

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0171

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

CHINA ROSE DAWN DAVIS,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana Thirteenth Judicial District Court,  
Yellowstone County, The Honorable Ashley Harada, Presiding

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## **STATEMENT OF THE ISSUE**

1. Whether the district court properly exercised its discretion in admitting crime scene photographs during Appellant's deliberate homicide trial when the photographs were probative and were not unduly prejudicial.
2. Whether the district court imposed a legal sentence when it ordered Appellant to pay restitution in an amount that Appellant agreed upon.

## **STATEMENT OF THE CASE**

On December 22, 2020, the State charged Appellant China Rose Dawn Davis (Davis) with deliberate homicide/felony murder and a weapon enhancement. (D.C. Doc. 3.) Davis filed a motion in limine to exclude "certain photographs" from the crime scene and/or the autopsy because the photographs were not relevant and/or unduly prejudicial. (D.C. Doc. 29 at 1.) Davis alleged that many of the photos the State produced in discovery depict "gruesome details" of the victim and his surroundings post mortem. (*Id.* at 2.) Davis argued that the State had other means of proving that the victim died from a gunshot wound to the head. (*Id.*)

The State filed a response objecting to Davis's motion advocating wholesale exclusion of photographs that depicted the victim's body. (D.C. Doc. 33.) The State argued that Davis had not identified any specific photographs that should be excluded so her motion was overbroad. (*Id.* at 3.) The State further explained that

any photograph it intended to admit at trial would be for a necessary purpose such as demonstrating the nature and circumstances of the crime, establishing the manner and cause of death, and/or demonstrating the location and layout of the crime scene. (*Id.*)

The district court held a jury trial on September 13, 2021, through September 17, 2021. (9/13/21-9/17/21 Transcript of Jury Trial [Tr.])<sup>1</sup> During the second day of trial defense counsel explained during a break that the defense objected to photographs numbered as State's Exhibits 60, 61, 65, 87, 88, 94, 95, 97 and 98. Defense counsel argued the photographs were irrelevant, unnecessary, and cumulative, citing Mont. R. Evid. 401, 402, and 403. (9/14/21 Tr. at 153-54.)

The State responded:

These [photographs] are relevant. They are probative. And they are not unfairly or unduly prejudicial to the Defendant. The jury has heard that James Eder was the shooter. I don't think there is a question of that. But in order to be able to describe the scene and continue with the State's case, I think that the jury is owed the opportunity to see the crime scene.

(*Id.* at 156.) Defense counsel responded that the State was only introducing the photographs to illicit a negative response from the jury. (*Id.*)

The district court ruled that the photographs to which the defense objected were admissible:

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<sup>1</sup> The transcript of each day of the jury trial starts anew with page one. The State will reference each day of the trial by the date followed by Tr.

All right. Well, I have looked at all of the photos. And I am going to allow them. I do find that the probative evidence is admissible. It is not unduly prejudicial or unfairly prejudicial. This is a homicide case. Ms. Davis was present at the time of the homicide.

That is—that has clearly been established. And the jury has the need to understand what occurred that evening and how things came to be. And I think that if they can see the room and they can see the crime scene, they can see the decedent, then they will have a better understanding.

I don't think that this is an attempt to create an emotional response. Additionally, I think that the State has put forth the assertion that the Defendant was present after the homicide and took time to apparently take methamphetamine before leaving the scene.

And I think that the whole set of circumstances needs to be examined and considered. And I think that if we didn't allow the jury to see the entire scene, that would be a disservice to them. I'm relying upon *Kills on Top Two*. That is 243 Mont. 56. And I'm relying on *Sigler, S-I-G-L-E-R*. That is 210 Mont. 248.

. . . .

I think that these photographs will aid the jury in making a determination.

(*Id.* at 157-58.)

The jury convicted Davis of deliberate homicide and unanimously found, beyond a reasonable doubt, that Davis or another person used a dangerous weapon to commit the deliberate homicide. (D.C. Doc. 72.)

Probation and Parole Officer Zent completed a Presentence Investigation Report and filed it with the court. (D.C. Doc. 88.) Officer Zent documented the restitution attributable to the deliberate homicide to be \$9,945.67. (D.C. Doc. 88,

attachments documenting restitution.) Davis filed a sentencing memorandum in which she stated that there was restitution amounting to \$9,945.67, and she did not contest the restitution obligation. (D.C. Doc. 87 at 1.) The district court held a sentencing hearing on February 3, 2022. (2/3/22 Sentencing Transcript [Sent. Tr.].) Davis promptly informed the district court that she did not contest the restitution but asked that the cost for her counsel be waived so she could focus on her restitution obligation. (Sent. Tr. at 3.) The district court concluded that it was more important for Davis to pay restitution than for Davis to pay the cost of her attorney. The district court waived the cost of assigned counsel. (*Id.* at 3-4.) As part of its sentencing recommendation, the State requested that the court impose restitution in the amount of \$9,945.67. (*Id.* at 11.)

