

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0155

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DANIEL R. WOOD,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

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**APPELLEE ANSWER BRIEF**

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On Appeal from the Montana Eighteenth Judicial District Court,  
Gallatin County, The Honorable John C. Brown, Presiding

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## ISSUES PRESENTED

1. *Whether the District Court erred when it dismissed Appellant's petition for release of confidential criminal justice information.*
2. *Whether Appellant is entitled to his requested relief.*

## STATEMENT OF THE CASE

On March 21, 2023, Appellant filed a petition for the release of confidential criminal justice information (“CCJI”) in the Eighteenth Judicial District Court, Gallatin County. (Doc. 3.) In his petition, Appellant sought an order from the court releasing the body-worn microphone audio from Sgt. Justin Chaffins’s investigation of a vehicle accident Appellant was involved in. (*Id.*) Although Appellant served the petition on the Gallatin County Attorney’s office, he did not name the State or the Gallatin County Attorney as a party in the action. (*Id.*) The Gallatin County Attorney’s office did not respond to the petition and the District Court took no action. On June 9, 2023, Appellant filed a motion for declaratory judgment and brief in support. (Doc. 4, 5.) Again, Appellant served his motion and brief in support on the Gallatin County Attorney’s office, this time naming the State of Montana as the respondent in the action. (Doc. 4.) In response to this motion, the Gallatin County Attorney’s office filed an answer brief arguing that Appellant had not used the established procedures intended to safeguard the dissemination of sensitive and protected criminal justice information. (Doc. 6.)

On March 1, 2024, the District Court dismissed Appellant's petition. (Doc. 9.)

This appeal follows.

### **STATEMENT OF THE FACTS**

In February 2021, Appellant was involved in a motor-vehicle accident in Bozeman. (Doc. 4.) Among the responding officers was Sgt. Justin Chaffins of the Bozeman Police Department. (*Id.*) While investigating the accident, Chaffins spoke with Appellant and with the other motorist involved. (Affidavit of Probable Cause and Motion for Leave to File Information, No. DC 21-86A.) Following the investigation, Appellant was charged with the criminal possession of a controlled substance. (Information, No. DC 21-86A.) Pursuant to the district court's omnibus order, Appellant received documents numbered 1-238 and one flash drive containing evidence. (Discovery Receipt, No. DC 21-86A.)

On motion by the State, Appellant's criminal prosecution was later dismissed. (Order, No. DC 21-86A.) Following dismissal of his criminal proceedings, Appellant filed a petition in the Eighteenth Judicial District Court, Gallatin County, seeking additional evidence from the investigation of the

accident. (Doc. 4.) In his petition, Appellant requested the release of audio from Chaffins's body-worn microphone. (*Id.*)<sup>1</sup>

Gallatin County has created and maintains a robust set of systems and procedures through which members of the public may request access to CCJI. The system implemented by Gallatin County ensures the orderly processing of requests, guarantees compliance with the statutory requirements for the dissemination of CCJI, and safeguards the public's constitutional right to know. The process is free and made easily accessible to members of the public online. (*See* Doc. 9.) Instead of utilizing these established procedures, Appellant chose to file a petition directly in the District Court for the release of Chaffins's microphone audio.

### **STANDARD OF REVIEW**

The decision to dismiss an action is within the sound discretion of the trial court. *Nystrom v. Melcher*, 262 Mont. 151, 157, 864 P.2d 754, 758 (1993). This Court reviews a district court's dismissal for abuse of that discretion. *Id.* An abuse of discretion occurs when a discretionary ruling is premised upon a mistake of law. *Mont. State Univ.-Bozeman v. Mont. First Judicial Dist. Court*, 2018 MT 220, ¶ 15, 392 Mont. 458, 426 P.3d 541 (citation omitted).

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<sup>1</sup> It is unclear from the record of the proceedings below and the State is unaware whether the requested audio exists.

## SUMMARY OF THE ARGUMENT

The State concedes that the District Court erred as a matter of law and, therefore, abused its discretion when it determined that Appellant was required to submit a request for the release of CCJI through Gallatin County's web portal. Montana law explicitly provides that a person seeking the release of CCJI may do so through "any action . . . that the person or organization considers appropriate and permissible." Mont. Code Ann. § 44-5-303(6). Gallatin County has established procedures and infrastructure to ensure the orderly and efficient review of requests for CCJI. The County's established processes ensure that Montanans' right to know is appropriately balanced against the individual privacy interests implicated by the release of sensitive and confidential information, as is required by law. Had Appellant utilized the established procedures, his request would have been reviewed and processed in a timely fashion. Nonetheless, the State recognizes that Appellant, by law, has no obligation to use processes designed to protect his constitutional rights.

