

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0462

CITY OF KALISPELL,

Plaintiff and Appellee,

v.

SEAN MICHAEL DOMAN,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Robert Allison, Presiding

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STATEMENT OF THE ISSUES

1. Whether there was sufficient evidence to convict Appellant for obstructing a peace officer after Appellant, who inserted himself into a traffic stop and attempted to communicate with the occupants of the stopped vehicle, hindered the investigation when he chose to escalate his behavior towards an officer rather than obey the officer's reasonable request to record the stop from a safe distance.

2. Whether this Court should invoke plain error to review Appellant's unpreserved claim that Mont. Code Ann. § 45-7-302 was unconstitutional as-applied to the facts of this case.

3. Alternatively, whether Mont. Code Ann. § 45-7-302 was unconstitutional as-applied to the facts of this case.

STATEMENT OF THE CASE

On July 17, 2022, Appellant Sean Doman (Doman) was cited with obstructing a peace officer pursuant to Mont. Code Ann. § 45-7-302(1). (Doc. 1 at 87.) The State alleged that Doman, who was recording a traffic stop with his cell phone, refused to obey an officer's request that he record the stop from a reasonable distance. (Doc. 1 at 88.)

On March 8, 2023, a jury in Kalispell Municipal Court convicted Doman of obstructing a peace officer. (Doc. 1 at 11.)

On April 21, 2023, Doman filed a Notice of Appeal to the district court. (*Id.* at 4.) On appeal, Doman contended that Mont. Code Ann. § 45-7-302 was “vague, facially overbroad, and unconstitutional as-applied to the facts of this case.” (Doc. 3 at 2.) The State responded that Doman’s constitutional arguments had been waived. (Doc. 4 at 4.) The district court affirmed Doman’s conviction, stating, “this Court will ‘not address as-applied constitutional arguments when raised for the first time on appeal.’” (Doc. 5 (citing *City of Whitefish v. Curran*, 2023 MT 118, ¶ 29, 412 Mont. 499, 531 P.3d 547).)

STATEMENT OF THE FACTS

Officer Dustin Willey (Officer Willey) had been an officer with the Kalispell Police Department (KPD) for about three and a half years. (3/08/23 Trial Recording [Rec.] at 2:50:20-37.) He had conducted approximately 600 traffic stops in his career. (*Id.* at 2:50:48-54.)

Officer Willey testified that he had been trained to pay attention to “everything in the vicinity of the stop.” (*Id.* at 2:51:05-29.) Officer Willey testified that traffic stops are dangerous, in part, because “you don’t know who is behind the wheel.” (*Id.* at 2:51:40-2:52:09.) Part of an officer’s training is to direct their focus on the driver and occupants of the car. (*Id.* at 2:52:15-19.) As Officer Willey put it, “. . . we’re trained to try to keep as much of our attention as we can on the

traffic stop on the occupants of that vehicle. They in most scenarios present the greatest threat to our safety is the occupants of the vehicle that you've stopped.” (*Id.* at 2:52:27-41.)

On July 17, 2022, Officer Willey conducted a traffic stop after he observed a vehicle turn without using its signal, then determined that the registered owner had a suspended driver's license. (*Id.* at 2:52:43-2:53:21.) The vehicle had tint on its windows, which prevented Officer Willey from seeing inside. (*Id.* at 2:53:37-45.)

City's Exhibit 1, which contained three segments of video recordings, was admitted into evidence.¹ (*Id.* at 2:54:56-2:55:22.) After publishing Video 2, Officer Willey's dash camera, the City published Video 1, his BWC. (*Id.* at 2:58:08-11.) Video 1 recorded Officer Willey introducing himself to the driver, explaining his reason for the stop, and asking for his driver's license, which he did not have. (*Id.* at 2:59:03-28.)

Officer Willey then returned to his squad car, and his dash camera recorded that Doman rode his bike around the front of the stopped vehicle, then turned around and pulled up on the sidewalk next to it. (Video 2 at 04:42-54.) Doman began recording with his cell phone. (*Id.*) Officer Willey could be heard asking

¹ Video 1 was Officer Willey's body worn camera [BWC], which is 9:02 in length; Video 2 was the dash camera recording from Officer Willey's squad car, which is 6:58 in length; and Video 3 was Officer Minaglia's BWC, which is 2:19 in length.

dispatch if other officers were in the area, as he had someone filming him. (*Id.* at 05:07-12.) As Officer Willey continued to speak to dispatch, Doman wheeled his bike a few feet closer to the vehicle and motioned for the occupant(s) to roll down their window.² (*Id.* at 05:28-39.)

