

**IN THE SUPREME COURT OF THE STATE OF MONTANA
NO. DA24-0663**

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JUSTIN STINGER,

Defendant and Appellant

BRIEF OF APPELLANT

On Appeal from the Montana Fourth Judicial District Court, Missoula County, the
Honorable Robert L. Deschamps, III Presiding.

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INTRODUCTION

Justin Stinger (“Justin”) was convicted by a jury in Missoula District Court on Friday, June 14, 2024. But Justin’s conviction was not the result of the Due Process that our system demands. Instead, Justin’s conviction marked the conclusion of a case that was unfairly augured against him from the very beginning. Justin’s conviction stemmed from inconsistent accusations, made to seemingly biased police, who filed ostensibly incomplete and inaccurate reports, which were delivered to a County Attorney that was apparently unwilling to consider exculpatory evidence, and presented to a judge who was seemingly unwilling to think of Justin as anything other than “just a mean, violent SOB,” despite Justin’s entitlement to a presumption of innocence. (Transcript of Change of Plea Proceedings, at 5).

Justin’s conviction was procedurally flawed, legally deficient, and the result of the accumulation of numerous errors. This appeal narrates Justin’s warped encounter with the criminal justice system, from the first report to law enforcement, through Justin’s conviction.

Beginning with an exploration of the errors found in the policework in this matter, this brief then tracks the legal errors in the proceedings—both procedurally and substantively—and eventually, requests the relief of this Court. Because Justin’s defense was prejudiced at each stage of the proceedings against him, from

report, to investigation, to charge, to pretrial proceedings, through trial, and ultimately resulted in his conviction, Justin prays for this Court's review and relief.

STATEMENT OF THE ISSUES

1. Whether Justin Stinger was denied his right to Due Process when the District Court allowed the State to present seemingly false, misleading, and/ or deficient evidence during the trial?
2. Whether, at and before trial, Justin experienced judicial bias?
3. Whether the State failed to meet its duty to correct testimony that it should have known was false or misleading, resulting in a violation of *Napue v. Illinois*?
4. Whether the proceedings against Justin resulted in cumulative error sufficient to prejudice the outcome?

STATEMENT OF THE CASE

The State charged Justin with six counts in his case: Count I, Partner or Family Member Assault (“PFMA”) by Reasonable Apprehension (Third or Subsequent), a felony; Count II, Tampering with or Destroying a Communication Device, a misdemeanor; Count III, Aggravated Assault by Reasonable Apprehension, a felony; Count IV, PFMA Strangulation; Count V, PFMA Causing Bodily Injury (Third or Subsequent), a felony; and Count VI, Tampering with or Destroying a Communication Device, a misdemeanor. (Amended Information).

Initially, the parties arrived at a plea agreement, where Justin agreed to plead guilty to counts I, II, V, and VI, with counts III and IV being dropped, and the State recommending a total of 5 years in DOC with 2 suspended. (Plea Agreement Conformed).

After entering the plea agreement, Justin appeared at a hearing for the change of plea, with hopes of continuing the proceeding. Justin's motion to continue the proceeding was intended to give Justin time to finalize some of his professional and personal obligations before he pled guilty. The obligations that Justin was seeking to complete involved paying the mortgage on the home that Kasondra was living in, and finishing several roofing projects, which generated the income that Justin would use to pay that mortgage. (Transcript of Change of Plea Proceedings, at 3-4). The Court decided that it would not follow the State's recommendation contained within the agreement. (Transcript of Change of Plea Proceedings, at 4). Notably, the Court indicated that it was not inclined to follow the State's recommendation, and that the Court would impose a higher sentence because the court thought, among other things, that "[Justin was] just a mean, violent SOB. . . ." (Transcript of Change of Plea Proceedings, at 5). The Court advised that Justin should take his low risk assessment "and burn it because it's ridiculous with [Justin's felony record]." To illustrate its point, the Court advised Justin that he should, "Bring [his] toothbrush, because [the Court was] gonna send

[Justin] away, and [the Court was] gonna put [Justin] on probation for 10 years unless [Justin] want[ed] to withdraw [his] plea.” (Transcript of Change of Plea Proceedings, at 5).

Following this plea proceeding, Justin did not feel comfortable continuing with the plea agreement, and this matter proceeded to trial. Despite the strong language of the Court at the plea proceeding, Justin’s counsel did not move to recuse the Judge following his statements.

The state put 10 witnesses on the stand at trial: Kasondra, Justin’s former spouse; Donna Townsley, a 9-1-1 Operator; Kylie Stinger, Justin’s daughter; the six officers who responded to the two incidents; and the EMT who examined Kasondra after the October incident. (Transcript of the Trial, at 4-5). The common theme shared by the witnesses: apparently inconsistent statements, reluctance to address evidence favorable to the Defendant, and an unwillingness to answer the Defendant’s questions directly.

After 4 days of trial and an onslaught of seemingly prejudicial testimony and evidence, the jury went into deliberations. The jury deliberated for 4 hours on a Friday afternoon, working into the evening before returning its verdict, guilty on counts I-V, and not guilty on count VI.

