dispositions and relevant collateral consequences. Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.

[49] The United States Supreme Court agrees that these are the client's decisions. See, Jones v. Barnes, 463 U.S. 745 (1983).

[50] 2010 MT 201, ¶ 76, 357 Mont. 398, 240 P.3d 987. The ABA's *Ten Principles of a Public Defense Delivery System,* Principle 5 with Commentary (Feb. 2002) imposed a similar requirement:

> **Defense counsel's workload is controlled to permit the rendering of quality representation.** Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.

[51] Wood v. Georgia, 450 U.S. 261, 272 (1981).

[52] State v. Jones, 278 Mont. 121, 125, 923 P.2d 560, 562-63 (1996).

[53] Strickland v. Washington, 466 U.S. 668, 692 (1984).

[54] In re Neuhardt, 2014 MT 88, ¶ 25, 374 Mont. 379, 321 P.3d 833.

[55] People v. Roberts, 321 P.3d 581, 589 (Colo. Ct. App. 2013).

[56] See, In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender, 561 So. 2d 1130, 1135 (Fla. 1990)("When excessive caseload forces the public defender to choose between the rights of the various indigent criminal defendants he represents, a conflict of interest is inevitably created."); In re Edward S., 92 Cal. Rptr. 3d 725, 746-747 (Cal. App. 1st Dist. 2009).

[57] Cuyler v. Sullivan, 446 U.S. 335, 346 (1980); State v. Wereman, 273 Mont. 245, 902 P.2d 1009 (1995).

[58] Sec. 41-3-425, MCA provides, in relevant part:

> **41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.
>
> (2) Except as provided in subsections (3) and (4), the court shall immediately appoint the office of state public defender to assign counsel for:
>
> (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;
>
> (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and
>
> (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.
>
> (3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

[59] Santosky v. Kramer, 455 U.S. 745, 753-54 (1982); In Matter of R.B., 217 Mont. 99, 102-03, 703 P.2d 846, 848 (1985).

[60] Santosky, 455 U.S. at 753-54.

[61] The Due Process Clause, found in Article II, § 17 of the Montana Constitution, provides: ""No person shall be deprived of life, liberty, or property without due process of law."

[62] 258 Mont. 194, 198, 852 P.2d 127, 130 (1993).

[63] 258 Mont., at 198, 852 P.2d at 129.

[64] 258 Mont., at 198, 852 P.2d, at 129 (The Montana Court quoted from the U.S. Supreme Court's decision in Santosky v. Kramer).

[65] In re A.S., 2004 MT 62, ¶ 20, 320 Mont. 268, 87 P.3d 408.
[66] In re A.S., 2004 MT 62, ¶ 26.

[67] 2010 MT 4, ¶ 17, 355 Mont. 23, 223 P.3d 921.

[68] 2010 MT 4, ¶ 16, 355 Mont. 23, 223 P.3d 921.

[69] See, Sec. 15, Chap. 449, L. 2005; SB 146 (2005).

[70] In the Matter of Adoption of A.W.S., 2014 Mont. 322, ¶ 26, 377 Mont. 234, 339 P3d 414.

[71] Sec. 41-5-1413, MCA provides:

> **41-5-1413. Right to counsel -- assignment of counsel.** In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication.

[72] This statute provides, in part: "[a] court may order an office to assign counsel in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows: for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;..."

[73] In re Gault, 387 U.S. 1, 41 (1967) ("the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an

institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.")

[74] In re Mental Health of K.G.F., 2001 MT 140, ¶ 27, 306 Mont. 1, 29 P.3d 485; In re Mental Health of C.R.C., 2009 MT 125, ¶ 15, 350 Mont. 211, 207 P.3d 289.

[75] 2001 MT 140, ¶¶ 70-86. The Court added, "[i]n turn, the due process afforded individuals under the foregoing standards must serve to protect the fundamental individual liberty interests of dignity and integrity as identified under Title 53, Chapter 21, and Article II, Sections 4 and 10, of the Montana Constitution.

[76] Secs. 40-6-119, 47-1-104(4(a)(ii), MCA.

