IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0185

STATE OF MONTANA,

Plaintiff and Appellee,

v.

LEROY SANCHEZ,

Defendant and Appellant.

OPENING BRIEF OF APPELLANT

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

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A. INTRODUCTION

The trial against Mr. Sanchez was decidedly unfair. The jury heard testimony about a prior, allegation of inappropriate sexual contact between Leroy Sanchez and a teenager. This highly inflammatory evidence, admitted over objection, compromised the jury's verdict because the prosecutor exploited it to portray Mr. Sanchez as a serial sexual predator and abuser. It signaled to the jury to convict on propensity, not proof.

Additionally, the trial court permitted a fact witness, the complaining witness's older sister, to sit at the counsel table throughout her testimony. This arrangement violated sequestration rules and improperly bolstered the complaining witness's credibility. This violated due process and denied Mr. Sanchez a fair assessment of the evidence.

The prosecutor also committed misconduct by portraying Mr. Sanchez as a sexual predator and sexual abuser who was grooming vulnerable children. Finally, the State fractured a single, continuous pattern of abuse into three separate convictions for the same crime, punishing him multiple times for one wrong. These compounding errors created a fundamentally unjust verdict.

B. STATEMENT OF THE ISSUES

1. Did the District Court abuse its discretion and violate MRE 404(b) and the standards set in *Peterson*[1], by admitting an uncharged, seven-year-old allegation to prove motive and plan where the State did not provide a logical theory that did not rely on prohibited propensity inference?

2. Did the District Court err by permitting an adult sibling of the complainant, who was also a testifying witness, to serve as a "support person" at the counsel table throughout the complainant's testimony because it was an unconstitutional visual validation and vouching both witness's credibility in violation of MRE 403 and due process?

3. Did the State's systematic branding of Mr. Sanchez as a sexual predator—a characterization used to bridge the gap in proof and later adopted by the Court to justify a 100-year sentence—constitute reversible prosecutorial misconduct?

4. Did the prosecutor commit reversible misconduct by systematically labeling Mr. Sanchez a sexual predator and abuser?

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[1] *State v. Peterson*, 2024 MT 5, 415 Mont. 34, 541 P.3d 776

5. Did the convictions on three separate counts of sexual assault violate the constitutional and statutory protection against double jeopardy where the alleged acts happened simultaneously during a single, uninterrupted course of conduct and the State failed to prove distinct, separate criminal transactions?

6. Did the cumulative effect of the trial errors—specifically the admission of the prior bad acts evidence, the improper seating of the testimonial witness, and prosecutorial misconduct in type-casting Mr. Sanchez a sexual predator and abuser—deprive Mr. Sanchez of his fundamental right to a fair trial?

C. STATEMENT OF THE CASE AND FACTS

1. A blended family suffer setback from a series of debilitating illnesses.

Leroy Sanchez lived in Stevensville, Montana in a blended family with Laura Pape-Harper and her children in a crowded and often stressful home. (Tr. 221.) Witnesses described the family dynamic as openly affectionate, with family members frequently cuddling or sitting on each other's laps in shared spaces. (Tr. 92, 173). The couple shared the downstairs master bedroom, while the children occupied their own

spaces. (Tr. 221). The family depended on Mr. Sanchez financially and he also leased their home in his name. (Tr. 221, 232-34, 324-325).

In March 2020, the blended family's stability frayed when Ms. Pape-Harper suffered a brain aneurysm requiring major surgery. (Tr. 192, 308-309). Because of that she was heavily medicated and unresponsive at night during her recovery. (Tr. 192, 308-309). Throughout this period, Mr. Sanchez paid the lease, cared for the children and their mother, and provided financially for the household. (Tr. 221).

2. The children move in with their biological father and allegations surface.

Against this backdrop, V.H., Ms. Pape-Harper's daughter, later claimed when she was nine or ten years old, Mr. Sanchez would wake her at night while her mother was incapacitated and ask her to cuddle in the master bed, and would touch her breasts, buttocks, and vagina, over and under her clothing. (Tr. 193-95, 198). V.H. claimed she did not report it because she feared her family would lose their home as it depended on Mr. Sanchez for everything. (Tr. 195, 198). She claimed the touching continued until she and her siblings moved to Arlee with their

biological father. (Tr. 192-194). Only then, did V.H. start accusing Mr. Sanchez of inappropriate behavior. (Tr. 189).

3. The State charges Mr. Sanchez and, over objection, is allowed to present a prior uncharged allegation from seven years ago.

Based on these allegations, the State filed an Information charging Mr. Sanchez with four counts of sexual assault. (Tr. 1-5, 15, 19).

Before trial, the State sought to introduce Cailyn Gilchrist's 2017 accusation from Utah under Rule 404(b). (D.C. Docs. 18, 33). It argued, this evidence showed "motive, specifically, his sexual attraction to young girls." (D.C. Docs. 18, 33 at 7). The State claimed that evidence that Mr. Sanchez assaulted Ms. Gilchrist prior to assaulting V.H. was relevant to prove he was "motivated by his sexual fixation with young girls." (D.C. Docs. 18, 33, at 7). It also argued the evidence also showed plan and preparation, because shortly after sexually assaulting Ms. Gilchrist, Mr. Sanchez chose to date and cohabit with V.H.'s mother, who was single and financial insecure to gain access to V.H. *Id*. at 8-10. Mr. Sanchez made a standing objection to Ms. Gilchrist's sole allegation and countered that such a "broad theory" of motive went beyond any permissible theory of admissibility, and fell squarely under

the forbidden propensity evidence. D.C. Docs. 51. Moreover, Montana caselaw has interpreted "plan" as synonymous with the statutory definition of a "common scheme" in Mont. Code Ann. § 45-2-101(8). Thus, the State cannot show Ms. Gilchrist's prior accusation and the alleged assaultive conduct charged conduct constituted a series of acts driven by a single criminal objective or a common purpose resulting in repeated similar offenses or affecting the same victim. (D.C. Docs. 51 at 1-2.)

Over objections, the District Court nevertheless admitted the evidence and allowed the jury to hear Gilchrist's accusation. (Tr. 279-280). In a surprising twist, it also allowed testimony from Ms. Gilchrist's mother, Michelle Snook. (Tr. 87-88, 275). The Court also gave a limiting instruction. (Tr. 272-273).

4. At the onset, the prosecution began casting Mr. Sanchez as a sexual predator.

In opening statement, the prosecutor framed Mr. Sanchez as a man who "cultivated an inappropriate special relationship" with V.H. from the moment the blended family moved in together. (Tr. 90). The prosecution told the jury Mr. Sanchez deliberately sought out "financially vulnerable" women as a means to gain access to their minor

daughters. (Tr. 89.) The prosecutor promised the jury that both mothers in the case would show he "pursued a romantic relationship" specifically to reach underaged girls. (Tr. 89). The opening argument cast Mr. Sanchez not as a man living in a blended, affectionate household, but as a calculating offender who embedded himself in vulnerable family situations to satisfy a sexual interest in children. (Tr. 89-90).

5. Over objection, the State stages a tableau of truthfulness while the complaining witness testifies.

During the trial, the court also allowed V.H.'s older sister, Isabel—a primary fact witness—to remain at the prosecution's counsel table while V.H. testified. (Tr. 200). Mr. Sanchez made a standing objection to the State's request to have a support person sit at the counsel table. (Tr. 88-89). Over objection, the court allowed V.H.'s older sister to sit at counsel table. (Tr. 89.)

