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Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 25-0317

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Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

SUPREME COURT OF THE STATE OF MONTANA

STATE OF MONTANA,  
plaintiff/appellee,

Cause# DA25-0317

VS.

APPELLANTS BRIEF

DYANE ANGELO BURCHILL,  
defendant/appellant.

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Crawford V. Washington, 541 U.S. 36 (2004)

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## Statement of Issues

① Whether the District Court erroneously admitted four of the prosecutions witnesses testimony via remote two-way video conferencing at Burchill's jury trial.

## Summary of Argument

The State requested admissability of four of their adverse witnesses, three being Expert Professional witness Testimony presented via Two-Way Video Conferencing Technology. Violates Confrontation Clause clearly violating Burchill's fundamental guarantee from the U.S. Constitution Sixth Amendment and Montana Constitution art. II, Section 24, at Burchill jury trial.

## Standard of Review

Under our plenary review of lower court conclusions and applications of constitutional law, we review alleged violations of fundamental right of the criminally accused to confront adverse witnesses under U.S. Const. amends. VI and XIV, and Mont. Const. art. II, #24, de novo for correctness. State v. Mercier, 2021 MT 12, 11-12, 403 Mont. 34, 479 P. 3d 967

## ARGUMENT

Issue No. ①: Whether the District Court erroneously admitted not just one, but four of prosecution's witnesses testimony via remote two-way video conferencing at trial, violating Burchill's fundamental U.S. Sixth Amendment and Mont. Constitution Art. II, #24, right to personal face-to-face confrontation of adverse prosecution in the courtroom.

"As applied to the States through the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the Sixth Amendment guarantees the criminally accused the right to "confront" adverse "witnesses." U.S. Const. amends VI and XIV. The Supreme Court has long recognized that the Sixth Amendment right to "confront" adverse witnesses, means the "right to meet" adverse witnesses "face to face" at trial. Coy v. Iowa, 487 U.S. 1012, 1019-21, 108 S. Ct. 2798, 2802-03, 101 L. Ed. 2d 857 (1988). (noting "irreducible literal meaning" of Confrontation Clause - citation omitted); Maryland v. Craig, 497 U.S. 836, 844, 110 S. Ct. 3157, 3162-63, 111 L. Ed. 2d 666 (1990). (Coy "interpretation" derives from "literal text" of United States Constitution and "historical roots" thereof). The Montana Constitution

Similarly guarantees that the criminally "accused shall have the right ~~one~~ to meet (adverse) witnesses ~~one~~ face to face." Mont. Const. art. II, #24. Despite slightly different language, the Sixth Amendment and Mont. Const. art. II, #24, thus similarly guarantee criminal defendants the right to confront and cross-examine adverse witnesses personally, face-to-face in the courtroom, State v. Strommen, 2024 MT 87, 17, 416 Mont. 275, 547 P. 3d 1227. The Purpose of the face-to-face confrontation and cross-examination right is to "ensure the reliability of the (adverse) evidence" through "rigorous" adversarial face-to-face testing in the presence of the factfinder in accordance with long-settled "norm of Anglo-American" justice. Craig, 497 U.S. at 844-46, 110 S. Ct. at 3162-63 (citing Coy, 487 U.S. at 1016-17, 108 S. Ct. at 2801, inter alia).", State v. Hognes, 2024 MT 304, at p. 27, DA 22-0199

In Burchill's 2017 jury trial, the State requested admissibility of their first witness through two-way video conferencing (Docket #40) and the defendant objected and opposed (Docket #50), but the Court granted the States first witness through two-way video conferencing (Docket #105). Once establishing granting their first witness through

the Court for two-way video conferencing, the State then requests three other witnesses to be permitted (Docket #116), Kyle Luloff, Joe Pasternak and Courtney Chamberlain and all of which were adverse witnesses (Kyle Luloff: witness at the alleged robbery, Joe Pasternak: State Crime Lab Professional Expert witness on DNA and Courtney Chamberlain: a Police Officer from Idaho who retrieved the alleged gun establishing Chain of Custody) and all three were added to the first and granted by the Court. (Docket #128)

Clearly violating Burchill's Confrontation Clause and violating the defendants U.S and Mont. Constitutional Rights after objecting to all their testimony as such, through the two-way video conferencing and any and all of their evidence presented for the State from these opposed witnesses and the Court recognized the defendants opposition (Docket #105, pg. #3)<sup>10</sup>. The defendant stated his opposition to the witness being allowed to testify via video. The Court notes the defendants objection<sup>11</sup>, but yet granted and allowed the violations through two-way video conferencing by one and then three more as a total of four witnesses allowed via two-way video conferencing.

"Montana Supreme Court: Expert witness Testimony presented via Two-way Video Conferencing Technology Violates Confrontation Clause." State v. Strommen, 2024 MT 87. The State clearly abused Burchill's Constitutional rights to in-court face-to-face confrontation of not one, but four adverse witnesses in violation of the defendant's Sixth Amendment Confrontation Clause and similar protection guaranteed by Mont. Const. art II, #24. Looking through all the case Law Precedence of rulings, the defendant can not find a single case allowing four adverse witnesses to testify through two-way video conferencing. Burchill's Rights were absolutely violated and Burchill accordingly respectfully prays this Court will reverse and remand the case for a new trial.

The erroneous admission of expert testimony is frequently highly prejudicial because it amounts to a "seemingly authoritative opinion of a qualified and credible" witness for the State, according to the Court, State v. Van Kirk, 32 P.3d 735 (Mont. 2001)

The right to confrontation generally applies to all "testimonial" statements offered as evidence against the accused at trial. Crawford v. Washington, 541 U.S. 36 (2004)

## Conclusion

Under the Sixth Amendment to the U.S. Constitution, a criminal defendant has the right "to be confronted with the witnesses against him." Similarly, under article II, section 24 of the Montana Constitution, a defendant has the right "to meet the witnesses against him face to face." The Montana Supreme Court reviews alleged violations of these fundamental rights de novo. State v. Mercier, 479 P.3d 967 (Mont. 2021)

A defendant's right to confrontation generally guarantees the "right to meet" adverse witnesses "face-to-face" at trial. Coy v. Iowa, 487 U.S. 1012 (1988); Maryland v. Craig, 497 U.S. 836 (1990).

Burchill's Confrontation Clause and U.S. as well as Montana Constitutional Rights were clearly violated in the defendant's 2017 trial.

Accordingly, the defendant respectfully moves this Court to reverse Burchill conviction and remand the case for a new trial.

Dated this 8<sup>TH</sup> day of May, 2025

~~Duane Angelo Burchill~~

Pro Se, Duane Angelo Burchill

## Certificate of Service

Documents mailed through U.S. Mail to the following parties:

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