

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Supreme Court Cause No. DA 25-0102

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CHAD STONE,

Appellant,

v.

CITY OF LIVINGSTON, CITY OF  
LIVINGSTON POLICE DEPARTMENT,  
and COURTNEY LAWELLIN,

Appellees.

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On appeal from the Montana Sixth Judicial District Court,  
Park County Cause No. DV-34-2024-24  
The Honorable Judge Brenda R. Gilbert, Presiding

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**APPELLEES' RESPONSE BRIEF**

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Chad Stone  
*Pro Se*  
1106 W. Park, Suite 20-157  
Livingston, MT 59047  
Telephone: (406) 220-2711  
Email: [ogchadstone@gmail.com](mailto:ogchadstone@gmail.com)

Harlan B. Krogh  
Derek R. Graves  
Crist, Krogh, Alke & Nord, PLLC  
2708 1<sup>st</sup> Ave. N., Suite 300  
Billings, MT 59101  
Telephone: (406) 255-0400  
Email: [hkrogh@crislaw.com](mailto:hkrogh@crislaw.com)  
[dgraves@crislaw.com](mailto:dgraves@crislaw.com)

*Pro Se Appellant*

*Attorneys for Appellees*  
*City of Livingston, City of Livingston*  
*Police Department, and Courtney*  
*Lawellin*

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## **STATEMENT OF ISSUES**

1. Whether Stone waived his discovery, summary judgment, and judicial bias objections by raising them for the first time on appeal, failing to timely respond to The City and Lawellin's summary judgment motion, failing to pursue available discovery remedies below, and failing to move for recusal or raise conflict of interest objections in the District Court.

2. Whether Stone's malicious prosecution claims are barred by prosecutorial immunity.

3. Whether Stone's constitutional claims under § 1983 fail as a matter of law where he identifies no specific municipal policy, practice, or custom under *Monell*, and establishes no constitutional violations on the part of the City or Lawellin.

4. Whether Lawellin is immune from Stone's state law claims under MCA § 2-9-305.

## **STATEMENT OF THE CASE**

This action arises from Appellant Chad Stone's civil claims against the City of Livingston and former City Attorney Courtney Lawellin following Stone's criminal prosecution for conduct at the Park County Attorney's office on August 26, 2020.

Stone was cited for assault, disorderly conduct, harassment by electronic communication, and endangering the welfare of a child stemming from his disruptive behavior at the County Attorney's Office. (Appellees' Appx. p. 45; Defendants' Brief in Support of Motion for Summary Judgment p. 6). Stone failed to appear in court, resulting in a bench warrant. *Id.* After his arrest, Stone moved to transfer venue to Meagher County, claiming he could not receive a fair trial in Park County. *Id.* The court granted his unopposed motion, but due to an administrative error in the clerk's office, the case file was never transferred and remains dormant. (Appellees' Appx. pp. 45-46; Defendant's Brief in Support of Motion for Summary Judgment pp. 6-7).

The City and Lawellin served discovery requests on Stone in April 2024, which Stone never answered despite follow-up correspondence. (Appellees' Appx. pp. 3-14; Defendants' Discovery Requests to Plaintiff; Defendants' May 29, 2024 Correspondence to Chad Stone). When Stone served his own discovery requests in June 2024, The City and Lawellin provided timely responses in July 2024. (Appellees' Appx. pp. 19-34; Defendants' Responses to Plaintiff's First Disc. Requests). Critically, Stone never challenged these responses, never initiated meet-and-confer procedures, and never filed any discovery motions under M.R.Civ.P. 37. (Record generally).

On December 12, 2024, the City and Lawellin filed their Motion for Summary Judgment. (Appellees' Appx. pp. 37-90; Defendants Motion for Summary Judgment and Brief in Support). Stone failed to file any response within the 21 days allowed under M.R.Civ.P. 56. (Record generally). On January 8, 2025, the District Court granted summary judgment, noting that "Plaintiff did not respond" and taking "Plaintiff's silence as a concession that the Motion is well-taken." (Appellees' Appx. p. 101; Order Granting Defendants' Motion for Summary Judgment p. 11). Stone filed his response only after judgment was entered, which the court did not consider. (Appellees' Appx. pp. 102-104; Plaintiff's Motion for Summary Judgment).

