IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0613

STATE OF MONTANA,

Plaintiff and Appellant,

v.

COLE LARSON LEVINE.

Defendant and Appellee.

On Appeal from the Fourth Judicial District Court of Missoula County
State of Montana, the Honorable Shane A. Vannatta, Presiding

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I. Statement of the Issues Presented for Review.

Pursuant to M. R. App. P. 12(2), Appellee asserts he is dissatisfied with the Statement of the Issues by Appellant and states the issues presented for review are as follows:

> **Issue One**: Whether any Montana Statute confers extraterritorial jurisdiction to a district court to issue a search warrant for places and things located outside the State of Montana.
>
> **Issue Two**: Whether the Good Faith Exception applies to a void *ab initio* warrant.
>
> **Issue Three**: Whether the evidence seized pursuant to an invalid warrant must be excluded pursuant to the Supervisory Powers Doctrine.

II. Statement of the Case.

Pursuant to M. R. App. P. 12(1)(c) and 12(2), Appellee briefly indicates the nature of the case and the procedural disposition in the district court below, and states as follows:

Appellee Levine filed a Motion to Suppress and Request for Hearing. *See* Record at Register of Actions Document Sequence No. 28, (hereinafter "ROA [document sequence no.]") or ROA 28. Levine raised various claims of illegal search and seizure, including searches conducted both with and without a warrant. *See Id*. There were four issues presented by the Motion to Suppress. *See* ROA 47 (Reply

Brief in Support of Motion to Suppress and Motion to Dismiss). Only one claim is before this Court, which was characterized by Appellee Levine as whether the Search Warrant attached as Appendix B (hereinafter "App. B") to Appellant's "Related Documents" filing on December 22, 2023, was an illegal extraterritorial search warrant[1] and void *ab initio. See* ROA 47 at page 3:3-3:6. The Motion was fully briefed and the State was allowed to file a Sur-Reply to the Reply of Appellee. *See* ROA 49. The district court conducted a hearing on April 14, 2023, *see* ROA 52, and issued an Opinion & Order Partially Granting Defendant's Motion to Suppress, ROA 71, attached as Appendix A (hereinafter "App. A") to Appellant's "Related Documents" filing on December 22, 2023. The district court suppressed the evidence generally described in App. B *see* last page (the return) and more particularly described in the Order at ROA 71, page 24 (*See* App. A).

Appellant filed a Notice of Appeal as permitted by Mont. Code Ann.§ 46-20-103(2)(e) (appealing an order suppressing evidence) bringing the case before this Court.

III. Statement of the Facts Relevant to Issues Presented for Review.

Pursuant to M. R. App. P. 12(1)(d) and 12(2), Appellee states the facts relevant to the issues presented for review, with references to the pages or parts of the record at which material facts appear, are as follows.

[1] The Search Warrant and Return for Same make up Appendix B.

a. Facts Relevant to the Issues Presented for Review.

On October 3, 2022, Cpl. Mitchell Lang applied for a Search Warrant for data in possession of Cellco Partnership, LLP dba Verizon Wireless, located at 180 Washington Valley Road in the City of Bedminster, in the State of New Jersey. *See* Exhibit 5, to ROA 28 in its entirety. Fourth Judicial District Judge Shane A. Vannatta issued a search warrant, and the location in New Jersey was searched and evidence was seized. *See* App. B. The location, 180 Washington Valley Road, Bedminster, New Jersey is outside the State of Montana. The Search Warrant in question was an extraterritorial warrant.

b. Facts not Relevant to the Issues Presented for Review.

Appellant attempts to characterize Appellee Levine as a kidnapper and sexual assailant in a transparent effort to distract the Court from the issue presented and avoid scrutiny of the presence, as well as absence, of support for the Appellant's arguments. In addition, the only evidence supporting this allegation are hearsay statements by the prosecutors themselves (*See* ROA 2, Amended Motion and Affidavit for Leave to File Information), and the investigating officer (*see* Application for Search Warrant, at pages 1-2, of Exhibit 5 to ROA 28). Unlike most cases that come before this Court in criminal matters, there has been no trial or adjudication of guilt and there has been no adversarial testing of the State's allegations. A defendant in a criminal action is presumed innocent until the contrary

