

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0567

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

GARRETT MICHAEL O'HOWELL,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana First Judicial District Court,  
Broadwater County, The Honorable Michael Menahan, Presiding

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## **STATEMENT OF THE ISSUES**

Whether the district court erred when it denied O’Howell’s motion to suppress.

Whether there was sufficient evidence to support the jury’s verdict.

## **STATEMENT OF THE CASE**

Following a traffic stop of a vehicle in which Garrett Michael O’Howell was a passenger, O’Howell was arrested on an outstanding warrant. (Doc. 2.) A subsequent search of the vehicle revealed five individually packaged baggies of methamphetamine and various drug paraphernalia. (*Id.*) The man who was in the back seat where the baggies were found, was charged with, and pled guilty to, possession of methamphetamine with the intent to distribute. (5/3/21 Tr. (Tr-1) at 133.) O’Howell was charged with Count I, Criminal Possession of Dangerous Drugs with Intent to Distribute (by accountability), a felony, and Count II, Criminal Possession of Drug Paraphernalia, a misdemeanor. (Docs. 30, 33-34.)

Following an evidentiary hearing, the district court denied O’Howell’s motion to suppress wherein he challenged the investigatory stop. (Docs. 19, 22-23, 25, 47; 12/10/20 Tr. (Hr’g).) At trial, the State presented testimony from the arresting officers, a forensic scientist from the State Crime Lab, and two of the vehicle’s passengers. (Tr-1; 5/4/21 Tr. (Tr-2).)

O’Howell was convicted of both counts and was sentenced to the Department of Corrections for a net term of ten years, with five years suspended. (Tr-2 at 153; 8/6/21 Tr; Doc. 72.)

### **STATEMENT OF THE FACTS**

#### **I. Investigative stop and O’Howell’s pretrial motion to dismiss**

On May 4, 2020, at approximately 8:30 in the evening, Broadwater County Sheriff’s Deputy Tony Cordova was patrolling in Townsend. (Hr’g.) Deputy Cordova went to the Town Pump to gas up his patrol vehicle and noticed a parked vehicle with two men in the back seat. (*Id.*) The deputy noted the two men continuously looking toward him and then away when he looked back. (*Id.*) A third male got into the passenger seat and a female got into the driver’s seat. (*Id.*) As the vehicle drove by the patrol vehicle, the two men in the backseat continued to stare at the deputy, which heightened the deputy’s suspicions. (*Id.*) The vehicle proceeded southbound on Front Street/Highway 287. (*Id.*) The deputy called in the car’s plate to dispatch and learned the vehicle was registered to Katelynn Smock (Smock) and that Smock’s driver’s license had been revoked. (*Id.*)

Deputy Cordova followed the vehicle and caught up to it at the four-way stop where the road intersects Broadway Street/Highway 12. (Hr’g.) The deputy

noted the men in the back seat continued to make furtive movements and look back at him. (*Id.*) Just after clearing the intersection, Smock immediately accelerated, and Deputy Cordova activated his radar. (*Id.*) The speed limit zones beyond that intersection change from 35 mph to 45 mph and eventually to 70 mph daytime/65 mph nighttime. (*Id.*) The deputy clocked Smock traveling 52 mph while the vehicle was in the 45-mph zone, so he initiated a traffic stop at about 9:19 p.m. (*Id.*; Ex. A.)

After Smock pulled over, Deputy Cordova approached the vehicle and informed the occupants that the car had been going 52 mph in a 45-mph zone and that the registered owner's driver's license was revoked. (Ex. B. at 00:30 to 1:30.) When the deputy asked for her driver's license and car registration, Smock stated she did not have those documents with her but confirmed she was the registered owner. (*Id.*)

Since he knew Smock's driver's license was revoked and she could not legally drive, Deputy Cordova asked the three passengers if any of them had IDs on them and then followed up by asking if anyone had a valid driver's license. (Hr'g at 23-24.) Donald Hamlin (Hamlin), the male sitting behind Smock, volunteered that he had a learner's permit and O'Howell, who avoided making eye contact with the deputy, volunteered that he did not have a driver's license and that his ID had been stolen. (Ex. B. at 00:30 to 1:30.) Deputy Cordova explained, "We

gotta figure out who is gonna drive, I guess, is what I'm worried about.” (Ex. B at 1:45.) Had someone else in the vehicle had a valid driver's license, the deputy would have let them go with the other person driving. (Hr'g at 23, 45, 48, 58.)

When the deputy asked if anyone was on probation or parole, Hamlin volunteered that he was and added his son had recently had surgery at St. Pete's. (Ex. B. at 1:30 to 4:10.) The deputy then asked for their names. (*Id.*) Hamlin gave his name and date of birth and showed Deputy Cordova his ID. (*Id.*) O'Howell volunteered his name and date of birth. (*Id.*) The male in the back passenger side stated his name was “Adam Johnson” and reported he did not have a license, but previously had one in Arizona. (*Id.*) It was later determined that “Johnson” was Kody Laird. (Hr'g.)

About four minutes after initiating contact with the vehicle, Deputy Cordova asked if Smock would sit in the front passenger seat of his patrol vehicle so he could talk to her about the status of her driver's license and process the traffic stop. (Hr'g; Ex. A at 5:20; Ex. B at 4:10-4:31.) Deputy Cordova did not force Smock to join him. (*Id.*) The deputy explained that he asked Smock to his patrol car for his safety and because he preferred to talk to Smock without extraneous input from the other passengers. (*Id.*; Hr'g at 56-57.) Deputy Cordova also explained that he asks people if they are on probation during investigatory stops for his own safety

because, in his experience, individuals who have been in trouble with the law do not care for police officers. (*Id.*)

Smock agreed to sit in the patrol car passenger seat while the deputy began filling out the citations. (Ex. A at 6:00-10:50; Ex. B at 5:09-10:00.) Deputy Cordova confirmed Smock was the vehicle's registered owner and called in the names of the three passengers to dispatch. (*Id.*) The deputy asked Smock if she was on probation and talked to her about how long her license had been revoked and the number of times that she had been cited for driving while suspended. (*Id.*) Smock initially stated the men in her car were her friends, but when she later explained she was giving them a ride to Bozeman she said she did not really know the two in the back, but O'Howell was her friend. (*Id.*) The deputy also asked Smock if there was something illegal in the vehicle because all three passengers continued to look back at the patrol car and were acting nervous. (*Id.*) Smock denied anything illegal was taking place. (*Id.*)

When Smock asked if there was any problem with leaving, the deputy referred to how fidgety the men in the vehicle continued to act and he believed there was something illegal in the car. (Ex. A at 10:50-12:30; Ex. C at 0:00-1:35.) Smock denied knowing there was anything illegal in the car and then suggested that Hamlin could drive. (*Id.*) Deputy Cordova replied that he believed there were restrictions on when a person with only a learner's permit may drive and said they

could confirm that with the Highway Patrol Trooper who had just pulled up. (*Id.*)<sup>1</sup> As the deputy was explaining the situation to MHP Trooper Mackenzie Gifford, Smock changed her earlier statement that they were going to Bozeman and said she was giving them a ride to Billings. (*Id.*)

At this point, which was about 12 minutes since the stop began, dispatch relayed that O’Howell had a \$50,000 warrant out for his arrest. (Ex. C at 1:35-3:45.) Dispatch also informed the deputy that there was “no return” on the name “Adam Johnson” with the date of birth he gave. (Hr’g.)

