IN THE SUPREME COURT OF THE STATE OF MONTANA

CAUSE NO. DA 25-0166

STATE OF MONTANA,
Plaintiff and Appellee,

and

MARLON DAUNTE THOMAS,
Defendant and Appellant.

DEFENDANT'S OPENING BRIEF

On Appeal from the District Court of the Thirteenth Judicial District of the State of Montana, Yellowstone County

Before the Honorable Rod Souza

Cause No. DC-16-1157

Clerk of Court
Yellowstone County
217 North 27th Street
P.O. Box 35030
Billings, MT 59107

Austin Knudson
Montana Attorney General
P.O. Box 201401
Helena, MT 59620-1401

Yellowstone County Attorney's Office
Ms. Ann-Marie Mckittrick
P.O. Box 35025
Room 701, Courthouse
Billings, MT 59107-5025

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BACKGROUND

On, or about July 10th, 2017, the above-named Defendant and Appellant, Marlon Daunte Thomas, began his first jury trial. Said first trial ended in a mistrial.

On, or about November 27th, 2017, the above-named Defendant and Appellant began his second trial. Said trial ended on November 30th, 2017, and resulted in a conviction on Count I, and Count II.

The State claims a jury pool for the Defendant's trial of 100 jurors were "randomly drawn" and "summoned for trial." At the start of the trial 76 actually reported for jury service. Of those 76 jurors, four failed to appear at the opening day of trial. Confusion as to how one alternate could have possibly filled four open seats, and how the unknown jurors were subjected to voir dire and a random drawing prior to being placed on the jury.

The State admits that the state had on the day of trial a jury pool of 6.060 available jurors, or 4.7% of the overall population. Solely based on the State's admission to a total population of over 130,000 citizens in Yellowstone County, Montana, on April 1st, 2010 (actual number 147,972). This population is based on a decade and a half old statistic, for some unknown reason (most Montana residents would agree that Billings, MT, has doubled since that date). It is unclear how these percentages are realistic since the State readily admits issue(s) with the jury selection software, and the Court Clerk's jury selection compliance.

Thus, based on the above percentages, the Defendant argues before this Court that statistical analysis of the State's admitted statistics and issue(s) have directly resulted in a violation of the Defendant's Sixth Amendment right to a fair trial. No matter if the violations were intentional or not. They resulted in a disproportional disadvantage to the well-established legal requirements of a fain, non-political based swath of the Defendant's peers.

STATEMENT OF THE ISSUE(S)

Should the State be allowed to prosecute people for crimes when the jury pool is a fractional total of the whole population?

Is a jury pool within the legislative intent and constitutional standards if it is compiled of 100% white people when prosecuting an individual that is labeled a minority?

Is it a violation of Due Process under the Fourteenth Amendment to knowingly limit the total size of the jury pool?

Is the Yellowstone County District Court construing the language of the jury statutes according to their plain meaning?

STANDARD OF REVIEW

An appellate Court reviews a district court's findings of fact to determine whether they are clearly erroneous. A finding is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence, or if the appellate Court's review of the record convinces it that the district court made a mistake.

The Fourteenth Amendment to the United States Constitution, and the Mont. Const. art. II, § 17, provide that no person shall be deprived of life, liberty, or property without due process of law. The guarantee of due process has both a procedural and a substantive component. Generally, substantive due process analysis applies when state action is alleged to unreasonably restrict an individual's constitutional rights.

"The rules of statutory construction require the language of a statute to be construed according to its plain meaning." Montana v. State, 2006 MT 277 *emphasis added*.

LEGAL QUESTIONS

I. Does the Legislature's intentions provide room for interpretation?

No one can argue that a substantial failure to comply with the jury selection process encompasses a statutory violation that affects the random nature or objectivity of the selection process. Thus, the underlying concern is that the methods used must not result or have the potential to result in discrimination among cog-

nizable groups of prospective jurors.

Essentially, after careful analysis of the legislative needs of the State of Montana, as to ensure a fair jury structure. The Montana Legislative body reached a legal standard, and passed said standard into law. Said law did not grant the judicial body the legal authority to "loosely construe" said intentions.

It is a fundamental canon of statutory construction that the words of a statute must be read in their context (*emphasis added) and with a view to their place in the overall statutory scheme (*emphasis added). Where the statute at issue is one that confers authority upon an administrative agency, that inquiry must be shaped, at least in some measure, by the nature of the question presented, i.e..., whether the Montana Legislature in fact meant to confer the power the agency has asserted. In the ordinary case, that context has no great effect on the appropriate analysis. None the less, judicial precedent teaches that there are extra-ordinary cases that call for a different approach, i.e..., cases in which the history and the breadth of the authority that the agency has asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that the legislature meant to confer such authority.