Stone never moved for judicial recusal, never raised bias claims, never filed discovery motions, and never objected to any procedural matters he now challenges on appeal. (Record generally).

## **STATEMENT OF THE RELEVANT FACTS**

### **I. THE UNDERLYING INCIDENT**

On August 26, 2020, Stone stormed into the City County Building and stood outside the Park County Attorney's Office. (Appellees' Appx. p. 41; Defendants' Brief in Support of Motion for Summary Judgment p. 2). When Stone realized the door was locked, he called the office on his cell phone and shouted at the

receptionist, saying he was “pissed off” and demanding to be let in to speak with County Attorney Kendra Lassiter. *Id.*

Once inside the office, Stone’s hostile behavior escalated. He began yelling profanities about his ex-wife, referring to her as a “cunt” and “fucking bitch” in front of his young son. (*Id.* pp. 42; p. 3). Stone stood within one foot of County Attorney Lassiter, who had her back against the wall and could not escape. *Id.*

When County Attorney employee Jenn Zang offered to take Stone’s son to another room to color in an attempt to deescalate the situation, Stone replied, “no he doesn’t fucking want to color.” *Id.* Zang warned Stone that she would call law enforcement if his behavior continued, and Stone invited her to do so. *Id.* Zang then called dispatch requesting an officer remove Stone from the building. *Id.*

During this incident, Stone had left his young daughter unattended in his vehicle in the parking lot. (*Id.* p. 43; p. 4). The vehicle’s windows were rolled up, the engine was not running, and the temperature outside was approximately 80 degrees. *Id.*

## **II. CRIMINAL CHARGES AND PROCEEDINGS**

On August 28, 2020 Sergeant LaBaty of Livingston Police Department contacted Stone by phone to inform him of citations stemming from the August 26 incident. (Appellees’ Appx. pp. 44-45; Defendants’ Brief in Support of Motion for Summary Judgment pp. 5-6). Stone immediately hung up. *Id.* Sergeant LaBaty left

a voicemail informing Stone that he had four citations: (1) misdemeanor assault, (2) disorderly conduct, (3) harassment by electronic communication, and (4) endangering the welfare of a child. *Id.*

Stone failed to appear in court, and Judge Happe issued a warrant for his arrest on October 6, 2020. *Id.* On October 14, 2020 Stone was arrested during a child exchange. *Id.*

On August 10, 2021, Judge Happe granted Stone's unopposed motion to transfer venue to Meagher County. (*Id.* pp. 45-46; 6-7). However, due to an administrative error made by the clerk's office, the case file was never transferred and remains in the possession of the Livingston City Court. *Id.* The criminal case has remained dormant since the transfer order. *Id.*

### **III. THE CIVIL ACTION AND DISCOVERY**

On February 8, 2024, Stone filed this civil action seeking \$1,000,000 from each Defendant for malicious prosecution, constitutional violations, false arrest, and defamation. (Complaint ¶¶ 1.1, 2.5, 5.3)

The City and Lawellin served initial disclosures in accordance with the District Court's scheduling order on March 28, 2024. Stone never served initial disclosures of his own.

On April 3, 2024, The City and Lawellin served discovery requests on Stone. Stone never responded to these discovery requests. On May 29, 2024, The City and

Lawellin sent Stone a letter asking for responses to the outstanding discovery requests and inquiring whether he planned to serve his own initial disclosures. No response was received.

On June 26, 2024, Stone served discovery requests on the City and Lawellin, which counsel for Respondents received via mail several days later. On July 29, 2024, The City and Lawellin provided timely responses to Stone's discovery requests. (Appellees' Appx. pp. 15, 18, 19-34; Plaintiff's First Discovery Requests to Defendants; Defendants' Responses to Plaintiff's First Discovery Requests).

Critically, Stone never raised any issues with Respondents discovery responses. Stone never contacted Respondents counsel about alleged deficiencies, never sent a meet-and-confer letter, never filed a motion to compel discovery under Rule 37, and never filed any other discovery-related motions with the District Court. Stone had numerous procedural mechanisms available under the Montana Rules of Civil Procedure to challenge discovery responses or seek additional discovery but failed to utilize any of them.

