

OP 24-0087

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 116

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CLARK RYAN RAMSEY,

Petitioner,

v.

YELLOWSTONE COUNTY JUSTICE COURT,  
HON. J. COLLEEN HERRINGTON, Presiding,

Respondent.

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Original Proceeding: Writ of Supervisory Control,  
In and For the County of Yellowstone, Cause No. CR-2023-342  
Honorable J. Colleen Harrington, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Joel M. Thompson, Joel M. Thompson Law Office, PLLC, Great Falls,  
Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Mardell Ployhar, Assistant  
Attorney General, Helena, Montana

Honorable J. Colleen Harrington, Self-represented, Bozeman, Montana

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Decided: May 28, 2024

Filed:

  
Clerk

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Justice Ingrid Gustafson delivered the Opinion and Order of the Court.

¶1 Petitioner Clark Ryan Ramsey seeks a writ of supervisory control directing the Yellowstone County Justice Court to reverse its order denying Ramsey’s motion to dismiss in its Cause No. CR-2023-342. We have granted Ramsey’s request that the Justice Court matter be stayed pending the resolution of this petition. Both the State and the Honorable J. Colleen Harrington, the presiding judge in the Justice Court matter, have filed responses opposing Ramsey’s petition.

¶2 We address the following restated issue on appeal:

*Whether Ramsey is entitled to a writ of supervisory control directing the Justice Court to dismiss the criminal prosecution against him because, even accepting as true every fact presented in the charging documents, there is not probable cause to believe he committed a crime.*

## **FACTUAL AND PROCEDURAL BACKGROUND**

¶3 Ramsey is an attorney in Billings. He represented Justin Kalina in DC-20-1474 (Case 1), in which Kalina was charged with felony assault with a weapon. Jessica Foote was a witness to the underlying assault in that case, who later complained about witness tampering by Kalina. The State subsequently added a witness tampering charge in Case 1. While Kalina was in custody, he allegedly discovered Foote had spent over \$1,700 on Kalina’s Uber Eats account. Kalina notified law enforcement of the alleged theft and the Yellowstone County Sheriff’s Office (YCSO) investigated Foote regarding Kalina’s claim (Case 2). The State ultimately did not bring charges against Foote in Case 2.

¶4 While representing Kalina, Ramsey sought information from the prosecutor in Case 1 that had been gathered in Case 2 and which could be exculpatory or used to impeach

Foote. The prosecutor sent Ramsey a report of the Case 2 investigation once it was completed. That report indicated a cell phone extraction had been done on Foote's phone and contained text messages between Kalina and Foote. Consistent with Yellowstone County's general practice of having defense counsel receive electronic discovery from the relevant law enforcement agency, Ramsey did not receive the cell phone extraction from the prosecutor. Ramsey thereafter submitted a form to the YCSO requesting copies of the Confidential Criminal Justice Information (CCJI) in Case 2, noting he sought copies of CCJI from YCSO case number 2021-000729119, regarding defendant Foote. The form Ramsey submitted to the YCSO was a modified version of the typical form used to obtain CCJI, which contains an acknowledgement of receipt of CCJI and notes the "information will only be provided to Defendants in pending Court actions or Attorneys who have been retained to represent a Defendant in a Court action." The typical form contains a section in which the person receiving CCJI is required to sign which states:

I certify under penalty of law that: (check one)

☐ I AM THE DEFENDANT – I am presently charged with a crime in a pending Court action that is the subject of this information request.

☐ I REPRESENT THE DEFENDANT – I am either (a) an attorney licensed to practice law in the State of Montana who has been retained to represent the Defendant in this action, or (b) a duly authorized agent or employee of the attorney hired to represent the Defendant in this action. I am obtaining this information solely for the use of the Attorney in connection with his/her representation of the Defendant.

On the form at issue submitted by Ramsey in this case, he modified the signature section to state:

I certify under penalty of law that: (check one)

☐ I AM THE DEFENDANT – I am presently charged with a crime in a pending Court action that is the subject of this information request.

☐ I REPRESENT THE VICTIM – I am an attorney licensed to practice law in the State of Montana who has been retained to represent the victim in this action, and I am obtaining this information solely for the use of that attorney in connection with his/her or his/her representation of the victim. The defendant in this matter is also a witness in a connected matter to my client (the victim).

Ramsey checked the box marked “I REPRESENT THE VICTIM,” signed this form, and noted the Case Number was for “DC-20-1474,” or Kalina’s Case 1.<sup>1</sup> The YCSO thereafter disseminated the Case 2 CCJI to Ramsey.

¶5 On July 11, 2023, the State filed the State’s Motion for Leave to File Complaint and Supporting Affidavit in the Justice Court, seeking to charge Ramsey with misdemeanor forgery and misdemeanor solicitation of the misuse of confidential criminal justice information stemming from Ramsey’s submission of the form to the YCSO and subsequent receipt of CCJI from that agency. Though the State’s motion and affidavit referred to attached exhibits, no exhibits were attached. In addition, though there was a notary public signature block, it was left blank and the State’s motion was not notarized. In spite of these deficiencies, a pro tem Justice of the Peace issued an Order granting the State’s motion for

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<sup>1</sup> As the form submitted looks similar to the Word template form provided to Ramsey by the YCSO, the Dissent asserts there is nothing that would alert the reader the form has been changed. This totally ignores that in the form at issue, Ramsey truthfully identifies “**I REPRESENT THE VICTIM[.]**” (Emphasis added.) A reader or reviewer certainly would be capable of actually reading the form to determine whether the information should have been provided or not. It is noted the form submitted also candidly states, “[t]his information will only be provided to Defendants in pending Court actions or Attorneys who have been retained to represent a Defendant in a Court action.” With this statement and the clear representation Ramsey represented the victim, not the defendant, the reader or reviewer would know the request did not meet the criteria outlined in the form and should have denied his request.

leave to file an information charging Ramsey with forgery and solicitation of the misuse of CCJI on July 14, 2023. Respondent J. Colleen Harrington, a Bozeman Municipal Court Judge, assumed jurisdiction of the case on August 5, 2023, after Yellowstone County Justice of the Peace David A. Carter recused himself.

