IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0486

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RANDY JOE FISH,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Danni Coffman, Presiding

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STATEMENT OF THE ISSUE

Whether the district court erred when it denied Fish's motion to suppress evidence that was seized incident to Fish being arrested pursuant to a preexisting warrant that law enforcement only discovered after Fish voluntarily identified himself when prompted by law enforcement.

STATEMENT OF THE CASE

The State of Montana charged Appellant Randy Joe Fish by Information with Criminal Possession of Dangerous Drugs, a felony, in violation of Mont. Code Ann. § 45-9-102. (Doc. 3.) Fish subsequently filed two motions to suppress. In his first motion to suppress, Fish requested that the district court suppress statements Fish made while in custody based on law enforcement not complying with *Miranda v. Arizona*, 384 U.S. 436 (1966). (Doc. 12.) In his second motion to suppress, Fish argued evidence should be suppressed because it was obtained from an unlawful *Terry*[1] stop. (Doc. 13.)

The district court held a hearing on both motions on December 9, 2022. (Doc. 26.) At the conclusion of the hearing, the district court, based on the State's concession, granted Fish's motion to suppress his statements. (12/9/22 Tr. at 38; Doc. 16 at 3.) Based on the evidence presented and the briefing, the district court

[1] *Terry v. Ohio*, 392 U.S. 1 (1968)

denied Fish's second motion to suppress, finding that law enforcement's interaction with Fish did not constitute an unlawful *Terry* stop.[2] (12/9/22 Tr. at 37.)

After a jury found Fish guilty of Criminal Possession of Dangerous Drugs, the district court sentenced Fish to a three-year deferred sentence. (Docs. 59, 65.) Fish timely appeals only the district court's denial of his motion to suppress based on an unlawful *Terry* stop.

STATEMENT OF THE FACTS

I. The offense

On May 26, 2022, a Windiggers Casino employee contacted dispatch requesting that law enforcement conduct a welfare check on two individuals who had been sleeping for several hours in a vehicle parked outside of the Windiggers Casino, and then tell the two individuals to leave the parking lot. (12/9/22 Tr. 5-6.) Flathead County Sherrif's Deputy Patrick McGauley responded to the Windiggers Casino seconds before Deputy Drew Kammerzell arrived. (*Id.* at 5-6, 27.) Both deputies arrived in uniform in patrol cars without their sirens or lights activated, and parked within a short distance of each other and the "red maroon colored" car

[2] Absent from the record is a written order memorializing the district court's oral order denying Fish's motion to suppress.

that matched the description dispatch had provided the two deputies. (12/9/22 Tr. at 6-7; State's Ex. 1 at 0:04-0:14.)

On their initial approach to the vehicle, the deputies observed two individuals sleeping in the car, one in the driver's seat and the other in the passenger seat. (12/9/22 Tr. at 6.) Deputy McGauley then approached the driver's side of the vehicle and Deputy Kammerzell approached the passenger's side, with both deputies knocking on the windows near each occupant. (12/9/22 Tr. at 7, 16; State's Ex. 1 at 0:26-0:39.)

Christina Torres, the owner and driver of the vehicle, responded to Deputy McGauley's knocks first and rolled down the driver's side window. (State's Ex. 1 at 0:56-1:00.) As Deputy Kammerzell continued to try to alert Fish, who was the passenger, to respond, Deputy McGauley calmly asked Torres how she was doing and what she was up to. (*Id*. at 1:00-1:50.)

Eventually, Fish woke up and rolled down his window to interact with Deputy Kammerzell. (*Id*. at 1:51.) In response to Deputy Kammerzell inquiring into what was going on, Fish explained that the pair were just trying get a little sleep. (*Id*. at 1:54-1:57.) And, when asked, Fish confirmed to Deputy Kammerzell that the pair were good. (*Id*. at 1:58-2:00.)

When Deputy Kammerzell asked Fish if he had any identification, Fish responded he did not. (*Id*. at 2:00-2:02.) Fish, unprompted, subsequently

volunteered that earlier the pair had been gambling at the Windiggers Casino. (*Id*. at 2:09-2:11.) Deputy Kammerzell asked if Fish would provide his first name. (*Id*. at 2:32.) In response, Fish asked Deputy Kammerzell what time it was and, after Deputy Kammerzell told him it was 12:10 p.m., Fish expressed surprise that it was already after noon. (*Id*. at 2:34-2:40.)

Fish began to talk to Torres when Deputy Kammerzell, again, asked if Fish would provide his first name. (*Id*. at 2:41-2:46.) Fish turned away from his conversation with Torres, and provided Deputy Kammerzell with his first name, last name, and date of birth. (*Id*. at 2:47-2:57.) Deputy Kammerzell stepped a short distance away from Torres's vehicle and provided dispatch with Fish's information, which resulted in Deputy Kammerzell learning that Fish had a $2,000 warrant. (*Id*. at 3:00-3:44, 7:45.)

While waiting for confirmation of Fish's warrant from Montana Highway Patrol, Deputy Kammerzell engaged in polite conversation with Fish, explaining why the deputies were present and asking how long ago the pair had been gambling. (*Id*. at 3:47-4:34.) Throughout his interaction with Fish, Torres and Fish were moving around in the vehicle and engaging in conversation with each other. (*Id*. at 2:17-11:51.) At one point, Fish also used his cell phone and started smoking a cigarette while Deputy Kammerzell was talking with him. (*Id*. at 3:44-5:11.)