STATEMENT OF THE FACTS

This case arose from two separate incidents, one occurring on or about June 20, 2022, and the other occurring on or about October 27, 2022. Separated in time, these incidents are connected by the common thread of a tumultuous and failing marriage, being held together by at-odds parents for the sake of children and shared obligations. They are also connected by the misconduct of law enforcement during investigation, and the State's apparent failure to ensure that Justin was given Due Process throughout.

A. The June 20, 2022, incident.

The June 20 incident began with an argument between Justin and Kasondra regarding a piece of their daughter's dental equipment. (Transcript of Trial, at 200). Justin was yelling from a couch in their living room, while Kasondra was on her feet closer to the front door. (Transcript of Trial, at 201). Justin stood while yelling at his and Kasondra's son, Jaxson, whom Justin approached on foot. (Transcript of Trial, at 201). Kasondra stepped into Justin's path, pushing Justin back and trying to prevent him from approaching Jaxson. (Transcript of Trial, at 201). After Justin was pushed by Kasondra, he pushed her aside without knocking her down and headed for Kylie's room. (Transcript of Trial, at 201). Unbeknownst to either Justin or Kasondra, Kylie had gone into her room, closed her door, gone

into her bathroom, closed that door, and called 9-1-1. (Transcript of Trial, at 207-208).

At trial, Kasondra was the first witness for the State. She testified that, in the moments leading up to the incident on June 20, 2022, the parties were having a casual night and were not intoxicated. (Transcript of Trial, at 200). Kasondra's testimony at trial, as well as to responding officers on the night of June 20 was that during the argument she confronted Justin and was "trying to, like, push [Justin] back away from Jaxson." (Transcript of Trial, at 201). This testimony indicated that Kasondra was the party to initially make physical contact during the June 20, 2022, incident. Kasondra continued, saying that she was "holding him back off of Jaxson, and then he shoves me almost to the ground and takes off to my daughter's room." (Transcript of Trial, at 201-202). Again, Kasondra indicates that she initiated physical contact with Justin and maintained that contact prior to any physical contact that Justin may have made.

At trial, as well as in her report to Officer Sedwick on June 20, Kasondra's version of events was inconsistent with other evidence, including the statement of her son, Jaxson, who never indicated that Justin had "charged him." (Transcript of Trial, at 435).

This argument and altercation took place in the living room of the Stingers' home on Wahupa Lane in Huson, Montana. While the argument took place, Kylie

apparently went into her room, into her bathroom, and placed a call to 9-1-1, which was played at trial. Justin denied that he went into Kylie's room and took her phone from her, ending the call that she was on, and denied knowing that Kylie was on the phone with 9-1-1. (Transcript of Trial, at 598). After Kylie's call was ended, 9-1-1 called back, and Kasondra answered—apparently explaining to the operator that she thought “there was just too much drinking, and [she] just really want[ed] a set of keys. . . .” (Transcript of Trial, at 203). Kasondra's testimony was already contradictory, as she switched her story from sobriety to intoxication. (Transcript of Trial, at 200). After Kasondra told the 9-1-1 operator that she wanted keys, Justin retrieved a set for her and gave them to Kasondra. (Transcript of Trial, at 203). At that point, Kasondra took the keys, gathered the kids, and left for the night.

Not far from the house, Kasondra encountered the police officers who were dispatched to respond to her call. Immediately upon encountering them, and apparently in contravention of department policy, Kasondra began to explain to the police her version of what had transpired, in front of her children. (Transcript of Trial, at 204 & 427). At this point in her testimony, the County Attorney stopped Kasondra, and asked her the following question:

I'd like to go back and . . . clarify a few things, if I could. So before he goes into the room with Kiley, you said he's yelling at Jaxson, he's shoving you.

What's going through your head when he's shoving you when you get in between him and Jaxson?

(Transcript of Trial, at 204). Not only did this lead Kasondra to specific testimony, but it also misstated her immediately preceding statement. Even so, it set up the following exchange, which illuminated a critical flaw in Count I:

Q. Were you worried about your own safety at all?

A. Not in the moment. I knew – I just knew that I needed to take care of Jaxson [. . .]

Q. Sounds like you were pretty concerned about Jaxson at that point

A. Yes.

Q. Did you reasonably believe that you might get hurt--

A. Yeah.

Q. When you were shoved even though you were protecting Jaxson?

(Transcript of Trial, at 204-205). Without the County Attorney's leading, Kasondra's testimony would have been insufficient to establish reasonable apprehension of her own bodily injury. Furthermore, Kasondra admitted on cross that Justin had never been physically violent towards the children before, and Jaxson told Officer Sedwick that Justin had not charged Jaxson that evening.

