IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0565

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DAVID STANLEY,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eighteenth Judicial District Court,
Gallatin County, The Honorable Rienne H. McElyea, Presiding

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STATEMENT OF THE ISSUES

1. Whether Appellant was unlawfully seized.

2. If Appellant was unlawfully seized, whether the district court correctly denied Appellant's motion to suppress because the discovery of the evidence was attenuated from the seizure.

STATEMENT OF THE CASE

Gallatin County charged Appellant David Stanley (Stanley) with one count of Criminal Possession of Dangerous Drugs for possessing methamphetamine. (Doc. 3.) Prior to trial, Stanley filed a Motion to Suppress Evidence. (Doc. 23.) Stanley argued that he was unlawfully seized, and that the evidence of methamphetamine discovered after his arrest at the jail should be suppressed. (Doc. 23 at 6-8.)

The State responded that Stanley's encounter with law enforcement was voluntary, and no seizure occurred until after the officers discovered there was a warrant for his arrest. (Doc. 25 at 2-4.) Alternatively, the State argued that, if there was an unlawful seizure, the attenuation doctrine applied and evidence of the methamphetamine should not be suppressed. (*Id.* at 4-7.)

The court found that the officers had unlawfully seized Stanley without particularized suspicion of wrongdoing. (Doc. 44 at 6.) However, the court agreed

with the State that "the arrest of [Stanley] was attenuated from the initial contact based on the active warrants for his arrest" and, accordingly, denied the motion to suppress. (*Id*. at 9.)

The State and Stanley reached a plea agreement. (Doc. 57, Ex. 1.) Stanley agreed to plead guilty and jointly recommend a two-year sentence to the Department of Corrections, all suspended, while preserving his right to appeal the denial of his motion. (*Id.*) At sentencing, the court followed the plea agreement. (Doc. 60.) Stanley now appeals.

STATEMENT OF THE FACTS

On September 11, 2020, at approximately 2:30 p.m., Bozeman Police Department (BPD) Officer Jacob Ahmann (Officer Ahmann) was patrolling near Baxter Lane and North 11th Avenue in Bozeman. (02/26/21 Hr'g Tr. (Tr.) at 10-11.) The area of North 11th Avenue between Baxter Lane and Oak Street is largely undeveloped but has paved streets with sidewalks. (*Id.* at 40.) Due to the lack of development, vehicle and pedestrian traffic in the area was minimal. (*Id.*)

Dispatch relayed over the radio that Daniel Sobrepena (Sobrepena), who had a warrant out for his arrest, had been seen living or camping in a drainage ditch in the area. (Tr. at 11.) The anonymous tipster reported that Sobrepena was wearing a "red curly wig to avoid being apprehended for his warrants." (*Id.* at 12-13.) Officer

Ahmann was familiar with Sobrepena and began looking for him since he was already in the area. (*Id.* at 11-12.)

Officer Ahmann drove south on 11th Avenue toward the drainage ditch. (Tr. at 15.) He turned right onto Patrick Street and started to drive west when he saw an individual walking east with a bike toward the 11th Avenue intersection. (*Id*.) Officer Ahmann observed that the individual was wearing a long, "red curly-haired wig [] that matched the description" from dispatch. (*Id.*) Officer Ahmann described the wig as "very distinct." (*Id.* at 29.)

Initially, the person averted eye contact with Officer Ahmann. (Tr. at 17.) Officer Ahmann pulled his squad car over, parallel to the curb on the opposite side of Patrick Street, then exited his vehicle and walked across the street toward the individual, who he later identified as Stanley. (*Id.* at 17, 35.) Officer Ahmann did not activate his top lights. (*Id.* at 17.)

After getting out of his vehicle, Officer Ahmann called out Sobrepena's name. (Tr. at 18.) When Stanley turned around, Officer Ahmann realized he was not Sobrepena. (*Id.*) At that point, Officer Ahmann determined he would speak with Stanley as an "inquiry into where he [had] gotten the wig." (*Id.*) Since Stanley had the wig that Sobrepena had reportedly been wearing, Officer Ahmann wanted to question Stanley about it, with the hopes that it might lead to information on Sobrepena's whereabouts. (*Id.* at 23.)

Officer Ahmann asked Stanley if he had identification and told Stanley he was a "witness" because he was "wearing [Sobrepena's] wig." (02/26/21 Hr'g Ex. 1 (Ex. 1) at 14:40:50-14:40:57.) Stanley denied that the wig belonged to Sobrepena. (*Id.* at 14:40:57-14:41:05.) When Officer Ahmann told Stanley that he wanted to identify him as a witness, Stanley responded that there was no reason he needed to be identified. (*Id.* at 14:43:01-14:43:05.) Officer Ahmann explained to Stanley that he was wearing a wig that belonged to a fugitive they were trying to find. (*Id.* at 14:43:06-14:43:17.)

Despite Stanley denying any connection to Sobrepena, Officer Ahmann did not believe that the anonymous tip to law enforcement was necessarily a false or mistaken tip. (Tr. at 41.) Rather, he believed that the tipster could have seen Sobrepena wearing the wig earlier, and that Sobrepena had transferred the wig to Stanley at some point. (*Id.*) Officer Ahmann wanted to speak with Stanley to determine how he got the wig, if he knew where Sobrepena was staying, or if Sobrepena had given him the wig. (*Id.* at 58.) Officer Ahmann's only initial concern in stopping to speak with Stanley was to try to locate Sobrepena. (*Id.*)

Upon seeing Stanley, Officer Ahmann knew that he recognized him. (Tr. at 23.) Officer Ahmann had cited him in an assault case in 2015. (*Id.*) Officer Ahmann also knew Stanley from interactions he had had with Stanley's "cousins and some of his associates," who had frequent contact with the BPD. (*Id.*)

However, Officer Ahmann could not recall Stanley's name because Officer Ahmann had only recently returned from a year-long military deployment and he was "trying to relearn everybody" that had regular contact with the BPD. (*Id.*)

Officer Ahmann, at first, confused Stanley with another individual named Ryan Sheets. (Tr. at 25.) Stanley denied his name was Sheets. (*Id.*) Officer Ahmann asked Stanley to identify himself, but Stanley refused. (*Id.* at 46.)

Within 30 seconds of Officer Ahmann arriving on scene, BPD Officer Braden Peterson (Officer Peterson) also arrived. (Tr. at 19, 22.) Officer Peterson had been assigned to the call by dispatch and was approximately one block away when Officer Ahmann stopped his vehicle to approach Stanley. (*Id.* at 19.) When Officer Peterson arrived, he pulled his vehicle in at a 45-degree angle to the corner boulevard of 11th Avenue and Patrick Street, where Officer Ahmann had just begun speaking with Stanley on the sidewalk. (*Id.* at 29.) Officer Peterson did not activate the lights or siren on his patrol vehicle. (*Id.* at 30.)