Deputy Cordova returned to the vehicle and arrested O’Howell on the warrant. (Hr’g; Ex. C at 3:45-6:30.) The deputy asked Hamlin again where he was on probation, and he answered Billings. (*Id.*) Dispatch had reported that Hamlin’s probation was out of Butte. (*Id.*) After O’Howell was secured, Deputy Cordova continued writing out the citations and explained to Smock and O’Howell that he needed to follow up on Hamlin’s probation status because Hamlin had lied to him. (*Id.*; Ex. A at 15:15 to 17:19.) O’Howell remarked that Hamlin was his “homeboy.” (Ex. C at 6:20.)

At this point, Hamlin got out of the vehicle and Laird moved from the back seat into the driver’s seat. (Hr’g; Ex. A at 17:20; Ex. C at 6:30-7:30.) The deputy

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<sup>1</sup>Pursuant to Mont. Code Ann. § 61-5-106(1)(a), a person with a learner’s permit may drive a motor vehicle only if “accompanied by a licensed driver seated beside” them.

ran to Hamlin as Laird pulled away despite both officers yelling and running towards the car. (*Id.*) When asked why Laird drove off, Hamlin replied that he believed Laird was “wanted” and reported his first name was Kody, not Adam. (*Id.*; Hr’g at 32-33.)

Trooper Gifford returned to her patrol car and pursued the fleeing vehicle. (Hr’g.) Not far down the road, Laird did a U-turn and drove northbound, past the deputy’s patrol vehicle with the trooper still in pursuit. (*Id.*) Deputy Cordova let Hamlin and Smock go and transported O’Howell to the detention center. (*Id.*; Ex. A at 17:20-22:10; Ex. C at 8:20-10:00.) Deputy Cordova then joined the pursuit of Laird, which eventually ended when officers deployed stop sticks. (*Id.*)

Deputy Cordova obtained a search warrant for Smock’s vehicle and discovered methamphetamine. (Hr’g; Doc. 47.) Among other things, the deputy found five individually packaged baggies of suspected methamphetamine totaling over 116 grams and 28 used syringes and 4 “loaded” syringes, as well as a backpack in the front passenger seat that Laird stated belonged to O’Howell. (Tr-1 at 115-41; Tr-2 at 23-30.) There were two magazines for firearms in the backpack and a pill bottle that contained drug paraphernalia. (*Id.*) The five baggies of methamphetamine were in one larger bag that was found under the rear of the driver’s seat where Hamlin had been sitting. (*Id.*; Exs. 33-36, 43-53.) Another small baggie of methamphetamine was found under the driver’s seat where Smock

stated she had stashed it. (*Id.*; Exs. 16-18.) Finally, a loaded syringe was located underneath the front passenger seat. (Ex. 39.)

Smock was charged with two traffic violations and criminal possession of methamphetamine for the baggie under the driver's seat. (Tr- at 166-202.) Hamlin was charged with criminal possession of dangerous drugs with intent to distribute for the individually packed baggies found where he was sitting in the car. (*Id.* at 133.) O'Howell was charged with accountability to criminal possession of dangerous drugs with intent to sell and possession of drug paraphernalia. (Docs. 30-34.) Laird was charged with criminal endangerment for the highspeed chase. (Tr.-2 at 19-46.)

O'Howell filed a motion to suppress the evidence discovered in Smock's vehicle. (Doc. 19.) O'Howell argued that Deputy Cordova's inquiry into the "DMV database" to run Smock's plates was not justified and a violation of the right to privacy. (*Id.*) O'Howell also claimed that the State could not prove Smock had exceeded the speed limit. (*Id.*) Next, O'Howell argued that any statements O'Howell made should be suppressed as he had not been given *Miranda*<sup>2</sup> warnings. (*Id.*) O'Howell further alleged that Deputy Cordova exceeded the scope of the investigative stop. (*Id.*) Finally, O'Howell asserted that

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<sup>2</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

the pursuit and stop of Laird was also illegal as Smock had not reported her vehicle as stolen. (*Id.*)

Following the evidentiary hearing, the district court denied O’Howell’s motion to suppress. (Hr’g; Doc. 47.) The court concluded Deputy Cordova had particularized suspicion to stop Smock’s vehicle based on her exceeding the speed limit. (*Id.*) The court disagreed that O’Howell had been subjected to a custodial interrogation when the deputy was simply trying to determine if one of the three passengers had a valid driver’s license. (*Id.*) The court concluded that the deputy lawfully arrested O’Howell on his outstanding warrant and that his actions had not unreasonably exceeded the scope of the stop. (*Id.*)

## **II. Jury trial**

Smock and Laird testified for the State, but Hamlin did not testify. (Tr-1 at 166-202; Tr-2 at 19-62.)<sup>3</sup> The jury was advised that Hamlin had been convicted of possession of dangerous drugs with intent to distribute as a result of the events on May 4, 2020. (Tr-1 at 133.)