The State called Isabel, V.H.'s then adult sibling, as its third witness, placing her early in the trial. (Tr. 149). She testified that Mr. Sanchez controlled the family's finances and housing and claimed he isolated V.H. from her siblings, despite testimony that the family frequently interacted in shared spaces. (Tr. 151, 154, 156). When Isabel's testimony ended, she did not leave the courtroom; instead, she

took a seat directly beside the prosecutor at counsel table, remaining there while the next witness, and V.H. testified. (Tr. 200). She stayed in that position—visible to the jury and aligned with the State—until V.H. finished her testimony as the fifth witness. (Tr. 191).

V.H. was twelve years old at the time of the trial. (Tr. 151, 192). She said that starting when she was nine or ten years old, Mr. Sanchez began waking her at night and would direct her to follow him to the master bed while her mother was asleep. (Tr. 153, 157, 194). Mr. Sanchez would reach under her clothing and underwear to touch her breasts, buttocks, and vagina with his hands. (Tr. 154-155). V.H. only started accusing Mr. Sanchez when her and her siblings went to live with their father in Arlee. (Tr. 172, 323).

6. The State primes the jury with the sexual predator narrative through an expert witness.

The State then presented expert testimony from Mary Pat Hansen of the First Step Resource Center, who provided a clinical framework for "sexual grooming." (Tr. 94, 109). Hansen testified that grooming involves the deliberate "selection" of vulnerable victims, particularly children from financially unstable homes or those with incapacitated caregivers, followed by isolation and escalating physical affection

intended to normalize inappropriate touch. (Tr. 109-110, 117-118). Her testimony echoed the State's theory that Mr. Sanchez targeted "financially vulnerable" families. (Tr. 89, 310).

7. Over objection, the State presents testimony from another teenager claiming that Mr. Sanchez inappropriately touched her.

Next, over objection, the State called Cailyn Gilchrist to tell the jury that Mr. Sanchez touched her in 2017. (Tr. 285.) When Ms. Gilchrist was about 8 years old, she and her mother met Mr. Sanchez in a shelter. Tr. 287. They moved in and lived with Mr. Sanchez from 2008 to 2017. Gilchrist, claimed just **once** when she had turned seventeen, Mr. Sanchez came to her room and "kind of caressed my thigh and lifted the blanket and proceeded to go over my underwear for a *moment* and then under them with his fingers." (Tr. 287.) (emphasis added) She stirred and Mr. Sanchez kept touching her thigh. *Id.* But when she appeared fully "rouse," he pretended she was having a nightmare and comforted her. (Tr. 286–288.) Her mother, Michelle Snook, testified that her family became financially dependent on Mr. Sanchez when they lived together. (Tr. 286–287, 327.) Nevertheless, even after the

accusation, Ms. Snook continued to allow her younger daughter to visit with Mr. Sanchez for years. (Tr. 286–287, 327.)

After the State's case in chief, the prosecution moved to dismiss Count 4 for lack of evidence. (Tr. 290.).

8. In closing, the State emphasizes the sexual predator theme.

By closing argument, the prosecutor had fully embraced the rhetoric of predation, repeatedly labeling Mr. Sanchez a "sexual predator" and a "sexual abuser." (Tr. 310, 312). The State told the jury that the evidence as consistent "with a sexual abuser grooming a child." (Tr. 310, 315).

Although Ms. Expert witneas Hansen never used the term "sexual predator," the prosecutor invoked her testimony to reinforce that theme. Twice, the prosecutor argued: "She talked to you about how sexual predators, they select their victims and they groom their victims… You heard evidence consistent with why the Defendant selected [V.H.]." (Tr. 310). The State continued to thematically hammer: "What that is is evidence consistent with… a sexual abuser grooming a child." (Tr. 312).

The prosecutor then purported to caution the jury not to use the evidence to decide "what kind of person" Mr. Sanchez was. (Tr. 314).

But the very next argument invited exactly that inference. The State told the jury they could use Ms. Gilchrist's testimony to decide:

> Does it prove that he knew exactly what he was doing when he sexually assaulted [V.H.] after he had already done it to Cailyn. And you can consider Cailyn's testimony to decide whether or not the Defendant had a motive to sexually assault [V.H.]? *Does it prove he had a sexual desire for underaged girls*? And you can also consider Cailyn and her mom's testimony in the context of his plan and his preparation.
> The evidence shows that the Defendant entered into a romantic relationship with a vulnerable woman who had a young daughter, and that woman became financially dependent on him. And after he had sexually assaulted Cailyn, he planned and he prepared to select [V.H.], another vulnerable underaged girl with a financially insecure mother that he would have easy access to.

(Tr. 315.)

The prosecutor distilled its theme into a single question: Whether Ms. Gilchrist's testimony proved Mr. Sanchez had "a sexual desire for underaged girls?" (Tr. 315).

The State argued Ms. Gilchrist's accusation proved Mr. Sanchez "planned and prepared" to select V.H. because he had a "sexual desire for underaged girls." (Tr. 315). The prosecutor told the jury that Mr. Sanchez's relationships with financially struggling women were not coincidences but part of a deliberate pattern of predation. (Tr. 310). The

rebuttal reinforced the same narrative, urging the jury to view the case through the lens of a man who sought out vulnerable families to satisfy a sexual interest in children. (Tr. 312-315).

9. The verdict, the 100-year-sentence, and the justification for sentence echoes the predator theme.

The jury returned guilty verdicts on the remaining three counts. (Tr. 339-341). At sentencing, the District Court adopted the State's narrative wholesale. Despite Mr. Sanchez's age, of nearly sixty, and his documented physical disability, and despite one count being dismissed, the court embraced the prosecutor's portrayal and described him as a "predator of the worst kind." (Sent. Tr. 8, 10). The court stated:

> Mr. Sanchez, the evidence in this case demonstrates that you are a predator of the worst kind, one who systematically targets the most vulnerable among us for your own sexual gratification.

(Sent. Tr. 10.)

The court then imposed a 100-year sentence with 50 years suspended, along with a 20-year parole restriction on all counts—effectively ensuring Mr. Sanchez would die in prison. (Sent. Tr. 10-11).

The sentencing remarks echoed the same themes the State had advanced from the first moments of opening statement through the final lines of rebuttal, demonstrating that the portrayal of Mr. Sanchez

as a predatory figure permeated the entire proceeding. (Sent. Tr. 10-11). Mr. Sanchez timely appealed the judgment and sentence.

D. SUMMARY OF THE ARGUMENT

The District Court erred in admitting evidence of a prior charged allegation of sexual assault from a different accuser under MRE 404(b). This more than seven-year-old incident, involving a single encounter with a seventeen-year-old, lacked the distinctive similarity to the charged multi-year grooming of a nine-year-old required to establish a "common plan" under *Peterson*. (Tr. 219–220.) Instead of proving motive or a specific scheme, the evidence served primarily to suggest a propensity for sexual assault, creating a level of unfair prejudice that outweighed its minimal probative value. (Tr. 220.)

