IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0337

STATE OF MONTANA

Plaintiff and Appellee

v.

STEVEN JUSTIN HEDRICK,

Defendant and Appellant.

APPELLANT'S OPENING BRIEF

On Appeal from the Montana Eleventh Judicial District, Flathead County, the Honorable Amy Eddy, Presiding.

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STATEMENT OF THE ISSUES

I. Whether the State failed to present sufficient evidence upon which a rational jury could convict Steven Justin Hedrick (Hedrick) of Deliberate Homicide?

II. Whether the District Court erred in its denial of Hedrick's Motion for Acquittal?

III. Whether the District Court erred by issuing unconstitutionally presumptive jury instructions?

IV. Whether the prosecutor engaged in misconduct, and whether the misconduct prejudiced his right to a fair trial?

V. Whether Hedrick received ineffective assistance of counsel?

STATEMENT OF THE CASE AND FACTS

On January 25, 2023, the State charged Hedrick by information with Deliberate Homicide under MCA § 45-5-213(1)(b). The State alleged Hedrick "attempted to commit, committed, or [was] legally accountable for the attempt or commission of assault with a weapon" MCA § 45-5-213(1)(b), "or any other forcible felony, and in the course of committing, or attempted commission of that forcible felony," he caused death of Jeffery Brookshire, (hereinafter, J.B.), within Flathead County, Montana. However, no predicate offense was specified. (D.C. Doc. 1.)

Hedrick's appointed counsel filed a Motion to Dismiss and Brief in Support on March 24, 2023, which the District Court granted in part on April 11, 2023. (D.C. Docs. 10, 13, 19.) Subsequently, the State filed an Amended information, specifying the underlying offense was the commission, or attempted commission of Assault with a Weapon, by way of reasonable apprehension. (D.C. Doc. 27.) On July 21, 2023, Hedrick filed a Notice of Affirmative Defense of Justifiable use of Force. (D.C. Docs. 33.)

On November 29, 2023, forty-eight (48) days before the Jury Trial, Amanda M. Gordon substituted in as the attorney of record. (D.C. Doc. 99.) On December 13, 2023, the District Court issued an Order noting Gordon was now counsel of record and articulated the Jury Trial was set for January 16, 2024. The Court made clear the trial was to proceed as set and it would not expect to entertain a continuance. (*See* D.C. Doc. 100.)

On January 8, 2024, Gordon confirmed for trial. Gordon did not file subpoenas for her witnesses until January 5th, and January 8th. (D.C. Docs. 101-06.) On the day of trial, the District Court issued Gordon's Subpoena Duces Tecum for the State Crime Lab to Produce Information, regarding the autopsy and any related tests performed. (D.C. Docs. 110, 113.)

On January 16, 2024, the Jury Trial commenced. (Transcript of Jury Trial (hereinafter JT Tr.) at p. 1[1].) After a jury was selected, the State gave its opening where the prosecutor made numerous objectionable statements with no objection from Gordon. (JT Tr. at pp. 182:7-183:3, 185:13-193:10.) Gordon reserved her opening, and the State began its case in chief by admitting and publishing Hedrick's 911 call (State's Exhibit 1-A, JT Tr. at pp. 195:22-197:7.) During that call, Hedrick told the 911 operator that Hedrick shot J.B. and J.B. was "threatening [him] and everybody all night. And [he] just tried the gun as a show of strength and [J.B.] rushed [him]." (State's Exhibit 1-A at pp. 1-2.)

During its case in chief, the State called five (5) separate law enforcement officers involved in the investigation: Tessa Cowan, Michael Hingiss, Seth Stratton, Tim Schuch, and Detective Boll. (JT Tr. at pp. 195:15-21, 225:1-10, 287:2-13, 338:23-24, 367:13-14.) Officer Cowan, who responded to the scene, described Hedrick as calm, cooperative, noted he was on crutches. This was also confirmed by Officer Hingiss's testimony. Officer Cowan did not believe Hedrick was a physical threat to her, and that based on her training and experience, she would feel threatened and in danger if

[1] The Transcripts did not have printed page numbers, and cited page numbers are based on the page number of the PDF provided by a standard PDF viewer.

someone had charged her. (JT Tr. at pp. 208:14-23, 210:4-25, 213:18-214:5, 222:14-224:1-9.)

Officer Hingiss responded to the scene and determined J.B. was deceased. Notably, while assessing the scene Officer Hingiss noted Hedrick's apartment to be small and "pretty tight quarters." (JT Tr. at pp. 225:1-10, 227:1-16, 228:8-25, 229:11-15, 234:1-18, 237:3-10.)

Seargent Stratton was called to the scene and spoke with neighbors from surrounding rooms: Angela Hardin, William Gimenez, Jasmine Jones, Karen Peters, Eric Keedy. Most of these witnesses were in their apartments during the incident, did not know what was going on, did not open their doors, and were unable to provide Sgt. Stratton with specific statements said during the incident, only that they heard a lot of cursing. (JT Tr. at pp. 287:2-13, 289:8-23, 293:13-18, 294:1-295:24.) Hardin and Peters **did** open their doors and described J.B. as being agitated. This gave Sgt. Stratton the impression J.B. was being verbally and physically aggressive. (JT Tr. at p.300:13-301:7.) Sgt. Stratton also spoke with Patricia Hawkins, J.B.'s ex-girlfriend, who indicated she did not want to open the door for J.B. because she knew he would hurt her, and instead of going after her, J.B. went after Hedrick. (JT Tr. at pp. 298:13-299:1.)

While transporting Hawkins to the station to conduct an interview, Sgt. Schuch learned J.B. was bipolar, diabetic, and diagnosed with intermittent explosive disorder. (JT Tr. at p. 338:23-24.) He also learned J.B. threatened to kill Hawkins that evening and she reiterated she was afraid of him. (JT Tr. at pp. 356:13-357:1, 359:4-23, 360:15-23, 361:7-23.) Sgt. Schuch also reviewed the security footage[2] and observed J.B. attempt to strike Hawkins with a "haymaker" earlier in the evening – an action that Sgt. Schuch agreed constituted assault. Sgt. Schuch also observed J.B. scream at other residents, initiate arguments, raise his middle finger, and direct anger towards Hedrick. (JT. Tr. at pp. 358:2-19, 364:7-9.) Regarding Hedrick, Sgt. Schuch testified only as to his cooperation with law enforcement. (JT. Tr. at 356:5-12, 358:20-22.)

The State then called Jennie Payne, the property manager at Local's Hotel (Local's) who knew and was familiar with J.B. and Patricia Hawkins as residents of Local's. (JT Tr. at pp. 252:16-23, 253:13-24, 254:9-22.) Payne was aware Hawkins and J.B.'s relationship ended on January 23, 2023, because J.B. requested Payne place him in a different apartment. Payne described J.B. as very distraught and she distanced him from Hawkins by placing him on the second floor. (JT Tr. at p. 255:1-13.) Payne knew J.B. for

[2] All security footage lacked audio capabilities.

up to six (6) months prior to the incident and described him as having a reputation for being volatile[3]. (JT Tr. at p. 275.) Although Payne was not present for the incident, she reviewed the security footage (which lacked audio) and confirmed she observed J.B. acting very upset, agitated, belligerent, irrational and angry. (JT Tr. at pp. 259:10-261:3, 276:10-23.)