is proved. *See* Mont. Code Ann. § 46-16-204. Moreover, "…[t]his presumption remains with him throughout every stage of the trial…" *See* MCJI 1-104 (2022). Unless and until the State proves, at a trial, that Appellee Levine is Guilty, this Court should presume him to be innocent. In addition, numerous procedures fundamental to our criminal justice system and designed to reveal and discover the truth have not yet been employed. "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies… This right is a fundamental element of due process of law." *Washington v. Texas*, 388 U.S. 14, 19 (1967). "Our cases establish, at a minimum, that criminal defendants have …the right to put before a jury evidence that might influence the determination of guilt." *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987). Not only is this right fundamental and essential to a fair trial, "…this right is an essential attribute of the adversary system itself." *Id*. Last, but not least, none of the State's witnesses have been cross examined. "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested." *Davis v. Alaska,* 415 U.S. 308, 316 (1974).

This Court need not, and should not, make any determinations regarding Appellee Levine's guilt or innocence before resolving the issues presented. Conveniently, his guilt or innocence is not relevant to the issue to be determined,

whether district courts have jurisdiction to issue extraterritorial warrants, and the rule announced by the Court in this case will be applied to the innocent and guilty alike in the future.

IV. Statement of the Standard of Review.

Pursuant to M. R. App. P. 12(1)(e) and 12(2), Appellee states the standard of review for the issue presented for review is as follows:

Appellee agrees with the Statement of the Standard of Review by Appellant. When reviewing orders suppressing evidence, this Court reviews findings of fact for clear error, and reviews interpretation and application of law *de novo*. *See State v. Staker*, 2021 MT 151, ¶7, 404 Mont. 307, 489 P.3d 489. Interpretation of statutes are questions of law which this Court reviews for correctness. *See City of Missoula v. Fox*, 2019 MT 250, ¶8, 397 Mont. 388, 450 P.3d 898.

V. Argument.

Pursuant to M. R. App. P. 12(1)(f),(g), and 12(2), Appellee makes his Argument and precedes same with a summary of the argument.

a. Summary of Argument.

The search and seizure of evidence obtained by virtue of the extraterritorial warrant issued to Verizon Wireless in Bedminster, New Jersey was unconstitutional because the issuing court, the Montana Fourth Judicial District Court was without jurisdiction and authority to issue such an extraterritorial warrant. As the issuing

court was without jurisdiction to issue the warrant, the warrant was void *ab initio*, and the *Leon* good faith exception does not apply. Even if *Leon* applies to void *ab initio* warrants, this Court should find the evidence was properly excluded under the Supervisory Powers Doctrine.

b. Argument.

i. Montana Law Does Not Provide Extraterritorial Jurisdiction to Issue Search Warrants to be Executed Outside the State of Montana.

In Montana, district court jurisdiction is provided for in Art. VII § 4 of the Montana Constitution. This section gives Montana district courts "original jurisdiction in all criminal cases amounting to a felony and all civil matters and cases at law and in equity." Mont. Const. Art. VII § 4. A Montana district court's power of process extends "to all parts of the state" and a Montana district court may have "such additional jurisdiction as delegated by the laws of the United States or the state of Montana." *Id*.

Montana Law does not delegate jurisdiction to Montana district courts to issue extraterritorial search warrants. Mont. Code Ann. § 46-5-220 gives lower court (City, Municipal and Justice Court) judges authority to issue warrants "within the judge's geographical jurisdiction" and gives Montana district court judges authority to issue warrants "within this state." *See Also* Commission Comments, "[t]he statute

allows a [Montana] District Court Judge to order a search and seizure anywhere in the state.”)*; State v. Grussing*, 2022 MT 76, ¶9, 408 Mont. 245, 507 P.3d 1152 (“Section 46-5-220, MCA, allows a district court to issue a warrant anywhere within the State …”). The plain meaning of this statute is district courts can order search and seizure within the State, but not outside the State. Judge Watters held in *United States v. Webb*, United States District Court for the District of Montana Case No. 1:19-cr-00121-SPW, “… Montana Code Annotated § 46-5-220(2) does not authorize extra-territorial search warrants.” Montana Fourth Judicial District Court Judge Shane A. Vannatta, who issued the warrant in question below, agreed and suppressed the evidence seized.

