IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0724

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JAY LE CLEVELAND,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Twentieth Judicial District Court,
Lake County, The Honorable Molly Owen, Presiding

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STATEMENT OF THE ISSUES

1. Whether the investigating officer, while completing a lawful welfare check of Appellant pursuant to the community caretaker doctrine and learning that Appellant did not have his driver's license, obtained a particularized suspicion to continue with an investigative stop.

2. Whether there was reasonable cause to conduct a probationary search of Appellant's vehicle based upon his status as a felon and probationer with a history of drug use, combined with him being slumped over his steering wheel and motionless in a grocery store parking lot.

3. Whether Appellant waived any objection to his agreed-upon $300 costs of prosecution.

STATEMENT OF THE CASE

On January 12, 2022, Polson police officers located a digital scale, 32 grams of methamphetamine, and 179 fentanyl pills during a probationary search of the vehicle Appellant was driving. (D.C. Doc. 2 at 2.) On January 24, 2022, the State charged Appellant, Jay Le Cleveland (Cleveland), with two counts of Criminal Possession of Dangerous Drugs (CPDD) with intent to distribute. (D.C. Doc. 4.)

Cleveland's probation officer (PO) requested the search of the vehicle Cleveland was driving after a concerned citizen observed Cleveland, who had been

on probation in Missoula since 2003, slumped over his steering wheel and motionless in a grocery store parking lot at about 10:30 a.m. with his engine running. (D.C. Doc. 2 at 2.)

On May 19, 2022, Cleveland filed a motion to suppress and dismiss. (D.C. Doc. 11.) Cleveland alleged that the police officer unlawfully expanded the scope of a concededly valid welfare check. (*Id.* at 4.) Cleveland also claimed that the PO did not have reasonable cause to suspect he was violating the law or rules of probation. (*Id.* at 6.)

On May 27, 2022, the State filed its response. (D.C. Doc. 17.) The State summarized its argument, stating, "While sleeping in your car is not a crime, being passed out over the steering wheel in a parking lot in broad daylight is concerning. When a [p]robationer who is attending NA meetings [is] found in such a state it creates a reasonable concern for drug use or overdose. The information the Defendant provided to Officer Doyle did not alleviate[] his concerns, rather [it] compounded them." (*Id.* at 3.)

The district court denied Cleveland's motion to suppress and dismiss on July 8, 2022. (D.C. Doc. 24.) On September 14, 2022, Cleveland entered into a plea agreement and pled no contest to Count I, CPDD with intent to distribute, and the State moved to dismiss Count II. (Doc. 26.) The agreement included that "[t]he

Defendant shall pay the Lake County Attorney's Office $300 for the cost of prosecution." (*Id.* at 5.)

Cleveland reserved the right to appeal the district court's denial of his motion to suppress and dismiss. (*Id*. at 8.)

STATEMENT OF THE FACTS

On January 12, 2022, at approximately 10:37 a.m., an identified citizen, T.F., contacted 911 dispatch and stated, "Yeah, I just want to report a suspicious activity in the Super 1 parking lot here in Polson. There's a guy slumped over his steering wheel, and his car is still running, and he's from Missoula, Montana, and he hasn't moved since I've been watching him." (911 recording, attached to Defendant's Motion to Suppress and Dismiss (D.C. Doc. 11) as "Defendant's Exhibit [Def's Ex.] A" at 00:04-21.)[1] T.F. clarified that she had been watching the motionless, slumped over driver for "about three minutes now." (D.C. Doc. 11, Def's Ex. A at 00:24-26.)

[1] Three exhibits were attached to Cleveland's motion to suppress and dismiss (D.C. Doc. 11): Def's Ex. A, the 911 recording; Def's Ex. B, the body worn camera recording from Officer Doyle; and Def's Ex. C, Polson Police Department reports pertaining to this matter.

After describing the vehicle as a black SUV and its general location in the parking lot, T.F. said, "I just don't know if he had a heart attack or what." (*Id.* at 00:46-48.)

Officer Doyle of the Polson Police Department arrived shortly thereafter. Without activating his emergency lights, Officer Doyle parked behind and to the driver's side of the black SUV with Missoula County plates. Initial views of the SUV from Officer Doyle's body worn camera (BWC) show that it was irregularly parked, straddling the driver's side parking line. (D.C. Doc. 11, Def's Ex. B at 00:27.) Upon noticing Officer Doyle, Cleveland preemptively explained through a crack in his window that the window was broken and he couldn't lower it any further. (*Id.* at 00:35-38.)

Officer Doyle responded, "Oh, okay. How are you doing today?" (*Id.* at 0:38-40.) Cleveland said he was "doing alright." (*Id.* at 00:40-41.) Officer Doyle introduced himself and explained that someone had reported that Cleveland was slumped over his steering wheel for a while. (*Id.* at 00:42-00:49.) Cleveland responded, "Oh, was I? Um . . . yeah, I was for a minute." (*Id.* at 00:49-52.) Cleveland claimed that his eyes were bothering him. (*Id.* at 00:53-55.) He elaborated, "They're burning really bad today."[2] (*Id.* at 00:58-01:00.)

[2] The video shows the skies were completely overcast and Cleveland was wearing sunglasses. (*See* D.C. Doc. 11, Def's Ex. B.)

About 30 seconds into their conversation, Officer Doyle politely asked, "Could I get your driver's license, you mind if I get that from you?" (*Id.* at 01:02-04.) Cleveland volunteered, "I can give you my name. I don't have my license, I lost my wallet yesterday, so . . . ." (*Id.* at 01:04-10.) Officer Doyle said, "Okay, just hang tight for me." (*Id.* at 01:12-14.) Officer Doyle walked to his squad car, where he obtained a notepad, and then wrote down Cleveland's name and date of birth. (*Id.* at 01:47-59.)

Officer Doyle asked, "Does this vehicle belong to you? Is it registered to you?" (*Id.* at 02:07-10.) Cleveland responded, "Uh, no, it's registered uh, It's my neighbor, her name is Teresa. I can't remember what her last name is but, she uh, I'm doing a bunch of work here for her, [inaudible] paying me out of Seattle." (*Id.* at 02:10-20.)

