IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. DA 23-0136

STATE OF MONTANA,
Plaintiff and Appellee,

v.

WILLIAM TREVOR CASE,
Defendant and Appellant.

REPLY BRIEF OF APPELLANT

On Appeal from the Montana Third Judicial District Court, Deer Lodge County, the Honorable Kurt Krueger, Presiding.

Appearances:

Nathan D. Ellis
Ellis Law, PLLC
2047 North Last Chance Gulch, #482
Helena, Montana 59601
Phone: (406) 475-5900
Email: nate@ellis.law

Christopher R. Betchie
Hull, Swingley, & Betchie, P.C.
P.O. Box 534
Helena, Montana 59624
Phone: (406) 204-5710
Email: christopher@hullmtlaw.com

Attorney for Defendant and Appellant

Austin Miles Knudsen
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401

Ben Krakowka
Deer Lodge County Attorney
800 Main Street
Anaconda, Montana 59711

Attorneys for Plaintiff and Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Defendant and Appellant, William Trevor Case, respectfully replies to the State's response brief as follows:

ARGUMENT

I. There is no reason for this Court to adopt the Federal emergency aid doctrine where the State's own admissions demonstrate that it is not applicable.

As an initial matter, it appears that the State does not contest that the U.S. Supreme Court's holding in *Caniglia v. Strom*, 141 S. Ct. 1596 (2021), has impliedly overruled this Court's holding in *Estate of Frazier v. Miller*, 2021 MT 85, 484 P.3d 912, to the extent that ruling permits community caretaking/welfare checks to be performed in a personal residence without a warrant.

Rather, the State implicitly admits that this Court has not adopted the Federal emergency aid doctrine by failing to provide any authority from this Court adopting or applying this exception, and then urging the adoption and application of Federal case law to excuse its officers' conduct. (Resp. Br. at 19-29.) However, as the State correctly notes, the emergency aid doctrine requires an active emergency to which state actors respond immediately, which is the opposite of what the State admits that occurred in this case. (Resp. Br. at 20-21.) Without support, the State further argues that should this Court adopt the emergency aid doctrine they should also adopt a reasonableness standard in lieu of the requirement for immediate action. (Resp. Br. at 28-29.)

While the State quotes in support of its argument that the emergency aid exception "requires only 'an objectively reasonable basis for believing,' that 'a person within [the house] is in need of **immediate** aid.'" (Resp. Br. at 21 (quoting *Michigan v. Fisher*, 558 U.S. 45, 47 (2009) (emphasis added)), it then argues that its officers did not have to immediately render aid due to the reasonableness of their delays. (Resp. Br. at 28-29.) However, despite the State repeatedly asserting the reasonableness of the officers' conduct, it fails to produce a single legal authority in support of its position. This is unsurprising as the Federal emergency aid exception clearly requires the immediate rendering aid, as evidenced in every case cited by the State in support of its argument.

Again, the State acknowledges that when the officers in *Fisher* arrived at the residence, they observed that "[i]nside the house they saw a man screaming and throwing things." (Resp. Br. at 22 (citing *Fisher*, 558 U.S. at 46.)) While it is understandable why the State framed it this way, it is also important to note that the officers in *Fisher* made this observation through a window from outside the residence, *Fisher*, 558 U.S. at 46, which is the opposite of what occurred in this case where the officers arrived to a vacant and silent residence with no signs of an active emergency in progress that required immediate assistance. Further, unlike in the present case where the officers wasted approximately 45 minutes prior to making entry, in *Fisher*, the officers immediately approached the house, made contact with

the defendant through the door and window, and then made immediate entry when he refused to open the door. *Id.*

Relying upon *United States v. Snipe*, 515 F.3d 947 (9th Cir. 2008), the State then argues that the circumstances in this case gave the officers "an objectively reasonable basis for concluding there was an **immediate** need to protect Case…." (Resp. Br. at 25 (emphasis added).) And yet, despite admitting that there was an immediate need to render aid to Mr. Case, the State then argues that it didn't have to render immediate aid due to the reasonableness of its reasons for delay. (Resp. Br. at 28-29.)

