

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0620

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSEPH DWAYNE MATT,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana First Judicial District Court,
Broadwater County, The Honorable Kathy Seeley, Presiding

APPEARANCES:

AUSTIN KNUDSEN
Montana Attorney General
MARDELL PLOYHAR
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
mployhar@mt.gov

JAMES PARK TAYLOR
Attorney at Law
717 Hiberta Street
Missoula, MT 59804

ATTORNEY FOR DEFENDANT
AND APPELLANT

KEVIN BRACHTER
Broadwater County Attorney
515 Broadway
Townsend, MT 59644

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

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STATEMENT OF THE ISSUES

1. Whether the court correctly denied Joseph's motion to suppress evidence seized from a car Joseph was a passenger in when the driver's probation officer authorized a search of the car based on information the probation officer knew, in addition to the driver's unlawfully obtained admission to using methamphetamine, but the probation officer testified that he would have authorized the search even without the driver's admission to using methamphetamine.

2. Whether the court erred in denying Joseph's motion to dismiss for insufficient evidence where the evidence included Joseph's presence in the passenger seat of a car that contained methamphetamine in the center console; testimony from the driver, who was legally accountable for the possession of the methamphetamine, that Joseph knew he was on a trip with the driver to obtain drug; and surveillance video corroborating the driver's testimony that Joseph was in the car when the driver exited his car, obtained the drugs, returned to his car with drugs, and then placed the drugs in the center console.

STATEMENT OF THE CASE

The State charged Appellant Joseph Dwayne Matt (Joseph)¹ with criminal possession of drugs with intent to distribute by accountability and with criminal possession of drug paraphernalia. (Docs. 1, 3.) The charges were based on methamphetamine and paraphernalia located in Levi Gadaire's (Gadaire) car, in which Joseph was a passenger. (*Id.*)

Joseph moved to suppress the evidence seized from the car. (Doc. 8.) The court denied the motion after a hearing. (Doc. 16, available at Appellant's App. 1-13.)

The jury found Joseph guilty of the lesser included offense of criminal possession of dangerous drugs and found him not guilty of possession of drug paraphernalia. (Doc. 27.)

STATEMENT OF THE FACTS

I. Motion to suppress

Joseph moved to suppress the drugs located in the car, arguing that Gadaire was compelled to make statements because of his probation status and those statements resulted in the discovery of the drugs. (Doc. 8.) He argued that Gadaire's and Joseph's probation conditions placed them in a classic penalty

¹ Because another witness is named Matt, the State refers to the Appellant by his first name.

situation where they provided information because they were compelled to cooperate with law enforcement. (*Id.*)

Gadaire filed a separate motion to suppress in his case, and the State filed a combined response. (Doc. 11.) The State conceded that statements Gadaire made after he was placed in custody and questioned without being read *Miranda* warnings had to be suppressed, but the State argued that the methamphetamine was discovered through a permissible probation search that would inevitably have been conducted without Gadaire's inadmissible admissions. (*Id.* at 2, 6.) The State argued that Joseph's statements should not be suppressed because he was not in a classic penalty situation, and he could have invoked his right to remain silent. (*Id.* at 7-9.) Further, the State argued that there was ample information, even with Gadaire's statements suppressed, to establish reasonable grounds for a probation search. (*Id.* at 9-14.)

The court held a hearing on the combined motions to suppress from Joseph and Gadaire. (*See generally* 6/16/23 Tr.) Sergeant Jamie Buck testified that he stopped Gadaire's car based on a report of erratic driving. (*Id.* at 12-13.) He located the car that had been reported and observed it make a steering correction. (*Id.* at 37, 57-58.)

A recording from Sergeant Buck's body camera was played at the hearing. (*Id.* at 15-20; State's Hr'g Ex. 1, admitted at 6/16/23 Tr. at 15, played at *id.* at

16-20.) Sergeant Buck testified that when he asked Gadaire for his driver's license, Gadaire turned to his right and hunched over. (6/16/23 Tr. at 16.) Sergeant Buck noticed that Gadaire was using his left hand to move something, which made Sergeant Buck concerned that there might be a weapon in the center console. (*Id.*)

When Sergeant Buck learned that Gadaire was the driver, he knew that Gadaire was on probation based on the weekly probation and parole listing. (*Id.* at 17.) Gadaire confirmed that he was on probation with Probation Officer Landon Lamb. (*Id.* at 18.) Joseph also informed Sergeant Buck that he was on probation. Gadaire told Sergeant Buck that he did not know Joseph was on probation. (*Id.*; State's Hr'g Ex. 1 at 4:58-5:05, 16:20-16:24.)

Sergeant Buck learned that Joseph was an absconder from probation and parole with an arrest warrant. (*Id.* at 18-19; State's Hr'g. Ex. 7:10-7:35, 8:49-8:59, 18:14-18:27.) As a result, Sergeant Buck arrested Joseph. (*Id.* at 19.)

Sergeant Buck spoke to Officer Lamb and requested that he fax over the warrant for Joseph. (*Id.*) There were two warrants issued for Joseph, and they demonstrated that he was on parole or conditional release. (*Id.* at 73-74, 80; Def.'s Exs. A-B.)

Sergeant Buck and Officer Lamb discussed the option of searching the vehicle, but Officer Lamb did not give Sergeant Buck permission to search the car during the first phone call. Instead, Officer Lamb said he wanted to check some

information and would call Sergeant Buck back. (6/16/23 Tr. at 20; *see also* State's Hr'g Ex. 1 at 11:40-16:10 (duration of first call).)

After that call, Sergeant Buck told Gadaire that he believed Officer Lamb would authorize a search of the car, and Gadaire agreed. (State's Hr'g Ex. 1 at 16:35-16:40.) Sergeant Buck then questioned Gadaire, who was in custody, and Gadaire admitted that he had used methamphetamine that morning. (6/16/23 Tr. at 21.)

While waiting for Officer Lamb to call back, Sergeant Buck told another officer that he expected Officer Lamb to authorize a search of the car when Officer Lamb called back. (State's Hr'g Ex. 1 at 19:00-19:11.) When Officer Lamb called back, Sergeant Buck informed Officer Lamb that Gadaire had admitted to using methamphetamine that morning. (*Id.* at 21, 52; State's Hr'g Ex. 21:34-21:55.) Officer Lamb authorized a search of the car during that call. (6/16/23 Tr. at 21, 52; State's Hr'g Ex. 23:15-23:21.) During the conversation, Officer Lamb noted that Gadaire and Joseph were not supposed to be together because of their probation status, and Joseph had a warrant based on his status as an absconder. (6/16/23 Tr. at 24.)