After Deputy Kammerzell finally received confirmation of the warrant, he asked Fish to exit the vehicle and arrested him. (*Id*. at 11:45-12:31.) During a search incident to arrest, Deputy Kammerzell discovered and seized a baggie that appeared to contain methamphetamine. (*Id*. at 12:42-13:35, 14:20-14:32.) Subsequent testing of the evidence established that Fish had less than 0.1 grams of methamphetamine in his possession. (State's Ex. 7.)

II. Suppression motion and hearing

Fish moved the district court to suppress the methamphetamine seized subsequent to his arrest.[3] (Doc. 13 at 4.) Fish argued that this evidence must be suppressed because he was not free to leave when Deputy Kammerzell asked him to identify himself and Deputy Kammerzell did not have any reasonable suspicion of illegal activity when he made such a request. (*Id*.)

In response, the State argued that "[a] reasonable person in [Fish's] position would have believed he was free to leave and therefore the encounter (asking for identification and name) between Deputy Kammerzell and [Fish] did not constitute a seizure or investigative stop." (Doc. 17 at 4.) Alternatively, the State argued that even if the district court concluded that Fish was seized during his interaction with

[3] Because Fish only challenges the motion to suppress evidence based on an unlawful *Terry* stop, the State does not address Fish's motion to suppress statements based on *Miranda*.

Deputy Kammerzell, that Deputy Kammerzell had particularized suspicion to investigative the possible crime of trespass. (*Id*.)

Deputy Kammerzell testified, and his body worn camera footage was admitted, at a hearing on Fish's suppression motion that was conducted on December 9, 2022. (12/9/22 Tr. at 4, 7-8.) At the hearing, Deputy Kammerzell testified that there were two purposes to his interaction with the occupants of the vehicle: (1) to make sure the vehicle's "occupants were okay" and if they were, to (2) "remove them from the property as requested." (*Id*. at 7.)

When he arrived on scene, Deputy Kammerzell explained that he believed he and Deputy McGauley both parked at a distance far enough away from the vehicle that Torres "could have moved the vehicle out of the parking lot." (*Id*. at 16.) And, as confirmed by his body worn camera, Deputy Kammerzell explained that the tone of voice he used to interact with Fish was his standard tone towards "a fair amount of people" and was not "demanding or accusatory." (*Id*. at 18.)

When asked, Deputy Kammerzell agreed that one of the several reasons he asked Fish to identify himself was to see if Fish had any active warrants. (*Id*. at 20.) Another reason that Deputy Kammerzell had asked Fish his name was to investigate criminal trespass. (*Id*. at 26.) For instance, as Deputy Kammerzell explained, without knowing Fish's name, he would not know if Fish "had been called in earlier in the day" and, if he had, and then was back at Windiggers

Casino, then he would need to know that for purposes of his trespass investigation. (*Id*. at 26, 35.)

Ultimately, however, Deputy Kammerzell explained, if Fish had refused to provide Deputy Kammerzell his name, then Deputy Kammerzell would have "[t]old him to have a nice day and leave the private property." (*Id*. at 10.) Indeed, to Deputy Kammerzell, Fish was not free to leave only after Deputy Kammerzell learned Fish had a warrant. (*Id*. at 10.) After reviewing the briefing and hearing the evidence presented, the district court denied Fish's motion. In reaching its conclusion, the district court reasoned:

> I'm not too concerned about the niceness or lack thereof of the tone. It seemed like his tone was perfectly low key and not confrontive in any way.
>
> If I'm an officer and I'm called to or come upon a vehicle with two people at noon essentially sleeping in it, I'm naturally going to be wanting to make a bit of an inquiry, so I don't find that this was—and in this case they had been specifically directed there by the property owners, or agents of the property owners, so I don't find that it was a *Terry* violation.

(*Id*. at 37.)

SUMMARY OF THE ARGUMENT

The totality of the circumstances supports that Fish was not seized when Deputy Kammerzell asked Fish to identify himself. Deputy Kammerzell and Deputy McGauley arrived in their patrol vehicles without their emergency lights or

sirens activated, and parked a distance far enough away, which would have allowed Torres sufficient space to move her vehicle. Deputy Kammerzell spoke in his standard tone and did not demand Fish provide his identification or otherwise answer Deputy Kammerzell's limited questions. And, ultimately, Fish voluntarily provided Deputy Kammerzell his first name, last name, and date of birth when asked.

Moreover, throughout Fish's interaction with Deputy Kammerzell, Fish and Torres were freely moving around and conversing with each other in the vehicle. Without interference, Fish also freely used his cell phone and smoked a cigarette during his interaction with Deputy Kammerzell. In other words, the totality of the circumstances supports that a reasonable person in Fish's position would have felt both free to leave and free to not answer Deputy Kammerzell's questions, including his questions asking Fish to identify himself.

However, even if this Court finds that Deputy Kammerzell seized Fish when he asked Fish to identify himself, the district court still correctly denied Fish's motion to suppress. The secondary purpose of Deputy Kammerzell's investigation involving Fish was to ask Fish to leave the Windiggers Casino's parking lot. As Deputy Kammerzell testified, part of asking Fish to leave involved investigating Fish for criminal trespass, which required asking Fish's name to determine if he had been previously asked to leave the Windiggers Casino. Because

Deputy Kammerzell had particularized suspicion to lawfully investigate Fish for the offense of trespass, Deputy Kammerzell was statutorily authorized to ask Fish to identify himself.

Furthermore, because Fish was arrested following the discovery of the preexisting warrant, any connection between Fish's initial seizure and the methamphetamine recovered in the search incident to Fish's arrest was too attenuated to justify suppression. Accordingly, the district court correctly denied Fish's motion to suppress evidence.

