IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA-25-0081

STATE OF MONTANA

Plaintiff and Appellee,

v.

KODY ALLEN MARTIN

Defendant and Appellant.

APPELLANT'S OPENING BRIEF

On Appeal from the Montana Twenty First Judicial District Court,
Ravalli County, The Honorable Jennifer Lint, Presiding

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ISSUES PRESENTED

Did the district court violate Martin's Sixth Amendment right to a public trial when it cleared the courtroom for the testimony of his three accusers?

Did the district court err when it prohibited defense discovery and inquiry into the disciplinary record of an investigating officer?

STATEMENT OF THE CASE

The State of Montana charged Kody Allen Martin with various sexual crimes against three individuals who were minors at the time of the alleged abuse: K.T., J.P., and A.M. The State filed multiple amended charging documents to add or subtract charges, eventually settling on two counts of Sexual Intercourse without Consent in violation of Mont. Code Ann. § 45-5-503(4)(a)(1); two counts of Sexual Assault in violation of Mont. Code Ann. § 45-5-502(1), (3); and one count of Incest in violation of Mont. Code Ann. § 45-5-507(1). Third Amended Information at Doc. 104.

The case proceeded to trial on March 29, 2024, but resulted in a mistrial when the jury became deadlocked. First Trial 2, 350:1-351:5. A second trial was scheduled and commenced on August 16, 2024.

At the second trial, the jury found Martin guilty on all five counts in the third amended information. Verdict at Doc. 141. Martin was sentenced on

November 18, 2024, to concurrent terms of 100 years with 25 years suspended on the sexual intercourse without consent charges and 50 years with 25 years suspended on the assault and incest charges, all running concurrently. Sentencing, 21:10-22:21; Judgment at Doc. 152.

Martin timely filed his notice of appeal.

STATEMENT OF FACTS

The State alleged multiple incidents of sexual misconduct with three minors occurring over several years. K.T.'s alleged assaults occurred between 2009-2012 when she was approximately 6-9 years old. First Trial 2, 150:1-2. Her family had been close friends with Martin's family, and K.T. frequently stayed at their home. Second Trial 2, 262:7-265:12. The alleged conduct included digital penetration and sexual contact in a hot tub and bathroom. Second Trial 2, 276:1-9.

J.P., Martin's cousin, disclosed assaults occurring in 2017 when she was 14-15 years old. First Trial 2, 152:8-15. The incidents allegedly occurred at Martin's family property in Victor, including touching in a camper trailer. First Trial 2, 215:4-12.

A.M., Martin's daughter, disclosed incidents occurring in late 2021 when she was 13 years old. First Trial 2, 152:16-22. She alleged Martin inappropriately

touched her breasts during what began as play wrestling in her bedroom. First Trial 2, 266:12-267:23.

I. The district court cleared the courtroom for victim testimony.

Prior to the first trial, the State moved to exclude all non-essential persons from the courtroom during victim testimony.

> So I am making a motion or asking the Court to order that the courtroom be cleared of anybody, I guess, who is not associated with one of our offices or courtroom staff during the testimony of at least [A.M.], but I would prefer it for all three of the victims.
>
> I don't know how much the Court has perceived this, but it's very apparent during the investigations and during our trial preparation that the defendant's family is highly involved. There have been, really, with at least two of the victims, interactions of an intimidating nature during the investigation and after that. Among the victims and their families, I think there is a pretty significant concern that they're going to try to have a significant presence in the courtroom while these kids are testifying in order to try to intimidate them or show support for the defendant.
>
> Candidly, I think there's some concern by [A.M.]'s mom that her family might be overbearing in the same nature, and she's having a hard time communicating to them that she doesn't want them here. I have spoken with A.M. at length. She has indicated that one person and only that one person and her mother are the only people that she'd like in the courtroom. And so I'm asking the Court for that, I guess, special accommodation frankly just to make it so that it's not a distraction to the jury, not a distraction to the witness, and so that those witnesses aren't somehow being bullied by looks, commentary, sounds, anything else of that nature during their testimony.

