

IN THE SUPREME COURT OF THE STATE OF MONTANA

No.

MEGAN MICHELLE FIECHTNER,

Petitioner,

v.

MONTANA TENTH JUDICIAL DISTRICT COURT,
THE HONORABLE. JON A. OLDENBURG, PRESIDING,

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

*Original Proceeding Arising from the Montana Tenth Judicial District Court,
Judith Basin County; State of Montana v. Megan Michelle Fiechtner, Tyson David
Kolar, Cause No. DC-23-08 & 23-09, Hon. Jon. A. Oldenburg, Presiding*

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STATEMENT OF ISSUE

Whether the district court is proceeding under a mistake of law, causing a gross injustice, by allowing the State to prosecute Petitioner for accountability for deliberate homicide when its charging documents fail to allege any facts to support the charge, except that she was not yet divorced from the victim and failed to timely summon aid after he was fatally shot by her boyfriend?

STATEMENT OF THE CASE

Petitioner Megan Fiechtner is a defendant in the underlying criminal prosecution by the State, charged by an Information filed October 11, 2023, and an Amended Information filed June 4, 2024, with Accountability for Deliberate Homicide, a felony in violation of § 45-5-102(1), MCA, and § 45-2-302(3), MCA, in relation to the events on October, 2, 2023, where Tyson Kolar, her boyfriend, fatally shot and killed Matthew Fiechtner, with whom she was in the process of divorcing. (6/4/24 Amend. Info., attached as **Ex. A**). Petitioner moved to dismiss (for a second time) on November 8, 2024, arguing the State failed to allege any facts which supported her accountability for deliberate homicide. (11/8/24 Mtn. Dismiss, attached as **Ex. B**).

After the matter was fully briefed, the district court denied the motion on December 20, 2024, concluding Petitioner had a legal duty to summon aid because she was still the victim's wife, despite the fact they were separated and in the

middle of divorce proceedings. (12/20/24 Opinion & Order Denying Defendant's Second Motion to Dismiss, attached as **Ex. C**). The district court also concluded such duty might result from her creation of the peril, based on her sole act of riding in the vehicle to the victim's residence. Notably, the State previously conceded and the district court determined the fact she was a nurse did not impose a duty to provide medical assistance. (Docs. 100, 163). Petitioner previously argued in a motion in limine that the State should be precluded from arguing Petitioner had a duty to render aid, which the district court denied to the extent liability was based on her status as the victim's wife and her "creation of the peril."

Thus, the State's apparent theory of accountability relies on the belief that she had a duty to summon aid, however, contrary to the district court's ruling no such allegations are contained in the Amended Information. While the State in its Amended Information alleged the victim and Petitioner were married, the State did not allege that she had a duty to summon aid based on marriage and/or creation of the peril. Regardless, as argued below, accountability must be based on actions committed prior to, or during, the commission of the offense—not after.

As such, dismissal is required because the State has no cognizable theory of accountability. Trial is scheduled for March 7, 2025, thus presenting the unique, urgent and emergency circumstances which justify this Court's intervention to prevent an unlawful prosecution and deprivation of Petitioner's rights.

SUPERVISORY CONTROL STANDARD

Pursuant to Article VII, Sect. 2(2), Mont. Const., this Court “has general supervisory control over all other courts” and as authorized by Rule 14(3), M.R.App.P., “may, on a case-by-case basis, supervise another court by way of a writ of supervisory control . . . when urgency or emergency factors exist, making the normal appeals process inadequate, when the case involves purely legal questions, and when . . . the other court is proceeding under a mistake of law and is causing a gross injustice.”

This includes reversal of decisions of courts when a failure to do so may prejudice a criminal defendant’s constitutional rights. *Daenzer v. Municipal Court*, 2020 MT 140, ¶ 4, 400 Mont. 179, 464 P.3d 996. Specifically, this Court recently intervened to order the dismissal of charges when the State’s special prosecutors failed to allege in the charging document “sufficient evidence to establish the probability that a defendant committed the crime for which they are being accused.” *Ramsey v. Yellowstone Cnty. Just. Ct.*, 2024 MT 116, ¶¶ 16-18, 416 Mont. 472, 549 P.3d 458.

As argued below, the same result is demanded here. The district court’s refusal to dismiss the charge of accountability for deliberate homicide against Petitioner, requiring her to stand trial for an unsupported offense, is an error of constitutional dimension that must be remedied by this Court.