Further, unlike in *Snipe*, where the front door had been left open, 515 F.3d at 949, here the front door was closed and latched. Further, when the officers knocked on the open door in *Snipe*, immediately upon their arrival, the door opened further immediately revealing the occupants and drugs on the kitchen table, *id.*, unlike the present case where the officers opened a closed and latched door and then proceeded to search the entire residence after waiting more than 45 minutes to make entry. However, most importantly, unlike in the present case, the officers in *Snipe* made immediate entry to the residence in order to render immediate aid to a potential reported victim and then searched the house for the potential reported victim with the **permission** of the occupants. 515 F.3d at 949-950.

As such, there is no reason for this Court to adopt the Federal emergency aid exception as it clearly does not excuse the officers' conduct in this case where they allegedly recognized an immediate need but instead of immediately rendering aid, as clearly required and demonstrated in every case cited by the State, the officers in this case wasted nearly 45 minutes before making entry while admitting on camera that Mr. Case would have been dead, had he shot himself, due to their delays. (Doc. 55.1.) In other words, the officers admitted that they would not be able to render aid to Mr. Case just prior to making their warrantless entry, thus negating any allegedly objective basis to conclude that there was an immediate need to make entry and render aid to Mr. Case.

II. As evidenced by this Court's explicit and repeated holdings that exigent circumstances require probable cause, and as evidenced by this Court's refusal to date to recognize the Federal emergency aid exception, the Montana Constitution clearly provides enhanced protections against warrantless searches of the residence.

Notwithstanding the State's argument, Mr. Case has repeatedly argued from the beginning that this Court's repeated and explicit holdings that the exigent circumstances exception required probable cause, combined with the lack of explicit adoption of the Federal emergency aid doctrine, evidenced the heightened protections afforded Montana citizens under our constitution. In other words, if this Court has afforded suspected criminals this level of state constitutional protections, why would it afford law abiding citizens less. In fact, this Court has not done so, but

rather has yet to adopt the Federal emergency aid exception, which does not require probable cause, and has repeatedly held that Montana law requires probable cause in addition to exigent circumstances.

While the State admits that this Court has repeatedly and explicitly held that probable cause is required under the exigent circumstances exception, (Resp. Br. at 33), it also attempts to argue that probable cause is not really required based upon the holdings of *State v. Loh*, 275 Mont. 460, 914 P.2d (1996), and *State v. Lewis*, 2007 MT 295, 340 Mont. 10, 171 P.3d 731. However, in both *Lewis* and *Loh*, the defendants did not contest the initial entry made to fight the active fire. *Lewis*, ¶ 10; *Loh*, 275 Mont. at 467. Further, like every other case cited by the State, in both *Lewis* and *Loh*, the State's agents made immediate entry to render immediate aid.

Unlike the present case, where officers did not see an active fire or other emergency, in *Lewis*, after arriving on scene the officer could observe flames behind a wood stove through a window of the defendant's apartment. *Lewis*, ¶ 4. Further, unlike the present case where officers wasted 45 minutes prior to making entry to render aid, in *Lewis*, the officer immediately broke the window to discharge his fire extinguisher. *Id.* After emptying his extinguisher and the extinguisher of a neighbor, the officer was let into the apartment by the owner of the building, which again is distinguishable from the present case. *Lewis*, ¶ 5. At the point the officer in *Lewis* made entry into the residence, there was still significant smoke coming from the

structure, thus continuing to present an active emergency due to the dangers of smoke inhalation. *Id.*

Likewise, in *Loh*, officers arrived on the scene of a reported house fire and were informed by a bystander that there were possibly two individuals inside the residence. *Loh*, 275 Mont. at 464. Without delay, the officers kicked in the back door of the residence but were unable to enter due to the thick black smoke. *Id.* The officers then kicked in the front door and were able to make entry by crawling on the floor below the smoke. *Id.*

As such, the State's reliance upon *Lewis* and *Loh* is misplaced as these cases present a situation where police not only immediately responded to the scene of a reported and active emergency that was visible from outside the residence, but also made immediate entry while the emergency was still active in order to render immediate assistance to the occupants. Further, the initial entry in both cases was not contested by the defendants.

