In the Supreme Court for the State of Montana

Supreme Court No. DA 24-0718

STATE OF MONTANA,

Plaintiff and Appellee,

-vs-

DEL ORRIN CRAWFORD,

Defendant and Appellant.

Appellant's Opening Brief

On Appeal from the Montana Eleventh Judicial District
Flathead County, Hon. Dan Wilson, Presiding

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Statement of the Case

Del Orrin Crawford, appeals from his convictions for Deliberate Homicide with a weapons enhancement, Attempted Deliberate Homicide with a weapons enhancement, Assault with a Weapon, and Tampering with or Fabricating Physical Evidence.

A jury convicted Del at the conclusion of a four-day trial in July, 2024. On November 26, 2024, the district court sentenced Del to a net sentence of 100 years in the Montana State Prison, with none of those years suspended. (Appendix A).

Del filed a timely notice of appeal and now requests that this Court reverse and remand his convictions.

Statement of the Issues and Summary of the Arguments

The district court made two different errors in denying Del's motion to suppress his statements. First, the court erred in applying the "public safety" exception to Del's clear invocation of his right to counsel. Lack of any imminent threat to either law enforcement or the general public combined with Montana's enhanced constitutional protections surrounding *Miranda*, the Court should decline to recognize

the "public safety" exception to the facts of this case.

The court's second error was concluding Del's second waiver, after his first invocation of the right to counsel, was a knowing, intelligent, and voluntary waiver despite the fact that Del's unequivocal invocation or his right to counsel continued to be ignored.

Statement of Facts

Introduction

On the night of August 26 and the next morning on the 27th, in 2022 Del was accompanying a wedding party to the Southfork Saloon in Martin City in Flathead County. (Dkt. 1 at 4). Also at the Saloon was a separate group engaged in a joint birthday celebration. When the dust settled, two members of the birthday party had been shot – one fatally – and Del was subjected to continual and repeated interrogations by numerous law enforcement officers despite having invoked his right to counsel almost immediately.

Whisper Sellers

Whisper Sellers died in the early hours of August 27, 2022. She and four family members started the evening at a small casino in

Coram. (Trial Tr. 285). After "[a]pproximately an hour and-a-half," the group "decided to go to the South Fork [Saloon]." (Id. at 286). They arrived at the Saloon around 9:30 p.m. on Friday, August 26, 2022, and "all felt comfortable." (Id). As Friday turned to Saturday, Whisper went outside with her husband, Doug, and her sister-in-law, Alicia Crosswhite, as well as Alicia's husband. (Trial Tr. 336).

Outside the Saloon, the trio smoked, talked, laughed, were "just having a good time out there." (Trial Tr. 287). After about ten minutes, Whisper noticed a golf cart someone had driven to the Saloon. (Id. at 287-288). Whisper, who had been drinking, smoking marijuana, and "goofing around," got into the golf cart. (Trial Tr. 336-338). At trial, Alicia testified Whisper was "goofing around, wanting to move [the golf cart], and it ended up rolling." (Trial Tr. 338). Alicia distinctly remembered the cart rolling because she "was in front of it" and the vehicle ended up "tapping" her. (Trial Tr. at 339).

At this point, Doug, who had already had "probably five beers and then five mixed drinks," saw someone emerge from the Saloon. (Trial Tr. at 288 & 291). The person "somehow" "realized his golf cart had

moved forward." A discussion began between the person and the three members of other group as the three began to explain "what had happened." (Trial Tr. 291). This "person," was Del.

Del

Although he had been invited, Del did not have much of a connection to the wedding party. He knew the groom "in passing," and was closer to the bride-to-be, who had invited him to the wedding and the rehearsal dinner. (Trial Tr. 533). Before heading "up the canyon," for the rehearsal dinner, Del had worked all day. (State's Ex. 73 at 4:22).

After the rehearsal dinner, Del and "maybe 15" other people went to the Saloon. (Trial Tr. 536). The groom, Ken Bush, and two other people drove the golf cart, and the rest including Chelsea Bauska rode in a pickup. (Id.). Chelsea would later testify that she was at the Saloon for about an hour before she returned to the wedding venue in the golf cart. Del drove. (Trial Tr. 475). A bit later, Del drove Chelsea back to the Saloon in the golf cart. (Id.)

Back at the Saloon everyone was having fun in their respective

groups. Del was "casual, laid back." (Trial Tr. 478). Eventually, Chelsea was ready to leave and go back up to "the wedding reception venue." (Trial Tr. 479). Del volunteered to give her a ride back in the golf cart. (Id.) When Del and Chelsea left the Saloon, they saw "people sitting in the golf cart that looked like they were trying to start the golf cart." (Id.) Del and Chelsea "asked the group what they were doing," and they "got two separate responses." (Trial Tr. 480).

The first response Del and Chelsea received was that "the golf cart rolled had rolled forward and they were stopping it." For her part, Chelsea found this response "unlikely" because "it's a flat surface." (Trial Tr. 481). The second response, that the group was taking "selfies in the cart," also seemed unlikely because Chelsea did "not recall anyone with a phone out." Speaking for both she and Del, Chelsea testified "'It looks like you're trying to steal the golf cart.'" (Id.) At this point, "things kind of escalated." (Id.)

Whisper Sellers

Responding to Del's apparent accusation they were trying to steal the golf cart, Whisper suggested Del call the police. (Trial Tr. 432). At

trial, Doug testified "Del and Whisper's voices [were] getting louder, and their faces kept getting closer and closer together to where it became a screaming match." (Trial Tr. 294). Everyone started to argue and talk over each other. Chelsea tied to de-escalate the situation by saying "we need to calm down . . . [t]he situation needs to, like, calm down." (Trial Tr. 485).

Whisper was "intoxicated" and had been smoking marijuana that night. In fact, her husband recalled thinking that all four of the people in his group were intoxicated that night. (Trial Tr. 307-308). Whisper exited the golf cart and came at Del "aggressively[.]" (Trial Tr. 509). During the argument, Whisper "was just really in" Del's "face," "[a]nd it was like a spit yelling. . ." (Trial Tr. 510).

