**IN THE SUPREME COURT OF THE STATE OF MONTANA**

No. DA 23-0727

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ALLEN MISAEL MARTINEZ,

Defendant and Appellant.

# BRIEF OF APPELLEE

On Appeal from the Montana Twenty-first Judicial District Court,
Ravalli County, The Honorable Howard F. Recht, Presiding

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## STATEMENT OF THE ISSUES

1. Whether—viewing the evidence in the light most favorable to the State—any rational juror could have found that Appellant committed misdemeanor criminal mischief.

2. Whether the district court clearly erred in imposing financial obligations when—after considering the PSI and Appellant's financial resources and concluding that Appellant had the ability to pay limited obligations—the court steeply suspended or nominally imposed fines for Appellant's five offenses, did not impose any surcharges for one offense, and imposed surcharges for some offenses.

## STATEMENT OF THE CASE

After a jury trial, Appellant Allen Misael Martinez was convicted of three counts of felony criminal child endangerment, one count of misdemeanor criminal mischief, and one count of misdemeanor disorderly conduct. (Doc. 54; Trial Tr. at 243.)

For the three criminal child endangerment counts, the court sentenced Martinez to the Department of Corrections for five years, none suspended, concurrent with each count and concurrent to another matter, DC-22-228. (Doc. 68 at 4-5; Sentencing Tr. at 11-12.) For the criminal mischief, Martinez

received a jail sentence of 6 months, with 405 days of pretrial credit applied, concurrent. (Doc. 68 at 5; Sentencing Tr. at 12-13.) For the disorderly conduct, incarceration was not imposed. (Doc. 68 at 5; Sentencing Tr. at 13.)

As to financial obligations, Martinez asked the district court at sentencing to suspend all fines, fees, and costs for all five of his offenses. (Sentencing Tr. at 10.) The district court partially obliged Martinez's request. For the three criminal child endangerment counts, the court ordered: $500 fines with $400 suspended, $50 surcharges, and 10% surcharges. (Doc. 68 at 4-5; Sentencing Tr. at 11-12.) For the criminal mischief, the court ordered a $100 fine, a $50 surcharge, and a $15 statutory surcharge fee. (Doc. 68 at 5; Sentencing Tr. at 12-13.) For the disorderly conduct, the court ordered a $100 fine with $50 suspended, and declined to impose any costs or fees. (Doc. 68 at 5; Sentencing Tr. at 13.)

Martinez appeals, exclusively challenging his conviction for misdemeanor criminal mischief, but further arguing that the district court committed clear error at sentencing when it failed to adequately consider his ability to pay fines, fees, and costs for all offenses.

/ / /

## STATEMENT OF THE FACTS

### I. The background

On Friday, July 22, 2022, Martinez was at Lake Como with his wife and his several children. (Trial Tr. at 100-02, 131.) Martinez was observed by onlookers chugging and crushing five beers, aggressively speaking to other recreationists and calling them "gawkers," and yelling at his child who was trying to learn to swim while the child was screaming or crying. (*Id*. at 102-05, 132-34.) Martinez also ate watermelon and threw the rinds in the lake where other people were recreating. (*Id*. at 104.) As he walked by other lake patrons, he mumbled words like "pedophiles" and "homosexuals[.]" (*Id*. at 105.) Later, in the parking lot near his vehicle, Martinez was blaring music, pounding more beers, changing his shorts, talking loudly, and possibly urinating in front of his car. (*Id*. at 107-08, 137-38, 152.) Martinez also proclaimed something like: "Everyone in Hamilton drinks and drives; I dare anybody to tell on me[.]" (Trial Tr. at 108; *see also id*. at 138-39 (slightly different words recollected, but same connotation).)

Martinez peeled out of the parking lot with his family in the vehicle, and blew past a couple of stop signs. (Trial Tr. at 109, 141.) He departed at a high rate of speed and cut off another vehicle on the road. (*Id*. at 110-12, 142.) Two concerned citizens in different vehicles called 911. (*Id*. at 112, 144-45.) Martinez continued driving while throwing a can out of the driver's side window, and

crossed the double yellow line, forcing opposing traffic to move out of the way, which otherwise would have caused a head-on collision. (*Id*. at 113-14, 146.) Martinez's vehicle went almost "sideways," nearly moving to a roll, and engaged in a hard stop. (*Id*. at 115.)