Before Sergeant Buck began searching the car, Gadaire told him that Joseph had drugs in the center console of the car. (State's Hr'g Ex. 1 at 23:34-23:40.) After receiving Officer Lamb's authorization, Sergeant Buck searched the car.

(6/16/23 Tr. at 24.) He located three plastic containers containing methamphetamine. (*Id.* at 24-29.)

Officer Lamb testified that he had supervised Gadaire for several years. (*Id.* at 63.) He recalled that he was informed that Gadaire was with Joseph, who was on probation or parole and being supervised out of Butte, and that Gadaire admitted to using methamphetamine earlier in the day. (*Id.* at 64.) But Officer Lamb relied on his notes and did not remember the details of his conversations. (*Id.* at 64-65, 86.) Officer Lamb's notes did not specify that he did not authorize the search until his second call with Sergeant Buck, and Officer Lamb did not recall that two conversations occurred. (*Id.* at 65, 86.) It was evident from Sergeant Buck's body camera, however, that Officer Lamb authorized the search during his second call with Sergeant Buck. (*See State's Hr'g Ex. 1 at 11:40-16:10; 21:34-23:21.*)

The State admitted Gadaire's and Joseph's probation documents through Officer Lamb. (6/16/23 Tr. at 67-70; State's Exs. 7-8.) Joseph's conditions stated that he "will not associate with probationers[or] parolees . . . without prior approval[.]" (State's Ex. 7 at 2.) His conditions also provided that "Upon reasonable suspicion, as ascertained by a Probation/Parole Officer, my person, vehicle, and/or residence may be searched at any time[.]" (*Id.* at 1.) Gadaire's conditions prohibited him from "knowingly associat[ing]" with somebody on

felony supervision and informed him that he could be searched upon reasonable suspicion. (6/16/23 Tr. at 84; State's Ex. 8.)

Officer Lamb explained that Gadaire and Joseph were not supposed to associate because they were both on probation, and Joseph had a warrant for absconding. (6/16/23 Tr. at 71-73.) He also explained that having a warrant for absconding was a "pretty serious offense." (*Id.* at 72.)

Officer Lamb testified that, "[w]ith the information that I got for the call for erratic driving and then being in association with somebody that has absconded, violation right there with the erratic driving, it was grounds for us to authorize a search." (*Id.* at 75.) He testified repeatedly that he would have authorized the search of the car even without Gadaire's admission to using methamphetamine, which the State conceded was unlawfully obtained. (*Id.* at 76-77, 83-85.) When asked what he would have done without the information about Gadaire using methamphetamine, Officer Lamb testified:

A. I would—I would authorize a search based on Mr. Matt being an absconder.

Q. So you're saying that's a significant factor?

A. The association and him being an absconder with a warrant issue[d] for him, then that's grounds for us to being able to authorize a search.

Q. Okay. And so again, if we take away—You never heard, the bell was never rung. You did not hear Mr. Gadaire saying, "I used

methamphetamine that day,” you are saying you still would have authorized the search?

A. I would have.

(*Id.* at 75-76.)

Officer Lamb further specified that, “I would authorize [the search] every time, those circumstances. Somebody in violation, I would still authorize it.” (*Id.* at 76.) He also stated that he would have authorized it even if Gadaire and Joseph had denied having any drugs. (*Id.* at 77.)

When asked whether he would have authorized the search based solely on the association of two people on probation and erratic driving, without information about Joseph being an absconder, Officer Lamb was unsure. He stated, “Would I have authorized it based off from not knowing he was on—an absconder? There would had to been [sic] probably a little more for me to authorize a search. I don’t—I don’t know at that point.” (*Id.* at 87.)

When asked whether he was saying he would never not authorize a search when two probationers are present together in a car, Officer Lamb replied:

A. No. I said I have—when they have other violations, when somebody’s in violation with (unintelligible).

Again, this situation hasn’t happened very often, where there is—somebody’s in—actually has a felony warrant issued for their arrest. They are in that association, yes, I am going to authorize a search.

If it's two felons associating, and there is no other violation, there is no laws of conduct violation but there is a warrant issued for somebody, there is going to have to—we are going to have to look at more of the circumstances of the situations.

(Id. at 88-89.)

At the conclusion of the testimony, the State argued that the evidence seized from the car should not be suppressed because even without Gadaire's admission to using methamphetamine, Officer Lamb would have authorized the search based on Joseph's and Gadaire's presence together and Joseph's warrant for absconding.

(Id. at 95-96.) The State argued that because the search would have been authorized, the methamphetamine would inevitably have been discovered. *(Id. at 95-96.)*

In response, Joseph argued that without Gadaire's admission there was not sufficient evidence to establish reasonable grounds for the search. *(Id. at 97-104.)* In contrast, Gadaire acknowledged that Officer Lamb could have searched the car, but he argued that the record demonstrated that Officer Lamb would not have authorized the search of the car without the improperly obtained admission of drug use from Gadaire. *(Id. at 106-13.)*

Following the hearing, the court issued an order on Joseph's suppression motion. (Appellant's App. 1-13.) Consistent with the State's concession, the court suppressed Gadaire's custodial admission to using methamphetamine.

(Appellant's App. at 2, 8.) But the court denied Joseph's motion to suppress the

evidence seized from the search of the car. (*Id.* at 12-13.) The court made detailed findings based on the evidence presented at the hearing. (*Id.* at 3-8.) They included the findings that:

40. Lamb did not immediately give Buck permission to search the vehicle since he needed to check more records.

....

46. Lamb testified that under the factual circumstances encountered by Buck and relayed to him during their first phone call[, before he learned of Gadaire’s admission to using methphetamine], he was going to authorize a vehicle search since there was reasonable cause based on Gadaire’s driving behavior, two probationers traveling together, and that [Joseph] was an absconder with an active warrant.

....

54. Based on the totality of the circumstances, Lamb had reasonable suspicion based on specific facts, despite the unlawfully obtained admissions from Gadaire, to authorize Buck’s search of the Pontiac.