The District Court further erred by permitting the victim's adult sister, Isabel, to sit at the prosecution's counsel table as a designated support person during V.H.'s testimony. (Tr. 88–89.) Because Isabel was a sequestered fact witness who had already testified, her placement at the table provided a continuous and improper visual signal of validation to the jury. This extraordinary measure was not necessary because of the victim's demeanor, as testimony established, was that V.H. was

"smiley" and "energetic" during her disclosures. (Tr. 144.) There was no showing of necessity. By allowing this arrangement, the court unfairly bolstered the victim's credibility, violating MRE 403. (Tr. 227.)

Finally, the entry of convictions on three separate counts of sexual assault for a single, continuous incident violates the constitutional and statutory protections against double jeopardy. (Tr. 228.) The State improperly fractured a single "cuddle session"—during which various touchings allegedly happened in one uninterrupted sequence—into multiple units of prosecution. (Tr. 223.) Because the law does not allow a single criminal transaction to be sliced into multiple felonies to increase a defendant's penal exposure, the cumulative convictions and the resulting 100-year sentence must be vacated. (Tr. 228.).

E. STANDARDS OF REVIEW

Evidentiary Rulings

This Court reviews a trial court's decision to admit evidence of other crimes, wrongs, or acts under M. R. Evid. 404(b) for abuse of discretion. *State v. Rowe*, 2024 MT 37, ¶ 16, 415 Mont. 280, 543 P.3d 614 *citing State v. Crider*, 2014 MT 139, ¶ 14, 375 Mont. 187, 328 P.3d 612. The same applies to the court's balancing of probative value

against prejudicial effect under MRE 403, and the denial of a motion to exclude a witness under MRE 615. A court abuses its discretion when it acts arbitrarily without conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *Rowe*, ¶ 16.

To the extent an evidentiary ruling is based on an interpretation of an evidentiary rule or statute, this Court's review is de novo. *Rowe*, ¶ 16 *citing State v. Lacey*, 2010 MT 6, ¶ 12, 355 Mont. 31, 224 P.3d 1247.

Double Jeopardy and Multiple Convictions

A legal question on the double jeopardy clause is reviewed de novo to determine whether the district court's interpretation of the law is correct. *State v. Guillaume*, 1999 MT 29, ¶ 7, 293 Mont. 224, 975 P.2d 312. Unpreserved issues alleging violations of a fundamental constitutional right are reviewable under the common law plain error doctrine. *State v. Barrows*, 2018 MT 204, ¶ 8, 392 Mont. 358, 424 P.3d 612. Plain error review is appropriate when failure to review the alleged error "may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the proceedings, or compromise the integrity of the judicial process." *Barrows*, ¶ 8 (citations omitted).

Prosecutorial misconduct

Although this Court does not ordinarily review unpreserved claims, it may do so when a fundamental constitutional right is implicated and failure to review would risk a manifest miscarriage of justice or call into question the fundamental fairness of the proceedings. *State v. Valenzuela*, 2021 MT 244, ¶ 10, 405 Mont. 409, 495 P.3d 1061. Multiple errors by the prosecution may cumulatively undermine the fairness of a trial. *State v. Byrne*, 2021 MT 238, ¶ 32, 405 Mont. 352, 495 P.3d 440.

F. SUMMARY OF THE ARGUMENT

The convictions of Leroy Sanchez cannot stand because the trial that produced them drifted far from the constitutional promise that guilt must be proven by evidence of the charged offenses—not by who the State insists a man must be.

From the outset, the prosecution built its case not on the facts from his principal accuser, but on the shadow of an allegation from Utah that happened seven years earlier. The District Court allowed the State to resurrect that remote, dissimilar accusation and repackage it as "common plan" or motive, though neither was an issue at trial. But

under *Peterson*, prior acts cannot be used to suggest a "specific internal motivation" or a generalized "sexual desire" for a type of victim. That is simply propensity dressed in legal vocabulary. The Gilchrist allegation bore none of the hallmarks of a distinctive signature; it was too old, too different, and too attenuated to illuminate anything about the charged conduct. Yet once admitted, it became the centerpiece of a narrative portraying Mr. Sanchez as a predatory figure—precisely the inference Rule 404(b) forbids.

The trial's trajectory only worsened. The court permitted the victim's sister—herself a key fact witness—to sit at the prosecution's table while the victim testified. Montana's support-person statute was never meant to override the sequestration rule or to allow a testifying witness to sit in a position of authority and visual endorsement. Her presence beside the State signaled to the jury that the prosecution's story came pre-validated, that the witness's testimony carried the imprimatur of the government itself.

The State then fractured a single, uninterrupted encounter into three separate felonies, converting one alleged episode into a trilogy of convictions. Under *Goodenough*, the unit of prosecution turns on

distinct criminal acts separated by volitional breaks. Here, there were none. Treating one continuous event as three crimes not only violated Double Jeopardy—it inflated the sentencing exposure to an extraordinary and unauthorized degree.

And throughout it all, the prosecution relied on rhetoric rather than proof. Again and again, the jury was told it was confronting a "sexual predator," a "sexual abuser," a man driven by a "sexual desire for underaged girls." These labels were not stray remarks; they were the scaffolding of the State's case, used to bridge evidentiary gaps and to transform disputed facts into a foregone conclusion. The sentencing court ultimately adopted the same language, demonstrating how deeply the narrative had permeated the proceeding.

Each of these errors would have been troubling on its own. Together, they produced a trial in which character eclipsed conduct, inference replaced evidence, and the presumption of innocence gave way to a story the State was determined to tell. Because the Constitution demands more, this Court must reverse for a fair trial.

G. ARGUMENT

1. The District Court erred by admitting highly prejudicial and dissimilar "prior acts" evidence under MRE 404(b) and 403.

The District Court committed reversible error by admitting a 2017 accusation involving a 17-year-old girl from Utah, Cailyn Gilchrist, who alleged that Mr. Sanchez, who lived with her mother, once touched her inappropriately. (Tr. 279–80). This evidence failed the threshold for admissibility because the Gilchrist allegation was not sufficiently similar to the charged conduct to establish a common plan under M.R. Evid. 404(b). Because the testimony lacked a legitimate non-propensity purpose, its admission served primarily to suggest a criminal disposition, creating a prejudicial effect that substantially outweighed any marginal probative value. M.R. Evid. 403.

a. A prior act is inadmissible to show propensity.

Evidence of other acts offered solely to prove a defendant's propensity to commit an offense is inadmissible. M. R. Evid. 404(a). Properly understood, Rule 404(b) is a categorical bar to admitting evidence for the purpose of proving character and conformity. *State v. Lake*, 2022 MT 28, ¶¶ 26–27, 407 Mont. 350, 503 P.3d 274 (Rule 404(b) prevents the jury from inferring that the accused "is a person of bad

character, and thus likely guilty of the charged offense"); *see also State v. Aakre*, 2002 MT 101, ¶ 12, 309 Mont. 403, 46 P.3d 648 (Rule 404(b) exists to prevent convictions based on propensity).

Although other-acts evidence may be admissible for a non-propensity purpose—such as motive, intent, or common plan—its proponent must show that the evidence actually advances that purpose and that the purpose is genuinely at issue. M. R. Evid. 401–02, 404(b); *Lake*, ¶¶ 26–27; *State v. Blaz*, 2017 MT 164, ¶ 12, 388 Mont. 105, 398 P.3d 247. Merely reciting a permissible purpose is insufficient. *State v. Keys*, 258 Mont. 311, 317, 852 P.2d 621, 625 (1993).

