IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0551

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CHARLES FABIAN IDHEN,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, the Honorable Donald L. Harris, Presiding

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STATEMENT OF THE ISSUES

1. Charles Fabian Idhen was pulled over in an unmarked police vehicle for alleged speeding after being "paced" for a few blocks. The detective had no other objective indication of Charles' speed. Whether the court erred in denying the motion to suppress the evidence obtained after the illegal stop?

2. Within three and a half minutes of the traffic stop, the detective asked to search Charles' vehicle for drugs. The detective's only articulated suspicion that Charles possessed drugs was Charles' uncorroborated past alleged conduct. Whether the court erred in denying the motion to suppress the evidence obtained after the illegal expansion of the stop from a traffic infraction into a drug investigation?

STATEMENT OF THE CASE

Charles Fabian Idhen was initially charged with Endangering the Welfare of Children in violation of Mont. Code Ann. § 45-5-622(3)(c), Count I, Criminal Possession of Dangerous Drugs in violation of § 45-9-102, MCA , Count II, on July 17, 2023. (D.C. Doc. 2 and 3). The State filed an amended information on April 17, 2024, adding two more counts of Criminal Possession of Dangerous Drugs for contraband found in the residence, Counts III and IV. (D.C. Doc. 99 and 100).

Charles challenged the initial stop, the unlawful expansion of the stop into an uncorroborated drug investigation, and the search of his residence as fruit of the poisonous tree. (D.C. Doc. 12). Charles also filed

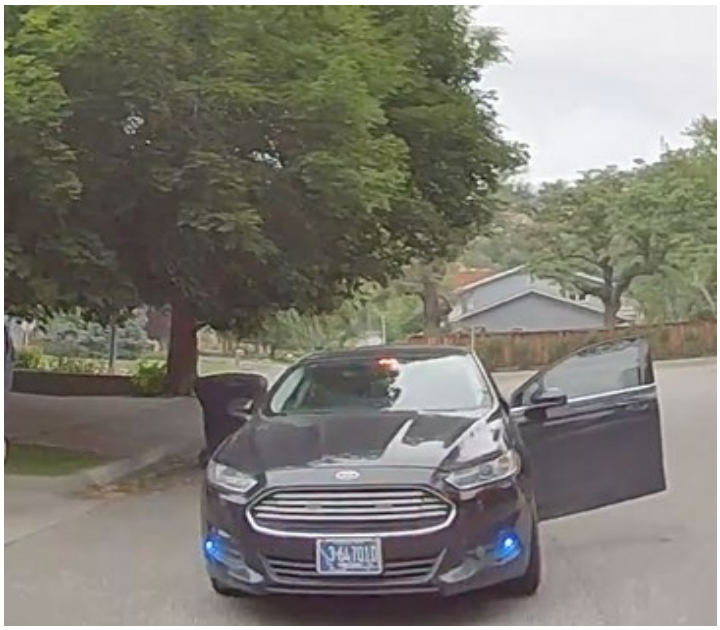
a motion to compel the identity of the informant or, alternatively, to dismiss. (D.C. Doc. 23). A suppression hearing was held on January 16, 2024, and a hearing on the Motion to Compel or Dismiss on January 23, 2024. (D.C. Doc. 50). The court denied the motions in their entirety. (D.C. Doc. 58). Charles entered a *nolo contendere* plea pursuant to an agreement, on May 17, 2024, to Endangering the Welfare of Children Count I and Criminal Possession of Dangerous Drugs Count III, reserving his right to appeal the district court rulings. (D.C. Doc. 114, 115). On July 24, 2024, the district court sentenced Charles to the Department of Corrections for five years on Count I: Endangering the Welfare of Children, five years to the Department of Corrections suspended, on Count III, to run consecutively, and dismissed Counts II and IV. (See attached Appendix A, Judgment; D.C. Doc. 127). Charles timely appeals. (D.C. Doc at 129).

STATEMENT OF THE FACTS

Detective Hallam

One sunny afternoon in July of 2023, on the busy street of Rimrock in Billings, Detective Hallam "paced" a vehicle for a "three or four blocks" and then pulled the vehicle over for allegedly going forty-

five in a thirty-five mile an hour speed zone. (See State's Exhibit 2, offered and admitted at Suppression Hearing 1.16.2024 ("Sup. Tr.") at 34, hereafter "BWC").[1] Hallam, working as a member of the Billings Street Crimes Unit ("SCU"), was in an unmarked vehicle. (D.C. Doc. 58 at 3). The black unmarked sedan displayed basic Montana citizen issued Billings license plates, with inconspicuous lights, presumably no radar gun, and sirens as shown here:



(BWC 21:33).

Days prior to July 17, 2024, Hallam stopped an unknown person, and after a search, discovered methamphetamine. (D.C. Doc. 58 at 2).

[1] Body worn camera will be reference by minutes and seconds accordingly.

Hallam promised that person "he would 'sit' on the case if that person provided information." (D.C. Doc. 58 at 2). A few days later, the unidentified person contacted Hallam and told Hallam that Charles sold her drugs within the previous months. She told Hallam that Charles drove a black Cadillac Escalade, lived somewhere on Rimrock, and carried a gun. (D.C. Doc. 58 at 3). Hallam looked up Charles' criminal history, which included previous drug charges and possession of a firearm by a prohibited person. (D.C. Doc. 58 at 3). Charles was currently under federal supervision. (D.C. Doc. 58 at 3).