The State published State's Exhibit 15 to the jury and simultaneously questioned Payne. (JT Tr. at p. 263:11.) At 12:41 p.m., J.B. came downstairs and lay next to Hawkins' door. Hawkins appeared to interact with him for a period and then retreated into her room. (JT Tr. at p. 264:4-21, State's Exhibit 15 (hereinafter Ex. 15) at 6:19-7:37.) Payne recalled J.B. remained at Hawkins' door banging and kicking it as Angela Hardin, an upstairs neighbor, came downstairs and Karen Peters stepped outside her door. (JT Tr. at pp. 265:1-266:14.) Ex. 15 depicted Hardin's attempt to interact with J.B. as he continued to kick Hawkins' door. He then became aggressive towards Hardin, appeared to chase her and yell at her. (Ex. 15 at 25:11-26:06.).

Then, Hedrick peaked out his door, maintaining distance, and J.B. began forcefully kicking Hawkins' door. After a while, J.B. headed back upstairs. As J.B. passed Hedrick's door, J.B. forcefully yelled at Hedrick and

[3] Although the State did object, and the District Court sustained the objection, Payne answered the question, and the answer was not struck from the record.

continued to do so as he walked past Hedrick's door. (Ex. 15 at 26:36-27:47.) Hedrick appeared calm and stayed in his apartment doorway. After J.B. went upstairs, Hedrick and Peters closed their doors. (Ex. 15 at 27:47-28:36.)

The hallway remained empty until roughly five (5) minutes later, when Hedrick exited his room. As he neared the end of the hallway, Hawkins opened her door, and the two conversed for a moment. Hedrick returned to his room and the hallway remained empty until J.B. appeared and again began banging on Hawkins' door. (Ex. 15 at 32:52-33:40.)

J.B. continued to beat on the door as Hedrick's head and booted foot poked out of his doorway. Hedrick and J.B to talked until J.B.'s arms became animated. (Ex. 15 at 50:30-51:20.) Then, with his hands moving around in his pockets and waist area, J.B. took two steps towards Hedrick's open door. Hedrick went back into his room. J.B. continued toward Hedrick's room when Hedrick appeared in his doorway with his pistol in his hand, pointed at the ground. J.B. continued forward, aggressively pointing at Hedrick as Hedrick raised the pistol toward J.B. Hedrick did not advance on J.B., and instead, stood his ground in the doorway of his small apartment while balancing on crutches. J.B. approached within inches of Hedrick's pistol as it was pointed at J.B.'s head and angrily pointed towards himself. J.B. stepped toward Hedrick again, grabbed hold of the barrel of the pistol, pulled the barrel, and

the gun discharged. J.B. collapsed and stayed motionless. Within seconds, Hedrick called 911. (Ex. 15 at 51:20-51:36, 53-55:42, JT Tr. at p. at 272:12-17.)

The State called Karen Peters who lived at Local's for six (6) months at the time of the incident. (JT Tr. at pp. 302:20-24, 303:3-305:25.) That night, Peters confirmed J.B. was shouting and kicking on Hawkins' door, and that she could hear Hawkins tell J.B. to go away. (JT Tr. at pp. 306:3-13, 307:2-8, 9-17.) Peters observed an upstairs neighbor, presumably Hardin, confront J.B. Peters testified Hardin mentioned calling the police. In response, J.B. jumped up and leaped at her in a threatening way causing Hardin to quickly step backwards and flee. (JT Tr. at pp. 307:18-308:10-16, 326:9-25.)

As J.B. yelled at the upstairs neighbor, he turned towards Peters almost as if squaring up to her, causing her to step back into her doorway. However, she came out again because she was concerned for Hawkins' safety. Peters noted J.B.'s threatening demeanor, and how she felt he created a tense environment that night. (JT Tr. at pp. 310:4-5, 323:18-22, 324:3-24, 335:1-10.) While J.B. was on his tirade, Peters observed Hedrick open his door and look out appearing "relaxed, casual." Peters testified disturbances in the building were a common occurrence. (JT Tr. at pp. 309:1-25, 310:13-19, 322:15-323:5.) After J.B. left for a period, Peters heard two male voices angry

and shouting at each other, but she could not make out what they said. (JT Tr. at pp. 311:2-12, 312:1-22.)

The State then called Detective Boll to testify, who interviewed Hedrick after the incident. Without objection, the State introduced State's Exhibit 34, a recording of Det. Boll's interview with Hedrick. (JT Tr. at pp. 367:13-14, 368:20-25, 383:8-16, 385:1-5.) In the video Det. Boll informed Hedrick he intended to review Hedrick's Miranda rights with him. Hedrick indicated he would speak with Det. Boll but would want an attorney at some point. (State's Exhibit 34 (hereinafter Ex. 34) at 3:12-5:14.)

Hedrick informed Det. Boll he lived in his current apartment since September but resided at Local's since July of 2023. He said Local's felt increasingly dangerous, as he observed "tweakers" coming in and out of the hotel, people being assaulted, and people selling drugs. (Ex. 34, at 8:57-9:23, 9:40-10:23.) In fact, just ten (10) days prior to this incident Hedrick was attacked, without explanation, by a **different** neighbor in the same hallway, only five (5) days after his ankle surgery. (Ex. 34 at 8:57-9:05, 10:30-10:56, 12:35-12:53, 24:38-29:54, 39:54-31:40.) Det. Boll testified that he did not believe Hedrick instigated the prior attack and in fact, Hedrick was found to have acted in self-defense by Whitefish police and was not charged with any offense. (JT Tr. at pp. 407:2-22, 411:3-16, 423:1-17.)

Hedrick told Det. Boll he was startled awake on the night of the night of the incident by someone screaming and what he thought was beating on **his** door. (Ex. 34 at 11:55-12:10, 13:29-14:04.) Hedrick opened his door and observed J.B. across the hall beating and kicking on Hawkins' door. When Hedrick tried to speak with J.B., he told Hedrick to "go fuck himself," that J.B. "would kill [Hedrick]," that J.B. "didn't give a fuck right now," and for Hedrick to call the cops. (Ex. 34 at 5:14-6:41.) Hedrick tried to calm J.B. down, but J.B. continued to yell at and threaten Hedrick. (Ex. 34 at 6:41-7:05, 14:50-15:16.)

Other neighbors tried to calm J.B. down, but when they mentioned calling the police, J.B. yelled "bring it[,]" and ranted about fighting people. (Ex. 34 at 15:16-16:15, 18-18:19, 18:38-19:04.) Hedrick told Det. Boll he knew J.B. beat on Hawkins, and that Hawkins and J.B. fought often. (Ex. 34 at 19:04-19:36, 24:38-29:54, 39:54-31:40.)

After a while, J.B. left, but came back and again began beating on Hawkins' door, saying things like "I'm not leaving, you're going to regret this." (Ex. 34 at 7:05-7:24, 21:50-22:15.) Hedrick approached his door but first grabbed his gun off the kitchen counter as "a show of strength," because he felt J.B. was acting crazy and unpredictable. (Ex. 34 at 7:24-7:39, 8:19-8:57.)