After Martinez pulled over on the highway, Montana Highway Patrol Trooper Pat Heaney arrived in his patrol vehicle, observed Martinez out of the vehicle with the driver's side door open, and observed Martinez arguing with his wife. (Trial Tr. at 160-62; *see id*. at 174 (identifying passenger as Martinez's wife).) When Trooper Heaney asked what was in Martinez's hands and saw a handgun, Martinez immediately began cursing at the officer. (*Id*. at 162.) Martinez refused to put down his gun when ordered to do so. Martinez's wife got involved and struggled with Martinez over the gun, ripped it out of his hands, and threw it in the cab of the truck. (*Id*. at 163.) Martinez "blew up" and was "in a rage[.]" He came at Trooper Heaney aggressively. (*Id*. at 163-64.) Trooper Heaney nonetheless tried to convince Martinez to come back to his patrol vehicle to calm him down and get him farther away from his weapon. (*Id*. at 164-65.)

Martinez got into a defensive position and began walking toward Trooper Heaney, resulting in Trooper Heaney deploying his taser. (Trial Tr. at 166.) Because the probes did not hit two different areas of Martinez's body, Martinez only briefly locked up but did not fall down. (*Id*. at 167-68.) Instead, Martinez

rolled up the wires and broke off the probes, then started coming at Trooper Heaney again. (*Id*. at 168.) Several other troopers arrived at that point, and one of them sneaked up on Martinez and tackled him from behind. (*Id*. at 171-73.) Martinez was handcuffed. (*Id*. at 173.)

Officers noted the vehicle's occupants were Martinez's wife, three "very small children," and an infant in a baby seat. (Trial Tr. at 174.)

## II. Facts related to criminal mischief

Martinez was placed in Trooper Heaney's vehicle. (Trial Tr. at 174.) That patrol vehicle—like most police vehicles—had a partition between the front and back, but the partition had a center window that could be pulled back and forth. (*Id*. at 175.) The partition window was open when Martinez was placed in the back of Trooper Heaney's patrol vehicle. (*Id*.)

Martinez took the opportunity to "spit all over the" front interior of Trooper Heaney's vehicle, including his steering wheel, dashboard, "all" of the widows, and on "everything else." (Trial Tr. at 175.) Another trooper, Trooper Gane, "witnessed the spit" and "closed that partition" to prevent more spit from going into the front area. (*Id*.) Martinez also "spit in the back seat." (*Id*.)

Trooper Heaney was wrapping up the scene at the time and did not know what Martinez was doing. (Trial Tr. at 177.) Trooper Heaney explained: "When I

got in my car I noticed spit on my dashboard, steering wheel and everything else." (*Id*.) Trooper Heaney cleaned up the front area, including the steering wheel, before driving to the detention center. (*Id*.) Later, he "spent about an hour sanitizing the rear" of the vehicle. (*Id*. at 177-78.) Trooper Heaney explained:

> He had spit everywhere. It's my office basically. I'm in it all day every day, so I obviously was going to clean that up.

(*Id*. at 178.)

## III. Criminal mischief at trial, the jury instructions, and the question

Martinez did not cross-examine Trooper Heaney about the spitting incident. (*See* Trial Tr. at 184-204.) After Trooper Heaney's testimony, the State rested, and the defense immediately rested. (*Id*. at 208.) No motions were made by the defense after the settling of instructions or the close of the State's case. (*Id*. at 208, 213.) Other than an unrelated instruction objection, no objection was made to the jury instructions, including the criminal mischief jury instructions. (*Id*. at 210-12.)

In closing argument, the State addressed the criminal mischief charge:

> You will see the second page here has the criminal mischief. It's unfortunate that you had the opportunity to watch as the Defendant spit all over the backseat of the trooper's vehicle. Trooper Heaney talked about the experience and having to clean it up. That's—read the definition of criminal mischief in the instruction and you'll see that's criminal mischief. [*remainder of paragraph omitted*]

(Trial Tr. at 220.)