Officer Willey testified that he had called for back up because, “I don’t know what [Doman] is doing there, what his intentions are, he starts communicating with the people inside the vehicle. At that point, I’ve got a situation I’d like more than one set of eyes on.” (Rec. at 3:13:33-45.) This was done for safety and calling for assistance in this scenario was consistent with his training. (*Id.* at 3:13:50-3:14:00.)

Officer George Minaglia (Officer Minaglia) arrived on the scene, and Officer Willey could hear him speaking with Doman. (*Id.* at 3:18:22-44.) Officer Willey left his car in a hurry after he heard their conversation “getting heated,” with raised voices. (*Id.* at 3:19:59-3:20:17.)

Officer Willey testified that responding to Doman’s escalated behavior took his attention “completely off of the traffic stop.” (*Id.* at 3:20:18-22.) No one was watching the occupants of the stopped vehicle, and Officer Willey confirmed that “at that point, it was just me and Officer Minaglia.” (*Id.* at 3:20:24-32.)

² There was a female in the front passenger’s seat. (*See*, Video 1 at 01:17-18.)

Officer Willey was able to return his attention to the traffic stop after another officer arrived, and he explained that, “so now I knew George—Officer Minaglia had someone there with him.” (*Id.* at 3:22:36-52.)

During cross-examination, Officer Willey clarified that he turned his attention to Doman because “[t]his is the more pressing situation, because a lot of people, as soon as the handcuffs come out, that’s when the fight starts. I’m not gonna just wait to be reactive, if we can have two officers control someone that’s elevated like this, its much safer to get involved before it—before it evolves.” (*Id.* at 4:09:10-27.)

Officer Minaglia worked for the KPD for about one year, had since been hired by the Flathead County Sheriff’s Department, and had over seven years of law enforcement experience. (*Id.* at 4:49:37-54.)

On July 17, 2022, he responded to Officer Willey’s call for back up. (*Id.* at 4:50:41-4:51:17.) Upon arriving at the scene, he made contact with Doman. (*Id.* at 4:51:36-42.) He observed that Doman was approximately 15 feet from Officer Willey’s squad car, and about 10-12 feet from the vehicle that had been stopped. (*Id.* at 4:52:13-28.) Officer Minaglia explained that Doman’s proximity to Officer Willey’s traffic stop was a safety concern for both officers and the general public. (*Id.* at 4:52:39-4:55:40.)

During his conversations with Doman, Officer Minaglia expressed that, “I did not disagree that he had a right to film. I again explained several times that he

needed to move approximately 20 feet away so we could continue our investigation.” (*Id.* at 4:55:56-4:56:03.)

When asked why he removed Doman’s phone from his hand, Officer Minaglia responded:

So, while he was filming me, he was in such close proximity, that I had no idea at this point, with his several refusals to leave whether he was gonna strike me in the face with his phone, or what his intention was with it, and I took the phone out of his hand, placed it on the ground, so that I could escort him out of our scene.

(*Id.* at 4:56:13-35.)

Doman accused Officer Minaglia of assaulting him, called him a tyrant, and stated that he was going to sue him. (*Id.* at 4:58:14-22.) Asked why he decided to arrest Doman, Officer Minaglia responded, “[y]eah, so as I was trying to escort him back he ultimately stopped, while he was saying these things, and I made the determination that he had zero intention of following our commands and has continued to hinder the enforcement of this investigation.” (*Id.* at 4:58:39-56.) Officer Minaglia testified that he did not arrest Doman because he called him a tyrant. (*Id.* at 4:58:56-4:59:00.)

The City then published Officer Minaglia’s BWC. (*Id.* at 4:59:39.) The BWC recorded Officer Minaglia’s initial conversations with Doman:

OFFICER: Hey brother, *I don’t mind if you film*, just do me a favor and kind of, go a little bit away, okay?