Del

During the argument, Del was "just standing there" or ""trying to lean back a little bit." (Trial Tr. 510). "He wasn't moving forward." (Id.) The four people in the Sellers/Crosswhite group approached Del and Chelsea. (Trial Tr. 512). Chelsea, who had been trying to tell a member of the Sellers/Crosswhite group to "calm down," heard a thump

and "forceful landing." (Trial Tr. 514-515). She turned to see Del on the ground and Whisper and Whisper' husband at Del's feet. Both were "fairly close" to Del. (Trial Tr. 515).

"What the fuck just happened," said Del, as Whisper and Doug Crosswhite leaned over him. (Trial Tr. 516). Chelsea thought, "[w]e're going to get our ass kicked for sure, or I'm gonna have to figure out a way to get back into the fricking bar and try to crowd some people from inside." (Trial Tr. 517). It looked like Del was getting attacked and was going to continue to be attacked because Whisper and her group "were being aggressive that evening." (Trial Tr. 518.)

Doug Crosswhite

Doug answered Del's question about "what the fuck just happened," at trial. According to his testimony, Doug watched Del give Whisper a shove on the shoulder but it was "not aggressive." (Trial Tr. 314). In response, Doug – who is six foot four and approximately 190 pounds, shoved Del back over rocks. (Id. & 324). Doug "took a really stern step forward and shoved [Del] as hard as he could." (Trial Tr. 427).

In reality, the rocks were "big boulders" installed in the parking lot "so you can't actually go forward" in a vehicle. (Trial Tr. 480). Del "looked shocked." (Trial Tr. 314). He had "hit his head on the fence," (Trial Tr. 374), and "could have cracked his head on that boulder." (Trial Tr. 495).

Del

While Del lay shocked on the ground, Kristen Lundstrom, a member of the Sellers/Crosswhite party "got down on eye level with him, and told him that he needed to get out of here and that he shouldn't be doing any of this." (Trial Tr. 427). Her tone was "very stern" and she was harsh. She told Del, "[y]ou need to leave." (Trial Tr. at 429). Kristen was "really mad." (Trial Tr. 373).

Surrounded by five people who were "angry," "upset and angry," and "really mad," (Trial Tr. 373), and attempting to defend himself, Del got up off the ground "pulled a gun from his waist." (Trial Tr. 393). He felt "there was no other option but to stand up and defend" himself. (State's Ex. 73 at 3:35:55). He was "being attacked," "by a mob." (Id. at 3:37:29; 4:20:48). He shot twice. (Id. at 3:36:35). His shots struck

Whisper and Doug Crosswhite. Whisper died and Doug was injured. At an interview with law enforcement after the shooting, Del would unequivocally recount his belief that his "life was in danger" and he "defended himself." (Id. at 3:38:40). He ended by saying: "That's the final thing I'm saying."

In "hindsight," Del later said he should have stayed at the scene. (Id. at 3:46) but he didn't. "The fact of the matter was that he was scared. . . ." (Id.) Whisper, Doug and their party had made repeated comments about how long it would take law enforcement to respond to the scene. For Del, the fact that law enforcement's inability to make a timely response added to his fear. (Id. at 3:48). So, he holstered his gun and he ran. (Id. at 4:34:56). Del believed he was being chased by the others in their vehicle. (Id. at 4:34:58).

Chelsea Bauska

Chelsea didn't see the shooting and, at trial, she was uncertain how many shots she heard. (Trial Tr. 487). She turned to Del and yelled at him. (Trial Tr. 488). Del "didn't say anything." (Id.) He was unresponsive with "like a thousand-yard-stare - -;" "terrified and

scared." (Id.)

Del

After his flight, Del called 911 multiple times but the calls "kept dropping." (Trial Tr. 567). Finally, Del was able to get through and dispatch transferred him to Sergeant Caleb Tappan. "Distraught" and "upset," (Trial Tr. 569), Del told Sgt. Tappan "he had shot in self-defense." (Trial Tr. 568). Sgt. Tappan told Del to put his gun down on the side of the road and walk toward the deputies. (Trial Tr. 569). Unarmed, Del complied and was taken into custody by Corporal Aaron Westphal. (Trial Tr. 572).

Corporal Westphal

Corporal Westphal had been working for the Flathead Sheriff's Department for approximately 20 years when he "detained" Del "for further investigation." (Trial Tr. 587). Corp. Westphal and his colleagues commanded Del to "go down to the ground." Del complied. Then, Corp. Westphal and other officers "were able to place [Del] in handcuffs." (Trial Tr. 586). At this point, Del was legally "in custody." (Dkt. 95 at 9).

Corp. Westphal transported Del "to a safer location, which was the Martin City fire hall. . ." (Trial Tr. 588). During the transport, Del was in the back of Corp. Westphal's patrol car. (6/26/2024 Tr. at 79). At the fire hall, Corp. Westphal read Del his rights and "specifically asked [Del] about the location of the firearm" that Del had admitted using in the shooting. (Id. at 590). In response, Del said, "[i]f you are going to read me my rights, I'm going to need an attorney before I say anything." (Dkt. 95 at 9). In pretrial proceedings, the State stipulated Del's statement was a request for counsel. (Id.) Despite Del's clear invocation of the right to counsel, Corp. Westphal merely thought Del was "thinking about the idea of an attorney." (6/26/24 Tr. at 81).

Del

Although Del invoked his right to counsel before Corp. Westphal even read them, he was subjected to continued questioning. In response to Del's clear invocation of his rights, Corp. Westphal responded: "Okay. All right." Persisting, Corp. Westphal informed Del, "I still have to read them [the rights] to you." (Dkt. 95 at 10). Del answered, "That's cool. Go ahead." (Id.)

After Del was read his rights, Corp. Westphal made a confusing statement. "All right. But without talking to an attorney first, I won't be able to know what happened, just to let you know that." (Id.) Later, Corp. Westphal would describe his statement as "a word salad of a statement, not very well, but I was just trying to make sure he understood the state – his rights." (6/26/24 Tr. at 89). At the time the statement was made, however, Del was left with the word salad rather than a clear question by Corp. Westphal about whether Del understood the rights and was electing to waive them despite his prior invocation of his rights. So, Del simply said "cool." (Dkt. 95 at 11).

Corp. Westphal pressed on. "I just have to let you know. So, again, were just trying to figure out what happened, and like who you are and what is going on." (Id.) Picking up on what Del had told another officer during one of Del's three 911 calls, Corp. Westphal inquired: "All right. You were talking to Corporal Tappan. You said there was a firearm that you left on the side of the road because we didn't want to have any miscommunication; is that correct?" Del responded, "Yep, I hid the gun." (Id.) Westphal inquired again. "You

hid the gun up there on the road so nobody could find it?" Del answer affirmed, but interrogation continued.