(*Id.* at 6-7.)

The court concluded that Joseph “had no actual privacy expectation in Gadaire’s vehicle he was riding in as a passenger[, and Joseph] has failed to show he had a reasonable privacy expectation in Gadaire’s vehicle.” (*Id.* at 8.) The court concluded that there could not be an unlawful government intrusion because Joseph did not have any privacy expectation. (*Id.* at 8.) And because Officer Lamb had sufficient reasonable cause to authorize the search and testified that he would have authorized the search, the court concluded “that the three meth

packets and scale inevitably would have been discovered separate and apart from Buck's constitutional violation as to Gadaire.” (*Id.* at 12.)

II. Evidence of the offense admitted at trial

A. Evidence admitted during the State's case-in-chief

Gadaire was the driver and Joseph was the passenger in a vehicle traveling north, south of Townsend. (Trial Tr. at 102.)² A concerned citizen reported that Gadaire's vehicle was swerving all over the highway. (*Id.* at 95-97.) Sergeant Buck located the car and saw it make a sharp steering correction. (*Id.* at 100-01.) He stopped the car in Townsend. (*Id.* at 101.) The State played a video from Sergeant Buck's body camera at trial, demonstrating that Gadaire and Joseph both told Sergeant Buck that they did not have identification, but they provided their names and dates of birth. (State's Ex. 1.) The State played another video that showed officers locating methamphetamine in the center console of the car. (State's Ex. 2; Trial Tr. at 106.)

At trial, Gadaire testified that he had lost his leg in an industrial accident two years before the traffic stop. (Trial Tr. at 140.) He had significant physical limitations as a result. (*Id.* at 141.) Gadaire received worker's compensation

² The trial was held July 17-18, 2023. Because the trial transcript is consecutively paginated, it is cited as “Trial Tr.”

because of his injury, and he said he liked to treat his friends in Butte, where Joseph lived. (*Id.* at 144.)

Gadaire testified that he called Joseph and told him his mother needed help moving things. (*Id.* at 145.) Gadaire said he offered to give Joseph “product—or cash and some product,” if he would come on the trip to help. (*Id.*) Gadaire clarified that the “product” was methamphetamine. (*Id.* at 146.) Although Gadaire testified that he really did plan to go help his mother in Boulder, and that was one reason for the trip, (*id.* at 145, 176), the trip also involved a drug deal. Gadaire testified that he told Joseph he was going to be picking up drugs, and Joseph agreed to ride with him. (*Id.* at 147-48.) Gadaire said he wanted Joseph to ride along to help him pump gas, go inside to buy lottery tickets, or help with anything else he needed. (*Id.* at 146.) He also explained that he wanted to have someone else sitting in the car with him because he was worried about being robbed. (*Id.* at 143, 147.)

Gadaire testified that he obtained drugs from Matt and Ashley, a couple from Belgrade, in the parking lot of the Town Pump in Three Forks. (*Id.* at 149.) Gadaire said he and Joseph first went into the casino and gambled until Gadaire received a message from Matt and Ashley. (*Id.* at 150.) Gadaire testified vaguely that he drove over to Matt and Ashley’s vehicle by himself, but then he went and picked up Joseph before driving back to Matt and Ashley’s vehicle. (*Id.* 150-51, 157.)

Gadaire drove back around the side of the casino, where Matt and Ashley were parked. (*Id.* at 151, 157.) Gadaire parked next to them, got into their vehicle, weighed two bags of drugs, and then got back in his car. (*Id.*) He testified that he weighed two bags because he was going to give Joseph a bag. (*Id.*) Gadaire said he went back to his car with the drugs, and he put them in the center console. (*Id.* at 155.) Joseph was in the passenger seat when he did that. (*Id.*) Gadaire believed that Joseph would have seen the drugs, but he acknowledged that Joseph never touched them. (*Id.* at 155, 167.)

Three bags containing drugs were located in Gadaire's car. (Trial Tr. at 152; State's Exs. 2-3.) He testified that the small bag of methamphetamine belonged to his girlfriend, and there were two additional bags that each weighed an ounce. (*Id.* at 152.) He testified that he was going to "make money" with one of the bags and give some to Joseph. (*Id.* at 153.)

After Gadaire obtained the drugs, he drove to the gas pumps. (*Id.* at 156.) Joseph went into the store to pay for the gas. (State's Ex. 12.4.) They then drove to Wheat Montana, where Gadaire had Joseph pick up a cinnamon roll for his mother. (*Id.* at 157-58.)

Gadaire testified that he pled guilty to the possession of methamphetamine pursuant to a plea agreement, and he received a five-year commitment to the Department of Corrections. (*Id.* at 160.) He acknowledged that he told law

enforcement multiple stories, and he initially claimed the drugs were Joseph's. (*Id.* at 161, 169-71.) Gadaire testified that Joseph had to wake him up twice while he was driving, and he believed that he would have crashed if Joseph had not been present. (*Id.* at 165.)

Lewis and Clark County Deputy Sheriff Matthew Reighard testified that he assisted with the investigation after the traffic stop. Deputy Reighard and another officer interviewed Gadaire and Joseph, and portions of his interview with Joseph were played at trial. (Trial Tr. at 184; State's Exs. 13.1-13.10.) In the interview, Joseph said that Gadaire offered to pay him to move some things for Gadaire's mother. Joseph said he thought she lived in Butte, but then Gadaire got onto the highway. (State's Ex. 13.8.) Joseph said they stopped in Three Forks and bought a cinnamon roll for Gadaire's mother. (State's Ex. 13.9.)

Deputy Reighard testified that he questioned Joseph about his travel plans because Joseph claimed they were driving from Butte to Boulder, and it did not make sense for them to go through Three Forks and Townsend to get from Butte to Boulder. (Trial Tr. at 213-16.) Joseph claimed in the interview that he had barely been out of Butte, so he did not know the geography, but he later described Boulder as being between Butte and Helena. (State's Exs. 13.9-13.10.) Joseph said he went into the casino in Three Forks and gambled with money from Gadaire. (State's Ex. 13.3.)

