

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0338

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STATE OF MONTANA,

Plaintiff and Appellee,

vs.

CURTIS P. BUNSE,

Defendant and Appellant.

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BRIEF OF APPELLANT

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On Appeal from the Montana Fifth Judicial District Court,  
Jefferson County, the Honorable Luke Berger, Presiding

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## STATEMENT OF THE ISSUE

Whether there was sufficient evidence to sustain the Appellant's conviction for the offense of Criminal Possession of a Dangerous Drug?

## STATEMENT OF THE CASE

The Appellant was released from the START program (Sanction Treatment Assessment and Revocation Transition) in December of 2023, and came to stay at the home of Brenda Smith at 502 Monroe in Boulder, Montana. TR Tran. pg. 58, lines 4-8. Probation and Parole Officer McKenzie Lyons was responsible for monitoring Appellant's conduct after his release from START. TR Tran. pg. 21, lines 16-18. She came to Ms. Smith's home on Dec. 13, 2023, to inspect the premises. TR Tran. pg. 22, lines 2-9. In one of the rooms in Ms. Smith's home Officer Lyons located a small amount of methamphetamine and a pipe. TR Tran. pg. 23-25. It was disputed whether the methamphetamine and pipe belonged to Appellant. The Appellant was arrested and charged on January 3, 2024, with one count of Criminal Possession of a Dangerous Drug. DC Doc. 1. The Appellant waived jury trial, DC Doc. 10, and the matter went to a bench trial before the Honorable Luke Berger on February 12, 2024. DC Doc. 18. On February 22, 2024, Judge Berger issued a written opinion analyzing the evidence. Judge Berger found the Appellant guilty of the single count of Criminal Possession of Dangerous Drugs. DC DOC 19. The Appellant was sentenced on April 3, 2024 by Judge

Berger to five years with the Department of Corrections, to run concurrently with any other sentences Appellant was serving. DC Doc 24. This appeal follows.

There were no pretrial motion at issue in the lower court. The sufficiency of the evidence is the sole matter before this Court.

### STATEMENT OF THE FACTS

#### *1. Entering the House*

The Appellant has dealt with addiction issues for much of his adult life. In December of 2023 he had just completed a sanction at the START program (Sanction Treatment Assessment and Revocation Transition). After leaving the START program he went to stay at the home of Brenda Smith at 502 Monroe in Boulder, Montana. TR Tran. pg. 58, lines 4-8. Ms. Smith was a family friend of the Appellant, and he referred to her as his “aunt.” TR Tran. pg. 59, lines 2-4. Probation and Parole Officer McKenzie Lyons was responsible for monitoring Appellant’s conduct after his release from START. TR pg. 21, lines 16-18. She came to Ms. Smith’s home on Dec. 13, 2023, to inspect the premises. TR Tran.pg. 22, lines 2-9. The Appellant was aware that Officer Lyons was coming to the house at 502 Monroe to inspect it and he had a discussion with her about the state of the residence when they first met. TR Tran. pg. 58-60. Their first meeting was at Officer Lyon’s place of work on or about December 7, 2023, after Appellant’s release from START. TR Tran. pg. 30, lines 9-10. Appellant told Officer Lyons

that there were several individuals that had been living at the residence besides himself and Brenda Smith. Appellant told Officer Lyons there may be drug paraphernalia present from prior residents, and she told him to get it “cleaned up.” TR Tran. pg. 58, lines 14-20, TR Tran. pg. 30, lines 17-20. Appellant also told her there might be a firearm present, and she also told him to get rid of it. TR Tran. pg. 30, 17-20.

Officer Lyons came to do a home visit at 502 Monroe on December 13, 2023. She was not wearing a body cam and did not use any kind of recording device. TR Tran. pg. 31, lines 3-5. She was accompanied by Parole and Probation Officer Aba Atwan. Officer Atwan was not wearing a body cam or other recording device and did not testify at the trial, so could not corroborate any of Officer Lyons’ testimony. TR Tran. pg. 31, lines 6-8.