Next, Officer Doyle asked, "What brings you to Polson?" (*Id.* at 02:20-21.) Cleveland replied, "Yesterday, I come [sic] up and, uh, there was a big meeting up here, for a NA meeting." (*Id.* at 02:21-30.) Cleveland also said that he had spent the previous night at "Econo something," off of Main Street.[3] (*Id.* at 02:42-46.)

Officer Doyle then inquired, "I gotta ask, are you on probation or anything like that?" (*Id.* at 02:52-55.) Cleveland confirmed that he had been on probation

[3] The district court understood this to mean the Econo Lodge Hotel in Kalispell. (D.C. Doc. 24 at 2.)

out of Missoula since 2003. (*Id.* at 02:55-03:03.) In other words, within about two minutes of conversation, Officer Doyle had determined the following: Cleveland did not have a driver's license with him; Cleveland was a felon and active probationer; Cleveland was attending Narcotics Anonymous; Cleveland had been slumped over his steering wheel and motionless in a grocery store parking lot and his eyes were "burning really bad" on an overcast day; and, finally, Cleveland did not own the vehicle he was in, nor could he provide the full name of the registered owner.

Officer Doyle called Cleveland's name and date of birth in to dispatch, and asked that they also "check his probation status." (*Id.* at 03:22-39.) Officer Doyle then returned to speak with Cleveland and stated, "Alright, Jay, I'm just gonna run you through dispatch real quick . . . make sure you don't got any warrants or nothing crazy like that." (*Id.* at 03:54-04:01.)

In their ensuing conversation, Officer Doyle indicated to Cleveland, "I'm here checking your welfare." (*Id.* at 04:07-09.) He added, "If, if you were slumped over the vehicle, you know, over the steering wheel, I mean, that concerns me a little bit, you know what I'm saying?" (*Id.* 04:10-21.) Cleveland indicated that he understood and said it was "no problem."

Cleveland informed Officer Doyle that his PO was Patty Wolfe. (*Id*. at 04:29-32.) Cleveland provided Officer Wolfe's phone number, and Officer Doyle

said he was going to call her "real quick." (*Id.* at 05:11-13.) Officer Doyle then called Officer Wolfe. (*Id.* at 06:05 to 08:20.) While Officer Wolfe's side of the conversation cannot be heard, Officer Doyle's comments were as follows:

> Hi, Patty, this is Officer Doyle with Polson Police. Hey, so, I'm out here with a Jay Cleveland, he says he is on probation with you. Um, I just wanted to call and talk to you a little bit, you know, we got called because he was, um slumped over the steering wheel in his vehicle here in the Super 1 parking lot. Um, he said he was up here for a Narcotics Anonymous meeting yesterday. And I just wanted to make sure everything was kosher with, with you guys.

(*Id.* at 06:05-43.)

> You know, I can't see anything in plain view. [five second pause] Um, it's tough for me to tell, I, I um, you know, if he was slumped over the wheel at, you know, almost 11:00 in the morning, it leads me to believe that there might be some narcotics on board. I can't smell the odor of alcohol or anything.

(*Id.* at 06:53-07:19.)

> No, it is not, he said it's his neighbor's. [seven second pause] It's a black GMC Yukon with Missoula plates—Missoula County plates, it's, uh, registered to a Teresa Swan, I think.

(*Id.* at 07:25-43.)

> He's the, he's the only one in the vehicle, if that helps.

(*Id.* at 07:59-08:03.)

Officer Doyle agreed that Officer Wolfe could call him back and gave her his phone number. (*Id.* at 08:08-20.) Officer Doyle then walked over to Captain Booth, who had arrived after Officer Doyle and had been observing from the

passenger's side of Cleveland's SUV. Officer Doyle informed Captain Booth that Cleveland's PO was going to "get a hold of someone" and call him back. (*Id.* at 08:22-42.) Captain Booth observed, "He looks like he was having a bad day." (D.C. Doc. 11, Def's Ex. B at 08:51-53.)

Officer Doyle summarized his conversations with Cleveland, and stated, "It seems odd to me that he's parked here, slumped over the wheel, sleeping." (*Id.* at 09:08-12.) Officer Doyle added, "I find it odd that there's no Narcotics Anonymous meetings in Missoula." (*Id.* at 09:20-23.)

Officer Doyle walked back to the driver's side of the SUV, and informed Cleveland, "So I'm just waiting on a call back from your PO, man," to which Cleveland responded, "Oh, okay, no problem." (*Id.* at 09:49-53.) Cleveland added that "she's good, she's strict, but she's good." (*Id.* at 09:54-56.)

Cleveland stated to Officer Doyle, "I've been doing this [probation] for a long time." (*Id.* at 10:03-04.) He continued, "But you know, it changed my life. I did some time in the joint, and uh, you know, it was good for me, it slowed me down a lot." (*Id.* 10:13-24.) Cleveland also volunteered that he had a knife on his person. (*Id.* at 10:31-36.)

At that point, Officer Wolfe called back, and asked Officer Doyle to search the SUV. (*Id.* 10:37-56.) Officer Doyle informed Cleveland that his PO wanted the vehicle searched. (*Id.* at 11:02.) Officer Doyle asked Cleveland to exit the SUV

and then pat searched him, removing the knife Cleveland had mentioned from his belt, and some brass knuckles Cleveland had not mentioned from one of his pockets. (*Id.* at 11:25-49.) Officer Doyle directed Cleveland, "if you wouldn't mind standing over by my truck, with Captain Booth, here," and began to search the SUV.[4] (*Id.* at 11:58-12:04.)

About six minutes into the search, Officer Doyle located a cardboard box behind the center console, which contained a digital scale, what turned out to be approximately 32 grams of methamphetamine, and 179 fentanyl pills.[5] (Doc. 2 at 2; *see also* D.C. Doc. 11, Def's Ex. B at 17:37-58.) Officer Doyle handcuffed Cleveland and placed him under arrest. (D.C. Doc. 11, Def's Ex. B at 18:03.)