DOMAN: [Inaudible] activity.

OFFICER: You're what?

DOMAN: [inaudible]First Amendment. First Amendment. Protected Activity.

OFFICER: Right, I agree, just do me a favor and just, get out of where we're working, and *you can totally film from like right over here by this tree, okay?*

(Video 3 at 00:25-00:39 (emphasis added).)

After Doman stated, "I'd like to stand right here," their conversation continued:

OFFICER: Do you understand that my engagement with you is distracting me from this?

DOMAN: That's your fault. That's not my responsibility.

OFFICER: *Can you please, can you please move forward, sir?*

DOMAN: *No.*

OFFICER: *Can you please move forward?* [Officer takes phone and places it on the ground while directing Doman away from the traffic stop] *I don't mind if you film.*

DOMAN: Yeah, I'm gonna sue the fuck out of you now brah.

OFFICER: Okay, go ahead sir.

DOMAN: What's your name and badge number?

OFFICER: Officer Minaglia, K-34. Okay? Let's keep moving.

(*Id.* at 00:55-01:18 (emphasis added).)

At this time, Officer Willey approached and remained a few feet behind Doman. (*Id.* at 01:18.) After Doman falsely alleged that Officer Minaglia had not told him where he could record, the two had the following exchange:

OFFICER: Last warning, you can move over by that tree, or you can be arrested.

DOMAN: Yeah, you put your hands on me, you fucking assaulted me
. . . .

OFFICER: Okay.

DOMAN: . . . you seized my phone illegally.

OFFICER: Keep going, keep going.

DOMAN: I'm going to sue the shit out of you, dude.

OFFICER: Keep going. Go ahead.

DOMAN: Yeah, how far? How far?

OFFICER: Do you see the tree?

DOMAN: How far, tyrant? How far, tyrant?

OFFICER: Okay, stop—you're under arrest.

DOMAN: [Laughing] He's gonna a—he's arresting me for calling him tyrant.

OFFICER: Stop. Stop.

DOMAN: This is fucking awesome! Oh, I'm gonna get so much money out of you fuckers.

OFFICER: Okay. Go ahead.

DOMAN: Oh, you fucking pigs!

OFFICER: Thank you.

DOMAN: Oh my God, you fucking tyrant!

(*Id.* at 01:39-02:04.)

Asked to give an “all encompassing statement” of what the jury had observed on his BWC, Officer Minaglia responded,

So, like I kinda had just stated, the fact that there was zero effort from him to distance himself from our investigation, I had explained it several times to him, my—I was completely distracted by him and hindered from assisting Officer Willey finish his investigation.

Officer Willey had to come and assist me with what I now had, presented in front of me, uh, there was zero cooperation from him to just follow a simple instruction and distance himself. And I that point I determined, okay, well, he’s hindering our investigation and he needs to be placed under arrest.

(Rec. at 5:04:48-5:05:24.)

After Officer Minaglia’s testimony, the City rested. (*Id.* at 5:48:35-38.)

The defense called Officer Timothy Cronan (Officer Cronan) as a witness.

(*Id.* at 5:50:09-20.) Officer Kronan’s testimony provided nothing relevant to the verdict or this appeal.³

³ Doman contends that Officer Kronan was available to assist Officer Minaglia. (Appellant’s Br. at 16.) However, Officer Kronan did not appear until *after* Officer Willey had placed Doman in handcuffs. (*See, e.g.*, Rec. at 5:51:45-48: “I didn’t play much of a role in the case;” *see also*, Video 1 at 07:30-41.)

After Officer Cronan's testimony, the defense indicated it was going to rest. (*Id.* at 6:02:18-21.) Then, the defense moved for a directed verdict. (*Id.* at 6:03:00-15.) The sole basis articulated in the motion was that there had been no testimony to establish that a traffic offense constituted a criminal violation. (*Id.* at 6:03:43-56.)

The municipal court denied the motion. (*Id.* at 6:04:58-6:05:00.) The district court's instructions to the jury included the following:

A citizen's right to film government officials including law enforcement officers in the discharge of their duties at a traffic stop is a well-established liberty safeguarded by the First Amendment. It is not a violation of the law to film a peace officer conducting official duties while enforcing the law. However, the right to record . . . police activity . . . is not without limitations. It may be subject to reasonable time, place, and manner restriction.