For the deliberate homicide, the district court sentenced Davis to prison for 80 years. The district court imposed a weapon enhancement of 5 years in prison to run consecutively to the 80-year sentence for the deliberate homicide conviction. (D.C. Doc. 94, attached to Appellant's Br. as App. B.) The district court ordered Davis to pay restitution in the amount of \$9,945.67, without objection from Davis. (Sent. Tr. at 50.) In the written judgment the district court similarly ordered that Davis pay restitution in the amount of \$9,945.67. (Appellant's App. B at 3.)



## **STATEMENT OF FACTS**

Davis first met the deliberate homicide victim, Carl Archer (Carl), in Wolf Point standing outside the Town Pump. (9/16/21 Tr. at 76.) Carl asked Davis if she wanted to ride to Billings with him to make a drug run, and Davis accepted his offer. Carl was a drug dealer who was attempting to sell drugs in Wolf Point and Billings, but he did not know the area. Davis volunteered that she did know the area and offered to help him sell the drugs. (*Id.* at 77.) Carl was unfamiliar with the area between Billings and Wolf Point. Carl and Davis entered an arrangement whereby Davis would assist Carl in navigating the area and selling his drugs. (*Id.* at 78-79.)

Every time Davis assisted Carl, Carl paid Davis with an ounce of methamphetamine, which was worth about \$5,000. (9/16/21 Tr. at 80.) Davis was addicted to meth, so she always used the meth rather than selling it. After Davis met Carl her meth addiction worsened. (*Id.* at 81.) The last time Davis assisted Carl, he dropped her off in Wolf Point as usual, but he did not pay her. Carl told Davis he had to sort some things out and then he would pay her, but he never did. (*Id.* at 84.)

In late October 2019, Davis met James Eder (Eder) while she was standing outside Lucky Lil's in Wolf Point. (9/16/21 Tr. at 85.) Davis returned to Billings

with Eder and the two lived together at Eder's uncle's house until Davis got kicked out for stealing from other people living at the apartment. (*Id.* at 76, 86.)

On November 1, 2019, Eder found out that Davis was at the Days Inn in Billings with her friend, Morgan Long (Morgan). (9/14/21 Tr. at 33.) Late in the day, Eder went to the Days Inn. Eder learned that Carl had rented the hotel room that Davis and Morgan were in. Investigators later confirmed that Carl was the registered guest in room 227 at the Days Inn. (*Id.* at 172-73.)

Eder and Davis got into an argument because Eder did not trust Carl and he felt jealous that Davis intended to stay in Carl's room. Davis got angry with Eder and told him to leave. Eder left the room and went to the lobby, charging his phone before leaving the hotel around midnight. (*Id.* at 34-35.) The Days Inn video surveillance footage corroborates Eder's report of his activities at the Days Inn. (9/15/21 Tr. at 44-47; State's Exs. 163-72.)

Eder caught a ride to his ex-girlfriend's house from someone he did not know. His ex-girlfriend lived at 7 Alderson. Eder and Davis continued to exchange text messages. (9/14/21 Tr. at 35-36.) Davis came up with the idea that she and Eder should rob Carl and steal his meth. Eder was initially reluctant but eventually acquiesced and his friend Charlie Reimers (Reimers) agreed to drive Eder. (*Id.* at 36-37.) Eder initially suggested he could get some bear spray for the robbery. Davis was not on board with the bear spray idea because she thought Carl had a

gun. Because of Eder's conversations with Davis, he believed he needed to get a gun. (*Id.* at 37-38.) Eder viewed the purpose of the gun as a show of force. He was not planning on shooting the gun. (*Id.* at 47.)

Reimers agreed to get Eder a gun and drove to a place in Lockwood. Reimers picked out a small caliber shotgun and gave it to Eder. Eder loaded the gun. Both Reimers and Eder were using meth and were both high. Eder also thought Davis was high. (9/14/21 Tr. at 39-40.) After getting the gun, Reimers and Eder drove to the parking lot of the hotel next to the Days Inn and waited. Davis wanted Eder to complete the robbery at the Days Inn, but Eder was hesitant and did not attempt the robbery. (*Id.* at 40-41.)

Reimers and Eder later followed Carl, Morgan, and Davis to Walmart on King Avenue West. Davis messaged Eder that she would meet him in the parking lot but he never saw her come out alone. Eder saw Carl, Morgan, and Davis leave Walmart and get into a white Crown Victoria that Carl was driving. Carl headed east on the interstate. Reimers and Eder followed him. (9/14/21 Tr. at 42-43.)

