

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

STATE OF MONTANA,  Plaintiff,	Cause No. BDC-16-416
vs.	
BRANDON LEE CRAFT,  Defendant.	<b>ORDER DENYING MOTION FOR NEW TRIAL</b>

The Defendant, Brandon Lee Craft (Craft), has moved, *pro se*, for a new trial. (Doc. 323). The Court has reviewed the motion and now rules.

Craft contends that, because the Court found on August 21, 2023, that the Cascade County Clerk of Court and Sheriff had improperly notified and served the pool of jurors for the 2023 jury pool in *State v. Hinkle* (Cause No. BDC-22-242), that the structural error identified in that case entitles him to a new trial. Craft was tried and convicted by a jury on November 19, 2019. (Doc. 272). Over four years have elapsed between trial and the filing of Craft's Motion. Section 46-16-702, MCA, provides:

**46-16-702. Motion for a new trial.** (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice. A new trial may be ordered by the court without a motion or may be granted after motion and hearing.

(2) The motion for a new trial must be in writing and must specify the grounds for a new trial. The motion *must be filed by the defendant within 30 days following a verdict or finding of guilty* and be served upon the prosecution.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty.

(emphasis added).

Craft's Motion is untimely. There is no provision for extending this 30-day time limit. *State v. Hammer*, 2013 MT 203, ¶23, 371 Mont. 121, 305 P.3d 843. The Court's Order in *Hinkle* was entered following a timely motion before trial and agreement of both parties, after counsel for Hinkle supplemented investigation by counsel for the Defendant in a case before Judge Kutzman, *State v. Brown*, Cause No. ADC-22-302(c). Moreover, the issues identified for the 2023 jury pool are the result of practices in 2023. Craft was convicted in 2019. No evidence has been presented that there were any issues with the 2019 jury pool.

All counsel for criminal defendants may investigate formation of the jury pool and the jury panel for the specific case before trial,<sup>1</sup> just as the lawyers in *Brown* and *Hinkle* did. Counsel for Craft had that opportunity before trial and for 30 days thereafter and did not do so. The Court has no evidence that the jury panel for Craft's trial was skewed or biased.

Craft may suggest that new "evidence" (the orders issued following *Brown* and *Hinkle*) entitles him to a new trial. This question must be answered by applying a specific test set out in *State v. Clark*, 2005 MT 330, ¶ 34, 330 Mont. 8, 125 P.3d 1099: "(1) the evidence must have been discovered since the defendant's trial; (2) the failure to discover the evidence sooner must not be the result of a lack of diligence on the defendant's part; (3) the evidence must be material to the issues at trial; and (4) the evidence must be neither cumulative nor merely impeaching." See also *Garding v. State*, 2020 MT 163, ¶ 40, 400 Mont. 296, 466 P.3d 501. The Court is not convinced that speculative arguments about jury empanelment more than four years prior to the date of his Motion is "evidence." Craft does not show that his failure to investigate was not the result of his own lack of diligence, or that what he would have discovered is or would have been material.

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The Motion is DENIED.

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<sup>1</sup> The Court uses the term "pool" to denote the larger group of potential jurors from which individual jury panels are drawn, provided by the Secretary of State through the Office of the Court administrator, and the term "panel" to denote the group of jurors drawn by the Clerk from the pool for a specific trial.

**ELECTRONICALLY SIGNED AND DATED BELOW**

cc: CA/K. Larsen  
Defendant, #3027933, Crossroads Correctional Center, 50 Crossroads Dr.,  
Shelby, MT 59474

**CERTIFICATE OF MAILING**

This is to certify that the foregoing was  
duly served by mail upon counsel of  
record at their address this \_\_\_\_\_  
day of 02/23/2024, 20\_\_\_\_

TINA HENRY, CLERK OF COURT  
By  DEPUTY