(Transcript of Trial, at 275 & 435)

This early moment in the trial, in Kasondra's testimony, is significant because it fits into a theme explored by Justin's counsel at closing: without the apparently inappropriate conduct of the State, Kasondra's case did not hold water. This inappropriate conduct took numerous forms throughout the course of the case

against Justin, starting with the procedurally defective interview of Kasondra taken by Officer Sedgwick when he first contacted Kasondra after the argument on June 20, 2022. This trend continued, in the reports filed by the officers who responded to the June 20 call, and in the reports of the officers who responded to the October 27 call, and in those officers' testimony at trial. Consistently, the responding officers omitted apparently exculpatory evidence from their reports and evaded responding to any questions that cast Justin in a positive light at trial.

B. The October 27, 2022, incident.

On October 27, 2022, Justin headed to the Wahupa Lane house to deliver dog food and dinner to Kasondra and the children. (Transcript of Trial, at 222-223). Justin was later than Kasondra expected, and when he arrived, she approached his truck angrily. (Transcript of Trial, at 225). Kasondra and Justin began to argue, and the argument became physical, with Justin and Kasondra telling different versions of what transpired and who provoked the physicality. What is clear from the record is that there was an altercation which resulted in Kasondra spending some time under Justin's truck. (Transcript of Trial, at 232). This altercation at the truck ended when Kylie opened the door of the house and called outside to Justin and Kasondra to ask what was going on. (Transcript of Trial, at 231). Justin and Kasondra advised Kylie that things were okay, and that Kylie should go back inside. (Transcript of Trial, at 230). A short time later,

Kasondra got out from under the truck, and she proceeded inside with Justin.

(Transcript of Trial, at 232-233).

Once inside, Kasondra worked on getting herself cleaned up a bit, while Kylie inquired what was going on. (Transcript of Trial, at 233). Eventually Kasondra and Kylie headed for Kasondra's room under the guise of a bathroom trip. (Transcript of Trial, at 234). Kasondra stated at trial that she gave Justin her phone before this bathroom trip. (Transcript of Trial, at 234). Once Kasondra and Kylie entered Kasondra's room, Kasondra retrieved a 9mm handgun "out from under the mattress, and [Kasondra] called Denny, and pointed [the handgun] at [Justin], and [Kasondra] told [Justin] to get the eff out of [her] house, and [Justin] ran out and [Kasondra] chased him out." (Transcript of Trial, at 235).

In the aftermath of this call, Kasondra called the police from one of her children's phones, while Justin wondered if he should call the police, but decided not to. (Transcript of Trial, at 638-639). Justin denied ever having Kasondra's phone. (Transcript of Trial, at 637-638). The police arrived, met with Kasondra, and eventually pulled Justin over in his vehicle. (Transcript of Trial, at 639-640). Justin gave the officer who stopped him his version of events—that he had arrived at the house, that Kasondra had come out mad, that she had punched Justin, injuring his ear. (Transcript of Trial, at 641-643). Justin was eventually arrested by Officer Rush, who recorded Justin's version of events, photographed Justin's ear,

and eventually filed a report on this matter. (Transcript of Trial, at, at 641-644). Unfortunately for Justin, that report, like others in this case, appeared incomplete, and Officer Rush was seemingly uncooperative at trial.

After the October 27, 2022, incident, the proceedings in this matter began in earnest. It was not long until it became clear that Justin was not going to get a fair shake in this matter.

While the motivations of the State might have been carried out under the guise of justice — apparently trying to aid an alleged victim of abuse — the reality appears less than convincing. From the outset of this case, the State seemed unwilling to consider Justin's side of the events. In doing so, the police, the county attorney, and the district court all denied Justin his right to the Due Process of law. Collectively, the State appeared to carry preconceived notions of Justin's guilt, despite his presumption of innocence. The State appeared to carry those preconceived notions from its first attempt to contact Justin, into the investigation, through the filing of an information, the hearing on Justin's plea agreement, the trial, all the way through when the case was turned over to the jury, and finally, through sentencing. The result of the State's conduct in this matter was the violation of Justin's constitutional rights, and cumulative error of a magnitude that warrants the reversal of his conviction, and a new trial in this matter.

STANDARDS OF REVIEW

While this Court generally reviews evidentiary rulings for an abuse of discretion, it reviews conclusions involving the Constitution or interpretation of the Rules of Evidence *de novo*. *State v. Lake*, 2019 MT 172, ¶ 22, 396 Mont. 390, 397, 445 P.3d 1211, 1216; *State v. Patterson*, 2012 MT 282, ¶ 10, 367 Mont. 186, 291 P.3d 556. Justin raises a constitutional claim in this matter—that his right to Due Process was abrogated by both the conduct of the State’s agents in this case and by the accumulation of numerous errors in his proceedings—therefore, Justin is asserting a constitutional claim, and this Court’s review is *de novo*. *Patterson*, ¶ 10; *Lake*, ¶ 22.

SUMMARY OF THE ARGUMENT

From the outset of this case, Justin was denied Due Process of law. Starting with the investigation by law enforcement, it seemed that Justin was fighting against a presumption of guilt. This presumption was certainly present at the pretrial proceeding for Justin’s plea agreement, where the Court explicitly stated its belief that, due to Justin’s background, he must be an evil person. That same apparent presumption of guilt poisoned the fairness of Justin’s trial proceedings. This can be seen by the State’s apparent failure to correct the false and misleading testimony given by Kasondra during her direct examination. Instead, the state

reemphasized that information during its closing argument, in violation of *Napue* and its progeny.