Even when offered for a permissible purpose, the evidence must be relevant without relying on propensity. *State v. Thomas*, 2020 MT 281, ¶ 19, 402 Mont. 62, 476 P.3d 26 ("no link of which can be propensity"). The question is not simply whether the evidence proves something, but whether it proves it without the forbidden inference. *Aakre*, ¶ 12; *Lake*, ¶ 27 (quoting *State v. Madplume*, 2017 MT 40, ¶ 23, 386 Mont. 368, 390 P.3d 142).

Wigmore explains that "an act is not evidential of another act"; there must be an intermediate inference that does not depend on

character. 1 J. Wigmore, *Evidence in Trials at Common Law* § 192, at 1857 (1983). One cannot argue: "Because A did an act last year, therefore he probably did the act now charged." *Id*. Thus, whatever non-propensity purpose is asserted, the evidence must be relevant to that purpose independent of propensity.

Aakre illustrates this principle. There, the Court reversed because the prior-acts evidence served no purpose other than portraying the defendant as predisposed to sexual misconduct. *Aakre*, ¶¶ 12–15. The Court emphasized that even when the State articulates a permissible purpose, the evidence is inadmissible if its practical effect is to show character.

Rule 404 therefore prohibits admitting evidence to establish guilt through the inference that the defendant is guilty of the present offense because he is a "bad person" who has done "bad things." *State v. Eighteenth Jud. Dist. Ct., Gallatin County (Salvagni)*, 2010 MT 263, ¶ 47, 358 Mont. 325, 246 P.3d 415. Only if the evidence serves a genuine non-propensity purpose, and does not depend on character reasoning, may it be admitted. *Salvagni*, ¶¶ 59–62.

Because other-acts evidence carries a high risk of unfair prejudice, Rule 404(b) must be read alongside Rule 403, which excludes relevant evidence when its probative value is substantially outweighed by the danger of unfair prejudice. *State v. Sage*, 2010 MT 156, ¶ 36, 357 Mont. 99, 235 P.3d 1284; *State v. Franks*, 2014 MT 273, ¶ 15, 376 Mont. 431, 335 P.3d 725. The more marginal the probative value, the more likely prejudice will predominate.

Montana law draws a bright line between evidence that legitimately illuminates a disputed issue and evidence that merely invites the jury to convict because the defendant is the kind of person who commits sexual offenses. The admission of the Gilchrist allegation crossed that line. The State introduced this seven-year-old, factually dissimilar allegation of a seventeen-year-old whose family previously lived with Mr. Sanchez from 2008 to 2017. (Tr. 287–88). For almost a decade, Ms. Gilchrist lived with Mr. Sanchez but she alleged only one incident: that Mr. Sanchez "caressed my thigh and lifted the blanket and proceeded to go over my underwear for a moment and then under them with his fingers," and when she stirred, "he just moved my thigh again." (Tr. 287–88.)

The State nevertheless claimed this single factually different allegation somehow proved a multi-year domestic grooming scheme beginning when V.H. was nine years old, supposedly facilitated by the mother's medical incapacitation. (Tr. 19, 193, 1523, 242.) But the evidence was not tied to any legitimate non-propensity purpose. Its only probative through the forbidden inference that Mr. Sanchez had a propensity or disposition to commit sexual assault against minors. Its prejudicial impact overwhelmed any marginal probative value.

Under *Peterson*, *Blaz*, *Aakre*, *Thomas*, and *Salvagni*, the district court's admission of this evidence was reversible error.

b. As presented and argued, Gilchrist's prior accusation did not show motive or common plan without relying on the forbidden propensity inference.

Evidence may be admissible to show motive only when separate acts can genuinely be explained by the same underlying reason for action. *Peterson*, ¶ 17 (internal citation omitted). A "motive" is simply a reason—"something within a person…that incites him to action," a force that influences volition. *Webster's Third New International Dictionary* (Rev. ed. 2002). *Blaz* similarly describes motive as a "nebulous concept" encompassing whatever "leads someone to act" and is "evidential

toward…doing or not doing the act." *Blaz*, ¶ 14 (quoting *Black's Law Dictionary).*

Montana law does not require proof of motive for any criminal mental state or for any element of an offense. Mont. Code Ann. §§ 45-2-101(35), (43), (65), -103(1). And because motive is so broad, courts warn that expansive theories risk "encroaching upon the impermissible use of motive as propensity evidence." *Blaz*, ¶¶ 14–15. That is precisely what occurred here.

The circumstances of the two allegations could not be more different. At seventeen, Ms. Gilchrist was nearly an adult, in her own bedroom, with an attentive mother present in the home. (Tr. 153, 286). V.H., by contrast, was a prepubescent child whose mother was incapacitated. (Tr. 153, 286). The State argued that Mr. Sanchez used the blended family's affectionate dynamic—cuddling, sitting on laps, physical closeness in shared spaces—to "normalize" inappropriate touch. (Tr. 92, 109-110, 117-118, 173). According to V.H., the touching spanned nearly three years, beginning when she was about eight or nine. (Tr. 193-194). She testified that Mr. Sanchez woke her at night

while her mother was incapacitated and touched her breasts, buttocks, and vagina while they cuddled in the master bed. (Tr. 193-195, 198).

For Rule 404(b) purposes, Montana cases often use "common scheme" interchangeably with "plan." *Aakre*, ¶ 15. But *Rowe* makes clear that "common scheme" does not apply to sexual assault. In *Rowe*, the defendant was charged with repeatedly assaulting his under-sixteen-year-old brother-in-law. *Rowe*, ¶¶ 4–9. The State introduced a later uncharged act to show motive or plan under a "common scheme" theory. *Rowe*, ¶ 2. The Court reversed, holding that the theory improperly relied on the defendant's disposition to commit sexual offenses. *Rowe*, ¶¶ 26–29.

The State's theory here—that Mr. Sanchez "targets vulnerable families" because of his "sexual attraction to young girls" (Tr. 24; 315)—is exactly the kind of generic similarity *Rowe* rejected. It describes Mr. Sanchez as a type who engages in broad nature of sexual misconduct, not a distinctive modus operandi. As in *Rowe*, the State used a separate allegation to suggest a pattern, not to prove a legitimate non-propensity purpose.

Blaz reinforces this point: if the acts are not unique, the only logical connection is the forbidden propensity inference. *Blaz*, ¶ 16. Nothing about Ms. Gilchrist's accusation suggested a distinctive signature. (Tr. 288).

Tellingly, the State never quite articulated how its motive theory avoided relying on propensity. Instead, after the evidence was admitted it explicitly argued that the charged and uncharged conduct showed Mr. Sanchez was a sexual predator. The jury could connect the two events only by reasoning: because he allegedly touched a teenager in 2017, he is a sexual predator, and therefore he touched V.H. in 2020. That is the precise inference Rule 404(b) prohibits. *State v. Derbyshire*, 2009 MT 27, ¶ 21, 349 Mont. 114, 201 P.3d 811 ("Proof that [the] accused committed other crimes, even if they were of like nature to that charged, is not admissible to show his depravity or criminal propensities, or the resultant likelihood of his committing the offense charged; nor may such evidence be offered if it only tends to create a prejudice against the accused in the minds of the jury.").

