

IN THE SUPREME COURT OF THE STATE OF MONTANA  
CAUSE NO. DA 23-0428

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STATE OF MONTANA,

Plaintiff and Appellee,  
and

ASIA CARL SOAPES,

Defendant and Appellant.

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**Appellant/Defendant's Opening Brief**

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

Before the Honorable Michael G. Moses  
Cause No. DC-21-1001

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## **STATEMENT OF THE ISSUES**

- I. Whether the district court abused its discretion by not granting the State's motion to strike a juror, the Yellowstone County Undersheriff, or should have done so sua sponte when the Undersheriff was not an impartial juror who impartiality and influence on other jurors denied Soapes his right to a impartial jury trial?
- II. Whether the improper joinder of a 2009 sexual intercourse without consent charge with the later 2016 – 2021 charges was improper leading to Soapes suffering prejudice because his conviction was based upon a cumulation of evidence that would have otherwise been inadmissible in separate trials requires reversal?
- III. Whether this Court should exercise its discretion under the plain error doctrine to review the errors in Soapes' case where the errors implicate Soapes' fundamental right to a fair and impartial jury trial when they were not objected to in the district court?
- IV. Whether Soapes suffered from ineffective assistance of counsel, when his counsel did not move to strike the Yellowstone County Undersheriff, or support the State's motion to do so, when the Undersheriff's presence on the jury was clearly improper, and counsel further failed to object to the joinder of the 2009



related allegation when it improper and caused Soapes to suffer prejudice at trial?

### **STATEMENT OF THE CASE**

Appellant Asia Carl Soapes (“Soapes”) was accused in 2021 of having molested his adopted daughter from 2016 when the adopted daughter was 10 until 2021 when the abuse came to light, after this accusation became known, an earlier alleged victim from 2009 stepped forward to report that Soapes had also molester her when she was 17. The 2009 victim was Stepanie Berry, the sister of Soapes’ wife, who claimed that during an overnight visit at Soapes’ residence, Soapes had sexually assaulted her and committed sexual intercourse without consent. While the 2009 incident was known to all family members, it was not reported to law enforcement until after the report by Soapes’ adopted daughter, and the charges for both victims were joined in one Information, which was eventually taken to a jury trial where Soapes was found guilty on all counts.

At trial the Yellowstone County Undersheriff was in the jury pool during voir dire, and despite having been in charge of the investigation into Soapes was not struck by the defense or district court, becoming part of the final jury. On day two of trial, the State moved to strike the Undersheriff, the defense did not join the motion, and the district court denied that motion. The Undersheriff remained on the jury throughout deliberations and final verdict of guilty on all counts.

## **SUMMARY OF ARGUMENT**

The Undersheriff's presence on the jury caused a fundamental flaw during Soapes jury trial which requires reversal and remand for a new trial. While the Undersheriff professed he would remain impartial, he was in charge, i.e. the boss, of the agency that conducted the investigation into Soapes, and the witnesses against Soapes. Further, it is presumed the Undersheriff had access to all investigative materials, even those not presented at trial. This creates a fundamental concern with impartiality of the Undersheriff, and Soapes' jury trial. Moreover, during voir dire, the Undersheriff was in uniform, and identified as an expert investigator who had special experience in sex crimes, making him qualified to be an expert witness; thereby, when the Undersheriff went to the jury room, an expert witness for the State went to the jury room where the Undersheriff's opinion would easily sway the other jurors.

Additionally, the allegations from 2009, and those involving Soapes' adopted daughter were improperly joined in a single information, and should not have been tried together because they were not of the same or similar nature. The victims were different, and of a different victim profile; they were distinct in time, separated by years; the locations were different; and the modes of operations for the crimes were different, making their joinder improper. Moreover, this caused prejudice during trial because had the trials been separate, evidence of one of the cases could not have

been used in the other trial. There was overlapping evidence and witnesses used from one allegation to support the other, allowing the State to paint Soapes as a “bad man” whereby the jury would certainly find him guilty.

While these errors were not objected to by defense counsel, this Court should exercise its discretion to review them under the plain error doctrine because the errors alleged call into question the fundamental fairness of Soapes jury trial, which requires reversal and remand for a new trial.

Finally, the Court should find that Soapes suffered from Ineffective Assistance of Counsel because the errors were glaringly obvious, and no objections or efforts were made to correct them. In the case of the Undersheriff, the State identified the issue, citing the correct legal guidance, and defense counsel resisted the State’s efforts to remove the Undersheriff from the jury. Further, the improper joinder issue led directly to Soapes suffering prejudice at trial. This was ineffective assistance of counsel, and this Court should reverse and remand for a new trial.

## **STATEMENT OF FACTS**

### **I. General Overview and Background**

On July 28, 2021 the State charge Appellant Asia Carl Soapes (“Soapes”) with Count I: Sexual Assault; Count II: Sexual Intercourse Without Consent; Count III: Sexual Intercourse Without Consent, all alleged to have occurred between January 1, 2026 and October 1, 2019. See Doc. 4, Information. The alleged victim of these

crimes was Soapes' adopted daughter, whose mother, Christina Soapes ("Christina") had married Soapes in 2013. Doc. 1; Transcript of Proceedings, Jury Trial Day 1, February 8, 2023 ("Tr. JT Day 1"), 195:16-19. After this initial charge, Christina's sister, Stepanie Berry ("Berry") came forward to state that Soapes had sexually assaulted her in 2009, when she was 17, added Count IV: Sexual Intercourse Without Consent, with Berry as the victim. Doc. 22.

Generally, the allegations relating to Soapes adopted daughter were that between January 1, 2016 until March 31, 2021, Soapes had raped his adopted daughter on multiple occasions, beginning with inappropriate touching, advancing to digital penetration, and then Soapes began to penetrate her with his penis. See Doc. 20. This continued until the adopted daughter disclosed to a friend, whose parent anonymously reported the situation to Department of Health and Human Services, who passed the information to law enforcement. *Ibid.*

After this initial report, Berry came forward to report an incident that occurred in 2009, alleging that Soapes had digitally penetrated Berry, without consent. *Ibid.* At the time, Berry was 17 years old, and this incident occurred when Berry had gone to spend the night with Soapes and Christina, and while there and after Christina had fallen asleep in the bedroom, Berry was sleeping on the couch when she awoke to Soapes touching her, and at some point Soapes penetrated Berry's vagina with his finger. *Ibid.*

This gave rise to the State's Amended Information, combining both the counts regarding the adopted daughter and Berry. See Doc. 22.