Legally, Justin's experience is best characterized as a denial of Due Process, and his conviction is best characterized as the result of cumulative error. Because Justin was denied Due Process, he is raising constitutional claims for review, entitling him to *de novo* review by this Court. Additionally, the erroneous admission of the State's tainted photographs into evidence, and the District Court's failure to maintain the proceedings could be reviewed for abuse of discretion.

ARGUMENT

I. Law Enforcement breached protocol and filed apparently false reports in this matter.

A. Officer Sedgwick.

By his own admission, Officer Sedgwick deviated from standard procedure when he interviewed Kasondra while Kylie and Jaxson were present in the vehicle. (Transcript of Trial, at 427). Officer Sedgwick further admitted that the children were never forensically interviewed in this case, which Missoula County has the capability to do and is the special procedure to be taken for interviewing children. (Transcript of Trial, at 429).

At trial, Officer Sedgwick seemed to forget every fact that was favorable to Justin during his initial contact with Kasondra, requiring Justin's counsel to refresh

Sedgwick's recollection and chase down a truthful answer. The first of Sedgwick's many failures of memory was a prejudicial mischaracterization of the scene as he encountered Kasondra and the children on the night of June 20, 2022. In his report, Sedgwick stated that when he arrived on scene, Kasondra and the children were all crying uncontrollably. (Transcript of Trial, at 435). However, after having his recollection refreshed by viewing his own dash cam video, Sedgwick clarified that Jaxson was not crying when he arrived, he saw no evidence that Kylie was crying uncontrollably, and Kasondra was not crying uncontrollably, either. (Transcript of Trial, at 435-436).

Next, Officer Sedgwick failed to include in his report Jaxson's own statement that he did not get charged by Justin during the July 20 incident. (Transcript of Trial, at 435). Despite what Jaxson said, Kasondra stated that Justin charged Jaxson, and then Kasondra pushed Justin. (Transcript of Trial, at 435). Despite this admission from Kasondra, Officer Sedgwick did not include Kasondra's statement that she was the first party to instigate physicality. (Transcript of Trial, at 434). Officer Sedgwick admitted that he did not include these facts in his report despite the facts being favorable to Justin. (Transcript of Trial, at 435).

B. Officer Janttie

Inquiry was not made into Officer Janttie's report at trial, and he was not cross examined by Justin's counsel at trial. However, Officer Janttie testified regarding Kasondra's alcohol consumption on June 20, 2022. (Transcript of Trial, at 447 & 449). According to Kasondra, while talking to Officer Janttie, three bottles of wine were opened at the Wahupa Lane house on the evening of June 20, 2022. (Transcript of Trial, at 447). At the conclusion of the officer's interview with Kasondra on the night of June 20, it was decided that Kasondra should be given a safe ride home by Kasondra's mother. (Transcript of Trial, at 449).

Janttie indicated that Kasondra was given a safe ride out of an abundance of caution, because she had partaken in at least two of the bottles of wine, and even though that was over the course of a 7-hour period, Officer Janttie still felt Kasondra should not drive. (Transcript of Trial, at 449). Officer Janttie was dispatched to Huson around 12:50 am, the night of June 20 or the morning of June 21. (Transcript of Trial, at 442). It took the responding officers between 15 and 20 minutes to arrive in Huson and encounter Kasondra. (Transcript of Trial, at 442). Kasondra indicated at trial that only one bottle of wine had been opened, early in the evening, but that they had not been home long, and she was not intoxicated. (Transcript of Trial, at 200).

The State was aware of the disparity between what Kasondra said at trial, versus what she said to Officer Janttie, and yet the State did nothing to reconcile this disparity—an apparent violation of *Napue*.

C. Officer Rush

Officer Rush took Justin’s statement of events on the night of October 27, 2022. Justin’s version of what happened during the altercation on October 27 included Kasandra punching him, injuring Justin’s left ear. (Transcript of Trial, at 472). While Officer Rush was interacting with Justin on October 27, either at the jail or in the field, Officer Rush took photos of Justin’s ears, and said something to the effect of “[Justin’s ear] could be swollen, but I don’t know [how] they normally are, and I’m not a doctor. So it could be cauliflower ear, or it could be that’s the normal shape of [Justin’s ear].” (Transcript of Trial, at 479). Officer Rush was indicating a difference in Justin’s ears, potentially corroborating Justin’s story, but Officer Rush refused to take that possibility seriously at trial and refused to circle the part of Justin’s ear that indicated that possibility on one of Justin’s trial exhibits. (Transcript of Trial, at 483-484). Officer Rush documented possible swelling on Justin’s ear, told Justin that it was possibly swelling, and stated at trial “If I thought there was swelling that was relevant, then I would have noted it.” (Transcript of Trial, at 485).