Davis messaged Eder to fall back because Carl was getting paranoid, thinking that somebody was following them. Carl pulled off the interstate. Reimers continued heading east. Carl got back on the interstate, traveling behind Reimers and Eder. Reimers then exited the interstate, allowing Carl to get ahead and then resumed traveling behind Carl. Carl exited at Ballentine but instead of continuing

he pulled off to the right, heading south and pulled into a bar and motel called Tiger Town. Reimers continued driving past the motel. (*Id.* at 44-45.) Reimers stopped in Worden and pulled into an alleyway. (*Id.* at 47.)

As Reimers and Eder remained parked in the alleyway, Davis continued to message Eder. Davis pressured Eder about when he was going to show up and rob Carl. She described which room she, Morgan, and Carl were in at the Tiger Town Motel where they had stopped. (9/14/21 Tr. at 48.) Eder was reluctant but Davis was insistent. Eder told Davis to just leave the motel room and he and Reimers would come to pick her up. Davis responded that Carl would not let her leave. Davis then told Eder to hurry because Carl was trying to take off her clothes. (*Id.* at 48-49.) Davis made a video call to Eder from the motel bathroom. Eder believed that Carl was holding Davis against her will, and was about to rape her, so Reimers and Eder headed to the Tiger Town Motel. (*Id.* at 49-50.)

Reimers pulled in front of the gas pump and parked. He remained in the vehicle. Eder grabbed the gun and headed to the motel room to get Davis. (*Id.* at 50.) Eder could not see into the windows because they were covered. He knocked on the door and heard some movement. He turned the handle and realized the door was unlocked. Eder entered the room. He saw Carl on the bed and yelled at him for holding Davis against her will. Carl stood up and jumped at Eder. Eder said the two struggled for the gun, the gun went off, and Eder saw that Carl had been shot

in the head because a piece of Carl's scalp had come off. Eder grabbed the gun and ran back to Reimers' vehicle. (*Id.* at 51-53.) Tiger Town's surveillance videos corroborated Eder's testimony concerning events outside of the motel room. (*See* State's Exs. 12-14.)

Davis texted or called Eder and instructed him to come back and pick her up. Reimers refused to return to the motel. Reimers tried to dump his vehicle at a friend's house but the friend refused. Reimers dropped Eder back at 7 Alderson. (9/15/21 Tr. at 54-55.) Eder testified that he had pled guilty to deliberate homicide pursuant to a plea agreement. The plea agreement did not require Eder to testify against Davis and Eder received no benefit for doing so. (*Id.* at 56-57.)

On November 2, 2019, Deputy Brutlag with the Yellowstone County Sheriff's Office (YCSO) responded to the Ballentine area after a 911 hang up call. (9/13/21 Tr. at 152-53.) While responding to this call, he learned another officer, Deputy Ketch, was checked out with two females on the side of the road. Pursuant to officer safety protocol, Deputy Brutlag responded to this location. One female identified herself as Morgan Long (Morgan) and the second female identified herself as Amber Lee Hollow Horn. Deputy Brutlag later learned that this was a false name and this female was Davis. Davis and Morgan had multiple bags with them. (*Id.* at 157-59.)

Deputy Brutlag asked the two women what they were doing. They replied that they had gone to the Tiger Town gas station to buy a pop. Deputy Brutlag knew that the gas station had been closed for hours. (*Id.* at 159.) Davis elaborated that as they were getting a pop, a man with a gun went into a motel room behind the gas station, and the two women heard a bang. Davis and Morgan went to the room and found their friend Carl lying on the floor inside the room. (*Id.* at 160.)

After placing the women in separate patrol cars, Deputy Brutlag and Sergeant Ketch went to room number 2 at the Tiger Town Motel and found a male, later identified as Carl, face down on the floor between two beds with what appeared to be a gunshot wound to the head. (*Id.* at 162.) Dr. Kurtzman, the chief medical examiner for the State of Montana, completed an autopsy of Carl on November 3, 2019. (9/14/21 Tr. at 135-37.) Dr. Kurtzman concluded that Carl sustained a shotgun wound to the head. (*Id.* at 138.) The wound may not have been instantly fatal, but it was instantly incapacitating. (*Id.* at 145.) Carl had methamphetamine in his system at the time of his death. (*Id.* at 149-50.)

About two and a half hours after discovering Carl's dead body, Deputy Brutlag collected Davis's cell phone from her. Long did not have a cell phone. (*Id.* at 165.) Davis advised Deputy Brutlag that her phone was dead, which Deputy Brutlag confirmed. Back at the sheriff's office, he plugged the phone in and a message popped up that the phone had reset. (*Id.* at 166.)

