

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0451

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOHN DAVID PANASUK,

Defendant and Appellant.

APPENDIX TO OPENING BRIEF OF APPELLANT

On appeal from the Montana Fifteenth Judicial District Court,
Roosevelt County, Cause No. DC 2021-24
The Honorable David Cybulski presiding

APPEARANCES:

N.G. SCHWARTZ LAW, PLLC
Nancy G. Schwartz, Esq., Bar #4154
P.O. Box 36
Huntley, MT 59037
Telephone: (406) 670-2915
nschwartzlaw@gmail.com

Attorney for Defendant/Appellant

AUSTIN KNUDSEN
Montana Attorney General
Justice Building, Third Floor
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Roosevelt County Attorney
400 2nd Ave. So.
Wolf Point, MT 59201

Attorneys For Plaintiff/Appellee

APPENDIX
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APPENDIX A

JUN 15 2022

JERI TOAVS
Jeresa Pono
DEPUTY CLERK

**MONTANA FIFTEENTH JUDICIAL DISTRICT COURT
ROOSEVELT COUNTY**

STATE OF MONTANA,

Hon. David Cybulski

Plaintiff,

Cause No. DC-2021-24

-vs-

JUDGMENT AND SENTENCE

JOHN DAVID PANASUK,

Defendant.

On March 17, 2022, the Defendant was found guilty by a jury on the charges of:

COUNT I: CRIMINAL POSSESSION OF DANGEROUS, a felony, in violation of
Mont. Code Ann. § 45-9-102 and **COUNT II: CRIMINAL POSSESSION OF DRUG
PARAPHERNALIA**, a misdemeanor, in violation of § 45-10-103.

The Court ordered a pre-sentence investigation and report. PSI report was
completed April 26, 2022. Sentencing hearing was set for June 15, 2022.

The Defendant, JOHN DAVID PANASUK, was present and was represented by
counsel CHRISTOPHER WHITE, Attorney At Law. The State was represented by
Roosevelt County Attorney FRANK A. PIOCOS.

The Defendant was offered the opportunity to make a statement and addressed
the Court. The Defendant's attorney, CHRISTOPHER WHITE, recommended five (5)
years to the Department of Corrections with all five (5) years suspended. County
Attorney, Frank A. Pioscos recommended five (5) years to the Montana State Prison,



1 with none suspended. The Court then asked the parties if there was any legal reason
2 why sentencing should not be pronounced, and being none, the Court rendered its
3 judgment:

4 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:**

5 That the Defendant, JOHN DAVID PANASUK, is guilty of the offenses of
6 **COUNT I: CRIMINAL POSSESSION OF DANGEROUS DRUGS**, a felony, in violation
7 of Mont. Code Ann. § 45-9-102 and **COUNT II: CRIMINAL POSSESSION OF DRUG**
8 **PARAPHERNALIA**, a misdemeanor, in violation of § 45-10-103

9 I. Mont. Code Ann. § 45-9-102 provides that a person who is convicted of
10 the offense of **COUNT I: CRIMINAL POSSESSION OF DANGEROUS DRUGS**, a
11 felony, shall be imprisoned in the state prison for not more than five (5) years or be
12 fined an amount not more than \$5,000, or both.

13 For the offense of **COUNT I: CRIMINAL POSSESSION OF DANGEROUS**
14 **DRUGS**, a felony, in violation of Mont. Code Ann. § 45-9-102, the Defendant is
15 sentenced to three (3) years in the Montana State Prison, with none suspended. The
16 defendant shall be given credit for two hundred and fifty seven (257) days jail previously
17 served.

18 Upon parole, if any, the Defendant shall be subject to parole conditions as set
19 forth by Adult Probation and Parole.

20 The Court did not impose a fine. The Defendant must pay all applicable fees,
21 surcharges and the cost of the jury trial. Jury trial total was \$2,242.99.

- 22 1. The Defendant shall pay the following fees and/or charges:
23 a. The Probation & Parole Officer shall determine the amount of supervision
24 fees (§46-23-1031) to be paid each month. Payments can be made
25 online at <https://svc.mt.gov/doa/opp/COROffenderPay/cart> OR in the form

1 of money order or cashier's check to the Department of Corrections,
2 Collections Unit, P.O. Box 201350, Helena, MT 59620 (\$50 per month if
3 the Defendant is sentenced under §45-9-902, dangerous drug felony
4 offense and placed on ISP). The DOC shall take a portion of the
5 Defendant's inmate account if the Defendant is incarcerated.