Justin's counsel's cross examination of Officer Rush was not a smooth one. Justin's counsel objected to some of Officer Rush's answers as nonresponsive, which the Court disagreed with. (Transcript of Trial, at 485). In the subsequent exchange between Justin's counsel and Officer Rush, the State objected to Justin's counsel as being argumentative, which the Court agreed with and admonished Justin's counsel to change his questions if he did not want the witness to answer in that fashion. (Transcript of Trial, at 485-486).

D. Officer Wagner

Officer Wagner took Kasondra's statement on the night of October 27, 2022. (Transcript of Trial, at 502-503). Officer Wagner indicated that while he was interacting with Kasondra, he could smell alcohol on her breath. (Transcript of Trial, at 505). Officer Wagner's report indicates that Kasondra told him that the altercation started with Justin immediately putting Kasondra into a headlock, covering her mouth, and choking her. (Transcript of Trial, at 520-521). Officer Wagner also reported that Kasondra told him that Justin punched Kasondra in the head twice. (Transcript of Trial, at 522). In his report, Officer Wagner indicated that the only possible corroboration of Kasondra's injuries was redness to her neck, which could have been attributed to the cold weather. (Transcript of Trial, at 524).

The content of Officer Wagner's report provides contradictions to testimony that Kasondra later gave at trial. Specifically, the order in which the altercation

between Kasondra and Justin transpired. In her interview with Officer Wagner, Kasondra stated that Justin was the first to instigate physicality, immediately putting Kasondra into a headlock, then restricting her breathing, and then punching her in the head. (Transcript of Trial, at 521-522). At trial, Kasondra stated that Justin punched her in the eye, then put her in a headlock, then continued to try to punch her, then covered her mouth. (Transcript of Trial, at 226). Kasondra indicated that while Justin was covering her mouth, she was scratching his hands. (Transcript of Trial, at 226). At trial, Officer Wagner testified that, in the version Kasondra told him on October 27, she never mentioned being punched in the face, and Officer Wagner saw no sign of injury to her face or eye. (Transcript of Trial, at 516).

II. Justin experienced apparent Judicial bias pre-trial.

Prior to trial, the State and Justin had arrived at a plea agreement, which was addressed at a proceeding on October 30, 2023. (Transcript of Change of Plea Proceedings, at 1). At this proceeding, the Court was considering Justin's motion for a continuance on Justin's change of plea. The Court decided that it was unwilling to accept the State's recommendation of five years with two suspended. (Transcript of Change of Plea Proceedings, at 4). The Court expressed that it was unwilling to accept this recommendation based on Justin's criminal record, and because the Court disagreed with Justin's low risk assessment. (Transcript of

Change of Plea Proceedings, at 5). The Court suggested that Justin, “take that [risk assessment] and burn it because it’s ridiculous with that kind of a felony record.” (Transcript of Change of Plea Proceedings, at 5). The Court reasoned that Justin’s low risk assessment was based on Justin saying that, “oh, I don’t have any family problems, I don’t have any substance abuse, or, my mother loves me. I’m a hard-working guy.” (Transcript of Change of Plea Proceedings, at 5). The Court was mockingly mischaracterizing factors that had been considered in Justin’s benefit for his risk assessment, but still the Court felt that it should specify that its “note [was that Justin is] just a mean, violent SOB.” (Transcript of Change of Plea Proceedings, at 5). The Court went on to further minimize the factor’s supporting Justin’s low risk assessment, stating again that “You know, I [the Court] think this guy’s dangerous. And so I’ll give you your continuance.” (Transcript of Change of Plea Proceedings, at 5). The Court then addressed Justin directly, saying “But bring your toothbrush because I’m gonna send you away, and I’m gonna put you on probation for ten years unless you want to withdraw your plea.” (Transcript of Change of Plea Proceedings, at 5).

This conduct by the Court was clearly inappropriate and improper and strongly influenced Justin’s decision to proceed to trial. Ironically, this proceeding was for Justin to plead guilty to the charges and accept responsibility for them, yet, after the Court’s tirade about how “[Justin] minimizes his own behavior,” the result

was Justin choosing to roll the dice at trial. (Transcript of Change of Plea Proceedings, at 5).

Although Justin's counsel did not move to recuse Judge Deschamps from trial, this pre-trial proceeding foreshadowed what was to come for Justin at trial: apparent unwillingness to hear his side, and apparent hostility from the State's agents.

III. The Court did not control the proceedings at trial.

A. Kasondra's testimony.

The trial proceedings for Justin were sloppy. During the State's direct examination of its first witness, Kasondra Stinger, the witness gave extremely long, narrative responses to the State's leading questions. This resulted in an early interjection by the Court Reporter, and an admonishment by the Court that:

. . . most of [Kasondra's] answers are long, narrative responses, and there's no objection, but it's just murder, I know, for the Court Reporter to take answers that go on for minutes, so it would be better if you could kind of break it down and proceed with more question-and-answer format [. . .] and ma'am [to the witness] same goes for you.

(Transcript of Trial, at 235-236). Despite this admonishment, the trend continued during the State's direct examination of Kasondra.

After even more longwinded, narrative testimony and leading questions, Justin's counsel objected to one of Kasondra's statements on the basis of hearsay.

