IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-478

CITY OF HELENA,

Plaintiff and Appellee,

v.

MATTHEW GORDON MAYFIELD,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana First Judicial District Court,
Lewis and Clark County, the Honorable Mike Menahan, Presiding

APPEARANCES:

TAMMY A. HINDERMAN
Division Administrator
DIMITRIOS TSOLAKIDIS
Assistant Appellate Defender
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147
Dimitrios.Tsolakidis@mt.gov
(406) 444-9505

ATTORNEYS FOR DEFENDANT
AND APPELLANT

AUSTIN KNUDSEN
Montana Attorney General
TAMMY K PLUBELL
Bureau Chief
Appellate Services Bureau
P.O. Box 201401
Helena, MT 59620-1401

REBECCA DOCKTER
Helena City Attorney
316 North Park Avenue
Room 203
Helena, MT 59623

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

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STATEMENT OF THE ISSUES

1. The First Amendment protects the right to use offensive, even vulgar, speech. That right is no weaker when the speech is directed at police—in many jurisdictions, it's stronger. But the City of Helena arrested Matthew Mayfield for obstructing because he advised an unrelated DUI suspect to remain silent and cursed out the investigating officer. Did the City arrest Mayfield without probable cause and in violation of his right to free speech?

2. The City brought Mayfield to trial after the six-month misdemeanor speedy trial deadline expired. But the City continued Mayfield's trial three separate times for the following reasons: (i) the toxicologist "is scheduled to be in another trial" and has a "personal conflict"; (ii) "the toxicologist is unavailable"; and (iii) a "foundational witness" is "out of state and unavailable." Did the City demonstrate good cause to violate Mayfield's statutory right to a speedy trial?

STATEMENT OF THE CASE

In their own words, Officers Seder and Hamilton arrested Mayfield for obstructing because he was "getting real chippy" and "jabbering." (Seder Body Camera 1 at 23:31–45 (Seder 1); Baker Body

Camera 1 at 5:25–27 (Baker 1).) Mayfield's "jabbering" was shouting legal advice at an unrelated motorist, Brandon Morgan, whom Seder was investigating for speeding and driving under the influence (DUI). *See* pp. 4–8, *infra*. Once Mayfield was in handcuffs, the officers sought desperately to find a charge that would stick. (Baker 1 at 5:01–6:39 (Corporal Baker urging Hamilton to start a DUI investigation).) When they drew Mayfield's blood at the jail the next morning, his blood alcohol content (BAC) was .114. (Doc. 1, Municipal Court Record (MC), Trial Ex. 2, Toxicology Report.)

The City of Helena charged Mayfield with obstructing a peace officer, Mont. Code Ann. § 45-7-302, and DUI, Mont. Code Ann. § 61-8-1002(1)(a), and eventually amended its complaint to add a charge of operating a noncommercial vehicle with an alcohol concentration of .08 or more (DUI per se), § 61-8-1002(1)(b). (MC Mot. to Am. Compl. (July 17, 2023).) Mayfield pleaded not guilty on April 24, 2023. (MC Ct. Mins. (Apr. 24, 2023).)

Mayfield moved to suppress the DUI evidence on the grounds that his initial arrest lacked probable cause and violated his right to free speech. (MC BIS Mot. to Suppr. at 3, 7 (July 6, 2023).) The court held a

suppression hearing, in which Seder, Hamilton, and Baker testified, and the court admitted their body camera footage. (MC Minutes of Evidence (June 8, 2023).) The court denied Mayfield's motion to suppress, concluding that the officers had probable cause and that Mayfield used unprotected "fighting words." (MC Ord. on Mot. to Suppr. ¶¶ 12, 17–20 (July 18, 2023).)

Next, the City thrice continued Mayfield's jury trial due to unavailable witnesses. (MC Mot. to Continue (July 20, 2023); MC Mot. to Continue (Sept. 7, 2023); MC Mot. to Continue (Oct. 27, 2023).) Mayfield moved to dismiss for lack of speedy trial. (MC Mot. to Dismiss (Nov. 22, 2023).) The Municipal Court denied Mayfield's motion because it concluded that Mayfield caused the second continuance by filing a motion in limine on September 1, 2023, and that the City's unavailable witness furnished "good cause" for its third extension. (MC Ord. on Mot. to Dismiss at 2–3 (Dec. 21, 2023) (Speedy Trial Ord.).)

The City brought Mayfield to trial on January 9, 2024—77 days past the misdemeanor six-month speedy trial deadline. (MC Ct. Mins. (Apr. 24, 2023); Speedy Trial Ord. at 1.) At the beginning of the trial, the City dismissed Mayfield's obstructing charge. (Trial Recording 1

at 1:04–10 (Jan. 9, 2024).) A jury convicted Mayfield of DUI per se, under § 61-8-1002(1)(b). (MC Verdict Form (Jan. 9, 2024).)

The First Judicial District Court affirmed Mayfield's conviction. (Doc. 18.) The District Court agreed there was probable cause to arrest Mayfield. (*Id.* at 11.) As to speedy trial, the District Court attributed the delays to the City but nonetheless affirmed on the ground that witness unavailability constitutes "good cause" under Mont. Code Ann. § 46-13-401(2). (Doc. 18 at 6–7.) Mayfield timely appealed. (Doc. 22.)

STATEMENT OF THE FACTS

On April 22, 2023, Mayfield stopped for gas at the Friendly's Gas Station in Helena, Montana. Three gas pumps away, Officer Seder was investigating Brandon Morgan for speeding and DUI. (Seder 1 at 5:18–54.) Mayfield walked around the parking lot and stood roughly 30–40 feet away from Seder and Morgan. (*Id.*; Suppr. Hrg. Recording at 3:21:05–17 (June 8, 2023) (Suppr. Hrg.).) Seder asked Morgan if he was "willing to go through some testing," and Morgan agreed. (Seder 1 at 5:32–40.) Morgan performed the horizontal gaze nystagmus (HGN) or "eye" test. (*Id.* at 6:00–7:08.) Around that time, Officer Hamilton arrived as the "cover" officer and stood by, observing Seder's

investigation and watching Mayfield in the distance. (Hamilton Body Camera 1 at 0:28–52 (Hamilton 1); Suppr. Hrg. at 3:13:20–25.)

When Morgan completed the HGN, Seder began explaining the next standard field sobriety test (SFST), the "walking" test. (Seder 1 at 10:25–32.) But Morgan refused to perform the walking test. Instead, he asked, "[W]hat happened with the eye test?" (*Id.* at 10:32–35.) In response, Seder said, "The eye test is just the first of three, so it's up to you, if you're willing to continue through."[1] (*Id.* at 10:39–44.) Morgan then asked, "Did I pass the first test with the eyes?" (*Id.* at 10:46–50.) Seder said that it was not pass–fail, and he asked Morgan if he was "cool with" performing two more tests. (*Id.* at 10:50–11:22.) But Morgan pushed back again, asked whether he passed the HGN, and said, "I haven't gotten a clear answer to that." (*Id.* at 11:20–35.) Seder dodged the question again and said that he was "observing things" that "ma[de] [him] think" Morgan was impaired. (*Id.* at 11:36–41.)

After Morgan refused SFSTs for a second time, Mayfield waved at Hamilton, as seen in the following screenshot:

[1] Seder was correct that Morgan was within his rights to refuse further SFSTs. *See State v. Simmons*, 2000 MT 329, ¶ 17, 303 Mont. 60, 15 P.3d 408; Mont. Code Ann. § 61-8-1016; U.S. Const. amend. V.