As Hedrick again opened the door, J.B. told Hedrick to "fuck off, I will fucking kill you," and more. (Ex. 34 at 7:24-7:42.) Hedrick closed the door, but when he heard J.B. continue to beat Hawkins' door, he opened his door again. As he did, Hedrick told J.B. "dude, hey," and "calm down," and "no one has called the cops yet." J.B. continued to threaten him, turned and came at Hedrick. (Ex. 34 at 7:42-7:56, 22:28-22:54.) Det. Boll asked Hedrick what Hedrick was feeling at that point, to which Hedrick replied that J.B had already threatened him with violence. (Ex. 34 at 38:00-40:06.)

Twenty-two (22) minutes into the interview, Hedrick told Det. Boll he wanted to speak with his attorney. (Ex. 34 at 22:50-23:14.) However, Det. Boll continued to ask Hedrick questions, and in fact, repeated the same question which prompted Hedrick to request an attorney. (Ex. 34 at 23:19-23:48.) Hedrick's invocation of his right to an attorney was played for the jury with no objection from Gordon.

Next, the State called Dr. Sunil Prashar, M.D. to testify. Dr. Prashar performed J.B.'s autopsy and found the cause of death to be "a gunshot wound to his head. . . ." (JT Tr. at pp. 432:10, 435:24-436:1-15, 447:8-13.) Dr. Prashar testified J.B. had 0.184 blood level of alcohol, and 6.1 nanograms per milliliter of THC, (the legal driving limit is 5 NGmL). (JT Tr. at p. 443:2-11.)

The State rested at the end of Dr. Prashar's testimony and Gordon moved for a directed verdict. The District Court denied the same. (JT Tr. at p. 470:18-1.)

The trial proceeded with Gordon's opening statement and first witness. Gordon called Patricia Hawkins, who testified at the time of the incident, she recently ended her relationship with J.B. due to his physical and emotional abuse. (JT Tr. at pp. 471-477:10-11, 479:20-22.) Hawkins confirmed J.B. had "explosive emotional disorder," and was bipolar, all of which manifested in J.B.'s abusive behavior. She believed many neighbors, including Peters and Hedrick, were aware of the abuse and they heard her and J.B. fighting and yelling. (JT Tr. at pp. 487:7-24, 490:19-491:6, 492:7-18, 504:6-17.)

The day she ended their relationship J.B. went out drinking. Hawkins was concerned, because when J.B. was in was a dysregulated state, "[h]e became very agitated, and more emotional, and angry." Her concern was validated when J.B. showed up at her door and began attacking it. (JT Tr. at pp. 489:5-490:20, 492:2-16.) Hawkins opened the door and tried to get J.B. up from the floor, and as soon as she mentioned someone calling the cops, J.B. swung at her. Hawkins retreated and locked the door. (JT Tr. at p. 494:2-24.) Hawkins described J.B.'s behavior as irate, and said she was scared because when J.B. became irate, he became abusive. That once he got started, he was not going to stop. (JT Tr. at pp. 495:12-14, 496:1-3, 515:4-10.)

J.B. continued banging on her door. At one point, she heard Hedrick interact with J.B. but described Hedrick's calm tone, noting he was stern but not angry. Hawkins never heard Hedrick threaten J.B. or swear at him. (JT Tr. at p. 497:2-498:10.)

After J.B. went upstairs, he texted and called Hawkins threatening to kill her. (JT Tr. at pp. 498:13-499:6.) When J.B. returned downstairs, Hawkins described his renewed beating on the door as ". . . like he was trying to shoulder his way in." (JT Tr. at pp. 500:19-501:6-17.) She told J.B. she was afraid he was going to hurt her and that she would not open the door. J.B. responded with "open the F'ing door and find out." (JT Tr. at p. 501:18-21.) Shortly after, Hawkins heard Hedrick's door opening, and J.B. stated very loud and angrily, "I helped you and this is what you're doing to me." (JT Tr. at pp. 502:13-25, 503:4-14.) After the gun went off, Hawkins heard Hedrick saying "oh, no" repeatedly. When she opened the door, the first thing Hedrick said to her was he was sorry – that J.B. grabbed the gun and it went off. Hawkins testified that, throughout the entire incident, she was never afraid of Hedrick. (JT Tr. at pp. 505: 1-12, 506:8-16, 507:9-19.)

Gordon next called Howard Webb, a law enforcement trainer since 1980, to testify. Webb had extensive police training experience, wrote the first police use of force textbook, and developed scenario-based use of force

training. (JT Tr. at pp. 540:1-6, 541:1-542:12.) In preparation for his testimony, Webb spent twelve hours reviewing the copies of the videos and the interviews. Based on Webb's experience in analyzing use of force, he believed Hedrick's actions to be justified. (JT Tr. at p. 544: 4-9, 564:13-23.)

In forming this opinion, Webb applied an objectively reasonable standard while reviewing the case materials and relied on his "experience in reviewing actions of officers and other people who are put in similar situations." (JT Tr. at pp. 549:23-25, 550:3-8, 553:3-5.) Webb considered J.B.'s altered mental state, his anger, mental illness, intoxication, his emotional state, the threats J.B. had made to Hedrick and others, and J.B.'s violent behavior that evening. He believed J.B. was unpredictable, and dangerous. Given the short distance between Hedrick and J.B., Hedrick's time and ability to react to an attack would be shortened. Webb also factored Hedrick's ankle injury into his analysis, stating such an injury put him at even greater risk of danger, because an injured person would need more strength than a fist to defend themselves. (JT Tr. at pp. 562:8-18, 566:1-23, 568:2-569:6, 570:1-24.) Webb ultimately testified a person in Hedrick's position would be justified in using deadly force in response to J.B.'s actions. (JT Tr. at pp. 563:23-564:3, 568:2-569:6, 574:6-12, 601.) While on cross, the State elicited testimony regarding Hedrick's assertion to his right to counsel and

provided commentary about Hedrick's request to speak with counsel. (JT Tr. at pp. 591:18-592:6.) Gordon failed to object.

Gordon then called Hedrick to testify. (JT Tr. at p. 620:1-10.) On the night of the incident, Hedrick was aware of J.B. and Hawkins fighting, and he could hear Hawkins screaming for J.B. to stop hitting her.[4] (JT Tr. at pp. 631:17-25, 632:1-13.) Hawkins showed Hedrick her injuries and confided in him J.B. had "uncontrolled anger issues, once he gets going it's hard to stop him." (JT Tr. at pp. 632:22, 635:5-12.)

Hedrick testified about the incident itself, testimony that mirrored his statement to police.[5] Hedrick reiterated he was startled out of bed by yelling and someone trying to kick a door. Hedrick saw J.B. violently attack Hawkins' door multiple times, tried to talk J.B. down, only for J.B. to threaten him, screaming he was going to "kick [Hedrick's] ass," and J.B. was "going to fuckin' kill [Hedrick]." (JT Tr. at pp. 639:19-640:7, 642:13-16, 644:9-13, 646:22-25, 647:23-648:13.)

Hedrick noted when he saw Peters tell J.B. she would call the cops, J.B. "charge[d] at her and she retreat[ed] into her room." (JT Tr. at p. 648:18-24.)

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[4] While the State did object to this line of questioning, it failed to ask Hedrick's testimony struck.

[5] Depiction of Hedrick's testimony only highlights facts not addressed in his statement to Det. Boll.

At one point, when Hedrick mentioned calling the police, J.B. responded with aggression. This made Hedrick feel J.B. was preparing to attack. (JT Tr. at p. 652:3-19.) Overall, Hedrick noted J.B. screamed challenges for people to fight him, was physically violent, and exhibited rage and unpredictability. (JT Tr. at pp. 649:9-650:6, 651:10-13, 652:1-2.)