The only appropriate remedy in this case is reversal and remand to the District Court. Montana law clearly provides that parties are responsible for their own fees and costs when seeking the release of CCJI. Appellant's requests for the recusal and sanction of both the Judge and Deputy County Attorney in this case are unbriefed and should, therefore, not be considered by the Court. Should the Court

address Appellant's requests for recusal and sanction, such remedies are unsupported by law and inappropriate in this case.

## ARGUMENT

### **I. The State concedes that the District Court abused its discretion when it dismissed Appellant's petition for failing to adhere to established procedures for requesting access to CCJI.**

As an initial matter, Appellant asserts that the District Court lacked jurisdiction to rule on his petition. Although Appellant uses the term jurisdiction, the State understands Appellant to argue that the District Court acted outside of its authority when it *sua sponte* dismissed Appellant's petition. Although the District Court abused its discretion in dismissing Appellant's petition, there is no question that the District Court possessed jurisdiction under Mont. Code Ann. § 3-5-302 and Mont. Const. art VII, § 4.

As relevant to this appeal, Montana law classifies criminal justice information as either public criminal justice information or CCJI. *Bozeman Daily Chronicle v. City of Bozeman Police Dep't*, 260 Mont. 218, 222, 859 P.2d 435 (1993); *see also* Mont. Code Ann. §§ 44-5-103(3), (13). Except as otherwise provided by Montana law, public criminal justice information must be made available to the public by the originating department or agency. Mont. Code Ann. § 44-5-301(2). Conversely, the dissemination of CCJI is strictly controlled by

Mont. Code Ann. § 44-5-303. The parties agree that the evidence Appellant seeks is CCJI subject to the dissemination provisions of Mont. Code Ann. § 44-5-303.

Montana Code Annotated § 44-5-303(1) restricts the dissemination of CCJI only “to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure.” Mont. Code Ann. § 44-5-303(1). Appellant is not a criminal justice agency. Accordingly, he may only receive the information he seeks if he is authorized to do so by law, or if a district court authorizes him to receive it. *Bozeman Daily Chronicle*, 260 Mont. at 223, 859 P.2d at 438.

This Court has determined that legal authority to receive CCJI can derive from either statutory or constitutional law. *In re Lacy*, 239 Mont. 321, 325, 780 P.2d 186, 189 (1989). Statutory provisions notwithstanding, “a person . . . is authorized by law to receive confidential criminal justice information under [Art. II, § 9] of the Montana Constitution.” *Bozeman Daily Chronicle*, 260 Mont. at 224, 859 P.2d at 439 (internal quotations omitted). This authorization, however, is qualified by individual rights to privacy also contained in the Montana Constitution. *Id.* at 224, 859 P.2d at 438-39 (citing *In re Lacy*, 239 Mont. at 325, 780 P.2d at 188).

The Right to Know and the Right to Privacy will “inevitably conflict in cases involving a request for [CCJI].” *Bozeman Daily Chronicle*, 260 Mont. at 225, 859 P.2d at 439. As such, the provisions of Title 55, Chapter 5, MCA, are in large part an effort by the Montana legislature to safeguard individual privacy in the collection and dissemination of CCJI. Mont. Code Ann. § 44-5-102 (“The purpose of this chapter is to . . . establish effective protection of individual privacy in confidential and nonconfidential criminal justice information collection, storage, and dissemination.”). It is, therefore, the duty of Montana courts to balance the competing interests and determine what information, if any, is appropriate for release. *In re Lacy*, 239 Mont. at 326, 780 P.2d at 189.

To allow a court to balance these competing interests, it is first incumbent upon a party seeking the release of CCJI to show that they properly may receive the information. *Bozeman Daily Chronicle*, 260 Mont. at 224, 859 P.2d at 439 (citing *In re Lacy*, 239 Mont. at 326, 780 P.2d at 189). Montana Code Annotated § 44-5-303 contains two relevant dissemination provisions that allow a requestor to make this showing.

