

APPLICATION FOR

**DISTRICT COURT JUDGESHIP**  
**First Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: Jeffrey Michael Doud
  - a. What name do you commonly go by? Jeff
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED]  
Phone: [REDACTED]
4. Office Address: 1712 Ninth Avenue, Helena, Montana 59601  
Phone: (406) 444-3029
5. Length of residence in Montana: 14 years
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
January, 2015 – Present	Helena	Montana

**B. EDUCATIONAL BACKGROUND**

7. List the names and location of schools attended beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Woodburn High School	Woodburn, Oregon	June, 1998	High School Diploma
Willamette University	Salem, Oregon	May, 2002	B.A. Political Science
Gonzaga University	Spokane, Washington	May, 2006	Juris Doctorate

8. List any scholarships, awards, honors and citations that you have received:

None

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

No

### **C. PROFESSIONAL BACKGROUND AND EXPERIENCE**

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
<u>Montana Supreme Court</u>	<u>October, 2006</u>
<u>U.S. District Court for the District of Montana</u>	<u>October, 2006</u>
<u>Ninth Circuit Court of Appeals</u>	<u>August, 2015</u>

11. Indicate your present employment. (List professional partners or associates, if any).

I am an Assistant Attorney General with Agency Legal Services Bureau of the Montana  
Department of Justice.

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
<u>Managhan &amp; Kortum-Managhan</u>	<u>Associate Attorney</u>	<u>11/2006-7/2007</u>
<u>Wold Law Firm, P.C.</u>	<u>Associate/Contract Attorney</u>	<u>8/2007-2008</u>
<u>McKeon Doud, P.C.</u>	<u>Managing Partner/President</u>	<u>2008-1/2015</u>
<u>Montana Department of Justice - ALSB</u>	<u>Assistant Attorney General</u>	<u>1/2015-Present</u>

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

N/A

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

I am currently an Assistant Attorney General with Agency Legal Services Bureau within the Montana Department of Justice. At ALSB, we provide a wide range of legal services to various state boards and departments. My cases are diverse and have ranged from defending federal civil rights cases, state tort claims, HRB discrimination claims, employment grievances, and wage/compensation claims to asserting Medicaid estate recovery claims and handling criminal appellate cases. I have also presided over administrative cases as a hearings officer. I provide legal advice and contract reviews to the Montana State Library. I also provide legal representation to judges and other judicial officials for the Court Administrator's Office.

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

None

16. If you specialize in any field of law, what is your specialty?

I do not have a specialty. I have always tried to remain diverse in my practice areas and continually learn new areas of the law, which is what drew me to my current positions. When I was in private practice, I handled cases involving personal injury, medical malpractice, contracts, corporate defense, employment issues, minor criminal cases, and even attempted to maintain a class action lawsuit. I have maintained that diversity in my caseload in my current position as detailed above.

17. Do you regularly appear in court? Yes.

What percentage of your appearance in the last five years was in:

Federal court	<u>20</u>	%
State or local courts of record	<u>60</u>	%
Administrative bodies	<u>20</u>	%
Other	<u>0</u>	%

18. During the last five years, what percentage of your practice has been trial practice?

50%, though none of my cases have gone to trial.

19. How frequently have you appeared in court? 3-5 times per month on average.

20. How frequently have you appeared at administrative hearings? 1 time per month on average.

21. What percentage of your practice involving litigation has been:

Civil	<u>90</u>	%
Criminal	<u>10</u>	%
Other	<u>0</u>	%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

Over the last 5 years, I have appeared in a total of 16 cases before the Montana Supreme Court, involving both criminal and civil appeals. The five most recent cases are as follows:

1. *Armstrong v. Board of Personnel Appeals, et al.*, DA 19-0590, Lin Deola, Morrison, Sherwood, Wilson & Deola, PLLP, 401 Last Chance Gulch, Helena, MT 59601, (406) 442-3261
2. *Thomas Sliwinski v. State*, DA 19-0439, Thomas Sliwinski, *pro se*
3. *State v. Tyler Cole*, DA 19-0338, Robin Meguire, Meguire Law, P.O. Box 1845, Great Falls, MT 59403, (406) 442-8317
4. *State v. Pierre*, DA 19-0138, Gregory D. Birdsong, Birdsong Law Office, P.C., P.O. Box 5899, Missoula, MT 59806, (406) 529-6988



5. *State v. A. Scott*, DA 19-0074, Alexander Pyle, Office of the Appellate Defender, P.O. Box 200147, Helena, MT 59620-0147, (406) 444-9505

23. State the number of jury trials that you have tried to conclusion in the last ten years. 0
24. State the number of non-jury trials that you have tried in the last ten years. 0 – if this does not include administrative hearings
25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

Lin Deola, Morrison, Sherwood, Wilson & Deola, PLLP, 401 Last Chance Gulch, Helena, MT 59601, (406) 442-3261, *Armstrong v. Board of Personnel Appeals, et al.*, Montana Supreme Court DA 19-0590, on appeal from Montana First Judicial District Court, Cause No. DDV-2017-732, Hon. James Reynolds presiding. Wage grievance filed by employees of DPHHS alleging a violation of Mont. Code Ann. § 2-18-301. Administrative hearing of March 31-April 2, 2015.

Scott Peterson, Morrison, Sherwood, Wilson & Deola, PLLP, 401 Last Chance Gulch, Helena, MT 59601, (406) 442-3261; *Blount v. Montana State Library*, Case No. 1754-2018. Age discrimination claims in Library's selection of Mr. Blount for a reduction in force following drastic budget cuts. No judge. Administrative Hearing of August 16-17, 2018.

Ed Moriarity, Moriarity & Badaruddin, PLLC, 736 South 3rd Street West, Missoula, Montana 59801-2514, (406) 586-5468; *Leslie Fischer, et al. v. Montana Department of Environmental Quality*, Eighteenth Judicial District Court Cause No. DV-14-994B, Hon. Rienne McElyea presiding. Tort claims filed against the State related to the former site of the Bozeman landfill. No trial, unresolved at this time.

Ben Sather, Sather Law Firm, P.C., Sather Law, PLLC, 2301 Montana Ave., Suite 202, P.O. Box 1115, Billings, MT 59103, (406) 294-1700; *Kaneshiro v. Montana State University Billings*, Thirteenth Judicial District Court Cause No. DV-16-672, Hon. Jessica Fehr presiding. Tort claims involving the alleged improper construction and maintenance of student apartment buildings. Unresolved at this time.

Justin Stalpes, Beck, Amsden & Stalpes, PLLC, 1946 Stadium Drive, Suite 1, Bozeman, MT 59715, *Brandemihl v. State of Montana*; Lewis & Clark County Cause No. BDV-2016-124, Hon. Kathy Seeley presiding. State tort claim related to inmate suicide. Resolved prior to trial.

W. Wayne Harper, Harper Law Firm, 35 West Granite Street, Butte, MT 59701, *Norbeck v. Koenig, et al.*; Eleventh Judicial District Cause No. DV-14-1208(D), Montana

Supreme Court Case No. DA 18-0117, Hon. Dan Wilson presiding. Claim filed by homeowners against the Montana DEQ regarding a faulty water distribution system in a residential subdivision. No trial, dismissed on summary judgment, and affirmed by Supreme Court.

Jon E. Doak, DOAK & ASSOCIATES, P.C., 100 North 27th Street; Suite 200, P. O. Box 1875, Billings, Montana 59103, *Harmon v. Dual Trucking, Inc.*, Fifteenth Judicial District Court Cause No. DV-15-15, Hon. David Cybulski presiding. Claim filed by landowners against Montana DEQ related to the improper operation of a Solid Waste Management System on property. Resolved prior to trial.