Thus, this Court should not construe the legislative intentions in passing a specific jury selection process that a Court Clerk must follow. The state should not be allowed the presumption of being correct, and a barrier be placed in front of the defendant, as a means to defer the defendant's belief in a fair

jury selection process. Fairness in the jury selection process is an expected act defered to the states by the U.S. Constitution. Not a means to reinterpret the legislature's intentions when it created a law. Especially since said law provides no room for this Court to know the outcome of the Defendant's trial had he received a fair, legally compliant jury pool. This Court's translation of the jury selection process should be construed in favor of the Defendant, and the legislature intentions in the writing of the jury compliance laws.

II. Does 4.7% of the total population represent a fair cross-section of the Defendant's peers?

The duty to protect the federal constitutional rights of all does not mean the courts must or should impose on states its conception of the proper source of jury lists. So long as the source reasonably reflects a cross-section of the population suitable in character and intelligence for that civic duty. No one can, nor will argue that the fair cross-section jury requirement of the Sixth Amendment is violated via the systematic exclusion of certain racial cross-sections, perportional to the population of Yellowstone County, Montana.

Thus, a disproportional jury pool of nearly all white jurors, clearly demonstrates at a minimum a failure to comply in specific legislative imposed standards, the legislative standards are incorrect, or outright fradulent activity is occurring. No one can argue that of a population of over 130,000 that the mass majority

of that population failed to reply to jury duty notifications. Resulting in a potential jury pool of only 10,372 citizens of a population of 130,000 (a number which is only Billings, Mt, not the entire county's population), and of that cross-section only 6,060 were available, or 4.7%:

> "13.Jury Program Status for the September 1, 2017, to August 31, 2018, term was:
> a) Temporary excusal - 1,046
> b) Notice Not Deliverable - 2,739
> c) Available with Questionnaire - 6,060
> d) None - 5,427" Affidavit of Bernie Wahl, page 3 of 5, Cause No. DC-16-1157, Thirteenth Judicial District, May 30th, 2024.

This equates to a very small statistical amount of only 4.7% of Billings, Montana's total population, and of that total population swath no amount equals any other racial group. Essentially, the Court Clerk is attempting to say that somehow through some miracle the jury pool contained no ethnic jurors what so ever.

The U.S. Supreme Court's prior decisions are instructive. Both in the course of exercising its supervisory powers over trial in federal courts and in the constitutional context. Thus, the U.S. Supreme Court has unambiguously declared that the American concept of the jury trial contemplates a jury drawn from a fair cross-section of the community.

A unanimous court stated in Smith v. Texas, 311 U.S. 128, 130 (1940), that "[it] is part of the established tradition in the use of juries as instruments of public justice that the jury be

a body truly representative of the community." To exclude racial groups from jury service was said to be "at war with our basic concepts of a democratic society and a representative government." A state jury system that resulted in systematic exclusion of African Americans, Hispanic, and other racial groups therefore violates the Equal Protection Clause of the Fourteenth Amendment [****]. Glasser v. United States, 315 U.S. 60, 85-86 (1942).

Furthermore, the U.S. Supreme Court has held that in the context of federal criminal cases and the Sixth Amendment Jury Trial requirements, "[our] notions of what a proper jury is have developed in harmony with our basic concepts of a democratic society and a representative government," and repeated the Court's understanding that the jury "be a body truly representative of the community...and not the organ of any special group or class."

III. Does the Defendant demonstrate a prima facie showing of purposeful discrimination via census statistics?

Next the Defendant would like to point out that it is a denial of the Equal Protection of the law to try a defendant of a particular race or color under a criminal allegation from which all persons of his race or color have solely, because of that race or color, been excluded by the state. Substantial under representation of the group constitutes a constitutional violation as well if it results from purposeful discrimination.

Furthermore, an official act is not unconstitutional solely because it has a racially disproportionate impact. Never the less,

sometimes a clear pattern, unexplained on grounds other than race, emerges from the effect of the state action even when the governing legislation appears nuetral on its face. Thus, the Yellowstone County Court Clerk's failure to comply with Montana law clearly lays open the State to statistical analysis of said action, and once this Court reaches that conclusion the mathmatical statistics show a severe failure to offer a proper swath of potential jurors as required by the Fourteenth Amendment. 4.7% of a population only represented by a single town in the entire county clearly shows an issue.