STANDARD OF REVIEW

This Court reviews a district court's denial of a motion to suppress evidence to determine whether the district court's factual findings are clearly erroneous and whether the district court's interpretation and application of the law are correct. *State v. Rymal*, 2024 MT 277, ¶ 9, 419 Mont. 144, 559 P.3d 839. A district court's findings of facts are clearly erroneous if not supported by substantial evidence, the district court misapprehended the effect of the evidence, or if this Court's independent review of the record leaves it with the definite or firm conviction that a mistake has been made. *Rymal*, ¶ 9. Because it presents a question of law, this Court employs de novo review to determine whether the district court correctly interpreted and applied the pertinent law to the facts at issue. *Rymal*, ¶ 9.

ARGUMENT

I. Fish has not met his burden to show that the district court erred by denying his motion to suppress evidence.

Both the United States Constitution and the Montana Constitution protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Mont. Const. art. II, § 11. "The central inquiry under the Fourth Amendment is the reasonableness under all the circumstances of a particular governmental invasion of a citizen's personal security." *State v. Clayton*, 2002 MT 67, ¶ 12, 309 Mont. 215, 45 P.3d 30 (citing *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). The defendant possesses the burden of establishing that the search and seizure were unlawful. *State v. Sundberg*, 235 Mont. 115, 123, 765 P.2d 736, 741 (1988); *State v. Therriault*, 2000 MT 286, ¶ 26, 302 Mont. 189, 14 P.3d 444.

On appeal, Fish argues that the district court erred in denying his motion to suppress because the law enforcement officers "exceeded the scope of the investigative stop or welfare check under the community caretaker doctrine," in violation the Fourth Amendment of the United States Constitution and art. II, § 11, of the Montana Constitution. (Appellant's Br. at 18.) Fish, however, was not seized when Deputy Kammerzell asked him to identify himself. And, even if this Court concludes otherwise, Deputy Kammerzell had particularized suspicion to investigate criminal trespass, which allowed him to ask Fish to identify himself.

A. Fish was not seized when Deputy Kammerzell asked Fish to identify himself.

The Fourth Amendment's and Mont. Const. art. II, § 11's "protection against unreasonable searches and seizures applies only if and when a government search or seizure actually occurs." *Rymal*, ¶ 13 (internal quotations and citations omitted). However, "not all personal intercourse between police[] and citizens involves 'seizures' of persons." *State v. Wilkins*, 2009 MT 99, ¶ 8, 350 Mont. 96, 205 P.3d 795 (quoting *Terry*, 392 U.S. at 19-20). To that end, this Court first determines whether a seizure has occurred. *State v. Strom*, 2014 MT 234, ¶ 10, 376 Mont. 377, 333 P.3d 218.

"Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Wilkins*, ¶ 8 (quoting *Terry*, 392 U.S. at 19-20). As this Court has recognized, "the analytical line between police-citizen encounters or interactions that are or ripen into constitutional seizures, and those that are merely coincidental or consensual, is whether or at what point the totality of the circumstances the subject police conduct and posture would have caused an objectively reasonable person to not feel free to ignore or refuse to answer or otherwise cooperate with the police, or disengage from any further interaction with them and move away." *Rymal*, ¶ 14 (internal citations and quotations omitted).

To determine whether a seizure has occurred under both constitutions, this Court applies the *Mendenhall* factors. *State v. Ballinger*, 2016 MT 30, ¶ 18, 382 Mont. 193, 366 P.3d 668; *Wilkins*, ¶ 9 (citing *United States v. Mendenhall*, 446 U.S. 544, 553-54 (1980)). This non-exhaustive list of factors includes: "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Mendenhall*, 446 U.S. at 554; *accord Ballinger*, ¶ 18. "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Mendenhall*, 446 U.S. at 555.

This Court has recognized, "an officer merely walk[ing] up to a person standing or sitting in a public place (or, indeed, who is seated in a vehicle located in a public place) and put[ting] a question to him," by itself does not constitute a seizure. *Wilkins*, ¶ 10 (quoting Wayne LaFave, *Search and Seizure* Vol. 4, § 9.4(a), 419-21 (4th Ed. West 2004). Likewise, "in order to make a basic inquiry, an officer may tap on the window of a car to get the person's attention or request that the person open the door or roll down the window without transforming the encounter into a seizure." *Id*.

Moreover, the United States Supreme Court has recognized that "a seizure does not occur simply because a police officer approaches an individual and asks a few questions." *Florida v. Bostick*, 501 U.S. 429, 434 (1991). Similarly, "Montana law does not require police encounters to be either random, fortuitous, and voluntary, or supported by particularized suspicion." *State v. Questo*, 2019 MT 112, ¶ 17, 395 Mont. 446, 443 P.3d 401.

Rather, this Court has repeatedly recognized that a routine police encounter does not constitute a seizure or investigative stop requiring particularized suspicion merely because the officer has an "inclination to investigate." *Questo*, ¶¶ 17-19 (citing *Wilkins*, ¶¶ 3, 14 ("[N]o seizure occurred when a police officer 'stopped to investigate' a parked vehicle that was left running at an unusual time of night in an area known for recent burglaries."); *Ballinger*, ¶¶ 19-20 (officer investigating a report of an empty house with its door open did not seize two individuals walking on a public street toward the house when he "intercepted" them, used a flashlight to see better in the dark, informed them he was "investigating a suspicious call," and asked where they were going); *State v. Dupree*, 2015 MT 103, ¶¶ 4, 15, 17, 378 Mont. 499, 346 P.3d 1114 (after receiving a tip that the defendant would be in possession of illegal drugs, no seizure occurred during a "routine police encounter" when officers approached the defendant at a train station and asked if she would consent to a search of her luggage)).