Officer Lyons was met at the door to 502 Monroe by the Appellant, who let in Officers Lyons and Atwan. TR Tran. pg 22, lines 15-19. Appellant accompanied them through the living room, which she kindly described as “pretty packed with quite a bit of stuff.” TR Tran. pg 22, lines 20-21. The owner of the home, Brenda Smith, described the condition of the house as “horrible.” TR Tran. pg. 40, line 2-4. The District Court reviewed body cam evidence of the living room and the Court described the living room as “extremely cluttered with items piled throughout the area and on all visible pieces of furniture.” DC Doc. 19, pg. 2,

Finding 2 (See also Appendix 1). From the living room they went to other rooms on the same floor, down a narrow hallway. According to Officer Lyons there were three bedrooms and one bathroom. TR. Tran. pgs 22-23. Because of the narrow hallway, Officer Lyons asked the Appellant to wait while she inspected the bedrooms and bathroom. Brenda Smith, the owner of the residence and in a wheelchair, was present in the living room and indicated to Officer Lyons which bedroom belonged to Ms. Smith. Appellant will refer to Ms. Smith's bedroom as Bedroom 1. Officer Lyons looked through the door to Bedroom 1, saw a bed and female clothing, and exited Bedroom 1. TR Tran. pg. 23, lines 6-8.

*2. What was in Bedroom 2?*

According to Officer Lyons, Bedroom 2 did not appear to have anyone staying there. She couldn't see a bed in that room, didn't see any contraband, and it appeared to be used only for storage. TR Tran. pg. 23, lines 13-20.

*3. Where was the Appellant staying?*

The testimony on this issue is a matter of significant dispute, and the dispute is critical to the analysis of the case as methamphetamine and paraphernalia were found Bedroom 3. There were three possibilities; that he was staying on the couch in the living room, that he was staying in Bedroom 2, or that he was staying in Bedroom 3. As noted, Officer Lyons testified that it did not appear that anyone was yet staying in Bedroom 2, so the only options were the couch or Bedroom 3.

One the one hand Officer Lyons testified that she asked Appellant which of the two remaining bedrooms was his (Bedrooms 2 and 3), and according to her, “He pointed to the remainder of the two bedrooms. He pointed to both of them and says he stays between here and there, between both of them.” TR Tran. pg. 23, lines 10-13. (Officer Lyons was referring to Bedrooms 2 and 3). When Appellant was asked about what he had told Officer Lyons he testified, “She asked me where I stayed and I said, ‘It’s going to be a toss up between here and there (meaning Bedrooms 2 and 3). I don’t have a room yet. I’m staying on the couch’...[I]t was a toss up; because I didn’t have a room yet. I hadn’t cleaned one of them out and it hadn’t been cleaned out in order for me to move in. I wouldn’t have said that otherwise.” TR Tran. pg. 61, lines 5-12.

Recalling that Appellant had informed Officer Lyons at their December 7th meeting that there was a firearm and at least some drug paraphernalia in the house, Appellant testified that Ms. Smith was sick when he arrived at 502 Monroe with what he thought was COVID. TR Tran. pg. 50, lines 2-9. Appellant soon came down with the same illness and was staying on the couch in the living room, so had not moved into any of the bedrooms. TR Tran. pg. 59, lines 2-7. This is why neither Bedroom 2 or Bedroom 3 had been cleaned out as Officer Lyons had instructed him to do.

Appellant testified that he had not stayed in Bedroom 3, that Bedroom 3 had been locked until shortly before Officer Lyons arrived. TR Tran. pgs 60-61. This testimony was corroborated by Ms. Smith. TR Tran. pg. 43, lines 5-15. Bedroom 3 had only been unlocked a few hours before Officer Lyons arrived. Ms. Smith had unlocked it so she and a friend could clean out the belongings of the prior resident. The prior residents of Bedroom 3 were identified by Ms. Smith as “Becka” and “Jamie.” Jamie had moved out of the Bedroom 3 about a month before the Appellant arrived, and Becka had only left Bedroom 3 a day or two before Appellant arrived. TR Tran. pg. 40-41. Both Jamie and Becka had male friends who had visited them while they were staying in Bedroom 3. TR Tran. pg. 42, lines 13-16.