Deputy Marketon of the YCSO conducted a pat down search of Davis before transporting her to the sheriff's office in her patrol vehicle. (9/14/21 Tr. at 83, 85-86.) Davis had a folding knife hidden in her bra. (*Id.* at 86-87; State's Ex. 126.) Davis continued to provide Deputy Marketon with a false name, date of birth, and social security number. (*Id.* at 89-90.)

Investigators learned that Tiger Town had a video surveillance system and made copies of the surveillance videos from November 1-2, 2019. (9/14/21 Tr. at 97-99; State's Exs. 12-14.) One surveillance video showed Carl's vehicle parking near the Tiger Town Motel around 3 a.m. Carl got out of the driver's side of the vehicle. Davis and another female also exited the vehicle. The three of them unloaded bags from the trunk of the car and carried them into room number 2. (9/15/21 Tr. at 11.) The video depicted Davis taking some things out of the trunk of Carl's car. Davis also looked at her phone and manipulated it. (*Id.* at 12.) After the three people went into the motel room, Davis came back outside to the parking lot and looked towards the south end of the parking lot in the direction of the interstate. (*Id.* at 13.)

At about 3:29 a.m., one of the surveillance videos showed a van pulling up to the Tiger Town gas pumps. The van's driver, identified as Reimers, got out of the van. The passenger, Eder, also got out of the van and walked towards the south side of the motel. (*Id.* at 14.) Another surveillance video depicts Eder walking

towards motel room number 2 with a shotgun. Eder entered the room, but only for a few moments. Eder then ran out of the room, got back into the van with Reimers, and Reimers drove away. (*Id.* at 17.) Within a few seconds, the video showed Davis and Morgan leaving the room and crossing the parking lot of the motel. (*Id.*) The surveillance videos showed Davis and Morgan walking towards the interstate near the railroad tracks where Sergeant Ketch located them moments later. (*Id.* at 16; *see also* State's Ex. 14.) Davis did not use her phone to call 911. (*Id.* at 19.)

On November 11, 2019, Sara Armour, who works at Tiger Town and is the owners' granddaughter, (9/14/21 Tr. at 97), found a bag of meth down the road from Tiger Town near the railroad tracks where Sergeant Ketch found Davis and Morgan during the early morning hours of November 2, 2019. (*Id.* at 101-02; State's Ex. 15.) Video footage from the officers' cameras showed something falling from Davis's hand in this area. (9/15/21 Tr. at 65.) Sara placed the meth in a plastic grocery bag, took it back to Tiger Town, and turned it over to Deputy Lauwers of the YCSO. (*Id.* at 102.) The packet of meth that Deputy Lauwers collected from Sara weighed 24.35 grams. (*Id.* at 111; State's Exs. 21-24.)

On June 15, 2020, while Davis was incarcerated on another charge, she sent a kite informing the detectives investigating Carl's homicide that she would like to speak with them. (*Id.* at 89; State's Ex. 214.) Around this time, Davis also



exchanged numerous text messages with Crystal Hanson (Crystal). (9/15/21 Tr. at 68; State's Ex. 220-A.) On June 17, 2020, Davis texted Crystal:

My conscious—conscience is getting to me. I'm feeling so guilty the more I am here. I put a kite in to talk to the detectives. Maybe come clean with them.

(9/15/21 Tr. at 84.) In another text to Crystal on the same day, Davis wrote:

Maybe if I come clean myself before James goes to trial they won't throw the book at me. IDK. I don't know. Baby, I'm so confused.

(*Id.* at 85.)

On June 18, 2020, Davis texted Crystal:

There is more to the story than many people—that many people don't know. But if they find out once they extract data from my fone, F-O-N-E, they got the night of the homicide, they will know. I'm thinking if I confess, then they will take it easy on me when I go to court for the charge.

(*Id.* at 85.) After Davis met with the detectives, she texted Crystal, "They kept asking questions and I fucking fucked myself." (*Id.* at 86.)

Detectives Dahl and Fritz interviewed Davis, at her request, on June 18, 2020. (*Id.* at 90; State's Ex. 215-A.) Davis had a calm demeanor throughout the interview and readily volunteered information. (*See* State's Ex. 215-A.) Davis explained that she wanted to speak to the detectives because she felt guilty for two people "going down" for something they wanted no part of. (State's Ex. 215-A at 3:47-50.) Davis admitted that she was angry at Carl because he owed her meth. (*Id.* at 14:56-58.) Davis volunteered that, "I get evil when I'm high." (*Id.* at 14:45-48.)

Davis suggested to Eder, “Should we just rob this fucker?” (*Id.* at 9:05-07.) When Eder asked Davis if he should just get some mace, she told him to get a gun. (*Id.* at 4:03.)