(*Id.* at 6:17:00-28.)

The jury returned a verdict of guilty. (*Id.* at 6:53:03-6:54:00.)

SUMMARY OF THE ARGUMENT

There was more than sufficient evidence to support the jury's verdict. The fact that Officer Willey was ultimately able to issue a citation to the driver of the stopped vehicle is not relevant to whether Doman impeded or hindered what was obviously police officers engaged in their lawful duties while conducting an investigation.

This is not a case where plain error review is appropriate, as the jury, who was accurately instructed on the law, observed Doman interfere with Officer Willey's investigation with their own eyes and ears. The verdict was a result of the jury comparing their own observations with the officers' testimony and logically concluding that the officers were credible.

Montana Code Annotated § 45-7-302 is not unconstitutional as-applied to the facts of this case. Officer Minaglia informed Doman more than once that he could record the stop, but asked him to do it from a safe distance. When Doman escalated his defiance to Officer Minaglia's request and forced Officer Willey to direct his attention towards Doman and away from the occupants of the stopped vehicle, he impaired and hindered the investigation.

ARGUMENT

I. Standards of review

A claim of insufficiency of the evidence is reviewed de novo regardless of whether it was raised below. *State v. Rodriguez*, 2024 MT 132, ¶ 10, 417 Mont. 52, 551 P.3d 292 (citation omitted). "When reviewing a challenge to the sufficiency of the evidence, this Court determines whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found

the essential elements of the crime beyond a reasonable doubt.” *Id.* (citation omitted).

This Court has consistently held that it will not consider issues raised for the first time on appeal. *See, e.g., State v. Reim*, 2014 MT 108, ¶ 38, 374 Mont. 487, 323 P.3d 880; *State v. Taylor*, 2010 MT 94, ¶ 12, 356 Mont. 167, 231 P.3d 79. This Court may review an unpreserved claim alleging a violation of a fundamental constitutional right under the common law plain error doctrine where the defendant invokes the Court’s inherent authority and establishes that failing to review the claimed error may result in a manifest miscarriage of justice, may leave unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process. *Taylor*, ¶¶ 12-13. This Court invokes plain error review “sparingly, on a case-by-case basis, according to narrow circumstances, and by considering the totality of the circumstances.” *State v. Williams*, 2015 MT 247, ¶ 16, 380 Mont. 445, 358 P.3d 127.

“A statute is presumed constitutional unless it conflicts with the constitution, in the judgment of the court, beyond a reasonable doubt.” *State v. Brown*, 2022 MT 176, ¶ 29, 410 Mont. 38, 517 P.3d 177 (citation omitted). “Our review of constitutional questions is plenary.” *Id.* (quoting *State v. Knudson*, 2007 MT 324, ¶ 12, 340 Mont. 167, 174 P.3d 469).

II. Any rational trier of fact could find that Doman knowingly hindered the performance of Officer Willey’s investigation.

Pursuant to Mont. Code Ann. § 45-7-302, “[a] person commits the offense of obstructing a peace officer . . . if the person knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function” In interpreting the statutory definition of “knowingly,” this Court has held that “an individual obstructing a peace officer must engage in conduct under circumstances that make him or her aware that it is highly probable that such conduct will impede the performance of a peace officer’s lawful duty.” *City of Kalispell v. Cameron*, 2002 MT 78, ¶ 11, 309 Mont. 248, 46 P.3d 46 (interpreting Mont. Code Ann. §§ 45-2-101(35) (2011) and § 45-7-302(1)).

Since the jury’s role is to “evaluate the credibility of witnesses, weigh the evidence, and ultimately determine which version of events should prevail,” it is immaterial to this Court’s review “whether the evidence could have supported a different result.” *State v. Burnett*, 2022 MT 10, ¶ 15, 407 Mont. 189, 502 P.3d 703 (citations omitted); *see also State v. Fleming*, 2019 MT 237, ¶ 12, 397 Mont. 345, 449 P.3d 1234; *Byers v. Cummings*, 2004 MT 69, ¶ 16, 320 Mont. 339, 87 P.3d 465 (not this Court’s function to agree or disagree with the jury’s verdict since the jurors determine the weight and credibility afforded to evidence).