(Hamilton 1 at 5:36–40.) Hamilton saw Mayfield waving and said, "What's up, man?" (*Id.*) The two of them walked toward each other, such that Hamilton eventually stood about halfway between Mayfield and Seder. (*Id.*) Slouched, with his hands in his pockets, Mayfield replied to Hamilton, "This test needs to come to an end." (*Id.* at 5:40–46.) Seder then interjected and yelled, "Hey man, you can't jump into an investigation!" (*Id.* at 5:47–49.) Mayfield replied, "I am a bystander, and this test needs to come to an end." (*Id.* at 5:49–51.)

Neither Seder nor Hamilton asked Mayfield to leave, back away, or show his hands. (*Id.*) Seder warned Mayfield, "You're gonna be obstructing if you come into our investigation." (*Id.* at 5:54–56.)

Mayfield did not approach Seder or get between him and Morgan; instead, he turned to walk toward his car. (*Id.* at 6:03–06.) When he saw Hamilton following him, Mayfield told Seder, "I will talk to your partner over here." (*Id.* at 6:05–07.)

As Mayfield was walking away with Hamilton, Seder continued to engage with him. (*Id.* at 6:09–13.) Seder turned his entire body to face Mayfield directly and shouted, "Hey! You can go over and talk to him." (*Id.*) In response, Mayfield looked over his left shoulder and said, "No, you can get fucked." (*Id.* at 6:12–15.) Seder repeated, "You can go chat with him." (*Id.*) Mayfield again replied, "No, you can get fucked." (*Id.*)

At that time, Hamilton invited Mayfield to "go chat with [him]." (*Id.* at 6:14–16.) Mayfield complied, but before walking away, he told Seder, "I literally stood over here, listening to your questions. You asked him a question. He answered it. He said, 'Did I pass?' And you couldn't answer him. And you did not do it. Your answers are fucked. Fuck you." (*Id.* at 6:21–32.) That second interaction lasted roughly 20 seconds, and again, neither Seder nor Hamilton asked Mayfield to leave, back up, or show his hands. (*Id.* at 6:10–30.)

Mayfield then turned his entire body away from Seder again and tried to walk away. (*Id.* at 6:31–33.) But Seder prolonged the interaction, yelling, "No, I was just going to talk to him." (*Id.*) Mayfield replied, "No, you're a piece of shit. Fuck you." (*Id.* at 6:31–34.) Next, Mayfield addressed Morgan: "Don't answer any more shit. Do not answer—do not say another fucking word." (*Id.* at 6:35–38.) Mayfield and Hamilton then walked further away from Seder and Morgan. (*Id.* at 6:38–42.)

As Mayfield was leaving the scene, Morgan told Seder that he agreed with everything Mayfield said. (Seder 1 at 12:44–47 ("Honestly, that's how I feel.").) Morgan again refused further testing and asserted his right to counsel numerous times. (*Id.* at 12:45–58, 16:16–24, 17:06–59, 53:15–54:38, 1:06:30; Seder Car Camera at 28:58–29:12.)

The entire interaction between Seder and Mayfield lasted about 46 seconds. (*See* Hamilton 1 at 5:47–6:33.) For the next seven minutes, however, Hamilton continued conversing with Mayfield off to the side, closer to Mayfield's vehicle. (*Id.* at 6:38–13:43.) At no point did Hamilton ask Mayfield to leave, show his hands, or submit to a pat-down. (*Id.*)

Mayfield explained to Hamilton why he was dissatisfied with Seder's investigation: "You are prosecuting that man without answering his questions. . . . He asked a question, 'Did I pass that test?' He says, 'I need to test you again.' No, you do not. . . . And if he doesn't know his rights, you can't pass those rights." (*Id.* at 8:02–41.) Hamilton had multiple opportunities to disengage from Mayfield, but he thought he "had a right to respond to everything [he] said." (*Id.* at 9:21–24.) Within three minutes of Mayfield and Seder's interaction, another back-up officer arrived. (*Id.* at 9:16–19; Suppr. Hrg. at 3:34:25–59.)

Hamilton continued arguing petulantly with Mayfield:

> **Mayfield:** I can find him a sober ride home if he's not. Correct or false . . . ?
>
> **Hamilton:** You can certainly find him a ride.
>
> **Mayfield:** Exactly. Can I do that?
>
> **Hamilton:** Right now, no.
>
> **Mayfield:** Oh, I totally can. Is he obtained?
>
> **Hamilton:** Is he *detained*? Yes, he's being detained.
>
> **Mayfield:** He's not obtained.
>
> **Hamilton:** It's *detained*, not *obtained*.
>
> **Mayfield:** No, you have not—

> **Hamilton:** It's *detained*, not *obtained*. And he is being *detained*.

(Hamilton 1 at 9:36–10:00 (emphasis in audio).)

At one point, Mayfield offered to perform SFSTs, but Hamilton said, "I have no need to test you." (*Id.* at 7:14–19.) Hamilton continued bickering with him for several minutes:

> **Mayfield:** If he walked away right now, you could not tackle him.
>
> **Hamilton:** Yeah, we could.
>
> **Mayfield:** That's against the law.
>
> **Hamilton:** No, it's not.
>
> **Mayfield:** That's against the law. That—that's against the law, trust me.
>
> **Hamilton:** No, it's not.
>
> **Mayfield:** Oh, it totally is. I've been through school to be a lawyer. That's against the law.
>
> **Hamilton:** You studied to be a lawyer?
>
> **Mayfield:** Yeah, I did.
>
> **Hamilton:** Ok, where at?
>
> **Mayfield:** Yeah. Two years, actually.
>
> **Hamilton:** Where at?

Mayfield: In North Dakota.

Hamilton: North Dakota? Ok.

Mayfield: Yeah.

Hamilton: Cool. Why didn't you become a lawyer, then?

Mayfield: Because I was against this bullshit.

Hamilton: You're against this? [points at Seder detaining Morgan] Well, then, it sounds like you should've been a lawyer, hahaha.

(*Id.* at 10:08–43.) Around that time, Seder arrested Morgan for DUI. (*Id.* at 11:56–59; Seder 1 at 18:00–05.) Morgan was found not guilty of DUI on May 16, 2024. *See State v. Morgan*, TK-520-2023-999 (Helena Mun. Ct. 2023).

Eventually, Mayfield asked if he was free to leave. (Hamilton 1 at 12:56–59.) The following interaction ensued:

Hamilton: Right now, you're being detained. You're not free to leave.

Mayfield: No, no, I'm not. What did I do? What did I do to break the law?

Hamilton: I'm gonna go chat with those guys and see if we're gonna go obstructing.

Mayfield: No, what did I do to break the law?

Hamilton: Ok.

Mayfield: What did I do to break the law?

Hamilton: At this point, you've been obstructing our investigation.

Mayfield: No, I did not. No, I did not. I came over here to ask you a question. . . . If you obtain me, that's breaking the fucking law.

Hamilton: Ok, there's no "*obtaining*."

Mayfield: What did I do to break the law?

Hamilton: There's no "*obtaining*" you. You would be "*detained*."

Mayfield: Ok. What did I do—

Hamilton: They're two different words, ok?

Mayfield: Ok, so what did I do to "detain" myself?

Hamilton: Ok, you didn't detain—you didn't detain yourself. It would be us detaining you.

Mayfield: You detained me for asking questions, right? That's breaking the law?

Hamilton: For obstructing an ongoing investigation.

(*Id.* at 13:00–42 (emphasis in audio).) Seder and Hamilton then agreed to arrest Mayfield for obstructing. (*Id.* at 13:41–14:25.) Seder said, "Oh,

yeah. We definitely have him on obstructing . . . He was telling this guy what to do, what to say. That—yeah, nah." (Seder 1 at 22:22–38.)

A sheriff's deputy arrived as back-up and asked Seder what was "really going on." (*Id.* at 23:29–30.) Seder replied, "So I'm processing this guy for DUI. And this guy's standing there watching. I'm like, 'That's fine, whatever.' And then he starts jabbering—saying, like, telling him what to do, what decisions to make and all this." (*Id.* at 23:31–45.)