Other courts have long recognized the principle “every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory.” *Overby v. Gordon*, 177 U.S. 214, 222 (1900). A corollary of that principle is “no State can exercise direct jurisdiction and authority over persons and property ***without*** its territory. The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others.” *Id*. (emphasis added). As a result, “no tribunal established by [one State] can extend its process beyond [its] territory so as to subject either persons or property to its decisions.” *Id*. at 223.

This principle applies to search warrants. "Crossing state lines by allowing an Ohio court to determine when California citizens and property are subject to search and seizure crosses [the] constitutional line … Allowing one state's court to determine when property, residences, and residents of another state may be subject to search and seizure would trample the sovereignty of states to determine the procedures by which a warrant may be issued and executed and of their courts to determine the consequences of a failure to follow those laws." *State of Ohio v. Jacob*, 185 Ohio App.3d 408, 414-415, ¶25, 924 N.E.2d 410, 415-416 (Ohio App. 2009). The "… lack of jurisdiction to issue the [search] warrant is not a mere technicality, but results in a nullity." *State v. Kirkland*, 212 Ga.App. 672, 442 S.E.2d 491 (Ga. Ct. App. 1994) *quoting Pruitt v. State*, 123 Ga.App. 659, 664, 182 S.E.2d 142 (1971).

States do have the ability to vest their courts with authority to issue extraterritorial search warrants under limited circumstances, and some states have enacted such laws. The Montana Legislature has chosen not to do so. Montana does have a statute allowing warrants for electronic data to be served on domestic entities or foreign companies otherwise doing business under a contract with a resident of Montana. However, the statute does not give district courts authority to issue extraterritorial warrants and does not give authority for law enforcement to serve providers who have contracts with non-residents, or search locations outside the State of Montana. Mont. Code Ann. § 46-5-605(3)(a) provides as follows:

> A warrant or investigative subpoena under 46-5-602 may be served only on a provider of an electronic communication that is a domestic entity or a company or entity otherwise doing business in this state under a contract or a terms of service agreement with a resident of this state if any part of that contract or agreement is to be performed in this state.

Mont. Code Ann. § 46-5-605(3) does not give authority to issue an extraterritorial warrant. When the Montana legislature intends to give permission for a Montana court to exercise authority beyond the State's borders, it expressly does so in a statute. For example, Montana courts are expressly given authority to cooperate with out-of-state courts in summoning witnesses from outside the state. Mont. Code Ann. § 46-15-113, captioned "Subpoena of Witness in Another State to Testify in this State" authorizes a judge of a Montana court to "issue a certificate under the seal of the court" stating the facts necessary to justify summoning the out-of-state witness. "The certificate must be presented to a judge of a court of record in the county in which the witness is found." *Id*. Montana has a reciprocal statute, Mont. Code Ann. § 46-15-112, which allows the judge of a court of record in any other state to comply with essentially the same process in obtaining a witness from Montana. Under special circumstances, Montana also explicitly provides for jurisdiction over a nonresident for purposes of establishing child support. *See e.g.,* Mont. Code Ann. § 40-4-210. There is no Montana statute expressly authorizing a Montana court to issue a search warrant to search and seize property located beyond the borders of the state.

A version of Mont. Code Ann. § 46-5-605(3) that would have expressly provided authority to issue an extraterritorial warrant was rejected by the Montana Legislature. The legislative history of House Bill 148 (2017), later codified as Mont. Code Ann. § 46-5-605(3), reveals an earlier version of the bill which would have required a provider of an electronic communication to produce all electronic customer data, contents of communications and other information "regardless of where the information was held."[2] The Montana Legislature struck the language "regardless of where the information was held" from the draft legislation and it does not appear in the final version of statute. *See* Mont. Code Ann. § 46-5-605(3).

Mont. Const. Art. VII § 4 may allow district courts to exercise "such additional jurisdiction as delegated by the laws of the United States" but no such "additional jurisdiction" has been delegated. Federal Law did not provide jurisdiction to the issuing judge who signed the warrant at App. B and did not otherwise authorize the issuance of the search warrant. The only relevant federal law is the Stored Communications Act (SCA) 18 U.S.C. § 2701 *et. seq.* That law provides:

> A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of

[2] *See* HB 148 of the 65th Montana Legislature, page 4:6-4:7, available at https://legiscan.com/MT/text/HB148/id/1596680/Montana-2017-HB148-Amended.pdf.

