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IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 26-0036

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STERLING GLENN BROWN,

Petitioner,

v.

THE SEVENTH JUDICIAL DISTRICT  
COURT, The Honorable Jessica Fehr, Presiding,

Respondent.

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**District Court's Response to Petition for Writ of Supervisory Control**

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On Application from the Seventh Judicial District Court-  
Prairie County  
Cause No. DC-23-01  
The Honorable Jessica Fehr, Presiding

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1 investigation demanded by the defense was unwarranted following the four  
2 days of testimony before the court.

3 In its order denying Brown’s Motion, the court stated, “[t]he evidence is  
4 clear; there was no disclosure of any of the information heard in the calls or  
5 scanned in the letter beyond those that listened and viewed.” [Order, Pet.’s Ex.  
6 B4 at 26.] “[I]n an abundance of caution,” however, the court ordered the  
7 suppression of all recorded attorney-client calls and the testimony of any  
8 personnel who accessed Brown’s oral or written attorney-client  
9 communications from jury trial, which is set for May 26, 2026. [*Id.*]  
10

11 Brown’s Petition for Writ of Supervisory Control states that “[a]t its  
12 core, the District Court attempted to assess the extent of prejudice to Brown,  
13 which constitutes a mistake of law.” [Pet. at 3.] According to Brown, the court  
14 should have presumed prejudice and dismissed Brown’s charges. [Pet. at 9.]  
15 Brown continued and alleged that the court’s mistake of law “causes a gross  
16 injustice for which an appeal after trial is not an adequate remedy, and thus  
17 presents the unique, urgent, and emergency circumstances that justify  
18 supervisory control.” [Pet. at 4.] Brown’s Petition also asserts two alternative  
19 options for the Montana Supreme Court to consider if it disagrees with  
20 Brown’s assertion that charges should be dismissed. [Pet. at 14, 16.]  
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1 It is well-established that the Montana Supreme Court “has general  
2 supervisory control over all other courts.” Mont. Const. Art. VII, § 2(2).  
3 Respectfully, however, this case, at this juncture, does not warrant the Montana  
4 Supreme Court’s exercise of supervisory control. Since the writ’s inception in  
5 1900, notable figures such as Chief Justice Karla Gray have advocated for the  
6 Montana Supreme Court to exercise supervisory control in a consistent  
7 manner. See Larry Howell, *Montana’s Unique Writ of Supervisory Control*,  
8 ScholarWorks at Univ. of Mont. (2009),  
9 [https://scholarworks.umt.edu/faculty\\_barjournals/47](https://scholarworks.umt.edu/faculty_barjournals/47) (“[T]he court has just  
10 completed another decade-long period in which it first tended to grant  
11 supervisory control liberally, only to subsequently restrict its use to very few  
12 cases.”); see also *Lane v. Mont. Fourth Jud. Dist. Ct.*, 2003 MT 130, ¶ 42, 316  
13 Mont. 55, 66, 68 P.3d 819, 826 (“[T]he Court is using supervisory control  
14 jurisdiction to transform the traditional structures and roles of the trial courts  
15 and this Court . . . will the Court ever find reason to deny supervisory  
16 control?”) (Gray, C.J., dissenting). Fortunately, the 2007 adoption of Mont. R.  
17 App. P. 14, which expressly sets forth the criteria for issuing writs of  
18 supervisory control, has finally provided the clarity that has been argued for  
19 over the last century. See *id.* “Supervisory control is an *extraordinary* remedy  
20 and is sometimes justified when urgency or emergency factors exist making the  
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1 normal appeals process inadequate, when the case involves purely legal  
2 questions, and when . . . [t]he other court is proceeding under a mistake of law  
3 and is causing a gross injustice.” Mont. R. App. P. 14(3)(a) (emphasis added).

