

No. 24-624

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IN THE  
**Supreme Court of the United States**

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WILLIAM TREVOR CASE,  
*Petitioner,*  
v.  
STATE OF MONTANA,  
*Respondent.*

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**On Writ of Certiorari to the  
Supreme Court of the State of Montana**

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**JOINT APPENDIX**

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PETITION FOR WRIT OF CERTIORARI FILED: DECEMBER 4, 2024  
CERTIORARI GRANTED: JUNE 2, 2025

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\* The following opinions and orders have been omitted in printing this Joint Appendix because they appear on the following pages in the appendix to the Petition for a Writ of Certiorari:

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MONTANA THIRD JUDICIAL DISTRICT,  
ANACONDA-DEER LODGE COUNTY

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No. DC-21-100

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The STATE OF MONTANA,  
*Plaintiff,*  
v.  
WILLIAM TREVOR CASE,  
*Defendant.*

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**RELEVANT DOCKET ENTRIES**

<b>DATE</b>	<b>NO.</b>	<b>PROCEEDINGS</b>
12/15/2021	23	Amended Information
12/17/2021	26	Motion to Suppress
12/17/2021	27	Brief in Support of Motion to Suppress
01/03/2022	32	State's Response to Defendant's Motion to Suppress (w/attached DVD exhibits 1, 2, 3)
01/05/2022	38	2nd Amended Information
01/19/2022	44	Reply Brief in Support of Motion to Suppress
02/14/2022	55.1	State's Exhibits (1, 2, 3 body cam videos) & #4 is scanned

<b>DATE</b>	<b>NO.</b>	<b>PROCEEDINGS</b>
02/14/2022	55.2	Minute Entry for motions hearing held on 2/14
02/17/2022	56	Order on Motions
07/18/2022	79	Renewed Motion to Suppress
07/18/2022	80	Brief in Support of Renewed Motion to Suppress
07/27/2022	87	State's Response to Defendant's Motion to Suppress
08/11/2022	98	Reply Brief in Support of Renewed Motion to Suppress
09/28/2022	102.1	Minute Entry – Motions Hearing 9/28/22
09/30/2022	103	Order on Pending Motions
12/08/2022	115	Verdict Form
02/24/2023	140	Judgment and Order of Commitment

## SUPREME COURT OF MONTANA

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No. DA 23-0136

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THE STATE OF MONTANA,  
*Plaintiff and Appellee,*

v.

WILLIAM TREVOR CASE,  
*Defendant and Appellant.*

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**RELEVANT DOCKET ENTRIES**

<b>DATE</b>	<b>PROCEEDINGS</b>
02/24/2023	Notice of Appeal Filed
05/12/2023	Appellant's Opening Brief
10/31/2023	Appellee's Response Brief
12/14/2023	Appellant's Reply Brief
08/06/2024	Opinion of the Supreme Court of Montana

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**MONTANA THIRD JUDICIAL DISTRICT COURT,  
 ANACONDA-DEER LODGE COUNTY**

STATE OF MONTANA,  <i>Plaintiff,</i>  v.  WILLIAM TREVOR CASE,  <i>Defendant.</i>	Cause No. DC 21-100  <b>AMENDED INFORMATION</b>
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Ben Krakowka, Anaconda-Deer Lodge County Attorney, alleges that on or about the September 27, 2021, in Deer Lodge County, Montana, the above-named Defendant committed the following offense(s):

**Count I: Assault on a Peace Officer**, a felony, in violation of §45-5-210(1)(b)(i), MCA (2019), committed in Anaconda-Deer Lodge County, Montana, when the Defendant knowingly or purposefully caused reasonable apprehension of serious bodily injury in Sgt. Richard Pasha when he pointed a pistol at Sgt. Richard Pasha.

**Penalty**

A person convicted of Assault on a Peace Officer is subject to incarceration in a State Prison for a term of not less than two (2) years or more than ten (10) years and a fine of not more than \$50,000, or both.

Respectfully submitted this 15<sup>th</sup> day of December,  
2021.

/s/ Ben Krakowa  
Ben Krakowka  
County Attorney

The witnesses now known to the State are as follows:

Officer Linsted  
Anaconda Police Department  
800 Oak St.  
Anaconda, MT 59711

Sgt. Pasha  
Anaconda Police Department  
800 Oak St.  
Anaconda, MT 59711

Captain Heffernan  
Anaconda Police Department  
800 Oak St.  
Anaconda, MT 59711

Chief Sather  
Anaconda Police Department  
800 Oak St.  
Anaconda, MT 59711

Agent Mark Strangio  
Division of Criminal Investigation  
P.O. Box 8127  
Bozeman, Montana 59703

Agent Ryan Eamon  
Division of Criminal Investigation  
P.O. Box 9  
Butte, Montana 59703

Jennifer Harris  
311 Cottonwood  
Anaconda, MT 59711



Christopher R Betchie  
Hull, Swingley & Betchie PC.  
P.O. Box 534  
Helena, MT 59624  
(406)-204-5710  
christopher@hullmtlaw.com  
*Attorney for Defendant*

**MONTANA THIRD JUDICIAL DISTRICT COURT,  
DEER LODGE COUNTY**

\* \* \* \* \*

STATE OF MONTANA,  <i>Plaintiff,</i>  -vs-  WILLIAM TREVOR CASE,  <i>Defendant.</i>	Cause No. DC 2021-100  Hon. Ray J. Dayton  <b>MOTION TO SUPPRESS</b>
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COMES NOW the above-named Defendant William Trevor Case, by and through counsel, Christopher R. Betchie, and moves the Court for an Order suppressing all evidence, both physical items and verbal statements, collected/obtained by Anaconda-Deer Lodge County Police Department in its illegal search and seizure of Defendant and his residence. Because this illegal search was conducted without a warrant, or a valid exception, all evidence obtained in the illegal search must be suppressed as it was obtained in violation of Defendant's rights, as guaranteed by the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and Article II, section 11 of the Montana State Constitution, that led to a subsequent warranted search and seizure, pursuant to the "fruit of the poisonous tree" doctrine.

THEREFORE, Mr. Case respectfully requests this Court suppress all evidence, both physical items and verbal statements, collected/obtained by Anaconda-Deer Lodge County Police Department in its illegal search and seizure of Defendant and his residence. Because this illegal search was conducted without a warrant, or a valid exception, all evidence obtained in the illegal search must best suppressed as it was obtained in violation of Defendant's rights, as guaranteed by the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and Article II, section 11 of the Montana State Constitution, that led to a subsequent warranted search and seizure, pursuant to the "fruit of the poisonous tree" doctrine.

DATED this 17th day of December 2021.

HULL, SWINGLEY &  
BETHCIE, PC

/s/ Christopher R. Betchie  
Christopher R. Betchie  
Attorney for Defendant

CERTIFICATE OF SERVICE.

I hereby certify that a true and correct copy of the foregoing MOTION TO SUPPRESS was served, via US Mail on 17th day of December 2021, to the following:

Ben Krakowka  
Anaconda-Deer Lodge County Attorney  
800 Main St.  
Anaconda, MT 59711-2999

HULL, SWINGLEY &  
BETHCIE, PC

By: /s/ Christopher R. Betchie  
Attorney for Defendant

Christopher R Betchie  
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christopher@hullmtlaw.com

*Attorney for Defendant*

**MONTANA THIRD JUDICIAL DISTRICT COURT,  
DEER LODGE COUNTY**

\* \* \* \* \*

STATE OF MONTANA,  <i>Plaintiff,</i>  -vs-  WILLIAM TREVOR CASE,  <i>Defendant.</i>	Cause No. DC-2021-100,  Hon. Ray J. Dayton  <b>BRIEF IN SUPPORT OF MOTION TO SUPPRESS</b>
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COMES NOW the above-named Defendant William Trevor Case, by and through counsel, Christopher R. Betchie, and hereby supports his motion before the Court for an Order suppressing all evidence, both physical items and verbal statements, collected/obtained by Anaconda-Deer Lodge County Police Department in its illegal search and seizure of Defendant and his residence. Because this illegal search was conducted without a warrant, or a valid exception, all evidence obtained in the illegal search must be suppressed as it was obtained in violation of Defendant's rights, as guaranteed by the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and Article II, section 11 of the Montana State Constitution, that led to a subsequent warranted

search and seizure, pursuant to the “fruit of the poisonous tree” doctrine.

### FACTUAL BACKGROUND

On September 27, 2021, Defendant, William Trevor Case, (hereinafter Trevor) was alone in his home. Trevor had been experiencing a depressive episode and had been engaged in a verbal argument with his ex-girlfriend/former romantic partner Jennifer Harris via telephone. At some point during the call, Trevor threatened self-harm and indicated that he had a loaded firearm. After Trevor abruptly ended the call, Jennifer called Anaconda-Deer Lodge County (hereinafter ADLC) Dispatch to report that he “was threatening suicide and the phone just went silent, and she didn’t get a response;” and that “he said he had a loaded gun, and all I heard was clicking and, I don’t know, I thought I heard a pop at the end, I don’t know.” *911 call by Jennifer Harris to ADLC Dispatch.*

At 9:06 pm, Captain Dave Heffernan was dispatched to Trevor’s residence at 307 West Commercial Ave in Anaconda, Montana. While en route, Captain Dave Heffernan radioed Sergeant Richard Pasha and Officer Blake Linsted to abandon the call they were responding to at the time and join him on the welfare check at Trevor’s home, because they’ve “dealt with this male before.” *MT Dept. Of Justice Interview of Captain Heffernan* October 6, 2021.

Sergeant Pasha and Officer Linsted arrived at Trevor’s residence first, but instead of parking in front on his residence, they decided to park around the corner on Locust St. and sneak up on foot to surveil the property as part of their “wellness check.” Officer Linsted immediately drew his service weapon upon arrival and had it out while he and Sergeant Pasha

stalked the front of Trevor's house, looking in windows with their flashlights. *Body camera footage from Sgt Pasha and Officer Linsted.* Captain Heffernan arrived shortly thereafter, and the three consulted for a moment before returning to search Trevor's residence through the windows to ascertain his position in the house. *Body camera footage from Sgt. Pasha and Officer Linsted.* Jennifer Harris then arrived on scene and approached Trevor's home. Captain Heffernan, Sergeant Pasha, and Officer Linsted then spoke with Ms. Harris for a moment mainly to ascertain a better understanding of the layout of Trevor's home and his possible location in the home. *Body camera footage from Cpt. Heffernan, Sgt. Pasha, and Officer Linsted.*

After stalking around Trevor's home for five minutes and 28 seconds, peeping in windows, Sergeant Pasha finally knocked on Trevor's front door. Trevor did not answer the door and made no indication of being home. Notably, Trevor had no duty to respond to anyone, including the police without a warrant, who knocked on his door late at night. After receiving no answer or sign of movement from knocking on the door, Sergeant Pasha checked the door handle and realized it was unlocked, thereby making his first illegal entry into Trevor's residence. *Body camera footage from Cpt. Heffernan, Sgt. Pasha, and Officer Linsted.*

The officers then resumed searching the front side of Trevor's home via peeping in windows with their flashlights, treading all over the curtilage of Trevor's home. After about seven and a half minutes of illegally searching Trevor's home from the exterior, the three officers noticed an empty holster on the kitchen counter. *Body camera footage from Cpt. Heffernan, Sgt. Pasha, and Officer Linsted.* The officers continued to illegally search the house for

Trevor from the front exterior of his home, for another two minutes before proceeding to Trevor's backyard after having been on scene for approximately nine and a half minutes. *Body camera footage from Cpt. Heffernan, Sgt. Pasha, and Officer Linsted.*

The three officers then proceeded to illegally enter Trevor's backyard and search Trevor's house from the exterior for approximately another six minutes by looking through windows with flashlights and entering his back porch and looking through his back door. *Body camera footage from Cpt. Heffernan, Sgt. Pasha, and Officer Linsted.* It's only after Officer Linsted heard someone walking down the alley behind Trevor's house that they ceased searching his house from the backyard and exited his backyard. *Body camera footage from Cpt. Heffernan, Sgt. Pasha, and Officer Linsted.*

After speaking to a neighbor in the alley, the officers then proceeded to the front of Trevor's home, after more than 18 minutes on scene. *Body camera footage from Cpt. Heffernan, Sgt. Pasha, and Officer Linsted.* While proceeding to the front of Trevor's home Sgt. Pasha began speculating as to whether Trevor was in his home or "out walking around with a gun." *Body camera footage from Officer Linsted at 0:18:09<sup>1</sup>.* It's after that statement by Sgt. Pasha, that Officer Linsted began voicing concerns about an upstairs window and "not liking it." *Body camera footage from Officer Linsted at 0:18:21.* After further discussion between the three officers, Sgt. Pasha stated "I don't know, do you make entry and then all of a sudden he

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<sup>1</sup> All times are play back times on Counsel's video program and not time stamps on body camera footage, as not all footage has time stamps.

pulls a gun and then you shoot him, if he's actually not dead." *Body camera footage from Officer Linsted* at 0:19:30. Followed by Officer Linsted asking, "or you leave him?" *Body camera footage from Officer Linsted* at 0:19:38.

Sergeant Pasha then returned to searching the front of Trevor's home, while Officer Linsted approached Jennifer Harris to obtain Trevor's phone number to call him. Officer Linsted decided to attempt to reach Trevor via phone after more than 20 minutes on scene, most of which time was spent illegally searching Trevor's home from the outside. *Body camera footage from Officer Linsted*. While attempting to obtain Trevor's phone number from Jennifer Harris, Officer Linsted was called him over to the front door of Trevor's home by Sergeant Pasha, who stated he observed a notebook, with about a paragraph of writing in it, located on Trevor's coffee table in his living room. *Body camera footage from Officer Linsted* at 0:20:48. After which, Officer Linsted abandoned efforts to contact Trevor via telephone, and he and Sergeant Pasha concluded that the paragraph was a handwritten note, with inferences that they believed it to be a suicide note. Notably, neither officer had actually read the contents of the handwritten document that they so quickly decreed it to be a "suicide note."

Officer Linsted and Sergeant Pasha then met with Captain Heffernan, who was sitting in his vehicle while on the phone with ADLC Police Chief William "Bill" Sather. Officer Linsted and Sergeant Pasha notified Captain Heffernan of the handwritten document on Trevor's coffee table while insinuating that it was a suicide note. *Body camera footage from Officer Linsted* at 0:21:42. While approaching Captain

Heffernan's vehicle Sergeant Pasha stated "if we go in there we gotta be careful man, just in case he didn't actually shoot himself." *Body camera footage from Sergeant Pasha* at 0:21:32. After conferring with Captain Heffernan, Sergeant Pasha notably admitted the existence of his unreasonable apprehension of bodily harm, prior to even entering the residence or ever seeing a weapon, by stating that he was "scared that maybe he [Trevor] didn't actually shoot himself, because he can't and he's tried suicide by cop before, and he like left us all this so we're gonna go in the house and he's gonna fucking pull a gun on us, is what I'm worried about." *Body camera footage from Sergeant Pasha* at 0:22:23, and *Body camera footage from Officer Linsted* at 0:21:45.

It's after Sergeant Pasha expressed his concern for the third time that Trevor wasn't actually dead or wounded that Officer Linsted indicated that he was going to retrieve his rifle from his and Sergeant Pasha's patrol vehicle. *Body camera footage from Officer Linsted* at 0:21:57. While making his way to their patrol vehicle on Locust St., Officer Linsted asked Sergeant Pasha if he wanted his rifle as well. *Body camera footage from Officer Linsted* at 0:22:08. Officer Pasha initially declined and then changed his mind and asked Linsted to retrieve his as well. *Body camera footage from Sergeant Pasha*.

Shortly after having retrieved their personal AR-15's, Officer Linsted and Sergeant Pasha took up a defensive position on the other side of Trevor's truck (on the side opposite of the house) and waited for Chief Sather to arrive. *Body camera footage from Sgt. Pasha, and Officer Linsted*. During this time, Officer Linsted and Sergeant Pasha boasted about how firearm safeties are unnecessary as true operators rely



on trigger discipline being their safeties. *Body camera footage from Sgt. Pasha, and Officer Linsted.* They then conduct another search of Trevor's vehicle, looking in his windows and discussing the rifle case located in his back seat. *Body camera footage from Sgt. Pasha, and Officer Linsted.* Captain Heffernan then approached and relayed vague information allegedly received from Jennifer Harris, roughly claiming that Trevor said something to the effect that he would shoot it out with law enforcement or come out guns blazing should they illegally enter his residence. Unfortunately for Trevor, her exact words cannot be quoted as Captain Heffernan's body camera was inexplicably turned off during that conversation. *Body camera footage 2.0 from Sgt. Pasha at 0:04:24.*

Sergeant Pasha then pushed his narrative that Trevor was suicidal and seeking to commit "suicide by cop" for the fourth time. Sergeant Pasha then continued to sickly fantasize about various scenarios where he would get to gun down Trevor during their "wellness check," which was interrupted by Captain Heffernan, stating "we just go in and watch each other's backs." *Body camera footage 2.0 from Sgt. Pasha at 0:05:05.* Officer Linsted then offered the idea that they could utilize the ballistic shield, because it "takes the gun out of the fight." *Body camera footage 2.0 from Sgt. Pasha at 0:05:12.* Sergeant Pasha then suggested that Chief Sather grab the ballistic shield on his way to Trevor's house, and Officer Linsted indicated that Chief Sather was already there and pulling up." *Body camera footage 2.0 from Sgt. Pasha.*

Upon his arrival Chief Sather immediately asked if the three officers present had night vision for their "wellness check." *Body camera footage 2.0 from Sgt. Pasha at 0:05:23.* The three officers and Chief Sather

then discussed everywhere in Trevor's home that they had been able to search and the locations they hadn't been able to see into. *Body camera footage 2.0 from Sgt. Pasha*. Captain Heffernan asked if Chief Sather wanted him "to go get the shield" from the ADLC station. *Body camera footage 2.0 from Sgt. Pasha* at 0:06:01. While Captain Heffernan was retrieving the ballistic shield, Sergeant Pasha again pushed his "suicide by cop" theory, to which Chief Sather replied "I don't think he's going to shoot us." *Body camera footage 2.0 from Sgt. Pasha* at 0:06:11.

Chief Sather, Sergeant Pasha, and Officer Linsted proceeded to discuss Trevor's past interactions with law enforcement concerning his suicidality, and Jennifer Harris's account of her conversation with Trevor and that she thought he shot himself. During those conversations Officer Linsted, Sergeant Pasha, and Chief Sather grossly mischaracterized the facts of the previous interactions compared to the written reports filed by the officers involved, which were Captain Heffernan in 2015 (who was a sergeant at the time of the 2015 interaction) and Officer Linsted in 2020. Further during these conversations, Officer Linsted asked if Trevor was "Airborne" and Sergeant Pasha responded that he doesn't know. *Body camera footage 2.0 from Sgt. Pasha* at 0:06:43.

Sergeant Pasha yet again began to mention that he's concerned that Trevor "is going to make them come into his house and..." but he trailed off and began discussing the handwritten document on Trevor's coffee table. *Body camera footage 2.0 from Sgt. Pasha* at 0:07:44. Sergeant Pasha then recounted the "note" and "holster" found during their search of Trevor's home from the exterior, and then finished expressing his concern "that he's gonna make us come into this

house and he's gonna want to shoot it out, and so I want to be prepared." *Body camera footage 2.0 from Sgt. Pasha at 0:08:14.* Chief Sather responded with "he ain't got the guts." *Body camera footage 2.0 from Sgt. Pasha at 0:08:22.* Sergeant Pasha was clearly scared and anxious and taking deep breaths in what appears to be an attempt to calm himself down. *Body camera footage 2.0 from Sgt. Pasha.*

Sergeant Pasha then continued to ramp himself up by stating "two standoffs two nights in a row." *Body camera footage 2.0 from Sgt. Pasha at 0:10:25.* Sergeant Pasha then oddly lamented about missing a prior hostile encounter, stating "this is three standoffs in two days. Last night, today during the day, which I feel like shit about, because I fell asleep and didn't have my phone on the charger so my phone was dead." *Body camera footage 2.0 from Sgt. Pasha at 0:10:35.* After that conversation Sergeant Pasha can be heard swearing to himself and taking several deep breaths. *Body camera footage 2.0 from Sgt. Pasha.* Captain Heffernan eventually returned with the ballistic shield and the four officers then began discussing who's going to use the shield and prepared to make entry to Trevor's house. Before entering Sergeant Pasha, then started telling the others how he's going to make a tactical entry and "pie the front room off the living room" during their "wellness check." *Body camera footage 2.0 from Sgt. Pasha at 0:10:35.*

As Sergeant Pasha illegally entered Trevor's home for the second time, he yells out "Trevor, it's the Police Department. We want to check your welfare, **come out with your hands up.** Anaconda Police Department!" while sweeping the room with his personal assault rifle. *Body camera footage 2.0 from Sgt. Pasha at 0:13:29 (emphasis added).* After Sergeant Pasha

entered the house, Chief Sather entered behind him and yells “Trevor, it’s Bill Sather. We want to talk to you buddy. Come on out.” *Body camera footage 2.0 from Sgt. Pasha at 0:13:48.* The four law enforcement officers then began to search Trevor’s main floor in a tactical fashion, clearing rooms and checking closets, while maintain long cover on the kitchen. *Body camera footage 2.0 from Sgt. Pasha.*

After tactically clearing the first floor, the officers reached a stairwell, with stairs going up to the second floor, and stairs going down to the basement. Sergeant Pasha and Officer Linsted proceeded upstairs, while Chief Sather and Captain Heffernan proceeded downstairs. While proceeding in their various directions, Chief Sather was calling out to Trevor as he did when he first entered Trevor’s home and Sergeant Pasha was calling out in the same manner as he did when he first entered the home. All the while Sergeant Pasha was communicating his tactics and intentions to Officer Linsted in a hushed voice. *Body camera footage 2.0 from Sgt. Pasha and Officer Linsted.*

Sergeant Pasha entered the upstairs bedroom located just to the right of the stairwell in a sweeping fashion and swept his light from his right to his left. As he’s swept approximately half of the room, the curtain covering part of the closet to the left began to move open, revealing Trevor’s left arm. *Body camera footage 2.0 from Sgt. Pasha at 0:15:25.391.* Sergeant Pasha rapidly turned and fired one shot at Trevor, striking him in the left arm and lower left abdomen. *Body camera footage 2.0 from Sgt. Pasha at 0:15:25.791.* Sergeant Pasha immediately exclaimed “oh shit!” *Body camera footage 2.0 from Sgt. Pasha at 0:15:26.647.* Sergeant Pasha was exasperated and yelled “what are you doing?” *Body camera footage 2.0*

from Sgt. Pasha at 0:15:28.607. Officer Linsted then yelled “put your hands up” and Sergeant Pasha yelled “get on the ground now!” All the while Trevor was slowly falling to the floor with multiple gunshot wounds from a single gunshot. A black handgun can eventually be observed to come out from behind the curtain, separating the closet from the room, in Trevor’s right hand as descended to the floor, and he dropped it in a laundry basket full of toys and blankets. *Body camera footage 2.0 from Sgt. Pasha* at 0:15:29.094. Notably, no weapon or outline of a weapon was visible until after Trevor was shot in his own home.

Again, Sergeant Pasha exclaimed “what are you doing man?” *Body camera footage 2.0 from Sgt. Pasha* at 0:15:33.299. Chief Sather can then be heard coming up the stairs and asked “is everyone okay.” *Body camera footage 2.0 from Officer Blake Linsted* at 0:11:10.801. Officer Linsted then called for emergency medical services (EMS). *Body camera footage 2.0 from Sgt. Pasha* at 0:15:37.649. After which Officer Linsted then approached Trevor and indicated that he needed to put cuffs on him, and asks “do you got any guns on ya?” *Body camera footage 2.0 from Sgt. Pasha* at 0:15:45.429. The entire time Officer Linsted was calling for EMS and attempting to place Trevor in hand cuffs, Sergeant Pasha was breathing heavily and speaking very excitedly.

As Captain Heffernan came into the bedroom, either he or Chief Sather asked “where’d ya shoot?” To which Sergeant Pasha responded, “I, I came in and he jerked that curtain open, and I shot him right here. I shot him.” *Body camera footage 2.0 from Sgt. Pasha* at 0:15:50.549 - 0:15:57.301. During that exchange Officer Linstead handed off his AR-15 to Chief Sather

and returned to rendering medical aid to Trevor. Sergeant Pasha then, told Trevor again while he's lying on the floor not moving to "put your hands behind your back buddy." *Body camera footage 2.0 from Sgt. Pasha* at 0:16:03.829. Chief Sather then asked Trevor "where you hit at?" *Body camera footage 2.0 from Sgt. Pasha* at 0:16:09.768. Officer Linsted asked again, "Do you got a gun buddy?" *Body camera footage 2.0 from Sgt. Pasha* at 0:16:12.538.

During this time, Trevor was resistant to aid and kept telling the officers he's good and doesn't want their help. Trevor then said "because, I don't want you guys to coming into my house." *Body camera footage 2.0 from Sgt. Pasha* at 0:16:38.197. To which Sergeant Pasha retorted "why didn't you answer us and tell us you're okay, then dude." *Body camera footage 2.0 from Sgt. Pasha* at 0:16:40.099. Trevor replied "because I'm not okay!" *Body camera footage 2.0 from Sgt. Pasha* at 0:16:42.401. Officer Linsted could then be heard asking Trevor "what's going on?" *Body camera footage 2.0 from Sgt. Pasha* at 0:16:43.068.

Just before the conversation between Trevor and Sergeant Pasha took place, Captain Heffernan noticed a black handgun, later identified as Trevor's model 1911 from an unknown manufacturer, and picked it up off of a laundry basket full of toys and blankets. *Body camera footage 2.0 from Sgt. Pasha* at 0:16:31.090 and *Body camera footage 2.0 from Cpt. Heffernan* at 0:00:00.000. Captain Heffernan then asked "who's is this?" *Body camera footage 2.0 from Sgt. Pasha* at 0:16:49.230<sup>2</sup>. To which Sergeant Pasha admitted,

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<sup>2</sup> Captain Heffernan's second body camera footage doesn't begin playing audio for the first 30 seconds, so it's unclear when he asked who the handgun belonged to on his body camera footage.

***“I don’t know where that came from.”*** *Body camera footage 2.0 from Sgt. Pasha at 0:16:50.376* (emphasis added)<sup>3</sup>. “To which Captain Heffernan responded, “it was laying right there.” *Body camera footage 2.0 from Sgt. Pasha at 0:16:51.176*. Officer Linsted then continued to attempt to render aid to Trevor, despite his resistance.

Eventually, Officer Linstead ceased trying to place the chest seal on Trevor and stood Trevor up to walk him down stairs. Chief Sather headed down stairs to clear the way for EMS, and Officer Linsted then walked Trevor down stairs to meet EMS. After Trevor and Officer Linsted proceeded downstairs, Captain Heffernan handed Sergeant Pasha Trevor’s handgun. Sergeant Pasha asked if it was cocked, and Captain Heffernan responded that it was. Then Sergeant Pasha asked “where did you find that at Dave?” *Body camera footage 2.0 from Sgt. Pasha at 0:18:39.985*. Captain Heffernan then indicated “right there” and pointed to the laundry basket where he found the gun. Sergeant Pasha then said **“maybe he dropped it, I don’t know.”** *Body camera footage 2.0 from Sgt. Pasha at 0:18:43.622* (emphasis added). He continued “I came in here to clear it and that fucking curtain flew open and I just fucking let one fly.” *Body camera footage 2.0 from Sgt. Pasha at 0:18:45.245*(emphasis added). Before heading down stairs Sergeant Pasha said to Captain Heffernan **“I wonder if he did have it and he fucking dropped it?”**<sup>4</sup> *Body camera footage 2.0 from Sgt. Pasha at 0:18:54.677*(emphasis added). To which Captain Heffernan responds “well it

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<sup>3</sup> This is the same weapon that allegedly was used to assault Sergeant Pasha.

<sup>4</sup> Again, this is the same weapon that was allegedly used to assault Sergeant Pasha.

was right there.” *Body camera footage 2.0 from Cpt. Heffernan* at 0:02:25.418.

Sergeant Pasha and Captain Heffernan then proceeded down stairs, and Officer Linsted was still trying to walk Trevor out to the ambulance. Chief Sather was on the phone with presumably Division of Criminal Investigation, and told the person on the other end of the phone “We’re down here at Trevor Case’s house, he’s threatening suicide. We searched the house, he jumped out, Pasha shot him, he had a gun. So, we’re gonna need some boys here.” He then attempted to taint the investigation by falsely and baselessly stating “but he had a loaded gun, swung it open, pointed it at Pasha, and Pasha shot him.” *Body camera footage 2.0 from Cpt. Heffernan* at 0:02:43.050 - 0:03:10.006. Notably, at this point, no officer had verified that Trevor’s gun was chambered with a round, only that the hammer was cocked, nor had Sgt. Pasha, the only other witness to Trevor’s shooting, stated that he had even seen a weapon, let alone seen one pointed at him.

Officer Linsted was able to get Trevor to the ambulance, during which Trevor made some comments about his life being over, and such. Sergeant Pasha secured his AR-15, and cleared the chamber. The whole time he was sighing audibly and swearing to himself. Sergeant Pasha talked to Agent Sullivan, and he instructed Sergeant Pasha what to do with his weapon and told him to remain in uniform. When Agent Sullivan asked Sergeant Pasha if he’s okay or needs anyone to talk to Sergeant Pasha responded “I’m good this second, I’m fucking pissed.” *Body camera footage 2.0 from Sgt. Pasha* at 0:21:37.696.

Sergeant Pasha then headed out side and while recounting the events to Officer Linsted, he stated



“she fucking, she told us, if we go in the house he’s gonna shoot it out with us. Dude I went to clear that room and I swept my right corner and I went to swing right and that fucking curtain flew open.” *Body camera footage 2.0 from Sgt. Pasha* at 0:22:57.709 - 0:23:07.067. To which Officer Linsted replies “dude. You’re good. You’re good.” *Body camera footage 2.0 from. Sgt. Pasha* at 0:23:06.385. Chief Sather eventually came out and attempted to reassure and calm Sergeant Pasha down, and Sergeant Pasha recounted the events to Chief Sather saying “fucking lady just told us, that he was fucking going to shoot it out with us if we went in that house, and he, and I fucking I, I told Blake there’s a door on the right, I said there’s a closet at the end of the hallway, there’s a door on the left. I said I’m go in and clear the right, so I went right and I swooped right and I was coming back left and that fucking curtain came tearing open and I, and I let one fly then.” *Body camera footage 2.0 from Sgt. Pasha* at 0:24:16.388 - 0:24:36.347.

Chief Sather, Captain Heffernan, Sergeant Pasha, and Officer Linsted cleared the scene after Anaconda - Deer Lodge County Police detectives arrived to secure the scene. Agent Ryan Eamon of Montana Department of Justice, Department of Criminal Investigations (MT DOJ DCI) then applied for a search warrant to search Trevor’s house. The application and affidavit are based on the information obtained from Chief Sather, Captain Heffernan, Sergeant Pasha, and Officer Linsted, which was obtained by them during their illegal search of Trevor’s home, and subsequent shooting of Trevor.

### **ARGUMENT**

Anaconda-Deer Lodge County Police Department conducted an illegal search as they entered Trevor’s

house without a warrant nor an applicable warrant exception. As such all evidence obtained as a result of the warrantless search must be suppressed. *State v. Ellis*, 2009 MT 192, at ¶ 48, 351 Mont. 95, 210 P.3d 144, 2009 Mont. LEXIS 226. The Court in *Ellis* states: “The exclusionary rule bars evidence obtained as a result of an unconstitutional search or seizure, also known as ‘fruit of the poisonous tree,’ and is the primary vehicle which helps to ensure protection from an unreasonable governmental search or seizure.” *Ellis* at ¶ 48 (quoting *Dickinson*, P 19 (citing *State v. Ottwell*, 239 Mont. 150, 154, 779 P.2d 500, 502 (1989))). This must include the evidence obtained during the warranted search conducted by MT DOJ DCI, as that warrant was obtained solely upon information illegally obtained during the initial warrantless search conducted by ADLC PD.

The United States Supreme Court and the Montana State Supreme Court have repeatedly held that a person’s home is sanctified and should be safeguarded against arbitrary invasions by governmental officials. *State v. Ellis*, 2009 MT 192, at ¶73. “The home is the most sanctified of all ‘particular places’ referred to in the Fourth Amendment, and it is for that reason that the exceptions to the warrant requirement are, concomitantly, jealously guarded and carefully drawn.” *Ellis* at ¶ 73 (citing *State v. Graham*, 2004 MT 385, P 22, 325 Mont. 110, 103 P.3d 1073). Searches of a home without a warrant are presumed unreasonable both at the State and Federal levels. The *Ellis* Court further explained:

We indicated in *McLees* the rationale behind the warrant requirement:

The presence of a search warrant serves a high function. Absent some grave emergency,

the Fourth Amendment [and Article II, Section 11 of the Montana Constitution] [have] interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals.

*Ellis* at ¶ 39 9 (quoting *McLees*, P 26 (quoting *State v. Sorenson*, 180 Mont. 269, 274-75, 590 P.2d 136, 140 (1979), overruled in part by *State v. Loh*, 275 Mont. 460, 914 P.2d 592 (1996))).

Before further analyzing the exceptions, one must define a search. A search under the Fourth Amendment is defined as “when the government invades an area in which a person has a “reasonable expectation of privacy” *United States v. Scott*, 450 F.3d 863, 867 (9th Cir.2006) (citing *Katz v. United States*, 389 U.S. 347, 361, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)). The US Constitution and Montana Constitution both clearly impart an expectation of privacy on one’s home and afford it the greatest level of protection from unreasonable or unlawful searches.

The Montana Constitution provides a greater level of protection from unlawful searches. However, there are delineated exceptions to the warrant requirement for searching a home in Montana, and they: are voluntarily and freely given consent, *State v. Bieber*, 2007 MT 262, ¶ 29, 339 Mont 309, 170 P.3d 444; a search incident to a lawful arrest, *State v. Hardaway*, 2001 MT 252, 307 Mont. 139, 36 P.3d 900; and the

presence of exigent circumstances only in combination with probable cause, *State v. Stone*, 2004 MT 151, 1118, 321 Mont. 489, 92 P.3d 1178.

The present case clearly does not contain a consent exception as it was due to a lack of contact with Trevor that ADLC PD decided to enter his home. Likewise, there is not an argument to be made for a search incident to a lawful arrest, as Trevor was later shot and then arrested after the search of his home was commenced. As such, the only remaining exception will be that of the presence of exigent circumstances coupled with probable cause under the Montana Constitution.

The Court in *Stone*, clearly explained exigent circumstances as:

Exigent circumstances exist if the situation at hand would cause a reasonable person to believe that prompt action is necessary to prevent physical harm to an officer or other person, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating law enforcement efforts.

*Stone* at ¶ 18 citing (*State v. Wakeford*, 1998 MT 16, ¶ 24, 287 Mont. 220, 953 P.2d 1065). Further the *Stone* Court then goes on to define probable cause as existing “if the facts and circumstances within the officer’s personal knowledge, or imparted to the officer by a reliable source, are sufficient to warrant a reasonable person to believe that the suspect has committed an offense.” *Stone* at ¶ 18 citing (*State v. Saxton*, 2003 MT 105, ¶ 26, 315 Mont. 315, 68 P.3d 721). “The State bears the heavy burden of showing the existence of exigent circumstances and can meet

that burden only by demonstrating specific and articulable facts.” *State v. Ruggirello*, 2008 MT 8, ¶ 18, 341 Mont. 88, 176 P.3d 252, 2008 Mont. LEXIS 8 (citing *State v. Logan*, 2002 MT 206, ¶ 17, 311 Mont. 239, 53 P.3d 1285.)

In the case at hand neither the “emergency aid” nor the “exigent circumstances coupled with probable cause” exceptions applies. As indicated in the facts above established by the 911 audio and body camera footage from Captain Heffernan, Sergeant Pasha, and Officer Linsted, there existed exigent circumstances. Nor was there probable cause to believe that Trevor had committed an offense until after they illegally entered, searched his home, shot him, and then discovered the presence of a loaded firearm in the same room. *Stone* at ¶ 18. As such the entry and subsequent search by ADLC PD was unlawful and all evidence obtained must be suppressed.

**There existed no exigent circumstances and probable cause to excuse the warrantless search of Trevor’s home under the Montana Constitution.**

The Montana Supreme Court has adopted the Ninth Circuit Court of Appeals’ definition of exigent circumstances:

Exigent circumstances exist if the situation at hand would cause a reasonable person to believe that prompt action is necessary to prevent physical harm to an officer or other person, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating law enforcement efforts. *Stone* at ¶ 18 (emphasis added).

However, the Montana Supreme Court further defines probable cause as “if the facts and circumstances

within the officer's personal knowledge, or imparted to the officer by a reliable source, are sufficient to warrant a reasonable person to believe that the **suspect has committed an offense.**" *Stone* at ¶ 18 (emphasis added).

In the present case officers responded to a "welfare check" initiated by a call placed by Jennifer Harris to 911 that indicated her concern for Trevor's wellbeing, as he was claiming to be suicidal and she "heard a pop." *911 call by Jennifer Harris to ADLC Dispatch*. Captain Heffernan was tasked with responding, and he called Sergeant Pasha and Officer Linsted off of another call to assist him in his check of Trevor's welfare. However, from the moment of arrival Captain Heffernan, Sergeant Pasha, and Officer Linsted were not objectively acting as officers checking the welfare of a suicidal person or possible victim of suicide. Neither Captain Heffernan, Sergeant Pasha, nor Officer Linsted made any attempt to make contact with Trevor for about five and a half minutes. Instead they were traipsing about the curtilage of Trevor's home, looking in windows with flashlights, brandishing their service weapons, and attempting to ascertain Trevor's location in the house.

Eventually Sergeant Pasha knocked on Trevor's front door after about five and a half minutes of searching Trevor's house as thoroughly as possible from the exterior of the home. Captain Heffernan, Sergeant Pasha, and Officer Linsted continue to search Trevor's home from the exterior, and notice an empty holster on a table or counter after about seven and a half minutes by looking through a side window. After just under ten minutes of being present at Trevor's home and conducting an exterior search of the front of the house Captain Heffernan, Sergeant Pasha,

and Officer Linsted proceed to Trevor's backyard. At no time is there any sense of urgency to enter nor concern for Trevor's safety expressed or demonstrated in those nearly ten minutes, with exception to Jennifer Harris, who even then was reluctant to think Trevor had actually harmed himself.

Again Sergeant Pasha makes a cursory attempt to make contact with Trevor by calling into an open exterior window observed from the backyard. No response is received, in fact no noises are heard from through the window. Again, there is no expression of a prompt or urgent need to enter Trevor's home to ensure his safety. In fact the inverse is demonstrated in the near twenty minutes that Captain Heffernan, Sergeant Pasha, and Officer Linsted were on scene when they returned to the front of Trevor's house. During this long wait, Captain Heffernan, Sergeant Pasha, and Officer Linsted are demonstrating a palpable hesitancy and reluctance to make entry as they repeatedly express a fear that Trevor is alive and armed inside. By the twenty minute mark, Captain Heffernan is calling Chief Sather for further assistance and guidance, Sergeant Pasha has resumed searching the interior of Trevor's home from the exterior by looking in the windows with his flashlight, and Officer Linsted finally approaches Jennifer Harries asking for Trevor's phone number to attempt to make phone contact.

Nothing in the officers' discussions or behaviors demonstrates that they or a reasonable person would "believe that prompt action is necessary to prevent physical harm" to themselves or Trevor. Further Captain Heffernan, Sergeant Pasha, and Officer Linsted waited for Chief Sather's arrival, and then waited even longer for Captain Heffernan to leave and

retrieve the ballistic shield, before they made entry into Trevor's home more than forty minutes after arriving at his home to perform a welfare check. Clearly there existed no exigent circumstances, in the present case. If the officers could wait over forty minutes to enter Trevor's home, while waiting for higher level supervision, the retrieval of tactical weaponry, and the retrieval of a ballistic shield, then they could have called for a warrant at the same time Chief Sather was called or even when Captain Heffernan left to retrieve the ballistic shield. However no such attempt was made, likely because no probable cause existed for such warrant to be issued.

Further, even if waiting forty minutes to make entry to check the welfare of an allegedly suicidal person, or potential suicide victim who may have a near fatal gunshot wound is deemed reasonable and prompt, there still existed no probable cause to believe Trevor or anyone else in his home had committed an offense. Committing suicide and being suicidal is not a criminal offense. Being armed in one's own home is not a criminal offense, nor is being intoxicated in one's own home. Allegedly making a statement that if law enforcement arrived to stop one from killing themselves, that person would go out in a "blaze of glory," "go down guns blazing," or "shoot it out with cops" is not a criminal offense. Stupid maybe, but not criminal, especially since the alleged statement is predicated on officer's illegally invading ones home without legal justification. However, this statement cannot be corroborated nor can Jennifer Harris remember the exact verbiage and may be completely misrepresenting what was allegedly said by Trevor while on the phone with her. He made no threats or statements of confrontation to Chief Sather, Captain Heffernan, Sergeant Pasha, or Officer Linsted upon



their arrival, nor did he make any other indication that he was confrontational. In fact Trevor exhibited the opposite of confrontational behavior by retreating to an upstairs room and hiding in a closet to avoid interaction with law enforcement. As such, Chief Sather, Captain Heffernan, Sergeant Pasha, and Officer Linsted lacked probable cause to believe that Trevor or anyone else in his home had committed an offense.

Any finding that ADLC PD acted in accordance to the exigent circumstance exception to the warrant requirement for searching a home under the present facts would undoubtedly render the protections granted by Article II, Section 11, of the Montana Constitution merely an illusory protection and grant Law Enforcement unfettered access to individuals' homes, by claiming that the person was suicidal and there was an empty holster present in the home based on an unwarranted search from the exterior areas of the home that the general public are clearly preclude from.