#### **IV. SUMMARY JUDGMENT PROCEEDINGS**

On December 12, 2024, The City and Lawellin filed their Motion for Summary Judgment and Brief in Support. (Appellees' Appx. pp. 37-39, 40-90; Defendants Motion for Summary Judgment and Brief in Support). Stone's response was due on January 2, 2025. M.R.Civ.P. 56. Stone failed to file a timely

response. (Appellees' Appx. pp. 91-101; Order Granting Defendants' Motion for Summary Judgment).

On January 8, 2025, the District Court granted The City and Lawellin's Motion for Summary Judgment, finding that "Plaintiff did not file a response" and taking "Plaintiff's silence as a concession that the Motion is well-taken." (*Id.* p. 101, p 11).

Stone filed an untimely response on January 8, 2025, only after judgment was entered by the district court. The court did not consider this untimely filing. (Appellees' Appx. pp. 102-104; Plaintiff's Motion for Summary Judgment). Final Judgment was entered on January 14, 2025. (*See* Judgment dated January 10, 2025).

## **V. ISSUES NEVER RAISED BELOW**

At no point during the proceedings did Stone move for recusal of Judge Gilbert. (Record generally). Stone never filed any discovery motions or challenged The City and Lawellin's discovery responses. *Id.* Stone never raised claims of judicial bias or procedural violations. He raises each of these issues for the first time on appeal.

## **STANDARD OF REVIEW**

This Court reviews a trial court's grant of summary judgment de novo, using the same standards used by the trial court. *Mecca v. Farmers Ins. Exchange*, 2005

MT 260, ¶ 8, 329 Mont. 73, 122 P.3d 1190. Summary Judgment is appropriate when “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” M.R.Civ.P. 56(c)(3).

### **SUMMARY OF THE ARGUMENT**

This appeal fails on multiple independent grounds. First, Stone waived his discovery, summary judgment, and judicial bias objections by failing to raise them properly in the district court. Stone never timely responded to the City Defendants’ summary judgment motion, never filed discovery motions or challenged the City Defendants’ discovery responses through required meet-and-confer procedures, and never moved for recusal or raised any conflict of interest objections regarding Judge Gilbert. Stone raises each of these issues for the first time on appeal. Montana law is clear that issues not presented to the trial court cannot be raised for the first time on appeal. See *Paulson v. Flathead Conservation Dist.*, 2004 MT 136, ¶ 37, 321 Mont. 364, 91 P.3d 569 (It is well established that this Court will not review an issue that was not raised in the district court.”).

Second, Stone’s malicious prosecution claims are barred by absolute prosecutorial immunity and fail on the merits. Under *Rupnow v. State Auditor*, 2024 MT 14, ¶ 10, 415 Mont. 81, 524 P.3d 384, filing and maintaining criminal charges are core prosecutorial functions protected by absolute immunity, regardless of negligence or lack of probable cause. Stone’s claims target exactly these

protected activities—the City’s prosecution of criminal charges against him following his disruptive conduct. Additionally, the undisputed evidence shows Stone caused a disturbance in a government building, displayed aggressive and threatening behavior towards the County Attorney, left a minor child unattended in a hot vehicle, and failed to appear in court. There was ample probable cause for the charges against him.

Third, Stone’s constitutional claims under § 1983 fail as a matter of law on multiple grounds. Stone cannot establish malicious prosecution under *Thompson v. Clark* as he contends, because the alleged unlawful actions he alleges Lawellin took were core prosecutorial functions shielded by absolute immunity. His municipal liability claims fail because he identifies no specific municipal policy or custom that was the moving force behind any alleged constitutional violation, as required under *Monell*. His Fourth Amendment claims fail because he was arrested on a valid warrant issued by a judge after a probable cause determination. His First Amendment retaliation claims fail because his criminal charges were based on his disruptive conduct, not protected speech, and because he voluntarily came to the police station where he was arrested. His due process claims fail because he received all the protections he was due. He had counsel, posted bond, and obtained transfer of his case to another county at his own request.

Finally, Montana Code § 2-9-305(5) provides complete immunity to Lawellin in her individual capacity for actions taken within the course and scope of her employment as City Attorney.