Corporal Baker arrived as another back-up officer. (Suppr. Hrg. at 3:30:06–36.) Baker asked Seder whether they could also charge Mayfield with DUI. (Baker 1 at 3:07–4:03.) Seder said, "I don't know," and explained that he did not see Mayfield drive or exit a vehicle. (*Id.* at 4:03–18.) Baker suggested pursuing a DUI investigation, saying, "We can always process in the jail." (*Id.* at 4:31–33.) Baker then walked over to Hamilton, who had just placed Mayfield in his squad car, (Hamilton 1 at 19:24–28), and asked him if he could arrest Mayfield for DUI. (Baker 1 at 5:01–10.) Hamilton replied, unambiguously, "No." (*Id.* at 5:10–12.) Baker continued to press him:

Baker: DUI—this guy.

> **Hamilton:** [sigh] No. The other guy was DUI. This guy's fucking hanging out and then starts—
>
> **Baker:** Did he pull up in this? [points at Mayfield's vehicle]
>
> **Hamilton:** I think so. But he starts coming up, getting real chippy, being like, "Hey, quit talking to them, you don't have to say anything." And then just keeps going and going . . . telling him that he doesn't have to do anything, he doesn't have to speak to us.

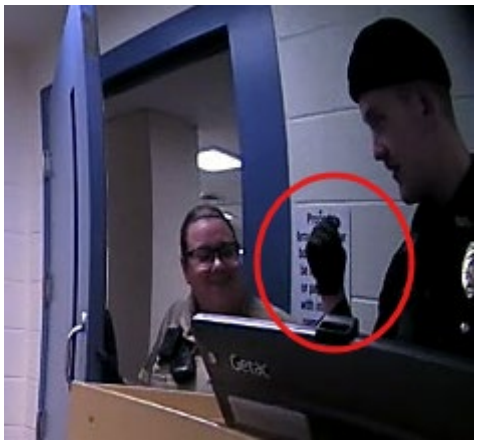
(*Id.* at 5:16–39.) Baker asked Hamilton if he smelled alcohol on Mayfield, and Hamilton said, "I didn't smell anything on him, no." (*Id.* at 5:48–55.) Baker told him, "Ok, when you get up to the jail, do a DUI investigation on this guy." (*Id.* at 6:20–26.) Hamilton gave Baker a "thumbs up" and said, "I like it." (*Id.* at 6:30–35.)

Hamilton testified that Mayfield's DUI investigation began after he arrested Mayfield for obstructing. (Suppr. Hrg. at 3:25:25–32.) Despite talking in close proximity with Mayfield for nearly ten minutes, Hamilton did not smell the odor of alcohol on him. (*Id.* at 3:28:04–27; Seder 1 at 1:11:22–39.) After Baker instructed him to investigate for DUI, however, Hamilton allegedly smelled alcohol when he was in the squad car with Mayfield. (Suppr. Hrg. at 3:28:04–27.)

Back at the jail, Hamilton continued mocking Mayfield with the jail staff as his audience:

> So one guy's DUI. This guy comes, starts getting chippy, acting like he's gonna help, tellin' him what to do . . . he's obstructing. . . . But his lawyers are gonna handle it with me—apparently. He also studied law for two years. So, he should've been a lawyer. But he decided to do whatever the hell he's doin' now.

(Hamilton 1 at 43:15–52; *see also id.* at 1:03:20 ("Well, the one guy, he studied law. Two years. And he decided not to . . . become a lawyer because he's 'tired of this bullshit.'").) At one point, while describing the reason for Mayfield's arrest, Hamilton said, "This guy starts fucking [demonstrates yapping gesture with hand]," as seen in the screenshot below:



(Seder 1 at 1:01:36–44.)

After Mayfield and Morgan were both booked, Hamilton told Seder, "Corporal Baker wants to push for DUI for [Mayfield]." (*Id.* at 51:24–30.) Seder again stated that he did not observe Mayfield

driving. (*Id.* at 51:42–58.) "We need video just to show that he was in the driver's seat," he said. (*Id.* at 52:01–07.) Seder later watched his dash camera footage and observed Mayfield exiting the vehicle's driver's side at Friendly's. (Suppr. Hrg. at 3:03:36–43.) The next morning, Hamilton obtained a search warrant to test Mayfield's BAC. (MC Appl. for Search Warrant (Apr. 22, 2023).)

At the suppression hearing, Seder testified that he believed Mayfield was obstructing because he "began yelling from a distance and interrupted the investigation." (Suppr. Hrg. at 30:01:50–02:58.) Seder explained that Mayfield interrupted because he "[s]tarted . . . telling the gentleman what he should and shouldn't be doing." (*Id.* at 30:01:50–02:58.) When asked what effect Mayfield's speech had on his investigation, Seder said, "[I]t actually caused my investigation to stop because he was telling the gentleman that he should no longer proceed with it," and "[Morgan] no longer wanted to go through it because of what Mr. Mayfield had said." (*Id.* at 3:03:50–04:15, 3:05:34–46.) Seder admitted that people have the right to refuse SFSTs and that refusing them makes his job "more challenging." (*Id.* at 3:07:33–52.)

Hamilton testified that he had to divert his attention away from his duties as cover officer because of Mayfield:

> I had to take my attention away from watching the general scene and then also watching the other defendant and direct myself to watching him. And, you know, just due to the amount of profanities he was saying toward us, and then just the close proximity to us, there was concern that he would escalate things further, and then um, I just had to divert my attention away from our original investigation, open up a whole new, separate investigation into the obstructing, and then take my attention from our original job.

(*Id.* at 3:15:30–16:25.)

Speedy Trial

The City delayed Mayfield's trial 77 days past the expiration of his six-month statutory speedy trial deadline due to unavailable witnesses. (Doc. 18 at 5:5, 7:6–7; MC Ct. Mins. (Apr. 24, 2023).)

First continuance (42 days)

The City's first request for a continuance stated, "the City's toxicologist will not be available as she is scheduled to be in another trial and has an additional conflict on the afternoon of the trial date." (MC Mot. to Continue (July 20, 2023).) Although the City referenced "another trial," it provided no details about it. (*See id.*) The City eventually clarified that the toxicologist's other "conflict" was a

"personal conflict" in its brief in opposition to Mayfield's speedy trial motion. (MC BIO Mot. to Dismiss at 6–7 (Dec. 7, 2023).)

Second continuance (56 days)

The City advised Mayfield's counsel on September 1, 2023, that it intended to file a motion to continue the September 14 jury trial on the ground that the toxicologist was, once again, unavailable. (MC Not. of Objection (Sept. 1, 2023).) That same day, Mayfield filed a notice of objection because the court had already extended the trial date to accommodate the toxicologist's schedule. (*Id.*) Also on September 1, Mayfield filed a motion in limine to exclude the toxicology report. (MC Mot. in Limine (Sept. 1, 2023).)

The City eventually filed the second motion for continuance on the following grounds: (1) "the City's toxicologist is unavailable"; and (2) "the City was recently served a motion labeled as a motion in limine." (MC Mot. to Continue (Sept. 7, 2023).) The City failed to explain why the toxicologist was unavailable for the second time in a row. Despite getting a second and third bite at the apple, the City offered no post hoc justification for the toxicologist's absence in either its brief in opposition to Mayfield's speedy trial motion, (MC BIO to

Mot. to Dismiss (Dec. 7, 2023)), or in its brief in opposition to Mayfield's appeal, (Doc. 13). Indeed, the City never explained the nature of the toxicologist's second absence, and neither the Municipal Court nor the District Court questioned the City's unsupported assertion that she was, simply, "unavailable."