Smock told the jury she had pled guilty to possession of methamphetamine and the two traffic violations. (Tr-1 at 166-202.) Smock, who received a four-year

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<sup>3</sup> Hamlin, while subpoenaed, refused to testify, claiming that he would be physically harmed in prison if he did. (Tr-1 at 197; Tr-2 at 47-50.) The State chose not to force him to testify, and the jury was not made aware of this fact. (*Id.*)

deferred imposition of sentence, explained that after her arrest she had stopped using methamphetamine and was sober. (*Id.*) Smock told the jury that when O’Howell asked her to drive him and his friends to Billings that day, she initially declined. (*Id.*) However, O’Howell showed up at her door in Helena and eventually convinced her to drive them. (*Id.*) Smock testified O’Howell did not mention anything about drugs and explained she barely knew Laird and did not know Hamlin at all. (*Id.*)

Since Smock did not have a valid license, O’Howell drove Smock’s car to pick up the other two men. (Tr-1 at 174-81.) O’Howell then drove to a gas station in Helena where Hamlin paid for the gas. (*Id.*) At this point, O’Howell told Smock that Hamlin had drugs with him that they planned to use in the car. (*Id.*) O’Howell drove on to Townsend where they stopped at Town Pump. (*Id.*) Smock said she got in the driver’s seat because O’Howell wanted to get high. (*Id.*) When they were pulled over, Smock put the baggie of methamphetamine she had on her person under the driver’s seat. (*Id.*; Exs. 16-18.) It was not until Laird stole her car and she and Hamlin were on the roadside that Smock learned Hamlin had left the large quantity of drugs in the car. (*Id.*)

Laird told the jury he had pled guilty to criminal endangerment for the high-speed pursuit on May 4, 2020. (Tr-2 at 19-46.) Laird was still in custody for

that offense when he testified. (*Id.*) Laird testified that he had been a drug addict since age 11 and admitted that he had forged some checks to get drug money. (*Id.*) Laird was scheduled to go to inpatient treatment, and he wanted to get sober with his wife who was also in treatment. (*Id.*)

Laird testified that he did not know Hamlin, but his girlfriend at the time, Bonnie, had asked Laird if he could find a ride for Hamlin from Helena to Billings. (Tr-2 at 19-46.) Hamlin came to their apartment, and they got high with drugs Hamlin brought. (*Id.*) Laird eventually contacted O’Howell about helping Hamlin get to Billings. (*Id.*) Laird told O’Howell that Hamlin would give him some money and drugs so they could get high on the way to Billings. (*Id.*) Laird testified that he told O’Howell that Hamlin had a lot of drugs with him that he was trying to sell. (*Id.*) Laird testified that he and Hamlin had O’Howell stop at a couple different convenience stores trying to find something to use to ingest crystalized methamphetamine. (*Id.*)

Like Smock, Laird testified that O’Howell drove the car until they got to the Townsend Town Pump. (Tr-2 at 19-46.) Laird told the jury that he asked Smock to drive then because O’Howell was driving erratically because they had used methamphetamine before they left. (*Id.*) Laird admitted giving a false name because he was on probation and did not want the car searched. (Tr-2 at 33-63.) Laird said that as he was fleeing the scene in Smock’s car, he was trying to find a

phone to call his girlfriend to come pick him up if he could get to Helena and dump the car. (*Id.*) Laird admitted that at the end of the pursuit, he did a shot of Heroin because he knew he was going to jail. (*Id.*)

Deputy Cordova's description of his investigatory stop and interactions with the vehicle's occupants was consistent with his testimony at the evidentiary hearing. (Tr-1 at 85-142.) The deputy agreed with defense counsel that when he arrested O'Howell he did not notice any drugs on the passenger seat and did not discover any contraband on O'Howell when he patted him down. (*Id.* at 137-38.)

Videos from Deputy Cordova's patrol car camera and body camera were played for the jury. (Exs. 1, 2, 54.) The jury heard O'Howell refer to Hamlin as his "homeboy" on the patrol video after Deputy Cordova explained Hamlin had lied about being on probation. (Ex. 1, Clip 1, at 17:10-18:15.)

Trooper Gifford testified about assisting Deputy Cordova when he arrested O'Howell and stated she did not see any drugs or drug paraphernalia in plain view when she first looked in the vehicle. (Tr-1 at 142-64.) The trooper described pursuing Laird when he drove off in Smock's vehicle and confirmed that she never lost sight of the vehicle during the pursuit. (*Id.*; Ex. 55.) Trooper Gifford explained that Laird's driving was extremely erratic (did not maintain speeds, went from very fast to below 20 mph, and drove in the oncoming traffic lane) and he was moving inside the vehicle. (*Id.*) Trooper Gifford also noted that when Laird

was arrested, he was initially very fidgety but fell asleep on the way to jail. (*Id.*) These observations led the trooper to believe Laird was under the influence of drugs. (*Id.*)

Deputy Cordova testified that he obtained a search warrant for the car and described what was discovered in the car and where it was found. (Tr-1 at 115-41.) Alyssa Stulz from the State Crime Lab confirmed the baggies and syringes found in the vehicle contained methamphetamine. (Tr-2 at 5-18; Ex. 56.)

At the close of the State's case, O'Howell did not move to dismiss the felony accountability to possession of dangerous drugs with intent to distribute for insufficient evidence. (Tr. 2 at 62.)

O'Howell was the only witness for the defense. (Tr. at 63-108.) O'Howell testified that he was good friends with Bonnie, who was trying to find a ride for Hamlin, and that Laird just "tagged along." (*Id.*) O'Howell claimed he wanted to go to Billings to get his dog from his ex-in-laws and believed Hamlin just needed a ride home. (*Id.*) According to O'Howell, Smock never said she did not want to go. (*Id.*) O'Howell agreed they left around 4 or 4:30 in the afternoon and made several stops at convenience stores, including the Town Pump in Townsend, but denied knowing why Laird and Hamlin kept wanting to go inside the stores. (*Id.*) O'Howell also denied that there was any discussion about drugs during the three to four hours they simply drove around Helena. (*Id.* at 88.)

Contrary to Laird's testimony that O'Howell drove erratically because he was on drugs, O'Howell blamed his poor driving on difficulty seeing when there were oncoming headlights, but also claimed he planned to drive back from Billings that night. (*Id.*) O'Howell told the jury he did not know Smock had drugs on her that night and denied being in possession of drugs, or even knowing any drugs or drug paraphernalia were in the car. (Tr-2 at 63-108.) Despite the fact the backpack that contained the gun magazines and drug paraphernalia was in the front seat of the vehicle where he was sitting, O'Howell denied that the pack was his. (*Id.*)

For Count I, the jury was instructed on both Criminal Possession of Dangerous Drugs with Intent to Distribute—by Accountability, and the lesser-included offense of Criminal Possession of Dangerous Drugs. (JI Nos. 21-23, 29-31.)<sup>4</sup>

The jury was also provided an accomplice instruction. (JI No. 13.) That instruction advised the jury that Laird, and/or Hamlin, and/or Smock may be legally accountable for the offense O'Howell was charged with and instructed on the meaning of "legally accountable." (*Id.*) The jurors were instructed that

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<sup>4</sup>The parties' proposed jury instructions and the instructions the court gave the jury are in the manilla folder that contains trial exhibits. This folder is separate from the two red folders that contain the docketed pleadings.

determining who may have been “legally accountable” was a question of fact for them to determine and were further instructed that,

3. The testimony of one legally accountable ought to be viewed with distrust.

4. A conviction cannot be had on the testimony of one legally accountable unless the testimony is corroborated by other evidence that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

(*Id.*) The jurors were also instructed that a person may be legally accountable for another’s conduct if one of the following are met:

1) he or she purposely or knowingly causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

**OR**

2) either before or during the commission of an offense, and with the purpose to promote or facilitate such commission, the person solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.