The district court referenced most of the above facts in its order denying Cleveland's motion to dismiss.[6] (Doc. 24 at 1-3.) The district court observed, and

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[4] There were two squad cars present at the relevant times in this case, Officer Doyle's and Captain Booth's. Captain Booth's squad car was a white, unmarked pickup, which arrived after Officer Doyle and pulled up on the passenger's side of Cleveland's SUV. (D.C. Doc. 11, Def's Ex. B at 00:39.) Neither squad car activated emergency lights or parked in a manner that restricted Cleveland's ability to leave. Captain Booth's participation in this matter was limited to conversing with Cleveland while Officer Doyle searched the SUV, and subsequently discussing how to provide care for Cleveland's dog.

[5] The officers did not test or weigh the drugs at the scene. However, in his very brief post-*Miranda* conversation with Cleveland, Officer Doyle made it clear that he recognized both substances: "It appears that there's a large number of blue pills that I know to contain fentanyl, and there is a very sizable piece of methamphetamine in there." (D.C. Doc. 11, Def's Ex. B at 19:20-36.)

[6] The district court's order also referred to information from Officer Doyle's police report, attached to D.C. Doc. 11 as Def's Ex. C.

the parties agreed, that Officer Doyle's initial approach to Cleveland's vehicle was lawful under the community caretaker doctrine. (*Id.* at 3 (citing *State v. Zeimer*, 2022 MT 96, ¶ 33, 408 Mont. 433, 510 P.3d 199).)

The district court accurately noted that by the time Officer Doyle went back to his squad vehicle to retrieve a notepad, he knew that Cleveland had been slumped over his steering wheel in a grocery store parking lot while his car was running. (*Id.* at 5.) Further, the court found that when specifically asked about his behavior, Cleveland did not initially realize he had been slumped over his steering wheel. (*Id.*) The district court concluded that these facts, combined with the recent opioid overdoses encountered by the Polson Police Department, established that Officer Doyle had "'an objectively reasonable particularized suspicion of DUI under the totality of the circumstances' and his articulated inferences."[7] (*Id.* (citing *Zeimer*, ¶ 35).)

The court further found that Officer Doyle's brief and limited questioning "was done in a manner that did not 'substantially prolong the stop beyond that reasonably necessary to diligently dispel or exhaust the original particularized suspicion that justified the stop.'" (*Id.* at 6 (quoting *Zeimer*, ¶ 45).) The court

[7] In his report, Officer Doyle wrote that he informed Officer Wolfe that he suspected Cleveland might be under the influence of opiates because of the "huge influx of opiate overdoses our department has responded to recently." (D.C. Doc. 11, Def's Ex. C at 2-3.) Officer Doyle did not convey that information to Officer Wolfe during the two recorded phone calls that are part of the record in this case.

pointed out that the entirety of the stop, including the brief search of the SUV, took only 18 minutes. (*Id.*)

Finally, the district court found that Officer Wolfe had reasonable suspicion that Cleveland was operating a motor vehicle under the influence of drugs to justify the probationary search of his vehicle. (*Id.*)

SUMMARY OF THE ARGUMENT

After learning that Cleveland was slumped over his steering wheel and motionless in a grocery store parking lot, Officer Doyle lawfully approached Cleveland's vehicle to check on his welfare pursuant to the community caretaker doctrine.

Cleveland has not met his burden of proving that Officer Doyle seized him when he politely asked if he could see Cleveland's driver's license 30 seconds into their contact. When Cleveland offered to give Officer Doyle his name, and volunteered that he did not have his driver's license, Officer Doyle obtained a particularized suspicion to believe a statutory violation was occurring, and he lawfully asked questions about Cleveland's presence in the grocery store parking lot.

When Officer Doyle learned within a little over two minutes of the ensuing conversation that Cleveland was a felon from Missoula who had been on probation

since 2003, was driving someone else's car without his driver's license, and explained his presence in the grocery store parking lot by claiming to have attended a Narcotics Anonymous meeting the previous evening, Officer Doyle had a particularized suspicion that Cleveland might be under the influence of drugs. Officer Doyle acted appropriately by contacting Cleveland's PO. Further, based upon the totality of the circumstances, Officer Wolfe had reasonable cause to request that Officer Doyle conduct a probationary search of the vehicle Cleveland was driving.

Cleveland waived any objection to the $300 costs of prosecution for "specifically incurred expenses" by agreeing to pay that amount pursuant to his plea agreement, not objecting to the imposition of the costs, and explicitly waiving his right to contest the costs.

ARGUMENT

I. Standard of review

The standard of review of a lower court's denial of a motion to suppress evidence in a criminal case is whether the court's pertinent findings of fact are clearly erroneous and whether it correctly interpreted and applied the applicable law to those facts. *State v. Noli*, 2023 MT 84, ¶ 24, 412 Mont. 170, 529 P.3d 813 (citing *State v. Hoover*, 2017 MT 236, ¶ 12, 388 Mont. 533, 402 P.3d 1224). This

Court "will affirm the district court when it reaches the right result, even if it reaches the right result for the wrong reason." *State v. Marcial*, 2013 MT 242, ¶ 10, 371 Mont. 348, 308 P.3d 69 (citing *State v. Ellison*, 2012 MT 50, ¶ 8, 364 Mont. 276, 272 P.3d 646).

This Court reviews criminal sentences for legality only. *State v. Fisher*, 2021 MT 255, ¶ 25, 405 Mont. 498, 496 P.3d 561 (citing *State v. Hirt*, 2005 MT 285, ¶ 11, 329 Mont. 267, 124 P.3d 147); *State v. Moore*, 2012 MT 95, ¶ 10, 365 Mont. 13, 277 P.3d 1212 (citation omitted). If a sentencing condition is legal, this Court "review[s] its reasonableness to determine whether the district court abused its discretion." *State v. Reynolds*, 2017 MT 317, ¶ 15, 390 Mont. 58, 408 P.3d 503 (citation omitted); *State v. Dowd*, 2023 MT 170, ¶ 6, 413 Mont. 245, 535 P.3d 645.

II. The district court properly denied Cleveland's motion to suppress evidence obtained during a probationary search of his vehicle.

A. Introduction

Cleveland asserts that when Officer Doyle asked if he could see his driver's license, he was unlawfully seized. (Appellant's Br. at 16.) A defendant seeking to suppress evidence on the basis of an illegal seizure has the burden to demonstrate that he was illegally seized. *State v. Therriault*, 2000 MT 286, ¶ 26, 302 Mont.