Third continuance (61 days)

The City's third motion stated: "the City's foundational witness for the chain of custody of the blood sample is out of state and unavailable to testify." (MC Mot. to Continue (Oct. 27, 2023).) The City did not explain (a) who the "foundational witness" was, (b) why they were "out of state," (b) when they would return, or (c) why they were "unavailable to testify."[2] (*See id*.) Mayfield filed another objection, noting that he had "already confirmed this case for trial three times." (MC Notice of Objection (Oct. 27, 2023).)

[2] Months later, the City's attorney argued in briefing that the witness was out of state for "training," but that assertion was not before the court at the time of the extension, and neither the Municipal Court as the factfinder, nor the District Court on appeal, ever considered it. (*See* MC BIO Mot. to Dismiss at 7 (Dec. 6, 2023).)

STANDARDS OF REVIEW

The Court reviews "decisions by a district court acting as an appellate court as if originally appealed to this Court." *City of Kalispell v. Salsgiver*, 2019 MT 126, ¶ 11, 396 Mont. 57, 443 P.3d 504. The Court must "examine the municipal court record independently of the district court's decision, applying the appropriate standard of review to [its] own examination of the record." *Id.*

The Court's review of constitutional questions is plenary. *Planned Parenthood v. State ex rel. Knudsen*, 2025 MT 120, ¶ 11, 422 Mont. 241, 570 P.3d 51. Whether probable cause exists is a mixed question of fact and law, which the Court reviews de novo. *Ramsey v. Yellowstone Cty. Justice Ct.*, 2024 MT 116, ¶ 11, 416 Mont. 472, 549 P.3d 458.

"Whether a criminal defendant's statutory right to a speedy trial was violated under § 46-13-401(2), MCA, is a question of law," which the Court reviews "de novo." *State v. Wolverine*, 2024 MT 31, ¶ 14, 415 Mont. 201, 543 P.3d 597.

SUMMARY OF THE ARGUMENT

The Court should reverse Mayfield's conviction on either or both of two grounds.

First, Seder and Hamilton obtained all DUI evidence because of an unlawful arrest, and therefore the exclusionary rule bars its admission. Mayfield's arrest was unlawful for two independent reasons.

The arrest violated Mayfield's right to free speech, which permitted him to criticize law enforcement and give legal advice to Morgan, and his speech did not implicate the "fighting words" doctrine. U.S. Const. amend. I, XIV; Mont. Const. art. II, § 7; *City of Houston v. Hill,* 482 U.S. 451, 461 (1987) (invalidating city ordinance that prohibited individuals from verbally "interrup[ting]" police investigations).

Additionally, Seder and Hamilton lacked probable cause to arrest Mayfield for obstructing because a reasonable person would not have believed that Mayfield's speech hindered Seder's investigation into Morgan. *See generally State v. Bennett*, 2022 MT 73, 408 Mont. 209, 507 P.3d 1154. Morgan had already refused to perform additional SFSTs when Mayfield started "jabbering," and Hamilton voluntarily prolonged his conversation with Mayfield.

Second, the City violated Mayfield's right to a speedy trial. Under the misdemeanor speedy trial rule, the government must show "good

cause" for the delay—vague, boilerplate excuses do not suffice. *Wolverine*, ¶ 17. Although witness unavailability sometimes furnishes good cause, it is not categorically so—some record evidence regarding the circumstances of the witness's absence must exist. Here, the City continued Mayfield's trial three times due to unavailable witnesses without providing any context for the trial court to make a credible good cause finding.

ARGUMENT

I. The DUI evidence is fruit of the poisonous tree because Mayfield's arrest for giving Morgan legal advice and using profanity violated his right to free speech and lacked probable cause.

The Municipal Court erred by denying Mayfield's motion to suppress the DUI evidence. Mayfield's arrest (1) violated his right to free speech and (2) lacked probable cause; therefore, (3) the exclusionary rule applies.

A. Mayfield's arrest for telling Morgan "what he should and shouldn't be doing" and shouting "profanities" violates his right to free speech.

The right to free speech is "among the fundamental personal rights and liberties" that the First and Fourteenth Amendments protect from "invasion by state action." *Chaplinsky v. New Hampshire,* 315 U.S.

568, 570–71 (1942). The Montana Constitution prohibits the State from "impairing the freedom of speech or expression" and declares that "[e]very person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty." Mont. Const. art. II, § 7. "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson,* 491 U.S. 397, 414 (1989).

Of course, "[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any constitutional problem." *Chaplinsky,* 315 U.S. at 571–72. Those include "fighting words," "true threats," incitement to riot, and obscenity—*i.e.*, expression that appeals to the "prurient interest in sex." *Virginia v. Black*, 538 U.S. 343, 359 (2003); *State v. Dugan*, 2013 MT 38, ¶ 48, 369 Mont. 39, 303 P.3d 755. Additionally, the government may regulate physical *conduct* more freely than *speech*. *See United States v. O'Brien*, 391 U.S. 367, 376 (1968); *Thomas v. Collins*, 323 U.S. 516, 540 (1945). But pure speech cannot give rise to criminal

liability unless it falls within "the narrowly limited classes of speech" above. *See Gooding v. Wilson*, 405 U.S. 518, 521–22 (1972).

Mayfield's arrest violated his right to free speech. First, Hamilton and Seder arrested Mayfield for pure speech, thus triggering First Amendment protections. Second, the First Amendment safeguards the use of coarse language directed at law enforcement, unless such speech constitutes "fighting words"—words that have a direct tendency to provoke a violent response from an ordinary listener. Third, Mayfield's advice to Morgan and criticism of Seder did not have a "direct tendency to cause acts of violence." *See Dugan*, ¶ 37.

1. Mayfield's expression is pure speech directed at state actors and therefore entitled to the strongest constitutional protection.

"[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers." *Hill,* 482 U.S. at 461. The freedom of individuals to verbally express opposition to police action without risk of arrest is a "principal characteristic[]" of a free state. *Hill,* 482 U.S. at 462–63. Criticism of government and state agents is at the core of First Amendment protections. *New York Times*

Co. v. Sullivan, 376 U.S. 254, 269–70 (1964); *Rudd v. City of Norton Shores*, 977 F.3d 503, 513–14 (6th Cir. 2020).

Hamilton and Seder arrested Mayfield for pure speech. Mayfield did not physically interfere with Seder's investigation. When Seder warned Mayfield that he would be "obstructing if he [came] into [his] investigation," Mayfield kept his distance and did not put himself between Seder and Morgan. (Hamilton 1 at 5:54–6:06.) Both officers testified at the suppression hearing that Mayfield interfered by "shouting," using "profanities," and "telling [Morgan] what he should and shouldn't be doing"—not through any physical conduct. *See* pp. 16–17, *supra*. Seder and Hamilton repeatedly said that they arrested Mayfield for "telling this guy what to do, what to say"; "telling him . . . what decisions to make"; "jabbering;" "telling him that he doesn't have to do anything"; and "getting real chippy." *See* pp. 13–16, *supra*.

Mayfield did not physically prevent Seder from investigating Morgan; all he did was speak his mind—albeit aggressively. But "yelling and screaming . . . alone does not take . . . conduct out of the realm of speech." *Freeman v. Gore*, 483 F.3d 404, 414 (5th Cir. 2007) (cleaned up); *see also Norwell v. City of Cincinnati*, 414 U.S. 14, 16

(1973) ("being loud and boisterous" during police investigation did not amount to "interfer[ence] with a police officer"). Because Mayfield's conduct was pure speech criticizing state officers, it is at the core of the First Amendment and subject to the highest degree of protection.

2. "Fighting words" are those that have a direct tendency to cause violence.

"[T]he mere fact that expressive activity causes hurt feelings, offense, or resentment does not render the expression unprotected." *Dugan*, ¶ 45 (cleaned up). Rather, fighting words are "words that by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Hill*, 482 U.S. at 461–62 (cleaned up). They are "personally abusive epithets, which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Cohen v. California*, 403 U.S. 15, 20 (1971) ("fuck" not considered fighting words where there was "no showing that anyone . . . was in fact violently aroused or that appellant intended such a result").