(JI. No. 15 (emphasis in original).)

The jury found O’Howell guilty of Criminal Possession of Dangerous Drugs with Intent to Distribute (by accountability) and Criminal Possession of Drug Paraphernalia. (Tr-2 at 153.)

## **STANDARD OF REVIEW**

This Court “review[s] a district court’s denial of a motion to suppress to determine whether the court’s findings are clearly erroneous and whether those findings were applied correctly as a matter of law.” *State v. Hardy*, 2023 MT 110, ¶ 18, 412 Mont. 383, 530 P.3d 814 (citation omitted).

This Court employs *de novo* review to determine whether sufficient evidence supports a conviction. *State v. Palafox*, 2023 MT 26, ¶ 16, 411 Mont. 233, 524 P.3d 461 (citation omitted). This Court “review[s] the sufficiency of the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Palafox*, ¶ 16 (citations omitted).

## **SUMMARY OF THE ARGUMENT**

The district court’s order denying O’Howell’s motion to suppress did not contain clearly erroneous facts and correctly applied the relevant law.

Deputy Cordova lawfully stopped Smock’s vehicle based on her speeding violation. Once the deputy confirmed Smock did not have a valid driver’s license, it was reasonable for him to see if someone else in the car could drive. By asking the passengers their names and if they could legally drive, Deputy Cordova was not acting on a “hunch” or because they had acted suspiciously at the Town Pump.

Rather, Deputy Cordova was acting within his investigative stop authority to ensure safe, licensed drivers were on the road.

All three passengers voluntarily answered Deputy Cordova's questions. The deputy did not demand to see a license from anyone but the driver. The fact that Deputy Cordova had additional concerns with the suspicious behaviors of the males in the car did not negate the objective data he articulated establishing particularized suspicion for the stop and, as part of that lawful stop, he was justified in asking for the passengers' names and if any of them could legally drive Smock's car.

Deputy Cordova also acted within his authority and the scope of the stop when he asked Smock if she would sit in his patrol car while he completed her citations. It was at this point, only 12 minutes after initiating the stop, that Deputy Cordova learned O'Howell had a warrant for his arrest. The deputy appropriately secured O'Howell and within minutes of that arrest, Laird drove off, creating additional particularized suspicion that both Deputy Cordova and Trooper Gifford could act upon. From the point he stopped Smock's vehicle to when Laird drove off, Deputy Cordova acted within the scope of the original stop.

Even if the deputy's actions and questions (*e.g.*, names, if licensed drivers, and if Smock would sit in the patrol car) are characterized as extending the stop, Deputy Cordova did not improperly prolong the stop. The deputy's questions

were a direct result of learning Smock was not legal to drive and were related to his mission to ensure safe, licensed drivers are on Montana's highways.

Deputy Cordova was not dilatory in asking if Smock would sit in the patrol car and it was reasonable for him to call in everyone's names to dispatch.

Reviewing the evidence in a light most favorable to the State, the jury was presented with sufficient evidence to find O'Howell guilty of accountability to criminal possession of dangerous drugs with intent to distribute. While Laird's testimony needed to be corroborated since he admitted he knew Hamlin had drugs to sell and that he helped Hamlin find the ride to Billings, the evidence did not establish Smock had any knowledge of Hamlin's packaged drugs. Thus, the jury was free to consider her testimony even if it was not corroborated.

Nonetheless, even if Smock is considered an accomplice, there was sufficient evidence presented to corroborate both her testimony and Laird's testimony. Finally, O'Howell's own testimony at trial lacked credibility, especially given the large amount of drugs that was found in the vehicle, so it would have been difficult for the jury to believe O'Howell's statement that he had absolutely no reason to think drugs were in the car.

The jury's verdict is supported by more than sufficient evidence, especially when viewed in the light most favorable to the State.

## ARGUMENT

### **I. The district court did not err when it denied O’Howell’s motion to suppress.**

Both the United States Constitution and the Montana Constitution protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Mont. Const. art. II, § 11. These constitutional protections extend to investigative stops of vehicles made by law enforcement officers. *State v. Flynn*, 2011 MT 48, ¶ 7, 359 Mont. 376, 251 P.3d 143. Under Montana law,

[i]n order to obtain or verify an account of the person’s presence or conduct or to determine whether to arrest the person, a peace deputy 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.

Mont. Code Ann. § 46-5-401(1). Particularized suspicion is evaluated under the totality of the circumstances and “requires consideration of the quantity or content of the information available to the deputy and the quality or degree of reliability of that information.” *State v. Wagner*, 2013 MT 159, ¶ 10, 370 Mont. 381, 303 P.3d 285; *City of Missoula v. Kroschel*, 2018 MT 142, ¶ 11, 391 Mont. 457, 419 P.3d 1208 (“Whether an deputy had a particularized suspicion of criminal activity is a question of fact under the totality of circumstances.”).

During a lawful stop, an deputy may “request the person’s name and present address and an explanation of the person’s actions and, if the person is the driver of

a vehicle, demand the person's driver's license and the vehicle's registration and proof of insurance." Mont. Code Ann. § 46-5-401(2)(a).

An investigatory stop "may not last longer than is necessary to effectuate the purpose of the stop." Mont. Code Ann. § 46-5-403. When evaluating the "reasonableness of the duration and scope of an investigative stop [the reviewing court] 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 (citing *State v. Sharp*, 217 Mont. 40, 47, 702 P.2d 959, 963 (1985)); *State v. Nelson*, 2004 MT 310, ¶ 23, 323 Mont. 510, 101 P.3d 261 ("[W]hile law enforcement officers conducting an investigation or investigatory stop should be guided by principles of reasonableness, 'effective law enforcement requires some latitude to be given to investigating officers to react to and follow up on their observations.'").

It is a "well-established rule that factual determinations," such as whether or not an officer had particularized suspicion, "are within the purview of the trial courts." *State v. Deines*, 2009 MT 179, ¶ 20, 351 Mont. 1, 208 P.3d 857.

