IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0215

CITY OF MISSOULA,

Plaintiff and Appellee,

v.

JOHN RAY ADAMS,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, The Honorable Robert L. Deschamps, III, Presiding

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STATEMENT OF THE ISSUE

Did the district court err in determining that Missoula Police Officer Vreeland possessed particularized suspicion to stop and investigate Adams's vehicle, which was parked in the dark next to a U-Haul facility at 3 a.m.?

STATEMENT OF THE CASE

Appellant John Ray Adams (Adams) appeals from the district court's order affirming the municipal court's denial of Adams's motion to suppress evidence based on the determination that law enforcement had particularized suspicion to stop and investigate Adams's parked vehicle. (D.C. Doc. 10, attached to Appellant's Br. as Appendix B [Appellant's App. B].)

In June 2019, Officer Brian Vreeland (Officer Vreeland) arrested Adams for theft and obstructing a peace officer. (D.C. Doc. 1, municipal court order, attached to Appellant's Br. as Appendix A [Appellant's App. A].) Adams pled not guilty to the charges and filed a motion to suppress. The Missoula Municipal Court (municipal court) held a hearing on Adams's motion to suppress on October 25, 2019. (*Id.*) In a written order dated November 5, 2019, Municipal Court Judge Sam Warren denied Adams's motion to suppress, concluding that Adams was not detained or stopped until he was discovered under the U-Haul vehicle and that the officer had particularized suspicion for that detention based on the totality of the

circumstances. (Appellant's App. A at 3.) On December 6, 2019, Adams pled no contest to the charge of theft, but preserved his right to appeal the denial of his motion to suppress to the district court. (D.C. Doc. 1, Ack. of Waiver of Rights.) The municipal court stayed Adams's sentence pending appeal in the district court. (D.C. Doc. 1, Or. Staying Sent.) On January 8, 2020, Adams appealed to the district court, seeking review of the municipal court's denial of his motion to suppress evidence based on a lack of particularized suspicion for a traffic stop. (D.C. Doc. 3.) After considering the parties' briefs and reviewing the municipal court record, the district court affirmed the municipal court's order denying Adams's motion to suppress. (D.C. Doc. 10.)

SUMMARY OF THE FACTS

On June 2, 2019, shortly after 3 a.m., Officer Vreeland was on regular patrol in Missoula near the U-Haul Service Center at 820 Strand Avenue. (Appellant's App. A at 1; 10/25/19 Evid. Hr'g Rec. [Hr'g] at 1:50-2:15.) From his patrol car, Officer Vreeland observed a white Cadillac parked on the street behind U-Haul trucks. (*Id.*; Hr'g at 2:24-2:37; 12:47-12:55.) Officer Vreeland saw a male sliding down in the backseat of the vehicle, apparently attempting to hide from him. (*Id.*; Hr'g at 2:30-2:37; 13:11-13:30.) Officer Vreeland also noticed a female he recognized from previous encounters quickly getting into the passenger seat. (*Id.*;

Hr'g at 2:40-2:45.) Officer Vreeland testified that he recognized the female as having a disability that might prevent her from owning or driving a car. (*Id*.; Hr'g at 12:24-12:31.) Officer Vreeland also wanted to determine why Adams and the female were near the U-Haul facility at 3 a.m. because U-Haul trucks are easy targets for syphoning gas. (*Id*.; Hr'g at 16:25-16:45.)

Officer Vreeland turned his patrol car around, pulled up behind the Cadillac, and activated his overhead lights. (*Id.*; Hr'g at 2:50-3:06.) Officer Vreeland approached the Cadillac on foot and noticed the male he had seen in the backseat was gone. (*Id*.; 3:09-3:17.) He asked the female sitting in the passenger seat why she was there, and she responded that she was smoking a cigarette. (*Id*.; Hr'g at 14:20-14:50.) She also confirmed that her boyfriend, Adams, had just left the vehicle, but she did not know where he had gone. (*Id.*)

Officer Vreeland then looked around with his flashlight and saw Adams hiding underneath a large U-Haul truck. (*Id*.; Hr'g at 14:55-15:08.) Officer Vreeland also observed under that same truck a siphon hose, a gas can, and gas spilling out of the can. (*Id*.; Hr'g at 15:18-15:36.) Adams complied with Officer Vreeland's order to come out from under the truck and Officer Vreeland arrested Adams. (Hr'g at 15:45-16:00.) Adams was charged with Theft and Obstructing a Peace Officer.