[77] Secs. 46-21-201, 47-1-104(4)(a)(v), MCA.

[78] Secs. 46-22-101, 47-1-104(4)(a)(vi), MCA.

[79] 53-24-302 (9), MCA (This statute provides in part, that "If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the person regardless of the person's wishes."); 47-1-104(4)(a)(ix), MCA.

[80] Secs. 46-4-304, 47-1-104(4)(a)x), MCA.

[81] Sec. 50-20-509(2), MCA.

[82] Sec. 50-20-509(2), MCA.

STATEMENT OF ISSUES

1.) Whether the District Court incorrectly concluded it lacked subject matter jurisdiction over a Misrepresentation Complaint?
2.) Whether the District Court falsely asserted the Complaint was seeking post conviction relief in a criminal trial that has not even been conducted?
3.) Whether the District Court erroneously asserted and concluded the Complaint did not address by Judicial discretion the type of relief that could be awarded to the Plaintiff
4.) Whether the District Court erroneously concluded it lacked subject matter jurisdiction over a Complaint about Attorney Misrepresentation
5.) Whether the District Court erroneously denied a Stay of Judgment until all the related constitutional arguments would come forward regarding Tyler Fries negligence to make those same arguments in a related proceeding that cost Plaintiff unrecoverable damages
6.) Whether the District Court Judge failed to recuse herself when a Change of Venue was filed in this Complaint because she was the Judge that issued a warrant on unconstitutional grounds that involved an illegal search and seizure of Plaintiff's property?

INTRODUCTION

An Attorney Legal MIsrepresentation Complaint stands on its own . It has nothing to do with an improper collateral attack on a pending criminal trial as this attorney falsely claims. The State is making absurd allegations in order to twist the facts of the matter and take the arguments out of context that keep the crux of the focus off Attorney Tyler Fries negligent legal representation that violated Plaintiff's constitutional rights to effective assistance of counsel and fair proceedings with just outcomes.

STRAW MAN ARGUMENTS ARE A FALLACY and the State uses them as a way to refute an argument different from the one actually under discussion and cannot

recognize or acknowledge the distinction.

HORSE LAUGH FALLACY when the State tries to present the Plaintiff's arguments that Mr. Fries did not put forth one argument in defense of his client he was assigned to represent as absurd, ridiculous and therefore not worthy of serious consideration. The State's arguments lack merit because it focuses on the detrimental consequences the Plaintiff was subjected to because of this attorney's negligence instead of the attorneys legal malpractice. The State scoffs at the Plaintiff being put into a position to try to go back and rectify the attorney's errors only to be browbeat by the judicial system at every conjecture. The damages sustained by the Plaintiff because of this judicial abuse is horrific and unconscionable.

RED HERRING FALLACY is used by the State to divert attention away from the fact Tyler Fries was grossly negligent in his substandard and unprofessional conduct as a defense attorney. Instead, the State diverts attention to focusing on the Plaintiff as she was put into a position to act as her own defense attorney because of Tyler Fries unacceptable and negligent legal representation. The State raises issues of only minute and basically inconsequential relevance to the main complaint of Attorney Legal Misrepresentation by Tyler Fries. All the consequences of the civil proceedings is because of Tyler Fries legal misrepresentation and negligence by omission of constitutional arguments he stated he would raise and did not.

STATEMENT OF THE CASE

FALLACY NO.1. ASSERTED BY THE STATE

The Plaintiff told Tyler Fries that Cascade County Officials did not have a warrant on May 6th, 2020 and were engaged in unconstitutional activities from that day forward. Tyler Fries was instructed by his client to argue the unconstitutionality of the search and seizure starting on May 6th, 2020. Tyler Fries assured his client he would and he never did. In addition there were numerous due process violations, procedural violations and substantive constitutional arguments he never raised. In Fact there was not one defense put forth on behalf of his client.