Martinez responded in closing that "[a]lthough [his] spitting in Trooper Heaney's vehicle was untoward, it did not injure, it did not damage, it did not destroy the property belonging to the State." (Trial Tr. at 232.)

During deliberations, the jury sent a note to the court, asking for a definition of "damage" as it related to criminal mischief, specifically inquiring whether it meant only "physical" damage. (Doc. 53, Second Question.) The following discussion between the parties and the court occurred:

> **STATE**: So, Your Honor, I was doing a quick look. This clearly is—the only time the word "damage'" shows up is in the instruction on criminal mischief, and I just looked and my quick word search shows no particular case that addresses that definition related to that crime, and I don't see anything showing up in our general definitions. I think the response would be something to the effect of that would be—I can't think of the right word. Maybe I'll come up with it. But in other words, it's really for the jury to decide whether damage was caused.
>
> **COURT**: Okay. [Defense Counsel].
>
> **DEFENSE COUNSEL**: Judge, as [the prosecutor] was looking into the case law very quickly, and definitions, didn't see anything specific, I wouldn't disagree with [the prosecutor's] position on that. Maybe this is just a question the jury is going to have to answer on their own; define "damage," if it's not defined by law.
>
> **COURT**: So one of the things I was thinking of in answering the question is just to say "damage" is to be understood in its usual and ordinary usage.
>
> **STATE**: I think that's fine.
>
> **DEFENSE COUNSEL**: I think that's good, Judge.

> **COURT**: So I'll send an answer in to the jury to that effect. So we'll be in recess.

(Trial Tr. at 241-42.) The district court accordingly responded to the jury that "damage" is "to be understood in its usual and ordinary usage." (*Id*.)

## IV. Facts related to imposition of fines, fees, and costs

Listed in the presentence investigation report (PSI) as a source of income was "VA Pension and VA Disability." (Doc. 61, PSI at 2.) Martinez further offered in the PSI that "my wife filed for divorce while I've been in jail, sold the house, and made money off the house but she is trying to go after my VA pension and VA retirement." (*Id*. at 7.)

At sentencing, the Court explained it had "received and reviewed the Presentence Investigation Report that was filed," and asked defense counsel for any "corrections or clarifications[.]" (Sentencing Tr. at 4.) Defense counsel responded no. (*Id*.)

Martinez provided a sentencing recommendation, in part asking the court to "suspend all fines, fees, public defender costs, et cetera." (Sentencing Tr. at 10.)

The district court largely suspended the fines and further explained it was imposing costs and surcharges "under 46-18-236, 46-18-232, and 3-1-317." (Sentencing Tr. at 11-12.) The district court explained:

> Defendant is 43 years of age, has a high school diploma, is divorced with 4 children, and is currently unemployed. The Court finds that the Defendant is able to meet the financial obligations of the sentence reasonably and without undue hardship. The Court is aware that the Defendant receives monthly income sufficient to pay those costs and has suspended the majority of the fines.

(Doc. 68 at 6; *see also* Sentencing Tr. at 13.)

## SUMMARY OF THE ARGUMENT

Viewed in the light most favorable to the State, any rational juror could have found that Martinez committed misdemeanor criminal mischief when he spit all over the interior of Trooper Heaney's vehicle. Without objection, the jury was instructed that "damage" could be understood by its common meaning. Any rational juror could have determined that Martinez damaged Trooper Heaney's vehicle by spitting biological material all over the steering wheel and front dashboard—thus impairing the vehicle's use and requiring the cleaning of the vehicle before transport to the jail. This Court should reject outright Martinez's other argument that misdemeanor criminal mischief requires a showing of pecuniary loss because Martinez cites no statute or decision requiring as much.

The district court did not clearly err when it steeply suspended fines and imposed nominal surcharges. After reviewing the PSI, the district court summarized Martinez's situation and explained it had "suspended the majority of the fines." The court considered Martinez's financial condition and his sources of

income and determined that Martinez could pay limited obligations. In settling on nominal fees, the district court followed its statutory duty to properly consider the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine would impose. The court specifically highlighted Martinez's very concerning behaviors, the need to provide for public safety, and the need to ensure the safety of the victims in the matter. This Court should affirm.