This Court’s inquiry into the sufficiency of the evidence turns on whether the evidence in the record could reasonably support a finding of guilt beyond a reasonable doubt. *State v. Crabb*, 232 Mont. 170, 173, 756 P.2d 1120, 1122 (1988).

But this inquiry does not require a court to “ask itself whether it believes whether the evidence at the trial established guilt beyond a reasonable doubt.” Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Crabb, 232 Mont. at 173, 756 P.2d at 1122 (citing *State v. Lundblade*, 221 Mont. 185, 717 P.2d 575 (1986) (internal citations omitted) (emphasis in original)).

When reviewing sufficiency of the evidence, this Court “will not substitute our judgment for that of the jury, which is able to view firsthand the evidence presented, observe the demeanor of the witnesses, and weigh the credibility of each party.” *State v. Shields*, 2005 MT 249, ¶ 20, 328 Mont. 509, 122 P.3d 421. “It is only in those rare cases where the testimony of a witness is so inherently improbable or is so nullified by material self-contradiction that no fair-minded person could believe it, that we may say no firm foundation exists for the verdict based on it.” *Id.*

In this case, the jurors were able to see and hear recordings of the incident and compare their personal observations to the officers’ testimony. The jury heard

Officers Willey and Minaglia describe how Doman's actions hindered Officer Willey's lawfully executed stop. The jury watched Doman inject himself into the traffic stop and defiantly pick a fight with Officer Minaglia, thus forcing Officer Willey to divert his attention from the occupants of the stopped vehicle to Doman. After comparing the testimony of the officers to what they observed on the recordings, the jury concluded that the officers were credible.

Doman attempts to compare this case to *State v. Bennett*, 2022 MT 73, 408 Mont. 209, 507 P.3d 1154. (Appellant's Br. at 11-12.) This comparison is unpersuasive due to significant factual differences between *Bennett* and this case. Most notably, this Court determined that there was "nothing" that occurred during the officer's encounter with Bennett to show "that Bennett hindered Officer Loya's performance of his duty, much less that she was aware her conduct was highly probable to hinder the performance of that duty." *Bennett* ¶ 10.

This Court observed that:

In this case, after responding to all of Officer Loya's questions, Bennett turned to walk away as she was responding to what was, by all appearances, the end of Officer Loya's inquiry: "So, Angela, anything else you want to tell me?" In that moment, Bennett was immediately arrested without incident.

Bennett, ¶ 11.

Here, not only was Doman undeniably aware that officers were conducting an investigation, he was explicitly informed that he was distracting them from that

investigation. Further, unlike the officer in *Bennett*, Officer Minaglia gave Doman a clear and obvious choice: “Last warning, you can move over by that tree, or you can be arrested.” (Video 3 at 01:39-43.) Unlike the defendant in *Bennett*, Doman chose to be arrested.

Doman claims that he “never refused to comply with [Mignalia’s] order to back up, and Mignalia admitted as much at trial.” (Appellant’s Br. at 8.) This is not a realistic interpretation of the evidence. After Doman informed Officer Minaglia that, “I’d like to stand right here,” the two had the following exchange:

OFFICER: Do you understand that my engagement with you is distracting me from this?

DOMAN: That’s your fault. That’s not my responsibility.

OFFICER: *Can you please, can you please move forward, sir?*

DOMAN: *No.*

OFFICER: Can you please move forward? [Officer takes phone and places it on the ground while directing Doman away from the traffic stop] I don’t mind if you film.

DOMAN: Yeah, I’m gonna sue the fuck out of you now brah.

OFFICER: Okay, go ahead sir.

DOMAN: What’s your name and badge number?

OFFICER: Officer Minaglia, K-34. Okay? Let’s keep moving.

(Video 3 at 00:55-01:18 (emphasis added).)

After Doman verbally refused to move, what movement he did make was done in an obnoxiously slow and defiant manner, intended to demonstrate that he did not intend to obey the officer's lawful request. Doman attempts to portray the facts here as similar to *Cameron, supra*, where the defendant was unaware that law enforcement activity was occurring and therefore did not understand that refusing the officer's order would hinder an investigation. *Cameron*, ¶¶ 10-12. (Appellant's Br. at 12-13.)