The U.S. Supreme Court has long recognized that "it is a denial of the equal protection of the laws to try a defendant of a particular race or dolor under a criminal indictment...from which all persons of his race or color have, solely because of that race or color, been excluded by the state..." Hernandez v. Texas, 347 U.S., at 477. See [*493] Alexander v. Louisiana, 405 U.S. 625, 628 (1972); Carter v. Jury Comm'n, 396 U.S. 320, 330 (1970). See also Peters v. Kiff, 407 [****16], U.S. 493, 497 (1972) (plurality opinion); id at 507 (dissenting opinion). While the earlier cases involved absolute exclusion of an identifiable group, later cases established the principle that, substantial under representation of the group constitutes a constitutional violation as well, if it results from purposeful discrimination. See Turner v. Fouche, 396 U.S. 346 (1970); Carter v. Jury Comm'n, supra; Whitus v. Georgia, 385 U.S. 545, 552 (1967); Swain v. Alabama, 380 U.S. 202 [**1288] (1965); Cassell v. Texas, 339 U.S. 282 (1950). As well

recent cases have established the fact that an official act is not unconstitutional solely because it has a racially disproportionate impact. [***510] Washington v. Davis, 426 U.S. 229, 239 (1976); see Arlington Heights v. Metropolitan Housing Dev. Corp. 429 U.S. 252, 264-265 (1977). Never the less, the U.S. Supreme Court recognized in Arlington Heights, "[s]ometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face." Id at 265.

IV. Does § 3-15-402 and 403, MCA, clearly express legislative intentions contrary to this Court's past standing?

The final question before this Court is if this Court translated § 3-15-402 and 403 correctly, since less formal types of subsequent legislative history provide an extremely hazordous basis for inferring the meaning of a legislative enactment. While such history is sometimes considered relevant, such history does not bear strong indicia of reliability, however, because as time passes memories fade and a person's perception of his earlier intention may change. Even when it would otherwise be useful, subsequent legislative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment. Thus, evaluating the weight to be attached to these statements require the oft-repeated warming that "the views of a subsequent legislative body from a hazordous basis for inferring the intent of

the earlier one." United States v. Price, 361 U.S. 304, 313 (1960) quoted in United States v. Philadelphia National Bank, 374 U.S. 321, 348-349 (1963). And ordinarily even the contemporaneous remarks of a single legislator who sponsers a bill are not controlling is analyzing legislative history. Chrysler Corp. v. Brown, 441 U.S. 281, 311 (1979).

Therefore, the starting point for interpretation of a statute is the language of the statute itself; absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.

§ 3-15-402, MCA: Powers of Judicial officers as to conduct of proceedings (1) Preserve and enforce order in the officer's immediate presence and in proceedings before the officer when the officer is engaged in the performance of said officer's official duties."

This language is absolute and provides no room for any translation. Other than a translation in favor of the Defendant. Simply based on the preservation of the constitutional rights of all Americans.

CLOSING

In closing the Defendant asks this Court to look deeper into the totality of the Yellowstone County Court Clerk's failure to comply with the legislative intention set forth by the Montana Legislature. And ask this Court to consider the Laches doctrine in its conclusion of law. Laches is an equitable doctrine by

which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting the claim, when the delay or negligence has prejudiced the party against whom relief is sought. Black's Law Dictionary 879 (Bryan [****12] A. Garner ed., 7th ed. West 1999). See also Cole v. State ex. rel. Brown, 2002 MT 32, P24, 308 Mont. 265, P24, 42 P.3d 760, P24.

The Court may be hesitant to apply this standard in this matter, but the Defendant argues that as a criminal defendant is held liable for the conduct of violating the law, the State should be held at a higher standard for its failure to comply with the legislative intention set forth in the law. This standard is necessary because the State's violation of clearly established legal standard's has now violated the Defendant's Sixth Amendment right to a fair trial. Since the evidence needed to retry this case would have long ago disappeared. Thus, the only relief that would demonstrate a fairness in the judicial process would raise to a dismissal on the grounds of compounded constitutional violations.

If this Court decides to not accept the Laches doctrine to this case the Defendant asks this Court to REMAND this matter for retrial.

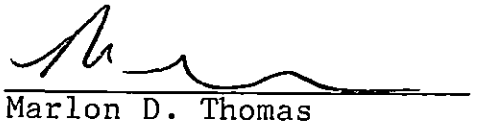
DATED this 27th day of May, 2025.

Marlon D. Thomas

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Defendant's Opening Brief was typed with the provided materials at Crossroads Correction Center; is double spaced except for footnotes, quoted, and indented material; and as an inmate I am not afforded the benefits of Microsoft Word Professional Edition or any other modern version(s) of word processing software common to people living in the 21st century.

DATED this 27th day of May, 2025.



Marlon D. Thomas

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Defendant's Opening Brief to be mailed and/or hand delivered to:

Clerk of Court
Yellowstone County
217 North 27th Street
P.O. Box 35030
Billings, MT 59107

Yellowstone County Attorney's Office
Ms. Ann-Marie Mckittrick
P.O. Box 35025
Room 701, Courthouse
Billings, MT 59107-5025

Austin Knudson
Montana Attorney General
P.O. Box 201401
Helena, MT 59620-1401

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Marlon D. Thomas