FACTUAL BACKGROUND

As alleged by the State in Revised Motion for Leave to File an Amended Information and Affidavit in Support:

1. On October 2, 2023, at approximately 1632, Central Montana Dispatch received a 911 call from [Petitioner] Fiechtner []. She reported that she just showed up at her ex-husband's house, and she couldn't find him. She reported there was blood on the steps and door. She tried calling him and he wouldn't answer. Their 2-year-old daughter was home alone in the house and their 6-year-old just showed up from school. She reported no vehicles missing. At no time did Megan identify or indicate that she was with Tyson David Kolar. Deputy Christopher Wagner [arrived on scene and] made an entry and located Matthew Dean Fiechtner [], deceased. Matthew was lying face down in the hallway.

2. Deputy Wagner spoke with Megan, and she stated that she and [Mr.] Kolar, [], came out to Matthew's residence to see her son, who would be coming home from school on the bus about the time they showed up. Megan stated she arrived at 1615 hours.

3. Christopher Aune, the school bus driver, stated he dropped the 6-year-old son off at 1610 hours. Aune stated Megan was already at the property when he dropped off their 6-year-old son.

4. Megan repeatedly told Deputy Wagner that Kolar was on the property in the pastures looking for Matthew, even though she was present when he shot and killed Matthew and immediately fled the crime scene.

5. At 1901 hours, Kolar arrived at the property of 215 Red Barn Rd, in a 2018 Blue Toyota RAV4 bearing Montana License plate 36-9398A. Megan and Matthew Fiechtner are the vehicle owners of the Toyota RAV4. Judith Basin County Undersheriff Richard Hayes approached Kolar and asked who he was. Kolar attempted to walk into the house and did not respond to Undersheriff Hayes. Undersheriff Hayes asked again, he said his name was Tyson. Undersheriff Hayes informed Kolar that he, Megan and the kids would not be leaving until Department of Criminal Investigation (DCI) agents Bruce McDermott and Craig Baum arrived. Nicole Fiechtner arrived on scene. Nicole stated she just received a snapchat from her brother Matthew at 1559 hours, approximately 15 minutes before he was shot, confirming he was alive at the time.

6. DCI Agent McDermott interviewed Megan who initially reported to have shown up at the property for a prearranged visit with her children, who resided with Matthew. She indicated that her 2-year-old daughter was outside playing, and Matthew was nowhere to be seen. Megan claimed she saw blood evidence trailing into his residence and could not enter because the house was locked and could not see Matthew anywhere inside or outside of his home. Megan indicated Kolar drove

around to look for Matthew but ultimately just drove away and left her on scene. When confronted with this apparent lie, Megan then confessed that she was present when Kolar shot Matthew. She was then Mirandized and continued to answer questions. She claimed that Matthew reached behind his back and that Kolar shot Matthew because he believed Matthew was going for a weapon. Megan reported that Kolar shot Matthew three times with a revolver that he had concealed upon his person. She said Kolar immediately left the area and left her stranded with her 2-year-old daughter and her 6-year-old son who had arrived on the school bus.

7. DCI Agent McDermott read Kolar his Miranda rights and Kolar agreed to speak with him and signed the consent form. Kolar denied knowing anything about Matthew's death. Kolar denied shooting Matthew but then recanted and admitted he shot Matthew in self-defense. He maintained that Matthew started to assault him by punching him in the chest, abdomen, and legs. At this time, Kolar pulled his handgun from his right Carhartt jacket pocket and fired into Matthew within six feet. Kolar stated that he fired two additional shots at Matthew who was fleeing from him, at approximately fifteen feet. Kolar stated that, following the shooting, he drove to his residence in Lewistown . . . and hid the murder weapon (a Taurus silver/stainless .357 mag revolver) in his master bedroom closet.

8. A follow-up interview with Megan revealed that there had been no physical altercation or assault before the shooting between Matthew and Kolar.

She was adamant that there had only been a verbal altercation between the two when Matthew reached behind his back. Kolar pulled his handgun and pointed it at Matthew, and Matthew put his hands in the air in a 'surrender' fashion and said there was no need to resort to or bring out the handgun. Despite no clear threat to Megan or Kolar, Kolar fired his handgun at Matthew, and Megan could see blood on Matthew's upper body as he turned to run. She reported that Kolar shot a second time at Matthew and then ran after him as Matthew fled toward his house. Megan reported she heard a third shot after Kolar pursued Matthew. She said there was no threat and no self-defense in this situation, as Matthew was unarmed and posed no threat with his hands in the air. Her description of the firearm used matched the description given by Kolar of his handgun, that it was a silver short barrel revolver.