Hedrick went outside to smoke, and upon his return, he heard J.B. in the hallway. (JT Tr. at pp. 665:21-25, 666:7-10, 668:11-18.) J.B. again started to rap on Hawkin's door, threatening Hawkins in a calm but "very psychotic" tone to "open your door, you're going to regret this, you're going to find out, you're disturbing the neighbors, please open the door." (JT Tr. at p. 669:7-15.) Hedrick again opened his door, and J.B. told him "you fuckin' go back in your room or you're going to find out, I'll fuckin' kill you." (JT Tr. at p. 671:12-17.) Hedrick went back inside, until J.B.'s knocking became louder, and shortly after Hedrick opened his door again. (JT Tr. at pp. 671:17-24, 691:19-692:2.) Because of J.B.'s behavior and threats, Hedrick placed his pistol by the door before he opened it. Hedrick did not want to hurt J.B. but wanted his pistol close by in an abundance of caution, considering the night's events. (JT Tr. at pp. 672:3-11, 677:16-678:6.)

When Hedrick opened the door one more time, J.B. threatened to beat him and to kill him. (JT Tr. at pp. 673:5-7, 691:19-692:2.) In a manner of

seconds, Hedrick saw J.B. reach into and around his waist band. Based on J.B.'s threats and actions that night, Hedrick believed J.B. was reaching for a weapon. (JT Tr. at p. 673:5-16.) Hedrick grabbed his gun in response because without a weapon, Hedrick had a physical disadvantage. (JT Tr. at p. 673:14-19.) As he did, J.B. closed the distance between them and Hedrick raised his firearm. Hedrick stated "[w]hen [J.B.] seen (sic) the firearm his face - - he lost it. He was enraged, and his face - - he was screaming. I was panicking." Hedrick felt J.B. was charging him. (JT Tr. at p. 674:7-21.)

J.B. then grabbed the barrel of the gun and Hedrick stated he was afraid J.B. was going to follow through on his threats. Hedrick testified this all happened so fast he did not have time to think, only to react. Hedrick was worried he was going to be attacked, like he was just ten (10) days prior, or killed. During those seconds in time, Hedrick stated he was "solely focused on [his own] protection." (JT Tr. at pp. 675:17-20, 676: 5-14, 679:2-19, 680:2-13, 725:7-15.)

On cross examination, the State drilled Hedrick on how he never told Det. Boll specifically he was afraid and suggested Hedrick's request to speak with an attorney was a sign of guilt. (JT Tr. at p. 694.) The State ridiculed Hedrick for asking to speak with an attorney during the interrogation and asked Hedrick whether he needed to consult with anyone to answer the State's

questions at trial. (JT Tr. at p. 727:1-14.) At the end of Hedrick's testimony, Gordon rested, and jury Instructions were settled, during which Gordon failed to object. Jury instructions were read to the jury, and the State began its closing. (JT Tr. at pp. 654:1-733:7-14, 735:14-747:4.)

During closing statements, the State made numerous objectionable statements, opinions, and argued the incorrect standards of law to the jury. the State also argued for the jury to rely on public sentiment, public policy, and public sympathy. (JT. Tr. at pp. 761:17-24, 791:6-13, 792:19-793:13.) Additionally, the State misstated multiple facts to the jury by and argued incorrect standards of law. (JT. Tr. at pp. 747:10-748:9, 753:10-20, 757-758:9-13, 758:17-23, 761:4-16, 762:8-15, 791:14-21.) Gordon failed to object.

In Gordon's closing, and in response to the State's factually unsupported argument that Hedrick shot Jeff to shut him up, Gordon stated "I don't really know how to respond to that, so I'll leave that to you, the members of the jury, to decipher." (JT. Tr. at pp. 762:20-763:2.) At one point, Gordon confused her client's name and the victim's name and argued "[t]here's no way that Mr. Brookshire was the aggressor that night[,]" which was contrary to the theory of defense and evidence. (JT Tr. at pp. 771:2-6.) Gordon further repeatedly reminded the jury of Hedrick's request to speak to an attorney

during the police interrogation, but failed to ask for a corrective instruction. (JT. Tr. at pp.773:17-18, 782.)

The jury deliberated and ultimately found Hedrick guilty of Deliberate Homicide, as was stated on the verdict form, and the District Court set sentencing for March 7, 2024, at 9:00 a.m. (JT. Tr. at pp. 800:9-10, 802:20-22.) On February 16, 2024, the District Court received a kite from Hedrick expressing concern with his attorney. The District Court issued an order appointing the Office of the Public Defender and set a hearing. (D.C. Docs. 127, 129, 130.) At the hearing, District Court put on the record Gordon was informed of the hearing date, time, and indicated to the Court she would be present by Zoom. Gordon did not appear. (February 22, 2024 Representation Hearing (hereinafter 2/22/24 Rep. Hr'g) at p. 6:3-17.) It was further learned as of February 9, 2024, Gordon was not authorized to practice law in Montana. The District Court removed Gordon as counsel, appointed OPD, and set sentencing for March 21, 2024. (2/22/24 Rep. Hr'g at pp. 6:18-7:13, 8:2-10.)

Benjamin Darrow was assigned to represent Mr. Hedrick, and on March 12, 2024, Darrow filed an opposed motion to continue the sentencing hearing to May 9, 2024, while the Court did grant a continuance, it was only to April 4, 2023, giving Darrow only forty-one (41) days to prepare. (D.C. Docs. 132, 139.)

On April 4, 2024, Darrow filed Defendant's Motion for New Trial, Brief in Support, and Request for Hearing, Defendant's Sentencing Memorandum, and Defendant's Motion for Acquittal or Renewed Motion for Dismissal Due to Insufficient Evidence. (D.C. Docs. 142, 143, 144.) At sentencing, the District Court denied Darrow's motion for a new trial due to the motion being filed outside of the 30-day time limit. (April 4, 2024 Sentencing Hearing Transcripts (hereinafter Sent. Hr. Tr.) at pp. 6:21-7:23.) Further, the District Court found the motion failed to meet the substantive requirements for a new trial. (Sent. Hr. Tr. at pp. 7:24-8:18.) Darrow brought his additional motions to the attention of the District Court, and without reading the motion, denied it for "reasons put on the record by the court this morning." (Sent. Hr. Tr. at pp. 9:15-10:2, 15-23.) Ultimately, the District Court sentenced Hedrick to 30 years MSP with no time suspended. (Sent. Hr. Tr. at pp. 33:8-15.)

Hedrick now timely appeals. (D.C. Doc. 150.)

STANDARDS OF REVIEW

This Court reviews "a challenge to the sufficiency of evidence to determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. DeMarie*, 2025 MT 115, ¶

18. This Court reviews such challenges de novo. *State v. Craft*, 2023 MT 129, ¶ 10.

Issues not raised before a district court are generally not reviewed on appeal. However, the plain error doctrine, though applied sparingly, may be invoked "in situations that implicate a defendant's fundamental constitutional rights when failing to review the alleged error may result in a manifest miscarriage of justice, leave unsettled the question of fundamental fairness of the proceedings, or compromise the integrity of the judicial process." *State v. Hayden*, 2008 MT 274, ¶ 27.