Ms. Smith testified that she had kept Bedroom 3 locked with a padlock because she had not yet cleaned out the room. TR Tran. pg. 43, lines 5-15. She took the lock off the morning that Officer Lyons arrived because Ms. Smith had a friend coming over that same day to help her clean the room. TR Tran. pg. 43, lines 16-24, TR Tran. pg. 44, lines 21-25, pg. 45, line 1. Defendant’s Exhibit A is a photograph of the padlock that was on the door to Bedroom 3. Ms. Smith corroborated that the Appellant had not been staying in Bedroom 3, but had been staying on the couch in the living room. TR Tran. pg. 44, lines 18- 20; TR Tran. pg. 41, lines 23-25. Ms. Smith also testified that both of the two females that had

previously stayed in Bedroom 3, Jamie and Becka, still had property in Bedroom 3 on December 13, 2024. TR Tran. pg. 45, lines 7-16; Defendant's Exhibit B.

*4. What was found in Bedroom 3?*

When Officer Lyons entered Bedroom 3 at 502 Monroe Street in Boulder, Montana, she observed a box of Bud Light beer that was half empty. TR Tran. pg. 23-24. Officer Lyons observed a diabetic testing kit on a ledge in the room. TR Tran. pg.24, lines 1-3. Officer Lyons observed a large piece of furniture with shelving and on the top shelf was a glass pipe which she testified was of a type commonly used to smoke methamphetamine. It appeared to contain some kind of residue. TR Tran. pg. 24, lines 4-9; State's Exhibit 2. Next to the pipe was a plastic baggie with a crystalline substance in it. Officer Lyons detained the Appellant and then called the Jefferson County Sheriff's Office to report what she had found. TR Tran. pg. 24, lines 10-14. Next to the glass pipe and baggie are what appeared to be a product called Dove Men+Care. State's Exhibit 3. A Jefferson County Deputy responded, took photographs of the evidence, seized the evidence, and Officer Lyons then transported the Appellant to the Jefferson County Detention Center. TR Tran. pg. 25, lines 6-10. Officer Lyons testified that the Appellant is diabetic. TR Tran. pg. 28, lines 2-3. She also testified that there appeared to be some items of men's clothing located in Bedroom 3. Officer Lyons did not look at the labels

on the men's clothing to see if they were the same size as the Appellant wears. TR Tran. pg. 33, lines 23-24.

Jefferson County Deputy Amanda Morgan responded to Officer Lyon's call. Dept. Morgan field-tested the crystalline substance and it tested as presumptively positive for methamphetamine. She then sent the substance to the State Crime Lab for analysis. TR Tran. pg.12, lines 6-14. The results of the sample, weighing 1.95 grams, came back as positive for methamphetamine. TR Tran. pg. 13, lines 5-19; State's Exhibit 4. Deputy Morgan also testified that there was at least one item of women's clothing, a high heel, that was also found in Bedroom 3. TR Tran., pg. 18, lines 14-17.

Despite having found beer in Bedroom 3, Officer Lyons did not have Appellant submit to either a preliminary breath test or a breathalyzer test when he was brought to the Jefferson County Detention Center. TR Tr. pg. 34, lines 4-12.

The day after the Appellant was arrested, Officer Lyons had Appellant submit to a urinalysis. It came back as presumptively positive for methamphetamine, amphetamine, and THC. TR Tran. pg. 25. Officer Lyons sent the sample off to the State Crime Lab, which analyzed it and determined it was positive for methamphetamine, amphetamine, diphenhydramine (Benadryl) and THC. TR Tran. pg. 26, lines 8-21; State's Exhibit 5.

Appellant testified and confirmed that he was diabetic. TR Tran. pg. 59, lines 8-9. It was unknown whether the prior inhabitants of Bedroom 3 were diabetic or not. Ms. Smith testified that she didn't think Jamie was diabetic, but that she didn't know about Becka. TR Tran. pg. 45, lines 2-14. Appellant testified that the diabetic test kit found in Bedroom 3 was not his, and he kept testing materials in the refrigerator in a different room. TR Tran. pg. 59, lines 12-16, DC Doc. 19, pg. 3, finding 7 (Appendix 1).