## STANDARD OF REVIEW

This Court reviews the question of whether sufficient evidence supports a criminal conviction de novo. *State v. McCoy*, 2021 MT 303, ¶ 25, 406 Mont. 375, 498 P.3d 1266.

This Court reviews a district court's determination of a defendant's ability to pay an imposed fine, fee, cost, or other charge for clear error. *State v. Dowd*, 2023 MT 170, ¶ 7, 413 Mont. 245, 535 P.3d 645. "A court's findings of fact are clearly erroneous if they are not supported by substantial credible evidence, if the court misapprehended the effect of the evidence, or if a review of the record leaves this Court with the definite and firm conviction that a mistake has been made." *State v. Reynolds*, 2017 MT 317, ¶ 16, 390 Mont. 58, 408 P.3d 503.

## ARGUMENT

### I. The State presented sufficient evidence that Martinez committed misdemeanor criminal mischief.

#### A. Applicable law

In reviewing sufficiency of evidence claims, this Court considers the evidence presented in the light most favorable to the prosecution, and it will uphold a conviction where "any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt." *McCoy*, ¶ 25. This Court's "job as an appellate court [is] to probe the record for evidence to support the fact-finder's determination." *State v. Dineen*, 2020 MT 193, ¶ 14, 400 Mont. 461, 469 P.3d 122. The inquiry is whether sufficient evidence exists to support the verdict, not whether the evidence could have supported a different result. *State v. Sheehan*, 2017 MT 185, ¶ 17, 388 Mont. 220, 399 P.3d 314. Thus, "whether the evidence could have supported a different result proves immaterial to our review." *State v. Burnett*, 2022 MT 10, ¶ 15, 407 Mont. 189, 502 P.3d 703.

This Court "will not substitute [its] judgment for that of the jury, which is able to view firsthand the evidence presented, observe the demeanor of the witnesses, and weigh the credibility of each party." *State v. Shields*, 2005 MT 249, ¶ 20, 328 Mont. 509, 122 P.3d 421. "It is only in those rare cases where the testimony of a witness is so inherently improbable or is so nullified by material

self-contradiction that no fair-minded person could believe it, that we may say no firm foundation exists for the verdict based on it." *Id*.

**B. Discussion**

Martinez argues insufficient evidence existed for his conviction because, as he alleges, an out-of-jurisdiction decision in *Ortiz v. Texas*, 280 S.W.3d 302, 303 (Tex. App. 2008), shows that the common usage of the term "damage" cannot encompass spitting in a patrol vehicle. (Appellant's Br. at 12-14.) Martinez also argues that there was no evidence presented regarding a "pecuniary loss," relying on *State v. Higgins*, 2020 MT 52, 399 Mont. 148, 18 P.3d 1006. (*Id*. at 11-12.)

The jury was instructed a "person commits the offense of criminal mischief if the person purposely or knowingly injures, damages or destroys any property of another without consent." (Doc. 52, Given Instr. #13.) In an element breakdown, the jury was instructed that criminal mischief was committed if the following elements were met:

> 1. That Allen Martinez damaged, injured or destroyed the property of the Montana Highway Patrol;
>
> AND
>
> 2. That Allen Martinez did so without the consent of the Montana Highway Patrol;
>
> AND
>
> 3. That Allen Martinez acted purposely or knowingly.

(*Id*., Given Instr. #14.) The jury was given the corresponding "purposely" and "knowingly" instructions. (*Id*., Given Instr. #16.) Other terms have been left undefined by the Legislature.[1]

Here, Martinez does not dispute that he spit all over the interior of Trooper Heaney's vehicle, including the steering wheel and front dashboard. He does not argue he lacked the requisite mental state to do so. Nor does Martinez dispute the "without consent" element. The only element of misdemeanor criminal mischief Martinez disputes is whether he caused "damage" when he spit throughout the vehicle.