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have been both an attorney representing clients and a hearings officer presiding over administrative cases. The cases where I represented clients have involved employment grievances before the Montana Board of Personnel Appeals and discrimination claims before Montana Human Rights Commission. The cases that I have presided over as a hearings officer involved employment grievances, highway disbarment proceedings, benefits under the TRS, insurance and securities matters, and license revocation proceedings under the PAARP Board.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

While it was not a formal lecture, I was asked by the legal department of the Montana Department of Corrections to speak with various individuals to provide them with a legal update and to advise them on the inmate grievance process which is a prerequisite to inmates filing § 1983 claims in federal district court.

#### **D. PROFESSIONAL AND PUBLIC SERVICE**

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.



None

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

None

30. Have you ever run for or held public office or sought a judicial appointment? If so, provide the details.

No

31. Explain your philosophy of public involvement and practice of giving your time to community service.

I think that it is important that attorneys give as much time to the public as possible.

Given the necessary time commitments of the profession, I have not always volunteered

as much as I would like. However, I have always attempted to give in other ways, such

as ensuring that teachers have supplies for projects since I could not be present in the

classroom, or coaching youth teams to provide a role model for youth in the community.

#### **E. PROFESSIONAL CONDUCT AND ETHICS**

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

No

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No

#### **F. BUSINESS AND FINANCIAL INFORMATION**

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

No

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

N/A

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

None

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

No



41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes \_\_\_\_\_

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? ☒ Yes ☐ No

If not, please explain.

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?  
☐ Yes ☒ No

If yes, please explain.

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No \_\_\_\_\_

## G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

In the last five years, I have drafted an extensive number of legal briefs, including briefs related to motions for summary judgment or to dismiss in state district courts, motions for summary judgment in federal courts, appellate briefs to the Montana Supreme Court, and appellate briefs to the Ninth Circuit Court of Appeals. As part of my practice, I do not rely on support staff or other attorneys to research or write any substantive portions of my

briefs. At most, support staff will proofread my briefs and draft the table of contents and table of authorities.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

None

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable. The writing sample should be as recent as possible.

48. What percentage of your practice for the last five years has involved research and legal writing?  
90 %

49. Are you competent in the use of Westlaw and/or Lexis?

Yes

#### **H. MISCELLANEOUS**

50. Briefly describe your hobbies and other interests and activities.

My hobbies revolve around my family, namely my two sons who are 8 and 11. We enjoy fishing, water sports, hiking, traveling, basketball, football, and video games. I also enjoy any kind of home improvement project.

51. Describe the jobs that you have held during your lifetime.

I have worked consistently since I was 12 or 13. I started out working in a traveling concession stand in Oregon. We would travel to different events, such as races and fairs, during the summer and on weekends during the school year. It was from that job that I first learned the value of money and hard work. When I turned 16, I started working in residential construction. I worked weekends, school breaks, and summers doing odd jobs for a home builder. This job involved cleaning the homes at various stages, clearing debris from the property, landscaping, and generally whatever else was needed of me. I started out working alone, but eventually became the supervisor of a work crew. At

times, I would work on a framing crew or build the occasional fence or deck. I worked in construction from my sophomore year in high school until I graduated law school. When I was a senior in college, I worked as a legal assistant in a law firm in Portland, Oregon. I worked as a legal assistant throughout my senior year of college and full-time during my break year between undergrad and law school.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

Unfortunately, I have not been able to perform an extensive amount of pro bono work. However, there have been many instances when I have assisted family members or friends with legal matters or provided them with legal advice at no charge. My ability to provide pro bono legal hours has been somewhat constrained by my position and need to avoid conflicts of interest.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

When I was a senior in college, I took a position with an attorney in Portland. His name was Michael Kennedy. I admired the manner in which he approached cases and dealt with opposing counsel. While successfully representing his clients, he always brought humanity and levity to the profession by treating everyone with respect and listening to their concerns in earnest. His philosophy was that, at the end of the day, we are all people. I have always tried to emulate his approach and apply it to my practice.