Westphal: So[,] it's just up the road?

Del: It's not findable.

Westphal: Oh, it's not findable?

Del: Correct.

Westphal: Okay. There's no way somebody can find it?

Del: Nope.

Westphal: Okay. All right. Okay. Well, that's what I wanted to know because I don't want a kid finding a gun or something like that if it's sitting up on the side of the road.

Del: No. It's unloaded and empty, and it's just a piece of steel.

Westphal: Piece of steel right now?

Del: Yep.

Westphal: Okay. Safe?

Del: Oh, yeah.

Westphal: All right. Good. Well, that's what I need to know. Perfect.

(Dkt. 95 at 11-12 (citations to video and transcript omitted).

Then, as had been his intention all along, Corp. Westphal drove Del to the Flathead County Sheriff's Office so he could "be turned over to the Flathead County detective division for further investigation." (Id. at 592). The drive lasted "[a]pproximately 30 minutes." (Id. at 593).

Det. Robert Brauer

At the Sheriff's Office, Del was placed in an interrogation room and questioned by Det. Brauer and his partner, Corporal Scott McConnell. (6/26/24 Hrg. Tr. at 66). Det. Brauer began with having a conversation with Corp. Westphal, who informed Det. Brauer that Del had been already read his rights. (Id. at 67). Corp. Westphal did not inform Det. Bruaer that Del had already invoked his right to counsel. (Id.) In fact, Corp. Westphal said Del "wanted to speak with us." (Id. at 70). Det. Brauer would not have gone into the interrogation room had he know Del had requested an attorney. (Id. at 71).

Uninformed that Del had invoked his right to counsel, Det. Brauer did go into the interrogation room to question Del. First, he again read Del the *Miranda* advisory.

Del

Del, whose last invocation of his right had been out-right ignored if not discouraged, agreed to speak to Det. Brauer and Corp. McConnell. He gave a lengthy statement that included omissions, untruths, half-truths, dissembling, and an explanation of the events as he perceived them. The statement was played at trial and, in both opening and closing arguments, Del's counsel would describe his behavior during the interview as "weird" and "strange." (Trial Tr. 1026).

Motion to Suppress and Hearing

Del eventually got the lawyer he asked Corp. Westphal for. Counsel, in turn, filed a motion to suppress Del's statements. The district court held a hearing on the motion to suppress on June 26, 2024. Both Corp. Westphal and Det. Brauer testified. The district court partially granted and partially denied Del's motion.[1] (Appendix B) (6/26/24 Tr. at 177-185).

Despite Del's invocation of his right to counsel, the court admitted his statements regarding the gun and its location under the public safety exception to the *Miranda* requirement. (6/26/24 Tr. at 184).

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[1]The court's split ruling will be addressed in greater detail below.

The court did exclude "the statement Mr. Crawford made in response to the detective's question whether he'd been drinking that night, because it occurred after he invoked his right to counsel and before he was read the *Miranda* warning for a second time. (Id.)

Finally, the court held the "statement made by Mr. Crawford during the conversation, interrogation, that occurred at the Sheriff's Office after he was read and advised of and acknowledged understanding his rights under *Miranda*, were made knowingly, voluntarily, and intelligently, having been made after an effective waiver of those rights." (6/26/24 Tr. at 185).

Trial

On July 25, 2024, after a four-day trial, the jury convicted Del of one count of deliberate homicide with a weapons enhancement, one count of attempted deliberate homicide with a weapons enhancement, one count of assault with a weapon, and one count of tampering with physical evidence. (Trial Tr. 1069 - 1072). The jury acquitted Del of the charge that he assaulted Alicia Crosswhite with a weapon. (Trial Tr. 1071). The district court set sentencing for November 26, 2024.

Sentencing

The court concluded Del's actions were "consistent with someone who was prompted by immediate, overwhelming, encompassing rage and anger." (Sent. Tr. at 52). After considering the mitigating and aggravating factors in the case, (Trial Tr. at 55), the district court sentenced Del to a net sentence of 100 years in the Montana State Prison with none of the time suspended. (Trial Tr. 59). The court did not impose a parole restriction. Notwithstanding the Montana State Prison sentence, Del is currently housed in the Tallahatchie County Correctional Facility in the state of Mississippi.

He now appeals the district court's denial of his motion to suppress and requests the Court reverse his conviction and remand his case for a new trial.

Standards of Review

When reviewing a district court's ruling on a motion to suppress, this Court determines "whether the findings of fact are clearly erroneous and whether the district court correctly interpreted the law and applied it to those facts." *State v. Nixon*, 2013 MT 81, ¶ 15, 369

Mont. 359, 298 P.3d 408.

Courts indulge in every reasonable presumption against a waiver of fundamental constitutional rights and will not indulge in any presumption of a waiver. Thus, for a waiver to be effective, a defendant must waive a known right knowingly, intelligently, and voluntarily. *State v. Walker*, 2008 MT 244, ¶ 18, 344 Mont. 477, 188 P.3d 1069.

"Our review of constitutional questions is plenary and we review for correctness the district court's interpretation of constitutional law. Likewise, to the extent the district court's ruling is based on interpretation of a statute, our review is *de novo*." *State v. Kelm*, 2013 MT 115, ¶ 18, 370 Mont. 61, 300 P.3d 687 (internal citations and quotations omitted).

Arguments

The court's mixed ruling on Del's motion to suppress was erroneous on both factual and legal terms. The determination whether Del invoked his right to counsel is an objective inquiry. *State v. Main*, 2011 MT 123, ¶ 16, 360 Mont. 470, 255 P.3d 1240. In Del's case, the court resolved the inquiry in the affirmative–Del had invoked his right

to counsel. (6/26/24 Tr. at 184). The court's suppression of Del's responses to whether he'd been drinking that night was suppressed by the court because it found Del had invoked his right to counsel.

Del does not contest the court's finding that he invoked his right to counsel. Rather, as required by the standard of review, he disagrees the court's findings were applied correctly as a matter of law. *State v. Gill*, 2012 MT 36, ¶ 10, 364 Mont. 182, 272 P.3d 60. Because the court essentially made two rulings based on two different legal theories, they are addressed separately.