STANDARD OF REVIEW

On appeal from a municipal court of record, district courts function as intermediate courts of appeal, with a scope of review "confined to review of the record and questions of law." *City of Missoula v. Kroschel*, 2018 MT 142, ¶ 8, 391 Mont. 457, 419 P.3d 1208. "On appeal of a lower court judgment following intermediate appeal, [this Court will] review the lower court record independently of the district court as if appealed directly to this Court without district court review. Upon independent review of the lower court record, [this Court's] standard of review is whether the lower court's findings of fact are clearly erroneous, whether its conclusions of law are correct, and, as applicable, whether the lower court abused its discretion." *Id.* (internal citations omitted).

SUMMARY OF THE ARGUMENT[1]

The municipal court's finding that Officer Vreeland had the requisite particularized suspicion to conduct an investigative stop of Adams's vehicle is not clearly erroneous and should be affirmed. Officer Vreeland's observations and the

[1] While the municipal court thought that Officer Vreeland spoke to the female pursuant to the community caretaker doctrine, the district court did not take that finding into consideration. The State likewise does not discuss the doctrine because there is no evidence that Officer Vreeland relied upon it to conduct the stop of Adams's vehicle. This Court will affirm a lower court "when it reaches the right result, even if it reaches the right result for the wrong reason." *State v. Marcial*, 2013 MT 242, ¶ 10, 371 Mont. 348, 308 P.3d 69, citing *State v. Ellison*, 2012 MT 50, ¶ 8, 364 Mont. 276, 272 P.3d 646.

circumstances culminating in particularized suspicion included: (1) Adams's vehicle parked in front of a closed U-Haul truck rental business at 3 a.m.; (2) Adams's suspicious movement (sliding down in the backseat) when he saw Officer Vreeland's patrol car; and (3) knowledge that it is easy to siphon gas from U-Haul trucks. The cases Adams offers to challenge Officer Vreeland's particularized suspicion are distinguishable and unpersuasive.

Even making the incongruous assumption that the stop of Adams's vehicle was unlawful, Adams abandoned his expectation of privacy in his vehicle when he left it after spotting law enforcement. Further, Officer Vreeland's observations are admissible pursuant to exclusionary rule exceptions. The investigatory stop was attenuated from Officer Vreeland's observation of Adams under the U-Haul. Officer Vreeland could have seen Adams from other vantage points, not just standing next to Adams's vehicle. Further, Officer Vreeland would have inevitably discovered Adams siphoning gas from under the U-Haul if he had not stopped Adams's vehicle but had merely looked around the U-Haul facility.

ARGUMENT

I. Relevant seizure law

The Fourth Amendment to the United States Constitution and art. II, section 11, of the Montana Constitution protect citizens from unreasonable

searches and seizures. *State v. Larson*, 2010 MT 236, ¶ 19, 358 Mont. 156, 243 P.3d 1130. "As a procedural component of these protections, government searches and seizures must generally occur pursuant to a judicial warrant issued on probable cause." *Kroschel*, ¶ 10. Those constitutional protections extend to investigative stops of vehicles. *Id.*

"A recognized exception to the warrant requirement is the temporary investigative stop, or *Terry* stop, as first recognized by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 16 (1968), and subsequently codified in Montana at §§ 46-5-401 and -403, MCA." *Kroschel*, ¶ 11, citing *Terry*. An officer "may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense." *State v. Hilgendorf*, 2009 MT 158, ¶ 13, 350 Mont. 412, 208 P.3d 401, citing Mont. Code Ann. § 46-5-401(1).