Ms. Smith testified that she herself did not use methamphetamine and that she didn't know of other people in the home bringing in methamphetamine. Ms. Smith TR Tran. pg 51, line 7-9. Ms. Smith said she let a number of people stay at her home in Boulder without paying rent. She put it this way, "Yeah, if they're kind of down and out, I do. I don't like anyone to be cold or hungry." TR Tran. pg. 50-51. "They just stayed with me to help, usually. People call it rent, so it is kind of, like, board and room. I gave them meals, and they helped me." TR Tran. pg. 48, lines 3-5. The District Court found that Undersheriff James Everett stated that he was familiar with Ms. Smith's residence and heard rumors that numerous people filtered in and out of the residence as short term renters. DC Doc. 19, pg. 4, finding 15. (Appendix 1)

*5. Appellant's testimony concerning the positive UA*

Appellant testified and acknowledged that he has a substance abuse problem with methamphetamine. TR Tran. pg. 61-62. He testified, however, that he had not used methamphetamine since before he went to the START program. He testified that he had been sent to START for a 15 day sanction, and was released on December 7, 2023, so his last usage would have been approximately November 22nd or 23rd, 2023. TR Tran. pg. 62, lines 6-12.

Appellant told Officer Lyons on December 7<sup>th</sup> that when he left START he had found a bag of methamphetamine in his coat pocket that the people at START had missed, and that he had disposed of it but not used it. TR Tran. pg. 63, lines 19-25. Because of Appellant's statement Officer Lyons had him take a UA on December 7<sup>th</sup>. The result was clean. TR Tran. pg. 63, lines 18-23. Appellant's explanation of the positive UA on December 14, 2023, was that there must have been residue he touched from the methamphetamine that he found in his coat when he left START. TR Tran. pg. 64, lines 10-15. The report from the Crime Lab introduced as State's Exhibit 5 did not indicate any particular amount of methamphetamine, just that it was "detected." Appellant was adamant that he did not use or possess methamphetamine at the house located at 502 Monroe. TR Tran. pg. 63-64. He testified that he had been sick and that was why the UA on December 14 also was positive for diphenhydramine (Benadryl), a common

medicine used to treat cold or allergy symptoms. The State offered no evidence to rebut Appellant's testimony that he was exposed to methamphetamine residue in his coat from the methamphetamine he had thrown away on leaving START.

### STANDARD OF REVIEW

This Court reviews the sufficiency of the evidence *de novo*. *State v. Bennett*, 2022 MT 73, ¶ 7, 408 Mont. 209, 507 P.3d 1154. Viewing the evidence in a light most favorable to the prosecution, the Court determines whether there is any evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Kirn*, 2012 MT 69, ¶10, 364 Mont. 356, 359, 274 P.3d 746, 748; *State v. Booth*, 2012 MT 40, ¶ 7, 364 Mont. 190, 272 P.3d 89. The standard is the same whether the trial is a bench trial or a jury trial. *State v. Fish*, 2009 MT 47, ¶27, 349 Mont. 286, 290, 204 P.3d 681, 684.

### SUMMARY OF THE ARGUMENT

As a matter of law there was insufficient evidence to convict the Appellant of knowingly possessing methamphetamine. The District Court incorrectly analyzed the evidence presented in the case.

