

Robert Donald Boone
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FILED

01/16/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0288

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JAN 16 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

<u>In The Supreme Court of the State of Montana</u>	
Robert Donald Boone Appellant,	Cause No.
v. State of Montana Appellee.	DA 24-0288
	OPENING Brief

Comes now, Pro Se Appellant, request
this Court to Consider all facts of law, and
the manner in which Montana Laws were
not followed.

I, pro Se Appellant will show how
the Cascade District Court, Cascade District's
Court's Clerk of Court, and Cascade County
Sheriff's Dept. has errored in upholding

Montana Codes. I will offer how this Court may offer Relief.

Statement of Case

I, Robert Boone was charged by "leave of Information" of Sexual Intercourse without Consent, on June 29th 2016.

The matter proceeded to trial on August 27th 2018 before a Jury. During that Jury Trial I was found guilty. I did file a Direct Appeal before this Court, and that matter has been heard.

"I" being used in the first person is always to be referred to pro se Appellant.

throughout this Document.

I am Currently housed at a Montanas State Prison Contract facility in Eloy, Arizona.

I will show how Cascade County District Court has errored in the process of my trial. I will Present facts as to which the District Court has found, and admitted their errors in other cases as of Recent.

I will present arguments of great question in Cascade County District ability to hold a legal Jury trial During the time of my Conviction.

Cascade County District Court erred in following Statutes 3-15-405, M.C.A. and therefore failed to offer myself, Mr. Boone a fair and impartial Jury Trial. These failures to not abide in M.C.A 3-15-405 constitute Structural error, which is presumptively prejudicial and automatically reversible. " St. v. Hardy, 2023 MT 110, 57, 412 Mont. 383, 530 P.3d 814.

Claim #1

My, Robert Boone, Appellant, constitutional right to due Process, and my Sixth

amendment right to a fair and impartial jury were violated because the Clerk of the District Court and the Sheriff Dept. failed to substantially comply with 3-15-405 M.C.A.

Legal Authority

I have the constitutional right to a trial "by an impartial jury of the State and district wherein the crime shall have committed." U.S. Const., amend VI. Article II, section 24 contains identical language to the Sixth Amendment. However, Montana's constitution goes further and offers greater protections;

"The right to a trial by jury is secured to all and shall remain inviolate" Mont. Con. Art. II, 26.

The individual right to trial by jury is a prized shield against oppression and the approaches of arbitrary power dating back to the time of Magna Carta. St. v. Lamere, 2000 MT. 45, 28, 298 Mont. 358 2 P.3d 204. The American tradition of trial by jury necessarily contemplates an impartial jury drawn from a cross-section of the community. Thiel v. Southern Pacific Co., 328 U.S. 217, 220 (1946).

The Purpose of jury selection statutes is to provide a random selection of jurors from the "Entire" panel or array, thus securing a fair and impartial jury. Trobby v. Northwestern Bank of Great Falls, 217 Mont. 196, 207, 704 P. 2d 409, 416 (1985). In achieving the constitutional requirement of an impartial jury.

Cascade County Clerk of Court failed to notify the Sheriff Dept., of non-Responders to report to jury duty selection. I (Mr. Boone) contest that I'm afforded same protects set forth in

St. v. Hinkle, MT 2023. I, (Mr Boone)

also stood trial in Cascade County

① District Court, housed at Cascade County Sheriff dept. Is it not reasonable to believe that my trial being set forth in 2018, might not have enjoyed errors made in Hinkle, MT 2023.

Although the postcard notification system wasn't used in 2018, the agreement set forth by the State, it is reasonable to believe that the same relaxed manner between the Clerk's office and Sheriff dept regarding non-responder to potential jury duty, set forth in Hinkle, MT 2023

I bring legal issue of Cascade County Clerk of Courts' office, Cascade County Sheriff's Dept., and the District Court.

During my trial I wasn't able to enjoy the process of all potential jurors due to the Clerk of District and the Sheriff's Dept. not following up with jury selection non-responders. The Clerk of District Court failed to notify the Sheriff's Dept. to make contact with those who have not responded to jury selection in my trial. And the Sheriff's Dept. has failed to seek out non-responders.

The objective standards established

by the Montana Legislature for the
random selection of Jurors are intended
to protect a criminal defendants

fundamental right to a fair and impartial

Jury. Laverne, 35. Relevant to my

(Mr. Byrne) Brief, Mont. Code Ann. 3-15-405,
sets forth the process the Montana
Legislature designed to achieve a fair and
impartial jury.

"The Clerk of Court shall serve

notice by mail on the persons to respond by
mail as to their qualifications to serve as
jurors. The Clerk of Court ~~shall~~ may

attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse from service provided for in 3-15-313.

If a person fails to respond to the notice, the clerk shall certify the failure to the Sheriff, who shall serve the notice personally on the person to respond to the notice."