This Court reviews "the grant or denial of a motion to dismiss de novo to determine whether the district court's conclusions of law are correct." *State v. Seiffert*, 2010 MT 169, ¶ 10.

This Court reviews "a district court's jury instructions in criminal case to assess whether the instructions, when considered as a whole, fully and fairly instructed the jury on the applicable law. *State v. Rowe*, 2024 MT 37, ¶ 17. This Court "will only reverse if the district court abused its discretion in any way that prejudicially affected a defendant's substantial rights. *Id*. "'If the instructions are erroneous in some aspect, the mistake must prejudicially affect the defendant's substantial rights in order to constitute reversible error.'" *Id*. (quoting *State v. Devereaux*, 2022 MT 130, ¶ 20). "Jury

Instructions that relieve the State of its burden to prove each element of an offense violate a defendant's right to due process." *Rowe*, ¶ 17.

"Ineffective assistance of counsel claims are mixed questions of law and fact which [this Court] review[s] de novo. *State v. Wright*, 2021 MT 239, ¶ 7.

This Court reviews "allegations of prosecutorial error de novo, considering the prosecutor's conduct in the context of the entire proceeding." *State v. Dobrowski*, 2016 MT 261, ¶ 8. If the misconduct prejudices a defendant's right to a fair trial, reversal is required. *State v. Hayden*, 2008 MT 274, ¶ 24. A defendant must demonstrate their right to a fair and impartial trial was prejudiced by the improper comments. *State v. Gladue*, 1999 MT 1, ¶ 27.

This Court exercises "plenary review of constitutional questions, including alleged violations of a criminal defendant's due process rights." *State v. Severson*, 2024 MT 76, ¶ 6.

SUMMARY OF THE ARGUMENT

The State failed to present sufficient evidence upon which a rational jury could find, beyond a reasonable doubt, Hedrick committed the offense of Deliberate Homicide, by attempting to cause J.B. reasonable apprehension of serious bodily injury with a weapon. The State further failed to provide sufficient evidence that during the alleged attempt, Hedrick

caused J.B.'s death. Further the State failed to present sufficient evidence to prove beyond a reasonable doubt Hedrick was not justified. Hedrick is entitled to an acquittal of the guilty verdict against him.

Alternatively, the District Court erred when it failed to review and summarily denied Hedrick's motion for acquittal as the charge of attempted assault with a weapon is a nonexistent crime. This Court should find District Court erred, and order reversal and remand for acquittal.

Alternatively, this Court should grant Hedrick a new trial as his right to due process was violated when the District Court provided unconstitutionally presumptive jury instructions, that lessened the State's burden of proof by omitting the requirement for the State to prove causation of J.B.'s death, and the superseded the State's requirement to provide sufficient evidence to challenge Hedricks's assertion of justifiable use of force.

Alternatively, this Court should grant Hedrick a new trial as the prosecutor engaged in misconduct that violated Hedrick's right to a fair trial as it invaded the province of the jury.

Alternatively, this Court should grant Hedrick a new trial as Hedrick's counsel provided ineffective assistance, which prejudiced Hedrick's rights to due process.

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ARGUMENT

I. THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE UPON WHICH A JURY COULD CONVICT HEDRICK OF DELIBERATE HOMICIDE

"[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of *every fact* necessary to constitute the crime for which he is charged." *Sandstrom v. Montana*, 442 U.S. 510 (1979) (citing *In re Winship*, 397 U.S. 358 (1970)), U.S. Const. amend XIV, Mont. Const. art. II, § 17.

A defendants' right to due process is violated when the State fails to present evidence sufficient to prove the charges beyond a reasonable doubt, and the remedy is acquittal. *State v. Dulaney*, 2025 MT 67, ¶¶ 48, 52. "A question on the sufficiency of the evidence is viewed to determine whether 'after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Dellar*, 2025 MT 111, ¶ 8, *Dulaney*, ¶ 48. In the light most favorable to the prosecution is described by this Court as "view[ing] the evidence and all inferences to be drawn therefrom in the strongest light possible which supports the establishment of the State's case." *Dulaney*, ¶ 48.

However, this Court cautioned "[b]are suspicion from which inferences can be drawn is insufficient for a finding of beyond a reasonable doubt[,]" and "[t]he test is whether the facts and circumstances are of such a quality and quantity as to legally justify a jury in determining guilt beyond a reasonable doubt." *State v. Polak*, 2018 MT 174, ¶ 38. Further, a court must give full consideration to the jury's role to determine the credibility and weight of testimony. *Dulaney*, ¶ 49.

Here the State charged Hedrick felony-murder under MCA 45-5-102(1)(b), which provides that a person commits Deliberate Homicide when they "attempt[] to commit, commits . . . assault with a weapon . . . and in the course of [assault with a weapon] or the flight thereafter, the person . . . caused the death of another human being." The predicate offense the State utilized was Assault with a Weapon, which provides that a person can be convicted if they purposely or knowingly cause reasonable apprehension of serious bodily injury, with a weapon. MCA § 45-5-213(1)(b). The State only submitted to the jury the predicate offense of attempted assault with a weapon, and not the actual commission. The State failed to provide sufficient evidence upon which a rational jury could convict Hedrick of attempted assault with a weapon, failed to prove Hedrick caused the death of J.B., and further failed to provide

sufficient evidence to prove beyond a reasonable doubt that Hedrick was not justified as to the predicate offense.

A. The State Failed To Prove Hedrick Attempted To Commit Assault With A Weapon.

i. The State failed to prove Hedrick acted with the purpose to commit the predicate offense.

When alleging attempt, the State must show beyond a reasonable doubt, that "with the purpose to commit a specific offense, the person does any act towards the commission of the offense." MCA § 45-4-103(1). "Culpability for attempt therefore arises when one acts with the purpose to accomplish the result constituting the underlying offense." *Dulaney*, ¶ 27. Thus attempt "requires proof of a specific purpose: the person must act 'with the purpose to commit a specific offense.'" *Dulaney*, ¶ 29. MCA §45-2-101(65) defines "with purpose" as "a person's conscious object to cause the result described by a statute defining an offense."

Here, there is no dispute Hedrick drew his pistol and pointed it at J.B. However, the record is devoid of direct or circumstantial evidence Hedrick did so with the specific purpose to attempt to cause J.B. reasonable apprehension of serious bodily injury or death. Instead, evidence showed Hedrick acted with the purpose of defending himself.

The State points to Hedrick's statement that he had the gun there as a show of force as the indicator of mental state but does so in isolation. When examined within the context of the surrounding facts, Hedrick told police he had his gun because he felt increasingly unsafe in his apartment due to multiple assaults, drug deals, and thefts that occurred, and he placed it next to the door due to J.B.'s behavior and threats towards him that evening. (Ex. 34 at 8:24-8:43).

"Bare suspicion from which inferences can be drawn is insufficient for a finding of beyond a reasonable doubt." *Polak*, at ¶ 38. Here, in the light most favorable to the State, the facts and circumstances are not of the "quality and quantity as to legally justify a jury determining guilt beyond a reasonable doubt." *State v. Fitzpatrick*, 163 Mont. 220, 225 (1973). There was insufficient evidence Hedrick acted with the specific purpose to attempt to cause J.B. reasonable apprehension of serious bodily injury of death. No evidence presented showed it was Hedrick's conscious object to attempt to cause J.B. reasonable apprehension of serious bodily injury or death. However, there is overwhelming evidence Hedrick acted with the purpose to defend himself against J.B.'s threats of violence and murder.