The test is what people "of common intelligence would understand would be words likely to cause an average addressee to fight." *Gooding*, 405 U.S. at 523. The "purpose of the doctrine . . . is 'to preserve the

public peace' by forbidding only those words that have a 'direct tendency to cause acts of violence.'" *Dugan*, ¶ 37 (quoting *Chaplinsky,* 315 U.S. at 573). The United States Supreme Court has "not upheld a conviction under the fighting-words doctrine in 80 years." *Counterman v. Colorado*, 600 U.S. 66, 77 n.4 (2023).

Using offensive, foul language toward police officers is not a crime and does not trigger the fighting words doctrine. In *Lewis v. City of New Orleans*, 415 U.S. 130 (1974), a New Orleans police officer detained the defendant and her husband while they were driving. *Id.* at 132. The officer asked for the husband's driver's license, and the defendant, the vehicle's passenger, exited the vehicle and began yelling, "[Y]ou god damn motherfucking police—I am going to the superintendent of police about this." *Id.* (cleaned up). The City charged her under an ordinance that prohibited "wantonly" cursing, reviling, or using "opprobrious language" toward police. *Id.* The Court reversed her conviction and held that the ordinance was facially unconstitutional because it "punishe[d] only words" and was not limited to fighting words. *Id.* at 132, 134. The Court thus ruled that the First Amendment protects even the "vulgar"

and "offensive" language with which the defendant addressed the police officer. *Id.* at 134.

In *Hill*, Raymond Hill saw two police officers detaining his friend, who was intentionally impeding traffic on a busy street. *Hill*, 482 U.S. at 453. To divert their attention, Hill shouted, "Why don't you pick on somebody your own size," several times. *Id.* at 453–54. The City of Houston charged Hill with "interfering with policemen" under a city ordinance. *Id.* at 455. The Court invalidated the ordinance under the First and Fourteenth Amendments because the restriction on Hill's speech was not limited to fighting words. *Id.* at 461–63. The Court reasoned that even "provocative and challenging [speech] . . . is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." *Id.* at 461.

Uncharacteristically, the Montana Supreme Court has afforded Montanans *less* protection than the United States Supreme Court for speech directed at police officers. *Compare State v. Robinson*, 2003 MT 364, 319 Mont. 82, 82 P.3d 27, with *Hill*, 482 U.S. at 461–63; *Lewis*, 415

U.S. at 134. *See also* John Wolff, *Trailing in the Wake: The Freedom of Speech in Montana*, 77 Mont. L. Rev. 61, 76 (2016); Thomas W. Korver, *State v. Robinson: Free Speech, or Itchin' for A Fight?*, 65 Mont. L. Rev. 385, 405 (2004). In *Robinson*, the defendant approached a police officer, glared at him, and said, "fucking pig." *Robinson*, ¶ 3. When the officer attempted to question him, Robinson replied, "Fuck off, asshole." *Id.* ¶ 4. This Court affirmed Robinson's disorderly conduct conviction, finding that his speech amounted to "fighting words." *Id.* ¶ 22. The Court observed, "We fail to see how randomly goading a police officer . . . adds to our constitutionally protected speech." *Id.* (cleaned up).

Robinson aside, numerous courts have applied First Amendment protections squarely to situations like Mayfield's—sometimes to far more egregious forms of expression. *See, e.g.*, *Duran v. City of Douglas*, 904 F.2d 1372, 1377 (9th Cir. 1990) (making vulgar gestures and shouting profanities at officer); *Brooks v. City of W. Point*, 639 Fed. App'x 986, 987 (5th Cir. 2016) (plaintiff became angry and "used curse words" during police investigation); *Lowe v. Spears*, 258 Fed. App'x 568, 569–70 (4th Cir. 2007) ("Arresting a person solely based on speech that questions or opposes police action violates the First Amendment.");

Johnson v. Campbell, 332 F.3d 199, 203, 214–15 (3d Cir. 2003) (calling officer a "son of a b****"); *Greene v. Barber*, 310 F.3d 889, 892–93, 896 (6th Cir. 2002) (calling officer an "asshole" and "really stupid"); *United States v. McKinney*, 9 Fed. App'x 887, 888–90 (10th Cir. 2001) (telling officer to "go fuck himself" multiple times); *Buffkins v. City of Omaha*, 922 F.2d 465, 467, 472 (8th Cir. 1990) (calling officer an "asshole"); *Tate v. W. Norriton Tp.*, 545 F. Supp. 2d 480, 483, 487 (E.D. Pa. 2008) (using "fuck" toward officer who was investigating a vehicular collision); *Kaylor v. Rankin*, 356 F. Supp. 2d 839, 844, 848 (N.D. Ohio 2005) (defendant approached officer, who had just issued a parking citation to a third party, and said, "[T]his is all bullshit" and "fucking asshole"); *Cook v. Wyandotte Bd. of Cty. Comm'rs*, 966 F. Supp. 1049, 1051–52 (D. Kan. 1997) ("flipp[ing] the bird" to a highway patrol officer); *Martinez v. District of Columbia*, 987 A.2d 1199, 1200, 1204 (D.C. 2010) (using a plethora of profanities toward officer during traffic stop); *South Dakota v. Suhn*, 759 N.W.2d 546, 547, 550 (S.D. 2008) (yelling at officer, "Fucking cop, piece of shit. You fucking cops suck. Cops are a bunch of fucking assholes"); *Delaney v. Georgia*, 599 S.E.2d 333, 334–35 (Ga. Ct. App. 2004) (honking horn and shouting, "What are you doing parked in

the middle of the roadway," in close proximity to officer who was conducting traffic stop); *Long. v. L'Esperance*, 701 A.2d 1048, 1051, 1053 (Vt. 1997) (complaining about DUI roadblock and using curse words); *City of Bismark v. Schoppert*, 469 N.W.2d 808, 809, 813 (N.D. 1991) (saying "fuck you" multiple times in response to officer's questions); *Diehl v. Maryland*, 451 A.2d 115, 116, 122–23 (Md. 1982) (saying "fuck you" to arresting officer); *City of St. Louis v. Tinker*, 542 S.W.2d 512, 513, 519–20 (Mo. 1976) (calling officers "pigs" and "stupid"). *See also* Kimberly J. Winbrush, Annotation, *"Fighting Words" Supporting Charges Under State Disorderly Conduct Laws*, 72 A.L.R.7th Art. 2 (2022).

Additionally, many courts have found that "properly trained officer[s]" are "expected to exercise a higher degree of restraint than the average citizen and thus be less likely to respond" violently to profane language—making the fighting words doctrine especially difficult to satisfy. *See Lewis*, 415 U.S. at 135 (Powell, J., concurring) (cited favorably in *Hill*, 482 U.S. at 462); *United States v. Poocha*, 259 F.3d 1077, 1081 (9th Cir. 2001); *Wood v. Eubanks*, 25 F.4th 414, 425 (6th Cir. 2022); *United States v. Lanning*, 723 F.3d 476, 486 (4th Cir. 2013);

Johnson, 332 F.3d at 212; *Posr v. Ct. Officer Shield No. 207*, 180 F.3d 409, 415 (2d Cir. 1999); *Enlow v. Tishomingo Cty.*, 962 F.2d 501, 509 (5th Cir. 1992).

3. Though offensive and abrasive, Mayfield's criticisms of Officer Seder and legal advice to Morgan did not have a "direct tendency to cause acts of violence."

Mayfield did not use "fighting words" toward Seder because none of his statements had a "direct tendency to cause acts of violence" when heard by a person of ordinary intelligence. *See Dugan*, ¶ 37. Though annoying and offensive, Mayfield's speech did not "rise[] far above public inconvenience, annoyance, or unrest." *See Hill*, 482 U.S. at 461.