ADLC PD waited over forty minutes before making entry into Trevor's home. In no universe is that measure of time considered a prompt action necessary to prevent harm or render aid to an already harmed individual. Further there was no clear indication that Trevor was harmed or going to harm himself, and ADLC PD's actions objectively demonstrate that they did not believe he was injured or in any imminent threat of harm, other than from their presence alone, demonstrated by Sergeant Pasha expressing concern on five separate occasions that Trevor is inside armed and that they could end up shooting Trevor as a result of their illegal entry. Finally, ADLC PD had no probable cause, or even a hunch, to believe that an offense had been committed in Trevor's home. Therefore, ADLC PD's warrantless entry, search of

Trevor's home, their shooting Trevor, and subsequently arresting him, are unlawful, which then makes any warrant issued upon facts obtained from the results of ADLC PD's warrantless search and seizure unlawful. As such, all evidence obtained through this illegal conduct must be suppressed.

### CONCLUSION

ADLC PD conducted an illegal warrantless search and seizure of Trevor Case's home and person. Such a search is presumptively unlawful unless the search and seizure fall within a recognized warrant exception. No such warrant exception exists in the present case, as ADLC PD did not have consent; there was nothing in plain sight seized; Trevor was arrested after the warrantless search and not prior, and there existed no objective facts to demonstrate an emergency aid or exigent circumstance exception existed when ADLC PD entered Trevor's home more than forty minutes after arriving to conduct a welfare check on him.

THEREFORE, Mr. Case respectfully requests this Court suppress all evidence, both physical items and verbal statements, collected/obtained by Anaconda-Deer Lodge County Police Department in its illegal search and seizure of Defendant and his residence. Because this illegal search was conducted without a warrant, or a valid exception, all evidence obtained in the illegal search must be suppressed as it was obtained in violation of Defendant's rights, as guaranteed by the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and Article II, section 11 of the Montana State Constitution, that led to a subsequent warranted search and seizure, pursuant to the "fruit of the poisonous tree" doctrine.

DATED this 17th day of December 2021.

HULL, SWINGLEY &  
BETHCIE, PC

/s/ Christopher R. Betchie  
Christopher R. Betchie  
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing BRIEF IN SUPPORT OF MOTION TO SUPPRESS was served, via US Mail on 17th day of December 2021, to the following:

Ben Krakowka  
Anaconda-Deer Lodge County Attorney  
800 Main St.  
Anaconda, MT 59711-2999

HULL, SWINGLEY &  
BETHCIE, PC

By: /s/ Christopher R. Betchie  
Attorney for Defendant

Ben Krakowka  
 County Attorney  
 Anaconda-Deer Lodge County  
 800 Main Street  
 Anaconda, MT 59711  
 (406)563-4019  
 Attorney for the State of Montana

**MONTANA THIRD JUDICIAL DISTRICT COURT  
 ANACONDA-DEER LODGE COUNTY**

STATE OF MONTANA,  <i>Plaintiff,</i>  v.  WILLIAM TREVOR CASE,  <i>Defendant.</i>	CAUSE NO.: DC-21-100  <b>STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS</b>
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COMES NOW the State of Montana, through Ben Krakowka, County Attorney, and offers this response to the Defendant's motion to suppress.

**FACTUAL BACKGROUND**

For the purposes of this brief the State will rely on the facts as set forth in the State's Affidavit in Support of Leave to File Information. The State will also rely upon the body camera videos of the Officers involved in attempting to intervene in yet another of William Trevor Case's suicide attempts. These Body Camera Videos are attached to this brief as State's Exhibit 1, State's Exhibit 2, and State's Exhibit 3.

**ARGUMENT**

The Fourth Amendment to the United States Constitution and Article II, Section 11 of the Montana Constitution, protect individuals against unreasonable

searches and seizures. The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const, amend. IV. “The basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. The Fourth Amendment thus gives concrete expression to a right of the people which ‘is basic to a free society.’ *Camara v. Municipal Court*, 387 U.S. 523, 528, 87 S. Ct. 1727, 1730, 18 L. Ed. 2d 930 (1967) (quoting *Wolf v. Colorado*, 338 U.S. 25, 27, 69 S. Ct. 1359, 1361, 93 L. Ed. 1782 (1949)).

“Montana has a strong tradition of respect for the right to individual privacy.” *State v. Bullock*, 272 Mont. 361, 383, 901 P.2d 61, 75 (1995). Article II, Section 11 of the Montana Constitution provides:

The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Further, Article II, Section 10 of the Montana Constitution provides: “The right of individual privacy

is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.” Our unique constitutional language affords Montanans a greater right to privacy and, therefore, broader protection than does the Fourth Amendment to the United States Constitution in cases involving searches of, or seizures from, private property. *Bassett*, P42 (citing *State v. Hubbel*, 286 Mont. 200, 211, 951 P.2d 971, 977 (1997)); *Bullock*, 272 Mont. at 384, 901 P.2d at 75; *State v. Sawyer*, 174 Mont. 512, 515, 571 P.2d 1131, 1133 (1977), *overruled in part on other grounds*, *State v. Long*, 216 Mont. 65, 67, 71, 700 P.2d 153, 155, 157 (1985).

One exception to the warrant requirement is where exigent circumstances and probable cause are present. *Warden v. Hayden* (1967), 387 U.S. 294, 87 S. Ct. 1642, 18 L. Ed. 2d 782; *State v. Sorenson* (1979), 180 Mont. 269, 590 P.2d 136. Probable cause exists “if the facts and circumstances within the officer’s personal knowledge, or imparted to the officer by a reliable source, are sufficient to warrant a reasonable person to believe that the suspect has committed an offense.” *State v. Wakeford*, 1998 MT 16, P22, 287 Mont. 220, 225, 953 P.2d 1065, 1068, 1998 Mont. LEXIS 13, \*8-9, 55 Mont. St. Rep. 56 citing *State v. Schoffner* (1991), 248 Mont. 260, 264, 811 P.2d 548, 551.

Exigent circumstances are “those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.” *United States v. McConney* (9th Cir. 1984) (en banc), 728 F.2d 1195, 1199 *cert denied* (1984), 469

U.S. 824, 105 S. Ct. 101, 83 L. Ed. 2d 46. The State bears the heavy burden of showing the existence of exigent circumstances. *Welsh v. Wisconsin* (1984), 466 U.S. 740, 749-50, 104 S. Ct. 2091, 2097, 80 L. Ed. 2d 732, 743. It can meet that burden only by “demonstrating specific and articulable facts to justify the finding of exigent circumstances.” *United States v. Driver* (9th Cir. 1985), 776 F.2d 807, 810. The State must establish that the circumstances, as they appeared at the moment of entry, would lead a reasonable officer to believe that someone in the house or motel room required immediate assistance. *United States v. Salava* (7th Cir. 1992), 978 F.2d 320, 324. *State v. Wakeford*, 1998 MT 16, P24, 287 Mont. 220, 226, 953 P.2d 1065, 1068, 1998 Mont. LEXIS 13, \*9-10, 55 Mont. St. Rep. 56.

In the matter currently before the Court the factual situation is that Jennifer Harris contacted law enforcement and informed them that the Defendant was making suicidal threats. She also informed them that she had heard a “pop” come from inside of the house that sounded like a gunshot. She was concerned that he had shot himself and that he was in need of medical care.

Upon arrival, Officers did not immediately seek to enter the residence as such action would have been imprudent and dangerous. From prior interactions with the Defendant, they had legitimate concerns that he would likely attempt to commit “suicide by cop” if he were not already dead or seriously injured. As a result they called for backup and got and bulletproof shield, backup and equipped themselves with different arms before entering the residence. Prior to entering the residence, they did attempt to look into windows to see if they could see a body or an injured individual.

Such actions were justified by the exigent circumstances of the situation. While doing this they were able to observe a partially written note. They were also unable to get any response to shining their lights in windows, calling out to the Defendant that law enforcement was present and wanted to speak with him, or to knocking on doors.

At that time the responding Officers had exigent circumstances to enter the property and the house of the Defendant. Specifically, the objective circumstances and the information available to the Officers would lead a reasonable person to believe that entry was necessary and justified to render aid to the Defendant who may have been seriously injured or to prevent the Defendant from seriously injuring or killing himself with the weapon he had already demonstrated having that night while on the phone with Jennifer Harris. There is a legitimate law enforcement and community interest to allowing law enforcement to, under this kind of circumstance, enter a home to prevent a suicide or to render aid to a person attempting to commit suicide. As the Officers entered the residence they did not do so in a stealthy manner. They repeatedly called out to the Defendant informing him they were there and informing him they were law enforcement checking to see if he was alright. The Defendant never answered and instead chose to hide in a closet with a gun in a darkened room and jump out at Sgt. Pasha when Sgt. Pasha entered the room to clear it.

### **CONCLUSION**

Suicide is a permanent solution to a temporary problem. Routinely law enforcement is called to deal with a despondent individual who has made a decision to end their own life. The method of ending their life



takes different methods. Our Officers deal with drug overdoses, cut wrists, hangings, and almost every method of suicide that a distraught mind can imagine. That also includes incidents in which a person shoots themselves. Often times Officers are able to locate these persons and render aid that will save the suicidal individual's life. Sometimes that places the Officers' life in jeopardy as a result of the suicidal person's method of suicide or as a result of the suicidal person themselves. Unfortunately, that is what happened in this case. It was the Defendant's own actions that created the exigent circumstances drawing law enforcement to his residence. He was the one who made a call threatening to kill himself. He was the one who discharged a firearm in his house while on the phone with his ex-girlfriend and then discontinued the call. He was the one who chose to hide in a closet with a gun and in a dark room while allowing clearly concerned Officers to continue to believe he was in the house dead or dying of a gunshot wound.

The Officers in this case had exigent circumstances to enter the residence. Since they had exigent circumstances to enter the residence, there is no issue regarding "fruit of the poisonous tree" doctrine. Following locating the Defendant, anything recovered in the subsequent investigation was recovered as being in plain view of the Officers at the time they located the Defendant or was seized pursuant to a valid warrant that had a basis in the exigent circumstances upon which law enforcement initially entered the residence. The Defendant's Motion to Suppress should be properly denied.

DATED this 3rd day of January, 2022.

39

/s/ Ben Krakowa

Ben Krakowka  
County Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of January, 2022 a true and correct copy of the foregoing was served upon the attorney of record for Defendant by depositing said copy in the United States mails, postage prepaid, addressed as follows, to-wit:

Christopher Betchie  
Hull, Swingley and Betchie, PC  
P.O. Box 534  
Helena, MT 59624

/s/ Melissa Huotte

Melissa Huotte

Anaconda-Deer Lodge  
County Attorney's Office

BEN KRAKOWKA  
 Anaconda-Deer Lodge County Attorney  
 800 Main St.  
 Anaconda, MT 59711-2999  
 Telephone: (406) 563-4019

COUNSEL FOR THE STATE

**MONTANA THIRD JUDICIAL DISTRICT COURT,  
 ANACONDA-DEER LODGE COUNTY**

STATE OF MONTANA,  <i>Plaintiff,</i>  v.  WILLIAM TREVOR CASE,  <i>Defendant.</i>	Cause No. DC 21-100  <b>SECOND AMENDED INFORMATION</b>
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Ben Krakowka, Anaconda-Deer Lodge County Attorney, alleges that on or about the September 27, 2021, in Deer Lodge County, Montana, the above-named Defendant committed the following offense(s):

**Count I: Assault on a Peace Officer**, a felony, in violation of §45-5-210(1)(b)(i) or (ii), MCA (2019), committed in Anaconda-Deer Lodge County, Montana, when the Defendant knowingly or purposefully caused reasonable apprehension of serious bodily injury in Sgt. Richard Pasha when he pointed a pistol, or what reasonably appeared to be a pistol, at Sgt. Richard Pasha.

**Penalty**

A person convicted of Assault on a Peace Officer is subject to incarceration in a State Prison for a term of not less than two (2) years or more than ten (10) years and a fine of not more than \$50,000, or both.

Respectfully submitted this 5th day of January,  
2022.

/s/ Ben Krakowa  
Ben Krakowka  
County Attorney

The witnesses now known to the State are as follows:

Officer Linsted  
Anaconda Police Department  
800 Oak St.  
Anaconda, MT 59711

Sgt. Pasha  
Anaconda Police Department  
800 Oak St.  
Anaconda, MT 59711

Captain Heffernan  
Anaconda Police Department  
800 Oak St.  
Anaconda, MT 59711

Chief Sather  
Anaconda Police Department  
800 Oak St.  
Anaconda, MT 59711

Agent Mark Strangio  
Division of Criminal Investigation  
P.O. Box 8127  
Bozeman, Montana 59703

Agent Ryan Eamon  
Division of Criminal Investigation  
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*Attorney for Defendant*

**MONTANA THIRD JUDICIAL DISTRICT COURT  
 ANACONDA-DEER LODGE COUNTY**

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STATE OF MONTANA,  Plaintiff,  v.  WILLIAM TREVOR CASE,  Defendant.	CASE NO.: DC-2021-100  Hon. Ray J. Dayton  <b>REPLY BRIEF IN SUPPORT OF MOTION TO SUPPRESS</b>
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COMES NOW the above-named Defendant William Trevor Case, by and through counsel, Christopher R. Betchie, and hereby replies to the State's Response Brief in support of his motion before the Court for an Order suppressing all evidence, both physical items and verbal statements, collected/obtained by Anaconda-Deer Lodge County Police Department in its illegal search and seizure of Defendant and his residence in violation of Defendant's rights, as guaranteed by the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and Article II, section 11 of the Montana State Constitution.

### **FACTUAL BACKGROUND**

Defendant hereby incorporates the facts laid out in detail in his Brief in Support of Motion to Suppress. Those same facts are corroborated and substantiated by the State's Exhibits 1-3, as they are the body camera footage of the night in question and the statements contained in Defendant's facts are direct quotes from the same body camera footage,

### **ARGUMENT**

The State through Anaconda-Deer Lodge County Attorney, Ben Krakowka, cites to many of the same cases as Defendant and acknowledges the more stringent protections offered by Montana Constitution, Article II, Section 11, as compared to the United States Constitution's 4<sup>th</sup> Amendment incorporated through the 14<sup>th</sup> Amendment, The State then correctly asserts that one of the exceptions the warrant requirement is when both exigent circumstances and probable cause are present.

The State then cites numerous cases to support his provided definitions for both probable cause and exigent circumstances. One such case is *United States v. McConney* (9<sup>th</sup> Cir. 1984) (en banc), 728 F.2d 1195 *cert denied* (1984), 469 U.S. 824, 105 S. Ct. 101, 83 L. Ed. 2d 46. However, the State failed to mention that *McConney* created a "mild exigency" analysis that was ultimately struck down and abandoned. *LaLonde v. County of Riverside*, 204 F.3d 947, 2000 U.S. App. LEXIS 2778, 2000 Cal. Daily Op. Service 1433, 2000 Daily Journal DAR 2031. Although *LaLonde*, was a civil 42 U.S.C. §1983 claim, the Court in *LaLonde* analyzed exigent circumstances and probable cause in a situation fairly similar to the present case.

In *LaLonde*, John LaLonde, the Plaintiff, was at home enjoying a quiet evening with his roommate and her three children. There was some yelling, thumping and banging coming from the apartment directly across the way from LaLonde's apartment. One of LaLonde's neighbors called Riverside County Sheriff's Department to complain that LaLonde was causing a disturbance some time that evening. Around 1:00 a.m. sheriff's deputies spoke with the complainant, LaLonde's neighbor, and she told them of the disturbance and informed them the LaLonde owned a rifle and "had a hostile attitude toward law enforcement and that the officers should be careful because he might be willing to use the rifle." *LaLonde* at 951. Officer's knocked on LaLonde's apartment door, his roommate answered the door, and the deputies asked if LaLonde was there, LaLonde entered the deputies' view and spoke with them. There's debate about whether LaLonde was asked to step outside, but he was unwilling to invite the deputies into his apartment. After further conflicting testimony about the series of events one of the deputies entered the home and attempted to detain LaLonde and arrest him for obstruction. LaLonde and the deputy engaged in a scuffle and the deputy pepper sprayed LaLonde and handcuffed him. Later LaLonde then filed his 42 U.S.C. §1983 claim.

The district court in *LaLonde* upheld the warrantless entry on the grounds that: "(1) the officers had probable cause to arrest LaLonde for disturbing the peace; (2) the officers were faced with exigent circumstances due to the threat of armed resistance." *Id* at 954. The district court in *LaLonde* concluded that the mere existence of probable cause alone was sufficient to justify the warrantless entry. However the appellate court stated that "it is well settled

constitutional law that, absent exigent circumstances, probable cause alone cannot justify an officer's warrantless entry into a person's home." *Id* at 954. In further analyzing the warrantless entry of the officers into LaLonde's home the *LaLonde* appellate court noted "Moreover, Santana was a felony suspect while LaLonde was suspected only of a misdemeanor, and the Supreme Court has explained that an exigency related to **a misdemeanor will seldom, if ever, justify a warrantless entry into the home.**" *Id* at 956 (emphasis added). The *LaLonde* appellate court further noted, by quoting *Welsh v. Wisconsin*, 466 U.S. 740, 752-53, 80 L. Ed. 2d 732, 104 S. Ct. 2091 (1984) that:

it is difficult to conceive of a warrantless home arrest that would not be unreasonable under the Fourth Amendment when the underlying offense is extremely minor....

Application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense ... has been committed. *LaLonde* at 956 citing *Welsh v. Wisconsin*, 466 U.S. 740, 753.

Finally when analyzing the exigent circumstances the *LaLonde* appellate court indicated that the deputies argued that the warning about LaLonde owning a rifle, and his hostile attitude toward law enforcement, and that he might be willing to use said rifle were sufficient information to establish exigent circumstances, when LaLonde "appeared hostile" or, alternatively, "when LaLonde made a move toward the kitchen." *LaLonde* at 956. Rejecting their arguments, the *LaLonde* appellate court refused to find exigent circumstances and noted that under *Welsh* the law is clear that police must demonstrate



specific and articulable facts, and the burden is not met by leading the court to speculate about the possible circumstances. *LaLonde* at 957.

Unlike in the *LaLonde* case, the State in the present case asserts that the officers were responding to a request for a welfare check, as opposed to a crime, and as such, they are unable to even argue that the ADLC officers present at Trevor's home had any probable cause to believe that he had committed a crime. Because "an exigency related to a misdemeanor will seldom, if ever, justify a warrantless entry into the home," *LaLonde* at 956, it would defy logic and precedent to find justification for warrantless entry into Trevor's home for a non-criminal "welfare check."

Despite the clear case law to the contrary, the State continues to argue that there existed exigent circumstances for the ADLC officer's warrantless entry while failing to address the essential element of probable cause. The State contends that Jennifer Harris reporting possibly hearing a "pop" over the phone<sup>1</sup> while speaking with Trevor as he was threatening self-harm and her concern that he may have shot himself warranted exigent circumstances because Trevor may be in need of medical aid. However, needing medical aid is clearly not the standard required by the cases relied upon by the State. Rather, the officers needed to have probable cause that an offense was being committed, which it cannot prove given the State's assertion that the

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<sup>1</sup> Ms. Harris indicated in her 911 call that she thought she heard a pop at the end of her phone call. She did not indicate that he was inside his house. Nor did she definitely indicate that she heard a pop to the 911 operator or the responding officers.

officers were responding to a request for a welfare check, which notably is not a crime.

The State then argues that ADLC Officers did not make immediate entry to the home upon arrival because that would be “imprudent and dangerous.” *Slate’s Response Brief to Defendant’s Motion to Suppress* at page 4. The State essentially wishes to have its cake and eat it to. It was either an exigent circumstance requiring an immediate response, or it was not. The State notably did not cite to any case law to support its novel theory, and as such, it appears to be attempting to create a new “imprudent and dangerous” exception to the immediacy requirements of the exigent circumstances warrant exception.

The State then argues, unironically, that due to prior interactions with Trevor, the ADLC Officers had concerns that he would attempt “suicide by cop” if Trevor were not already dead or seriously injured, and as such waited 40 minutes for back-up and a ballistic shield. Defendant takes great issue with the State’s repeated and factually unsupported pushing of its “suicide by cop” position that can only be asserted to improperly distract from the blatantly unconstitutional conduct of its police officers. Typically, “suicide by cop” involves the perpetrator baiting cops to a scene of a crime so that they can provoke a standoff with police to end their own life. However, in this case, there was no crime reported that the officers were responding to, the request for the welfare check was not made by Trevor, and, in fact, Trevor went out of his way to state to his ex-girlfriend that he did not want any interaction with police, and subsequently went out of his way to avoid any contact with police until it was painfully apparent that they would not leave him alone until he submitted to their

unconstitutional demands, which ultimately ended up in the attempted homicide of Trevor. Rather than demonstrating “suicide by cop,” the State’s position is nothing more than a distasteful and factually unsupported demonstration of victim blaming at best, and an attempt to conceal the unlawful conduct of its police officers at worst.

It is also unclear how the State reconciles waiting forty minutes for backup and a ballistic shield with prompt action being necessary to prevent harm or to render aid. The state claims the officers had exigent circumstances because:

the objective circumstances and information available to the officers would lead a reasonable person to believe that entry was necessary and justified to render aid to Defendant who may have been seriously injured or to prevent the Defendant from seriously injuring or killing himself with the weapon he had already demonstrated having that night while on the phone with Jennifer Harris. *State’s Response Brief to Defendant’s Motion to Suppress* at page 5.

The officers waited forty minutes before entering Trevor’s home without a warrant **to allegedly render aid**, and not to investigate a crime. Again, the State fails to acknowledge and argue a necessary element of exigent circumstances, which is “prompt action is necessary to prevent physical harm to an officer or other person” *State v. Stone*, 2004 MT 151, ¶ 18, 321 Mont. 489, 92 P.3d 1178. The State argues that entry was warranted, but fails to argue how waiting forty minutes is considered prompt in any universe. Further, if the officers felt it was permissible to delay for 40 minutes due to unfounded

speculation and concerns, then they also had the time to apply for a warrant so that their entry would be legal. Understandably, this likely did not cross their minds as they acknowledged that they were not there to investigate a crime, or to make an arrest for a crime in a home, but rather to conduct a welfare check, and as such, would hopefully recognize that there can be no probable cause to support a warrant if the subject of such warrant has not been accused of any crimes.

Further it appears that the State is attempting to create a new exception to the warrant requirement for entry into a home, in circumstances of preventing or rendering aid to individuals threatening or attempting suicide. However, suicide is not a crime and falls within the purview of the privacy protected by the warrant requirement. The freedom from intrusion by government agents and the expectation of privacy within one's home includes the freedom to commit suicide without interference if that is what the individual so desires. Under the State's argument, officers would be able to barge into the home a terminal patient exercising their right to death with dignity, or more nefariously construct a claim of suicidality through informants to justify entry into any home they so choose, rendering the Fourth Amendment and Montana Constitution, Article II, Section 11 merely illusory protections. The State's position is likewise absurd in that they assert the presence of any weapon in the home, real or imagined, would support the filing of felony assault charges should the resident assert their right to require a duly issued warrant prior to the search and seizure of the individual in their own home. This position would set a very dangerous precedent and essentially convert the Constitutional rights of all Montanans into privileges that we must grovel for, subjecting each of

us to felony prosecution anytime we asserted our rights under the U.S. or Montana Constitution.

Finally, the State engages in additional victim blaming. The State argues that the officers did not enter stealthily, and repeatedly called out while receiving no answer. As well as, suggesting that Trevor's past interactions with ADLC officers warranted their unreasonable and factually unsupported fear of Trevor potentially committing "suicide by cop" so much so that they retrieved assault rifles and a ballistic shield, yet that wasn't indication enough to them that they shouldn't be entering his home without a warrant. The State then blatantly blames Trevor for hiding in a closet while experiencing a mental health episode and wanting to be left alone, so much so that he retreated to a location that officers could not observe him from the exterior of his home, and he remained silent in hopes that they would not make further unlawful entries into his home than they already had. It was only when he was faced with no other option than to interact with ADLC officers that he complied with Sgt. Pasha's unlawful order and exited the closet<sup>2</sup> only to be shot by Sgt. Pasha for complying with his order. Again under the Fourth Amendment and Montana Constitution, Article II, Section 11, Trevor had no duty to answer the door, nor was he under any obligation to make himself known to officers, as he was lawfully and peacefully in his house experiencing a mental health episode, and they had no

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<sup>2</sup> Again there is no indication of Trevor "jumping out" at Sgt. Pasha. Trevor merely moved the curtain aside in order to step out when he was gunned down by an overly anxious and fearful Sgt. Pasha. This is clearly demonstrated in Sgt. Pasha's body camera footage.

probable cause to believe he had committed a crime of any severity let alone a felony.

Neither the United States of America, nor Montana specifically, have devolved into any fashion of a totalitarian despotic regime where citizens must submit or face possible death/imprisonment, regardless of what politicians, news personalities, pundits, and members of the public wish to claim. The State's position appears to be that any assertion of a Constitutional right is subject to the permission of a low-level government law enforcement employee, such as Sgt. Pasha. However, rights do not require permission of anyone, let alone a government agent. As such, there is no expectation that citizens of the United States of America nor Montana bow to police officers and "kiss the ring" during their interactions. Citizens are still free to be difficult and even to a limited extent combative or non-complaint, when interacting with law enforcement, especially when the officers are present in a civil aid capacity and have no legal right to enter a private residence. This is even more so when experiencing a mental health crisis, as they are a person in need of aid and compassion, not petty authoritarian demands of immediate compliance. Any expectation otherwise by the State or its law enforcement agencies is a further loss of freedom and liberty, as well as slipping ever so closely to that totalitarian hellscape warned about on every news channel and at every political rally. Being difficult in past interactions with law enforcement does not create exigent circumstances on the best of occasions, but even less so when officers are "concerned about Defendant committing suicide by cop." Ultimately, the State seeks to transform the U.S. and Montana Constitutional into a list of illusory "rights" that the individual only possesses as long as they do not

attempt to assert them, which is simply repulsive to our Constitutional Republic.

### **CONCLUSION**

The State has asserted that the officers were conducting a welfare check, and therefore, they could have no probable cause to believe Trevor had committed a crime of any severity, let alone a felony. This is further supported by the deafening silence of the State concerning probable cause to enter Trevor's residence. As such even if there existed any exigent circumstances, the exigency was not sufficient alone without probable cause to warrant such a blatant trampling of Trevor's Constitutional protections against illegal searches and seizures. Rendering aid to suicidal individuals is not a recognized exigent circumstance, nor should it be as suicidality is not a criminal act, and therefore cannot supply the required probable cause. Finally, even ignoring the fatal lack of probable cause, waiting forty minutes is not a prompt entry/action in any definition of prompt as required by the exigent circumstances warrant exemption. As such, if ADLC officers could wait forty minutes for backup, the retrieval of tactical weapons, and a ballistic shield, they could and should have waited for a warrant to be issued before entering. However, ADLC did not apply for a warrant, possibly in part due to the fact that they knew they did not possess probable cause to be issued a warrant for entry. ADLC officers illegally entered Trevor's home, conducted a search, shot and seized him, and then requested a warrant based upon evidence obtained as a result of their initial illegal entry. Therefore the physical evidence and statements made by Trevor after ADLC's illegal entry and search must be suppressed as "fruit of the poisonous tree."

DATED this 18<sup>th</sup> day of January, 2022.

HULL, SWINGLEY &  
BETHCIE, PC

/s/ Christopher R. Betchie  
Christopher R. Betchie  
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **REPLY BRIEF IN SUPPORT OF MOTION TO SUPPRESS** was served, via US Mail on 18<sup>th</sup> day of January 2022, to the following:

Ben Krakowka  
Anaconda-Deer Lodge County Attorney  
800 Main St.  
Anaconda, MT 59711-2999

HULL, SWINGLEY &  
BETHCIE, PC

/s/ Christopher R. Betchie  
Christopher R. Betchie  
Attorney for Defendant



[1] MONTANA THIRD JUDICIAL DISTRICT  
COURT DEER LODGE COUNTY

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Cause No. DC-2021-100

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STATE OF MONTANA,

*Plaintiff,*

vs.

WILLIAM TREVOR CASE,

*Defendant.*

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Transcript of Proceedings

February 14, 2022

(Motions Hearing)

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PRESIDING: THE HONORABLE RAY J. DAYTON

DATE: February 14, 2022

PLACE: Courthouse – Deer Lodge County  
Anaconda, MT 59711

[2] APPEARANCES:

Ben Krakowka, County Attorney  
Anaconda-Deer Lodge County  
Attorney Office Courthouse  
800 S. Main St.  
Anaconda, MT 59711  
Attorney for Plaintiff.

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Helena, MT 59624  
Attorney for Defendant.

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[4] BE IT REMEMBERED, that the above entitled cause came on for the Motions Hearing before the HONORABLE Ray J. Dayton, District Court Judge, on the 14<sup>th</sup> day of February, 2022 in the Courtroom of the Deer Lodge County Courthouse, Anaconda, Montana, with Ben Krakowka, present, Counsel for the Plaintiff, and with Christopher R. Betchie, present, Counsel for the Defendant, and with William Trevor Case, present, Defendant, and being recorded by Ann Allen, Official Court Reporter.

THEREUPON, the following proceedings were had, to wit: THE COURT: Be seated, good morning.

MR. BETCHIE: Morning your honor.

THE COURT: Appreciate everybody wearing masks. Uh, we've had fairly limited experience in the Courtroom during the pandemic in the Third Judicial District. Got all the plexiglass, all that, you know, be careful, uh just try not to breath on each other. It's still a deadly virus out there. It's changing, you know, the – what's best to do changes all the time, but uh, we do know that you, you can get sick and get very sick. So, we're going to be careful.

Uh, when you're addressing the Court, particularly if you're behind the plexiglass, you know, feel free to take your mask off. When I have a witness on the stand they can take their mask off, that sort of thing, unless you want to keep it on uh, that's fine.

[5] But here, we're here to talk about DC-21-100; State of Montana v. William Trevor Case, um single count, right?

MR. KRAKOWKA: Yes, your honor.

THE COURT: Assault on a Peace Officer or Judicial Officer. And the charge is under subsection B?

MR. KRAKOWKA: Yes, your honor.

THE COURT: Uh, a person assaults a peace officer. Uh, in order to be convicted of Assault on a Peace Officer you have to either hurt the police officer uh or cause reasonable apprehension of bodily injury in the peace officer with the use of a weapon, and that's subsection B, and that's what was charged here.

MR. KRAKOWKA: Yep.

THE COURT: The Affidavit in Support of Leave to File, which I read and thereafter granted leave to file said that uh, uh – and I'm not quoting exactly, but the gist of it is Trevor Case pointed a gun at Pasha uh, and Pasha shot him. He was uh, reasonably apprehensive of uh, of being seriously hurt or killed. Uh, there was the use of a weapon uh, hence subsection B charge.

The Defendant has moved to dismiss uh, asserting that the, I'll call it the Discovery uh, in the case, uh the statements made during the uh, investigation, the statements that were made by people uh, memorialized uh, on body cam, uh indicate that in fact there was no weapon pointed at Pasha. [6] Uh, he didn't have a gun in his hand, uh any of that. Uh, that's what the Defense alleges.

Now, I didn't come here to try the case. You know, it – we got witnesses uh, abounding in the hall, I see that. I was asked to have a live hearing uh, because of all the witnesses and videos uh, and you know, uh I think I got all day don't I? Or no, I guess, I got all morning don't I? We've got all day if we need it.

Uh, but uh, what Mr. Krakowka, the State, says uh, is that it doesn't matter uh, for purposes of a Motion to Dismiss uh, because what matters is whether or not I – there was probable cause uh, as defined, it's been

defined for 200 years. If there's probable cause in the Affidavit, State has all the way until their case in chief to come up with the elements of the offense uh, and it's invulnerable basically for dismissal until then. Um, you know and that could very well be true. Uh, that may be the law of the land and if it is the law of the land why am I hearing evidence? I'm not going to be the trier of fact. You know we're still in the process of uh, vetting uh, the 13 people who are going to be, or the 12 people that are going to be the triers of fact. So, why would I hear the evidence? That's, that's my threshold question I have in my mind.

Uh, I'm not going to tell you how to try your motion. Uh, you do whatever you guys want to do. Uh, I'm not going [7] to rule from the bench uh, and I think that's going to – at, at a minimum it's going to be a pivotal point. Now, if uh, if I were to hear evidence in response to the motion – now I can definitely understand I'm going to hear evidence if uh, the Defense says, hey, it's very clear uh, what the Affi..., Affidavit said turns out not to be true, uh there was no gun. Uh, there certainly was no gun pointed uh, at anybody uh, so how could he of – there's – where's the use of the weapon? Well, uh if the State's going to come in and call a witness and they're going to say, oh, I clearly saw the gun. It was in his hand. It was pointed right at Pasha, or it was pointed at, no – okay, well then – well now. Clearly, we got to go to trial. But I, I suspect, you know, maybe that's not what I'm going to hear.

So, it comes down to that legal point if that's the case and then you get into the fineries, you know, uh is there a precedent from which I would be obligated to instruct a jury that it doesn't – you don't have to be pointing the weapon. Uh, the, you know, the, the buildup, you know, the why they were there, the phone

calls, the history, you know, if all that's enough and you can instruct a jury to that if that's the law, when then that uh, you know, you can also go to trial on that. Uh, but makes me wonder why I'm hearing evidence today about it. And that's just the Motion to Dismiss.

[8] The Motion to Suppress is uh, like founded in that uh, uh the Defense is saying the, the officer's had no business going into the place. Well, they had business, but they had no Constitutional Right. Uh, the Constitutional Right of the Defendant, Mr. Case, uh was the operative thing and you can't cross that threshold uh, without a warrant. Uh, the State of course says, exigent circumstances. Exigent circumstances are a uh, exception to the warrant requirement. You know if my house is burning down, I hope the cops don't wait to get a warrant before they come in and save me uh, you know, exigent circumstances uh, is an exception to the warrant requirement. And that's the g..., that's the gist of the Motion to Suppress.

And then there's a Motion in Limine uh, a Motion in Limine uh, party comes in and says, Judge I want a pre-trial ruling that this particular evidence will or will not, you know, get into the trial. Uh, and what the Defense wants out is uh, former conduct uh, by Trevor Case uh, alleged former conduct, whatever, but uh, prior bad acts, prior acts has received tons and tons of attention in criminal jurisprudence and very much including Montana. The lawyers got it right as to the procedure, make a Motion in Limine after your Discovery and that's it.

[9] Uh, uh, uh and I don't think there's a lot of dispute uh, really – I don't think the State wants to risk trying to get any prior bad acts in anyway. So, we'll get to that.

Anything else as preli..., preliminary matter Mr. Krakowka?

MR. KRAKOWKA: Your honor, as far as calling witnesses um, I would ask uh, if the Defense would object to calling the witnesses in a consolidated fashion um, for both the Motion to Suppress and Motion to Dismiss for the testimony for both seems that it would be relevant in the same way, so we don't have to call them twice to say the same thing.

MR. BETCHIE: I don't object to that your honor.

THE COURT: Makes sense. So ordered.

MR. KRAKOWKA: Thank you.

Uh, otherwise your honor, um that's, that's all from the State.

THE COURT: Okay. Uh...

MR. BETCHIE: Your honor, I think there's a matter of uh, initial appearance on the amended.

THE COURT: Oh, yeah, we got to do that.

MR. KRAKOWKA: Yes, your honor, um Notice to Appear.

THE COURT: Sure. Hull, Swingley & Betchie, is that

David Hull?

MR. BETCHIE: Yes, your honor.

THE COURT: Uh, pushing 70 years old?

[10] MR. BETCHIE: Oh, he's been retired for a long time.

THE COURT: Oh, he's been retired.

MR. BETCHIE: Yeah.

THE COURT: I knew David. I liked David. Did a lot of uh, debt type stuff.

MR. BETCHIE: Yes, he did.

THE COURT: Uh, but as uh, with a gentlemanly and scholarly uh, approach.

MR. BETCHIE: Very much so.

THE COURT: Uh, most uh, bill collectors that I dealt with my practice were horrible.

(LAUGHING)...

THE COURT: You know, David Hull was a lawyer.

MR. BETCHIE: Yeah.

THE COURT: Is a lawyer.

MR. BETCHIE: He was there briefly when I was an intern and then he was in process of retiring and then I worked for Julia and then I wound up buying her out.

THE COURT: All the guys about my age are retired.

(LAUGHING)...

ARRAIGNMENT ON AMENDED INFORMATION:

THE COURT: Uh, I've got everything but an outline to do an Initial Appearance. Can you whip me up one?

JUDICIAL ASSISTANT: Um, I don't have one...

[11] THE COURT: I just want to make sure I don't forget anything. Mind if I fumble around at it? He's been advised twice I think.

MR. BETCHIE: I'm fine with that your honor.

THE COURT: Alright, uh...

MR. BETCHIE: This will be the third one, so I think he knows his rights.



THE COURT: yeah. Uh, Mr. Krakowka would you summarize the amendment? What's different with this amendment than bef..., the next proceeding pleading?

MR. KRAKOWKA: Yes, your honor, this amendment specifies under subsection B uh, the statute for Assault on a Peace Officer uh, that the assault on a peace officer was based upon causing reasonable apprehension of bodily injury and a peace officer with a weapon. Uh, let me get down to my charging documents your honor.

THE COURT: And is the Pre-Trial Wednesday or next Wednesday?

CLERK OF COURT: I think it's Friday Judge.

THE COURT: Oh.

CLERK OF COURT: Friday, the 25th.

JUDICIAL ASSISTANT: A week from Friday.

CLERK OF COURT: Yeah.

MR. BETCHIE: Yes.

MR. KRAKOWKA: Yes, and...

[12] THE COURT: The, the Final Pre-Trial is a week from Friday?

JUDICIAL ASSISTANT: Correct.

THE COURT: Okay.

MR. KRAKOWKA: If reasonable apprehension of serious bodily injury uh, involving the use of a pistol.

THE COURT: And that was a change?

MR. KRAKOWKA: That, that is the change your honor. Whereas before I believe it was just saying reasonable apprehension of serious bodily injury.

THE COURT: You, you, you put in the use of a weapon.

MR. KRAKOWKA: (INAUDIBLE-SPEAKING SAME TIME AS THE JUDGE)...

THE COURT: What's the difference between the next to last and the last Information Mr. Krakowka? What do you, what are you alleging this guy did?

MR. KRAKOWKA: Uh, it's between making a threat with a weapon to with a weapon or what reasonably appeared to be a weapon.

THE COURT: That's the change?

MR. KRAKOWKA: Yes, your honor.

THE COURT: You, you had alleged the weapon and...

MR. KRAKOWKA: Yes.

THE COURT: reasonable apprehension of serious bodily injury previously...

[13] MR. KRAKOWKA: Yes.

THE COURT: but now you specifically said by use of a weapon.

MR. KRAKOWKA: By use of a weapon or what appeared to be a weapon.

THE COURT: What appeared to be a weapon, okay.

And you understand that Mr. Case that that's what's being alleged now in the most recent Amended Information?

MR. CASE: I do your honor.

THE COURT: Okay. Uh, and previously uh, on at least one occasion, now this is a Second Amendment, right?

MR. BETCHIE: Yes, it is.

MR. KRAKOWKA: Yes, your honor.

THE COURT: Uh, so twice now you've been advised of rights uh, advised that you don't have to admit anything, advised that you have the right to remain silent and make the State prove it. Uh, you know, to call your witnesses, to testify if you want to, you don't have to. You know, all of those things, I'm just touching upon the surface of it because you've been advised twice before and your attorney says I don't have to go through it in such great detail.

Do you understand what's going on?

MR. CASE: Yes, I do your honor.

THE COURT: Uh, and uh, uh let me just jump to it. How do you plead to that Amended Information?

[14] MR. CASE: Innocent your honor.

THE COURT: Not guilty?

MR. CASE: Not guilty, yes, your honor.

THE COURT: Alright. Uh, you satisfied with that?

MR. BETCHIE: I am your honor.

THE COURT: Okay. Uh, State satisfied?

MR. KRAKOWKA: Yes, your honor.

THE COURT: Alright. Alright, uh he's been uh, arraigned on the uh, Second Amended Information.

They are, they are the Defendant's motions, uh, you know, we've got three different ones. Did, did you want to make any kind of argument in addition to your briefs? Uh, you want to just say, okay, State you know what uh, we're alleging here, put some evidence on to counter it. Uh, uh it always seems kind of

backasswards to me when somebody makes a motion and the other side has to come in and disprove it. It kind of – it happens in a Motion to Dismiss. Uh, but I don't want to just say, okay, Mr. Krakowka call your witnesses if that's – if you came with an oratory for me to hear.

MR. BETCHIE: I have no opening (INAUDIBLE-JUDGE BEGAN SPEAKING)...

THE COURT: Okay.

MR. BETCHIE: your honor. Um, I have closing, I may, if the Court will allow it... THE COURT: Sure.

[15] MR. BETCHIE: but other than that I'm (INAUDIBLE-JUDGE BEGAN SPEAKING)...

THE COURT: Uh, like I say I got all day. Uh, so what do you think should happen first?

MR. BETCHIE: Um, I'm fine with the State calling the witnesses or I could call them. It doesn't matter to me your honor. I'm prepared both ways.

THE COURT: Alright. Uh, uh I think generally it's the State's burden to beat back the motion. Do you agree with that Mr. Krakowka?

MR. KRAKOWKA: Yes, your honor.

THE COURT: Alright. So, uh and we've agreed that that uh, and it's ordered that we're going to have witnesses one and done. Uh, they come in, whatever you want out of that witness get it out for all purposes today. Uh, uh and since both parties uh, subpoenaed pretty much the same people as far as – or tried to anyway, uh, uh, I, I, I think this distinction between uh, direct and cross is kind of a nullity. You know, uh, uh I, I think each side is sponsoring the witness while they got it up there. You follow, following me? Uh, don't

not, don't hesitate to ask a question because it wasn't covered in direct. Uh, the witness is up there, ask your questions for today's purposes.

Alright, first witness.

[16] MR. KRAKOWKA: Yes, your honor, the State would ca..., start by calling Jen Harris.

THE COURT: Jen Harris, is Jen Harris in the Courtroom?

MR. KRAKOWKA: She – I have all the witnesses outside your honor.

THE COURT: Okay, very good.

Ms. Harris, please come into the well of the Courtroom, approach the Clerk and be sworn.

(WITNESS SWORN IN) CLERK OF COURT

THE COURT: Right here.

STATE WITNESSES:

MS. JEN HARRIS

DIRECT EXAMINATION:

MR. KRAKOWKA: And your honor, may she remove the mask to testify?

THE COURT: She, she can if she wishes. How you doing Jen? Nice to see you.

