

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0056

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

CHAD JEROME WOLFCHILD,

Defendant and Appellant.

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**REVISED BRIEF OF APPELLANT**

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On Appeal from the Montana Eighth Judicial District Court,  
Cascade County, the Honorable David J. Grubich, Presiding

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## **STATEMENT OF THE ISSUE**

1. Whether the evidence was sufficient to prove beyond a reasonable doubt that Mr. Wolfchild took items totaling more than \$1,500.00?

2. Whether two or more offenses must be distinctly plead in separate counts as part of the repeated commissions of a common scheme?

## **STATEMENT OF THE CASE**

An investigation was commenced based upon Scheels store surveillance video that showed Mr. Chad Wolfchild entering Scheels between June 6 and June 10, 2022, hiding items in his clothes and leaving the store without paying. (St.'s Ex. 1, at video files from June 6, 7, 9, and 10<sup>1</sup>; 10/02/2023 Bench Trial Transcript (Tr. Transcript at pg. 18, line 9-20.)) The State filed an affidavit charging one count of "Theft (common scheme), a felony in violation of M.C.A. §45-6-301(1)(a) and listing three offenses of theft on June 6, 2022 totaling \$736.92, June 7,

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<sup>1</sup> The State's exhibit 1 includes 6 video files from June 6, 2022, 11 video files from June 7, 2022, 5 video files from June 9, 2022, and 5 video files from June 10, 2022. Instead of repeating St.'s Ex. In each citation, all further citations will cite directly to the month, day and video file number.

2022 totaling \$409.98, and June 9, 2022 totaling \$529.98. (D.C. Doc. 1). The State Information was filed in Cascade County charging one count against Mr. Wolfchild for Theft (Common Scheme), a Felony, in violation of M.C.A. §45-6-301(1)(a) for offenses of theft that occurred between June 6, 2022 and June 10, 2022, with a combined value over \$1,500.00. (D.C. Doc. 3.) Mr. Wolfchild was convicted at a bench trial and sentenced to a five (5) year deferred imposition of sentence, with credit for 203 days for time already served, and ordered to pay restitution of \$50.00 to First Security Pawn. (D.C. Doc. 58, Appellant Appendix A) Mr. Wolfchild timely appealed to this Court. (D.C. Doc. 61.).

### **STATEMENT OF THE FACTS**

Tysen Conley was employed at Great Falls Scheels in the Loss Prevention section (Tr. Transcript at pg. 15, line 17-22) and he became aware of Mr. Wolfchild during the period of June 6-10, 2022 (Tr. Transcript at pg. 18, line 9-16.) Tysen collected video surveillance footage from Scheels surveillance cameras during that time period. (Tr. Transcript at pg. 18, line 17-20.)

Tysen saw Mr. Wolfchild, on video, entering the Scheels store Monday June 6, around 11:00 a.m. with another female, Carla Cree Medicine<sup>2</sup>. (June 6 video File 1; Tr. Transcript at pg. 21, line 16-18.) Mr. Wolfchild and Carla went to the fly-fishing department and he picked up a fly-fishing line, the pair left and then came back, and he picked up another fly-fishing line. (June 6 video File 2; Tr. Transcript at pg. 21, line 20-25.) Mr. Wolfchild and Carla then left the area again and he is seen placing the items in his shorts. (June 6 video File 3; Tr. Transcript at pg. 22, line 2-5.) Mr. Wolfchild and Carla then exited the store without paying for any items. (June 6 video File 4; Tr. Transcript at pg. 22, line 8-12.) Mr. Wolfchild and Carla were seen on video outside the front of Scheels going to the stairs near the parking lot and Chad handed “either one or both of the fly-fishing products to . . .” Carla and they left the property. (June 6 video File 5; Tr. Transcript at pg. 22, line 13-18 and pg. 25, line 20-25.)

Mr. Wolfchild returned to Scheels the same day after 1:00 p.m. and he was alone. (June 6 video File 6; Tr. Transcript at pg. 25, line 5-

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<sup>2</sup> Tysen Conley later identifies the female as Carla Cree Medicine (Tr. Transcript at pg.23, line 5-6.)