¶6 On October 18, 2023, Ramsey, through counsel Joel M. Thompson, filed a Motion to Dismiss. Ramsey asserted the matter must be dismissed due to a lack of probable cause because, as a matter of law, the State could not prove the elements of forgery or solicitation. Ramsey asserted this to be the case because Ramsey filed a sweeping discovery request in Case 1 which imposed a duty on the prosecutor to disclose the information in Case 2. Ramsey maintained he gave full disclosure of how Case 2 was connected to Case 1, and that he sought the information for Case 1. Ramsey also argued that the way in which he acquired the CCJI was a matter of procedure and that a procedure was insufficient to establish the elements of forgery or solicitation, as a matter of law. As this was a question of law, Ramsey argued it was not suited for a jury. Further, Ramsey argued whether he was entitled to receive CCJI as Kalina's attorney is a legal determination also not suitable for resolution by a jury. Ramsey also noted the State's affidavit was deficient and not notarized even though the affidavit had a line for a notary signature. After the motion to dismiss was fully briefed, the Justice Court held a hearing. At that hearing, the Justice Court asked if either side had any further evidence to present, and both sides maintained the court should simply review the affidavit. Ramsey noted the court's review of the probable cause determination was "basically supposed to be the analysis of the actual affidavit" and "the facts that are necessary for the record are sufficiently before the

[c]ourt.”<sup>2</sup> The Justice Court then found “[t]hat initial determination was made in this case when the complaint and the affidavit of probable cause was accepted and the charges were filed into court” and it had “no evidence that has been submitted that would challenge any of the facts in the affidavit of probable cause to bring up a new determination of probable cause.” The Justice Court noted it denied Ramsey’s motion to dismiss because there was “nothing new to consider[.]”

¶7 This petition followed on February 8, 2024. On February 9, 2024, the Justice Court held another hearing. At that hearing, for the first time, the Justice Court noted the State’s initial motion for leave and affidavit was deficient because there was no notary signature, though Ramsey had already raised this point in his October 18, 2023 Motion to Dismiss and the court had already held a hearing on the matter. The court further noted that the referenced exhibits were not attached. The court allowed the State until 4 p.m. to cure those deficiencies, and the State filed the State’s Motion to Amend Complaint and Affidavit of Probable Cause in Support later that day. On February 13, 2024, the Justice Court issued its Order Allowing Filing of Amended Complaint.

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<sup>2</sup> In his Dissent, Justice Rice asserts Ramsey “refused to stipulate in the hearing to any of the facts alleged by the State[.]” Dissent, ¶ 23. The only discussion at the hearing regarding stipulating to facts occurred after Ramsey’s motion to dismiss was denied by the Justice Court and the parties had moved on to arguing the State’s motion to disqualify Ramsey’s counsel based on a letter Thompson sent to the YCSO. It is unknown what bearing Ramsey’s counsel not stipulating to facts relating to State’s motion to disqualify him from representing Ramsey could have on Ramsey’s (already denied) motion to dismiss wherein he alleged all the facts necessary to determine probable cause was lacking were already before the court in the State’s motion for leave and supporting affidavit.

## STANDARD OF REVIEW

¶8 Supervisory control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must also meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. M. R. App. P. 14(3)(a)-(c). Whether supervisory control is appropriate is a case-by-case decision. *Stokes v. Mont. Thirteenth Jud. Dist. Ct.*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (citations omitted). Consistent with Rule 14(3), this Court refrains from exercising supervisory control when the petitioner has an adequate remedy of appeal. *Volkswagen Aktiengesellschaft v. Mont. First Jud. Dist. Ct.*, No. OP 20-0171, 401 Mont. 556, 472 P.3d 1151 (Aug. 25, 2020). Such writ is available “[o]nly in the most extenuating circumstances[.]” *State ex rel. Ward v. Schmall*, 190 Mont. 1, 4, 617 P.2d 140, 141 (1980).

## DISCUSSION

¶9 *Whether Ramsey is entitled to a writ of supervisory control directing the Justice Court to dismiss the criminal prosecution against him because, even accepting as true every fact presented in the charging documents, there is not probable cause to believe he committed a crime.*

¶10 Initially, we observe that the State has filed motions for disqualification of Ramsey in several other criminal cases where he represents defendants.<sup>3</sup> The State, represented by

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<sup>3</sup> Ramsey also raised in his Petition that the Justice Court was proceeding under a mistake of law causing a gross injustice when the Justice Court granted the State’s motion for disqualification of his counsel. However, the Justice Court held a hearing a week later and clarified that it had

Dan M. Guzynski of the Montana Attorney General's Office, Prosecuting Services, maintains that because two of its attorneys are handling the prosecution of Ramsey, there is a conflict of interest since the defendants could allege that to gain favor with the State, Ramsey did not represent them with zeal. Thus, it is the State's position that in every case in which the Attorney General's Office, Prosecuting Services, is involved, Ramsey must be disqualified if he does not obtain a waiver from his client. Ramsey maintains that the charges against him are improperly motivated and should not be a basis for disqualifying him from representing his clients in other cases. While the circumstances underlying the Petition and Response are concerning for the Court and is, in part, the reason it ordered the State to respond, the other criminal matters in which the State has moved for disqualification are not specifically before the Court. Accordingly, we first must determine whether this matter is appropriate for a writ of supervisory control. The writ may only be invoked when a case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must also meet additional criteria—as applicable to Ramsey's petition here, the other court must be proceeding under a mistake of law and causing a gross injustice. M. R. App. P. 14(3)(a). Ramsey asserts he meets each of the criteria required for a writ of supervisory control. The State contends supervisory control is inappropriate because Ramsey has an adequate remedy of appeal and the Justice Court is not proceeding under a mistake of law or causing

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reserved its ruling. The Justice Court then denied the State's request for disqualification of Ramsey's counsel rendering this issue moot.



a gross injustice. The State further asserts the Justice Court’s probable cause determination in this case is a matter of discretion and does not present a purely legal issue.