Davis explained that Eder “really, really did not want to do it.” (*Id.* at 5:03.) Eder kept trying to talk Davis out of robbing Carl. (*Id.* at 33:58-34:18.) Davis manipulated Eder so he would think she was in danger. (*Id.* at 23:47-54.) Davis told Eder that Carl was taking her out of town and she did not feel safe. (*Id.* at 34:26.) During the interview, Davis assured the detectives that she was speaking to them of her own free will and nobody was intimidating her. (*Id.* at 38:37-50.) Davis hoped that by coming forward Eder and Reimers would receive some leniency and she would not be sentenced as harshly. (*Id.* at 45:25-42.)<sup>2</sup>

Davis defended against the felony murder charge by asserting that in her two-week relationship with Eder, he had emotionally abused her into submissiveness. (9/16/21 Tr. at 5-18, 87-91.) Davis also testified that she only intended to steal the meth from Carl that he owed her. (*Id.* at 109-12.)

Davis confirmed that she met up with her friend Morgan at the Days Inn on November 1, 2019. Davis later learned that Morgan was in Carl’s motel room, so Davis was hoping that Carl would finally pay her for the meth that he owed her.

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<sup>2</sup> Although at trial, Davis attempted to portray herself as a submissive victim of Eder’s emotional abuse, Davis’s interview with the detectives shows Davis to be a person in charge of her own decision making. (State’s Ex. 215-A.)

(9/16/21 Tr. at 96-97.) Davis told Eder where she was, and he showed up at the Days Inn. When Eder showed up at the Days Inn, Davis told him she wanted him to leave, and Eder was upset with her. Davis yelled at Eder and he finally left. (*Id.* at 98-100.) After Eder left, he and Davis continued to message each other. (*Id.* at 101.)

Carl eventually returned to the Days Inn. Carl, Morgan, and Davis all ingested meth. Davis continued to communicate with Eder through messages. Once Davis realized that Carl had about three ounces of meth, she messaged Eder, “Should we rob him?” (*Id.* at 106.) Davis continued to communicate with Eder through text messages and kept him apprised of her whereabouts. (*Id.* at 108-10.) In contrast to the statement Davis gave the detectives, at trial Davis denied that she ever told Eder to bring a gun to rob Carl. (*Id.* at 109.) Davis claimed to have instructed Eder that he needed to find a ride because at some point Davis intended to take Carl’s drugs and make a run for it. (*Id.* at 111.) Davis testified she needed a “getaway vehicle” on standby. (*Id.* at 112.) Davis maintained at trial that she only instructed Eder to find a getaway vehicle. Davis claimed that Eder was never supposed to enter the Tiger Town motel room. (*Id.*) Davis knew that Eder had recruited Reimers as the driver. (*Id.*)

Davis admitted at trial that as she, Carl and Morgan were headed to the Tiger Town Motel in Ballentine, she knew that Eder and Reimers were following them in Reimers’ vehicle. Davis remained in communication with Eder. (*Id.* at 112-13.) At

one point, Davis instructed Eder to “fall back” because Carl was paranoid that someone was following him. Carl pulled off the interstate thinking someone was following him. (*Id.* at 113.)

Once Davis, Carl and Morgan were settled in the motel room, she continued to message Eder. She described for Eder what room they were in. (*Id.* at 114-15.) Davis recalled that Eder believed she was in danger and kept pleading with her to just get out. (*Id.* at 116.) Eventually there was a knock on the door. According to Davis, Eder entered the room with the shot gun and accused Carl of holding his girlfriend against her will. Davis claimed that Eder immediately shot Carl and then ran from the room. (*Id.* at 122-23.) Davis recalled that as Morgan was frantically gathering things up, Davis took the meth out of Carl’s pants pocket and then followed Morgan out of the room. (*Id.* at 125.) Carl’s pants were lying behind him between the two beds. (*See* State’s Ex. 82.)

Davis claimed that as she and Morgan were walking on the road, Eder texted her and instructed her to delete all her messages, and she did so. (*Id.* at 129.) Davis claimed she gave law enforcement officers a false name because she had outstanding warrants. (*Id.* at 131.) Throughout her testimony, Davis maintained that she never meant for Eder to come into the room with a weapon. All she wanted from Eder was a ride after she stole the meth from Carl. (9/17/21 Tr. at 23-24.)

## **SUMMARY OF THE ARGUMENT**

The district court properly exercised its discretion in holding that nine photographs from the crime scene depicting the victim or the blood pool from the victim's gunshot wound were more probative than prejudicial and therefore admissible. Davis's claim that the victim's manner of death was irrelevant to the felony murder charge she faced lacks merit. The State had to prove that the victim was murdered during a robbery, making the victim's manner of death highly relevant. Also, the crime scene photographs were helpful to the jury's role in making credibility determinations. Davis's version of events diverged greatly from Eder's version of events. The crime scene photographs at issue corroborated Eder's testimony. Davis's true goal in suppressing the crime scene photographs was to sanitize the victim's murder for the jury. The crime scene photographs of which Davis complains were far less prejudicial than Davis's voluntary statement to two detectives during which she admits that she was the mastermind of the robbery, she insisted that Eder bring a gun to the robbery, and she manipulated Eder into believing that she was in great danger, all so Davis could steal the victim's meth—an act Davis completed by navigating around the victim's dead body before fleeing from the crime scene.

