IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 25-0459

ANTHONY LEE WEGNER,

Petitioner,

v.

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY, HONORABLE ASHLEY HARADA, presiding,

Respondent.

ORDER

Petitioner Anthony Lee Wegner, via counsel, seeks a writ of supervisory control directing the Thirteenth Judicial District Court, Yellowstone County, to grant Wegner's motions to set aside the verdict and to dismiss with prejudice in its Cause No. DC-21-1232. The State has responded in opposition to Wegner's petition.

Supervisory control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. M. R. App. P. 14(3)(a)-(c). Whether supervisory control is appropriate is a case-by-case decision. *Stokes v. Mont. Thirteenth Jud. Dist. Ct.*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (citations omitted).

In August 2024, a jury found Wegner guilty of negligent homicide after he hit and killed a pedestrian with his truck. During the trial, the State relied, in part, on the testimony of State Medical Examiner Dr. Walter Kemp, who performed an autopsy of the decedent.

Prior to trial, the State disclosed Dr. Kemp's postmortem examination report to the defense. The report noted the decedent's body had a 12-centimeter tear in the left femoral region, but the report did not correlate the injury to vehicle speed. However, a few days prior to trial, Dr. Kemp advised the State he had reviewed medical literature which indicated tears in the femoral region usually occur when the speed of impact is greater than 60 miles per hour (mph) and such tears never occur when the vehicle is traveling at less than 30 mph. Dr. Kemp sent a follow-up email to the State after this trial preparation interview, reiterating his opinion and specifying the medical literature that provided the basis of this opinion. However, the State did not disclose this information to the defense.

During trial, but prior to Dr. Kemp's testimony, the State informed the defense that Dr. Kemp would testify the femoral region tear he observed on the decedent's body usually occurs when a pedestrian is hit by a vehicle traveling within a certain range of speed. The defense objected, arguing the court should not allow this testimony because Dr. Kemp did not include it in his report and the State had not disclosed the information to the defense. After allowing the parties to voir dire Dr. Kemp, the court ruled Dr. Kemp could testify to the range of speed at which femoral region tears are typically caused. At trial, Dr. Kemp testified he reviewed "a forensic textbook that covers injuries and others of the lower extremities" that indicated femoral region tears would not occur below a 30 mph impact and usually occur around 60 mph. The State further asked Dr. Kemp if the injuries he observed on the decedent's body were consistent with an impact from a vehicle traveling at more than 70 mph, and Dr. Kemp opined, in part, "if I had to choose, I would say it was a vehicle that was going faster rather than slower."

After trial concluded, defense counsel learned about the email Dr. Kemp had sent to the State after his trial preparation interview, which named the forensic textbook and included a quotation it. Upon learning of the email, defense counsel obtained a copy of the textbook and determined Dr. Kemp's quotation was incomplete, omitting part of the sentence that indicated higher-speed impacts which may cause femoral region tears often cause amputations and the victim's body will "somersault" over the vehicle. Notably, no

amputation occurred in this case, nor did any witness testify that the decedent's body "somersaulted" over Wegner's truck.

On September 4, 2024, defense counsel moved for a new trial. It argued the court erred in allowing Dr. Kemp's opinion testimony regarding vehicle speed because this was new information the State failed to disclose to the defense prior to trial. The defense argued Wegner did not receive a fair trial because the State failed to comply with the disclosure requirements of §§ 46-15-322 and -327, MCA. The defense asserted the State's failure to timely disclose Dr. Kemp's opinion and his email citing a particular forensic textbook prevented defense counsel from providing Wegner effective assistance because counsel was unprepared to adequately cross-examine Dr. Kemp.

On November 18, 2024, while the motion for new trial was pending, defense counsel moved to set aside the verdict and dismiss the case with prejudice, arguing the failure to disclose constituted a *Brady* violation. The defense maintained that, if the State had disclosed the name of the forensic textbook prior to Dr. Kemp's testimony, it would have been able to cross-examine him on exculpatory and impeachment material contained within the textbook, including in the unquoted part of the sentence Dr. Kemp had quoted in his email.

On April 10, 2025, the District Court issued the Order Granting Motion for New Trial and Order Denying Motion to Dismiss that is the subject of Wegner's pending petition for writ of supervisory control. In that order, the court determined the State had failed to fulfill its statutory disclosure obligations. It found testimony regarding speed was "a significant part of the State's theory of the case" and Wegner was prejudiced because he did not have the opportunity to challenge this theory. The court concluded the State had an affirmative obligation to provide Dr. Kemp's email to the defense. It noted that, if Wegner had known the name of the forensic textbook, Wegner would have been able to challenge Dr. Kemp on several statements from the book that may have weakened his testimony regarding speed. These statements included "there is no reliable method for evaluating crash speed in terms of biological markers" and "attempts to determine the crash speed on the basis of the severity of injuries have brought no reliable . . . methods of

crash-speed determination." Because of the statutory violation, the court granted Wegner a new trial.[1] However, the court denied Wegner's motion to dismiss as to the asserted *Brady* violation, reasoning, "At this stage, the [c]ourt is not entirely certain that disclosure of the book would have resulted in a different outcome. The [c]ourt is not in a position to speculate on that issue. The situation does not undermine confidence in the verdict so as to require dismissal of the case."