13.) Mr. Wolfchild walks to the archery department and selects two arrow rests. (June 6 video File 7; Tr. Transcript at pg. 26, line 9-13.) Mr. Wolfchild then walks to another area and places the items in his shorts. (June 6 video File 8; Tr. Transcript at pg. 26, line 14-17.) Tysen Conley reviewed the video and said on direct that Mr. Wolfchild exited the store and did not pay for any items. (June 6 video File 9; Tr. Transcript at pg. 28, line 7-9.)

Tyson then saw Mr. Wolfchild on video surveillance for a third time on June 6, around 6:00 p.m. and Mr. Wolfchild was alone. (June 6 video File 10; Tr. Transcript at pg. 29, line 9-17.) Mr. Wolfchild got in line to return merchandise he brought into the store, which were two arrow rests and two fishing line boxes. (June 6 video File 10; Tr. Transcript at pg. 30, line 3-9.) Mr. Wolfchild received a gift card for store credit in the amount of \$736.92 for the value of the four items he returned. (June 6 video File 10; Tr. Transcript at pg. 33, line 2-14.)

The next day, June 7, Mr. Wolfchild returned alone to the store and was seen on video surveillance by Tysen at one of the front registers trying to purchase an item, it appeared his credit cards were declined, and he left the store. (June 7 video File 7; Tr. Transcript at pg.

33, line 18-25 and pg. 34, line 1-8.) Surveillance footage with Mr. Wolfchild on June 7 was later reviewed showing Mr. Wolfchild prior to him trying to purchase an item and leaving the store. (Tr. Transcript at pg. 34, line 9-12.) Tysen stated Mr. Wolfchild picked up a fishing line. (June 7 video File 2; Tr. Transcript at pg. 43, line 13-15.) Tysen describes the archery department in the surveillance and Mr. Wolfchild picking up a Mathews arrow rest. (June 7 video File 4; Tr. Transcript at pg. 43, line 19-25.) Tysen testified Mr. Wolfchild went into the store food prep area and had two items in his hand and when he came out of the area, he did not have the items in his hand. (June 7 video File 5 and 6; Tr. Transcript at pg. 36, line 18-25.) Tysen did see an item in his hand that was referred to as the “unknown item” that he attempted to purchase but his credit cards were declined. (June 7 video File 6; Tr. Transcript at pg. 45, line 19-20.) On June 7, 2022, Tysen did not see Mr. Wolfchild conceal any items. (Tr. Transcript at pg. 77, line 16-19.) Tysen stated the area was searched later and no items were found. (Tr. Transcript at pg. 37, line 1-5.) Mr. Wolfchild then went to purchase the “unknown item” but was unable to and he left. (June 7 video File 7 and 8; Tr. Transcript at pg. 37, line 12-14.)

When Mr. Wolfchild exited Scheels he was not holding any items (June 7 video File 8; Tr. Transcript at pg. 77, line 9-15.) Mr. Wolfchild met Carla outside, they were walking together in the video, there is space between them, and there is no hand-to-hand transfer of any item between them. (June 7 video File 9; Tr. Transcript at pg. 79-80, line 17-2.) Carla was walking with an aluminum can in her right hand and a handbag slung over her left shoulder. (June 7 video File 10; Tr. Transcript at pg. 82, line 12-19.) A significant portion of the video shows Carla walking to the left of Mr. Wolfchild and holding a can of something in her right hand. (June 7 video File 9; Tr. Transcript at pg. 75, line 2-10.) There was no transfer of items that occurred while the two were on the steps. (June 7 video File 9; Tr. Transcript at pg. 76, line 6-9.) Mr. Wolfchild and Carla crossed 13th Street South and there was no transfer of any Scheels items seen. (June 7 video File 10; Tr. Transcript at pg. 84, line 1-8.) The video does not show an item going from Mr. Wolfchild to Carla's hand or from Mr. Wolfchild to Carla's handbag, and the surveillance from June 7th does not show Mr. Wolfchild concealing an item inside Scheels. (June 7 video File 10; Tr. Transcript at pg. 84-85, line 15-2.)