The State next argues that if this Court's prior holdings concerning exigent circumstances are still valid, that this Court can also impliedly find probable cause despite the sworn testimony of each and every officer present that there was no probable cause nor suspicion of a crime being committed. (Resp. Br. at 35.) While the State relies upon *State v. Wakeford*, 1998 MT 16, 287 Mont. 220, 952 P.2d 1065, to support its argument that this Court may find probable cause on its own in the

face of uncontradicted sworn testimony from each and every officer present that there was no probable cause or suspicion that a crime had been committed, the officers in *Wakeford* did not testify that they had no probable cause and that there was no suspicion that a crime was being committed. Rather the officers noted that they heard loud voices engaged in a potential domestic abuse situation when they arrived, and that they encountered an agitated Mr. Wakeford at the door to the room who was concealing his hands from the officers and blocking the door opening such that the officers could not see or hear the female they had heard Mr. Wakeford arguing with. *Wakeford*, ¶ 31. Although this Court found probable cause under these circumstances where the district court had not done so, the facts supported said finding, there is nothing in the holding of *Wakeford* to support a finding of probable cause in the face of sworn testimony from the officers to the contrary.

Likewise, the State's gross mischaracterization of the evidence and sworn testimony cannot create probable cause after the fact. While the State first asserts that the officers "**knew** Case had threatened suicide and fired his gun," (Resp. Br. at 25 (emphasis added)), it later walks back this misrepresentation to the Court and admits that actually the complainant only reported hearing a "pop." (Resp. Br. at 34.) Despite this, the State only cites to the complainant's highly suspect testimony at trial, which again makes sense as the complainant refused to tell the truth at trial, forcing Mr. Case to impeach her testimony with the actual recording of her original

call to 911. In the call the complainant stated that Mr. Case "was threatening suicide and the phone just went silent, and she didn't get a response;" and that "he said he had a loaded gun, and all I heard was clicking and, **I don't know**, **I thought** I heard a pop at the end, **I don't know**." (Doc. 127 – Exhibit D-90 – Complainant's 911 call to ADLC Dispatch.) Notably, the complainant never reported a gunshot to 911, nor did she communicate any alleged threats towards law enforcement from Mr. Case. *Id.*

Likewise, the responding officers all reported that there was no probable cause prior to entry as there was no suspicion that a crime had been committed. While the DCI investigators eventually found a bullet hole in the floor of the kitchen, none of the officers were aware of this prior to their entry. (Trial Tr. at 280, & Doc. 55.1.) As such, it would again defy logic to allow the existence of an alleged crime, that was unknown to the officers at the time of entry, to justify their warrantless entry, as this is the exact abuses that our state constitution allegedly protects its citizens from. In other words, the State is arguing that as long as they find any evidence of any alleged crime after the entry it can remedy the lack of probable cause prior to entry. This is the very definition of an out-of-control Orwellian type government, and it is exceptionally concerning that the very agency responsible for upholding our state constitution is arguing that it essentially no longer applies to the proles.

As is clear from the above discussion, there is little to no support for the State's argument that probable cause is no longer required under the exigent circumstances exception. Further, like with the Federal emergency aid exception, immediacy of response, entry, and/or rendering of aid is required, but did not occur in this case. Finally, there is no support for the State's argument that once exigent circumstances exist, they exist indefinitely as long as the officer can articulate "reasonableness" for any delays, even if the officers admit such delays extend past the exigent circumstances. Rather, it is clear from every case cited by the State and Mr. Case, that under either the Federal emergency aid or Montana's exigent circumstances exceptions, the officers are permitted to make a warrantless entry in recognition of, and in exchange for, the immediate rendering of aid. This is especially true where the officers admitted prior to entry that Mr. Case would be dead due to their delays had he actually shot himself.