¶11 As a preliminary matter, we note the State sets forth an incorrect standard of review for our determination regarding whether the charging documents establish probable cause. The State, citing to *State v. Dunfee*, 2005 MT 147, ¶ 31, 327 Mont. 335, 114 P.3d 217, asserts the determination of whether probable cause exists in the charging documents is a matter left to the sound discretion of the trial court. Several years after *Dunfee*, this Court conducted a broad review of the proper standard of review for a motion to dismiss when challenging whether the State established probable cause in the charging documents in *State v. Giffin*, 2021 MT 190, ¶¶ 7-11, 405 Mont. 78, 491 P.3d 1288, and determined such a determination was a mixed question of fact and law which must be reviewed de novo because the do novo “standard of review addresses both the factual and legal components in a motion to dismiss an information for lack of probable cause.” *Giffin*, ¶ 11.<sup>4</sup> In fact, in *Giffin*, this Court specifically addressed *Dunfee*, and noted it was an example of a previous case in which this Court used an abuse of discretion standard in a case “involving only questions of factual sufficiency.” *Giffin*, ¶ 9 n.3.

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<sup>4</sup> Later, in *State v. Brown*, 2022 MT 176, 410 Mont. 38, 517 P.3d 177, which involved a challenge to the sufficiency of the evidence to establish probable cause, we stated that “[w]e pay ‘great deference’ to a court’s determination that probable cause exists and draw ‘every reasonable inference possible . . . to support that determination.’” *Brown*, ¶ 19 (quoting *State v. Kant*, 2016 MT 42, ¶ 13, 382 Mont. 239, 367 P.3d 726). *Kant*, cited with approval in *Brown*, was not a challenge to the sufficiency of probable cause to file charges, but a challenge to the sufficiency of a search warrant. See *Kant*, ¶¶ 15-24. As we set forth the proper standard of review—de novo—in *Giffin*, we note that *Brown*’s implication of a “great deference” standard to a lower court’s determination when a defendant challenges whether probable cause to file charges exists is incorrect.

¶12 Though a “petition for writ that does not raise an issue that is purely one of law but involves a matter of discretion fails to satisfy the standards for supervisory control,” *Norman v. Mont. Eighteenth Jud. Dist. Ct.*, No. OP 23-0168, 411 Mont. 393, 526 P.3d 713 (March 16, 2023) (citing *Henderson v. Mont. Third Jud. Dist. Ct.*, No. OP 22-0069, 408 Mont. 540, 507 P.3d 140 (Feb. 15, 2022)), Ramsey is not alleging the Justice Court abused its discretion by allowing the State to file criminal charges against him—he is alleging the Justice Court, as a matter of law, incorrectly allowed to the State to file criminal charges which do not actually allege the requisite elements of a crime occurred. While typically such a challenge involves “mixed question[s] of law and fact,” *Giffin*, ¶ 11, both here and below Ramsey did not challenge the factual basis of the charges, only their legal sufficiency. In this case, where the underlying facts regarding the probable cause determination are undisputed, we determine that, in accordance with our de novo standard of review for such a question, Ramsey is presenting a pure question of law appropriate for a writ of supervisory control. Justice Rice’s contention this matter involves disputed facts is unavailing in the face of Ramsey’s argument to the Justice Court that the probable cause determination was “basically supposed to be the analysis of the actual affidavit” and “the facts that are necessary for the record are sufficiently before the [c]ourt”—those facts being those presented by the State in its motion for leave and supporting affidavit.

¶13 In addition to presenting a purely legal question, Ramsey’s petition must also set forth that urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The basic thrust of Ramsey’s petition on this point is that the State has repeatedly attempted to disqualify him from representing his clients on the basis of the

charges in this case.<sup>5</sup> Both Ramsey's livelihood as an attorney and his clients' choice of his representation in entirely unrelated matters are at risk due to the present charges. If Ramsey is correct that there is no probable cause to charge him with a crime in this case the normal appeal process may be inadequate due to the State repeatedly attempting to leverage these charges against Ramsey in unrelated matters. While we have recognized that sufficiency of charging document claims can be addressed on direct appeal, *see Hartman v. Mont. Nineteenth Jud. Dist. Ct.*, No. OP 20-0017, 399 Mont. 549, 460 P.3d 399 (Jan. 15, 2020), this case presents unique concerns not present in *Hartman* which may make the normal appeal process inadequate.

¶14 With the predicate conditions for a writ of supervisory control met, a writ of supervisory control would be appropriate in this case if the Justice Court is proceeding under a mistake of law and causing a gross injustice. M. R. App. P. 14(3)(a). The legal question here is if, taking every fact alleged in the State's motion for leave to file a complaint as true, there is probable cause to file charges alleging Ramsey committed the offenses of forgery and/or solicitation of the misuse of CCJI. If there is not probable cause to believe Ramsey committed the charged offenses, continuing his prosecution while lacking probable cause would be both a mistake of law and a gross injustice.