Within the first 45 seconds of Officer Ahmann speaking with Stanley, Stanley stated his name was "James Biden." (*See* Ex. 1 at 14:40:30-14:41:15) Officer Ahmann immediately knew that was a false name. (Tr. at 32-34.) Knowing that Stanley was providing a false name, Officer Ahmann became suspicious that Stanley had warrants out for his arrest or that he was on probation and was intentionally concealing his identity. (*Id.* at 33.)

After Stanley provided the false name of James Biden, Officer Ahmann asked Stanley to remove the wig because the wig was "still kind of concealing his identity." (Tr. at 35, 61.) Officer Ahmann believed seeing Stanley without the wig might trigger his memory to be able to remember his true name. (*Id.* at 35.) Stanley continued to claim he was James Biden. (Ex. 1 at 14:43:26-14:43:32.)

Officer Ahmann told Stanley to pull out his phone to prove that he was James Biden by showing his profile on Facebook. (*Id.* at 14:43:28-14:43:33; Tr. at 47.) Stanley would not show Officer Ahmann his phone and claimed he did not have any other identification. (*Id.* at 47-48.) At the hearing, Officer Ahmann explained that, if someone did not have an identification card, using Facebook or Instagram was a common method to verify someone's identity. (*Id.* at 48.) When Stanley continued to claim he was James Biden, Officer Ahmann responded by repeatedly telling Stanley to provide his name and date of birth. (Ex. 1 at 14:43:30-14:44:04.)

Officer Ahmann then took Stanley's bike from him because he was "getting ready to take [him] into custody." (Ex. 1 at 14:44:04; Tr. at 35, 49.) Because Stanley had repeatedly provided a false name and would not identify himself, Officer Ahmann suspected that Stanley also had a warrant for his arrest, or he was trying to avoid probation. (Ex. 1 at 14:44:47-14:45:09.) Stanley claimed that he

had just found the wig in the garbage. (Ex. 1 at 14:44:50-14:44:55.) Stanley also initially claimed that he had not seen Sobrepena in years. (Doc. 1 at 1.)

Once Officer Ahmann took Stanley's bike, he subjectively believed Stanley was no longer free to leave the encounter. (Tr. at 49.) Officer Ahmann believed he had particularized suspicion to investigate why Stanley was providing a false name, though he conceded it is not necessarily illegal to lie to the police. (*Id.* at 49-50.) After Officer Ahmann took his bike, Stanley correctly identified himself. (*Id.* at 35.) After hearing his correct name, Officer Ahmann immediately recognized Stanley. (*Id.*)

Officer Ahmann ran Stanley through the "local" system. (Tr. at 36.) The "local" database, known as "Zuercher," is a case management system used by Gallatin County law enforcement agencies that includes information on individuals previously encountered by law enforcement within the county. (*Id.* at 24.) The database includes information on local alerts (e.g., history of violence or drug use), trespass notices, local warrants, or involvement in active investigations. (*Id.* at 53.)

To run someone through the database, an officer needs to know the person's name. (Tr. at 36.) If Officer Ahmann recognized an individual while patrolling, he would routinely run the individual through the database, without stopping the individual, to see if he or she had an active warrant. (*Id.* at 52.) Officer Ahmann

would also run someone through the database if he had stopped the person for a different reason. (*Id.* at 53-54.)

After Officer Ahmann relayed Stanley's information, dispatch responded that Stanley did not have any local warrants. (Tr. at 36.) However, Officer Peterson recognized Stanley's name from a recent Probation and Parole (P&P) bulletin that identified him as a probation absconder. (*Id*.)

Officer Peterson returned to his vehicle to "do some extra queries to find out if in fact [Stanley] was an absconder." (Tr. at 37.) Officer Peterson had previously worked as a probation officer and was "familiar with the . . . absconding system and where to . . . check to see if someone was currently on supervision or with Probation and Parole." (*Id.* at 51.) Officer Peterson returned to his squad car to "double check" the probation bulletin and was able to confirm that Stanley had absconded from probation out of Billings. (*Id.*; *see also* Ex. 1 at 14:49:08-14:49:13.)

Officer Peterson confirmed by having Stanley's name put into "conweb," which is a publicly available internet site that shows if someone is currently supervised by the Department of Corrections and his or her status. (Ex. 1 at 14:46:00-14:46:08.) After learning about the probation warrant, Officer Ahmann placed Stanley under arrest. (Tr. at 37.) Around the time Officer Ahmann placed Stanley under arrest, a third officer, Officer Zach Garfield, arrived on scene. (*Id.*)

After Officer Ahmann arrested Stanley, the officers continued to ask him if he knew of Sobrepena's whereabouts. (Ex. 1 at 14:47:40-14:49:05.) Although Stanley's answers are hard to understand on Officer Peterson's audio, it is clear that Stanley provided information on Sobrepena's whereabouts. (*Id.* at 14:47:44-14:48:12.) Officer Ahmann can be heard on the audio telling another officer: "[Stanley] says [Sobrepena] has a dog and he'll just walk us over to where [Sobrepena's] at." (*Id.*)

Stanley was later transported to the Gallatin County Detention Center on a probation hold for absconding from Billings P&P. The officers also located active arrest warrants for Stanley from the Billings Police Department and the Yellowstone County Sheriff's Office. (Ex. 1 at 14:49:50-14:51:38; Doc. 44 at 3.) During the booking process at the detention center, a jailer located two small baggies containing methamphetamine on Stanley's person, which led to the Gallatin County charge. (Doc. 44 at 3.)

SUMMARY OF THE ARGUMENT

This Court has held that it will affirm a district court's denial of a motion to suppress, even if the district court reached the right conclusion for the wrong reason. Here, the district court should have concluded that Officer Ahmann did not seize Stanley until after he provided a false name. When Stanley provided a false

name, Officer Ahmann had particularized suspicion that Stanley had committed the offense of obstructing a peace officer and, therefore, the seizure was appropriate.

However, even if the seizure was unlawful, the district court correctly denied Stanley's motion to suppress because the exclusionary rule does not apply. The valid, pre-existing warrant for Stanley's arrest attenuated the discovery of drugs on his person at the jail from any illegal seizure that might have occurred earlier.