Carla goes into the pawn shop and Mr. Wolfchild walks by the pawn shop to the other end of the building. (June 7 video File 10; Tr. Transcript at pg. 48, line 18-21.) Shawn Rate is the Assistant Manager of First Security Pawn, and was present during the transaction on June 7, 2022, when Carla entered the store. (Tr. Transcript at pg. 96, line 5-15.) Shawn reviewed State's Exhibit 14 and describe it as a "pawn ticket" for the sell by Carla of a Mathews arrow rest to the pawn shop. (State's Exhibit 14; Tr. Transcript at pg. 96-97, line 16-1.) Shawn noticed Carla entered the store alone, (Tr. Transcript at pg. 99, line 1-4.), Shawn identified her with her Montana Tribal Identification card, and she pawned the Mathews arrow rest. (Tr. Transcript at pg. 97-98, line 18-1.) Carla stayed in the pawn shop for about 20 minutes and came out with the pawn shop receipt that she signed selling the Mathews arrow rest. (State's Exhibit 14, June 7 video File 11; Tr. Transcript at pg. 51, line 14-22.)

Mr. Wolfchild was recorded returning to Scheels on June 9, 2022, through the mall entrance on the escalator. (June 9 video File 1; Tr. Transcript at pg. 56, line 3-8.) Mr. Wolfchild goes to the archery department and picks up two arrow rests. (June 9 video File 2; Tr.

Transcript at pg. 56, line 9-17.) Mr. Wolfchild then goes to the fly-fishing department with the arrow rests, he picks up a fishing line and puts it down then moves on. (June 9 video File 3; Tr. Transcript at pg. 56-57, line 21-6.) Mr. Wolfchild goes to another area of the fishing department and Tysen states Mr. Wolfchild is “concealing the item down – items down his pants”. (June 9 video File 5; Tr. Transcript at pg. 57, line 7-12.) Mr. Wolfchild then leaves Scheels. (June 9 video File 6; Tr. Transcript at pg. 57, line 19-25.)

On June 10, 2022, Carla Cree Medicine enters Scheels and Mr. Wolfchild enters Scheels after her. (June 10 video File 1; Tr. Transcript at pg. 59, line 3-17.) Carla went to the cash register to return Mathews and Epsilon arrow rests, and a box of fly line. (June 10 video File 2; Tr. Transcript at pg. 60, line 2-5.) While Carla was returning her items Mr. Wolfchild was walking around the store, a manager went to assist Carla and was slowing the return so the police department could arrive. (June 10 video File 2; Tr. Transcript at pg. 63, line 11-23.) Carla was denied a return of the items, so she left Scheels with the items. (June 10 video File 3; Tr. Transcript at pg. 62, line 1-4.) Mr. Wolfchild left after Carla, and went to the staircase in front of the store when Great Falls Police

officers stopped them. (June 10 video File 3; Tr. Transcript at pg. 62, line 10-15.) The value of the two arrow rests and box of fly line that Carla was in possession of and tried to return is \$529.98. (Tr. Transcript at pg. 86, line 3-10.) Carla Cree Medicine entered Scheels with those items, went directly to the return counter, and was the only person who was in possession of those items. (June 10 video File 2; Tr. Transcript at pg. 86-87, line 13-35.)

The value of the items on June 6, 2022 (two boxes of fly line and two arrow rests) is \$736.92. (State's Exhibit 13; Tr. Transcript at pg. 91-92, line 24-2.) The value of items on June 7, 2022, that were alleged to be taken by Mr. Wolfchild (one arrow rest and one fly line box) is \$408.99 (Tr. Transcript at pg. 93, line 4-6.) The value of items on June 9, 2022 (Mathews and Epsilon arrow rests) is \$529.98 (State's Exhibit 13; Tr. Transcript at pg. 93, line 7-15.) The total value of items in the possession of Mr. Wolfchild and Carla Cree Medicine for the three days is \$1,675.89. (State's Exhibit 13; Tr. Transcript at pg. 93, line 16-25.)

