

SUPREME COURT, STATE OF COLORADO
Two East 14th Avenue
Denver, Colorado 80203

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CASE NUMBER: 2023SA289

Rifle Municipal Court
Honorable Victor Zerbi
201 East 18th Street
Rifle, CO 81650

IN RE:

JEREMIAH MOBLEY & MICHELLE MOBLEY
Petitioners

v.

**CITY OF RIFLE, by and behalf of THE PEOPLE OF
THE STATE OF COLORADO**
Proposed Respondent

▲ COURT USE ONLY ▲

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Case Number: 23SA

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PETITION FOR RELIEF PURSUANT TO C.A.R. 21

Mr. Jeremiah Mobley and Mrs. Michelle Mobley petition this Court, pursuant to C.A.R. 21, to issue a rule to show cause why Rifle Municipal Court did not err by holding it can punish defendants for low level theft in Rifle Municipal Court more severely than the legislature has authorized in state court; based on its determination that theft is a matter of purely local concern, allowing home rule cities to disregard the will of the legislature and that disparate sentences for identically situated defendants comports with equal protection under the Colorado Constitution.

IDENTITIES OF THE PARTIES

The Petitioners in this original proceeding are Michelle Mobley and Jeremiah Mobley (“the Mobley’s”), Defendants in Rifle Municipal case numbers 23CR21 and 23CR17, respectively. The proposed Respondents are the Rifle Municipal Court (the trial court) and the Office of the Rifle City Prosecutor (the prosecution). *See People v. Williams*, 987 P.2d 232, 233 n.1 (Colo. 1999) (acknowledging that, although any relief under C.A.R. 21 would issue against the tribunal below, the prosecution is the "real party in interest").

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IDENTITY OF THE TRIBUNAL BELOW

The tribunal that issued the order that is the subject of this original proceeding is the Rifle Municipal Court. The contested order was issued in Rifle Municipal Court, Case 23CR17 and 23CR21.

IDENTITY OF THE ENTITY AGAINST WHICH RELIEF IS SOUGHT

The relief requested in this case would issue against the Rifle Municipal Court, located at 201 18th Street, Rifle, CO, 81650.

RULING COMPLAINED OF AND RELIEF SOUGHT

A. The Ruling

On June 7, 2023, the Honorable Victor Zerbi issued a written joint order denying the Mobley's request to declare certain portions of Rifle's municipal code unconstitutional and dismiss their cases. (Attachment A – Municipal Court Ruling).

At issue was the City of Rifle's municipal code, which allows the court to impose significantly harsher sentences for theft in comparison with the identical charge in state court. In state court, the Mobley's faced a maximum of ten days in jail for their alleged theft. See C.R.S. §§ 18-4-401(2)(b); 18-1.3.503(1.5). In Rifle

Municipal Court, the Mobley's faced up to six months in jail for the same conduct. Rifle Municipal Code ("RMC") §§ 10-4-10(b); 10-1-40. The elements for theft under the RMC and theft under Colorado's state statute are functionally and practically identical. See § C.R.S. 18-4-401; RMC § 10-4-10(b).

During argument on the Mobley's motion, the prosecutor conceded the Rifle Police Department retains unfettered discretion to charge someone in state court or municipal court. The summons issued to Mrs. Mobley evinces the discretion given to Rifle police to include check boxes allowing an officer to choose if someone is charged in state court or municipal court for a theft under \$300. (See Attachment B – Rifle Summons).

The Court ruled that "Rifle Misdemeanor theft sentencing provisions are a matter of local municipal concern" and for this reason, Rifle, a home rule city, could punish theft more severely than allowed by the state legislature pursuant to the Colorado Constitution Art. XX. See Attachment A – para. 60.

