IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0550

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSHUA ALLEN BALDWIN,

Defendant and Appellant.

REPLY BRIEF OF APPELLANT

On Appeal from the Montana Third Judicial District Court,
Deer Lodge County, the Honorable Ray J. Dayton, Presiding

APPEARANCES:

CHAD WRIGHT
Appellate Defender
MICHAEL MARCHESINI
Assistant Appellate Defender
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147
Michael.Marchesini@mt.gov
(406) 444-9505

ATTORNEYS FOR DEFENDANT
AND APPELLANT

AUSTIN KNUDSEN
Montana Attorney General
MARDELL PLOYHAR
Assistant Attorney General
P.O. Box 201401
Helena, MT 59620-1401

BEN H. KRAKOWKA
Anaconda-Deer Lodge County
Attorney
MICHELLE SIEVERS
Deputy County Attorney
Courthouse – 800 Main St.
Anaconda, MT 59711

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Laws

Other Authorities

INTRODUCTION

The State strains to parse out differences between the court "conditions" in *Letasky* and the court "conditions" in this case, arguing the former are not "mandates" but the latter somehow are. *Letasky* clearly applies here; neither conditions of a suspended sentence nor conditions of release are "mandates" within the meaning of the criminal contempt statute. Officer Beasley had no probable cause to arrest Joshua for contempt.

The State raises a backup theory of admissibility for the tainted evidence for the first time on appeal: the good faith exception to the exclusionary rule. This is a federal doctrine that does not, and should not, apply under the Montana Constitution. This Court should vindicate Montanans' heightened privacy and search and seizure protections by definitively rejecting the federal good faith exception. Regardless, Beasley simply misunderstanding the law is not "good faith."

The State also argues the contraband in Joshua's car should not be suppressed because, when the police decided to investigate Joshua's car in the parking lot after arresting him, that was an "independent source" for their discovery of the evidence. The police investigated

Joshua's car based solely on knowledge they ascertained from Joshua's unlawful arrest. That is fruit of the poisonous tree, not an independent source.

ARGUMENT

I. Beasley lacked probable cause to arrest Joshua without a warrant.

A. Joshua did not violate his release condition.

Joshua reiterates he did not violate a condition of release, so Beasley had no probable cause to arrest him. (Appellant's Br. at 14–16.) His condition did not bar entry into casinos; it barred entry into "bars," "taverns," and other businesses where alcohol is "the chief item of sale." (Doc. 22, Ex. 2 at 2.) When a person's freedom hinges on compliance with a court condition such as this, due process requires that the person "know in advance what behavior is prohibited." 6 Wayne R. LaFave, *Criminal Procedure* § 26.9(b) (4th ed. Dec. 2023 update). Joshua in fact did not know—and could not reasonably have known—this condition prohibited him from standing inside a Lucky Lil's casino to briefly chat with a friend. (Doc. 22, Ex. 3 at 3 (Beasley acknowledging Joshua "did not realize that was one of his conditions").)

The State asserts, without citing anything, that "[t]he casino where Officer Beasley located Baldwin qualifies as a business where alcoholic beverages are the chief item of sale." (Appellee's Br. at 11.) Below, the State similarly failed to present any evidence or testimony that this casino's "chief item of sale" was alcohol. (*See* Doc. 23 at 2.)

The State papers over Beasley's incorrect belief that Joshua's condition prohibited him from entering any establishment where alcohol was "a" primary item of sale, rather than "the" chief item of sale. (Appellee's Br. at 11.) The State claims this distinction is "insignificant." (Appellee's Br. at 11.) This distinction is very significant to Joshua, whose freedom hinged on Beasley's incorrect understanding about the wording of this condition.

Alcohol is "the" chief item of sale in a bar, tavern, or liquor store, which Joshua's condition made clear. (Doc. 22, Ex. 2 at 2.) By contrast, alcohol is "a primary" item of sale in a casino,[1] convenience store, grocery store, restaurant, concert venue, rodeo arena, or football

[1] A casino's primary function is the provision of gambling, not the sale of alcohol. *Casino*, *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/casino (last accessed April 2, 2024) (defining "casino" as a building or room "used for social amusements," and "specifically: one used for gambling").

stadium. Joshua's condition prohibited his presence at the former, not the latter. (Doc. 22, Ex. 2 at 2.) Beasley was simply incorrect that Joshua violated his conditions of release.