First, Mont. Code Ann. § 44-5-303(5)(a) allows a person to request a prosecutor release CCJI relating to a terminated criminal investigation. Upon receiving a request, the prosecutor may then file a declaratory judgment action in district court to determine whether release of the information is appropriate. (*Id.*)

The remaining provisions of Mont. Code Ann. § 44-5-303(5) create mandatory procedures that notify all interested parties of the request<sup>2</sup>, ensure the interested parties are aware of their rights<sup>3</sup>, and guarantee that the decision to disclose or protect the information comports with both the Right to Know and the Right to Privacy.<sup>4</sup>

Next, in addition to the detailed provisions of Mont. Code Ann. § 44-5-303(5), Mont. Code Ann. § 44-5-303(6) provides “[t]he procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible.” The plain language of Mont Code Ann. § 44-5-303(6) suggests that filing a petition directly with the district court is permissible under Montana law. Although this Court has had few occasions to interpret the breadth of Mont. Code Ann. § 44-5-303(6), in *Crites v. Lewis & Clark Cty.*, 2019 MT 161, ¶¶ 22-25, 396 Mont. 336, 444 P.3d 1025, the Court stated that the detailed procedures of Mont. Code Ann. § 44-5-303(5) are not superimposed upon and do not limit a person’s ability to make a request under Mont. Code Ann. § 44-5-303(6). The Court’s conclusion in *Crites*, is strengthened by the legislative history of the statute. Mont. Code Ann. §§ 44-5-303(5) and (6) were added in

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<sup>2</sup> Mont. Code Ann. §§ 44-5-303(5)(a)(ii), (iii)(A).

<sup>3</sup> Mont. Code Ann. §§ 44-5-303(a)(iii)(B), (v)(A) .

<sup>4</sup> Mont. Code Ann. § 44-5-303(b).

2003. 2003 Mont. Laws Ch. 253. In introducing the amendment, the bill's sponsor, then-senator Mike Wheat, made clear that the new bill would not prevent any individual or organization from seeking the release of information by any legal means—the procedures of the new subsection five notwithstanding. *See Hearing on SB 141 Before the Senate Committee on the Judiciary*, 58th Leg., Reg. Sess. at 12 (2003).

Counties across Montana, including Gallatin County, have created procedures to implement Mont. Code Ann. §§ 44-5-303(5) and (6). In Gallatin County the virtual portal located at <https://gallatincomt.virtuالتownhall.net/support-services-records> serves this purpose. Although Gallatin County makes a simple and efficient process available to Appellant, and despite the fact that those processes enable the Gallatin County Attorney's office and the Eighteenth Judicial District Court to more easily and efficiently process requests like the one Appellant makes, it does not appear that Montana law imposes any legal requirement on Appellant to utilize those procedures. The plain language of the statute, the legislative history, and this Court's precedent all suggest that any person may seek the release of CCJI by any legal means they choose. The District Court erred as a matter of law when it dismissed Appellant's petition because he did not use the online portal. Accordingly, the District Court abused its discretion. *Mont. State Univ.—Bozeman*,

¶ 15. The State agrees with Appellant that the Court should reverse and remand this case to the District Court for further proceedings.

Although the State agrees with Appellant as to the meaning of Mont. Code Ann. § 44-5-303(6), the State does not agree that Appellant is necessarily entitled to the information he seeks—if such evidence exists. Appellant’s assertion that “there are no privacy concerns” associated with his request is flatly incorrect. By Appellant’s own admission, the evidence he seeks involves both police officers as well as the other motorist involved in the accident. Any officer recorded in the evidence Appellant seeks, as well as the other motorist have a clear privacy interest in the evidence. *See City of Bozeman v. McCarthy*, 2019 MT 209, ¶ 17, 397 Mont. 134, 447 P.3d 1048 (noting that public officials, including police officers, do not shed entirely their right to privacy even while on the job) (citations omitted). Montana law requires the balancing of the competing interests of privacy and public disclosure prior to the release of CCJI. Mont. Code Ann. § 44-5-303(1). Appellant is not entitled to receive any information prior to the proper balancing of interests, which can occur at the district court upon remand.

**II. The only remedy appropriate in this case is reversal and remand to the District Court.**

In addition to reversal and remand, Appellant requests that this Court award him costs for pursuing this matter, order the disqualification of both the judge and

the prosecuting attorney in any furtherer proceedings, and sanction both Judge Brown and Deputy County Attorney LeAnn Certain. The Court should deny Appellant's request for these extreme remedies as they are entirely unsupported by Montana law. Additionally, Appellant failed to sufficiently raise these issues in his opening brief and has forfeited them.