Peterson underscores the error. There, the defendant was charged with touching his eleven-year-old step-granddaughter while she sat on

his lap watching television. *Peterson*, ¶¶ 3–4. The State introduced testimony from multiple unrelated young girls describing prior inappropriate touching in different settings and at different times. *Peterson*, ¶¶ 6–10. The Court reversed, holding that although prior-acts evidence might theoretically serve a permissible purpose, the State's use of it relied on the forbidden inference that Peterson was a "bad person" who therefore committed the charged offense. *Peterson*, ¶¶ 18–19, 38–39.

Peterson is directly on point. The Gilchrist allegation involved a different victim, age, setting, and conduct, yet the State used it to portray Mr. Sanchez as a serial sexual offender. (Tr. 250). Like *Peterson*, the State's theory depended on the inference that because he allegedly touched a minor before, he likely did so again. Rule 404(b) prohibits this "bad act → bad person → guilty now" chain. *Peterson*, ¶ 18.

The more than seven-year temporal gap further undermines any probative value. In *Aakre*, the Court reversed where prior acts were too remote to be relevant. *Aakre*, ¶ 18. The more than seven years between

Gilchrist allegation and present charges here similarly attenuates any logical connection. (Tr. 285).

Finally, *Salvagni* reiterates that using prior acts to show the defendant is a "type" of offender is impermissible. *Salvagni*, ¶ 47. The State's presentation—pairing Gilchrist's allegation with testimony about financial and emotional vulnerability—was crafted to depict Mr. Sanchez as a particular kind of predator who exploits domestic roles to access minors. (Tr. 254–56) That is exactly the inference *Aakre* and *Salvagni* forbid.

c. *Ms. Gilchrist's accusation is not similar enough to the charged acts and is inadmissible as common plan.*

For Rule 404(b) purposes, Montana cases often use "common scheme" interchangeably with "plan." *Aakre*, ¶ 15. But *Rowe* makes clear that "common scheme" does not apply to sexual assault. In *Rowe*, the defendant was charged with repeatedly assaulting his under-sixteen-year-old brother-in-law. *Rowe*, ¶¶ 4–9. The State introduced a later uncharged act to show motive or plan under a "common scheme" theory. *Rowe*, ¶ 2. The Court reversed, holding that the theory improperly relied on the defendant's disposition to commit sexual offenses. *Rowe*, ¶¶ 26–29.

The sole incident Ms. Gilchrist alleged is materially dissimilar to the charged offenses and does not show a common plan. If it happened at all, it was a single, momentary, opportunistic touching of a seventeen-year-old. Though the families lived together for nearly a decade—since Ms. Gilchrist was eight—she did not allege any other incidences of extensive grooming during that period. (Tr. 287-288).

The charged offenses, by contrast, alleged a multi-year, complex grooming scheme involving repeated nighttime cuddling, touching of the breasts, buttocks, and vagina, and exploitation of a mother's medical incapacitation to gain access to a nine-year-old child. (Tr. 19; 193; 242; 1523). These differences in victim age, duration, setting, and method show the incidents lack the unusual and distinctive concurrence required by *Peterson* to infer a common plan.

Put differently, the District Court's admission of Gilchrist allegation failed the similarity test established in *Peterson*. In *Peterson*, this Court cautioned that prior acts must be more than merely "similar" in the broad sense of the crime; they must demonstrate a distinctive modus operandi that sets the defendant's conduct apart from the generalized nature of the offense. *Peterson*, ¶ 38.

In sum, Gilchrist's accusation involved a momentary, opportunistic touching that bears no resemblance to the charged offense, which alleged a complex grooming scheme in which Mr. Sanchez isolated V.H. from her siblings and exploited a mother's deeply medicated state following a brain aneurysm. The Gilchrist accusation lacks any systemic grooming or isolation component. Admitting this testimony simply allowed the jury to conclude that because Mr. Sanchez allegedly committed a sexual offense before, he must have done so again. As in *Rowe*, the State recited permissible purposes and once admitted the State relied on the forbidden propensity inference.

Blaz reinforces this point: if the acts are not unique, the only logical connection is the forbidden propensity inference. *Blaz*, ¶ 16. Nothing about Ms. Gilchrist's accusation suggested a distinctive signature. (Tr. 288). Finally, *Salvagni* reiterates that using prior acts to show the defendant is a "type" of offender is impermissible. *Salvagni*, ¶ 47. The State's presentation—pairing Gilchrist's allegation with testimony about financial and emotional vulnerability—was crafted to depict Mr. Sanchez as a particular kind of predator who exploits

domestic roles to access minors. (Tr. 254-56, 310, 312; D.C. Docs. 18, 33 at 7). That is exactly the inference *Aakre* and *Salvagni* forbid.

d. Even if the evidence were marginally relevant for motive the State unfairly exploited it to establish propensity.

Even assuming *arguendo* that the Gilchrist allegation had some minimal relevance to motive, the State's use of it crossed directly into forbidden character reasoning. Although the State nominally offered the evidence for motive, common plan, preparation, knowledge, or absence of mistake, the record shows it was used to portray Mr. Sanchez as a serial sexual offender. (Tr. 250).

As Wigmore warned more than a century ago, the greatest danger in admitting prior-acts evidence is that the jury will conclude the defendant is a "bad man" and convict him "to punish his nature." 1 John Henry Wigmore, *Evidence in Trials at Common Law* § 57 (Tillers rev. 1983).

That danger materialized here. The State's verbatim question—"does Cailyn's testimony prove that the Defendant had a sexual desire for underaged girls?"—was a naked appeal to propensity. (Tr. 315). It invited the jury to find that Mr. Sanchez possessed a particular predatory character trait and acted in conformity with it. This is the

classic "vicious circle" in which the defendant is tried not for the charged conduct but for who the State claims he is.

Under *State v. Thomas*, the proponent of other-acts evidence must articulate a chain of logical inferences "no link of which may be the inference that the defendant has the propensity to commit the crime charged." *State v. Thomas*, 2020 MT 281, ¶ 19, 402 Mont. 38, 475 P.3d 1194. The State offered no such chain. The Gilchrist allegation does not logically establish motive, plan, preparation, knowledge, or absence of mistake without relying on the inference that Mr. Sanchez has a disposition to commit sexual offenses. Without the propensity link, the State's theory collapses.

e. The Gilchrist allegation created the precise prejudice condemned in Peterson.

This Court's decision in *Peterson*, controls the prejudice analysis. In *Peterson*, the Court reversed a conviction because the probative value of other-acts testimony was substantially outweighed by its prejudicial effect. *Peterson*, ¶ 30. Although the Court initially allowed testimony from three women under M. R. Evid. 404(b) to show motive and intent, it emphasized the "inherent dangers" of presenting emotionally charged allegations to a jury. *Peterson*, ¶ 20. The testimony ultimately "carried

significant danger that the jury would find Peterson guilty because he had committed similar offenses before," rather than on the evidence of the charged conduct. *Peterson*, ¶ 26.

The same pattern unfolded here. The State's theory—that the Gilchrist allegation proved Mr. Sanchez had a "sexual desire for underaged girls"—depends entirely on the prohibited propensity inference. *Peterson*, ¶ 18. *Peterson* makes clear that even when the State recites a permissible purpose like motive, the evidence is inadmissible if it relies on the inference that the defendant is a "bad person" who acted in conformity with a specific sexual attraction. . *Peterson*, ¶ 18. The prosecutor's explicit question to the jury—whether the Gilchrist testimony proved a "sexual desire for underaged girls"—is the precise "propensity trap" *Peterson* forbids. (Tr. 315).