Neither Hamilton nor Seder perceived Mayfield's comments as violence-provoking, and they did not testify that they felt compelled to respond violently. (*See* Suppr. Hrg. at 30:01:50–02:58; 3:15:30–16:25.) Indeed, Hamilton continued casually bickering with Mayfield for seven more minutes and seemed mostly irritated by Mayfield's questions, not by his profanity. (Hamilton 1 at 6:38–13:43.) The officers seemed generally unperturbed by Mayfield's name-calling, and Hamilton himself used a fair amount of profanity with his colleagues throughout the night. (*See* Baker 1 at 5:16–39; Seder 1 at 1:01:36–44.) Both

Hamilton and Seder said they arrested Mayfield because of the statements he was directing at Morgan. (Hamilton 1 at 43:15–52, 56:10–18; Seder 1 at 23:31–45; 1:01:36–44; Baker 1 at 5:16–39.) But advising Morgan of his rights is also protected speech.[3]

Like *Hill*, where the defendant yelled, "Why don't you pick on somebody your own size," during another person's criminal investigation, Mayfield's speech was not "likely to produce a clear and present danger of a serious substantive evil." *Hill*, 482 U.S. at 461. As in *Lewis*, where the defendant said, "You god damn motherfucking police" directly to an officer during an ongoing investigation, the First Amendment protects Mayfield's speech. *Lewis*, 415 U.S. at 134.

Robinson is inconsistent with the United States Supreme Court's fighting words jurisprudence and should therefore be overruled. *Compare Robinson*, ¶ 22, *with Hill*, 482 U.S. at 461; *Lewis*, 415 U.S. at 134; *Cohen*, 403 U.S. at 20; *Norwell*, 414 U.S. at 15–16; *Hess v. Indiana*, 414 U.S. 105, 106–08 (1973).

[3] Morgan indisputably had a right to refuse testing and a right to remain silent. *Simmons*, ¶ 17; § 61-8-1016; U.S. Const. amend. V.

But *Robinson* is also distinguishable. There, the defendant approached a police officer, without any context or provocation, and called him a "fucking pig." *Robinson*, ¶ 3. Here, Mayfield waved at Hamilton, and Hamilton invited him to chat by asking, "What's up, man." (Hamilton 1 at 5:30–45.) Hamilton and Mayfield walked toward each other, and Mayfield expressed his disapproval with the investigation. It was only after Seder began shouting that Mayfield responded with profanity. (*Id.* at 6:00–42.) Unlike *Robinson*, Mayfield was not "randomly goading a police officer." *See Robinson*, ¶ 22.

Additionally, whereas the Court found that Robinson's language did not add "to our constitutionally protected social discourse," *id.* ¶ 22, Mayfield unambiguously expressed the following important sentiments:

- Morgan had a right to refuse testing (*See* Hamilton 1 at 5:40–46 ("This test needs to come to an end."), 6:35–38 ("Don't answer any more shit."));
- Morgan had a right to remain silent (*See id.* at 6:35–38 ("Do not say another fucking word.")); and
- Seder and Hamilton could not disregard Morgan's assertion of his rights (*See id.* at 8:02–41 ("You are prosecuting that man without answering his questions . . . And if he doesn't know his rights, you can't pass those rights.")).

Although Mayfield expressed those concepts in a vulgar manner, the gist of his speech has value in our constitutionally protected social discourse. Punishing Mayfield for this speech runs the risk of chilling an entire category of meaningful social discourse regarding the rights of the accused and state overreach. *Robinson* is therefore both factually distinguishable and incorrect as decided.

Under *Hill* and *Lewis*, Mayfield's arrest violated his First Amendment rights because Hamilton arrested him for speech that did not fall into any of the "well-defined and narrowly limited classes" that evade constitutional shielding. *See Chaplinsky*, 315 U.S. at 571–72.

B. Seder and Hamilton lacked probable cause to arrest Mayfield because it was not reasonable to believe that Mayfield knowingly hindered Seder's investigation.

Seder and Hamilton lacked probable cause to arrest Mayfield for obstructing. Probable cause requires a showing that the "facts and circumstances within an officer's personal knowledge" would "warrant a reasonable person to believe that another person is committing or has committed an offense." *City of Missoula v. Iosefo*, 2014 MT 209, ¶ 10, 376 Mont. 161, 330 P.3d 1180. And, to effectuate a warrantless arrest, "existing circumstances" must "require immediate arrest." Mont. Code

Ann. § 46-6-311. Seder and Hamilton arrested Mayfield allegedly for obstructing. "A person commits the offense of obstructing a peace officer or public servant if the person knowingly obstructs, impairs, or hinders the enforcement of the criminal law." § 45-7-302(1). No facts and circumstances justified Mayfield's arrest here.[4]

In *Bennett*, an officer approached the defendant and said he wanted to talk "about something that someone reported." *Bennett*, ¶ 4. Bennett responded that she did not "know what the fuck [he was] talking about," called him "dumb," and walked away. *Id.* The officer arrested Bennett for obstructing. *Id.* ¶ 5. This Court reversed Bennett's conviction for insufficient evidence because nothing in the forty-second encounter established that Bennett hindered the officer's performance of his duty. *Id.* ¶ 10. Being "coarse" and "lacking in etiquette" was not sufficient to support a conviction. *Id.* ¶¶ 10–11. *See also, e.g.*, *Freeman*, 483 F.3d at 414 ("merely arguing with police officers about the propriety of their conduct, including whether they have the legal authority to conduct a search," did not establish probable cause); *Washington v.*

[4] If the Court finds that § 45-7-302 justified Mayfield's arrest, then the statute is unconstitutional as applied to him. *See* § I(A), *supra.*

E.J.J., 354 P.3d 815 (Wash. 2015) (no probable cause of obstructing where bystander shouted legal advice at arrestee and expletives at officers).

Hamilton and Seder offered two rationales to justify Mayfield's arrest: (1) Mayfield's legal advice caused Morgan to stop cooperating with the DUI investigation; and (2) Mayfield distracted Hamilton from his duties as the cover officer due to the "amount of profanities he was [using]" and "the close proximity to [him and Seder]." (Suppr. Hrg. at 3:03:50–05:46, 3:15:30–16:25.) Both rationales fail.

First, Morgan had already refused to perform SFSTs before Mayfield began "jabbering." (Seder 1 at 10:25–11:41 (Morgan demanding to know whether he passed the HGN and refusing to perform the walking test).)

Second, Morgan had a right to refuse SFSTs—as Seder admitted, both at the time of the incident and at the suppression hearing. (*Id.* ("would you be willing"; "it's up to you"; "if you're cool with it"); Suppr. Hrg. at 3:07:33–52.) Morgan also had a right to remain silent. U.S. Const. amend. V, XIV. Advising someone of their rights cannot equate to "hinder[ing] the enforcement of the criminal law." *See* § 45-7-302.

Third, Hamilton *chose* "to divert [his] attention away from [the] original investigation"; he did not "have" to. (*See* Suppr. Hrg. at 3:15:30–16:25.) Mayfield's interaction with Seder lasted about 46 seconds, and Hamilton continued needlessly chatting with Mayfield for seven more minutes, even after back-up officers arrived. (Hamilton 1 at 6:38–13:43.) This delay further shows that the "circumstances" did not "require immediate arrest." *See* § 46-6-311. Correcting Mayfield's use of the word "obtained" and mocking him about his legal education, (*See* Hamilton 1 at 9:36–10:43), bear no relation to the "enforcement of the law," "respect for the needs of the citizens," or "protection of human rights." *See Mission Statement*, Helena Police Dep't.[5]

Hamilton claims he was unable to provide "cover" to Seder, but he never once asked Mayfield to leave, he never attempted to disengage from Mayfield, and he did not arrest Mayfield until eight-and-a-half minutes after he began "jabbering," (Hamilton 1 at 5:32–14:02), and over two minutes after Morgan was arrested, (Seder 1 at 18:00–20:05). But even if extending his conversation with Mayfield was necessary to

[5] *Available at* https://www.helenamt.gov/Departments/Police-Department (last visited Sept. 30, 2025).

secure the scene, that is the job of the "cover" officer—to secure the scene. (Suppr. Hrg. at 3:13:20–59.) If that's the case, then interacting with Mayfield did not distract from Hamilton's duties—it *was* Hamilton's duty.