> such service (not including the contents of communications) when the governmental entity –
>
> obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (**or, in the case of a State court, issued using State warrant procedures** …
>
> 18 U.S.C. § 2703(c)(1)(A). (emphasis supplied).

Federal law allows a government entity to apply for a warrant to obtain electronic data, but when the warrant is applied for in State court, the warrant must be *issued using State warrant procedures*. State warrant procedures require the issuing court to have jurisdiction to issue the warrant. Here, the state district court did not have jurisdiction to issue a search warrant for property located in another state, it was not otherwise provided that authority, and the SCA does not apply.

Montana Law does not provide jurisdiction to district courts to issue extraterritorial warrants or authorize the search and seizure of evidence outside the State of Montana.

ii. The Good Faith Exception does not Apply to Void *Ab Initio* Warrants.

Under Montana law, if a judge does not have statutory authority to issue a search warrant, the warrant is void *ab initio. See Potter v. District Court of the Sixteenth Judicial Dist.*, 266 Mont. 384, 393, 880 P.2d 1319, 1325 (1994). As set forth in *Potter*, a search warrant issued without authority is of no force and effect and provides law enforcement with no authority to search or seize evidence. *See Id*.

Seizing evidence in the absence of a valid search warrant violates a defendant's "substantial rights to be free from unreasonable searches and seizures under Article II, Section 11 of Montana's Constitution." *Id.* In *State v. Vickers*, 1998 MT 201, ¶23, 290 Mont. 356, 964 P.2d 756, this Court considered the same Good Faith *Leon/Potter* arguments raised by the Appellant below and rejected them. The *Vickers* Court held:

> … the State's reliance on *Leon* is misplaced. In *Leon*, the basic inquiry was whether the purpose of the exclusionary rule would be served in suppressing evidence seized pursuant to a search warrant issued by a judge who mistakenly thought that the warrant was supported by probable cause. [*United States v.*] *Leon,* 468 U.S. [897] at 905-922 [(1984)] … In contrast, the [basic] inquiry in the instant case is not whether the purposes of the exclusionary rule would be served by invalidating the search warrants, but whether [the warrant issuing judge] had the authority to issue the search warrants at all. *See Potter*, 266 Mont. at 392, 880 P.2d at 1325. We have held that failure to have search warrants issued by a properly appointed judge renders them void *ab initio,* of no force or effect. *Potter*, 266 Mont. at 393, 880 P.2d at 1325. If a search warrant is void *ab initio,* the inquiry stops and all other issues pertaining to the validity of the search warrant, such as whether the purpose of the exclusionary rule is served, are moot.

The district court correctly held the search warrant at App. B was void *ab initio* because the issuing judge, Judge Vannatta himself, did not have authority to issue the extraterritorial warrant. A void warrant is no warrant at all, and warrantless searches violate the Fourth Amendment as well as Art. II § 11.

Appellant argues this Court should overrule *Potter* and *Vickers*. This Court held in *State v. Wolfe,* 2020 MT 24, ¶21, 398 Mont. 403, 457 P.3d 218 "… principles

of law should be positively and definitively settled so that courts, lawyers, and, above all, citizens may have some assurance that important legal principles involving their highest interests shall not be changed from day to day." *Id. citing State ex rel. Sparling v. Hitsman*, 99 Mont. 521, 525, 44 P.2d 747, 749 (1935). "Stare decisis is a fundamental doctrine that reflects this Court's concerns for stability, predictability, and equal treatment*." Id.* citing *Formicove, Inc. v. Burlington N., Inc.*, 207 Mont. 189, 194, 673 P.2d 469, 472 (1983). In order for the Appellant to overcome the rule of Stare Decisis it must demonstrate the rule of *Potter* and *Vickers* is "manifestly wrong." *See Wolfe* at ¶22 ("… the rule of stare decisis will not prevail where it is demonstrably made to appear that the construction placed upon a statute [or constitutional provision or doctrine] in a former decision is manifestly wrong." *Id. quoting Hitsman*, 99 Mont. at 525, 44 P.2d at 749). Appellant has not demonstrated the rule of *Potter* and *Vickers* is manifestly wrong, nor attempted to do so, and this court should decline to overrule those cases.

iii. Exclusion is Independently Required by Montana Statute.