In *Cameron*, this Court reversed the defendant's conviction because when he interacted with police, he did not know that an investigation or traffic stop was taking place. *Cameron*, ¶¶ 10, 12. The officer approached the defendant without warning, after the vehicle in which he was a passenger had already come to a stop. *Id.* ¶ 4. Cameron had exited the vehicle and walked into a restaurant when the officer called out to Cameron. *Id.* ¶ 5. He complied with the officer's request to approach, but he refused to re-enter the vehicle. *Id.* The officer responded by using force to handcuff Cameron. *Id.*

Notably, another police officer who arrested Cameron's companion testified that the arrest took place without incident and his investigation was not impaired by Cameron's refusal to return to the vehicle. *Id.* ¶ 12.

This Court determined that "there was no evidence that Cameron impaired the investigation." *Id.* ¶ 10. This Court noted testimony that this "was not a normal

traffic stop during which officers follow a vehicle on the road and pull the vehicle over after activating their lights.” *Id.* ¶ 4. Therefore, Cameron had no reason to know he was being investigated or arrested. *Id.* ¶ 12.

Under the facts of this case, until Doman arrived on the scene, this was a “normal traffic stop.” Officer Willey’s overhead lights were flashing and Doman was undeniably aware that Officer Willey was performing his duties as a law enforcement officer. That was the only basis for Doman approaching the stop and recording it in the first place. Importantly, the jury determined that Doman hindered the performance of Officer Willey’s investigation after they watched and heard him do exactly that.

Doman urges this Court to conclude that because Officer Willey ultimately issued a citation to the driver of the stopped vehicle, he was not hindered or impeded in the performance of his lawful duty. (Appellant’s Br. at 15.) This argument is unavailing because it disregards that Officer Willey had to take his attention “completely off of” the occupants of the stopped vehicle to assist Officer Minaglia. (Rec. at 3:20:18-23.)

As this Court observed in a similar case, *State v. Eisenzimer*, 2014 MT 208, 376 Mont. 157, 330 P.3d 1166:

[Officer] Holbrook was only able to complete his traffic stop after he arrested Eisenzimer. Prior to arresting Eisenzimer, Holbrook’s attention to the performance of his duties—i.e., the traffic stop—was diverted by responding to Eisenzimer’s repeated requests for a ride.

Although Holbrook acknowledged at trial that he did not think Eisenzimer intended to impede his work, Eisenzimer's subjective intent is not the issue. *The issue is whether Eisenzimer engaged in conduct that impeded the performance of Holbrook's lawful duties under circumstances that made Eisenzimer aware it was highly probable his conduct would impede the performance of those duties.* Reviewing the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could have made such a finding beyond a reasonable doubt.

Eisenzimer, ¶ 11 (emphasis added).

The U.S. Supreme Court has recognized for decades that there is an “inordinate risk confronting an officer as he approaches a person seated in an automobile.” *Pa. v. Mimms*, 98 S. Ct. 330, 336-37 (1977); *see also, Arizona v. Johnson*, 129 S. Ct. 781 (2009) (noting that traffic stops are “especially fraught with danger to police officers”).

And we have specifically recognized the inordinate risk confronting an officer as he approaches a person seated in an automobile. “According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, *Police Officer Shootings—A Tactical Evaluation*, 54 J. Crim. L.C. & P.S. 93 (1963).” *Adams v. Williams*, 407 U.S. 143, 148 n.3 (1972). We are aware that not all these assaults occur when issuing traffic summons, but we have before expressly declined to accept the argument that traffic violations necessarily involve less danger to officers than other types of confrontations. *United States v. Robinson*, 414 U.S. 218, 234 (1973). Indeed, it appears “that a significant percentage of murders of police officers occurs when the officers are making traffic stops.” *Id.*, at 234 n.5.

Mimms, 98 S. Ct. at 336.

Law enforcement cannot be expected to tolerate behavior such as Doman's that distracts a peace officer from the occupants of a vehicle he is investigating, thereby hindering the performance of his lawful duties. After attempting to communicate with the occupants of the stopped vehicle, Doman felt entitled to loudly and profanely refuse to cooperate with Officer Minaglia. Doman diverted Officer Willey's attention from the vehicle he had stopped, thus hindering the investigation.