Nothing. Nada. Zero. Tyler Fries basically stood through the whole civil hearing and did nothing. Tyler Fries was asked again by his client if he planned on raising the illegal search and seizure at the criminal trial and he said he would. One week before the criminal trial Tyler Fries backtracked and said he would only "infer" about the illegal search and seizure at the criminal trial. That led to a hearing in the District Court with Judge Kutzman where I lodged my complaints about his negligence and substandard professionalism as a defense attorney and I wanted him removed from my case. Note, the first course of action Defense Attorneys Levi Roadman and Tom Schoenleban did, once they were assigned to my criminal case, was file for a Suppression Hearing and Dismissal based on an illegal search and seizure of their client's property on November, 2023. Had Tyler Fries done the same back in May, 2020 it would of spared Plaintiff

trying to act as her own defense attorney in all the civil proceedings for additional four years of legal battles. Legal battles that all resulted in rendering judgments that because Tyler Fries neglected to raise those same argument at the May 26th, 2020 they are now forever barred and it rendered unjust judgments.

FALLACY NO. 2 ASSERTED BY THE STATE

The State falsely accuses the Plaintiff of requiring her "pending criminal trial case be immediately appealed." This is just laughable at the insanity and absurdity of this assertion. Who did I make this assertion too? How would that even be possible when two competent defense attorneys are assigned to the criminal case? What Judge did I go about having this enacted?

How would I have been able to bypass all the procedural processes in place with attorneys being on the record as representing me? The fact of the matter is this false accusation never transpired nor would it ever transpire. A discussion that did come up with Defense Attorney Jay Reno and he believed there were grounds for Ineffective Assistance of Counsel arguments and appeals related to Tyler Fries misrepresentation in my case. Jay Reno never did show up for the trial on April 5th, 2022 so as a consequence he was dismissed from the criminal case also. Both Tyler Fries and Jay

Reno were assigned through the Office of the Public Defenders.

FALLACY NO. 3. ASSERTED BY THE STATE A TRUTHFUL ASSERTION BY THE STATE is the fact I filed a Change of Venue in Judge

Best's District Court because of her involvement with the false statements used to

obtain an unlawful warrant. Granted Judge Best would not know she is being lied to in

order to grant a warrant some two days after the initial illegal search and seizure. Tyler Fries was aware of the circumstances and failed to raise them when he assured his client he would. This also points out how sloppy the whole process of obtaining a warrant has become. It appears it is easy to skate by any constitutional standards that are required before obtaining one. This is due to the fact attorneys are no longer being held accountable for not scrutinizing the conditions in which a warrant was obtained. This is the case with Tyler Fries and his negligence to not argue the illegal search and seizure and how a warrant was obtained under false premises. Now this places the Plaintiff and the District Court Judge at odds because of an attorney's deficiencies. Current defense attorneys have also filed for a Change of Venue because it is very apparent Plaintiff will never receive a fair hearing in Cascade County for starters.

FALLACY NO.4. ASSERTED BY THE STATE

The Complaint was properly served by a process server hired in Helena, MT to deliver the Complaint to the attorney representing Tyler Fries as that is where she is located. The proof of service was submitted to the court. A process server was hired here in

Great Falls to properly serve Tyler Fries the Complaint. That proof of service was also submitted to the Court.

FALLACY NO.5. ASSERTED BY THE STATE

The District Court does have jurisdiction over a Legal Misrepresentation Claim. The relief the Plaintiff has sought throughout the entirety of her cases is that the truth of the matters be revealed. The State is projecting, "gas lighting" the Plaintiff and distorting the

real issues being brought forward in the Misrepresentation Complaint. The Plaintiff has argued that if the judicial system is not about uncovering the deception being presented, fundamental fairness towards the Plaintiff then she would approach this as a tort claim. Although money was never the driving force behind the Complaint. Plaintiff is just conceding if that is all the court will recognize as relief then so be it. The State has taken out of context every argument the Plaintiff has put forth on what she is hoping to accomplish with the Complaint. Primarily Tyler Fries needs to be held accountable for his refusal to put forth the arguments he assured to his client he would and he did not.

The damages the Plaintiff has accrued over the course of the last four years can never be reconciled because of attorney misrepresentation and negligence by omission. Money can never compensate one for having her constitutional rights not defended by her attorney . As a consequence of the attorney's actions the Plaintiff has had every aspect of her life destroyed by the State of Montana.