### ARGUMENT

1. *The District Court incorrectly analyzed the evidence and incorrectly applied the burden of proof*

*a. Factual inaccuracies and inconsistencies in the State's case make it unreliable as a matter of law.*

There are many reasons why the State failed to prove its case beyond a reasonable doubt. The State's entire case rests on proving that Appellant was staying in Bedroom 3, where the methamphetamine was found. Among the reasons the State failed to meet its burden of proof are:

- Although Officer Lyons testified that Appellant stated he was staying in Bedrooms 2 and 3, Appellant testified he had told Officer Lyons "She asked me where I stayed and I said, 'It's going to be a toss up between here and there (meaning Bedrooms 2 and 3). I don't have a room yet. I'm staying on the couch'...[I]t was a toss up; because I didn't have a room yet. I hadn't cleaned one of them out and it hadn't been cleaned out in order for me to move in. I wouldn't have said that otherwise." TR Tran. pg. 61, lines 5-12.
- Appellant testified that he had not stayed in Bedroom 3, that Bedroom 3 had been locked until shortly before Officer Lyons arrived. TR Tran. pgs 60-61. This testimony was corroborated by Ms. Smith. TR Tran. pg. 43, lines 5-15.
- Officer Lyons testimony should not be credited. Officer Atwan was apparently present throughout the entire time but did not testify to corroborate Officer Lyon's testimony. She did not corroborate Officer Lyons statement that Appellant said he was staying in both Bedroom 2 and Bedroom 3. She did not corroborate Officer Lyons testimony that he

“changed his story” about where he was staying after being told of the discovery of methamphetamine in Bedroom 3. Finally, neither Officer Lyons nor Officer Atwan were wearing a body cam or using any type of recording device. Officer Lyons misheard the Appellant’s statement about where he was staying and the State built their case on that misapprehended statement. The failure of the State to record the conversations is significant as it is the State who has the burden of proving each and every element of the case beyond a reasonable doubt. *State v. Egelhoff*, 272 Mont. 114, 121, 900 P.2d 260, 264 (1995) (*rev’d on other grounds*); *In Re Winship*, 297 U.S. 358, 364 (1970).

- The fact that a diabetic test kit was found in Bedroom 3 does not prove it belonged to Appellant. The test kit was never submitted for fingerprint or DNA analysis. The owner of the residence, Brenda Smith, was unsure whether the person who had left Bedroom 3 only a few days before (Becka) was diabetic. TR Tran. pg. 45, lines 2-14. The failure of the State to submit the diabetic test kit for fingerprint and DNA analysis is significant as it is the State who has the burden of proving each and every element of the case beyond a reasonable doubt. *State v. Egelhoff*, 272 Mont. 114, 121, 900 P.2d 260, 264 (1995) (*rev’d on other grounds*); *In Re Winship*, 297 U.S. 358, 364 (1970).

- Similarly, neither the plastic baggie containing methamphetamine nor the glass pipe were submitted for fingerprint or DNA analysis. If either of these two items belonged to the Appellant the State could easily have proven his domain over the items with this kind of analysis. The failure of the State to submit the plastic baggie and the glass pipe for fingerprint and DNA analysis is significant as it is the State who has the burden of proving each and every element of the case beyond a reasonable doubt. *State v. Egelhoff*, 272 Mont. 114, 121, 900 P.2d 260, 264 (1995) (*rev'd on other grounds*); *In Re Winship*, 297 U.S. 358, 364 (1970).
- Part of the circumstantial evidence used against the Appellant was that there was supposedly “men’s clothing” found in Bedroom 3. The State failed to offer any proof of the size of the clothing in question and whether it would match the size of clothing Appellant wore. The failure of the State to make this causal connection is significant as it is the State who has the burden of proving each and every element of the case beyond a reasonable doubt. *State v. Egelhoff*, 272 Mont. 114, 121, 900 P.2d 260, 264 (1995) (*rev'd on other grounds*); *In Re Winship*, 297 U.S. 358, 364 (1970)
- There was a reasonable explanation for why the urinalysis conducted on the Appellant on December 14, 2023, could have been positive for methamphetamine. Appellant’s explanation of the positive UA on December