ARGUMENT

I. Standard of review

"For the denial of a motion to suppress, this Court reviews findings of fact for clear error and conclusions of law for correctness." *State v. Larson*, 2022 MT 223, ¶ 13, 410 Mont. 424, 519 P.3d 1243. "Findings of fact are clearly erroneous if they are not supported by substantial evidence, the court misapprehends the effect of the evidence, or appellate review of the record convinces the [C]ourt that a mistake has been made." *Id.*

II. Although the district court was ultimately correct to deny Stanley's motion to suppress, the court should have denied the motion because Stanley's seizure was lawful.

This Court will affirm a district court's denial of a motion to suppress, even if the court "reached the right result for the wrong reason." *State v. Wilkins*,

2009 MT 99, ¶ 5, 350 Mont. 96, 205 P.3d 795 In *Wilkins*, this Court affirmed a district court's denial of a motion to suppress on the basis that the defendant had not been seized by law enforcement, even though the district court had erroneously concluded that Wilkins had been seized but that particularized suspicion had justified the seizure. *Id.*

Here, Stanley was not seized until after he had provided a false name to law enforcement. After Stanley provided the false name, particularized suspicion existed that he had committed the offense of obstructing a peace officer.

A. Stanley was not seized until after he provided a false name.

Montana citizens are protected from unreasonable searches and seizures by the Fourth Amendment to the United States Constitution and article II, section 11, of the Montana Constitution. *Wilkins*, ¶ 7; *see also State v. Strom*, 2014 MT 234, ¶ 10, 376 Mont. 277, 333 P.3d 218. The analysis of "whether a 'seizure' has occurred is the same under the federal and the Montana Constitutions." *Wilkins*, ¶ 7.

"[N]ot all personal intercourse between policemen and citizens involves 'seizures' of persons." *Wilkins*, ¶ 8 (quoting *Terry v. Ohio*, 392 U.S. 1, 19-20 n.16 (1968)). "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen [does the Court] conclude that a 'seizure' has occurred.'" *Id.* (quoting *Terry*, 392 U.S. at 19-20 n.16). A person is

"seized" for the purpose of Fourth Amendment analysis "only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Wilkins*, ¶ 9 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)).

Factors that may be taken into consideration in determining whether a seizure has occurred include "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Wilkins*, ¶ 9 (quoting *Mendenhall*, 446 U.S. at 554). The above-referenced "factors are not exhaustive" and the Court considers all of the circumstances of the encounter between law enforcement and the citizen. *State v. Ballinger*, 2016 MT 30, ¶ 18, 382 Mont. 193, 366 P.3d 668. When an officer "merely walks up to a person standing or sitting in a public place . . . and puts a question to him, this alone does not constitute a seizure." *Wilkins*, ¶ 10 (quoting Wayne LaFave*, Search and Seizure*, vol. 4, § 9.4(a), 419-21 (4th ed. West 2004)).

In analyzing these factors, this Court has found that an officer who merely approaches a citizen to ask noncoercive questions in a nonthreatening manner has not "seized" that citizen. *See State v. Questo*, 2019 MT 112, ¶¶ 15, 18, 395 Mont. 446, 443 P.3d 401. In *Questo*, the Court held that an officer did not seize Questo

when the officer approached him while he was pumping gas and asked him questions about a tip the officer had received. *Id.* This Court concluded that Questo was not seized when he was parked in a public location of his choosing; the officer did not activate his lights or siren; and the officer approached alone, did not draw a weapon, and used a neutral tone. *Questo*, ¶¶ 15, 18. This Court concluded that Questo was not seized when the officer asked him to perform field sobriety tests because the officer was merely asking for Questo's voluntary participation, and Questo consented. *Id.* This Court concluded that Questo was not seized because none of the officer's actions restrained Questo's liberty. *Questo*, ¶ 18.

This Court also held in *State v. Dupree*, 2015 MT 103, ¶ 15, 378 Mont. 499, 346 P.3d 1114, that Dupree was not seized when law enforcement approached her in public and asked her a question. The Court held that Dupree was not seized even though officers asked her if she would consent to a search of her luggage, which she consented to, and then moved her to another room of a train station to complete the search. *Id*. This Court stated that when the two officers approached Dupree at the train station, it was "a routine police encounter for which no particularized suspicion was needed." *Dupree*, ¶ 17.

The United States Supreme Court has held that merely asking a person for his driver's license and airplane ticket does not constitute a seizure. *Florida v. Royer*, 460 U.S. 491, 501 (1983). In *Royer*, detectives at an airport suspected

Royer of smuggling drugs in his luggage. *Id*. at 493-94. The detectives approached Royer, identified themselves as policemen, and asked Royer if he had a moment to speak with them, to which he agreed. *Id.* at 494. The detectives requested Royer's identification and airline ticket. *Id.* After noticing that Royer's identification had a different name than his airline ticket, the detectives, without returning either item, escorted him to another room. *Id.* Eventually, Royer consented to a search of his luggage, which revealed a large quantity of marijuana. *Id.* at 494-95.

The Court held that Royer was not seized until after the detectives led him to the other room while withholding his identification and airline ticket. *Royer*, 460 U.S. at 501. The Court stated:

> Asking for and examining Royer's ticket and his driver's license were no doubt permissible in themselves, but when the officers identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver's license and without indicating in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment.

Id.

Since *Royer*, the United States Supreme Court has affirmed that merely asking a person to identify himself does not implicate a Fourth Amendment seizure. *See Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 185 (2004). "[I]nterrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure." *Id.* (quoting

Immigration & Naturalization Serv. v. Delgado, 466 U.S. 210, 216 (1984)). If the person refuses to provide identification, the interaction only rises to the level of a "seizure" if "the police take additional steps" to compel the person to identify himself. *Id.*

In *Strom*, which the district court relied on in this case, law enforcement took the "additional steps" contemplated by *Delgado*, which resulted in a seizure similar to the facts in *Royer*. In *Strom*, a Butte police officer approached a van that was parked near Stodden Park. *Strom*, ¶ 4. There had recently been vandalism at the Korean War Memorial in the park, so the officer frequently patrolled the area. *Id*. Finding the van suspicious, without activating his overhead lights, the officer parked his squad car behind the van in a manner that would allow it to leave. *Id.* The officer then approached the van on foot and asked the driver and passenger to produce identifications. *Strom*, ¶ 5. After obtaining identifications, the officer returned to his squad car to check the driver's status and to check both of the vehicle's occupants for warrants. *Id.* Strom, who was the passenger, had an active warrant and was subsequently arrested. *Id.* At the jail, Strom was found to be in possession of methamphetamine. *Strom*, ¶ 6.

