

William W. Mercer
Brian M. Murphy
Holland & Hart LLP
401 North 31st Street
Suite 1500
P.O. Box 639
Billings, Montana 59103-0639
Telephone: (406) 252-2166
Fax: (406) 252-1669
wwmerc@hollandhart.com
bmmurphy@hollandhart.com

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GALLATIN COUNTY
JUSTICE COURT

Todd S. Whipple
Whipple Law Offices
251 Edelweiss Drive
Suite 2
Bozeman, Montana 59715
Telephone: (406) 581-4651
Fax: (406) 586-8289
info@whipplelawoffices.com

ATTORNEYS FOR DEFENDANT

IN THE JUSTICE COURT OF GALLATIN COUNTY, STATE OF MONTANA

BEFORE RICK WEST, JUSTICE OF THE PEACE

STATE OF MONTANA,)	Case No. TK-2017-2025
)	
Plaintiff,)	
)	
v.)	BRIEF IN SUPPORT OF ORAL MOTION
)	OBJECTING TO FINGERPRINTING
GREG R. GIANFORTE,)	AND PHOTOGRAPHING
)	
Defendant.)	

Comes Now, Defendant, Greg R. Gianforte, by and through counsel, and seeks relief from the Court's Order entered on June 12, 2017, requiring the Defendant to appear at the Gallatin County Detention Center to be fingerprinted and photographed.

INTRODUCTION

Current Montana law does not provide courts authority to require a defendant, like Mr. Gianforte, who was charged with a misdemeanor offense, was not arrested, and was not charged by indictment or information to be fingerprinted or photographed. The comprehensive statutory scheme clearly sets forth narrow circumstances in which a court can order a defendant be fingerprinted and photographed. Mr. Gianforte does not fit within the narrow authority granted to the Court.

STATEMENT OF INCONTROVERTIBLE FACTS

The Gallatin County Sheriff issued Mr. Gianforte a Notice to Appear and Complaint charging him with Assault, a Misdemeanor, in violation of § 45-5-201, MCA on May 24, 2017. Mr. Gianforte was not arrested. He appeared in the Gallatin County Justice Court and pled guilty to the charge on June 12, 2017. The court sentenced him during the hearing on June 12th. Immediately following sentencing, the Court ordered that Mr. Gianforte report to the detention center to be fingerprinted and photographed. Mr. Gianforte objected to this Order and the Court allowed him to file a motion setting forth the legal authority for the objection.

ARGUMENT

The Montana Legislature has enacted a comprehensive statutory scheme addressing the collection of photographs and fingerprinting by criminal justice agencies, the Department of Corrections and the Department of Justice. Mont. Code Ann. § 44-5-202. Although the Legislature addresses the circumstances in which courts, as opposed to law enforcement agencies, may direct collection of photographs and fingerprints, this statute provides a very limited basis for courts to do so. Mont. Code Ann. § 44-5-202(3). It is well established that Justices' courts are courts of limited jurisdiction. *State v. Houston*, 36 Mont. 178 (1907). As

such, they “have only such power as is expressly conferred by statute.” *Thompson v. State*, 2007 MT 185 ¶ 24, 338 Mont. 511, 519, 167 P.3d 867, 873. Thus, the Justice Court cannot exercise discretion to order fingerprints or photographs of a defendant if that power is not expressly granted to it by statute, which it is not in this instance.

Subsection 3 of Montana Code Annotated § 44–5–202 gives courts the authority to demand photographs and fingerprints of a narrow set of offenders. It provides:

A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if: (a) the charge is the commission of a felony; (b) the identification of an accused is in issue; or (c) it is required to do so by court order.

Mont. Code Ann. § 44–5–202(3). No other subsection of the statute provides authority for the court to order fingerprinting and photographs. The Legislature has limited courts’ authority to those instances where the charge against a defendant is set forth in “an information or indictment.” *Id.* “Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint.” Mont. Const. art. II, § 20. Meaning, prosecutions in justice courts may only be commenced by complaint. *State v. Strobel*, 885 P.2d 503, 504 (Mont. 1994) (“All prosecutions of offenses charged in a district court must be by indictment or information and all other prosecutions must be by complaint.”); *Application of Campeau*, 209 P.2d 1012, 1013 (Mont. 1948) (“Criminal actions in a justice of the peace court are commenced by the filing of a complaint and in the district courts of this state by the filing on the part of the state of either an indictment or an information.”). Therefore, there is never an instance where a defendant would be summoned to appear in a justice court “to answer an information or indictment.” The Justice Court does not ever have authority to issue an order directing a defendant to be fingerprinted or photographed.

It is a fundamental canon of statutory construction that a statute should be read in such a way that “no clause, sentence, or word shall be superfluous, void or insignificant. *Duncan v. Walker*, 533 U.S. 167, 174 (2001); see *United States v. Menasche*, 348 U.S. 528, 538-539 (1955) (“It is our duty ‘to give effect if possible, to every clause and word of a statute.’” (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883))). Thus, the choice of the Legislature to include “by indictment or information” cannot be ignored. By inserting those words, the Legislature intentionally limited district courts’ authority to order a criminal justice agency to take photographs and fingerprints of those defendants charged by indictment or information. Additionally, the Legislature provided justice courts’ with no authority to order fingerprinting or photographing of a defendant, as prosecutions in justice courts are never commenced by information or indictment. *Strobel*, 855 P.2d at 504; *Application of Campeau*, 209 P.2d at 1013.