Hallam began surveilling 2646 Rimrock Road, the address listed for Charles by his federal supervision officer. (D.C. Doc. 58 at 3). He watched the residence "for an hour here or there" in an unmarked vehicle two or three times before July 17, 2024. (Sup. Tr. at 19). Hallam observed a black Escalade with the hood up parked in the yard, as if it was out of service, and a grey GMC Yukon with temporary tags, registered to Charles, in the driveway. (D.C. Doc. 58 at 4; Sup. Tr. at 20). Hallam testified he did not see any signs of drug trafficking during his surveillance and investigation. (Sup. Tr. at 116). On that afternoon in July, Hallam decided to follow the Yukon when it left the residence.

Hallam testified he did not see who got into the Yukon when he decided to follow it. (D.C. Doc 58 at 4; Sup. Tr. at 118).

The Stop

After "pacing" the grey Yukon for "a few blocks," Hallam spoke into his body cam indicating the alleged speed of "going 45 in a 35." (BWC at 1:00). The driver, Charles and his girlfriend, Karilei Garcia ("Karilei") were the proud parents of a newborn baby who came into their world just fourteen days earlier. (D.C. Doc. 58 at 5; BWC at 4:09). Hallam approached the vehicle, advised Charles he was speeding and asked for his driver's license, registration, and proof of insurance. (BWC at 2:04-2:14). He also asked for Karilei's identification and advised them he knew about both their probationary statuses, and that they recently had a baby. (BWC at 2:47-4:10). The dashcam shows Hallam in shorts, sneakers, with a beard and baseball cap with sunglasses, as well as a holstered firearm. (State's Exhibit 1, Hallam's Dashcam at 01:58 hereafter "Dashcam", offered and admitted 1.16.24, Sup. Tr.at 32). After providing the requested documents, the following conversation occurred:

CHARLES: So you a detective?

HALLAM: Yup.

CHARLES: So why was you – was you watching my house or something?

HALLAM: Yeah.

CHALRES: Why?

HALLAM: Because your name's come up in being involved in drug distribution again Mr. Ibez. (phonetic).

CHARLES: But I'm not.

HALLAM: Okay. Well, that's why I'm here. So, I pulled you over for a lawful reason.

* * *

KARILEI: (Indiscernible). We just had a baby recently.

HALLAM: I know. I know all this, okay?

CHARLES: But I ain't distributing nothing. Nothing's happening.

HALLAM: Well, I'm not going to show my cards, right? That's not how this works, okay? I don't believe you one bit, because I have reason not to believe you. All right? Not just

on a whim, okay? Is there anything illegal in the car that I may be concerned about?

CHARLES: No.

HALLAM: Okay. Do you give me consent to search the car?

CHARLES: Sure, if that's what you would like.

HALLAM: (to Karilei) Okay. Do you have anything else that belongs to you besides your purse in the car?

(BWC at 3:39-4:39; Defendant's Exhibit EE at 2-5, offered and admitted Sup. Tr. at 120, hereafter "Ex. EE.").

Charles denied any involvement with drugs, but Hallam did not believe him. (BWC at 4:12, 4:51; Ex EE at 6). Hallam admitted that Charles was "not so much using because you don't test hot with your Federal P.O." (BWC at 5:07-5:09; Sup. Tr. at 116; Ex. EE at 6).

Hallam then stated, "I'm going to advise you of your guys' rights, okay?" (BWC at 5:17; Ex. EE at 6). Karilei explained to Hallam that she must get to work, and Hallam sternly responded, "Okay. I don't care what you got to do. This is a traffic stop, okay? So listen." (BWC at 5:30-5:33; Ex. EE at 6). Charles said, "if you're reading us our rights that means somebody's going to jail." (BWC at 5:36; Ex. EE at 6). Hallam

advised Charles of his rights and started questioning him. (BWC at 5:58-7:05; Ex. EE at 7-9). Charles reiterated that he's only been at home taking care of his baby. (BWC at 7:17-7:20).

The Search

Approximately eight minutes into the stop, Hallam asked Charles to exit the vehicle and conducted a pat down search. (BWC at 8:50-9:10; Ex. EE at 10). Hallam asked Charles and Karilei to sit on the curb and asked for consent to search Karilei's purse and reminded her she has a baby to worry about. (BWC at 11:29-11:42; Ex. EE at 10-13). Again, Hallam asked to search the vehicle and asked if he was going to find anything in the vehicle or in the residence. Detective Matthew Bisterline ("Bisterline") of the SCU was similarly dressed in street clothes, arrived to assist in the stop. (BWC at 11:25).[2] He reminded them he's been in touch with their respective State and federal probation officers. (BWC at 11:48-12:12). Hallam arrested Charles after

[2] (See also David, Jay, 3 Billings Police Officers on Leave as County Attorney Launches Review of Their Cases, https://www.ktvq.com/news/local-news/3-billings-police-officers-on-leave-as-county-attorney-launches-review-of-their-cases (retrieved December 22, 2024).

discovering a small plastic bag of drugs in the driver's side sun visor. (BWC at 21:35-21:41).

Hallam then called Charles's federal supervision officer, Kendall Ridgley, and asked to search Charles' residence because of the drugs found in Charles' vehicle. (BWC at 37:21; Sup. Tr. at 153). After approximately 20 seconds of silence, Officer Ridgley denied permission for Hallam to search Charles' residence. Hallam responded, "All right, well, I'll call the State PO and see what they want to do since they're living together." (BWC at 38:40-38:42). After more discussion, Hallam said, "I'll give Skillen a call. I've been dealing with him concerning her." (BWC at 39:17-38:20). Karilei admitted not updating her address with Skillen after she had her baby on June 30. (BWC at 42:31-42:44). Karilei advised Skillen she was told to get ahold of her probation officer after he got back from the academy. (BWC at 45:25-45:37). After Hallam told Skillen he's dealt with that basement apartment before, Skillen gave him permission to search the residence because Karilei violated a condition of probation by not updating her address. (BWC at 46:14-46:28).

