

FILED

11/12/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 24-0287

Montana Supreme Court  
Cause # DA 24-0287

State of Montana  
Plaintiff,

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Cody Wayne Johnston  
Appellant,

Rebuttal to States  
reply in motion for a  
new trial

Reply Brief

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Clerk of Supreme Court  
State of Montana

Comes now Pro-Se appellant Cosby Wayne Johnston, to rebut the reply brief provided by the State.

## Argument

MCA 3-15-405 requires that if a person fails to send in their juror questionnaire to the clerk of court "The clerk of court shall certify failure to the sheriff who shall serve notice personally on the person to respond to the notice."

This is crystal clear and unambiguous, there is no room for question in this MCA. Johnston has a "liberty interest" in a fair and impartial jury. Civil rights are guaranteed in Johnston's constitutional rights protected in U.S. Constitution 14th Amend. "life, liberty or property" The Due process clause prohibits states from depriving any person of life, liberty or property without due process of law. Thus if one possesses a "liberty interest" the question of law becomes what process is due "Statute of mandatory language" "liberty interest" is created when legislature expressly mandates to an agency the performance of some activity to be carried out within specific parameters which include definitions, criteria and mandated shalls

So when the legislature creates an MCA, creating specific language for a process to be followed and it is not followed, what is the remedy. Judge Best ordered a jury pool of 150 citizens be summoned for voir-dire. She specifically ordered 150 not 126 to show up or for a pool of a 126 with more than 20 potential jurors to show up not having filled out the questionnaire. Judge best never ordered 150 jurors to be summoned but if you don't want to follow the MCA and that affects  $\frac{1}{3}$  of the jury pool that's ok. Johnston has not been able to find the MCA stating that if jurors show up without filling out juror questionnaire the bailiff will help them fill them out. What would this court's opinion be if for example a gun store employee was telling a potential gun buyer how to answer the question on a Federal fire arms form? Bailiffs are county employees not elected officials like the clerk of court and the sheriff who are mandated by MCA 3-15-405 to make sure the jury pool of 150 as ordered by judge Best was present and accounted for, at Johnston's trial.

So Johnston asks, are the clerk of court and the Sheriff exempt from following MCA's or are they claiming ignorance of the law? Either way substantially affecting Johnston's constitutional rights to a full jury pool with an adequate cross section of the community.

Johnston's research into the Montana Supreme Court rulings has shown that the rulings on ignorance of the law are also clear and very unambiguous. So if the clerk of court, Sheriff are claiming ignorance of the law, this court has made itself very clear on that.

"For at least a century it has been the law in Montana that ignorance of the law is no defence" State ex rel Rowe v dist court 1911

For example if a person accused of a crime (in this instance the clerk of court, sheriff and the state.

"Could shield himself behind the defense that he was ignorant of the law which he violated, immunity from punishment would in most cases result. No system of criminal justice could be sustained with such an element in it to obstruct the course of its administration" State v Trujillo 2008 M.T

The clerk of court, sheriff and the state have no authority to violate Johnston's Constitutional rights. "The supreme court noted people are presumed to know the law and will not be relieved of criminal liability for their failure to comply with it"

If the clerk of court, sheriff and state, did not have intent to specifically violate Johnstons constitutional rights and did it so just by neglect and apathy to their chosen careers causing them to not follow procedure to MCA's that is no excuse.

in Blalock this court observed "one need not form intent to commit a specific crime or to intend the result that occurred to be found guilty of knowingly committing a crime" the court also observed "ignorance of the law has never been a defence in Montana"

There can be no dispute Judge Best ordered a jury pool of 150 for Johnstons trial. There can be no dispute 24 jurors did not show up for voir dire. There can be no dispute that more than 20 jurors were not properly vetted by the clerk of court before voir dire and allowed to fill out their juror questionnaires with assistance of un-elected bailiffs. There can be no dispute Johnstons constitutional and civil rights were violated prior to his trial by not providing the ordered jury pool of 150 members of the community.

The final issue Johnston will bring up is the assertion by the state that Johnston did not have evidence unseen by the jury. What ever confusion there may be the state was sent the exact same brief with attached exhibits as the clerk of court.

Johnston called the clerk of court and verified that all exhibits, specifically including exhibits K, L and M were filed with the court and on the record. The clerk of court stated that all the exhibits were on record with the court. Johnston is attaching K, L and M with this rebuttal to again have them seen by the state to avoid any confusion.

One would think in a homicide case that lasted only 3 days provided no physical evidence including no body, no crime scene, no autopsy, no murder weapon, no manner of death, no coroners inquest, no death certificate no witness to a crime, no audio, no video, no confession of a crime that the state would gladly be receiving of any information to truly get to the bottom of this situation. In a homicide case where Johnston's attorneys didn't bother to call any defense witnesses or any defense experts or object to the prosecutorial misconduct at trial, one would think police and FBI documents unseen by a jury would be openly reviewed + reviewed especially in a county that has just seen a homicide reversed due to Brady violations.

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To that end Johnston respectfully requests the court to review all the exhibits especiall K, L and M. Some of the many documents unseen by the jury pertaining to Mrs Waller being seen days after her "alleged death" and the uninvestigated crime stoppers report where there was a confession about three men burying Mrs. Wallers body. Exhibit M is Johnston's pre-trial neuro-psychological evaluation that was never adressed by the court or Johnston's defense attorneys. This alone would have put a major dent in the states theory that Johnston is a criminal mastermind who could commit a crime while leaving no physical evidence, no body, no crime scene, no murder weapon, no P.N.A., no blood, no witnesses, no audio, or video, or anything else to this day showing Johnston committed any crime. Johnston simply could not have and is not capable of the many feats the States grand theory has placed on him. With all of these factors + the evidence of clear pre-trial structural error Johnston is deserving of a fair trial including a proper full jury pool and a chance to show a jury all of the evidence in this case. This case has not met the standards of Winship as none of the elements have been proven to show any crime was ever committed

Respectfully

Cody Wayne Johnston

10-19-24

Cody Wayne Johnston

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## Certificate of Service

I, Cody Wayne Johnston Appellant (Pro-Se) hereby certify that I have served true and accurate copies of the foregoing motion to the following on 10-19-2024

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Cody Wayne Johnston

Cody Wayne Johnston

October 19, 2024