It is incomprehensible why unjust judgments would stand because of an attorney

violating a client's rights to constitutional safeguards. Plaintiff's property should not be searched and seized under unconstitutional searches and seizures. Plaintiff's property should not be ruthlessly murdered under "cost for caring" fallacies. The animals seized were never rendered any medical care but were murdered while in State custody due to State cruelty and neglect. This violates my constitutional rights to have my property returned when the criminal charges are adjudicated. This violates due process, the right to be free of cruel and unusual punishment and the right to be free of unreasonable searches and seizures. No one in their right mind would allow these unjust actions to go uncontested or be allowed to stand as just judgments. The fact remains this all happened because Tyler Fries did not make those arguments in May of 2020. I do not accept those judgments should be allowed to stand because of legal attorney misrepresentation and failure to render effective assistance of counsel.

FALLACY NO. 6. ASSERTED BY THE STATE UNDER STATEMENT OF "FACTS"

These assertions are not "factual" and are currently being contested in the criminal proceedings. There are new briefs submitted by the current defense attorneys tearing down all these false allegations of wrongdoing by the Plaintiff that the State keeps using as distractions to take away the issue, Tyler Fries did not put forth any defenses of his own. The State assertion that there was a lawful search warrant in place is a fallacy.

The State neglected to mention that the Plaintiff requested an Animal Welfare Hearing where she could have a say in the care and safety of the animals. This was

unconstitutionally denied by the State. Procedurally ,the State should have let the Plaintiff go first based on all the Motions she had put forward regarding the concern for the animals in state custody. Tyler Fries as the defense attorney of record did not argue any of the constitutional safeguards or the rights of the Plaintiff.

Tyler Fries did not argue all the due process violations that had already transpired and are still being contested so this is far from a matter of settled law.

The forfeiture bond that is demanded after an illegal seizure is unconstitutional based on the constitutional right to be free of excessive fines and fees. The forfeiture bond would already be millions of dollars at $30,000.00 per month times four plus years later . An excessive fee and bond demanded by the State when the animals should never have been removed in the first place. Tyler Fries did not make any constitutional arguments regarding the unconstitutionality of the proceedings.

Tyler Fries as the defense attorney of record did not argue this was a case of first impression as the law was passed to "get" the Plaintiff, The "cost of caring" assertion is blatantly false, No care is rendered to all the animals murdered in State custody. A report by Detective Krause documented over 25 animals died in State custody within months of being seized. Animals previously healthy that died horrendous tortured deaths by State, County Officials and their affiliates. Tyler Fries did nothing to secure the property rights of his client. Tyler Fries did nothing to argue the State was engaged in needlessly killing animals before any criminal charges had even been lodged.

Tyler Fries was requested to obtain discovery which was a picture of all the animals

illegally seized to demonstrate the animals were all healthy in Plaintiff's care which he refused to do so. Plaintiff only received three citations therefore it should have been contested as to why all the animals were removed. Any animals with medical conditions were under veterinary care which the State refused to acknowledge. All the State had to do was pick up the phone and contact Plaintiff's veterinarian that was involved in administering care and oversight over the animals. Tyler Fries did not even argue or object when the State refused to acknowledge the veterinarian. When Tyler Fries attends a Hearing and does not put forth any of the arguments outlined and there were many more he could have addressed, no wonder a low standard judgment of "by preponderance" of the evidence was rendered. Tyler Fries basically stood there and did not make one argument in his client's defense. Then after the devastating and utterly damaging judgment was rendered then Tyler Fries withdrew from the civil proceedings. This left the Plaintiff on a mission to try to rectify all the damage that was sustained by Tyler Fries misrepresentation and negligent omissions of crucial facts in the case. Every judgment rendered in all the courts after Tyler Fries negligence stated all the arguments the Plaintiff is now trying to put forth should have been argued at the district court level by a competent attorney . Plaintiff has been subjected to severe mental anguish and insurmountable damages because of Tyler Fries involvement and lack of legal representation in the civil case. Tyler Fries basically obstructed all the evidence I had submitted to him in order to refute the allegations of wrongdoing that he never put forth

in a defense. Mike Klinkhammer, Attorney that helped Plaintiff with the Appeal June 1st, 2020 documents this fact in his brief. Mike Klinkhammer Attorney stated Tyler Fries involvement left Plaintiff with a daunting task of overcoming insurmountable odds which were virtually impossible at this point in the civil case.