Joseph claimed that he did not know anything about the drugs in the car, but he also said he might have turned the money from Gadaire “into another quarter gram or something” when he returned to Butte. (State’s Ex. 13.2.) Later, he acknowledged that he was trying to earn some money so he could “buy some dope.” (State’s Ex. 13.4 at 0:00:00-0:00:05; *see also* State’s Ex. 13.7.) He said Gadaire was going to pay him in cash, and “we all know what it was gonna turn out to be when I get back to Butte.” (State’s Ex. 13.4 at 0:00:07-0:00:10, 0:00:16-0:00:20.) He also said he “didn’t know [Gadaire] had anything or else I would have asked him. And then we probably wouldn’t have had to make the trip.” (*Id.* at 0:00:20-0:00:29.)

Deputy Reighard acknowledged that Gadaire told law enforcement multiple conflicting stories, and Gadaire did not acknowledge that the drugs were his until his third story. (Trial Tr. at 237-39, 247-49.) Deputy Reighard explained that he pursued evidence consistent with Gadaire’s third story, in which he stated that he obtained drugs from Matt and Ashley, because that story was the most reasonable one. (*Id.* at 251.) The surveillance video Deputy Reighard obtained from Town Pump and the data on Gadaire’s phone were consistent with Gadaire’s story, except his claim that he obtained drugs from Matt and Ashely in the bathroom, rather than in the parking lot. (*Id.* at 252-53.)

The surveillance video Deputy Reighard obtained was played at trial, and it corroborated Gadaire's trial testimony. (Trial Tr. at 194-203; State's Exs. 11.1-11.3, 12.1-12.5, admitted at Trial Tr. at 192-93.) The video demonstrated that a vehicle drove past the front of the Town Pump and then parked around the side. (Trial Tr. at 190-91; State's Exs. 11.1, 12.1.) Gadaire's vehicle approached and parked nearby. (Trial Tr. at 190-91, 197; State's Ex. 11.2.) Gadaire then reversed and drove away without getting out of his car. (*Id.*) Gadaire drove around to the front of the Town Pump, got out of his car, and entered the store. (Trial Tr. at 198; State's Ex. 12.2.) Gadaire and Matt both exited the store and got into Gadaire's car, with Gadaire driving. (Trial Tr. at 199; State's Ex. 12.3.)

They drove around the side of the store and parked next to the other car. (Trial Tr. at 199; State's Exs. 11.3, 12.3.) Because the two sides of the store were captured by different cameras, Gadaire's car was not continuously recorded. (*Compare* State's Ex. 11.3, *with* State's Ex. 12.3.) But the time listed on both videos demonstrates that the car was out of the view of the cameras for only three seconds. (*Compare* State's Ex. 12.3 at 13:55:10, *with* State's Ex. 11.3 at 13:55:13.) Although the video quality is poor, doors can be seen opening on the driver's side of Gadaire's car and the passenger side of the other vehicle. (State's Ex. 11.3 at 13:55:34-13:56:08.) Minutes later, Gadaire can be seen exiting the other vehicle and returning to his car. (Trial Tr. at 201-02; State's Ex. 11.3 at

13:59:46-14:00:16.) The quality of the video is clearer at this point, and Gadaire's prosthetic leg can be seen against the snow in the background. (*Id.*)

Gadaire subsequently reversed and drove back to the front of the store and parked at the gas pump. (State's Ex. 11.3 at 14:01:12-14:01:30; State's Ex. 12.4 at 14:01:30-14:01:43.) Joseph exited the passenger's side of the car and entered the Town Pump. (Trial Tr. at 203; State's Ex. 12.4 at 14:02:19-14:02:53.) Joseph returned to the car, and it appeared that they pumped gas. (State's Ex. 12.5.)

Deputy Reighard also downloaded the data from Gadaire's cell phone. (Trial Tr. at 184.) The text messages downloaded from Gadaire's phone demonstrated that he had phone conversations with Matt and Ashley, and he texted other people offering to sell drugs. (Trial Tr. at 185-89; State Trial Ex. 10.)

B. Evidence presented by Joseph

Joseph testified that he was present at the Town Pump, but he denied knowing about the methamphetamine. (Trial Tr. at 311, 346.) He claimed that he contacted Gadaire because he needed money for prescription medication to help his back. (*Id.* at 272-73.) He testified that he wanted Gadaire to give him a ride to the other side of Butte so he could get money from his dad, but then his dad was not home. (*Id.* at 275-76.) Joseph said Gadaire said he could earn money from him if he helped Gadaire's mother and he agreed, thinking the job was in Butte. (*Id.* at 277.)

Joseph said he got in the car, and Gadaire began driving out of town. (*Id.* at 278.) Joseph said Gadaire told him that his mother lived in Boulder, but Gadaire said they were getting gas in Whitehall and taking a back road. (*Id.* at 278-79.) Joseph said Gadaire fell asleep or lost consciousness while they were driving, and Joseph had to shake him to wake him up. (*Id.* at 279.) Joseph claimed that when they passed Whitehall, Gadaire said he would treat Joseph to gambling at the casino in Three Forks. (*Id.* at 279-80.) Joseph said that Gadaire gave him some money to gamble when they got there. (*Id.* at 281.)

Significantly, Joseph claimed that Gadaire gave him money and he went into the casino twice. (Trial Tr. at 281-83, 329-35.) Joseph acknowledged that surveillance video showed Joseph getting into the car after he left the casino the first time, and it showed Gadaire's car traveling around the side of the building. (*Id.* at 323.) There was a three second gap between videos from different cameras, however, as the car passed from one side to another. (Trial Tr. at 323-24; *see also* State's Exs. 11.3, 12.3.) Joseph claimed that he got out of the car during that time and that he was back in the casino, rather than in Gadaire's car, when Gadaire obtained the drugs from Matt and Ashely. (*Id.* at 281-83, 316-25, 329-35.) Joseph acknowledged that he was back in the car when they got gas and that he went inside and paid for the gas. (*Id.* at 283-84.)

Joseph claimed that when they left, he insisted that Gadaire take him to his mother's or back to Butte, but Gadaire said they had to buy a cinnamon roll at Wheat Montana for his mother. (*Id.* at 284.) Joseph said Gadaire then told him they were taking a back road to Boulder when they drove north toward Townsend. (*Id.* at 285.)