First Trial 1, 14:2-15:8.

The Defense objected, arguing that "Mr. Martin has a right to a public trial. He has a right to have his family here as support." First Trial 1, 15:10-13. Counsel

further contended that both J.P. and K.T. were adults at the time of trial and "a special accommodation should not extend to them given they are adults at this point." First Trial 1, 15:15-18. The Defense pointed out that if family members misbehaved, "the Court can always ask them to leave at that point. But to deprive him of his ability to have some support or some showing of support with him in the courtroom on a maybe or a might happen is just unfair and against his right to that fair public trial." First Trial 1, 15:20-25.

The State then hedged its request: "Judge, to the extent it matters, if we can't get anything else, we would ask for it just in regard to [A.M.], at the very least. She's, I think, just about to turn 15 . . . ." First Trial 1, 16:12-15. The Defense agreed that was a fair compromise, and did not object to courtroom clearing for A.M.. First Trial 1, 16:20-22.

The Court ordered the courtroom would be cleared during the testimony of A.M., J.P., and K.T. The Court cited Mont. R. Evid. 611(a), finding it appropriate to "exclude from the courtroom anyone that is not professionally associated with either side" during victim testimony to protect witnesses from harassment and enhance the integrity of witness testimony. First Trial 1, 124:4-8. The court noted this would prevent prejudicial situations requiring judicial intervention in front of the jury. First Trial 1, 124:14-17.

At both the first and second trial, the public was cleared from the courtroom during the testimony of A.M., J.P., and K.T. First Trial 2, 208:19-209:9 (before J.P.'s testimony); First Trial 2, 263:8-19 (before A.M.'s testimony); First Trial 2, 164:11-18 (before K.T.'s testimony); Second Trial 1, 147:18-24 (before J.P.'s testimony); Second Trial 2, 243:14-22 (before A.M.'s testimony); Second Trial 2, 272:6-13 (before K.T.'s testimony).[1]

II. The district court prohibited evidence and questioning regarding an investigating deputy's disciplinary file.

A. The district court denies the defense subpoena for disciplinary records.

In the weeks before the second trial, defense counsel sought a Subpoena Duces Tecum and filed a Declaration in Support of Subpoena Duces Tecum seeking disciplinary records of a sheriff's deputy who had been involved in the investigation. Doc. 114. The Declaration detailed that disciplinary action had been taken against the deputy for disclosing confidential information and subsequently refusing to answer questions despite being ordered to do so. Anderson further revealed that this disciplinary action resulted in a referral to the Montana POST council with an

[1] K.T.'s testimony in the second trial occurred directly after a lunch break. The record does not indicate whether the courtroom was cleared during K.T.'s testimony in the second trial. If the district court reversed its ruling for K.T.'s testimony in the second trial, that is not in the record.

official letter dated October 3, 2023. Anderson argued the disciplinary information was relevant to the deputy's credibility, and that he was the main investigator for two of the alleged victims.

The State responded that the defense was using the wrong legal mechanism, arguing the request should be analyzed first under *Brady* and *Giglio* standards, then under the "substantial need" standard for extraordinary discovery under Mont. Code Ann. § 46-15-322(5). Doc. 117. The State contended the information was non-exculpatory, occurred years after the investigation, and that the deputy was not a key witness linking the defendant to the crimes since the victims themselves provided that evidence. Id.

The district court denied the Defense subpoena. The court held that defendant failed to establish either a *Brady/Giglio* issue or substantial need under Mont. Code Ann. § 46-15-322(5), noting that the Defendant provided no particularized explanation of how the deputy's disciplinary records could include exculpatory information. Doc. 118. After conducting an *in camera* review of the deputy's disciplinary record, the Court determined disclosure was not warranted. Id. at 9.