The Court also denied the Mobley's claim that disparate punishment for identical conduct did not violate equal protection under the Colorado Constitution. The Court reasoned that despite the unfettered discretion of Rifle police officers to choose between state or municipal court, resulting in a stark difference in possible punishment, there is no violation of equal protection because theft is a matter of

local concern, and thus, any municipal theft punishment “superseded” state law. The Court further held that because theft is a matter of purely local concern, “the remedy should be dismissal of the state charge – not dismissal of the local concern municipal charge.” (Attachment A – para. 65)

B. *Relief Sought*

The Mobley’s are petitioning this Court to exercise its general superintending authority over lower courts, as well as its constitutional authority to grant extraordinary relief. *See* C.A.R. 21(a). The Mobley’s assert that the Rifle Municipal Court’s ruling is contrary to equal protection under the Colorado Constitution, and violates a variety of legal principles, including prior holdings of the Colorado Supreme Court’s finding that theft is a matter of mixed state and local concern. Accordingly, the Mobley’s request this Court order the trial court to show cause why it denied the Mobley’s motion to dismiss the charges against them in Rifle Municipal Court.

INADEQUACY OF OTHER REMEDIES

C.A.R. 21(a)(1), by its plain terms, contemplates the discretionary exercise of this Court's original jurisdiction only in cases where the general superintending authority of the Supreme Court over subordinate courts is implicated, or where the Court's power to dispense extraordinary relief is properly invoked.

It is the exclusive province of this Court to exercise superintending authority over Colorado courts. *See* Colo. Const. art VI, § 2; *People v. Vigil*, 729 P.2d 360, 366 (Colo. 1986). This Court has construed its own "superintending control" over all lower courts as the authority "to keep subordinate courts within bounds, and to insure the harmonious working of the judicial system." *People ex rel. Att'y Gen. v. Richmond*, 26 P. 929 (Colo. 1891).

Relief pursuant to C.A.R. 21 is available to "remedy a lower court's abuse of discretion where appellate review would be inadequate." *Chism v. People*, 80 P.3d 293, 294 (Colo. 2003) (citing *People v. Lee*, 18 P.3d 192, 194 (Colo.2001)). This Court will also invoke its authority under the rule to dispel confusion or uncertainty concerning a particular point of law to facilitate the effective administration of the justice system. *See People v. Young*, 814 P.2d 834, 838-39 (Colo. 1991), abrogated on other grounds by statute, as recognized in *People v. Vance*, 933 P.2d 576, 577 n.2 (Colo. 1997). This Court may exercise its original jurisdiction "when a petition raises issues of significant public importance" that the Court has yet to consider. *Brown v. Long Romero*, 495 P.3d 955, 958 (Colo.2021).

Exercise of this Court's original jurisdiction to review the issues in this matter is both appropriate and necessary. The Mobley's are currently set for a bench trial before the municipal court and face a jail sentence, if convicted, which

will significantly exceed the statutory maximum under state law. Additionally, the Mobley's have the benefit of appointed Counsel in this case, while many other litigants in municipal court proceed pro se. It is unclear, beyond anecdotal evidence, how many other defendants have been subject to jail terms beyond penalties set by the legislature for similar charges in Rifle Municipal Court.

Further, it is counsels' belief that this issue is of great importance not only to the City of Rifle but other jurisdictions around the State of Colorado. The legislature recently made significant changes to Colorado's misdemeanor and petty offense sentencing provisions, which became effective March 1, 2022. See § 18-1.3-501 C.R.S (2022), et seq. This modification to the sentencing provisions of lower-level offenses has a direct and sweeping impact on the penalties for cases seen concurrently by municipal and state county courts. This has led to many discrepancies in a variety of charges throughout the state and created parallel systems of justice. The sentences defendants face is dramatically different based on an arbitrary and unfettered decision by law enforcement to charge someone in either state or municipal court. This court should intervene as this is a continuous problem occurring across the state of Colorado.

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ISSUE PRESENTED

Whether the Rifle Municipal Court erred when it held that the Colorado Constitution allows home rule cities to punish theft more severely than proscribed by the state legislature based on the theory that theft is a matter of purely local concern; and the disparate sentencing provisions for identical conduct does not violate equal protection under the Colorado Constitution.

FACTUAL AND PROCEDURAL BACKGROUND

On February 11, 2023, Mrs. Mobley and Mr. Mobley allegedly stole two shirts from Diva's Boutique in Rifle, CO. The value of the two shirts totaled \$30.00. (Attachment C – Jeremiah Mobley Arrest Warrant). Later that afternoon, officers went to the Mobley residence and contacted Mrs. Mobley. The officers gave Mrs. Mobley a summons, charging her with theft under Rifle Municipal Code, Sec. 10-4-10. (Attachment B – Rifle Summons). Mr. Mobley was later arrested on the same charge of theft under the Rifle Municipal Code. Rifle, CO is a home rule city. See Rifle Charter and Municipal Code https://library.municode.com/co/rifle/codes/charter_and_municipal_code.