When Officer Minaglia pointed out that this was exactly what he was doing, Doman responded, "[t]hat's your fault. That's not my responsibility." (Video 2 at 00:55-01:18.) The unrefuted testimony established that Doman diverted Officer Willey's focus "completely off of" the stopped vehicle and its occupants. (Rec. at 3:20:18-32.) Therefore, as in *Eisenzimmer, supra*, Doman knowingly impaired or hindered Officer Willey's traffic stop, and there was substantial evidence for any rational juror to conclude that he was guilty of obstructing a peace officer.

III. This Court should decline to invoke plain error to review Doman's unpreserved constitutional challenge and, if reviewed, it should be denied on the merits.

A. This Court should decline to invoke plain error

"It is axiomatic that [an appellate court] will not review an argument, much less a constitutional challenge, that is raised for the first time on appeal." *State v.*

Normandy, 2008 MT 437, ¶ 18, 347 Mont. 505, 198 P.3d 834 (citations omitted).

“It is ‘fundamentally unfair to fault the trial court for failing to rule on an issue it was never given the opportunity to consider.’” *State v. Whalen*, 2013 MT 26, ¶ 37, 368 Mont. 354, 295 P.3d 1055. Further, appellate courts avoid constitutional issues whenever possible. *Normandy*, ¶ 19.

The plain error doctrine is invoked, if at all, in cases of egregious miscarriages of justice or circumstances seriously calling into question the fairness of the proceedings. *See, e.g., State v. Barrows*, 2018 MT 204, ¶ 11, 392 Mont. 358, 424 P.3d 612 (trial court sua sponte reinstating previously dismissed charge); *State v. Lawrence*, 2016 MT 346, ¶¶ 4, 12, 386 Mont. 86, 385 P.3d 968 (prosecutor argued presumption of innocence no longer applies after close of evidence). In such cases, this Court will deviate from the general rule. *State v. Carter*, 2005 MT 87, ¶ 19, 326 Mont. 427, 114 P.3d 1001 (addressing unpreserved claim of Sixth Amendment issue due to the United States Supreme Court’s opinion in *Crawford v. Washington*, 124 S. Ct. 1354 (2004)).

An error is plain if it results in a manifest miscarriage of justice, may leave unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process. *Taylor*, ¶¶ 12-13. An error is plain only if it leaves this Court “firmly convinced” that some aspect of the trial, if not addressed, would result in one of the aforementioned consequences. *Id.* ¶ 17.

This Court has declined to invoke plain error review to as-applied constitutional objections that were not preserved for appeal. *See, e.g., Brown*, ¶ 32 (“Because his argument raises an as-applied challenge, we decline to consider it for the first time on appeal.”).

Doman represented that he would not be filing any motions at the omnibus hearing. (Doc. 1 at 72.) Doman moved for a directed verdict at the close of evidence—on the sole basis that “there was no testimony stating that a traffic offense is a criminal violation.” (Rec. at 6:03:42-47.) The parties discussed constitutional issues regarding free speech while settling jury instructions. (*Id.* at 6:10:00-6:11:21 (Doman’s attorney moving to include language from *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011), that, “In our society, police officers are expected to endure significant burdens caused by citizens’ exercise of their First Amendment rights,” and that, “[t]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.”).)

Doman had substantial time and numerous opportunities to move for dismissal on constitutional grounds, but he failed to do so. This is not the type of case that plain error is meant to address. Because the entire incident was captured on video, the jury received reliable evidence to compare to the testimony. The district court accurately instructed the jury on the law, and Doman does not

contend otherwise.⁴ Under these facts, this Court should not be “firmly convinced” that failing to reverse Doman’s conviction would result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial or proceedings, or compromise the integrity of the judicial process.

B. Montana Code Annotated § 45-7-302 is not unconstitutional as-applied to the facts of this case.

“The constitutionality of a statute is presumed, and the party challenging the constitutionality of a statute bears the burden of proving the statute conflicts with the constitution beyond a reasonable doubt.” *State v. Jensen*, 2020 MT 309, ¶ 9, 402 Mont. 231, 477 P.3d 335 (citation omitted). “If any doubt exists, it must be resolved in favor of the statute.” *Id.*

Doman’s First Amendment analysis is misplaced. The evidence demonstrates that Officer Minaglia did not arrest Doman for exercising his First Amendment rights:

OFFICER: Hey brother, I don’t mind if you film, just do me a favor and kind of, go a little bit away, okay?