The prejudice intensified when the State introduced Gilchrist as a prior alleged victim. Her testimony provided the jury with external validation that encouraged them to bypass their duty to independently assess V.H.'s credibility. (Tr. 315). The State then weaponized its expert's testimony on cognitive dissonance to argue that because Mr. Sanchez "did it to Cailyn," the jury should disregard any doubts about

V.H. (Tr. 165). This is the kind of unfair prejudice condemned in *State v. Stewart*, 2012 MT 317, ¶ 67, 368 Mont. 414, 291 P.3d 1187.

The Gilchrist allegation—remote, factually dissimilar, and emotionally charged—created precisely the kind of irreparable prejudice *Peterson* warns about. No limiting instruction could have neutralized the impact of a second alleged victim describing digital touching. (Tr. 265). *Peterson* reversed under similar circumstances, holding that prior-acts testimony overwhelmed the jury's ability to fairly evaluate the charged conduct. *Peterson*, ¶¶ 38–39.

The State's rhetoric amplified the harm. Throughout trial, the prosecutor labeled Mr. Sanchez a "sexual predator" and "sexual abuser," using the Gilchrist allegation as the foundation for that narrative. (Tr. 310, 312). Even if the State nominally invoked permissible purposes, it then exploited the evidence for pure propensity—exactly what Rule 404(b) prohibits.

The State's expert testimony further magnified the prejudice. By explaining that parents often struggle with cognitive dissonance in abuse cases, the expert provided a psychological framework the State used to tell the jury that because Mr. Sanchez "did it to Cailyn," any

hesitation about V.H.'s account should be dismissed. (Tr. 165; 315). This is the definition of unfair prejudice: an undue tendency to suggest decision on an improper basis.

The Gilchrist testimony was also cumulative and unnecessary. The State already had multiple witnesses describing the alleged grooming of V.H. The only function of the Gilchrist allegation was to inflame the jury and bolster the State's narrative that Mr. Sanchez was a serial sexual offender.

In sum, the admission of the Gilchrist allegation violated M. R. Evid. 404(b) and 403 and requires reversal.

2. The Court violated Mr. Sanchez's right to a fair trial by permitting improper visual vouching by permitting a sequestered fact witness to sit at the prosecution's table as a support person.

A witness may not comment on another witness's credibility, nor may a prosecutor elicit or express such opinions. *State v. Byrne*, 2021 MT 238, ¶ 23, 405 Mont. 352, 495 P.3d 440, citing *State v. Hayden*, 2008 MT 274, ¶¶ 26, 31, 345 Mont. 252, 190 P.3d 1091. Prosecutors likewise may not offer personal assurances of credibility. *State v. Aker*, 2013 MT 253, ¶ 26, 371 Mont. 491, 310 P.3d 506; *State v. Lawrence*, 2016 MT 346, ¶ 20, 386 Mont. 86, 385 P.3d 968. Such vouching improperly places

the prestige of the State behind a witness and invades the jury's exclusive role in assessing credibility. The same principle applies when the State and the court create a visible display of support for a witness.

The State requested that the then fourteen-year-old V.H. be permitted an older sibling as a support person under M.R. Evid. 611, citing *State v. Rogers*, 213 Mont. 302, 692 P.2d 2 (1984), where a four-year-old was allowed to testify while sitting on the prosecutor's lap. (D.C. Docs. 35, 2–3.) Mr. Sanchez objected, noting that nothing in the State's cited authorities justified such an extraordinary arrangement for a teenage witness. (D.C. Docs. 55, 1–2.) Nevertheless, the District Court allowed Isabel—the victim's adult sister and a key fact witness—to sit at counsel table throughout V.H.'s testimony, violating M.R. Evid. 403 and the sequestration rule under M.R. Evid. 615. (Tr. 88–89).

Although Mont. Code Ann. § 46-24-106 grants victims the right to a support person, it does not authorize placing a testifying sibling at the prosecution's table. (Tr. 227). Isabel was not a neutral observer; she testified about the family's financial dependence and Mr. Sanchez's alleged controlling behavior. (Tr. 149–151). Seating her at counsel table immediately after her testimony transformed her into a visual

extension of the prosecution. (Tr. 200). This constituted improper visual vouching, analogous to the verbal vouching condemned in *Lawrence*, ¶¶ 15, 20. It signaled to the jury that Isabel—and by extension V.H.—was truthful, fragile, and endorsed by the State. (Tr. 222). This was unnecessary, as CPS Supervisor Syndee Hunter described V.H. as "smiley," "energetic," "very open," and "comfortable" during her disclosures. (Tr. 189, 222).

a. The presence of Isabel at counsel table was visual vouching and violated the Rule of Exclusion (M.R. Evid. 615).

Despite being a fact witness, Isabel remained at counsel table during V.H.'s testimony in direct violation of the sequestration order. (Tr. 88–89). The prosecutor specifically requested she be "pre-seated at counsel table so we don't have an interruption," and the Court granted the request. (Tr. 149). Isabel then sat within the prosecution's immediate workspace after testifying. (Tr. 200). This placement converted her from a witness into a visible adjunct of the State, conveying an imprimatur of credibility and protection. (Tr. 200, 222).

Rule 615 prevents witnesses from hearing other testimony and from appearing as coordinated agents of the prosecution. Allowing Isabel to remain at counsel table undermined these purposes by

exposing the jury and subsequent witnesses to a testimonial ally of the State. (Tr. 88–89). The Court made no finding that Isabel's presence was necessary to facilitate V.H.'s testimony, nor did it impose any safeguards to prevent influence on the jury or other witnesses. (Tr. 200, 227).

The Court also rejected a less-prejudicial alternative—a non-testifying caregiver—as the support person. (Tr. 19). Instead, it allowed a central fact witness to occupy counsel table, favoring emotional theater over neutral procedure. (Tr. 227).

b. Isabel's presence was unnecessary yet highly prejudicial under Rule 403.

Under Rule 403, any minimal utility of seating Isabel at counsel table was substantially outweighed by the danger of unfair prejudice and improper bolstering. The record shows V.H. was not so fragile as to require a protective presence; Hunter testified when V.H. first disclosed the inappropriate touching she was "smiley," "energetic," "very open," and "comfortable." (Tr. 144). The Court made no finding that V.H. could not testify without Isabel. (Tr. 227).

Allowing a fact witness to sit beside the prosecutor implied that Mr. Sanchez's presence was threatening and that V.H. required a

bodyguard—an implication that improperly influenced the jury's assessment of her demeanor. (Tr. 222). Because Isabel was a material witness, her pre-seating at counsel table violated Rule 615 and created impermissible visual vouching akin to the verbal vouching condemned in *Lawrence*. (Tr. 149, 200, 88–89).

Her placement next to the prosecutor throughout V.H.'s testimony provided continuous visual validation of V.H.'s claims. (Tr. 200). By seating a witness who described Mr. Sanchez as controlling at the prosecution's table, the Court non-verbally communicated endorsement of her testimony and V.H.'s subsequent allegations. (Tr. 151, 200). The error was not harmless; the visual bolstering amplified the prejudicial effect of other improperly admitted evidence and deprived Mr. Sanchez of a fair and neutral forum. (Tr. 265, 220).