Therefore, it is a fallacy for the State to ever assert Tyler Fries as the attorney of record ever "represented" his client by ethical and professional standards.

FALLACY NO.7. ASSERTED BY THE STATE THAT MCA 27-1-434 HAS BEEN CHALLENGED AS BEING UNCONSTITUTIONAL

Again the State uses deception by taking the issues and judgments out of context and trying to present them in a nonfactual manner. What every court decision was after Tyler Fries did not initially raise any constitutional arguments at the May 26th, 2020 hearing was that they were now forever barred by the res judicata claim preclusion. Thus, the constitutionality of Senate Bill has not been challenged but I do believe those challenges will be coming by competent professional attorneys. There is no case law establishing Senate Bill 320 as a case law and establishing precedence. The United States Supreme Court Justices and specifically Clarence Thomas is of the opinion that modern day civil forfeitures have been abused to be within the boundaries of being constitutional. Clarence Thomas has stated he is waiting for a civil forfeiture case to become before the Court so this constitutional argument can be addressed. Many states are no longer using civil forfeitures because they believe they are immoral, unethical and unjust. Why would a State have dual civil proceedings before any criminal

proceedings and convictions as a means of depriving a person of property rights without any constitutional safeguards ?? I believe the rhetorical response is self-explanatory.

STANDARD OF REVIEW

A ruling under Mont. R. Civ. P. 12(b) (1) is a conclusion of law is reviewed de nova for correctness by the Montana Supreme Court. Under Rule 12 (b) (1) the court must take all well pled" factual" assertions (not taken out of context assertions) as true in the light most favorable to the claimant.

SUMMARY OF THE ARGUMENT

It is a false assertion and distortion of the Plaintiff's claim for the State to assert the Misrepresentation Complaint is a collateral attack on the impending criminal proceedings. What is a factual assertion is Plaintiff's claim that if it wasn't for Tyler Fries negligent unprofessional conduct as a defense attorney the judgments rendered in the District Court and even in this Court would not be that all arguments regarding the unjust civil proceedings cannot be argued because Tyler Fries did not raise them initially at the hearing so they are now barred by res judicata.

Because of his ineffective assistance of counsel the Plaintiff was subjected to unlawful unconstitutional judgments because there were no defenses put forth to dispute all the arguments that could have been made May 26th, 2020. There is not an individual subjected to this injustice that would be accepting of this as a final outcome.

I am not going through this Misrepresentation Complaint as a pathway to having

criminal charges dismissed. The defense attorneys currently involved are making the

appropriate arguments to seek for a dismissal of charges on their own merits.The same arguments that Tyler Fries could have made in his clients defense but did not do so. It is absurd for the State to make this statement but all of their statements have been outrageous and not based on facts. I have submitted the defense attorneys briefs and in in no way shape or form have I interfered in the criminal proceedings of my own accord.

Furthermore, the Judge presiding over the criminal proceedings would allow this type of influence in his courtroom. Again the State keeps deflecting to this being about a Plaintiff wanting accountability for an attorney not doing his job as a defense attorney. This is not about a Plaintiff acting as her own defense attorney as a pro se litigant because of a licensed attorney not giving professional representation.

The District Court was not interested in having a dialogue with the Plaintiff. The District Court Judge was totally on board to only listen to the State's false assertions.