¶15 Though both the State's July 11, 2023 Motion for Leave to File Complaint and Supporting Affidavit and its February 9, 2024 Motion to Amend Complaint and Affidavit

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<sup>5</sup> The State also sought to disqualify Ramsey's own attorney from representing Ramsey in this case.

of Probable Cause in Support asserted the State sought to charge Ramsey with misdemeanor forgery in violation of § 45-6-325(1)(a), MCA, which states a “person commits the offense of forgery when with purpose to defraud the person knowingly . . . without authority makes or alters a document or other object apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time or with different provisions or of different composition,” both the July 11, 2023 Complaint (apparently filed three days before the Justice Court granted leave to file it) and the Amended Complaint charge Ramsey with misdemeanor forgery in violation of § 45-6-325(1)(b), MCA, which states a “person commits the offense of forgery when with purpose to defraud the person knowingly . . . issues or delivers the document or other object knowing it to have been thus made or altered[.]” As charged against Ramsey, the solicitation of misuse of confidential criminal justice information charge comes from two statutes: § 45-4-101(1), MCA, which states a “person commits the offense of solicitation when, with the purpose that an offense be committed, the person commands, encourages, or facilitates the commission of that offense” and § 45-7-601(1)(b), MCA, which states that a “person commits the offense of misuse of confidential criminal justice information if the person is entitled to directly access the criminal justice information network and purposely or knowingly . . . disseminates information accessed from the criminal justice information network to any person who is not authorized to receive confidential criminal justice information pursuant to 44-5-303.”

¶16 “The supporting affidavit [of a motion for leave to file criminal charges] does not have to make out a prima facie case that the defendant committed an offense; rather, a

probability that the defendant committed the offense is sufficient.” *Giffin*, ¶ 15 (citing *State v. Elliott*, 2002 MT 26, ¶ 26, 308 Mont. 227, 43 P.3d 279). Put another way, while the evidence needed to establish probable cause need not be as complete as the evidence necessary to establish guilt, *Giffin*, ¶ 15 (citations omitted), there still must be sufficient evidence to establish the probability that a defendant committed the crime for which they are being accused. Both the forgery and solicitation charges in this case have mental state elements for which meeting even the relatively low probable cause standard is entirely lacking in the charging documents. Forgery requires “the purpose to defraud,” while solicitation of the misuse of CCJI requires dissemination of information “accessed from the criminal justice information network to any person who is not authorized to receive” CCJI with “the purpose that an offense be committed[.]”

¶17 As charged by the State, Ramsey, an attorney in good standing, submitted a modified but accurate form to the YCSO in the course of representing Kalina in Case 1, seeking CCJI regarding Case 2. In said form, Ramsey specifically attested to the YCSO that he is an attorney who “REPRESENT[S] THE VICTIM” and “has been retained to represent the victim in this action, and I am obtaining this information solely for the use of that attorney in connection with . . . representation of the victim. The defendant in this matter is also a witness in a connected matter to my client (the victim).” Ramsey also noted the specific criminal matter, “DC-20-1474,” or Kalina’s Case 1, for which he was seeking the CCJI regarding Case 2. Ramsey seeking CCJI by using a form which specifies “I REPRESENT THE VICTIM” and explains his purpose for seeking the CCJI is not forgery,

trickery, fraud, or the solicitation of a criminal offense.<sup>6</sup> If internal YCSO policies would prohibit dissemination of CCJI to an attorney not representing the defendant to which the CCJI pertains yet Ramsey still received it anyway after making abundantly clear that he represented the victim and not the defendant, that is, frankly, not Ramsey’s problem and an issue for the YCSO to address itself by reviewing its own policies and, if necessary, retraining staff to actually read the words contained in the submitted forms.<sup>7</sup> All parties agree that Ramsey believed he was entitled to the CCJI he sought and that he sought it in the course of his representation of Kalina in Case 1, and the State further agrees that he is in fact likely entitled to most, if not all, of the CCJI disseminated to him. Taking the facts of the affidavit in support of the State’s motion to file charges against Ramsey as true, the State cannot, as a matter of law, establish probable cause to charge Ramsey with either forgery or solicitation of the misuse of CCJI.

¶18 Ultimately, there is not probable cause to believe Ramsey committed either offense charged in this case and the Justice Court should not have granted the State’s motion for

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<sup>6</sup> Justice Rice asserts the State can meet the mental state requirements because Ramsey lacked “authority” to alter the form created by the YCSO. Dissent, ¶ 38 (citing § 45-6-325(1)(a), MCA). Setting aside that this form was an editable Word document sent to attorneys via email, our probable cause review in this case is limited to the charge actually brought against Ramsey, which is found in § 45-6-325(1)(b), MCA, and is not an “alternative charge,” as the Dissent contends, but the offense with which Ramsey was actually charged.

<sup>7</sup> Justice Rice claims the form Ramsey submitted to the YCSO was “subtly alter[ed],” Dissent, ¶ 39, and that Ramsey submitted “the counterfeit form to the agency without telling the agency what he had done[.]” Dissent, ¶ 41. Ramsey did tell the YCSO what he had done—in the (quite short) form itself. Ramsey informed the YCSO that he “REPRESENT[S] THE VICTIM”; that he was seeking the information in connection with “his/her representation of the victim”; that the “Defendant in this matter is also a witness in a connected matter to my client (the victim)”; and that he sought the information for “CASE # DC-20-1474,” which is Kalina’s Case 1.

leave to file a complaint. When Ramsey raised the probable cause issue again in his motion to dismiss, the Justice Court should have reassessed its initial probable cause determination as a matter of law rather than simply reiterating the initial probable cause determination and noting there was “nothing new to consider[.]” Accordingly, the State’s criminal prosecution of Ramsey for something which is not a crime must be dismissed.

### **CONCLUSION**

¶19 Ramsey’s Petition for a Writ of Supervisory Control is ACCEPTED and GRANTED.

¶20 The Justice Court’s finding of probable cause and accompanying February 13, 2024 Order Allowing Filing of Amended Complaint is REVERSED.

¶21 This matter is REMANDED to the Justice Court with instructions to dismiss.

The Clerk is directed to send a copy of this Opinion and Order to all counsel of record in this matter and in Yellowstone County Justice Court Cause No. CR-2023-342, and to the Honorable J. Colleen Harrington, presiding Justice Court Judge.