After the arrest, Hallam gave Charles a written warning for speeding. (BWC at 51:21). Hallam placed Charles' license and a warning for speeding in Charles' back pocket. (BWC at 53:20).

The Suppression Hearings

On January 16, 2024, the district court held a suppression hearing on Charles' motion. (D.C. Doc. 50). The State called Hallam and Bisterline to testify. (Sup. Tr. at 4, 132). Charles argued that Hallam did not corroborate any current illegal activity before expanding the scope of the stop into a drug investigation, and made an illegal stop, search, seizure, therefore all the evidence, including the evidence found in the residence, should be suppressed. (D.C. Doc 12 at 3, Sup. Tr. at 153). The State responded that Charles was stopped for "traveling 45 mph in a 35 mph zone. That he gave consent for his vehicle to be searched, and a probation officer authorized the search of the home." (D.C. Doc 17 at 1).

Detective Hallam testified. The State admitted Hallam's unmarked police vehicle dash camera and body camera footage from the stop and search. (Sup. Tr. at 32, 34; State's Exhibit 1 and 2). He testified about his training and experience and educational background.

He attended the Montana State Law Enforcement Academy and did three and half months of field training. (Sup. Tr. at 6). Hallam did not testify to any of his training or experience about pacing, or other reliable methods, to detect speeding and did not testify whether he uses it often.

Defense counsel then asked Hallam about the stop:

DEFENSE: So this is a new topic. So when you – when you stopped the vehicle, at that moment in time you had not corroborated any of the illegal activity that you learned about, Correct?

HALLAM: That is correct.

DEFENSE: So there was no independent other source that confirmed you with anything?

HALLAM: Other than the history of the Defendant led some credence of the information that I had obtained from the source.

DEFENSE: But you could get that information from the source or not from the source. Correct?

HALLAM: You've lost me.

DEFENSE: You can get criminal history --

HALLAM: You're talking about independent witnesses outside the source.

DEFENSE: Correct.

HALLAM: But in today's day and age being a detective, we broaden the scope in order to facilitate or prove or disprove an allegation; and by me doing research on your client's history led to some validations and credence to what the source of information was showing because your client has a propensity, already legally documented, to being involved with drugs and firearms.

DEFENSE: And so, but that has nothing to do with what he is doing today. Correct? You could not corroborate his crime activities, illegal activities. Correct?

HALLAM: At that time when I stopped your client for driving 45 in a 35 mile an hour zone, no, ma'am, I had not corroborated any illegal activity at that point in time.

(Sup. Tr. at 121-122).

Additional facts are incorporated below.

STANDARD OF REVIEW

This Court reviews a district court's factual findings of particularized suspicion for clear error and its application of those facts to the law for correctness. *City of Missoula v.* Sharp, 2015 MT 289, ¶ 5, 381 Mont. 225, 358 P.3d 204. A lower court's factual findings are clearly erroneous if they are not supported by substantial credible evidence, misapprehend the effect of the evidence, or leave the Court with the firm and definite conviction that a mistake was made. *State v. Noli,* 2023 MT 84, ¶ 24, 412 Mont. 170, 529 P.3d 813.

SUMMARY OF THE ARGUMENT

The district court erred for two reasons. First, the district court erred in finding that Detective Hallam had a particularized suspicion of speeding to stop Charles. Pacing is an unreliable method of detecting speed. Here, the state failed to meet their burden to show a particularized suspicion existed. Hallam did not testify how or when he learned this methodology, how or whether it accurately estimates speed, and how often he uses it. Law enforcement should not utilize unreliable means to pretextually stop individuals when a plethora of accurate

means, that show contemporaneous speed, are available. Hallam did not have particularized suspicion or any other objective observations to justify a premeditated investigative stop in an unmarked vehicle for a minor traffic infraction.

Second, the district court erred when it found that Hallam did not illegally expand the stop when he asked Charles to search his vehicle for drugs. The search was an unlawful expansion of the initial reason for the stop in contravention of Mont. Code Ann. § 46-5-403. Here, Hallam did not have any objective or reasonable inferences, other than the uncorroborated comment of one individual from alleged past conduct, to expand the stop into a drug investigation. Hallam acted extortionately to justify the pretextual stop, seeking consent to search the vehicle without particularized suspicion, and going behind Charles's federal supervision officer's back to justify an invasive search of his residence. The evidence seized against Charles was a direct result of two constitutional violations, the stop and the search, that taints the search of the residence. The exclusionary rule applies because Hallam purposely exploited an invalid traffic stop of a probationer for a drug

investigation without particularized suspicion in violation of Charles's constitutional rights.

This Court should reverse the district court finding that Hallam possessed a particularized suspicion to conduct the stop and Charles himself expanded the scope of the stop to justify Hallam asking for consent to search the vehicle and remand with instructions to grant the motion to suppress and exclude the contraband found in the residence as fruit of the poisonous tree.

ARGUMENT

I. The district court erred in concluding Hallam possessed a particularized suspicion that Charles was speeding.

Government searches and seizures are generally unlawful under the Fourth Amendment to the United States Constitution and Article II, Section 11, of the Montana Constitution, unless conducted in accordance with a judicial warrant issued on probable cause and their fundamental purpose is to "protect the privacy and security of individuals from unreasonable government intrusion or interference." *Noli*, ¶ 26.

A peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or

occupant of the vehicle has committed, is committing, or is about to commit an offense. Mont. Code Ann. § 46-5-401(1).