As such, regardless of whether this Court adopts the Federal emergency aid exception or amends this Court's prior exigent circumstances jurisprudence to remove of the last of the enhanced protections enjoyed by Montanans under our state constitution, the warrantless entry made by the officers was not excusable as there was no immediate entry nor immediate rendering of aid. Rather the officers admitted that they waited long enough for Mr. Case to die before they finally made entry.

III. The State committed a Brady Violation by failing to disclose Sgt. Pasha had experienced being shot at three months before September 26, 2021, as that information could have been used to impeach Sgt. Pasha's testimony about what he observed as Mr. Case exited the closet, the only direct evidence of the charged offense.

Although Sgt. Pasha testified to having been shot at previously in his career, he neglected to testify that he had been shot at three months prior to his unwarranted and near fatal entry into Mr. Case's home, the proximity of time being key. (Trial Tr. 118.) The State argues that the court did not abuse its discretion by refusing to address the *Brady* argument raised by Defense in their reply brief to their motion for a new trial. (Doc. 135 at 4.) However, the Defense was unable to raise it prior to the Reply brief as the Defense did not become aware of the proximity in time of the two incidents until almost two weeks after it had filed its motion for a new trial. (Doc. 133 at 6.) Further at the time Defense was drafting the Reply brief, a new motion for a new trial would have been untimely and summarily denied as such. (Doc. 133). Finally, the State was able to draft and file their own response brief to the new argument well before the court rendered a decision on the motion. (Doc 134.) As such the matter was fully briefed by both sides, and it was raised as soon as the Defense became aware of the issue.

This case is nothing like the case of *Kapor v. RJC Inv., Inc*., 2019 MT 41, ¶ 29, 394 Mont. 311, 434 P.3d 869, in which RCJ raised for the first time in their reply brief an argument that they had been aware of during the time of filing their initial

brief. There must be an accommodation, in the name of judicial economy and expedience, for information that was not known prior to filing of the initial brief to be raised in the reply so long as the other side is given a chance to respond, just like in the present case, and the matter is fully briefed before the court renders a decision. The other option is to force parties to file another motion and initial brief, that further consumes the court's time, and may possibly be summarily denied on some other procedural grounds. To hold otherwise would only further encourage corrupt prosecutors to actively suppress the disclosure of favorable evidence.

As to the substantive nature of Mr. Case's *Brady* argument, the State begins their refutation of Defense's argument that Officer Pasha's mental state is not an element of the charged crime, because it is a reasonable officer standard not the individual officer and their personal apprehension. (Resp. Br. at 37.) Even though the individual officers mental state isn't the standard, it is a factor considered by the jury, and if the officer involved was so scared that he shot at movement rather than an identified individual possessing what the officer reasonably believes to be a weapon, that negates the reasonable officer standard as no crime was committed, and the subsequent charge is an attempt to cover up the officer's negligence.

In the matter at hand, Sgt. Pasha testified to observing a stern expression, gritted teeth, and a dark colored object between the curtain and Mr. Case's shirt at his mid-section. (Trial Tr. At 70-71.) Sgt. Pasha's observations were called into

question by the Defense. Further, the central focus of Case's defense was that Sgt. Pasha was so agitated and scared that he shot at movement and didn't actually see what he testified to observing prior to opening fire.