MS. HARRIS: Good how are you?

THE COURT: Alright. Hey Jen, it's me.

MS. HARRIS: I know.

(LAUGHING)...

MR. KRAKOWKA: Could you please state your name?

MS. HARRIS: Jenny Harris.

Q: Alright, and is the Court Reporter able to pick that up? Alright, thank you.

[17] Could you please spell your last name?

A: H-A-R-R-I-S (SPELLING OF NAME)...

Q: And um, Jen how do you know uh, the Defendant Mr. Case?

A: Um, since High School probably. Went to school in the same era.

Q: Alright. Were you involved in a relationship with him in early 2021?

A: Um, summertime we hung out for a couple months or so.

Q: Okay. And did you speak with him on September the 27th, 2021?

A: Yes.

Q: Um, what were you speaking with him about?

A: Um, we were on the phone. Um, I had a busy night and he had wanted to talk and um, I don't know – we were just kind of going our separate ways I guess and um, had been for a while and um, I don't know if any – just said he was going to kill himself or something to that nature, I guess.

Q: Okay. Um, while you were talking with him did you get any impressions to whether or not he'd been drinking at all?

A: Um, I can't remember if he said he was. I, I assumed maybe he was. Um, just kind of erratic, I guess.

[18] Q: Alright. When he said that he was going to kill himself um, did that concern you?

A: Yeah.

Q: Alright. Um, how did you handle that when he told you he was going to kill himself?

A: Um, well the nature of the conversation changed at that point. Um, you know, I tried to tell him he had a family that loved him and cared about him. He's got a daughter and um, and he just – I, I couldn't reel him back. It seemed it just kind of became more methodical um, about what he was going to do. And um, and then I could hear um – he said he was going to get a note or something like that and then I could hear a clicking, like he had a pistol or something like that and.

Q: What do you mean by a clicking? Can you describe it?

A: Um, like to co..., I mean to cock a gun is what it sounded like.

Q: Okay. Um, and have you heard that sound before anywhere?

A: Um, yeah, my grandpa and my dad both taught Hunter Safety so, I grew up around.

Q: Around firearms and guns?

A: Um hmm.

[19] Q: Alright. And so, when you heard that sound that was familiar?

A: Yeah, I mean I assumed he was serious at that point, so yeah.

Q: Wha..., what did you tell him you were going to do?

A: I um, told him I'd have to call the cops if he did this. I probably shouldn't have said that. I wasn't trying to antagonize him. I just was trying to reel him back in um.

Q: What was his response when you told him that you were going to call the police?

A: Um, he made a comment about um, I, I'm not even sure it totally registered with him that he said um, he would shoot them all too, or something like that. It just – I'm not sure he was clear in his thinking, but it just kind of came out like that.

Q: Okay. That's not the exact words, but similar to the fact of...

A: Something to that effect, yeah.

Q: he'd shoot them all?

A: Something like that, yeah.

Q: Okay. Um, as the, as the conversation went on what's the next thing you remember hearing over the phone?

A: Um, after that um, uh there was a pop. Um, and then just nothing, it was just air. It was nothing. I, I just, I thought he pulled the trigger um, because it was just dead [20] air. He wouldn't respond. I yelled his name a few times and um.

Q: Was the phone call still connected?

A: Yeah. Yeah, it didn't go dead. It was just air and, and uh, I – yeah, I just – I thought he pulled the trigger so.

Q: Alright. Um, so then what did you do?



A: Um, I called 9-1-1. I um – this was maybe 9:30 at night or something like that. I just couldn't – immediate response was just to call 9-1-1.

Q: Okay. And did you report to them what had happened?

A: Uh, probably, briefly.

Q: Alright.

THE COURT: I didn't hear that answer, I'm sorry.

MS. HARRIS: Probably briefly.

THE COURT: Briefly.

MR. KRAKOWKA: After uh, reporting to them what happened, what did you do?

MS. HARRIS: Um, told my kiddo I had to go. I, I went down there just – I didn't know what to do.

Q: Alright. Did you try and call back at all?

A: Yeah, yep. I sat outside. I tried to call. Um, tried to text him. No response.

Q: Did you get any answers when you tried to call him?

A: No.

[21] Q: Did your texts get responded to at all?

A: No.

Q: When you got there were the police there already or did they arrive?

A: Yeah.

Q: They were there?

A: No, they were there um hmm.

Q: Alright. At any point in time did you speak with any of the officers there?

A: Um, yeah, outside a little bit. I think I maybe talked to Heffernan. I didn't even recognize him at the time, but.

Q: Alright. Do you recall what you talked to uh, Captain Heffernan about?

A: Um, I think, you know, everything was happening so fast I just couldn't process what was happening. Um, not really. It was just – I, I honestly can't really recall.

Q: Okay. Do you recall if you had talked to him about the threat to shoot it out with the police?

A: Um, I can't, I can't remember how it came up exactly, but um, something about – maybe he said we would have to go inside or something and I, I relayed the, the comment that Trevor had made, you know, that he was prepared is what it sounded like to me.

[22] Q: Alright. And Jen um, at that point in time were you pretty concerned about Trevor and possibly what he'd done to himself?

A: Um hmm, absolutely.

Q: Alright. Um, as far as appearing today goes...

A: Um hmm.

Q: were you pretty nervous about showing up and testifying in Court?

A: Yes.

Q: Okay. Kind of didn't even want to?

A: Right.

Q: Would've avoided it if you at all possibly could have?

A: Yes.

Q: Jen, thank you for your time. I have no further questions for this witness your honor?

THE COURT: Alright. Uh, just housekeeping, if we're going to be that close without masks uh, don't do it.

MR. KRAKOWKA: Okay.

THE COURT: Uh, if you're not going to wear a mask get, get to the podium and ask your questions.

MR. KRAKOWKA: Thank you your honor, I'm sorry I was having trouble hearing Ms. Harris.

THE COURT: It's alright, it's alright, I understand.

Mr. Betchie you may cross.

[23] CROSS EXAMINATION:

MR. BETCHIE: Thank you your honor.

Um, hi Jen.

MS. HARRIS: Hi.

MR. BETCHIE: Um, do you go by Jenny? I'm sorry.

MS. HARRIS: Yeah, that's fine.

Q: Okay. I feel like I know because I've heard so much, but – and I've heard your name a few a times, but haven't actually met you so, nice to meet you.

A: Me too.

Q: Um, I just have two quick questions for you. Um, so, you testified he said something to the effect of I'll shoot them all too um, at the scene and then on your um, when you talked Captain Hefferman I believe you

said something to the effect that going to come out guns blazing or go down in a blaze of glory. So, you don't know exactly what he said?

A: No, it was something, something to that effect. I, I can't recall the exact words.

Q: Okay. And it – you said this several times as well that it's – he said something, and this is how you're interpreting it is that it's something like that?

A: (INAUDIBLE-NO RESPONSE)...

Q: Okay. So, this is also based on you interpretation of his statement and not a clear – this is exactly what he said?

[24] A: The um, the comment of coming out shooting or something like that?

Q: Yes.

A: Um, yeah. Um, my interpretation was he wasn't really thinking about what he said, and he just said it, but um yeah.

Q: And did you communicate that it was interpretation and not an exact quote to the officers?

A: Um, yeah, I, I don't think we got into like exact quotes that night. It was just – he said something to this effect was all I said.

Q: Okay. Um, thank you very much.

THE COURT: Okay. Any re-direct?

MR. KRAKOWKA: No, your honor.

THE COURT: Alright, Ms. Harris the Court appreciates your testimony. Uh, we're done with her all day, right?

MR. KRAKOWKA: Yes, your honor. I would ask that she be allowed to be excused.

THE COURT: Yep, you are excused Ms. Harris with the Court's thanks.

MS. HARRIS: Thanks.

MR. KRAKOWKA: Thank you your honor.

The State would next call Captain Heffernan.

THE COURT: Okay.

Alright, Captain Heffernan, you know the way.

[25] (WITNESS SWORN IN) CLERK OF COURT

CAPTAIN DAVE HEFFERNAN

DIRECT EXAMINATION:

MR. KRAKOWKA: Please take a seat Captain. You can take your mask off while you testify if you'd like.

Could you please state your name for the record?

CAPTAIN HEFFERNAN: Dave Heffernan.

Q: Um, could you please spell your last name?

A: H-E-F-F-E-R-N-A-N (SPELLING OF NAME)...

Q: Thank you. What is your current occupation?

A: I'm a Captain with the police department.

Q: How long have you been an officer?

A: Uh, almost 18.

Q: Almost 18 years. Were you working on September the 27th uh, and September the 28th of 2021?

A: I was.

Q: Um, do you recall uh, what kind of call you got that night in regards to Trevor Case, the Defendant?

A: Yes.

Q: What kind of a call was it?

A: Uh, possibly suicidal male.

Q: Do you recall who that report had come in from?

A: Yeah, uh his ex-girlfriend.

Q: Okay. Do you recall anything more I, I guess specific about that call?

[26] A: She just said that when she was talking to him, she heard him uh, cock a gun and then a loud pop and then there was no more conversation with him.

Q: Um, did she report I, I guess anything else about what he said while she was talking on the phone with him?

A: Yeah, she said don't call the police because she goes, she – they would have uh – be in trouble. He would have a shootout with them.

Q: Alright. Um, who all was working the shift with you that night?

A: Sergeant Pasha and Officer Lindsted.

Q: Now, as far as things that go on in Anaconda-Deer Lodge County, how serious of an incident is this?

A: Oh, very serious.

Q: Um, so at that time were the three of you going to be adequate to handle this situation?

A: I didn't think so.

Q: What did you think you need...

A: You always, you always want more...

Q: what did you do?

A: I did – I called the Chief.

Q: Alright. Uh, and who is the Chief?

A: Uh, Bill Sather.

Q: Um, and what did Chief Sather do?

A: He came to assist us.

[27] Q: Um, now you're the Captain...

A: Right.

Q: at the scene?

A: Um hmm.

Q: So, who's in charge of the overall scene?

A: I was.

Q: Alright. Even though the Chief was responding?

A: Well, the Chief would be in charge when he showed up, but I wa..., before he showed up, I was in charge.

Q: Okay. So, you're the one making the calls?

A: Yes.

Q: Why, why – were you considering whether or not to go into the house for – to see about the condition of Mr. Case?

A: Well, we went around the house several times calling for him, and uh looking through the windows to see if we could locate him.

Q: Okay, why would you do that?

A: Well just to see if he was hurt or anything like that.

Q: Okay. Did you guys try knocking on the door for him?

A: We did.

Q: Alright.

A: Front, back and he has a basement door in the back also. We knocked on all of them.

[28] Q: Alright. Any response?

A: None.

Q: Um, so why not just – I mean, or why, why are you looking in the windows. I mean you're looking in the windows...

A: Well, to see if he was hurt. Uh, his girlfriend said she heard a pop. We thought he might've shot himself, so we're looking to see if we could see him laying there or anything.

Q: Alright. A body?

A: Right.

Q: Blood?

A: Yeah.

Q: Okay. Were you able to see anything?

A: Well, we saw an empty holster, uh some empty, or some beer and uh, like that through the kitchen, but that's all we could see.

Q: Alright. Um, why's an empty holster important?

A: An empty holster means there was a weapon there at some time.

Q: Alright, and it's not there now?

A: Right.

Q: So, how often do you have to deal with someone who's suicidal while you're on a shift?



A: Quite often.

[29] Q: Um, what do you do when somebody is suicidal?

A: Like depends on the situation.

Q: Okay.

A: Um, I've gone to somewhere, a person has hung himself. And I got there in time to cut him down and he's still with us today.

Q: Um, so if, if you respond to a situation where someone is suicidal and you're able to intervene before the suicidal act has started to occur what do you do with them?

A: We talk to them, try to get them some help, maybe bring them to the hospital so they can see – we have a Crisis Response Team.

Q: Okay. What is a Crisis Response Team?

A: It's called CRT, they, they uh, can come in and be uh – get them some help uh, maybe medication, uh maybe help them with some other problems that they're having with their life.

Q: Alright. Sometimes if there's a very serious mental health issue do, they try to get them placed somewhere?

A: A lot of times they'll go uh, Butte, uh Billings, a lot of times to the hospital down here.

Q: Alright. Uh, and when you say down here?

A: Warm Springs.

Q: Okay. The Montana State Hospital?

A: Um hmm.

[30] Q: Alright. Um, and then they're safe and they can't hurt themselves?

A: Or others.

Q: Or others. Um, so, as an officer ha..., have you responded to situations where someone has tried to commit suicide before you've gotten there?

A: Oh, yes.

Q: Um, what kind of situations have you responded to where you've been able to successfully intervene before somebody has managed to kill themselves?

A: Well, that uh, like the guy I did cut down. Uh, there was another guy that did shoot himself, but we got there in time to help him. I actually drove the ambulance while they uh, brought him in. He's still with us also.

Q: Alright. Where did he shoot himself?

A: Right in the head. But he luckily right now he's still alive and doing well.

Q: Alright. Um, if you get there and somebody has seriously, or tried to commit suicide, what's protocol for what you do?

A: Well, render aid first. First officer safety, make sure everything's fine, but you try to render aid. Try to help them. Uh, get them to the hospital if they've hurt themselves. If not, try to help them and then we get them to hospital so they can see somebody to get them some help.

[31] Q: So, the first concern is officer safety?

A: Um hmm.

Q: Followed by rendering...

A: Right.

Q: to the subject, and then transportation to the hospital?

A: Um hmm.

Q: Um, how does the nature of the call and reported frame how you're going to respond to that death or suicide call?

A: Well, it depends on who it is and if we've had prior dealings.

Q: Okay. So, how do you respond if somebody goes over and finds grandma dead watching the Price Is Right?

A: It depends on like that. Like that grandma – uh it depends on if we call a detective out or not. If it's a, an expected death, you know, it's not a suicide.

Q: Okay.

A: It's, it's – we've gone to a lot of deaths.

Q: Okay. So, there's...

A: Some are expected, some are like age related or not.

Q: Okay. If you're responding to a situation that has like cut wrists or somebody is trying to overdose on pills, how does that change your response?

[32] A: Well, first thing our dispatch does is ask if there is any weapons. And if there's no weapons, you know, we go in and we try to render aid first thing. But, you know, like cut wrists are different than a gun shot.

Q: Okay. So, explain to me how...

A: You know, we know there's, we know there's weapons involved so officer safety first.

Q: Alright. With cut wrists now you know there's a knife?

A: Right.

Q: So, that's something you're considering going.

A: Considering.

Q: Now, where you've got potentially a firearm involved...

A: Right.

Q: how does that change your response?

A: Well, it depends on who it is and if they've shot themselves and if someone else is in the house. It depends on if they're alone with whether we go in right away or if they're alone, you know, if there's just a second party telling then it's different than if someone's already there with them.

Q: Okay. So, in this case presumably they're alone.

A: Um hmm.

Q: How does that make you want to respond?

[33] A: Well...

Q: Or how does that – how are you trained to respond?

A: when, when he already threatened to harm officers, we proceed with caution.

Q: Okay. What kind of caution is that?

A: Well, officer safety. That's why I called out uh, the Chief just for extra help.

Q: Okay. So, you call out backup?

A: Um hmm.

Q: Okay. Bullet proof vests?

A: Right. We have those.

Q: Alright. Potentially bullet proof shields?

A: I actually went to the station and, and retrieved it.

Q: Alright. You go in with weapons drawn as opposed to them holsters?

A: Right.

Q: Okay. Um, did you know Trevor Case uh, before you responded to this call on September the 27th?

A: Yes.

Q: How did you know Trevor Case?

A: I've known him my whole life actually, but uh, we've had other prior dealings with him.

Q: What kind of other prior dealings have you had with Trevor Case?

[34] A: Well, he threatened suicide before.

Q: Alright. What kind of incidences have surrounded those threats of suicide?

A: Well, he threatened and uh, actually his fellow teachers were all around the house helping him and we went there and tried to get him help and they actually – he, he threatened to drive away, and they took his vehicle and, and his weapons.

Q: Alright. Did that end up upsetting him?

A: It did.

Q: Okay. How did that end up upsetting him, do you recall specifics?

A: Yeah, because he actually had walked up to the police station and made a report that I stole his truck.

Q: Alright. Um...

A: And actually, when the – his fellow teachers took his truck so he couldn't hurt himself.

Q: Okay. Do you recall any other – so, that was when you had a personally had an interaction...

A: Right.

Q: with Mr. Case?

A: Right.

Q: Um, on that occasion did the school end up getting locked down?

[35] A: Not on that occasion, but there was another occasion that it did.

Q: Okay. So, there was another – do you – can you give me any details about that one?

A: I, I wasn't sure about that one, no.

Q: Okay. Do you recall any other occasions involving Mr. Case having an involvement with law enforcement?

A: Yeah, when he had an altercation up at the 7-Gables, but that was just a report I read. I, I wasn't involved in that one.

Q: You weren't involved in that one?

A: Right.

Q: But part of your job as a Captain is to know what's going on?

A: Right, read all reports.

Q: What do you recall from that report?

A: That he was just involved in an altercation at a bar.

Q: And had he left before law enforcement arrived?

A: Um hmm.

Q: And was he supposedly consuming alcohol at that time?

A: Yes.

Q: Um, now on this occasion um, you had spoken with Jenny Harris?

[36] A: Um hmm.

Q: Um, and you had also seen beer cans in through the window?

A: Right.

Q: Did you have a suspicion as to whether or not alcohol was involved?

A: Absolutely.

Q: Um, had your experience with Trevor Case led you to believe that he starts to become erratic when he's consuming alcohol?

A: Absolutely.

Q: So, when you respond here to this call and you're considering going in to assist Trevor Case how does that frame your response how you're reacting this time?

A: Well, that's officer safety first thing right there, because we see the empty holster, we saw there was beer cans on the counter, he wouldn't answer to us. Jenny said she heard a pop. We don't know if he fatally shot himself, or like I said before I had a guy shoot himself in the head and was still alive, we saved him.

Q: So why even go in the house?

A: For – to help him. If he wasn't fatally shot, you know we could get him assistance.

Q: Alright. So, if you hadn't – if he wasn't deceased...

[37] A: Um hmm.

Q: you wanted to get him help?

A: Right.

Q: How long did it take you to take – for you to get ready uh, and get all the pieces in place before you went into the house?

A: It was probably a half hour.

Q: During that time um, the, the half hour, did you consider applying for a warrant?

A: No.

Q: Why not?

A: Uh, because it wasn't a criminal thing. We were going in to assist him.

Q: Okay.

A: We didn't, we weren't going in for a criminal thing. We were looking trying to assist him. That's why I called out the Chief to help.

Q: Alright. You were afraid he was in there bleeding to death?

A: Right.

Q: In your experience have you sought warrants in the past?

A: Not for a suicidal.



Q: Not for a suicidal. But you've sought warrants in regards to other matters?

[38] A: Oh yes.

Q: How long do they take?

A: Oh, they'll take sometimes up to a couple hours.

Q: And a couple hours was your concern that Trevor Case would be deceased?

A: Um hmm, yes.

Q: Prior to going into the house what were the officer safety measures you made sure were in place?

A: Well, we just always, you know, we were all together.

Q: Okay.

A: And we just checked all the windows. We even knocked on the back window where there was a light on, and no answer.

Q: Okay. So, you tried to get responses in the house?

A: Um hmm.

Q: Um, what did you do for personnel to increase officer safety?

A: That's when I called out for the Chief.

Q: Okay. You got additional personnel there?

A: Right.

Q: What did you do for equipment to increase officer safety?

A: I, I went back to the station and I did retrieved the shield.

[39] Q: Alright. And once you got the shield, what did you guys do for your own personal equipment to increase pro..., personal safety?

A: Well, the other officers had their uh, weapons with them and we uh, just actually went to the front door and announced ourselves and went through the front door.

Q: Okay. Um, once you got into the house um, why did you go in again?

A: Just to assist him.

Q: Okay. You were afraid for him?

A: Um hmm.

Q: Um, were you identifying yourself inside?

A: The whole time.

Q: How loud?

A: Very loud.

Q: Alright. Do you recall the kind of things you were saying?

A: Well, I was, actually, I was walking with the Chief, and we were yelling Trevor, Trevor we're the police, police, we're here. We need to help you. Trevor come here. Where you are? You know we were just yelling the whole the time.

Q: Alright.

A: Announcing ourselves.

Q: So, you were making sure that he knew that it was officers in the house?

[40] A: Right.

Q: Alright. And what was the other point of the, the kind of, the yelling at it? I mean was it – were you trying to scare him?

A: No, we were trying to find out where he was so we could help him.

Q: Alright. Um, the door that you went in what part of the house did that enter into?

A: The front room, right through the front door.

Q: Alright. And what floor is that?

A: Living room, main floor.

Q: The main floor of the residence?

A: Um hmm.

Q: Um, how did you clear that first floor?

A: As we went in we cleared the main living room, and that's where – actually there was a note laying on the table as we saw and it looked like a suicidal note.

Q: Alright.

A: And there's a bedroom to the left, or part of a room. They cleared that and then we went in toward the kitchen where we found the, or that's where the empty holster was.

Q: Alright. Did you have an opportunity to read the note?

A: No.

[41] Q: No? But you could see a partially completed note?

A: Right.

Q: Um, in your training and experience uh, do uh, suicidal individuals leave notes?

A: Most of the time.

Q: Why?

A: Probably closure for the family maybe.

Q: Okay. Maybe sometimes closure for themselves?

A: Maybe.

Q: Um, in the kitchen then you observed an empty holster?

A: Empty holster and empty beers.

Q: Alright. Did you see the pistol that went in holster anywhere in the kitchen?

A: Nope.

Q: As an officer does that concern you at all?

A: Very much.

Q: Why?

A: Because you know there's a holster, there's a pistol somewhere.

Q: Alright. But it's not there?

A: It's not there.

Q: Um, where did you go next?

A: We went in toward the back. Um, and then Chief Sather and I – there's a stairs going downstairs and then [42] stairs going up. And I knew from my other job that uh, his bedroom was downstairs. So, Chief Sather and I went downstairs. I figured that's where he might be.

Q: Alright. As you went – when you went downstairs what's the next thing you remember happening?

A: We were going downstairs announcing ourselves throughout the whole time and it actually, Chief Sather was saying, come on Trevor, it's me Billy, you know, we're here to help you. Where you at? And then we heard the loud pop.

Q: Alright. And did you recognize that loud popping sound?

A: Oh, yes.

Q: Alright. What was it?

A: It was a rifle, or a, a gun.

Q: It was a gun. Where'd that shot come from?

A: Upstairs.

Q: So, what did you and Chief Sather do?

A: We turned and ran right upstairs.

Q: Um, when you got there what do you remember happening?

A: Well, I made it through the door first and I asked our officers if they were okay. I said, you guys okay? He goes, I shot him. I said, are you guys okay? He goes, yeah, and actually Officer Linsted was already on top of Trevor trying to help him and he was laying on the ground. And

[43] Officer Linsted carries a, a medical bag on his belt. And he was trying to put compression on him already.

Q: Alright. Um, when you're saying, he said I shot him, who was that?

A: Officer Pasha, or Sergeant Pasha.

Q: Or Sergeant Pasha?

A: Yes.

Q: Alright. Um...

A: And I said, I said are you okay? Are you okay? Because we didn't know who shot or who got shot or anything...

Q: Alright.

A: because I mean we weren't there.

Q: Um, what do you recall happening next?

A: Well, I looked down and I saw a pistol laying there and I picked it up and uh, put it – secured it away from us.

Q: Okay. Do you know whose pistol that was?

A: I didn't at that time.

Q: Okay. Where was it?

A: It was laying right in the hamper, right next to where actually he was laying.

Q: Okay. Um, why would you have picked that up and moved it?

A: Well, he already attempted to shoot. I said, you know, he was still very much alive and...

[44] Q: Okay.

A: hurt and he doesn't need a weapon.

Q: Now, at that point you don't know as to whether or not he tried to shoot anybody, because you...

A: No, I did. I saw that weapon there and I just secured it for our safety.

Q: Okay. You did see there's a weapon there...

A: Oh, yeah.

Q: And it needs to be secured?

A: Um hmm.

Q: Okay. He had made threats and suicidal threats?

A: Right.

Q: So, at that point the prudent thing to do is to secure that weapon?

A: Exactly.

Q: Alright. Um, then what happened?

A: We assisted Trevor and then all of a sudden, you know, we called for medical right away. And then we helped him up and helped him down the stairs to uh, the ambulance, which is only across the street, so they were there very fast. And we walked him out and helped him right into the ambulance.

Q: Alright. Um, now was your body camera on the entire time?

[45] A: Not when I was carrying the shield, because it wouldn't show anything. When uh, up – when we were up there it was on.

Q: Okay. When you were clearing the rest of the house it was on?

A: Right.

Q: Prior to entering the house did you have your body camera on?

A: No, um, yes, outside.

Q: Outside?

A: Um hmm, when we were clearing the house and uh, looking through the windows, announcing ourselves.

Q: Alright. But there – so there's a time there where the body camera isn't on?

A: Right, the battery doesn't last all that long so, I turned it off when I went to the station to get the shield and made that run.

Q: Alright. And to turn it off and on there's a manual...

A: Um hmm.

Q: button to turn it off and on?

A: Yes.

Q: May I approach the witness your honor?

THE COURT: Sure.

MR. KRAKOWKA: Do you recognize this exhibit sir?

[46] CAPTAIN HEFFERNAN: Yep.

Q: Okay. And is this a true and accurate copy of your body camera?

A: It is.

Q: Alright. The State would move for admission of State's Exhibit 2 uh, in State v. Case; DC-21-100, um State v., or I'm sorry uh Captain Heffernan's body camera?

THE COURT: Any objection?

MR. BETCHIE: Um, I haven't seen what's on the disk, but I'm going to assume it's...

THE COURT: Pardon?

MR. BETCHIE: I haven't, I'm sorry your honor, just a moment. I have not seen what's on that particular disk, but I'm going to assume that it is Captain Heffernan's body cam footage, so no objection.



THE COURT: Well, that's the way it's being described. Uh, with that same assumption it is admitted.

MR. KRAKOWKA: And Mr. Betchie, this is an exact duplicate of the disk that I sent you attached uh, to my brief.

MR. BETCHIE: Okay.

MR. KRAKOWKA: And your honor, at this time I don't know that this is the best representation uh, of what had occurred in the house. The video is 30 minutes long. Uh, I will [47] leave it to the Court to review this disk at your leisure if you would like to.

THE COURT: Well, uh you got any problem with that, you know, me uh, viewing evidence uh, all by myself?

MR. BETCHIE: Uh, no, your honor.

THE COURT: You're okay with that?

MR. BETCHIE: I'm okay with that one.

THE COURT: Alright, I'll do it.

MR. KRAKOWKA: I have no further questions for this witness your honor.

THE COURT: Okay. Defense cross.

CROSS EXAMINATION:

MR. BETCHIE: Thank you your honor.

Um, how are you today, Captain Heffernan?

CAPTAIN HEFFERNAN: Very good.

Q: Um, nice to finally meet you. Again, I've heard your name quite a few times um, I feel like I know after watching your body cam, but it's nice to actually meet you.

Um, so, just to clarify, this was a welfare check that you were called out on, correct?

A: Yes.

Q: Okay. And there was no reports of criminal or suspected criminal activity?

A: Nope

[48] Q: Okay. Um, and you testified that you looked in the downstairs back door when you guys entered the back door. Did you also enter the um, back porch area?

A: Um, knocked.

Q: Okay.

A: Knocked on the doors.

Q: And you testified that you saw an empty holster um, but there was already a report that he had had a gun, is that correct?

A: Right.

Q: Okay. So, the presence of the empty holster only confirmed what you had already been told?

A: Yep.

Q: Okay. Um, and then you testified about a gentleman that attempted to hang himself. How long did you wait before entering his home to render aid?

A: Uh, not long at all. Uh...

Q: Okay.

A: because his wife was present.

Q: Okay, his wife was present. And um, so when someone's alone do you typically wait before entering the home?

A: It depends on the circumstances.

Q: Okay. Um, and you testified that you were proceeding with caution due to the history of the individual [49] that you were called out on, um your previous interactions with him and the fact that there was a gun, correct?

A: Um hmm.

Q: Okay. And so, when does proceeding with caution exceed immediate action in your opinion?

A: Well, when someone threatens to hurt officers...

Q: Okay.

A: it's caution.

Q: And um, you testified that, that during your interaction with Mr. Case um, in 2015 that he walked up to the police station and that the school didn't get locked down?

A: I didn't know the school got locked down that time.

Q: Okay.

A: It did another time.

Q: Um, your honor, might I approach?

THE COURT: Sure.

MR. BETCHIE: I'm handing you a copy of your report that you filed, um or it appeared that Officer Deeks might've written, um but you were part of the call, is that correct for the 2015 incident?

CAPTAIN HEFFERNAN: Okay, yeah.

Q: Um, and so the second to last paragraph on the second page, does that state that Mr. Case walked up to the police station or called the police station?

[50] A: I think he walked up to the police station.

Q: Okay, so the report's incorrect then?

A: I'm not sure.

Q: Okay. Um, and then on the last paragraph on the last page is there mention of the school getting locked down?

A: They did.

Q: Okay. And that was based on secondhand information?

A: Um hmm.

Q: Okay. And what was the alleged threat that was received second hand from the sch..., by the school?

A: See, I'm, I'm nightshift so I wasn't – during the day when they locked it down.

Q: Okay.

A: So.

Q: So, you're not aware?

A: No, I'm not shift.

Q: Okay. And um, can you tell me your definition of exigent circumstances?

A: Uh, it depends on when you go into help someone.

Q: Um hmm.

A: It – you're trying to help them. Uh, we have uh, reason to believe he had already harmed himself so, we have reason to believe that he needs help.

[51] Q: Okay. And so, your understanding of exigent circumstances is there a factor of promptness to your actions?

A: Yes.

Q: Okay. And you testified that you were on scene for about a half an hour before making entry. Um...

A: Um hmm.

Q: based on your body cam footage would it be more accurate to say it was closer to 40 minutes?

A: Yeah, 30, 40 minutes, I don't know, we were there.

Q: Okay. And so, in your definition of exigent circumstances does 30 to 40 minutes constitute prompt action?

A: I think so...

Q: Okay.

A: if he's still hurt.

Q: And again, to clarify you testified that you didn't attempt to obtain a warrant because this wasn't a criminal act?

A: Right.

Q: And you testified that you entered houses to render emergency aid without a warrant in the past?

A: All the time.

Q: Okay. And were you fearful of bodily harm?

A: Absolutely.

Q: And was that before or after entering the home?

[52] A: Both.

Q: Okay.

A: Before, during and after.

Q: And did you notice um, changes in officer, or I'm sorry, Sergeant Pasha's demeanor during your presence on scene?

A: As far as before?

Q: Uh, from initial arrival to entry did you see any changes in his demeanor?

A: No.

Q: No, you didn't observe an escalation in his...

A: Not at all.

Q: fear attention?

Okay. (HITTING MICROPHONE)... Sorry.

Um, how many gun shots did you hear?

A: Just the one.

Q: Just the one, okay. And then when you secured the weapon for officer safety did you ask any questions about it?

A: Well, I just said I'd – whose is this? And I grabbed it because actually Trevor was laying there...

Q: Okay.

A: and I just secured it.

Q: Was anybody able to positively identify it when you asked that question?

A: No.

[53] Q: Okay. Um, and you also testified that your body camera turned off, or you turned your body camera off when you went to retrieve the ballistic shield, is that correct?

A: Um hmm.

Q: Um, have you reviewed your body cam footage?

A: Not really.

Q: Okay. Um, are – so you're not aware that it actually turned off well before that?

A: Well, I had that and then I uh, when I, I went to talk to Jenny and then uh, I had it on when we were assisting him out.

Q: Okay. So...

A: And upstairs.

Q: I'm going to ask for a little bit of clarification on that.

A: Okay.

Q: Did you turn it off before talking to Jenny or...

A: Yeah, probably.

Q: Okay.

A: She was parked across the street.

Q: Okay. And why did you turn it off before attempting to talk to Ms. Harris?

A: The battery doesn't last that long on them and I, I just turn it off because it was...

Q: What's the standard battery life on one of those?

[54] A: I'm not sure.

Q: Okay. Um, did you ever observe Mr. Case holding a weapon?

A: No.

Q: No, okay. Nothing further your honor.

THE COURT: Okay. Anything else?

RE-DIRECT EXAMINATION:

MR. KRAKOWKA: Briefly your honor.

Would you say an exigent circumstance is an emergency circumstance?

CAPTAIN HEFFERNAN: Absolutely.

Q: Okay. And an emergency would include a situation uh, where you have a reasonable belief, based on the information you have, that somebody uh, is dying?

A: Yes. Jenny said she heard the shot, or a loud pop.

Q: Thank you. And that leads us to the next question. Which is when you respond how do you measure the promptness of your response to that emergency situation against the prudence of running right in?

A: Well, the same thing is when she said he threatened officers' lives if we did come right in. And so, that's why I called for help.

Q: Alright. And looking at this police report that Mr. Betchie had provided to you, do you still have that in front of you there?

[55] A: Yes.

Q: Okay. Looking at that last paragraph had uh, the very last paragraph written by Doris Paull, on the second line, did he make a threat against law enforcement there?

A: Yes.

Q: What was that threat?

A: Said that he'd take cops out if he had to.

Q: Alright, and what was the date on that report?

A: That was in 2015.



Q: Alright. So, December 9<sup>th</sup>, 2015, he was threatening to take cops out then too?

A: Yes.

Q: Alright. I have no further questions from this witness.

THE COURT: Mr. Betchie, anything else?

RE-CROSS EXAMINATION:

MR. BETCHIE: Um, just one more question your honor.

So, just to clarify um, you're not aware of that threat until just now when you read that in the report?

CAPTAIN HEFFERNAN: Right.

Q: Okay. So, you weren't aware of that at the time of the incident?

A: No.

Q: Okay. Nothing further your honor.

THE COURT: And that was two questions.

[56] MR. BETCHIE: Sorry, your honor.

(LAUGHING)...

THE COURT: Haven't seen the lawyer yet that can just ask one.

(LAUGHING)...

MR. BETCHIE: They're like potato chips your honor, you can't have just one.

THE COURT: Everybody through with Heffernan?

MR. KRAKOWKA: Yes, your honor.

MR. BETCHIE: Yes, your honor.

THE COURT: Alright, Dave thank you very much. You are excused.

MR. KRAKOWKA: Um, thank you your honor, and may Mr. Heffernan be completely excused for the rest of the day?

THE COURT: He's excused.

MR. KRAKOWKA: Thank you. He does work again tonight, and he worked last night.

The State would call uh, Officer Lindsted to testify.

THE COURT: Okay.

(WITNESS SWORN IN) CLERK OF COURT

THE COURT: Good morning, sir.

OFFICER LINSTED: Good morning.

OFFICER BLEAKE LINSTED

DIRECT EXAMINATION:

[57] MR. KRAKOWKA: Officer Linsted while you're on the stand you can take your mask off.

OFFICER LINSTED: Alright.

MR. KRAKOWKA: Could you please state your name for the record?

OFFICER LINSTED: My name's Officer Blake Linsted.

Q: And could you please spell your name?

A: Um, my first name's B-L-A-K-E, last name is L-I-N-S-T-E-D (SPELLING OF NAME)...

Q: Alright. How long have you been a police officer?

A: Uh, two years now.

Q: Um, were you working on September the 27<sup>th</sup> and September the 28<sup>th</sup> of 2021?

A: I was, yes.

Q: Do you recall getting a case that night in regards to uh, the Defendant, Trevor Case?

A: I do, yes.

Q: What kind of a call was it?

A: It was a welfare check on a suicidal male.

Q: Do you recall where – who that welfare check had come in from?

A: I believe – I don't know her name, but I believe it was cur..., like a current girlfriend.

Q: Alright. Um, what uh, I guess, what was the, the nature of the call? Do you recall what the details were?

[58] A: Uh, yeah, the reporting party stated that she was on the phone with Mr. Case, heard a, like a handgun slide rack and then she heard a pop through the phone and the line had gone silent, but like the, the call didn't disconnect, it stayed open. And at that point she hung up and called us to report it.

Q: Um, did she report anything else at that time?

A: To the best of my knowledge that's what we were dealing with when we were on our way to the call.

Q: Alright. Any threats regarding law enforcement?

A: I don't believe in the current dispatch call, but once we arrived on scene, she informed us that he's told her that if we showed up, he was going to shoot it out with us.

Q: Alright. In the scope of uh, calls that you go on uh, during a nightshift in Anaconda-Deer Lodge County, how serious is this call?

A: This is almost all the way at the top.

Q: Okay. Why is that?

A: Uh, it's inherently dangerous for us and then obviously anybody contemplating suicide they're in immediate danger to themselves.

Q: Um, how does that increase or decrease with the use of a firearm versus other means?

A: Uh, it's absolutely the most serious with – if somebody is intending to use a firearm.

[59] Q: Why?

A: It puts us in a tough spot. Any sort of call that we're responding to, or somebody has a gun it's going to be extremely dangerous for everybody involved and then it is – if that's the method they chose to use to commit a suicide it tends to be extremely effective.

Q: Okay. What is the effect uh, if they try and utilize that weapon against anyone else?

A: It's also extremely effective. A firearm is, is obviously a very effective weapon to use against yourself or anybody else.

Q: Is that something then that as a responding officer you're taking into consideration?

A: Absolutely, yeah.

Q: And is that something that you're taking into consideration with what you learned from uh, the Defendant's girlfriend?

A: Yes.

Q: Um, after responding um, who all was there and working that night?

A: The three of us that were on shift that night were Captain Heffernan, Sergeant Pasha and myself. Sergeant Pasha and myself were in the car together and we got there probably a minute before Captain Heffernan arrived on scene.

Q: Alright. Did anyone else arrive?

[60] A: Um, Chief Sather showed up approximately a half hour after we got on scene, but other than that, not it was just the three of us.

Q: Um, when you initially arrived on the scene um, what, what – can you just walk me through what transpired when you arrived initially? I mean what happened the first about five or ten minutes?

A: So, initially uh, we kind of go like right into a scene assessment. Uh, we started looking through windows, like the door, anything like that that we can gather information from outside of the house.

Q: Why would you look through windows?

A: With a call of this nature um, you're truly just trying to figure out the most you can from the outside to keep us safe and then if, if somebody has a self-inflicted gunshot wound there, there's tells that you can tell from the outside.

Q: Like what?

A: Um, you can see blood on the floor. You can see like feet or like a, an entire body. Um, you can see like maybe something as small as like a shell casing is obviously going to set off like red flags for us. You're looking for anything you can see outside the house to like indicate that somebody has sustained a gunshot

wound. Or is waiting for [61] you um, looking outside the window. Like if we can see he's okay then that obviously changes the nature of our response

Q: Alright. When looking through the windows what were you able to observe?

A: I found in the kitchen, around like the table or the counter there was a empty, it's called a Serpa holster, um it's a holster for a handgun. There was an empty holster and then a couple beer cans were in very close proximity to that holster. I could see those from one of the windows on the Westside of the house. And then there was a, a handwritten note on like a coffee table in the front living room of the house that we were able to observe from the front window of the house. Other than that, we couldn't really gather anything else.

Q: Alright. And these are things that you can see looking in through the windows?

A: Yes.

Q: Alright. Um, when you respond to a suicide call um, what, what is your intent when you res..., responding to a suicide call?

A: Preservation of life is kind of the most important thing. At that point you're trying to keep – give the person that is intending to commit suicide the best chance, whether that's like deescalating the situation or if there is some sort of harm getting them like medical aid as fast as you [62] can. And then like a very close second priority to that is like officer safety and safety of others. And those are, those are the top two things I'm concerned about when I go to a suicide call.

Q: Alright. Um, when you talk about officer safety during a suicide call is suicide by cop a method of somebody committing suicide?

A: Yes, it's become extremely popular in recent times.

Q: What is, what is that?

A: That's somebody putting us in a situation where, you know, it kind of dictates that it's either us or them that's going to go home. So, they're using us as a means to obviously harm or in their minds hopefully kill them and it, it puts the ball in our hands, I guess.

Q: Alright. And necessarily before you use force in that kind of situation what kind of danger do you have to be in, or do you have to observe?

A: I'm sorry, I misunderstood your question. Could you repeat that one?

Q: Be..., before you can respond with force in that kind of situation, what kind of danger do you feel like you have to be in?

A: I would say that obviously any time we use force there has to be like an imminent threat of danger. It has to be like fairly immediate for us to ever use force.

[63] Q: Alright. Um, have you gone on a lot of uh, suicide calls uh, since you've been an officer?

A: I have, yes. I've been on multiple suicide calls.

Q: When you go on a suicide call, if you're dealing with somebody who's not in immediate, physical danger, okay. Uh, you're dealing with a situation where you can talk somebody down, how do you deal with it?

A: Um, yeah, if you're able to deescalate obviously, like just communicating with them is thing number one.

Q: Um hmm.

A: Um, and then at that point once we've found out everybody's safe, like the, I guess, the subject and

ourselves were able to – there's multiple avenues we can take. You can do like a mental health hold. You could bring them up to the jail where they're under like a suicidal protocol. So, they're supervised so they're not able to harm themselves and then they're evaluated by CRT, or we can take them to the, the Community Hospital of Anaconda in town and then they're also able to receive a CRT evaluation while they're being monitored by hospital staff. So, those are the two avenues we utilize.

Q: Alright. And what is CRT?

A: It's a Crisis Response Team. It is a – I don't know who – I – it's not a company. I don't know who heads it, but I just know it's the Crisis Response Team. It's a, it's a [64] group of people that's able to evaluate suicidal subjects and they're able to seek either placement in some sort of facility or um, doctor's care, or later follow up with a doctor. They're able to get that ball rolling and facilitate that.

Q: Alright. So, they're, they're assessing the mental health of this subject?

A: Yes.

Q: Alright. Um, what kind of I, I guess what kind of facilities have you seen folks be sent to?

A: Uh, if the mental illness is severe enough often placement in the State Hospital at Warm Springs is sought. That's kind of the main one I've seen in my personal, personal experience. A lot of times they're able to just recommend medication changes, stuff like that, or like able to get them in touch with a doctor, whether it's like Western Montana Mental Health in Butte, anything like that. Those are the only two places I, I know of them sending people for help.



Q: Alright. And in the case of a suicide um, a lot of times they're looking at the subject for issues of depression, does that sound correct?