This Court held in *Sharp* that an experienced officer's opinion that a car is speeding may, together with other accompanying objective evidence of wrongdoing, give rise to a particularized suspicion of wrongdoing. *Sharp*, ¶ 12. In *Sharp,* the officer observed pedestrians near an intersection while Sharp revved the engine of his pickup. *Sharp*, ¶ 3. When the light turned green and the pickup launched into rapid acceleration across the block. *Sharp*, ¶ 3. Based on the totality of the circumstances this Court held that the officer had a particularized suspicion to stop Sharp because of Sharp's speed, the presence of pedestrians near the intersection, and the danger of nighttime visibility. *Sharp*, ¶ 12.

Similarly, in *Flynn*, an officer observed a vehicle overtake another vehicle at high rate of speed. *State v. Flynn,* 2024 MT 236, ¶ 3, 418 Mont. 331, 577 P.3d 934. The officer could also see a RADAR controlled traffic sign which detects vehicle speed that notifies a driver's speed in relation to the posted speed limit. *Flynn*, ¶ 3. This Court held there was

a particularized suspicion based on the officer's training and experience *and the* speed displayed on the RADAR sign. *Flynn*, ¶ 17.

On the other hand, in *Reynolds*, this Court found that possible speeding and a delayed start through an intersection was not enough to stop the vehicle. *State v. Reynolds*, 272 Mont. 46, 51, 899 P.2d 540, 543 (1995). An officer observed the driver of car head down a dead-end street and thought the vehicle was "bordering on traveling too fast." *Reynolds*, 272 Mont at 48. The officer saw the driver make a U-turn in a city park and then met the driver at an intersection where the driver had the right-of-way. *Reynolds*, 272 Mont at 48. The driver sat for approximately 7 to 10 seconds before proceeding through the intersection where the officer then pulled him over. *Reynolds*, 272 Mont at 48. Despite this suspicious behavior, this Court held that possible speeding combined with waiting 7-10 seconds at the intersection did not constitute particularized suspicion. *Reynolds*, 272 Mont. At 51.

In this case, the only reason Hallam pulled Charles over was for speeding. The only data used to justify the stop was Hallam's self-serving statement of "pacing" Charles for an unknown distance. Pacing is an infrequently used method by law enforcement to determine whether a

driver is speeding. (See Ralph K. Jones, et. al., *Police Enforcement Procedures for Unsafe Driving Actions*, *Volume II: A Review of the Literature,* The University Michigan Highway Safety Research Institute, Prepared for U.S. Department of Transportation National Highway Traffic Safety Administration, pp. 31-32, (1980)). Aside from its unreliability, there are several steps a pacing officer must take if it is used correctly. First, the officer must make sure their vehicle speedometer is properly calibrated. (*Jones*, at 31.) Second, the officer must maintain an equal distance between themselves and the suspected offender. (*Jones,* at 31). Third, the officer must follow the vehicle for a period of time at a steady pace. (*Jones,* at 32). Due to the "availability of more precise methods (for example, radar) odometer pacing is used infrequently in most jurisdictions." (*Jones,* at 32). If an officer fails to maintain equal distance, the estimation of speed can be unreliable. See *State of Washington v. Vasquez*, 109 Wash App. 310, 318, 319, 34 P.3d. 1255, 1261 (2001), (finding an officer "must have enough time to observe and pace [for] the offense of speeding"); *Cf. Ohio v. Jarosz*, 2013-Ohio-5893, ¶ 19, 5 N.E.3d 1102, (Court of Appeals Ohio), (affirming a district court holding where the video demonstrated the officer did not maintain

an equal distance while pacing the suspect vehicle that conflicted with his testimony, thus making it unreliable and an illegal stop).

First, nowhere in the record is the speedometer of Hallam's unmarked police vehicle authenticated or recently calibrated. Second, it is unclear exactly how long Hallam "paced" Charles. Speaking into his body camera while driving, he indicated "pacing this vehicle . . . for a few blocks." (BWC 1:01-1:05). At the suppression hearing, Hallam testified for "three or four blocks." (Sup. Tr. at 24). Later, during cross examination, he claimed to have "paced them four to five blocks." (Sup. Tr. 119). Third, Hallam's testimony and dashcam show he did not maintain an equal distance with a steady pace for a sufficient period of time to establish reliability. (Dashcam at 00:34-1:18). Charles applied the brakes and slowed down at the stop light. (Dashcam at 00:28). Hallam moved closer to Charles. (Dashcam at 00:34-00:36). Charles moved farther away. (Dashcam at 00:42-00:48). Hallam sped closer to Charles. (Dashcam at 00:53-00:57). And closer. (Dashcam at 01:05-01:11).

In all, regardless of its inherent unreliability, the State failed to provide any evidence that Hallam accurately used the pacing method

here. Further, there was no other evidence, i.e. radar gun, dashcam footage, Arbitrator system, or Hallam's own BWC recording his speedometer to show Charles was speeding. Charles's driving was not aggressive or erratic. In fact, the dash cam shows Charles was operating his vehicle prudently taking into account the amount and character of traffic as Hallam's unmarked cruiser sped up to him.

Unlike *Sharp*, where the officer had other objective data including revving the engine and accelerating quickly, along with observing pedestrians in the crosswalk and what the officer characterized as "aggressive driving." Here, by contrast, Hallam had no indication of excessive speed other than his recorded voice statement and nebulous technique of pacing. It does not matter that Charles responded, "I'm just trying to get her to work," which Hallam took as an admission to speeding. This Court must only assess the information Hallam had before initiating the traffic stop based on the totality of the circumstances.

Like *Reynolds*, Hallam guessed that Charles was speeding. Hallam's own testimony about his experience and background showed he was focused on investigating drug activity, not enforcing traffic laws.

His generalized hunch about Charles's speed is not enough to constitute a particularized suspicion to conduct an investigative stop. Unlike *Flynn*, Hallam did not observe a sign-controlled RADAR posting the driver's speed. In no case has this Court held that "pacing" by itself is a reasonable means to pull someone over in an unmarked vehicle, or even in a marked vehicle.