However, the overarching principle for this Court to consider in reviewing each of the district court's legal analyses is that "the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.'" *Michigan v. Mosley*, 423 U.S. 96, 103 (1975) (quoting *Miranda v. Arizona* , 384 U.S. 436, 479 (1966)); *see also: State v. Morrisey*, 2009 MT 201, ¶ 34, 351 Mont. 144, 214 P.3d 708).

A. Public Safety Exception: Timing is Everything

"[T]here is a 'public safety' exception to the requirement that *Miranda* warnings be given **before** a suspect's answers may be given into evidence and the availability of that exception does not depend upon the motivation of the individual officers involved." *New York v. Quarles*, 467 U.S 649, 655-656 (1984) (emphasis added). *Quarles* gave rise to the public safety exception and is factually similar to Del's case. It is also precisely the reason why the public safety exception does not apply in Del's case.

In *Quarles*, law enforcement officers were confronted by a woman who claimed she had been raped. She gave a detailed description of the individual, including the fact that he had a gun, and informed the officers "the man had just entered an A&P supermarket located nearby." *Id.* at 651-652. One officer entered the store and located an individual matching the woman's description. Quarles fled, but a law enforcement officer pursued him with his weapon drawn. Eventually, the officer apprehended Quarles and frisked him. The officer "discovered [Quarles] was wearing a shoulder holster which was empty." *Id.* at 652. The officer handcuffed Quarles and "asked him

where the gun was. [Quarles] nodded in the direction of some empty cartons and responded, 'the gun is over there.'" *Id.* The gun was located and Quarles was arrested. Upon arrest, the officer read Quarles the *Miranda* advisory and Quarles indicated that he would be willing to answer questions without an attorney present. *Id.* He was eventually charged with criminal possession of a weapon. His counsel moved to exclude the post-handcuff but pre-*Miranda* statement "the gun is over there," as well as the discovery of the gun "because the officer had not given [Quarles] the warnings" required by *Miranda*. The United States Supreme Court disagreed. "[W]e believe this case presents a situation where concern for public safety must be paramount to adherence to the literal language of the prophylactic rules enunciated in *Miranda*." *Id.*

The Court elaborated.

> In such a situation, if the police are required to recite the familiar *Miranda* warnings **before** asking the whereabouts of the gun, suspects in Quarles' position might be deterred from responding. . . . We decline to place officers . . . in the untenable position of having to consider, often in a matter of seconds, whether it best serves society for them to ask the necessary questions without the *Miranda* warnings and render whatever probative evidence they uncover inadmissible, or for them to give the warnings in order to preserve the admissibility of evidence they might uncover

> but possibly damage or destroy their ability to obtain evidence and neutralize the volatile situation confronting them.

Quarles, 467 U.S. at 657-658 (emphasis added). In fact, *Quarles* created a "narrow exception to the *Miranda* rule." *Id.* at 658. Nothing in the creation of the public safety exception to post-arrest pre-*Miranda* questioning rejected the requirement that a defendant's invocation of the right after *Miranda* warnings should not be scrupulously honored. Thus, timing is everything.

If Corp. Westphal had asked Del about the location of the gun before advising Del of his *Miranda* rights, Del's answers would fall squarely within the public safety exception. That is not what happened. Instead, Corp. Westphal handcuffed Del and transported him to a different, secure location, *Mirandized* him and Del – as the State conceded – invoked his right to counsel. Corp. Westphal did not scrupulously honor Del's request. Instead, Corp. Westphal simply ignored the invocation and pressed on with his questioning.

Some courts have expanded the public safety exception beyond the narrow exception created by the United States Supreme Court. In

United States v. DeSantis, 870 F.2d 536 (9th Cir. 1989), the Court of Appeals for the Ninth Circuit concluded the public safety exception could apply to post-*Miranda* questioning. As with *Quarles*, however, the *DeSantis* decision is highly fact-specific.

Two U.S. marshals went to DeSantis' residence to execute an arrest warrant. They entered DeSantis' apartment and explained they were there to arrest him. One Marshal conducted a brief security sweep and determined there was no one else in the apartment while a second Marshal read DeSantis his *Miranda* rights. *DeSantis*, 870 P.2d at 537. After the rights were read and DeSantis acknowledged he understood them, he asked if he could change his clothing in an adjoining bedroom. In response, the Marshal asked DeSantis if there were any weapons in the house and DeSantis volunteered "there was a gun on the shelf in the closet." *Id.* Both Marshals accompanied an unhandcuffed DeSantis into the bedroom where DeSantis told them about a pistol, "which was two or three feet away from him." When the pistol was secure, DeSantis "volunteered that he had received the gun as part of an inheritance from his father." *Id.* At the time, DeSantis was a convicted

felon. Consequently, he was later charged for being a felon in possession of a firearm pursuant to *18 U.S.C. § 922*.

DeSantis moved to suppress his statements and the pistol because, like Del, he had already been *Mirandized* when the statements regarding the pistol had been made and the weapon was found. The government relied on the public safety exception, an argument with which the Ninth Circuit agreed. This is where the similarities between Del and DeSantis end.

Unlike Del, "at no time at the apartment did DeSantis request an attorney or suggest that he wanted to remain silent." *Id.* A number of other facts were relevant to the Ninth Circuit's decision as well. For example, "DeSantis was questioned in his own home, which is a considerably less coercive environment than the police station." *Id.* at 541. Second, the Marshal "questioned DeSantis about a weapon only in response to DeSantis' request to enter the bedroom. Finally, viewed objectively, [the Marshal's] question was not intended to elicit testimonial evidence, but rather to secure the inspector's own protection." *Id.*

Contrast these critical factors, which justified the public safety exception, with the factors in Del's case, the exception is not justified here. First, both the State and the court agreed Del invoked his right to an attorney. Second, Corp. Westphal placed Del in the back of the Corporal's vehicle and transported to a "location near the firehall," which was "a bit more secluded. . . ." (6/26/24 Tr. Hrg. at 80). A stark contrast from DeSantis' livingroom. Finally, the totality of the circumstances demonstrate an objective likelihood that Corp. Westphal's questioning was less designed to secure his own protection as it was to elicit testimonial statements from Del and to assist investigators locating evidence in a criminal investigation, rather than secure his own or the safety of others.