The district court imposed a legal sentence when it ordered Davis to pay restitution in the amount to which she agreed. Davis waived the claim that she

raises for the first time on appeal that the district court erred when it did not pronounce her restitution obligation to run jointly and severally with the restitution obligations of her accomplices. The fate of Davis's accomplices is immaterial to the district court's authority to impose full restitution on Davis.

## **ARGUMENT**

### **I. The standard of review**

A district court has broad discretion in determining the admissibility of evidence, and this Court reviews the district court's rulings for an abuse of discretion. *State v. Strizich*, 2021 MT 306, ¶ 17, 406 Mont. 391, 499 P.3d 575. A district court abuses its discretion if it "acts arbitrarily or unreasonably, resulting in substantial injustice." *Id.* quoting *State v. Holland*, 2019 MT 128, ¶ 8, 396 Mont. 94, 443 P.3d 519.

This Court reviews a district court's sentence imposed in a criminal case for legality only and confines its review to whether the sentence is within statutory parameters. *State v. Workman*, 2005 MT 22, ¶ 11, 326 Mont. 1, 107 P.3d 462.

### **II. The district court properly exercised its discretion in admitting the crime scene photographs.**

This Court has long held that photographs are admissible if they fairly and accurately represent relevant evidence. *State v. Austad*, 197 Mont. 70, 82, 641 P.2d

1373, 1380 (1982). Pictures of the crime scene are admissible, “if in the determination of the court, they aid the jury in its fact-finding process.” *State v. Gratzner*, 209 Mont. 308, 321, 682 P.2d 141, 148 (1984). As this Court explained in *State v. Sigler*, 210 Mont. 248, 256, 688 P.2d 749, 753 (1984), “where the purpose of the photographic exhibit is to assist the jury in understanding the case, it is admissible, even though its effect may be prejudicial or inflammatory, if its probative value outweighs its prejudicial effect.” Photographs are admissible for the purpose of explaining and applying the evidence. *State v. Mergenthaler*, 263 Mont. 198, 205, 868 P.2d 560, 564 (1994).

Here, Davis objected to any photograph that depicted any part of Carl’s dead body and any portion of the pool of blood from the gunshot wound to Carl’s head. In other words, Davis wanted to sanitize Carl’s homicide for the jury. But this Court has explained, “We will not demand that a trial be sanitized to the point that important and probative evidence must be excluded.” *State v. Gollehon*, 262 Mont. 293, 302, 864 P.2d 1257, 1262 (1993), quoting *State v. Doll*, 214 Mont. 390, 400, 692 P.2d 473, 478 (1985).

Davis argued below and seemingly argues on appeal that the photographs were unnecessary because Eder admitted he shot Carl and the medical examiner testified that Carl died from a gun shot wound to the head. Davis therefore argues there is little probative value to the photographs to which she objected. Under

Davis's reasoning, photographs of a homicide victim from the crime scene would never be admissible because there would always be a medical examiner to testify about the cause of death and an investigating officer to testify about observations from the crime scene. This Court has never made such a sweeping holding and instead leaves admissibility of crime scene photographs to the broad discretion of the trial court since the trial court is familiar with the contested facts before it.

*State v. Dunfee*, 2005 MT 147, ¶ 26, 327 Mont. 335, 114 P.3d 217; *see also State v. English*, 2006 MT 177, ¶ 52, 333 Mont. 23, 140 P.3d 454 (Although the victim's death was not in dispute, her injuries, as depicted in photographs at issue on appeal, may have been useful to the jury in understanding the manner in which the victim was injured.).

Davis claims there was "no need to prove the manner of Carl's death." (Appellant's Br. at 30.) Davis is mistaken. For starters, the State charged Davis with felony murder. To prove the charge against Davis, the State had to prove a murder. Davis did all that she could at trial to distance herself from the homicide and to portray herself as a victim of Eder's emotional abuse. The circumstances surrounding Carl's death were all critical to the State's ability to meet its burden of proof that Davis was guilty of felony murder.