The district court erred in finding that pacing, in this instance, was reliable enough to form a particularized suspicion to conduct an premeditated stop in an unmarked police vehicle for alleged speeding.

II. Even if Hallam had a particularized suspicion for the traffic infraction, he had no corroborated data or additional articulable facts to expand the scope of the stop into a premeditated drug investigation while Charles was seized.

If "based on additional specific and articulable facts observed or discovered during the lawful scope and duration of the initial stop," police may also "lawfully expand or prolong the scope or duration of an investigative stop beyond its initial justification upon development of a new or expanded particularized suspicion of criminal activity." *Noli*, ¶ 35 (citing *State v. Zeimer*, 2022 MT 96, ¶ 33, 408 Mont. 433, 510 P.3d 100).

Police must act with reasonable diligence to quickly confirm or dispel the particularized suspicion of criminal activity that justified the initial stop and any subsequent expansion in duration or scope must be based on new or additional suspicion developed within the lawful scope and duration of the initial stop. *State v. Panasuk*, 2024 MT 113, ¶ 14, 416 Mont. 430, 549 P.3d 432. Authority for the seizure thus ends when tasks tied to the traffic infraction are, or should reasonably have been, completed. *Panasuk*, ¶ 16 (citing *Rodriguez v. United States*, 575 U.S. 348, 355-56, 135 S. Ct. 1609, 1615, 191 L.Ed.2d 492 (2015)).

A. Charles was seized by Hallam and was not free to leave when Hallam expanded the stop into a drug investigation.

A constitutional seizure is government action that deprives an individual of dominion over his or her person or property. *Zeimer*, ¶ 24, (citing *State v. Loh*, 275 Mont. 460, 468, 914 P.2d 592, 597 (1996) (internal quotations omitted)). "Even a brief restrain of a person's liberty constitutes a constitutional seizure." *Zeimer*, ¶ 24 (citing *State v. Massey* 2016 MT 316, ¶ 9, 385 Mont. 460, 385 P.3d 544). "A person has been 'seized' within the meaning of the Fourth Amendment, only if, in view of all the circumstances surrounding the incident, a reasonable

person would have believed that he was not free to leave." *State v. Pham*, 2021 MT 270, ¶ 14, 406 Mont. 109, 497 P.3d 217 (citing *State v. Wilkins*, 2009 MT 99, ¶ 9, 350 Mont. 96, 205 P.3d 795). Circumstances showing an individual was seized include: "the threatening presence of several officers, the displays of a weapon by an officer, some physical touching of the citizen or the use of language or tone of voice indicating compliance with officer's request might be compelled." *Pham*, ¶ 14 (citing *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L.Ed.2d 497 (1980)).

The Court in *Pham* looked at whether Pham was constitutionally seized when officers conducted a drug investigation. *Pham*, ¶ 1. Pham was a Vietnamese immigrant who spoke English as a second language and was driving to his home in Minnesota from Butte. *Pham*, ¶ 2. He stopped at gas station in Miles City to get fuel and food. *Pham*, ¶ 2. He encountered an agent for the Division of Criminal Investigations in plain clothes and a gun in a leg holster, along with two Montana Highway Patrol troopers. *Pham*, ¶ 3. The troopers were driving the MHP van containing approximately 960 pounds of seized marijuana and the Agent was driving an unmarked gray pickup, which Pham was

starting at. *Pham*, ¶ 3. Based on Pham staring at the van, the agent figured he was either lost or committing a crime. *Pham*, ¶ 4. The agent approached Pham at the gas pump, found he was not lost, asked for his identification and asked whether he had any guns, knives, any form of drugs, or child pornography. *Pham*, ¶ 9. The agent testified that Pham allowed him to look in the trunk and in closed boxes that rendered 19 pounds of marijuana. *Pham*, ¶ 9.

This Court unanimously held that Pham was seized while detectives questioned him in the gas station. *Pham*, ¶ 23. After the agent confirmed Pham was not lost and not "committing an immediately apparent offense," this Court held Pham was seized by continued conversation and a consent to search query. *Pham*, ¶ 20. Pham was approached by several officers, one in plain clothes, but displaying a firearm, being asked a barrage of questions that any reasonable person would not have felt free to leave. *Pham*, ¶ 20.

In this same way, Charles was seized and not free to leave when Hallam expanded the stop from a traffic offense into a drug investigation. First, Hallam took possession of his driver's license, registration and proof of insurance. Even with Charles' alleged

admission of speeding, Hallam did not return the license nor complete the reason for the initial stop for almost an hour, even though he had all the information he needed to do so. Additionally, Hallam advised both Charles and Karilei of their rights and when they tried to interject, Hallam responded, "I don't care what you got to do, this is a traffic stop. So listen." No one in Charles's position would have felt free to leave. Hallam was not concerned about completing the reason for the initial stop. He did not care that Karilei was going to be late for work, even though his focus was obviously on Charles. He wanted to search the vehicle and in doing so, seized both Charles and Karilei.

Like *Pham*, Charles and Karilei were approached by an officer in plain clothes with a firearm holster and a badge before being asked about drug possession. Here, Detective Bisterline arrived shortly after and stood by to closely watch both Charles and Karilei. At this point, an objective, reasonable person would conclude Charles was seized simply by show of superior undercover law enforcement authority. Hallam then turned the stop into a drug investigation by almost immediately asking Charles for consent to search his vehicle for drugs. Hallam then

Mirandized both Charles and Karilei while they were seated in the vehicle. This further indicates Charles was not free to leave.[3]

In all, Charles was seized when he was pulled over, when Hallam asked him for consent to search, and when he was Mirandized due to Hallam's mere hunch of criminal activity based on alleged and uncorroborated past conduct.