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

I believe that a good judge is someone who is fair, and comes into a case with an open mind and free of preconceived notions. The judicial system was founded on the principal it is a forum of impartiality that serves justice equally. A good judge reflects this



principle and strives to ensure that the process is not tainted with the judge's personal beliefs. A good judge is also someone who challenges the arguments made by the parties. One of the things I always enjoyed about appearing before Judge Reynolds was that he questioned both sides from the bench. This forced the parties to think critically about their case and argument, and not just rehash the argument made in their briefs.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

Stare decisis is one of the bedrock principles of our profession. It provides certainty to the general public as to which actions will be tolerated by society and those which run afoul of the law. While this principle remains a necessary tenet, it must also be tempered by the need for the law to adapt to the evolution of society. Without this flexibility, the law will serve only as a barrier to progress. Probably the best example of this is the rapid development of technology for which there were no laws or rules to govern it. In those instances, anyone interpreting the law needs to be mindful of the legislature's intent, but also recognize that the legislature may not have considered, let alone known, how society would evolve when the law was enacted, and apply the best possible rationale when deciding such cases that is based upon all pertinent facts and circumstances.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

Throughout my legal career, I have thought about seeking a judicial position; however, it was not until I started presiding over administrative proceedings that I gave it any real consideration. During those proceedings, I found that I really enjoyed acting in a judicial capacity. I enjoy listening to the parties make arguments and applying those arguments and facts to the law to render a decision that was fair and appropriate to the parties.

Also, I want to be a judge to make a difference in my community. I want people knowing that their court is ensuring their rights are upheld and that they are given a meaningful opportunity to have their matters decided in a fair and just manner.

57. What items or events in your career have distinguished you or of which you are most proud?

There are not any items or events in my career that, I feel, have distinguished me or that stand out. I have approached every case with the same mindset: to do the best possible job for the client and provide them with sound legal advice so that they can make an informed decision. This work has been rewarding and fulfilling, and I very much appreciate and cherish the personal connections I have made with clients and members of the legal community. I am most proud of the manner in which I have conducted myself and represented my clients, and the reputation that I have built throughout my legal career.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

There is not anything that reflects on me positively or negatively that has not already been disclosed in the preceding sections.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

I believe that my service as a hearings officer gives me an advantage over other applicants who do not have this experience. During those proceedings, I had to marshal evidence and control the proceedings just as a judge has to do. While maybe not as formal as trials, I always approached those proceedings with the mindset of a judge and tried to give everyone a fair hearing, while making rulings consistent with the rules of evidence. Another thing that sets me apart of the other candidates is the diversity of my

legal experience. I have been incredibly fortunate to be able to practice in so many  
different areas of the law. This experience makes me well-suited for a judicial position as  
I would be able to take that wide-ranging experience and apply it to the cases that I  
preside over.

### CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 1st Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

8/25/2020  
(Date)

[Signature]  
(Signature of Applicant)

-----

A signed original **and** an electronic copy of your application and writing sample must be submitted by  
***5:00 p.m. on Thursday, August 27, 2020.***

**Mail the signed original to:**

**Office of Court Administrator  
c/o Lois Menzies  
P.O. Box 203005  
Helena, MT 59620-3005**

**Send the electronic copy to: [mtsupremecourt@mt.gov](mailto:mtsupremecourt@mt.gov)**



claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.” Mont. Code Ann. § 27-1-703(1). Furthermore, Mont. Code Ann. § 27-1-703(3) provides that “[a] party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant’s damages or if one party acted as an agent of the other.” Mont. Code Ann. § 27-1-703(3).

When read in conjunction with Mont. Code Ann. § 46-18-241(1), subsections (1) and (3) give the district court the broad authority to impose the full amount of restitution on a criminal defendant, jointly and severally, with anyone else who acted in concert with the criminal conduct that resulted in the pecuniary loss.

B. The District Court’s Imposition of Restitution on Mr. Cole Was Proper Because the State Proved That a Victim Existed in this Case.