DATED this 28th day of May, 2024.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH  
/S/ LAURIE McKINNON  
/S/ DIRK M. SANDEFUR

Justice Jim Rice, dissenting.

¶22 For the reasons discussed herein, I would not exercise supervisory control and intervene in this criminal prosecution. Consideration of the sufficiency of the allegations supporting probable cause is a question not well suited to review upon supervisory control, due to the assessment of probability inherent in the inquiry. The Court frames this case as involving “undisputed” facts and a “pure question of law,” but I disagree with this assessment. Opinion, ¶ 12. The perception of “undisputed” facts arises, in my opinion, from factual assumptions or determinations the Court improperly makes in favor of the Defendant.

¶23 Regarding issues of fact, Ramsey has not yet entered a plea in this matter, but has raised factual issues in his motion to dismiss and refused to stipulate in the hearing to any of the facts alleged by the State, including the basic allegation that he altered the official Yellowstone County Sheriff’s Office’s form to obtain confidential criminal justice information. Additional disputed facts are discussed herein. But more to the point, the question before us is not whether the facts are undisputed, as it would be in a summary judgment inquiry; rather, the question is whether the facts as alleged by the State are sufficient to carry the charges. *See State v. Giffin*, 2021 MT 190, ¶ 11, 405 Mont. 78, 491 P.3d 1288 (“[T]he issue is whether the alleged facts satisfy the statutory elements of the crime charged.”).

¶24 Neither is the inquiry here a “pure question of law.” This Court’s review is a *de novo* review of both fact and law. *Giffin*, ¶ 11 (“The determination is a mixed question of law and fact.”). As such, we are to address “both the factual and legal sufficiency” in a



motion to dismiss for lack of probable cause. *Giffin*, ¶ 11. In considering the facts, we are to review the charging documents together, which do not “have to make out a prima facie case that the defendant committed an offense; rather, *a probability* that the defendant committed the offense is sufficient.” *Giffin*, ¶ 15 (emphasis added). Indeed, as we have recognized, “[p]robable cause poses a fluid concept turning on *the assessment of probabilities* in a particular factual context, not readily, or even usefully, reduced to a neat set of legal rules.” *State v. Barnaby*, 2006 MT 203, ¶ 41, 333 Mont. 220, 142 P.3d 809 (internal citation omitted) (emphasis added). Necessarily, then, within our *de novo* review of this mixed question of fact and law, we are called upon to make a factual assessment of probability.

¶25 This is particularly critical with regard to mental state, which may be proven by inference. *See* § 45-2-103(3), MCA (“The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.”); *see also State v. Christensen*, 2020 MT 237, ¶ 126, 401 Mont. 247, 472 P.3d 622 (“[T]he jury may infer the requisite mental state from what a defendant says and does, and from all the facts and circumstances involved.”). Thus, this Court’s review of the probability a crime has been stated within a complaint—probable cause—must allow for mental state to be demonstrated from inferences drawn from the facts alleged therein.

¶26 At the conclusion of the analysis, the complaint “must reasonably apprise the accused of the charges against him to enable him the opportunity to prepare a defense.” *Giffin*, ¶ 15. “We apply the ‘common understanding’ rule to determine if the charging language of a document allows a person to understand the charges against him. Under this

standard, the test of the sufficiency of a charging document is whether the defendant is apprised of the charges and whether he will be surprised.” *Giffin*, ¶ 15 (internal citation omitted).

¶27 The application of all of these standards renders the assessment of probable cause to support a charge a complex endeavor, and I do not believe it is generally wise or necessary for the court to entertain the review on supervisory control. There is a remedy of appeal here. However, since the Court has done so, I will also undertake an evaluation on the merits of the probable cause supporting the charges.

### *The Charged Offenses*

¶28 The State charged Ramsey with two offenses. The first is misdemeanor forgery, in violation of § 45-6-325(1)(a), MCA (2021), which provides:

**Forgery.** (1) A person commits the offense of forgery when with purpose to defraud the person knowingly:

(a) without authority makes or alters a document or other object apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time or with different provisions or of different composition.

(b) issues or delivers the document or other object knowing it to have been thus made or altered;<sup>1</sup>

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<sup>1</sup> The State’s motion to amend the complaint and probable cause affidavit cited § 45-6-325(1)(a), MCA, as the forgery subsection under which it was making the charge. In the amended complaint, it cited § 45-6-325(1)(b), MCA. However, the subsections overlap and subsection (1)(b) is an alternative charge that references the terms used in subsection (1)(a), alleging that the defendant issued or delivered “the” document or object referenced in subsection (a) knowing it to be “thus” made or altered as stated in subsection (1)(a). Here, as alleged, Ramsey could have been charged under either subsection.

Secondly, the State charged Ramsey with misdemeanor solicitation of the misuse of confidential criminal justice information, in violation of § 45-4-101(1), MCA (2021), and § 45-7-601(1)(b), MCA (2021). These provisions provide:

**Solicitation.** (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, the person commands, encourages, or facilitates the commission of that offense.

**Misuse of confidential criminal justice information.** (1) A person commits the offense of misuse of criminal justice information if the person is entitled to directly access the criminal justice information network and purposely or knowingly:

(b) disseminates information accessed from the criminal justice information network to any person who is not authorized to receive confidential criminal justice information pursuant to 44-5-303.

### *The Complaint's Allegations*

¶29 Unless otherwise indicated, the quotations in this section are taken verbatim from the complaint and probable cause affidavit (complaint). The complaint states that prosecutor Metzger provided the initial police report generated in Case 2 to Ramsey. A prosecutor's approval is "required prior to the dissemination of any further confidential criminal justice information" (CCJI) identified within this initial report, in accordance with § 44-5-303, MCA. However, Ramsey engaged in "no additional communications" with case prosecutors about obtaining discovery of this CCJI, and thus "did not seek that approval."