(Transcript of Trial, at 235). While considering the objection, the Court again stated: “that’s part of the problem [. . .] when you get going on these narrative things, things creep in, and it’s hard to deal with it . . .” (Transcript of Trial, at 235-236). Even so, despite the Court’s awareness of the ongoing issues with Kasondra’s testimony, the Court did nothing to control Kasondra’s testimony or the State’s direction thereof. The court reporter was forced to interject again during Kasondra’s testimony, asking her again to slow down, without the Court taking any action. (Transcript of Trial, at 241). The court reporter repeatedly had to step in during cross examination because of Justin’s counsel and Kasondra speaking over one another. (Transcript of Trial, at 264 & 297-298).

Justin’s counsel was forced to object and strike Kasondra’s testimony, following long winded nonresponsive testimony from Kasondra. (Transcript of Trial, at 302.) The Court sustained that objection but did not further attempt to control Kasondra’s testimony.

B. Evidentiary Issues

During Kasondra’s direct examination, Kasondra referenced being treated by her optometrist and by the Rocky Mountain Eye Care Center for treatment for blunt force trauma to her eye. (Transcript of Trial, at 239-240). By allowing reference to this treatment, without providing any support of the veracity of Kasondra’s claims, the prosecution sanctioned her misleading testimony on the

stand. (Transcript of Trial, at 239-240). Furthermore, Kasondra's testimony regarding eye damage contradicts the testimony and report of Officer Wagner, who saw no evidence of injury to Kasondra's eye. (Transcript of Trial, at 516).

Kasondra apparently had no complaints of injury to the responding medical technicians on October 27. (Transcript of Trial, at 553). By allowing Kasondra to testify regarding her injuries in a way that contradicted her own previous statements to law enforcement and medical personnel, which were in evidence from the dash cam of Officer Wagner and the EMT report, the State sanctioned Kasondra's false or misleading testimony.

Kasondra's injuries were the subject of several evidentiary issues at trial. During Kasondra's direct, over defense counsel's objection and voir dire of Kasondra, the Court allowed unverified photos to be submitted into evidence. (Transcript of Trial, at 246-247). The photos purported to show Kasondra's injuries in the hours or days after her October altercation with Justin. (Transcript of Trial, at 245). The only foundation for these photos was Kasondra's own testimony. (Transcript of Trial, at 246-247). The Court indicated that Justin's counsel's objection went to Kasondra's credibility, and not to the admissibility of the photos, but that was erroneous. Justin's Counsel objected to the admission of the photos because there was no way of verifying what the photos were being offered to show. While establishing the foundation for those photos, Kasondra never stated that she

took them; the State said that Kasondra took the photos in a leading question. (Transcript of Trial, at 245). The Court also stated that Kasondra took the photos while the Court was overruling Justin's Counsel's objection. In fact, Kasondra never directly stated that she took those photos prior to their admission. (Transcript of Trial, at 245-247).

The State later moved to admit an identical set of photos, purportedly showing a date and time stamp when the photos were taken. The defense did not object to these photos at that time. (Transcript of Trial, at 251). However, on cross examination, Justin's counsel asked Kasondra about these photos, and Kasondra stated that her daughter took them, that Kasondra provided them to the State, and that she did not know what metadata was. (Transcript of Trial, at 304-306).

Because these photos were identical to the photos that Justin's counsel had previously objected to, the same photos that the Court admitted because it believed that Kasondra took them, there was a fundamental flaw in the foundation and verifiability of these photos, and they should have been excluded from consideration by the jury.

C. Jury exposure

On two separate occasions, the jury was exposed to content at trial that it should not have been exposed to. The first occasion involved a single juror

remaining in the courtroom while the rest of the jury took a recess. (Transcript of Trial, at 249). This recess was taken immediately after Justin’s counsel’s objection to the veracity of Kasondra’s photos. (Transcript of Trial, at 248-249). The potential that this individual juror was exposed to information that was not meant to be considered exists, but it also tends to show that there was an apparent lack of control over the courtroom by the Court.

Next, apparently the entire jury was exposed to the private communications between Justin and his counsel while they were at counsel’s table in the courtroom. (Transcript of Trial, at 433). How long this occurred for, and what private information the jury was exposed to is not in the record—but the potential exists that this flaw tainted the jury.

IV. Justin was denied his Due Process rights under the Fourteenth Amendment of the United States Constitution and Article II, Section 17 of the Montana Constitution.

1. *Napue* Claims

Nearly a century ago, the United States Supreme Court recognized a prosecutor’s obligation to not just win convictions, but to see that justice is done.

As far back as 1935, the Court explained the following:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a

peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnest and vigor – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Berger v. United States, 295 U.S. 78, 88 (1935).

More recently, the 9th Circuit has echoed this mandate, stating:

The prosecuting attorney represents a sovereign whose obligation is to govern impartially and whose interest in a particular case is not necessarily to win, but to do justice.... It is the sworn duty of the prosecutor to assure that the defendant has a fair and impartial trial.

Hayes v. Brown, 399 F.3d 972, 978 (9th Cir. 2005).