The State argued that the officer's contact with Strom had been voluntary, relying on *Wilkins*. *Strom*, ¶ 12. This Court distinguished the case from *Wilkins*. *Strom*, ¶ 13. Similar to *Royer*, this Court found that the officer's demand for

identification, while telling Strom and the driver to remain in their vehicle and returning with the identification to his patrol car, resulted in a seizure. *Id*.

Here, the district court determined that Stanley's case was more analogous to the facts in *Strom* than in *Wilkins.* (Doc. 44 at 6.) The court noted that there were two officers "on opposite sides of" Stanley, that Officer Peterson's car was parked, "nosed in and facing" Stanley, and Officer Ahmann "demanded [Stanley's] identification." (*Id*.) Despite these observations, the district court did not identify the moment during the stop that Stanley was "seized" for the purposes of the Fourth Amendment. Rather, the court moved on to conclude that the exclusionary rule did not apply, despite there being, at some point, a seizure without particularized suspicion.

The district court was not necessarily incorrect in analogizing this case to *Strom*. However, the three above-referenced facts the court used to find a seizure did not all occur until after Stanley provided a false name. Therefore, at the time Stanley was seized, particularized suspicion justified the seizure.

Upon arriving on scene, Officer Ahmann parked on the opposite side of the street and approached Stanley by crossing the street. Soon thereafter, Officer Peterson parked his squad car "nosed in" to the intersection corner and approached Stanley front-on. At that point, the officers were not on "opposite" sides of Stanley and they were not blocking him from walking away down the sidewalk to the south

or the west. Officer Ahmann initially asked Stanley: "Do you have any ID on you, man?" (Ex. 1 at 14:40:50-14:40:51.) Accordingly, at first, Officer Ahmann only asked Stanley if he had identification—his first question was not a "demand." Pursuant to *Royer*, *Hiibel*, and *Delgado*, Officer Ahmann did not "seize" Stanley simply by trying to identify him.[1]

Stanley protested that the officers did not have a reason to contact him. Officer Ahmann responded by telling him that he was a "witness" because he was "wearing [Sobrepena's] wig." (Ex. 1 at 14:40:52-14:40:56.) Stanley continued to protest that he did not "have to talk to the police." (*Id.* at 14:41:03-14:41:06.) Officer Ahmann responded: "I just wanna know who I'm talking to." (*Id.*) Stanley then provided the false name of "James Biden." (*Id.* at 14:41:10-14:41:14.) Officer Ahmann immediately recognized that "James Biden" was not Stanley's name.

Stanley was not seized prior to providing the false name. Up to the point that Stanley provided a false name, the facts of this case are distinguishable from *Strom* and more consistent with *Wilkins*, *Questo*, and *Dupree*. Officer Ahmann did not

[1] In *Ballinger*, this Court noted that the State had conceded Ballinger was seized after an officer told Ballinger he was investigating suspicious circumstances, requested identification, and stated: "I need to identify you." *Ballinger*, ¶ 20. Despite the State's concession, this Court did not hold that a mere request for identification would constitute a seizure. *See id.*, ¶ 21-23. Rather, the Court held that the officer had particularized suspicion even prior to the request for identification and the investigatory stop was, therefore, lawful. *Id.* Accordingly, *Ballinger* is not on point.

"demand" Stanley's identification, nor did he seize his identification and return to his patrol car while requiring Stanley to stay put. Officer Ahmann questioning Stanley about whether he had identification did nothing to indicate that he was not free to leave or that he was required to stay and speak with the officers. Officer Ahmann merely informed him that he was a "witness" and that he wanted to know his name.

At that time, the officers were not on "opposite sides" of Stanley and the sidewalk was open for him to walk away to the south or west. Although Officer Peterson had pulled his squad car up to "nose-in" to the corner, he did not have his lights or siren activated. At the time Stanley provided the false name, he was not seized.

The encounter did not escalate to the point of "demands" until Officer Ahmann instructed Stanley to remove the wig. (Ex. 1. at 14:42:49-14:42:51.) Officer Ahmann told Stanley to take the wig off "[b]ecause then I'm gonna ID you." (*Id.* at 14:42:57-14:42:59.) Officer Ahmann informed Stanley of his belief that Stanley was lying either because he had a warrant or was on probation. (*Id.* at 14:43:20-14:43:27.) At that point, Officer Peterson had also moved to stand on the southbound sidewalk and Stanley's ability to leave was more restricted. Consistent with the district court's findings, and the fact patterns in *Strom* and *Royer*, it was only at that moment that the officers "seized" Stanley within the meaning of the

Fourth Amendment. However, by that time, the seizure was justified by particularized suspicion.

B. Once Officer Ahmann recognized that Stanley had provided a false name, particularized suspicion existed to further investigate Stanley for criminal activity.

Once a warrantless seizure is made, it must be justified by an exception to the warrant requirement to avoid violating the Fourth Amendment to the United States Constitution and article II, section 11, of the Montana Constitution. *City of Missoula v. Kroschel*, 2018 MT 142, ¶ 10, 391 Mont. 457, 419 P.3d 1208. One recognized exception is the temporary investigative stop. *Kroschel*, ¶ 11. "Under this exception, a law enforcement officer may briefly stop and detain a person for investigative purposes without a warrant or probable cause for an arrest if, based on specific and articulable facts known to the officer, including rational inferences therefrom based on the officer's training and experience, the officer has an objectively reasonable, particularized suspicion that the person is engaged, or about to engage, in criminal activity." *Id.*

The existence of "criminal activity is a question of fact under the totality of circumstances." *Kroschel*, ¶ 11. What begins as a consensual encounter not involving a seizure may evolve into a seizure upon the later discovery of particularized suspicion of criminal activity. *Wilkins*, ¶ 15.

A person commits the offense of obstructing a peace officer if he or she impairs or hinders the enforcement of the criminal law or the performance of a governmental function. Mont. Code Ann. § 45-7-302. Accordingly, providing a police officer with a false name provides particularized suspicion to investigate the person for obstructing a peace office. *Kroschel*, ¶¶ 19-20; *see also United States v. Chaney*, 584 F.3d 20, 26 (1st Cir. 2009) (particularized suspicion to expand scope of a traffic stop existed based on defendant providing a false name, so the officer could "determine Chaney's identity and the reasons he might have given false information").

Furthermore, particularized suspicion need not be predicated on the direct observation of illegal behavior. *State v. McMaster*, 2008 MT 294, ¶¶ 14-15, 345 Mont. 408, 191 P.3d 443. Rather, "a series of innocent actions, when taken together, may warrant further investigation." *McMaster*, ¶ 15.