B. The district court prohibits defense questioning at trial.

During cross-examination of the deputy at the second trial, defense counsel attempted to question him about his training records and disciplinary history with the POST Council. Second Trial 1, 182:4-9. Out of the presence of the jury, defense

counsel indicated the questioning would address "why he switched or when he switched from detective to patrol" arguing this was relevant to the deputy's credibility. Second Trial 1, 183:18-25. The defense referenced the POST letter stating that in January 2023, while the case was pending, the deputy "refused to fully and honestly answer a question asked" which defense argued was "directly in line with his credibility and his ability to answer questions honestly." Second Trial 1, 185:9-16.

The State objected, arguing that any disciplinary action was "barred and irrelevant" and that defense "can't make a relevance argument other than she thinks it's relevant, which is insufficient under the law." Second Trial 1, 184:3-14. The State contended this was an "end run" around previous court rulings. Second Trial 1, 184:15-24. The State clarified that the deputy was disciplined for "failure to communicate information to a superior, which was deemed as insubordination. So not telling something that wasn't true, but not telling what he was asked to tell." Second Trial 1, 187:19-25.

The court sustained the objection, ruling that explaining "the complexities of what sheriff's officers' positions are" was "completely irrelevant." Second Trial 1, 187:4-8. The court found no connection between any disciplinary action and the current case, stating "I do not see that it is at all related to this case, not at all." Second Trial 1, 187:10-11. The court distinguished this from disciplinary action

"directly related to this investigation," which would warrant different consideration. Second Trial 1, 187:16-18.

C. The deputy's disciplinary files.

The disciplinary files reviewed *in camera* by the district court are now in this Court's record. The "Notice of Disciplinary Suspension" detailed the conduct that resulted in the deputy's discipline. During a meeting with his superiors, the deputy revealed that he knew he would soon be subject to a performance improvement plan. His superiors later discovered that the deputy received an actual copy of the PIP, which was a confidential document disseminated in violation of the Sheriff's Office policy. When asked about the disclosure of that information, the deputy repeatedly refused to cooperate with his superiors, telling them he would "need to think about it" before providing information.

The Notice reprimanded the deputy: "Your behavior has made clear that your loyalty lies with those that would violate office policy, rather than with the trustworthy and efficient operation of the Office for the community. . . . Your hiding of policy violations and protecting members who violate those policies erodes public trust, as well as the trust of your supervisors and other members of the Office." The deputy was suspended without pay for two weeks because of this transgression.

SUMMARY OF ARGUMENT

The district court's clearing of the courtroom during witness testimony violated Martin's right to a public trial under the Sixth Amendment of the U.S. Constitution and Art. II. Section 24 of the Montana Constitution. The State made assertions about the *possibility* of witness intimidation in the courtroom, providing no evidence or testimony to support its concern. The district court conducted no factual inquiry into the State's claims, and closed the courtroom to the public during the testimony of Martin's three accusers. This error was structural, requiring a new trial on all counts.

The district court also erred when it prohibited inquiry into the disciplinary records of the sheriff's deputy who was the lead investigator in the case. The disciplinary records contained impeachment evidence that demonstrated the deputy violated policy and withheld information. The document reviewed by the district court *in camera* specifically reprimanded the deputy for hiding policy violations and eroding public trust. After withholding this document from the defense, the district court then prohibited the defense from even asking about the deputy's reassignment to a different position after his misconduct. By withholding evidence and prohibiting this line of questioning, the defense was prohibited from impeaching the lead investigator in the case. This had a reasonable probability of changing the outcome of the trial.

STANDARDS OF REVIEW

This Court has plenary review over constitutional questions. *City of Missoula v. Duane*, 2015 MT 232, ¶ 11, 380 Mont. 290, 292, 355 P.3d 729, 732 (plenary review of 6th Amendment issues); *State v. Ilk*, 2018 MT 186, ¶ 15, 392 Mont. 201, 422 P.3d 1219 (plenary review of *Brady* violations).