B. Even if Joshua violated a condition of release, Beasley lacked probable cause to arrest him for criminal contempt of court.

1. As this Court held in *Letasky*, a court "condition" is not a "mandate" within the meaning of the criminal contempt statute.

The State argues this Court's holding in *Letasky*—that "conditions" on a court order are not "mandates" for purposes of criminal contempt—applies only to suspended sentence conditions but not conditions of release. (Appellee's Br. at 9, 13–16.) In the State's view, a duly convicted probationer who violates a court condition is immune from prosecution for contempt, but a presumptively innocent person awaiting trial on bail who violates the same condition may be prosecuted for contempt. Nothing in Montana statute, *Letasky*, or the common understanding of a "condition" supports this illogical distinction.

The State tries to distinguish *Letasky* by narrowly focusing on procedural differences between suspended sentences and release orders.

(Appellee's Br. at 9, 13–16.) This misses the big picture: *Letasky* was about interpreting an element of *criminal contempt*, not about the particular nuances of suspended sentences. *See State v. Letasky*, 2007 MT 51, ¶¶ 10–18, 336 Mont. 178, 152 P.3d 1288. The core holding of *Letasky* is that the element of criminal contempt requiring violation of a court "mandate" does not apply to "conditions" that a court places on its lawful order. *Letasky*, ¶ 13. That holding applies with equal force to conditions of release as to conditions of suspended sentences.

When the Justice Court released Joshua on bail pending his trial for misdemeanor assault, that court's "mandate" was that Joshua be released on bail and allowed to live in the community, rather than in jail, pending trial. (Doc. 22, Ex. 2 at 1 ("IT IS HEREBY ORDERED that the Defendant be and hereby is admitted to bail in the amount of $5,000.").) The very term, "release order," implies the court's "order" is for the defendant's "release." Indeed, the Justice Court's order was titled, "Release Order and Conditions of Bail," clearly indicating the "order" was for him to be released, and the "conditions" were the contingencies placed on that order. (Doc. 22, Ex. 2 at 1.) After mandating Joshua's release on bail, the order states that "the

Defendant's *release* be and hereby is *subject to the following conditions*.") (Doc. 22, Ex. 2 at 1 (emphasis added).)

This aligns with the plain language meaning of a "condition." A condition is a "prerequisite" or "a premise upon which the fulfillment of an agreement depends."[2] A "mandate," on the other hand, is "an authoritative command."[3] A mandate requires a person to do something; a condition simply makes one thing contingent on something else.

A condition gives someone a choice, while a mandate does not. By way of analogy, when the U.S. government conditions foreign aid on recipient countries implementing democratic, human-rights, or economic reforms, it does not *mandate* those countries do anything. It simply offers a benefit (*e.g.*, money), and it gives those countries a

---

[2] *Condition*, *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/condition (last accessed April 2, 2024).

[3] *Mandate*, *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/mandate (last accessed April 2, 2024).

choice: comply with the conditions and keep the benefit, or violate the conditions and lose the benefit.[4]

The same is true for Joshua's release conditions. The Justice Court offered Joshua a benefit (his freedom pending trial), and it gave him a choice: comply with the court's stated conditions and keep that benefit or violate the conditions and give up that benefit. This condition was not an "independent mandate," and its violation is not criminal contempt. *Letasky*, ¶ 15.

2. The Legislature could have, but did not, include criminal contempt as an available remedy for a conditional release violation.

The Legislature explicitly provided the remedies for a violation of a condition of release in Mont. Code Ann. §§ 46-9-311, -503, and -505. Those enumerated remedies are: the prosecution moving to revoke bail; a judge issuing an arrest warrant; the defendant appearing before the judge; and the holding of a hearing to determine whether to increase bail, alter the conditions of bail, or revoke bail altogether. §§ 46-9-311(1), 46-9-503(1), 46-9-505(1)–(4).

---

[4] *See*, *e.g.*, Jeremy M. Sharp, *Egypt: Background and U.S. Relations*, Congressional Research Service, https://sgp.fas.org/crs/mideast/RL33003.pdf (updated May 2, 2023) at 20–23.

