

STATE OF MONTANA,

Plaintiff and Appellee,

v.

NICOLE LEE HUNT,

Defendant and Appellant.

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**REPLY BRIEF OF APPELLANT**

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On Appeal from the Montana Twenty-First Judicial District Court,  
Ravalli County, the Honorable Jennifer B. Lint, Presiding

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## ARGUMENT

Having received and reviewed the State's response, undersigned maintains the arguments made in Appellant's opening brief and replies as follows:

**Hunt withdrawing consent to search did not provide particularized suspicion for a canine sniff.**

After completing the initial purpose of the stop and ruling out that Hunt was not driving under the influence, Monaco continued the stop simply because he was "a little suspicious" of "some other illegal activity." (*Motion to Suppress Transcript*, p. 16-17). The State concedes that the following "observations alone" – Monaco's initial observation of the vehicle outside the Rustic Hut Apartment and Monaco's subjective viewpoint of Hunt's demeanor, speech, and eye appearance – "may have been insufficient" to search Hunt's vehicle via a canine sniff. (*State's Response*, p. 29). The State pairs this law-abiding behavior with Hunt's "instant, agitated response [*i.e.*, revoking consent to search] to Detective Monaco locating a specific package in her vehicle during a consent to search[]" to support an argument for particularized suspicion. (*State's Response*, p. 22, 29).

Unless an exception to the general rule is demonstrated, a warrant is required to search a vehicle for property not within plain view. *State v. Peoples*, 2022 MT 4, ¶ 13, 407 Mont. 84, 502 P.3d 129 (citing *State v. Elison*, 2000 MT 288, ¶¶ 43-59, 302 Mont. 228, 14 P.3d 456). *See also State v. Sawyer*, 147 Mont. 512, 518, 571 P.2d 1131, 1134 (1977), *overruled on other grounds by State v. Long*, 216 Mont. 65, 67, 700 P.2d 153, 155 (1985) (providing rule of inventory search of vehicles). Warrantless searches are *per se* unreasonable, burdening the State to demonstrate that the search fell within a specific exception to the warrant requirement. *Peoples*, ¶ 15 (citations omitted). *See also State v. Marino*, 2016 MT 220, ¶ 13, 384 Mont. 490, 380 P.3d 763 (citing *State v. Tackitt*, 2003 MT 81, ¶ 29, 315 Mont. 59, 67 P.3d 295).

Under Montana law, “consent, as an exception to the warrant requirement, must be narrowly construed.” *State v. Ellis*, 2009 MT 192, ¶ 31, 351 Mont. 95, 210 P.3d 144 (citing *State v. Schwarz*, 2006 MT 120, ¶ 14, 332 Mont. 243, 136 P.3d 989).

When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, [they have] the burden of proving that the consent was, in fact, freely and voluntarily given. This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority.

*Bumper v. North Carolina*, 391 U.S. 543, 548-49, 88 S.Ct. 1788, 1792, 20 L.Ed.2d 797 (1968) (footnotes omitted). Ranging from contract formation to sexual relationships, consent can be withdrawn as easily as it is made, making the original consent void.

As for particularized suspicion to expand the search and conduct a canine sniff, two-thirds<sup>1</sup> of the State’s basis for “reasonable and articulable suspicion” is supported by “facts or inferences [that] could be drawn about virtually any law-abiding citizen[.]” *State v. Loberg*, 2024 MT 188, ¶ 12, 418 Mont. 38, 554 P.3d 698 (citing *State v. Noli*, 2023 MT 84, ¶ 32, 412 Mont. 170, 529 P.3d 813). Such *Noli* factors “must be in conjunction with other *specific* indicia of criminal activity.” *Loberg*, ¶ 12 (citing *Noli*, ¶ 32) (emphasis in original). Here, Hunt revoked consent to search because the package “wasn’t her mail and didn’t want [Monaco] opening other people’s mail.” (*Supp. Tr.*, p. 23). The package in question was a partially opened, “yellow manila-style shipping envelope” addressed to “Trent Parker.” (State’s Exhibit 14; *Supp. Tr.*, p. 22).

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<sup>1</sup> Meat Loaf and Jim Steinman, *Two Out of Three Ain’t Bad*, on *Bat Out of Hell* (Cleveland International Records / Epic Records 1977).

Undersigned cannot locate Montana precedent speaking directly as to whether an individual has a reasonable expectation of privacy in delivered mail of another within their possession. Under federal law, “sender’s expectation of privacy” in contents of a letter “ordinarily terminates upon delivery” regardless of whether the “sender may have instructed the recipient to keep the letters private”. *State v. Staker*, 2021 MT 151, ¶ 31, 404 Mont. 307, 489 P.3d 489 (citing *United States v. King*, 55 F.3d 1193, 1195-96 (6<sup>th</sup> Cir.)). However, Montanans privacy expectations are higher under Article II, Sections 10 and 11 of the Montana Constitution. *State v. Hamilton*, 2003 MT 71, ¶ 14, 314 Mont. 507, 67 P.3d 871 (citing *State v. Scheetz*, 286 Mont. 41, 45, 950 P.2d 722, 724). On this basis, undersigned argues that Montanans enjoy a reasonable expectation of privacy as to another person’s mail within a person’s vehicle or home.

### **CONCLUSION**

The District Court erred concluding that Hunt’s consent was continually valid as an exception to the warrant requirement. (DC Doc. 50, p. 7). Likewise, Monaco’s generalized suspicion was not particularized suspicion of illegal activity. The District Court erred



concluding that particularized suspicion existed to justify the canine sniff. (DC Doc. 50, p. 4). Hunt's motion to suppress should have been granted.

Hunt relies on her argument and remedy as to the second issue found in the opening brief. The District Court abused its discretion permitting the State's rebuttal witness.

Respectfully submitted this 10th day of December, 2024.

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## **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 880, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Joshua James Thornton  
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## **CERTIFICATE OF SERVICE**

I, Joshua James Thornton, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 12-10-2024:

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