14, 2023, was that there must have been residue he touched from the methamphetamine that he found in his coat on leaving START on December 7, 2023. TR Tran. pg. 64, lines 10-15. The report from the Crime Lab introduced as State's Exhibit 5 did not indicate any particular amount of methamphetamine, just that it was "detected." Appellant was adamant that he did not use or possess methamphetamine at the house located at 502 Monroe. TR Tran. pg. 63-64. He testified that he had been sick and that was why the UA on December 14 also was positive for diphenhydramine (Benadryl), a common medicine used to treat cold or allergy symptoms. The State offered no evidence to rebut Appellant's testimony that he was exposed to methamphetamine residue in his coat from the methamphetamine he had thrown away on leaving START. The failure of the State to rebut Appellant's testimony is significant as it is the State who has the burden of proving each and every element of the case beyond a reasonable doubt. *State v. Egelhoff*, 272 Mont. 114, 121, 900 P.2d 260, 264 (1995) (*rev'd on other grounds*); *In Re Winship*, 297 U.S. 358, 364 (1970).

Transdermal exposure to methamphetamine is a recognized phenomena in the scientific community. "The human body can absorb methamphetamine by purposeful use, inhalation, accidental injection, or through skin contact with a contaminated surface.", *COMMENT: ANOTHER WEAPON IN THE ARSENAL TO*

*STOP THE PRODUCTION OF METHAMPHETAMINE*, 47 Tulsa L. Rev. 273, 278; ; “A child living in a methamphetamine lab may inhale or swallow toxic substances, receive an injection or accidental skin prick from discarded needles or other drug paraphernalia, or absorb methamphetamine or toxic substances through his skin following contact with contaminated surfaces.” N.M. SENTENCING COMM'N, RESEARCH OVERVIEW *Methamphetamine Production, Precursor Chemicals, and Child Endangerment*, pg 9 (Jan. 2004), <https://nmsc.unm.edu/reports/2004/MethReview.pdf>; Van Dyke M, Martyny JW, Serrano KA. See also Hui, Xiaoying. “*Dermal Exposure to Methamphetamine Hydrochloride Contaminated Residential Surfaces*. Food and Chemical Toxicology, 2012;

*b. The District Court improperly applied the burden of proof to the facts of the case.*

The Appellant takes no issue with the Findings of Fact which the District Court made in its order of February 22, 2024, with the exception of Finding No. 19, which provides:

Bunse claims after he left the START program, which is a secure facility contracting through the Montana Department of Corrections, he found a bag of methamphetamine in his coat. Bunse believes he had it in his pocket when he was sanctioned to the program and they missed it. Bunse claims he tossed the bag away but in touching it may have got meth on his skin. DC Doc. 19, page 3, Finding 19 (Appendix 1).

What Appellant actually testified to was that he believed there was still methamphetamine residue in the pocket of his coat where the bag had been kept.

Deputy County Attorney Andrew Paul: Okay, okay. But on the 14<sup>th</sup>, when you provided a UA, you were not clean; right?

Appellant: I'm telling you I still had been clean, yes. I had not used anything. The coat... the coat that I had... had had methamphetamine bowls spilled on it. There was a bag of meth in the pocket that I disposed of and so on. And I'm sure the likelihood of me being dirty in that case would probably be pretty good. TR Tran. pg. 64, lines 8-15.

Finding Number 19 misstates the testimony of the Appellant. Determining which testimony to credit is within the province of the District Court, but misstating the evidence is not.

The District Court relied in part on Finding 19 in order to reach the conclusion that the Appellant was not credible.

Bunse's version of the story lacks credibility. First, given the state of the house, it is unlikely Bunse was able to sleep on the couch in the living room. Next Bunse's changing stories on the situation call in question his veracity. Additionally, Bunse's version of having meth in property returned to him from START is unlikely. Bunse also asserted that he knew how long meth stayed in your system and it was approximately 10 days, so there was no way a positive test could have come from his use prior to START. Further Bunse testified he was clean upon leaving START. DC Doc. 19, page 6, Conclusion 7. (Appendix 1).

This conclusion relies on several things.

- The living room at 502 Monroe was very messy and cluttered and the Court thought it "unlikely" Appellant slept on the couch.

Unlikely is not the same as impossible.

- Appellant had a “changing story” on which room he was staying in.

This conclusion relies on the testimony of Officer Lyons, which should not be credited for the reasons set forth above at pages 13-14.

- Bunse’s version of having meth in property returned to him from START is unlikely.