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ii. The State failed to prove Hedrick acted with the purpose to purposely or knowingly cause reasonable apprehension of serious bodily injury.

Knowingly as to a result is defined as when a "person is aware that it is highly probable that the result will be caused by the person's conduct. MCA § 45-2-101(35). A person acts purposely "if it is the person's conscious object . . . to cause that result." MCA § 45-2-101(65). The State failed to prove Hedrick had the purpose to act purposely or knowingly to cause J.B. reasonable apprehension of serious bodily injury or death. Reasonable apprehension is an objective standard that asks, "whether a reasonable person under similar circumstances would have reasonably apprehended bodily injury." *State v. Finley*, 2011 MT 89, ¶ 29. The State must prove "that a reasonable person would have realized that bodily injury could result." *Finley*, ¶ 29.

The record lacks proof Hedrick acted with the purpose to commit the offense, and that Hedrick was aware it was highly probable he would cause J.B. reasonable apprehension of serious bodily injury or that it was his conscious object to cause J.B. reasonable apprehension of serious bodily injury. Throughout the case the State asserted Hedrick acted to get J.B. to "shut up." However, the State relied on its own bare suspicion to support this

inference, not facts. Rather, the evidence showed Hedrick reacted to J.B.'s actions with knowledge and purpose to defend himself.

In *State v. Weinberger,* this Court found there was insufficient evidence of reasonable apprehension. 206 Mont. 110, 129 (1983). Weinberger was charged with felony-murder, with the predicate offenses of attempted aggravated assault (now assault with a weapon), and commission of aggravated assault. *Id*. This Court determined there was "no proof in the record of what [the victim] may have apprehended from [Weinberger's] use of the [weapon]." *Id*.

Here, the State failed to provide sufficient evidence that Hedrick acted with the purpose to purposefully or knowingly cause reasonable apprehension. In fact, just as in *Weinberger*, at the close of evidence, the State only submitted to the jury the charge of attempted assault with a weapon against Hedrick, rather than the actual commission of the offense. *Id.* This left the Court to believe the State thought it could not prove serious bodily injury with a weapon, and that it failed to establish reasonable apprehension of serious bodily injury. *Id*. Here, in the light most favorable to the prosecutor no evidence was presented that Hedrick acted purposefully or knowingly, insufficient evidence was presented as to whether Hedrick felt reasonable apprehension of serious bodily injury.

B. Even If This Court Finds Sufficient Evidence Of The Predicate Offense, The State Failed To Prove Beyond A Reasonable Doubt Hedrick Was Not Justified In His Use Of Force.

Hedrick provided sufficient evidence to assert the affirmative defense of justifiable use of force as to the allegations of attempted commission and commission of assault with a weapon. When evidence of self-defense is offered, the "[S]tate has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified.'" *State v. Erickson*, 2014 MT 304, ¶ 15. In a sufficiency determination, this Court assesses "whether, viewing the evidence in the light most favorable to the prosecution, there is sufficient evidence upon which a rational trier of fact could find, beyond a reasonable doubt, that the defendant's actions were not justified." *Erickson*, ¶ 28.

This Court previously held "the degree of force a person uses to defend himself must be commensurate with the threat of harm the person faces. *State v. Miller*, 1998 MT 177, ¶ 28 (overruled in part on separate grounds). For a person to be justified in use of force likely to cause death or serious bodily injury, a person must reasonably believe the ". . . force is necessary to prevent imminent death or serious bodily harm to the person or another or to prevent the commission of a forcible felony." MCA § 45-3-102. This belief may be

reasonable even if incorrect.[6] *Miller*, ¶ 28. "[T]he 'reasonable belief' standard is an objective one that may be discerned from the totality of the circumstances surrounding an incident." *State v. Fredericks*, 2024 MT 226, ¶ 15. Fear is not an element in proving whether a person's apprehension was reasonable. *State v. McMahon*, 2003 MT 363, ¶ 17. Additionally, "[i]f a person reasonably believes that the person or another is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon." MCA § 45-3-111(2).

More than sufficient evidence was presented for Hedrick to assert he was justified in drawing and presenting his weapon, and he was justified in pointing his weapon at J.B. The record clearly shows it was reasonable for Hedrick to believe he was threatened with bodily harm, serious bodily injury, and with death by J.B. In his call to 911, Hedrick stated J.B. threatened him that night, and he had the gun there as a show of force. During his interview with Det. Boll, Hedrick told him J.B. threatened Hedrick with physical violence and to kill Hedrick. Hedrick told Boll Local's felt increasingly unsafe as he observed people on drugs, dealing drugs, fights, and because he was

[6] A person does not need to see a weapon for their apprehension of serious bodily injury to be reasonable. *State v. Smith*, 2004 MT 191.

attacked just **ten (10) days prior** to this incident in the same hallway by a different neighbor having a mental health crisis. The attack was unprompted, and evidence showed Hedrick was the victim.

When Hedrick opened his door, to try and calm J.B. down. J.B. was screaming, acting violently and threatened to kill Hedrick. Hedrick was at a severe physical disadvantage due to his leg injury. Hedrick did not know J.B. very well, and evidence showed J.B. was acting irate and unpredictable. Considering the history of violence, criminal activity, and physical attacks on Hedrick, including his leg injury, the totality of the circumstances showed it was reasonable for J.B. to believe he was threatened with bodily harm, and serious bodily injury, or death. Hedrick was therefore justified in drawing and presenting his firearm.

Hedrick was further justified in the raising and pointing of his weapon. Undisputed evidence showed when Hedrick opened his door, J.B. started to move towards Hedrick. Hedrick took no steps toward J.B., and the video showed J.B. was reaching around in his pockets, and or waist. Hedrick believed J.B. was reaching for a weapon to make good on his death threats. In response, Hedrick grabbed his pistol, and when J.B. saw it, J.B. became even more irate. Given the threats of death, unpredictable behavior, the violent physical attacks of the door, and Hedrick's injured leg, it was reasonable to

believe J.B. threatened to cause Hedrick serious bodily injury or death, not only with his fists, with the potential weapon Hedrick thought J.B. had, or with Hedrick's own weapon.

The State failed to present sufficient evidence to prove beyond a reasonable doubt Hedrick was not justified in either drawing and presentation his firearm, or the actual pointing of the firearm. Instead, the State argued Hedrick did not specifically say he was "afraid." This is a misnomer as the standard for both theories of defense was whether a person had a reasonable belief of bodily injury, or serious bodily injury, or death. Hedrick met this standard, and the State failed to show his beliefs were not reasonable, and his actions were not justified.

C. The State Failed To Prove Hedrick Caused The Death Of J.B.

Even if the State presented sufficient evidence to convict Hedrick of the predicate offense of attempt and overcame its burden to disprove justifiable use of force, it still failed to prove Hedrick caused J.B.'s death. In *Weinberger*, this Court stated "for felony murder to apply, it is necessary that the homicide be a natural and probable consequence of the . . . attempt to commit the felony[.]" 206 Mont. at 113. Further, there must appear to be an actual legal connection between the crime attempted and the killing, as ". . . part of the perpetuation of the crime, or in furtherance of an attempt or purpose to commit

it. Thus for the felony murder rule to apply a causal connection between the felonious act and the death must be present." *Id*. Specifically, the State must prove the attempt to commit assault with a weapon was the cause of J.B.'s death. *Id*. at 130-131.