9. On 10/3/23 while searching the crime scene, investigators located a surveillance system which recorded the crime and the arrival of the suspect(s) moments before the shooting occurred. The surveillance system was determined to be only 10 seconds slower than the actual time. They arrived in a red Ford pickup which appeared to be a 1990's era model. A search of MT vehicle registration records revealed that Tyson Kolar had a currently registered 1993 Ford F150 pickup, red in color . . . located near Moore, MT at the ranch property of [his]

parents [which] is an exact match to that of the suspect vehicle seen on surveillance video.

10. The surveillance video shows Matthew Fiechtner arriving home in his water truck on 10/2/23 at 4:06:17 p.m. Kolar's vehicle is seen driving in front of Matthew Fiechtner's house at 4:07:02 p.m. The video shows a bloody Matthew Fiechtner running to his front door at 4:09:22 p.m. followed by a running male yelling profanities who enters the screen at 4:09:27 p.m. The male reaches the front door at 4:09:30 p.m. to find it locked behind Matthew. The male suspect, who appears to be Kolar wearing a green Carhartt jacket and tan ballcap, is carrying a short-barreled silver color revolver and places it into his right jacket pocket.

11. Another surveillance camera system was operating 100+ yards from the crime scene at Matthew's house. This surveillance system recorded the encounter after Matthew pulled in driving his water truck. Both Matthew and Tyson Kolar can be seen in the video, talking for a short time. Suddenly, Kolar fired his handgun at Matthew, who runs north out of camera view. Kolar calmly starts to walk after him. There had been no physical altercation or contact before Kolar shot Matthew Fiechtner.

12. Megan walks into view after the shooting and gets her 2-year-old daughter from the parked water truck. Megan Fiechtner, a nurse, is seen walking about the front yard and up to the house and appears to be examining the blood.

She is seen calmly walking about carrying her 2-year-old daughter, and it is confirmed that she does not call 911 until 4:31:55 p.m., over 20 minutes after the shooting. In the 911 call, she lies and tells the 911 dispatcher that she arrived at the residence and found blood on the ground and door and found her 2-year-old child alone. She said she didn't want to get in trouble for taking her 2-year-old and 6-year-old (who just got home from school) because she didn't know where their father was. She specifically stated, "We're in the middle of a divorce, and I don't want to get in trouble for taking my kids.... but I don't know where he's at". She knew where he was, and that he had been shot. She is a registered nurse and failed to render aid or immediately summon help.

13. Megan told Agent McDermott this is the first time she attempted a showup-visit at Matthew's house in the nearly 2 months [he] had the children at the ranch property. She stated she just showed up to see the kids. She also told . . . Deputy Wagner she knew Matthew's parents were away. . . Matthew's parents live in a house only a matter of yards from [his] house. Megan also stated to Deputy Wagner and Agent McDermott she tried calling [his] parents to tell them she couldn't find him when she arrived at the property. This was found to be untrue, and this lie was also told to arriving law enforcement and dispatch. Further, [she] makes no attempt to go to or make contact at the main house where Matthew's parents live [which] supports [she] knew Matthew's parents were not home.

14. Megan initially told Agent McDermott that Kolar was on the property in the pastures looking for Matthew, even though she was present when he shot and killed Matthew and immediately fled the crime scene.

15. On the day of the shooting, Megan received news her parenting plan had been rejected. This information was provided to Megan by a mailed letter to her.

16. Megan and Kolar also were aware that Matthew's father planned to give a statement against the pair (Megan and Kolar) to Matthew's civil attorney. It was anticipated that Matthew's father would provide information related to Kolar's unfit and unstable behavior.

17. Kolar confirmed the jacket and hat he wore at the time of the shooting are now located in this 2018 Blue Toyota RAV4. This vehicle, MT License plate 36-9398A, was parked at the Hobson property at the time of the interviews. It has been impounded and towed to Lewistown. It was searched per SW and his hat and jacket were recovered and a match to those seen worn in surveillance footage.

18. During the interviews, it was determined that Kolar went back to their residence in Lewistown . . . and hid his firearm at the residence. A Taurus .357 magnum was recovered via SW where Kolar said it would be found. It was lying on a leather holster cartridge belt rig described by Megan. The firearm was loaded with 38 special ammunition as described by Kolar. Three cartridges had been fired as reported by Kolar and Megan. Two live rounds remained in this handgun.