To justify an investigatory stop of a vehicle, the "State bears the burden of proving that an officer had particularized suspicion to stop a vehicle by showing: (1) objective data and articulable facts from which an experienced officer can make certain inferences, and (2) a resulting suspicion that the occupant of a certain vehicle is or has been engaged in wrongdoing or was a witness to criminal activity." *Larson*, ¶ 19. This Court looks to the totality of the circumstances to determine whether those requirements were satisfied. *Id*. ¶ 14. "From this data, a

trained officer draws inferences and makes deductions . . . that might well elude an untrained person." *Id*. citing *United States v. Cortez*, 449 U.S. 411 (1981). Thus, "particularized suspicion does not require certainty on the officer's part." *Larson*, ¶ 19, citing *State v. Britt*, 2005 MT 101, ¶ 12, 327 Mont. 1, 111 P.3d 217.

II. The municipal court correctly found that Officer Vreeland had a particularized suspicion to conduct an investigative stop of Adams's vehicle.

A. The totality of the circumstances surrounding the investigative stop established a sufficient particularized suspicion for Officer Vreeland to stop Adams's vehicle.

A confluence of objective factors created the sound basis for Officer Vreeland's particularized suspicion. Officer Vreeland's particularized suspicion arose from information he observed prior to effecting the stop. Adams's Cadillac was parked next to a closed business in a commercial business district at 3 a.m., Adams exhibited suspicious behavior (sliding down in the backseat) when Officer Vreeland drove by, and Officer Vreeland knew that it is easy to syphon gas from U-Hauls. The U-Haul facility was located on Officer Vreeland's usual patrol route. Both his training and experience alerted him to the reasonable possibility of criminal activity when he saw a parked car with suspicious occupant activity. Those facts, especially when viewed through the eyes of a trained law enforcement

officer, created solid particularized suspicion that the occupants of the Cadillac were engaged in criminal activity.

Pursuant to Mont. Code Ann. § 46-5-401, Officer Vreeland was allowed to question the female in the passenger seat and to "verify an account of the person's presence or conduct" and to ask her for an explanation of her actions. Questioning "is an essential part of police investigations [because] . . . [t]he state has a compelling interest in enforcing the criminal law in furtherance of public order and safety." *Kroschel*, ¶ 14. Officer Vreeland's suspicion only grew once he knew that Adams was no longer in the vehicle. The "additional information developed during the initial lawful duration and scope of an initial investigative stop . . . [created] new or broader particularized suspicion of criminal activity justifying expansion of the scope or duration of the stop beyond that justified by the officer's initial observations." *Kroschel*, ¶ 19.

In *Hilgendorf*, Deputy Romero was on patrol in Billings around 2 a.m., when he "observed a vehicle parked next to a business on South 23rd Street with its engine running and its lights on." *Hilgendorf*, ¶ 5. Deputy Romero knew that "businesses in this area, which at that late hour were closed, had experienced a high rate of theft and burglary." *Id.* Deputy Romero drove past the parked vehicle, circled the block, and approached the vehicle from behind a second time; once the patrol car "headlights illuminated the rear of the parked vehicle a second time, the

car immediately pulled out and quickly drove away." *Id*. Wondering if the vehicle occupants were engaged in criminal activity, Deputy Romero followed the vehicle. *Id.* When Deputy Romero stopped behind the subject vehicle at a stop sign, he saw the occupants "moving around inside as if they were trying to conceal something." *Id.*

Based upon the suspicious behavior of the vehicle occupants, Deputy Romero initiated a traffic stop. *Id.* ¶ 6. After speaking with the driver (Hilgendorf) and the passenger, Deputy Romero returned to his patrol car to run a warrant check on them. *Id.* Deputy Romero then "noticed both occupants were moving around inside the vehicle, and the passenger was opening and closing the door on his side as if attempting to discard something." *Id*. ¶ 7. Concerned for his safety, Deputy Romero asked Hilgendorf and his passenger to exit the vehicle, whereupon he frisked each of them. *Id*. Deputy Romero found an orange container of drugs on each occupant's person during his pat-down searches. *Id*.