A: Yes.

Q: Um, have you responded to uh, attempted suicides where the person attempting suicide has survived?

[65] A: I have, yes.

Q: Can you describe a few of those for me?

A: I've been to numerous like overdose attempts that have failed. Uh, some of them are severally, like very severe. They're taking like prescription pain killers, attempting to overdose that way. Some less severe with like one juvenile female used like Midol. Like they're just kind of swallowing pills thinking it's the way out.

And then I've been to a failed self-inflicted gunshot wound to the head. Um, we were able to, to get him out of the house and he's, he's actually doing really well, still living in Anaconda. And those are the only failed attempts that I've been to.

Q: So, you actually responded a situation where somebody shot themselves in the head?

A: Yes.

Q: And they survived?

A: They did, yes.

Q: How does the nature of the recall, the nature of the call reported frame how you respond?

A: The nature of this call I would say is very urgent um, based on the fact that like being able to hear an audible, like racking of a handgun to chamber a round

and then what was described is like a pop before the phoneline [66] went silent. That's going to dramatically aggravate like how we respond to a call like this.

Q: What do you mean aggravate?

A: Well, it's going to ramp up response, I guess. It's going to be taken, I don't want to say more seriously, because they're all taken seriously, but you're going to, to be alert and know that what the possible outcomes are. When you're going to a situation like that you kind of have to mentally prepare yourself to see, you know, a self-inflicted gunshot wound or stuff like that. So, that – you, you're mentally preparing for that.

Q: Okay. What else are your preparing for?

A: Um, there's always the chance with any suicidal subject that has a firearm that you're going to get in a shootout with that person or they're going to shoot at you or, or raise their weapon at you. Um, you, you got to be ready for that all the time.

Q: Alright. Did you know who Trevor Case was before you responded to this call on September the 27th, 2021?

A: I did, yes.

Q: How did you know who Trevor Case was?

A: Uh, there was previous dealings at work and there, there's been multiple – when we're at work you're, you're discussing potentially dangerous situations all the time with the guys that I work with and obviously names are included in [67] those conversations and he – the name has come up multiple times when I've been, been at work.

Q: Alright. How has his name come up?

A: Uh, you're talking about reports we've received in the past, calls we've been on, um kind of just – yeah, things that occurred that we have dealt with as a police department that we're going to discuss those things whether it's from like a training standpoint or like a precaution standpoint. That's always a discussion that we're hav..., like continuously having every day that we're at work.

Q: Okay. And, and officer I'm looking for specific instances that you recall discussing about Mr. Case?

A: Uh, there was one incident that was at the 7-Gables bar. I know that he was in like a physical altercation with another male out there. And at some point, during that, that altercation he ended up like biting the guys ear off and that is the extent of what I knew about that.

Q: Okay.

A: And then there was another very similar call that I responded to myself, it was approximately a year and a half ago I believe. Uh, he was, Mr. Case was suicidal again, he was out at Georgetown Lake. Um, I don't remember any of like the dispatch video on that. We weren't able to locate him at the lake.

[68] As you're coming back into town heading East there's uh, there's a game check station right across from the lime quarry on the West end of town, we were able to locate Mr. Case and his truck there and conducted uh, what would be considered like almost set up a felony stop to try and get him out of the car. And he, he was very uncooperative at that point. Wouldn't listen to what we told him. We couldn't really get him out of the car and finally when he came out he was kind of screaming back and forth with us, arguing I guess. We told not – like multiple time to not go back

into the car and I vividly remember him like flying into the car, like reaching in there very quickly. I don't remember what he came out with, but, you know, it was, it was almost like a mock – it – I don't know it was, it was something that I think somebody in a rationale state of mind that had cops screaming at him to go – to not go back into there, would not have done. The movement was just like far too rapid.

Um, and that, those are the only, the only time that – I've discussed or dealt with Mr. Case myself.

Q: I want to talk to you a little bit about the rapid movement back into the car and why that's important. Why would that scare you as an officer?

A: Um, like weapons are number one thing for sure. That's, that's a very quick – you talk about like quick jerk [69] movements, that's obviously like a red flag for us. That's something we're always watching for, for somebody reaching back into a vehicle that fast. Like guns are going to be our number one thing that we're reaching for, whether it's guns, knives, any sort of weapon. Like we don't want – once they're out of that car they – our best intention is to keep him out of that car where we can deal with them with their hands up, there's no potential reaching for any sort of weapon, anything like that. Like that's best-case scenario for us. That's, that's where we want to be for an officer safety standpoint.

Q: In the scenarios of suicide by cop why does somebody lurch back into their car?

A: Oh, you see multiple instances of people doing it like hoping that an officer is actually going to shoot them at that point. They think that like a quick jerk movement is, is enough to get us on a level to the point that we think we're going for like a gun or a knife, that

we're going to end up like discharging our service weapon and harming them.

Q: Okay. So, you'd had previous interactions with Trevor Case where he was belligerent with law enforcement and problematic?

A: Yes.

Q: Um, you knew that going into this situation already?

A: Yes.

[70] Q: This time when you were looking in the windows what had you seen?

A: Um, I was able to see that Serpa style holster and the beer cans in the kitchen and then that note on the coffee table in the living room. That was really the best, the best things that we could obtain from inside the house to kind of preemptively start gathering information on what was going on.

Q: So, when you see that empty holster what does that tell you?

A: Oh, there's a gun obviously easily accessible somewhere inside the house.

Q: Alright.

A: And it, it doesn't come out by itself, like somebody had taken a gun out of a holster.

Q: So, at this point you've got your prior experience with Mr. Case?

A: Yep.

Q: You've got reports from Jen Harris that he's threatening to shoot it out with law enforcement?

A: Yes.

Q: You've got um, an empty holster that you can see?

A: Yes.

Q: And you've got a report of a pistol sounding like it's being cocked over the phone?

[71] A: Yes.

Q: And a report of a possible shot being fired?

A: Yes.

Q: So, when eventually going into that house how does that mitigate the officer response when you finally go into that house?

A: Um, like the totality of everything that we had discovered or been reported is going to – we're going to be much more careful in a house like that. It's, it's an unattended suicide. Nobody knows if he is currently in like in need of medical care. Like nobody knows what's going on inside that house. So, we're going to be like absolutely the most careful we can when we go into a situation like that.

Q: Okay. At the same time, you believe you need to go him and help him?

A: Yeah, absolutely. Uh, preservation of life with a situation like this is like the upmost importance. That's, that's why, that's why we go there in the first place, you know.

Q: So, before entering that house what kind of things need to be in place?

A: You almost need like a plan and it's not always like a, a verbal plan, we train together so that we have kind of like non-spoken plans on like how we do things and why we do them the way that we do. Um, the mental preparation needs to [72] be there for what you

could encounter inside that house. And then any sort of advantage you can give yourself can, can be spoken about at that point to try and formulate what exactly it is you're going to, to do once you get inside a house like that.

Q: Alright. So, advantages like the body armor you're wearing?

A: Yes.

Q: Um, were attempts – what attempts were made to contact Mr. Case?

A: We knocked on the door multiple times. I know Sergeant Pasha did multiple times. Uh, there was – we went into the backyard. There was an open window in the back of the house and Sergeant Pasha was screaming through that window that it was the police, just come out and talk to us, you know. Announced numerous times. Knocked numerous times inside and outside the house.

Q: Okay. So, you want to exhaust those before you go in?

A: Yeah, you do, yes.

Q: Okay. Because the danger level goes up once you go in?

A: Absolutely.

Q: And when I say the danger level goes up primarily to you as officers?

[73] A: Yes.

Q: When you did go into the house what can you do to reduce the danger level to yourselves as officers?

A: Uh, as like you say body armor is one, one of the main things...

Q: Body armor.

A: we do every day. Uh, have like department has bought ballistic shields that we're able to carry.

Q: What is a ballistic shield?

A: It is like a large rectangle with a bullet proof glass window in it that you're able to look through. Um, it's NIJ rated to – I don't even know what level it is. It, it stops the most common like handgun and rifle rounds that we're going to encounter. It's not bullet proof, but it is ballistic and it's, yeah, it's just a shield used to hold up in front of yourself so that it gives you pretty much a, a ballistic panel between you somebody in front of you.

Q: Something nice, light, easy to carry around with you?

A: Absolutely not. They're extremely heavy, like extremely hard to carry and the, the window that's in them you can barely see through it. They're extremely hard to shoot with if you need to. They're, they're a pain. They're not easy at all.

[74] Q: Alright. Do you guys carry those in the car with you?

A: We do not.

Q: How come?

A: Uh, we have two of them so, they're in the armory at the police department. We leave them there so that if – everybody knows where they're at. They're always at one spot if we need them.

Q: Alright. So, in this case you've decided you want that. Um, somebody has to go get it?



A: Yes. Um, we had called Chief Sather, explained to him what was going on. He stated he was going to come down and meet us. At that point I think it was my idea to, to maybe obtain a ballistic shield. Um, I passed the idea off to Sergeant Pasha and Captain Heffernan. And Captain Heffernan made the decision to go get the shield so, he drove to the police department to go get it.

Q: Okay. Um, what else can you do to increase officer safety?

A: Announcing when you're inside a house is pretty huge. Um, letting them know that it, it's not somebody that he doesn't know, you know, come breaking into his house or something like that.

Q: Okay. Not...

A: And that's...

[75] Q: sneaking around inside?

A: Yeah, no, you know, we're not, we're not tip toeing around.

Q: Okay.

A: Not saying anything, you know, being sneaky or whatever. That's, that's not why we're there.

Q: You don't want to surprise him?

A: No, absolutely not.

Q: Alright. Um, change in weapons you're carrying possibly?

A: Yeah, that's, that's another huge advantage. Um, our patrol rifles are substantially more effective than our duty pistols.

Q: Alright. Talk to me about patrol rifles. Does the department provide patrol rifles?

A: The government, the department does provide patrol rifles. They put them in the car in our rifle racks that are, are in our patrol vehicles. Then we're also able to at the same time qualify with those if we make the decision to build a personal rifle and bring that to work. Per policy we're able to use that at work. So, you can use either the, the department one or your personal one that you qualified with.

Q: Alright. Have you opted to qualify with your own weapon?

[76] A: I did, yes.

Q: Alright. Why did you want to qualify with your own weapon?

A: I train substantially more with that weapon. Um, it is nicer than the, the rifles that we have in our patrol vehicle. Um, it, it is set up for me like perfectly. Everything is set up to like my length of pull and all that. It, it is my rifle, like dedicated to me. Uh, it's outfitted with an optic, which is huge for like shooting accurately and then...

Q: Do the department rifles have an optic?

A: They did not at this time.

Q: Okay. Does yours have an adjustable uh, shoulder stock on it?

A: It does, yes.

Q: Okay. Did the departments have an adjustable shoulder stock?

A: They did, yes.

Q: They do?

A: Yes.

Q: But it – is, is that adjusted for your size?

A: It is not.

Q: Alright. But yours is?

A: Mine is, yes.

[77] Q: Okay. Um, what do you train with more, yours or the departments weapons?

A: I train with mine substantially more.

Q: Alright. Are you more familiar with yours or the departments weapons?

A: Mine.

Q: Which do you have more confidence in?

A: Mine.

Q: If you're put in a position where you have to use one which you have more confidence using in a dangerous situation?

A: Mine.

Q: Alright. So, in this situation which one were you carrying?

A: Mine.

Q: What about uh, reducing the risk to yourself with the number of responding officers, is that also important to consider?

A: Yeah, absolutely. Uh, if you can get as many guys in there as you can we're able to, like I said those unspoken plans are, are substantially easier with more people in the house that are in agreeance with that plan than it is to, to do it with like two or three

guys. It, it's extremely difficult with how many officers we usually have on shift.

[78] Q: Alright. So, with more officers it becomes a safer situation for the officers?

A: Absolutely.

Q: Um, and in this case, it take – took time for Chief Sather to respond?

A: It did, yes.

Q: Alright. Do you recall how long it took from when you guys started arriving at the scene until everything was ready to go into the house?

A: I believe it was right around like 35 minutes to the best of my knowledge.

Q: Alright. Was there a lot of time spent uh, I, I guess – was there a lot of delay in there anywhere that you recall?

A: No, I, I wouldn't say delay. Um, kind of like I explained we had, we have plans and we had a plan that night. Obviously, we were waiting for Chief Sather. He was not at work. He had to come from, from his house, get a patrol vehicle, like all that stuff just takes time and I wouldn't, I wouldn't say it was a delay. It was just the things that we do take time like police officers in general when you formulate a plan sometimes it takes time to get that together.

A: Had – did you consider getting a warrant?

[79] A: I did not. Um, I wasn't in there to, to search anything. I wanted to find Mr. Case, make sure he was okay. If he wasn't I needed to get him medical attention and I, I was not in there for any reason other than that.

Q: Even if you got in there and you found he was okay, did he need to talk to a CRT?

A: Depending on how that conversation goes it's kind of how you dictate that. Um, if I believe at that point that he's in imminent danger, then yes. Even if he is like adamantly against it, you can, you can bring him in for – it's mental health hold is what we call it. I don't, I don't know what it's actually legally called, but you can do that if you deem that that's necessary.

Q: Okay. When you all finally ended up going into the house where did you enter the residence?

A: There was a front door that was facing north towards, towards Commercial Street, that's where we all entered the house.

Q: Um, while entering um, what, what's the, I, I guess the, the danger with entering through a doorway?

A: Uh, doorways are referred to as fatal funnels. That's like the most dangerous place you're going to be in in any house. There's only one in um, obviously the door. So, as you're in that doorframe if anybody was to like want to harm you, they're going to do it right as you like hit that [80] threshold of a doorframe. So that – the door is ext..., one of the, the most dangerous places in a house you can be in.

Q: So, what did you do to mitigate the danger there at that doorway?

A: Right as we opened it, I know Sergeant Pasha announced again that it was the police and told Trevor we just wanted to check on him. Told him to come out with his hands up and it, it was extremely loud. Sergeant Pasha was screaming it in the house and then at that point is when we entered the house.

Q: Alright. Um, who was carrying the bullet proof shield?

A: Uh, Captain Heffernan was at that point.

Q: Once inside the house did Captain Heffernan continue to carry the bullet proof shield?

A: He did not. He, he explained that – like I – it's extremely heavy and just bulky. I think I remember hearing him say, that like he can't use this shield or something and made the decision to place it on the couch.

Q: Okay. Um, while looking for Mr. Case uh, where did you look first?

A: So, right as we entered the door there was like a, a spare bedroom almost to the left. So, Sergeant Pasha and myself went directly to that room first. And that's always going to kind of be like how you go throughout a house, like [81] you don't want anybody behind you. So, any opening you're going, you're going to check that first. So, Sergeant Pasha and myself hit that first bedroom on the left first.

Q: Okay. While going through the first floor what did you observe that, that I, I guess was concerning to you?

A: I'd say like when we were in that, that first floor um, there wasn't really anything more alarming than what we had seen from the outside that really caught my attention at the time that I was in the house.

Q: The note?

A: Yeah, the note on the table. I didn't read it. I didn't pay attention to that. Um, I just – yeah it was on the table. I saw it, but...

Q: The beer cans?

A: Yeah.

Q: And an empty holster?

A: Yes.

Q: Alright. Um, were you announcing yourselves loud enough so that it would be apparent to anyone inside that house that you were there?

A: Yeah, absolutely. Like I said Sergeant Pasha was – Chief Sather was also announcing um, and they were both extremely loud inside the house.

Q: Um, once the first floor was cleared how did the search through the rest of the house for Mr. Case proceed?

[82] A: As we got through the first floor to the back of the house it was like a split-level staircase where one staircase went up to a third floor and one staircase went down to a basement. Um, Chief Sather and Captain Heffernan, it was kind of one of those unspoken things like I was talking about, you know, if you got four guys, you're going to go two and two. Uh, they made the decision to check the basement because I believe that's where they thought Trevor was going to be because the reporting party say that's where his bedroom was. So, they made the decision to go into the basement and Sergeant Pasha and myself were going to take the third floor, or I guess second floor it would be. It would be like ground floor and second floor. There's one up there.

Q: Okay. Um, is it dangerous to go up and down the stairways?

A: Yeah, uh doorways and stairs are like the two places none of us want to be in in a situation like this. So, it was extremely dangerous to be on a staircase.

Q: Alright. When you got to the top of the stairs what did you see?

A: Well, this staircase in particular was extremely tight, it was like shoulder width, um kind of felt like you crawling up into an attic. And as Sergeant was in front of me so I was – some of my vision was blocked, but we communicated that there – I believe was a closed door. So, [83] as we were looking down the hallway there was a closed door on the left. There was like a closed closet door directly in front of us and then there was an open door on the right side of the hallway.

Q: Alright. On the way up were either of you announcing who you were?

A: So, right as we got to like the last two stairs Sergeant Pasha announced again that it was the police and just told Trevor I believe to come out.

Q: Okay. Um, then, then what did you guys do?

A: Uh, we formulated a plan. Um, I told Richie I would take what we consider like long cover where I watch like that door that was straight in front of us. He told me he was going to right. So, my job was then to make sure that nobody came out of like the door on the left side of the hallway or the door straight in front of him and make sure that nobody can get behind him.

Q: Okay.

A: So, that is, that's what we formulated.

Q: So, where did he go then?

A: He entered the room on the right side of the hallway, that open door.

Q: Were you able to see what happened when he went into the room?



[84] A: I lost sight of him. Um, there's at like a – it's called unknown corner is what we refer to it as, and he dove around it and went that way so the wall was blocking him and could no longer see Sergeant Pasha inside the room.

Q: Okay. What's the next thing you remember?

A: Well, I was – like I explained I had long cover in the hallway and Sergeant Pasha had gone into the room. I knew what he was doing, we refer to is like a, a button hook, that's something that we train, and we I knew he was going to be coming around to like the backside of the room. And that backside of the room had a closet in it and that was the only side of the room that I could see.

So, I stayed in the hallway and as Richie was in there like almost immediately when Richie hit it there was no closet doors on that closet. It was like a dark gray or a, a black curtain hanging over the closet. Almost immediately as Sergeant Pasha entered the room um, I – that curtain was ripped to the side. I saw an individual step out of the curtain in a like very aggressive motion. At that point I gave up long cover and I transitioned my rifle into that room in case um, there was, there was a reason he was coming out of the closet that fast and I, I didn't know what that reason was at that time, but at that time I heard a single gunshot ring out and watched Mr. Case fall to the floor.

Q: Alright. When – what do you recall doing next?

[85] A: At that point I, I climbed up like those last two stairs that I was standing on. So, I was on like the vertical platform, or I guess it would've been the second floor. And I, I stood in the threshold of that door, and I just remember screaming at Mr. Case to put his hands up. And he – you, you get into that negative

mind of where you're saying the same thing over and over and I just kept telling him to put his hands up.

Once I realized it wasn't going anywhere I, I attempted to put him in handcuffs, and I never finished that process. Q: Okay. Where were his hands?

A: They were like right up by his head and palms flat on the floor because he was laying on his chest.

Q: Alright. What did you start doing then?

A: Like I, I told Sergeant Pasha I was going to put him in handcuffs. That's like a security thing for us.

Everybody we deal with in a situation like this goes in handcuffs and I kind of broke that golden rule. I made the decision to, to give up on the handcuffing idea. I could see blood on the floor, and I remember him claiming he, he couldn't feel his, or he was feeling in his hand.

Q: Okay.

A: And that to me was like I, I took it as, as like a sign of blood loss. I didn't understand that a bullet had actually gone through his arm. Um, so, I, I didn't want to [86] grab that arm and I, I switched from handcuffing to trying to render medical aid.

Q: And how did you try and render medical aid?

A: I have a medical kit. They call them like a blowout kit that's in the small of my back on my duty belt and it has like a wire cable. You just grab that cable, and you yank it if you need like medical supplies that I pack in there um, and they, they literally fall out on the floor, that's why they call it a blowout kit so. I grabbed the cable and pulled on it and everything fell on the floor, and I remember taking, because I had my rifle slung like across my chest. I took my rifle off and

handed it to Chief Sather. I bent down and I have, it's like a, a vented chest seal is what they call it. It's a medical device used to seal like any wound that would be in like the center mass of a human like in their torso. Um, so I open that and attempted to put it on him and I, I was denied. I couldn't render medical aid but.

Q: Who was denying you?

A: Uh, Mr. Case would not cooperate in any way with, with any sort of medical aid I was attempting.

Q: Alright. What do you, what do you remember happening next?

A: Uh, yeah, just I, I remember fumbling with that chest seal, because it's like in a sealed plastic container, and I, I ripped it open and got it out. I got it open. It [87] was sticky side down. Uh, I was ready to put it on him. He told us pretty much that he didn't want us there. Um, didn't want any help. Like refused to roll over so I could even look at what was going on. Uh, finally got him rolled onto like his right side and I could see like blood coming out of the mid-section of his shirt and I explained to him that I wanted to get that chest seal on him uh, to keep anything inside the body that's remain inside the body. That's what that chest seal's going to keep in there. So, I explained to him that I wanted that on him, and he refused to let me put that on him.

Q: And have responded to suicide calls before where you've been told people don't want your help and they don't want you there?

A: No. That – this was the first one I've ever been told no on.

Q: This was the first one where you've...

A: Yes.

Q: been told no?

A: Yeah.

Q: Okay. I'm talking about other cases where somebody hasn't injured themselves?

A: Yes. Uh, those included um, even if they haven't attempted yet. The – other than this one every other person [88] has been extremely thankful that you're there to, to give them the best help that you're, you're able to give them.

Q: So, this was a little bit unusual in that respect?

A: Yes.

Q: Uh, eventually where did you guys take Mr. Case?

A: I was finally able to get him stood up and we walked him down the stairs that we came up. I had like my arms under him because I was afraid he was going to fall or something and I remember him like slapping my hands away, like trying to get me away from him.

Q: Okay.

A: And I just, I kept walking down the hall, or the stairs with him and then like right at the bottom of the stairs is the kitchen. I was just walking with him through the kitchen, and he put like both his hands on like where his kitchen sink was and I remember him like spitting twice into the sink, and I didn't see him spit any blood up or anything, so I was, I was relieved with that. And same thing, you know, he was kind of giving me like just – he didn't want any help. Told us to get out and I, I was able to talk him, I guess able to talk him into getting outside to where I knew that, that the ambulance was that we had called for.

So, I remember right as he turned and like kind of turned around to head towards the front door from the kitchen sink, he like stumbled. He kind of swayed and I was able to [89] catch him with those hooks and then from there I walked him out the front door to the gurney, or the ambulance.

Q: From when you guys first arrived at the residence and you were banging on the door did you hear Trevor Case indicate that he was there at all?

A: No, there was no recognition of any of our, our announcements or anything like that.

Q: Okay. When you entered the house, and you were announcing yourselves and why you were there was there any kind of response that you heard from anywhere in the house?

A: No.

Q: When you were going up the stairs and announcing again, I mean what do you think your distance was to where Mr. Case was at?

A: Uh, you were probably, if I had to guess, between like eight to ten feet away from Mr. Case at that point.

Q: Was there any response that he was there and fine? A: No, absolutely not.

Q: Okay. No, I'm fine, just go away?

A: Nope.

Q: Would that had changed how you entered the room? A: Yeah, we, we would not have entered at that point. Q: Alright. What would ha..., I mean what kind of – how would you have addressed that kind of situation, or how, how are you trained to address that kind of situation?

[90] A: Well, at that point like you've established communication. Um, you know the person is at least still alive for starters. So, that gives like a very baseline and that changes the situation already. Um, and you've established communication, you know, you're able to narrow it down from like where you can hear it from. You know if, if it's him. You're, you're able to communicate and diagnose the problem without ever leaving where we were on the stairs.

Q: Alright. Make sure he's okay?

A: Yes. All that.

Q: Make sure he hasn't injured himself?

A: Yes.

Q: Alright. Uh, and then change your response?

A: Yes, that – yes.

Q: Did you have your opportunity to engage in those other kinds of tactics?

A: No, uh with no response you're, you're still in that preservation of life mode where you got to get through things as quickly as you can safely to hopefully render medical aid if needed as fast as you can.

Q: Do you recall how you felt when that curtain came open?

A: Yeah, that's a, that's like a situation you train frequently and that's – somebody coming at you in a, a motion that aggressive is never good in any circumstance. That's one of the worst-case scenarios you can be in.

Q: Okay. Is it scary?

A: Oh, yeah, it's very scary.

Q: Was the light on or off in that room?

A: The light in the room was off. It was a dark room.

Q: So, Trevor Case was in a room?

A: Yes.

Q: With the light off?

A: (INAUDIBLE-NO RESPONSE)...

Q: With you and Sergeant Pasha eight to ten feet away?

A: Yes.

Q: Hollering at – up there announcing yourselves?

A: Yes.

Q: Alright. Saying that you were there going through the house to help him?

A: Yep.

Q: And no response?

A: Nothing the whole time we were in there.

Q: I have no further questions for this officer your honor.

THE COURT: Okay, cross?

CROSS EXAMINATION:

MR. BETCHIE: Yes, your honor.

How are you today Officer Linsted?

[92] OFFICER LINSTED: Good, how are you?

Q: I'm pretty good.

A: That's good.

Q: Nice to finally meet you um...

A: Yeah, you as well.

Q: after watching your body cam a few times and listening to your interviews I feel like we know each other, but...

A: Yeah.

Q: the first time actually putting eyes on you in person.

So, just got some questions for you. Um, you were there for a welfare check, correct?

A: Yes.

Q: Okay. Uh, there were no reports of a crime or suspected criminal activity?

A: No.

Q: Okay. Um, and were you initially dispatched to Trevor's home?

A: Uh, it went to Captain Heffernan just over the radio and that, that's something we're all going to respond to, that's why they send it over the radio.

Q: And um, you and Sergeant Pasha were actually on another call at that time, correct?

[93] A: We had, we had finished a call. We were going to complete like a follow up I guess to kind of wrap it up. We had already cleared the scene. We were in the car just driving at that point.

Q: Okay. Um, and at the scene Ms. Harris wasn't sure that she had heard a gunshot, was she?

A: She explained that she heard a pop over the phone, but it was quiet.

Q: Okay. Um and when you were wandering around outside of Mr. Case's house looking in the windows and



stuff um, you didn't see anything from the outside to indicate that he had shot himself, did you?

A: I was not able to see any – like a direct indication of a gunshot wound.

Q: Okay. So, you didn't see a body, you didn't see blood, shell casing, anything like that?

A: Nope.

Q: Okay. Um, and you testified quite a bit about the CRT members, do you ever call them out to the scene to assist or consult?

A: No.

Q: No? Okay.

A: They're not trained to be at a scene like that.

Q: And you testified about a um, another individual who had attempted a gunshot wound and succeeded in wounding [94] themselves, but failed ultimately committing suicide. How long did you wait before making entry on that case?

A: That was an attended suicide. Uh, his wife called us and was like, he's laying here bleeding out. So, that was one that we didn't have like an elevated – a caution level so we, we blew the door up and went in.

Q: Okay. Um, and you testified about your previous interaction with Mr. Case um, in 2020, correct?

A: I can't tell you an exact year, but yes.

Q: Okay. And at the scene of this incident, you also recounted that narrative, so Sergeant Pasha and Captain Heffernan, is that correct?

A: Yes.

Q: Okay. Um, your honor might I approach?

THE COURT: Sure.

MR. BETCHIE: And real quick Officer Linsted what's your badge number?

OFFICER LINSTED: Uh, 43.

Q: Okay. So, um on the second page of the report, the last paragraph, there's a 7964LINST, is that you?

A: That is, yeah.

Q: Okay. So, you wrote the narrative on this report?

A: Yep.

Q: Okay. And that was dated August 31<sup>st</sup>, 2020, is that correct?

[95] A: Yes.

Q: Okay. And so, you recount in your report what happened um, and your report wildly varies from what you testified to here today and what you recounted at the scene, isn't that correct?

A: Uh, I would have read it.

Q: Okay. Um, will you go ahead and read your report real quick?

A: Yeah.

Q: Okay, and so did you note in your report with Mr. Case um, exited the vehicle despite being told to stay in the vehicle?

A: No.

Q: Did you indicate in your report that Mr. Case kept reaching back into the vehicle despite being told not to reach back into the vehicle?

A: No.

Q: Um, what did you indicate in your report?

A: Um, stated that he did nothing wrong and we had no reason to be stopping him. Uh, he talked to Lieutenant Staley for a while before he ended up getting back in the vehicle and shutting the door. Remained adamant that he's not suicidal and we did not need to be there.

Q: Okay. And so, you and the officer that had responded originally um, I think it's Officer Helfrich?

[96] A: Yes.

Q: You were unable to get him out of the vehicle, is that correct?

A: Yes.

Q: Okay. And it wasn't til Lieutenant Staley arrived that he got out?

A: Yes.

Q: Okay. Um, and you had also testified and in the report indicated that you initiated a felony stop?

A: Yes.

Q: Um, you so initiated a felony stop on somebody that wasn't um, suspected of committing a crime at the time?

A: It – I didn't – I may have testified to the fact that I initiated a felony stop. I believe I said I set up like a felony stop.

Q: Okay.

A: That is like an officer positioning. Uh, that is what I meant. I didn't stop a vehicle. It is a way that we position our vehicles to give us like a safety barrier between ourselves and another car.

Q: Okay. And in your report, you stated we initiated a felony stop on Trevor, is that correct?

A: Uh, yeah, if that's what it says.

Q: Okay. Um, and so you're recounting, and testimony again are different than what's actually noted in the report?

[97] A: Yeah, I didn't do anything, so I didn't like ex..., write an extremely detailed report.

Q: Okay. And then um, when you first approached Mr. Case's house did you have your service weapon drawn?

A: I did, yes.

Q: Okay. And why is that?

A: If you're approaching a suicidal subject that somebody stated he has a gun I'm absolutely going to draw my service weapon when I approach that house.

Q: Okay. Um, so were you in fear of bodily harm at that time?

A: Absolutely.

Q: Okay. And did you remain in fear of bodily harm before making contact with Mr. Case?

A: I, I, I don't know if you would say in fear is, is necessarily the right thing. It's in the back of your mind.

Q: Okay.

A: Um, yeah, I guess I – yeah, in fear is a way to say it.

Q: So, in apprehension?

A: Yeah, uh I think that's a better word than fear.

Q: Okay.

A: I don't think any of us are necessarily scared when you're there but.

[98] Q: And um, why did you take about five minutes looking around in, in windows before somebody knocked on the door when you arrived at his house?

A: If I'm able to see something inside that house uh, I would rather spend time looking through the windows attempting to see any of those things that I mentioned before. Before I go up and knock on somebody's door.

Q: Okay.

A: If I got somebody bleeding out in the house I'd rather not knock on the door and not get an answer and get in there as fast as I can.

Q: Okay. Um, and then you testified about seeing an empty holster. So that empty holster confirmed that he had a gun as was reported to you, correct?

A: Yes.

Q: And so you also testified that you came up with the idea to retrieve the ballistic shield, why did you come up with that idea?

A: Uh, just giving ourselves every possible advantage and in any sort of situation something I'm always going to do.

Q: Okay. And was that in response to any particular fears or apprehension um, vocalized by any other members at the scene?

[99] A: I, I don't know what was said? I think it was a mutual understanding that we could be getting into a very dangerous situation, because that's something

we've trained and discussed hundreds of times. So, I mean yes, there was, there was caution being utilized I guess before we enter a house like that.

Q: Okay. Um, is he kind of testified about the difference between the department issued patrol rifle and your personal rifle, can you um, reiterate those differences?

A: Uh, well, for starters I guess if you want to get technical mine is a AR-15 pistol platform that utilizes a brace instead of a stock. It has an optic on it and a weapon mounted light as well as a foregrip on the front. And that it is set up specifically for like my length of pull, with how long my arms are and it is set up where the eye positioning on the optic is the best eye relief that I can get and then the brace is positioned in the correct placement for myself.

Q: Okay. Um, any difference in trigger pull between the – your, your weapon and the (INAUDIBLE-WITNESS BEGAN SPEAKING)...

A: Um, mine has like – I, I, I couldn't tell you the weight of a milspec trigger, which would be in like your standard AR-15...

Q: Um hmm.

[100] Q: which I'm, I'm sure what's in our patrol rifles that are in our car.

Um, mine has a, it's like a three-and-a-half-pound standard duty rated, I believe it's three and half pounds, flat blade trigger, so instead of curved it's flat.

Q: Okay. Um, and you testified multiple times about wanting to get in and immediately render aid if needed and stuff like that and so, do you constitute 35 to 45 minutes as rendering an immediate response?

A: A formulated immediate response, yes.

Q: Okay. Um, and then you also testified that you weren't searching Mr. Case's house for anything but by definition trying to find Mr. Case in his house requires searching his house for him, correct?

A: Um, yeah, I mean I guess you have to look inside of a house to find somebody...

Q: Okay.

A: so, I guess if that's searching a house, then yes.

Q: Okay. Um, and then you testified that you guys didn't actually end up using the shield that you had taken the time to retrieve for entry?

A: Uh, yeah, my Captain made that decision.

Q: Okay. And um, just to clarify your testimony about the note was that you didn't read it, you just assumed it was a suicide note?

[101] A: Uh, yeah, I couldn't read it from the outside of the house.

Q: Okay. And so, if there's no suspected criminal activity and you believe the situation to be so dangerous why did you guys enter at all?

A: Oh, I'm not – like personally I'm not going to let somebody bleed out on the floor. I don't believe that's right. Um, getting somebody medical aid as fast as they can is – I'm not going to fly into a house blind. I mean I'm going to go home at night. That's, that's our priority number one. Um, but the best that I can do to protect and serve somebody is going to be done.

Q: Okay. Um, did you, or so, why did you make the recommendation uh, early on when you guys were about 10, 15 minutes on scene that you could just leave

him um, after Sergeant Pasha made the first mention of Mr. Case not being dead possibly?

A: I believe what I said, is like what are you going to do, just leave him? It was uh, that was a question. That was not like a statement that I planned on leaving him.

Q: Okay.

A: That was like a rhetorical question that I didn't even that option was on the table.

Q: Okay. Um, and you attempted to reach Mr. Case by telephone, correct?

[102] A: I did not. Um, I asked, I believe her name's Jen.

Um, I asked her for a phone number. I was going to use my, my work cell phone to call him and as I was asking her for the phone number, I believe Sergeant Pasha called me over and at that point that's when he had indicated that he found a note on the table.

Q: Okay.

A: I do not recall ever calling Mr. Case's cell phone.

Q: Okay, and you already um, testified that you weren't able to read it from outside, were you?

A: No.

Q: Okay. And after Mr. Case had been shot and you handed off your weapon did you assess the wounds and or check his back at any time?

A: No.

Q: Okay.



A: There was no blood coming out the back of his shirt as he was laying on his chest. So, I wasn't concerned about blood coming out of the back of him.

Q: Okay. And um, again just to reiterate you've been on the force for two years now?

A: Yes.

Q: Closer to three years or closer to two?

A: So, it's actually like a year – I'm four days short, February 18th I think I started.

[103] Q: Okay.

A: So, I'm like a year, almost two.

Q: So, you'll be two years this month?

A: Yes.

Q: Okay. Um, and then you testified about Mr. Case not stepping out of the closet prior to you guys getting to the second floor. Would you guys have left if he had stepped out and said, hey, I'm here, I'm fine, leave?

A: Like I said, yeah, that, that 180 changes our response to a suicidal call like this.

Q: Okay. But would you have left if he had said, just leave?

A: Like I indicated earlier it kind of depends on how that conversation goes. If he's like, yeah, I know I'm, I'm going to harm myself. I leave – I can't leave him there.

Q: Okay.

A: Um, that would be an instance where like a mental health hold most likely would've been utilized.

Q: I think you answered the rest of my questions so, thank you.

RE-DIRECT EXAMINATION:

MR. KRAKOWKA: Officer Linsted, everything that happened, all the conversations with Sergeant Pasha, were those all recorded on your body camera?

OFFICER LINSTED: They were, yes.

[104] Q: Okay. And is this a true and accurate copy of that body camera?

A: It is, yes.

Q: Alright.

A: Yep.

Q: And um, without any spin being put on those conversations by either the State or the Defense attorney, this shows what happened?

A: Yes.

Q: Okay. The State would move for admission of State's Exhibit 3?

MR. BETCHIE: No objection your honor.

THE COURT: Okay, it is admitted.

MR. KRAKOWKA: Your honor, I would like to show State's Exhibit 3?

THE COURT: How long is it?

MR. KRAKOWKA: This particular video is 51 minutes and one second.

THE COURT: You going to play it in its entirety right now?

MR. KRAKOWKA: I was planning...

THE COURT: I'm just asking.

MR. KRAKOWKA: I was planning on it your honor.

THE COURT: Okay, then we're going to take a ten-minute recess...

[105] MR. KRAKOWKA: Yes, your honor.

THE COURT: so, the Judge can go to the bathroom.  
(LAUGHING)...

MR. BETCHIE: Okay, thank you your honor.

OFFICER LINSTED: Thank you your honor.

COURT REPORTER: All rise.

(RECESS)...

MR. KRAKOWKA: Officer Linsted before I start playing the video (INAUDIBLE-MUFFLED AND SPEAKING AWAY FROM MICROPHONE)... real quick?

OFFICER LINSTED: Yes.

MR. BETCHIE: Uh, your honor before we begin um, it's about ten minutes to noon, Mr. Case's um, 24/7 monitoring is going to start making a noise here in about ten minutes, just so everybody's aware.

THE COURT: Okay.

MR. BETCHIE: Um, and it's going to – he has a limited period of time to test so.

THE COURT: Do whatever you need to do. I'm just – I'll just keep watching the video.

MR. BETCHIE: Okay, thank you your honor.

THE COURT: Thank you, thank you.

MR. BETCHIE: Sorry to interrupt Ben.

MR. KRAKOWKA: Um, thank you. And so, Officer Linsted um, as – we, we talked about this report

briefly. At the [106] time this report was written we discussed you were a new officer on the force?

OFFICER LINSTED: Yeah, I, I was very inexperienced at the time.

Q: Okay. About how long had you been an officer when you wrote this report about the first incident with Mr. Case out here West of town?

A: Um, 2020 it would have to be, you know, eight months, ten months I think.

Q: Okay. You started in February?

A: Yeah.

Q: And this was in August so, more like six months?

A: Yeah.

Q: Okay. At that time had you gone to the Police Academy yet?

A: I had not.

Q: Alright, had you had any formal courses in how to write police reports?

A: Uh, no, you know, you briefly discuss it with like a FTO just so you can barely get by, but you're not like properly trained on how to write a police report until you go to the Academy where you're, you're – there's classes you have to, to complete on how to write a police report.

Q: Were – did any charges result from this interaction with Mr. Case?

[107] A: Uh, no. As I indicated in there um, he indicated he was okay and did not need help. We did not take any further action of any sort and that so, it, it just laid where it was.

Q: So, you didn't take in – so, you didn't go into a long-winded specific details about everything that had happened?

A: No.

Q: Um, now that you've been a police officer for a little bit longer and you've gone to the Police Academy, or the Montana Law Enforcement Training Academy, would you handle things a little bit differently with this report?

A: Yes, it, it would be much more thorough. I know to, to complete reports whether or not you take police action or not. You write it all the way through and that was something I did not understand at the time.

Q: Alright. And another question, as far as making the determination of going to Mr. Case's house this day who was the lowest officer on the totem pole at that scene that day?

A: That was me.

Q: Alright. Who was the next lowest officer on the totem pole?

A: Sergeant Pasha.

Q: Alright. When you guys first got there who was the officer in command?

[108] A: Um, within a minute Captain Heffernan was there and that he was obviously the officer in command at that point.

Q: Alright. And he was the one who made the determination to go in?

A: Yes.

Q: Alright. So, regardless of whether you thought it was a good idea or not, it was his call?

A: Yes.

Q: Okay.

(STATE PLAYING EXHIBIT 3, BODY CAM VIDEO)...

THE COURT: That's the theme song for every one of these videos. Don't they make like rubber balls or something you can put over a microphone that cuts the wind?

OFFICER LINSTED: We got new cameras so, we got an upgrade.

(CONTINUE PLAYING BODY CAM VIDEO)...

MR. BETCHIE: Um, your honor, quick point of clarification, are we starting this from the very beginning or from Captain, or Chief Sather's arrival?

MR. KRAKOWKA: Um, um...

THE COURT: Is, is the problem you can't see it?

MR. BETCHIE: Well, I, I know the video by heart at this point, um but I can tell you...

THE COURT: Yeah.

[109] MR. BETCHIE: that's not the actual beginning of the video.

THE COURT: Well...

MR. BETCHIE: So, I'm wondering where we're starting it at just for my point of clarification.

MR. KRAKOWKA: And, and Mr. Betchie this is the video that I sent you attached as State's Exhibit 3 numbered.

MR. BETCHIE: Okay. So, that's placed by them?

MR. KRAKOWKA: Yes, yes.

MR. BETCHIE: Okay. And so, this one picks up in the middle of the – being on scene?

MR. KRAKOWKA: Uh, it picked up part way through being on scene.

MR. BETCHIE: Okay.

MR. KRAKOWKA: Uh, it uh, cut out the, certainly like the initial 30 seconds um...

MR. BETCHIE: Is this a first or second video from his body cam footage?

MR. KRAKOWKA: This is both of the videos put together in one long continuous video.

MR. BETCHIE: Okay.

THE COURT: Ben, why don't you push the table back a little bit and just cock the TV at an angle so that the Defense table can see it.

[110] MR. KRAKOWKA: And this is the, the video that I sent you labeled as State's Exhibit 3 Mr. Betchie, I mean...

MR. BETCHIE: Okay.

THE COURT: It'll give everybody something to watch for the 51 minutes we're going to be sitting here watching. That's good, just turn it a little bit, angle it. Little more, little more. I can see it fine.

MR. BETCHIE: Thank you your honor.

THE COURT: Alright.

(CONTINUE PLAYING BODY CAM VIDEO, APPROXIMATELY 50 MINUTES LONG)...

MR. KRAKOWKA: I'm sorry, and Officer Linsted was this when you first approached the house?

OFFICER LINSTED: This is, yeah.

(CONTINUE PLAYING BODY CAM VIDEO-SEEMED AS IF FIRST PART OF VIDEO WAS ACTUALLY PLAYED SECOND)...