ARGUMENT

THE STATE’S PROSECUTION OF PETITIONER FOR ACCOUNTABILITY IS BASED ON A MISTAKE OF LAW AND CONSTITUTES A GROSS INJUSTICE.

“The purpose of the [I]nformation is to apprise the defendant of the particular offense with which he is charged” and ensures “the [constitutional] right of the accused to receive fair notice of both the nature and cause of the accusation.” *State ex rel. Keyes v. Montana Thirteenth Judicial Dist. Court*, 1998 MT 34, ¶¶ 16, 20, 288 Mont. 27, 955 P.2d 639 (writ of supervisory control dismissing State’s improperly charged offense, concluding “Count II does not properly charge Keyes with accountability for deliberate homicide”).

Dismissal of an Information under § 46-13-401(1), MCA, is justified upon a showing of good cause. Under § 46-11-201(2), MCA, an Information must be supported by allegations establishing “probable cause to believe that an offense has been committed by the defendant.” Probable cause necessarily requires the existence of all essential elements of the offense. *State v. LaFournaise*, 2022 MT 36, ¶ 22, 407 Mont. 399, 504 P.3d 486. In short, there must be “sufficient evidence to establish the probability that a defendant committed the crime for which they are being accused.” *Ramsey*, ¶ 16. If not, dismissal is required. *Ramsey*, ¶¶ 16-18.

This remains true regardless of whether an initial determination of probable cause supporting the initial charges has already been made. *Ramsey*, ¶ 18; *see*

also, *State v. Renz*, 192 Mont. 306, 307, 628 P.2d 644, 644 (1981) (affirming district court’s decision to “set aside previous orders granting leave to file an information” based on “insufficient facts” to support a forgery charge); *c.f. State v. Logan*, 2002 MT 206, ¶ 22, 311 Mont. 239, 53 P.3d 1285 (district court erred in not granting motion to reconsider previous order).

“It is a fundamental principle in Montana that conduct does not constitute a criminal offense unless proscribed by statute. *State ex rel. Keyes*, ¶ 23 (citing § 45-1-104(2), MCA). A prosecutor must charge “an offense in the code” not “with an offense it newly created by combining elements from [other] statutes.” *State ex rel. Keyes*, ¶ 23. This Court will intervene to remedy a “substantive prejudicial effect of [the State’s] charging error such that a criminal defendant is “charged with committing a fictional offense, not cognizable under Montana law.” *State v. Rowe*, 2024 MT 37, ¶¶ 20-21, 415 Mont. 280, 543 P.3d 614.

A person is legally accountable for the conduct of another under § 45-2-302(3), MCA, when “either before or during the commission of an offense with the purpose to promote or facilitate the commission, the person solicits, aids, abets, agrees, or attempts to aid the other person in the planning or commission of the offense.” Under this statute, “any person who assists in the commission of a crime, either before or during the occurrence, other than the victim, is liable as a principal

offender.” *State v. Kline*, 2016 MT 177, ¶ 15, 384 Mont. 157, 376 P.3d 132 (citing Compiler’s Comments to § 45-2-302, MCA).

The offense of deliberate homicide is codified at § 45-5-102(1), MCA, and provides that “[a] person commits the offense of deliberate homicide if . . . the person purposely or knowingly causes the death of another human being.” In order to convict a person “of deliberate homicide by accountability, the State is required to prove beyond a reasonable doubt that the person: “(1) had the purpose to promote or facilitate commission of deliberate homicide, and (2) aided or abetted [the actor] in the planning or commission of deliberate homicide.” *State v. Lantis*, 1998 MT 172, ¶ 33, 289 Mont. 480, 962 P.2d 1169.

In *Lantis*, this Court cited the following “settled law of accountability”:

A true accomplice is one who knowingly, voluntarily and with common intent with the principal offender unites in the commission of a crime . . . One may be an accomplice by being present and joining in the criminal act, by aiding and abetting another in its commission, or not being present, by advising and encouraging its commission; but knowledge and voluntary actions are essential in order to impute guilt.

Lantis, ¶ 37 (quoting *State v. Nordahl*, 208 Mont. 513, 679 P.2d 241 (1984)).