The district court correctly granted summary judgment based on these undisputed facts and controlling law. This Court should affirm on any or all of these independent grounds.

### **ARGUMENT**

#### **I. STONE WAIVED HIS DISCOVERY, SUMMARY JUDGMENT, AND JUDICIAL BIAS OBJECTIONS BY FAILING TO RAISE THEM PROPERLY IN THE DISTRICT COURT.**

##### **A. Stone Waived His Discovery and Summary Judgment Objections by Failing to Timely Respond.**

Stone's primary argument on appeal is that he was denied discovery necessary to oppose summary judgment. However, his argument is waived because he never timely responded to the City Defendants' summary judgment motion or properly pursued discovery relief below.

The record establishes that the City and Lawellin filed their Motion for Summary Judgment on December 12, 2024. (Appellees' Appx. pp. 37-39, Defendants' Motion for Summary Judgment). Stone failed to file any response within the 21 days required under M.R.Civ.P. 56. Instead, Stone filed a response only after the district court had already granted summary judgment on January 8,

2025. (Appellees' Appx. pp. 102-104; Plaintiff's Motion for Summary Judgment).

The district court correctly declined to consider Stone's untimely filing.

Furthermore, stone cannot claim discovery prejudice when he failed to pursue available discovery remedies. The record shows that The City and Lawellin served discovery responses on Stone, which he never answered. (Appellees' Appx. pp. 3-13; Defendants' First Disc. Requests to Plaintiff). Conversely, the City and Lawellin fully responded to Stone's discovery requests. (Appellees' Appx. pp. 15-18, 19-34; Plaintiff's First Disc. Requests to Defendants; Defendants Responses to Plaintiff's First Disc. Requests). Despite receiving responses, Stone never initiated meet-and-confer procedures under M.R.Civ.P. 26, never challenged the adequacy of The City and Lawellin's responses, and never filed any discovery motions under M.R.Civ.P. 37. (Record generally). Stone also never conducted depositions or sought any further discovery beyond his initial requests.

Montana law requires parties to pursue available remedies before claiming discovery prejudice. M.R.Civ.P. 37. A party cannot manufacture a discovery dispute on appeal that it failed to pursue in the trial court. Stone's failure to use proper discovery procedures constitutes a waiver of any discovery-related objections.

**B. Stone Waived His Judicial Bias Claims by Failing to Move for Recusal.**

Stone argues for the first time on appeal that Judge Gilbert should have recused herself because she was a “named witness.” This argument is waived because Stone never moved for recusal or raised any conflict of interest objections in the district court.

The record contains no motion for recusal, no objection to Judge Gilbert presiding, and no contemporaneous claim of bias or conflict. (Record Generally). Montana law requires recusal motions to be raised promptly upon discovery of the alleged conflict. *State v. Dunsmore*, 2015 MT 108, ¶ 18, 378 Mont. 514, 347 P.3d 1220. (“A claim for disqualification of a judge...is considered waived if a party does not raise the issue within a reasonable amount of time after the party acquires knowledge of a potential basis for disqualification.”) Stone cannot remain silent about an alleged conflict, allow the proceedings to continue, and then raise the issue for the first time on appeal when dissatisfied with the outcome.

Moreover, Stone’s “bias” claim lacks merit. Judge Gilbert is an elected official of Park County, but Park County is not a party to this litigation—the City of Livingston is the defendant. (Complaint generally). Stone fails to identify any actual conflict of interest between Judge Gilbert and the actual parties to this case.

**C. Stone Had all Information Necessary to Oppose Summary Judgment.**

Even if Stone’s discovery arguments were not waived, they fail on the merits because Stone had access to all information necessary to oppose summary judgment. The City and Lawellin attached all relevant police reports, witness statements, and citations as exhibits to their summary judgment motion. (Appellees’ Appx. pp. 40-90; Defendants’ Brief in Support of Motion for Summary Judgment and supporting exhibits). These documents contain all the factual information regarding the August 26, 2020 incident and Stone’s subsequent arrest.

Stone’s malicious prosecution claims turn on legal questions—whether prosecutorial immunity applies and whether the elements of malicious prosecution are satisfied—not on disputed facts requiring additional discovery. Stone cannot point to any specific information that additional discovery would have revealed that would have created a genuine issue of material fact.