Evidence that Sgt. Pasha had been shot at **3 months** prior to the unwarranted entry into Mr. Case's home would have directly addressed the Defendant's defense that Pasha was lying in his testimony and was so scared on September 26, 2021, that he shot at mere movement, as evidenced by the BWC footage. (Doc 55.1.) Further, it's not the mere fact that Sgt. Pasha had been shot at previously in his career, but that he had been shot at in such short proximity of time to his shooting of Mr. Case, that makes the evidence exculpatory as it casts doubt on Pasha's testimony and supports the Defense's theory. The information that Sgt. Pasha had been shot at in such proximity to his shooting of Mr. Case is the missing piece of Mr. Case's defense, that Sgt. Pasha was so unreasonably afraid on September 26, 2022, prior to entering Mr. Case's home. As a result of his consuming fear, he fired at the moving curtain as evidenced by his statements at the scene. (Doc 55.1.) It was only after the weapon was found that the four officer's present were able to craft the narrative that Sgt. Pasha saw a stern look, gritted teeth, and a dark colored object he thought to be a weapon. (Doc 55.1 and *Trial Tr.* At 70-71.) This was further evidenced by Chief Sather altering the narrative to DCI over the phone, before even talking to Sgt. Pasha. (Doc 55.1.) The proximity of the two shootings in time explains why Sgt. Pasha was

so afraid that night and would have been used to further impeach his perjurious testimony.

Finally, the Defense can only speculate as to whether or not records exist of any therapy or counseling after the event in which Sgt. Pasha was shot at because nothing of the nature was disclosed. (Resp. Br. at 38.) However, even if no such records exist, because Sgt. Pasha didn't seek counseling after being shot at, the absence of such counseling is just as exculpatory as any record of PTSD, if not more so, as the trauma had clearly not been treated, which directly lead to Sgt. Pasha's fearful behavior when he shot at a moving curtain and nearly killed Mr. Case in his home during a mental health welfare check. (Doc 55.1.)

As to the second prong of the *Ilk* test, the State argues that the prosecution affirmed that it did not possess any materials showing Sgt. Pasha had been diagnosed with PTSD. Further, the prosecution stated that it would be "preposterous to propose that part of discovery should entail listing details and names of every case an officer has ever investigated or testified in." (Doc. 134 at 4-5). However, this wasn't just some case Sgt. Pasha had investigated or testified in, but a case in which he had been fired upon merely three months prior to his shooting of Mr. Case. The State was aware of the June 19, 2021, incident and the details of the case, as the prosecution was in the process of prosecuting Mr. Hill for shooting at Sgt. Pasha while Mr. Krakowka was charging and prosecuting Mr. Case in the present matter. Further it

was clear from the briefs in support of the motions to suppress and dismiss that Defense had focused on Sgt. Pasha's statements at the scene and his overall exceptional level of fear exhibited in the BWC footage that was significantly greater than the other three officers present at the scene. (Doc 27, 29, & 55.1.) It is reasonable to infer that due to the date of Mr. Hill's trial, Mr. Krakowka was preparing himself and Sgt. Pasha for Hill's trial while also preparing for Case's evidentiary hearing. (Doc 133.)

The Defense is not claiming that an officer's entire investigatory and testimonial history should be included in the discovery. However, if an officer had been involved in a near death shooting just months prior to shooting a man whose welfare the officer was present to check upon, then that should also be disclosed as it carries exculpatory value similar to perjury or falsification of evidence.

In the present case, Sgt. Pasha had not been shot at in year 2 of his 8-year career, but 3 months prior to entering the home of a man in significant mental distress and gunning him down in his closet because Sgt. Pasha saw movement and "let one fly." (Doc 55.1.) That absolutely goes to the credibility of Sgt. Pasha and was suppressed by the State. Testifying to it at trial for the first time is not timely production, and the testimony did not mention the proximity of time of the two events. (Trial Tr. at 118.)