6 b. Surcharge of the greater of \$20 or 10% of the fine for each felony offense.
7 [\$46-18-236(1)(b)].

8 c. Surcharge for victim and witness advocate programs of \$50 for each
9 misdemeanor or felony charge under Title 45, Crimes; §61-8-401 (DUI;
10 §61-8-406 (DUI-alcohol); or §61-8-411 (DUI-delta-9-
11 tetrahydrocannabinol). [\$46-18-236(1)(c)]

12 d. \$10.00 for court information technology fee. (§3-1-317)

13 e. A \$50 fee at the time a PSI report is completed, unless the court
14 determines the Defendant is not able to pay the fee within a reasonable
15 time (§46-18-111). The Defendant shall pay online at
16 <https://svc.mt.gov/doa/opp/COROffenderPay/cart> OR by submitting a
17 money order or cashier's check to the Department of Corrections,
18 Collection Unit, P.O. Box 201350, Helena, MT 59620. The Defendant did
19 not pay the PSI fee.

20 2. The Defendant, convicted of a felony offense, shall submit to DNA testing.
21 (§44-6-103)

22 3. The Defendant shall be given credit against the time served in jail prior to
23 or after conviction. (§46-18-403) unless the imposition of sentence is deferred, then
24 credit shall not be given.

25 4. The PSI report shall be released by the Department to certain persons,
26 such as treatment providers, mental health providers, and/or medical providers, as
needed for the Defendant's rehabilitation.


Bail, if any, is hereby exonerated in this matter. In case of conflict with oral
pronouncement, either party has 120 days to request modification.

The Clerk of Court is directed to file this Judgment and provide copies to counsel

1 of record as well as the Defendant and Adult Probation and Parole Officer.

2 DONE IN OPEN COURT: June 15, 2022

3 DATED this 15th day of June, 2022.

4 
5 HON. DAVID CYBULSKI
6 District Court Judge

7 Prepared at the request of the Court/Judgment

8 John David Panasuk/Roosevelt County Cause No. DC-21-24

Hailey Forcella, Managing Attorney
Office of State Public Defender
PO Box 1767
Miles City, MT 59301

MONTANA FIFTEENTH JUDICIAL DISTRICT COURT, ROOSEVELT COUNTY
BEFORE THE HONORABLE DAVID CYBULSKI

STATE OF MONTANA,
Plaintiff,
v.
JOHN DAVID PANASUK,
Defendant.

Cause No. DC-21-24

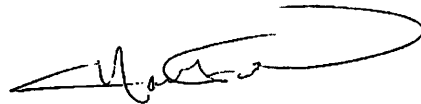
NOTICE OF SUBSTITUTION OF COUNSEL

COMES NOW, Christopher White, counsel of record in this matter, and notifies this Court that **Chad Wright, Appellate Defender of the Appellate Defender Division**, will further represent the above-named Defendant for purposes of appeal of this case to the Montana Supreme Court.

All future correspondence should be directed to their office at:

Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147
Telephone (406) 444-9505

RESPECTFULLY SUBMITTED on July 8, 2022.



Hailey Forcella
Office of State Public Defender

CERTIFICATE OF SERVICE

The undersigned certifies that on July 8, 2022, a true and accurate copy of the foregoing Notice of Substitution was delivered to the following:

Roosevelt County Attorney's Office

AUSTIN MILES KNUDSEN
Montana Attorney General

TAMMY K PLUBELL
Bureau Chief, Appellant Services Bureau
P.O. Box 201401
Helena, MT 59620-1401

OFFICE OF THE STATE PUBLIC DEFENDER
APPELLATE DEFENDER DIVISION
P.O. Box 200147
Helena, MT 59620-0147

John David Panasuk



Office of State Public Defender

APPENDIX B

JAN 18 2022

JERI TOAYS
Jeri Toays
DEPUTY CLERK

IN THE MONTANA FIFTEENTH JUDICIAL DISTRICT COURT
ROOSEVELT COUNTY

STATE OF MONTANA,
Plaintiff,

v.