3. Prosecutorial misconduct deprived Mr. Sanchez of a fair trial.

The right to a fair trial is guaranteed by the Sixth Amendment and by Article II, Section 24 of the Montana Constitution. *Aker*, ¶ 24. Prosecutors may not place inadmissible matters before the jury through improper questions, evidence, or argument. *State v. Krause*, 2021 MT 24, ¶ 26, 403 Mont. 105, 480 P.3d 222.

Yet the State's closing argument repeatedly branded Mr. Sanchez a "sexual predator" and "sexual abuser"—labels this Court has recognized as "highly prejudicial." *Aker*, ¶ 26. As already discussed, these characterizations were not incidental; they were the centerpiece of the State's well-crafted narrative.

The improper characterization was highly prejudicial as it led the jury to infer Mr. Sanchez was guilty because he was a sexual predator. *See Aker*, ¶¶ 24-26. The improper propensity theme not only influenced the verdict, it also influenced the extraordinary sentence imposed. The improper narrative was so effective that the sentencing judge adopted it verbatim after remaining with the abiding belief Mr. Sanchez was a "predator of the worst kind." (Sent. Tr. 10). The inadmissible propensity logic did not just affect the verdict; it dictated the ultimate 100-year punishment.

4. The conviction and sentencing on three separate counts of sexual assault for a single, continuous transaction violates double jeopardy.

The Double Jeopardy Clauses of the United States and Montana Constitutions, along with Mont. Code Ann. § 46-11-410, protect a defendant from multiple punishments for the same offense. *State v.*

Dixon, 2000 MT 82, ¶ 41, 299 Mont. 165, 998 P.2d 544. In the context of sexual assault, the unit of prosecution is the sexual contact. *State v. Goodenough*, 2010 MT 247, ¶ 21, 358 Mont. 219, 244 P.3d 37. While the State may charge multiple counts for acts that are distinct in time or location, it is prohibited from fracturing a single, uninterrupted criminal transaction into as many counts as there are body parts touched. *Goodenough*,¶ 21.

Here, the entry of three separate felony convictions for what V.H. described as a single, uninterrupted "cuddle session" violates the constitutional and statutory protections against multiple punishments for the same offense. Tr. 228. V.H. testified that during the nighttime incidents, Mr. Sanchez would touch her breasts, buttocks, and vulva. Tr. 154–55.

a. The State failed to prove a volitional separation between the alleged acts.

To sustain multiple convictions for acts occurring during a single encounter, the State must demonstrate a volitional departure—evidence that the defendant terminated his original criminal intent and formed a new, separate intent before initiating the subsequent act. This requirement flows from Montana's statutory definition of "same

transaction," which includes a series of acts motivated by a single criminal objective and necessary or incidental to accomplishing that objective. Mont. Code Ann. § 46-1-202(23); *see also State v. Cech*, 2007 MT 184, ¶¶ 19–22, 338 Mont. 330, 166 P.3d 140.

As Justice Leaphart explained, the proper question is whether the events are "so connected as to be considered one transaction for the purpose of prosecution." *Goodenough*, ¶ 31 (Leaphart, J., dissenting).

The record contains no such separation. Instead, V.H.'s testimony describes a single, uninterrupted sequence of touching during "cuddling":

- "He touched me."
- "My upper part and my lower part."
- "My breasts."
- "My no-no… my vagina."
- "My butt a couple times."

Tr. 154–55.

Crucially, V.H. did not describe any pause, change in activity, change in conversation, or any moment in which Mr. Sanchez stopped

touching her, disengaged, and then formed a new intent to touch a different part of her body.

The prosecutor's questioning confirms the continuity:

- When asked what Mr. Sanchez did, V.H. answered simply: "He touched me."
- When asked where, she responded: "My upper part and my lower part."
- When asked to clarify "upper part," she said: "My breasts."
- When asked to clarify "lower part," she said: "My no-no… my vagina."
- When asked if he touched any other part of her lower part, she added: "My butt a couple times." Tr. 154–55.

Nothing in this testimony suggests discrete criminal episodes.

Under *Goodenough*, ¶ 21, this is the textbook example of a single unit of prosecution. The State's attempt to convert each body part into a separate felony is precisely the fractioning of conduct that *Goodenough* forbids.

b. *The vague and undifferentiated timeline prevents the jury from unanimously identifying distinct criminal acts.*

A jury must unanimously agree on the specific act underlying each conviction. Montana law is unequivocal: when the State presents evidence of multiple acts, any one of which could constitute the charged offense, the jury must unanimously agree on the same underlying act. *State v. Weaver*, 1998 MT 167, ¶¶ 16–18, 290 Mont. 58, 964 P.2d 713. If the evidence presents several possible factual bases for conviction, the State must either elect the act it relies upon or the court must give a specific unanimity instruction. *State v. Martz*, 2008 MT 382, ¶¶ 33–35, 347 Mont. 47, 197 P.3d 102; *State v. LaMere*, 2000 MT 45, ¶ 31, 298 Mont. 358, 2 P.3d 204.

This requirement is especially critical in sexual-assault cases involving generic or undifferentiated testimony, where the jury cannot distinguish one alleged act from another. *State v. Baker*, 2008 MT 396, ¶¶ 22–24, 347 Mont. 159, 197 P.3d 1001; *State v. Johnson*, 2012 MT 101, ¶¶ 20–22, 365 Mont. 473, 282 P.3d 687.

Here, the vagueness of the testimony made it impossible for the jury to distinguish between Count 1, Count 2, and Count 3 as separate events. V.H. could not provide specific dates, times, or a chronological

breakdown of the alleged acts. Tr. 159. She described the touching of her breasts, vagina, and buttocks as occurring during a single nighttime "cuddle session," without any temporal markers or volitional breaks. Tr. 154–55, 228.

Because the State did not elect which act supported each count, and because the district court did not give a specific unanimity instruction, the jury was left to choose any of the undifferentiated touches to support any of the three counts. This is precisely the unanimity problem condemned in *Weaver*, *Martz*, *LaMere*, *Baker*, and *Johnson*.

Without evidence of a temporal or volitional break, the jury was forced to view the "cuddle session" as a single, amorphous event. Allowing three separate convictions under these circumstances effectively punishes Mr. Sanchez three times for the same uninterrupted sequence of conduct and violates his constitutional right to a unanimous verdict.

Because the State failed to prove the acts were volitionally or temporally distinct—and because the jury could not unanimously identify which act supported which count—two of the three convictions

must be vacated under Mont. Code Ann. § 46-11-410 and the Double Jeopardy Clause.

Here, V.H. could not provide dates, times, or any chronological breakdown of the alleged touching. She testified that the events occurred during nighttime "cuddling," but could not specify when each touch occurred or whether they were separated by any meaningful interval. Tr. 159.

The testimony thus forced the jury to treat the entire "cuddle session" as a single, amorphous event. The State's evidence was not good enough, as it provided no evidence that Count 1 corresponded to one moment in time, Count 2 to another, or Count 3 to a third. Instead, the State's theory required the jury to treat each anatomical location as a separate crime—precisely what *Goodenough* prohibits. *Id.* ¶ 21.