The Rifle Police Department's summons and complaint, Attachment B, includes a handwritten "X" next to the offense of theft. The offense of theft on the summons and complaint shows that both theft under RMC § 10-4-10(a)(1) or theft

under C.R.S. § 18-4-401(1)(a) are applicable. At the top of the summons and complaint, there are additional check boxes, indicating where an accused is required to appear based on the police officer's unfettered and discretionary decision to charge the individual in either state or municipal court. Specifically, the check boxes are for either Garfield County Court or Rifle Municipal Court, and the officer fills in a date and time to appear at the applicable court of their choosing.

(Attachment B–Rifle Summons).

Under Rifle's Municipal Code:

A person commits theft when he or she knowingly obtains or exercises control over anything of another without authorization or by threat or deception when the value of the thing is less than one thousand dollars (\$1,000.00), and: Intends to deprive the other person permanently of the use or benefit of the thing of value.

RMC 10-4-10(a)(1); Attachment D

Pursuant to Colorado's Criminal Code:

A person commits theft when he or she knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception . . . and: intends to deprive the other person permanently of the use or benefit of the thing of value.

C.R.S. 18-4-401(1)(a)

Both the RMC and state law link the level of offense and possible punishment for theft to the value of the item stolen. Under the RMC “[w]here the

value of the thing of value is less than one hundred dollars (\$100.00), theft is a Class B municipal offense.” RMC 10-4-10(b). Under state law, theft is “[a] petty offense if the value of the thing involved is less than three hundred dollars.” C.R.S. 18-4-401(2)(b).

Under the RMC, a Class B municipal offense is punishable by maximum fine of \$1000 and imprisonment up to Six (6) Months. RMC § 10-1-40; (Attachment E). However, as of March 1, 2022, a petty offense in Colorado is punishable by “a fine of not more than three hundred dollars, imprisonment for not more than ten days in a county jail, or both. C.R.S. § 18-1.3-503(1.5). The result is that since March 1, 2022, while the RMC and state theft statutes prohibit identical conduct, an individual charged with theft under three hundred dollars is subject to a maximum jail term of ten days in state court, but up to six months or more if sent to Rifle Municipal Court.¹

The trial court appointed counsel for Mr. and Mrs. Mobley. On April 5, 2023, Mr. Mobley filed a motion entitled “Motion to Declare Rifle’s Theft Statute Unconstitutional and To Dismiss the Charges in this Case”. (Attachment F). On May 3, 2023, counsel for Mrs. Mobley filed a similar motion challenging the

¹ The RMC punishes theft above one hundred dollars as a class A petty offense punishable by a fine up to \$2,000 and 364 days in jail, creating the same issues for theft above one hundred dollars as those raised by the Mobley’s.

constitutionality of Rifle Municipal Code Sec. 10-4-10 and requested the same relief. (Attachment G). The prosecution responded to both motions. (Attachment H; Attachment I). On May 5, 2023, the trial court held joint oral arguments on the Defendants motions. The parties did not introduce additional evidence at the hearing.

The Honorable Judge Zerbi of the Rifle Municipal Court issued a joint written order on June 7, 2023, denying the Mobley's motions. (Attachment A). The Mobley's are now set for trial to the Court on November 15, 2023.

ARGUMENT

I. DISPARATE PUNISHMENTS FOR IDENTICAL CONDUCT ON THEFT CHARGES IN STATE AND MUNICIPAL COURT VIOLATES THE COLORADO CONSTITUTION.