DOMAN: [Inaudible] activity.

OFFICER: You’re what?

DOMAN: [inaudible]First Amendment. First Amendment. Protected Activity.

⁴ Doman does argue that the district court erred by including an instruction under Mont. Code Ann. § 45-7-302(2), to be addressed, *infra*, but makes no assertion that the instruction did not accurately convey the law.

OFFICER: Right, I agree, just do me a favor and just, get out of where we're working, and you can totally film from like right over here by this tree, okay?

(Video 3 at 00:25-00:39.)

Officer Minaglia's unrefuted testimony was that he did not arrest Doman because he called him a tyrant. (*Id.* at 4:58:56-4:59:00.) Rather, as Officer Minaglia told the jury:

So, like I kinda had just stated, the fact that there was zero effort from him to distance himself from our investigation, I had explained it several times to him, my—I was completely distracted by him and hindered from assisting Officer Willey finish his investigation.

Officer Willey had to come and assist me with what I now had, presented in front of me, uh, there was zero cooperation from him to just follow a simple instruction and distance himself. And I that point I determined, okay, well, he's hindering our investigation and he needs to be placed under arrest.

(Rec. at 5:04:48-5:05:24.)

Refusal to follow an officer's lawful order is not a protected First Amendment activity. *See Young v. County of Los Angeles*, 655 F.3d 1156, 1170 (9th Cir. 2011) ("Because [the officer's] order that Young reenter his vehicle was lawful and Young's refusal to obey was not an act of speech protected by the First Amendment, [the officer] had the authority to arrest Young for disobeying a peace officer's order. . . .").

Even if Officer Minaglia’s request for Doman to move further away from the traffic stop had been unlawful, it is not a defense to obstruction of a peace officer that law enforcement is acting illegally. “It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided that the peace officer was acting under the peace officer’s official authority.” Mont. Code Ann. § 45-7-302(2).

The comments to the obstruction statute state that “[s]ubsection (2) of this section makes a distinction between the obstruction of illegal activity by a peace officer and a public servant. *The commission has followed the basic premise that a person should not take the law into his own hands when faced with illegal police activity.*” Commission Comments to Mont. Code Ann. § 45-7-302(2) (emphasis added).

1. Montana Code Annotated § 45-7-302(2) does not require the defendant to obstruct the peace officer with use of threats of force or violence.

Citing comments from a committee in Michigan, Doman asserts that Mont. Code Ann. § 45-7-302(2) “only applies when a defendant threatens or uses force or violence.” (Appellant’s Br. at 34-35.) However, “[i]n the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.” Mont. Code Ann. § 1-2-101. “We determine the intention of the

Legislature first from the plain meaning of the words used, and if interpretation of the statute can be so determined, we may not go further and apply other means of interpretation.” *State v. Flynn*, 2024 MT 236, ¶ 20, 418 Mont. 331, 557 P.3d 934 (citation omitted).

Nowhere in the relevant statute do the words “threat,” “violence,” or “force” appear. Montana Code Annotated § 45-7-302(2) is specifically designed to *prevent* that type of behavior by precluding a citizen from taking “the law into his own hands,” even when the police conduct is illegal.

Doman had a First Amendment right to insult Officer Mignalia and threaten to “sue the fuck” out of him, and he did. Likewise, he was told that he was free to record the stop, so long as he did so at a safe, reasonable distance from the vehicle. After refusing to move, and being informed that, “[l]ast warning, you can move over by that tree, or you can be arrested,” Doman chose the latter. Because he chose to respond to Officer Minaglia in the manner that he did, Officer Willey had to divert his attention off of his investigation to focus on Doman. Thus, Doman hindered or impeded Officer Willey’s investigation, and the jury’s verdict should be affirmed.

CONCLUSION

The jury's verdict convicting Doman of obstructing a peace officer should be affirmed.

Respectfully submitted this 25th day of April, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 5,978 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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CERTIFICATE OF SERVICE

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