Mr. Cole argues that the district court erred when it imposed restitution on him because his crime was victimless. Mr. Cole reasons that, absent a victim, restitution cannot be imposed against him. He relies exclusively on dicta in this Court’s opinion in *State v. Erickson*, 2005 MT 276, 329 Mont. 192, 124 P.3d 119.

In *Erickson*, the defendant was charged with two separate offenses of criminal possession of a dangerous drug and unlawful operation of a clandestine laboratory in separate informations. *Erickson*, ¶¶ 5-6. Both charges were resolved in a combined plea agreement and the district court conducted a consolidated

sentencing hearing on both charges. *Erickson*, ¶ 9. The district court's oral sentence ordered the defendant to pay his delinquent child support obligations in lieu of requiring him to pay cleanup costs associated with his clandestine lab. *Erickson*, ¶ 11. The district court's written judgment described the child support order as Erickson's sole financial responsibility in lieu of any fine, fee, or restitution. *Erickson*, ¶ 12.

On appeal, Erickson argued that the district court's order requiring him to pay his delinquent child support amounted to restitution, which was improper because there was no victim who suffered a pecuniary loss. *Erickson*, ¶ 29. As part of its reversal of the district court's imposition of restitution, this Court made a passing statement that "[t]he offense of criminal possession of dangerous drugs has no identifiable victim. Thus, by statute, Erickson could not be ordered to pay restitution as part of his sentence [for possession of a dangerous drug]." *Erickson*, ¶ 36. Mr. Cole now seizes upon this singular statement as the basis for his argument that the district court similarly erred in imposing restitution upon him because there was no victim in his case.

Mr. Cole's reliance on this statement is erroneous because it is dicta which is "[a]n opinion by a court ... that is not essential to the decision and therefore not binding even if it may later be accorded some weight." *State v. Beach*, 2015 MT 118, ¶ 31, 379 Mont. 74, 348 P.3d 629 (citing Black's Law Dictionary 549 (Bryan

A. Garner ed., 10th ed. 2009)). This statement falls within the definition of dicta because it was made in passing and not central to this Court's ultimate ruling. The Court offered no analysis for its conclusion or citation to other case or statutory law to substantiate its statement. Therefore, Mr. Cole should not be able to rely on this non-binding statement.

Even if this Court were to hold that its statement is not dicta and interpret it as a valid proclamation of this Court's position on restitution in drug and drug paraphernalia possession cases, the State strenuously urges this Court to reconsider its position in light of the operative facts of this case and scientific data, which prove that drug and drug paraphernalia cases are not all victimless crimes. Rather, there are instances when an innocent victim will suffer pecuniary loss stemming from possession of dangerous drugs and drug paraphernalia, particularly when those drugs are methamphetamine and associated paraphernalia is used to smoke meth.

“[S]moking methamphetamine in a residential property contaminates the house, furnishings and personal possessions within it, with subsequent exposure through ingestion, dermal absorption and/or inhalation causing adverse health effects.” *A Household Contamination with Methamphetamine: Knowledge and Uncertainties*, Emma J. Kuhn, et al. Int J Environ Res Public Health; 2019 Dec,



16, attached hereto as App. A.<sup>1</sup> “[S]moking methamphetamine has also been shown to produce residue contamination, though at much lower levels than measured during controlled cooks. Smoking, however, may be repeated on many occasions, resulting in higher levels of contamination.” *App. A* at 2. This residue “remain[s] on surfaces, upholstery and flooring . . . post-smoking. These surfaces may also desorb methamphetamine over time, and when these residues are disturbed, they become airborne within the environment. Generally airborne emissions are higher closer to the original contamination and there is methamphetamine that can be re-released into the air days or years after deposition.” *App A* at 8.

Importantly, exposure to methamphetamine residue can cause significant adverse health effects. The common adverse health effects are diverse, and “can include behavioural [sic] changes, respiratory illnesses and skin related responses. . . Symptoms can include irritability, anxiety, sleeplessness, weight loss, a persistent cough, dizziness, difficulty in breathing, nausea and throat, eye and skin irritations. *App. A* at 2.