Mr. Gianforte was not charged by information or indictment. Thus, § 44–5–202(3), MCA is inapplicable. The Montana Legislature has established four methods for commencing a prosecution against an individual:

- (1) a complaint;
- (2) an information following a preliminary examination or waiver of a preliminary examination;
- (3) an information after leave of court has been granted; or
- (4) an indictment upon a finding by a grand jury.

Mont. Code Ann. § 46–11–101. Mr. Gianforte’s prosecution was initiated by a complaint; not by indictment and not by an information. Therefore, Mr. Gianforte’s prosecution does not fall within the narrow group of prosecutions for which courts have the authority to order fingerprinting and photographing, as prescribed by § 44–5–202.

The statute also permits law enforcement agencies and criminal justice agencies to fingerprint and photograph persons charged with felonies who are not arrested and persons

charged with misdemeanors who are arrested. Mont. Code Ann. § 44-5-202(4)-(5). Subsection (4) allows law enforcement to fingerprint a “person charged with the commission of a felony” who is not arrested “at the time of initial appearance in court to answer the information or indictment against the person. Mont. Code Ann. § 44-5-202(4). To be clear, Gianforte was not charged with the commission of a felony and thus this subsection does not apply to him. However, it is significant, because the Legislature chose to grant authority to law enforcement to fingerprint a non-arrested defendant at the initial appearance only when the defendant was charged with the commission of a felony. *Id.* Importantly, the Legislature chose to not extend law enforcement’s authority to non-arrested defendants charged with misdemeanors. We must conclude that this choice was purposeful. *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 US 453 (1974) (“A frequently stamped principle of statutory construction is that when legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies”).

Subsection (5) grants authority to a criminal justice agency to photograph and fingerprint an accused if the accused *has been arrested* for the commission of a misdemeanor offense (except traffic, regulatory or fish and game offenses for which a person is not incarcerated). Again, this section does not apply to Mr. Gianforte because he was never arrested. However, it is important to read Subsection (5) in light of the entire statute. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000) (“It is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’”) (citing *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989)). Under this subsection, it is irrelevant how a defendant is charged. Regardless of whether the Government initiated the prosecution by complaint, indictment or information, a person arrested

and charged with a misdemeanor can be fingerprinted and photographed by a criminal justice agency at its discretion. In this subsection, the Legislature chose not to limit the criminal justice agencies' authority in a manner similar to the limitation imposed on courts' authority in Subsection (3). Reading the statutory scheme as a whole lends further credence to the statutory interpretation that the Legislature intentionally limited the courts' authority to instances where a defendant was "arrested" or appears to answer an "information or indictment." With House Bill 133 ("HB 133"), the 2017 Montana Legislature amended § 44-5-202(4), MCA. The amended statute takes effect July 1, 2017 and only applies to offenses committed after June 30, 2017. Mr. Gianforte was cited on May 24, 2017. It simply cannot be argued that HB 133 applies.

The amendment broadens criminal justice agencies' authority to fingerprint and photograph a person charged with the commission of a misdemeanor who was arrested or summoned to appear to answer an information or indictment. H.B. 133, 65th Leg. (2017). The amendment also broadens the authority of law enforcement to fingerprint a person at the time of an initial appearance to persons charged with misdemeanors, rather than only those charged with felonies. H.B. 133, 65th Leg. (2017). The Court must give meaning to the Legislature's amendment. *State v. Wibaux County Bank of Wibaux*, 281 P. 341, 344 (Mont. 1929). It must be presumed that the Legislature acts to create authority not present under the *status quo*. The amendment highlights the fact that the current law does not address the situation here. The policy change by the 2017 Legislature is further proof that the Court and the Sheriff's Office lacked authority to require Mr. Gianforte to be fingerprinted and photographed for a charge and a proceeding concluded before July 1st. Effective July 1, 2017, the Legislature chose to require defendants like Mr. Gianforte—those charged with misdemeanors who were not arrested or charged by information or indictment—to be fingerprinted and photographed. But that change in

law was not effective at the time of the charged offense or the judgment imposed by the Court, and the current law does not grant a court or any agency authority to require Defendant to be fingerprinted or photographed in relation to his misdemeanor assault charge on May 24, 2017.

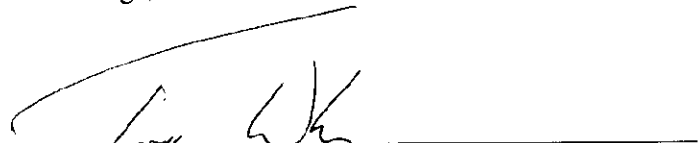
CONCLUSION

For the following reasons, the Court should find Mr. Gianforte's objection to the order directing him to be fingerprinted and photographed to be well taken and relieve him from complying with the order.

Dated this 16 day of June, 2017.



William W. Mercer
Brian M. Murphy
Holland & Hart LLP
401 North 31st Street
Suite 1500
P.O. Box 639
Billings, Montana 59103-0639




Todd S. Whipple
Whipple Law Offices
251 Edelweiss Drive
Suite 2
Bozeman, Montana 59715

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on this 16 day of Jan 2017, a
copy of the foregoing was duly served by:
 Inter-County Mail U. S. Mail X Personal Service
 Fax
upon the following :

Gallatin County Attorney's Office
1709 West College, Suite 200
Bozeman, Montana 59715



Todd Whipple

SEARCHED
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