Because the evidence did not permit the jury to identify three distinct criminal transactions, two of the three convictions must be vacated under Mont. Code Ann. § 46-11-410 and the Double Jeopardy Clause.

c. The three convictions punish a single, continuous transaction in violation of the statutory double jeopardy framework.

Sexual assault under Mont. Code Ann. § 45-5-502 criminalizes "sexual contact." When the evidence shows one continuous course of sexual contact motivated by a single criminal objective, the law permits only one conviction. Mont. Code Ann. § 46-11-410(2)(a), (d); *Wetherell*,¶ 12.

Here, the touching of the breasts, vulva, and buttocks occurred during one uninterrupted encounter—one "cuddle session"—with no evidence of a break in time, intent, or conduct. Tr. 154–55, 228. Under *Goodenough*, ¶ 19, this is a single unit of prosecution.

By converting one continuous act into three felonies, the State imposed multiple punishments for the same offense in direct violation of Montana's double-jeopardy protections. Two of the three convictions must therefore be vacated.

d. The State's likely counterarguments fail under Montana's double-jeopardy and unanimity framework.

First, the State is likely to argue that each anatomical area (breasts, vulva, buttocks) constitutes a separate "unit of prosecution" because each contact is a distinct harm. That framing ignores

Goodenough's core holding: in sexual-assault cases, the "unit of prosecution" is the sexual contact, because it is improper to artificially fraction a single, uninterrupted criminal episode into multiple felonies based solely on the number of body parts touched. *Goodenough*, ¶ 21. Where, as here, the record shows one continuous "cuddle session," during which the same hand repeatedly touches different parts of the victim's body without any proof of a break in time, intent, or conduct, the contacts are part of one "same transaction" for purposes of Mont. Code Ann. § 46-11-410 and Mont. Code Ann. § 46-1-202(23), not separate prosecutable offenses.

Second, the State may attempt to seize on V.H.'s statement that he touched her butt "a couple times" to argue that there were multiple separate criminal episodes. That overreads the testimony. V.H. did not testify to separate days, separate nights, or distinct encounters; she did not describe one touching of the buttocks ending, followed by a later, independent touching with a new decision to offend. Instead, she placed all of the touching—breasts, "no-no" (vagina), and buttocks—within the same "cuddle session" and the same nighttime "cuddling" with Mr. Sanchez. Tr. 154–55, 228.

Under the statutory "same transaction" definition, a "series of acts" motivated by one criminal objective and necessary or incidental to it remains a single transaction. Mont. Code Ann. § 46-1-202(23). The buttocks touches described as "a couple times" still occur inside that same uninterrupted series of acts, not outside it.

Third, the State may argue that even if the testimony is somewhat generic, the jury's general unanimity instruction sufficed. But under *Weaver* and its progeny, a boilerplate unanimity instruction is not enough when multiple indistinguishable acts could each support a conviction. In that circumstance, the State must either elect the specific act for each count or the court must give a specific unanimity instruction directing the jury to agree on the same underlying act. *Weaver*, ¶¶ 16–18; *Martz*, ¶¶ 33–35; *LaMere*, ¶ 31.

Here, the State did not elect, the court did not give a specific unanimity instruction, and the evidence did not differentiate which touch corresponded to which count. The jury therefore could have convicted on Count 1 based on touching the breasts, while other jurors used touching the vulva or buttocks, with similar disagreement on

Counts 2 and 3. That is precisely the unanimity defect those cases prohibit.

Fourth, the State may contend that any double-jeopardy issue is cured because the sentences were concurrent or because the court "merged" aspects of the conduct at sentencing. But *Dixon* makes clear that Montana's double-jeopardy protections extend to multiple convictions themselves, not just cumulative prison time. *Dixon*, ¶ 41.

Mont. Code Ann. § 46-11-410(2) prohibits a defendant from being "convicted" of more than one offense arising from the same transaction where one offense is included in the other or is merely a specific instance of the other offense's conduct. The constitutional and statutory harm is the existence of multiple convictions for what is, factually and legally, one offense—not just the length of the sentence imposed.

Fifth, the State may attempt to distinguish *Goodenough* by arguing that, in that case, the acts were more clearly part of a single episode than here. But the factual record here is, if anything, more unified. V.H. was asked open-ended questions ("What did he do to you?" "Where did he touch you?") and consistently described one continuous event: "He touched me… my upper part and my lower part… my

breasts… my no-no… my vagina… my butt a couple times." Tr. 154–55. She further framed the interaction as "cuddling" during a nighttime "cuddle session." Tr. 228. There is no testimony placing the breast, vulva, and buttocks touching in separate temporal compartments. Under *Goodenough*'s reasoning, this is exactly the kind of "single, uninterrupted criminal transaction" that cannot be split into separate felony counts merely by parsing anatomy.

Sixth, to the extent the State suggests that any error is harmless because "the evidence was strong" or "the jury clearly believed the victim," that misses the point. The issue is not whether some sexual contact occurred, but whether the convictions and sentences impermissibly multiply punishment for a single criminal transaction and whether the jury unanimously agreed on which act supported which count. Those are structural protections grounded in double jeopardy and unanimity, not mere evidentiary sufficiency issues. Where the record and instructions allow the jury to convict on different counts based on different, undefined slices of a single, continuous interaction, the resulting multiple convictions cannot stand under Mont. Code Ann.

§ 46-11-410 and the constitutional guarantees of double jeopardy and unanimous verdicts.

5. Cumulative error deprived Mr. Sanchez of a fair trial.

Under the doctrine of cumulative error, a new trial is required when multiple errors, taken together, deprive a defendant of a fair trial. *State v. Van Kirk*, 2001 MT 184, ¶ 44. Here, the errors did not simply add up—they worked in tandem to skew the entire proceeding against Mr. Sanchez.

The admission of inflammatory Rule 404(b) evidence supplied the backbone of the State's narrative that Mr. Sanchez was a "sexual predator" and "sexual abuser." That theme shaped how the prosecutor urged the jury to interpret every piece of evidence. At the same time, the court allowed the victim's sister—herself a fact witness—to sit at the prosecution's table during the victim's testimony, giving a visual endorsement of the State's case and improperly bolstering credibility. Together, the character evidence and courtroom vouching created a trial atmosphere in which neutrality was impossible.

Under *Van Kirk*, the State cannot show that these errors, individually or collectively, carried "no reasonable possibility" of

contributing to the verdict. The jury heard highly inflammatory prior-acts allegations that shifted its focus from the charged conduct to Mr. Sanchez's supposed propensity for sexual misconduct. The presence of a testifying sibling at counsel table reinforced that narrative by signaling the court's implicit approval of the State's portrayal of the victim.

Each error would raise concern on its own. Combined, they eroded the presumption of innocence, impaired the defense's ability to counter the State's narrative, and undermined the fundamental fairness of the trial. The cumulative effect of admitting propensity evidence, permitting improper credibility bolstering, branding the accused a "sexual predator," and multiplying charges through improper fractionation created a proceeding in which a fair verdict was unattainable. Under *Van Kirk*, reversal is required.

H. CONCLUSION

For the foregoing reasons, Mr. Sanchez respectfully requests that this Court reverse his convictions and remand for a new trial. Alternatively, the Court must vacate two of the three convictions and

remand for resentencing on a single count to satisfy the constitutional protections against Double Jeopardy.

Respectfully submitted this 30th day of December 2025.

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CERTIFICATE OF COMPLIANCE

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