**A. Appellant failed to raise the issues of costs, disqualification, and sanctions in his opening brief.**

Montana Rules of Appellate Procedure 12(1)(g) requires a party's brief include an argument which contains the contentions of the party complete with the reasons for the argument and citation to authority. Pursuant to Mont. R. App. P. 12(1)(g), the Court rejects arguments and requests for relief when they are not argued in the body of an appellant's opening brief. *See State v. Black*, 270 Mont. 329, 333, 891 P.2d 1164 (1995). Although the technical intricacies of the appellate rules may be relaxed for *pro se* litigants, they are not disregarded entirely. A *pro se* Appellant must still present the fundamental factual and legal bases for their appeal. *In re Marriage of McMahon*, 2002 MT 198, ¶ 7, 311 Mont. 175, 53 P.3d 1266.

Appellant's request to be reimbursed for costs comes, for the first time, in the conclusion section of his opening brief. Appellant includes no authority for the request other than a glancing reference to the Court's equitable powers. Further, although asserting that he could do so if requested, Appellant presents no argument or evidence for what his costs have been. Appellant's failure to properly brief this

issue impermissibly hinders the State's ability to adequately and fully respond to such arguments. Accordingly, the Court should not address Appellant's request for costs.

Similarly, Appellant's opening brief offers only accusations, grievance, and suspicions that both Deputy County Attorney Certain and Judge Brown are "in on the game." Appellant asserts that the District Court's and County Attorney's Office's actions were antithetical to judicial policies, violated his rights to due process, equity, and dignity, raised the appearance of impropriety, and were so egregious as to require the recusal and sanction of both. In support of these accusations, Appellant offers only that he has read about egregious legal error—without citing any authority on that subject or otherwise indicating for the court what he has read—and a quotation from a 1996 decision of the Supreme Court of Kentucky regarding fee arrangements between attorneys and liability insurers. *See American Ins. Ass'n v. Ky. Bar Ass'n*, 917 S.W.2d 568 (1996).

Montana statute, the Montana Code of Judicial Conduct, and the Montana Rules of Professional Responsibility all contain extensive rules concerning bias, prejudice, impartiality, and the disqualification of judges and attorneys and are easily accessible to *pro se* litigants. Despite his access to this information, Appellant does not indicate in briefing what, if any, Montana law he relies on to support his accusations. Aside from his oblique references to due process, equity,

and dignity, Appellant cites no case law, statute, or constitutional provision that is violated by the impropriety he alleges. Appellant's accusations against Deputy County Attorney Certain and Judge Brown are speculative, conspiratorial, and fail to meet his burden of providing the fundamental bases for appeal on these issues. *In re Marriage of McMahon*, ¶ 7. The Court has no obligation to locate supporting authority or invent arguments for Appellant. *State v. Rodarte*, 2002 MT 317, ¶ 15, 313 Mont. 131, 60 P.3d 983. Accordingly, the Court should deny Appellant's requested relief on these issues.

**B. In addition to being improperly raised, Appellant's requests are unsupported by applicable law.**

**1. Costs**

Appellant has not cited any authority in his request for costs; for this reason alone, this Court should deny his request. But even if this Court considers the issue, the law does not support Appellant's request. Two statutory provisions are likely relevant, should the Court consider Appellant's request for costs. Under either provision, an award of costs to Appellant would be improper.

To the extent Appellant is making a request for costs under Mont. Code Ann. § 44-5-303, the statute does not allow for costs and specifically disallows them in some circumstances. When a person seeks CCJI from a prosecutor in a case that has been terminated by dismissal, the parties in the case are explicitly

required to bear their own costs. Mont. Code Ann. § 44-5-303(5)(c). As noted above, Appellant brings this action under Mont. Code Ann. § 44-5-303(6).

Although in *Crites* the court stated that the provisions of Mont. Code Ann. § 44-5-303(5) are not automatically superimposed on Mont. Code Ann. § 44-5-303(6), that reasoning is less applicable with respect to the award of costs and fees.

*See Crites*, ¶ 23. In *Crites*, the estate of a murdered Helena man filed a petition seeking the release of CCJI connected to the investigation of his death. *Crites*, ¶ 14. Lewis & Clark County objected, arguing that the release of the information would harm their ongoing investigation. *Id.* The district court agreed and denied the Estate's request without conducting an *in camera* review of the requested evidence. *Id.* ¶ 15. On appeal, the Estate argued that an *in camera* review of evidence is required anytime CCJI is sought. *Id.* ¶ 22. The Court disagreed and explained that Mont. Code Ann. § 44-5-303(5) was the only provision that provides for *in camera* review of evidence, and that a request under Mont. Code Ann. § 44-5-303(6) does not automatically trigger *in camera* review. *Crites*, ¶ 23.