The *Hilgendorf* court held that Deputy Romero's stop was proper. *Hilgendorf*, ¶ 19. In its analysis, this Court noted that Hilgendorf's car was "parked near a business at 2:00 a.m., when all of the area businesses were closed, that the area was known for its thefts from and burglaries of the businesses . . . [and Hilgendorf] quickly left upon the second approach of the police vehicle." *Id.* ¶ 18. This Court rejected Hilgendorf's argument that Deputy Romero lacked

particularized suspicion because his case was like the facts of *State v. Reynolds*, 272 Mont. 46, 899 P.2d 540 (1995) and *State v. Jarman*, 1998 MT 277, 291 Mont. 391, 967 P.2d 1099. Instead, this Court found particularized suspicion existed with the addition of "at least one critical fact: that Romero also observed that both Hilgendorf and his passenger were moving around inside the vehicle as if trying to conceal something in the vehicle." *Hilgendorf*, ¶ 18.

This Court found that Deputy Romero "did not base the stop solely on Hilgendorf's presence in a high crime area or the lack of other drivers in the area, but upon various additional facts, including the abrupt takeoff . . . and the peculiar actions of the people inside the car while it was moving." *Id.* Therefore, Deputy Romero had particularized suspicion, and the facts "distinguish this case from the holdings in *Jarman* and *Reynolds*." *Id.*

Like in *Hilgendorf*, the totality of the circumstances in this case shows that sufficient objective data was available to Officer Vreeland for him to draw certain inferences that resulted in his suspicion that an occupant of the Cadillac had committed or was about to commit a criminal activity—namely, stealing from or burglarizing a closed business. Officer Vreeland knew U-Hauls are vulnerable to gas siphoning (theft). Also extant was the critical fact that Adams slid down in the backseat when he saw Officer Vreeland's patrol car.

The evidence of particularized suspicion in this case is comparable to, and even more abundant than, that presented in *State v. Rodriguez*, 2011 MT 36, 359 Mont. 281, 248 P.3d 850. In that case, this Court concluded that "specific and articulable facts and inferences gathered while observing Rodriguez support[ed] a finding of particularized suspicion to justify an investigative stop." *Rodriguez*, ¶ 18. There, officers observed Rodriguez's vehicle located outside a motor sports store at 11:30 p.m., well after the business had closed, with its headlights off, rolling slowly through the parking lot of a business that contained a significant amount of expensive inventory. *Id.* ¶¶ 3, 19. The officer testified that his experience had taught him that burglaries of businesses occur at night and that no vehicles were typically present in that business's parking lot at night. *Id.* ¶ 19. This Court concluded that those objective and articulable observations reasonably led the officer to possess the requisite particularized suspicion that Rodriguez was casing the store to commit burglary and that the district court did not err in concluding that the officers were justified in conducting an investigative stop of Rodriguez. *Id.* ¶ 19.

Here, Adams was parked next to a closed business at 3 a.m., in the dark. It was a time of night when people are unable to rent a U-Haul or enter the facility. Officer Vreeland knew that U-Hauls are often targeted for gas theft, and it was the time of night when burglaries or break-ins typically occur. In addition, Officer

Vreeland observed Adams's behavior inside the vehicle (sliding down in the backseat) as he drove by in his patrol car. That observed behavior gave rise to an additional suspicion that Adams was engaged in criminal behavior he did not want law enforcement to see.

Further, the duration and scope of Officer Vreeland's investigative stop was commensurate with what was "reasonably necessary to confirm or dispel the predicate suspicion for the stop." *Kroschel*, ¶ 13. Officer Vreeland very briefly spoke to the female passenger to obtain information about the reason she was there and to determine Adams's identity and location. Adams's absence only enhanced Officer Vreeland's particularized suspicion that Adams was involved in criminal activity, thus satisfying the requirement that particularized suspicion "continue[d] to exist prior to the development of the additional information on which [the] officer relie[d] to prolong and expand its scope." *Hoover*, ¶ 23. Officer Vreeland only slightly expanded the scope of his investigation to look around the immediate area with a flashlight after learning Adams had left the vehicle and after having seen him suspiciously sliding down in the backseat when he saw Officer Vreeland.