**II. STONE’S STATE LAW MALICIOUS PROSECUTION CLAIMS ARE BARRED BY PROSECUTORIAL IMMUNITY AND FAIL ON THE MERITS**

**A. Prosecutorial Immunity Bars Stone’s Malicious Prosecution Claims.**

Stone’s malicious prosecution claims are barred by absolute prosecutorial immunity, which protects prosecutors from civil liability when performing core prosecutorial functions. This Court recently reaffirmed this principle in *Rupnow*,

2024 MT 14, ¶ 23, where the Court held that filing and maintaining criminal charges are core prosecutorial functions, and when a prosecutor acts within the scope of these duties, that prosecutor is absolutely immune from civil liability, regardless of negligence or lack of probable cause.

Stone’s claims target exactly the prosecutorial functions protected by immunity. Stone alleges that The City and Lawellin improperly filed and maintained criminal charges against him following his August 26, 2020 outburst at the County Attorney’s office. (Complaint, ¶¶ 3.1-4.1). These activities—filing charges, prosecuting a case, and seeking an arrest warrant for failure to appear—constitute core prosecutorial functions. *Rupnow*, ¶ 10.

The immunity applies regardless of Stone’s allegations regarding probable cause or malice. As the Court emphasized in *Rupnow*, prosecutorial immunity protects prosecutors “regardless of negligence or lack of probable cause.” *Id.* (quoting *Rosenthal v. Cty. of Madison*, 2007 MT 277, ¶ 29, 339 Mont. 419, 170 P.3d 493). The policy underlying this immunity is to allow prosecutors to perform their duties without fear of personal liability for decisions made within their official capacity.

**B. Probable Cause Existed for Stone’s Charges Under Montana Law.**

Under Montana law, probable cause exists when a prosecutor “reasonably believes in the existence of the facts upon which the [charges are] based, and either

(a) correctly or reasonably believes that under those facts the claim may be valid under the applicable law, or (b) believes to this effect in reliance upon the advice of counsel.” *Huges v. Lynch*, 2007 MT 177, ¶ 16, 338 Mont. 214, 164 P.3d 913 (adopting Restatement (Second) of Torts § 675 (1977)). This standard requires only reasonable belief, not certainty.

The undisputed evidence also establishes probable cause for each charge against Stone under this standard:

- **Assault (MCA § 45-5-201):** Stone purposely caused reasonable apprehension of bodily injury in County Attorney Lassiter by backing her against a wall while angry and shaking his finger at her within one foot of her face. (Appellees’ Appx. pp. 41-45; Defendants’ Brief in Support of Motion for Summary Judgment pp. 2-6)
- **Disorderly Conduct (MCA § 45-8-101):** Stone knowingly disturbed the peace in the Park County Courthouse by using threatening, profane, and abusive language that disrupted government offices and employees attempting to conduct business. *Id.*
- **Privacy in Communications (MCA § 45-8-213):** Stone used his cell phone to make threatening and harassing calls with profane language to the County Attorney’s office staff after being escorted from the building. *Id.*

- **Endangering Welfare of a Child (MCA § 45-5-622):** Stone left his minor daughter unattended in a vehicle with windows closed and no air conditioning on a day when the temperature reached 80 degrees Fahrenheit. *Id.*

The existence of probable cause provides an additional basis for dismissing Stone's claims, demonstrating that the prosecution was legally justified regardless of the immunity analysis.

### **III. STONE'S FEDERAL CONSTITUTIONAL CLAIMS UNDER § 1983 FAIL AS A MATTER OF LAW.**

#### **A. Stone's § 1983 Malicious Prosecution Claims are Barred by Absolute Prosecutorial Immunity.**

Stone's federal § 1983 malicious prosecution claims are barred by absolute prosecutorial immunity, a federal constitutional doctrine that provides complete immunity to prosecutors performing core prosecutorial functions. Under this doctrine, prosecutors enjoy absolute immunity from § 1983 claims for actions “intimately associated with the judicial phase of the criminal process,” such as the prosecutor's initiation of a prosecution and presentation of the state's case.”