Fourth, as in *Bennett*, ¶¶ 10–11, using "coarse" language and "lacking in etiquette" does not equate to obstructing under § 45-7-302(1). Mayfield's use of foul language caused no harm. The interaction in which Mayfield used profanity toward Seder lasted 23 seconds, (Hamilton 1 at 6:12–6:35)—even less time than Bennett's detention. *See Bennett*, ¶ 10. And Seder never claimed to have been impeded by Mayfield's use of profanity. He testified that Mayfield interfered by shouting legal advice to Morgan. (Suppr. Hrg. at 3:03:50–05:46; *see also* Seder 1 at 23:31–45.)

Finally, Mayfield did not physically interfere with Seder's investigation. When Seder warned Mayfield that he would be "obstructing if [he came] into [his] investigation," Mayfield complied by not approaching. (Hamilton 1 at 5:54–56.) When Hamilton and Seder told Mayfield to "go chat" with Hamilton, Mayfield complied. (*Id.* at 6:14–42.) Mayfield did not pose a threat, and the officers never

perceived him as such. They never asked him to show his hands or back up, and they never patted him down. (*See* Hamilton 1 at 5:36–14:00.)

Hamilton and Seder did not have probable cause to arrest Mayfield because a reasonable person in their position would not believe that Mayfield's advice to Morgan hindered the enforcement of the criminal law.

C. The exclusionary rule applies.

"Courts are not allowed to use evidence that stems from an illegal act of the police." *State v. Baldwin*, 2024 MT 199, ¶ 25, 418 Mont. 70, 555 P.3d 748; *State v. Emerson*, 2015 MT 254, ¶ 26, 380 Mont. 487, 355 P.3d 763 (exclusionary rule barred admission of evidence collected subsequent to an unconstitutional seizure). "The core premise of the exclusionary rule is to deter future unlawful police conduct." *Baldwin*, ¶ 25.

The exclusionary rule applies because Hamilton did not begin investigating Mayfield for DUI until after Mayfield was handcuffed in the back of his squad car, and all evidence of DUI was collected after Mayfield's unconstitutional arrest. (Baker 1 at 5:16–39; Suppr. Hrg. at 3:25:25–32.) Hamilton unambiguously asserted, multiple times, that

he did not suspect Mayfield of DUI until he drove in the squad car with him on the way to the jail. (*See* Hamilton 1 at 7:14–19 ("I have no need to test you."); Baker 1 at 5:48–55 ("I didn't smell anything on him, no."); Seder 1 at 1:11:22–39 ("I did not smell the odor of alcohol when we were cuffing him; once I had him inside the vehicle, I did smell a quite strong odor of alcohol."); Suppr. Hrg. at 3:25:25–32 (testifying that he did not suspect Mayfield before driving with him).) Had Hamilton and Seder not arrested Mayfield for obstructing, they would have never launched a DUI investigation. Because all DUI evidence resulted from an unconstitutional arrest that lacked probable cause, the exclusionary rule bars its admission.

The Municipal Court should have suppressed the DUI evidence.

II. The City violated Mayfield's right to a speedy trial because Mayfield did not seek any continuances and the City failed to demonstrate good cause for postponing three trial dates.

The United States and Montana constitutions guarantee the right to a speedy trial. U.S. Const. amend. VI, XIV; Mont. Const. art. II, § 24. Defined by statute, Montana's misdemeanor speedy trial right is more protective than its constitutional origins. *State v. Ronningen*, 213 Mont. 358, 362, 691 P.2d 1348, 1350 (1984). Section 46-13-401(2) provides,

> After the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant's motion is not brought to trial within 6 months.

§ 46-13-401(2). Dismissal is therefore required when two conditions are met: (1) "the defendant has not asked for the postponement"; and (2) "the State has not shown good cause for the delay." *Ronningen*, 213 Mont. at 360, 691 P.2d at 1349 (cleaned up). "Good cause is a legally sufficient reason for the delay given the totality of the facts and circumstances of a particular case." *Wolverine*, ¶ 17 (cleaned up).

Mayfield did not postpone his trial, and the City failed to offer "legally sufficient reason[s]" for its witnesses' repeated lack of availability. *See id.*

A. Mayfield did not ask for the postponement.

"[A]ny pretrial motion for continuance filed by a defendant which has the incidental effect of delaying the trial beyond the six-month time limit could be said to 'postpone trial' for purposes of § 46-13-401(2)." *City of Helena v. Roan*, 2010 MT 29, ¶ 10, 355 Mont. 172, 226 P.3d 601 (cleaned up). Mayfield did not file any "pretrial motion for continuance." *Roan*, ¶ 10. (*See* Doc. 18 at 7.)

The District Court correctly rejected the Municipal Court's flawed reasoning that Mayfield's motion in limine constituted a delay attributable to the defense. (Speedy Trial Ord. at 2; Doc. 18 at 7.) A motion in limine is not a "pretrial motion for continuance." *See City of Red Lodge v. Pepper*, 2016 MT 317, ¶ 14, 385 Mont. 465, 385 P.3d 547; *State v. Fitzgerald*, 283 Mont. 162, 166–67, 940 P.2d 108, 111 (1997). Defendants have an unambiguous right to file pretrial motions that help ensure a fair trial, and it would be absurd if all such motions resulted in a waiver of their misdemeanor speedy trial rights. *See* U.S. Const. amend. XIV.

Even if Mayfield's motion in limine could be construed as a "motion for continuance," the City moved to continue the September 14 trial because of its unavailable witness—not due to Mayfield's motion. (*See* MC Mot. to Continue (Sept. 7, 2023) ("The City of Helena hereby moves this Court for a continuance . . . for the reason that the City's toxicologist is unavailable.").) And the City planned to seek that continuance even before it was made aware of Mayfield's motion in limine. (*Id.* at 2 ("[T]he City contacted opposing counsel on September 1, 2023, about the trial date and potential conflict. Opposing counsel, on

the same day, indicated he . . . would also object to any continuances."); MC Not. of Objection (Sept. 1, 2023) ("[T]he City is making this motion because the toxicologist witness is not available to testify."); MC Mot. in Limine (Sept. 1, 2023).)

Mayfield never sought a continuance of a single deadline, hearing, or trial; he diligently attended all court proceedings, and he confirmed for trial three separate times. Nothing he did had the "incidental effect of delaying the trial beyond the six-month time limit." *See Roan*, ¶ 10.

B. The City did not demonstrate good cause because it failed to explain its witnesses' absence when it moved to extend Mayfield's trial three times.

Witness unavailability—without some explanation of the reason for their absence—is not a per se good cause under § 46-13-401(2). And here, the City sought three extensions due to witness unavailability without offering any legitimate justification for their absence.

1. Witness unavailability does not categorically satisfy the good cause standard under § 46-13-401(2).

Vague, formulaic reasons for delaying a trial past the speedy trial deadline cannot establish good cause. *See Wolverine*, ¶ 19. This Court has repeatedly rejected boilerplate excuses because the misdemeanor

speedy trial rule demands some level of specificity, along with a showing that the prosecuting entity worked diligently to overcome the delay. *See, e.g.*, *id.* (claiming defendant was "in federal custody" was insufficient); *City of Helena v. Broadwater*, 2014 MT 185, ¶ 19, 375 Mont. 450, 329 P.3d 589 (claiming court had a "crowded docket" was insufficient); *Ronningen*, 213 Mont. at 360, 691 P.2d at 1349–50 (claiming judge retired before trial was insufficient).