Therefore, this Court generally defers to the trial court regarding the credibility of witnesses and the weight to be accorded their testimony. *State v. Lally*, 2008 MT 452, ¶ 24, 348 Mont. 59, 199 P.3d 818; *see also Wagner*, ¶ 15 (Court's obligation

on appeal is not “to reweigh conflicting evidence or to substitute our evaluation of the evidence for that of the trial court” as the trial court “had the benefit of observing the demeanor of witnesses and rendering a determination of the credibility of those witnesses”).

**A. Deputy Cordova had particularized suspicion to conduct a traffic stop and did not exceed the scope of that stop by asking the passengers for basic information and if Smock would speak to him in the patrol vehicle.**

To establish particularized suspicion for a stop, the State must show that the deputy possessed (1) objective data and articulable facts from which the deputy can make certain reasonable inferences, and (2) a resulting suspicion that the person to be stopped has committed, is committing, or is about to commit an offense. *Wagner*, ¶ 10. Commission of a traffic violation can justify a traffic stop. *See Wagner*, ¶ 12; *State v. Zimmerman*, 2018 MT 94, ¶¶ 15, 19, 391 Mont. 210, 417 P.3d 289 (driver’s speed limit violation formed “requisite suspicion to initiate the traffic stop”).

Based on Smock’s violation of the speed limit, the district court correctly concluded Deputy Cordova had particularized suspicion to initiate a traffic stop. The district court also correctly concluded that after confirming Smock did not have a valid driver’s license, asking the passengers for their names and if they had a valid driver’s license was not a custodial interrogation and was an appropriate inquiry during the stop to determine if someone was available to drive. Deputy Cordova

did not demand any passenger provide his name or produce a driver's license. As this Court has acknowledged, "[a]sking questions is an essential part of police investigations." *Kroschel*, ¶ 14 (citing *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 185 (2004)). Just as the deputy did here, requesting the names of persons encountered during a lawful stop is expressly permitted under Mont. Code Ann. § 46-5-401(2)(a).

Moreover, as this Court has acknowledged, "[t]he State has a compelling interest in enforcing the criminal law in furtherance of public order and safety," and to that end

[o]fficers investigating a particularized suspicion of criminal activity need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to others. The request for identity has an immediate relation to the purpose, rationale, and practical demands of a typical temporary investigative stop.

....

[N]othing in the language or legislative history of § 46-5-401(1), MCA, indicates any legislative intent to preclude police from asking other questions permissible under the Fourth Amendment within the limited scope of the stop (*i.e.*, reasonably related in scope to the particularized suspicion that justified the stop). If not the functional or substantive equivalent of requesting a person's name and current address, demanding available proof of identification is typically likewise reasonably related to the purpose of an investigative stop for Fourth Amendment purposes.

*Kroschel*, ¶¶ 14-15 (internal quotations and citations omitted).

By asking if someone had a valid driver’s license, Deputy Cordova was “diligently pursu[ing] a means of investigation . . . likely to confirm or dispel” the reason for his stop. *State v. Laster*, 2021 MT 269, ¶ 14, 406 Mont. 60, 497 P.3d 224 (quoting *United States v. Sharpe*, 470 U.S. 675, 686 (1985) (when making a valid investigative stop, officers must act with reasonable diligence to quickly confirm or dispel the predicate suspicion for the stop)).

This Court has recognized that since “[t]raffic stops are especially fraught with danger to police officers, . . . an deputy may need to take certain negligibly burdensome precautions in order to complete his mission safely[,] . . . [such as criminal record and outstanding warrant checks].” *State v. Noli*, 2023 MT 84, ¶ 38, 412 Mont. 170, 529 P.3d 813 (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 110-11 (1977) (government’s “legitimate and weighty” interest in deputy safety, outweighs the “*de minimis*” additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle); *Maryland v. Wilson*, 519 U.S. 408, 413, 415 (1997) (*Mimms* rule applies the same to passengers, noting that “the same weighty interest in deputy safety is present regardless of whether the occupant of the stopped car is a driver or passenger”); *Rodriguez v. United States*, 575 U.S. 348, 355 (2015) (deputy’s “mission” includes “ordinary inquiries incident to the traffic stop” which “serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.”))

Here, Deputy Cordova simply asked the passengers their names and whether they had a driver's license or were on probation. Such non-intrusive inquiries, which all three voluntarily answered, constituted a *de minimus* intrusion that was designed to further the reason for the stop (make sure valid, safe drivers on the road) and deputy safety (ask if on probation). Montana Code Annotated and this Court's jurisprudence did not limit Deputy Cordova's authority to *request* the names of Smock's passengers or if they were on probation.

Additionally, given the unique facts of this case—particularly that the deputy knew it would not be legal for Smock to continue to drive—asking if any of the passengers had a valid driver's license was a reasonable inquiry given the circumstances of the stop (Smock not legal to drive; vehicle is stopped on side of busy highway outside of town). While the deputy had noted suspicious behaviors by the backseat passengers, he was justified in asking if anyone had a valid driver's license during the lawfully conducted stop once the deputy confirmed Smock did not have a valid driver's license. O'Howell's characterization of the deputy's inquiry about the passengers' information as a "pretext" and an "investigation," is inaccurate. (Br. at 20.) Deputy Cordova articulated this objective data that had nothing to do with his earlier observations of the passengers' behaviors prior to the lawful stop.

As the deputy testified, if one of the passengers had stated they had a valid driver's license, he would have let them continue on after issuing citations to Smock. However, within five minutes of stopping the vehicle, Deputy Cordova learned that two of the passengers did not have valid driver's licenses and the third only had a learner's permit.

O'Howell relies on *State v. Strom*, 2014 MT 234, 376 Mont. 277, 333 P.3d 218. (Br. at 24-27.) However, that case is distinguishable from the circumstances here. In *Strom*, during routine patrol, an officer pulled up behind a parked van in the parking lot of a local park during daylight hours. *Strom*, ¶¶ 4-5. Strom was in the passenger seat and her friend, S.J., was in the driver's seat. *Id.* The deputy did not articulate any belief of wrongdoing, but noted the van, which was not running, was the only vehicle in the lot and he believed it to be "suspicious." *Id.* When the deputy got to the driver's window, he noticed "how young S.J. looked" so he asked her for her driver's license. *Id.* S.J. told him she did not have a driver's license and handed him her ID card. *Id.* Strom also provided an ID card upon the deputy's request. *Id.* The deputy took the IDs to his patrol vehicle to check S.J.'s status and for warrants and learned S.J. did not have a driver's license and Strom had a warrant out for her arrest. *Id.* While the deputy was in his car, S.J. contacted the van's owner who was on his way to get the vehicle. *Id.* Strom was arrested on the warrant and later charged with possession of dangerous drugs. *Id.*

This Court reversed the order denying Strom's motion to suppress wherein the court concluded there had not been a seizure, finding that a reasonable person would not have felt free to leave. *Strom*, ¶ 13. This Court further considered whether the deputy had particularized suspicion to conduct an investigatory stop during which he learned Strom's name. *Strom*, ¶¶ 14-17.