OFFICER LINSTED: This is replaying again.

MR. KRAKOWKA: Alright. I apologize for the (INAUDIBLE-SPEAKING AWAY FROM MICROPHONE)... video your honor.

Officer Linsted, in the end why did you guys go in that house?

OFFICER LINSTED: Um, as like I explained earlier like preservation of life was priority number one at that point. So, we, we made the decision that with the unknown status of [111] Mr. Case's wellbeing we had to go into that house to make sure he was okay.

Q: Alright. But before you went in you tried to find out everything that you could?

A: Yeah, you absorb everything you can from the outside of the house before you make that decision. Um, and we did our best – the best we could to, to formulate something, like a better, a better outcome to this from the outside and it wasn't possible.

Q: Alright. So, responding, knocking on the doors, takes a couple minutes?

A: Yes.

Q: Looking around the house, through the windows to see if you can see anything takes a couple minutes?

A: Yes.

Q: Talking to Jennifer Harris a couple more?

A: Yes.



Q: Waiting for Chief Sather to show up so you've got enough people?

A: (INAUDIBLE-NO RESPONSE)...

Q: Then that takes a couple more minutes?

A: Yes.

Q: Now there's a decision to go in, get the bullet proof shield, that takes a couple more?

A: (INAUDIBLE-NO RESPONSE)...

[112] Q: In the end that's, that's why it ended up taking you guys so long before you went into the house?

A: Yes.

Q: So, you could be safe when you went in?

A: Yes.

Q: Were you going in to investigate a crime?

A: I – we were not, no.

Q: Did you stop and gather evidence as you went through the house?

A: We did not.

Q: Did you stop and put anything in baggies and write

down on baggies dates and times and evidence?

A: No, we did not.

Q: Okay. Afterwards were you moving anything around in the house other than the gun that Captain Heffernan picked up that was in close proximity to Mr. Case?

A: No, I did not. Uh, you saw me like render my rifle safe. I ejected the round out of the chamber and put it back in my magazine. Other than that that was the only thing I touched inside that house and that was per DCI's request.

Q: Okay. And what did they want you to do?

A: Uh, they explained to Chief Sather over the phone that they wanted us to eject the round. Uh, I believe they kept the round that was chambered in Sergeant Pasha's rifle and then they wanted us to render it safe, which would ejecting a round and then putting it on safe.

Q: Alright. And did they want you to leave it at the scene?

A: Yes.

Q: Alright. And DCI stands for the Division of Criminal Investigation?

A: Yes.

Q: And that's a Montana State agency?

A: It is, yes.

Q: And ultimately did they conduct the investigation (INAUDIBLE-WITNESS BEGAN SPEAKING)...

A: They did, yes, yep.

Q: Alright. I have no further questions for this witness your honor.

THE COURT: Okay. Defense going to cross?

RE-CROSS EXAMINATION:

MR. BETCHIE: Uh, yes, your honor.

Um, so, you testified...

THE COURT: Hold on now. Are, are we done with videos during the hearing?

MR. KRAKOWKA: Uh, the State is your honor.

MR. BETCHIE: I'm fine right here your honor. I just have (INAUDIBLE-JUDGE BEGAN SPEAKING)...

THE COURT: Okay, well, you know...

COURT REPORTER: I need you to be a microphone.

THE COURT: Yeah, you got to be by a microphone. I always like to have people clean up their messes.

MR. BETCHIE: Okay.

THE COURT: And Ben if you would just help him slide that thing forward so it doesn't tip over. There you go.

MR. BETCHIE: Thank you.

Um, so, before watching the video you gave some testimony about the um, pertinent details that were missing from the report about him reaching into the vehicle and stuff. So, at that time you were – hadn't even gone to the Academy, correct?

OFFICER LINSTED: No.

Q: Okay. And your field training officer, supervisor didn't review the report?

A: No.

Q: Okay.

A: I was on my own at that point.

Q: Okay. Even before having gone to the Academy?

A: Yes.

Q: Okay. Um, and so the phone call you made on the video that was to stage medical, correct?

A: That was to let dispatch know where we were.

Q: Okay.

[115] A: Uh, we didn't call out at the scene because of our radios. So, I wanted to let them know that we – where we were. We made the decision not to stage medical because they were two blocks down the street.

Q: Okay. So, the phone call was to dispatch and not to the medical?

A: No, yes to dispatch.

Q: Okay. Alright. And then um, you testified that the ultimate decision was to go in for preservation of life despite comments made by yourself and other officers of, chances are slim, um if he had fired to shot himself, um the Chief saying he doesn't have the balls to do it. Um, Sergeant Pasha indicating that he hasn't been able to do it in past and that he's afraid that he's in there waiting um, in the terms such as suicide by cop. So, even with all of that said it was still for preservation of life was the purpose of going in?

A: Yes.

Q: Okay. And to your knowledge is that a valid warranted um, exception?

A: Yes.

Q: Okay. Nothing further your honor.

THE COURT: Anything else for Linsted?

RE-RE-DIRECT EXAMINATION:

MR. KRAKOWKA: Yes your honor.

[116] Chances are slim doesn't mean chances are none?

OFFICER LINSTED: Absolutely.

Q: Alright. He hasn't had the guts to do it before doesn't mean he didn't have the guts to do it this time?

A: Yes.

Q: Uh, from what you knew there had been the report of a gunshot?

A: Yes.

Q: Was that further than anything had gone before from your understanding with any involvement with Mr. Case in any of his threats?

A: Yes, all the other ones that I had heard of or received there was never actually a shot fired. Um, there was indication of the one that I had discussed earlier at Georgetown that he had proclaimed he already pulled the trigger once and somehow the gun didn't go off. So, there was, there was never a shot fired in that, but the trigger was pulled to, to initiate the process, obviously of firing a round.

Q: Alright. So, you still felt there was a need to go in and try and render assistance?

A: Yeah, um the, the comments that were made were not, they're not utilized in our decision making process. It's not – we had already made our mind up. We knew what was happening at that point in time. Like, like I said, we had a [117] plan and that was – we were going to go make sure he was okay.

Q: Alright. I have no further questions for this witness your honor.

THE COURT: Defense anything?

MR. BETCHIE: Nothing further your honor.

THE COURT: May Officer Linsted be excused from this hearing?

MR. KRAKOWKA: Yes, your honor.

THE COURT: Alright, sir, thank you very much for your testimony. You can go about your business.

OFFICER LINDSTED: Alright.

MR. KRAKOWKA: Thank you.

The State will call Sergeant Pasha to testify.

THE COURT: Okay. Afternoon Sergeant.

SERGEANT PASHA: Good morning, or afternoon.

(WITNESS SWORN IN) CLERK OF COURT

SERGEANT RICHARD PASHA

DIRECT EXAMINATION:

MR. KRAKOWKA: Sergeant Pasha you can take your mask off while you're testifying.

SERGEANT PASHA: Thank you.

Q: Could you please state your name?

A: Yeah, my name is Richard Pasha.

Q: Could you please spell your last name?

[118] A: It's uh, P-A-S-H-A (SPELLING OF NAME)...

Q: What is your current occupation?

A: I'm a nightshift patrol sergeant for Anaconda-Deer Lodge County Law Enforcement.

Q: How long have you been a police officer?

A: Um, just, just over eight years now. Eight years a few, couple months.

Q: What kind of um, or were you working on September 27th, September 28?

A: Yes, sir I was.

Q: What kind of a call did you get that night in regards to Trevor Case?

A: Um, we received a call of um, a male that was uh, suicidal and had, had potentially committed suicide.

Q: Um, do you know where that report had originated?

A: Uh, are you looking for location or who it came from?

Q: Um, both.

A: Uh, yes, I, I was aware that uh, I was – I believe it was Sergeant Heffernan, or Captain Heffernan informed me that this was taken place at Mr. Case's res..., residence uh, which I believe is 307 W. Commercial.

Q: Alright. That's here in Anaconda?

A: Yes, sir.

Q: Okay. Um, and who made the report?

[119] A: Uh, I, I believe her name is Jenny Harris. I believe it's maybe a former girlfriend of Mr. Case's.

Q: What do you recall about the report that she'd made?

A: Uh, I, I recall that a report was made that um, Ms. Harris was on the phone with Mr., Mr. Case. He was threatening suicide. He was going to go for a drive. Um, she told him not to do that and he said fine, I'll just do it here. She heard what sound, what sounded like a gun racking or chambering a round and she heard a pop.

Q: Alright.

A: And then the line just kind of went, went silent, but it was still, still open.

Q: Before she heard what sounded like a pistol racking and then the pop um, had he made any threats toward law enforcement that you were aware of?

A: Uh, at, at that point, at that point I, I didn't know that.

Q: Alright.

A: But yeah.

Q: When did you learn about threats toward law enforcement?

A: Uh, once, once we were down on the scene I had, I had learned that uh, Captain Heffernan had received that information from Mrs. Harris that he had threatened to shoot it out with law enforcement if they ever came in his house.

[120] Q: Alright. Um, who all was working that night?

A: Uh, it was Captain Heffernan, myself and Officer, Officer Linsted.

Q: How serious of an event is this uh, for a nightshift patrol in Anaconda?

A: It's, it's very serious, I mean it's a, it's a call, it's a call involving firearms. Um potentially fire, it sounds like a firearm that's already been discharged so, it's very serious.

Q: With three people on duty is that an adequate number of people to deal with a situation like this?

A: No, obviously not. Um, unfortunately like we're a small department so sometimes our shift numbers are not great so, uh times like that we can, we can try to call out for assistance.



Q: Alright. Who ultimately made the decision to call out?

A: Uh, Captain Heffernan, Captain Heffernan did.

Q: Uh, who did he call, or who did he call for assistance, do you recall?

A: He called Chief Sather.

Q: When he called Chief Sather what did Chief Sather do?

A: Uh, Captain Heffernan, Chief Sather they had a, a phone conversation. I, you know, I wasn't really privy [121] exactly to what they were saying uh, but uh, Chie..., Chief Sather eventually ended, or he ended up telling Captain Heffernan that he was going to come out and that we were going to make entry and check the residence to uh, check on Mr. Case's welfare and hopefully render aid if we needed to.

Q: Alright. I, I guess at this point what are your options for dealing with Mr. Case in, inside of this house? What can, I mean what, what are your different options that you can do? I mean you've got this sui..., possible suicide, threat of suicide inside this house, what, what can you guys do?

A: Um, obviously, you know, welfare check. We can make entry. We can try to uh, either render aid if Mr. Case has already inflicted harm on himself. Um, if he hasn't, we can, you know, we can try to, try and talk him down um, you know, and get him, get him the help he needs. You know like get him set up with CRT. Get a, you know, get him an evaluation, you know, down at the hospital, what, whatever needs to be down with that.

Q: So, how, how often uh, do you deal with mental health issues in the course of your job as a law enforcement officer?

A: Pretty frequently. Um, I, I would say darn near on a weekly basis.

[122] Q: Alright. When you're dealing with somebody who has a mental health issue or is threatening suicide um, what does um, what's the, I guess what's the procedure? How do you, how do you deal with that?

A: Uh, yeah, obviously um, you know, if we have somebody that's threatening suicide, trying, trying to harm themselves, having just a mental health break in general uh, we obviously try to establish contact with them. Um, you know it's, it's very much a, you know, hey, hey we're here to help you. Um, you know, like what can we do to help you, kind, kind of that type of manner. And we try to, you know, we just try to establish conversation and, and talk them off the ledge so to say.

Q: Okay. Um, once you've secured down at this situation um, did – is CRT ever involved in talking with them like while the situation, whatever it is, is going on?

A: Uh...

Q: Like in the house?

A: No, never in my experience, no.

Q: Okay. Not in eight years?

A: No.

Q: Alright. When does CRT talk to them?

A: Uh, CRT will talk with them either at the hospital um, or sometimes if, if it's a situation where a person

is uh, in ser..., in serious danger of harming themselves or [123] others. Uh, we can do a mental health hold uh, which, which would be done, you know, like in a holding cell at, at the police department. And basically, we can hold them until they can be seen by CRT to be evaluated and, and see if they're a, a danger to themselves or others.

Um, typically the CRT evaluation has to be uh, done when, when they're sober. So, it – sometimes if, if uh, you know, substance abuse is in play it, it can take a little bit of time.

Q: Alright. So, if they've been drinking uh, or using some other illicit substance you got to wait for them to sober up...

A: Absolute...

Q: and then CRT comes and talks to them?

A: Yes, sir.

Q: And they'll make the decision whether or not this person needs to go to the State Hospital, or some other form of care is needed or if they can just be let go?

A: Yes, sir.

Q: Alright. Um, at this point in time Mr. Case is threatening suicide um, and his girlfriend heard him rack a pistol and then heard a shot. Are you thinking he needs to talk to a CRT?

MR. BETCHIE: Your honor, I'm going to object to the...

SERGEANT PASHA: Abs...

[124] MR. BETCHIE: characterization of heard a shot. It's been thought – uh, um clearly stated that she

heard what she thought was a pop. There's no testimony that she heard a shot.

THE COURT: Care to respond?

MR. KRAKOWKA: I'll, I'll rephrase the question.

THE COURT: Did Jennifer Harris ever say that she heard a shot?

MR. KRAKOWKA: Um, I'll rephrase the question.

THE COURT: Did Jennifer Harris ever say she heard a shot?

MR. KRAKOWKA: She heard a pop that after she heard a gun racked. So, I...

THE COURT: So, then don't be...

MR. KRAKOWKA: no.

THE COURT: quoting her as if she said that there was a shot.

MR. KRAKOWKA: Yes, your honor.

THE COURT: Objection sustained.

MR. KRAKOWKA: So, at this point the information that you have is Trevor Case was threatening suicide?

SERGEANT PASHA: (INNAUDIBLE-NO RESPONSE)...

MR. KRAKOWKA: Jennifer Harris heard a pistol, what sounded like a gun get cocked or a pistol get – the slide get [125] racked, and then she heard a pop, and then it was silent after that?

A: Yes, sir.

Q: Does Trevor Case need to speak with a CRT?

A: I, I would have say absolutely yes.

Q: Okay, why?

A: Um, you know, obviously it seems like he's in a, a state to where uh, he, he is right there on the, on the verge of wanting to commit suicide so, I think he's a definite danger to himself at, at least at that point.

Q: Alright. Um, if he had inflicted injury upon himself do you need to render medical aid to him?

A: Absolutely.

Q: Have you responded to situations uh, where people have attempted suicide?

A: Yes.

Q: Um, have – can you tell me about some situations that you, you've responded to where people have attempted suicide that have survived?

A: Uh, yeah. Uh, one, one specific uh, time I can think of is it was a house on um, down East Sixth Street, across from AFFCO. Uh, we had a female inside who was cutting her – she was actively cutting her wrists. Um, we entered the house. Uh, obviously we, we had her, you know, we did, we did have our firearms out because there was a [126] weapon involved in that one. Um, and we were able to talk her down. Get the kno..., get the knife talked away from her and get her medical assistance.

Um, and then there was another incidence where um, you know, Officer, Officer Allison and I, or Detective Allison and I now, at the time he was an officer, we were on patrol and we actually came across a, a male who was trying to hang himself off of a garage door. I believe it was down on like the 100 block of Oak Street. There's some big garage doors and he had tied a rope on that and was, was hanging himself. Uh, he was purple in the face. We were able to like lift

him up, get the rope off of his neck, called EMS for him. And he, he survived.

And then there was at least one instance that I was inv..., involved with when I was employed with the Montana State Prison as a Correctional Officer that we, we were involved in, in cutting somebody down that was hanging themselves.

Q: Okay. So, there have been multiple instances where you've gone to render somebody assistance who's attempted to commit suicide uh, where you were able to save their life?

A: Yes, sir.

Q: How does the factual situation surrounding the attempted suicide effect how you respond?

[127] A: Um, you know, ob..., obviously in this case uh, you know, we do have a heightened uh, sense when it comes to our response uh, because obviously we know that from what we're being told there it's, it is very, very likely that there is a gun involved in this. Um, so obviously like we know that, you know, there could be a high, a high degree of danger if there's a firearm involved. So, um when it comes to response with, you know, with our guns out that's, that, that's why. If there's a, if there's a weapon, if there's a weapon involved, especially a gun, you know, we're going to, we're going to come with our guns out as well.

Q: Um, were you familiar with Mr. Case?

A: Uh, not really. I, I know of Mr. Case. Um, act..., actually weirdly enough I had actually just met Mr. Case for the first time in a bar. It was approximately maybe a month or two prior to this. He introduced himself to me and that was the first time I had ever personally met him.

Q: Alright. Um, other than personally meeting him that time, how were you familiar with Mr. Case from your employment uh, as a law enforcement officer?

A: Uh, you know, I just know of, I just know of different instance, instances that officers have had uh, case reports with him. Um, you know, I, I knew of a case report where he's been involved in a fight uh, up at the, the lake, I, I believe it was the 7-Gables. He had gotten into a fight [128] with somebody and had bitten some..., like bitten a person's ear off. He was fighting. Um, I know that there was a lockdown at the school because there was a threat of suicide in, uh in the school I believe um, is – was the threat and that was where the lockdown came from. And that was, that was, that was why I was mainly familiar with Mr. Case before I, I had previously met him, or recently met him I should say.

Q: Alright. So, you, you were aware of these threats and the threats of suicide before?

A: Hmm, yes.

Q: Alright. Um, in – I – in this case where it's involving a gun how does, uh, I, I guess that effect then your response?

A: Yeah, like I stated before um, with the involvement of a gun um, obviously it heightens our senses. It's going to um – we're going to be more cautious with the way that we approach something like this, because uh it is an extremely dangerous situation and, you know, and like as much as I want to go there and render someone aid um, you know, I, I absolutely have my own family that I got to, to come home to too. So, we have to, you know, we have to try to do our best we can to help somebody, to talk somebody down, to render aid, but also be safe to

where, you know, we like, like we're protecting ourselves as well.

[129] Q: When you initially got to the residence um, what did you do uh, to try and determine what was, or how safe the area was, or how safe the house was?

A: Yeah, um I did what I typically do. Um, this is something that I will do uh, with, with suicidal calls, welfare checks, or like just, just, just general welfare checks. Um, and then also even like domestics. Uh, you know, some..., something we'll do is, is I, I will look into the house from, from the outside of the window to see if I can, you know, see if we can hear, see if we can hear anything going on. See if we can see anything going on. Um, you know, a lot of times if somebody has committed suicide or they've attempted to, you know, maybe you're going to see somebody on the ground like, you know, potentially like you might see, see a body part, you might see blood, something like that. So, we were, we were looking through windows to try to establish whether, you know, we – whether we thought maybe the suicide had, had already taken place or if, or if um, maybe it had, you know, maybe it hadn't.

Q: Were you able to see a body or any blood in through the windows?

A: No, sir.

Q: What were you able to see through the windows?

A: Uh, while, while looking through the windows uh, we were, we were on what would be the West side of the house. [130] There was a window that was looking into like the um, dining room, kind of kitchen area. Uh, we could see what appeared to be kind of like a, a Kydex style type holster, a, a black holster, a plastic



holster, kind of like, kind like maybe a Blackhawk holster on the counter.

Um, and then I know Officer Linsted had stated something about seeing uh, empty beer cans, I, I don't necessarily, I don't necessarily recall that, but, but I know he stated he had seen beer cans. And then after – so, that like that was literally the first things that we had, that we had seen was the holster and Officer Linsted saw beer cans. And then as, as we had kind of, you know, kind of continued to look through – uh, shortly thereafter we did discover what appeared to potentially be a suicide note. It was a, you know, there was a notepad with a, a pen and it was, was on a living room table, like a coffee table. Um, and it had about a paragraph wrote out with a pen next to it and that was, and that was all that was on the table was just a notepad with a paragraph.

Q: And at that time, you didn't know what that note said?

A: No, nuh-uh.

Q: Okay.

A: No, sir, no sir.

[131] Q: So, all you can tell, all you tell is there was a note?

A: Yes, sir.

Q: Okay. Ultimately in the change of command where did you fit in uh, as far as the folks were there that night?

A: Uh, as far as the officers who were initially on scene, I'm, I was smack dab in the middle.

Q: Okay. Uh, when Chief Sather arrived where were you?

A: Uh, second from the bottom.

Q: Okay. So, um the – who was making the decisions?

A: Uh, Chief Sather and Captain Heffernan.

Q: Did you uh, I, I guess before going into the house did you have some reluctance about going into the house?

A: Absolutely, absolutely.

Q: Why?

A: Um, you know, like I guess, you know as, as weird as it sounds, don't know how to, how to explain it, I just had, I, I had a very bad gut feeling about the situation. I just, I didn't, I didn't – like there something in my gut that just didn't like it. And, you know, with uh, after speaking to, to Captain Heffernan and, and the threats that had been made to uh, Ms. Harris um, I had, I had some very serious reluctance about going in the house.

Q: Was that your call to make?

A: No, sir it was not.

[132] Q: Whose call was it to make?

A: Uh, that, that was Chief Sather and Captain Heffernan's call.

Q: When they make that call as a Sergeant uh, on the scene what's your job?

A: Um, you know, I, I felt at the time my job was to, you know, if – I mean obviously I, I think that they made a good call uh, to go in and try to, try to render aid. Um, I, I was reluctant about it myself. Um, it doesn't, it doesn't mean that it was a bad call to make. Um, I was, I was just reluctant myself, but I felt at that point, you know, it was, it was my job to try to kind of

make somewhat of a, a halfway plan on the fly of how we were going to safely try to clear this house um, just, just in case my gut feeling was correct and some..., something was wrong.

Q: Okay. Um, now let's talk a little bit about going into the house. Um, before you guys went into the house um, what equipment did you uh, all utilize to go into the house?

A: Um, as far as equipment goes um, the call was made um, I, I don't remember exactly whose decision it was, but the call was to get, get our ballistic shield from the station try to, you know, fur..., like further, you know, help our safety, I guess. Um, and so, so that call was made. So, the ballistic shield was retrieved and then um, Officer Linsted and I uh, did get our uh, patrol rifles out.

[133] Q: Alright. Now, your patrol rifle is that your own weapon?

A: Yes, sir.

Q: Does the department provide rifles?

A: They do.

Q: How are those rifles different from your rifle?

A: Uh, so at the time, uh we, we've actually since upgraded, um but at the time uh, our patrol, the patrol rifles that were provided by the department um, they were very, they were very basic. Um, it was your basic AR-15. There was no, there was no attachments. There was no light. There was no optic um, nothing like that. Uh, so you had, you had iron sights to work with, with no light and obviously for, for guys who were working in the middle of the night on nightshift that's not very conducive to our environment.

Q: Okay. And when you say light, we're not talking like laser sights, we're talking a flashlight?

A: A, a flash..., a flashlight, yes, sir.

Q: Okay. Um, and your own personal weapon that you had did you have to qualify with that weapon to be allowed to carry it?

A: I did, yes.

Q: And after you qualified with it did you then have to get permission to carry it?

[134] A: Uh, permission came first and then I qualified, but yes.

Q: Okay. Was that gun fitted specifically to you?

A: Yeah, it was specific to what I, to what I wanted it for, yes.

Q: Alright. Um, so the stock was adjusted just right for you?

A: Yes, sir.

Q: And the optics?

A: Uh, mine, mine was an AR pistol variant so, it's, it's a brace not a stock on the air pistol.

Q: Okay.

A: But, but yes, the brace was fitted how, how I wanted. Um, uh, on – I chose to go with a shorter, shorter barrel length on that, on that particular uh, rifle because uh, or AR pistol um, because at the time I was driving uh, the smallest patrol car we had, which was a Chevy Impala. Um, and then a 16-inch rifle it's, it's very long to, to try to maneuver in and out of a car. Typically for like situations where uh, you know, speed is, speed's what we want because, you know, we're,

possibly we're in a pursuit were in, like were in a high, high-risk traffic stop or something like that. I'm trying get my, my rifle out. A 16-inch rifle is just very, very long for that car so, I had chose to go with a shorter AR pistol build.

[135] Q: Alright. Um, the optics also uh, they're specifically adjusted to match up with your arm length and for your eye?

A: Yes, sir. Yeah, it's a, it's a red dot so it's, it's pretty uh, you know, it's, it's pretty forgiving. Um, but, you know, it is adjusted to where I like it for as, as far as like my eye height goes. Um, you know, and it was the kind, it was the kind of optic that I like, that I wanted, so, yes.

Q: Alright. In the end, did you feel more comfortable with your own rifle than with the department's rifles?

A: Absolutely, absolutely and uh, not only just for, you know, not only, not only for the purpose of, you know, a light and an optic um, but, but also the fact of just, just maintenance on the gun, on the gun, right. So, um, you know, when I carry my own rifle, I'm responsible to make sure that that rifle, you know, has been, you know, recently cleaned. Uh, it's lubricated. And I, and I know that gun's going to function if I need it to.

Q: Alright. You've been an officer for how many years?

A: Uh, eight years sir.

Q: Alright. Have you ever had to discharge your weapon at anybody in eight years?

A: Just, just one time, this, this time.

Q: This is it?

[136] A: This is it.

Q: Okay. So, it's not that you're having to shoot at people all the time?

A: No, no, this is, this is a very uh, infrequent thing. It's the first time it's ever happened.

Q: Alright. And in this case, you wanted to know that if the situation where this came up your gun would work?

A: Absolutely. I, I think we all come to work wanting to make sure our equipment works so.

Q: Alright. When you eventually got all the equipment ready to go and went into the house...

A: Yes, sir.

Q: um, why were and the other officers going into the house?

A: We were going into that house to, to render aid.

Q: Looking for Trevor and help him?

A: Welfare check, ren..., to render aid if we needed to, yes.

Q: Were you uh, searching for evidence in a crime?

A: No, absolutely not. There was – yeah, no.

Q: What did you do, I mean, did you call out and let him know that you were in the house when you went in?

A: Absolutely. Uh, we, we actually called out be..., before we ever went into. Um, there was, there was one point where we were uh, that we had went into the back, like the [137] backyard to look through the back windows to see if we could also see any, you know any signs of him being incapacitated. Um, you know, same

things we talked about, you know, blood, um body parts, laying on the floor, anything like that. Um, so we went in the backyard to do that, and I did actually notice that there was what maybe, you know, it was like a frosted glass window, which would be on the, on the Southeast corner of the house. Um, you know, I was thinking, maybe – we were thinking maybe bathroom or something like that, but the window was open. Um, so at that point I actually yelled into, I, I yelled into the window at least a couple times. I don't, I don't know how many times exactly, but at least a couple times I yelled in that it was the police department. Uh, you know, Trevor we're here to help you. You know, whatever I'm, whatever I exactly said, but it was, was something of that nature and then...

Q: Did you get any response at all?

A: No, sir.

Q: And were you guys shining lights in through the windows?

A: Yes, sir.

Q: Okay. Did you get any response to shining lights in through the windows?

A: No.

Q: Were you guys knocking and banging on the doors?

[138] A: We did. We, we did knock on the front door. Um, I believe Captain Heffernan may have knocked on the door, I, I don't know for certain. Um, but I know, I know for a fact that before we ever went, went into that house that I knocked on the door at least three times, I think.

Q: Okay. Did you get any response?

A: No, sir.

Q: Alright.

A: And Tre..., Trevor's vehicle was home at the house so, we were, we were definitely of the mindset that we felt that he was there. So, this, this escalated the thought, you know, we, we thought we need to render aid.

Q: When you went into that house were you calling out to let him know you were there?

A: Yes, sir. I, I, I believe I called out before I ever entered the threshold of the house.

Q: Alright. Why, why were you calling out to him?

A: Uh, calling to him to let him know that it's the police department and that we're there to help him.

Q: Alright. Um, are you concerned that he might jump out if he's just fine? Or...

A: If he's just fine?

Q: Yeah. I mean I guess, let me – tell me – walk me through this. Like what's going on in your mind? I mean at this point what can, what can he do?

[139] A: Uh...

Q: What are the options for what can happen?

A: Well, I mean obviously with, with the information that we had received from Ms. Harris um, you know, there was, there was a couple options at hand. There was, there was either, you know, t..., or um, probably three I guess, um or, you know, at least three.

There's the fact of, you know, maybe Trevor already has attempted, attempted to, to harm, to harm himself



to commit suicide and he does need ri..., um aid rendered.

Um, there's also maybe the chance that maybe, maybe he is very suicidal and, you know, maybe we can get in there and talk him down off the ledge.

Um, and then obviously with, with the threats that she had made us aware of I – there was also the thought in mind that potentially we could be walking into something very dangerous and potentially being ambushed or potentially walk into a gun fight.

Q: Okay. Once you cleared the first floor of the residence.

A: Yes, sir.

Q: Did you find Mr. Case there?

A: No.

Q: What did you find on the first floor of the residence, do you recall?

[140] A: Uh, mainly like the only thing I really remember was – I, I do remember like seeing the holster that we had seen from the outside. Um, somebody may have made mention of a, a rifle in the corner. I can't, I can't recall if that was before or after the event, or the events had transpired. Um, but there was um – I, I basically remember um, the holster like going through the house.

Q: Why is the holster important?

A: Well, there's no gun in it so, obviously there was probably a gun that was supposed to belong in that holster so that guns in play in the house somewhere.

Q: Okay. That guns somewhere and you don't know where it is?

A: Yes, sir.

Q: Once the main floor of the house was cleared um, where did everybody proceed next?

A: So, uh, Officer Linsted and I cleared a bedroom that was on the main floor and actually as, as we came out from clearing the bedroom uh, I actually announced again that it was the police department and asked Trevor to come and that we were there to try to help him. Um...

Q: As you're announcing this, any response at all?

A: No. No, the house was dead quiet.

Q: Okay. Um, and then so, we started, we started proceeding back to the kitchen uh, because Captain Heffernan [141] and Chief Sather were already in the kitchen area. Um, so you, you get back to the, the East, it's like the center of the house on the, in the East, the East side of the house. You get back behind the kitchen there, there's the bathroom, which is the, the frosted window that we were yelling into, or that I was yelling into uh, trying to get Trevor's attention. Uh, let him know we were there to help him. And then right off, so, you know, as I'm walking in, you know, we're coming through the kitchen, the bathroom's right here and then right as you turn to the left you have like basically a stairwell. Uh, there's stairs that go down into the basement and stairs that go into the upstairs.

Q: Where did you proceed?

A: Uh, Captain Heffernan and Chief Sather went downstairs so, that left upstairs for Officer Linsted and I.

Q: Who went first?

A: I did.

Q: Um, how dangerous is going up upstairs?

A: Uh, yeah, it's, it's, it's dan..., it's not, it's not, it's not fun, it's dangerous.

Q: Okay. As you were going up the stairs did you call out at all?

A: I did.

Q: Any response?

[142] A: At, at least once, I believe, maybe twice. Um, I, I called out for Trevor again telling him it was the police department, that we were there to help him and there was no response.

Q: When you got to the top of the stairs what did you see?

A: Uh, so as we were coming up the stairs um, I was seeing – there's a, it's a very narrow staircase. It's, I mean, obviously I'm not a very big guy myself, but it's essentially a should width stair..., staircase. Um, you know, shoulders were darn near rubbing on the walls. And uh, as I'm coming up the stairs I see a doorway to the right, like a open doorway to the right. And I see what appears to maybe like a, you know, like a linen cabinet or a, um maybe like a broom, a broom cabinet at the end of the hallway and then appeared to be another room on the left side.

Q: Okay. Was that door open or closed?

A: I can't recall.

Q: Where did you determine you needed to go?

A: Uh, obviously I turned, and I needed to go to the right because that was the first door, doorway that we were coming to. You just, you just never pass, you just never pass an open door so.

Q: Alright. When you entered the room, how did you enter the room?

[143] A: Uh, so, I let, I let Officer Linsted know my, my intentions um, that I was going to enter the room on the right. Um, I asked him to maintain cover on the hallway. And when I entered the room uh, you know, we do some in-service training in our department. Um, you know, we, we had an officer who recent, recently left our department uh, for a, a job in Wisconsin, um, but he was, he had, he had been to SWAT school, was like SWAT certified. So, he had some room clearing tactics. Um, so essentially if, if you're going to enter a room by yourself um, the one that I like to use is, is basically called button hook. So, as this room is on my right um, obviously like I, I can, I can see a lot of what's in, what's in the small room, but obviously what I can't see is directly what's on the other side of the wall for me, in, in like this corner.

So, a button hook is essentially, you essentially take, you know, two big steps, you turn, you turn a corner and like you turn a direct 180 to like, it's called, or I know it's called, call it dig, digging, digging the corner. So, I, so I dug, I dug my corner and then after that you – so, you dig your corner and if that's clear then you swee..., you sweep, sweep the rest of the room.

Q: Okay. As you did this what happened?

A: So, I entered the room. I dug my corner and right as I started sweeping uh, out, out of, like out of the corner [144] of my eye, my, my peripheral vision I see the curtain, because uh, on the, on the, I guess as like you're looking into the room uh, there's the corner on the right that I went to and then on the left side of the room there's like kind of an open bay closet that has a curtain up. So, as I dug my corner and started to sweep

uh, I saw this jerking motion and the curtain started coming open and I, I seen Mr. Case's face uh, coming out from behind the curtain.

Q: Alright. Describe for me how this curtain came open?

A: Uh...

Q: Is it a nice leisurely slow pull back?

A: No, this was, this was like a violent pull of the curtain, and I seen Mr. fa..., Mr., Mr. Case out of the corner of my eye. Uh, he appeared to be like, like, I guess like grinning or like clenching his teeth and I seen what appeared to be a black object coming out, coming out of the curtain.

Q: Okay. Now, at this time you're wearing your body camera, correct?

A: Yes, sir I am.

Q: Where's your body camera mounted on your vest?

A: Uh, it's, it's just, just to the left of center, because my external carrier has a, has a zipper. So, I wear [145] it just to the left of center. And it's down a little bit lower on my vest.

Q: What does that body camera show?

A: Uh, I mean, you know, it, it's basically directly of what's in front of me with a, with a little bit of peripheral.

Q: With a little bit of peripheral.

A: Yeah.

Q: Which has better peripheral vision, your eyes or your body camera?

A: My, my eyes, my eyes definitely.

Q: Alright.

A: It's – I have much wider view with my, with my own eyes than I do the camera.

Q: How did you respond when the curtain came open?

A: Well, I can, I can tell you that that was uh, that was kind like, that was kind li..., a life flashing before your eyes type of moment. Obviously like um, obviously I was scared. Like at that point, you know, with threats of a shootout, um, basically shooting it out with law enforcement, this curtain jerking and what, and what I see or, or what I believe is a black object coming out of that curtain, I thought I was getting shot right in my back. So, I immediately started to sweep faster um, and basically, I basically went from a sweep to a swing with my rifle and I [146] swung, I swung my rifle on target and once, once my red dot was on, was on body I, I fired one round.

Q: At that point did you think you were going to die?  
A: I did, absolutely. Or at, at the very least I, I thought I was going to be shot in my back.

Q: Alright. Officer Pasha as, as you're answering questions here today, I can hear your speech, you are stammering a little.

A: (INAUDIBLE-NO RESPONSE)...

Q: Please answer out loud, I can see you nodding your head.

A: Yes, sir, yes, sir.

Q: Okay. Do you have a bit of a stammer or a stutter in your speech?

A: I do, yeah. Yeah, I have a speech impediment. Uh, it used to be significantly worse uh, over the years.

I've – you know, I work in communication field so, over the years it has gotten substantially better. Um, sometimes when I, sometimes when I'm in a excited situation uh, it does get worse.

Q: Alright. So, when you're in an excited or extremely stressful situation that stammer, or stutter will emerge?

A: It, it will intensify, yes, sir.

Q: Okay. Um, how well do you recall what happened right after you fired the shot?

[147] A: Um, I, I mean I, I recall quite a bit. I mean obviously I fired one shot. Um, Mr. – you know, I fired one shot Mr. Case immediately kind of hunched over, kind of fell backwards into the closet bay and then he fell forward onto the ground. And then at that point um, you know, I maintained leth..., lethal cover on him until we could – until Officer Linsted started to render aid. Um, you know, and then...

Q: How long did it take before Chief Sather and uh, Captain Heffernan got up there?

A: Uff, I don't know it, it couldn't have been very long. Five, ten seconds maybe.

Q: At this point where is your focus?

A: On Mr. Case.

Q: Alright. Um, when they got up there do you recall where they went?

A: Uh, I kind of recall them just kind of being in, in the doorway. Um, if I remember correctly, I feel like Captain Heffernan kind of stepped inside the doorway uh, and Chief Sa..., Chief Sather I believe was kind of right in the doorway.

Q: Alright. Um, do you remember talking about the gun, seeing a gun, worrying about a gun?

A: Um, at, at that moment I do not, no.

Q: Okay. Um, ultimately was there a gun?

[148] A: Yes.

Q: Okay. Where um, had the gun gone in relation to Mr. Case?

A: Uh, so, as Mr. Case fell forward through the curtain uh, his hand actually went into like a laundry basket, and it fell into a laundry basket.

Q: Um, who removed the gun from that laundry basket next to Mr. Case?

A: Captain Heffernan I believe.

Q: Alright. Once Mr. Case was under control then what happened?

A: Uh, yeah once, uh once Officer Linsted started rendering aid to him uh, he, he was trying to – uh obviously uh, Officer Linsted didn't know exactly where, where he'd been shot so, he had, he had a medical kit on his belt. Uh, you know, he, he blew that out to, or pulled the medical kit out. Um, he pulled out a chest seal to try to um – because he, he was afraid that he'd been shot center mass in the chest. So, he, he, he pulled out a chest seal to try to seal up like a, a sucking chest wound um, if, if that was what he had.

Um, at that point I, I believe, you know, once, once Chief Sather and Captain Heffernan were there um, and Officer Linsted was uh, rendering aid and Mr. Case wasn't fighting Officer Linsted I, I believe that's about the point where uh, [149] I, I think it was Chief Sather asked to go ahead and step out into the hallway.



Q: Okay. Um, did you have some deep dark burning desire to shoot somebody Officer Pasha?

A: Absolutely not. I've, I've never wanted that in my career. I'm a, I'm a very, I'm a very soft-hearted person and I, I've never wanted that.

Q: Could you have gone through your entire career as a law enforcement officer and never discharged your weapon?

A: Ab..., absolutely. That, that's, that was my hope starting this career. Um, you know, I started this career in my, my hometown community, small community. Um, did, did I know it was a possibility? Yeah, I, I mean I did. Um, you know, obviously that's something that, you know, have to be prepared for, but I didn't ever, like, you know, starting my career eight years ago I never thought it was something I would have to do.

Q: After the shot was fired and Mr. Case was eventually removed and taken out to the ambulance did you start going through the house and bagging and tagging evidence?

A: No.

Q: Why not?

A: Um, I, I was just doing what uh, Chief Sather asked me to do. Um, obviously we weren't there to search anything. Uh, we were there to try and render aid and obviously my, my [150] sick gut feeling that I had outside the house uh, un..., unfortunately came to fruition. Um, but no, we weren't – I – we had, we had no intention of searching anything going in there. We were there to solely try to help and render aid and um, at, at one point um, just, just so it's covered. At, at one point at the top of the stairs the, the pistol was handed

to um, when we came downstairs, uh once Mr. Case was downstairs. Um, I just sa..., I sat that pistol on the, on the downstairs counter uh, because what Chief Sather asked, asked me to do with it. He, he was already on the phone with uh, DCI and stuff. And, you know, at that point there was no searching at that after I set the pistol there. Um, I, I took off my rifle and I cleared my rifle.

Q: Alright. The – so, the only purpose of going into that house that night was to render aid to Mr. Case?

A: Ab...

Q: And make sure he hadn't hurt himself, or if he had...

A: Absolutely, it was...

Q: (INAUDIBLE-WITNESS BEGAN SPEAKING)...

A: it was to render aid and, you know, po..., potentially try to talk him out of hurting himself if, if he hadn't already.

Q: And the secondary objective was to be safe as you could?

A: Absolutely.

[151] Q: You had your body camera on?

A: Yes, sir I did.

Q: Okay. And this disk is labeled State's Exhibit 1, is this a copy of your body camera?

A: Yes, it says Sergeant Pasha body camera.

Q: Alright. The State would move for admission of State's Exhibit 1?

MR. BETCHIE: No objection.

THE COURT: Okay, one is admitted. Are you going to publish it?

MR. KRAKOWKA: Yes, your honor I'd like to public, or publish it.

THE COURT: How, how long is it?

MR. KRAKOWKA: Uh, this is 50 minutes and 25 seconds.

THE COURT: Fifteen?

MR. KRAKOWKA: Fifty.

THE COURT: Fifty, uh we're going to take a break again then.

MR. KRAKOWKA: Yes, your honor.

THE COURT: Take, take just a relatively short one, five, ten minutes at the most.

SERGEANT PASHA: Thanks, thanks sir.

COURT REPORTER: All rise.

(RECESS)...

[152] THE COURT: You didn't resolve the case while I was gone did you?

(LAUGHING)...

THE COURT: No, okay.

MR. BETCHIE: I don't think so your honor.

MR. KRAKOWKA: I have the video ready to publish your honor.

THE COURT: Alright. Is this the last video?

MR. KRAKOWKA: Yes, your honor.

THE COURT: Okay.

(PLAYING BODY CAMERA VIDEO, EXHIBIT 1)...

MR. KRAKOWKA: Your honor, this disk is labeled State's Exhibit 1.

THE COURT: I think uh, that was one and one was admitted, right?

MR. BETCHIE: Yes, that's correct your honor.

THE COURT: So, how many videos does the Clerk have now?

CLERK OF COURT: I have three.

THE COURT: Okay, thank you.

MR. KRAKOWKA: And that is all of them your honor.

THE COURT: Okay.

MR. KRAKOWKA: Officer Pasha, you seemed almost a little angry uh, afterwards uh, after the shot was fired. Um, when you talking with Billy uh, and you were down in the kitchen and then you were in front of the house. Why, why?

[153] SERGEANT PASHA: Uh, I, I was upset at the situation. Like I was upset at the situation, and I like that's, you know, like, like I said, you know, like I said outside like that was, was the last thing I ever wanted to do was shoot.

MR. KRAKOWKA: You didn't want to have to shoot anybody?

A: No, ever.

Q: You didn't want to have to shoot Trevor Case?

A: No.

Q: Do you feel like if you hadn't shot him you were going to die?

A: Yeah, I ab..., absolutely do.

Q: Do you think he was going to shoot you?