Especially relevant to Fish's appeal, this Court, in *Strom* and in *Rymal*, addressed whether the totality of the circumstances supported that law enforcement had seized an individual when they requested the individual to identify themself.

In *Strom*, a police officer approached a van parked at a public-use area and began speaking with the driver and Strom, a passenger in the vehicle. *See Strom*, ¶ 5. The officer's first communication with the driver and Strom was to demand identification. *Strom*, ¶¶ 5, 13. The driver and Strom provided "IDs," and the officer instructed them to "wait there" while he took both IDs back to his patrol vehicle to check the driver's status and for warrants. *Strom*, ¶¶ 5, 13. Strom had an outstanding warrant, was arrested, and methamphetamine was found incident to her arrest. *Strom*, ¶¶ 5, 13. Strom moved to suppress the drugs pursuant to Mont. Code Ann. §§ 46-13-301, -302, and argued that the officer lacked particularized suspicion to conduct an investigatory stop. *Strom*, ¶ 7. On appeal, this Court reversed and found that Strom was seized under the circumstances, and the officer lacked particularized suspicion to stop or seize her. *Strom*, ¶¶ 13, 17-18.

In comparison, in *Rymal*, this Court concluded that Rymal was not seized under the circumstances. *Rymal*, ¶ 30. In *Rymal*, law enforcement had been surveilling outside of a casino for suspected illegal drug activity when they noticed two cars, a Honda and a Volkswagen, briefly stop next to each other before traveling towards a grocery store. *Rymal*, ¶¶ 2-3. The two cars parked at different

distances from the entrance of the store. *Rymal*, ¶ 3. While another officer approached the Volkswagen, Officer John Griffith approached the Honda. Rymal, the passenger of the Honda, was standing outside of the Honda while the driver went inside the grocery store. *Rymal*, ¶¶ 3-4.

Officer Griffith struck up a conversation with Rymal, which eventually led to him asking if she had an ID. *Rymal*, ¶ 4. When Rymal said she did not, she volunteered that she could provide her name and social security number. *Rymal*, ¶ 4. Rymal also volunteered that she may have a warrant for failure to appear on a speeding ticket. *Rymal*, ¶ 4. At that point, Rymal, when prompted, provided her name and date of birth, which Officer Griffith used to confirm the warrant. *Rymal*, ¶ 5. Officer Griffith arrested her and then, based off of an unchallenged search warrant, later seized drugs from inside Rymal's body. *Rymal*, ¶¶ 5-6.

Based on the totality of the circumstances, this Court agreed with the district court that "Rymal was not constitutionally seized at any time before she voluntarily disclosed her apparent active warrant status." *Rymal*, ¶ 30. This Court reasoned that Officer Griffith, who was in uniform, "calmly approached on foot with a flashlight guiding his way, from a patrol car parked a short distance away with no lights or siren." *Rymal*, ¶ 29. In other words, there was no "overt show of force, [or] other police conduct, that would have caused an objectively reasonable person to feel that she was not free to get back in her car and decline to talk to him,

or continue getting out of her car and then either follow her companion into the grocery store, walk her dog, or walk completely away." *Rymal*, ¶ 29. Moreover, there was "no objective record indication that anything Officer Griffith said or did would have caused an objectively reasonable person to feel not free to ignore his request for identification." *Rymal*, ¶ 30.

Here, the totality of the circumstances supports that Fish was not seized when Deputy Kammerzell asked him if he had an ID followed by asking him his name and date of birth. After Deputy Kammerzell and Deputy McGauley were dispatched to the Windiggers Casino to conduct a welfare check on Torres and Fish, who were asleep in a car, and to have them leave the property, the deputies appropriately approached Torres's vehicle and knocked on the windows to get Torres's and Fish's attention. During his interaction with Fish, Deputy Kammerzell, in his standard tone, asked a couple of questions about what the pair were doing and if they were okay.

Deputy Kammerzell then asked Fish if he had an ID. Unlike the deputy in *Strom*, but like the officer in *Rymal*, Deputy Kammerzell did not demand that Fish provide him his driver's license. Both Deputy Kammerzell's testimony and his body worn camera demonstrate that he asked Fish politely and in a nondemanding manner if Fish had his ID on him. When Fish answered that he did not, Deputy Kammerzell, again politely, asked what Fish's first name was. Even

though Fish did not answer Deputy Kammerzell the first time he asked, that does not equate to Deputy Kammerzell demanding that Fish identify himself.

Indeed, it further supports that Fish was aware that he was free to not answer Deputy Kammerzell's questions. After Deputy Kammerzell asked Fish for his first name, Fish asked Deputy Kammerzell what time it was. Deputy Kammerzell then engaged in brief conversation with Fish about it being 12:10 p.m., before Deputy Kammerzell again asked Fish, in a standard, polite tone, what his first name was. In response, Fish voluntarily provided Deputy Kammerzell his first name, last name, and date of birth.

Thus, although unlike in *Rymal*, Fish did not volunteer to provide his name unprompted, the record supports that Fish nonetheless voluntarily answered Deputy Kammerzell. Moreover, unlike in *Strom*, Deputy Kammerzell never had possession of Fish's ID, which further supports that a reasonable person would have felt free to leave. And, ultimately, Deputy Kammerzell credibly testified that had Fish refused to provide his name, he would have told him to leave the premises. Deputy Kammerzell would have only prevented Fish from leaving once Deputy Kammerzell learned that Fish had a warrant.