This Court held the deputy did not have objective data from which to initiate an investigatory stop of S.J., explaining that her "apparent youthfulness" was insufficient to believe she was not a licensed driver. *Strom*, ¶ 16. This Court further concluded there was no objective data or resulting suspicion that S.J. would drive the van, and further noted that S.J. had arranged for the van's owner to come to the park. *Strom*, ¶16. Since there was no particularized suspicion for the impetus of the "stop," any information gleaned thereafter should have been suppressed. *Strom, supra*.

Here, it is undisputed that Smock's speeding was objective data to support particularized suspicion to stop the vehicle. Deputy Cordova knew that the registered owner, Smock, had a suspended driver's license and he properly confirmed it was Smock who was driving. Unlike *Strom*, the deputy had every reason to believe that Smock would drive as he had just pulled her over. In addition, unlike S.J.'s van that was not running and parked at a city park, here,

Smock was pulled over on a busy highway where a vehicle should not be parked for a length of time.

Unlike *Strom*, here, Deputy Cordova lawfully stopped the car for speeding and properly determined Smock could not lawfully drive. The deputy had a valid reason to determine if there was a licensed driver in the car which was “reasonably related to the stop.” When the deputy mentioned there needed to be a licensed driver, neither O’Howell nor Laird spoke up and Hamlin stated he had a learner’s permit. Thus, the concern for public safety was not dispelled since none of the passengers stated they could legally drive. Contrary to O’Howell’s position, the deputy’s request for such basic, non-invasive information did not exceed the original basis for the stop. Nor did the deputy exceed the original basis when he asked if Smock would sit in the patrol car while he finished writing out the citations.

When assessing “the reasonableness of the duration and scope of an investigative stop [courts] 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.” *Laster*, ¶ 13 (citing *Sharp*, 217 Mont. at 47, 702 P.2d at 963; *Michigan v. Summers*, 452 U.S. 692, 700 n.12 (1981) (“key principle of [constitutional] reasonableness” is “the balancing of competing interests”— discussing various permissible “investigative techniques which may be [used]

effectively in the course of a *Terry*-type stop” including request for identification and interrogation regarding the suspicious activity).

Asking Smock to sit in the patrol car did not extend the scope of the stop. The deputy was justified in asking Smock to come to his patrol vehicle to complete his investigation and write traffic citations. As Deputy Cordova explained, he wanted to talk to Smock without extraneous input from the passengers. He had also learned that Hamlin was on probation, which the deputy wanted to look further into for his own safety. The fact Deputy Cordova had noted the passengers’ suspicious behaviors prior to the stop and when talking to Smock in the patrol vehicle, does not negate the justified reasons he had for asking if someone had a driver’s license and asking if Smock would sit in his patrol car.

The circumstances here are not akin to *Strom* where this Court found the deputy’s initial inquiries were improper. Here, it is undisputed that Smock’s speeding justified the deputy stopping her vehicle. Deputy Cordova also had reason to believe the driver did not have a valid driver’s license and after confirming that, the deputy was acting within the scope of the traffic stop when he asked the passengers for their names and if any one of them possessed a driver’s license. Deputy Cordova was also acting within the scope of the initial stop when he asked Smock to sit in the patrol car while he completed the traffic citations. Also, unlike *Strom*, who arranged for the van’s owner to come drive the vehicle,

Smock's only suggestion for a driver was Hamlin, who could not lawfully drive without another licensed driver.

Within only 12 minutes since the stop began, and while he was in his patrol car talking to Smock and completing the citations, Deputy Cordova learned O'Howell had a warrant out for his arrest. While Deputy Cordova also talked to Smock about the passengers' odd behaviors and his suspicion that something illegal was going on, he was not dilatory. Within only a couple minutes of securing O'Howell, and while the deputy was still finishing the citations, Laird drove off. Laird's action not only created additional particularized suspicion for Deputy Cordova, but it also created particularized suspicion that a new offense had been or was about to be committed. Laird's erratic driving and attempt to elude the trooper established probable cause to stop the vehicle. The totality of events that night, along with Laird's demeanor after being stopped, created probable cause to search the vehicle.

Deputy Cordova's actions during the 12 minutes after initiating the stop were not dilatory and were within purpose of the stop. Mont. Code Ann. §§ 46-5-401(2)(a), -403. The district court properly evaluated the totality of the circumstances and considered "quantity or content of the information available to the deputy and the quality or degree of reliability of that information" when it denied O'Howell's motion to suppress. *Wagner*, ¶ 10.

**B. Deputy Cordova did not improperly prolong the duration of the lawful stop.**

Even if Deputy Cordova's actions (asking for the names of the passengers and Smock to sit in the patrol car) are characterized as "extending the stop," his actions were not improper.

"[I]nvestigative stops may be prolonged, and the scope of the investigation enlarged, provided the scope of the investigation remains within the limits created by the facts and suspicions from which they arose." *State v. Harning*, 2022 MT 61, ¶ 15, 408 Mont. 140, 507 P.3d 145 (citing *State v. Estes*, 2017 MT 226, ¶ 15, 388 Mont. 491, 403 P.3d 1249). "Based on additional information developed during the initial lawful duration and scope of an initial investigative stop, an officer may develop new or broader particularized suspicion of criminal activity justifying expansion of the scope or duration of the stop beyond that justified by the deputy's initial observations." *Kroschel*, ¶ 19; *State v. Hoover*, 2017 MT 236, ¶ 19, 388 Mont. 533, 402 P.3d 1224 (Particularized suspicion may evolve during a lawful stop if an officer notes "additional 'specific and articulable facts' indicating that the occupants of the vehicle had committed, were committing, or were about to commit a specific criminal offense.").

In determining the reasonableness of the duration of a stop, the United States Supreme Court explained that the reviewing court

should not indulge in unrealistic second-guessing. A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But [the] fact that the protection of the public might, in the abstract, have been accomplished by “less intrusive” means does not, by itself, render the search unreasonable. The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.