The State stipulated Del had already been frisked before Corp. Westphal asked about the firearm. More importantly, the State also stipulated "the Defendant's firearm did not pose a threat to law enforcement." (Dkt. 95 at 15). Rather, the State's argument relied on the "interest of public safety." Del was placed into Corp. Westphal's vehicle at approximately 1:42 a.m. (6/26/24 Tr. at 79). Numerous

officers had been deployed to both the shooting scene and assist in Del's detention. Corp. Westphal was aware at least two officers were in search of the weapon. (Appendix C at 20) ("We're going to walk along the edge, see if we see the firearm somewhere or something.")

Because the public safety exception is a narrow rule, courts must guard against tenuous or imaginative risks to public safety to justify an exception to the *Miranda* guarantees especially in situations where questioning occurs after an individual has already invoked his right to counsel. The danger to the public must be objectively reasonable under the circumstances, and the danger must be immediate. "Absent other information, a suspicion that weapons are present is not enough, as a general matter, to demonstrate an objectively reasonable concern for immediate danger to police or public." *United States v. Mobley*, 40 F.3d 688, 693 n.2 (4th Cir. 1994). In *Mobley*, the Fourth Circuit noted it was the United States Supreme Court in *Quarles* that emphasized the narrow scope of the public safety exception. "As an exception, it must be narrowly construed. As the *Quarles* Court indicated, the 'public safety' exception applies only where there is 'an objectively reasonable

need to protect the police or the public from any immediate danger associated with [a] weapon." *Id.* (citing and quoting *Quarles*, 467 U.S. at 659 n.8).

There was no objective or even immediate threat to the public. Unlike the firearm in *Quarles*, which was in a shopping market in a major metropolitan area, or the firearm in *DeSantis*, which was located a few feet away from the defendant, the firearm did not pose a threat to law enforcement, the scene was a very remote wooded area, the time was the middle-of-the-night, and Corp. Westphal was aware at least two officers were in search of the firearm before he even transported Del or read him his rights. He certainly knew all of this at the point Del invoked his right to counsel.

What Corp. Westphal did know is that there had been a shooting, which left one person dead and another injured. (Appendix C at 3-4). Corp. Westphal also knew Del was on the phone with law enforcement and had been instructed to set the firearm "down on the side of the roadway and surrender himself to [law enforcement] unarmed." (6/26/24 Tr. at 77). Corp. Westphal was aware Del had cooperated with

law enforcement's instructions. (Id. at 79).

In light of all of this knowledge, the objective conclusion must be that Corp. Westphal's questions were solely to elicit testimonial evidence, *Quarles*, 467 U.S. at 658-659, i.e., the location of a piece of evidence used in a possible crime Corp. Westphal had been dispatched to respond to. (6/26/24 Tr. at 75). Even before he detained Del, Corp. Westphal "want[ed] to get [Del's] side of the story." (Id. at 86). Corp. Westphal affirmed he told Del "one of us would like to just do an interview with you, find out what happened, put all the pieces together, and then go over it because we're information finders, alright?" (6/26/24 Tr. at 86-87). This information-finding mindset was the objective purpose of Corp. Westphal's post-*Miranda* questioning for Del. Public safety concerns are also undercut by the fact that Corp. Westphal had multiple opportunities to question Del about the location of the gun that would have fallen under the narrow exception articulated by the *Quarles* Court. Specifically, and in the most immediate moment, he could have asked Del about the firearm's location at the time Del was being detained as the officers in *Quarles* did.

When pressed by the court about the evidentiary value of the statements, the prosecutor responded: "Your Honor, the fact of the matter is, is that the gun was not tossed in the woods or left in a situation where it could not be used. It was still loaded and located with the Defendant's possessions in an area where other people could have found it." (6/26/24 Tr. at 107). All of this evidence was admitted at trial through the testimony of Commander Luke Foster independent of Del's post-*Mirandized* invocation of counsel. (Trial Tr. 717). The State sought specifically to use the statements as evidence of Del's consciousness of guilt. (6/26/24 Tr. at 108). This intended use supports the argument that Corp. Westphal's purpose in questioning Del under these unique circumstances was to obtain testimonial evidence and not out of concern for public safety.

Ultimately, the district court ruled the public safety exception applied to these statements. (6/26/24 Tr. at 177-185).

> The public safety exception to the Miranda requirement applies in either instance and Deputy Wesphal's questions were narrowly directed to, and narrowly tailored to address the matter of public concern, namely the location of the firearm, and those questions ceased immediately when Mr. Crawford made unsubstantiated and uncorroborated but

> nonetheless representations of one sort of the other sufficient to satisfy the Deputy's concern that the gun didn't constitute an immediate public threat.

(Id. at 184).

Although this Court has recognized the public safety exception, it has never specifically adopted it or analyzed it independently under the Montana Constitution. *See: City of Missoula v. Kroschel*, 2018 MT 142, ¶ 22, 391 Mont. 457, 419 P.3d 1208 ("[E]xcept under certain recognized exceptions not at issue here, statements elicited while a person is subject to custodial interrogation are not admissible against the person in a subsequent criminal proceeding.") (citing *Quarles* and footnote 10)); *see also: State v. Morrisey*, 2009 MT 201, ¶ 48, 351 Mont. 144, 214 P.3d 708 (affirming admission of defendant's statements but not under the public safety exception).

While this Court may eventually conclude public safety exceptions sufficient to warrant the admissibility of statements, it should not do so under the facts of this case, especially when viewed through the Montana Constitution. In addition to advising a suspect of his right to silence guaranteed by the *Fifth Amendment*, *Miranda* also serves the

purpose of satisfying a suspect of his rights under the *Sixth Amendment*, most importantly the right to counsel. *Patterson v. Illinois*, 487 U.S. 285, 296 (1988) ("As a general matter, then, an accused who is admonished with the warning prescribed by this Court in *Miranda*, has been sufficiently apprised of the nature of his *Sixth Amendment* rights . . . ."). This Court has held that "[d]espite the *Sixth Amendment's* extensive protections, we have held that the right to counsel afforded by *Article II, Section 24* of the Montana Constitution is broader than the right afforded by the United States Constitution." *State v. Garcia*, 2003 MT 211, ¶ 37, 317 Mont. 73, 75 P.3d 313 (citing *State v. Spang*, 2002 MT 120, ¶ 22, 310 Mont. 52, 48 P.3d 727)). Relevant to this case, it's critical to recall that Del specifically invoked his right to counsel versus his right to silence.[2]

This right to counsel is generally over come only after a knowing, voluntary, and intelligent waiver. "If all law enforcement must do to effectuate a waiver of the right to counsel under the *Sixth Amendment*

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[2]This Court has not ruled on the question of whether the right to silence guaranteed by Montana's Constitution is broader than its federal equivalent. *State v. Nixon*, 2013 MT 81, ¶ 28, 369 Mont. 359, 298 P.3d 408.

is regurgitate *Miranda* warnings – even after misleading a defendant about his legal risk – attachment would be reduced to 'a mere formalism.'" *Commonwealth v. Rawls*, 256 A.3d 1226, 1242 (PA 2021) (Welch, J., dissenting); *see also State v. Geno*, 2024 MT 142, ¶ 58, 417 Mont. 135, 417 P.3d 51 (Gustafson, J., concurring) (citing and quoting *Rawls*)).