¶30 Instead, Ramsey, without notifying prosecutors, acted unilaterally to obtain CCJI from Case 2, "a case he has no connection with" as a criminal defense attorney. Ramsey represented Defendant Kalina in Case 1, but did not represent the putative Defendant, Foote, in Case 2, and thus "he was not authorized to receive [CCJI] without the approval

of the prosecutors pursuant to Montana Code Ann. § 44-5-303.” The complaint states that, “as the attorney representing a victim (Kalina in Case 2) the Defendant [Ramsey] may have been authorized to receive the Case 2 CCJI he requested, but only after the approval of the prosecutor,” including the “need[] to be reviewed and redacted to ensure privacy.” The Court surmises that Ramsey was entitled, or believed he was entitled, to the CCJI he obtained by the altered form. However, the key point in this inquiry is that the complaint alleged that he was *not* entitled to the CCJI, and it is not this Court’s duty to assume or declare otherwise. The statutory review process for the CCJI had not been completed, which could have resulted in the prosecutor denying or limiting disclosure of the information, from which Ramsey had the right to appeal to the court. As the State notes in its response to the petition, “[t]he fact that Ramsey may have been entitled to some of the information, if the prosecutor or a court had determined that he was entitled to it, does not negate the fact that he was not entitled to obtain it from the sheriff’s office without the permission of the prosecutor.”

¶31 Nonetheless, Ramsey “altered the form” issued by Yellowstone County to process CCJI requests, changing the official form’s declaration by deleting the legal prerequisite that required Ramsey to be representing the subject defendant (Foote), and making other significant changes, such as altering the statement “I REPRESENT THE DEFENDANT” to “I REPRESENT THE VICTIM.” Attached to the complaint and probable cause affidavit were two documents, including the official Yellowstone County form in its standard formatting, and the form as altered by Ramsey. The partial narrative from these documents provided by the Court in standard typeset within the Opinion fails to capture the meaning

and significance of these documents. The actual forms are reproduced below. The first (Form 1) is the official Yellowstone County form that Ramsey had previously and correctly submitted as a defendant's representative (The defendant's identity on this copy is protected by redaction.) The second form (Form 2) is the one altered and submitted by Ramsey in this case.

OFFICE OF THE SHERIFF



### REQUEST FOR COPIES

**ADDRESS & PHONE NUMBER** clark@ramlawmt.com / 2722 3rd Ave N #320, Billings MT 59101 / (406) 200-1776

☒ 911 Call    ☒ Photos    ☒ Audio    ☒ Video

Evidence Request: one copy of all the following (all unaltered and unedited)  
 (1) all 1002's; (2) all 1003's; (3) all 1004's; (4) all 1005's; (5) all 1006's; (6) all 1007's; (7) all 1008's; (8) all 1009's; (9) all 1010's; (10) all 1011's; (11) all 1012's; (12) all 1013's; (13) all 1014's; (14) all 1015's; (15) all 1016's; (16) all 1017's; (17) all 1018's; (18) all 1019's; (19) all 1020's; (20) all 1021's; (21) all 1022's; (22) all 1023's; (23) all 1024's; (24) all 1025's; (25) all 1026's; (26) all 1027's; (27) all 1028's; (28) all 1029's; (29) all 1030's; (30) all 1031's; (31) all 1032's; (32) all 1033's; (33) all 1034's; (34) all 1035's; (35) all 1036's; (36) all 1037's; (37) all 1038's; (38) all 1039's; (39) all 1040's; (40) all 1041's; (41) all 1042's; (42) all 1043's; (43) all 1044's; (44) all 1045's; (45) all 1046's; (46) all 1047's; (47) all 1048's; (48) all 1049's; (49) all 1050's; (50) all 1051's; (51) all 1052's; (52) all 1053's; (53) all 1054's; (54) all 1055's; (55) all 1056's; (56) all 1057's; (57) all 1058's; (58) all 1059's; (59) all 1060's; (60) all 1061's; 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**ACKNOWLEDGEMENT OF RECEIPT OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION  
UNDER MCA SECS 44-5-103, 303**

(This information will only be provided to Defendants in pending Court actions or Attorneys who have been retained to represent a Defendant in a Court action.)

I acknowledge the information being provided to me is designated as "Confidential Criminal Justice Information under MCA Secs 103, 303. By accepting this information, I assume responsibility of maintaining its confidentiality and assume the responsibility to restricting any further dissemination of this information pursuant to MCA Sec 44-5-303(3).

I certify under penalty of law that: (check one)

☐ I AM THE DEFENDANT – I am presently charged with a crime in a pending Court action that is the subject of this information request.

☒ I REPRESENT THE DEFENDANT – I am either (a) an attorney licensed to practice law in the State of Montana who has been retained to represent the Defendant in this action, or (b) a duly authorized agent or employee of the attorney hired to represent the Defendant in this action. I am obtaining this information solely for the use of the Attorney in connection with his/her representation of the Defendant.

SIGNATURE 

DATE 01/19/2022

PDO # N/A ATTORNEY Clark Ramsey

CASE # DC-21-1590

000112

STATE'S  
EXHIBIT  
1

*Yellowstone County*

OFFICE OF THE SHERIFF



P.O. BOX 35020  
BILLINGS, MT 59107-5020  
(406) 256-2939  
(406) 256-2949 FAX

**REQUEST FOR COPIES**

YCSO CASE # 2021-000729119

DEFENDANT'S NAME Jessica Ann Foote

PERSON MAKING REQUEST Clark R. Ramsey

FIRM NAME Ramsey Law, PLLC

ADDRESS & PHONE NUMBER 2722 3rd Ave N, Suite #320, Billings, MT 59101

☒ 911 Call ☒ Photos ☒ Audio ☒ Video

Audio/Photo CD (\$20/ea)	# of copies _____	64GB USB (\$100/ea)	# of copies _____
Video DVD (\$30/ea)	# of copies _____	128/256GB USB (\$125/ea)	# of copies _____
16GB USB (\$50/ea)	# of copies _____	320GB EX DRIVE (\$150/ea)	# of Copies _____
32GB USB (\$75/ea)	# of copies _____		

Evidence Request: one copy of all the following (all unaltered and unedited (code 1002)): (1) watch guard videos; (2) all other videos or video footage at all relevant to this case; (3) pictures or graphical representations of all kinds or types; (4) surveillance of all kinds or type; (5) all witness statements; (6) all police reports; (7) all police officer supplements; (8) all other written reports or notes, whether hand written or typed; (9) all audio recordings; (10) all test results of any and every kind/type (e.g., IAC, breath test, blood test, urine test, etc.); and (11) any other evidence maintained or controlled by the Billings City Police Department.