*Sharpe*, 470 U.S. at 686-87 (internal quotations and citations omitted).

This Court has explained that “the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop . . . and attend to related safety concerns.” *Harning*, ¶ 25 (citing *Rodriguez*, 575 U.S. at 354 (internal citations omitted)).

Unlike *Harning*, where the trooper “detoured” from the “mission” of addressing the driver’s traffic violation by extending the scope of the stop into a canine sniff, here Deputy Cordova’s non-invasive inquiry into the passengers’ information to determine if there was a legal driver and his request that Smock sit in the patrol car as he issued citations for speeding and driving while suspended were not “detours” from the reason for the investigatory stop. It was at this point that Deputy Cordova learned of O’Howell’s warrant which he quickly acted upon by detaining O’Howell. During that process, Hamlin lied about where he was on

probation and shortly after securing O’Howell and while he was still finishing the citations, Laird drove off. Deputy Cordova did not improperly prolong the stop.

Deputy Cordova’s questions sought to confirm there was a lawful driver; they were not a pretext to conduct a drug investigation as occurred in the other cases relied upon by O’Howell. *See Noli, supra*; *State v. Carrywater*, 2022 MT 131, 409 Mont. 194, 512 P.3d 1180; *State v. Wilson*, 2018 MT 268, 393 Mont. 238, 430 P.3d 77; and *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015) (held, by conducting additional felony registration check and dog sniff of car after completing reason for the traffic stop was unreasonable because it went beyond ordinary inquiries and to ensure vehicles on the road are operating in a safe and responsible manner).

Nor were the circumstances here akin to *State v. Broken Rope*, 278 Mont. 427, 428-33, 925 P.2d 1157, 1157-60 (1996) (strange actions in parking lot and using pay telephone not “inherently suspicious” or objectively indicative of illegal drug activity). Unlike *Broken Rope*, as explained above, it was not the passengers’ furtive movements or compulsive glances back at the deputy that caused him to ask for the passengers’ names and if someone had a driver’s license. Deputy Cordova immediately explained to the group, “We gotta figure out who is gonna drive, I guess, is what I am worried about.” (Ex. B at 1:45.)

While completing a lawful traffic stop, Deputy Cordova learned O’Howell’s name and determined there was a warrant out for his arrest, that Smock changed her story about where they were traveling and how well she knew the passengers, and that Hamlin lied about where he was on probation. Next, and within minutes of lawfully detaining O’Howell, Laird drove off leaving Hamlin behind. Deputy Cordova also learned that Laird had given a false name and had driven off because he was “wanted.” Under the totality of the circumstances presented, Deputy Cordova did not improperly prolong the stop. *Laster*, ¶ 14 (“[B]ased on additional information developed during the lawful duration and scope of the initial stop, new or broader particularized suspicion of criminal activity may develop and thus expand the permissible duration and scope of the stop beyond its initial purpose.”).

Even if Deputy Cordova’s interest in learning if another licensed driver was available and his request to Smock to sit in the patrol car are considered an extension of the initial stop, the deputy’s actions did not improperly extend the stop. The district court did not err when it denied O’Howell’s motion to suppress.

**II. The State presented sufficient evidence to convict O’Howell of accountability to criminal possession of dangerous drugs with intent to sell.**

O’Howell relies solely upon *State v. Tollie*, 2022 MT 59, ¶ 12, 408 Mont. 129, 506 P.3d 1021, to assert his felony conviction should be reversed. Relying

upon *Tollie*, O’Howell further asserts that whether there was sufficient evidence to corroborate the testimony of an accomplice is a question of law which should be reviewed for correctness. (*Id.*) However, here there is no legal conclusion for this Court to review because, unlike in *Tollie*, ¶ 10, O’Howell did not move to dismiss for insufficient accomplice testimony. *See also State v. Fey*, 2000 MT 211, 301 Mont. 28, 7 P.3d 358 (affirmed trial court’s order denying motion for “Judgment Notwithstanding the Verdict” based on alleged lack of corroboration of accomplice testimony). *But see State v. Kemp*, 182 Mont. 383, 597 P.2d 96 (1979) (record unclear if trial court asked to make ruling of law that accomplice testimony was insufficient).

Nonetheless, O’Howell is correct that a defendant may challenge the sufficiency of the evidence for the first time on appeal. Accordingly, while there is no legal conclusion by the district court to review, in its *de novo* review to determine if sufficient evidence supported O’Howell’s conviction, this Court must consider the “evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Palafox*, ¶ 16; *State v. Byers*, 2003 MT 86, ¶ 6, 315 Mont. 89, 67 P.3d 880.

As part of this *de novo* review, it is important to note that the jury was instructed on the legal standards relevant to accomplice testimony from Mont.

Code Ann. §§ 26-1-303(4) and 46-18-213. (See JI Nos. 13, 15.) “It is a well recognized principle of law that juries are presumed to follow the law as given them.” *State v. Turner*, 262 Mont. 39, 55, 864 P.2d 235, 245 (1993); *State v. Smith*, 2021 MT 148, ¶ 49, 404 Mont. 245, 488 P.3d 531 (appellate courts presume jury followed instructions).

**A. The jury was presented with compelling evidence that Smock was not an accomplice, so her testimony did not require corroboration.**

For the constrictions of accomplice testimony to apply, the witness at issue must be legally accountable for the conduct of the defendant. *State v. Blackcrow*, 1999 MT 44, ¶ 20, 293 Mont. 374, 975 P.2d 1253; *Byers*, ¶¶ 15-16; *State v. Marler*, 2008 MT 13, ¶ 32, 341 Mont. 120, 176 P.3d 1010 (Court determined “whether any rational trier of fact could have found that McMunn was not legally accountable for the conspiracy, viewing the evidence in the light most favorable to the prosecution.”). When the question of whether a witness shared legal accountability is in dispute, the jury determines that issue. *Tollie*, ¶ 16 (citing *Blackcrow*, ¶ 21).

Here, the jury was presented with sufficient evidence to conclude Laird was legally accountable along with O’Howell; however, the evidence about Smock did not establish beyond a reasonable doubt that she was legally accountable.

Smock believed she was giving Hamlin a ride to Billings because he lived there. Both Smock and Laird testified that Smock did not know Hamlin had a

large quantity of individually packaged methamphetamine. Smock admitted she brought her own baggie of methamphetamine to the car and stashed it under her seat when the deputy stopped her. Smock testified that she believed O’Howell planned to use drugs after they stopped in Townsend, and explained O’Howell had told her Hamlin had “stuff on him” which she believed to be a small quantity.