Finally, like the law enforcement officers in *Rymal*, Deputy Kammerzell and Deputy McGauley arrived in uniform and in marked patrol vehicles that did not have their lights or sirens activated. Although parked near Torres's vehicle, the

deputies left ample space for Torres's vehicle to leave the Windiggers Casino's parking lot.

Thus, the totality of the circumstances supports that Fish was not seized when Deputy Kammerzell asked him to identify himself. Like in *Rymal*, there also was no show of force or any other conduct by Deputy Kammerzell that would have caused an objectively reasonable person to feel that he could not leave Torres's vehicle or the parking lot area of the casino. Also, like in *Rymal*, there is no objective record that indicates anything Deputy Kammerzell did or said would have caused an objectively reasonable person to feel not free to ignore his request for identification. *See Rymal*, ¶ 30. Accordingly, the district court did not err when it denied Fish's motion to suppress.[4]

B. Even if this Court concludes Deputy Kammerzell asking Fish to identify himself constituted a seizure, Deputy Kammerzell possessed particularize suspicion to investigate the offense of trespass.

Fish contends that Deputy Kammerzell asking Fish to identify himself exceeded the scope of the *Terry* stop and the community caretaker doctrine. (Appellant's Br. 18-40.) Fish, however, did not argue that Deputy Kammerzell had

[4] Although the district court denied Fish's motion to suppress only based on whether Deputy Kammerzell had conducted an unlawful *Terry* stop, this Court should nonetheless affirm the district court's denial of Fish's motion to suppress. This Court "will affirm a district court when it reaches the right result, even if it reaches that result for the wrong reason." *Questo*, ¶ 19.

exceeded the scope of the community caretaker doctrine to the district court below. (*See* Doc. 13; 12/9/22 Tr.)

Indeed, Fish seemingly agreed that Deputy Kammerzell lawfully could have been present for purposes of the welfare check, but agreed that Deputy Kammerzell did not have particularized suspicion to ask Fish to identify himself. (*See* Doc. 13 at 4.) This Court "will not put a district court in error for an action in which the appealing party acquiesced or actively participated." *State v. Reim*, 2014 MT 108, ¶ 28, 374 Mont. 487, 323 P.3d 880. Accordingly, this Court should not review the community caretaker portion of Fish's claim.

Even so, Fish's argument that Deputy Kammerzell exceeded the scope of the community caretaker doctrine ignores that Deputy Kammerzell had two purposes to his investigation of Fish: to conduct a welfare check and then to ask the vehicle to leave. (*See* Appellant's Br. at 31.) And, consistent with Deputy Kammerzell's investigative purposes, the record supports that Deputy Kammerzell did not ask Fish to identify himself in relation to the welfare check portion of his contact with Fish.

Despite Fish's assertion otherwise, Deputy Kammerzell did have a "legal reason" to ensure that Fish was okay after the Windiggers Casino reported that two passengers had been sleeping in a vehicle in the parking lot for some time. (*See* Appellant's Br. at 32.) Furthermore, although Torres responded quickly to Deputy McGauley, Fish did not immediately wake up when Deputy Kammerzell

knocked on his window. "The community caretaker doctrine provides that if an officer relies on specific and articulable facts that would cause an experienced officer to suspect a person needs help or is in peril, then that officer has the right to stop and investigate." *State v. Cleveland*, 2024 MT 214, ¶ 16, 418 Mont. 147, 556 P.3d 945 (internal quotations and citation omitted). Eventually, Fish rolled down the window and confirmed that he was okay. "Once the officer knows that the citizen no longer needs help or is not in peril, then the community caretaker justification for the stop ceases and the officer's further actions constitute a seizure implicating the Fourth Amendment and Article II, Section 11, of the Montana Constitution." *Cleveland*, ¶ 16.

In other words, "[a]n officer who contacts a person in a community caretaking capacity is not required to immediately terminate the interaction merely upon initially finding a person to appear well." *Cleveland*¸¶ 18. Although Fish had confirmed he was okay, Deputy Kammerzell still had to follow through with the second portion of his investigation: asking Fish to leave, which included investigating criminal trespass. Thus, at the point Fish was deemed well, Deputy Kammerzell asked Fish to identify himself. Deputy Kammerzell explained that he had asked Fish to identify himself, in part, because he was investigating a potential trespass and would need to know Fish's name to confirm or dispel if Fish had previously been asked to leave the Windiggers Casino.

Here, if this Court concludes that Fish was seized when he was asked to identify himself, the district court correctly concluded that Deputy Kammerzell's inquiry to Fish did not constitute an unlawful investigatory stop. The Fourth Amendment of the United States Constitution's and art. II, § 11, of the Montana Constitution's prohibitions against unreasonable searches and seizures apply to "investigative stops of vehicles by law enforcement." *State v. Haldane*, 2013 MT 32, ¶ 19, 368 Mont. 396, 300 P.3d 657.