"The rules of statutory construction require the language of a plain meaning. If the language is clear and unambiguous, no further interpretation is required. Pavilli County v. Erickson, 2004 mt. 35, 11, 320 Mont. 38, 85 P. 3d 722. The language of Mont. Code Ann. 3-15-405, is clear and unambiguous. In filing a jury panel,

the Clerk of court must "serve" notice by mail on the persons drawn as jurors and require the persons to respond," and certify the failures to the Sheriff. The Sheriff must then "serve the notice personally on the person," who failed to respond and "make reasonable efforts to require the person to respond," M.C.A 3-15-405.

On August 21, 2023, District court judge Elizabeth Best, of the Eighth Judicial District, held a hearing regarding jury issues in State vs Hinkle, Cause BDC-22-242. At the hearing, Cascade County Clerk of Court Tina Henry and Cascade County Sheriff Jesse Slaughter testified

as to their respective roles in filling the jury panel. The Clerk and Sheriff both testified that a large proportion of persons who were sent Summons and questionnaire did not respond. These names were not certified as failure to the Sheriff. The Sheriff's staff had previously complained to the clerk office that they were "too busy" to personally notify non-responding jurors. In other words, summons and questionnaire were not sent out, the clerk did not certify to the Sheriff the large number of those who ~~fact~~ failed to Respond, and the Sheriff had no role in notifying the non-responding jurors.

On August 22nd 2023 Judge Best issued an "Order Vacating" trial and "all trials" in the Eighth Judicial District through September 25, 2023. State v. Hinkle.

My (Mr. Boone's) jury trial was held in Cascade County in August of 2018. Based on the testimony in Hinkle, 2023, it is undisputed that they were equally unaware of the mandates set forth in Mont. Code Ann. 3-15-405, at that time. Would the district court have us believe that the Clerk of court "used" to abide in MCA 3-15-405 in ~~20~~ August 2018, but forget to in 2023.

It's clear that the Clerk of Court didn't abide in MCA 3-15-405 in 2023, as testified to in Hinkle, MT 2023, thus wasn't abiding in MCA 315-405 in August 2018 during my (Mr Boone's) trial.

In *State v. Lamere*, the Montana Supreme Court clearly and unambiguously held that the right to a Speedy trial by impartial jury is secured through a rule that a "defendant has a right to a fair and impartial jury selected from the proper place and summoned according to law" State v. Lamere, 2000 mt, 45, 33
298 Mont. 358, 2 P.3d 204. A material

failure to substantially comply with the Montana Statutes governing the procurement of a trial jury is structural error. Lamere, 50.

The substantial compliance standard is "designed to protect the Random nature and objectivity of the jury selection process." Lamere, 57.

A structural error in a case is one that is "typically of constitutional dimensions, precedes the trial, and undermines the fairness of the entire trial₃ proceeding, and is presumptively₃ prejudicial and is not subject to harmless error review"

Suzor v. Int'l Paper Co., 2016 MT. 344, 30,

386 Mont. 54, 386 P.3d 584 -

"Examples of Structural errors include errors in selecting the Jury". State v.

Hardy, 2023 MT 110, 57, 412 Mont. 383

530 P.3d 814. "Errors involving jury

selection are Structural because they precede the trial and affect the fundamental, constitutional right to an impartial jury."

State v. Deveraux, 2022 MT 130, 25, 409 Mont.

177, 512 P.3d 1198. Structural errors are

"presumptively prejudicial and automatically reversible" Hardy, 57

In Hinkle, the Court vacated the trial and all other prospective jury trials

in the Eighth Judicial District until September 25, 2023. The Court then required the Clerk and Sheriff to come into compliance with Mont. Code Ann. 3-15-405, which would cure the structural error that occurred in Hinkle's jury selection process.

If I'm (Mr. Boone) am to assume that Cascade County Clerk of Court and Sheriff were not complying with the requirements of Mont. Cod. Ann 3-15-405 at the time of Hinkle, it is undeniable that structural error in his jury selection process as well. Prejudice to Boone's is presumed and reversal of his conviction and a new trial is constitutionally

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required under both the Sixth Amendment to the United States Constitution and Article II, Sections 24 + 26.

I, (Mr. Boone) request the Court, vacate my conviction and order a new trial.

Alternatively, I request an hearing and appointment of Counsel, so that I may depose Cascade County Clerk of Court and Cascade Sheriff dept. about their compliance of Mont. Cod. Ann 3-15-405 during the time of my trial.

I, Mr. Boone, file this "Opening Brief" on this 7th Day of January 2025.

Certificate of Service

I, Robert Boone Certify, and Send
this Motion "Opening Brief to the
Following Parties on this 7th Day of
January 2005.

1) Montana Attorney General

215 N. Sanders

P.O. Box 201401

Helena, Montana, 59620

2) Clerk of Montana Supreme Court
P.O. Box 803003
Helena, Montana 59620

For D. Boone
Robert D. Boone

1-7-05

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