Nothing in these statutes allows for the warrantless arrest of an alleged conditional release violator. By contrast, the Legislature explicitly provided for warrantless arrests of suspected probation or parole violators. Mont. Code Ann. §§ 46-23-1012(2) ("Any probation and parole officer may arrest the probationer without a warrant" upon a suspected violation), -1023(2) (stating the same for parolees). The absence of such language in the conditional release statutes evinces legislative intent that suspected conditional release violators *not* be subject to warrantless arrests.

The history of these statutes also proves the Legislature did not intend for any run-of-the-mill violation of a condition of release to trigger a separate prosecution for contempt. In 1991, the Legislature amended § 46-9-503(1) to include the language it contains today. 1991 Mont. Laws ch. 800, § 83. The 1991 Commission Comments to that statute explain, "This statute combines elements of the 1987 state code *and the federal code* into a single statute concerning the violation of release conditions." 1991 Commission Comments to 46-9-502[5]

[5] The commission comments to both §§ 46-9-502 and -503 were printed under § 46-9-502.

(emphasis added). The comments continue that the 1991 revision "reflects a provision from the federal code that allows the prosecutor to seek a revocation of a release order when conditions imposed by the court are not being observed. See 18 U.S.C. 3148." 1991 Commission Comments to 46-9-502.

The federal statute to which these 1991 comments refer—18 U.S.C. § 3148—was enacted in 1984 and explicitly provides the following remedies for a violation of a federal condition of release: "revocation of release, an order of detention, *and a prosecution for contempt of court*." 18 U.S.C. § 3148(a), (c) (emphasis added).

The 1991 Montana Legislature examined that federal statute and decided to incorporate some, but not all, of its provisions into Montana law. *See* 1991 Commission Comments to 46-9-502; 1991 Mont. Laws ch. 800, § 83. The Legislature conspicuously *declined* to include the federal statute's explicit remedy of "prosecution for contempt of court." *Compare* 18 U.S.C. § 3148(a), (c), *with* §§ 46-9-311, -503, and -505. This Court should not insert into the conditional release statutes what the Legislature deliberately omitted. Mont. Code Ann. § 1-2-101.

As the State notes, the Legislature did carve out one specific conditional release violation (failure to appear) as a separate criminal offense (bail jumping). *See* Mont. Code Ann. §§ 46-9-505(1), 45-7-308(1). This makes sense, given the paramount concern of ensuring a defendant released on bail subsequently shows up for court. *See* Mont. Code Ann. § 46-9-106. In fact, ensuring the defendant shows up for court is so important that the Legislature separately mandated it. Mont. Code Ann. § 46-9-105(2) ("If a person is released, that person *shall appear* to answer the charge for the alleged commission of the offense.") (emphasis added). The fact the Legislature defined a violation of *the single most important* condition of release as a specific criminal offense (bail jumping) does not mean it defined *every* violation of a condition of release as a different criminal offense (contempt of court).

Finally, the State argues its position that criminal contempt encompasses violations of conditions of release is "consistent with federal courts." (Appellee's Br. at 9.) For this proposition, the State relies primarily on one out-of-circuit case from 1980. (Appellee's Br. at 15–16 (discussing *United States v. Williams*, 622 F.2d 830 (5th Cir. 1980).) The State ignores that for the past four decades, federal law has

explicitly provided that "prosecution for contempt of court" is a remedy for a conditional release violation. 18 U.S.C. § 3148(a), (c). Montana's conditional release statutes contain no corollary to this, so federal law has no bearing on interpreting the relevant Montana law.

II. The State's novel "good faith" theory on appeal cannot excuse Joshua's unlawful arrest and the tainted evidence that flowed from it.

The State contrives a new theory on appeal that it did not assert below: assuming Beasley's warrantless arrest of Joshua for standing in a casino was unlawful, the fruits of that arrest should not be suppressed because Beasley acted in "good faith." (Appellee's Br. at 9, 16–18.) "Good faith" is not a recognized exception to the exclusionary rule in Montana, and even if it were, Beasley's actions here did not satisfy it.