A district court's determination of relevance and admissibility is reviewed for an abuse of discretion. *State v. Derbyshire*, 2009 MT 27, ¶ 19, 349 Mont. 114, 201 P.3d 811.

ARGUMENT

I. The district court violated Martin's right to a public trial by clearing the courtroom, the resulting structural error requires reversal.

A. Clearing the courtroom during his accusers' testimony violated Martin's right to a public trial.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." U.S. Const. amend. VI.

The U.S. Supreme Court has given strong protections to the right to public trial. *Waller v. Georgia*, 467 U.S. 39, 44, 104 S. Ct. 2210, 2214 (1984); *Presley v. Georgia*, 558 U.S. 209, 212, 130 S. Ct. 721, 723 (2010). This right, like nearly every right under the U.S. Constitution, "is subject to exceptions. Though these cases

should be rare, a judge may deprive a defendant of his right to an open courtroom by making proper factual findings in support of the decision to do so." *Weaver v. Massachusetts*, 582 U.S. 286, 298, 137 S. Ct. 1899, 1909 (2017) (citations omitted). "[T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Waller v. Georgia*, 467 U.S. 39, 48, 104 S. Ct. 2210, 2216 (1984).

Waller considered the State of Georgia's practice of closing suppression hearings for the broad concern of privacy interests. The Supreme Court noted that while specific situations may justify closing a suppression hearing, "the State's proffer was not specific as to whose privacy interests might be infringed . . . . [a]s a result, the trial court's findings were broad and general, and did not purport to justify the closure of the entire hearing." *Waller,* 467 U.S. at 48, 104 S. Ct. at 2216.

Presley reemphasized the requirement of specific facts and findings for a closure. The case concerned Georgia's practice of closing jury selection to the public because of concerns about juror safety or improper communications with the public in a crowded courtroom. The Court again recognized that jury selection may need to be closed in some cases, "[b]ut in those cases, the particular interest and threat to that interest must be articulated along with findings specific enough that a reviewing

court can determine whether the closure order was properly entered." *Presley*, 558 U.S. at 215, 130 S. Ct. at 725 (*citing Press-Enterprise I,* 464 U.S. 501, 104 S. Ct. 819 (1984)).

Article II, Section 24 of the Montana Constitution also provides the accused with the right to a public trial. In balancing that right, this Court has adopted the same principles and procedures outlined in *Waller*, *Presley*, and *Weaver*. *See State v. Northcutt*, 2015 MT 267, ¶ 8, 381 Mont. 81, 84, 358 P.3d 179, 182 (*citing Waller*); *Strommen v. Seventeenth Judicial Dist. Court*, 401 Mont. 554, 472 P.3d 1149 (2020) (*discussing Weaver* and *Presley*). *Strommen* considered the adoption of COVID protocols to limit public appearance in the courtroom during trial. Citing *Weaver*, this Court recognized that exceptions to the right of public trial should be rare and only after making proper factual findings in support of closure. *Strommen v. Seventeenth Judicial Dist. Court*, 401 Mont. 554, 472 P.3d 1149 (2020).

The district court here made no factual inquiry and closed Martin's trial to the public "[b]ased on the representations the state made that there could be influence from both sides . . . ." First Trial 1, 124:3-4. The court made no finding that witness intimidation was likely to happen, or that witnesses were fearing intimidation, or that supporters of either side would cause a disturbance. Nothing in the record reveals troublesome conduct of the public during hearings or at any other time in the case, nor does the State or district court reference any disruptive behavior. The court

did not rely on any evidence, testimony, or proof that these concerns were real or valid. Instead, the court relied on the State's bare assertion that there *could* be influence from Martin and the witness's families.