But Smock did not testify that she saw Hamlin give O’Howell drugs or that she saw O’Howell use drugs in the car. Smock consistently denied knowing anything about the drugs Hamlin had packaged for sale and Laird confirmed that she did not know about Hamlin’s drugs. The first Smock heard about a large quantity of drugs being in the car was after Laird drove off and Hamlin told her he was going to be in debt because his drugs just left in the car. (Tr-1 at 183-84.)

While Smock was charged with possession of dangerous drugs, her charge was based on her own personal baggie of drugs she brought with her and hid under the driver’s seat, not the individually packaged baggies of methamphetamine found where Hamlin had been sitting.

As this Court has explained, “as to crimes, wrongs or acts *other than those upon which the defendant is charged*, accomplice testimony need not be corroborated before it is admissible.” *Byers*, ¶ 15 (citation omitted). Byers was charged with, among other things, Count I, conspiracy to commit criminal production or manufacture of dangerous drugs with two others at their apartment

during October 2000 and Count II, criminal production or manufacture of dangerous drugs on or between October through November 2000 and was using his vehicle as a mobile methamphetamine lab. *Byers*, ¶¶ 11, 26. Byer's accomplice to Count II testified about comments Byers made relevant to Count I. *Id.*

This Court found that because that witness was not a coconspirator or accomplice concerning Count I, his testimony did not need to be corroborated. *Byers*, ¶¶ 15-16. Likewise, the testimony of the codefendants from Count I did not need to be corroborated relative to Count II because they were not accomplices to that offense. *Byers*, ¶ 28. *See also Blackcrow, supra* (sufficient evidence in record that witness was not an accomplice even though she drove the truck to the trailer park where Blackcrow and others committed aggravated burglary).

Like the driver in *Blackcrow*, the evidence supports that Smock had no knowledge about the quantity of methamphetamine Hamlin had with him or that it was individually wrapped for sale. Smock did not know Hamlin and agreed to drive them as a favor to O'Howell. Even if Smock knew Hamlin had some drugs with him, her testimony established she had no knowledge that he possessed individually packaged drugs he planned to sell in Billings.

But for O'Howell's denial that he told Smock that Hamlin had some "stuff on him," Smock's statements were corroborated by Laird, O'Howell, the statements on the deputy's video, and the physical evidence. If the jurors found

Smock credible, then they would have concluded she did not know about Hamlin's packaged drugs and thus was not legally accountable for his crime of possession with intent to distribute. Viewing the evidence in a light most favorable to the State, there was insufficient evidence to establish Smock was legally accountable for the five individually wrapped baggies of methamphetamine Hamlin planned to sell in Billings. Thus, the jury was free to consider her testimony without any limitation.

**B. Corroborating evidence**

Even if Smock is considered to be an accomplice, her testimony was corroborated by both Laird and O'Howell as well as the deputy's video and the physical evidence discovered in the car. Likewise, Laird's testimony was also corroborated.

Smock's testimony about her initially not wanting to leave her sick friends at her apartment when O'Howell first asked about her going to Billings was confirmed by O'Howell. Smock's admission that she brought her own baggie of methamphetamine was confirmed by the discovery of that baggie during the search. Smock's testimony that they were traveling to Billings and that she did not know Laird well and had never met Hamlin was corroborated by both Laird and O'Howell and the deputy's video. Smock's statement that she believed O'Howell planned to get high was corroborated by the loaded syringe discovered near the

passenger seat. Laird confirmed Smock's testimony that she did not know about the large quantity of drugs Hamlin had packaged for sale.

Laird's testimony that he met Hamlin through his girlfriend, Bonnie, was corroborated by O'Howell, as was Laird's explanation that he approached O'Howell about the trip to Billings as a favor to Bonnie. Laird also testified that he believed O'Howell wanted to pick up his dog in Billings, which is what O'Howell told the jury. Laird testified that he saw Hamlin push the bag full of packaged methamphetamine under the rear of the driver's seat, which is where the drugs were discovered during the search. Laird's description of there being syringes of drugs in the car was confirmed by the deputy's search of the vehicle, as was his testimony that the backpack belonged to O'Howell. Laird's admission about constantly looking back at Deputy Cordova along with Hamlin was confirmed by the deputy's testimony and the video of the stop.

O'Howell's testimony confirmed both Laird's and Smock's descriptions about where they drove in Helena, including stopping at several convenience stores and Hamlin paying for gas at Friendly's. O'Howell also confirmed their testimony that he drove until they got to Townsend.

Even if the jury determined both Smock and Laird were legally accountable for Hamlin's offense, there was more than sufficient evidence introduced to corroborate their testimony.

### **C. Additional evidence supporting O’Howell’s conviction**

Finally, in addition to Smock’s and Laird’s testimony, the jury was also presented with other evidence to support O’Howell’s guilt.

Deputy Cordova testified that O’Howell avoided eye contact with him when he first approached the vehicle. O’Howell also looked nervously back towards the patrol car when Smock was talking to the deputy. While these behaviors may also have innocent explanations, the jury was free to consider them, along with all the other evidence presented, to conclude O’Howell knew Hamlin had large quantities of drugs with him he intended to sell in Billings. One of the most compelling pieces of evidence that supported O’Howell’s familiarity with Hamlin was when O’Howell announced that Hamlin was his “homeboy” when Deputy Cordova said Hamlin had lied about where he was on probation.

The absence of drugs or drug paraphernalia on his person when he was arrested and that neither officer saw such evidence when arresting O’Howell, is not compelling evidence of his innocence. O’Howell’s knowledge about Hamlin’s packaged drugs is independent of his actual possession of drugs or paraphernalia. Moreover, O’Howell remained in the car when Deputy Cordova spoke to Smock, giving him plenty of opportunity to empty his pockets in anticipation of being pulled out of the car on the pending arrest warrant.

Viewing the “evidence in the light most favorable to the prosecution,” the record supports that “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Palafox*, ¶ 16.

### **CONCLUSION**

This Court should affirm the district court’s order denying O’Howell’s motion to suppress.

This Court should affirm O’Howell’s felony conviction for possession of dangerous drugs with intent to distribute (by accountability).

Respectfully submitted this 4th day of October, 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 9,716 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

*/s/ Katie F. Schulz*

\_\_\_\_\_  
KATIE F. SCHULZ

## CERTIFICATE OF SERVICE

I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-04-2023:

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Dated: 10-04-2023