**ACKNOWLEDGEMENT OF RECEIPT OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION  
UNDER MCA SECS 44-5-103, 303**

(This information will only be provided to Defendants in pending Court actions or Attorneys who have been retained to represent a Defendant in a Court action.)

I acknowledge the information being provided to me is designated as "Confidential Criminal Justice Information under MCA Secs 103, 303. By accepting this information, I assume responsibility of maintaining its confidentiality and assume the responsibility to restricting any further dissemination of this information pursuant to MCA Sec 44-5-303(3).

I certify under penalty of law that: (check one)

☐ I AM THE DEFENDANT – I am presently charged with a crime in a pending Court action that is the subject of this information request.

☒ I REPRESENT THE VICTIM – I am an attorney licensed to practice law in the State of Montana who has been retained to represent the victim in this action, and I am obtaining this information solely for the use of that attorney in connection with his/her or his/her representation of the victim. The defendant in this matter is also a witness in a connected matter to my client (the victim).

SIGNATURE

DATE 07/13/2022

PDO # N/A

ATTORNEY Ramsey, Clark

CASE # DC-20-1474

000127

STATE'S  
EXHIBIT  
2

¶32 The terms used in the complaint, including “altered the form” and “altered document,” can be understood only by reviewing the actual documents attached to the complaint. Apparent on an initial review, these forms appear to be identical, government-issued forms. The word “alteration” can be visualized as crossed-off language and new language inserted above, perhaps in handwriting, but that is not the kind of alteration that occurred here. There is nothing whatsoever upon Form 2, as allegedly engineered by Ramsey, that would alert a reader or reviewer that the form has been changed from the official agency Form 1, because the general appearance is exactly the same. The font of the alterations on Form 2 matches the original font on official Form 1.

¶33 Then, critically, in altered Form 2, the requisite acknowledgement language that restricts release of CCJI to a defendant’s legal representative, as required by law, specifically, that the requestor “has been retained to represent the Defendant in this action,” has been removed. In its place, in the same font and location on the form, wording has been inserted stating that the requestor is a licensed attorney “who has been retained to represent the victim in this action.” Other similar changes are likewise made within this acknowledgement, the sum of which render the paragraph similar in length and appearance to the actual paragraph within official Form 1. No notation or indication was made upon altered Form 2 that would notify the reader or reviewer or signify that language on the official form has been changed or that this form is not the official form generated by



Yellowstone County, with seal at top. This led to the consequence that the Sheriff's Office did "not notic[e] the alteration made by the Defendant."<sup>2</sup>

¶34 "Thus, by presenting the altered form, the Defendant commanded, encouraged, or facilitated, Yellowstone County Sheriffs Office's dissemination of CCJI regarding Case 2 to the Defendant, when he was not authorized to receive it." Consequently, Ramsey "with the purpose to defraud, knowingly issued or delivered a document knowing it to have been altered. Specifically, the Defendant altered a document on Yellowstone County letterhead to provide him with confidential criminal justice information, and delivered the document to Yellowstone County Sheriff's Office to obtain materials he was not authorized to obtain," and thus he committed the offense of misdemeanor forgery.

¶35 Also, Ramsey, "with the purpose of obtaining confidential criminal justice information (CCJI) he knew he was not entitled to, submitted an altered official request for CCJI to Yellowstone County Sheriff's Office Evidence Department which facilitated the misuse of that CCJI," and thus committed the offense of misdemeanor solicitation of the misuse of CCJI. The complaint further alleges that Ramsey "issued a subpoena" to Detective Donahue "to testify in Case 1." Ramsey "then attempted to use Detective Donahue to introduce the CCJI he illegally obtained from Case 2."

---

<sup>2</sup> The Court reasons that Ramsey "ma[de] abundantly clear" to the Sheriff's Office that he represented only the victim, and also repeats Ramsey's argument that he gave full disclosure in submitting the altered Form 2. Opinion, ¶ 17. However, these are factual determinations in favor of the Defendant that should instead be resolved by a factfinder, who may draw different conclusions from the evidence. Our task here is only to assess the allegations made by the State. The forms attached to the complaint could well demonstrate that Ramsey's alleged alterations were less than clear and his disclosure was less than full, especially in light of the further allegations discussed below.

### *Analysis*

¶36 As noted, misdemeanor forgery occurs when a person, knowingly and with the purpose to defraud, “without authority makes or alters a document” that is “apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time.” Section 45-6-325(1)(a), MCA. Bearing in mind that the complaint does not “have to make out a prima facie case that the defendant committed an offense; rather, *a probability* that the defendant committed the offense is sufficient,” *Giffin*, ¶ 15 (emphasis added), the allegations of the complaint and its attachments are sufficient to establish the probability that Ramsey, without authority, made or altered a document “apparently capable” of defrauding the Sheriff’s Office in a manner that it (the document) purported to have been made by another, for the purpose of fraudulently obtaining CCJI that he would not have been entitled to receive without prosecutor and/or court review, which may have resulted in denial or restriction of the CCJI to Ramsey. Then, the allegations are sufficient to establish the probability that, as alleged by the complaint, Ramsey solicited the offense of misuse of CCJI by “facilitating” the dissemination of “information accessed from the criminal justice information network to any person who is not authorized to receive confidential criminal justice information” when he obtained release of the information directly to himself when he was not authorized to receive it, and furthered that offense by attempting to have Detective Donahue introduce the unauthorized CCJI during testimony. Sections 45-4-101(1), 45-7-601(1)(b), MCA.