A: Yes.

Q: And were scared that that's what was going to happen?

A: Yes, sir.

Q: And at that time, you were in your uniform?

A: Yes, sir.

Q: You were wearing your badge?

A: Yes, sir.

Q: And you announced yourself as a police officer?

A: Num..., numerous times.

Q: Okay. I have no further questions for this witness your honor.

THE COURT: Defense cross?

[154] CROSS EXAMINATION:

MR. BETCHIE: Thank you your honor.

Sergeant Pasha, how are you doing now?

SERGEANT PASHA: I'm, I'm okay sir.

Q: Okay, and I – do you need a moment after watching that or are you good to proceed?

A: No, I'm, I'm fine.

Q: Okay.

A: Okay.

Q: Just wanted to make sure.

A: Thank you, I appreciate it.

Q: Um, so, I've got quite a few questions for you...

A: Okay.

Q: I would like to say it's nice to finally meet you in person.

A: Yes, sir.

Q: Um, so, just to reiterate it was a welfare check that you guys were there on, correct?

A: Yes, sir.

Q: Okay. And there were no reports of a crime or any suspected criminal activity?

A: No, sir.

(CELL PHONE GOING OFF)...

Q: I'm sorry, what was that?

A: No, sir.

[155] Q: Okay, thank you.

Um, and then to clarify you were called out by Captain Heffernan, he was originally dispatched?

A: I, I believe that's what happened, yes.

Q: Okay.

A: I, I believe it was – I, I was trying to talk with uh, Mr. Krakowka and I, I couldn't remember if he called me on the phone or the radio, but yeah, we were contacted by Captain Heffernan.

Q: Okay. And um, after you arrived you made contact with Ms. Harris and she indicated that she was not certain if she had heard a gunshot, she said she heard a pop, or what she thought was a pop, correct?

A: Um, honestly sir, I, I, I don't think that I talked to her until like a little bit later in the process. I, I believe Captain Heffernan I think talked to her like earlier.

Q: Okay. And it was while you were on scene um, about probably halfway into the – your time on scene that you heard from Captain Heffernan about the alleged threats that had been communicated to him by Ms. Harris?

A: Uh, yeah, I don't, I don't know exactly what the timestamp there was, but yeah, it was after, it was kind of – there as we were standing behind the vehicle is when he came over with that information.

[156] Q: Okay. And you testified that you um, at that point you guys really only had two options um, that was to make an entry um, and do a welfare check or leave, is that correct?

A: Uh, I, I don't recall if I said that uh, testifying like to make a welfare check or leave. I, I did say that, that we could make entry and, and check on his welfare or render aid or potentially talk him off of a ledge, but I don't...

Q: Okay. I'm sorry...

A: I, I just don't remember my exact words, I'm sorry.

Q: That's fine.

Um, and so, do you have any particular training in suicide response um, crisis intervention training or crisis response training?

A: Uh, you, you know, I, I took a class um, it was actually when I was a Corrections Officer. Uh, it was, it was called verbal judo class um, it's a de-escalation, it was a de-escalation course. Uh, it also dealt, I believe it was some suicide prevention and trying to talk

people down. Uh, and that, that topic is also covered at the Academy. That, that's something we, that's something we talk, or, or that's something that we cover at the Academy as well.

Q: Okay. Um, and does your department have any CRT specifically trained officers?

[157] A: Uh, you know, I, I'm honestly, I'm honestly unaware if anybody's gone to a specific CRT response school.

Q: Okay.

A: There, I mean, I, I know that there are some available. I just don't know if anybody has attended one?

Q: And then um, part of your testimony was that if you had gone in the house and found Mr. Case and he was suicidal you would've then um, taken him to a CRT, and would you have taken him even if he wouldn't have wanted to go to CRT?

A: You know it, it depends on, it depends on how that scenario unfolded, I guess. Um, you know, there could really be varying degree of, you know, how, how – in what state we found him, I guess.

Q: Okay. Um, and you mentioned uh, a woman who was attempting to commit suicide with the use of a knife. Um, how...

A: Ye..., yes.

Q: long did you wait to make entry on that?

A: Um, I'm trying to recall sir, um that, that was honestly, that, that was a call that I went to when I was on dayshift so, uh at the very minimum we're talking five, five years ago. Um, so, I, I honestly don't recall um, I don't recall like our initial response to that



and um, I'm not a hundred percent certain, but I, I do believe there may have [158] been somebody in the house with her and I, I think the door was open. I think we went in pretty, pretty quickly.

Q: Okay. And um, are you aware of how long it takes for an individual to bleed out from a gunshot wound?

A: I think that would be highly variable depending on where they shot them, themselves.

Q: Okay. Um, do you have a rough estimate?

A: I do not.

Q: No? Okay. And you approached um, Mr. Case's house with your um, service weapon drawn, why?

A: I, I'm sorry, I approached what, I approached?

Q: Mr. Ch..., Mr. Case's house when you first arrived on scene.

A: Oh, Case's, okay, okay, I'm sorry.

Um, so, the reason why my service weapon was out was because this call did involve a firearm. Um, obviously when we respond to calls with weapons um, our weapons are going to be out and, out and available in a case a weapon is turned on us or, or, or in case it's turned on somebody else.

Q: Okay.

A: Um, so especially, especially in a case involving a firearm.

Q: So, at that time were you apprehensive of potential bodily harm?

[159] A: Um, I, I think, I think when you're responding to a call like that, I mean I think there's, I think there's a certain level of apprehension like that,

that goes with just like a response to a call like that. Um, you know, at, at that time it wasn't as particularly high as it, as it was later in the, like, you know, later throughout the call.

Q: Okay. And so, throughout your time on scene did you think that Mr. Case had committed suicide?

A: You know, I, I really didn't know um, but for, for first reason I had a sick gut feeling that something just didn't feel right to me. Um, I, I don't, I don't know how you, you know, prove or testify to gut feelings, but something just didn't feel – like something wasn't sitting right with the situation with me and my stomach.

Q: Okay. And um, you mentioned during your testimony that there was a lockdown for threatening suicide in the school. Is there any report of that?

A: Uh, you know, honestly, honestly, I'm unaware of that.

Q: Okay. Do you know what year that allegedly was?

A: I, I'd be guessing if I give, I give you an answer.

Q: So, what's your basis for giving that statement in testimony?

[160] A: So, my basis there is that is just um, knowle..., it's, it's previous knowledge that I have heard from other officers in, in our department.

Q: Okay.

A: I, I remember the scenario happening. I just, I don't remember exactly when it was.

Q: Okay. Um, and so the – you noticed the handwritten document on the table um, what made you think that it was a suicide note?

A: Um, I mean ob..., obviously the type of call we're responding to uh, potential suicide um, you know, um to, to be honest with you at, at the point that we suicide note that, that is like the one time where in my mind I was kind of creeping towards the idea of, you know, of okay, maybe, maybe he did commit suicide in there. Um, because, you know, typically a lot of times if somebody is going to commit suicide, they – that they do leave note. It's, it's pretty, it's pretty common.

Q: Okay.

A: Uh, it just, it just appeared, it appeared to be what, what could be.

Q: Um, and so during your testimony you testified that it wasn't your ultimate decision to enter the house it was um, Chief Sather's and Captain Heffernan's, is that correct?

A: Correct, yes.

[161] Q: Okay. And um, if you don't necessarily agree with their calls do you have the option to remain outside or anything like that?

A: Uh, you know there's, there's a hundred different ways to handle every call we go to. Um, just because I, you know, just, just because maybe, maybe I'm apprehensive about it uh, no, I, you know, at that point I'm, I'm not going to remain outside. I'm not going to – um, obviously I, I don't think there's anything wrong with the call they made. Uh, I was apprehensive about entry. Um, but they, they made that call and obviously I'm, I'm going to go with my guys to make sure that they're safe and in the best spot they can be in.

Q: And so why were you apprehensive about entry?

A: Uh, I was apprehensive because I, you know, uh from the call we received, uh the empty holster, um to,

to me that puts a firearm into play in the situation. Um and obviously uh, speaking to um, Mrs., I'm sorry.

Q: Ms. Harris.

A: Ms. Harris, I'm sorry. Uh, you know, speaking with Mrs. Harris uh, the, the threats that she said that were made about shoot, getting in a shootout with law enforcement. Obviously, you know, that, that, you know, getting, getting a certain level of apprehension to enter the house.

Q: Okay. And so, prior to entry to the house would you say you were in apprehension of bodily harm at that time?

[162] A: Um, no, I, I would say that I was uh, nervous and apprehensive of the situation. Um, obviously I think I would have, I would have to have a valid threat in front of me to be apprehensive of bodily harm I guess, but.

Q: Okay. And so, you also testified that you entered the house to render aid um, and not to conduct any kind of search, but yet you were still required to search the house for Trevor, correct?

A: Uh, I wouldn't necessarily say search. I would say sweep or clear uh, like, you know, we're sweeping, we're sweeping and clearing the house checking for a person.

Q: Okay.

A: Um, I, I definitely don't – I, I would not, I would not categorize it as a search personally.

Q: Okay. Um, and again there was no external indication of aid being needed was there?

A: Uh, from – just, just from, from visual observation outside?

Q: Yes.

A: No, not necessarily, no.

Q: Okay. Um, and Mr. Case had no obligation to answer the door when you knocked on the door, did he?

A: No.

Q: Okay. And why wasn't there an attempt to reach Mr. Case by phone?

[163] A: I, I don't know that. That's um, that's not something we tried, I guess.

Q: Okay. And so, you testified that when you saw the curtain move open um, that's when you thought you were going to get shot, correct?

A: So, I, I seen the curtain jerk open. I seen Mr. Case's face and I seen what appeared to be a black object coming out and that's when I thought I was getting shot.

Q: Okay. Um, but yet you, in your interview with DCI indicated that you thought you were going to get shot before you even went up the stairs, is that correct?

A: Uh, I don't, I don't recall if I said that.

Q: Okay. Um, do you recall telling DCI investigators that at the base of the stairs that you knew that once you started up those stairs there was no way you, there was no way it was going to end anything other than a shootout?

A: I, I also don't recall saying that, I'm sorry.

Q: Okay. Um, what hand was the gun in, or what you thought to be a gun, what hand was it being held in?

A: Uh, Mr. Case's right hand.

Q: Okay. And do you remember telling DCI that you thought he was holding a black object in his left hand?

A: I, I do remember saying that. I remember saying that I initially thought that it was his left hand.

Q: Okay.

[164] A: Be..., because of the way the curtain was jerked opened.

Q: And so what's made you change your mind on which hand it was in?

A: Uh, ul..., ultimately, I think after, after reviewing the body camera like it, it showed what hand it was in.

Q: Okay.

A: Um, due to the way the cur..., due to the way the curtain was, was jerked open um, I guess in my mind it made sense that it would've been in the left hand so that's why I thought that.

Q: Okay. And um, so what's your training when you engage a threat with a firearm?

A: Can you specify, I'm sorry.

Q: Um, like when you're training and you open fire on a threat, what does your training entail?

A: Um, if, if, if we get to the point to where, you know, we have a lethal force threat and we have to use lethal force uh, we are trained to, to shoot to stop. Shoot to stop a threat.

Q: Okay. So, how many shots is that typically?

A: Uh, it just depends. I, I, like I couldn't give you an answer on what, what a typical amount would be.

Q: Okay.

[165] A: When, when, when the person stops being, or when the person or whatever stops being a threat I would say is – I mean, I mean that's when you have to stop.

Q: Okay. And um, we saw it on the body cam footage, you kind of spoke about the previous standout that you had missed, and you stated, I felt like shit for missing it. Can you elaborate on that please?

A: Yeah, I mean uh, so for, you know, for me like the, you know, the police department it's, it's more of a job it's, it's like family. So, you know, when, when I um, you know, there's like a standoff that, that one involved a gun as well. It was, it was pointed out the door at officers. Um, you know, I felt that the situation where I fell asleep, my phone had died, and I missed a phone call to, to come out and help with that. Um, it felt like shit to me because I, I, because I felt like I let my guys down because I wasn't there to help them and support them.

Um, you know, I've, I've been in situations where you would be on calls and you do like an, you know, like, we have like something like this, a standoff, something, it's kind of, it's like an all, it's like an all officer call out and you know, like you know the guys are, like, you know, the guys or, or the girls that are coming out and helping with that, you know, um you know they, they care. And like, like, [166] you know, that like they're there for you. If, if they're coming to come out and they're going to come and assist.

Q: Okay

A: So, I just felt bad I wasn't there for them.

Q: So um, when Officer Linsted retrieved um his AR and your AR and you guys took cover behind Mr. Case's truck.

A: Um hmm.

Q: Had you been made aware of Ms. Harris' statements about the alleged threats at that time?

A: I, I believe, I believe it was somewhere right in that time is where uh, Captain Heffernan had came, came over and said that.

Q: Okay. And so, um according to body camera it was right after, or while you guys were staged behind the truck, is that correct

A: I believe so, yeah.

Q: Okay.

A: Um, at one point earlier in the call um, Officer Linsted did say something about Mr. Case threatening to, like threatening a shootout. Um, I, I do believe it's on video. When I reviewed my video, it was there, because for some reason even before Captain Heffernan told us that Ms. Harris told us that um, that, that was, that was out before that. Um, and so when I reviewed my body camera, actually last night, um uh, Officer Linsted had said it earlier and I think [167] that ca..., that stemmed from their previous call um, where, where Officer Linsted had, had came, or had responded because uh, Mr. Case was suicidal uh, with uh, some of his school administrators and stuff when they were, they were present.

Q: Okay. Um, would you say that um, when you were approaching the door to knock in the first, like initially ten minutes of being on scene...

A: Um hmm.



Q: that you were apprehensive of any kind of bodily harm at that time?

A: Uh, no, I don't think so. I mean.

Q: Okay. Um, so, as you were approaching why did you state twice that you didn't like the big open window next to the door?

A: Uh, so, obviously a big window like that it just, it, it's a, it's a bad place to approach in ca..., in case something did happen and in case somebody was going to shoot at you uh, a big open window like that just gives you, it gives you zero cover. Um, obviously like you're standing, you know, you're standing wide out in the open for, for them to see you.

Q: Okay. And um, so, just to reiterate it's your testimony that you guys were entering the house to render emergency aid to Mr. Case in case he – well, to find Mr. Case and see if he needed emergency aid and then render it if so?

[168] A: Yes.

Q: Correct?

A: Yes.

Q: And you didn't necessarily agree with that, was that also correct?

A: I, I would say that I was apprehensive about going in.

Q: Okay.

A: Um, I, I wouldn't say that I, I wouldn't say that I disagreed um, I would just say that with, with the known threats I was apprehensive about entry.

Q: Okay. And so, is that why in ten separate statements throughout the body cam footage you said

some derivation of either Trevor didn't shoot himself, suicide by cop, or we go in and end up shooting Mr. Case?

A: Can, can, I'm sorry, can you ask one more time. I don't want to...

Q: So, your apprehension of entering the house, is that why throughout the body cam footage there were ten separate statements made by you um, to the effect of either he didn't shoot himself um, it was going to be a suicide by cop, or you guys were going to end up shooting him?

A: I was, I was obvious, I was obviously concerned about that possibility.

[169] Q: Okay. And then so, it's your testimony that you um, observed a black object in Mr. Case's hand, correct?

A: Yes.

Q: In his right hand?

A: Uh, I, I believe it's my testimony that I seen a black object coming out of the closet, or out of the curtain.

Q: Okay. Um, and you also testified that you saw the look on Mr. Case's face as he stepped out of the closet. Um, and that again he had a, a black object, and did you testify that it was pointed at you or that, that you saw it?

A: I believe, I, I believe I tes..., I believe I testified that it, it was coming out of the closet.

Q: Okay.

A: Or, or I'm sorry coming, coming through, through the curtain I think is what I've said.

Q: Okay. And so, based on the body cam footage I mean it's a snap (SNAPPING FINGERS)... like that, how quick...

A: It's very, very...

Q: it all happened.

A: fast.

Q: Um, have you viewed the body cam footage on a slower setting?

A: Um, yeah, I, I believe that I've watched it slowed down like just, just very permatively like on, like on a normal media player but.

[170] Q: Okay. Um, would you agree that it's a fair estimate that it was about four tenths of a second between the time the curtain starts moving open and the time you fired a shot?

A: Uh, I'm not sure about four tenths, but I've, I've typically said that I think that uh, it's, it's with – it's about two seconds from the time that I entered the room and probably, probably under a second from the time that I seen the curtain jerk.

Q: Okay. Um, and so, if you saw Mr. Case holding a gun or a black object as you testified um, why did you ask him when, why did office..., why did you ask him uh, if he had any guns while he was laying on the floor?

A: Um, I'm not entirely sure if I asked him that or if uh, Officer Linsted asked him that.

Q: Okay. I thought I might have heard you say it at least once but...

A: I'm, I'm not honestly sure sir.

Q: Okay. And um, when Captain Heffernan retrieved the firearm from the basket uh, why did you say, I don't know where that came from?

A: So, if I did say that um, I, I will, I will tell you right now uh, as I was turning, that curtain was jerking I do, or I did see a black object, or what I believed was a black object coming through the curtain. Uh, that's when I fired a shot. Mr. Case immediately hunched over, fell back [171] into the curtain, and as he fell forward, he fell to the floor and there was nothing in his hands and I didn't hear anything hit the floor.

Q: Okay.

A: Um, I, I will be very honest with you at that point in time that is when the F word came out of my, my mouth because I was very upset, because at that point I wasn't – like it made me question what I, it made me question what I saw and I, I thought maybe I had just shoot, shot somebody without a gun and that's, that's why I like I, I started questioning myself.

Q: So, in the moment you weren't sure if he had had a gun or not?

A: After, after he hit the floor and there was nothing in his hands, I started to question myself.

Q: Okay. And so, is that why um, you said to Captain Heffernan maybe he dropped it, I don't know?

A: Yes, sir.

Q: Okay.

A: I mean I, I was very, I was very, I was very (SIGH)... like I was, I was very amped up obviously in the, in the situation. You know I was, I was spewing

words about as fast as, as my mouth would mouth them so.

[172] Q: Okay. Um, and so that would also be why you said, I wonder if he did have it and he, pardon my language, but it's a direct quote, "he fucking dropped it?"

A: Yes, sir.

Q: Okay. At this time your honor I'd like to review the video. Um, I have a program that we can actually watch it frame by frame. Um, I'd like to get Officer Pasha's, or I'm sorry, Sergeant Pasha's take on watching it frame by frame.

THE COURT: Fair enough.

MR. BETCHIE: Thank you your honor.

(PLAYING VIDEO ON LAPTOP FRAME BY FRAME)...

SERGEANT PASHA: Would you like me to step down there so?

MR. BETCHIE: Sure.

(CONTINUE PLAYING VIDEO ON LAPTOP FRAME BY FRAME)...

MR. BETCHIE: (INAUDIBLE-SPEAKING SAME TIME VIDEO PLAYING)...

SERGEANT PASHA: Yes, sir.

(INAUDIBLE-SPEAKING SOFTLY AND AWAY FROM A MICROPHONE)...

(CONTINUE PLAYING VIDEO ON LAPTOP FRAME BY FRAME)...

SERGEANT PASHA: (INAUDIBLE-SPEAKING SAME TIME AS VIDEO PLAYING)...

[173] MR. BETCHIE: It's because it's pulling it off of the disk instead of...

THE COURT: If you guys are going to be in that proximity to each other you got...

MR. BETCHIE: Yes, your honor.

Give it a second to catch up.

(INAUDIBLES-SPEAKING AWAY FROM MICROPHONE)...

(CONTINUE PLAYING VIDEO FRAME BY FRAME)...

MR. BETCHIE: So, this is you entering the room, correct?

(INAUDIBLES-SPEAKING AWAY FROM MICROPHONE)...

THE COURT: You guys are having a conversation with each other. I don't know if we're getting a record, but I'm not hearing a word.

SERGEANT PASHA: Sorry, I was just asking if he could take it back a frame. There's a...

THE COURT: We're going to need to have a question and answer format.

MR. BETCHIE: Okay. Um, so I did ask him if this was him entering the room and sweeping.

SERGEANT PASHA: And I said yes.

MR. BETCHIE: And so, at this point um, please tell me when you see the weapon? And at this point you already fired a shot?

[174] SERGEANT PASHA: I believe so, yes. Uh, this, this frame by frame is very, like it's, it's pixelated frame by frame, but I have, I have been able to stop uh,

the video on where you can very clearly, or I can very clearly see the gray curtain and a black object move um, so obviously the firearm was here. But I...

MR. BETCHIE: So is that...

A: Um, I, I can tell you that I do, I, I have a screenshot avail..., available if you'd like it. Um, it's from that computer. I was able to – um so, I've, never, never been able, able to grab it like you know, in the slow, the slow frame because it does kind of pixelate. Um, but I, I can replicate it on the one computer as that – uh, and you can stop the video. You can see what I believe is a black object coming out of the curtain. I have a screenshot available if, if you guys like to see it. Um, it's a screen right off of that computer where I can (INAUDIBLE-TRAILED OFF AND SPEAKING AWAY FROM MICROPHONE)... The image that I can show you what I was...

Q: Okay. So, in this playback of frame by frame is that the first time that the gun can clearly be seen?

A: Uh, in – on this particular frame by frame played by, I mean it was a little before that but.

(CONTINUE PLAYING VIDEO FRAME BY FRAME)...

[175] A: Two, two previous I believe is where you see the gun, but (INAUDIBLE-SPEAKING AWAY FROM MICROPHONE)... So, um obviously I'm not seeing it as well on this, on this uh, frame by frame as, as I can on, on the video itself but.

Q: Okay. But on this play, you can clearly – that's when it first – would, would you say that's when it first becomes visible on the frame by frame?

A: Yeah, I, I believe so on this, yeah.

Q: Okay. And so, that's after you had already shot Mr. Case when he's falling forward?

A: On this, yes.

Q: Okay. And then on the full speed play through it becomes clearly visible about the time he falls to the floor, is that correct? Where it hits the basket?

A: Uh, as, as he's coming out of the curtain you can see the, you can see the muzzle or, and like the slide of, of the gun kind of sliding through the curtain, yep.

Q: Okay.

A: It's, it's, it's bef..., I, I believe it's before he hits the ground, but as he's coming through the curtain.

Q: So, as he's coming to the ground is when you see the weapon for the first time in the full speed playback?

A: No. No, I'm, I'm telling you I, I can see a black object in the full speed playback, and I can pause it and I can replicate it.

[176] Q: Okay. Um, and that's before you fired a shot?

A: Yes, sir.

Q: Okay.

A: I have a screenshot I can show you right now if you want to see it?

Q: Um, do you have it available with you?

A: I, I do, absolutely.

MR. KRAKOWKA: On your persons?

SERGEANT PASHA: On my person.

THE COURT: I'm going to take a recess uh, so the State can take to the witness aside. You know, this is a



little unusual, you know, when a, a witness offers something up and I'd just rather have the lawyers try the case. Uh, decide whether you're going to put something there or not.

MR. BETCHIE: Alright.

THE COURT: You've got about two minutes.

MR. BETCHIE: Thank you your honor.

MR. KRAKOWKA: Yes, sir.

COURT REPORTER: All rise.

(RECESS)...

MR. BETCHIE: I'm sorry your honor.

THE COURT: Are we still in recess or are we ready to go?

[177] MR. BETCHIE: Um, I think we're ready to go. I'm not going to ask that it be produced because in viewing it I, I mean unless the State wants to try and have it.

THE COURT: Whatever, you know, it came up in testimony. Finish your examination.

MR. BETCHIE: I get that.

Um, so, just to clarify your initial statements at the scene were indicative of you having not seen a weapon, would that be a fair characterization?

SERGEANT PASHA: Uh, yeah, I don't think, I don't think I made direct statements that I saw one at the scene, no.

Q: Okay. And you didn't make any statements on scene that you had seen the weapon um...

A: Not, not while body cameras were rolling, I did not.

Q: Okay. And then when you were interviewed by DCI on October 6<sup>th</sup>, you made statements to the effect of you saw it in his left hand coming out of the curtain and pointed directly at you, is that correct?

A: I do not recall if I made that direct statement. I have not been able to listen or review the interview. I, I don't recall.

Q: And then now today your testimony is that you're pretty sure you saw it in his right hand, but then you lost sight of it and so, the statements that you made at the [178] scene, or because you were questioning through yourself even though you knew you saw a weapon...

A: My testimony...

Q: or led to believe to be a weapon?

A: my testimony is I saw a dark object coming from the curtain that I believed to be a weapon.

Q: Okay.

A: Um, the way the curtain was opened it would lead me to believe that it was in the left hand. Obviously after reviewing body camera, it was in the right hand.

Q: Okay. So, that's three different accounts of the same events in three different times?

A: I don't think it's three different accounts.

Q: So, recalling what happened, that's not a recount?

A: I don't, I don't think that the way that I, the way the curtain was jerked, which made me believe, because of how it was jerked, that it, it would be in the left hand. That was an assumption by me.

Q: Okay.

A: And then after reviewing the body camera it was very obviously in the right hand.

Q: And had you reviewed the body camera footage prior to your DCI investigation?

A: Uh, yes.

[179] Q: Okay. And so at that point in time you still weren't aware that it was in the right hand, or what you thought was in his right hand?

A: At the time of the interview?

Q: Yes.

A: No, at the time of the interview I would've known it was in the right hand.

Q: So, then why did you tell DCI that it was in his left hand?

A: I, I think I told DCI that I initially thought that it was in his left hand and then when he went to the floor, and I didn't see it that's why I lost track of it. I don't, I don't recall – to, to be honest with you, I don't recall my exact statement to DCI. I can tell you, I can tell you I had very little sleep in between the time that this happened and my, my interview. Um, I don't recall my direct statement to them, and I haven't had a chance to review it.

But I, I'm not trying to make a direct quote, because I don't hundred percent remember, but I do remember making some sort of statement that I initially believed that it was in the left hand and then when he, he fell that I was hyper focused on his left hand and when he hit the ground with nothing in his left hand that's why I lost track of the weapon. Because I, I, I felt that the way that the curtain [180] was opened that it was in the left hand. That's what I believe I said.

Q: Your honor, may I approach?

THE COURT: Go ahead. You know, aren't we trying the case now?

MR. BETCHIE: Uh, no, we're not really, we're not trying the case your honor. I think we're trying to put fine points on this particular um, facet of our briefing that it's, it's pretty important. I mean you can't have probable cause if he didn't see a gun and...

THE COURT: He just testified that he saw what he thought was a gun.

MR. BETCHIE: He testified now what he...

THE COURT: That's exactly right.

MR. BETCHIE: thought was a gun.

THE COURT: You know, so for purposes of a Motion to Dismiss your boat is going around like this. It's not quite down the drain, but it's going down.

MR. BETCHIE: Okay.

THE COURT: Because he's testified to that. The rest of this is, you know, prior inconsistent statements, you know, it's jury stuff. It's...

MR. BETCHIE: (INAUDIBLE-SPEAKING SAME TIME AS THE JUDGE)...

THE COURT: it's uh, trial stuff.

[181] MR. BETCHIE: Alright, thank you. No other questions for this witness.

THE COURT: Alright.

MR. KRAKOWKA: Brief cross your honor.

THE COURT: Ugh.

MR. KRAKOWKA: Uh...

THE COURT: You want to sink your boat too?

(LAUGHING)...

MR. KRAKOWKA: I'll let it be then your honor.

THE COURT: Pardon?

MR. KRAKOWKA: I'll let it be then your honor. I have no further questions Officer Pasha.

THE COURT: I think – alright, good enough.

May Sergeant Pasha be excused?

MR. KRAKOWKA: Yes, your honor.

THE COURT: Defense?

MR. BETCHIE: Yes, your honor.

THE COURT: Alright sir, thank you very much for your testimony. You can go about your business.

SERGEANT PASHA: Thank you sir, I appreciate it.

MR. KRAKOWKA: One last witness your honor. This will be the shortest. This will be Chief Sather.

THE COURT: You bet.

(WITNESS SWORN IN) CLERK OF COURT

CHIEF OF POLICE BILL SATHER

[182] DIRECT EXAMINATION:

MR. KRAKOWKA: It's been a long day Chief Sather.

CHIEF SATHER: (LAUGHING)...

MR. KRAKOWKA: We're going to try and go through some of these as quickly as I can.

CHIEF SATHER: Okay.

Q: Could you please state your name?

A: Uh, Bill Sather.

Q: Could you spell your last name?

A: S-A-T-H-E-R (SPELLING OF NAME)...

Q: Uh, what is your current occupation.

A: I'm the Chief of Police.

Q: How long have you been the Chief of Police?

A: Uh, one year.

Q: Before then the Chief of Police how long have you been a law enforcement officer?

A: Uh, I, I got 29 years yesterday.

Q: Do you recall uh, uh responding to Trevor Case's residence on September 27th, 28th?

A: Yes, I do.

Q: Uh, do you recall why you needed to respond to that residence?

A: Yes.

Q: Why?

[183] A: Uh, Captain Heffernan called me and said that uh, Trevor and his girlfriend were fighting, and she had called the dispatch said that uh, when she was talking with Trevor on the phone, she heard him rack a round into his, into his pistol and fire it and the phone went dead.

Q: Alright. Um, are you familiar with Trevor Case?

A: Yes.

Q: How are you familiar with Trevor Case?

A: Uh, well, I've known Trevor for probably 30 years, had beers with him, played softball with him, against him.

Q: Alright. So, you know him socially?

A: Very well.

Q: Do you know him in a law enforcement capacity?

A: I do.

Q: How do you know him from your capacity in law enforcement?

A: Uh, since Trevor – when he breaks up with a girl, he, he kind of drinks pretty heavy and goes off a little kilter and panics and wants to commit suicide.

Q: Alright. Um, in your recollection how many times do you recall this having happened?

A: Three or four.

Q: Alright. Can you describe uh, some incidences that you recall?

[184] A: Other than this last one um, he was fighting with a gal at Lincoln School, they both were uh, workers there. And um, I don't know what happened and why they were fighting, but he was going to drive away. They're trying to stop him and they – the officers got called. I was not there. And they got him calmed down. He took off and the school they got a secondhand information that Trevor was going to either hurt himself or someone else in the school.

I know he got a DUI. I think it was Lieutenant Staley who gave him the DUI and, on a motorbike, and when he went to jail, he was threatening suicide.

Q: Okay. Um, what other incidents to recall involving Mr. Case?

A: Uh, there was an incident and, and I got to remind you I, I wasn't on any of these calls.

Q: Okay.

A: I just saw the reports. Uh, he was up at 7-Gables, and something happened there, and he took off and he was threatening suicide and the officers were involved.

Q: Alright. Um, during any of these incidents has he made threats toward law enforcement?

A: Um, I, I don't want to say yes, because I'm not sure on that.

Q: Okay. Off the top of your head, you can't recall?

A: Right.

[185] Q: Um, on this particular occasion uh, were you aware of whether or not he made any threats toward law enforcement?

A: Yes.

Q: Was that a concern to you as the Chief of Police?

A: Yes.

Q: As the Chief of Police is it also your duty to protect uh, Mr. Case?

A: Yes.

Q: Um, regardless of his intent to possibly harm himself?

A: Yes.

Q: Ultimately what decision um, did you um, make and you and Captain Heffernan make about what you needed to do with Mr. Case?

A: Uh, I, I told Captain Heffernan I'd come up to the scene to Trevor's house and I – it was my decision. I says, we got to go in. I didn't know if Trevor was hurt or not and if, if he was hurt, I wanted to be able to save him if, if he needed to be saved.



Q: Alright. Have you responded to suicide attempts where the person has not expired?

A: Many times.

Q: Um, have you had to take emergency action to keep somebody from dying as a result of a suicide attempt? A: Yes.

[186] Q: In this case even if Mr. Case had shot himself was it your hope that you still might be able to save him?

A: Definitely.

Q: Um, ultimately before all of you went into the house uh, for Mr. Case, do you recall talking with other officers outside before going in?

A: Yeah, I talked to the three officers who were there, Captain Heffernan, uh Sergeant Pasha and Officer Linsted. They were outside in the street like having a bag in between them cover, using uh, Trevor's Ca..., Trevor Case's truck and the told me what, you know, they had heard that he wants to shoot it out with us is, is what I think they said.

Q: Alright. Um, do you recall how you responded to that?

A: We got to go in.

Q: I'm sorry?

A: I said, we got to go in.

Q: Alright. Um, what about do you – I guess do you recall, you know, what you were thinking about um, the report that he uh, potentially shot himself?

A: Correct.

Q: What, what were you thinking about that?

A: That was my whole basic concern was, is that – we're not out to shoot anybody. We're there to help people and if Trevor's hurt I want to go in and help him, get him up.

[187] Q: If he hasn't shot himself and he's thinking about shooting himself, what do you need to do?

A: I've talked to Trevor several times. I, I thought myself I could, I could Trevor down and bring him out okay.

Q: Alright. Um, is there such a thing on our force as a CRT trained officer?

A: No.

Q: Alright. Who are CRT's?

A: That's the Crisis Response Team that mental health individuals who are, like I said, have been trained, have backgrounds in mental health that can discuss with Trevor. And like I say, we're not there so, I don't know what they all ask. It's all, it's all private and uh, they decide if he's a threat to himself or others. If he needs medical attention. Needs to go to Montana State Hospital.

Q: Alright. So, what you and your officers have training in is a more immediate...

A: Yes.

Q: uh diffusion of tension?

A: Yes.

Q: Okay. Something where you're trying to diffuse the immediate danger so that they can then talk to the CRT and determine what else is wrong?

A: Right.

Q: You're not a certified social worker?

[188] A: No.

Q: You're not a certified mental health professional?

A: No.

Q: Uh, and that's what you need to be to be a CR..., or be an actual CRT?

A: Correct.

Q: To your knowledge is anybody on the force in your police department a licensed clinical social worker?

A: No one is.

Q: Alright. Is anyone a licensed mental health professional?

A: No.

Q: Alright. After going inside of the residence, or before going inside the residence um, why were officers looking in the windows and knocking on the doors?

A: To try to get Trevor to come out and talk to them and stuff, like I said, we were there to help him.

Q: Okay.

A: You know we didn't, we didn't – we weren't there to harm anybody, we were there to help.

Q: Were, were – was anyone receiving any kind of response?

A: No.

Q: Do you know if efforts were made to try and contact Mr. Case?

[189] A: I, I don't know on that Ben.

Q: Okay. Um, other than banging on the door and hollering his name?

A: Right, right, correct.

Q: Alright. Um, when kind of looking through the windows to see if they could see anything, what kinds of things inside the house were of concern?

A: Uh, they said they sa..., what appeared to be a suicide note on the, on the coffee table in the front room.

Q: Okay. Uh, anything in the kitchen that was of concern?

A: I don't recall them saying anything.

Q: Alright. Before going into the house did you get any kind of extra armor or shields?

A: Yes, I picked up the, a ballistic shield on the way to the house.

Q: Alright. Um, why?

A: They asked for it.

Q: Okay. What kind of protection does that offer?

A: It will stop a, a bullet. I don't know what caliber off, offhand, but.

Q: At best it's better than nothing?

A: Yes.

Q: Can you describe to me what happened after you entered the residence?

[190] A: Uh, we entered the residence and um, Sergeant Pasha and Officer Linsted went to a room on the right, or excuse me, on the left, it was right there. They cleared that to make sure no – Trevor was not in there. We walked over to the table. I, I glanced at the

note, and it was, you could see it was scribbled and it wasn't very good penmanship. It looked like someone was in distraught almost the way they were writing it and big letters and small letter and I said, yep I, I think that's the note, let's just move on.

Sergeant Pasha and Officer Linsted decided to go upstairs. We heard that his bedroom was downstairs I told the Captain Heffernan and myself, uh I didn't tell myself. I says, me and you Dave will take the basement. If he's in his bedroom that's probably where we're going to find him.

Q: Okay. Um, upon entering the house were you calling out, identifying yourself?

A: Yes. By my name and Trevor, it's Billy, Bill Sather, it's the police, come on out.

Q: Okay. Any response?

A: None.

Q: Um, do you believe you were calling out loud enough so your voice would've carried through the whole house?

A: Definitely. All four of us were.

Q: Alright. Um, when you went downstairs were you still calling out?

[191] A: Yes.

Q: What's the next thing you recall happening?

A: I got maybe three to four steps down and I, I was looking downstairs and it's in, it's a pretty wide-open area right there and I'm just screaming, Trevor come on out, Trevor, and that's when I heard the shot.

Q: Okay. When you heard the shot what did you do?

A: Kind of panicked. I didn't know who shot. And I heard uh, Officer, or Sergeant Pasha scream and I go running upstairs and right behind, or right along with Dave Heffernan.

Q: Alright. I'm going to take a step back here for just a second here before we go going into the room. You said you've been officer for 29 years as uh, just a couple days ago here?

A: Yesterday.

Q: In 29 years um, how many times have you had to fire at a subject?

A: I have never fired at a subject.

Q: Okay. How many shooting incidents involving a subject, other than Mr. Case, do you recall in the last 29 years?

A: One.

Q: Alright. And what was that incident?

A: That was an incident with uh, can I say the name?

[192] Q: Yeah.

A: Johnny Chrisler and he was, on – high on drugs and threatening officers and we thought he was at a house, and he took off and shots were fired. I did not fire.

Q: Okay. Uh, almost running over officers with a car?

A: Yes.

Q: And in that incident was he wounded?

A: Yes.

Q: Where was he wounded?

A: Actually, I think the only bullet hole he had was his finger so.

THE COURT: (LAUGHING)...

MR. KRAKOWKA: Alright.

CHIEF SATHER: When he, when he needs that, you know.

THE COURT: That was the incident where uh, had mandatory target practice, wasn't it?

CHIEF SATHER: Yes, and I think he was wounded in the back, and he got glass in his eye.

MR. KRAKOWKA: Alright.

THE COURT: I, I shouldn't be flip about it, but...

CHIEF SATHER: No, no bullet holes so.

THE COURT: Yeah, many bullet holes in the car, no bullet holes in the...

CHIEF SATHER: Correct.

THE COURT: guy. (LAUGHING)...

[193] MR. KRAKOWKA: Um, it's an extremely rare occurrence where there is a shooting involving a subject?

CHIEF SATHER: That's the only two I, I know of in 29 years.

Q: It's not your desire to ever have to shoot a subject while you're working as law enforcement?

A: That's the last thing you want.

THE COURT: Let's finish up.

MR. KRAKOWKA: Okay. Uh, when you got up to the bedroom what did you observe happening?

CHIEF SATHER: I observed uh, Pasha was to the right. Trevor was laying on his stomach with hands out and I could see he was bleeding so; I knew right away he was the one shot. And Officer Linsted right away was trying to administer uh, medical aid, he has a medical aid pack on his belt. He handed me his rifle and I'm just kind of, kind of getting out the way. I didn't know how severe his injuries were, but I saw some blood out the side of – he's bleeding pretty good, we got to get help. And just then um, Officer Linsted got on his radio and called for the ambulance to come down, which is only two blocks away. And Dave Heffernan handed me a pistol that was cocked and ready to go.

Q: Alright. Did he say where he found the pistol? A: He didn't. He said it was Trevor's.

Q: Alright. Uh, after that what happened with Trevor?

[194] A: Uh, I'm not sure exactly what happening with Trevor, because at that point Trevor was no longer a threat. They were trying to render him aid and I thought, okay we got an officer involved shooting, I better call John Sullivan with the DCI, because they handle officer involved shootings, the State does. And being the past Chief of Police there and DCI agent he, he uh, I had his phone number in my phone so, I called him and explained what happened.

Q: Okay. Did he give on, instructions on what to do next?

A: Uh, yeah, he said, get everybody out there, make sure that – I said Trevor's being rendered to. The ambulance is coming. And while I'm talking to him I'm standing outside just trying to get away from everybody and uh, the officers were still in there. I set both of the guns down in the couch area and he said



uh, the, the DCI agent, former police officer, Ryan Eamon was on his way down.

Q: Alright. And so how did you instruct your folks at that time?

A: I, I made call outs for numerous officers. I says as many as you can get and us four are basically part of the crime scene now so, we can't really do anything. Let's just sit here and wait for the boys.

Q: Okay. I have no further questions for this witness your honor.

[195] THE COURT: Okay. Defense cross?

CROSS EXAMINATION:

MR. BETCHIE: I will be brief your honor.

Hi Chief, how are you today?

CHIEF SATHER: Good, how are you?

Q: Pretty good.

Um, so, just to clarify it was a welfare check that your officers were originally called down, correct?

A: Correct.

Q: Okay. And there were no reports of a crime or suspected criminal activity at the time of the response?

A: No.

Q: Okay. Um, and you talked about an alleged incident with the Lincoln School, do you know what time of, like when that was?

A: Offhand I don't. I don't have the report with me. Like I said, I wasn't on any of those calls I just remember them.

Q: Okay. So, um upon your arrival was there any indication that Trevor was in need of emergency aid?

A: Just from what the officers told there was a shot fired and he was not responding to anybody.

Q: Okay. And so, it's your testimony that they told you a shot had been fired?

A: I'm sorry?

[196] Q: It's your testimony that they had told you a shot had been fired?

A: Well, yeah...

Q: Okay.

A: that's what the uh, girlfriend told dispatch.

Q: Okay. Um, so when you arrived why did you make the statement that um, I'm sorry "he ain't got the balls"...

A: I didn't.

Q: referring to Trevor?

A: I didn't.

Q: You didn't say that?

A: (INAUDIBLE-NO RESPONSE)...

Q: Okay. Um, and why did you make a statement about this being the tenth time that you've dealt with him in this and he likes to go off in the woods and wait for people to cry for him before coming back?

A: I don't know if I said that exactly. That Trevor does that, he tries, you know, wants attention.

Q: Okay. So, with those statements it's a fair characterization that – to say that you truly didn't believe he was hurt, is that correct?

A: I thought we could talk him down.

Q: Okay. So, you didn't think he was actually injured yet?

A: I don't – I didn't know.

[197] Q: Okay. Um, and part of your testimony did you state that you stopped by the station and picked up the ballistic shield and brought it to the house?

A: Yes.

Q: Okay. Um, was it in fact Captain Heffernan that brought it?

A: I'm pretty sure he told me to pick up the shield.

Q: Okay. Um, and then you testified that Captain Heffernan indicated the weapon he hand you, handed you was Trevor's, are you sure that's what he said?