1. Presentation of False or Misleading Testimony and Evidence

In *Napue v. Illinois*, 360 U.S. 264, the United State Supreme Court recognized that:

A conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. The same result [is obtained] when the [Government], though not soliciting false evidence, allows it to go uncorrected when it appears. *Id.* 360 at 269 (internal citations and quotations omitted).

The Ninth Circuit has recognized:

There is a substantial difference between general evidence of untrustworthiness and specific evidence that a witness has lied. All the other evidence used by the defense to punch holes in the informant's credibility amount[s] only to circumstantial reasons why the informant might alter the truth to continue to feather his own nest. A lie would be direct proof of this concern, eliminating the need for inferences.

Sivak v. Hardison, 658 F.3d 898, 916 (9th Cir. 2011) (internal citations and quotations omitted).

Additionally, “[t]his Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice. . . A new trial is required if the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury” *Gratzer v. State*, 2003 MT 169, ¶16, 316 Mont. 335, 71 P.3d 1221 (citing *Napue*) (internal quotations omitted).

2. False Testimony and Evidence

At trial, Kasondra’s testimony was inconsistent with her version of events given outside of the courtroom. This trend began with Kasondra’s testimony as related to the June 20 incident. When Kasondra first encountered law enforcement on the night of June 20, she told law enforcement that she pushed Justin first, apparently to get Justin away from Jaxson, and that Justin only pushed her as he went past her towards Kylie’s room. (Transcript of Trial, at 434-435). This information was not included in Officer Sedgwick’s police report, but it was captured on his dashcam and was introduced at trial by Justin’s counsel refreshing Officer Sedgwick’s recollection of the incident. (Transcript of Trial, at 434-435). The State was aware of this evidence, and had surely viewed it prior to trial, and yet, during Kasondra’s direct examination, the State asked Kasondra:

I’d like to go back and . . . clarify a few things, if I could. So before he goes into the room with Kiley, you said he’s yelling at Jaxson, he’s

shoving you. What's going through your head when he's shoving you when you get in between him and Jaxson?

(Transcript of Trial, at 204). The State was apparently attempting to elicit testimony from Kasondra that would indicate that she was placed in reasonable apprehension of harm, so the State continued:

Q. Were you worried about your own safety at all?

A. Not in the moment. I knew – I just knew that I needed to take care of Jaxson [. . .]

Q. Sounds like you were pretty concerned about Jaxson at that point

A. Yes.

Q. Did you reasonably believe that you might get hurt--

A. Yeah.

Q. When you were shoved even though you were protecting Jaxson?

(Transcript of Trial, at 204-205).

The problem with this exchange is twofold: first, the State is essentially testifying on Kasondra's behalf, steering her to say she did fear for her safety, after she had just indicated that she did not fear for her safety in the moment; second, this entire line of questioning mischaracterizes Kasondra's version of what transpired during the June 20 incident, as she told law enforcement on that night. (Transcript of Trial, at 434-435).

Kasondra's trial testimony regarding the October 27 incident was similarly flawed. At trial, Kasondra's version of how the altercation proceeded, and what injuries she sustained, was different from the version she told law enforcement when she first encountered them on October 27. At

trial, Kasondra stated that, during their argument at the truck, Justin, “grabbed the bucket [of laundry]. Then he hit me, and then he grabbed me in a chokehold.” (Transcript of Trial, at 226). The State pressed Kasondra for more:

Q. How did he hit you?

A. He punched me in the head.

Q. Where at?

A. In the left side of my face in the eye.

Q. And then what happened at that point?

A. So then he grabbed me in a choke hold [. . .]

(Transcript of Trial, at 226).

This was an alternate version of events from what Kasondra told Officer Wagner and the responding medical technicians on the night of October 27, apparently in a bid to set up Kasondra’s testimony about her eye being injured.

Kasondra’s testimony regarding eye damage contradicts the testimony and report of Officer Wagner, who saw no evidence of injury to Kasondra’s eye. (Transcript of Trial, at 516). Kasondra apparently had no complaints of injury to the responding medical technicians on October 27. (Transcript of Trial, at 553). Kasondra’s version of events on October 27 was that Justin placed her in a headlock, then punched her in the head; she never mentioned being struck in the face or her eye, and Officer Wagner saw no sign of those injuries. (Transcript of Trial, at 521-522).

By allowing Kasondra to testify regarding her injuries in a way that contradicted her own previous statements to law enforcement and medical personnel, which were in evidence from the dash cam of Officer Wagner and the EMT report, the State sanctioned Kasondra's apparently false or misleading testimony.

V. Prosecutorial Knowledge of Falsity

Kasondra's version of events during her testimony were inconsistent with the evidence that the State possessed prior to trial. *Napue* demands that, at a minimum, the State has a duty to correct false evidence or testimony when it appears. *Napue*, 360 U.S. 264, at 269. The State's solicitation of Kasondra's false testimony could be viewed as seeking to obtain a conviction based on false evidence, but the conduct does not need to be that extreme—so long as the state was aware that false evidence or testimony arose, it was under a duty to correct that false evidence. The State did not do so.