*Fratzke v. Sanders County*, 2015 WL 4964200, at \*4 (D. Mont. Aug. 19, 2015)

(quoting *Torres v. Goddard*, No. 12-1706, ---F.3d---, 2015 WL 4282721, at \*3 (9th Cir. July 16, 2015) (citation omitted).

The functions Lawellin performed—filing criminal charges, prosecuting Stone’s case, and seeking an arrest warrant for his failure to appear—fall squarely within the core prosecutorial functions protected by absolute immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 430 (1976) (“[I]n initiating a prosecution and in presenting the State’s case, the prosecutor is immune from a civil suit for damages under § 1983.”).

Absolute prosecutorial immunity operates as a complete bar to § 1983 malicious prosecution claims, regardless of whether Stone satisfies the elements established in *Thompson v. Clark*. The immunity protects prosecutors from civil liability stemming from performing core prosecutorial functions even when constitutional violations are alleged, because the doctrine prioritizes the proper functioning of the prosecutorial office over individual accountability. *Kalina v. Fletcher*, 522 U.S. 118, 125 (1997).

Stone’s reliance on *Thompson v. Clark*, 596 U.S. 36 (2022), cannot overcome this absolute immunity. *Thompson* merely clarified the pleading standard for one element of § 1983 malicious prosecution claims—holding that to satisfy the “favorable termination” element, a prosecution need only end “without a conviction” rather than with affirmative indication of innocence. *Id.* at 49. *Thompson* did not eliminate the immunity that prosecutors enjoy for performing

core functions, nor did it relieve plaintiffs of proving the other required elements, including lack of probable cause and malicious intent.

Moreover, Stone cannot establish any constitutional violation because all of Lawellin's challenged conduct—filing charges, prosecuting the case, and seeking an arrest warrant—constitute core prosecutorial functions that are constitutionally protected. A constitutional violation under § 1983 requires the defendant to have acted outside the scope of constitutionally protected conduct, which is not present here.

**B. Alternatively, Stone's § 1983 Malicious Prosecution Claims Would Fail Even Without Immunity.**

Even if this Court were to find that absolute immunity does not apply, Stone's § 1983 malicious prosecution claims would still fail because his prosecution never actually terminated as required by *Thompson v. Clark*. Stone's charges remain pending due to an administrative error made by the clerk's office in transferring his case at his own request—no prosecutor moved to dismiss, and no judge dismissed the case. (Appellees' Appx. pp. 46, 87-89; Defendants' Brief In Support of Motion for Summary Judgment p. 7; Aff. Of Kris D. Denton pp. 1-3). *Thompson* requires that prosecution be "disposed of in such a manner that this cannot be revived," which has not occurred here. *Thompson*, 596 U.S. 36, 45 (quoting *Clark v. Cleveland*, 6 Hill 344, 347, n. a (1844)). Additionally, the

undisputed evidence establishes probable cause for Stone's prosecution, defeating any malicious prosecution claim on the merits.

**C. Stone's Municipal Liability Claims Fail Under *Monell*.**

Stone's § 1983 claims against the City of Livingston fail because he cannot establish municipal liability under *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978). Municipal liability under § 1983 requires proof that a constitutional violation occurred pursuant to an official policy, custom, or practice of the municipality. *Estate of Ramirez v. City of Billings*, 2019 WL 366894, at \*11 (D. Mont. Jan. 30, 2019).

Stone's Complaint and the record both below and on appeal generally is devoid of any allegation identifying a specific municipal policy or custom that caused his injuries. (Record generally). Stone makes only vague and conclusory allegations about constitutional violations without connecting them to any official City policy, custom, or practice. (Complaint generally). This failure to plead or prove a *Monell* claim requires dismissal of his municipal liability claims.

**D. Stone's Remaining Constitutional Claims Lack Merit.**

Stone's Fourth Amendment false arrest claims fail because he was arrested pursuant to a valid warrant issued by Judge Happe for failure to appear in court. (Appellees' Appx. pp. 45, 83; Defendants' Brief in Support of Motion for Summary Judgment p. 6; Bench Warrant p. 1). When an arrest is made pursuant to

a valid warrant, probable cause is established by the judicial determination that preceded issuance of the warrant. *Baker v. McCollan*, 443 U.S. 137, 143-44 (1979). The warrant was issued after Stone failed to appear for his scheduled court date despite being properly notified. (Appellee's Appx. pp. 45, 76-83; Defendants' Brief in Support of Motion for Summary Judgment; Citations and Notices to Appear; Bench Warrant). Stone does not challenge the validity of the warrant or the judge's probable cause determination. Accordingly, his Fourth Amendment claims fail as a matter of law.

