

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

STATE OF MONTANA,

Plaintiff and Appellee,
and

ASIA CARL SOAPES,

Defendant and Appellant.

Appellant/Defendant's Reply

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

SCOTTI L. RAMBERG
Peace Law Group, LLC
3010 Santa Fe Court Ste. 222
Missoula, MT. 59808
Telephone (406) 390-5026
Scotti@integrityfirstlaw.com

AUSTIN KNUDSON
Montana Attorney General
TAMMY K PLUBELL
Bureau Chief Appellate Services
Bureau P.O. Box 201401
Helena, MT 59620
dojsupremecourtefilings@mt.gov

SCOTT D. TWITO
Yellowstone County Attorney
P.O. Box 35025
Billings, MT. 59101

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REPLY

I. THE STATE’S INCORRECTLY ARGUES NO PARTY MOVED TO REMOVE UNDERSHERIFF BOFTO FROM THE JURY, WHEN THE STATE MADE THE MOTION AT TRIAL

At the district court, the State moved to disqualify Undersheriff Bofto, but now argues against its previous position, and incorrectly states that no party made such a motion. State’s Response Brief, § II.

However, at trial, the State correctly pointed out that the Undersheriff “may not be able to be fair and impartial.” Tr. JT Day 2, 129:22-24. Although unusual, Appellant agrees with the State's trial position that disqualification was warranted for numerous reasons.

The fact the State made such a motion was acknowledged and denied by the district court:

“If that was a motion to strike, it is denied at this time.”

Tr. JT Day 2, 133:24-25.

Further, on Appeal, the State ignores and fails to address one of the primary concerns for allowing the Undersheriff to stay on the jury...he was in charge of the investigation into Soapes. This fact cannot be brushed aside and ignored, while the Undersheriff may not have actively investigated the matter, he oversaw those that did and undoubtedly had access to the investigatory files and all information therein. It is simply too much to ignore this connection, no person with

direct involvement in an investigation which is the subject of a jury trial should be allowed to sit upon the jury. Further, it is without question that the Undersheriff had an interest in the outcome of the trial, it was the work of his personnel that he was judging. The Undersheriff may be the most integrity driven person in the world, but having a direct interest in the outcome of a trial is disqualifying from sitting on the jury.

In *Kebble*, this Court held that when a juror's connection to the prosecuting agency is direct—such as employment by the investigating entity—a challenge for cause must be granted, irrespective of claims of impartiality. Here, Undersheriff Bofto's oversight of the Yellowstone Sheriff's Department investigation creates an identical disqualifying conflict. *Id.* at ¶ 36.

The State claims it was in Soapes' "best interest" to keep the Undersheriff. The State's post-hoc rationalization ignores the inherent bias under *Kebble* and flips its trial position, where it moved for disqualification recognizing the impartiality risk (Tr. JT Day 2, 129:22-24). This reversal of position underscores the error, as the State's trial recognition of bias aligns with *Kebble's* mandate.

II. PLAIN ERROR REVIEW IS APPROPRIATE IN SOAPES' CASE

The right to an impartial jury is a fundamental right, period. *Duncan v. Louisiana* (1968), 391 U.S. 145, 153, 88 S. Ct. 1444, 1449 (1968); *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 224, 137 S. Ct. 855, 868 (2017); *State v. Stafford*, 208

Mont. 324, 329, 678 P.2d 644, 647 (1984); *State v. Johnson*, 2019 MT 68, ¶ 9, 395 Mont. 169, 437 P.3d 147.

When a criminal defendant's fundamental rights are implicated, the Supreme Court may choose to review a claim under the common law plain error doctrine 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. Taylor*, 2010 MT 94, ¶ 12, 356 Mont. 167, 231 P.3d 79 citing, *State v. Jackson*, 2009 MT 427, ¶ 42, 354 Mont. 63, 77, 221 P.3d 1213, 1224. Allowing the Undersheriff to serve on the jury invokes Soapes' fundamental right to a fair and impartial jury for all the reasons discussed in the opening brief and above.

Further, while this Court has known limitations on an appellate review of trial court errors, this Court has inherent power and paramount obligation to interpret Montana's Constitution and protect the rights set forth in that document. *Taylor*, at ¶ 13. Therefore, this Court may use its inherent power to discretionarily review the errors raised in Mr. Soapes' Opening Brief that implicate his fundamental constitutional rights, even if he did not timely object in the trial court, and notwithstanding constraints on appellate review set forth in Montana Code Annotated § 46-20-701(2). *Taylor*, at ¶ 14 citing, *State v. Finley*, 276 Mont. 126, 137, 915 P.2d 208, 215 (1996). In *Finley*, this Court established a two-part test for

whether common law plain error may be invoked: first, whether the alleged error implicates a fundamental right; and second, whether the Court's failure to review the alleged error would result in one of the above-listed consequences. *State v. Finley*, 276 Mont. 126, 137, 915 P.2d 208, 215 (1996).