### **STANDARDS OF REVIEW**

This Court conducts a de novo review of whether sufficient evidence supports a conviction. *State v. Christensen*, 2020 MT 237, ¶ 11,

401 Mont. 247, 472 P.3d 622. This Court considers the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Christensen*, ¶ 11.

This Court can address issues for the first time on appeal invoking a plain error review on claims that “implicate a criminal defendant’s fundamental constitutional rights when failing to review the claimed error may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial or proceedings . . .” *Christensen*, ¶ 12.

### **SUMMARY OF ARGUMENT**

Mr. Wolfchild admitted to stealing certain items when he was interviewed by police. However, he never admitted to stealing the items in Carla’s possession that she attempted to return, which were two arrow rests, and a fishing line valued at \$529.98. The items Mr. Wolfchild stole were identified as two fishing lines and two arrow rests (valued at \$736.92) on June 6th, and two arrow rests on June 9th (valued at \$529.98). The total value of those items is \$1,266.90. Carla had sole possession of the items she attempted to return. Mr. Wolfchild

was found guilty of theft of items in an amount greater than \$1,500.00 and 3 of those items were in Carla's possession.

The State failed to charge each offense separately and charged all three events as one theft by common scheme. Individually each theft is less than \$1,500.00. Mr. Wolfchild must be found guilty of all three offenses to reach an amount greater than \$1,500.00 required for felony theft. By charging each offense as one count of theft by "common scheme" it violated Mr. Wolfchild's due process rights and resulted in a lack of fundamental fairness at trial. This denied the possibility that Mr. Wolfchild could have been found guilty of one or two offenses, which would have resulted in a misdemeanor conviction.

### **ARGUMENT**

**I. Whether the evidence was sufficient to prove beyond a reasonable doubt that Mr. Wolfchild took items totaling more than \$1,500.00?**

To establish the charge of felony theft by common scheme the State must prove Mr. Wolfchild stole \$1,500.00 or more by a series of acts or omissions to accomplish a single criminal objective. Mont. Code Ann. §45-6-301(1)(a). Section 45-6-301(1)(a) states: "A person commits the offense of theft when the person purposely or knowingly obtains or

exerts unauthorized control over property of the owner and: (a) has the purpose of depriving the owner of the property . . . .” A common scheme is “a series of acts or omissions resulting in a pecuniary loss to the victim of at least \$1,500, or \$1,500 in value, motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.” Mont. Code Ann. § 45-2-101 (8). “A fundamental principle of the criminal justice system is that the State must prove each element of a crime beyond a reasonable doubt. *State v. Laird*, 2019 MT 198, ¶ 59, 397 Mont. 29, 447 P.3d 416. “The value of the property taken is an essential element of the offense” the State must prove beyond a reasonable doubt in a felony theft case. *State v. Martin*, 2001 MT 83, ¶ 60, 305 Mont. 123, 23 P.3d 216. (citing *State v. Price*, 2002 MT 284, 312 Mont. 458, 59 P.3d 1122; *In re Winship*, 397 U.S. 358, 363-64, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970)).

Here, the State has not presented sufficient evidence to demonstrate proof beyond a reasonable doubt that Mr. Wolfchild committed a theft on June 7, 2022, that would result in an amount