After briefly talking to the female passenger, Officer Vreeland saw Adams underneath the U-Haul within three minutes. This brief time falls well within a "judicial assessment of reasonableness of the duration and scope of an investigative stop[, which] must recognize that the State's compelling interest in

'effective law enforcement' demands that officers in the field have reasonable 'latitude' to reach, follow up on, and confirm or dispel initial suspicions of criminal activity." *Kroschel*, ¶ 13. Officer Vreeland's investigatory stop advanced the State's "compelling interest in enforcing the criminal law in furtherance of public order and safety." *Kroschel*, ¶ 14.

Based on the guidance of *Hildendorf* and *Rodriguez*, this Court should affirm the justice court's finding of particularized suspicion. Based upon the totality of the circumstances, Officer Vreeland observed specific and articulable facts and made reasonable inferences from those observations, which gave rise to a particularized suspicion of wrongdoing that justified an investigative stop. The municipal court's finding that particularized suspicion existed under the totality of the circumstances was not clearly erroneous, and its conclusion that such circumstances justified the stop was legally correct.

B. Adams's reliance on *Hoover, Reeves, Rodriguez, Wilson,* and *Jarman* is misplaced, as those cases are distinguishable from this matter.

1. The instant case does not involve an overreach of scope during an investigatory stop like that in *Hoover*.

The initial setting of the investigatory stop in *Hoover* was somewhat analogous to the facts here, but that is where the similarity ends. In *Hoover*, the appellant (Hoover) was sitting in his parked car with his lights off in a secluded area of a mini-storage complex. *Hoover*, ¶ 2. Unlike the U-Haul business by which

Adams was parked, the mini-storage business in *Hoover* was "open to the public 24 hours a day, seven days a week." *Hoover* at ¶ 2. A sheriff's deputy noticed Hoover's parked vehicle while on routine patrol and stopped to observe further because "people do not commonly access storage units at midnight" and storage units "are always being broken into." *Id.* ¶ 4. It is at this point that the facts of *Hoover* deviate from those now before this Court.

Instead of initiating an obvious stop, the deputy in Hoover recruited three more law enforcement officers to "sneak-up behind the truck and converge on the occupants from both sides." *Id.* Even when he got near to the truck, the deputy "still could not see what the occupants were doing but the driver appeared to be looking down at the steering wheel or into his lap." *Id.* ¶ 5. The deputy relied on his experience that "people often find a secluded spot to use illegal drugs," but "articulated no specific observation, fact, or circumstance particularly indicative of such illegal drug use." *Id.* After the four officers walked up to the truck, announced themselves, and illuminated the truck cab with a flashlight, they realized the truck occupants were engaged in sexual activity, but they saw "no indication of a possible break-in, illegal drug use, or other illegal activity." *Id.* ¶ 7. Though the officers did not find the female occupant to be in any distress, the deputy thought "further intrusion and investigation was necessary to determine whether 'the female was comfortable being there with a man exposing his penis.'" *Id.* ¶ 8.

During the officers' extended questioning of Hoover, officers smelled an alcohol beverage on Hoover's breath. *Id.* ¶ 9. Hoover voluntarily provided a preliminary breath test, which reported his blood alcohol concentration at .05%. *Id*. The officers ultimately arrested Hoover for violating the alcohol restriction of his probation at the direction of the on-call probation officer. *Id.*

Officer Vreeland had facts beyond those the officers relied upon in *Hoover* to make the investigatory stop. Although this Court noted in *Hoover* that it was reasonable for an officer to take "note of an occupied, unlit vehicle parked late at night in the dark in a relatively secluded location," that officer observed only "non-specific movement" and had no specific observations that supported his suspicion of illegal drug activity. *Hoover*, ¶¶ 19-20. By contrast, Adams's vehicle was parked next to a closed business in the middle of the night **and** Officer Vreeland observed Adams making specifically suspicious movement by sliding down in the backseat. Rather than his interaction with the vehicle's occupant dispelling his suspicions, Officer Vreeland grew more suspicious because the occupant (who had reacted suspiciously to seeing Officer Vreeland) was suddenly missing from the vehicle.