Based upon Berry's testimony, Berry was born February 7, 1992, making her either 16 or 17 at the time of the incident. Tr. JT Day 2, 229:16-17. Berry earned her GED in 2009, and at the time her sister, Christina, was pregnant with Soapes' child. *Id.*, 230:20-231:8. Soapes and Christina were living in mobile home located in Billings, when Christina began to have some issues with her pregnancy. *Id.*, 231:11-20; 232:14-16; 233:3-6. Berry went to stay the night with Christina to help with the pregnancy issues, and while at the mobile home began socializing and drinking with Soapes and Christina. *Id.*, 233:7-14. Berry fell asleep on the couch, while Christina went to the bedroom to sleep, and Soapes stayed up playing video games on the couch. *Id.*, 233:9-17; 234:4-8. Berry was awoken by Soapes touching her in her vaginal area, and some point Soapes penetrated Berry's vagina with his fingers. *Id.*, 234:9-235:5. Soon thereafter, Christina woke up to take care of her other child and walked through the living room, and immediately went back to bed. *Id.*, 234:16-20; 235:25-236:7. After this, Berry left the residence. *Id.*, 236:7

Berry immediately disclosed this incident to Christina, their parents, and Soapes' mother. *Id.*, 236:21-22. However, no one notified law enforcement, including Berry, and Christina continued to date Soapes. *Id.*, 238:2-7. A short time later, Christina, Berry, and Soapes had a meeting to address the incident and Soapes

apologized, and attributing the incident to the alcohol involvement. *Id.*, 238:13-239:7.

From 2009, until August of 2021, Berry did not bring this issue to law enforcement's attention and regularly attended family gatherings with Christina and Soapes. *Id.*, 239:24-240:12; 241:14-16.

## **II. Testimony and Trial and Trial Proceedings**

### **A. *Voir Dire* and the Undersheriff**

During *voir dire* it was identified that Undersheriff Bofto of the Yellowstone County Sheriff's Office was in the jury pool, the Undersheriff was not excused and was eventually allowed to sit on the jury for Soapes case. Below is an excerpt of the various exchanges with Undersheriff Bofto.

STATE: So I'm going to read off a name of the list of people that we anticipate being witnesses in this case. But before I do that, does anybody here recognize any of us attorneys? I mean, Undersheriff Bofto, that is a little unfair. Undersheriff Bofto, tell us who do you know here?

BOFTO: Judge, some of the clerks, the defense attorney, you.

STATE: So being the undersheriff at the sheriff's office, do you feel that you would be a fair and impartial juror?

BOFTO: I could be, yes.

STATE: Okay. Tell us about that. Why do you feel that way?

BOFTO: I have been in the criminal justice system for over 27 years. I have seen the ins and outs of it and understand what it takes to -- to come to these decisions.

STATE: All right. Thank you very much.

Tr. JT Day 1, 20:12-21:5.

When the State inquired if anyone was familiar with the witnesses, including Deputy Mike Kelso, Troy Charonneau (former deputy), Officer Ryan Donovan with Billings Police Department, and Detective Shane Winden of Billings Police Department, all who were investigators assigned to the case, Undersheriff Bofto raised his hand, to which the State responded:

“Well, Undersheriff Bofto, you are cheating a little bit because you know some of these people. Cloe Soapes. Trinity Soapes. Christina Hazen. Dr. Cynthia Brewer. Deputy Mike Kelso with the sheriff's office. Troy Charbonneau, who was with the sheriff's office is now retired. Dr. Wendy Dutton. Julie Peterson with CPS. Officer Ryan Donovan with BPD. Detective Shane Winden with BPD. And then Brandi Hazen and Stephanie Berry.

So besides Undersheriff Bofto, does anyone else recognize anybody?”

*Id.*, 22:3-13.

STATE: Undersheriff Bofto, you have worked with many, many people. How can you tell if someone is being honest?

BOFTO: You know, after years of interviewing and interrogation, you just develop the sense of being able to determine in your mind if somebody is being truthful and -- and honest. I guess that is the best explanation I can give you.

STATE: Just kind of know when you see it?

BOFTO: Mmm-hmm.

*Id.*, 42:14-23

STATE: Thank you. I think we covered everyone in the back. Anyone in the front row that has experience? Okay. So, Undersheriff Bofto, I will start with you.

BOFTO: I investigated sexual assault, rape cases for quite a few years.

STATE: Do you feel that given your experience as an investigator that you can still be fair and impartial in a case like this?

BOFTO: Absolutely, because that's what I did to find if there is evidence, proof.

*Id.*, 58:22-59:6.

STATE: So Undersheriff Bofto, do you understand why our proof is not beyond a shadow of a doubt or beyond all doubt?

BOFTO: Absolutely.

*Id.*, Day 1 73:3-6

On the second day of trial, the State called Deputy Mike Kelso from the Yellowstone County Sheriff's Department, and following direct examination by the State, defense counsel asked:

DEFENSE: Nervous testifying in front of your boss?

DEPUTY KELSO: Sure, of course. Wouldn't you be?

DEFENSE: Very much.

Tr. JT Day 2, 85:9-18

This short exchange set off alarm bells in the State's mind, and the following exchange occurred outside the presence of the jury:

MS. BISHOP: And, Your Honor, the State just wanted to bring something to your attention and make sure the record is clear. During questioning of Deputy Kelso, it was highlighted regarding his relationship with one of the jurors being his boss.



I think that highlighted the possibility that the juror, Mr. Bofto, may not be able to be fair and impartial.

I know during voir dire Mr. Bofto indicated he did know Deputy Kelso and also former Detective Charbonneau and that he could be fair and impartial. But at this time, the State does have concerns regarding that given the questioning on cross-examination of Deputy Kelso highlighting that relationship and the awkwardness for Deputy Kelso to be testifying in front of his boss.

The State did a little research prior to coming back from lunch. Based on statute 46-16-115, Mr. Bofto's relationship with Yellowstone County Sheriff's Office would have been grounds for cause removal had Defense or the State asked for that. In *State v Kebble* 2015 MT 195, the Montana Supreme Court did reverse based on a DCI agent sitting on a jury where DCI was part of the investigation and DCI agents testified.