The Plaintiff is arguing if the current defense attorneys are arguing the unconstitutionality of the criminal proceedings why wouldn't the civil proceedings also be deemed unconstitutional. The purpose of the Stay was to allow those arguments to come forward that proves Plaintiff's case within a case standard that is inherent in a Misrepresentation Complaint. The current defense attorneys are demonstrating all the arguments that were present and would also pertain to the civil proceedings. If they win on the merits in the criminal case. It further proves Tyler Fries caused Plaintiff to lose her civil case because of his incompetence. Plaintiff in trying to have dialogue with the

district court stated if monetary relief was the only relief available then she would concede and agree to punitive and compensatory relief. Although there is no way to compensate a Plaintiff for violating her constitutional rights by negligent misrepresentation. The damages are basically the Plaintiff has lost everything she has ever owned and accomplished. The damage of having one's' reputation slandered and posted as facts across social media. There is no way to be reimbursed for those types of damages. There is no way to reimburse Plaintiff for the death of sentient feeling beings that the State of Montana needlessly slaughtered by cruelty and neglect of their own making.

The State continues to argue it is the Plaintiff's fault she doesn't know how to properly argue in a judicial system that she has had no training in. Yet, the State of Montana is making laws where the Montana Citizen is being subjected to multiple proceedings for allegations where one proceedings would address all the allegations with constitutional safeguards in place. Civil proceedings before criminal charges have even being lodged is unconstitutional. The State of Montana stating it is not responsible to return property it illegally seized from citizens is a huge due process violation. Federal Judges have expressed this opinion in regard to animal seizure cases.

The State of Montana is asserting it is the responsibility of the citizens to know how to function as their own attorney even though they are not licensed legal professionals. The State of Montana is making laws such as these civil forfeitures where they place the burden of representation on the citizen instead of constitutionally

protected rights to have effective assistance of counsel. The citizen will then be subjected to verbal onslaughts such as what the State of Montana is currently engaging in. The Courts will debase, marginalize and label the citizen a vexatious litigant while they try to innocently argue the unjustness of these laws and proceedings.The Montana citizen will lose their constitutional rights and their property rights by the heavy burden that is placed on them with obstacles they cannot possibly overcome without knowledge in legal theory and the laws. The State of Montana will not protect your right to have legal representation in the legal system if it is a civil proceeding. The right to legal representation that is guaranteed in the Montana and Federal Constitution. The State of Montana will not hold attorneys accountable for their defective legal representation because somehow it will be projected it is all the citizens' fault. This is being demonstrated by the State of Montana regarding their arguments in this cause regarding Misrepresentation by a legal defense attorney part of the Office of Public Defenders.

What about the Judge taking some responsibility when the Plaintiff had voiced concerns she would be biased against the Plaintiff. The Judge in the spirit of fairness could of recused herself like she initially was trying to do by routing it to three other District Court Judges who declined to assume jurisdiction. The fact she was the Judge that issued the warrant that is currently under scrutiny as being unlawful would demonstrate in all fairness she should recuse herself because of the apparent bias that

would be present in trying to protect that warrant. The defense attorneys currently involved in the criminal trial proceedings have submitted Motion for Change of Venue based on the Judges suggestion this needs to be addressed in the interest of fairness.

The Judge demonstrates she was not going to be fair and listen to the Plaintiff and give the Plaintiff a chance to further amend her pleadings as the Judge was totally on board with the State's false assertions. The Judge basically signed off on an Order that the State submitted to her to have the Complaint dismissed without further clarity of the arguments that should be given to a pro se litigants

ARGUMENT

THE DISTRICT COURT ERRED IT COULD NOT GRANT RELIEF

The District Court erred when it jumped on the State band wagon that Plaintiff was trying to interfere with criminal trial proceedings. The District Court erred when it did not address Plaintiff's supplemental pleadings that if the only relief that was allowed was a

tort claim the Plaintiff could amend her Complaint by Leave of Court to designate that. That was argued in supplemental pleadings. Money is not what the Plaintiff was pursuing with this Complaint. It is the truth of the matter and how unjust all judgments that have been rendered because of Tyler Fries obstruction to justice with the civil proceedings. Obstruction by giving the appearance he was an attorney there to represent his client. Obstruction when he did not present any evidence to refute the

false allegations by the State. Obstruction when he did not present any of the 12 folders