JOHN DAVID PANASUK,
Defendant.

Honorable David Cybulski

Cause No. DC-21-24

**FINDINGS OF FACTS AND
CONCLUSIONS OF LAW**

This matter came for hearing on Defendant's Motion to Suppress on January 12, 2022. Present for the hearing was the Defendant John David Panasuk and his attorney Christopher White. The State was represented by Roosevelt County Attorney Frank A. Picos. The Defendant, through counsel, called Fort Peck Tribal Officer Jonah Riediger to testify. Officer Riediger was sworn and testified. The State called Fort Peck Tribal Officer Lt. Frank Martell and Special Agent Raul Figueroa of the Bureau of Indian Affairs. After reviewing the Court's file, including the motions and briefs, and hearing the testimony in this case this Court makes the following findings of facts and conclusions of law:

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FINDINGS OF FACTS

2 On May 6, 2021, Agent Figueroa had contact with Panasuk regarding Panasuk's
3 drug distribution on the Fort Peck Indian Reservation and shortly thereafter relayed that
4 information to Officer Riediger.

5 On May 19, 2021, Fort Peck Tribal Officers Jonah Riediger and Lt. Frank Martell
6 conducted a traffic stop on a grey Chevrolet truck pulling a goose-neck trailer with no
7 license plates. Riediger approached the driver and asked for his driver's license,
8 registration and proof of insurance. The driver, later identified as John David Panasuk,
9 was unable to provide any of it to Riediger. The passengers were identified as Dustin
10 Hickman and Camilla TalksDifferent. Both known drug users and drug dealers.
11 TalksDifferent's gave consent for Riediger to search her bag. Riediger located drug
12 paraphernalia in her bag. TalksDifferent informed Riediger that just prior to the stop
13 Panasuk handed "dope" (referring to methamphetamine) over to Hickman to hide and
14 that the methamphetamine was hid in the center console. After execution of the Search
15 Warrant, the methamphetamine was found in the center console. Panasuk was
16 subsequently charged by Information with Criminal Possession of Dangerous Drugs, a
17 felony, in violation of Mont. Code Ann. § 45-9-102.
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CONCLUSIONS OF LAW

22 The Defendant does not and did not challenge the particularized suspicion to
23 initiate a stop of the vehicle. The basis of the stop was lack of a license plate on the
24 trailer. In addition, the Defendant does not and did not challenge the probable cause
25 for the Search Warrant. Rather the Defendant challenges the expansion of the stop
26 into a drug investigation. The Court reviews such inquiry under the "totality of the
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circumstances" test. A stop may be extended and the investigative scope broadened if, during the course of the initial investigation, an officer develops any additional particularized suspicion. State v. Wilson, 2018 MT 268 (2018). Additional objective data and information may give rise to further suspicions and allow an officer to enlarge the scope of the investigation. See, State v. Nelson, 2004 MT 310 (2004). In this case, the Court finds that there was sufficient evidence for the officers to expand the nature and scope of their investigation. These facts include the following:

a. Officer Riediger testified that the Panasuk, Hickman and TalksDifferent are all known drug users and drug dealers. This was further corroborated, in part, by Lt. Frank Martell and Agent Figueroa;

b. Agent Figueroa testified that he had contact with Panasuk on May 6, 2021, less than two (2) weeks prior to the stop in question, involving Panasuk's drug distribution on the Fort Peck Indian Reservation. Officer Riediger testified that Agent Figueroa relayed that information to him prior to the stop on May 19, 2021.

c. Riediger testified that Panasuk appeared unusually nervous;

d. Drug paraphernalia was found in the truck as a result of a consensual search given by TalksDifferent;

e. TalksDifferent informed Officer Reidiger that just prior to the stop Panasuk handed methamphetamine over to Hickman to hide and that Hickman hid it in the center console. After execution of the Search Warrant the methamphetamine was located where TalksDifferent said it would be found.

Under the totality of the circumstances there was sufficient evidence to expand the initial stop into a drug investigation.

1 Defendant's Motion to Suppress is therefore DENIED.

2 DATED this 14th day of January 2022

3 
4 DISTRICT COURT JUDGE

5 cc: Christopher White, OPD
6 RAO
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