Here, Stanley provided Officer Ahmann with a false name, which Officer Ahmann immediately recognized was false. Officer Ahmann was attempting to locate a person wanted on a warrant. Stanley was wearing a wig that Sobrepena had been reported to be wearing to avoid detection. Stanley was in the area where Sobrepena was reported to be. Therefore, Officer Ahmann had reason to believe that there was a connection between Stanley and Sobrepena and that Stanley could provide useful information to aid in apprehending Sobrepena. Because Stanley was

crucial in finding Sobrepena, it was important that Officer Ahmann identify him as a witness.

By providing a false name, Stanley hindered Officer Ahmann's investigation and his ability to perform the governmental function of locating Sobrepena to serve the arrest warrant. Pursuant to *Kroschel*, at that point, Officer Ahmann had particularized suspicion that Stanley had committed the offense of obstructing a peace officer. Prior to Stanley providing the false name, the encounter was not a seizure within the meaning of the Fourth Amendment. After Stanley provided the false name, Officer Ahmann was justified by particularized suspicion to seize Stanley. Therefore, the district court was ultimately correct to deny Stanley's motion to suppress.

III. The district court correctly denied Stanley's motion to suppress because, even if Stanley's seizure was unlawful, the attenuation doctrine to the exclusionary rule applies.

A. The district court correctly applied *Utah v. Strieff*, 579 U.S. 232, 238 (2016), to the facts of this case.

Generally, derivative evidence obtained through an unlawful seizure will be suppressed as "fruit of the poisonous tree" pursuant to the exclusionary rule. *In re B.A.M.*, 2008 MT 311, ¶ 11, 346 Mont. 49, 192 P.3d 1161. "The purpose of the exclusionary rule is to deter government agents from acquiring evidence via

violation of constitutional rights." *State v. Laster*, 2021 MT 269, ¶ 35, 406 Mont. 60, 497 P.3d 224.

"[T]he rule does not apply in every case where there is a causal connection between the prior constitutional violation and the subsequent police discovery of the evidence . . . ." *State v. Peoples*, 2022 MT 4, ¶ 27, 407 Mont. 84, 502 P.3d 129. The rule is not "a personal right or remedy expressly or implicitly provided by, or rooted in" constitutional protections; rather, "it is a judicial remedy designed for the narrow purpose of deterring government agents from acquiring incriminating evidence through violation of constitutional rights." *Peoples*, ¶ 28. The rule is applicable only "where its 'deterrence benefits outweigh its substantial social costs.'" *Id*. (quoting *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)).

Moreover, "Montana recognizes three exceptions to the 'fruit of the poisonous tree doctrine.'" *In re B.A.M.*, ¶ 11 (quoting *State v. Therriault*, 2000 MT 286, ¶ 58, 302 Mont. 189, 14 P.3d 444). The first exception provides that derivative "evidence will be admissible notwithstanding a Fourth Amendment violation if it is . . . attenuated from the constitutional violation so as to remove its primary taint[.]" *Id.*

The attenuation doctrine applies where the "connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance . . . ." *Utah v. Strieff*, 579 U.S. 232, 238 (2016).

The doctrine "evaluates the causal link between the government's unlawful act and the discovery of evidence" or whether there is some "intervening event to break the causal chain . . . ." *Id*.

In *Strieff*, the United States Supreme Court analyzed whether the existence of a pre-existing arrest warrant, which only came to light during an illegal seizure of Strieff, was a sufficient intervening circumstance to attenuate his initial illegal seizure from the discovery of drug evidence located on his person after his arrest. *Strieff*, 579 U.S. at 235. There, the South Salt Lake Police Department had received an anonymous tip regarding drug activity at a particular residence. *Id*. Detective Fackrell with the narcotics division began conducting intermittent surveillance of the home. *Id*. Detective Fackrell observed visitors coming and going from the house with sufficient frequency and duration to raise his suspicion that the occupants of the residence were, in fact, dealing drugs. *Id.*

On one occasion while Detective Fackrell was surveilling the home, he observed Strieff exit the house and walk to a nearby convenience store. *Strieff*, 579 U.S. at 235. Detective Fackrell approached Strieff in the parking lot of the store, detained him, and then questioned him about what he was doing at the residence. *Id.* Detective Fackrell requested Strieff's identification and Strieff produced a Utah identification card. *Id.* Detective Fackrell relayed Strieff's identity to dispatch, which reported back that Strieff had an outstanding arrest warrant for a

traffic violation. *Id.* Detective Fackrell arrested Strieff pursuant to the warrant and discovered a baggie of methamphetamine and drug paraphernalia on his person during a search incident to the arrest. *Id.* at 235-36.

Strieff moved to suppress the evidence, arguing that the stop was an illegal seizure. *Strieff*, 579 U.S. at 236. The prosecutor conceded that Strieff was stopped without reasonable suspicion but argued "the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband." *Id.* The trial court agreed, and the case was ultimately appealed to the United States Supreme Court. *Id.*

The United States Supreme Court analyzed the issue under the three-factor attenuation doctrine test set forth in *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975). *Strieff*, 579 U.S. at 239. First, the Court looked at the "'temporal proximity' between the unconstitutional conduct and the discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional search." *Id.* (quoting *Brown*, 422 U.S. at 603). Second, the Court considered "the presence of intervening circumstances." *Id.* (quoting *Brown*, 422 U.S. at 603-04). Finally, and of particular significance, the Court examined "the purpose and flagrancy of the official misconduct." *Id.* (quoting *Brown*, 422 U.S. at 604).

The first factor will not favor "attenuation unless 'substantial time' elapses between an unlawful act and when the evidence is obtained." *Strieff*, 579 U.S. at

239 (quoting *Kaupp v. Texas*, 538 U.S. 626, 633 (2003). The United States Supreme Court has found that even a two-hour time difference factors in support of suppression. *See Brown*, 422 U.S. at 604.

On the second factor, the Court in *Strieff* held that the existence of a valid, pre-existing arrest warrant for Strieff's arrest weighed against suppression. *Strieff*, 579 U.S. at 240. The Court noted that, once Detective Fackrell became aware of the warrant, "he had an obligation to arrest Strieff." *Id.* Service of the warrant was a "ministerial act that was independently compelled by the pre-existing warrant." *Id.*

The Court in *Strieff* found that the third factor, the "purpose and flagrancy of the official misconduct" also "strongly favor[ed] the State." *Strieff*, 579 U.S. at 241. The Court again noted that the purpose of the exclusionary rule is to deter police misconduct. *Id.* Consistent with this rationale, the attenuation doctrine should apply unless "the police misconduct is most in need of deterrence—that is, when it is purposeful or flagrant." *Id.* "For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure." *Id.* at 243.