189, 14 P.3d 444 (citing *State v. McCarthy*, 258 Mont. 51, 55, 852 P.2d 111, 113 (1993)).

Both the United States and Montana constitutions protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Mont. Const. art. II, § 11. The U.S. Supreme Court explained in *Terry v. Ohio*, 392 U.S. 1 (1968), that "not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Id.*, 392 U.S. at 19 n.16. "The central inquiry under the Fourth Amendment is the reasonableness under all the circumstances of a particular governmental invasion of a citizen's personal security." *State v. Clayton*, 2002 MT 67, ¶ 12, 309 Mont. 215, 45 P.3d 30 (citing *Terry*, 392 U.S. at 19).

A person is constitutionally "'seized within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave.'" *State v. Case*, 2007 MT 161, ¶ 24, 338 Mont. 87, 162 P.3d 849 (citing *State v. Robert*s, 1999 MT 59, ¶ 16, 293 Mont. 476, 977 P.2d 974 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980))). This test is applicable to seizure issues raised under both the Fourth Amendment to the United States

Constitution and article II, section 11, of the Montana Constitution. *Case*, ¶ 24 (citations omitted).

In *Mendenhall*, the U.S. Supreme Court provided examples of circumstances that might indicate a person was seized: "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." *Mendenhall* at 554.

Additionally, police officers have a duty not only to fight crime, but also to investigate uncertain situations in order to ensure public safety. *State v. Nelson*, 2004 MT 13, ¶ 6, 319 Mont. 250, 84 P.3d 25. Pursuant to the community caretaker doctrine, "if there are objective, specific, and articulable facts from which a law enforcement officer would suspect that a citizen needs help or is in peril, then the officer 'may temporarily seize [the] citizen, in the absence of a warrant or particularized suspicion, without running afoul of the prohibition against unreasonable searches and seizures contained in the Fourth Amendment to the U.S. Constitution or Article II, Section 11 of the Montana Constitution.'" *State v. Spaulding*, 2011 MT 204, ¶ 18, 361 Mont. 445, 259 P.3d 793 (quoting *State v. Graham*, 2007 MT 358, ¶¶ 25-26, 340 Mont. 366, 175 P.3d 885).

The community caretaker doctrine is operative where law enforcement initiates contact with a citizen, not to investigate the commission of a crime, but to

investigate a potential vehicle accident or otherwise ensure the safety of citizens. *Spaulding*, ¶ 18 (citing *Graham*, ¶ 25; *State v. Seaman*, 2005 MT 307, ¶ 15, 329 Mont. 439, 124 P.3d 1137).

B. Officer Doyle properly initiated contact with Cleveland under the community caretaker doctrine.

This Court articulated Montana's version of the community caretaker doctrine in *State v. Lovegren*, 2002 MT 153, ¶¶ 13-16, 310 Mont. 358, 51 P.3d 471. In that case, an officer came upon a vehicle parked on the side of a rural highway. *Id.* ¶ 3. The motor was running, but the lights were off, so the officer stopped his vehicle to investigate. *Id.* Lovegren appeared to be asleep in the driver's seat. *Id.* ¶ 4. The officer knocked on the window, but Lovegren did not respond. *Id.*

The officer then opened the car door, at which point Lovegren woke up and stated, "I was drinking." *Id.* The officer noticed other indicia of intoxication, including the odor of alcohol and bloodshot eyes, and initiated a DUI investigation. *Id.* Lovegren moved to suppress all of the evidence obtained during the investigation on the grounds that the officer lacked particularized suspicion of criminal activity to "stop" him. *Id*. ¶ 5. The district court concluded particularized suspicion was not required because the officer had a duty to investigate for Lovegren's own safety. *Id.* ¶ 6.

In affirming the district court, this Court fashioned a three-part test "in relation to the community caretaker doctrine," which provides:

> First, as long as there are objective, specific and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril, then that officer has the right to stop and investigate. Second, if the citizen is in need of aid, then the officer may take appropriate action to render assistance or mitigate the peril. Third, once, however, the officer is assured that the citizen is not in peril or is no longer in need of assistance or that the peril has been mitigated, then any actions beyond that constitute a seizure implicating not only the protections provided by the Fourth Amendment, but more importantly, those greater guarantees afforded under Article II, Sections 10 and 11 of the Montana Constitution as interpreted in this Court's decisions.

Lovegren, ¶ 25.

In this case, the 911 caller, T.F., identified herself and made clear that what she was reporting was based on her own personal observations. "Yeah, I just want to report a suspicious activity in the Super 1 parking lot here in Polson. There's a guy slumped over his steering wheel, and his car is still running, and he's from Missoula, Montana, and he hasn't moved since I've been watching him." (D.C. Doc. 11, Def's Ex. A at 00:04-21.) T.F. clarified that she had been watching him for "about three minutes now." (*Id.* at 00:24-26.)

This information gave Officer Doyle objective, specific and articulable facts from which an experienced officer would suspect that Cleveland was in need of assistance or was in peril. This was particularly true in the context of Polson experiencing a huge increase in opiate overdoses at the time. Officer Doyle had a

duty to approach and investigate Cleveland's situation. Officer Doyle immediately told Cleveland the reason he was there, and Cleveland himself corroborated that he had been slumped over his steering wheel, although he did not initially recall that he had been. Cleveland then nonsensically volunteered that he had been slumped over his steering wheel because his eyes were burning really badly that day.

At all relevant times, there were only two officers present at the scene. Neither officer activated emergency lights on their squad vehicles, flashed a weapon, or did anything to imply Cleveland's cooperation might be compelled in any way. Officer Doyle's demeanor and tone of voice were polite, if not friendly. Officer Doyle's request to see Cleveland's license, seconds into their discussion, was merely that—a request.

C. Officer Doyle merely asking Cleveland if he could see his driver's license was not a seizure

Although the district court did not specifically determine when Officer Doyle seized Cleveland, and rather conducted a particularized suspicion analysis based upon the information Officer Doyle had when he walked to his squad car to obtain a note pad, this Court "will affirm the district court when it reaches the right result for the wrong reason." *Marcial*, *supra*, ¶ 10. As the U.S. Supreme Court has observed, "[w]hile most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly

eliminates the consensual nature of the response." *Immigration & Naturalization Serv. v. Delgado*, 466 U.S. 210, 216 (1984).