B. Hallam used uncorroborated information by a tipster to justify a pretextual stop to conduct a premeditated search.

This Court has held that an officer may rely on an informant motivated by good citizenship to form a particularized suspicion necessary to justify a stop as long as the information is reliable. *State v. Zietlow*, 2017 MT 148, ¶ 10, 388 Mont. 26, 396 P.3d 740 (citing *State v. Martinez,* 2003 MT 65, ¶ 34, 314 Mont. 434, 67 P.3d 207). This Court uses three *Pratt* factors to determine the reliability and thus sufficiency of an officer's particularized suspicion which are: (1) whether the informant identified themselves to authorities; (2) whether the informant's report is based on personal observations; and (3) whether

[3] See Mont. Code Ann. § 46-6-107 Miranda Warning Prior to Custodial Interrogation.

the officer's observations corroborate the informant's information. *State v. Elison*, 2000 MT 288, ¶ 16, 302 Mont. 228, 14 P.3d 456 (citing *State v. Pratt*, 286 Mont. 156, 164-65, 951 P.2d 37, 42-43 (1997)).

For example, in *Zietlow*, an identified caller called 911 several times to report a drunk driver and observed Zietlow's intoxicated behavior. *Zietlow*, ¶ 3. Using the registration information provided by the caller, a MHP trooper went to the address of the vehicle, saw the vehicle turn into the driveway and initiated a stop. *Zietlow*, ¶4. The trooper confirmed the tag number, vehicle description and physical description of Zietlow. *Zietlow*, ¶ 4. This Court found all three *Pratt* factors to be satisfied because the caller was identified and this was undisputed, the caller personally observed Zietlow's behavior, and the trooper confirmed the tag number, make of vehicle and physical attributes described by the informant. *Zietlow*, ¶¶ 13, 16.

Likewise, in *Elison*, a citizen riding with an officer, saw the driver of a vehicle hunched over the steering wheel smoking a brass-colored pipe. *Eilson*, ¶ 6. The citizen advised the officer that he thought the driver was smoking marijuana. *Elison*, ¶ 7. The officer pulled the car over and testified he could smell the odor of marijuana. *Elison*, ¶ 8. He

further testified that Elison's eyes were red and glassy, Elison appeared to be nervous and would not sit still. *Elison*, ¶ 8. When confronted about the brass pipe, Elison admitted he threw it out the window. *Elison*, ¶ 9. Elison gave verbal written consent to search his vehicle, the officer found marijuana, methamphetamine and associated paraphernalia. *Elison*, ¶ 10.

This Court held that the officer had sufficient particularized suspicion because the officer knew the passenger's identity, the passenger relayed the information of what looked like a marijuana pipe to the officer, and the officer substantiated the passenger's description of the vehicle. *Elison*,¶¶ 21, 22.

Here, the information given by the informant falls below what the *Pratt* factors require. The tipster allegedly identified him or herself to the authorities, but the district court kept the tipster's identity secret. (D.C. Doc. 58 at 11). Nothing in record shows the informant's name and address, charges, or any other identifying information. Unlike *Zietlow* and *Elison*, where the anonymous citizen immediately conveyed their personal observations to the officer, the anonymous tipster here talked about interactions from months ago after being caught for a crime. The

tipster told Hallam about personal past observations of Charles's alleged conduct, by either phone or text as Hallam "couldn't recall" which. (Motions Hearing 11.23.25 at 14).

The caller in *Zietlow* called 911 multiple times and gave a physical description while watching the driver's behavior. The passenger in *Elison* was riding with the officer. Here, Hallam spoke to the informant tipster only twice. Further, it was not until Hallam arrested the tipster and promised to "sit" on the felony charges, that the informant came up with the information about Charles. The informant's self-interest in avoid criminal charges destroys any possible reliability coming from a citizen informant. There is great motivation for someone to evade felony charges by providing any possible information to an intimidating detective. Multiple times throughout the stop Hallam said to Charles, "we've always treated you right." (Sup. Tr. at 109). This indicates Charles was already known to the SCU and Hallam. Further, nothing from Hallam's investigation and observations of Charles's behavior prior to pulling him over, or during the stop, support a particularized suspicion that Charles had drugs in his possession.

In all, Hallam used a brief interaction from a current drug user that gave limited, superficial information. Hallam used that to justify a pretextual stop and conduct a drug investigation. Accordingly, the information Hallam used to investigate Charles for drug possession was uncorroborated and unreliable.

C. Considering all the information known to Hallam when he began the drug investigation, the district court erred in finding Hallam possessed a particularized suspicion that Charles possessed drugs.

At the time Hallam expanded the stop, all he had was unreliable information from someone evading criminal charges and knowledge of Charles's criminal history and current compliance with federal supervision. In *Noli*, a trooper pulled over an out of state vehicle in a remote part of Montana for traveling in the left lane of the interstate without passing. *Noli*, ¶ 3. The trooper observed the vehicle to have a lived-in look, odor of heavy cigarette smoke, with blankets, pillows, and trash indicative of hard travel. *Noli*, ¶¶ 5, 9. After having Noli sit in the police cruiser, the trooper questioned her extensively about matters wholly unrelated to the traffic violation. *Noli*, ¶ 10. The trooper found Noli to be extraordinarily nervous, unable to answer simple questions, and had a choppy manner of speaking. *Noli*, ¶ 14. The trooper sought

consent to search the vehicle after what he thought were multiple indications of potential drug involvement or distribution. *Noli*, ¶ 21.

This Court reaffirmed that otherwise perfectly legal or innocuous conduct or behavior may be a contributing factor in a support of particularized suspicion "but only in conjunction with other *specific indicia* of criminal activity." *Noli*, ¶ 62 (emphasis added). It reasoned the trooper detoured into an unrelated illegal drug investigation without objective particularized suspicion of such activity and unlawfully extended the scope and duration of the stop. *Noli*, ¶ 63.