Martinez fails to explain how the jury's resolution of the otherwise undefined "damage" term requires this Court's further intervention in analyzing the sufficiency of the evidence. The jury could have ascertained the meaning of the term—based on the jury's common understanding, as instructed by the district court—that resulted in Martinez's conviction for misdemeanor criminal mischief. Alternatively, the jury may have applied another term in the same statute, such as "injures." On sufficiency review, Martinez has not shown that the undefined terms in the criminal mischief statute have a technical meaning beyond the common

[1] The Criminal Law Commission Comments to Mont. Code Ann. § 45-6-101 clarify that "[t]his section defines the behavior that is punishable because it *harms or threatens to harm* property. Insofar as the section deals with purposeful, unjustified, actual harm to property, it corresponds with the traditional 'malicious mischief' offense." (Emphasis added.)

usage or that the jury was otherwise prohibited from freely reading undefined terms in an acceptable way in common parlance.

This Court has explained that "the Legislature need not define every term that it employs when constructing a statute." *State v. Ankeny*, 2010 MT 224, ¶ 22, 358 Mont. 32, 243 P.3d 391. Except where a statute is phrased in "technical words and phrases" that "have acquired a peculiar" or special legal meaning, statutory language must be construed in accordance with the plain meaning of the subject words and phrases in ordinary usage. *See* Mont. Code Ann. § 1-2-106. And if "a term is one of common usage and is readily understood, it is presumed that a reasonable person of average intelligence can comprehend it." *Ankeny*, ¶ 22 (citing *State v. Trull*, 2006 MT 119, ¶ 33, 332 Mont. 233, 136 P.3d 551; *State v. Nye*, 283 Mont. 505, 513, 943 P.2d 96, 101 (1997)). To the extent possible, statutes must be construed to effect the manifest intent of the Legislature in accordance with the clear and unambiguous language of its enactments, without resort to other means of construction. *Larson v. State*, 2019 MT 28, ¶ 28, 394 Mont. 167, 434 P.3d 241.

Based on the jury's conviction for misdemeanor criminal mischief—and in line with the common understanding of the term—the jury could have defined "damage" to include impairment of the use of property. *See, e.g., Black's Law Dictionary* (12th ed. 2024) (defining criminal damage to property as the "[i]njury,

destruction, or substantial impairment to the use of property . . . without the consent of a person having an interest in the property"). Trooper Heaney explained that he had to clean off the front interior of his vehicle before transporting Martinez to the station, and then he had to spend substantial time disinfecting the vehicle. As any rational juror could have concluded, the vehicle was damaged because Trooper Heaney could not use it before cleaning off biological material from the front interior of the patrol vehicle, and the vehicle was otherwise unusable until it was disinfected.

Persuasive authority confirms that Martinez's claim challenging the application of the term "damage" for criminal mischief has little merit. For example, in *State v. Wells*, 2025 VT 5, 331 A.3d 1137 (2025), the Vermont Supreme Court considered the application of its misdemeanor unlawful mischief statute, which similarly did not specifically define the term "damage." *Wells*, ¶¶ 8-12. In the case, Wells claimed that spitting and urinating in a cell did not constitute "damage" under the mischief statute. *Id*. ¶ 1. The *Wells* court approvingly cited *People v. Collins*, 288 A.D.2d 756, 733 N.Y.S.2d 289 (App. Div. 2001), where the New York Supreme Court, Appellate Division, explained "it is commonly recognized that the term [damage] contemplates injury or harm to property that lowers its value or involves loss of efficiency and that only slight damage must be proved." *Id*. ¶ 10 (citing *Collins*, 288 A.D.2d at 758, 733

N.Y.S.2d at 291). The *Wells* court rejected the notion that "urinating and spitting on property is not 'damage,'" because the definition would then exclude "intentional contamination with bodily substances or other harmful liquids that necessitates cleaning and disinfecting, but not repair[.]" *Id.* ¶ 11. The court explained that Wells's actions "resulted in the 'substantial impairment' of the holding cell because the cell became unusable until the damage that he caused was rectified[]" as the cell was cleaned and disinfected. *Id.* ¶ 9.