I understand that Mr. Bofto did not commit any juror misconduct. It is just simply it is his employment with the Yellowstone County Sheriff's. However, the State does have concerns given that it was highlighted and addressed during Deputy Kelso's cross-examination.

THE COURT: Counsel. Response.

MR. MERCHANT: He wore his uniform during voir dire, Your Honor.

He has been addressed by the State as Undersheriff Bofto throughout the entire voir dire process. I'm sure everybody in the courtroom knows that he is the undersheriff of the Yellowstone County.

And, in fact, yes, two different deputies from the sheriff's department have testified. He -- the -- oftentimes we ask witnesses if they are nervous or if anything else. There was -- is a relationship but neither of us argued to remove him for cause. And neither of us exercised peremptory challenge.

And at this point, Mr. Bofto is on the jury. And if my offhand remark asking why I thought that the officer was a tad bit nervous when he was testifying causes some concern to the Court, we can certainly have the juror come in and we can question him individually. But he was passed for cause by both sides. He was passed for peremptories by both sides.

He wore his uniform for half the day yesterday. And he was addressed by the State as undersheriff. I don't think there are any concerns, at least not from the Defense, Your Honor.

THE COURT: Well –

MR. MERCHANT: I haven't done the research. If you want, I can go back to my office and we can reconvene in an hour or so and let me read the case and decide if I made a mistake. There would be good cause to -- would be cause, legal cause, I think, to strike Undersheriff Bofto but they didn't. Nobody did. We have the same thing with doctor, the good doctor sitting here as well. He's basically a partner of one of our witnesses here this morning.

And he was not removed and peremptories. Each side had six peremptories as it relates to the first 24 -- the first 12 jurors and nobody exercised peremptories on either one of those two jurors at that time, felt that those jurors could be fair and impartial and inquired of those jurors as to whether they can be fair and impartial and set aside any biases or concerns that they might have because of who might testify and who might not.

So at the moment and unless I can see otherwise -- I can see where a special investigative group such as the -- what was it the DIC?

MS. BISHOP: DCI.

THE COURT: DCI that special small group of investigators, both I think those include area investigators, local investigators, and federal investigators all in the same group, I can see where there would be some concern with respect to that. But here, Bofto who is the undersheriff of everybody and we all knew that in the very beginning, we knew that when he first took his seat. And here we are two days in and nobody removed him. He specifically stated that every -- both counsel agreed he can be fair and impartial and nobody removed.

They had an opportunity to remove him, if they wish. So at the moment, we are going to -- we are going to work our way through.

I would be interested in any further research on the subject matter. If you have it and you can provide it, provide -- both sides provide to each other and to the Court, give me a little help on that particular issue. But for the moment, he will continue to be seated and listen to the evidence in this case.

If that was a motion to strike, it is denied at this time. Anything else?

Tr. JT Day 2, 129:18-131:25

The next day the district court again took up the issue with Undersheriff Bofto, and this final exchange happened on the subject:

THE COURT: Very good. Then next let's take up Bofto. Does anybody wish to renew their position on -- the State wish to renew their position on Undersheriff Bofto?

MS. DEAN: No, Your Honor. I think the record that was made yesterday was sufficient.

THE COURT: Very good. One comment about that, Mr. Merchant, you will not comment about the relationship between any of the officers and Bofto during closing.

MR. MERCHANT: Absolutely. I apologize for that previous statement, Your Honor.

Tr. JT Day 3 5:19-6:5.

## **B. Testimony Provided at Trial, Generally**

At trial, and in relation to the allegations involving Soapes' adopted daughter, the State presented testimony first from the alleged victim, who testified that she was born October 15, 2016, and she considered Soapes her father, or father figure in her life. Transcript of Proceedings, Jury Trial Day One, February 2, 2023 ("Tr. JT Day 1"), 119:22-23; 122: 12-14. She went on to explain that while she was growing up, there were many times when Soapes would be at home while her mother, Christina, was at work. *Id.*, 123:9-25. During those times, she would be alone with Soapes and

her siblings, and it was only after the accusations against Soapes that she spent more, or the majority of the time with Christina. *Id.*, 124:16-130:5.

Soapes' adopted daughter stated that beginning around age ten, their relationship changed, and Soapes began to touch her vaginal area. *Id.*, 125:18-126:12. This progressed to digital penetration, and when she got a little older penetration by Soapes with his penis. *Id.*, 126:17:18-25; 129:23-130:10. These events occurred within the family home, primarily in Soapes' bedroom, but also in the adopted daughter's room. *Id.*, 127:24-128:5; 129:3-20; 130:16-17. These events would continue, sometimes 4 or 5 times a month, until Soapes' adopted daughter was approximately 14 when she disclosed to a friend what had occurred, which gave rise to the case against Soapes. *Id.*, 137:1-9; 139:2-5; 140:5-14.

In addition to the alleged victim's testimony, the State presented testimony from Trinity Soapes, Soapes' then 13 year old daughter, who testified that at one point she walked in to find Soapes and his adopted daughter into one of the bedrooms to find Soapes, dressed, and his adopted daughter laying on the bed unclothed, but believed that Soapes was tickling his adopted daughter at the time she entered the room. *Id.*, 172:6-174:4. Aside from this incident, Trinity Soapes did not remember anything that stood at to her which would be related to this case. See Tr. JT Day 1, 165:1-187:15.

Christina Hazen, formerly Christina Soapes, then took the stand. *Id.* 188:22-189:2. Christina described that in 2009 she had learned about the incident between Soapes and Berry, and a family meeting was called to discuss what happened. *Id.*, 201:3-8. Following this meeting, and a meeting between Christina, Soapes and Berry, everyone moved on from the incident. *Id.*, 202:9-16. Christina went on to relay that prior to CPS's arrival, she never suspected any problems with Soapes, or any wrongdoing on his part. *Id.*, 204:12-205:9.

Following Christina, Dr. Cynthia Brewer, who conducted a medical examination on Soapes' adopted daughter, specifically looking for signs of sexual abuse. Tr. JT Day 2, 38:12-21; 51:7-52:11. Dr. Brewer found "three deep notches" or evidence of in the vagina of Soape's adopted daughter. *Id.*, 58:23-59:4; 60:21-61:4. While these were medically relevant, there was no way to definitively say what the cause was. *Id.*, 68:19-70:2; 72:15-19.