In *Carter-Brueggeman*, an anonymous person reported suspicious activity at a known drug residence. *State v. Carter-Brueggeman*, 2025 MT 193, ¶ 4, 423 Mont. 514, 574 P.3d 906. No vehicles been there for a few days, then suddenly multiple people in multiple vehicles appeared while some departed and some remained at the residence. *Carter-Brueggeman*, ¶ 4. A deputy, based on his training and experience, knew that when "someone is suspected of distribution get a new product, all of the sudden there's people or vehicles coming and leaving more than usual." *Carter-Brueggeman*, ¶ 6. An off-duty trooper on the drug interdiction team observed Carter-Brueggeman in vehicle with expired

registration recently depart the suspect residence, and the trooper relayed that information to the deputy. *Carter-Brueggeman*, ¶ 5. The deputy initiated a stop based on the expired registration and, after recognizing several inconsistencies in Carter-Brueggeman's story in conjunction with deflective behavior and admitting to stopping at another known drug abuser's business, he sought consent to search. *Carter-Brueggeman*, ¶¶ 14, 20.

This Court held that the deputy had sufficient particularized suspicion based on the totality of the circumstances. *Carter-Brueggeman*, ¶ 39. Carter-Brueggeman confirmed that she was at the residence and described her personal knowledge of the recent drug activity there. *Carter-Brueggeman*, ¶ 39. These admissions confirmed the information provided by the anonymous caller, as well as the trooper, which justified expanding the scope of the stop into her potential drug activities at the residence. *Carter-Brueggeman*, ¶ 39.

More recently this Court decided, in *State v. Hunt*, 2025 MT 122, 422 Mont. 322, 570 P.3d 567, that an officer had particularized suspicion to conduct a stop when the officer observed an unregistered vehicle parked in front of an apartment associated with heavy

methamphetamine use. *Hunt*, ¶¶ 3, 34. There, the detective observed Hunt to have glassy and red eyes and jittery movements with rapid, continuous, and off topic speech as well asl inconsistent representations about her travels. *Hunt*, ¶ 29. The detective had specific knowledge of drug activity involving the apartment where her vehicle was. *Hunt*, ¶ 29. The detective previously encountered "folks associated with drugs from that apartment" during other law enforcement engagements. *Hunt*, ¶ 3. This Court held that the detective formed a particularized suspicion to expand the scope the stop because of Hunt's observed behavior *in conjunction* with the known ongoing drug activity associated with the apartment. *Hunt*, ¶ 34.

On the other hand, in *Panasuk*, the police initiated a stop for a vehicle towing a trailer without trailer plates. *Panasuk*, ¶ 4. After Panasuk was unable to provide the usual documentation, the officers requested him and the two passengers exit the vehicle. *Panasuk*, ¶ 4. One of the passengers was known by the officers as a current drug user. *Panasuk*, ¶ 4. After seeing the other passenger was from North Dakota, one of the officers called Williams County Task Force in North Dakota and was told the other passenger had history of drug distribution.

Panasuk, ¶ 4. The officer recalled that a couple weeks prior, Panasuk was driving a stolen vehicle and learned from a Special Agent with the Bureau of Indian Affairs that Panasuk had admitted to selling methamphetamine on the Reservation, which turned out to be false. *Panasuk*, ¶¶ 5, 21.

The Court in *Panasuk* held that the officer unlawfully expanded the scope of the stop without particularized suspicion when he concluded "Panasuk was *currently* involved in illegal drug activity." *Panasuk,* ¶ 19 (emphasis added). Even though there were known drug users in the car, and Panasuk had prior drug involvement, this Court held it would be improper to uphold the expansion of the search when it was based on information the officer had about prior suspected drug involvement. *Panasuk*, ¶ 22. People's "prior criminal involvement is alone insufficient to give rise to requisite reasonable suspicion because. . . any person with any sort of criminal record could be subject to investigative stops at any time with no justification at all." *Panasuk*, ¶ 22 (citing *United States v. Sandoval,* 29 F.3d 537, 543 (10th Cir. 1994)).

Here, Hallam did not possess a particularized suspicion. First, as discussed above, the information Hallam received from the informant

was unreliable. The sleuth did not vet the tipster. Unlike *Carter-Brueggeman*, there were no indications of current drug activity. Nothing Hallam observed while watching Charles's residence the days leading up to the stop led him to believe presently Charles possessed drugs. There were no people coming and going and no unknown vehicles parked outside the residence like *Carter-Brueggeman*. Indeed, Hallam testified he did not corroborate any illegal activity from his investigation at the time he stopped Charles. Additionally, nothing in the first three and half minutes of the stop gave Hallam suspicion of drug activity. Charles was candid and answered all Hallam's questions without reserved and denied having drugs. Charles did not provide inconsistent answers or deflective behavior. The only other information Hallam had was from Charles's federal supervision offers that he was testing clean. These, taken together, are not illegal activities and were already known by Hallam through Charles's federal supervision officer and others on the SCU.

Charles's criminal history was not enough to support an invasion of Charles's privacy. Like in *Panasuk,* Charles's criminal record involves prior illegal narcotic convictions, but this alone is not a basis to

start a drug investigation. Hallam knew from other sleuths on the SCU that Charles had interactions with them years prior. Hallam said during the stop several times, "that's why I'm here." (Sup. Tr. at 118, 148, 149). And said "Listen, we've always been respectful to you. Right?" indicating Hallam's prior familiarity with Charles. (BWC at 15:26). Like in *Hunt*, Hallam possessed no additional contemporaneous indicia of criminal activity justifying expanding the scope of the stop. The detective in *Hunt* had specific indications of ongoing drug activity at the residence, including the behavior of Hunt during the stop.