The Court found that Detective Fackrell "was at most negligent" because his "mistakes" were made in "good-faith." *Strieff*, 579 U.S. at 241. The Court concluded that, while Detective Fackrell should have attempted to engage Strieff in

a voluntary exchange rather than a stop, the conduct after that initial illegality was lawful. *Id.* Detective Fackrell lawfully ran a "warrant check" and lawfully searched Strieff after he placed him under arrest on the discovered warrant. *Id.* The Court found that there was "no indication that [the] unlawful stop was part of any systemic or recurrent police misconduct." *Id*. at 242.

Here, the district court found that the first *Strieff* factor, the temporal proximity between the constitutional violation and the discovery of evidence, weighed in favor of suppression. (Doc. 44 at 8.) This case is distinguishable from *Strieff* because the drug evidence here was not found until a later inventory search at the jail. Nevertheless, although more time passed here than in *Strieff*, the time was not "substantial" enough to weigh in favor of the State. The State concedes that the district court was correct that, if there was a violation, this factor favors suppression.

In analyzing the second factor, the district court found that the presence of intervening factors weighed "heavily in favor of the State." (Doc. 44 at 8.) The court found that the warrants for Stanley's arrest were "judicial mandates" that Officer Ahmann had a "sworn duty to carry out . . . and take [Stanley] into custody." (Doc. 44 at 9.) The court further found that the search at the jail was conducted as part of the standard booking process and was "undisputedly lawful."

Tellingly, while analyzing the second factor in his opening brief, Stanley ignores the fact that he had a valid, pre-existing warrant for his arrest that was unrelated to his initial seizure. (Br. at 30-32.) Rather, Stanley conflates the second *Strieff* factor with the third *Strieff* factor (flagrancy of the violation) and attempts to distinguish from *Strieff* by arguing that Officer Ahmann had no reason to stop Stanley or to verify his identity.[2] However, the reason for the stop or Officer Ahmann's conduct during the stop was not the intervening circumstance. As noted in *Strieff*, the intervening circumstance was the arrest warrant. Here, the multiple warrants for Stanley's arrest and his status as a probation absconder served as intervening circumstances that strongly attenuated his initial seizure from his arrest on the warrant and later search at the jail. The district court was correct that this factor weighs heavily against suppression.

Finally, the district court found that Officer Ahmann's conduct was not purposeful or flagrant and that he acted in good faith. First, for the reasons set forth *supra*, Officer Ahmann acted lawfully in contacting and ultimately seizing Stanley. However, even if his conduct was, at some point, unlawful, he acted in good faith while investigating the whereabouts of a fugitive.

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[2] The district court also mildly conflated the issues by discussing Stanley's false name in the paragraph analyzing the second factor. However, the district court went on to discuss the warrant as the intervening circumstance. (Doc. 44 at 8-9.)

Stanley attempts to distinguish from *Strieff* by arguing that, unlike in *Strieff*, the officers here did not locate the drug evidence while conducting a pat-down search for officer safety. (Br. at 31.) However, this fact weighs in favor of the State. Officer Ahmann did not stop Stanley as a pretext to search for drugs without probable cause for an arrest. Officer Ahmann, as he stated in his testimony, was simply trying to find Sobrepena and, once he learned of Stanley's arrest warrants, he had an obligation to arrest him. The fact that the drugs were not located until later, by a jailer unconnected to the seizure, further attenuates the contraband discovery from the seizure. Therefore, while this does present a difference between this case and *Strieff*, it weighs in the State's favor.

Stanley further argues that Officer Ahmann's conduct was part of routine and flagrant misconduct by the BPD. (Br. at 33-34.) Stanley's argument fails for two reasons.

First, Stanley misconstrues Officer Ahmann's testimony to argue that the BPD routinely seizes people, even "shoppers" at Walmart, to check for local warrants. (Br. at 32.) However, that was not Officer Ahmann's testimony, nor is it the BPD's practice. Officer Ahmann testified that he would check a name in the local database if he saw someone that he recognized from prior professional interactions. (Tr. at 24.) Officer Ahmann and other officers do that to see if a person has any warrants, local alerts, active investigations, or trespass notices.

(*Id.* at 53.) However, Officer Ahmann would not seize the person, or even interact with him or her at all, to run the check. There is nothing to suggest that the practice of a police officer putting a person's name into a local database without any interaction with that person is inappropriate, nor has Stanley advanced any legal authority supporting that premise.

Furthermore, Officer Ahmann did not contact Stanley to run him through the local database. Rather, Officer Ahmann approached Stanley hoping to obtain information on Sobrepena's whereabouts because Stanley was wearing a distinct wig that Sobrepena had reportedly been wearing earlier. As it was immediately apparent that Stanley and Sobrepena were likely connected, Officer Ahmann appropriately wanted to identify Stanley.

The Court in *Strieff* specifically found that this type of request for identification and subsequent running of a "warrant check was a 'negligibly burdensome precautio[n]'" and, therefore, "lawful." *Strieff*, 579 U.S. at 241 (quoting *Rodriguez v. United States*, 575 U.S. 348, 356 (2015)). Accordingly, Officer Ahmann contacting Stanley to investigate Sobrepena's whereabouts and, subsequently, running Stanley through the local system was not purposeful or flagrant misconduct. If it was unlawful, it was, at most, negligent. *See Strieff*, 579 U.S. at 241.

The second reason Stanley's argument fails is that Officer Ahmann's local database check of Stanley had nothing to do with his ultimate arrest. The local check did not return any pertinent information on Stanley and did not show his warrants or absconder status. Instead, it was Officer Peterson who, upon hearing Stanley's correct name, recognized that there had been a P&P bulletin identifying Stanley as a probation absconder. Officer Peterson then verified that Stanley was, in fact, an absconder and wanted by P&P. The officers then also discovered the active warrants out of Yellowstone County. Even if the BPD practice of running "locals" through their database was problematic, it had nothing to do with Stanley's arrest. Stanley's argument to the contrary is a red herring.

The district court was correct in finding that the second and third factors of the *Strieff* test weighed heavily against suppressing the evidence. Therefore, the court correctly denied Stanley's motion to suppress.

B. Other jurisdictions, both before and after *Strieff*, have come to the same conclusion as in *Strieff*, that a pre-existing warrant attenuates a prior unlawful seizure.