Then Deputy Mike Kelso from the Yellowstone County Sheriff's Office to the stand. Tr. JT Day 2, 75:4-12. Deputy Kelso explained that he received the case relating to Soapes' adopted daughter from CPS and began investigating the matter, and during that investigation he spoke with Soapes, who was cooperative, and after following up with Christina, continued his investigation, by referring Soapes' adopted daughter to have a forensic interview completed. *Id.*, 75:4-86:5

Next was former deputy Troy Charbonneau, who previously specialized in crimes against children, and had conducted a forensic interview of Soapes' adopted daughter. Tr. JT Day 2, 87:7-113:25. Former deputy Charbonneau testified that at the interview, Soapes' adopted daughter provided information largely in line with the allegations alleged by the State in its Information. *Ibid.*

Julie Peterson, a supervisor with Child Protective Services, was next and explained that she received information from an anonymous reporter regarding Soapes and his adopted daughter, and then followed up by going to Soapes' residence and talking with Christian, and later Soapes. *Id.*, 114:8-128:22.

The State's "blind" expert, Dr. Wendy Dutton from Phoenix Children's Hospital then 134:17-184:22. Dr. Dutton explained the general dynamics of a forensic interview and interviewing child sexual abuse victims. *Ibid.*

Next, Officer Ryan Donovan of Billings Police Department testified about a call he received on August 3, 3021 from Stephanie Berry, who disclosed the 2009 incident to law enforcement for the first time. *Id.*, 185:7-189:20.

Detective Sergeant Shane Winden followed next, who testified that he interviewed Berry and her statement to Sergeant Winden supported the facts alleged in the latest Amended Information. *Id.*, 190:5-208:14.

Then Chritina and Berry's mother, Brandi Hazen, testified providing background facts and circumstantial facts supporting the allegations by both Soapes' adopted daughter and Berry. *Id.*, 209:5-228:16.

Finally, Berry took the stand and laid out the allegations as outlined above, along with other facts providing support to the allegations by Soapes' adopted daughter. *Id.*, 228:17-264:10.

### **STANDARDS OF REVIEW**

- I. A district court's denial of a challenge for cause to a juror is reviewed for an abuse of discretion. *State v. Anderson*, 2019 MT 190, ¶ 11, 397 Mont. 1, 446 P.3d 1134. "A district court abuses its discretion if it fails to grant a challenge for cause when a juror's statements during *voir dire* raise serious doubts about the juror's ability to be fair and impartial." *State v. Johnson*, 2014 MT 11, ¶ 8, 373 Mont. 330, 317 P.3d 164.
- II. This Court reviews de novo whether counts are properly joined in an information. *State v. Freshment*, 2002 MT 61, ¶ 22, 309 Mont. 154, 43 P.3d 968.
- III. Under the plain error doctrine, this court may discretionarily review claimed errors that implicate a criminal defendant's fundamental constitutional rights, even if no contemporaneous objection was made, where failing to review the claimed error may result in a manifest miscarriage of justice, may leave

unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process. *State v. Stokes*, 2024 MT 32, 415 Mont. 208, ¶ 1, 543 p.3d 601.

- IV. "A claim of ineffective assistance of counsel constitutes a mixed question of law and fact that we review de novo." *State v. Brandt*, 2020 MT 79, 399 Mont. 415, ¶ 10, 460 P.3d 427 (citing *State v. Hooper*, 2016 MT 237, 385 Mont. 14, ¶ 5, 386 P.3d 548).

## **ARGUMENT**

### **I. THE DISTRICT COURT ABUSED ITS DISCRETION BY NOT GRANTING THE STATE'S MOTION TO STRIKE UNDERSHERIFF BOFTO FROM THE JURY, OR BY NOT SUA SPONTE DOING SO WHEN THE UNDERSHERIFF'S PRESENCE ON THE JURY DENIED SOAPES' RIGHT TO TRIAL BY AN IMPARTIAL JURY**

Appellant in this case finds himself in an odd position, arguing not for his own motion to strike, but that made by the State and denied by the district court. Here, the State correctly identified an issue with Undersheriff Bofto sitting on the final jury and the district court denied the State's request to address the issue. Additionally, this error was so obvious and unmistakable that the district court should have acted in the interest of justice to prevent it, discussed below as part of plain error analysis.



It is well-established that a criminal defendant has a fundamental right to be tried by an impartial jury. *State v. Allen*, 2010 MT 214, ¶ 25, 357 Mont. 495, 241 P.3d 1045.

**A. Undersheriff Bofto Was Not an Impartial Juror as He Was in Charge of the Investigation into Soapes**

Montana Code Annotated § 46-16-115 generally provides the reasons a juror may be struck for cause; however, this Court has made clear that the statutory reasons do not encompass every possible reason to strike a juror and the district court must exercise its discretion when a juror does not fall squarely within one of the statutory provisions. *State v. Kebble*, 2015 MT 195, ¶ 36, 380 Mont. 69, 353 P.3d 1175.

For instance, § 46-16-115(b) provides that someone in the employment of the person or agency “on whose complaint the prosecution was instituted,” should be struck for cause. However, the State is a party in every criminal case, which a literal reading would exclude any State employee, and this Court has determined that is too literal a reading of this subsection, so State employment does not automatically justify striking a juror for cause. *Paulson v. Flathead Conservation Dist.*, 2004 MT 136, ¶ 34, 321 Mont. 364, 91 P.3d 569, citing *State v. Radi*, 176 Mont. 451, 460, 578 P.2d 1169, 1175 (1978).

Additionally, “[T]he bare fact that he is connected with law enforcement does not, without more, necessitate a finding that he would not be an impartial

juror." *Keeble*, ¶ 28, quoting *State v. Thomson*, 169 Mont. 158, 165, 545 P.2d 1070, 1074 (1976).

However, where, as here, "the connection is direct and the prospective juror is in the employment of the person or agency on whose complaint the prosecution was instituted, the challenge for cause must be granted regardless of whether the potential juror claims he can be impartial." *State v. Keeble*, 2015 MT 195, ¶ 36, 380 Mont. 69, 79, 353 P.3d 1175, 1182.