Law enforcement is authorized stop any person or vehicle when particularized suspicion supports that the "person or occupant of the vehicle has committed, is committing, or is about to commit an offense." Mont. Code Ann. § 46-5-401. "Particularized suspicion is objective data from which an experienced police officer can make certain inferences and a resulting suspicion that the occupant of the vehicle is or has been engaged in wrongdoing." *State v. Wilson*, 2018 MT 268, ¶ 28, 393 Mont. 238, 430 P.3d 77. Particularized suspicion, however, "requires more than a mere generalized suspicion or an undeveloped hunch of criminal activity." *Id.*

"Whether particularized suspicion exists is a question of fact determined by examining the totality of the circumstances, but the related question of whether the circumstances indicated activity that was illegal is a question of law." *Id.* Relevant to a court's consideration is "the quantity, substance, quality, and degree of reliability of information known to the officer." *Id.* Additional objective data of

wrongdoing "may give rise to further suspicions and enlarge the scope of the investigation." *State v. Hurlbert*, 2009 MT 221, ¶ 21, 351 Mont. 316, 211 P.3d 869.

Law enforcement "must act with reasonable diligence to quickly confirm or dispel the predicate suspicion" for a valid investigative stop. *State v. Laster*, 2021 MT 269, ¶ 13, 406 Mont. 60, 497 P.3d 224. The law, therefore, mandates that the investigative stop's duration and scope "be carefully limited to its underlying justification." *Laster*, ¶ 13 (internal quotations and citation omitted). In other words, an investigative stop "may not exceed what is reasonably necessary to confirm or dispel the predicate suspicion for the stop." *Id.* Crucial to determining the "reasonableness of the duration and scope of an investigative stop" is the State's compelling interest in "effective law enforcement." *Laster*, ¶ 13. Law enforcement officers accordingly are afforded "reasonable latitude to reach, follow up on, and confirm or dispel initial suspicions of criminal activity." *Laster*, ¶ 13 (internal quotations omitted).

Because Deputy Kammerzell was lawfully investigating Fish for criminal trespass, Mont. Code Ann. § 46-5-401(2)(a) authorized Deputy Kammerzell to ask Fish to identify himself. After the welfare check portion of Deputy Kammerzell's investigation seemingly ended, Deputy Kammerzell began the second phase of his interaction with Fish: to have the pair leave the property. As part of that, Deputy Kammerzell was investigating whether Fish was trespassing in violation of

Mont. Code Ann. § 45-6-203, which would require Deputy Kammerzell to know Fish's identity. Without knowing Fish's identity, Deputy Kammerzell would have been unable to discern if Fish had been previously asked to leave the Windiggers Casino and had unlawfully returned. And, even if Fish had not earlier been asked to leave, Deputy Kammerzell would still need to know Fish's name so that it would be known to other law enforcement that Fish had been asked to leave the Windiggers Casino by Deputy Kammerzell.

Thus, by asking Fish to identify himself, Deputy Kammerzell was "diligently pursu[ing] a means of investigation . . . likely to confirm or dispel" the reason for his stop. *Laster*, ¶ 14. Moreover, this Court has recognized that since "stops are especially fraught with danger to police officers, . . . an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely[,] . . . [such as criminal record and outstanding warrant checks]." *State v. Noli*, 2023 MT 84, ¶ 38, 412 Mont. 170, 529 P.3d 813 (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 110-11 (1977)).

Throughout his brief, Fish references various precedents from this Court, none of which support that Deputy Kammerzell exceeded the scope of his investigation. (Appellant's Br. at 18-31.) For instance, Fish relies on *State v. Driscoll*, 2013 MT 63, 369 Mont. 270, 303 P.3d 788, which is distinguishable from the circumstances of Fish's case. (*See* Appellant's Br. at 22.)

In *Driscoll*, during a sweep of bars on Labor Day weekend in Dillon, law enforcement observed Driscoll holding a beer can in a bar. *Driscoll*, ¶ 5. Based on Driscoll's appearance, law enforcement believed he was younger than 21. *Driscoll*, ¶ 5. When asked how old he was, Driscoll answered 22. *Driscoll*, ¶ 5. Driscoll subsequently refused to provide law enforcement his ID. *Driscoll*, ¶ 5. In response, law enforcement asked Driscoll to step outside the bar. *Driscoll*, ¶ 5. Once outside, Driscoll, when prompted, provided law enforcement with a false name and false birthdate, which dispatch confirmed were false. *Driscoll*, ¶ 6. Law enforcement arrested Driscoll, and then subsequently discovered that Driscoll was under 21. *Driscoll*, ¶¶ 6.

On appeal, this Court agreed that law enforcement had particularized suspicion to ask Driscoll his age. *Driscoll*, ¶ 12. However, this Court concluded that law enforcement had improperly expanded their investigation when they escorted Driscoll outside of the bar. *Driscoll*, ¶¶ 14-15. As this Court explained, law enforcement impermissibly exceeded the scope of their investigation because there were no "additional articulable facts that led the officers to believe that Driscoll was underage," after he responded he was 22. *Driscoll*, ¶¶ 14-15.

Here, Deputy Kammerzell had the ability conduct a welfare check on Fish, and also had particularized suspicion to investigate the offense of trespass after the Windiggers Casino had asked law enforcement to tell the vehicle's occupants to

leave after confirming they were okay. As part of his investigation, Deputy Kammerzell asked for Fish's ID. Unlike in *Driscoll*, Fish did not refuse to provide his ID. Indeed, Fish did not have his ID on him. However, even if Fish had his ID, and refused to provide it to Deputy Kammerzell, unlike law enforcement in *Driscoll*, Deputy Kammerzell would not have ordered Fish to step outside the vehicle or otherwise prevented Fish from leaving the Windiggers Casino's parking lot. Moreover, unlike in *Driscoll*, Fish voluntarily provided his true name and true date of birth when asked. Because Deputy Kammerzell had articulable facts that led him to believe that Fish could be committing the crime of trespass, and because Fish had voluntarily provided his name, Deputy Kammerzell did not impermissibly expand the scope of his investigation.