Given the circumstances and Montana's enhanced protections on the right to counsel, this Court should conclude the public safety exception should not apply in a situation where the defendant specifically invoked his right to counsel and where there was not an immediate threat to either law enforcement or a member of the public. It is an unfortunate fact that life on Earth is always fraught with threats and peril of all types. Law enforcement are aware of this fact more than most for understandable reasons. However, this does not mean that any hypothetical threat or risk justifies an exception to the clear invocation of the right to counsel regardless of how speculative the threat or attenuated the threat to the reality of the specific situation. *See e.g., Michigan v. Bryant*, 562 U.S. 344, 387-398 (2011) (Scalia, J.,

dissenting) (cautioning against the use of a distorted reality of threats posed and public safety exceptions to undermine the Confrontation Clause).

As in the context of *Fourth Amendment* issues, imminence should play a primary role in analyzing whether the public safety exception should overcome a clear and unambiguous invocation of the right to counsel. *See e.g., Brigham City v. Stuart*, 547 U.S. 398 (2006) (the emergency-aid exception to the *Fourth Amendment* requires police to have an 'objectively reasonable basis for believing that an occupant is seriously injured or *imminently* threatened with such injury" before entering a home without a warrant.); *Caniglia v. Strom*, 593 U.S. 194, 198 (2021) (officers may enter private property without a warrant when certain exigent circumstances exist, including the need to render emergency assistance to an injured occupant or protect an occupant from *imminent* injury.)

Here, there was no imminence. When Del was detained, law enforcement knew he was unarmed. Del called 911 and spoke to Corp. Tappan. Even Corp. Westphal, who was not privy to the conversation

between Del and Corp. Tappan understood that Del had complied with the request from police to surrender himself unarmed. (6/24/24 Tr. at 77-78).

Del had also fled the scene thus removing himself from members of the public at the Saloon. Del was so far away from the scene that when Corp. Westphal and two other deputies went to detain Del, they had to take a patrol vehicle. (Id. at 78). Upon arrival, they found Del in the middle of the roadway. He was unarmed. (Id.) Del was detained by law enforcement at approximately 1:35 a.m., almost an hour after law enforcement was initially dispatched to the scene at 12:45 a.m. (6/24/24 Tr. at 78 & Trial Tr. at 557).

Del was then placed in Corp. Westphal's vehicle and driven back to a firehall which was a "little bit more secluded and away from potential people in the area. . . ." (6/24/24 Tr. at 80). Before Corp. Westphal left, at least two other officers remained on the scene to "see if we can see the firearm somewhere or something." (Appendix C at 20). Corp. Westphal relayed that information to at least one officer. (Appendix C at 21). No one: not law enforcement, not Del, and not the

patrons at the bar reference the presence of any "kid," that would render imminence to Corp. Westphal's hypothetical public safety risk about "a kid finding a gun or something like that if it's sitting up on the side of the road." (Id. at 24). This is especially true on a dark Montana backroad being patrolled by law enforcement looking for a gun at one in the morning. And, it is especially true given the heightened role the right to counsel and *Miranda* play in Montana.

The delegates of Montana's Constitutional Convention, aka, the Framers, were acutely aware of the *Miranda* decision, it having been decided eight years before the 1972 Convention. Rick Applegate, author of the "Bill of Rights" study prepared by the Montana Constitutional Convention Commission specifically referenced *Miranda* as one of the cases the United States Supreme Court has decided "giving rise to a vast body of case law and making a significant contribution to jurisprudence" through incorporation of the original federal Bill of Rights. Rick Applegate, Bill of Rights, Report 10, Montana Constitutional Convention Studies, pg. 53 n.24. Mr. Applegate's report also advised the Framers about this Court's 1971 case, *State v. Brecht*,

157 Mont. 264, 485 P.2d 47 (1971). About *Brecht*, Mr. Applegate told the Framers

> Although the case does not center squarely on the police interrogation questions of Miranda, it does contend that constitutional protections against self-incrimination and the right to privacy are afforded against violations of privacy and the right against self-incrimination by private individuals.

Id. at 149. This Court, however, had recognized and enhanced the privilege against self-incrimination even before the United States Supreme Court decided *Miranda*.

Miranda recognizes the desire to advise suspects of their right to counsel in addition to the right to silence. *Miranda*, 384 U.S. at 466. Indeed, Del invoked this specific right. As with the right to silence, both this Court and the Framers of two different Montana constitutions were conscious of the importance of the right to counsel and, as such, the right is afforded greater protection under the Montana Constitution. *State v. Covington*, 2012 MT 31, ¶ 21, 364 Mont. 118, 272 P.3d 43. Long before the United Supreme Court recognized that "the right to aid of counsel is of" a "fundamental character" to the personal right associated with a criminal prosecution, *Powell v. Alabama*, 287 U.S. 45,

68 (1932)[3], Montana's 1884 Territorial Constitution dictated that in all criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel." *Mont. Con. 1884*, Art. I, § 16. The right continued into statehood and was included as Article III, § 16 of the 1889 Montana Constitution.

Mr. Applegate's "Bill of Rights" study for the 1972 Constitutional Convention highlighted that six years before the United States Supreme Court's decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963), this Court concluded Montana's Constitution guaranteed the right of appointed counsel. *State v. Blakeslee*, 131 Mont. 47, 54, 306 P.2d 1103 (1957). See: Applegate, Bill of Rights Study at 168.