In *Keeble*, an agent with Montana Department of Criminal Investigations was allowed to sit on the jury, despite the fact that the agent, knew the prosecuting attorney, and several of the law enforcement witnesses scheduled to testify, but more importantly the agent worked within the same agency as one of the witnesses who assisted in the investigation. ¶ 31. While this Court agreed that the agent displayed no obvious bias, it went on to state such a relationship with the agency upon whose complaint the prosecution was instituted the juror must be struck for cause. *Id.*, ¶ 36.

The long-held rule for jury selection is that when voir dire examination discloses a serious question about a juror's ability to be fair and impartial, that question should be resolved in favor of excusing that juror. *Keeble*, ¶ 37, citing *State v. Williams*, 262 Mont. 530, 539, 866 P.2d 1099, 1104 (1993).

Here, similar to *Keeble*, as Undersheriff, Bofto directly supervised the Yellowstone County Sheriff's Office detectives, including Deputy Mike Kelso and

former Deputy Troy Charbonneau, who investigated Soapes and testified at trial. His role granted him oversight of all investigative efforts and access to case files, even if not presented in court, creating an inherent bias incompatible with juror impartiality. This conflict is both tangible and undeniable.

Undersheriff Bofto effectively investigated Soapes, provided the evidence supporting the prosecution to the prosecutor, and then judged that evidence as a juror. While this may seem hyperbole because Undersheriff Bofto likely did not personally review the evidence or attend to the crime scene, his employees did, and it has long been assumed in the law that employers are imputed to have knowledge of information known by their employees or agents. *Empire Steel Mfg. Co. v. Carlson*, 191 Mont. 189, 196, 622 P.2d 1016, 1021 (1981) (“employer is deemed to have had notice of the facts known to his employees...”). Similarly, employers are vicariously liable for the acts of their employees under the doctrine of *respondeat superior*, making employers responsible for the wrongful acts of their employees. See *Brenden v. City of Billings*, 2020 MT 72, ¶ 34, 399 Mont. 352, 470 P.3d 168. These employer – employee concepts are so ingrained in the legal world that they hardly require a citation to support them.

In *Kebble*, this Court pointed out that underpinning its reasoning was not a concern that the juror may intentionally be biased but that:

“From the juror's perspective, there will be an underlying concern about the prospect of returning to work after trial and having to explain to his

coworkers or boss why he may have disbelieved their testimony or rendered a verdict against them. Although this prospective juror may feel constrained to declare his impartiality before his peers during voir dire and may also be fully well-intentioned, the pressures underlying his employment relationship with a party to the case will undoubtedly color his ability to act wholly without bias.”

*Kebble*, ¶ 34.

The concern in this case is more grave, Undersheriff Bofto was actually responsible for the witnesses and their performance, and had to answer to his boss, the Sheriff, if fault was found in the investigation. Moreover, Undersheriff Bofto had access to all the investigative materials, including any materials that were not presented at trial. Even though there was no evidence that the Undersheriff intentionally accessed or viewed any of the investigative materials, those in his employment had access and complete knowledge of the investigative materials. This is akin to the situation governed by M. R. Pro. C. 1.10(a) which imputes a conflict of interest affecting one attorney in a law firm to all other attorneys in the law firm.

Also, no one inquired of the Undersheriff if he had seen any of the investigatory materials, or if he had direct knowledge of the investigation, the allegations or anything else related to the case.

Simply put, Undersheriff Bofto was not a disinterested and impartial jury member, and even absence of clear evidence of bias or wrongdoing of the part of the Undersheriff, the Undersheriff’s connection to the investigation and prosecution was

so direct that Soapes right to be tried by an impartial jury was violated. This necessitates reversal and remand for a new trial.

**B. Undersheriff Bofto's Presence on the Jury Unduly Influenced Other Jurors**

Generally, knowledge and information shared from one juror to another is not a prejudicial outside influence upon the jury, because juror's are expected to bring their own knowledge and experience to aid o the resolution of a case. *State v. Hage*, 258 Mont. 498, 508-09, 853 P.2d 1251, 1257 (1993). This includes when jurors feel pressure by other jurors, and an individual juror's physical, mental, and emotional condition cannot be considered when seeking to displace a jury verdict. *Ibid*.

If there ever should be an exception to this rule, this case is when it should be made. Undersheriff Bofto was essentially qualified as an expert witness during voir dire, having investigated sex crimes for "quite a few years," and explaining he knew how to determine if someone was lying because "after years of interviewing and interrogation, you just develop the sense of being able to determine in your mind if somebody is being truthful..." Then going on in response to the State's questioning if he could be unbiased when evaluating the evidence by stating, "[A]bsolutely, because that's what I did to find if there is evidence, proof."

All while in full uniform and being referred to with deference as the "Undersheriff" by the State, defense counsel and the court, lending Undersheriff Bofto an air of authority that should not have been allowed to influence other jurors.

It cannot be denied that Undersheriff Bofto's opinion would carry with it an outsized influence over other jurors because he was an expert in the field the jury was tasked to make factual determinations about, and he worked with many of the witnesses, giving his opinion of their testimony more weight than others on the jury.

This Court has reversed verdicts where a prosecution's expert improperly bolstered the testimony of other witnesses because it puts the expert's stamp of approval upon that testimony, giving it more credibility in the jury's eyes. *State v. Walker*, 2018 MT 312, ¶ 32, 394 Mont. 1, 433 P.3d 202 (internal citations omitted).

Here, the State essentially had an expert witness in the jury room evaluating the testimony of his own people, after Undersheriff Bofto laid out his credentials as an expert in investigations and sex crimes, and his ability to detect truthful testimony. The Undersheriff's own credibility was further bolstered by his appearance in uniform, along with the deference he was shown by both counsels and the district court.

Bofto's 27 years of law enforcement experience, expertise in sex crimes, and ability to detect lies—highlighted during voir dire while in uniform—positioned him as an authoritative figure in the jury room. His subordinates' testimony, including Kelso's admission of nervousness before his 'boss,' likely reinforced his credibility, effectively reducing the jury's deliberation to a 'jury of one' dominated by Bofto's perspective.

This is not to say that no law enforcement officer should be allowed to be on a jury panel, this is a fact specific argument for this case. It is the combination of factors present that give rise to Undersheriff Bofto's undue influence on the other jurors. This violates Soapes right to a fair and impartial jury of 12 persons, as Undersheriff Bofto's outsized influence made it a jury of one undermining the the Sixth Amendment's requirement for a collectively impartial jury.