Eder's and Davis's credibility was an issue the jury had to resolve in reaching a verdict on the felony murder charge against Davis. *See State v. McCoy*,



2021 MT 303, ¶ 30, 406 Mont. 375, 498 P.3d 1266 (Determinations of credibility are within the exclusive province of the jury.). And this Court has recognized that crime scene photographs, though graphic, are admissible to corroborate the testimony of witnesses. *Gollehon*, 262 Mont. at 301, 864 P.2d at 1262. Here, Eder testified that he was hesitant to participate in Davis's robbery scheme, but after he reluctantly agreed, he suggested that he could get some bear spray. Davis admitted to detectives that she rejected Eder's suggestion that he could get some mace and told Eder he needed to bring a gun. At trial, Davis denied that she had ever instructed Eder to get a gun. In fact, despite her detailed statement to the detectives, Davis claimed she had only asked Eder to line up a ride for her after she stole Carl's meth. At trial, Davis proclaimed surprise that Eder came to the motel room with a gun and shock that he used it to shoot Carl in the head.

Eder testified that he believed Davis was in danger and he intended to go into the motel room to get her out of harm's way. He did not intend to use the gun, but only intended to collect Davis, who he believed Carl was holding against her will. During Davis's statement to the detectives, Davis admitted to manipulating Eder into believing she was in danger and felt unsafe because Eder was so reluctant to help her with the robbery. During the trial though, Davis could not seem to recall suggesting to Eder that she felt unsafe and testified there was no reason for Eder to protect her from Carl.

Eder testified that by the time he got to the Tiger Town Motel, his conversations lead him to believe that Carl was going to rape Davis. Two of the photographs, to which Davis objected, established that Carl had his pants off and his boxer shorts were partially down near his knees, which clearly made Eder's concern for Davis's safety seem credible. (State's Exs. 87-88.)

Carl's placement between the two beds, lying face down, supports Eder's testimony that when Eder entered the room, Carl was lying on one of the beds. (State's Exs. 87-88.) Eder testified that Carl got up from a bed and lunged at Eder and the two struggled for the gun. The photograph labeled State's Exhibit 60 shows Carl's resting position in relation to the door of the motel room and corroborates Eder's testimony that Carl was lunging towards Eder, who had just entered the motel room. Eder testified that after the gun went off, he knew that Carl had been hit because a piece of the top of his scalp had come off. (9/14/21 Tr. at 52.) In making its determination, the jury was entitled to see where Carl was shot, which corroborated Eder's testimony. (*See* State's Ex. 98.)

And Davis testified at trial about the traumatic impact on her from Eder shooting Carl. She described her feelings of shock and emotional distress. Importantly, though, Davis also admitted, out of necessity, that before she left the crime scene, she retrieved the package of meth from Carl's pants. At least one crime scene photograph captures the location of Carl's pants near the floor,

between the two beds, behind Carl's dead body, near his feet. (State's Ex. 82.) For Davis, who claimed to be traumatized, to get the meth from Carl's pants' pocket, she had to navigate around the pool of blood and Carl's dying or dead body.

Davis mistakenly claims that the photographs to which she objected were not probative of a single disputed element in her trial. (Appellant's 35.) To the contrary, the jury was the sole judge of credibility, and the photographs in question were relevant to making credibility determinations about Eder's and Davis's divergent testimony concerning the circumstances surrounding Carl's murder. In order to prove the felony murder charge, the State had to demonstrate for the jury that Davis was not a victim of Eder's emotional abuse, but rather was the person who came up with the plan to rob Carl, convinced Eder to get a gun, and then, when Eder had cold feet, manipulated him into believing that Carl was about to rape her. Davis urged the jury that she never meant to "rob" Carl, she only meant to take from him the meth she believed he owed her. Davis portrayed herself as a victim of Carl's greed and Eder's jealous possessiveness. The district court correctly recognized the probative value of the photographs Davis argued were inadmissible. Also, the district court cautioned the State to show each photograph briefly and quickly move on. There is nothing in the record to suggest that the State failed to comply with the court's requirement.

Finally, to the extent that Davis argues the photographs to which she objected were gruesome, murder scenes generally produce gruesome photographs. This Court has recognized as much. *See, e.g., State v. Devlin*, 251 Mont. 278, 283, 852 P.2d 185 (1991). And as this Court has also recognized, the reality portrayed in crime scene photographs does not automatically make them more prejudicial than any other testimony or evidence. *Austad*, 197 Mont. at 83, 641 P.2d at 1380. Davis has failed to prove that the district court abused its discretion when it found that the photographs in question were more probative than prejudicial.

Even so, the State believes it is necessary to address Davis's claim that the State would not be able to prove that the admission of one or more of the photographs at issue here resulted in harmless error. Davis argues that the photographs at issue "were part of an extremely aggressive prosecution of China by the State to make her appear a criminal mastermind who orchestrated Carl's murder." (Appellant's Br. at 35.) Ironically, Davis's statement seemingly makes the State's case that the photographs at issue were highly probative. Even more important though is how the timing of when the State charged Davis disproves her accusation. The State did not charge Davis with felony murder until over a year after the homicide and *after* Davis gave her statement to Detectives Burch and Fritz on June 18, 2020—the statement that *she initiated*. (See State's Exs. 214, 214-A; 9/15/21 Tr. at 82-83.) As Davis recognized in her text message to Crystal after she

talked with the detectives, Davis sunk herself. Davis's own admissions to the detectives were admissible at trial and far more prejudicial than any of the crime scene photographs of which she complains. (*See* State's Ex. 215-A.)