Additionally, Mont. Code Ann. § 46-5-110 addresses "Location Information Privacy." This statute provides "a government entity may not obtain the location information of an electronic device without a search warrant issued by a duly authorized court." Mont. Code Ann. § 46-5-110(1)(a). The remedy for violating this statute, in a Montana State district court, is provided for in subpart (c) which states:

> Any evidence obtained in violation of this section is **not** admissible in a civil, criminal, or administrative proceeding and may **not** be used in an affidavit of probable cause in an effort to obtain a search warrant.

Mont. Code Ann. § 46-5-110(1)(c)(emphasis added).

The Legislature did not provide for any good faith exception to Mont. Code Ann. § 46-5-110(1)(c). The Search Warrant filed as App. B purported to authorize the search and seizure of property located outside of Montana in the State of New Jersey but was not issued by a "duly authorized court" and all evidence obtained is inadmissible under Montana State Law. *See Potter* and Mont. Code Ann. § 46-5-110(1)(c), *supra.* The executing state officers cannot reasonably claim good faith reliance on an ostensibly valid warrant given the warrant in question was void *ab initio* and State law would prohibit its introduction into evidence in a State court proceeding.

iv. Exclusion is Required by the Supervisory Powers Doctrine.

Appellee Levine demonstrated below, and the district court found, the Search Warrant at issue was without legal basis because Montana Law does not authorize extraterritorial warrants, and where, as here, the district court judge lacks statutory authority to issue a search warrant, the warrant is void *ab initio,* and the void warrant provides law enforcement with no authority to search or seize evidence. *See* Opinion & Order Partially Granting Defendant's Motion to Suppress, App. A, at 21; *See Also, Potter, supra* and *Vickers, supra*.

In the federal system, the courts have developed a doctrine known as the Doctrine of Supervisory Powers. The United States Supreme Court has provided the following guidance:

> "[G]uided by considerations of justice," *McNabb v. United States,* 318 U.S. 332, 341 (1943), and in the exercise of supervisory powers, federal courts may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress. The purposes underlying use of the supervisory powers are threefold: to implement a remedy for violation of recognized rights, *McNabb, supra,* at 340; *Rea v. United States,* 350 U.S. 214, 217 (1956); to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before the jury, *McNabb, supra,* at 345; *Elkins v. United States,* 364 U.S. 206, 222 (1960); and finally, as a remedy designed to deter illegal conduct, *United States v. Payner*, 447 U.S. 727, 735-736, n. 8 (1980).
>
> *United States v. Hasting*, 461 U.S. 499, 505 (1983).

The Supervisory Powers Doctrine is justified in three circumstances: (1) "to implement a remedy for the violation of a recognized statutory or constitutional right;" (2) "to preserve judicial integrity by ensuring a conviction rests on appropriate considerations validly before a jury;" (3) " and to deter future illegal conduct." *United States v. Chapman*, 524 F.3d 1073, 1085 (9th Cir. 2008), *quoting United States v. Simpson,* 927 F.2d 1088, 1090 (9th Cir. 1991). The Supervisory Powers Doctrine, in the district courts of the United States, exists to correct injustices that do not amount to statutory or constitutional violations. *See McNabb*, 318 U.S. at 340; *See Also, Hasting*, 461 U.S. at 505 ("… [F]ederal courts may, within limits, formulate procedural rules not specifically required by the Constitution or the

Congress … to preserve judicial integrity. …"); and *Cupp v. Naughten*, 414 U.S. 141, 146 (1973) ("The appellate court … may likewise require [the trial court] to follow procedures deemed desirable from the viewpoint of sound judicial practice although in nowise commanded by statute or by the Constitution.")

Federal Courts are not the only courts to recognize the Supervisory Powers Doctrine. In *State v. Harrison*, 95 Haw 28, 32, 18 P.3d 890, 894 (Haw. 2001), the Hawaii Supreme Court held "… [Hawaiian State] courts have inherent equity, supervisory, and administrative powers as well as inherent power to control the litigation process before them. Inherent powers of the court are derived from the state constitution and are not confined by or dependent on statute." Arizona employs the Supervisory Powers Doctrine to the same extent it exists in the federal courts. *See State v. Dumaine*, 162 Ariz. 392, 403, 783 P.2d 1184, 1195 (Ariz. 1989) *citing Hasting*, 461 U.S. at 505. Minnesota has held the doctrine applies when the interests of justice require its application. *See State v. Salitros*, 499 N.W.2d 815, 820 (Minn. 1993).