4 As Mont. R. App. P. 14(3) makes clear, supervisory control is an  
5 *extraordinary* remedy that the Montana Supreme Court may deem appropriate  
6 on a case-by-case basis. Notably, as C.J. Gray stated in *Truman*, “rulings on  
7 motions to dismiss . . . are *not* ‘*extraordinary* circumstances’ which create  
8 significant injustice for which an appeal is an inadequate remedy.” *Truman v.*  
9 *Mont. Eleventh Jud. Dist. Ct.*, 2003 MT 91, ¶ 37, 315 Mont. 165, 176, 68 P.3d  
10 654, 661 (Gray, C.J., dissenting) (emphasis added).

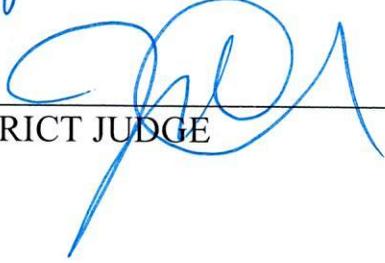
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13 The court conducted a four-day evidentiary hearing in which it carefully  
14 considered all the evidence before it. The order issued by the court was  
15 factually specific based on all the testimony the court sat through over four  
16 days. The court denied Brown’s Motion and implemented necessary safeguards  
17 by means of suppressing any potentially tainted evidence, in an abundance of  
18 caution, to ensure that Brown would have a fair trial. In its order, the court laid  
19 out its reasoning and cited all relevant statutes and case law it used in issuing  
20 its pretrial ruling. The court did not engage in an analysis of whether  
21 information learned in the attorney-client calls or written communications  
22 impacted the overall investigation. Instead, the court, based on the sworn  
23

1 testimony of the witnesses, found that no information was recalled by a single  
2 witness from a single call or letter. The sworn testimony demonstrated that not  
3 a single witness communicated anything from an attorney-client call or letter to  
4 anyone else, let alone a member of the investigative or prosecutive team. The  
5 court found there was no evidence that the attorney-client privilege violations  
6 resulted in any harm or prejudice to Brown based on the specific testimony  
7 offered during the evidentiary hearing. The defense asks that the Montana  
8 Supreme Court establish precedent that the mere interception of an attorney-  
9 client privileged call or letter, with nothing more, should result in dismissal of  
10 all charges.  
11

12  
13 The court does not agree that supervisory control is warranted here. In  
14 fact, the extensive factual record in this case is a prime example of when a  
15 matter should remain with the district court through trial instead of offering a  
16 route for an unsettled party to seek another bite at the fact laden proverbial  
17 apple. Respectfully, the court's pretrial ruling is not an "extraordinary"  
18 circumstance creating a "significant injustice" for Brown. *See id.* Rather, the  
19 court lawfully performed its duties as a trial court in the State of Montana and  
20 remains ready to complete those duties at the jury trial scheduled for May of  
21 2026. The Montana Supreme Court should deny Brown's Petition for Writ of  
22 Supervisory Control.  
23

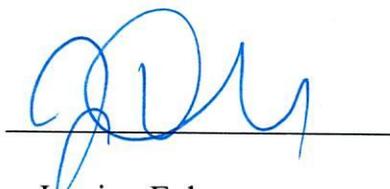
1 Respectfully Submitted:

2 DATED this 24<sup>th</sup> day of February, 2026.

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6 DISTRICT JUDGE  
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1 **CERTIFICATE OF COMPLIANCE**

2 Pursuant to Montana Rules of Appellate Procedure 11 and 14(9), I  
3 certify this Response to Petition for Writ of Supervisory Control is printed with  
4 a proportionally spaced Times New Roman text typeface of 14 points, is  
5 double spaced and the Word Count that Microsoft Word 2010 calculated is not  
6 more than 4,000 words under Montana Rule of Appellate Procedure 14(9)(b),  
7 being 1,145 words, excluding the Table of Contents, Certificate of Compliance,  
8 and Certificate of Service.  
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11 Jessica Fehr  
12 District Judge



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