Joseph insisted that Gadaire picked him up “under false pretense[s],” and “[t]he only thing I knew I was doing with him was moving furniture for his mom. Then he lied to me and said this was Boulder.” (*Id.* at 289.) But Joseph also admitted he was a drug addict and may have used the money he was given to purchase drugs. (*Id.* at 289-90, 303.) He also claimed that he was trying to get money to purchase legal painkillers for his medical problems, and he was referring to prescription painkillers when he agreed with the officers' statement that he was trying to get “dope.” (*Id.* at 305-06, 313.) He denied that he was trying to get money to obtain drugs, but acknowledged that the money “could have” turned into drugs because of his “addiction personality.” (*Id.* at 310.) He said he was relapsing, and he could not rule out that he would have obtained drugs. (*Id.* at 315.)

Joseph claimed that before the recording of his interview began, he asked law enforcement to get his phone from the car. (Trial Tr. at 292, 297-301.) But the State demonstrated that when law enforcement asked him if he had a phone, he

claimed that his phone did not work and he had to borrow a phone and use wi-fi to communicate with Gadaire or others. (*Id.* at 293-302.)

III. Motion to dismiss for insufficient evidence

At the close of the State's case, Joseph moved to dismiss for insufficient evidence. (Trial Tr. at 255-56.) Joseph argued that there was not sufficient evidence because Gadaire was an accomplice and his testimony was not corroborated. (*Id.* at 256.) The State argued in response that Gadaire's testimony was corroborated by the location of the two one-ounce bags of methamphetamine, the video showing the drug deal, and admissions from Joseph. (*Id.* at 256-61.)

The court agreed with Joseph that the case was "weak" but, viewing the evidence in the light most favorable to the State, the court concluded that there was sufficient evidence to go to the jury. (*Id.* at 264-65.) The court explained:

There is a large amount of drugs. There are some bags there. We have it located in the middle console, which is clearly accessible to both passengers. Perhaps I misunderstood the video, but it appeared to me that Mr. Matt was in the car and then got out of the car after the exchange took place so it seems he's probably there at least when stuff is put in the console. There was a search of Mr. G[a]daire's phone, which does indicate . . . that he at least was involved in dealing drugs. We have testimony from Mr. G[a]daire saying that Mr. Matt was in on this. Like I say, in and of itself I don't know, but I think there's some evidence to corroborate that somewhat. Mr. Matt indicated he was either going to get some sort of compensation here. I think it's susceptible to different interpretations what he said. I'm just looking at this. I think the state's kind of

hanging on by a thread here, but I'm not going to grant your motion to dismiss at this point.

(*Id.* at 264.)

SUMMARY OF THE ARGUMENT

The court correctly denied Joseph's motion to suppress evidence seized from the car for two reasons. First, Joseph did not have a reasonable expectation of privacy in drugs that were located next to him in another person's car when he was subject to a condition authorizing him to be searched upon reasonable cause, he was violating his conditions by associating with a probationer, and an arrest warrant had been issued for him because he had absconded from parole.

Second, the exclusionary rule does not apply if evidence is discovered from a source independent of the constitutional violation, or the evidence would have inevitably been discovered. Both exceptions apply here. Officer Lamb testified that he would have authorized the search of Gadaire's car based on Gadaire's erratic driving, Gadaire's and Joseph's violations of their conditions prohibiting them from associating, and Joseph's warrant for absconding, even without Gadaire's admission to using methamphetamine. Because he would have authorized the search of the car even without Gadaire's illegally obtained admission of methamphetamine use, the methamphetamine would inevitably have been discovered. It was also discovered from an independent source because

Officer Lamb would have authorized the search based on information that was independent of the methamphetamine use admission. Because the evidence was not obtained as a result of the exploitation of the illegally obtained admission, it is not subject to exclusion.

The court also correctly denied Joseph's motion to dismiss for insufficient evidence because the State presented sufficient evidence to corroborate Joseph's testimony. Significantly, the methamphetamine was located next to both Joseph and Gadaire, so its possession may be imputed to both of them. And, surveillance video demonstrated that Joseph was in the car when Gadaire drove over to his supplier's vehicle, he got into their vehicle, and then he got back into his vehicle. That evidence sufficiently corroborated Gadaire's testimony that Joseph knew he was obtaining drugs on the trip and would have been aware that Gadaire returned to the car with drugs.

ARGUMENT

I. Standard of review

This Court reviews a district court's grant or denial of a motion to suppress to determine whether the court's findings are clearly erroneous and whether those findings were correctly applied as a matter of law. *State v. Schlichenmayer*, 2023 MT 79, ¶ 11, 412 Mont. 119, 529 P.3d 789.

The denial of a motion to dismiss for insufficient evidence made at the close of the State’s case-in-chief, which is sometimes referred to as a motion for a directed verdict, is reviewed de novo. *State v. McWilliams*, 2008 MT 59, ¶ 37, 341 Mont. 517, 178 P.3d 121. “[D]eterminations of the credibility and weight of testimony are within the exclusive province of the jury, and conflicting testimony does not render the evidence insufficient to support a guilty verdict.” *Id.* Similarly, this Court has stated that the sufficiency of the evidence to corroborate the testimony of an accomplice is a question of law that this court reviews for correctness. *State v. Tollie*, 2022 MT 59, ¶ 12, 408 Mont. 129, 506 P.3d 1021. This Court reviews “questions regarding the sufficiency of corroborating evidence in the light most favorable to the prosecution.” *Id.* (quotation marks and citation omitted).

II. The court correctly denied Joseph’s motion to suppress.

A. Law applicable to probation searches

The Fourth Amendment to the United States Constitution and article II, sections 10 and 11, of the Montana Constitution protect individuals from unreasonable searches and seizures. *State v. Fischer*, 2014 MT 112, ¶ 10, 374 Mont. 533, 323 P.3d 891. This Court looks to the following factors to determine whether a search has occurred that intrudes into a person’s privacy: “(1) whether the person

had an actual expectation of privacy in the place searched; (2) whether society is willing to recognize that expectation as objectively reasonable; and (3) the nature of the State’s intrusion.” *State v. Conley*, 2018 MT 83, ¶ 16, 391 Mont. 164, 415 P.3d 473; *see also United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (“A ‘search’ occurs when an expectation of privacy that society is prepared to consider reasonable is infringed.”).