Further, this Court held the purpose of the felony-murder statute is to "'merely clothe the felon's act of killing with [knowledge or purpose].'" *State v. Nichols*, 225 Mont. 438, 449 (1987) (quoting *Weinberg*, 206 Mont. at 115). "[A]cts regarded as peculiarly dangerous create a reasonable risk of death. Therefore, the felon who *initiates* those acts is also responsible for a death arising from those acts." *Nichols*, 225 MT at 449 (emphasis added).

As articulated above, J.B. was aggressor and initiated felonious conduct[7], while Hedrick reacted with the purpose to defend himself. As Hedrick did not engage in felonious conduct, and did not initiate felonious conduct, he cannot be responsible for J.B.'s death, in accordance with *Nichols*. Further, even if this Court found Hedrick had committed the underlying felony, the evidence shows J.B. broke the causal connection when he grabbed the gun, causing it to discharge, and there was no proof Hedrick acted with the purpose or knowledge to cause J.B.'s death.

[7] Arguably, J.B.'s actions that evening constituted the charge for a forcible felony, Intimidation under MCA § 45-5-203, by threatening people when they mentioned calling the police.

II. THE DISTRICT COURT ERRED WHEN IT DENIED HEDRICK'S MOTION FOR ACQUITTAL.

Due process through both the federal constitution and state constitution guarantee a defendant a fair trial, the defendant's right to be presumed innocent, right to have each element of the offense proven beyond a reasonable doubt. U.S. Const. amends. VI and XIV, *Sandstrom*, 442 U.S. at 519-20, *State v. Miller*, 2022 MT 92, ¶ 21, Mont. Const. Art. II §17.

Here, Hedricks's right to due process was violated when the District Court denied his Motion for Acquittal as he was charged and convicted of a fictitious crime. At sentencing, Hedrick's counsel, Darrow, filed Defendant's Motion to Acquit or Motion for Dismissal Due to Insufficient evidence. (D.C. Doc. 144.) The District Court summarily dismissed the motion without review, "for reasons put on the record by the court this morning." (Sent. Hr. Tr. at pp. 9:15-10:2, 15-23.) However, the District Court's reasonings were as to Hedrick's Motion for a New Trial in which the District Court concluded regardless of Gordon's actions, Hedrick received a fair trial. The District Court failed to review or even analyze the Motion for Acquittal. Hedrick now reasserts the arguments made in his Motion for Acquittal and expands upon the argument.

In *Weinberger*, this Court questioned whether "there can be such a crime as attempted aggravated assault[,]" as Montana statute "combines

former statutes that related to the crimes of assault and battery." *Weinberger*, 206 Mont. at 130. Battery, under common law, "was the unlawful infliction of physical harm upon a victim. An assault was the attempt to inflict serious physical harm upon a victim." *Id*. "Thus to some theorists, a charge of aggravated assault would be an absurdity, a charge of an *attempt to attempt*." *Id*. "In Montana, it has been held that if a defendant pointed a gun at a victim which the defendant knew to be unloaded, and the victim was put into fear and alarm because the gun appeared to him to have the capacity to inflict physical harm, an assault (not an attempt) was committed." *Id*.

This case is analogous to *Weinberger*. Here, the State submitted to the jury Hedrick attempted to commit assault with a weapon by reasonable apprehension, in essence attempt of an attempt. This would require a jury to find Hedrick committed Deliberate Homicide when he attempted an attempted battery with a weapon. Not only is this charge confusing for the jury, but it lessens the duty of the State to prove its case beyond a reasonable doubt reasonable apprehension causation J.B.'s death. The District Court failed to review the Motion to Acquit and summarily denied it utilizing findings and conclusions that were inapplicable to this motion. Hedrick requests this Court find that the District Court erred in its denial of Hedrick's motion, and reverse and remand for acquittal.

III. THE DISTRICT COURT ERRED WHEN IT PROVIDED UNCONSTITUTIONALLY PRESUMPTIVE INSTRUCTIONS TO THE JURY.

As counsel failed to object, plain error review is appropriate as the unconstitutionally presumptive instructions implicated Hedrick's fundamental constitutional right to have each element of the charge proven beyond a reasonable doubt. *Hayden*, at ¶ 27. Failure to review would "result in a manifest miscarriage of justice, leave unsettled the question of fundamental fairness, or compromise the integrity of the judicial process." *Id*.

This Court held "[t]he trial judge is under a duty to instruct the jury on every issue or theory finding support in the evidence, and this duty is discharged by giving instructions which accurately and correctly state the law applicable in a case." *Erickson*, ¶ 35. "In *Sandstrom*, the Supreme Court held that jury instructions which eliminate the state's burden of proving an essential element of the crime, i.e. the requisite mental state, create an unconstitutional conclusive presumption against the defendant." *State v. Nichols*, 225 Mont. at 449 (citing *Sandstrom*, 442 U.S. 510 (1979).

Here Jury Instruction 18 eliminated the State's duty to prove every element of the offense beyond a reasonable doubt. Jury instruction 18 provided:

> To find the defendant attempted to commit assault with a weapon, the State must prove the following elements:

1. That the Defendant attempted to cause reasonable apprehension of serios bodily injury in [J.B.] by use of a weapon or what reasonably appeared to [J.B.] to be a weapon.

   AND

2. That the defendant acted purposely or knowingly.

If you find your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the defendant guilty….

(D.C. Doc. 126 (emphasis added).) This clearly directed the Jury to find Hedrick guilty if they found he attempted to commit the predicate offense. Full stop. It supersedes the State's requirement to prove Hedrick caused J.B.'s death during the commission of attempted assault, and further made no mention of the Jury's need to assess justifiable use of force.

To further add to the confusion, Jury Instructions no. 30 and 31 articulate conflicting standards for applying justifiable use of force. One states the jury must find whether evidence of justifiable use of force was offered while the other states evidence was offered. Additionally, the verdict form articulated the jury would either find the defendant guilty or not guilty of Deliberate homicide. The verdict form failed to ask whether the jury found Hedrick guilty of the predicate offense, that the state proved he was not justified, and that the State proved Hedrick caused J.B.'s death. (D.C. Doc. 129.)

Just as in *Sandstrom*, the jury instructions leave an unconstitutionally conclusive presumption for the jury: to find Hedrick guilty if they found he committed Attempted Assault with a weapon. *Sandstrom* 442 U.S. at 517, 519. Ultimately, this lessened the State's burden to prove causation and disprove justifiable use of force, which violated Hedrick's right to due process.

IV. PROSECUTORIAL MISCONDUCT VIOLATED HEDRICK'S RIGHT TO DUE PROCESS.

It is improper for a prosecutor to offer their opinion, as it "invades the province of the jury[,]" as "the jury may simply adopt the prosecutor's views instead of exercising their own independent judgement as to the conclusion to be drawn from testimony." *State v. Byrne*, 2021 MT 238, ¶ 23. A prosecutor's personal "views inject into the case the irrelevant and inadmissible matters or a fact not legally proved by the evidence, and add to the probative force of testimony adduced at trial the weight of the prosecutor's personal, professional, or official influence." *Byrne*, ¶¶ 23, 24. This Court "made it clear that [it]will reverse a case where counsel invades the province of the jury . . . [,]" as such a violation violates a defendant's right to a fair trial. *Id*.