## **II. ADDING THE NEW COUNT OF SEXUAL INTERCOURSE WITHOUT CONSENT, WHEN IT IS CLEAR THAT DOING SO WOULD IMPACT SOAPES'S FUNDAMENTAL RIGHTS.**

Soapes was initially charged with Sexual Assault and two counts of Sexual Intercourse Without Consent pertaining to his adopted daughter, who was 10 years old at the time the abuse started and which was alleged to have occurred between January 1, 2016 through March 31, 2021.

Later, the State amend its information to include one count of Sexual Intercourse Without Consent pertaining to Berry, who was 17 years old at the time of the alleged incident, and which was alleged to have occurred at an unspecified time in 2009.

The addition of the new count against Soapes alleging sexual intercourse without consent involving Berry was improperly joined in the Amended Information, and Soapes was unfairly prejudiced as a result.

### **A. The Addition of the Sexual Intercourse without Consent Count Involving**

The sexual intercourse without consent involving Berry was Improperly Joined with the original counts, because it was remote in time, was not of the same or similar character or based upon the same transactions as the original counts.

Montana Code Annotated § 46-11-404 allows the joinder of offenses into one information, “if the offense charged...are of the same of similar character or are based on the same transactions connected together or constituting parts of a common scheme or plan.”

This Court has generally applied several factors to determine if joinder was proper and if the charges in an information were "of the same or similar character," including: (1) whether the charges are brought under the same statute; (2) whether the charges involve similar victims, locations, or modes of operation; (3) whether the charged conduct occurred in a narrow time frame; and (4) whether the charged conduct occurred in a limited geographical area. See *State v. Southern*, 1999 MT 94, ¶ 19, 294 Mont. 225, 980 P.2d 3.

**1. The Counts are Brought Under the Same Statute as One of the Original Counts**

Here, although the original information contained counts other than sexual intercourse without consent, it cannot be fairly argued that the additional count of sexual intercourse without consent was not “brought under the same statute.”

**2. The New Count Involves a Different Victim, Location and Mode of Operation**



The original information contained allegations involving Soapes 10-14 year old daughter, while the added count involved a 17-year-old quasi relative, who had completed her GED and become an employed certified nursing assistant, for all practical purposes, a young adult. Not only are these literally different victims; they are completely different victim profiles, one is very young and lacking in life experience, while the other is more mature having already been exposed to the world.

Contrast this with the victims in *Southern* (§ 20), where all the victims were older women, and *State v. Duncan*, 2008 MT 148, § 24, 343 Mont. 220, 183 P.3d 111, where all three victims were young girls between nine and fifteen; and *Freshment* (§ 23), where both victims were 15 years old. Even though there were multiple victims in these cases, in each case they all fit into the same victim profile. In Soapes case, the two victims could not be more different.

Moreover, although the allegations involving Soapes adopted daughter and those involving Berry occurring within a house, they were different locations. Further, the locations within the homes where the assaults occurred were different, in Soapes adopted daughter's case the assaults took place in private areas of the home, i.e. bathroom and bedroom; with Berry the one alleged incident occurred in the living room, with Soapes' girlfriend asleep in the next room.

Finally, looking at the mode of operation for the offenses shows clearly the counts in Soapes' case should not have been joined.

For instance, in *Southern*, most of the victims were raped at knife point, all had their face covered with an article of clothing and were robbed; in *Freshment*, both victims were met through mutual friends, and both were plied with alcohol; in *Duncan*, each of the victims involved young girls which Duncan was able to seclude in his house and molest.

In the present case, it was alleged that Soapes, over the course of years, molested his adopted daughter and as part of that, Soapes waited until she was alone either while Soapes' wife was at work and taking the adopted daughter into a private area of the home, or by taking the adopted daughter on a trip outside the home. In contrast, the allegations involving Berry alleged that Soapes and Berry were drinking, while Soapes' then girlfriend was in the next room, and that after consuming alcohol, Soapes came onto Berry, kissing her and sticking his hand down her pants.

In the case of the adopted daughter, as alleged, this is classic child abuse behavior that likely developed over a long period, but certainly did occur over a lengthy time, and was repeated over that time. In Berry's case, it occurred rapidly and on one occasion only, and was apparently influenced by the consumption of alcohol.

These were very, very different crimes and should not have been joined into one information.

### **3. The Charged Criminal Conduct Occurred Over Entirely Separate and Distinct Timeframes**

This factor again shows that the allegations involving Berry should not have been joined with the earlier counts. The original counts stem from crimes alleged to have occurred between January 1, 2016 through March 31, 2021, while the new one involving Berry occurred at some point in 2009, seven years earlier than the first allegation in the original information.

Looking to other cases, in *Southern* the crimes occurred over two and half years; in *Freshment* the crimes occurred over two days; and in *Duncan* the crimes occurred over the course of the summer of 2004.

These are all relatively narrow time frames, especially when considering each case's modes of operations; and even more so when contrasted with the seven year gap between the 2009 incident involving Berry, and the first incident with Soapes' adopted daughter in 2016.

The allegations against Soapes did not occur in a narrow timeframe and, as such, were improperly joined in the Amended Information.

### **4. The Charged Offenses did not Occur in a Limited Geographic Area**

It is arguable that allegations involving Berry and Soapes' adopted daughter occurred in a limited geographic area because they were in the same community. However, they occurred at different homes, after Soapes moved, and some of the

allegations involving Soapes' adopted daughter occurred outside of the home, while camping.

Even though all the allegations occurred within the same community, they occurred in varied locations.

Examining the factors above, the originally charged counts involving Soapes' adopted daughter and those involving Berry did not involve the same or similar conduct, despite being charged under the same statute.

### **B. The Improper Joinder of the Counts Prejudiced Soapes**

A defendant claiming severance should have occurred under Montana Code Annotated § 46-13-211(1), bears the burden of proving that joinder of the charges is prejudicial. See *State v. Martin*, 279 Mont. 185, 192, 926 P.2d 1380, 1384-85 (1996), citing *State v. Slice*, 231 Mont. 448, 451, 753 P.2d 1309, 1311 (1988). A unsupported general allegation of prejudice is not sufficient. *Duncan*, ¶ 29.