Here, the State had the dash cam videos from Officers Sedgwick and Wagner. It had the medical technician's report. The State must have been aware that Kasondra's testimony at trial did not match up with the evidence, and yet the State did not seek to correct these disparate versions of events. Instead, Justin's counsel was forced to impeach Kasondra twice, based on

the disparities in her testimony, versus the statements she gave to police. (Transcript of Trial, at 272 & 276). Even so, impeachment does not discharge the State of its duties under *Napue*. The State's failure in this regard allowed the jury to infer this was a "he-said-she-said" event, and the defense attorney was simply grasping at straws and trying to poke holes in her testimony. Had the State corrected the record, the jury would have known Kasandra provided false or misleading testimony and likely would have disregarded that testimony. Indeed, the jury may have disregarded her entire testimony.

The failure of the State to correct the falsities that arose in Kasandra's testimony constituted a breach of the State's *Napue* duty, creating more errors that prejudiced Justin's right to Due Process.

VI. Materiality

The standard for *Napue* materiality is lower than the standard for *Brady* materiality. The Ninth Circuit has held the materiality requirement is met if there is "any reasonable likelihood that the false testimony *could* have affected the judgment of the jury." *Sivak*, 658 F.3d at 912 (internal citations and quotations omitted).

Here, there is no question the false and misleading testimony and evidence provided by Kasandra could have affected the jury's judgment. Although Kasandra

was to some degree impeached at trial (Transcript of Trial, at 272 and 275), the State still had a duty to correct that false and misleading testimony when the State was aware of its false or misleading nature, which the State failed to do.

Kasondra was the State's first witness in this case. Kasondra was the alleged victim. Her emotionality and difficulty maintaining a consistent timeline or sequence of events are understandable, but that does not discharge the State of its duties. The state was aware that Kasondra's trial testimony differed from her statements and allegations outside of the courtroom, which were contained in the State's evidence. Because the jury would give considerable weight to Kasondra's testimony in this type of case, and clarification by the State is inherently different from impeachment by the defense, Kasondra's false and/or misleading testimony was material. Taken together, the State's failure to correct Kasondra's materially false and misleading testimony resulted in a violation of the State's *Napue* duties, and prejudiced Justin's defense.

C. Cumulative error

This Court recognizes that the "cumulative error doctrine mandates reversal of a conviction where numerous errors, when taken together, have prejudiced the defendant's right to a fair trial." *State v. Cunningham*, 2018 MT 56, ¶ 32, 390 Mont. 408, 414 P.3d 289 (citing *State v. Hardman*, 2012 MT 70, ¶ 35, 364 Mont. 361, 276 P.3d 839). "The defendant must establish prejudice; a mere allegation of

error without proof of prejudice is inadequate to satisfy the doctrine." *Cunningham*, ¶ 32. "[P]rejudice may result from the cumulative effect of errors, and . . . the cumulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error." 5 Am. Jur. Appellate Review § 624 (2007) (footnotes omitted). A Defendant is entitled to a fair trial, not to a trial free from errors. *Cunningham*, ¶ 32. But, "[w]here individual errors would be insufficient alone, the sum of these errors can serve as a basis for reversal under the cumulative error doctrine." *Cunningham*, ¶ 32 (citing *Kills on Top v. State*, 279 Mont. 384, 392, 928 P.2d 182, 187 (1996)).

Here, the cumulative effect of the Government's *Napue* violations in addition to the Court's apparent bias, failure to maintain control of the proceedings, and admission of unreliable evidence, created the perfect conditions for a guilty verdict that lacks confidence. Had the government refrained from providing the jury with seemingly false or misleading testimony and evidence or corrected that same false or misleading testimony and evidence, the jury could have come to a different conclusion. Had the Court refrained from demonstrating bias at the pretrial proceeding in this matter, Justin may never have proceeded to trial. Had the Court maintained better control over the proceedings during trial, the jury may have come to a different conclusion. Had the Court denied the admission of questionable and unreliable evidence, the Jury may not have found beyond a reasonable doubt

that Justin did in fact harm Kasondra. With all of these components stacked against Justin, the jury was left to make its decision based on false and/or misleading testimony and questionable evidence.

Justin was denied his right to Due Process, and his conviction was the result of cumulative error.

CONCLUSION

For all the foregoing reasons, Justin Stinger respectfully requests that this Court review this matter *de novo*, vacate Justin's conviction, and order a new trial.

RESPECTFULLY SUBMITTED this 11th day of April, 2025.

SNYDER, BEAUDRY & COOK, PC

By: /s/ Tobias J. Cook _____

/s/Larry D. Mansch _____

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CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. B. P. 11(4)(e), I certify that this Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double spaced, and the word count calculated by Microsoft Word is 7,572 excluding the caption, table of contents, table of authorities, certificate of service, and the appendix.

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/s/Larry D. Mansch

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April 2025, a copy of the foregoing document was served on the following persons by the following means.

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3. Matt Jennings, Missoula County Attorney
4. Justin Stinger, Appellant and Defendant

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