As an initial matter, the State did not raise any argument below about a "good faith" exception to the exclusionary rule. (*See* Doc. 22; 2/23 Tr. at 1–17.) It now raises this for the first time on appeal. (Appellee's Br. at 16–18.) "It is a settled rule in Montana that [this Court] will not review an issue raised for the first time on appeal." *In re Custody of N.G.H.*, 1998 MT 212, ¶ 19, 290 Mont. 426, 963 P.2d 1275. This principle has its roots in due process, which "requires a reasonable

notice as to give everyone interested their opportunity to be heard." *State v. Rowe*, 2024 MT 37, ¶ 40, ___ Mont. ___, 543 P.3d 614 (Baker, J., dissenting) (internal quotations omitted).

The parties agreed below that the legal issues in this case were straightforward and could be decided, in the prosecutor's words, "on the briefs." (2/23 Tr. at 6.) The State's brief did not argue for a good faith exception. (Doc. 22.) Beasley did not testify at the suppression hearing, and the State put on no evidence at that hearing. (2/23 Tr. at 1–17.) There was thus no opportunity for Beasley to explain his supposed good faith belief or for defense counsel to cross-examine him on that belief. The State should not be permitted to raise this novel theory on appeal. Regardless, the State's argument fails on the merits.

A. Montana does not have a "good faith" exception to the exclusionary rule.

The State cites two federal cases for the proposition that the exclusionary rule does not apply "where law enforcement has acted in good faith." (Appellee's Br. at 17 (citing *United States v. Leon*, 468 U.S. 897, 920–24 (1984); *Williams*, 622 F.2d at 842–43, 846–47).) The U.S. Supreme Court developed the good faith exception to the exclusionary rule based on its view that the exclusionary rule served only one

purpose: to deter law enforcement's unconstitutional conduct. *Leon*, 468 U.S. at 917–18. The State parrots this rationale in urging this Court to excuse Beasley's unlawful, warrantless arrest of someone supposedly violating a pre-trial release condition. (Appellee's Br. at 17–18.)

The Montana Constitution provides stronger protections of privacy and against unreasonable searches and seizures than the U.S. Constitution. Mont. Const. art. II, §§ 10, 11; *State v. Hardaway*, 2001 MT 252, ¶ 31, 307 Mont. 139, 36 P.3d 900. "States are free to grant citizens greater protections based on state constitutional provisions than the United States Supreme Court divines from the United States Constitution." *Hardaway*, ¶ 31; *accord Oregon v. Hass*, 420 U.S. 714, 719 (1975). Montana's heightened constitutional protections require rejecting the federal good faith exception.

This Court has previously been asked to adopt the federal good faith exception and declined to do so. In *State v. Van Haele*, 199 Mont. 522, 529, 649 P.2d 1311, 1315 (1982) (overruled on other grounds), this Court held, "We are not persuaded by [the good faith exception] argument . . . Montana's constitutional guarantee of privacy is

expressed in the strongest terms of any state constitution in the country and we are not bound by federal interpretations from other circuits."

In *State v. Stewart*, 2012 MT 317, ¶ 29, 367 Mont. 503, 291 P.3d 1187, this Court declined to apply the good-faith exception to the case of an officer relying on a then-valid law permitting warrantless telephone monitoring. And in *State v. McLees*, 2000 MT 6, ¶ 32, 298 Mont. 15, 994 P.2d 683, this Court rejected a corollary to the good faith doctrine, the "apparent authority" doctrine. The Court held that if a third party has *apparent* authority—but not *actual* authority—to consent to a search of the defendant's property, an officer's reliance on that third-party consent cannot justify the search, even if that reliance is objectively reasonable. *McLees*, ¶ 32; *see also McLees*, ¶ 28 ("[R]egardless of whether the police acted in good faith, the individual's 'privacy' is still invaded.") (quoting *State v. Lopez*, 896 P.2d 889, 902 (Haw. 1995)).

This Court also held in *State v. Lacasella*, 2002 MT 326, ¶¶ 28–31, 313 Mont. 185, 60 P.3d 975, that an officer's good faith "misapprehension of the law" in making an unlawful seizure was not a basis to override the exclusionary rule. *But see State v. Gardner*, 2022 MT 3, ¶ 13, 407 Mont. 72, 501 P.3d 925 (noting *Lacasella* interpreted

federal constitutional law, not the Montana Constitution, and that U.S. Supreme Court precedent on the subject changed in 2014).