This Court noted in *State v. Wilkins*, 2009 MT 99, 350 Mont. 96, 205 P.3d 795, "if an officer merely walks up to a person standing or sitting in a public place (or, indeed, who is seated in a vehicle located in a public place) and puts a question to him, this alone does not constitute a seizure." *Wilkins*, ¶ 10 (citing 4 Wayne R. LaFave, *Search and Seizure* § 9.4(a) 419-21 (4th ed. West 2004)). "[I]n order to make a basic inquiry," an officer may even "tap on the window of a car to get the person's attention or request that the person open the door or roll down the window without transforming the encounter into a seizure." *Id.*

Additionally, an officer's "request for identification or potentially incriminating questions do not by themselves make an encounter coercive." 4 Wayne R. LaFave, *Search and Seizure* § 9.4(a) 591-93 (5th ed. West 2012). No precept of law prevents an officer from engaging a citizen in such voluntary conversations. *State v. Merrill*, 2004 MT 169, ¶ 17, 322 Mont. 47, 93 P.3d 1227.

This Court and other state courts have determined that no seizure has occurred where a police officer posed questions to citizens parked in vehicles in public places. *See* LaFave at 576 n.58 (collecting cases): *Wilkins*, ¶ 12 (holding no seizure where officer "was the sole officer during the initial contact; he did not activate his emergency light, display a weapon or employ threatening tones");

(*State v. Casillas*, 782 N.W.2d 882, 894 (Neb. 2010) (no seizure where officer approached parked vehicle on foot and "asked for identification and posed a few questions"); *Branham v. Commonwealth*, 720 S.E.2d 74, 77 (Va. 2012) (no seizure where police approached parked car and merely made "request for identification" of occupant); *Custer v. State*, 135 P.3d 620, 626 (Wyo. 2006) (no seizure where police officer approached defendant as he sat in parked car and asked him questions); and *Rice v. State*, 100 P.3d 371, 379 (Wyo. 2004) (no seizure where case involved a "police officer merely walking up to a person seated in an automobile in a public place and directing a question to the occupant"); *see also State v. Questo*, 2019 MT 112, ¶¶ 18, 19, 395 Mont. 446, 443 P.3d 401 (no seizure where officer, who had investigative motive, approached defendant at a fuel pump but did nothing to restrain his liberty).

After introducing himself and explaining why he had approached, Officer Doyle politely asked if Cleveland would mind showing him his driver's license. This took place after about 30 seconds of contact. When Cleveland volunteered that he did not have his driver's license, Officer Doyle obtained a particularized suspicion of a statutory violation.[8] Notably, Cleveland promptly volunteered to provide Officer Doyle his name.

[8] *See* Mont. Code Ann. § 61-5-116(1), "A licensee must have the licensee's driver's license in the licensee's immediate possession at all times . . . ."

Cleveland paraphrases *State v. Strom*, 2014 MT 234, ¶ 13, 376 Mont. 277, 333 P.3d 218, to suggest that anytime an officer requests to see an individual's driver's license, the encounter has necessarily become a seizure, thereby requiring particularized suspicion. (Appellant's Br. at 12.) That is not the holding of *Strom*, and the facts of this case are readily distinguishable.

In *Strom*, at approximately 9:40 a.m., the investigating officer, Sergeant Heard, observed a legally parked van at a park in Butte. *Strom*, ¶ 4. There had apparently been some issues with vandalism in the park. *Id.* Sergeant Heard pulled in behind the van, approached the two females seated inside and, based upon how young the driver looked, asked for her driver's license. *Id.* ¶ 5. The driver, S.J., did not have a license, so she produced her school identification. *Id.* Sergeant Heard also asked the passenger, Strom, for her identification, which she provided. *Id.*

Sergeant Heard told both S.J. and Strom to wait, went back to his squad car *with their identifications cards*, checked for driver's licenses and active warrants, and learned that Strom had an active warrant out of Stillwater County. *Id.* Sergeant Heard arrested Strom, and police subsequently determined that she possessed methamphetamine. *Id.* ¶ 6.

In holding that Strom was improperly seized, this Court distinguished the facts in *Strom* from *Wilkins*, *supra*, by pointing out that,

> Unlike the casual conversation with the driver initiated by the officer in *Wilkins* to check on her welfare and the unusual circumstances of

> the running and lighted vehicle's presence in the area at that time of day, Sgt. Heard's *first communication* with both S.J. and Strom, properly parked in a public-use area in broad daylight, was a *demand* of them to produce identification. After first obtaining a student ID from S.J., Sgt. Heard asked Strom if she "had any type of driver's license or identification." *He then took both women's IDs to his patrol car, instructing them to wait there, to check on driver's status and warrants*. *Based on these facts, we conclude that a reasonable person would not have felt free to leave* despite the fact that more compelling actions were not taken, such as the use of emergency lights, drawing of a weapon, or parking in such a way as to physically prevent the van from departing, and, therefore, *both women were seized at that time*.

Strom, ¶ 13 (emphasis added).

Strom is consistent with U.S. Supreme Court precedent which indicates that merely asking for a driver's license, without more, does not constitute a seizure. In *Florida v. Royer*, 460 U.S. 491 (1983), the Supreme Court held that:

> *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.

Royer, 460 U.S. at 501 (emphasis added). Here, as in *Wilkins*, Officer Doyle had specific facts that objectively justified his approach to Cleveland's vehicle under the community caretaker doctrine. Likewise, Officer Doyle's first communication accurately conveyed that he was there to check on Cleveland's welfare.

Officer Doyle's BWC recording makes clear he did not *demand* to see Cleveland's license. After some brief conversation about Cleveland being slumped

over his steering wheel and his eyes burning really badly on an overcast morning, Officer Doyle politely asked, "Could I get your driver's license, you mind if I get that from you?" (D.C. Doc. 11, Def's Ex. B at 01:02-04.)

Instead of refusing or asking why Officer Doyle wanted to see his license, Cleveland volunteered to give his name before he responded that he didn't have his license. Cleveland's admission established particularized suspicion that he was violating Mont. Code Ann. § 61-5-116(1), "A licensee must have the licensee's driver's license in the licensee's immediate possession at all times . . . ."