Likewise, Fish's reliance on *State v. Carlson*, 2000 MT 320, 302 Mont. 508, 15 P.3d 893, does not support that the district court erred when it denied Fish's motion to suppress. (Appellant's Br. at 23-24.) In *Carlson*, there was an ongoing dispute between Ernest Bahm and Tina and Dale Southworth over Bahm's property. *Carlson*, ¶ 4. One day, Bahm noticed a 1985 Chevy Astro van on his disputed property, which he had previously noticed parked on the Southworths' property. *Carlson*, ¶ 4. Bahm, however, did not know who the van belonged to. *Carlson*, ¶ 4. Upon investigating the van, Bahm discovered it was locked. *Carlson*¸¶ 4. Bahm reported the suspicious vehicle to law enforcement. *Carlson*, ¶ 4.

Law enforcement provided the van's license plate to dispatch, who confirmed the van belonged to Carlson. *Carlson*, ¶ 5. Upon hearing Carlson's name, an agent with the Montana Narcotics Investigation Bureau reported to the responding deputies that Carlson and her boyfriend were being investigated for illegal drug activities. *Carlson*, ¶ 5.

When law enforcement approached the van, they observed Carlson wrapping a package with packing tape inside the van and asked her to step outside the van. *Carlson*¸¶ 8. When asked to identify herself, "Carlson asked what [law enforcement's] inquiry was all about." *Carlson*, ¶ 9. Law enforcement told Carlson that Bahm had contacted law enforcement about Carlson's van trespassing on his property. *Carlson*¸¶ 9. Before Carlson could move her vehicle off Bahm's property, law enforcement deployed a drug-sniffing dog around Carlson's van, over her objection. *Carlson*, ¶ 11. The drug-sniffing dog alerted to the presence of illegal drugs, which were subsequently seized pursuant to a search warrant. *Carlson*¸¶ 12.

On appeal, this Court concluded that the totality of the circumstances established that Carlson was not free to leave the scene during her encounter with law enforcement. *Carlson*, ¶ 20. As such, this Court reasoned that "Carlson's detention constituted an investigative stop requiring particularized suspicion that she had committed or was committing the offense for which she was stopped."

Carlson, ¶ 20. Although this Court agreed that Carlson was lawfully stopped, law enforcement had "detained Carlson for longer than was necessary to effectuate the initial purpose of the stop," resulting in the once lawful investigatory stop turning "into a constitutionally deficient seizure." *Carlson*, ¶ 21. As this Court explained, an investigation into "[a] criminal trespass charge did not require a search of the exterior of Carlson's vehicle with a trained drug dog nor did it require Yellowstone County law enforcement officials to detain Carlson against her will." *Carlson*, ¶ 22.

Like in *Carlson*, the owner of the property that Torres's vehicle was parked on had asked law enforcement to have the vehicle, and its occupants, leave the Windiggers Casino's parking lot. Consequently, like in *Carlson*, Deputy Kammerzell had particularized suspicion to investigate one of the purposes of his investigation: criminal trespass. As this Court did not explicitly find that law enforcement could not ask for Carlson's identification as part of its trespass investigation, in this investigation Deputy Kammerzell was also authorized to ask for Fish's identification.

Furthermore, if Fish had declined to identify himself, Deputy Kammerzell, unlike law enforcement in *Carlson*, would not have held Fish at gunpoint and told him he was not free to leave. *See Carlson*, ¶ 11. Again, Deputy Kammerzell testified that had Fish refused to provide his identification, Deputy Kammerzell

would have simply told Fish to leave the property. Instead, Fish voluntarily identified himself.

Finally, unlike in *Carlson*, Deputy Kammerzell did not employ a drug canine to search the vehicle. Instead, Deputy Kammerzell seized drugs from Fish following a search incident to arrest after Deputy Kammerzell arrested Fish based on a preexisting warrant. Also, unlike in *Carlson*, Deputy Kammerzell did not detain Fish for an unreasonable length of time while investigating trespass. (*See* State's Ex. 1.) Fish has not established that the district court erred when it denied his motion to suppress.

In sum, here, Deputy Kammerzell merely asked Fish to identify himself. Such non-intrusive inquiry, which he voluntarily answered, constituted a *de minimus* intrusion that was designed to further the second reason for Deputy Kammerzell's interaction with Fish: to investigate trespass. Montana Code Annotated and this Court's jurisprudence did not limit Deputy Kammerzell's authority to *request* Fish's name. Thus, if this Court concludes that Deputy Kammerzell seized Fish when he asked him to identify himself, then Deputy Kammerzell still had particularized suspicion to ask Fish for his identification. Accordingly, the district court correctly denied Fish's motion to suppress evidence.

II. The district court correctly denied Fish's motion to suppress because, even if his initial seizure was unlawful, he was arrested pursuant to a preexisting warrant, which attenuated any connection between the seizure and the evidence seized incident to arrest.

"The 'fruit of the poisonous tree' doctrine forbids the use of evidence which comes to light as a result of the exploitation of an initial illegal act of the police." *Therriault*, ¶ 57 (citing *State v. New*, 276 Mont. 529, 535-36, 917 P.2d 919, 923 (1996)) "The purpose of the exclusionary rule is to deter government agents from acquiring evidence via violation of constitutional rights." *Laster*, ¶ 35.