A host of other high courts have explicitly rejected the good faith exception as incompatible with their state constitutional rights to privacy and/or against unreasonable searches—including Washington, Delaware, Iowa, Hawaii, New Mexico, Idaho, Pennsylvania, Vermont, Connecticut, and New Jersey, to name a few. *State v. Betancourth*, 413 P.3d 566, 571 (Wash. 2018); *Dorsey v. State*, 761 A.2d 807, 820 (Del. 2000); *State v. Prior*, 617 N.W.2d 260, 268 (Iowa 2000); *Lopez*, 896 P.2d at 902; *State v. Gutierrez*, 863 P.2d 1052, 1066–68 (N.M. 1993); *State v. Guzman*, 842 P.2d 660, 671–72 (Id. 1992); *Com. v. Edmunds*, 586 A.2d 887, 888–901 (Pa. 1991); *State v. Oakes*, 598 A.2d 119, 120 (Vt. 1991); *State v. Marsala*, 579 A.2d 58, 68 (Conn. 1990); *State v. Novembrino*, 519 A.2d 820, 856–57 (N.J. 1987).[6]

The good faith exception is misguided because deterrence is not the only purpose the exclusionary rule serves. (*Cf.* Appellee's Br. at

[6] The good faith exception may in fact be the single Fourth Amendment doctrine state courts reject most frequently. LaKeith Faulkner and Christopher R. Green, *State-Constitutional Departures from the Supreme Court: The Fourth Amendment*, 89 Miss. L.J. 197, 198 (2020).

17–18.) It is just as much, if not more, about effectuating individual constitutional rights. *State v. Walker-Brazie*, 280 A.3d 24, 35 (Vt. 2021) ("[T]he focus in an exclusionary-rule analysis 'should be on the individual constitutional rights at stake.'"); *State v. Winterstein*, 220 P.3d 1226, 1231 (Wash. 2009) (stating the intent of Washington's constitutional right to privacy is "to protect personal rights rather than curb government actions").)

The exclusionary rule is "the primary vehicle which helps to ensure protection from an unreasonable governmental search or seizure." *State v. Ellis*, 2009 MT 192, ¶ 48, 351 Mont. 95, 210 P.3d 144. It "vindicates [ ] constitutional privacy rights." *State v. Wolfe*, 2020 MT 260, ¶ 11, 401 Mont. 511, 474 P.3d 318; *accord Novembrino*, 519 A.2d at 856. It "best effectuates the constitutional proscription of unreasonable searches and seizures by preserving the rights of the accused to the same extent as if the government's officers had stayed within the law." *Gutierrez*, 863 P.2d at 1067.

When the focus shifts away from law enforcement and toward the citizens who actually possess the constitutional rights, the necessity of the exclusionary rule and the inadequacy of the good faith exception

become clear. After all, "From the perspective of the citizen whose rights are at stake, an invasion of privacy, in good faith or bad, is equally as intrusive." *Edmunds*, 586 A.2d at 901; *accord McLees*, ¶ 28. The good faith exception might seem fair from the perspective of a law enforcement officer, but it "would virtually emasculate" individual citizens' constitutional rights to privacy and against unreasonable searches and seizures. *Edmunds*, 586 A.2d at 899.

In addition to actualizing citizens' constitutional rights, the exclusionary rule serves to "preserve judicial integrity." *Ellis*, ¶ 48. When the government commits an unlawful search or seizure, courts should not "sanction that conduct by turning the other cheek." *Gutierrez*, 863 P.2d at 1067. "To allow the judicial branch to participate, directly or indirectly, in the use of the fruits of illegal searches would only serve to undermine the integrity of the judiciary." *Edmunds*, 586 A.2d at 901; *accord Winterstein*, 220 P.3d at 1231 (holding the exclusionary rule "protects the integrity of the judicial system by not tainting the proceedings with illegally obtained evidence").

"Judges would become accomplices to the unconstitutional conduct of the executive branch if they allowed law enforcement to enjoy the

benefits of the illegality." *State v. Cline*, 617 N.W.2d 277, 290 (Iowa 2000) (abrogated on other grounds). The exclusionary rule "avoid[s] having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means." *Guzman*, 842 P.2d at 672; *accord State v. Rauch*, 586 P.2d 671, 678 (Id. 1978) (holding that to admit evidence procured by an unlawful search or seizure "would be a violation, by the court" of the defendant's right to due process).