In sum, prior to Officer Doyle asking if he could see Cleveland's driver's license, the record included the following: Polson was experiencing a "huge influx" of recent opiate overdoses; Officer Doyle knew that Cleveland had been slumped over his steering wheel with the engine running in a grocery store parking lot; and Cleveland, who was wearing sunglasses on a completely overcast day, did not initially recall this behavior. Cleveland then affirmed he had been slumped over his steering wheel and blamed it on his eyes, which he said were "burning really bad." (D.C. Doc. 11, Def's Ex. B, 00:53-01:00.)

Merely requesting to see his driver's license did not convert this lawful conversation into a seizure until Cleveland stated that he did not possess his driver's license. At that point, Officer Doyle could lawfully ask additional,

unrelated questions, as long as they did not unnecessarily prolong the duration of the seizure.

Based on the circumstances presented here, this Court should hold that Officer Doyle's polite request to take a look at Cleveland's driver's license was not a seizure. Rather, the seizure occurred when Cleveland could not produce his driver's license. Alternatively, this Court can affirm the district court's reasoning that under all of the circumstances, Officer Doyle had particularized suspicion to continue his contact with Cleveland after the welfare check ended, and he properly asked if he could see Cleveland's driver's license.

D. While asking statutorily authorized questions about his presence, Officer Doyle developed a particularized suspicion that Cleveland was under the influence of drugs.

Because Cleveland admitted he did not have his driver's license, Officer Doyle obtained particularized suspicion of a statutory violation to justify a brief seizure. *See State v. Zimmerman*, 2018 MT 94, ¶ 15, 391 Mont. 210, 417 P.3d 289 (citing *Kummerfeldt v. State*, 2015 MT 109, ¶ 11, 378 Mont. 522, 347 P.3d 1233 ("A statutory violation alone is sufficient to establish particularized suspicion for an officer to make a traffic stop.")).

As a result, Officer Doyle could lawfully ask additional, unrelated questions, as long as they did not substantially prolong the seizure. As this Court stated in *Zeimer*:

> Upon a valid investigative traffic stop, unrelated questioning, including requests for proof of identification and checks for warrants, driver's license, vehicle registration, and insurance, *inter alia*, do not exceed the purpose, and reasonably-related scope and duration of the investigation of the underlying purpose of the stop as long as "the unrelated question[ing] or [checking] does not substantially prolong the duration of the stop" beyond that reasonably necessary to diligently dispel or exhaust the predicate particularized suspicion of criminal activity that justified the stop.

Zeimer ¶ 45 (citing *State v. Laster*, 2021 MT 269, ¶ 49, 406 Mont. 60, 497 P.3d 224 (quotations and brackets in original, internal citations omitted), and *Rodriguez v. United States*, 575 U.S. 348, 354-57 (2015).)

This precedent is codified by Mont. Code Ann. § 46-5-401(2), which states:

> (1) In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense. If the stop is for a violation under Title 61 . . . the officer shall as promptly as possible inform the person of the reason for the stop.
>
> (2) A peace officer who has lawfully stopped a person or vehicle under this section may:
>
> (a) 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[.]

Subsequent to obtaining particularized suspicion of a statutory violation, Officer Doyle asked lawful questions that led to a particularized suspicion that Cleveland was impaired by drugs.

First, Officer Doyle asked, "Is, uh, does this vehicle belong to you, is it registered to you?" (*Id.* at 02:06-09.) Cleveland responded that the SUV belonged to his neighbor, Teresa, whose last name he did not recall, but who was "paying [him] out of Seattle." (*Id.* at 02:09-21.) Second, Officer Doyle asked, "What brings you to Polson?" (*Id.* at 02:22-24.) Cleveland stated that he had traveled "up here" the previous day for a "big meeting," which he clarified was a Narcotics Anonymous meeting. (*Id.* at 02:24-31.) Third, Officer Doyle logically inquired, "You came up yesterday—where, where'd you stay?" (*Id.* at 02:33-38.) Cleveland responded he had stayed at the "Econo something." (*Id.* at 02:42-44.)

Officer Doyle finally said, "I gotta ask, are you on probation, or anything like that?" (*Id.* at 02:52-55.) Cleveland confirmed that he was on probation and volunteered that he had been on probation out of Missoula since 2003. (*Id.* at 02:55-03:03.)

About two minutes after establishing particularized suspicion of a statutory violation, Officer Doyle learned that Cleveland was a felon who had been on probation for almost two decades, did not own the vehicle he was driving, did not know the full name of the owner, and explained being slumped over his steering wheel in a grocery store parking lot by claiming to have had a NA meeting the previous evening. Additionally, this was an individual who was wearing

sunglasses, ostensibly because his eyes were burning really badly on a completely overcast morning.

Cleveland cites *City of Missoula v. Metz*, 2019 MT 264, 397 Mont. 467, 451 P.3d 530, as illustrative of "how a valid welfare check can quickly become an unlawful seizure when police lack particularized suspicion of DUI." (Appellant's Br. at 22-25.) Other than *Metz* involving an initially valid welfare check, this case is readily distinguishable. *Metz* did not involve a probation search, and it is a strained analogy to compare the actions of the respective officers.

In *Metz*, the 911 caller requested a welfare check because a legally parked vehicle was running, and she could not tell if the driver was moving or not. *Metz*, ¶ 3. Metz was then surrounded by four police cars and other emergency vehicles, and at least the lead officer (Erickson) activated his emergency lights. *Metz*, ¶ 4. Officer Erickson asked Metz to exit his vehicle and provide identification. Metz provided his driver's license, which Officer Erickson apparently held throughout their encounter, even while he held strategy discussions with other officers at the scene. *Metz*, ¶¶ 5, 6.

In this case, the 911 caller specifically described Cleveland as "slumped over" his steering wheel and "motionless" for the few minutes she had been watching him, as if he might have had a heart attack. Officer Doyle did not ask Cleveland to exit his car, immediately explained his presence, and, when Officer

Doyle asked if he could see his driver's license, Cleveland stated that he did not have it.