Once Appellant gave unrebutted testimony about what he thought the source of the December 14, 2023, positive UA, the burden was on the State to show what policies or procedures START had in place to prevent such an occurrence. The State failed to do so, and the Court cannot simply state it was “unlikely” in the absence of such evidence. It is the State who has the burden of proving each and every element of the case beyond a reasonable doubt. *State v. Egelhoff*, 272 Mont. 114, 121, 900 P.2d 260, 264 (1995) (*rev’d on other grounds*); *In Re Winship*, 297 U.S. 358, 364 (1970). As this Court has previously held:

In Montana, to constitute an offense, the possession of a dangerous drug must be knowingly. Sections 45-9-102; 45-2-103(1), MCA. In order to prove that the possession of a dangerous drug is with knowledge, it is necessary for the state to present evidence that the person charged with the offense was aware that they possessed the dangerous drug, or that such person was aware of a high probability that such substance is a dangerous drug. Section 45-2-101(34), MCA. Further, to establish criminal possession of a dangerous drug, the state must present evidence that such possession was voluntary. Section 45-2-202, MCA. Based on Montana's statutory definitions we conclude that while the presence of a dangerous drug in one's body constitutes a circumstance that indicates prior possession of that substance, it is insufficient, standing alone, to sustain a conviction for possession of dangerous drugs. This is so

because without more than proof that a person had a dangerous drug in their system, there is no evidence to establish that such drug was knowingly and voluntarily ingested. (emphasis added)  
*In re R.L.H.*, 2005 MT 177, ¶24, 327 Mont. 520, 526, 116 P.3d 791, 795,

In the case before the Court Appellant provided a rational explanation for how he could have ended with a positive urinalysis on December 14, 2024.

The burden shifted to the State to prove the Appellant had voluntarily ingested methamphetamine, which it could easily have done by submitting the plastic baggie containing methamphetamine and glass pipe for fingerprint and DNA analysis. The State failed to do so and thus failed to meet their burden of proof. *In re R.L.H.*, 2005 MT 177, ¶24, 327 Mont. 520, 526, 116 P.3d 791, 795; *State v. Egelhoff*, 272 Mont. 114, 121, 900 P.2d 260, 264 (1995) (*rev'd on other grounds*); *In Re Winship*, 297 U.S. 358, 364 (1970).

- As noted above, in Finding 19 the District Court misstated Bunse's testimony about the potential source of the methamphetamine contamination in his December 14, 2023 UA.

Because the District Court misstated the Appellant's testimony concerning the possible source of methamphetamine contamination, it could not rely in part on that testimony to conclude his statements lacked credibility. The District Court cannot misstate testimony and then rely on that misstatement in reaching a conclusion.

The District Court also committed error by crediting the testimony of Brenda Smith, and then ignoring her testimony when it disagreed with the conclusions the District Court reached. The District Court had this to say about Ms. Smith's testimony. "While the Court does not believe Smith testified untruthfully, the Court is troubled by the possibility of believing the meth belonged to a relatively unknown person." (emphasis added). DC Doc. 19, page 6, Conclusion 8. (Appendix 1). After stating the District Court did not believe Brenda Smith testified untruthfully, the Court went on to completely ignore the following sworn testimony offered by Ms. Smith:

- Appellant had not been staying in Bedroom 3; he had been staying on the couch for the few days he had been at Ms. Smith's home. TR Tran. pg. 41, lines 23-25.
- Bedroom 3 had been locked until just a few hours before Officer Lyons arrived. TR Tran. 43, lines 16-24. Ms. Smith only unlocked it the morning of December 13<sup>th</sup> so that she and a friend could clean it out. TR Tran. pg.44-45.

If, as the Court concluded, Ms. Smith did not testify "untruthfully" then the Court should have credited her testimony that the Appellant was not staying in Bedroom 3 and that it had been locked up until only a few hours before Officer Lyons arrived.

The Court also committed error by crediting Officer Lyons uncorroborated testimony that Appellant had been staying in both Bedrooms 2 and 3, and his “changing story” about where he was staying. As noted, Officer Lyons was not wearing a body cam, Officer Atwan was present the entire time but did not testify to corroborate Officer Lyons’ testimony.