of exhibits containing documents, pictures and receipts refuting the State's false narratives. Obstruction when he did not object to statements that the State made when he knew the statements to be false. Obstruction to future constitutional arguments being presented on appeals because he did not raise them in the District Court hearing. Obstruction when he did not argue Plaintiff's constitutional rights were being violated on multiple levels. Obstruction to appeals by not laying the foundation for appealable issues in the higher courts. Mike Klinkhammer; Attorney was so disgruntled with Tyler Fries involvement . It appears the Plaintiff probably would have done better on her own trying to defend herself versus having an attorney involved who gives his client false promises. Tyler Fries assured his client he would argue the illegal search and seizure without a lawful warrant in place and he did not. Tyler Fries did nothing to defend his client at the May 26th, 2020 hearing which basically handed over a win to unconstitutional enactments by Cascade County Officials that went unchallenged in the appropriate courtroom settling. These negligent behaviors mentioned by Tyler Fries are just the tip of the iceberg.

The main argument the Plaintiff is trying to assert here is that the Plaintiff is not the subject to be attacked and blamed for an attorney's negligence, obstruction to justice and the severe damage this inflicted on the Plaintiff. The Plaintiff is looking for relief for judgments that should not have been given if an attorney had adequately performed his job. Plaintiff wants the truth of the matters exposed. Plaintiff wants accountability for

attorneys involved in having such a huge negative impact on the citizens lives because of their failures to represent their clients. Throughout all the State's arguments it shifts the blame onto the Plaintiff. The Plaintiff should not have to be put into a position to be its own attorney against laws that defense attorneys do not even adequately argue against. The laws that are bypassing constitutional safeguards that ensure an individual has the right to effective representation should be challenged as unjust and unconstitutional. The statutes that have been in place for hundreds of years would have addressed this bogus "cost for caring" lie they are all hiding under. It is not a "cost for caring" , it is using extortion against the citizens while they charge them for ruthlessly murdering their animals. This murdering should be challenged as unconstitutional but it is also unethical and horrendous behavior condoned by the State and by the courts. The Court system can browbeat this litigant all it wants as I am going to continue to fight against this injustice and fight for my animals. Period. If I do not stand up against the injustice it is apparent attorneys like Tyler Fries cannot be held accountable for not fighting against cruelty and unlawful actions inflicted upon their clients. The District Court Judge should have allowed the Plaintiff to amend her Complaint for a second time. The Plaintiff did argue for the sake of a Misrepresentation Complaint that if money is all the Court will allow them to do then so be it.

Governor Bullock enacted into law civil forfeitures could not occur without a criminal conviction. He also stated the property seized has got to be accounted for at all times.

The United States Supreme Court is waiting for a civil forfeiture case to come before

them because they are of the opinion they are unconstitutional and they are not civil proceedings but criminal proceedings. Clarence Thomas and Ruth Ginsburg opinion in Timbs stats the following that forfeiting is grossly disproportionate to the gravity of the offense therefore are unconstitutional under the Excessive Fines Clause 8thAmendment applicable to the States under the 14th Amendment due process clause. Justices Ginsburg stated Historically fines and forfeitures have been used "to retaliate against or chill the speech of political enemies" thus undermining other constitutional liberties. Forfeitures are a source of revenue for the State that are not being regulated thus it is a form of "policing for profit" with improper unconstitutional incentives. Civil proceedings that cross over into being severely punitive towards the Plaintiff are no longer a civil proceeding but a criminal proceeding without constitutional safeguards. Therefore, for the State to view this as a black and white case is inaccurate. A Stay in Judgment would be appropriate to see if Senate Bill MCA 27-1-434 is not deemed unconstitutional on its face or as it was applied in my case. Furthermore upon adjudication of any criminal charges I want my property returned. Property that should never have been removed in the first place that Tyler Fries should have argued May 26th, 2020 on multiple grounds.

Therefore, a proficient responsible attorney even practicing the basics of criminal defense 101 would have been able to put forth numerous violations of constitutional rights in civil proceedings as well as criminal proceedings. The purpose of the Stay was to allow these constitutional arguments to manifest because my current defense

attorneys are effectively attacking these constitutional right violations inflicted on their client.