Stone's First Amendment retaliation claims fail because his criminal charges were based on his disruptive conduct, not protected speech. The charges arose from Stone's actions in causing a disturbance at the County Attorney's office—backing a victim against a wall in a threatening manner, leaving a child unattended in a hot vehicle, and failing to appear in court. While Stone engaged in speech during the incident, his prosecution was based on the manner and circumstances of his conduct—not the content of his speech. Conduct that accompanies speech is not protected merely because it occurs in conjunction with expression. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). Moreover, Stone was not arrested for speaking or because of the content of his expression, but pursuant to an outstanding warrant for his failure to appear in court.

Stone's due process claims fail because he received all the process he was due under the Fourteenth Amendment. Stone was properly served with citations, notified of his court date, had the opportunity to appear and defend against the charges, retained counsel, posted bond, and successfully obtained transfer of his case to another jurisdiction at his own request. (Appellees' Appx. pp. 45-56; Defendants' Brief in Support of Motion for Summary Judgment pp. 6-7).

Due process requires notice and an opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Stone received both. He cannot claim a due process violation when he chose not to appear for his court date and when he successfully obtained the relief he sought (venue transfer) through proper legal procedures.

Stone's remaining constitutional claims under the Second and Fifth Amendments are wholly unsupported by factual allegations or legal authority. These claims should be dismissed for failure to state a claim upon which relief can be granted.

#### **IV. MONTANA IMMUNITY LAW BARS CLAIMS AGAINST LAWELLIN.**

Stone's state law claims against former City Attorney Lawellin are barred by MCA § 2-9-305(5), which provides two independent bases for immunity. First, the statute's initial sentence bars recovery against an individual employee when recovery is sought against the governmental entity for the same conduct. Because

Stone seeks recovery against both the City and Lawellin for the same prosecution, the statute bars claims against Lawellin individually.

Second, the statute provides that an employee “is immune from liability” when the claim “arises out of the course and scope of the employee’s employment” and the governmental entity acknowledges such scope. MCA § 2-9-305(5). The City acknowledges that Lawellin was acting within the course and scope of her employment as City Attorney when she prosecuted Stone’s case. This acknowledgment triggers statutory immunity.

This Court has consistently applied this immunity to bar individual liability against government employees. *Kiely Construction, LLC v. City of Red Lodge*, 2022 MT 241, ¶¶ 88-89, 312 Mont. 52, P.3d 836 (affirming dismissal of claims against individual employees under § 2-9-305(5)).

### **CONCLUSION**

For the foregoing reasons, this Court should affirm the district court’s grant of summary judgment in favor of Respondents, the City of Livingston and Courtney Lawellin, on all claims.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of June, 2025.

CRIST, KROGH, ALKE & NORD, PLLC

By:           /s/ Derek R. Graves            
Derek R. Graves

*Attorney for Appellees*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellant Procedure, I certify that this Response Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double-spaced (except for footnotes and quoted and indented material which are singled spaced); with left, right, top and bottom margins at one inch; and the word count as calculated by Microsoft Office Word does not exceed 10,000 words, excluding the Table of Contents, Table of Authorities, and Certificate of Compliance.

DATED this 23<sup>rd</sup> day of June, 2025.

CRIST, KROGH, ALKE & NORD, PLLC

By:     /s/ Derek R. Graves      
Derek R. Graves

*Attorney for Appellees*

## CERTIFICATE OF SERVICE

I, Derek R. Graves, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 06-23-2025:

Harlan B. Krogh (Attorney)

2708 1st Avenue North

Suite 300

Billings MT 59101

Representing: City of Livingston, Montana, City of Livingston Police Department, Courtney Lawellin

Service Method: eService

Chad Stone (Appellant)

1106 West Park

Suite 20-157

Livingston MT 59047

Service Method: Conventional

Electronically Signed By: Derek R. Graves

Dated: 06-23-2025