The State argues that records showing that Sgt. Pasha was suffering from PTSD or was unfit for duty on the night of September 26, 2021, weren't produced because they "most likely [don't] exist" and that the information regarding Sgt. Pasha being shot at by a different defendant was not exculpatory. (Resp. Br. at 38.) The State's argument is speculative and glaringly ignores the fact that the absence of such records is evidence in and of itself. Such a lack of counseling or treatment would have brought up several other lines of questioning for the state's chief investigator and expert witness, as well as Sgt. Pasha. If Sgt. Pasha wasn't required to attend any kind of counseling to debrief after being shot at, such information would have further supported defense's argument that Sgt. Pasha was scared and reacted to the movement he saw out of the corner of his eye, resulting in him shooting at the moving curtain before even identifying that it was Mr. Case in the closet, let alone observing the "dark colored object."

Sgt. Pasha would have known if he had attended any counseling or debriefing following the incident, even if the prosecutor was not aware of it. Thus Sgt. Pasha's knowledge of his own counseling or lack thereof was within the possession of the State, as Sgt. Pasha is an agent of the State aiding in the investigation of the charged crime. The Prosecutor had an explicit duty to investigate and disclose the incident and any records of treatment or the lack thereof, all of which is exculpatory evidence. *Gonzales v. Wong*, 667 F.3d 971, 981-982 (9th Cir. 2011). The prosecution

suppressed this exculpatory evidence, likely as it was detrimental to the cover-up of Sgt. Pasha's gross negligence, when Sgt. Pasha intentionally shot at a moving curtain before identifying his target, and then wondering aloud where the mysterious firearm came from, hoping aloud that Mr. Case dropped it. (Doc 55.1 and *Trial Tr.* at 372.)

Regarding the third prong of the *Ilk* test, the State argues that Defense has failed to show that had the evidence been disclosed that there exists a reasonable probability that a different result would have occurred. (*Brief of Appellee*, at 39.) The present case is more akin to *Gonzales* than *Ilk*, as *Ilk* was claiming that additional photos taken of the same scene at a different time of day would have altered the outcome. *State v. Ilk*, 2018 MT 186, ¶ 39, 392 Mont. 201, 422 P.3d 1219. Whereas Gonzales was arguing that six withheld psychological reports of the prosecution's key witness would have had resulted in further impeachment which reasonably could have altered the verdict. *Gonzales*, 667 F.3d at 971. While the state argued that the defendant was adequately able to impeach Acker at trial and therefore the new evidence was merely cumulative, the court noted that "withheld impeachment evidence does not become immaterial merely because there is some other impeachment of the witness at trial. *Id*. Where the withheld evidence opens new avenues for impeachment, it can be argued that it is still material." *Gonzales*, 667 F.3d at 984. Although there was other circumstantial evidence, it was Sgt. Pasha's testimony alone that established Mr. Case exited the curtain in a manner that caused

him apprehension of serious bodily injury through what Sgt. Pasha perceived to be a weapon. Testimony that would have been further impeached with the withheld evidence.

The jury was aware of part of the story of Sgt. Pasha having been shot at, but not the important part, the proximity in time between the two events. Nothing else explained Sgt. Pasha's exceptional fear the evening he shot Mr. Case. (Doc. 55.1.) Had the defense had the information in question, it could have further supported its theory that Sgt. Pasha was overly fearful that night. The proximity in time was the missing piece of the defense's theory that would have tied it all up for the jury. Having such a glaring hole filled in undoubtedly creates a reasonable probability that the outcome would have been different.

Much like in Gonzales, in the present case, Mr. Case's whole defense theory was that Sgt. Pasha didn't see what he testified to seeing, but that he was overly fearful for some reason that the defense couldn't quite explain. Due to Sgt. Pasha's heightened level of fear that night, he saw movement and opened fire before even identifying his target, let alone observing a dark colored object, or Mr. Case's expression. The key weakness of the defense was why was Pasha so fearful the whole time he was on scene, repeatedly expressing his fear of Mr. Case not being injured and a shootout ensuing. (Doc. 55.1.) However, with the suppressed evidence, the picture becomes crystal clear, Sgt. Pasha had been shot at and nearly killed only

three months prior to September 26, 2021. It was fear and adrenaline from the June 19, 2021, shooting that came roiling back up the instant it was mentioned Mr. Case was in possession of a firearm. (Doc. 55.1.) Such information would have completed Defense's theory, filling in the rest of the picture the defense was painting for the jury. Such information would reasonably have put the whole case in such a light that the verdict is undermined.