Martinez's citation to the Texas *Ortiz* decision is easily distinguishable on the facts and otherwise confirms the accepted interpretation of "damage." First, the *Ortiz* court broadly construed "damage" to include an analysis of the synonym "injure"[2] to include "injury that lowers value and impairs usefulness[.]" *Ortiz*, 280 S.W.3d at 305 (citing *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003)). But—in considering the sufficiency of the evidence—the court considered the situation where a pedestrian allegedly spit on the window of a law enforcement vehicle while walking by, but the officer testified he wiped the spit off the window "later in the day[]" and "did not testify to any effect its presence had on the value or usefulness of the vehicle or its window." *Id.* at 304-05. The court thus found the evidence "legally insufficient to support the conviction." *Id.* Contrary to

[2] This Court need not resort to defining synonyms because Montana's statute specifically denotes that a person also commits the offense when the person "injures" the property of another.

Martinez's unsupported suggestion—the *Ortiz* court did not rule that, as a matter of law, spitting could not constitute criminal mischief based on the common understand of "damage." Rather, it ruled that the testimony presented at trial showed the evidence was insufficient to prove damage occurred in that circumstance.

Unlike in *Ortiz* where someone spit on a patrol vehicle window while walking by and there was no evidence presented that the spit impaired the use of the vehicle, here, Trooper Heaney testified that he had to wipe the spit off the front *interior* of his vehicle to transport Martinez to the police station. In the light most favorable to the State, Martinez impaired the usefulness of the vehicle by causing a biological hazard all over the interior of the vehicle—including the steering wheel and dashboard—thus impairing the use of the vehicle and delaying his transport so the biological material could first be cleaned up.

As to pecuniary loss, Martinez never objected to the jury instructions given, nor does he raise a challenge on appeal to the jury instructions. Thus, Martinez must concede that the jury was fully and fairly instructed on the elements of misdemeanor criminal mischief and his substantial rights were not affected. Martinez is otherwise incorrect that misdemeanor criminal mischief required the jury to find "pecuniary loss" for a conviction to be sustained.

Criminal mischief requires that the person purposely or knowingly "injures, damages, or destroys any property of another or public property without consent[.]" Mont. Code Ann. § 45-6-101(1)(a). Subsection (3)—the penalty provision of the same statute—provides:

> A person convicted of the offense of criminal mischief shall be fined not to exceed $1,500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and *causes pecuniary loss in excess of $1,500* . . . the offender shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

Mont. Code Ann. § 45-6-101(3) (emphasis added). In line with the plain language of the statute, Martinez is at least correct, as far as it goes, that to be convicted of *felony* criminal mischief a showing must be made that a "pecuniary loss" occurred in excess of $1,500. But "pecuniary loss" is not mentioned in the offense statute, nor is it defined in relation to misdemeanor criminal mischief in the penalty statute. For the same reason, *Higgins* does not apply here because Higgins was charged and convicted of "felony criminal mischief," which requires a showing of pecuniary loss more than $1,500. *Higgins*, ¶¶ 3, 18-22; *see also State v. Palmer*, 207 Mont. 152, 160, 673 P.2d 1234, 1239 (1983) (considering pecuniary loss for felony criminal mischief); *State v. Allen*, 2001 MT 17, ¶¶ 3, 10-11, 304 Mont. 129, 18 P.3d 1006 (same). Accordingly, while this Court has explained that "[b]asically, the offense of criminal mischief becomes a felony when the pecuniary

loss caused is in excess of $1,500[,]" *Higgins*, ¶ 18 n.3, this Court has never said that any specified amount of pecuniary loss must be established for the misdemeanor offense, nor has the Legislature specified so in Mont. Code Ann. § 45-6-101.[3]

In summary, sufficient evidence existed to convict Martinez of criminal mischief because: (1) the State proved that Martinez impaired the use of Trooper Heaney's vehicle; and (2) the State was not obligated to prove pecuniary loss for misdemeanor criminal mischief.