Stanley argues that courts from other jurisdictions have "cabined *Strieff* to its facts." (Br. at 34 (citing *State v. Manwarren*, 440 P.3d 606 (Kan. Ct. App. 2019);

Commonwealth v. Garrett, 585 S.W.3d 780 (Ky. Ct. App. 2019)).)[3] Although both the Kansas Court of Appeals and the Kentucky Court of Appeals distinguished *Strieff* from the facts at issue in those cases, neither of those courts limited the attenuation doctrine to the specific facts at issue in *Strieff*.

In *Manwarren*, a Kansas officer responded to a report of a man lying in the grass beside a highway for a welfare check. *Manwarren*, 440 P.3d at 610. Upon arriving on scene, Manwarren greeted the officer, stated he was fine, and indicated that he was waiting for his ride to arrive. *Id.* The officer agreed that he no longer had a reason to believe Manwarren needed help and agreed he had not committed any crime. *Id.* Nevertheless, the officer asked for Manwarren's identification and, upon receipt of the same, ran his information through dispatch. *Id.* The officer discovered a warrant for Manwarren's arrest and then located drugs on his person in a search incident to his arrest. *Id.* at 610-11.

In explaining why he requested the man's identification, the officer testified that it was his understanding that he could "walk up" to anybody, "take their I.D. and run them for wants and warrants." *Manwarren*, 440 P.3d at 618. The Kansas Court of Appeals applied the three-factor test from *Strieff* to analyze whether the

[3] Stanley also cites to *State v. McCarthy*, No. A19-0609, 2020 Minn. LEXIS 94 (Minn. Ct. App. Feb. 3, 2020), an unpublished Minnesota Court of Appeals decision. While it might be persuasive authority for trial courts in Minnesota, it does not merit discussion here.

attenuation doctrine applied. *Id*. at 617. On the second factor, the court found that the pre-existing warrant was "an intervening circumstance dissipating the taint of the illegal police contact." *Id.*

However, the Kansas Court of Appeals found that the first and third factors weighed in favor of suppression. *Manwarren*, 440 P.3d at 617-18. The court first found that a welfare stop "must end as soon as the officer determines the citizen is not in need of help" and that the officer's seizure of Manwarren was, therefore, a clear "violation of well-established Kansas caselaw[.]" *Id.* at 618. Furthermore, the court found that the officer's understanding that he could conduct suspicionless stops of individuals to obtain their identification and run a warrants check was clear misconduct. *Id.* For those two reasons, applying *Strieff*, the court found that the police misconduct was purposeful and flagrant and justified suppression.

Manwarren is inapposite to the facts at issue here. Officer Ahmann was not conducting a welfare stop on Stanley. Rather, he was investigating a fugitive that he reasonably believed Stanley would have information on. The belief that Stanley had information on Sobrepena persisted throughout the stop and was not dispelled by Stanley's initial claim that he had not seen Sobrepena in years. After his arrest, Stanley ultimately provided information on Sobrepena's whereabouts.

Therefore, as part of his investigation into Sobrepena, Officer Ahmann lawfully requested Stanley's identity. Moreover, unlike in *Manwarren*, Officer

Ahmann did not have the practice of conducting suspicionless stops of individuals to run warrant checks. Rather, Officer Ahmann had the practice of running a person's name in his database if he recognized them and knew their name, but his practice was to do so without contacting the person unless he had another valid reason to make the contact. Officer Ahmann's practice was a far cry from the officer's practice in *Manwarren*.

The Kentucky Court of Appeals case cited by Stanley, *Garrett*, is entirely distinguishable from the facts at issue here. In *Garrett*, the officers conducted a suspicionless seizure of Garrett based only on the fact that he was parked in a "high crime area." *Garrett*, 585 S.W.3d at 784. Upon running Garrett's identification, dispatch informed the officer that Garrett "possibly had a warrant." *Id.* at 785. The officer then handcuffed Garrett while he waited for dispatch to confirm the warrant. *Id.* However, sometime later, dispatch reported that Garrett did not have a warrant. *Id.* The officer proceeded to search Garrett's person anyway and located drug contraband. *Id.* at 785-86. On these facts, the court distinguished from *Strieff* and found that all three factors supported suppression. *Id.* at 797-98. The court in *Garrett* found the facts in that case were "in stark contrast with those in *Strieff*." *Id.* at 797.

Likewise, the *Garrett* facts are in "stark contrast" to the facts of this case. Here, Officer Ahmann did not conduct a suspicionless stop. Officer Ahmann

contacted Stanley because he reasonably believed he would have information on a fugitive. Furthermore, Stanley had a warrant. Unlike in *Garrett*, here, the warrant was the intervening circumstance. *Garrett* does not aid this Court's analysis.

On the contrary, other courts, both before and after *Strieff*, have reached the same conclusion as the United States Supreme Court did in *Strieff*—that a pre-existing warrant can serve as an intervening circumstance to purge the taint of a Fourth Amendment violation. *See State v. Page*, 103 P.3d 454, 459-60 (Idaho 2004) (finding that although the stop was illegal, the discovery of a valid arrest warrant acted as an intervening event to attenuate the initial Fourth Amendment violation); *State v. Mousseaux*, 945 N.W.2d 548, 555 (S.D. 2020) (finding the existence of a pre-existing warrant attenuated the illegal stop from the discovery of evidence found subsequent to an arrest on the warrant). In *Page*, the Idaho Supreme Court reasoned that the flagrancy and purpose of the unlawful stop must be "shocking" to "tilt the scales against attenuation." *Page*, 103 P.3d at 459 (quoting *United States v. Green*, 111 F.3d 515 (7th Cir. 1997)).

Furthermore, although this Court has not addressed this issue in a majority opinion, the concurring opinion in *State v. Dunn*, 2007 MT 296, ¶ 24, 340 Mont. 31, 172 P.3d 110 (Leaphart, J., concurring), would have found a pre-existing arrest warrant attenuated an initial Fourth Amendment violation. In *Dunn*, a Missoula County Sheriff's deputy arrested Dunn on an active warrant after responding to his

backyard to investigate a noise complaint. *Dunn*, ¶ 5. The deputy located a hash pipe with marijuana on Dunn's person during a search incident to his arrest. *Id.* Dunn moved to suppress the evidence, claiming the evidence was obtained during a warrantless entry onto his property. *Dunn*, ¶ 6. The majority in *Dunn* found that, given the specific circumstances of the case, Dunn did not have a reasonable expectation of privacy in his backyard during the boisterous early morning party that resulted in the law enforcement response. *Dunn*, ¶ 14.