2. The facts of *Reeves, Rodriguez,* and *Jarman* are distinguishable from the instant matter.

In *State v. Reeves*, 2019 MT 151, ¶¶ 2-3, 396 Mont. 230, 444 P.3d 394, Deputy Terrill stopped Reeves after watching him drive away from a brewery,

present a "deer-in-the-headlights" expression when he made eye contact with the officer while stopped at an intersection, and wait 8-10 seconds before moving from the intersection. This Court found that Deputy Terrill did not have particularized suspicion to stop Reeves's vehicle because Reeves "waited a prudent amount of time—given the icy conditions and Deputy Terrill's failure to seize the right of way—before signaling and executing a lawful left-hand turn." *Reeves*, ¶ 16.

Although the officer in *Reeves* did not have particularized suspicion to stop the vehicle there, the analysis in *Reeves* supports a finding of particularized suspicion in the instant case. This Court declined to find Reeves's delayed start at the intersection indicative of impaired driving because it occurred "in the middle of the afternoon, hours before bars closed." *Id.* ¶ 18. This Court distinguished those facts from *City of Missoula v. Cook*, 2001 MT 237, 307 Mont. 39, 36 P.3d 414, where a driver's "excessive length of the delay [at a flashing red light] combined with the delay occurring shortly after the bars closed constituted the requisite objective data to support a particularized suspicion that Cook was engaged in wrongdoing." *Id.* ¶ 17. Although Deputy Terrill's instincts were correct (Reeves's blood alcohol content was twice the legal limit), this Court found that there was no particularized suspicion because Reeves broke no other law and did not attempt to avoid being stopped. *Id.* ¶ 22. Here, Officer Vreeland observed articulable facts—

a car parked at 3 a.m. next to theft-vulnerable U-Hauls and the vehicle occupant sliding down in the backseat when he saw law enforcement.

In *City of Billings v. Rodriguez*, 2020 MT 9, ¶ 3, 398 Mont. 341, 456 P.3d 570, Officer Beechie was engaged in "proactive policing" by checking license plates on vehicles to verify registrations. Officer Beechie stopped Rodriguez when the database reflected that his license plate matched the make, model, year, and license plate number, but reported the vehicle as a different color than presented. *Id.* A vehicle's color inconsistency between its paint job and its registration is not criminal behavior. *Id*. ¶ 12. This Court found that the officer lacked particularized suspicion to stop Rodriguez because his only bases for suspecting Rodriguez of wrongdoing were inferences that could be drawn from the conduct of any law-abiding person. *Id.* Unlike the single-factor stop (inconsistent car color) in *Rodriguez*, Officer Vreeland stopped Adams's vehicle after observing multiple factors that combined to create particularized suspicion that the occupants of Adams's vehicle were engaged in criminal wrongdoing.

In *Jarman*, Officer Korell saw a man later identified as Jarman standing next to a pay phone as Officer Korell drove to respond to a domestic disturbance call. *Jarman*, ¶ 4. When Officer Korell circled the block and returned, Jarman was gone and the phone was off the hook. *Id.* Officer Korell patrolled the area and stopped Jarman's vehicle after observing it leaving a parking lot. *Id.* ¶ 5. Officer Korell saw

a knife in plain view on Jarman's front seat and found illegal drugs and a gun on Jarman's person. *Id.* Finding that "[b]eing in a high crime area by itself does not give the police a particularized suspicion to stop a person," this Court held that the stop was illegal and the evidence found as a result of the stop should have been suppressed. *Id.* ¶¶ 14, 16. Unlike the defendant in *Jarman*, Adams was not merely present in a high crime area,but acted suspiciously, near a closed business and its U-Haul trucks that are prone to theft, during nighttime hours.

3. Unlike the officer in *Wilson*, Officer Vreeland did not exceed the scope and duration of the particularized suspicion for his investigatory stop.

In *State v. Wilson*, 2018 MT 268, ¶¶ 27-28, 393 Mont. 238, 430 P.3d 77, the officer "had particularized suspicion to make the initial traffic stop when dispatch notified him that the vehicle's registration had expired." The officer issued a ticket, and this Court determined that "[t]he stop should have ended there." *Id.* ¶ 37. Instead, noting the driver was trembling and the passenger seemed nervous and avoided eye contact, the officer expanded his investigation. *Id.* ¶¶ 4, 13. Following that stop, a K-9 search was conducted, and it was that search that led to the drug discovery that resulted in the charges against the defendant. *Id.* ¶ 38. This Court explained that before the officer "could extend the stop and conduct a canine search, he needed particularized suspicion that [the driver] or his vehicle were involved in narcotics activity." *Id.* ¶¶ 27-28.