---

<sup>1</sup> The State recognizes that this article was not presented to the District Court in consideration of its argument to impose joint and several restitution on Mr. Cole. However, Mr. Cole never argued that restitution cannot be imposed because drug possession cases are victimless crimes to the District Court. As such, the State has presented this article to confront Mr. Cole’s new argument on appeal.

Based upon this scientific data, correlating adverse health effects to meth residue exposure, an innocent property owner—whose property has been used to smoke methamphetamine—must remediate their property in order to avoid these adverse health effects. Thus, an innocent property owner falls within the statutory definition of a victim under Mont. Code Ann. § 46-18-243. In that statute, a victim is defined as a person who suffers loss of property, bodily injury or death as a result of the commission of an offense. Mont. Code Ann. § 46-18-243(2)(a)(i)(A). The statutes related to restitution mandate that the district court impose restitution when it finds that a victim has suffered a pecuniary loss. *See Breeding*, ¶ 19. This case aptly demonstrates an instance when a victim exists in drug and drug paraphernalia cases. As such, the State urges this Court to reverse its blanket prohibition against a district court assessing restitution in these types of cases.

In advocating for this reversal, the State is mindful of the importance of *stare decisis*. However, as this Court has articulated, “court decisions are not sacrosanct and *stare decisis* should not be used as a ‘mechanical formula of adherence to the latest decision.’” *State v. Gatts*, 279 Mont. 42, 51, 928 P.2d 114, 119 (1996) (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 172, 109 S. Ct. 2363, 2370 (1989)). “[T]he search for truth involves a slow progress of inclusion and exclusion, involving both trial and error.” *State v. Running Wolf*,

2020 MT 24, ¶ 22 (citing *State v. Long*, 216 Mont. 65, 84, 700 P.2d 153, 166 (Weber, J., concurring)).

Where vital and important public or private rights are concerned, and the decisions regarding them are to have a direct and permanent influence on all future time, it becomes the duty, as well as the right of the court to consider them carefully and to allow no previous error to continue if it can be corrected. The foundation of the rule of *stare decisis* was promulgated on the ground of public policy, and it would be an egregious mistake to allow more harm than good from it.

*Mont. Horse Prods. Co. v. Great N. Ry. Co.*, 91 Mont. 194, 216, 7 P.2d 919, 927 (1932) (citations omitted). Here, even factoring in the importance of *stare decisis*, it would be an egregious mistake to allow a blanket prohibition against restitution in dangerous drug and drug paraphernalia cases when it has been demonstrated that there are instances when a victim exists in such cases. Science proves that smoking meth in a residence contaminates that structure, and the residue must be remediated in order to avoid exposure and the associated detrimental health effects of such exposure. Thus, an innocent owner must remediate the property in order to make it habitable. The Court's present prohibition means that these victims are unable to seek restitution even though Montana law dictates that they are entitled to it.

An affirmation of this Court's blanket prohibition would obliterate the public policy underlying restitution in criminal cases. In light of the scientific data and the importance of restitution, as a means of compensating victims for their



pecuniary loss, the State respectfully urges this Court to reverse its prior proclamation disallowing restitution in drug possession cases and to adopt a position that allows for restitution when the State sufficiently proves that a victim exists and that there is a sufficient causal connection between the criminal conduct and the pecuniary loss suffered by the victim. This case is a prime example of how such an arbitrary prohibition can preclude victims from rightfully seeking restitution. The property owner herein meets the statutory definition of a victim and has suffered considerable pecuniary loss, yet would not be entitled to any restitution. All victims should be accorded the same opportunity to recover their loss, and, as such, the State respectfully requests that this Court reverse their prior holding.