This reasoning and level of proof could be used to close any trial from public view. The State asserted that "the family was highly involved," that Martin's family would show up to the trial, that "there have been interactions of an intimidating nature," and that A.M.'s family was "overbearing." Three of those concerns are present in nearly every trial of this kind: families are present, involved, and interested in the outcome; supporters of both sides show up for the trial. Those facts cannot be valid reasons to close a courtroom. That leaves only the vague concern about "interactions of an intimidating nature." That concern was never given any detail or evidence by the State, nor was any finding made by the district court to support that assertion. This is not a "specific interest" supported by "particular findings" as contemplated by *Presley*. Rather, this is the exact situation *Waller* warns about: a murky proffer from the state leading to a "broad and general finding" in support of closure.

Presley and *Weaver* call for a trial court to "consider all reasonable alternatives to closure." *Weaver v. Massachusetts*, 582 U.S. 286, 297, 137 S. Ct. 1899, 1909 (2017) (*quoting Presley v. Georgia*. 558 U. S. 209, 130 S. Ct. 721, 175 L. Ed. 2d 675 (2010)). The district court had alternatives here. Montana courts

typically protect a child witness from pressure or interference by having the witness testify by video, out of the presence of the jury. *See* Mont. Code Ann. § 46-16-227. This Court has approved that practice and found it does not violate other guarantees of the Sixth Amendment, like the right to confrontation. *State v. Stock*, 2011 MT 131, ¶ 31, 361 Mont. 1, 10, 256 P.3d 899, 905. During the height of COVID, online public streaming was approved as an acceptable alternative to a fully open courtroom. *Strommen v. Seventeenth Judicial Dist. Court*, 401 Mont. 554, 472 P.3d 1149 (2020). The district court was likely not a stranger to either accommodation, but these alternatives were never considered.

The only legal authority cited by the district court was Mont. R. Evid. 611(a), which provides: "The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." By the research of undersigned counsel, no case has addressed whether this rule affords a district court broad discretion to exclude the public from a trial. The right to a public trial is a constitutional right of the accused, it cannot be so easily overridden by a statutory rule of evidence or a broad interest in protecting witnesses from routine discomfort. "Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the

vagaries of the rules of evidence. . . .” *Crawford v. Washington*, 541 U.S. 36, 61, 124 S. Ct. 1354, 1370 (2004).

B. This was structural error requiring reversal and a new trial.

The Supreme Court has divided constitutional errors into two classes: trial errors and structural errors. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148, 126 S. Ct. 2557 (2006). Trial errors are discrete mistakes that “occu[r] during the presentation of the case to the jury.” *Arizona v. Fulminante*, 499 U. S. 279, 307, 111 S. Ct. 1246 (1991). Structural errors, on the other hand, “affec[t] the framework within which the trial proceeds.” *Id*., 499 U.S. at 310. Because structural errors impact the framework of a trial, they “defy analysis by ‘harmless-error’ standards.” *Id*., 499 U.S. at 309. Structural errors are therefore exempted from the case-by-case harmlessness review to which trial errors are subjected.

The right to a public trial is a structural right. *Weaver*, 582 U.S. at 296, 137 S. Ct. at 1908. “[I]n the case of a structural error where there is an objection at trial and the issue is raised on direct appeal, the defendant generally is entitled to ‘automatic reversal’ regardless of the error’s actual ‘effect on the outcome.’” *Id.*, 582 U.S. at 299 (*quoting Neder v. United States*, 527 U. S. 1, 7, 119 S. Ct. 1827 (1999)).

The district court closed the courtroom over Martin’s objection, excluding the public, his family, and his supporters from watching the testimony of his three

accusers. This violation of Martin's right to a public trial implicated his structural rights, and requires reversal.

II. The district court erred when it prohibited defense inquiry into the disciplinary record of the investigating officer.