For this Court to consider allegations of prosecutorial misconduct, the issue must have been preserved. One method of preserving the issue is through motions in limine. *Byrne*, ¶ 22. Here, the State stipulated to Hedrick's motion

in limine, agreeing the prosecutor would not offer its personal opinion. This Court has held "when the State stipulates to a motion in limine and subsequently reneges on its word, 'resolving any doubt . . . in favor of the prosecution would be inappropriate.'" *Byrne*, ¶ 22 (quoting *State v. Partin*, 287 Mont. 12, 22, 951 P.2d 1002, 1008 (1997)).

When an issue is not preserved, this Court may invoke plain error review. *Hayden*, ¶ 27. Here, counsel failed to object during the State's opening, during the trial, and during the State's closing. However, the objectionable issues implicate Hedrick's right to a fair trial, his right to speak with an attorney, and the presumption of innocence, all of which are fundamental constitutional rights. Failure to review these errors would result in "a manifest miscarriage of justice, leave unsettled the question of fundamental fairness of the proceedings, [and] compromise the integrity of the judicial process." *Id*.

Here, the State offered its opinion to the jury, misstate evidence, argued facts not in evidence, and ridiculed Hedrick for invoking his right to an attorney. During opening, in addition to reciting the entirety of its case, the acted-out scenes, and pushed the theory to the jury that Hedrick acted to "get J.B. to shut up." However, no evidence was offered during trial to support this

contention, instead, it was the prosecutor's opinion. (JT Tr. at pp. 182:7-183:3, 185:13-193:10.)

During Cross of Webb, without evidentiary foundation, the State implied Hedrick could have been hallucinating due to the marijuana use, and as such, could have been mistaken about whether he was facing a threat. (JT Transcr. at p. 607:25-608:3.) The State then argued in closing Hedrick could have been hallucinating. The State further commented on Hedrick's request to speak with his attorney, suggesting Hedrick only did so to conceal guilt. (JT Tr. at pp. 591:18-592:6.) During the State's cross of Hedrick, the State ridiculed and mocked him for invoking his right to an attorney. (JT Tr. at pp. 591:18-592:6.)

The State pushed the jury to rely on public sentiment, public policy, and public sympathy, remarking that they "[drew] the line for this community, for this justice system, or what is reasonable." (JT. Tr. at p. 761:17-24.) In this same vein the State argued "every Friday night in this valley there are hundreds of [J.B.'s] there are people who are drunk, who are not good partners, who are even abusive to their spouses, people who have a past, and you don't get to kill those people, *that's not how we operate*." (JT Tr. at p. 791:6-13, emphasis added.) The State also argued its personal opinion by stating: "this jury gets to decide is it reasonable in that instance to bring out a

gun and put it in a guy's face. Is that the acceptable course of action in the Flathead Valley? *I would submit to you it is not*." (JT. Tr. at pp. 792:19-793:13, emphasis added.)

Additionally, the State misstated multiple facts to the jury by repeatedly arguing Hedrick acted to make J.B. to shut up, misstating testimony from Hawkins, and incorrectly argued Hedrick needed to show he was afraid. (JT. Tr. at pp. 747:10-748:9, 753:10-20, 757-758:9-23, 761:4-16, 762:8-15, 791:14-21.)

The prosecutor committed misconduct that prejudiced Hedricks' right to a fair trial, as his unsupported statements, opinions, misstatements of the law, and fact invaded the province of the jury.

V. HEDRICK WAS PREJUDICED BY INEFFECTIVE ASSISTANCE OF COUNSEL.

Criminal defendants enjoy the right to effective assistance of counsel. *Wright*, ¶ 9. In assessing ineffective assistance, this Court applies the two-pronged test from *Strickland v. Washington* where a defendant must "(1) demonstrate that 'counsel's performance was deficient or fell below an objective standard of reasonableness' and (2) 'establish prejudice by demonstrating that there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.'" *Wright*, at ¶ 9. "Ineffective assistance of counsel claims are appropriate for review on

direct appeal . . . when 'no plausible justification' exists for the actions or omissions of defense counsel." *Wright*, at ¶ 10. A defendant shows prejudice when they demonstrate "'a reasonably probability that, but for counsel's errors, the result of the proceeding would have been different.'" *Wright*, at ¶¶ 19, 20 (citations omitted).

Here Gordon's performance was deficient, and Hedrick was prejudiced because of it, as there was a reasonable probability that but for her errors, the trial would have been different. In addition to the arguments presented regarding ineffective assistance of counsel in Darrow's motion for a new trial (D.C. Doc. 142), Hedrick provides the following arguments.

Here, Hedrick's counsel failed to file a motion to suppress or a MIL to prevent any commentary on Hedrick's assertion of his right to speak with an attorney. This left the door open for the jury presume Hedrick's guilt because he wished to speak with an attorney. Gordon's attempts to correct the error during trial further drew attention to it and allowed for the State to comment on Hedrick's right to speak with an attorney. There is no plausible explanation for why an attorney would not protect their client's invocation of their right to counsel.

Gordon failed to file any MIL, failed to file any proposed Jury Instructions. Gordon did not get a subpoena issued for J.B.'s autopsy until the

day of trial. Further Hedrick reiterates Gordon failed to object to the misconduct engaged in by the prosecutor as argued above. In closing, Gordon argued against Hedrick's theory of defense by asserting no evidence showed *J.B.* was the aggressor that evening. When given the chance to challenge the incorrect statements made by the prosecutor, Gordon simply told the jury she wasn't sure how to respond, and she would let the jury decipher it.

Gordon failed to object to jury instructions and a verdict form that were unconstitutionally presumptive, and lessened the State's burden of proof, as argued above. Last, at the end of the trial, Gordon left the country, but failed to maintain her law license, and failed to maintain communication with Hedrick failed to file a motion for a new trial, which was denied for being untimely.

There are no plausible justifications for Gordan's failures were not strategic and instead show a lack of competence, unpreparedness, and constitute an unreasonable performance under *Strickland*.[8] There is a reasonable probability that had Hedrick had effective assistance of counsel, he would have been acquitted.

[8] Although not part of the record, it is important to note Gordon was brought before the Office of Disciplinary Counsel on allegations related to this case, as well as others. *See PR 24-0443 (https://supremecourtdocket.mt.gov/case-info/active/25569), PR 25-0553 (https://supremecourtdocket.mt.gov/case-info/active/27470).*

CONCLUSION

This Court should find there was insufficient evidence to support a conviction and reverse the finding of guilt. Further, this Court should find the District Court erred in its denial of Hedrick's motion to acquit, and reverse and remand for acquittal. Alternatively, This Court should find Hedrick's right to due process was violated through prosecutorial misconduct, or unconstitutionally presumptive jury instructions, or ineffective assistance of counsel, and should grant Hedrick a new trial.

Respectfully submitted this 12th day of November 2025.

By: /s/ Westen Young
WESTEN YOUNG
West Fork Law

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 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 and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is words 9,981 excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Westen Young
WESTEN YOUNG

APPENDICES

CERTIFICATE OF SERVICE

I, Westen Grant Young, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 11-12-2025:

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