In *Wilson*, the officer detained the defendant in the car along with the driver after the officer made an investigatory stop. That is not what occurred here. Adams was not in the vehicle when Officer Vreeland approached but, instead, was hiding beneath a nearby U-Haul. Here, Officer Vreeland spoke to the vehicle passenger for a matter of minutes and then quickly looked around for the missing occupant (Adams). Officer Vreeland's initial suspicion of criminal activity involved gas syphoning from U-Hauls, which is what he looked for during his brief scan of the immediate area around Adams's vehicle. Unlike the officer in *Wilson,* Officer Vreeland did not prolong the detainment and was justified in spending a few minutes scanning the area for Adams, who had been in the vehicle moments before.

III. Even assuming Officer Vreeland lacked particularized suspicion to stop Adams's Cadillac, the municipal court properly denied Adams's motion to suppress.

A. Adams cannot challenge the investigatory stop because the evidence does not demonstrate that Adams had a reasonable privacy interest in his vehicle.

Adams voluntarily relinquished his interest in his vehicle when he exited the vehicle to hide under a U-Haul, just moments after seeing a patrol car drive by. Adams admits he "left the vehicle prior to the officer turning on his lights . . . ." (Appellant's Br. at 18.) This Court has held that "[v]oluntary relinquishment of

one's interest in an item or one's control over that item is akin to the legal concept of abandonment." *State v. 1993 Chevrolet Pickup*, 2005 MT 180, ¶ 14, 328 Mont. 10, 116 P.3d 800. "Abandonment is defined as 'the relinquishment of a right; the giving up of something to which one is entitled.'" *Id.* This Court has stated that "when a person intentionally abandons his property, that person's expectation of privacy with regard to that property is abandoned as well." *Id.* "In determining whether someone has abandoned his property, the intention is the first and paramount inquiry." *Id*. ¶ 15. This intention is ascertained not only from the statements that may have been made by the owner of the property, but also from the acts of the owner. *Id.* When Adams purposely left his vehicle, he also abandoned a reasonable expectation of privacy.

This case is distinguishable from *State v. Hamilton*, 2003 MT 71, 314 Mont. 507, 67 P.3d 871, which Adams relies upon to argue that his physical separation from his vehicle did not defeat his privacy interest in his vehicle. (Appellant's Br. at 17.) The issue in *Hamilton* was whether "society continues to view a person's actual expectation of privacy as objectively reasonable when she loses her wallet." *Hamilton*, ¶ 24. Focusing on the difference between abandoned and lost property, this Court explained the

> common sense proposition that the law and society recognize a difference between a person who abandons property and a person who loses property but retains the right and desire to regain possession of that property.

Hamilton, ¶ 29. Whereas "Hamilton did not intentionally or knowingly expose her wallet to the public and [therefore] her right to exclude others from the contents of her wallet remained intact," *Hamilton*, ¶ 30, Adams purposely left his vehicle to avoid law enforcement and the investigatory stop.

Adams likewise misplaces his reliance on *State v. Isom*, 196 Mont 330, 641 P.2d 417. There, the defendant denied ownership of his vehicle to law enforcement while subject to a custodial interrogation. This Court pointed out that:

> [a]lthough it has been held that the owner of a car or a container will lose his standing to object to the search of it if he abandons it prior to the time of the search (internal citations omitted), a mere disclaimer of ownership in an effort to avoid making an incriminating statement in response to police questioning should not alone be deemed to constitute abandonment.

Isom, 196 Mont. at 340, 641 P.2d at 422.