In *Metz*, Metz explained to Officer Erickson that he had been relaxing for a "couple hours," and said that he was just trying to "take a nap." *Metz*, ¶ 4. Cleveland, on the other hand, eventually affirmed that he had been slumped over his steering wheel, and said it was because his eyes were burning really badly. He also claimed that he had been to a Narcotics Anonymous meeting the previous evening. Cleveland's excuse for being slumped over the wheel was peculiar and did not explain how a Narcotics Anonymous meeting the previous evening had resulted in this behavior in a grocery store parking lot in Polson the following morning.

In *Metz*, Officer Erickson indicated to other officers that he did not believe he had a particularized suspicion to investigate Metz for DUI. *Metz*, ¶ 26. In this case, Officer Doyle consistently articulated his suspicions to Captain Booth and to Officer Wolfe that Cleveland might have been under the influence of narcotics.

And, while Metz was on misdemeanor probation, it did not factor into the legality of the seizure, as none of the officers on the scene contacted his PO. *Metz*, ¶ 6. Cleveland was a felon who had been on probation for almost two decades. Officer Doyle diligently contacted Cleveland's PO after learning that information.

Metz made essentially the same argument as Cleveland does regarding the community caretaker doctrine, alleging that once the officer observed he was awake and his car was not running, the officer had an obligation to terminate the encounter. *Metz*, ¶ 16.

This Court disagreed. "While Metz argues that Officer Erickson should have been assured that Metz was not in peril and terminated the encounter when he arrived and neither of the conditions indicated in the 911 call were present—contrary to the information provided by the call, Metz's car was not running and Metz was moving—we find such an interpretation of the community caretaker doctrine too restrictive." *Id*.

Cleveland frames the argument as: "Doyle lacked particularized suspicion to conduct a DUI investigation at the time he asked Cleveland for his driver's license, told Cleveland to 'hang tight,' and retrieved a notepad." (Appellant's Br. at 25.) However, Officer Doyle's polite request to take a look at Cleveland's driver's license took place about 30 seconds into a lawful welfare check, and Officer Doyle retrieved a notepad because Cleveland had offered to give his name, and, unlike Metz, Cleveland did not have his driver's license. (*See* Mont. Code Ann. § 61-5-116(1).) Immediately after grabbing a notepad and writing down Cleveland's name and date of birth, Officer Doyle learned that Cleveland was a felon, an active probationer, and allegedly attending NA meetings more than an hour from where

he lived. Each of those factors were valid considerations for determining a particularized suspicion under the totality of the circumstances.

Furthermore, this Court has stated that, in applying the community caretaker doctrine, "[t]here is 'no requirement that the officer's subjective purpose be solely and exclusively to conduct a welfare check.'" *State v. Schlichenmayer*, 2023 MT 79, ¶ 20, 412 Mont. 199, 529 P.3d 789 (quoting *State v. Spaulding*, 2011 MT 204, ¶ 24, 361 Mont. 445, 259 P.3d 793).

Combined with the huge increase of opiate overdoses Polson was experiencing, Officer Doyle could not be expected to walk away from these circumstances without at least speaking with Cleveland's PO; which is what he did.

E. Based on the information Officer Doyle provided, Officer Wolfe had reasonable cause to authorize a probation search.

Probation is a form of punishment, and, accordingly, probationers do not enjoy the same liberty and expectations of privacy afforded every Montana citizen. *State v. Brooks*, 2012 MT 263, ¶ 14, 367 Mont. 59, 289 P.3d 105 (citing *State v. Moody*, 2006 MT 305, ¶ 19, 334 Mont. 517, 148 P.3d 662). The U.S. Supreme Court has recognized that "'the very assumption of the institution of probation' is that the probationer 'is more likely than the ordinary citizen to violate the law.'" *Id.* (citing *United States v. Knights*, 534 U.S. 112, 120 (2001) (quoting *Griffin v.*

Wisconsin, 483 U.S. 868, 880 (1987))). A probationer remains subject to a search at any time for reasonable cause at the request of his probation officer. *State v. Thomas*, 2008 MT 206, ¶ 11, 344 Mont. 150, 186 P.3d 864, citing *State v. Burchett*, 277 Mont. 192, 195, 921 P.2d 854, 856 (1996); Mont. Admin. R. 20.7.1101(7).

Probationers are subject to the lesser "reasonable cause" standard due to their "diminished expectation of privacy and because the probation officer is in the best position to determine what level of supervision is necessary to provide both rehabilitation of the probationer and safety for society." *State v. Charlie*, 2010 MT 195, ¶ 24, 357 Mont. 355, 239 P.3d 934 (citing *Burchette*, 277 Mont. at 195-96, 921 P.2d at 856 (1996)). The reasonable suspicion standard for warrantless probation searches is substantially less than the probable cause standard because of the probationer's diminished expectation of privacy. *State v. Fischer*, 2014 MT 112, ¶ 11, 374 Mont. 533, 323 P.3d 891 (citing *Moody*, ¶ 12). Whether reasonable grounds exist to conduct a probationary search is a factual inquiry determined by the totality of the circumstances. *Id.* (citing *State v. Stucker*, 1999 MT 14, ¶ 32, 293 Mont. 123, 973 P.2d 835).

In this case, Cleveland was prohibited from the use or possession of illegal drugs. Mont. Admin. R. 20.7.1101(9). Upon obtaining a reasonable suspicion that Cleveland was using or possessing drugs, Officer Wolfe was authorized to ask

Officer Doyle to conduct a probationary search of the vehicle he was driving. Mont. Admin. R. 20.7.1101(7).

Regardless of what "outside the record" information Officer Wolfe knew about Cleveland (*see* Appellant's Br. at 34), she was his probation officer. At a minimum, Officer Wolfe already knew that Cleveland had a history of drug use and/or addiction. Furthermore, Officer Wolfe was already aware of Cleveland's extensive criminal record, which included prior drug-related convictions. (*See* Doc. 10 at 1-2; Doc. 27 at 2-3.) This Court has long held that a suspect's criminal history is "one of the many factors to be considered under the totality of the circumstances test." *State v. Zito*, 2006 MT 211, ¶ 16, 333 Mont. 312, 143 P.3d 108 (citing *State v. Johnson*, 271 Mont. 385, 390, 897 P.2d 1073, 1076-77 (1995), (quoting *State v. Hook*, 255 Mont. 2, 6, 839 P.2d 1274, 1277 (1992))); *State v. Morse*, 2006 MT 54, ¶ 18, 331 Mont. 300, 132 P.3d 528.