above \$1,500 as a common scheme. Mr. Wolfchild entered the store on June 7, 2022, and was seen picking up a fishing line and an arrow rest on that day. (June 7 video Files 2 & 4; Tr. Transcript pg. 43, lines 13-15 & 19-25.) Tysen stated Mr. Wolfchild left the food prep area with no fishing line or arrow rest, but Mr. Wolfchild did have another item in his hand that Mr. Wolfchild took to the register to purchase. (June 7 video Files 6, 7, & 8; Tr. Transcript at pg. 36, line 18-25, pg. 37, line 12-14.) Tysen did not see Mr. Wolfchild conceal any items and Mr. Wolfchild was not holding any items when he left Scheels. Carla and Mr. Wolfchild walked to a pawn shop, however there is no video showing any item going from Mr. Wolfchild to Carla on the way to the pawn shop. (June 7 video File 10; Tr. Transcript at pg. 84-85, line 15-2.) Carla went into the pawn shop on her own and sold an arrow rest to the pawn shop, providing her identification, and signing the “pawn ticket.” (June 7 video File 10; Tr. Transcript at pg. 48, line 18-21, pg. 96-97, line 16-1.) Carla received payment for the item and was seen exiting the pawn shop with the pawn ticket, after Mr. Wolfchild had already left. (June 7 video File 11; Tr. Transcript at pg. 56, line 3-8).

Carla then entered Scheels by herself on June 10, 2022, with two arrow rests and a fishing line in her sole possession and approached the cash register to return those items. (June 10 video File 1 & 2; Tr. Transcript at pg. 59, line 3-17, and pg. 60, line 2-5.) The value of the items in Carla's possession was \$529.98.

Mr. Wolfchild was not seen concealing or leaving Scheels on June 7, 2022, with any item from the store. The testimony was that Mr. Wolfchild never handed anything to Carla on the walk to the pawn shop. Carla entered the pawn shop on her own and sold an item to the pawn shop and received a pawn ticket for the transaction. Carla was in Scheels on at least one prior occasion that is known and was looking at items in the fishing and archery departments. Carla had the opportunity to take items from Scheels remove them from the store and attempt to return them and sell them to the pawn shop.

**II. Whether two or more offenses must be distinctly pled in separate counts as part of the repeated commissions of an alleged felony theft by common scheme?**

This issue was not raised during the trial; however, this Court can invoke a plain error review on appeal for claims that "implicate a criminal defendant's fundamental constitutional rights when failing to

review the claimed error may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial or proceedings . . .” *Christensen*, ¶ 12. The State, in failing to charge each offense separately created a miscarriage of justice and raises the question of fundamental fairness in the trial and proceedings. The State relied on a single charge by common scheme. In this case Mr. Wolfchild could have been found guilty of one or two charges only, resulting in a misdemeanor offense and sentence. This question does implicate his right to due process and would result in a manifest miscarriage of justice and question the fundamental fairness of the trial.

The Legislature created certain offenses that could result in a common scheme, if the State can prove the common scheme elements necessary to enhance a penalty. *State v. Rowe*, 2024 MT 37 ¶ 20, 415 Mont. 280, 543 P.3d 614. (See §§ 45-6-301(7)(b)(ii), 45-6-309(4)(c), 45-6-312(2), 45-6-316(3)(c), 45-6-317(2)(c), 45-6-325(4)(c), 45-6-341(2), 45-7-210(2)(b), M.C.A. In *Rowe*, the State chose to charge a single count of sexual assault<sup>3</sup> by common scheme to reach a conviction, even though it

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<sup>3</sup> *State v. Rowe*, held the common scheme of sexual assault was a fictional charge by the State. However, the portions of *Rowe* that are relevant to the present matter demonstrate the Court’s view of a common scheme charge.

could have charged three separate counts of sexual assault by common scheme. *Rowe* at ¶ 22. This Court stated, “[e]ven when set forth within the definition of a statutory offense, a “common scheme” offense still requires proof of the elements of each “repeated commission” of the base offense. *Rowe* at ¶ 22; *See* § 45-2-101(8), M.C.A. (“common scheme” definition). The State was required to prove beyond a reasonable doubt every element of each offense, charged and uncharged, and prove the offenses meet the elements of a common scheme. Therefore, each recurring commission of an offense as the basis for an allegation of a “common scheme” must be specifically pled in individual counts. *Rowe* at ¶ 22. In this case the State failed to “specifically plead” three individual counts for “each recurring commission of an offense” in the affidavit and information. (D.C. Doc. 1 and 3). This denied Mr. Wolfchild his due process rights.