Montana Code Annotated § 44-5-303(5) creates procedures directly applicable to requests like Appellant's. While the State agrees that Appellant has the right to petition directly in the district court, allowing the award of costs would create a loophole by which a person can choose to avoid the statutory restriction on costs merely by saying they are filing under Mont. Code Ann. § 44-5-303(6). The

procedures outlined in Mont. Code Ann. § 44-5-303(5) make the process of requesting and disseminating CCJI more efficient and ensure that both the Right to Know and individual privacy rights are fully protected. Unlike the Court’s reasoning in *Crites*, where allowing a district court to determine the necessity of *in camera* review of evidence allows it to better balance the competing equities, allowing costs and fees under Mont. Code Ann. § 44-5-303(6) will only incentivize individuals to forego the provisions of Mont. Code Ann. § 44-5-303(5) for the potential of receiving a monetary award. Allowing a party to seek costs under Mont. Code Ann. § 44-5-303(6) will only serve to make the process of requesting CCJI more difficult and expensive for Montana courts and county attorneys. Furthermore, although the legislative record does not clarify why the cost restriction was left out of subsection six, it is unreasonable to believe that the 58th Legislature intended to create such a loophole. Whenever the Court must interpret multiple interconnected statutory provisions, the interpretation should give effect to all. Mont. Code Ann. § 1-2-101. Interpreting Mont. Code Ann. § 44-5-303(6) to allow the award of costs in this circumstance would undermine Mont. Code Ann. § 44-5-303(5).

Alternatively, Appellant might seek costs under Mont. Code Ann. § 2-3-221. That statute provides, “[a] person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person’s rights under Article II,

section 9, of the Montana constitution may be awarded costs and reasonable attorney fees.”

Appellant is also not entitled to an award of costs or fees under Mont. Code Ann. § 2-3-221 as Appellant has not “prevailed in an action brought in district court to enforce [his] rights under [the Right to Know].” The State does not dispute that Appellant has successfully argued that he has a right to petition for the release of CCJI directly in the district court. Appellant’s success, however, is limited to his procedural argument premised on Mont. Code Ann. § 44-5-303(6), not his constitutional argument.

## **2. Disqualification**

In general, questions regarding judicial disqualification in Montana are settled by reference to the Montana Code of Judicial Conduct, as those rules provide more protection than is afforded by constitutional rights to due process. *Reichert v. State*, 2012 MT 111, ¶ 31, 365 Mont. 92, 278 P.3d 455 (citing *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 890, 129 S. Ct. 2252, 2267 (2009)). Rule 2.12 of the 2008 Montana Code of Judicial Conduct provides an enumerated, but non-exhaustive, list of reasons for which a judge should be recused from a case. Broadly speaking, a judge in Montana should recuse if their impartiality may reasonably be questioned based on their having a fiduciary, familial, or

professional interest in a case before them. *See generally* Mont. Code. Jud. Cond. Rule 2.12.

The judicial conduct Appellant alleges does not fall within the list provided by Rule 2.12, nor does it reasonably bring Judge Brown's impartiality into question. Appellant relies on his conspiratorial assertions that Judge Brown is "in on the game" because he did not act on Appellant's original petition for nearly a year, and *sua sponte* dismissed Appellant's request. This Court has made clear that mere speculation and accusation are entirely insufficient to warrant judicial recusal. *Reichert*, ¶ 46 (citing with approval *State ex rel Anaya v. Scarborough*, 75 N.M. 702, 410 P.2d 732, 734 (N.M. 1966) ("the interest at issue must be direct, certain, and immediate, and not one which is indirect, contingent, incidental, or remote"). Appellant's frivolous accusations make no mention of what interest Judge Brown has in the denial of his request for CCJI. The Court should deny Appellant's requests to sanction or recuse Judge Brown from further proceedings. Because Appellant's allegations against Deputy County Attorney Certain are similarly speculative and unsupported, they too should be denied.

## CONCLUSION

The District Court erred as a matter of law when it dismissed Appellant's petition because Appellant did not use the preferred procedure. Accordingly, the

court abused its discretion. The only appropriate remedy is reversal and remand to the District Court where the appropriate balancing of interest under Title 44, Chapter 5, MCA can occur.

Respectfully submitted this 21st day of June, 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 3,900 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

*/s/ Blake R. Koemans*

\_\_\_\_\_  
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## CERTIFICATE OF SERVICE

I, Blake Robertson Koemans, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 06-21-2024:

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