This Court has explained that probationers have a reduced expectation of privacy. *Fischer*, ¶¶ 17-18. A deferred sentence “is a form of contract between the court and the probationer, eliminating certain privacy expectations.” *Conley*, ¶ 18. A probationer is on notice that his activities will be scrutinized. *Id.* The United States Supreme Court has concluded that probation searches do not violate the Fourth Amendment when conducted pursuant to state law and supported by reasonable suspicion to believe contraband would be found. *Fischer*, ¶ 10 (citing *Griffin v. Wisconsin*, 483 U.S. 868, 878 (1987)); *United States v. Knights*, 534 U.S. 112, 121 (2001) (“When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer’s significantly diminished privacy interests is reasonable.”). And several circuit courts have held that reasonable suspicion may be established by narrowly tailored

restrictions included within a probation agreement. *Fischer*, ¶ 10 (citing *United States v. Wryn*, 952 F.2d 1122, 1124 (9th Cir. 1991)).

In *Griffin*, the Supreme Court held that a state’s probation system can be a “special need[]” that may justify departures from the normal warrant and probable cause requirements. 483 U.S. at 873-74. The Court also noted that probationers “do not enjoy ‘the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions.’” *Griffin*, 483 U.S. at 874 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)). Probation, the court explained, is a continuum of possible punishments that could be imposed by the court ranging from solitary confinement in a prison to community service. *Id.* at 874. The restrictions in place during the period of probation “are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer’s being at large.” *Griffin*, 483 U.S. at 875. The Court concluded that a search of a home pursuant to a regulation permitting a probation officer to search a home based on reasonable grounds to believe contraband would be present did not violate the Fourth Amendment. *Id.* at 872, 875-76, 880.

In *Fischer*, this Court held a probation officer’s decision to count a probationer’s pills during a home visit did not violate the probationer’s constitutional rights because she did not have a reasonable expectation of privacy

in her medications given her drug conviction and her probation condition requiring her to take her medications as prescribed and inform her probation officer of all prescriptions. *Fischer*, ¶¶ 4, 16. The Court noted that the probation officer “must be able to supervise the probationer, and upon his judgment and expertise, search the probationer’s residence or cause it to be searched.” *Fischer*, ¶ 17 (quoting *State v. Small*, 235 Mont. 309, 312, 767 P.2d 316, 318 (1989)).

The United States Supreme Court has treated parolees differently than probationers, holding that the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee. *Samson v. California*, 547 U.S. 843, 857 (2006). The Court explained that parolees, like Joseph, “have severely diminished expectations of privacy by virtue of their status alone.” *Samson*, 547 U.S. at 852. The Court stated that parolees have even fewer expectations of privacy than probationers because parole is more akin to imprisonment. *Id.* at 850. The Court described parole as a variation on imprisonment, in which a parolee is released from prison early on the condition that the parolee abides by certain rules for the balance of his sentence. *Id.* The Supreme Court held that Samson did not have a reasonable expectation of privacy based on his status as a parolee and a parole condition that required him to submit to suspicionless searches. *Id.* at 852. The Court also recognized that the State has a “substantial” interest in supervising parolees. *Id.* at 853.

B. Joseph did not have a reasonable expectation of privacy in the drugs in Gadaire’s car under *Conley*.

This Court addressed circumstances similar to this case in *Conley* and held that Conley did not have a reasonable expectation of privacy in a vehicle in which he was riding, so no “search” occurred. *Conley*, ¶¶ 17-25. Similar to Joseph, who absconded from parole, Conley failed to report as required by his probation officer. *Conley*, ¶¶ 4-5. When probation officers located him, he was a passenger in a car. *Conley*, ¶ 5. Probation officers stopped the car, and Conley was arrested. *Id.* Conley was warned that the vehicle would be searched based on “red flags” of on-going drug use. *Conley*, ¶ 6. Officers looked in the car and saw a glasses pouch, and they knew glasses pouches are commonly used by drug users to store drug kits. *Id.* Conley and the driver of the car then consented to a search, where additional illegal items were located. *Conley*, ¶ 7.

This Court affirmed the denial of Conley’s motion to suppress evidence seized from the car. This Court noted that the “basic purposes of probation and its corresponding conditions are to provide an officer the chance to rehabilitate outside the prison setting and to provide the community protection from future criminal activity.” *Conley*, ¶ 18. The Court noted that the administrative rules provide that probationers must submit to a search upon “reasonable suspicion that the offender has violated the conditions of supervision.” *Id.* (quoting Mont. Admin. R. 20.7.1102(7)). Because Conley violated the conditions of his probation by failing

to report, and he was subject to a sentencing condition requiring him to submit to any search if his probation officer had reasonable grounds to believe he was violating the terms of his probation, the Court held that he had “not shown he had an actual expectation of privacy as a passenger in a vehicle neither Conley or [the driver] owned, nor has he demonstrated that society would consider such an expectation to be reasonable under these facts.” *Conley*, ¶ 20. The court explained that society expects probationers to comply with their conditions and does not recognize a probationer’s unimpeded right to privacy. *Id.* Because Conley did not have a reasonable expectation of privacy, this Court concluded that there was not a “search” or an unlawful government intrusion. *Conley*, ¶ 21.

Similar to Conley, Joseph absconded from his parole. He also had a warrant for his arrest. Under his parole conditions and Mont. Admin. R. 20.7.1102(7), Joseph was required to submit to a search if there was reasonable suspicion to believe he violated his conditions. That reasonable suspicion clearly existed because there was a warrant for his arrest based on his failure to report. Given those circumstances, Joseph did not have a reasonable expectation of privacy in the car in which he was a passenger. *See Conley*, ¶ 20. As a result, no “search” occurred, and there was not an unlawful government intrusion. The court correctly denied Joseph’s motion to suppress, relying on *Conley*, on the ground that he did not have a reasonable expectation of privacy. (*See Appellant’s App.* at 8-9.)

- C. The court also correctly denied Joseph’s motion to suppress because the evidence seized from the car would inevitably have been discovered without Gadaire’s admission to using methamphetamine, and the probation officer’s reliance on other information provided an independent source for the search.**

The Supreme Court has recognized that the exclusionary rule exacts “substantial social costs.” *United State v. Leon*, 468 U.S. 897, 907 (1984). The Court thus applies the exclusionary rule only where the benefits of exclusion outweigh the costs. *Utah v. Strieff*, 579 U.S. 232, 237 (2016); *see also Leon*, 468 U.S. at 906-22. The Supreme Court has viewed the exclusion of evidence as a “last resort, not our first impulse.” *Strieff*, 579 U.S. at 237-38 (internal citation and quotation marks omitted).