Finally, to the extent that Davis accuses the prosecutors of misconduct during their opening statement and/or closing argument, (*see* Appellant's Br. at 36-37), she has not raised that issue on appeal and it is improper for Davis to tease the Court with an unraised, and unproven claim of alleged prosecutorial misconduct in attempting to establish that the photographs at issue were more prejudicial than probative.

Since the district court did not abuse its discretion in admitting the photographs at issue here, there is no need for this Court to embark on a harmless error analysis. But even if it were to do so, Davis's 2020 interview with the detectives that *she initiated* was both admissible and far more prejudicial to Davis than any other piece of evidence admitted at trial.

**III. The district court imposed a legal sentence when it ordered Davis to pay the restitution figure she agreed she should pay and never requested that her restitution obligation be jointly and severally liable with her codefendants' restitution obligations.**

When the district court sentences a criminal defendant, it must require the defendant to pay restitution to fully compensate a victim for pecuniary loss, supported by evidence in the record, that the defendant caused by her criminal

conduct. *State v. Pierre*, 2020 MT 160, ¶ 12, 400 Mont. 283, 466 P.3d 494, citing Mont. Code Ann. §§ 46-18-201(5), and -243(1). Davis affirmatively agreed to pay restitution in the amount of \$9,945.67. Davis does not challenge the restitution amount on appeal.

Rather, for the first time on appeal, Davis argues that the district court erred when it did not order Davis's restitution obligation to be jointly and severally liable with the restitution obligations of Eder and Reimers. Davis did not make such a request at the sentencing hearing. Davis argues, however, that it is appropriate for the Court to consider this issue raised for the first time on appeal under the principles of *State v. Lenihan*, 184 Mont. 338, 602 P.2d 997 (1979), because the district court's failure to order Davis's restitution obligation to be jointly and severally liable with Eder's and Reimer's obligations resulted in an illegal sentence. Davis is mistaken.

This Court generally “will not put a district court in error for failing to address an issue or an argument that was not made before it.” *State v. Simpson*, 2014 MT 175, ¶ 11, 375 Mont. 393, 328 P.3d 1144, quoting *State v. David C. Johnson*, 2011 MT 116, ¶ 21, 360 Mont. 443, 254 P.3d 578. Although, under *Lenihan*, this Court will review an unpreserved claim that a criminal sentence is illegal, “a sentencing court's failure to abide by a statutory requirement rises to an

objectionable sentence, not necessarily an illegal one . . . .” *Simpson*, ¶ 11, quoting *State v. Kotwicki*, 2007 MT 17, ¶ 13, 335 Mont. 344, 151 P.3d 892.

Here, it was not the district court that failed to abide by a statutory provision, rather, it was Davis. As this Court recognized in *Workman*, ¶ 19, the district court’s authority to impose the full amount of restitution on a defendant for the victim’s entire pecuniary loss derives from Mont. Code Ann. § 46-18-141(1). The Court further explained that whether one defendant of a crime should bear full responsibility for the pecuniary loss a victim sustained rather than a proportionate share among codefendants is an issue that follows the contours of civil law. *Id.* Montana Code Annotated § 46-18-244(2) provides that an offender “may assert any defense that the offender could raise in a civil action for the loss for which the victim seeks compensation.”

Davis did not raise any civil defense at sentencing, and thereby waived the argument she now raises on appeal. The district court legally ordered Davis to pay restitution in the full amount. As this Court explained in *Workman*, the fate of Davis’s accomplices is immaterial to the district court’s authority to impose full restitution. *Workman*, ¶ 19. Because the district court imposed a legal sentence, this Court should decline to consider Davis’s claim that the district court erred when it did not order that her restitution obligation was jointly and severally liable to the restitution obligations of Eder and Reimers.

## **CONCLUSION**

Davis has failed to prove that the district court abused its discretion when it admitted crime scene photographs when the probative value of the photographs outweighed any prejudicial impact. Davis challenges the district court's restitution order for the first time on appeal but has failed to demonstrate that the district court imposed an illegal sentence when it did not orally pronounce that Davis's restitution obligation was jointly and severally liable with Eder's and Reimer's restitution obligations. The State respectfully requests that this Court affirm Davis's conviction for felony murder and the lawful sentence the district court imposed.

Respectfully submitted this 29th day of February, 2024.

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 7,070 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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## **CERTIFICATE OF SERVICE**

I, Tammy K Plubell, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-29-2024:

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