Justice Leaphart, writing nine years before the *Strieff* decision, concurred, but wrote separately, concluding that "even assuming arguendo that the officer's entry into Dunn's backyard violated his expectation of privacy, the discovery of the pipe was attenuated from the allegedly illegal entry, and thus the pipe was admissible." *Dunn*, ¶ 20. Justice Leaphart reasoned that the drug evidence was "the fruit of an outstanding arrest warrant and was not the fruit of an illegal entry into Dunn's backyard." *Id.* Using the same three-factor test the Supreme Court would later adopt in *Strieff*, Justice Leaphart would have found that, "[s]ince the police had not engaged in official misconduct, the [evidence would not be] subject to the exclusionary rule." *Dunn*, ¶ 24. In summarizing his position, Justice Leaphart quoted approvingly from the Seventh Circuit Court of Appeals' opinion in *Green*, stating:

> It would be startling to suggest that because the police illegally stopped an automobile, they cannot arrest an occupant who is found to

> be wanted on a warrant—in a sense requiring an official call of "Olly, Olly, Oxen Free." Because the arrest is lawful, a search incident to the arrest is also lawful. The lawful arrest . . . constituted an intervening circumstance sufficient to dissipate any taint caused by the illegal automobile stop.

Id. (quoting *Green*, 111 F.3d at 521).

Although the majority opinion decided *Dunn* on different grounds, Justice Leaphart's concurring opinion was well reasoned and should be adopted by the Court now. Although other courts have distinguished *Strieff* based on different facts, here, the facts of this case closely mirror *Strieff*. The district court correctly applied *Strieff* in this case.

C. The Montana Constitution does not alter the exclusionary rule analysis under *Strieff*.

Stanley argues that the district court erred by applying *Strieff* "without considering how Montana's constitutional right to privacy affects the outcome." (Br. at 41.) Stanley then points to two cases where this Court found that suppression of evidence was warranted. (Br. at 42-43 (citing *Strom* and *State v. Driscoll*, 2013 MT 63, 369 Mont. 270, 303 P.3d 788).) However, in neither *Strom* nor *Driscoll* did this Court even address the exclusionary rule and, therefore, neither case aids the Court's analysis here.

Stanley, in essence, argues that article II, sections 10 and 11, of the Montana Constitution require the suppression of evidence whenever law enforcement violates a person's rights. However, a constitutional violation is a predicate for the

exclusionary rule to apply. Therefore, such a holding would nullify the exclusionary rule and overrule decades of Montana case law.

This Court has been clear that the exclusionary rule is not "a personal right or remedy expressly or implicitly provided by, or rooted in, the Fourth and Fourteenth Amendments or Article II, Sections 10-11 of the Montana Constitution —it is a judicial remedy designed for the narrow purpose of deterring government agents from acquiring incriminating evidence through violation of constitutional rights." *Peoples*, ¶ 28.

Moreover, "[t]hough the Montana Constitution affords greater individual protection in determining whether a government intrusion violated an individual's reasonable expectation of privacy . . . , [this Court has] not applied a broader exclusionary rule than that recognized for Fourth Amendment violations once a search is found to have been unlawful." *Peoples*, ¶ 37 (Baker, J., concurring) (citing as examples *State v. Pearson*, 2011 MT 55, ¶ 24, 359 Mont. 427, 251 P.3d 152; *State v. Hilgendorf*, 2009 MT 158, ¶¶ 24-25, 350 Mont. 412, 208 P.3d 401; *In re B.A.M.*, ¶¶ 15-16; *State v. New*, 276 Mont. 529, 535-36, 917 P.2d 919, 923 (1996)).

The Montana Constitution has long allowed for exceptions to the exclusionary rule in cases where law enforcement obtained evidence after a constitutional violation. The exclusionary rule is a judicial remedy, not a

constitutional right and, therefore, application of the rule does not violate article II, sections 10 and 11, of the Montana Constitution. The three-factor *Strieff* test is consistent with the Montana Constitution and should be applied here.

Stanley urges this Court to follow Washington in adopting a stricter attenuation doctrine test than what was set forth in *Strieff.* (Br. at 44-49 (citing *State v. Mayfield*, 434 P.3d 58 (Wash. 2019).) However, *Mayfield* does not aid Stanley's argument. Like Montana, Washington's constitution enhances a citizen's right to privacy. *Mayfield*, 434 P.3d at 66 (citing Wash. Const. Art. I, § 7). However, unlike Montana, the Washington Supreme Court has interpreted its constitution to provide a right to the exclusion of evidence. *Id.* In *Mayfield*, the court stated that "[u]nlike many other jurisdictions, the primary purpose of Washington's exclusionary rule is *not* to deter official misconduct under threat of suppression" but, rather, "its primary purpose is to protect the individual right to privacy and to provide a certain remedy when that right is violated." *Id.* (emphasis in original). Thus, the Washington Supreme Court's interpretation of the exclusionary rule is directly contradictory to its stated purpose in Montana, which is to deter future unlawful police misconduct. *See Peoples*, ¶ 28. Therefore, *Mayfield* is inapposite.

The facts in *Mayfield* are also distinguishable because it did not involve the discovery of a pre-existing arrest warrant. A different Washington Supreme Court

case held that it would be "indescribably silly" to suppress evidence where a valid, pre-existing warrant only came to light because of an unconstitutional stop. *Mayfield*, 434 P.3d at 70 (quoting *State v. Rothenberger*, 440 P.2d 184, 185 (Wash. 1968)). In *Rothenberger*, which *Mayfield* did not abrogate or overrule, the Washington Supreme Court stated:

> To illustrate just how ridiculous the appellants' contention is, let us assume that while detaining the appellants on an unlawful arrest, word had come over the radio that Rothenberger and Pernar were wanted for a burglary in Seattle. On appellants' theory, the officer supposedly had no alternative but to touch his hat and say, "Gentlemen, be on your way. I am sorry to have unlawfully detained you." We find neither reason nor judicial precedent for such a change in the rules of the long continued game of "Cops and Robbers."

Rothenberger, 440 P.2d at 186.

In sum, adopting the three-factor test set forth in *Strieff* is consistent with article II, sections 10 and 11, of the Montana Constitution. Stanley's arguments to the contrary are without merit.

CONCLUSION

This Court should first affirm the district court's denial of Stanley's motion to suppress because Stanley was not unlawfully seized. However, even if Officer

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Ahmann unlawfully seized Stanley, the attenuation doctrine applies and the district court was still correct to deny his motion.

Respectfully submitted this 31st day of March, 2023.

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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 9,221 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

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CERTIFICATE OF SERVICE

I, Bjorn E. Boyer, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-31-2023:

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