## II. The district court did not commit clear error when it imposed limited fines, fees, and costs.

"[W]hen a defendant fails to object when the District Court failed to inquire into his ability to pay[,]" that failure to object "constitute a waiver that prevents [this Court] from reviewing the issue on appeal. *State v. Hinshaw*, 2018 MT 49, ¶ 16, 390 Mont. 372, 414 P.3d 271. Here, Martinez asked the district court to waive all costs, fines, and fees, but he did not object upon the sentence's

[3] *See also* Criminal Jury Instruction Commission Comments to MCJI No. 6-101(a) (2022), Criminal Mischief (explaining the Commission has "chosen not to include" facts specified in the penalty section of Mont. Code Ann. § 45-6-101(3) "in the pattern instructions defining each property offense," but "has included" pecuniary loss "as an 'element' that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the *felony* property offense" (emphasis added)).

imposition. While the failure to object at imposition was understandable because the district court actually did suspend the imposition of 80% of the fees for Counts I, II, and III, and 50% of the fee for count VI, this Court has explained that an objection encompasses a request for waiver of fines and fees. *State v. Yeaton*, 2021 MT 312, ¶ 16, 406 Mont. 465, 500 P.3d 583. Accordingly, under this Court's precedent, the State concedes that Martinez has preserved an objection.

The maximum penalty authorized for criminal child endangerment is 10 years in prison, a $50,000 fine, or both. Mont. Code Ann. § 45-5-628(3). The maximum penalty for misdemeanor criminal mischief is $1,500 and 6 months of imprisonment. Mont. Code Ann. § 45-6-101(3). The maximum penalty for disorderly conduct, first offense, is a $100 fine. Mont. Code Ann. § 45-8-101(2)(a). "In determining the amount and method of payment" of a fine, the court "shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine and interest will impose." Mont. Code Ann. § 46-18-231(3). Upon conviction of a felony, sentencing courts must additionally impose a surcharge of "the greater of $20 or 10% of the fine levied" unless the offender is unable to pay, or unable to pay within a reasonable time, upon consideration of the ability to pay required under Mont. Code Ann. § 46-18-231(3). Mont. Code Ann. § 46-18-236(1)(b), (2).

The district court acknowledged it had considered Martinez's resources and had decided to "suspended the majority of the fines." (Sentencing Tr. at 13.) Martinez did not dispute his financial situation as outlined in the PSI. The fact that the district court imposed, but reduced, Martinez's financial obligation shows that the court conscientiously considered the circumstances of Martinez's financial condition. *See, e.g., State v. Thompson*, 2017 MT 107, ¶ 2, 387 Mont. 339, 394 P.3d 197 (upholding fines reduced from $3,520 to $390 based on impact on the defendant's family); *State v. Schroder*, 2024 MT 59, ¶¶ 5-6, 415 Mont. 543, 545 P.3d 62 (upholding a restitution award reduced from $4,930.07 to $2,039 based, in part, on ability to pay).

Statutorily, a maximum $100 fine was the only possible punishment for disorderly conduct, and the court nonetheless suspended half of that fine. And, for misdemeanor criminal mischief, imposing fines and fees constituted the only effective punishment on a 6-month sentence with 405 days of credit imposed for time served. Finally, in imposing limited financial obligations for criminal child endangerment, the district court took "into account the nature of the crime[s] committed[,]" particularly considering the egregious nature of those offenses and Martinez's conduct. *See* Mont. Code Ann. § 46-18-231(3). The court considered the "reasons for the sentence that it reflects the Defendant's criminal history, his

very concerning behaviors, and the need to provide for public safety, as well as the safety of the victims in this matter." (Sentencing Tr. at 13.)

## CONCLUSION

As Martinez does not appeal his convictions for criminal child endangerment and disorderly conduct, this Court should affirm his convictions for those offenses. This Court should also affirm Martinez's conviction for misdemeanor criminal mischief as sufficient evidence supports the jury's determination. Finally, this Court should affirm the nominal fines, fees, and costs imposed.

Respectfully submitted this 24th day of November, 2025.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 5,008 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

*/s/ Roy Brown*
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## CERTIFICATE OF SERVICE

I, Roy Lindsay Brown, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-24-2025:

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