Wegner then filed this petition for writ of supervisory control. Wegner alleges that in this case, forcing him to go through a second criminal trial makes the normal appeal process inadequate, and that we should consider the matter on petition in the interests of judicial economy. This Court has repeatedly held that conserving resources, without more, is insufficient grounds to justify supervisory control where a party can seek review of the lower court's ruling on appeal and there is no evidence that relief on appeal would be inadequate. *Yellowstone Elec. Co. v. Mont. Seventh Jud. Dist. Ct.*, No. OP 19-0348, 397 Mont. 552, 449 P.3d 787 (Aug. 6, 2019). Furthermore, supervisory control is not a substitute for a direct appeal, nor an avenue to circumvent the normal appeal process. *Hartman v. Mont. Nineteenth Jud. Dist. Ct.*, No. OP 20-0069, 399 Mont. 551, 460 P.3d 400 (Feb. 11, 2020). However, in this case, we agree with Wegner that allowing this case to proceed to a second criminal trial with a potentially unresolved *Brady* violation, and the issue is also a question of whether the District Court is proceeding under a mistake of law and causing a gross injustice, provides sufficient grounds to meet this threshold requirement.

To establish a *Brady* violation, a defendant must demonstrate: (1) the State possessed evidence favorable to the defense; (2) the State suppressed the evidence; and (3) had the State disclosed the evidence, a reasonable probability exists that the result would have been different. *State v. Severson*, 2024 MT 76, ¶ 16, 416 Mont. 201, 546 P.3d

[1] There is no dispute Wegner is entitled to a new trial based on this statutory disclosure violation and the District Court's order. Wegner's petition for writ of supervisory control challenges only the court's determination regarding the asserted *Brady* violation and whether, if a *Brady* violation is established, dismissal is the appropriate remedy.

765. If the court determines a *Brady* violation has occurred, dismissal of criminal charges is a severe sanction that is not the "remedy of choice" for the prosecution's failure to disclose exculpatory evidence but is a remedy that has been limited to "egregious" or "outrageous" government conduct. *State v. Schauf*, 2009 MT 281, ¶ 26, 352 Mont. 186, 216 P.3d 740 (citations omitted). Wegner asserts the District Court correctly determined the State possessed evidence favorable to him that it suppressed. However, he argues the court erred as a matter of law by applying the wrong standard to determine if a *Brady* violation occurred because it required Wegner to demonstrate "entire certainty" rather than a "reasonable probability" that disclosure of the textbook would have resulted in a different outcome. Wegner thus asks this Court to conclude the court erred as a matter of law by applying the wrong standard to the third *Brady* prong. He further asserts that the proper remedy in this instance is for this Court to direct the District Court to grant his motion to set aside the verdict and dismiss the case with prejudice.

The State responds that Wegner incorrectly claims the District Court concluded the State possessed evidence favorable to the defense. According to the State, the court did not find Wegner established any of the prongs. Moreover, the State asserts Dr. Kemp's email was inculpatory because the quotation from the textbook contained within the email did not include the exculpatory language that the defense uncovered by obtaining the textbook. Thus, since *Brady* applies only to exculpatory evidence in the State's possession, it is irrelevant whether the District Court applied an incorrect standard to the third prong.

The State's representation of the District Court's rulings is inaccurate. In its April 10, 2025 Order, the court determined Dr. Kemp's email "was material and favorable to the defense," thus establishing the first prong. The court further determined the State possessed the new information and its basis prior to the start of trial but never provided the information to the defense, thus establishing the second prong. Moreover, Wegner comes to this Court arguing supervisory control is warranted because the District Court applied the wrong standard to the third *Brady* prong—an argument the State seems to concede. Without cross-petitioning and allowing Wegner the opportunity to respond, the State

cannot raise new arguments about alleged errors beyond the scope of the issue brought by Wegner in his petition.

The burden of persuasion is on the petitioner to convince the Court to issue a writ. *Disability Rights Mont. v. Mont. Jud. Dists. 1-22*, No. OP 20-0189, 400 Mont. 556 (Apr. 14, 2020) (citing *Miller v. 11th Jud. Dist. Ct.*, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186). In this case, Wegner has persuaded us that we should exercise supervisory control. However, we conclude the proper remedy as to the alleged *Brady* violation is to remand for the District Court to clarify its ruling. It is clear the District Court concluded the statutory disclosure violation precluded Wegner from receiving a fair trial such that a new trial was warranted. This ruling implies a reasonable probability that the jury could have reached a different conclusion had the information been disclosed. However, Wegner further sought a remedy beyond a new trial, alleging a *Brady* violation occurred and arguing that the remedy for such should be dismissal. In its order, the District Court accurately recites the third *Brady* prong and notes, "The situation does not undermine confidence in the verdict so as to require dismissal of the case." This language could indicate the court believed the disclosure violation warranted a new trial, but it was not firmly convinced the disclosure violation warranted dismissal of the case. Alternately, the language the District Court used could be interpreted as the court applying the wrong standard in considering the third *Brady* prong. The State's apparent concession on the issue of the third prong convinces us the best course of action is to accept supervisory control and request the District Court clarify its ruling under the appropriate "reasonable probability" standard. We take no position as to whether, if the court concludes a *Brady* violation occurred, dismissal would be an appropriate remedy.

IT IS THEREFORE ORDERED that Wegner's Petition for a Writ of Supervisory Control is GRANTED.

IT IS FURTHER ORDERED that the District Court shall clarify its ruling under the "reasonable probability" standard for the third prong of *Brady* and, if necessary, determine an appropriate remedy.

The Clerk is directed to provide immediate notice of this Order to counsel for Petitioner, all counsel of record in the Thirteenth Judicial District Court, Yellowstone County, Cause No. DC-21-1232, and the Honorable Ashley Harada, presiding.

DATED this 23rd day of September, 2025.

Chief Justice

Justices