The constitutional mandates established in *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), and *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763 (1972), require prosecutors to disclose evidence favorable to the defense, including impeachment evidence that affects witness credibility. A criminal defendant's due process rights include the right to receive potentially exculpatory evidence from the State during discovery. *State v. Stutzman*, 2017 MT 169, ¶ 28, 388 Mont. 133, 398 P.3d 265. "Non-exculpatory impeachment evidence is constitutionally material only where the subject witness provides the key 'evidence linking the defendant(s) to the crime, or where the likely impact on the witness's credibility would . . . undermine[] a critical element of the prosecution's case.'" *City of Bozeman v. McCarthy*, 2019 MT 209, ¶ 14, 397 Mont. 134, 144, 447 P.3d 1048, 1055 (*quoting United States v. Payne*, 63 F.3d 1200, 1210 (2d Cir. 1995)).

In *Stutzman*, this Court established a two-part inquiry to determine whether to grant a new trial for a failure to produce exculpatory evidence: (1) whether the evidence is "favorable to the defense," and (2) whether there is a "reasonable probability" that the evidence could have effected the outcome of the proceedings.

Stutzman, ¶¶ 28-29. Where, as here, a witness's privacy rights intersect with the defendant's discovery right, courts must also balance the "substantial need" of the defendant with the nature and extent of an asserted privacy right. *City of Bozeman v. McCarthy,* 2019 MT 209, ¶ 18, 397 Mont. 134, 148, 447 P.3d 1048, 1058.

A *Brady* violation occurred when the district court refused to disclose the deputy's disciplinary file to the defense. The first prong is satisfied because the evidence withheld by the State is impeachment evidence that was clearly favorable to the defense. *See State v. Reinert*, 2018 MT 111, ¶ 17, 391 Mont. 263, 419 P.3d 662. The "Notice of Disciplinary Suspension" provided specific details that could be used as impeachment material: that the deputy had violated policy with another member of the sheriff's office, then violated policy himself when he refused to truthfully answer his superiors about his conduct; that his superiors chastised him for untruthfulness and eroding the trust of the community. Much of this was admissible impeachment under Mont. R. Evid. 608(b), which allows inquiry into specific instances of conduct probative of truthfulness.

Turning to the second prong, there is a reasonable probability that the outcome of trial could be different had the defense been permitted this evidence and line of questioning. This was not a case of overwhelming evidence of guilt: the jury in the first trial was deadlocked and unable to agree on any of the counts. Martin steadfastly

denied the allegations and the passage of time had eroded detail, memory, and evidence.

While attacking credibility is not equally effective for every witness, the deputy in this case was an investigator in charge of two of the investigations. Second Trial 1, 175:16-25. After being prohibited from inquiring on the deputy's reassignment to patrol, defense counsel's examination zeroed in on the deputy's lack of thoroughness in taking photographs and interviewing witnesses. Second Trial 1, 190:5-191:25. If the court had disclosed the Suspension Notice to the defense, it could have been used to support the defense position that the case was poorly investigated, or that the deputy was withholding a key fact. With a trial that was deadlocked the first time, there is a reasonable probability that the outcome would be different if the defense was armed with this evidence.

Turning to the balancing of interests required by Mont. Code Ann. § 46-15-322(5), the defense's need for evidence was far greater than the deputy's interest in privacy. As the suspension notice stated when reprimanding the deputy, the deputy's insubordinate conduct was a violation of trust with his office that also eroded public trust in the institution. Where truthfulness and the interests of public trust are implicated, they outweigh the privacy interest of a public employee. The record should have been provided under the "substantial need" balancing test described in Mont. Code Ann. § 46-15-322(5).

CONCLUSION

This Court should reverse and remand for a new trial.

Respectfully submitted this 30th day of October, 2025.

/s/ Nick K. Brooke
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CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that the Appellant's Opening Brief is printed with proportionately-spaced Times New Roman typeface of 14 points; is double spaced except for lengthy quotations or footnotes; and does not exceed 10,000 words. The exact words count is 4888 words as calculated by my Microsoft Word software excluding the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

Dated this 30th day of October, 2025.

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CERTIFICATE OF SERVICE

I, Nicholas Kirby Brooke, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 10-30-2025:

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