This Court embraced the supervisory powers doctrine in *State v. Passmore*, 2010 MT 34, ¶46, 355 Mont. 187, 225 P.3d 1229, and quoted *United States v. Carrasco*, 786 F.2d 1452 (9th Cir. 1986) extensively. *Passmore* held:

> "Charging decisions are generally within the prosecutor's exclusive domain," and "the separation of powers [doctrine] mandates judicial respect for the prosecutor's independence." [*United States v.*] *Carrasco,* 786 F.2d [1452] at 1455 [9th Cir. 1986]; *see also State ex rel.*

> *Fletcher v. District Court,* 260 Mont. 410, 414-15, 417-18, 859 P.2d 992, 995, 996-97 (1993). Accordingly, an indictment will be dismissed only in flagrant cases of prosecutorial misconduct. Dismissal may be based either on constitutional grounds or on the court's exercise of its supervisory powers, and the appropriate analysis will differ accordingly. The purpose of a dismissal may be to preserve fairness to the individual defendant, to deter prosecutorial misconduct, or to protect judicial integrity." *Carrasco,* 786 F.2d at 1455 (citations omitted). But dismissal is permitted only if the misconduct was prejudicial to the defendant. *See* §§ 46-1-103(3), 46-20-701(2), MCA; *cf Bank of Nova Scotia* [*v. United States*], 487 U.S. [250] at 254-55, 108 S.Ct. at 2373-74 [(1988)].
>
> *Passmore*, 2010 MT 34, ¶46.

Dismissal is not the only remedy under the Supervisory Powers Doctrine. The doctrine also authorizes the exclusion of evidence. *See United States v. Powe,* 9 F.3d 68, 69 (9th Cir. 1993) and *United States v. Lopez*, 4 F.3d 1455, 1463 (9th Cir. 1993)[3]. Defendant submits the evidence seized pursuant to the search warrant in question, App. B, was discovered during a search which was conducted pursuant to an invalid extraterritorial warrant which was legally and constructively the same as conducting it with no warrant at all. The district court concluded the search warrant was issued in violation of Montana statutory authority and absent exclusion, there will be no remedy for the statutory violation, and any resulting conviction will be based on

[3] The *Powe* Court acknowledged the authority but chose not to exercise it and did not exclude the evidence in question. The *Lopez* Court found the sanction of dismissal was not appropriate, but lesser sanctions were appropriate and should have been considered and imposed pursuant to the Supervisory Powers Doctrine.

inappropriate considerations not validly before the jury, and law enforcement officers will have no deterrent to the continued use of these invalid warrants. *See Chapman, supra* at 1085. *See also, Salitros, supra* at 820 (interests of justice provides authority to impose remedies under supervisory powers doctrine). This Court should require the exclusion of evidence seized pursuant to an extraterritorial warrant, or one otherwise lacking in jurisdiction, pursuant to the Supervisory Powers Doctrine.

VI. Conclusion and Statement of Relief Sought.

Pursuant to M. R. App. P. 12(1)(h) and 12(2), Appellee states his conclusion and the precise relief sought.

a. Conclusion.

The Verizon Wireless Search Warrant, App. B, is an extraterritorial warrant, issued without statutory authority, and was void *ab initio*. The search and seizure conducted pursuant to this warrant was in violation of the Fourth Amendment as well as Art. II, §§ 10 and 11 of the Montana Constitution. The evidence was illegally obtained and the district court below did not err in excluding it.

b. Statement of Relief Sought.

This Court should issue an order or opinion affirming the district court below and excluding the evidence seized pursuant to the extraterritorial warrant from evidence at the trial of Appellee Levine.

Respectfully submitted this 20th day of March, 2024.

/s/ Shandor S. Badaruddin

_____

Shandor S. Badaruddin

Attorney for Appellee Cole Larson Levine

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word for Mac version 16.47 is 4,512 words, excluding table of contents, table of citations, certificate of service, certificate of compliance and the appendices per M. R. App. P. 11(4)(d).

So certified this 20th day of March, 2024.

/s/ Shandor S. Badaruddin

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