This is a case of first impression. It has not been established that Senate Bill 320 is not going to be challenged as unconstitutional on its face or as applied in my case. If it is ever overturned as unconstitutional or I am adjudicated of charges there are going to be serious ramifications to the due process violations that have been inflicted on me and the damages I sustained because of that. It proves the burden of a "case within a case" standard that I would have won my case(s) if Tyler Fries was not involved in obstructing just judgments by his omission, negligence and unprofessional conduct as a defense attorney.

The District Court ruled the Injunctive was moot. The District Court made a lot of erroneous ruling in the civil proceedings but all my arguments were barred by res judicata because Tyler Fries did not place one argument in defense of his client. That was a missed opportunity that can never be regained according to judicial rules of the court because Of Tyler Fries negligence. Tyler Fries negligence by obstruction and omissions.

The District Court also ruled it was a "moot" when the Plaintiff argued in a Motion she submitted before Tyler Fries got involved protesting the endless murdering of her animals. Animals murdered before any hearings and before criminal charges were even lodged. Judge Pinski ruled it was "moot" because the State has already been engaged in killing them. The pattern exposed is the State , Judges and attorneys cannot held

held accountable but the judicial system can sure beat on the common citizen trying to

fight these unlawful atrocities.

The Judge was biased and she should have recused herself. I voiced my opinion of inherent Judge bias because she issued the warrant being contested as unconstitutional. I requested a Change of Venue because of the prejudicial bias against the Plaintiff which she denied.

CONCLUSION

Plaintiff should not even have been put into this situation where she has to hold an attorney accountable for violating her right to effective assistance of counsel. Tyler Fries would have been of a professional caliber like the current defense attorneys the Plaintiff would not have lost her civil proceedings. The Plaintiff is going to continue to seek truth and justice. It appears to this Montanan that the State of Montana is no longer interested in protecting their citizens constitutional rights by the following;

Attorneys are not held accountable to effectively represent their clients which turns the court system into "kangaroo" courts. This violates the constitutional rights of Montana citizens to effective assistance of counsel.

Laws are being passed in Montana where the Montana citizen is left to defend itself against a judicial system that is hostile to a pro se litigant.

The fact they can label pro se litigants as vexatious as they try to fight for securing their rights and property is an act of hostility towards pro se litigants. Freedom of speech is thus restricted. Freedom of religion is violated when the belief in the

Exhibit C

Exhibit D

sanctity of life is ignored.Citizens are to be free from cruel and unusual punishments.

The United States Supreme Court is waiting to rule civil forfeitures are so punitive they are actually criminal proceedings without constitutional protections and are unconstitutional.There is no purpose for them other than to inflict govt overreach and abuse of power upon the citizens and deprive them of their rights.

This deprivation of rights is apparent throughout the State's brief trying to place the blame on a citizen looking for the truth and justice instead of the attorney that failed miserably to represent his client and protect her constitutional rights.

It appears to this Montana citizen of Jewish heritage that Montana is adopting the ideology of Nazi Germany. Which was argued in the first brief I submitted to this Court in reference to implementing unconstitutional measures like civil forfeitures on the socioeconomically disadvantaged Montana citizens and political opponents. It goes downhill from here.No wonder citizens are forming Judicial watch groups and bills for more oversight of the Judicial system processes. I have every right to demand an attorney to perform due diligence to defend my rights and Tyler Fries failed to do so on all fronts.

Exhibit E.

I stand on Judeo Christian principles where the laws and the constitutions originated from, Pamela Jo Polejewski pro se litigant

Pamela Jo Polejewski

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed proportionally spaced Times New Roman text typeface 12 point, is double spaced (except footnotes and indented material) and the word count calculated my Word does not exceed 5,000 words excluding the Table of Contents, Table of Authorities and Certificate of Compliance

Dated February 5th, 2024

Pamela Jo Polejewski

By Pamela Jo Polejewski Plaintiff pro se.

CERTIFICATE OF SERVICE

I, Pamela Jo Polejewski, hereby certify that I have served true and accurate copy of the Plaintiff Reply Brief to the Misrepresentation Complaint to the following;

Sarah Marie Mazanec
Attorney for Defendant
Risk Management Tort Defense
PO Box 200124
Helena, MT 59620-0124

Dated February 5th, 2024

Pamela Jo Polejewski Plaintiff pro se