Here, the error implicates Soapes' fundamental right under Article II, § 24 of the Montana Constitution; and failing to review risks a miscarriage of justice, as an impartial jury is foundational (*Duncan v. Louisiana*, 391 U.S. 145, 153 (1968)).

To obtain plain error review, Mr. Soapes presents multiple violations of his fundamental rights that should firmly convince this Court that failure to apply plain error review will result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial or proceedings, or compromise the integrity of the judicial process. *Taylor*, at ¶ 17

In its *Response*, the State argues that Soapes has failed to meet his burden of showing that allowing the Undersheriff to remain on the jury implicates a fundamental right, because he did not raise the issue at trial. This is the exact situation that makes plain error review necessary. That is, there was an error at trial which was not addressed at the lower court but implicates a fundamental right that if left unaddressed by this Court, will leave unsettled the question of the fundamental fairness of the trial or proceedings, which is this exact case. Soapes' fundamental right to a fair and impartial jury was violated at trial and this Court

should address it here because not doing so will result in a manifest miscarriage of justice, and leave unsettled the question of the fundamental fairness of the trial; and may compromise the integrity of the judicial process.

III. REVIEW FOR IAC IS NECESSARY IN SOAPES' CASE

Similarly, the State seems to agree that Soapes' trial counsel was ineffective, as it did not argue otherwise in its brief but instead argues that Soapes fails to show he was prejudiced by that ineffective assistance of counsel. The Sixth Amendment of the U.S. Constitution and Article II, § 24, of the Montana Constitution guarantees the right to effective assistance of counsel. In *Whitlow*, the Court summarized the test for ineffective assistance of counsel as the following two part analysis: first, whether counsel's performance fell below an objective standard of reasonableness; and second, whether a reasonable probability exists that but for counsel's errors, the result of the proceeding would have been different. *Whitlow v. State*, 2008 MT 140, ¶ 10, 343 Mont. 90, 94, 183 P.3d 861, 864.

Going to trial without a fair and impartial jury is prejudice. Furthermore, Soapes argued that allowing the Undersheriff to sit on the jury effectively made it a jury of one, there can be no greater prejudice. The State points out that the Undersheriff was not the jury foreperson but this is irrelevant, whether the Bofto was the foreperson or not does not demonstrate the Undersheriff's influence upon the remaining jury members. But for counsel's failure to object or challenge, the

outcome likely differs because the Undersheriff's presence tainted deliberations, potentially influencing other jurors due to his authority. Counsel's failure to support the State's motion or object fell below reasonableness, as no tactical reason justifies retaining a biased juror with supervisory ties to witnesses. *Id.*, at ¶ 10. Prejudice is presumed in structural errors like impartiality violations, per *State v. Johnson*, 2019 MT 68, ¶ 9. The prejudice suffered by Soapes is the lack of an impartial jury, and it cannot be swept away just because the Undersheriff was not the jury foreperson, it is evident and apparent that Soapes was prejudiced by the lack of a fair trial.

This compels this Court to review under plain error and ineffective assistance of counsel analysis.

CONCLUSION

Reversal and remand for a new trial are necessary to vindicate Soapes' constitutional rights and restore judicial integrity. Accordingly, this Court should reverse the conviction, remand for a new trial,

DATED this 11th day of August 2025.

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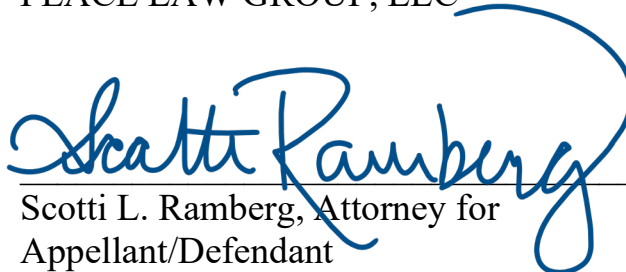
Scotti L. Ramberg, Attorney for
Appellant/Defendant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Appellant's Reply 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 1404 words, excluding the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

DATED this 11th day of August 2025.

PEACE LAW GROUP, LLC



Scotti L. Ramberg, Attorney for
Appellant/Defendant

CERTIFICATE OF SERVICE

I, Scotti Ramberg, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 08-11-2025:

Arielle Christine Dean (Govt Attorney)
PO Box 35025
Billings MT 59107
Representing: State of Montana
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Scott D. Twito (Govt Attorney)
PO Box 35025
Billings MT 59107
Representing: State of Montana
Service Method: eService

Tammy Ann Hinderman (Attorney)
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena MT 59620
Representing: Asia Carl Soapes
Service Method: eService

Thad Nathan Tudor (Govt Attorney)
215 N SANDERS ST
HELENA MT 59601-4522
Representing: State of Montana
Service Method: eService

Electronically Signed By: Scotti Ramberg

Dated: 08-11-2025