Because exclusion is a “last resort,” several exceptions to the exclusionary rule have been recognized. *Strieff*, 579 U.S. at 237-38. The exclusionary rule does not apply “if the evidence is so attenuated or dissipated from the government’s constitutional violation such that the evidence loses i[t]s primary constitutional taint.” *State v. Courville*, 2002 MT 330, ¶ 21, 313 Mont. 218, 61 P.3d 749. “For example, evidence loses its primary constitutional taint and is not excluded when the same evidence is discovered from a source independent of the constitutional violation, or where the evidence is such that it would have been inevitably discovered.” *Id.*

The district court correctly concluded that evidence seized from the car was admissible, despite Officer Lamb's reliance on Gadaire's methamphetamine use admission that Sergeant Buck unlawfully obtained, because Officer Lamb would have inevitably authorized the search of the car, and the drugs would inevitably have been discovered. This "Court generally applies the doctrine of inevitable discovery when investigatory procedures already were in progress and the lawful investigation eventually would have revealed the evidence." *State v. Pearson*, 2011 MT 55, ¶ 24, 359 Mont. 427, 251 P.3d 152. The exception applies where the Court is certain that the evidence would have been discovered without reference to the violation of the defendant's rights. *Pearson*, ¶ 24. In *Pearson*, this Court applied the inevitable discovery doctrine to affirm the denial of a motion to suppress evidence obtained during the illegal search of a fanny pack because the officer had already arrested the defendant and the evidence would have been discovered during an inventory search at the police department. *Pearson*, ¶¶ 27-28; *see also State v. Hilgendorf*, 2009 MT 158, ¶ 27, 350 Mont. 412, 208 P.3d 401 (applying the inevitable discovery doctrine under similar circumstances).

Here, Officer Lamb testified that he would have authorized the search of Gadaire's car, even without Gadaire's illegally obtained admission to using methamphetamine, because Joseph and Gadaire were not supposed to be associating with each other, Joseph had a felony warrant, and Gadaire was stopped

for his erratic driving. (6/16/23 Tr. at 75-76.) His testimony demonstrates that the search would inevitably have been authorized, and the methamphetamine would inevitably have been discovered. The investigation was in progress, and a lawful investigation would eventually have revealed the evidence. The court correctly denied the motion to suppress because the methamphetamine would inevitably have been discovered.

Further, Officer Lamb's testimony that he would have authorized the search, even without the illegally obtained information, demonstrates that there was an independent source for the search. In *State v. New*, 276 Mont. 529, 530-32, 536-37, 917 P.2d 920, 923-24 (1996), this Court held that drugs located in the probation search of a car following an illegal search of the defendant did not have to be suppressed where the probation officer relied on independent information to authorize the search. The probation officer testified that he had planned to search New's vehicle, even without the information obtained as a result of the unlawful search. *New*, 276 Mont. at 536-37, 917 P.2d at 923. The Court explained that the exclusionary rule is designed to put police in the same, not a worse, position than they would have been in had no police error occurred, so if evidence has an independent source, it should not be excluded. *New*, 276 Mont. at 536, 917 P.2d at 923 (quoting *Murray v. United States*, 487 U.S. 533, 537 (1988)). This Court concluded that the evidence obtained during the search of the vehicle was not the

result of the exploitation of the illegal search but rather based on information known to the probation officer that was independent of the fact that New had been arrested and illegally searched. *New*, 276 Mont. at 537, 917 P.2d at 924. Because the probation officer authorized the search based on information that was independently obtained, evidence seized from the search did not have to be suppressed. *Id.*

Here, the district court concluded that “Gadairie’s meth use was not independently obtained from another source.” (Appellant’s App. at 11.) But, that analysis is incorrect. It does not matter whether knowledge of Gadaire’s meth use was independently obtained. Instead, the question is whether the search was the result of the exploitation of an illegal search or seizure, or instead the result of information known to the probation officer that was independent of the illegally obtained information. *See New*, 276 Mont. at 537, 917 P.2d at 924. Like in *New*, Officer Lamb testified that he would have authorized the search, regardless of whether he had the illegally obtained information. Therefore, the search was independent of the illegally obtained information, and it is exempted from the exclusionary rule under the independent source doctrine.

III. The district court correctly denied Joseph’s motion to dismiss for insufficient evidence made at the close of the State’s case-in-chief because Gadaire’s testimony was sufficiently corroborated.

The State presented substantial testimony corroborating Joseph’s testimony. When viewed in the light most favorable to the State, that evidence was sufficient to support his conviction for criminal possession of dangerous drugs.

Because testimony from an accomplice is deemed untrustworthy, a criminal defendant “may not be found guilty of an offense [based] on the testimony of one responsible or legally accountable for the same offense, . . . unless the testimony is corroborated by other evidence that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense.” Mont. Code Ann. § 46-16-213; *accord Tollie*, ¶ 14; *State v. Black*, 2003 MT 376, ¶ 22, 319 Mont. 154, 82 P.3d 926.

This Court has explained that the sufficiency of the evidence will depend on the circumstances of each case. *Tollie*, ¶ 15. Corroborating evidence may be circumstantial, and not every fact in the accomplice’s testimony has to be corroborated. *Tollie*, ¶ 15. Corroborated evidence also does not need to be sufficient, by itself, to support a defendant’s conviction or even to make out a prima facie case against him. *Black*, ¶ 24. But the “evidence must show more than that a crime was in fact committed or the circumstances of its commission. It must

raise more than a suspicion of the defendant's involvement in, or opportunity to commit, the crime charged." *Id.*

This Court has found sufficient evidence to support a conviction when evidence linking the defendant to an offense corroborates accomplice testimony, as occurred in this case. For example, this Court held in *State v. Byers*, 2003 MT 83, 315 Mont. 89, 67 P.3d 880, that the defendant's conviction for conspiracy to commit criminal production or manufacture of dangerous drugs was supported by sufficient evidence when an accomplice testified that Byers showed her how to manufacture methamphetamine and he owned some of the equipment in her home used to make methamphetamine, and her testimony was corroborated by a man who operated a different methamphetamine lab with Byers but was not an accomplice to that count. *Byers*, ¶¶ 9-16. The court also held that the second conviction for criminal production or manufacture of dangerous drugs was supported by sufficient evidence when officers observed Byers's car next to a Winnebago, somebody drove away in the Winnebago when officers attempted to serve a search warrant on it, the Winnebago driver put a methamphetamine lab into a dumpster, Byers was located in the house where the Winnebago had been parked, items related to the production of methamphetamine were located in the house, items used by drug dealers were located in Byers's car, and the accomplices to the

other count corroborated that Byers knew how to produce methamphetamine.