The Colorado Constitution prohibits the imposition of a harsher penalty for multiple offenses for identical conduct. Colo. Const. art II sec 25. Pursuant to the Colorado Constitution "a person convicted under the harsher penalty is denied equal protection unless there are reasonable differences or distinctions between the proscribed behavior." *People v. Stewart*, 55 P.3d 107, 114 (Colo.2002)(Citing *People v. Richardson*, 983 P.2d 5, 6–7 (Colo.1999); *People v. District Court*, 964 P.2d 498, 500–01 (Colo.1998); *People v. Marcy*, 628 P.2d 69, 74 (Colo.1981);

People v. Estrada, 198 Colo. 188, 191, 601 P.2d 619, 621 (1979); *People v. Calvaresi*, 188 Colo. 277, 281–82, 534 P.2d 316,318 (1975)).

These cases primarily discuss harsher penalties for multiple offenses based on the same or similar conduct. In this context, to determine a violation of equal protection, a Court must “determine whether two statutes proscribe identical conduct [by analyzing] the elements of each”. *Stewart*, 55 P.3d at 115 (Citing *Richardson*, 983 P.2d at 7; *Moze*, 723 P.2d 117).

Here, the elements for theft under the RMC and Colorado Revised Statutes “are nearly identical.” (Attachment A – para. 13). Colorado Revised Statute, §18-4-401(1)(a) states: “a person commits theft when he or she knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception; receives, loans money by pawn or pledge on, or disposes of anything of value or belonging to another that he or she knows or believes to have been stolen, and intends to deprive the other person permanently of the use or benefit of the thing of value.” C.R.S. §18-4-401(1)(a).

Rifle Municipal Code 10-4-10(a)(1) states “a person commits theft when he or she knowingly obtains or exercises control over anything of another without authorization or by threat or deception when the value of the thing is less than one

thousand dollars (\$1,000) and intends to deprive the other person permanently of the use of benefit of the thing of value.” R.M.C. 10-4-10(a)(1).

In state court, if the “value of the thing involved is less than three hundred dollars” it is a petty offense; a petty offense is punishable by “a fine of not more than three hundred dollars, imprisonment for not more than ten days in a county jail, or both.” C.R.S. §18-4-401(2)(b); C.R.S. §18-1.3-503(1.5).

R.M.C. 10-4-10(b) provides that where the value of the thing involved is less than one hundred dollars (\$100), theft is a class B municipal offense, and a class B municipal offense is punishable by a fine of up to \$1000.00 and/or imprisonment up to six (6) months. R.M.C. 10-4-10(b); R.M.C. 10-1-40.

As the state statute and the RMC proscribe identical conduct, their disparate sentences violate equal protection guaranteed under the Due Process Clause of the Colorado Constitution. Colo. Const. art. II sec. 25.

Additionally, perhaps the most visible aspect of the equal protection violation is the fact that individuals sentenced to jail by the Rifle Municipal Court and the Garfield County Court for theft are both housed at the Garfield County jail. Thus, defendants from the same county, sentenced for the same conduct, housed in the same jail, could be serving significantly different sentences. A defendant charged under state law for theft would be serving a maximum sentence of ten days, while

another defendant charged under municipal code for theft could be serving a sentence for 183 days.

Due to these disparate sentencing schemes and visible violation of equal protection, the issue becomes a conflict between two provisions of the Colorado Constitution -- the implicit guarantee of equal protection in the Due Process Clause and the powers granted to home rules cities under Article XX, Section 6 of the Colorado Constitution. Colo. Const. art. II sec. 25: Colo. Const. art. XX sec. 6. When addressing these questions, the Court “must consider the constitution as a whole and give effect to every part.” *Town of Frisco v. Baum*, 90 P.3d 845, 847 (Colo. 2004).

A. Constitutional Authority Granted to Home Rule Cities is Limited to Matters of Local and Municipal Concern.

The Colorado Constitution authorizes home rule cities to create municipal courts “to exercise jurisdiction over local and municipal matter[s].” *Town of Frisco v. Baum*, 90 P.3d at 847 (Colo. 2004). However, “the constitution limits the authority of municipal courts to local and municipal matters so that there is not a conflict between the jurisdiction of state courts and that of municipal courts.” *Id.*

Home rule cities may enact and enforce their own laws over matters of municipal and local concern. See *Conrad v. City of Thornton*, 553 P.2d 822 (1976).