The *Gonzales* court noted that the defendant had:

> a colorable argument that the jury believed Acker despite the impeachment evidence presented to them. This argument could rest in part on the fact that Acker was an important witness for the government, especially during the penalty phase, and that '[i]n cases in which the witness is central to the prosecution's case, the defendant's conviction indicates that in all likelihood the impeachment evidence introduced at trial was insufficient to persuade a jury that the witness lacked credibility.'"

Gonzales, 667 F.3d at 985 (quoting Benn v. Lambert, 283 F.3d 1040, 1055, (9th Cir. 2002)). In its conclusion the *Gonzales* Court held "[w]hile there was other circumstantial evidence, Acker's testimony was the only direct evidence establishing that Gonzales had a premeditated plan to kill a police officer." *Gonzales*, 667 F.3d at 986. It is the same in the present case, the jury clearly believed Pasha's testimony despite it being impeached by the BWC, and previous statements. However, had defense had the suppressed information, there exists a reasonable probability that further impeachment of Sgt. Pasha could have resulted in a different outcome.

However, had defense had the suppressed information, there exists a reasonable probability that further impeachment of Sgt. Pasha could have resulted in a different outcome.

CONCLUSION

Mr. Case's conviction and sentence should be overturned as it was based solely upon illegally seized evidence collected during a warrantless home search and seizure of Mr. Case. Although the State urges this Court to adopt a bastardized version of the Federal emergency aid exception, there is no reason for this Court to do so as it is undisputed that the officers did not render immediate aid, but rather waited until they admitted themselves that there was no chance Mr. Case would be alive had he shot himself prior to their arrival. Likewise, the Defense has been able to support its claim that exculpatory evidence, favorable to the Mr. Case's defense, was suppressed by the actions of the prosecution, and had the suppressed evidence been disclosed there exists a reasonable probability that the result of the trial would have been different. Further, the defense had no choice but to raise this argument for the first time in its Reply Brief. Finally, the matter was fully briefed before the lower court. As such, Mr. Case's conviction and sentence should be overturned due to these serious constitutional violations.

//

//

Respectfully submitted this 14th day of December 2023.

ELLIS LAW, PLLC

/s/ Nathan D. Ellis
Nathan D. Ellis
Attorney for Defendant and Appellant

HULL SWINGLEY & BETCHIE, P.C.

/s/ Christopher R. Betchie
Christopher R. Betchie
Attorney for Defendant and Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Reply Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and quoted, indented material; and the word count calculated by Microsoft Word is 4,995, excluding the Cover Page, Table of Contents, Table of Authorities, Certificate of Compliance, Certificate of Service, and Appendices.

DATED this 14th day of December, 2023.

/s/ Nathan D. Ellis
Nathan D. Ellis
Attorney for Defendant and Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2023, I caused a true and accurate copy of the foregoing **REPLY BRIEF** to be electronically served to:

Austin Miles Knudsen
Montana Attorney General
215 North Sanders
Helena, Montana 59620

Ben Krakowka
Deer Lodge County Attorney
800 Main Street
Anaconda, Montana 59711

/s/ Nathan D. Ellis
Nathan D. Ellis
Attorney for Defendant and Appellant

CERTIFICATE OF SERVICE

I, Nathan Daniel Ellis, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 12-14-2023:

Christopher R. Betchie (Attorney)
PO Box 534
Helena MT 59624
Representing: William Trevor Case
Service Method: eService

Ben Krakowka (Govt Attorney)
Office of the County Attorney
800 Main
Anaconda MT 59711
Representing: State of Montana
Service Method: eService

Michael Patrick Dougherty (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Electronically Signed By: Nathan Daniel Ellis
Dated: 12-14-2023