Even more relevant to Del's argument that invocation of his right to counsel should be afforded greater protection than under the United States Constitution is Mr. Applegate's reference of this Court's opinion in *State ex rel. Middleton v. District Court*, 85 Mont. 215, 278 P. 122 (1929). In 1928, a lawyer named W.E. Casleton "brought an action to compel Middleton, as warden of the state penitentiary, to permit him to

[3]Also known as the "Scottsboro cases."

consult in private with two clients who were confined in the institution but, as [Casleton] alleged, were charged with grand larceny, on which charge they had not been brought to trial." *Id.* at 219. This Court concluded the inmates did not have a right to consult with counsel under Article III of the 1889 Constitution, but it did announce "that such right was guaranteed by Section 8990 of the Revised Code of Montana." Applegate, Bill of Rights Study at 168-169. In 1947 and continuing until the 1972 Montana Constitutional Convention, Montana law provided that

> All public officials, sheriffs, coroner, jailers, constables, or other officers or persons, having in custody any person committed, imprisoned, or restrained of his liberty, for any alleged cause whatever, must admit any practicing attorney and counselor at law in this state, whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody. . . .

Applegate, Bill of Right Study at 169 (citing and quoting 93-2717 of the Revised Codes of Montana 1947).

Thus, both this Court and the Montana Legislature have recognized the two rights protected by *Miranda* long before the United States Supreme Court rendered that decision. *See State v. Scheffer*,

2010 MT 73, ¶ 16 - 17, 355 Mont. 523, 230 P.3d 462. As such, Del's invocation of his right to counsel should be given greater protection and should have been honored scrupulously by Corp. Westphal, especially in the absence if any imminent or reasonably articulable public safety hazard. *Scheffer*, ¶ 27 ("With respect to Article II, Section 25 right to counsel in custodial interrogations, this Court has stated that we refuse to march lock-step with the United States Supreme Court when the provisions of the Montana Constitution call for greater protection than that guaranteed by the United States Constitution. (internal citations omitted)).

While this Court has recognized the United States Supreme Court's public safety exception, it has yet to specifically adopt it as an exception to *Miranda*'s exclusionary rule. Although the district court did adopt it in Del's case, it erred in doing so, especially given long-recognized protections under Montana law. Because Del specifically invoked his right to counsel all questioning should have ceased and all subsequent answers should have been excluded. Both the right to silence and the right to counsel are fundamental and should not be

overcome simply because law enforcement hypothesized a potential safety risk after Del had been disarmed, transported, and secured.

B. Statements at the Sheriff's Department

After Corp. Westphal ignored Del's invocation of counsel, he transported Del to the Sheriff's Department and left Del in an interview room. (6/26/24 Tr. at 84). Del remained handcuffed in the interview room for 10 minutes until Corp. Westphal returned with coffee and to unlock Del's handcuffs. (Id. at 94-95). Del remained alone in the room for approximately 40 minutes until he was forced to knock on the door and ask permission to use the bathroom. (Id. at 96). Corp. Westphal answered the door, then left and returned with two Flathead County Sheriff's detectives.

Not only did Corp. Westphal not inform the detectives that Del had invoked his rights under *Miranda*, but he affirmatively told them that Del "may want to talk." (Id. at 97).

The detectives entered the interview room to conduct a warrantless swab of Del's hands for gunshot residue before allowing

him to use the bathroom. (Ex. 2[4] to State's Resp. Br. at 47:55 - 49:00). Attempting to accommodate the detectives' swab and his own need to use the facilities, Del asked "[w]hat do you guys need from me, man?" He was swabbed and then allowed to use the bathroom.

Upon returning to the interview room, the Det. McConnell asked Del how much he had to drink and informed him that they did not know what happened. His past invocation having gone ignored, Del stated "I'll tell you. I'll tell you what I can. I don't think I need an attorney." Det. McConnell informed Del that he needed to read Del the *Miranda* warning. Del replied: "[i]f you need me too [*sic*]. I don't know, nobody has yet." Det. McConnell advised Del of his rights and Del confirmed he understood the rights and signed the *Miranda* Rights Advisory form. (Id. at 56:15 - 1:00). The district court erroneously held Del's statements to the detectives from then on were admissible because Del "was read and advised of and acknowledged understanding his rights under *Miranda*, [and] were made knowingly, voluntarily, and intelligently, having been made after an effective waiver of rights."

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[4]Identified in State's Response to Defendant's Motion to Suppress as "McConnell Video."

(6/26/24 Tr. at 185).

Countless courts have held law enforcement does not get a mulligan after a suspect invokes his rights under *Miranda*. The most notable examples are *Arizona v. Robertson*, 486 U.S. 675 (1988), *McNeil v. Wisconsin*, 501 U.S. 171 (1991), and *Montejo v. Louisiana*, 556 U.S. 778 (2009).

Each of these cases and the reasoning behind them were recognized by this Court in *Scheffer*. "Once an individual has invoked his or her right to have counsel present during custodial interrogation, the interrogation must cease and officials may not reinitiate interrogation without counsel present." *Scheffer*, ¶ 17. In *Scheffer*, this Court analyzed the two distinct rights to counsel. The right implicated here is the "*Fifth Amendment/Article II, Section 25* right to counsel, applicable during a custodial interrogation" which "protects 'the suspects desire to deal with the police only through counsel.'" *Scheffer*, ¶ 18 (citing and quoting *McNeil*, 501 U.S. at 178). This Court noted this type of right to counsel was not "offense specific, and '[o]nce a suspect invokes the *Miranda* right to counsel for interrogation regarding one

offense, he may not be reapproached regarding *any* offense unless counsel is present.'" *Id.* This Court also affirmed "failure to fully honor the exercise of [*Miranda*] rights through the interrogation, generally requires the exclusion of any *testimonial* evidence (i.e., communications) obtained." *Id.* Also, citing *Davis v. United States*, 512 U.S. 452, 458 (1994), this Court recognized that if a suspect "requests counsel at any time during the interview, he is not subject to further questioning regarding any offense unless an attorney is actually present or the suspect himself reinitiates conversation." *Scheffer*, ¶ 26.

Below, the State conceded Del made an unequivocal request for counsel in his interactions with Corp. Westphal. At that point, all questioning should have stopped. It didn't. Even if the public safety exceptions applied to narrowly tailored questions about the location of the gun are exempt, it does not mean that Del's answers to those narrowly tailored questions should be considered a reinitiation sufficient to ignore the prior invocation of the right.