Contrary to Adams's position, *United States v. Shaefer, Michael & Clairton Slag, Inc.* 637 F.2d 200 (3d Cir. 1980), does not support the argument that Adams retained a privacy interest in his vehicle after he left. In *Shaefer*, the Third Circuit Court's finding that the Fourth Amendment's "prohibition against seizures of property does not depend upon presence of the owner" involved the question of whether a corporation maintained "a possessory interest in [its vehicles], exercised through its driver agents." *Shaefer*, 637 F.2d at 203. Further, the State seized documents in that case that the defendant-corporation kept within the car in that

case. *Id.* Unlike in *Shaefer*, Adams was not present during the seizure, not because he was the absent corporate owner of the vehicle, but because he physically fled when he saw law enforcement approaching.

B. Officer Vreeland's observation of Adams is admissible because the stop was attenuated from the observation and because he would inevitably have discovered Adams under the U-Haul.

Assuming Adams does have standing to challenge the stop of his vehicle, Officer Vreeland's observation of Adams underneath the U-Haul was separate and independent from the stop. "The exclusionary rule ensures protection against the government's intrusion on an individual's constitutional right to be free from such unreasonable searches and seizures." *Hilgendorf*, ¶ 23. "If an exception to the warrant requirement is not established, the evidence obtained as a result of an unreasonable search or seizure is excluded." *Id.* However, there are exceptions to the exclusionary rule/"fruit of the poisonous tree" doctrine. This Court has explained:

> the "fruit" is admissible if it is (1) attenuated from the constitutional violation so as to remove its primary taint; (2) obtained from an independent source; or (3) determined to be evidence which would have been inevitably discovered apart from the constitutional violation.

State v. Therriault, 2000 MT 286, ¶¶ 58-59, 302 Mont. 189, 14 P.3d 444.

The United States Supreme Court has explained:

> We need not hold that all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."

Wong Sun v. United States, 371 U.S. 471 (1963).

Officer Vreeland saw Adams from his position on a public street after he moved away from the vehicle. Officer Vreeland's observations of Adams were distinct from anything or anyone he saw in Adams's vehicle. He would have looked in the same places had he not effected a stop. Officer Vreeland was concerned about what the vehicle occupants were doing when he drove by them, before he initiated a stop. Had he merely walked down the street to check things out, he would have discovered Adams under the U-Haul siphoning gas.

Adams misplaces his reliance on *United States v. Jones*, 565 U.S. 400, 404 (2012), and others[2] to make a "fruit of the poisonous tree" argument. (Appellant's Br. at 16.) In *Jones*, the United States Supreme Court held evidence must be excluded because it was "obtained by warrantless use of the GPS device." *Jones*,

[2] The other cases Adams mentions, including *State v. Goetz*, 2008 MT 296, 345 Mont. 421, 191 P.3d 489, *State v. Tackitt*, 2003 MT 81, 315 Mont. 59, 67 P.3d 295, and *State v. Elison,* 2000 MT 288, 302 Mont. 228, 14 P.3d 456, all involve evidence found within a vehicle pursuant to a vehicle stop.

565 U.S. at 404. There, the Court emphasized that "[i]t is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information." *Id.* This is not what happened here. Though it is true that a vehicle is an "effect" under the Fourth Amendment, *Jones*, 565 U.S. at 404, Officer Vreeland's evidence—his observation of Adams under the U-Haul—was not evidence found within Adams's vehicle and, therefore, the evidence was not obtained from his stop of Adams's vehicle.

Further, Officer Vreeland would have seen Adams siphoning gas from under the U-Haul even if he had not stopped Adams's vehicle. The "inevitable discovery rule posits that evidence obtained without a search warrant may nonetheless be used against the defendant if . . . [officers] would have inevitably discovered the evidence in a manner that did not require a warrant." *State v. McKeever*, 2015 MT 177, ¶ 15, 379 Mont. 444, 351 P.3d 676. Officer Vreeland would have looked around the U-Haul facility and its trucks because he was suspicious that someone was stealing gas from the U-Haul trucks. Officer Vreeland would have scanned the area even if he had not stopped Adams's vehicle.

/ / /

CONCLUSION

This Court should affirm the district court's order affirming the municipal court's denial of Adams's motion to suppress based upon a proper finding of particularized suspicion that justified the investigative stop.

Respectfully submitted this 31st day of August, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 5,848 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, and any appendices.

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CERTIFICATE OF SERVICE

I, Bree Williamson Gee, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-30-2021:

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