In *Wolverine*, the State moved to continue the trial because the defendant "was in federal custody," but this Court reversed the trial court's finding of good cause. *Wolverine*, ¶ 6. Merely stating that the defendant was "in federal custody" was not a legally sufficient reason to delay her trial. *Id.* ¶ 25. Notably, the State's motion to continue failed to include any specificity regarding the defendant's incarceration: it "did not indicate what jurisdiction had incarcerated her or when she would be released." *Id.* The record also lacked any showing of what actions the State had taken to "extract [the defendant] from federal custody." *Id.* ¶ 10.

In *Broadwater*, the Court held that an extension due to the municipal court's "crowded docket" did not amount to good cause.

Broadwater, ¶ 18. The Court observed that "the City presented no evidence of any actions it took to ensure that Broadwater's trial would be held in a timely manner." *Id.* ¶ 18. While sympathetic to the trial court's busy docket, the Court held that the City's vapid explanation did not suffice: "Were we to hold here that the assertion of a crowded docket, without more, is sufficient to establish good cause for delaying a misdemeanor trial beyond six months, the exception would swallow the rule, and § 46-13-401(2), MCA, would be rendered meaningless." *Id.* ¶ 19.

Although this Court has stated that "the unavailability of a prosecution witness constitutes valid reason for trial delay," *State v. Krenning*, 2016 MT 202, ¶ 12, 384 Mont. 352, 383 P.3d 721, in every case where witness unavailability constituted good cause, the records contained enough context from which the trial courts were able to make a credible finding of good cause. *See, e.g.*, *State v. Knippel*, 2018 MT 144, ¶¶ 14–18, 391 Mont. 495, 419 P.3d 1229 (the State represented that the victim had moved to Colorado and refused to testify in-person, and the State sought to move proceedings from city to district court in order to depose the victim); *Pepper*, ¶¶ 8–9 (the City represented in its motion

for continuance that a witness moved to Arizona, and the City needed more time to purchase an airline ticket); *Krenning*, ¶¶ 4, 12–13 (the State moved to continue because the arresting officer was on paid administrative leave due to an internal investigation into his off-duty conduct); *Roan*, ¶ 14 (witness's unavailability due to "undergoing a difficult pregnancy . . . clearly constitute[d] good cause"); *see also, cf.*, *State v. Johnson*, 2000 MT 180, ¶¶ 9, 20, 300 Mont. 367, 4 P.3d 654 (felony speedy trial) (finding good cause where State's witness was "out of state interviewing witnesses in a federal case and would not return until the following week" and forensic scientist "had been subpoenaed to testify in other courts during the time set for trial").[6] The common thread in the above cases is that unlike Mayfield's case, the records

[6] This Court has at times referred to felony speedy trial cases when analyzing § 46-13-401(2). Though sometimes instructive, their persuasive value is limited because under § 46-13-401(2), "good cause" is a necessary element that the prosecution has the burden to prove to avoid dismissal. In felony speedy trial cases, by contrast, the "reason for the delay" is just one consideration among other factors. *State v. Ariegwe*, 2007 MT 204, ¶ 34, 338 Mont. 442, 167 P.3d 815. "In this state there is no common law in any case where the law is declared by statute." Mont. Code Ann. § 1-1-108. "[A]nalysis of the misdemeanor statutory speedy-trial right is conducted separately from a constitutional speedy-trial analysis . . . the analyses of each should be conducted separately." *City of Helena v. Heppner*, 2015 MT 15, ¶ 13, 378 Mont. 68, 341 P.3d 640.

contained some explanation of the circumstances regarding the witnesses' absence at the time that the extensions were granted.

Categorically waiving the speedy trial deadline whenever witnesses are presumed unavailable would lead to absurd results. Witness unavailability can have an infinite number of meanings, including that the witness wants to sleep in on the trial date or that they won last-minute tickets to a Las Vegas show. Although the inquiry always depends on the "totality of facts and circumstances," *Roan*, ¶ 13, there must be some way of determining when a witness's unavailability rises to the level of a "legally sufficient reason for the delay," *Wolverine*, ¶ 17.

A good cause finding that is supported by substantial evidence requires some explanation for the delay. Absent some level of justification, prosecuting attorneys are free to run amok, continuing trials past the statutory speedy trial deadline for just about any reason as long as they claim that a witness is "unavailable" in their motion for continuance. That is an unworkable standard that "would swallow the rule" and "render[] meaningless" the speedy trial right enshrined in § 46-13-401(2). *See Broadwater*, ¶ 19.

2. The City thrice continued Mayfield's trial without justifying its witnesses' unavailability.

The City failed to meet its burden to prove good cause for its witnesses' persistent and unspecified lack of availability.

Stating only that a witness is "unavailable," without more, is no less vague than delaying trial due to a "crowded docket." *See Broadwater*, ¶ 18. As in *Broadwater* and *Wolverine*, generic justifications, such as "the toxicologist is unavailable," are insufficient to demonstrate good cause. The City's excuses here that its witnesses were "unavailable," had a "personal conflict," or were "out of state" do not pass muster. The City presented "no evidence of any actions it took to ensure that [Mayfield's] trial would be held in a timely manner." *See Broadwater*, ¶ 18.

Unlike *Knippel*, ¶¶ 14–18, *Krenning*, ¶ 12, *Pepper*, ¶¶ 8–9, *Roan*, ¶ 14, and *Johnson*, ¶ 9, where the prosecution offered some legitimate bases for its witnesses' unavailability, here, the City failed to present legally sufficient reasons for its witnesses' absence. (*See* pp. 17–19, *supra* ("the City's toxicologist . . . is scheduled to be in another trial" and has a "personal conflict" in the afternoon; "the City's toxicologist is

unavailable"; "the City's foundational witness . . . is out of state").) The City did not demonstrate good cause in "the record" "[a]t the time" of the extensions. *See Wolverine*, ¶¶ 5, 25–26; *Gabbert*, ¶ 16 ("The City must demonstrate, by affidavit or otherwise, that it affirmatively attempted to provide the defendant with a trial within six months.").

Due to the lack of detail in the City's motions to continue, the Municipal Court was unable to conduct a legitimate good cause analysis under § 46-13-401(2). Because the burden to show good cause is on the City, *Wolverine*, ¶ 18, the District Court erred by finding the delay justified. The Court should reverse the District Court and dismiss Mayfield's case pursuant to § 46-13-401(2).

CONCLUSION

The Court should reverse Mayfield's conviction and dismiss. First, "jabbering" is not a crime. The DUI evidence resulted from an illegal seizure—one that violated Mayfield's right to free speech and lacked probable cause—and should therefore have been excluded. Second, the City's mysteriously "unavailable" witness did not excuse its failure to try Mayfield within the misdemeanor speedy trial deadline. Under either rationale, the Court should reverse and dismiss.

Respectfully submitted this 23rd day of October, 2025.

OFFICE OF STATE PUBLIC DEFENDER
APPELLATE DEFENDER DIVISION
P.O. Box 200147
Helena, MT 59620-0147

By: /s/ Dimitrios Tsolakidis
DIMITRIOS TSOLAKIDIS
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook 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 9,964, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Dimitrios Tsolakidis
Dimitrios Tsolakidis

APPENDIX

CERTIFICATE OF SERVICE

I, Dimitrios Tsolakidis, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 10-23-2025:

Rebecca Dockter (Attorney)
316 N. Park Avenue
Helena MT 59601
Representing: Helena, City of
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: Helena, City of
Service Method: eService

Electronically signed by Kat J. Hahm on behalf of Dimitrios Tsolakidis
Dated: 10-23-2025