Deterring law enforcement misconduct is of course also *a* legitimate goal of the exclusionary rule (it is just not the only one). Contrary to the State's view, however, excluding the evidence in this case *would* have a strong deterrent effect, notwithstanding Beasley's subjective belief his actions were lawful.

Courts should incentivize police to exercise restraint and *ensure* they have lawful authority to make a warrantless arrest before doing so. *Marsala*, 579 A.2d at 68 (stating that if "evidence is consistently excluded in these circumstances, police departments will surely be prompted to instruct their officers to devote greater care and attention to" ensuring they have lawful authority to conduct a search or seizure)

(quoting *Leon*, 468 U.S. at 955 (Brennan, J., dissenting)). This is particularly true if there is no urgency to make an arrest. Here, there was no exigency; Joshua was not committing a serious crime, endangering anyone, destroying evidence, or attempting to flee. He was getting a gas station burrito and talking to his friend in the attached casino about a place to stay. (Doc. 22, Ex. 1 at 4.)

Moreover, the Legislature specifically laid out an orderly procedure for how the State is supposed to deal with suspected violations of conditions of release—a procedure Beasley utterly neglected to follow. §§ 46-9-503 and -505. Applying the exclusionary rule here would incentivize law enforcement to stay apprised of the law and "to err on the side of constitutional behavior," not on the side of spontaneous, warrantless, unnecessary arrests. *United States v. Johnson*, 457 U.S. 537, 561 (1982).

B. Regardless, Beasley's conduct does not meet the federal good faith exception.

The good faith exception requires not only that the officer subjectively believe his conduct is lawful, but that belief must be objectively reasonable. *Leon*, 468 U.S. at 922. Examples of a police officer's objectively reasonable good faith that the U.S. Supreme Court

has recognized include: reliance on a warrant that is later deemed defective; reliance on a statute a court later declares unconstitutional; reliance on binding appellate precedent that is subsequently overturned; and reliance on a reasonable misinterpretation of the law. *Leon*, 468 U.S. at 922; *Illinois v. Krull*, 480 U.S. 340, 349–50 (1987); *Davis v. United States*, 564 U.S. 229, 232 (2011); *Heien v. North Carolina*, 574 U.S. 54, 57 (2014).

Unlike in *Leon*, *Krull*, and *Davis*, there is nothing wrong with the *underlying legal instrument* here—the criminal contempt statute—that Beasley thought gave him authority arrest Joshua. Beasley simply conducted this arrest based on his mistaken belief that Joshua violated that statute by stepping inside a casino to talk to a friend. Unlike in *Heien*, Beasley's mistaken view of the law was not objectively reasonable.

The conditional release statutes—which by their own terms cover scenarios such as this, where an officer suspects a violation of a condition of release—plainly require a warrant before arresting someone for a suspected violation. §§ 46-9-503, -505. The criminal contempt statute on its face does not apply to court "conditions," and

this Court has never suggested it does. Mont. Code Ann. § 45-7-309. To the contrary, this Court has made clear that court "conditions" are not "mandates" in the context of criminal contempt. *Letasky*, ¶ 13. That squares with the common-sense definition of a "condition"—it is a contingency, not a mandate. Beasley's belief that a court condition is a "mandate," such that its violation established the offense of criminal contempt, was not reasonable.

The State notes the Justice Court's release order warned Joshua that he could be charged with contempt if he violated any conditions. (Appellee's Br. at 18.) As Joshua pointed out in the opening brief, the Legislature, not lower courts, defines the elements of a criminal offense. (Appellant's Br. at 22, n. 5.) Besides, there is no evidence in the record that Beasley was actually aware of this criminal contempt warning in Joshua's release order. Beasley simply heard from dispatch that one of Joshua's conditions was that he not enter any casinos. (Doc. 22, Ex. 3 at 3.) Beasley could not have reasonably relied on the criminal contempt warning in Joshua's release order to believe he could arrest Joshua for contempt, because he was not aware it said that.

Even the federal good faith doctrine would not justify Beasley's actions. The exclusionary rule should apply.

III. The independent source doctrine does not excuse the constitutional violation here, because officers discovered the incriminating evidence as a direct result of Joshua's unlawful arrest.