"[T]he rule does not apply in every case where there is a causal connection between the prior constitutional violation and the subsequent police discovery of the evidence . . . ." *State v. Peoples*, 2022 MT 4, ¶ 27, 407 Mont. 84, 502 P.3d 129. The exclusionary rule is not "a personal right or remedy expressly or implicitly provided by, or rooted in" constitutional protections; rather, "it is a judicial remedy designed for the narrow purpose of deterring government agents from acquiring incriminating evidence through violation of constitutional rights." *Peoples*, ¶ 28. The rule is applicable only "where its 'deterrence benefits outweigh its substantial social costs.'" *Peoples*, ¶ 27 (quoting *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)).

Montana recognizes three exceptions to the "fruit of the poisonous tree" doctrine. *Therriault*, ¶ 58. This Court has "stated that the 'fruit' or derivative evidence is admissible if it is (1) attenuated from the constitutional violation so as

to remove its primary taint; (2) obtained from an independent source; or (3) determined to be evidence which would have been inevitably discovered apart from the constitutional violation." *Therriault*, ¶ 58 (citing *New*, 276 Mont. at 536, 917 P.2d at 923). "The State has the burden of proving by a preponderance of the evidence that the independent source exception or inevitable discovery exception applies to evidence tainted by prior illegality." *Laster*, ¶ 36.

The attenuation doctrine applies where the "connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance . . . ." *Utah v. Strieff*, 579 U.S. 232, 238-39 (2016). The doctrine "evaluates the causal link between the government's unlawful act and the discovery of evidence" or whether there is some "intervening event to break the causal chain . . . ." *Id.* In *Strieff*, the United States Supreme Court analyzed whether evidence seized as part of a search incident to arrest was admissible because the officer's discovery of an arrest warrant during the seizure attenuated the connection between the unlawful stop and the seized evidence. *Strieff*, 579 U.S. at 235.

The Supreme Court analyzed the issue under the three-factor attenuation doctrine test set forth in *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975). *Strieff*, 579 U.S. at 239. First, Supreme the Court looked at the "'temporal proximity' between the unconstitutional conduct and the discovery of evidence to determine

how closely the discovery of evidence followed the unconstitutional search." *Id.* (quoting *Brown*, 422 U.S. at 603). Second, the Supreme Court considered "the presence of intervening circumstances." *Id.* (quoting *Brown*, 422 U.S. at 603-04). Finally, the Supreme Court examined "the purpose and flagrancy of the official misconduct." *Id.* (quoting *Brown*, 422 U.S. at 604).

The first factor will not favor "attenuation unless 'substantial time' elapses between an unlawful act and when the evidence is obtained." *Strieff*, 579 U.S. at 239 (citation omitted). Per the second factor, *Strieff* held that the existence of a valid, preexisting arrest warrant for Strieff's arrest weighed against suppression. *Strieff*, 579 U.S. at 240. The Supreme Court noted that, once the arresting officer became aware of the warrant, "he had an obligation to arrest Strieff." *Id.*

The Supreme Court in *Strieff* found that the third factor, the "purpose and flagrancy of the official misconduct," also "strongly favor[ed] the State." *Strieff*, 579 U.S. at 241. The Supreme Court again noted that the purpose of the exclusionary rule is to deter police misconduct. *Id.* Consistent with this rationale, the attenuation doctrine should apply unless "the police misconduct is most in need of deterrence—that is, when it is purposeful or flagrant." *Id.* "For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure." *Id.*, 579 U.S. at 243. Consequently, the *Strieff* Court held that the evidence seized incident to the arrest was admissible because the

discovery of the arrest warrant attenuated the connection between the unlawful stop and the seizure of the evidence. *Id*.

Here, even if the first factor weighed in favor of suppression, i.e., temporal proximity, the remaining factors overwhelmingly weighed against suppression. Importantly, at the time Deputy Kammerzell made contact with Fish, a valid preexisting warrant from another jurisdiction was in effect. This factor weighed against suppression. *Strieff*, 579 U.S. at 240. Like the officer in *Strieff*, once Deputy Kammerzell became aware of the warrant, he was compelled to arrest Fish. *See id*. (stating that Strieff's arrest was a "ministerial act that was independently compelled by the pre-existing warrant").

Lastly, if Deputy Kammerzell erred during his encounter with Fish, his conduct was at most negligent, and not a purposeful or flagrant violation of Fish's Fourth Amendment rights. *Strieff*, 579 U.S. at 241-42. Deputy Kammerzell approached Fish based on a Windiggers Casino employee's request to dispatch that law enforcement conduct a welfare check on two individuals who had been sleeping for a while in their car parked in the casino's parking lot and then to ask those occupants to leave the property. If Deputy Kammerzell committed misconduct by engaging with Fish on these facts, it hardly rose to a level of police misconduct that would warrant suppression. *See id*. This factor weighed in favor of denying Fish's motion.

Accordingly, even if Deputy Kammerzell unlawfully seized Fish, the preexisting warrant from Lake County attenuated any connection between Fish's initial seizure and the methamphetamine recovered search incident to Fish's arrest. The discovery of the warrant broke the causal chain, if any, between the seizure and the discovery of the evidence because once Deputy Kammerzell was aware of the warrant he was compelled to arrest Fish. Thus, the district court correctly denied Fish's request to suppress this evidence, even if its reasoning was based on other grounds. *See Questo*, ¶ 19.

CONCLUSION

This Court should affirm the district court's order denying Fish's motion to suppress.

Respectfully submitted this 22nd day of May, 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 7,641 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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