While “the legislature continues to exercise supreme authority over matters of state concern, a home rule city is not inferior to the General Assembly with respect to local and municipal matters.” *City & County of Denver v. State*, 788 P.2d 764, 767 (Colo. 1990). In determining whether the state or home rule municipalities control, this Court has recognized three broad categories of regulatory matters: (1) matters of local concern; (2) matters of state concern; and (3) matters of mixed state and local concern.” *Id.*

In *Winslow Const. Co v. City and County of Denver*, 960 P.2d 685, 693 (Colo. 1998), the Court established four factors to aid in making the determination of whether a matter is of local, state, or mixed concern:

- a. Whether there is a need for state uniformity of regulation;
- b. Whether the municipal region has an extraterritorial impact;
- c. Whether the subject matter is one traditionally governed by state or local government; and
- d. Whether the Colorado Constitution specifically commits the particular matter to state or local regulation.

Following *Winslow*, the Court clarified there is no specific test to determine whether a matter is of local, state, or mixed concern, instead, it is made on an ad hoc basis considering the totality of the circumstances. *City of Northglenn v.*

Ibarra, 62 P.3d 151, 155 (Colo. 2003). The Court found that while the *Winslow* factors are instructive, they are all “directed toward weighing the respective state and local interests implicated by the law, a process that lends itself to the flexibility and consideration of numerous criteria.” *Id. at 156*. (internal citations omitted).

This Court has further held that the terms “local,” “state” and “mixed” are not “mutually exclusive or factually perfect descriptions of the relevant interests of the state and local governments.” *City of Northglenn v. Ibarra*, 62 P.3d 151, 155 (Colo. 2003). Many matters are not exclusively of local, state, or mixed concern and instead often overlap or merge. *Id.* To determine that a matter is of local, state, or mixed concern is to draw “a legal conclusion based on the facts and circumstances of each case.” *Id.* (citing *City and County of Denver v. State*, 788 P.2d 764, 767 (Colo. 1990)).

B. Theft is a Mixed Matter of State and Local Concern.

This Court previously determined that theft is a matter of mixed state and local concern. *Quintana v. Edgewater Municipal Court*, 498 P.2d 931 (Colo. 1972); See also *Gazotti v. City & County of Denver*, 352 P.2d 963 (1960); Since the Court made this determination, nothing has changed to proscribe a different conclusion.

Here, despite applicable precedent, the trial court adopted the prosecution's argument that theft is a matter of local concern because of Rifle's unique geographic location. In reaching its conclusion, the trial court included the prosecution's argument that:

Rifle "has an interest in deterring crime related to theft more than other jurisdictions might. This is due specifically to the City of Rifle's unique rural, yet heavily trafficked nature. The City of Rifle sits directly on the intersection of Interstate 70, the main East-West thoroughfare for Central Colorado, and Highway 13, the main North-South thoroughfare for Northwestern Colorado. This location means that Rifle specifically attracts travelers and pulls consumers from a wide rural area. This mixed market lends itself to a higher rate of instances of theft than comparable cities, particularly at the Walmart store, whose nearest companion store is over thirty minutes away by car. If the R.M.C. were limited to the penalty prescribed by C.R.S., there would be no sufficient deterrence of theft within this unique municipality. Therefore, the issue at hand is of local interest."

(Attachment A – Court order para. 37).

The trial court further found that theft is a matter of local concern because “the reality is that the opportunity to commit theft is far greater in municipal communities with retail stores and commercial businesses. The reality is also that theft does in fact occur far more in municipal communities where those greater

opportunities to commit theft exists – and is a very serious problem in these communities.” (Attachment A – para. 38). The trial court also cited two online articles regarding theft.

These arguments of the prosecution, adopted by the trial court, cite no evidence to support the contention that somehow theft in the city of Rifle is a more serious problem than in any other jurisdiction in the state, therefore requiring a penalty up to eighteen times greater than the maximum allowable sentence for the same offense pursuant to state law.

This anecdotal argument, without evidentiary support, highlights the equal protection violation when Rifle punishes low level theft more harshly than allowed under state law.

Furthermore, the question is not whether the City of Rifle believes theft is a matter of purely local concern. The question is whether theft, based on the totality of the circumstances weighing the respective state and local interests, is a matter of purely local concern. See *Ibarra*, 62 P.3d 151.