Any reasonable person would ask someone in an unmarked and inconspicuous police cruiser, wearing shorts and sporting facial hair, why they are following them or watching their house. Many people have been pulled over once or twice in their lives, but it's likely only a very small percentage have been pulled over by a police vehicle like the one shown *supra.* Like this Court held in *Noli*, perfectly legal or innocuous conduct or behavior may be a contributing factor in support of particularized suspicion, but only if there are other specific indicia of criminal activity. Here, there was none and Hallam's testimony acquiesced that crucial fact.

Further, once Hallam was denied consent to search the residence from Charles's federal supervising officer, he did not wait to see if that officer would authorize the search because Charles was already under arrest. Nor did he seek to obtain a judicial warrant, or consent from Charles or Karilei. He simply told the federal supervising officer "well, I'll [just] call Skillen I've been working with him." (BWC at 39:20). He did not get the answer he wanted from the federal supervising officer so he went through the back door, as a stalking horse.[4] Asking a law enforcement officer a single word question of "why" does not lawfully expand a minor speeding infraction into a full-blown drug investigation simply based on an unreliable tipster, especially when there are no

[4] The stalking horse theory is a concept declined by this Court in *State v. Crawford*, 2016 MT 96, 383 Mont. 229, 371 P.3d 381, where the subjective motivations of law enforcement officers exploiting a person's probationary status to expand a collateral criminal investigation is not a basis for invaliding an otherwise legal probation search. *Crawford*, ¶¶ 20-23 citing *United States v. Knights*, 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001). *Knights*, however, has not been adopted by all jurisdictions. In *State v. Short*, 851 N.W.2d. 474 (Iowa, 2014), that court held the absence of a valid judicial search warrant of a probationer's apartment by law enforcement violated the search and seizure provision of Iowa's state constitution because of its strong emphasis on individual rights. *Short*, 851 N.W.2d at 506. *Cf.* Iowa Const. art. I § 8, Mont. Const. art. II, § 11. This argument is not postulated here because it is not record based for ineffective assistance of counsel but highlights for this Court the many unreasonable actions of this officer considering the heightened constitutional rights for warrantless entries into a home. See *State v. Case*, 2024 MT 165, 417 Mont. 354, 553 P.3d 985, cert. granted 605 U.S. ____ (2025).

other specific indicia of ongoing criminal activity and the suspect is seized. Hallam was acting on a whim and wanted to target Charles.

Thus, the district court erred when it held the stop was not unlawfully expanded because Hallam possessed a particularized suspicion to start a drug investigation by asking for consent to search the vehicle.

D. The exclusionary rule applies

Under the exclusionary rule, evidence discovered as a direct result of a constitutional invalid seizure or search is generally inadmissible against the accused in subsequent proceedings. *State v. Laster,* 2021 MT 269, ¶ 35, 406 Mont. 60, 497 P.3d 224 (citing *Wong Song v. United States,* 371 U.S. 471, 484-85, 83 S.Ct. 407, 416, 9 L.Ed.2d 441 (1963)). "The core premise of the exclusionary rule is to 'deter future unlawful police conduct.'" *State v. Baldwin*, 2024 MT 199, ¶ 25, 418 Mont. 70, 555 P.3d 748. The three narrowly recognized exceptions are: (1) attenuation; (2) independent source; or (3) inevitable discovery. *Baldwin*, ¶ 25.

The exclusionary rule applies here stemming from the constitutional violations of Charles's initial seizure and the unlawful expansion of the stop. Charles was charged with Counts III and IV for

drugs found in his residence nine months after his arrest. (D.C. Doc 99). Trial counsel did not contest the search of the house but argued that it is the fruit of the poisonous tree. (Sup. Tr. at 153). Here, Hallam purposely exploited an invalid traffic stop of a probationer for a drug investigation without particularized suspicion using past criminal history and uncorroborated information.

The search of the residence was a probation search authorized through Karilei's probation officer for not updating her address two weeks after having a baby. Charles's federal supervising officer did not authorize a search of his residence even with the information that Hallam had located drugs in the vehicle. Charles was clean and taking care of his baby. Hallam's actions are not attenuated because Charles was unlawfully seized, never free to leave, and the stop was unlawfully expanded. The entire stop and search of the vehicle and residence lasted just under two and half hours. (BWC 0:00-2:27:13). The only source of Hallam's uncorroborated information was a person currently violating the law with the motivation to avoid felony charges. The search of the residence was the result of the exploitation of the initial stop and subsequent searches. If not for the illegal stop, and not for the illegal

search, there would have been no reason for Hallam to further exploit Karilei's probationary status to enter Charles's residence. This unreasonable government conduct must be deterred.

The evidence seized must be excluded as fruit of the poisonous tree.

CONCLUSION

The district court committed reversible error by finding that pacing, in and of itself, was a justifiable means to pursue a pretextual stop when the methodology used by the detective, as compared to the footage and his inconsistent and lacking testimony, made it unreliable.

Additionally, the district court committed reversible error by finding the sleuth possessed a particularized suspicion to expand the search into a drug investigation when there were no other indications of ongoing illegal criminal activity. The evidence seized against Charles was a direct result of two constitutional violations, the stop and the search, that taints the search of the residence. Therefore, this Court should reverse the district court's denial of the motion to suppress and remand to the district court with instructions to grant the motion to

suppress the search from an illegal stop and the contraband found in the residence as fruit of the poisonous tree.

Respectfully submitted this 9th day of January, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced 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 7,877, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Dustin L. Kuipers
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APPENDIX

CERTIFICATE OF SERVICE

I, Dustin L. Kuipers, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 01-09-2026:

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