¶37 More specifically, the mental state elements of the charged crimes include, for forgery, “knowingly” making or altering a document in a manner that it purports to have

been made by another and apparently capable of being used to defraud, “with the purpose to defraud”; or, alternatively under subsection (1)(b) of the forgery statute, delivered the document “knowing it to have been thus made or altered”; and for the solicitation offense, “with the purpose that an offense be committed,” facilitates “purposely or knowingly” disseminating CCJI to persons not authorized to receive it. However, intent may be proven by inferences drawn from the evidence, including the nature of the altered form itself and the actions taken by Ramsey with that form. From the documents and the actions described above in the charging documents, and the below considerations drawn therefrom, the required mental states are sufficiently established to support the charges.

¶38 First, what “authority” (§ 45-6-325(1)(a), MCA) or basis did Ramsey have to believe that he could alter an official government document utilized by an agency to process confidential criminal information in accordance with the requirements of law, without that agency’s permission? The official form, attached to the complaint, does not state it may be altered for use in other circumstances, or that the requisite qualifications for release of information may be altered or waived. The answer must be, for purposes of this inquiry, that there was no authority permitting Ramsey to unilaterally alter the official government form, and no possible basis for him to believe that he could do so. This likewise satisfies an alternative charge under subsection (1)(b) that he delivered the document “knowing it to have been thus made or altered” without authority.

¶39 If there is no such basis for such a belief, then for what permissible purpose did Ramsey alter the form, doing so in a manner that made the form appear to be unaltered—looking identical to the official government form, including with government heading, seal,

and title—and submit the form to the agency *without giving the agency any indication* that he had subtly but critically altered its form? Why did Ramsey not disclose what he had done? The answer is that, as alleged, there is no permissible purpose for Ramsey’s actions, and he wanted his actions to slip by the agency unnoticed and result in his receiving CCJI he was not entitled to. This establishes the probability of deception. His intended plan worked: his knowing actions of subtly altering the form and submitting it without notice misled the agency and demonstrated a purpose to defraud the agency. Thus, as alleged, he subverted the legal process and acquired confidential information that he was not permitted to obtain.

¶40 Ramsey is presumed innocent, and he is completely entitled to offer evidence at trial that none of these allegations and inferences are true; rather, that he mistakenly believed, though a lawyer, he was immediately entitled to receive this confidential information without completing the process of review, and therefore he had no need or intention to defraud; that he innocently believed he could properly obtain this information by altering the official form to make it look like the official form, but which instead matched the client he was representing in Case 2—not the requisite defendant, but a victim; and that he innocently assumed it was unnecessary for him to advise the agency that he had altered its form because he thought the agency would catch the error if he was wrong. If the factfinder believes these Ramsey positions, then he will be acquitted. But it is possible that the factfinder will not believe Ramsey, because there is probable cause to believe otherwise.

¶41 Despite this, the Court completely accepts Ramsey’s point of view regarding his intentions, concluding that the mental state elements of the charges are “entirely lacking in

the charging documents.” Opinion, ¶ 16. However, they are not lacking, and the Court’s conclusion to the contrary is essentially a factual finding that Ramsey lacked all criminal intentions, and engaged only in completely innocent behavior. The Court concludes that the altered form submitted to the agency by Ramsey was a “modified but accurate form,” which “ma[de] abundantly clear” his intentions. Opinion, ¶ 17. This conclusion overlooks the question of what right or authority Ramsey had to alter the form in the first place; it mistakenly states that Ramsey’s counterfeit form, deceptively made to look like the official form and omitting the legal prerequisite for release of the CCJI, was somehow an “accurate” request for confidential information; and it absolves Ramsey of submitting the counterfeit form to the agency without telling the agency what he had done, and receiving CCJI to which he was not entitled. Then, the Court surveys this case and concludes that the fault entirely lies not with the person who allegedly misled the agency and manipulated the process, but with the Sheriff’s Department. *See* Opinion, ¶ 17 (“[T]hat is, frankly, not Ramsey’s problem and an issue for the YCSO to address itself by reviewing its own policies . . .”). In sum, the Court does not accept the allegations at face value, but instead takes on the role of factfinder and decides that all of Ramsey’s actions were done with innocent purpose and without deception. In my view, as alleged and supported by the complaint, this indeed is Ramsey’s problem, and the ultimate determination about the truth of these factual allegations should be left to the factfinder.

¶42 In the end, the complaint “reasonably apprise[s] [Ramsey] of the charges against him to enable him the opportunity to prepare a defense.” *Giffin*, ¶ 15 (internal citation omitted). “We apply the ‘common understanding’ rule to determine if the charging

language of a document allows a person to understand the charges against him. Under this standard, the test of the sufficiency of a charging document is whether the defendant is apprised of the charges and whether he will be surprised.” *Giffin*, ¶ 15 (internal citation omitted). I would hold that Ramsey has been properly apprised of the charges, and that they are supported by probable cause.

/S/ JIM RICE

Justice Beth Baker joins in the dissenting Opinion of Justice Rice.

/S/ BETH BAKER

Justice James Jeremiah Shea, dissenting.

¶43 I agree with Justice Rice’s assessment, expressed at ¶¶ 22-27 of his dissent, that this matter is not appropriate for a writ of supervisory control. Having made that determination, though, I would decline to address the merits of Ramsey’s Petition. I therefore dissent separately from the Court’s issuance of the writ.

/S/ JAMES JEREMIAH SHEA