Although the State did not specifically argue that Del's answers in response to Corp. Westphal's alleged public safety questions amounted

to a reinitiation of conversation after the assertion of the right, the district court's ruled Del's statements to the detectives were an independent interrogation made permissible by a second knowingly, intelligent, and voluntary *Miranda* waiver. The court's error comes from failing to recognize that at no point was Del's invocation of his right to counsel scrupulously honored.

The "second layer of prophylaxis for the *Miranda* right to counsel is designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights." *Davis*, 512 U.S. at 458. Badgering can come in many forms. *See United States v. Moore*, 235 F.Supp. 3d 1329, 1335 (S.D.FL 2017) (Detective's expression of personal disappointment that suspect requested a lawyer was purposeful and evoked the hoped-for response and reinitiated the conversation thus violating *Miranda* and *Davis*). Certainly, ignoring an outright invocation of the right and telling other officers Del "may want to talk" so they may question him ignorant of his prior invocation, amounts to badgering that cannot be overcome by a subsequent *Miranda* advisory without first honoring the previous request to allow Del to speak to his

lawyer.

Simply because Del signed a waiver of his *Miranda* rights for the detectives does not mean that waiver was knowing, intelligent, and voluntary. Rather, it highlights why courts virtually draw a bright line that if a suspect requests counsel at any time during an interview he cannot be subject to further questioning until a lawyer has been made available.

That the detectives were unaware of Del's prior invocation does not excuse their actions especially given that Corp. Westphal both ignored Del's invocation and then advised the detectives Del may want to talk. The decision in *Edwards v. Arizona*, "made clear that 'a valid waiver of [the right to counsel] cannot be established by showing only that [the defendant] responded to further police-initiated custodial interrogation even if he [was] advised of his rights." *Grimes v. Bryan D. Phillips*, 105 F.4th 1159, 1166 (9th Cir. 2024) (citing and quoting *Edwards*, 451 U.S. at 484).

Additionally, courts recognize a distinction between a valid waiver of one's *Miranda* rights generally as compared to a waiver of the specific

Miranda right to counsel once that right has been invoked. *See Fayne v. Commonwealth*, 83 Va. App. 686, 697, 911 S.E.2d 842 (Va. 2025) ("a voluntary *Miranda* waiver is sufficient at the time of an initial attempted interrogation to protect a suspect's right to have counsel present, but it is not sufficient at the time of subsequent attempts if the suspect initially requested the presence of counsel.") This language in *Fayne* draws directly from the United States Supreme Court decision in *Maryland v. Shatzer*, 599 U.S. 98, 105 (2010). To establish a valid waiver, the State must show that the wavier was knowing, intelligent, and voluntary under the high standard of proof for the waiver of constitutional rights [set forth in] *Johnson v. Zerbst*, 304 U.S. 458 (1938).

Virginia has adopted a three-part test to address situations such as that faced by this Court in Del's case. In *Quinn v. Commonwealth*, 25 Va.App. 702, 492 S.E.2d 470 (1997), the Court of Appeals looked to three factors to determine if the *Edwards* rule renders a statement inadmissible.

> First, the trial court must determine whether the accused actually invoked his right to counsel and whether the

> defendant remained in continuous custody from the time he or she invoked this right to the time of the statement.
>
> Second, if the accused has invoked his right to counsel and has remained in continuous custody, the statement is inadmissible unless the trial court finds that the statement was made at a meeting with the police that was initiated by the defendant or attended by his lawyer.
>
> Third, if the first two parts of the inquiry are met, the trial court may admit the statement if it determines that the defendant thereafter [voluntarily] knowingly, and intelligently waive the right he had invoked.

Quinn, 492 S.E.2d at 712. The Virginia Court of Appeals did not craft this process from whole-cloth. Rather, it adopts clear and unambiguous language from the United States Supreme Court's holding in *Smith v. Illinois*, 469 U.S. 91, 95 (1984). Given that guidance and reliance on clearly established federal constitutional law that was in effect at the time of the district court's ruling in Del's case, it is plain Del's alleged subsequent waiver after having clearly invoked his right to counsel is invalid and his statements to the detectives should have been suppressed. Florida adopts a similar process. "[O]nce an individual has invoked the *Miranda* right to counsel, a valid waiver of this right can be found only if the individual is the one responsible for reinitiating

contact with police." *Sapp v. State*, 690 So2d 581, 584 (Fl. 1997); *Scotsman v. State*, 238 So.3d 300, 305 (Fla. 4th DCA 2018) (holding that the failure to honor a suspect's request for counsel taints later incriminating statements because a suspect's decision to reinitiate contact may be a product of coercive tactics).

Therefore, law enforcement's second *Miranda* advisory does not act as a magic wand to erase or negate Del's prior invocation of counsel. Any subsequent advisory must comply with the stringent requirements of any other constitutional right previously invoked and being sought to be revoked, i.e., the requirements in *Johnson v. Zerbst*, 304 U.S. 458 (1938).

In Del's case, neither the facts established at the evidentiary hearing nor the district court's conclusion meet the criteria for a vaild waiver of a previously-invoked right to counsel under *Miranda*. Consequently, the district court erred by failing to suppress Del's statements at the Sheriff's Office as being tainted by the earlier violation of his *Miranda* rights.

Conclusion

Under the circumstances of this case, Del's clear invocation of his right to counsel as guaranteed by the Montana Constitution and *Miranda* necessitated exclusion of his statements. His conviction should be reversed in light of the district court's error. Neither legal authority nor fact-based analyses warrant application of the public safety exception, and the second waiver does not satisfy the requirements for a knowing, intelligent, and voluntary waiver **after** a prior invocation of counsel, especially since Del remained in custody and subject to law enforcement questioning without first seeing a lawyer before making the waiver.

Del respectfully requests this Court reverse his convictions and remand his case for a new trial in which his statements are properly excluded.

Dated this 22nd day of July, 2025.

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Certificate of Compliance

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that the Appellant's Opening Brief is printed with proportionately-spaced Century typeface of 14 points; is double-spaced except for lengthy quotations or footnotes; and does not exceed 10,000 words. The exact word count, as calculated by my WordPerfect software and excluding tables and certificates, is 9,215.

Dated this 22nd day of July, 2025.

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CERTIFICATE OF SERVICE

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