C. The District Court Properly Imposed Joint and Several Restitution on Mr. Cole Because a Sufficient Causal Connection Between Mr. Cole's Criminal Conduct and the Victim's Pecuniary Loss Exists

Next, Mr. Cole argues that the district court erred because there was no causal connection between Mr. Cole's criminal conduct and the pecuniary loss suffered by the victim in this matter. Alternatively, Mr. Cole argues that the district court erred in imposing joint and several restitution and that he should only be responsible for the pecuniary loss attributable to his crime. In this vein, Mr. Cole argues that since he only admitted to possession of those drugs and paraphernalia in his bedroom, he should only be responsible for the remediation

costs in his bedroom. However, Mr. Cole's argument runs in contravention of Montana law.

Initially, Mr. Cole argues that he should not be required to pay any restitution because there is no causal connection between his crime and the pecuniary loss suffered by the victim. *Appellant Br.* at 14. To the extent that Mr. Cole argues that no restitution should have been imposed upon him, Montana law and the record in this case prove otherwise.

As previously set forth, Montana's restitution statutes provide that:

a sentencing court shall require an offender to make full restitution to any victim of the offense who has sustained pecuniary loss as a result of the offense, including a person suffering an economic loss as a result of the crime. The duty to pay full restitution under the sentence remains with the offender until full restitution is paid.

Mont. Code Ann. § 46-18-241(1).

Pecuniary loss means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

Mont. Code Ann. § 46-18-243(1). Under these statutes, a causal relation between the offender's criminal conduct and the pecuniary loss must be established when determining whether a person or entity is a victim entitled to restitution. *City of Billings v. Edward*, 2012 MT 186, ¶ 26, 366 Mont. 107, 285 P.3d 523; *State v. Brownback*, 2010 MT 96, ¶ 20, 356 Mont. 190, 232 P.3d 385; *Breeding*, ¶ 13. Once that causal connection is established, then the victim is entitled to restitution. *Breeding*, ¶ 19.

Here, the requisite causal connection exists. It is uncontroverted that Mr. Cole pled guilty to not only possessing methamphetamine, but also paraphernalia that is associated with methamphetamine use. *8/28/2018 Hrg. Tr.* 10:8-19. The State established that Mr. Cole's paraphernalia is typically used to smoke methamphetamine. *3/27/2019 Hrg. Tr.* 17-23. The State presented evidence that the apartment where Mr. Cole, his meth, and meth-smoking paraphernalia was found was contaminated with meth residue. *3/27/2019 Hrg. Tr.* 30:1-12. The meth residue in Apartment 58 is consistent with the scientific data which shows that smoking methamphetamine leaves a residue that permeates the surfaces of anything it touches. *App. A* at 2. Moreover, there was nothing to suggest that Apartment 58 had been contaminated with meth prior to Mr. Cole's admitted



conduct. 3/27/2019 Hrg. Tr. 43:11-16. As such, there is a sufficient causal connection between Mr. Cole's possession of meth and meth-smoking paraphernalia and the contamination in Apartment 58.

The scientific data establishes that remediation of the meth residue was necessary because it can become airborne when disturbed. *App. A* at 8. This residue can cause exposure to others, unknowingly, through ingestion, inhalation, or dermal absorption. *App A* at 1. As such, the victim suffered a loss in the amount that it was required to expend to remediate the meth residue and make Apartment 58 safe and habitable again. Therefore, the district court did not err in imposing restitution against Mr. Cole and its judgment should be affirmed.

Similarly, the district court did not err in imposing joint and several liability on Mr. Cole for the full amount of pecuniary loss suffered by the victim as a result of his criminal conduct. While Mr. Cole argues that he should have only been made to pay for the remediation work that was required in his room, his argument neglects to acknowledge clear civil law allows for the imposition of joint and several liability when multiple defendants are responsible for the victim's pecuniary loss.

"[W]hether one defendant in a crime should bear full responsibility for the pecuniary loss sustained, rather than a proportionate share divided among all co-defendants, is an issue that follows the contours of civil law." *State v. Workman*,