The improper joinder of counts may prejudice a defendant in three ways, (1) the jury may consider the defendant facing multiple charges a “bad man” and accumulate evidence until it finds the defendant guilty of something; (2) the jury may use proof of guilt on one count to convict the defendant of a second count even though that proof would be inadmissible at a separate trial on the second count; and (3) the defendant may be prejudiced if he wishes to testify on one charge but not on another. *Duncan*, ¶ 26.

Here, it is likely the jury accumulated evidence to find Soapes guilty, and used proof of one count to convict Soapes of another, but as Soapes testified regarding both counts, the final factor does not apply.

### **C. The State Painted Soapes as a “Bad Man” by Using Both Cases Against Him**

This first type of prejudice has seldom been found sufficient, because a defendant being held out as a habitual offender, and when the jury has acquitted on a portion of the charges brought against the defendant, this Court has found no prejudice. *State v. Richards*, 274 Mont. 180, 906 P.2d 222, 227 (1995).

Even facing this high burden, the facts of Soapes case show prejudice. Soapes was initially accused of sexual intercourse without consent with his adopted daughter, and in support of that contention, the State presented physical evidence in the form of the medical exam results, testimony from an expert in child sexual abuse, corroborating testimony from family members, and testimony from the alleged victim, who was highly sympathetic.

In contrast, the evidence presented in support of the added count involving Berry consisted of her testimony, and testimony from family members who corroborated something happened in 2009, although no one could recount when the event occurred. Additionally, there was no physical evidence presented, and the only two people that actually witnessed anything were Soapes and Berry. What stories were told to various family members seemed to fluctuate, and despite all family

members knowing of the incident, no one notified law enforcement. Finally, Soapes testified that an event did occur, but that it was consensual, making this Berry's word against Soapes. While the State may have still obtained a conviction, Berry's case was by far much, much weaker than that involving Soapes adopted daughter.

Having already heard all the testimony regarding Soapes's sexual abuse of his adopted daughter, the allegations made by Berry fit right into the picture painted of Soapes and the jury was almost certainly going to find him guilty, which they did of each and every count alleged by the State.

#### **D. The Jury Used Proof of one Count to Find Soapes Guilty on Another**

The second type of prejudice occurs when a jury uses proof of guilt on one count to count, generally by allowing the jury to consider evidence that would have been inadmissible at a separate trial on the second count. See *Freshment*, ¶ 32.

No prejudice of this nature will be found when the evidence presented at a joint trial is simple and distinct. *State v. Richards*, 274 Mont. 180, 906 P.2d 222, 227 (1995). On the other hand, where there is overlapping evidence and witnesses, then a analysis is required to determine what evidence may have been inadmissible at separate trials. *Ducan*, ¶ 30.

Here, there is overlapping evidence and witnesses, and evidence for the original counts, and the added count involving Berry would each be inadmissible against the other under Rule of Evidence 404(b).

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." M. R. Evid. 404(b). The aim of Rule 404(b) is to ensure jurors do not impermissibly infer that a defendant's prior bad acts make that person a bad person, and therefore, a guilty person. *State v. Dist. Court of the Eighteenth Judicial Dist.*, 2010 MT 263, ¶ 47, 358 Mont. 325, 246 P.3d 415 (hereinafter "*Salvagni*"); *see also State v. Aakre*, 2002 MT 101, ¶ 12, 309 Mont. 403, 46 P.3d 648 (purpose of Rule 404 is "to prevent convictions that are merely based on a jury finding that someone has a propensity to do certain things").

Evidence of prior bad acts is admissible for other purposes such "as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." M. R. Evid. 404(b). The distinction between admissible and inadmissible Rule 404(b) evidence turns on the intended purpose of the evidence, not its substance. *Salvagni*, ¶¶ 47, 62-63.

None of the exceptions apply to Soapes case, because although charged under the same statute, the original counts and the count involving Berry were distinct and separate events, having very little in common factually.

The earlier sexual intercourse without consent involving Berry, would not provide evidence of motive, as the victims were different victim types and the incidents were separated by a vast amount of time, likewise this applies to intent,

preparation, plan, knowledge, identity, and opportunity. The crimes are simply too distinct to be brought in under 404(b).

Perhaps the best argument is absence of mistake or accident, but these were not at issue in Soapes case, and it is hard to imagine how either case would show absence of mistake or accident in the other.

Evidence of the events with Soapes' adopted daughter would have been inadmissible at trial for the allegations involving Berry, and vice versa. Soapes has established that he was prejudiced by the improper joinder.

#### **E. The Right Against Self Incrimination is Not Implicated**

A defendant may be prejudiced if he wishes to testify on one charge but not on another; but, when a defendant takes the stand and testifies regarding all the allegations, including those which are claimed to be improperly joined, then the defendant cannot demonstrate prejudice. *Duncan*, ¶ 26, 34-35.

Here, Soapes did testify, and testified regarding all the allegations against him, accordingly he cannot now claim prejudice based upon this factor under this Court's precedent.

However, no one factor is determinative, and when looked at as a whole, it is evident that the State was able to introduce what would have been otherwise inadmissible evidence in separate trials, and by doing so painted Soapes as a bad man in order to gain a conviction on all counts.



### **III. THE COURT SHOULD APPLY THE PLAIN ERROR RULE TO THE ABOVE ERRORS BECAUSE THEY IMPACT FUNDAMENTAL RIGHTS AND FAILING TO DO SO WOULD LEAD TO A MANIFEST MISCARRIAGE OF JUSTICE.**

As none of the errors above were objected to by the defense in district court, this Court should review the errors under the plain error doctrine. The plain error doctrine is employed on a case-by-case basis, where failing to review the error may result in a manifest miscarriage of justice, may leave unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process. *State v. Taylor*, 2010 MT 94, ¶ 12, 356 Mont. 167, 231 P.3d 79 (citation omitted). For this Court to review, and potentially reverse under plain error, Soapes must demonstrate the claimed error implicates a fundamental right, that will result in a manifest miscarriage of justice, leave unsettled a question of fundamental fairness of the trial, or compromise the integrity of the judicial process. *State v. Akers*, 2017 MT 311, ¶ 10, 389 Mont. 531, 408 P.3d 142.