A: I'm sure, yeah.

Q: Okay. And then you testified that you sent down both guns, which guns were you referring to?

A: Uh, Officer Linsted's and the, the pistol that Trevor had.

Q: Okay. Um, and so, what were the, what were the exigent circumstances that you observed to justify entering Trevor's home without a warrant?

A: Well, if a guy committed suicide or he shot himself we're not going to wait for a warrant. It might take two or three hours to get a warrant.

Q: Okay.

A: I'm, I'm there to save him.

Q: And was there any indication that he had shot himself?

[198] A: Other than there was a shot fired and he wasn't answering the phone.

Q: Okay. Um, and Sergeant Pasha at the scene didn't indicate that Trevor pointed a gun at him, did he?

A: Pardon?

Q: At the scene in his recounting the events, Sergeant Pasha never said that Trevor pointed the gun at him, did he?

A: I, I don't recall that.

Q: Okay. So, when you called DCI um, you initially told them that Trevor was in the closet with a gun and Sergeant Pasha shot him, is that correct?

A: I didn't say that.

Q: Okay. And then you um, so you didn't immediately after that then tell DCI that Trevor pointed the gun at Pasha and Pasha shot him?

A: Uh, I don't recall my words to DCI on the phone. I just said that we had an officer involved shooting and uh, Sergeant Pasha had shot a guy.

Q: Okay. Nothing further your honor.

THE COURT: Anything?

RE-DIRECT EXAMINATION:

MR. KRAKOWKA: Yes.

Chief Sather uh, as Defense counsel's going you, going through and asking you about exactly what you'd said, um [199] would you disagree if these were things that you said that were recorded on body camera?

CHIEF SATHER: Yeah, it's pretty, pretty intense situation so, yeah.

Q: And you don't remember the exact wording for everything you said...

A: No.

Q: at every point in time?

A: No.

Q: Okay. Would you agree that what was said on the body camera is accurate?

A: Definitely.

Q: Okay. And so, on their – even if you're not recalling now you might've said a statement about, he didn't have the balls to shoot himself?

A: I don't recall saying that.

Q: Okay. You don't recall, but you wouldn't disagree if that was on the body camera?

A: If it's on the body camera I, I said it.

Q: Okay. Um, and the exigent or emergency circumstances here where he may have been in the house dying?

A: (INAUDIBLE-NO RESPONSE)...

Q: Or he may be in the house contemplating suicide and not responding to anyone and you can render him assistance in either case?

[200] A: Correct.

Q: I have no further questions for this witness your honor.

THE COURT: Okay. Defense anything else?

MR. BETCHIE: No further questions your honor.

THE COURT: Alright, Chief Sather with the Court's thanks you are excused.

CHIEF SATHER: Thank you.

MR. KRAKOWKA: May I approach Mr. Betchie your honor?

THE COURT: Sure.

MR. KRAKOWKA: Your honor, may I approach?

THE COURT: Sure.

MR. KRAKOWKA: Um, State and Defense counsel have agreed that this image can be introduced as State's Exhibit 4. Um, this is the image to which Sergeant Pasha was referring and after speaking with Sergeant Pasha it's the screenshot image that he took of the video while he was reviewing it last night while he working, I believe probably in the middle of the night during nightshift.

THE COURT: Any objection to four?

MR. BETCHIE: Uh, no objection to it as he characterized it your honor.

THE COURT: Alright. Well, obviously they're admitted for purposed for the Motion to Dismiss or the Motions hearing. Uh, we, we likely need to get some better [201] foundation then we have, or clearly foundation anyway, but based upon the stipulation four is received into evidence for today's purposes.

MR. KRAKOWKA: Thank you your honor. The State has no additional witnesses your honor.

THE COURT: Alright. From an evidentiary standpoint were you going to call any other witnesses?

MR. BETCHIE: No, your honor.

THE COURT: Uh, uh the hour is late, it's 4:00 o'clock. Uh, I don't need uh, long argument. Uh, not my first rodeo. Well briefed. Compliments to counsel. I

know what the theories are. Uh, uh I'd like to have a little discussion about the Motion in Limine uh for sure.

Uh, it's basically a prior bad acts motion, right?

MR. BETCHIE: That's correct your honor.

THE COURT: Uh, and what specifically are you seeking to have excluded at the trial?

MOTION IN LIMINE DISCUSSION:

MR. BETCHIE: Um, just specifically I'm seeking to exclude the bar fight that's been alluded to multiple times throughout this hearing um, and any allusions or um, any references to unsubstantiated and/or hearsay statements regarding previous threats of suicide in the school or anything like that.

THE COURT: Unsubstantiated and what?

[202] MR. BETCHIE: Um or hearsay I believe is what I said your honor.

THE COURT: Okay, alright.

MR. BETCHIE: The secondhand recounting that – there's no direct line of who he supposedly told it to.

THE COURT: Any, anything else?

MR. BETCHIE: No, I'm fine.

THE COURT: Okay. Uh, State agrees that the bar fight's out, right?

MR. KRAKOWKA: Your honor, the State agrees that the bar fight and the previous uh, crimes, wrongs or bad acts with Mr. Case, the bar fight, the incident at the school, the show down with Officer Linsted and Officer Staley. The State has no intention of bringing any of that up at the time of trial with one caveat and that one caveat is uh, if at trial if Defense counsel or

his client start making a big deal about the response the officer's utilized to go into the house uh, how they were armed, uh utilizing the bullet proof shield uh, that goes to the reasonableness of their response and why they responded in that way. And at which time (INAUDIBLE-JUDGE BEGAN SPEAKING)...

THE COURT: So, so it's all fair game because that's going to be an issue in the case for sure, is that what you're saying? It's okay – it's out...

MR. KRAKOWKA: Only, only if...

[203] THE COURT: as long as I can get it in.

MR. KRAKOWKA: they make it an issue. The State has every intention of not bringing that in and it can simply be a video, a...

THE COURT: I, I don't think you're going to get a stipulation from the Defense that there was reasonable apprehension of any kind of harm uh, so the State's going to have to prove it.

MR. KRAKOWKA: No, your honor, the reasonable apprehension of harm uh, the State can prove that simply based on the statements by – made by Jen Harris um...

THE COURT: Here's, here's my problem. I'm not trying to argue the case against you or anything...

MR. KRAKOWKA: I understand.

THE COURT: like that. Uh, uh and you know, you got – every so often, like nine times out ten it seems uh, I get a Motion in Limine from Defense counsel, I'm not talking about here. But I get a Motion in Limine that says uh, uh we want to keep all the inadmissible evidence out, you know. I don't want to have any of this hearsay in there. Uh, no uh, no uh, inadmissible bad



acts. Well, of course. You know we're not going to have any inadmissible evidence. Only admissible evidence. And he..., and, and so we're – we've kind of digressed into an argument about admissibility uh, and what I heard was that there was a stipulation that, uh now wait – [204] all I've been asked to keep out on prior bad acts is the bar fight at the 7-Gables...

MR. BETCHIE: (INAUDIBLE-SPEAKING SAME TIME AS THE JUDGE)...

THE COURT: that I heard about today. You respond to that by saying oh, we don't want this, this, this or this in except if I needed it for some kind of purpose and that gets me nowhere.

MR. KRAKOWKA: Okay. The State doesn't intend on bringing up the issue with the bar fight your honor and so...

THE COURT: We're talking about the bar fight.

MR. KRAKOWKA: I'd agree.

THE COURT: Bar fights out?

MR. KRAKOWKA: Bar fights out.

THE COURT: Not going to hear anything about the bar fight for any reason? See, we're getting ready for trial.

MR. KRAKOWKA: I'm...

THE COURT: Decisions have to be made.

MR. KRAKOWKA: Absolutely.

THE COURT: Bar fight's out, right?

MR. KRAKOWKA: Yes, your honor.

THE COURT: Okay, bar fight's out.

Now, there's coloration of what I'm talking about with your uh, try – and when I'm saying what do you want out, you say the unsubstantiated or hearsay-based stuff about uh, [205] prior suicide. Uh, what if I get a witness on the stand that says, oh yeah, two years ago I was at Lincoln School or whatever and I heard him say I'm going to go kill myself. Now I got a witness who is not hearsay uh, I don't know how much substantiation you need? You need two other people say, yeah, I heard him say it too.

MR. BETCHIE: No, your honor.

THE COURT: See what I mean?

MR. BETCHIE: Yes, I, I see what you mean. Um, with regards to the prior suicide attempts I'm talking specifically about the mention of the threats to law enforcement in 2015 incident that came after the fact by way of a secondhand source through the school the was reported to law enforcement.

THE COURT: Well.

MR. BETCHIE: There's like four layers of hearsay there and so, that I...

THE COURT: I – yeah...

MR. BETCHIE: (INAUDIBLE-JUDGE BEGAN SPEAKING AT SAME TIME)...

THE COURT: if that's how it comes in uh, I think an objection's going to be sustained.

MR. BETCHIE: Okay.

THE COURT: Uh, but I don't know how it's going to come in. Uh, a prior uh, allegations of, or prior information, [206] prior evidence uh, that Trevor Case on previous occasions uh, uh, uh indicated an intent to kill himself, commit suicide. It was made known to law

enforcement. It might very well have a place in this trial.

MR. BETCHIE: I, I have no objection to those your honor. They are both incidences that are well documented in the police reports.

THE COURT: Well, whatever, uh I'm, I'm just trying to figure out what you want out.

MR. BETCHIE: Yeah, I'm not trying to exclude those. The only thing...

THE COURT: So, you, you got the bar fight out.

MR. BETCHIE: Yes.

THE COURT: Uh, everything else, uh your Motion in Limine's denied. Um, I'm not saying it's going to come in. Uh, you know, you object, that's hearsay. It's hearsay, it's not coming in.

MR. BETCHIE: Right.

THE COURT: You know, it's uh, you know irrelevant, it's whatever. Uh, but uh, you know, I can't grant a Motion in Limine that says uh, based upon hearsay and unsubstantiated and all like that, it's just too smokey. I, I can't get my arms around to know what's out. Uh, if, if you want to dial that in, you know, between and the Pre-Trial Conference, you know, I'll listen to it.

[207] MR. BETCHIE: Um hmm.

THE COURT: Okay?

MR. BETCHIE: Fair enough your honor.

THE COURT: But based upon what's been filed only the bar fight is out.

Now, uh, frankly I feel sufficiently advised to, to rule without any further argument unless there's something that's not in your briefs uh, you know, if you want to highlight particular testimony or anything like that, you want to make an argument, I'll listen to it. Uh, but I feel pretty ready to rule.

State you got any argument?

STATE FINAL ARGUMENT:

MR. KRAKOWKA: Your honor there were statutes the State hadn't specified in it's brief.

THE COURT: The what?

MR. KRAKOWKA: The statute that the State hasn't specified as the State was going to draw the Court's attention to subsection 4 of the statute on exigent circumstances for other legitimate law enforcement purposes. And then point the Court to sub..., to Montana Code Annotated 53-21-102 uh, which describes an emergency situation surrounding a mental health commitment uh and taking someone into custody for a mental health evaluation where they're a danger to themselves or to others as a result of a mental [208] illness. Um, there's further definition contained in 53-21-129 uh, that's the kind of exigent circumstance um, that we were dealing with here as indicated um, to all of the officer's testimony as backed up by the testimony of Jennifer Harris that they were responding to a suicidal male, which is why they went into the house uh, without a warrant. They weren't investigating a crime. Uh, they were trying to stop someone from committing suicide.

THE COURT: Okay.

MR. KRAKOWKA: That's all I have.

THE COURT: Anything?

## DEFENSE FINAL ARGUMENT:

MR. BETCHIE: Uh, yes, you honor.

So, um, as we're clear there was no probable cause.

There was no suspected criminal activity. Um, the State's arguing exigent circumstances. Um, I think my briefing's pretty clear on that, that exigent circumstances requires a coupling of probable cause. Um, but it seems now that through the testimony presented the State's kind of shifting their argument from specifically exigent circumstances to emergency aid and/or community caretaking doctrine. Neither of those were briefed um, at any length by either side. Um, I would state that although they haven't been briefed, they're very similar to exigent circumstances and that they require an immediacy of action um, and a promptness and I [209] haven't seen a case law yet that indicates that 40 minutes in any definition would be considered prompt or immediate regardless of the circumstances faced by the officers. Um, so, I just don't believe that exigent qualifies with that significant of a wait.

## COURT PROCLAMATION:

THE COURT: Alright. Alright uh, I think I said at the beginning of this hearing I wasn't going to rule from the bench, but I am. Uh, it's, it's clear what I have to do.

Uh, number one uh, on the Motion to Dismiss – the Motion to Dismiss the gist of it is uh, unlike the Affidavit, uh the facts, this is the argument now, the State's, or Defense Argument. The Affidavit is clear enough uh, uh between, well, the Information's now been twice amended, but State came to the Judge and said, let us file a criminal case against Trevor Case. Uh, we want to charge him with Assault uh, on, on a

Peace Officer. Uh, they – the cops got called. Trevor Case was talking about suicide. The cops went up there. Ultimately, they went in the house and Trevor Case jumped out of a closet, pointed a gun at Pasha and he shot him. That's how it started, okay.

Uh, and so leave to file the Information was granted. Uh, Discovery occurs, uh information is gathered, uh, uh statements are taken, body cams looked at and the Defense makes a Motion to Dismiss saying unlike the Affidavit in [210] Support of Leave to File uh, there, there isn't uh, any probable cause here uh, because all of the elements of the crime of Assault on a Peace Officer, as charged in this case, uh are – they're not all here. All the elements are not here. You've got to have, you got to have each element.

I'm, I'm kind of distilling your argument maybe crammed two or three arguments into one, but it's the gist, because when Pasha was talking on the video and was talking to DS..., or DCI when uh, other statements were made, you know, uh and they're enumerated in the brief. Uh, there's no weapon. The weapon is missing is kind of the gist of the argument. And there's others, you know, he couldn't – uh, Pasha had to have been reasonably apprehensive uh, because of the weapon, not because – and use of a weapon. I guess distinguishing it from a statement that there's a weapon. You know, girlfriend said there's a weapon. Girlfriend might have heard a shot. She heard a pop. Uh, you know, she heard what sounds like maybe chambering a round into a pistol. Uh, you know, that's not the same thing as uh, uh he turned with a gun, pointed it at me and I shot him.

So, I came in here today uh, to listening very carefully uh, to evidence. I hadn't seen the body cam uh, video before. You know, now's the time, you know,

to look at that for purposes of a Motion to Dismiss uh, and uh, in the – well, uh and I, I wanted to listen very carefully because I [211] wasn't sure what I was going to do with this legal argument that the State was making that this doesn't matter for today, because that kind of a motion is premature. As long as I had probable cause in the Affidavit, that's enough to get me to the opportunity to present my case in chief. And if Defense wants to raise the uh, issue about whether or not there's any evidence of uh, uh, you know, a probability that there was apprehension brought about by the use of a weapon or whether there was a weapon, you know, then they can make it then uh, to attack the elements of the charge.

And, you know, the cases do say that. Uh, there's a lot of cases that say that. Uh, and like so many things uh, in the law I find myself saying things like, is that the law? You know, uh because when you look at – well, you can pick of any kind of uh, examples uh, you, you can make them up where uh, all in good faith a prosecutor has a witness that says, you know, he came at me with a knife. Uh, and so, I – oh, okay, he came at you with a knife. We'll charge him with Assault with a Weapon. Uh, and then, you know, during the run up to the case uh, run up to the trial uh, the witness says, I lied. It was a different guy, a different about the weapon. I was just mad at him, and I lied. Well, I think a prosecutor would at that point dismiss uh, but you know, if the prosecutor were to choose to say anything, you get a Motion to Dismiss. That's not what the witness said [212] something different now. There, there's a recantation. I mean even then can't I grant a Motion to Dismiss? I have to go trial uh, and have that witness come in and say, yeah, I lied? I mean, I mean there must be situations where a Judge could say case dismissed. You know, the, the, the evidence just didn't

materialize. It's not nothing like the Affidavit, I'm not describing this case, but there, there must be a case, you know, there must cases where a Judge could do that.

You know, interestingly uh, and I didn't pour over it this time, over the years you get an opportunity to look at things from all kinds of different angles, but you know the, the Motion to Dismiss in a criminal case is hard to grab a..., on to. I mean there's a statute that says, you know, if, if justice so requires, a Judge can dismiss a case. But it doesn't talk about the procedure of a Defendant making a Motion to Dismiss and, you know, where..., whether that's at trial, whether it's before trial, whether it's after the case in chief, you know, it's just so much less well defined in the criminal law than in the civil law. Uh, so it's, it's kind of a squishy process.

But I don't know that that's uh, that concern that I have about, do I have to let the State uh, present a case in chief before I can analyze a defendant uh, pro testation, a Motion to Dismiss. Uh, uh I don't know that I – I don't [213] think I have to worry too long about that here in the light of the hearing, because Sergeant Pasha came in here, sat here, said I saw what looked to be a gun. It was a black thing. Uh, it was before I shot. I – it, it made me afraid. Uh, the elements are there if a jury wants to believe it. So, Motion to Dismiss denied. Probable cause exists both in the Affidavit and from uh, the hearing that we've had here today. Probable cause is a long way from a reason..., beyond a reasonable doubt. We all understand that, but we're on a Motion to Dismiss. Motion to Dismiss denied.

Motion to Suppress, Motion to Suppress is based upon the fact that there was uh, a warrantless entry uh, into the house. Uh, that to the extent that evidence was seized without the warrant or uh, derivative of



things that happened before a warrant. You know uh, generally speaking without a warrant it, it's, it's no good. It's got to stay out. There are exceptions.

You know we can slice the bologna as thin as we want about exigency versus emergency, you know, and different statutory definitions in different context, but police department got a call. They got a call about Trevor Case. No stranger to the Anaconda-Deer Lodge County Department of Law Enforcement. Uh, you know, prior things have gone on, but just on the face of it without any of that uh, Jen Harris, apparently a former girlfriend uh, says that we were [214] in a conversation. He was upset. He was emotional uh, and uh, in the end he said, I'm going to kill myself. I have a gun. Uh, she hears what is inter..., interpretational uh, as the uh chambering of a round in a pistol and then a pop, which may have been a gunshot. That's what her concern was clearly that maybe it was a gunshot, maybe he killed himself. Got to do something. Off goes Linsted and Pasha. Off goes uh, uh Captain Heffernan uh, you know, and so, is that an emergency? Is that exigency? Yes, it is, clearly.

In this house, you know, they knew from the conversation, from the call, there's Jennifer Harris, or Jen Harris, you know, she comes to the scene before they go in. Well, yeah, I guess before she got there, they were shining lights in there to see if they could see a dead body. See if they see a guy with a gun. You know there uh, there's an exigency. They had to go in that house. They had to go in that house.

The Defense's concern seems to be more that uh, they didn't act like it was very exigent. It took 40 minutes, or 35 minutes, or 30 minutes before they, you know, went in to look for him. Well, not really true. They were looking for him, but it's not just an exigency.

It's not just a guy. What they were working was ju..., not just a guy uh, who said I'm, or, or a person who said there's a guy in there whose threatened suicide, he might have killed himself. He [215] might've shot himself. He, he – you know, when the call was made that created the exigency.

Now, I might want if my wife called uh, from somewhere else and said, geez I think my husband's having a heart attack at the house. Uh, I would hope Dave Heffernan comes in, you know, and busts my door down and comes and drags me out to the ambulance right away. But if they said, Dave, Ray's in the house and he's got a gun and he said he's going to shoot ya. Well, then I would expect them to use more caution rather than just going in.

Whether or not it was too slow, too fast, whatever, you know, uh I, I almost said hindsight's clearer than foresight by a damn sight, but that's what we always do in trials. That's what we always do in criminal cases. We're always micro analyzing uh, analyzing uh, you know, Monday morning uh, after the game. But that micro analysis here says, yes for the purpose of whether or not there was an exigency when they went in because they still didn't know was he in there? Was he dead? Was he waiting for them? Was he gonna do it the suicide by cop thing? You know, what was going to happen? They had to be careful. But it was an exigent circumstance. They went into the house without a warrant. Uh, does not render what came as a result of that inadmissible. The Motion to Suppress is denied.

And we've talked about the Motion in Limine.

[216] MR. KRAKOWKA: Yes, your honor.

THE COURT: Such is the order of the Court. Court is adjourned.

MR. KRAKOWKA: Thank you your honor.

COURT REPORTER: All rise.

CONCLUSION

[217] CERTIFICATE OF TRANSCRIPTIONIST

I, Ann Allen, Official Court Transcriptionist of the District Court of the Third Judicial District of the State of Montana, in and for the Counties of Granite,

Anaconda-Deer Lodge and Powell, after having been duly sworn,

DO HEREBY CERTIFY:

That the foregoing proceedings were electronically recorded using an FTR Recording System.

That the recording has been in the custody of the Court.

That the recording has not been changed or altered in any way.

That the recording is a full, true and accurate record of these proceedings.

That the undersigned arranged to have the recording transcribed to writing.

That the undersigned has compared the tape recording with the requested written transcription and the foregoing 217 pages constitute a full, true and accurate transcription of the above-entitled proceedings had and taken in the above-entitled matter at the time and place hereinabove mentioned.

Witness my hand this 23rd day of February, 2022.

/s/ Ann M. Allen

Ann M. Allen

Official Court Reporter

MONTANA THIRD JUDICIAL DISTRICT COURT  
ANACONDA-DEER LODGE COUNTY

STATE OF MONTANA,  Plaintiff,  v. WILLIAM TREVOR CASE,  Defendant.	CASE NO.: DC-21-100   VERDICT FORM
---	---

We the jury, duly empaneled and sworn to try the issues in the above-entitled cause, enter the following unanimous verdict:

1. To the charge of Assault on a Peace Officer;

Guilty

(Write above this line "guilty" or "not guilty")

DATED this 8th day of Dec., 2022.

/s/ John Dorckendorf  
FOREPERSON

MONTANA THIRD JUDICIAL DISTRICT,  
DEER LODGE COUNTY

---

STATE OF MONTANA,

*Plaintiff,*

v.

NO.: DC-21-100ss

WILLIAM TREVOR CASE,

*Defendant.*

---

**JUDGMENT AND ORDER OF COMMITMENT**

This matter came before the Court on the 24th day of February, 2023 with the Honorable Judge Kurt Krueger presiding. This was the time set for sentencing in this matter. The Defendant was present and was represented by Christopher R. Betchie and Nathan Ellis. The State was represented by Anaconda-Deer Lodge County Attorney Ben Krakowka.

In this matter, the Defendant was convicted by a jury of his peers of the offense of ASSAULT ON A PEACE OFFICER, in violation of § 45-5-210, Mont. Code Ann. After the trial, the Court ordered the preparation of a presentence investigation and set sentencing for February 24, 2023.

At the outset of the February 24, 2023 Sentencing Hearing, the parties acknowledged receipt of the Presentence Investigation. The Court noted the parties' corrections to the Presentence Investigation Report. The State presented witnesses and officers made statements. The State presented Probation Officer Kissell and Chief Sather. Officer Lindstad and Sergeant Pasha gave statements to the Court. The Defendant presented no witnesses.

Counsel for both parties presented argument. The Court then proceeded to sentencing, with the consent of the Defendant and his counsel. Upon the Court's consideration of the entire record, especially the Defendant's lack of any accountability, the Defendant's lack of remorse, and the Defendant's mental health issues.

**IT IS THE JUDGMENT OF THIS COURT** that the Defendant, WILLIAM TREVOR CASE, is guilty of the criminal offense of ASSAULT ON A PEACE OFFICER, in violation of § 45-5-210, Mont. Code Ann., as stated in the Information filed by the State and as evidenced by his conviction of the same at trial.

**IT IS THE DECISION OF THIS COURT** that the Defendant shall be sentenced to the custody of the Montana Department of Corrections for a period of ten (10) years with five (5) of such sentence suspended upon the terms and conditions of probation set forth below.

**IT IS ORDERED** that during the period of suspension the Defendant shall abide by the following terms and conditions of release:

1. The Defendant shall be placed under the supervision of the Department of Corrections, subject to all rules and regulations of Adult Probation & Parole.
2. The Defendant must obtain prior written approval from his supervising officer before taking up residence in any location. The Defendant shall not change his place of residence without first obtaining written permission from his supervising officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not

use any device that would hinder an officer from visiting or searching the residence.

3. The Defendant must obtain permission from his supervising officer or the officer's designee before leaving his assigned district.

4. The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his supervising officer, the Defendant must inform his employer and any other person or entity, as determined by the supervising officer, of his status on probation, parole, or other community supervision.

5. Unless otherwise directed, the Defendant must submit written monthly reports to his supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact his supervising officer or designee when directed by the officer.

6. The Defendant is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.

7. The Defendant must obtain permission from his supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.

8. Upon reasonable suspicion that the Defendant has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, residence of the Defendant, and the Defendant must submit to such search. A probation and parole officer

may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.

9. The Defendant must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself as a good citizen. The Defendant is required, within 72 hours, to report any arrest or contact with law enforcement to his supervising officer or designee. The Defendant must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.

10. The Defendant is prohibited from using or possessing alcoholic beverages and illegal drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

11. The Defendant is prohibited from gambling.

12. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing court.

13. The Defendant shall pay the following fees and/or charges:

a. The Probation & Parole Officer shall determine the amount of supervision fees (46-23- 1031, MCA) to be paid each month in the form of money order or cashier's check to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620 (\$50 per month if the Defendant is sentenced under 545-9-202, MCA, dangerous drug felony offense and placed on ISP). The DOC shall take a portion of the Defendant's inmate account if the Defendant is incarcerated. \$21 per month.



b. Surcharge of the greater of \$20 or 10% of the fine for each felony offense [§46-18- 236(l)(b), MCA]

c. Surcharge for victim and witness advocate programs \$50 for each misdemeanor or felony charge under Title 45, Crimes §61-8-401 (DUI); §61-8-406 (DUI-alcohol); or §61-8-411 (DUI-delta-9-tetrahydrocannabinol). [§46-18-236(l)(c), MCA]

d. \$10.00 for court information technology fee. (§3-1-317, MCA)

14. If the Defendant is convicted of a crime listed in {46-23-502(13), MCA, he/she shall register as a violent offender. [46-18-201(7), MCA]

15. The Defendant, convicted of a felony offense, shall submit to DNA testing. (44-6-103, MCA)

16. The Defendant, required to register as a sexual or violent offender under “6-23-504, MCA, shall submit to DNA testing. (44-6-103, MCA)

17. The Defendant will surrender to the court any registry identification card issued under the Medical Marijuana Act.

18. The Defendant shall not abscond from supervision. Absconding is a non-compliance violation as defined in 46-23-1010), MCA.

19. The Defendant shall obtain a chemical dependency evaluation by a state-approved evaluator if deemed necessary. The Defendant shall pay for the evaluation and follow all of the evaluator’s treatment recommendations.

20. The Defendant shall obtain a mental health evaluation/assessment by a state-approved evaluator if deemed necessary and appropriate. The Defendant

shall pay for the evaluation and follow all of the evaluator's treatment recommendations.

21. The Defendant shall successfully complete Cognitive Principles & Restructuring (CP&R) or similar cognitive and behavioral modification program.

22. The Defendant shall not possess or use any electronic device or scanner capable of listening to law enforcement communications.

23. The Defendant shall abide by a curfew as determined necessary and appropriate by the Probation & Parole Officer.

24. The Defendant shall complete any community service ordered by the court or the Probation & Parole Officer.

25. The Defendant shall not enter any bars.

26. The Defendant shall not enter any casinos.

27. The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer outside a work, treatment, or self-help group setting. The Defendant shall not associate with persons as ordered by the court or BOPP.

28. The Defendant shall not knowingly have any contact, oral, written, electronic or through a third party, with the victim(s) unless such contact is voluntarily initiated by the victim(s) through the Department of Corrections. DOC staff may notify victims about the availability of opportunities for facilitated contact with their offenders without being considered "third parties."

29. The Defendant shall attend self-help meetings at the direction of the Probation & Parole Officer.

30. The Defendant shall advise all medical personnel of addiction history/conviction, including all prescribed narcotics and/or medical marijuana.

31. The Defendant shall inform the Probation & Parole Officer of all prescriptions obtained from medical personnel prior to filling them. The Defendant shall take all prescription medications as prescribed and in the manner in which they were prescribed.

32. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.

33. The Defendant shall enter and complete an Anger Management Program to assist in dealing with his violent criminal behaviors.

34. The Defendant shall participate in the 24/7 Sobriety and Drug Monitoring Program, or any program specifically designed to monitor and address the Defendant's use of intoxicants, for a period of time to be determined by the supervising Probation & Parole Officer, if the Officer deems it necessary and the program is available.

35. The PSI report shall be released by the Department to certain persons, such as treatment providers, mental health providers, and/or medical providers, as needed for the Defendant's rehabilitation.

The Court sentenced the Defendant to Montana Department of Corrections in recognition of the severity of the offense and the opportunity to engage in mental health treatment.

The Defendant was advised of his right to challenge any terms of this written Judgment that conflict with

the Court's oral imposition of sentence. Such challenge must be made by the Defendant within 120 days of the filing of the written Judgment. If the Defendant does not file such a challenge, the right to a modification hearing shall be waived.

**IT IS FURTHER ORDERED** that the Defendant is remanded to the Police Chief for placement with the Department of Corrections.

As ordered from the bench on February 24, 2023.

DATED this 24th day of February, 2023.

/s/ Kurt Krueger

KURT KRUEGER  
DISTRICT JUDGE

**IN THE SUPREME COURT OF  
THE STATE OF MONTANA**

**NO. DA 23-0136**

---

STATE OF MONTANA,  
*Plaintiff and Appellee,*

v.

WILLIAM TREVOR CASE,  
*Defendant and Appellant.*

---

**BRIEF OF APPELLANT**

---

*On Appeal from the Montana Third Judicial District  
Court, Deer Lodge County, the Honorable  
Kurt Krueger, Presiding.*

---

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### ISSUES PRESENTED

I. May police officers make a warrantless entry to an individual's residence during a "welfare check" based on a report from an ex-girlfriend that the occupant is armed, suicidal, but does not want contact with the police or their "assistance?"

II. Did the State committed a Brady Violation by failing to disclose that Sgt. Pasha had been shot at on June 19, 2021, approximately three months prior to the incident in the present case, when an element of the charged offense is the reasonableness of the officer's apprehension of serious bodily injury?

III. Does Mont. Code Ann. § 45-5-210 require more than mere possession of a weapon to constitute assault on a peace officer?

**STATEMENT OF THE CASE AND FACTS**

On the evening of September 27, 2021, Defendant, William Trevor Case had been engaged in an argument over the phone with his ex-girlfriend, Jennifer Harris, while he was sitting at his house alone. (D.C. Doc. 27.) After Mr. Case abruptly ended the call, Jennifer called Anaconda-Deer Lodge County Police Department (“ADLCPD”) Dispatch to report that he “was threatening suicide and the phone just went silent, and she didn’t get a response,” and that “he said he had a loaded gun, and all I heard was clicking and, **I don’t know, I thought** I heard a pop at the end, **I don’t know.**” (*Id.* (emphasis added).)

Sergeant Richard Pasha and Officer Blake Linstead arrived at Mr. Case’s residence first, parking around the corner and sneaking up on foot to surveil the property as part of their welfare check. (D.C. Doc 55.1.) Officer Linstead and Sergeant Pasha stalked the front of Mr. Case’s house, looking in windows with their flashlights. *Id.* Captain Dave Heffernan arrived shortly thereafter, and the three consulted for a moment before returning to search Mr. Case’s residence through the windows. *Id.* Jennifer Harris then arrived on scene and spoke briefly with the officers on scene mainly about the layout of Mr. Case’s home and his possible location. *Id.*

After searching the first floor of Mr. Case’s home through various windows for five minutes and 28 seconds, while observing no signs of distress, movement, injury, or the need for imminent aid, Sergeant Pasha finally knocked on Mr. Case’s front door. *Id.* Mr. Case did not answer the door and made no indication of being home. *Id.*

After about seven and a half minutes of searching Mr. Case's home from the exterior, Officer Linstead noticed an empty holster on the kitchen table and alerted the other officers to its presence. *Id.* The officers continued to search the house from the front exterior and proceeded to the backyard after having been on scene for approximately nine and a half minutes. *Id.*

The three officers then proceeded to enter the backyard and continued to search the house for approximately another six minutes by looking through windows with flashlights and entering his back porch and looking through his back door. *Id.* Still the officers have observed no indicia of Mr. Case, a struggle, injury, or emergent situation requiring immediate action/entry of the officers. *Id.* At this point, Officer Linstead heard someone walking down the alley behind Mr. Case's house, at which time the officers ceased searching Mr. Case's home from the backyard and exited into the alley behind Mr. Case's home. *Id.*

After speaking to a neighbor in the alley, the officers then returned to the front of Mr. Case's home, after more than 18 minutes on scene. *Id.* After further discussion between the three officers, Sgt. Pasha stated "I don't know, do you make entry and then all of a sudden he pulls a gun and then you shoot him, if he's actually not dead." *Id.* Followed by Officer Linstead asking, "or you leave him?" *Id.*

Sergeant Pasha then returned to searching the front of Mr. Case's home, while Officer Linstead approached Jennifer Harris to obtain Mr. Case's phone number, to call him. *Id.* Before he could obtain Mr. Case's phone number from Jennifer Harris, Sgt. Pasha called Officer Linstead over to the front porch to show him a

notebook, with about a paragraph of writing in it, that he had observed located on Mr. Case's coffee table in his living room. *Id.* Officer Linstead then abandoned efforts to contact Mr. Case via telephone, and he and Sergeant Pasha concluded that the paragraph long handwritten entry in a notebook was a suicide note, despite not being able to read the contents of the writing. *Id.*

Officer Linstead and Sergeant Pasha then met with Captain Heffernan, who was sitting in his vehicle while on the phone with ADLCPD Police Chief William "Bill" Sather. *Id.* Officer Linstead and Sergeant Pasha notified Captain Heffernan of the handwritten document on Mr. Case's coffee table continuing to claim that it was a suicide note, without any substantiation. *Id.* While approaching Captain Heffernan's vehicle Sergeant Pasha stated, "if we go in there, we gotta be careful man, just in case he didn't actually shoot himself." *Id.* After conferring with Captain Heffernan, Sergeant Pasha admitted the existence of his belief that Mr. Case was not in immediate need of aid, by stating "I'm scared that maybe he didn't actually shoot himself, because he can't and he's tried suicide by cop before, and he like left us all this so we're gonna go in the house and he's gonna fucking pull a gun on us, is what I'm worried about." *Id.* In response, Officer Linstead and Sgt. Pasha discussed if he should retrieve their personal AR-15 rifles, and Officer Linstead ultimately retrieved both rifles. *Id.*

Shortly after retrieving the rifles, Officer Linstead and Sergeant Pasha took up a defensive position on the other side of Mr. Case's truck and waited for Chief Sather to arrive. *Id.* Captain Heffernan then approached and relayed vague information allegedly

received from Jennifer Harris, roughly claiming that Mr. Case said something to the effect that he would shoot it out with law enforcement or come out guns blazing should they illegally enter his residence. *Id.* Unfortunately for Mr. Case, her exact words cannot be quoted as Captain Heffernan's body worn camera (BWC) was inexplicably turned off during that conversation. *Id.*

Sergeant Pasha then pushed his narrative that Mr. Case was seeking to commit "suicide by cop" for the fourth time and continued to speculate that Mr. Case was not injured and was waiting for the officers to enter, which was interrupted by Captain Heffernan, stating "we just go in and watch each other's backs." *Id.* Officer Linstead then offered the idea that they could utilize the ballistic shield, because it "takes the gun out of the fight." *Id.* Notably, the officers had still not observed any indicia of an exigent situation that would require immediate entry, and all three officers on scene up to that point had stated that it was unlikely Mr. Case required immediate aid, but rather he was likely lying in wait for them to commit suicide by cop. *Id.*

After Chief Sather arrived, the officers discussed everywhere in Mr. Case's home that they had been able to search and the locations they hadn't been able to see into. *Id.* The officers generally stated that they had observed an empty darkened home, an empty holster on the table, beer cans on the counter, and a handwritten note that they were unable to read on the coffee table. *Id.* While Captain Heffernan was retrieving the ballistic shield, Sergeant Pasha again pushed his suicide by cop theory, to which Chief Sather replied, "I don't think he's going to shoot us." *Id.*

Sergeant Pasha yet again began to mention that he's concerned about the possibility of an officer created jeopardy by stating that Mr. Case "is going to **make them come into his house** and ..." but he trailed off and began discussing the handwritten document on Mr. Case's coffee table. *Id.* Sergeant Pasha then recounted the "note" and "holster" found during their search of Mr. Case's home from the exterior, and then finished expressing his concern "that he's gonna make us come into this house and he's gonna want to shoot it out, and so I want to be prepared." *Id.* Chief Sather responded with "he ain't got the guts." *Id.*

Captain Heffernan eventually returned with the ballistic shield and the four officers then began discussing who's going to use the shield and how they would make entry to Mr. Case's house. *Id.* After entering the house and thoroughly searching the first floor, the officers reached a stairwell that led to both the basement and second floor. *Id.* Sergeant Pasha and Officer Linstead proceeded upstairs, while Chief Sather and Captain Heffernan proceeded downstairs. *Id.*

As Sergeant Pasha entered the first upstairs bedroom and began sweeping the room with his rifle, the curtain covering part of the closet began to move open, revealing Mr. Case's left side of his body. *Id.* Sergeant Pasha rapidly turned and fired one shot at Mr. Case, striking him in the left arm and lower left abdomen. *Id.*

Sergeant Pasha immediately exclaimed "oh shit!" *Id.* Mr. Case immediately began falling to the floor. *Id.* While none of the officers testified to seeing a firearm prior to the shooting, the BWC footage shows that Mr. Case had a black handgun by his side in his right hand that can be seen emerging from behind the

curtain and then being dropped into a nearby laundry basket after he was shot. *Id.* Notably, no weapon or outline of a weapon was visible until after Mr. Case was shot and already halfway to the floor. *Id.*

After the other officers joined Sergeant Pasha, Captain Heffernan noticed the handgun Mr. Case dropped and picked it up from a laundry basket full of toys and blankets. *Id.* Holding the handgun, Captain Heffernan then asked, “who’s is this?” *Id.* To which Sergeant Pasha admitted, “I don’t know where that came from.” *Id.* To which Captain Heffernan responded, “it was laying right there.” *Id.* Mr. Case was then repeatedly offered a chest seal for his gut shot and was then escorted downstairs to the ambulance that had just arrived. *Id.*

After Mr. Case and Officer Linstead proceeded downstairs, Captain Heffernan handed Sergeant Pasha Mr. Case’s handgun. *Id.* Sergeant Pasha asked, “where did you find that at Dave?” *Id.* Captain Heffernan replied, “right there” and pointed to the laundry basket where he found the gun. *Id.* Sergeant Pasha then said, “maybe he dropped it, I don’t know.” *Id.* He continued “I came in here to clear it and that fucking curtain flew open and I just fucking let one fly.” *Id.* Before heading downstairs Sergeant Pasha said to Captain Heffernan “I wonder if he did have it and he fucking dropped it?” *Id.* To which Captain Heffernan responds, “well it was right there.” *Id.* Mr. Case was then taken to the hospital by emergency services. *Id.*

The ADLC County Attorney filed the packet of charging documents on October 1, 2021 (five days before DCI investigators interviewed the four officers involved in the warrantless entry of Mr. Cases home). (D.C. Docs. 1-4.) The State’s Motion for Leave to file an

Information and Affidavit in Support, was rife with gross mischaracterizations and patently untrue statements including that: Ms. Harris heard a “pop” from inside the house, when Ms. Harris reported that she “thought she heard a pop” over the phone; that upon arrival the officers made entry, despite officers waiting over 40 minutes before making entry; that officers observed a bullet hole in the kitchen floor, though this was not discovered until DCI began their investigation; that all four officers proceeded upstairs; and that Mr. Case pointed the pistol towards Sgt. Pasha. (D.C. Doc. 1.)

Mr. Case made his initial appearance on October 13, 2021, and entered a plea of not guilty. (D.C. Doc. 11.) Upon Defendant’s motion, the court ordered the State to produce all “material or information that tends to mitigate or negate the Defendant’s guilt as to the offense charged or that would tend to reduce his punishment, therefore.” (D.C. Docs. 9 & 10.) Although the State produced numerous videos, audio recordings, and written documents, it failed to disclose that Sgt. Pasha had been shot at three months prior to incident at issue, and whether he had undergone any evaluations or counseling for the incident. (D.C. Doc. 133.)

On December 20, 2021, Mr. Case filed Motions to Suppress, to Dismiss, and *in Limine*, requesting the exclusion of any evidence obtained as a result of the warrantless search of the home and seizure of Mr. Case, and an evidentiary hearing was held on February 14, 2022. (D.C. Docs. 25-29.)

At the hearing, Ms. Harris testified that she heard a “pop” and never said gunshot. (Tr. of 2/14/22 Evidentiary Hearing, 19:21-20:2.) Likewise, when asked if he saw a body or blood while searching Mr. Case’s home from the exterior, Cpt. Heffernan stated



they saw an empty holster and empty beers. (Tr. of 2/14/22 at 28:1-17.) When asked how long they waited, Cpt. Heffernan testified half an hour, when the BWC footage clearly shows it was forty to forty-five minutes that they waited. (Tr. of 2/14/22 at 37:4-13.) Cpt. Heffernan was then questioned about whether they considered applying for a warrant. *Id.* He responded “no” and that the reason they didn’t apply for a warrant was that “it wasn’t a criminal thing.” *Id.* Further Cpt. Heffernan testified about the preparations made for officer safety and that being part of the delay before making entry. (D.C. Doc. 55.1 & Tr. of 2/14/22 at 37:8-39:6.)

Cpt. Heffernan then testified that he turned his BWC off while the three officers were in front of Mr. Case’s home discussing whether Mr. Case needed emergency assistance or lying in wait for them. (Tr. of 2/14/22 at 45:7-22; 53:5-24.) Further, upon redirect, Cpt. Heffernan testified about exigent circumstances being the same as emergency situations, and how the promptness of action is measured against the “prudence of running in.” (Tr. of 2/14/22 at 54:9-22.)