Officer Doyle contacted Officer Wolfe on a Wednesday morning and informed her that Cleveland had just been observed slumped over his steering wheel in a grocery store parking lot in Polson. Even without specific details of how he was slumped over the steering wheel (*see* Appellant's Br. at 33), Officer Wolfe obviously understood it was in a manner alarming and/or unusual enough for someone to call the police, and for the police to convey that information to her.

Officer Doyle further informed Officer Wolfe that Cleveland was alone in the vehicle, which belonged to Teresa Swan, and that Cleveland claimed he was there because he had come up the previous day for a Narcotics Anonymous meeting. Officer Wolfe surely recognized that attending a purported NA meeting the previous day did not and could not explain why Cleveland was slumped over the steering wheel in his neighbor's SUV in a grocery store parking lot in Polson the following morning.

"The probation officer acts upon a continued experience with the probationer, with knowledge of the original offense, and with the probationer's welfare in mind. Because of his expertise, we view the probation officer in a far superior position to determine the degree of supervision necessary in each case." *State v. Burke*, 235 Mont. 165, 169, 766 P.2d 254, 256 (1988).

This Court has "long recognized that probation-police collaboration and cooperation in monitoring and ensuring probationer compliance with probation conditions and the criminal law is not only constitutionally proper, but highly desirable in furtherance of probation compliance and public safety." *State v. Peoples*, 2022 MT 4, ¶ 22, 407 Mont. 84, 502 P.3d 129 (citing *Burchett*, 277 Mont. at 196-97, 921 P.2d at 856-57; *Burke*, 235 Mont. at 170, 766 P.2d at 257).

Upon learning that Cleveland was slumped over the steering wheel in a grocery store parking lot in Polson on a Wednesday morning, that he did not have

his driver's license in his possession, that he did not own the vehicle he was driving, and that he explained this behavior by claiming to have been to a Narcotics Anonymous meeting the previous evening, Officer Wolfe had reasonable grounds to request a probation search of the vehicle.

III. Cleveland waived any objection to his agreed upon $300 costs of prosecution.

Costs of prosecution are specifically authorized by Mont. Code Ann. § 46-18-232. Therefore, any issue with the $300 costs of prosecution should have been objected to, rather than explicitly agreed to, in the district court.[9] Generally, this Court will not review an issue to which a party has failed to object and preserve for appeal because the objecting party never gave the trial court an opportunity to address and correct any perceived errors. *In the Matter of K.M.G.*, 2010 MT 81, ¶ 36, 356 Mont. 91, 229 P.3d 1227. "A condition of a sentence is reviewed for reasonableness only if the defendant objects at the time of sentencing." *State v. Holt*, 2011 MT 42, ¶ 10, 359 Mont. 308, 249 P.3d 470 (citing *State v. Hernandez*, 2009 MT 341, ¶ 3, 353 Mont. 111, 220 P.3d 25).

[9] Cleveland waived the right to challenge the imposition of these agreed upon costs. (Doc. 26 at 6, ¶ 10; *See also* Doc. 29 at 3: "Each of the parties was given an opportunity to be heard and for hearing on financial conditions at time of sentencing. The financial conditions are determined based upon Defendant's current and future projected ability to pay, taking into account all statutory factors and other input from the parties.")

This Court has recognized and applied an exception to that general rule, enunciated in *State v. Lenihan*, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979): an appellate court may review any sentence, even if not objected to at the trial court, if it is alleged that such sentence is illegal or exceeds statutory mandates. *State v. Lewis*, 2012 MT 157, ¶ 27, 365 Mont. 431, 282 P.3d 679. The *Lenihan* rule does not apply, however, to permit appellate review of a sentencing court's failure to abide by statutory requirements because such "error" results in an objectionable sentence, not necessarily an illegal one. *Lewis*, ¶¶ 27-29; *State v. Kotwicki*, 2007 MT 17, ¶ 13, 335 Mont. 344, 15 P.3d 892; *see also State v. Swoboda*, 276 Mont. 479, 482, 918 P.2d 296, 298 (1996); *State v. Nelson*, 274 Mont. 11, 20, 906 P.2d 663, 668 (1995).

In *Kotwicki*, the defendant argued that his sentence, which included a fine, was illegal because the district court did not inquire and make specific findings, as required by Mont. Code Ann. § 46-18-231(3), on Kotwicki's financial resources prior to imposing a fine. *Kotwicki*, ¶ 7. Kotwicki failed to raise an objection at sentencing and argued that the *Lenihan* exception applied, allowing him to raise the issue on appeal. *Kotwicki*, ¶ 9. However, this Court rejected that argument, noting that "[w]e consistently have held that a sentence is not illegal if it falls within statutory parameters." *Kotwicki*, ¶ 13.

Furthermore, this Court noted that "a sentencing court's failure to abide by a statutory requirement rises to an objectionable sentence, not necessarily an illegal one that would invoke the *Lenihan* exception." *Kotwicki*, ¶ 13. In Kotwicki's case, his fine fell within the parameters authorized by Mont. Code Ann. § 46-18-231, and was, therefore, not illegal for the purposes of the *Lenihan* exception. *Kotwicki*, ¶ 16. Likewise, an alleged failure to find that the agreed upon costs of prosecution were "expenses specifically incurred," creates an objectional sentence, and not an illegal sentence.

In this case, Cleveland's agreement to pay $300 in costs of prosecution falls within the statutory parameters of Mont. Code Ann. § 46-18-232, and is, therefore, not illegal for the purposes of the *Lenihan* exception. Any objection to whether the costs were specifically incurred expenses should have been made at sentencing or prior to explicitly agreeing to pay said costs while contemporaneously waiving any right to challenge them.

/ / /

CONCLUSION

This Court should affirm the district court's order concluding that Officer Wolfe had reasonable cause to request a probationary search of Cleveland's vehicle and imposing the agreed upon $300 costs of prosecution.

Respectfully submitted this 14th day of March, 2024.

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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 8,792 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, Tammy K Plubell, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-14-2024:

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