As a matter of law, there was sufficient reasonable doubt to mandate an acquittal of the Appellant. This Court reviews the sufficiency of the evidence *de novo*. *State v. Bennett*, 2022 MT 73, ¶ 7, 408 Mont. 209, 507 P.3d 1154. Viewing the evidence in a light most favorable to the prosecution, the Court determines whether there is any evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Kirn*, 2012 MT 69, ¶10, 364 Mont. 356, 359, 274 P.3d 746, 748; *State v. Booth*, 2012 MT 40, ¶ 7, 364 Mont. 190, 272 P.3d 89. The standard is the same whether the trial is a bench trial or a jury trial. *State v. Fish*, 2009 MT 47, ¶27, 349 Mont. 286, 290, 204 P.3d 681, 684.

While this Court generally defers to the factual findings of a District Court, the deference is not limitless. Whereas here the District Court misapprehended the Appellant’s testimony concerning Finding 19, relied on uncorroborated testimony of Officer Lyons, credited the testimony of Brenda Smith and yet ignored crucial aspects of that testimony, and in light of Appellant’s denial that he possessed the

methamphetamine failed to require the State to prove Appellant's knowing by submitting the baggie and pipe for fingerprint or DNA testing, it is incumbent on this Court to reverse the Appellant's conviction and order that a Not Guilty verdict be entered on the Appellant's behalf. This Court's has stated role in reviewing the sufficiency of the evidence as:

De novo review is appropriate because "[t]here either is, or is not, sufficient evidence to convict, and the determination is not a matter of discretion." *Swann*, ¶¶ 16-19; *Bomar*, ¶ 13. We likewise review an appellate challenge to the sufficiency of the evidence to support a conviction under the same standard. *State v. Dulaney*, 2025 MT 67, ¶49, 421 Mont. 251, 278, 566 P.3d 534, 552,

In the case at bar as a matter of law there simply was not sufficient evidence to support Appellant's conviction for Criminal Possession of a dangerous drug.

### CONCLUSION

The District Court misstated the Appellant's testimony about how he was exposed to methamphetamine resulting in his positive urinalysis on December 14. The District Court then relied on this incorrect statement of Appellant's testimony in part to conclude he was testifying falsely. This was error by the District Court.

The District Court committed error by crediting the testimony of Brenda Smith and then ignoring the parts of her testimony that were exculpatory.

The District Court concluded that it was “unlikely” that a small plastic baggie of methamphetamine was in Appellant’s possession when he left the START program. Yet the Court did not require the State to provide any evidence of the screening processes used by that program. This was error by the District Court.

The “men’s clothing” found in Bedroom 3 was never examined to determine if it was the same size as clothing worn by Appellant. At least one item of women’s clothing was also found in Bedroom 3. It was error by the District Court to rely on such evidence.

Although there was an opened box of Bud Light in Bedroom 3, Appellant denied using alcohol. Officer Lyons did not testify that she detected the odor of an alcoholic beverage on the Appellant, and on his arrest on December 13, 2023, she did not have him submit to a preliminary breath test or an Intoxilyzer test.

In view of Appellant’s denial that the diabetic test kit in Bedroom 3 was his, and in the absence of fingerprint or DNA analysis of the kit, the District Court committed error by concluding that the kit in Bedroom 3 showed that the Appellant had been present in the room.

In view of Appellant’s denial of knowing possession of methamphetamine, and in the absence of fingerprint or DNA analysis of the plastic baggie and glass pipe, the District Court committed error by concluding Appellant has knowingly

possessed methamphetamine. This conclusion could only be reached by ignoring the State's burden of proof.

For all the reasons set forth there was insufficient evidence to sustain the Appellant's conviction. His conviction must therefore be reversed and a verdict on Not Guilty must be entered.

Respectfully submitted this 5<sup>th</sup> day of June, 2025.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Time 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 5829, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ James Park Taylor  
JAMES PARK TAYLOR

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