In *State v. Cazier*, Cazier was charged by an amended information of assault with a weapon, common scheme, a felony. *State v. Cazier*, 2019 MT 259 ¶18. In *Cazier*, the State relied on three offenses of assault with a weapon to allege the “common scheme” element and this Court stated, “even assuming the use of “common scheme” in the title of

the charge constituted a charging defect, "[a] charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant." Section 46-11-401(6), MCA." *Cazier* at ¶ 19. In *Cazier* this Court found no prejudice, but did find a benefit to *Cazier* since the State charged *Cazier* with only one assault with a weapon, and did not charge him with "three charges of assault with a weapon - one for each victim." *Cazier* at ¶19. In contrast Mr. Wolfchild was prejudiced by the State's charge of one count of common scheme as a felony. Not one offense alleged in the State's information and affidavit meets the monetary element for a felony, only combining all three offenses could the offenses be a felony. A common scheme requires "a pecuniary loss to the victim of at least \$1,500 . . ." (M.C.A. § 45-2-101(8)). Mr. Wolfchild did not receive the same benefit this Court found in *Cazier*<sup>4</sup>. Had the State specifically pleaded each offense as individual counts Mr. Wolfchild would have benefited by having the possibility of being convicted of a misdemeanor. Instead, the State's single charge, contrary to *Rowe*, took away any possibility Mr. Wolfchild could have

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<sup>4</sup> *Cazier* was charged with only one felony, the State could have charged him with three. *State v. Cazier*, 2019 MT 259, ¶19.

been found guilty of a misdemeanor offense. The State has simply charged one offense to find Mr. Wolfchild guilty of a felony rather than charging each offense where every element must be proven beyond a reasonable doubt and then determine if the monetary amount has been proven. *Cazier* was charged and convicted of a single count of assault with a weapon. *Cazier* at ¶21. *Cazier* could have been charged with other counts, but the State didn't need to charge him with other counts to prove a felony offense. In contrast, Mr. Wolfchild was charged by a single count of felony theft by common scheme. That single count was based upon three offenses and required a specific finding of guilt as to a monetary amount that was unique to each offense. Mr. Wolfchild should have been charged with three separate counts of theft in order for the State to prove each count beyond a reasonable doubt.

### **CONCLUSION**

The State has failed to prove beyond a reasonable doubt that Mr. Wolfchild took items from Scheels on June 7, 2022, when he was in the store but was not seen taking or leaving with any items.

The State failed to charge all three offenses. In this case the State charged Mr. Wolfchild with a *single count* of felony theft by “common

scheme” that occurred during the time frame of June 6, 2022, and June 10, 2022. *D.C. Doc. 1 & 3*<sup>5</sup>. If the State had properly charged each offense, it would have been possible to find him guilty of one, two, or three offenses. Which would change the result and allow for a felony or misdemeanor conviction. The critical issue is if he was found guilty of only one or even two of the uncharged offenses it would be a misdemeanor conviction. Mr. Wolfchild had to be found guilty of three separate charges in order to be found guilty of a felony theft by common scheme.

This Court should remand this case and order the District Court to reverse the conviction and enter judgment of acquittal, due to the insufficiency of the State’s evidence. Alternatively, this Court should remand this case and order a retrial.

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<sup>5</sup> D.C. Doc. 1 is State’s Motion for Leave to File Information and Affidavit in Support. D.C. Doc. 3 is State’s Information.

Respectfully submitted this 10th day of March, 2025.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook 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 4231, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Brian Owens  
BRIAN OWENS

APPENDIX

Findings of Fact – Conclusions of Law..... App. A  
Sentencing Order .....App. B

## **CERTIFICATE OF SERVICE**

I, Brian Owens, hereby certify that I have served true and accurate copies of the foregoing brief – Appellant’s Opening to the following on March 10, 2025:

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