The State renounces the "plain view" argument it raised below, and it concedes the "inevitable discovery" doctrine Joshua discussed in his opening brief does not apply here either. Instead, the State now claims the evidence should not be suppressed because the officers' observation of contraband in Joshua's car after his unlawful arrest was an "independent source of information" wholly detached from the prior illegality. (Appellee's Br. at 10, 19–23.)

The State strains the independent source doctrine beyond its limits. The officers decided to investigate Joshua's car because of, and only because of, knowledge they gained during and as an immediate result of Joshua's unlawful arrest. This was fruit of the poisonous tree, not an "independent source of information."

"The independent source doctrine allows admission of evidence that has been discovered by means *wholly independent of* any constitutional violation." *Nix v. Williams*, 467 U.S. 431, 443 (1984)

(emphasis added). The State analogizes this case to *State v. Laster*, 2021 MT 269, 406 Mont. 60, 497 P.3d 224, where after an unlawful pat-down search uncovered drugs on his person, Laster voluntarily gave police consent to search his vehicle. (Appellee's Br. at 20–21.) This Court held Laster's consent was sufficiently attenuated from the illegal pat-down search because it "was primarily the result of Laster's intervening free will choice, rather than the officer['s] . . . *exploitation of* the information gained from the prior illegal pat-down search." *Laster*, ¶ 49 (emphasis in original).

This case is nothing like *Laster*. During Joshua's unlawful arrest, the officers discovered a butane lighter that they knew to be drug paraphernalia. Then they placed him in the patrol car, where he started fidgeting and acting nervously, raising the officers' suspicions. *Based on those observations*, the officers decided to investigate Joshua's car after he was hauled off to jail. (Doc. 22, Ex. 1 at 3.) The officers clearly "exploited" the unlawful arrest: they gained knowledge from it (that Joshua possessed paraphernalia and was acting nervously upon being arrested), and they used that knowledge to inform their decision to

investigate his car. This decision was not "wholly independent of" the unlawful arrest—it was a direct result of it. *Nix*, 467 U.S. at 443.

The State says the officers searched Joshua's car "because he had been in a casino that was known for drug activity"—which the officers knew without reference to the unlawful arrest. (Appellee's Br. at 22.) This was not an actual reason for investigating Joshua's car. The officers were not prowling the parking lot looking into other casino and convenience store patrons' car windows for evidence of drugs. *Before* arresting Joshua, Beasley observed Joshua in the casino, walked outside and approached his car in the parking lot, ran the plates with dispatch, and confirmed it was Joshua's. Yet, curiously, Beasley did *not* look through the windows of Joshua's car at this point. (Doc. 22, Ex. 1 at 4; Doc. 22, Ex. 3 at 3.) Why not? Because he did not yet have any reason to do so, because he had not yet arrested Joshua. It was purely the knowledge officers subsequently gained *from the unlawful arrest* that prompted them to take a closer look at Joshua's car.

"The State has the burden of proving" that an intervening event "sufficiently distinguishable" from the unlawful arrest actually led to the discovery of the tainted evidence. *Laster*, ¶¶ 36, 45. There was no

intervening event here that broke the chain of events between Joshua's unlawful arrest and the police discovery of contraband in his car. The independent source doctrine does not apply.

CONCLUSION

Joshua did not violate his "no bars" condition of release, so Beasley had no authority to arrest him without a warrant. Even if he did violate this condition, this was not a criminal offense (such as contempt of court), so Beasley had no authority to arrest him without a warrant.

This presumptively unconstitutional, warrantless arrest directly caused the officers to investigate Joshua's car, which in turn led to their procurement of a search warrant and the discovery of the evidence at issue in this case. The exclusionary rule demands suppression of this evidence.

Respectfully submitted this 4th day of April, 2024.

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

By: /s/ Michael Marchesini
MICHAEL MARCHESINI
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with a proportionately spaced Century Schoolbook 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 4,906, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Michael Marchesini
MICHAEL MARCHESINI

CERTIFICATE OF SERVICE

I, Michael Marchesini, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 04-04-2024:

Ben Krakowka (Govt Attorney)
800 Main St.
Anaconda MT 59711
Representing: State of Montana
Service Method: eService

Mardell Lynn Ployhar (Govt Attorney)
215 N. Sanders
Helena MT 59620-1401
Representing: State of Montana
Service Method: eService

Electronically signed by Pamela S. Rossi on behalf of Michael Marchesini
Dated: 04-04-2024