The essence of plain error review is to ensure a fair and impartial trial. *State v. Ogle*, 255 Mont. 246, 251, 841 P.2d 1133, 1136 (1992). For instance, this Court exercised plain error review to reverse and remand for a new trial when a prosecutor commented the defendant had been tried and convicted of the same charge in a different court. *State v. French*, 2018 MT 289, ¶ 22, 393 Mont. 364, 431 P.3d 332. Further, the Court invoked plain error where issues such as a jury's uncertainty or confusion about whether a unanimous verdict is required or a failure to instruct the

jury on the state's burden of proof, as these issues call into question the fundamental fairness of the trial process in their respective cases. *State v. Daniels*, 2019 MT 214, ¶ 33, 397 Mont. 204, 448 P.3d 511, citing *State v. Dasen*, 2007 MT 87, ¶¶ 39, 41, 13, 337 Mont. 74, 155 P.3d 1282 (citations omitted).

Here, the errors alleged by Soapes impact his fundamental right to a fair and impartial trial and failing to address them will leave unsettled a question of the fundamental fairness of Soapes trial.

First, the presence of Undersheriff Bofto denied Soapes his fundamental right to an impartial jury. While no overt evidence of wrongdoing by the Undersheriff appears on the record, he literally oversaw the investigation into Soapes, and then sit in judgment over the results of that investigation. This is fundamentally unfair, regardless of whether or not Undersheriff Bofto truly believed he could remain impartial.

Additionally, Undersheriff Bofto's presence on the jury panel essentially denied Soapes of a 12 person jury, because the Undersheriff was presented to the other jurors as an expert in the issues before them, and as someone who could readily discern truth from lies. That combined with the deference shown by the attorneys and the district court to the Undersheriff would give any opinion by the Undersheriff incredible weight in the jury room.

If the Court determines that Soapes earlier reliance upon the State's motion to strike is improper, then the Court should review these issues pursuant to plain error review doctrine as they call into question the fundamental fairness of Soapes' trial, and find that they warrant reversal and remand for a new trial.

Secondly, Soapes was prejudiced by the improperly joined count involving Berry, and as a result, did not receive a fair trial. No motion or objection to the joinder was found in the record; however, because this issue impacts the fundamental fairness of Soapes' trial, the Court should likewise exercise its discretion to apply the doctrine of plain error review to reverse and remand this case for a new trial.

#### **IV. SOAPES SUFFERED FROM INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS COUNSEL FAILED TO OBJECT TO THE IMPROPER JOINDER OF COUNTS, AND FAILED TO MOVE TO STRIKE UNDERSHERIFF BOFTO FROM THE JURY.**

The Sixth and Fourteenth Amendment to the United States Constitution and Article II, Section 24 of the Montana Constitution guarantee the right to effective assistance of counsel. *State v. Aker*, 2013 MT 253, 371 Mont. 491, ¶ 34, 310 P.3d 506. This Court has adopted the standard applied in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) to review ineffective assistance of counsel (IAC) claims, that is "a defendant must prove both (1) that counsel's performance was deficient, and (2) that counsel's deficient performance prejudiced

the defense." *Garding v. State*, 2020 MT 163, 400 Mont. 296, ¶ 15, 466 P.3d 501 (citing *Whitlow v. State*, 2008 MT 140, 343 Mont. 90, ¶ 10, 183 P.3d 861); *State v. Crider*, 2014 MT 139, 375 Mont. 187, ¶ 34, 328 P.3d 612.

Generally, this Court will review IAC claims on direct appeal only when the record sufficiently answers "why" counsel did or did not take a certain course of action. *State v. Kime*, 2013 MT 14, 368 Mont. 261, ¶ 31, 295 P.3d 580. However, non-record-based claims may be raised on direct appeal where counsel either failed to do something that was required, or did something for which there is no plausible justification. *State v. Schaeffer*, 2014 MT 47, 374 Mont. 93, ¶ 35, 321 P.3d 809, citing *State v. Koughl*, 2004 MT 243, ¶ 6, 323 Mont. 6, 97 P.3d 1095.

Here, there is no plausible explanation for why Soapes counsel did not move to strike Undersheriff Bofto from the jury, when despite the Undersheriff's pronouncements that he could and would remain unbiased, he was personally responsible for the investigation into Soapes. This a clear conflict that even the State identified, for which the State cited the relevant statutory and case law, yet defense counsel declined to take action to remove Undersheriff Bofto. Defense counsel knew the Undersheriff's relation to the testifying witnesses and even joked about it with one of the witnesses, asking if the witness was nervous testifying in front of his boss, the Undersheriff.

It is difficult to fathom any rational reason not to strike the Undersheriff from a defense prospective, while it is amazingly easy to see why the State would want the Undersheriff on the jury. While no disparagement is intended toward the Undersheriff, he is by definition on the State's side and having been law enforcement for nearly 30 years, and the supervisor of the investigators in this matter, he was personally responsible to deliver evidence of Soapes alleged crimes to the State to allow for Soapes prosecution. It is a simple and classic conflict of interest, an attorney cannot at the same time represent A and B, when the case at hand is A v. B. Despite this, Soapes counsel argued against removing Undersheriff Bofto from the jury. To not see or at least acknowledge the conflict created by having the person in charge of the investigation against your client on you client's jury, is ineffective assistance of counsel.

Further, the joinder of the allegations related to Berry is and was a glaring violation of Montana Code Annotated § 46-11-404, and allowing Soapes' case to proceed forward without challenging the joinder of the alleged offenses against Berry exposed Soapes to prejudice through an unfair jury trial. There is likewise no plausible reason to allow your client to be exposed, without challenge, to such an increased risk that a jury would be prejudiced against him by the accusations of one victim in regards to the count concerning the other victim. This is ineffective assistance of counsel, and there is no plausible justification for counsel's inaction.

## **CONCLUSION**

For the foregoing reasons, the Court should reverse Soapes' conviction and remand the case for a new trial.

DATED this 25th day of June 2025.

PEACE LAW GROUP, LLC

  
Scotti L. Ramberg, Attorney for  
Appellant/Defendant

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes, quoted, and indented material; and that the word count calculated by Microsoft Word Professional Edition is 9,318 words, excluding the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

DATED this 25th day of June 2025.

PEACE LAW GROUP, LLC



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Scotti L. Ramberg, Attorney for  
Appellant/Defendant

## **APPENDIX**

Judgment Appealed From, Doc. 89, June 29, 2023 .....	Appendix A
Amended Information, Doc. 22, December 7, 2021 .....	Appendix B



## **CERTIFICATE OF SERVICE**

I, Scotti Ramberg, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 06-26-2025:

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