The only act which the State alleged prior to the offense is that Petitioner was in the vehicle driven by Mr. Kolar and that she must have told him where the victim’s property was located, which is pure speculation. It is true that Petitioner was in a relationship with Mr. Kolar and was in the same vehicle with him when he drove to Matthew Fiechtner’s house, however, she did not drive the vehicle,

provide the weapon, or otherwise promote or facilitate his act of fatally shooting Mr. Fiechtner.

Nothing in the State's Amended Information claims Petitioner owed a legal duty to summon aid to Mr. Fiechtner after Mr. Kolar shot him, either based on the fact they were not yet divorced, or because she created the peril. The act of lying to police officers does not equate to culpability for murder. Petitioner's alleged failure to act came after the offense had already occurred. Mr. Kolar "caused the death" of Mr. Fiechtner without any facilitation or aid by Petitioner.

Even presuming the State had properly alleged in its Amended Information that Petitioner owed a duty to render aid, such after-the-fact failure is not culpable under a theory of accountability which requires an act "before or during" the commission of the offense, not a failure to act after its commission. A failure to summon aid after Mr. Kolar shot him is not culpable under Montana law and the district court's contrary conclusion must be reversed.

Even if a duty to summon aid after a homicide could lawfully form the basis for accountability, Petitioner possessed no such duty. "For criminal liability to be based upon a failure to act, there must be a duty imposed by the law to act, and the person must be physically capable of performing the act." *State ex rel. Kuntz v. Montana Thirteenth Judicial Dist. Court*, 2000 MT 22, ¶ 14, 298 Mont. 146, 995 P.2d 951 (citing § 45-2-202, MCA). Under "the American bystander rule," a

person owes “no duty to rescue or summon aid for another person who is at risk or in danger, even though society recognizes that a moral obligation might exist.”

State ex rel. Kuntz, ¶ 14. “This is true even ‘when that aid can be rendered without danger or inconvenience to’ the potential rescuer.” *State ex rel. Kuntz*, ¶ 14.

There are seven exceptions to this common law rule, however, none of them are applicable here. These exceptions are: 1) a duty based on a personal relationship, such as parent-child or husband-wife; 2) a duty based on statute; 3) a duty based on contract; 4) a duty based upon voluntary assumption of care; 5) a duty based on creation of the peril; 6) a duty to control the conduct of others; and 7) a duty based on being a landowner. *State ex rel. Kuntz*, ¶ 15 (citation omitted).

It is uncontested that the parties no longer resided together and were in the process of a divorce. Petitioner represented in a court filing that the marriage relationship was irretrievably broken. Any special relationship concluded before the events at issue. Indeed, because the common law duty is based on a relationship where one party is entrusted to the care, control and protection of the other, no such relationship existed at the time of the events at issue. *Kuntz*, ¶ 19 (noting the duty is based on “mutual reliance” such as living together and not whether the parties are married). Once a divorce has commenced, the parties have indicated their intention “to opt out of the special duties of marriage” Collins, J., et al., *Punishing Family Status*, 88 B.U.L. Rev. 1327, 1364-1365 (Dec. 2008) (noting

“there might be cases when it seems unfair to require divorce or termination” before relieving the party of a duty to render aid).

Indeed, in duty-to-act cases, this Court is reluctant to impose a duty “in the case of risks of harm to others directly caused by third parties beyond the control of the alleged [actor].” *Md. Cas. Co. v. Asbestos Claims Court*, 2020 MT 70, ¶ 28, 399 Mont. 279, 460 P.3d 882. As such, this Court must conclude Petitioner had no duty to summon aid at any time and any alleged failure cannot form the basis for accountability. The same is true for any allegation she “created the peril.”

Petitioner did not take a direct action which created a danger to the victim. This Court can declare the same as a matter of law. *Ramsey*, ¶ 18 (“the State’s criminal prosecution . . . for something which is not a crime must be dismissed”). Indeed, there are no facts whatsoever supporting the State’s indirect theory of accountability. Accordingly, the Amended Information lacks probable cause to support the offense and the charge must be dismissed.

CONCLUSION

Based on the foregoing, this Court should issue the requested Writ of Supervisory Control and dismiss the charge against Petitioner.

Respectfully submitted this 14th day of January, 2025.


Clark R. Ramsey
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing
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DATED: January 14th, 2025



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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Petition 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 not more than 4,000 (3,997) words, excluding table of contents, certificate of service and certificate of compliance.


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CERTIFICATE OF SERVICE

I, Clark Ryan Ramsey, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 01-14-2025:

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