Byers, ¶¶ 18-28.

Two cases involving burglary convictions also support the conclusion that evidence is sufficient where there is evidence linking the defendant to the offense, which corroborates the accomplice testimony. In *State v. Price*, 234 Mont. 144, 147, 762 P.2d 232, 234 (1988), this Court held that evidence was sufficient to support a conviction for burglary of a Baptist church when law enforcement saw the defendant and two accomplices in the act of burglarizing a Methodist church, one of the accomplices was arrested, that accomplice and the other accomplice later pleaded guilty to burglarizing the Methodist church, items stolen from a Baptist church were located in the back yard next to the defendant's house, and the accomplice to the Methodist church burglary testified that he had seen those items in the defendant's home.

Similarly, this Court held in *State v. Rose*, 187 Mont. 74, 80-82, 608 P.2d 1074, 1078-79 (1980), that the defendant's conviction for burglary was sufficiently corroborated when an accomplice testified that the defendant committed the burglary with him and the defendant acknowledged that he had possessed guns that had been stolen from the house. This Court found that the only independent evidence connecting the defendant with the burglary was his possession of stolen guns, but this Court held that was sufficient as a matter of law to corroborate the

accomplice's testimony. *Id.* This Court noted that whether the defendant's explanation for his possession of the guns was sufficient to explain away his possession was a factual question for the jury. *Rose*, 187 Mont. at 81, 608 P.2d at 1078.

In contrast, this Court found that there was not sufficient evidence to corroborate an accomplice's testimony in *State v. Kemp*, 182 Mont. 383, 597 P.2d 96 (1979). In *Kemp*, a woman who purchased drugs claimed that Kemp was the supplier. But the only evidence to corroborate the accomplice's testimony implicating Kemp came from the accomplice herself. This Court held that because the corroborating evidence all came from the accomplice, who had a motive to fabricate, the evidence was insufficient to support Kemp's conviction for the sale of dangerous drugs. *Kemp*, 182 Mont. at 387-88, 597 P.2d at 99-100.

In this case, not only did the additional evidence corroborate Gadaire's testimony, it independently established the majority of the facts. Most importantly, the video evidence and testimony from Sergeant Buck indisputably demonstrated that Joseph was in the passenger seat of the car, sitting right next to the center console containing the drugs, when Sergeant Buck stopped Gadaire's car. (Trial Tr. at 102-06; State's Exs. 1-2.) And video evidence demonstrated that Joseph was in the car, despite his implausible claim to the contrary, when Gadaire drove from the front of the Town Pump, parked next to Matt and Ashley, got into their car, and

then returned to his car. (State's Exs. 11.3, 12.2-12.4.) That encounter appeared to be a drug transaction, corroborating Gadaire's testimony that he obtained two bags of methamphetamine from Matt and Ashley at that time. Also, Gadaire's phone records indicated that he was in communication with Matt and Ashley shortly before he met up with them, and Gadaire was involved in the distribution of illegal drugs. (Trial Tr. at 185-89; State's Trial Ex. 10.) This evidence strongly corroborated Gadaire's testimony that he obtained drugs from Matt and Ashley while Joseph was in the car.

Additionally, Gadaire's testimony that he wanted to have a person with him for protection is corroborated by evidence demonstrating that Gadaire initially parked near Matt and Ashley without Joseph present, but Gadaire did not get out of the car. Gadaire then drove back to the front of the Town Pump, and Joseph got in the car. After Gadiare picked up Joseph, he drove back to Matt and Ashley's vehicle and got into their car. (Trial Tr. at 143, 147, 190-91, 198-202; State's Exs. 11.1-11.3, 12.1-12.3.)

“Where a controlled substance is found in a place subject to the joint dominion and control of two defendants, possession may be imputed to both defendants.” *State v. Sutton*, 2018 MT 143, ¶ 17, 391 Mont. 485, 419 P.3d 1201. A reasonable juror could conclude from this evidence that Joseph knew Gadaire planned to obtain drugs on the trip, Joseph knowingly participated in the trip, and

both Gadaire and Joseph had dominion and control over the methamphetamine in the center console.

And although Joseph denied knowing about the drugs in the center console, he admitted that he was a drug addict who likely would have obtained drugs if he had earned money. He also made statements about his phone that were belied by the record. The jury could consider his statements when assessing his credibility.

The district court correctly denied Joseph's motion to dismiss for insufficient evidence because there was sufficient evidence to corroborate Gadaire's testimony and to support Joseph's conviction for criminal possession of dangerous drugs.

CONCLUSION

The district court correctly denied Joseph's motion to suppress evidence seized from the car and the motion to dismiss based on insufficient evidence. As a result, his conviction for criminal possession of dangerous drugs should be affirmed.

Respectfully submitted this 11th day of June, 2025.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: /s/ Mardell Ployhar
MARDELL PLOYHAR
Assistant Attorney General

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 8,938 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Mardell Ployhar

MARDELL PLOYHAR

CERTIFICATE OF SERVICE

I, Mardell Lynn Ployhar, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 06-11-2025:

James Park Taylor (Attorney)
717 Hiberta Street
Missoula MT 59804
Representing: Joseph Dwayne Matt
Service Method: eService

Tammy Ann Hinderman (Attorney)
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena MT 59620
Representing: Joseph Dwayne Matt
Service Method: eService

Kevin Bratcher (Govt Attorney)
515 Broadway St.
Townsend MT 59644
Representing: State of Montana
Service Method: eService

Electronically signed by LaRay Jenks on behalf of Mardell Lynn Ployhar
Dated: 06-11-2025