As mentioned, the Colorado Supreme Court has previously addressed this question directly, finding that “theft . . . is of both state and municipal concern.” *Quintana v. Edgewater Municipal Court*, 498 P.2d at 932. As the Court stated there, low level “theft constitutes a great problem and should be combated not only

by our state authorities in state courts, but by our police departments in municipal courts.” *Id.*

Over just the past three years, the Colorado State Legislature has amended the theft statute five times. See C.R.S. § 18-4-401. If theft was only a matter of local concern, certainly the legislature would not continue to modify the statute as often as it does.

This is not to say that low level theft is not an important local issue. Home rule cities can continue to prosecute such cases so long as they don’t conflict with state law, which only requires limiting the punishment to mirror the mandate of the legislature. At the same time, state courts retain jurisdiction to also prosecute theft crimes. However, the ruling by the trial court, in finding that theft is a matter of purely local concern, leads to the absurd result that if “state charges are filed when those charges have been superseded by the home rule municipal ordinance . . . the remedy should be dismissal of the state charge.” (Attachment A – para. 64).

Thus, the trial court order strips the state from hearing any theft charge under one-thousand dollars (\$1,000) which is committed within the city limits of Rifle.²

² RMC covers theft up to one-thousand dollars (\$1,000)

C. As Theft is a Mixed Matter of State and Local Concern, State Law for Theft Superseded the Conflicting Provisions of the Rifle Municipal Ordinance for Theft.

A violation of theft under the RMC is practically identical to the Colorado state statute for theft; and the trial court found there is “no substantial or substantive difference between provisions of the Colorado Revised Statutes and the Rifle Municipal Code” for theft. (Attachment A – Court Order para. 13).

The conflict thus arises in the sentencing schemes permissible under each individual law. If the value of the thing stolen is under \$300, a defendant in state court would be subject to ten (10) days in jail and a fine of \$300; while a defendant in Rifle Municipal Court would be subject to a penalty of approximately 183 days in jail and a fine of \$1000. Thus, C.R.S. §18-4-401(1)(a) and R.M.C. 10-4-10(a)(1) conflict.

When state law and a home rule city ordinance conflict, the Court looks to the category of the regulatory matter. This Court has consistently held that “in matters of mixed local and state concern, a charter or ordinance provision of a home rule municipality may coexist with a state statute as long as there is no conflict, but in the event of conflict the state statute supersedes the conflicting provision of the charter or ordinance.” *City and County of Denver*, 788 P.2d at 767.

As such, since theft is a mixed matter of state and local concern, the state sentencing provisions for theft supersede Rifle municipal code sentencing provisions for theft.

CONCLUSION

For these reasons, the Mobley's ask this Court to issue a rule to show cause why Rifle Municipal Court did not err by holding it can punish defendants for low level theft in Rifle Municipal Court more severely than the legislature has authorized in state court. The Rifle Municipal Code sentencing provisions for theft violate equal protection under the Colorado Constitution, as theft is a mixed matter of state and local concern, requiring the sentencing provisions for theft under state law to supersede that of Rifle Municipal Code. Colo. Const. art. II sec. 25; C.R.S. §18-4-401(2)(b); C.R.S. §18-1.3-503(1.5); R.M.C. 10-4-10(b); R.M.C. 10-1-40.

WHEREFORE, Defendant Mr. Jeremiah Mobley and Defendant Mrs. Michelle Mobley, by and through their attorneys, M. Scott Troxell of Troxell Law, LLC, and Mackenzie J. Morris of Aspen Valley Law, P.C., respectfully submits this Petition for Relief Pursuant to C.A.R. 21.

DATED: November 6, 2023

Respectfully submitted,



M. Scott Troxell #38978

ASPEN VALLEY LAW, P.C.



Mackenzie J. Morris, #53854

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 6, 2023, a true and correct copy of the foregoing **PETITION FOR RELIEF PURSUANT TO C.A.R. 21, INDEX OF SUPPORTING DOCUMENTS ACCOMPANYING PETITION FOR RELIEF PURSUANT TO C.A.R. 21, AND ATTACHMENTS A through I** were served via email to the following:

Rifle Municipal Court
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Timothy Graves
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M. Scott Troxell – Atty Reg. 38978