Officer Linstead and Sgt. Pasha testified similarly regarding exigent circumstances and the time on scene prior to entering Mr. Case’s home. When asked about whether he considered getting a warrant before entry, Officer Linstead testified “Um, I wasn’t in there to, to search anything. I wanted to find Mr. Case, make sure he was okay. If he wasn’t I needed to get him medical attention and I, I was not in there for any reason other than that.” (Tr. of 2/14/22 at 78:24-79:4.)

On cross examination Officer Linstead testified that he observed no signs of Mr. Case having a gunshot wound or having injured himself. (Tr. of 2/14/22 at 93:917.) His BWC was shown to the court, and when

asked why they made entry into Mr. Case's home, he testified that with the "unknown status of Mr. Case's wellbeing" they had to go in "to make sure he was okay," with no testimony about exigent circumstances or indications that Mr. Case needed emergency aid. (Tr. of 2/14/22 at 110:20-111:9.)

When Sgt. Pasha testified, he indicated that he did not observe blood or a body or any indicia of a person in need of emergency care. He did testify that there was an empty holster, beer cans, and a handwritten paragraph, none of which indicated to him or the others that they must make an immediate entry to render emergency aid or medical care. (Tr. of 2/14/22 at 129:1-131:3.) Sgt. Pasha later testified about the black object coming out of the curtain for the first time, which was inconsistent with his statements to DCI after he had watched his BWC. (Tr. of 2/14/22 at 143:24-144:18 When asked on cross examination if there was any external indication of a need for aid being rendered prior to entry, Sgt. Pasha testified "no, not necessarily, no." (Tr. of 2/14/22 at 162:15-20.)

In the court's verbal order at the end of the hearing, the court denied both motions. In its reasoning for denying the Motion to Suppress the court opined, the district court stated that:

You know we can slice the bologna as thin as we want about exigency versus emergency, you know, and different statutory definitions in different context, but police department got a call.

\*\*\*

But that micro analysis here says, yes for the purpose of whether or not there was an exigency when they went in because they still

didn't know was he in there? Was he dead? Was he waiting for them? Was he gonna do it the suicide by cop thing? You know, what was going to happen? They had to be careful. But it was an exigent circumstance. They went into the house without a warrant. Uh, does not render what came as a result of that inadmissible. The Motion to Suppress is denied.

(Tr. of 2/14/22 at 213:18-215:14.) Notably, the district court found that exigent circumstances in the absence of probable cause excused the officers' warrantless entry into the house. *Id.*

Defendant filed his Renewed Motion to Suppress, Brief in Support, and Motion and Brief in Support of Motion in Limine on July 18, 2022. (D.C. Docs. 79-81.) A hearing on the renewed motions was held on September 28, 2022. (D.C. Doc. 102.1 & 103.) The Court denied the renewed Motion to Suppress and the State's Motion in Limine and granted Defendant's Motion in Limine at the hearing. *Id.* Judge Dayton recused himself due to inappropriate comments made about witness, Jenifer Harris, which were heard by County Attorney Ben Krakowka, who reported it to the Judicial Practices Committee. (D.C. Doc. 104.)

A four-day trial was held between December 5, 2022, and December 8, 2022. During the trial Sgt. Pasha was called to testify. (Tr. of 12/5/22 to 12/8/22 at 41:1-80:10.) Throughout his direct examination Sgt. Pasha only testified that he saw "what he believes to be a dark object" with no testimony of actually seeing the weapon Mr. Case was holding at his right side. *Id.*

Chief Sather then testified that it would not have been appropriate for the other three officers to "just go

right in.” (Tr. of 12/5/22 to 12/8/22 at 91:1-4.) He then stated that he made the decision to delay while Cpt. Heffernan retrieved the bullet shield from the station, which he incorrectly stated was across the street. (Tr. of 12/5/22 to 12/8/22 at 91:5-11.) Chief Sather further testified about the “note” found on the coffee table stating that, “it wasn’t a usual suicide note that we usually see on suicides. . . it wasn’t finished. It was only half a note there.” (Tr. of 12/5/22 to 12/8/22 at 92:7-11.)

During his resumed direct, Sgt. Pasha went through a series of still frame shots from his BWC footage, indicating where he believes he began to see the “dark object” protrude from the curtain. (Tr. of 12/5/22 to 12/8/22 at 102:8-108:22.) The State later recalled Sgt. Pasha for rebuttal, where he testified that the dark object he saw just as easily could have been a shadow as a gun. (Tr. of 12/5/22 to 12/8/22 at 37:22-374:4.)

Following closing arguments, the jury found Mr. Case guilty of assault on a peace officer, Montana Code Annotated § 45-5-210(b). (Tr. of 12/5/22 to 12/8/22 at 416:16-23.) As such, Defendant moved for a new trial on January 6, 2023, to which the State responded on January 12, 2023. (D.C. Docs. 129-131.)

However, Defense counsel learned on January 19, 2023, that Sgt. Pasha was shot at in June of 2021, and as such raised the issue of a Brady violation for the first time in their reply brief. (D.C. Doc. 133.) The State responded to the newly raised Brady issue in a separate response brief. (D.C. Doc. 134.) The Motion for new trial was denied by written order on February 9, 2023, and Mr. Case’s sentencing hearing was set by an order issued that same day. (D.C. Doc. 135 & 136.) Mr. Case was sentenced on February 24, 2023, and

defense counsel filed this appeal on the same day. (D.C. Doc. 140.)

### **STANDARDS OF REVIEW**

When reviewing a decision to grant or deny a motion to suppress evidence, the Court determines “whether the court’s findings of fact are clearly erroneous and whether those findings were correctly applied as a matter of law. *State v. Ellis*, 2009 MT 192, ¶ 20, 351 Mont. 95, 210 P.3d 144. “A trial court’s findings are clearly erroneous if they are not supported by substantial credible evidence, if the court has misapprehended the effect of the evidence, or if our review of the record leaves us with a definite and firm conviction that a mistake has been made.” *Id.*

This Court’s “review of constitutional violations, including alleged *Brady* violations, is plenary.” *State v. Ilk*, 2018 MT 186, ¶ 15, 392 Mont. 201, 422 P.3d 1219.

### **SUMMARY OF THE ARGUMENT**

Both the conviction and sentence of Mr. Case for assault on a peace officer must be overturned as the conviction and sentence was based solely upon evidence illegally obtained by ADLCPD during their warrantless search of the home and seizure of Mr. Case.

The officers’ warrantless entry into the residence was not excused under either the exigent circumstances or the community caretaking doctrine, and as such, all evidence obtained should have been suppressed. Specifically, the U.S. Supreme Court in *Caniglia v. Strom*, 141 S. Ct. 1596, 1599-1600 (2021), clearly held that the community caretaking doctrine never existed and does not permit government agents to make a warrantless entry to a residence, thus impliedly

overruling this Court's holding in *Estate of Frazier v. Miller*, 2021 MT 85, ¶ 25, 484 P.3d 912, to the extent that opinion permits police to make warrantless entries when performing welfare checks.

Likewise, Montana, which allegedly has a constitution that provides greater privacy protections than the U.S. Constitution, requires that officers show both exigent circumstances in addition to probable cause before their warrantless entry to a home is excused under the exigent circumstances exception. However, all the officers in this case testified under oath that they had no probable cause to suspect that Mr. Case had committed any wrongdoing prior to their warrantless entry.

Further, even if this Court decides to adopt the Federal emergency aid doctrine, the officers' significant delays and statements on scene betray their argument that an ongoing exigent situation existed at the time they finally made entry to the residence.

Further, Mr. Case's conviction and sentence must also be overturned because the county attorney suppressed and refused to disclose exculpatory *Brady* evidence that Sergeant Pahsa had a recent near-death incident on the job where he was shot at for the first time in his career, which again requires reversal of Mr. Case's conviction and sentence as this suppressed evidence is favorable to Mr. Case, is directly relevant to an essential element of the alleged crime, was known by the State given the same county attorney tried each case, and because this evidence is material in that it not only goes to an essential element of the alleged crime, the reasonableness of Sergeant Pasha's apprehension, as well as new avenues for impeachment of the State's main and only witness to the alleged crime.

Finally, Montana law requires more than the mere possession of a weapon, but some tangible use of the weapon for an act to constitute assault on a peace officer. As such, Mr. Case's conviction and sentence should be overturned due to these serious constitutional violations.

### ARGUMENT

**I. Neither the exigent circumstances exception nor the community caretaking doctrine excused the officers' warrantless entry into Mr. Case's residence more than 40 minutes after arriving on scene to perform a "welfare check" at the insistence of an ex-girlfriend.**

In theory, Montanans enjoy stronger constitutional protections against government searches and seizures than provided by the U.S. Constitution. *Ellis*, ¶ 22. However, the District Court's Order, not only holds that probable cause is no longer required to make a warrantless home entry under the exigent circumstances exception when accused of experiencing a mental health crisis, but it also conflates three completely distinct doctrines by stating "we can slice the bologna as thin as we want about exigency versus emergency . . . and different statutory definitions." Under that ruling Montanans are now stripped of all rights to refuse police entry to their home and are subjected to armed raids and potential execution should they fail to obey every order of the State's agents, regardless of constitutionality of the orders. Likewise, the State's last-minute invocation of the community caretaking doctrine at the suppression hearing is futile as the U.S. Supreme Court has recently ruled that this doctrine does not permit warrantless home entries.

In addition to being contrary to established Montana law, the District Court's Order defies a basic premise of constitutional law, as a right that can only be complained about after the protections are violated is not a right but rather a state issued privilege. As a result of operating under a mistake of law, not only will Mr. Case be subjected to continued gross injustice, but now the rights of all Montanans to be free from unreasonable searches and seizures in their own homes are in jeopardy.

**1. While Federal interpretation of the exigent circumstances exception to the 4<sup>th</sup> Amendment allows for prompt entry in cases of in progress suicides under the emergency aid doctrine, Montana law clearly requires exigency plus probable cause in order to excuse a warrantless entry to a residence.**

The officers' illegal home raid was not excused under Montana's exigent circumstances exception to the warrant requirement as the officers involved have all testified under oath that there was no probable cause to suspect that Mr. Case had committed a criminal offense, which is a required element the State must satisfy to excuse its warrantless entry into Mr. Case's residence.

The United States Supreme Court and the Montana Supreme Court have repeatedly held that a person's home is sanctified and should be safeguarded against arbitrary invasions by governmental officials. *Ellis*, ¶ 73. "The home is the most sanctified of all 'particular places' referred to in the Fourth Amendment, and it is for that reason that the exceptions to the warrant requirement are, concomitantly, jealously guarded and carefully drawn." *Id.* (citing *State v. Graham*,



2004 MT 385, ¶ 22, 325 Mont. 110, 103 P.3d 1073). Searches of a home without a warrant are presumed unreasonable both at the State and Federal levels. *Ellis*, ¶ 24.

The Montana Constitution guarantees a greater level of protection from unlawful searches. *Ellis*, ¶ 22. However, there are delineated exceptions to the warrant requirement for searching a home in Montana, and they: are voluntarily and freely given consent, *State v. Bieber*, 2007 MT 262, ¶ 29, 339 Mont 309, 170 P.3d 444; a search incident to a lawful arrest, *State v. Hardaway*, 2001 MT 252, 307 Mont. 139, 36 P.3d 900; and the presence of exigent circumstances only in combination with probable cause, *State v. Stone*, 2004 MT 151, ¶ 18, 321 Mont. 489, 92 P.3d 1178. Notably, Montana has not adopted the emergency aid doctrine, which generally allows warrantless entries without probable cause. *State v. Saale*, 2009 MT 95, ¶ 14, 350 Mont. 64, 204 P.3d 1220; *State v. Saale*, ¶ 6, 2008 Mont. Dist. LEXIS 242.

The present matter clearly does not contain a consent exception. Likewise, there is no argument to be made for a search incident to a lawful arrest, as Mr. Case was later shot and then arrested after the search of his home was commenced. As such, the only remaining exception is that of the presence of exigent circumstances coupled with probable cause under the Montana Constitution.

- a) Montana law requires probable cause prior to making a warrantless entry under the exigent circumstance's exception and has not adopted the Federal emergency aid doctrine.**

The officers' illegal home raid was not excused under Montana's exigent circumstances exception to the warrant requirement as all four officers testified under oath that there was no probable cause to suspect that Mr. Case had committed a criminal offense thus permitting a warrantless entry into his residence. Nor could they testify to articulable facts that would demonstrate that Mr. Case needed emergency assistance or was facing imminent injury, as their entire testimony at both the motion's hearing and trial were speculative and unsure whether Mr. Case was dead, injured, facing imminent injury, or lying in wait for them.

Demonstrating that this Court's numerous statements concerning the stronger protections provided under the Montana Constitution were not hollow and meaningless, Montana's exigent circumstances exception requires not only the existence of exigent circumstances, which are nonexistent in this case, but also that there be probable cause to believe the suspect had committed an offense. In describing the two elements of Montana's exigent circumstances exception, this Court in *Stone*, defined exigent circumstances as follows:

Exigent circumstances exist if the situation at hand would cause a reasonable person to believe that prompt action is necessary to prevent physical harm to an officer or other person, the destruction of relevant evidence,

the escape of a suspect, or some other consequence improperly frustrating law enforcement efforts.

*Stone* at ¶ 18 citing (*State v. Wakeford*, 1998 MT 16, ¶ 24, 287 Mont. 220, 953 P.2d 1065)(emphasis added). This Court then went on to define probable cause as existing “if the facts and circumstances within the officer’s personal knowledge, or imparted to the officer by a reliable source, are sufficient to warrant a reasonable person to believe that the suspect has committed an offense.” *Stone* at ¶ 18 citing (*State v. Saxton*, 2003 MT 105, ¶ 26, 315 Mont. 315, 68 P.3d 721). In proving whether said requirements have been met, “[t]he State bears the heavy burden of showing the existence of exigent circumstances and can meet that burden only by demonstrating specific and articulable facts.” *State v. Ruggirello*, 2008 MT 8, ¶ 18, 341 Mont. 88, 176 P.3d 252 (citing *State v. Logan*, 2002 MT 206, ¶ 17, 311 Mont. 239, 53 P.3d 1285.)

As is clear from *Stone*, an officer must have probable cause, in addition to exigent circumstances, to make a warrantless entry into a personal residence. Yet, in this case the district court found exigent circumstances excused the warrantless entry despite a lack of probable cause, even though the officers were not able to point to specific and articulable facts other than mere speculation and conjecture, in defiance of Montana law. See Tr. of 2/14/22, 209:7-216:3. Specifically, officers Pasha, Sather, Heffernan, and Linsted have all testified under oath that there was no probable cause that Mr. Case had committed a criminal offense. Tr. of 2/14/22, 47:19-24; 92:12-17; 154:17-22; 195:7-12. Further the officers were unable to testify to any articulable facts that were indicative of Mr. Case having harmed himself, or that he was

facing the threat of imminent harm that would lead a reasonable person to believe that prompt action was necessary. The entirety of their testimony, as well as their statements on scene, were indicative of a lack of knowledge of Mr. Case's status, and that entry was necessary to fact find and determine the status of his wellbeing. As such, the district court was clearly mistaken in refusing to grant Mr. Case's motion to suppress by holding that the exigent circumstances exception excused the officers' warrantless home raid.

**b) Even if this Court decided to adopt the Federal emergency aid doctrine, there was no observable evidence of an active emergency that would excuse their warrantless entry, nor was the delay excused by the alleged need for officer safety.**

Although the Federal emergency aid doctrine permits officers to make a prompt entry into a residence without a warrant in order to administer emergency aid to someone who is clearly in need of immediate assistance or facing the threat of imminent harm, it does not provide a blank check to make entry whenever the officers feel safe to. Specifically, the emergency aid doctrine requires the existence of an emergency situation that requires prompt action, which was missing in this case where the officers did not observe any evidence of an ongoing emergency and spent over 40 minutes collecting intelligence, waiting for senior personnel, retrieving additional equipment from across town, and obtaining additional weapons from their vehicles in preparation for what Sgt. Pasha described as one of the only two possible outcomes: that Mr. Case was already dead inside or "that he's gonna make us come into this house and he's gonna

want to shoot it out, and so I want to be prepared.” (D.C. Doc. 55.1.)

While there does not appear to be a firm time limit for government agents to make entry under the emergency aid doctrine, review of the testimony in this case demonstrates that the situation was a far cry from the facts and circumstances of *Brigham City v. Stuart*, 547 U.S. 398 (2006) and *Michigan v. Fisher*, 558 U.S. 45 (2009), in which the U.S. Supreme Court excused warrantless entries under the emergency aid doctrine.

In *Brigham City* officers were responding to a complaint about a loud party. Upon arrival “officers heard shouting from inside,” entered the backyard after observing minors consuming alcohol, and observed inside the house through windows and a screen door “an altercation in the kitchen between four adults and a juvenile, who punched the face of one of the adults, causing him to spit blood in a sink.” After observing this, an officer made immediate entry, announcing his presence multiple times trying to cease the altercation. *Brigham City*, 547 U.S. at 401. While the Court upheld the warrantless entry under the emergency aid doctrine, it is notable that Justice Stevens, in his concurrence, states that the U.S. Supreme Court should not have granted certiorari as the Utah Supreme Court “has made clear that the Utah Constitution provides greater protection to the privacy of the home than does the Fourth Amendment.” *Brigham City*, 547 U.S. at 408.

In *Fisher*, officers responded to a complaint of disturbance at or near Fisher’s address. *Fisher*, 547 U.S. at 45. Upon arrival officers actively observed a household in “considerable chaos;” damage done to a truck, the home, and the property outside the home;

blood on the pick-up, some clothes inside the truck, and an exterior door. *Fisher*, 547 U.S. at 45-46. Further, through a window, they observed Mr. Fisher throwing things and screaming inside the house. *Id.*

As opposed to *Brigham City* and *Fisher*, in the present matter officers arrived to find a quiet and empty home. There existed no active indicia of an individual facing imminent harm, in need of emergency aid, nor of a suicide in progress. The officers were responding to an unsubstantiated report of a potentially suicidal male from an ex-paramour (who repeatedly testified that she was tired of talking to Mr. Case and failed to understand his need for repeated communication after the cessation of their “hanging out”), metallic clicking, and what she thought was a pop. After more than twenty minutes of searching the home from the exterior officers were able to observe the sum total of an empty holster, some empty beer cans, and a handwritten document on the coffee table. The antithesis of the active and tumultuous environments that required prompt action in *Fisher* and *Brigham City*.

Furthermore, as Justice Stevens notes in *Brigham City*, much like the citizens of Utah, Montanans enjoy a much greater protection of privacy in their homes, pursuant to the Montana Constitution and this Court’s repeated holdings in various cases. *Ellis*, ¶ 22 (the Montana Constitution also affords its citizens additional privacy protections: “The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest,”); *State v. Burns*, 253 Mont. 37, 40, 830 P.2d 1318, 1320 (1992) (Thus, Montanans enjoy a greater right to privacy exceeding even that provided by the federal constitution.); etc. As such the

emergency aid doctrine should remain unadopted in Montana, as it was rejected by this court in *Saale*, ¶ 14 (“We likewise reject the District Court’s conclusion that the prospect of Saale having sustained serious injuries justified the warrantless entry.”)

However, even if this Court should adopt the Federal emergency aid doctrine, the officers’ entry was still not excused as they did not make immediate, or even prompt, entry, but rather waited over 40 minutes so that they could obtain additional personnel, weapons, and equipment for their coordinated and thorough search of Mr. Case’s home. Likewise, the officers noted prior to entry that due to their delay, there was essentially no chance that Mr. Case would still be alive at the time of entry had he shot himself. As such, based upon the officers’ admissions and the lack of objective exigent circumstances, the officers’ entry would still be illegal under the emergency aid doctrine.

Additionally, none of the officers could articulate specific exigent circumstances in this case. The only stated basis for them to make entry was Mr. Case’s failure to answer the door, which they all testified that he had no obligation to answer, the report of a “pop” heard by an ex-girlfriend over the phone, a notebook on a table, which the officers could not read, and an empty holster. While these may indicate that a person may have already committed suicide or intends to commit suicide, these observations do not confirm that there is a suicide in progress for which their assistance is immediately needed. Notably missing was any evidence of actual exigency, such as screaming, calls for help, a visible body on the floor, a pool of blood, etc.

Finally, in support of its holding, the district court stated that police are not required to run directly into

a building without assessing the potential risks to officer safety and that it was therefore reasonable for them to spend over 40 minutes collecting additional intelligence about the interior of the residence, retrieving additional weapons from their vehicle, and returning to their police station to pick up a ballistic shield that was immediately placed on the couch after making their entry. However, there is no “officer safety” exclusion to the law which permits officers to disregard all other laws.

As such, even should this Court adopt the emergency aid doctrine, the officers’ entry would still not be excused as there is no “officer safety” exception to the requirement to make prompt entry that would permit them to delay entry for over 40 minutes, and while even admitting that there was little to no likelihood of Mr. Case’s survival had he shot himself.

**2. The U.S. Supreme Court has clearly held that the community caretaking doctrine does not permit police to make a warrantless entry into a residence, and as such, has impliedly overruled this Court’s holding in *Estate of Frazier v. Miller*.**

This Court first recognized the community caretaking doctrine in *State v. Lovegren*, 2002 MT 153, 310 Mont. 358, 51 P.3d 471, which involved a police officer stopping to check on a motorist who was parked on the side of the highway. In recognizing the community caretaking doctrine, this Court first looked to the U.S. Supreme Court opinion in *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973), and its definition of the community caretaking doctrine, *Lovegren*, ¶ 17.



While there was a brief mention of police-citizen contact in a home or office, this was merely made in comparison to the substantial contact a citizen could have in public with law enforcement while operating a vehicle. In contrast, although *Lovegren* only involved a stopped vehicle on a public highway, this Court adopted a broadly worded test that did not appear limited to the vehicle/public highway situation. *Lovegren*, ¶ 25. However, in *Estate of Frazier v. Miller*, 2021 MT 85, 484 P.3d 912, this Court applied the community caretaking doctrine to excuse another warrantless entry by the ADLCPD that resulted in the death of another individual receiving a “welfare check” inside their residence.

While the facts in this case are significantly different those of *Estate of Frazier*, in that there were no signs of an immediate crisis or exigent circumstance in progress, nor did Mr. Case contact police and ask for their assistance, nor did he confront them at the entrance to his house while threatening suicide by cop, among other distinguishing facts, it simply does not matter as the following month the U.S. Supreme Court clearly held that community caretaking/welfare checks may not be performed in a personal residence without a warrant. *Caniglia*, 141 S. Ct. at 1599-1600.

In *Caniglia*, the petitioner had retrieved a gun from his bedroom during an argument with his wife, placed it on the dining room table, and asked his wife to shoot him and get it over with, 141 S. Ct. at 1598. The wife declined to shoot him and stayed the night at a hotel. *Id.* She called the police to request a welfare check the following morning after she was unable to reach her husband by phone. *Id.* Although petitioner confirmed his argument the previous night, he denied being

suicidal. *Id.* Only after being promised that the police would not confiscate his firearms did he agree to voluntarily go to the hospital for a psychological evaluation. *Id.* Once petitioner had left, the officers lied to the wife and seized petitioner's firearms. *Id.* After discussing the history of the community caretaking doctrine and its historical application to vehicles in public spaces, **the Court held that the community caretaking doctrine did not permit warrantless entries into personal residences.** *Id.* at 1599-1600. Further *Caniglia* held that there is no broad community caretaking exception at all, but most especially in the home. In Justice Alito's concurrence, he noted:

“The Court holds—and I entirely agree—that there is no special Fourth Amendment rule for a broad category of cases involving “community caretaking.”

\*\*\*

The Court's decision in *Cady v. Dombrowski*, 413 U. S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973), did not recognize any such “free-standing” Fourth Amendment category. See ante, at 209 L. Ed. 2d, at 607, 608. The opinion merely used the phrase “community caretaking” in passing. 413 U. S., at 441, 93 S. Ct. 2523, 37 L. Ed. 2d 706.

*Id.* at 1600.

As such, binding U.S. Supreme Court precedent does not allow warrantless home searches and seizures of individuals suffering alleged mental health crises under a community caretaking doctrine or Montana Code Annotated § 53-21-129. This of course makes sense, as the alternative leads to the absurd

result of providing more constitutional protections to suspected criminals than law abiding citizens.

Finally, although Justice Kavanaugh notes in his concurrence that federal law concerning exigent circumstances permits entries without probable cause under the Federal emergency aid doctrine, *Caniglia*, at 1603-1604, as argued above in great length, Montana law requires probable cause and exigent circumstances for this exception. Likewise, Montana has not adopted the emergency aid doctrine. As such, the community caretaking doctrine provides no excuse for the officers' illegal home raid.

**II. The State committed a Brady Violation by failing to disclose Sgt. Pasha had been shot at on June 19, 2021, approximately three months prior to the incident in the above-entitled case, as this evidence went directly to the essential element of whether Sgt. Pasha's apprehension of serious bodily injury was reasonable.**

By failing to disclose that Sgt. Pasha had been shot at approximately three months prior to the incident in this case, the State knowingly withheld exculpatory evidence that was directly relevant to the issue of whether the officer's apprehension of serious bodily injury was reasonable.

The prosecution is required to give a defendant "all requested exculpatory information material either to the defendant's guilt or to punishment," which includes "all evidence significant for impeachment purposes." *Kills on Top v. State*, 273 Mont. 32, 41-42, 901 P.2d 1368 (1995). As such, a defendant's due process rights are violated when the State fails to disclose exculpatory evidence. *Ilk*, ¶ 28 (citing *Brady*

*v. Maryland*, 373 U.S. 83, 87 (1963)). In order to “prove a due process violation under *Brady*, a defendant must show: (1) the State possessed evidence, including impeachment evidence, favorable to the defense; (2) the prosecution suppressed the favorable evidence; and (3) had the evidence been disclosed, a reasonable probability exists that the outcome of the proceedings would have been different.” *Ilk*, ¶ 28. Concerning the third element, the U.S. Supreme Court has stated that “[a] ‘reasonable probability’ of a different result is accordingly shown when the Government’s evidentiary suppression ‘undermines confidence in the outcome of trial.’” *Kyles v. Whitley*, 514 U.S. 419, 434 (1995) (quoting *U.S. v. Bagley*, 473 U.S., 667, 678 (1985). Finally, “the effect of the suppressed *Brady* material must be considered collectively rather than on an item-by-item basis.” *Id.*

In *Kills on Top*, the defendant had argued in his post-conviction relief petition that his conviction and sentence should be overturned due to alleged *Brady* violations. 273 Mont. 32, 41-42, 901 P.2d 1368 (1995). Specifically, the defendant argued that he should have been provided with discovery concerning a co-defendant’s alleged rape by a jailer while incarcerated, as well as with the codefendant’s criminal record as the co-defendant had accepted a plea offer and testified against defendant at his trial. *Kills on Top*, 273 Mont. at 42-43. After determining that the information should have been produced, this Court then discussed whether the defendant’s conviction and sentence should be reversed. *Kills on Top*, 273 Mont. at 44-45. While this Court held that there was not a reasonable probability that the sought after information would have changed the outcome of the conviction, as the co-defendant at issue was not the

only witness to the crime, it also held that the results of the sentencing proceeding could have been different as the information directly related to defendant's contention that he had been manipulated by the co-defendant, which was a mitigating factor in sentencing. *Id.*

In *Gonzales v. Wong*, the defendant had been convicted of first-degree murder and received a death sentence after a finding of the special circumstance of killing a law enforcement officer engaged in the lawful pursuit of his duties and had brought a Federal post-conviction relief petition after his failed state petition. 667 F.3d 965, 971 (9th Cir. 2011). As an initial matter, the court noted that it “may only consider the record that was before the state court when it adjudicated the claim.” *Gonzales*, 667 F.3d at 972. In evaluating the claims made to the California Supreme Court in his state post-conviction relief petition, the court noted that the defendant had argued that the prosecutor had failed to produce exculpatory material. *Id.* Specifically, during discovery in the Federal action, the state finally produced over six psychological reports concerning the State's main witness, William Acker, against the defendant which indicated that he “had a severe personality disorder, was mentally unstable, possibly schizophrenic, and had repeatedly lied and faked attempting suicide in order to obtain transfers to other facilities.” *Gonzales*, 667 F.3d at 976. While the court concluded that the matter must be sent back to the state court to be fully adjudicated, it went on to discuss the withheld materials and why it concluded that the defendant had “a colorable or potentially meritorious *Brady* claim such that a reasonable state court could find a *Brady* violation. *Gonzales*, 667 F.3d at 980.

The *Gonzalez* court first noted that there was a colorable argument that the psychological reports could have been used to challenge Acker's credibility. *Gonzales*, 667 F.3d at 981. Next, the court noted that "*Brady* does not require a showing that the state willfully or intentionally suppressed the evidence; even inadvertent suppression will satisfy this prong of the test." *Id.* While it noted that the reports at issue were in the prosecutor's possession prior to trial, this did not matter as "a prosecutor has a duty under *Brady* to 'learn of any exculpatory evidence known to others acting on the government's behalf.'" *Gonzales*, 667 F.3d at 981-982 (quoting *Carriger v. Stewart*, 132 F.3d 463, 479-80 (9th Cir. 1997)). Finally, in discussing the materiality of the withheld evidence, the court noted that "[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Gonzales*, 667 F.3d at 981-982.

In reaching the conclusion that a reasonable state court could conclude that there was a reasonable probability of a different result had the withheld information been available to the defense and presented to the juries, the court undertook a two-step inquiry. *Gonzales*, 667 F.3d at 982. First the court asked, "whether a reasonable state court could conclude that there was a reasonable probability that the new evidence would have changed the way in which the jurors viewed Acker's testimony." *Id.* Next, the court asked, "whether a reasonable state court could conclude that there was a reasonable probability that this change would have resulted in a different verdict during either or both phases." *Id.*

Concerning the juror's view of Acker, the court noted that "[t]here is a colorable argument that a factfinder would have found the information about Acker contained in these reports disturbing, and that it would have been difficult for anyone, let alone a reasonable factfinder, to trust the witness described in these reports." *Id.* While the state argued that the defendant was adequately able to impeach Acker at trial and therefore the new evidence was merely cumulative, the court noted that "withheld impeachment evidence does not become immaterial merely because there is some other impeachment of the witness at trial. *Id.* Where the withheld evidence opens new avenues for impeachment, it can be argued that it is still material." *Gonzales*, 667 F.3d at 984. Finally, the court noted that the defendant had:

a colorable argument that the jury believed Acker despite the impeachment evidence presented to them. This argument could rest in part on the fact that Acker was an important witness for the government, especially during the penalty phase, and that "[i]n cases in which the witness is central to the prosecution's case, the defendant's conviction indicates that in all likelihood the impeachment evidence introduced at trial was insufficient to persuade a jury that the witness lacked credibility."

*Gonzales*, 667 F.3d at 985 (quoting *Benn v. Lambert*, 283 F.3d 1040, 1055, (9th Cir. 2002)).

The court then considered whether the new evidence would have led to a different outcome at either the guilt or penalty phase. *Gonzales*, 667 F.3d at 986. In concluding that a reasonable state court could conclude that further impeachment of Acker could

have resulted in a different outcome, the court stated that “[w]hile there was other circumstantial evidence, Acker’s testimony was the only direct evidence establishing that Gonzales had a premeditated plan to kill a police officer.” *Gonzales*, 667 F.3d at 986. Ultimately, the court remanded the matter to the district court to stay proceedings pending review by the California Supreme Court, as it concluded that the defendant could make a potentially meritorious *Brady* claim. *Id.*

Here, the fact that Sergeant Pasha was shot at for the first time in his career on June 19, 2021, which by his own testimony in that matter made him rethink his career in law enforcement (a comment identical to one he made in the present case) is not only favorable to the defense, but it is also clear that the State had this suppressed favorable evidence as the same county attorney tried both cases. Further, this new information raises a reasonable probability that the outcome of the proceedings would have been different had Sergeant Pasha’s prior incident been disclosed as his mental state was an essential element of the alleged crime.

As noted above, Mr. Case was charged with assault on a peace officer, in violation of Montana Code Annotated § 45-5-210, which provides in relevant part: “[a] person commits the offense of assault on a peace officer or judicial officer if the person purposely or knowingly causes: ...(b) reasonable apprehension of serious bodily injury in a peace officer or judicial officer by use of: (i) a weapon; or (ii) what reasonably appears to be a weapon.” (emphasis added.) As such, any evidence that showed that the officer may not be responding reasonably due to past traumatic events is certainly favorable to the defendant as it goes to the



essential element of the charged crime: whether Sergeant Pasha's apprehension of serious bodily injury was reasonable. Such evidence clearly concerns and could affect Sergeant Pasha's mental state and perceptions the night that Mr. Case allegedly caused Sergeant Pasha apprehension of serious bodily harm, as well as could affect his credibility in front of the jury.

The second element is likewise easily met in this matter, as both cases had the same prosecutor. As such, it would be disingenuous for the State to argue that it didn't suppress this information.

Finally, the undisclosed evidence would have called into question whether Sgt. Pasha was even fit for duty on the night in question in the present case and would have explained his unreasonably heightened levels of fear and anxiety when responding to a welfare check. Further, the knowledge that Sgt. Pasha had been shot at and his methods, or lack thereof, of dealing with such traumatic event in the three months between the incidents definitely would have impacted the Jury's view of Sgt. Pasha and his credibility about the apprehension he allegedly felt. Further the impact of such knowledge would have called into further question the stark contrast in the difference between Sgt. Pasha's statements at the scene and in the court room over a year later, as well as, whether Sgt. Pasha had unresolved PTSD or similar trauma difficulties that led to him shoot a target before fully identifying it and crafting a narrative after having watched his BWC footage before giving his statement. Further, it would have contrasted the difference in the method of DCI's investigation in the present case, and whether officers were interviewed cold or after having watched their BWC footage, which by the State's own expert is

not the standard operating procedure in Montana. The State's failure to disclose such evidence absolutely undermines the outcome of the trial.

Second, being that Sgt. Pasha was the alleged victim in this case, his recent trauma of being shot at months prior would have undoubtedly put the whole case into such a different light as to undermine the confidence in the verdict. As in *Gonzales*, Sergeant Pasha was the main and only witness to the alleged crime, other than Mr. Case, and the evidence directly related to his mental state at the time of the alleged crime. This is the opposite of the situation in *Kills on Top*, where there were several other witnesses of the alleged crime. While Sergeant Pasha was impeached concerning his conflicting statements made on different occasions under oath, this did not touch on the issue of his mental health and the reasonableness of his alleged apprehension. As such, this new information is not cumulative, but rather opens new avenues for impeachment of the witness.

Finally, the undisclosed evidence must be taken as a whole and not piecemeal. It is without doubt that Sgt. Pasha's traumatic experience on June 19, 2021, whether he sought any counseling or therapy afterwards; whether he was placed on any type of leave following the incident of June 19, 2021; whether he was experiencing PTSD or anxiety as a result of the June incident; whether he was fit for duty the night of September 26, 2021; his comments at the scene and in his interview with DCI following the June incident; and his propensity for unreasonable fear after the incident, when taken as a whole would alter the light of the present case and any confidence in the present verdict. As such, the State violated its *Brady*

obligations in failing to disclose Sgt. Pasha's recent near-death experience.

**III. Assault on a peace officer objectively requires more than the mere possession of a weapon or what reasonably appears to be a weapon, and requires some tangible or articulable use of the weapon.**

The Montana Supreme Court has held that an officer does not need to observe a weapon to experience reasonable apprehension of bodily harm by the use of it. In *State v. Kirn*, 2012 MT 69, 364 Mont. 356, 274 P.3d 746, Officers were responding to a noise complaint, and contacted Defendant. Defendant disengaged from the interaction with officers, retreated to a back room, the officers discussed that they suspected he was retrieving a weapon, and Defendant then came back and assumed a bladed stance obscuring the weapon from the officers' view. *Id.* (See also *State v. Steele*, 2004 MT 275, 323 Mont. 204, 99 P.3d 210; *State v. Hagberg*, 277 Mont. 33, 920 P.2d 86, 90 (1996); *State v. Misner*, 234 Mont. 215, 763 P.2d 23, 25 (1988).

There exists a significant difference between all the above referenced cases and the present case. Mr. Case had not been accused of any crime prior to his interaction with Sgt. Pasha and there were no other indicia that Mr. Case was in the possession of a weapon that he may use to harm Sgt. Pasha prior to the shooting. Further, there was no interaction between Mr. Case and Sgt. Pasha, other than Mr. Case opening the curtain to come out, before being shot. In all the cases cited above, the officers were responding to a report of suspected criminal activity and had a significant prior interaction with the defendants that would lead the officers to believe the defendants were armed despite not seeing the weapons. Mr. Case was

home alone and actively avoiding contact with law enforcement who were conducting welfare check. Sgt. Pasha shot Mr. Case, admittedly without seeing the gun in question or having any knowledge of its presence until well after Mr. Case was bleeding on the floor. Sgt. Pasha repeatedly and exclusively testified that he saw what he thought was a dark colored object between the curtain and Mr. Case's shirt, which admittedly could have merely been a shadow.

### CONCLUSION

Mr. Case's conviction and sentence should be overturned as it was based solely upon illegally seized evidence collected during a warrantless home search and seizure of Mr. Case, and there were no valid exceptions to the warrant requirement that excused their entry. Likewise, the State's decision to knowingly withhold exculpatory *Brady* evidence is not surprising, but still requires the reversal of both Mr. Case's conviction and sentence as the evidence goes directly to the issue of guilt as the suppressed evidence, if presented to the jury, would have allowed Mr. Case to demonstrate the unreasonableness of Sergeant Pasha's alleged apprehension of serious bodily injury, as well as open new avenues for impeachment of this officer. As such, Mr. Case's conviction and sentence should be overturned due to these serious constitutional violations.

Respectfully submitted this 12th day of May, 2023.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and quoted, indented material; and the word count calculated by Microsoft Word is 9,838, excluding the Cover Page, Table of Contents, Table of Authorities, Certificate of Compliance, Certificate of Service, and Appendices.

DATED this 12th day of May, 2023.

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Commitment (February 24, 2023) .....App. D.

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**IN THE SUPREME COURT OF  
THE STATE OF MONTANA  
NO. DA 23-0136**

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STATE OF MONTANA,  
*Plaintiff and Appellee,*

v.

WILLIAM TREVOR CASE,  
*Defendant and Appellant.*

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**BRIEF OF APPELLEE**

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On Appeal from the  
Montana Third Judicial District Court, Deer Lodge  
County, The Honorable Kurt Krueger, Presiding

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### STATEMENT OF THE ISSUES

1. Whether the district court correctly denied the motion to suppress because the officers' warrantless entry was reasonable under the circumstances.

2. Whether the district court should have granted the motion for a new trial because the State committed a *Brady* violation by not disclosing until trial that Sgt. Pasha had been previously shot at while on duty.

3. Whether sufficient evidence supported Case's conviction.

**STATEMENT OF THE CASE**

Anaconda-Deer Lodge County charged Appellant William Trevor Case (Case) with assault on a peace officer, in violation of Mont. Code Ann. § 45-5-210(1)(b) (2019), after he knowingly or purposefully caused reasonable apprehension of serious bodily injury in Sgt. Richard Pasha (Sgt. Pasha) by use of a weapon. (Docs. 35-38.)

Case filed a motion to suppress evidence and argued he was unlawfully seized by law enforcement and subjected to search in violation of the Fourth and Fourteenth Amendments to the United States Constitution, as well as article II, section 11, of the Montana Constitution. (Docs. 26, 27.) The district court held an evidentiary hearing on February 14, 2022, and orally denied the motion. (2/14/22 Tr. at 213-15; *see also* Doc. 56 at 2 (written order denying the motion for the “reasons stated at the Motions Hearing”).) Case later renewed his motion to suppress. (Docs. 79, 80.) The district court held a hearing on September 28, 2022, and orally denied it. (*See* Doc. 102.1.) The district court issued a subsequent written order stating that it orally denied Case’s renewed motion “for failure to present new arguments and facts to warrant reversing the Court’s previous ruling.” (Doc. 103.)

Case proceeded to trial and was unanimously convicted by jury. (Doc. 115.) The district court sentenced Case to custody of the Montana Department of Corrections for ten years, with five years suspended. (Doc. 140 at 2.) Case moved for a new trial. (Docs. 129-31.) However, in his reply brief, Case asserted a *Brady*<sup>1</sup> claim that he had failed to raise in his opening

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<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

motion. (Docs. 133 at 6, 134 at 1.) The Court denied Case's motion for a new trial and found that he had improperly raised the claim in his reply brief. (Doc. 135 at 5.)

### **STATEMENT OF THE FACTS**

#### **Phone call and threat of suicide**

At roughly 9:30 p.m., on September 27, 2021, Case called J.H. on his cell phone. (Doc. 1 at 1; 2/14/22 Tr. at 17, 20.) Case and J.H. had known each other since high school and had "hung out" in early 2021. (2/14/22 Tr. at 17.) After J.H. made it clear that she was not interested in a "serious relationship" and they were "going [their] separate ways," Case began to threaten suicide. (2/14/22 Tr. at 17-18; Trial Tr. at 32.) While speaking with Case, J.H. assumed he had been drinking, as he was "erratic." (2/14/22 Tr. at 17.) J.H. became concerned and "the nature of the conversation changed at that point." (*Id.* at 18.) J.H. later testified that she tried to tell Case he had a family who loved and cared about him, but she "couldn't reel him back." (*Id.* at 18-19.)

Case said something to J.H. about getting a "note," and she began to hear "clicking" on the phone, which she believed to be "a pistol." (2/14/22 Tr. at 18.) J.H. grew up around firearms and was familiar with the sound of someone "cock[ing] a gun." (*Id.*) J.H. became concerned that Case was going to hurt himself, so she said she would have to call the police. (*See id.* at 19.) In response, Case said "he would shoot them all too, or something like that." (*Id.* at 19, 24 (agreeing that Case said he would be "coming out shooting or something like that").)

Next, J.H. heard "a pop" over the phone, and then nothing, "just dead air." (2/14/22 Tr. at 19-20.) J.H.

yelled Case's name over the phone a few times as the call was still connected, but he did not respond. (*Id.* at 20.) Case failed to respond to further calls and texts from J.H. (*Id.* at 20-21.) J.H. thought Case had "pulled the trigger," and "called 9-1-1." (*Id.*) J.H. reported what had happened. (*Id.*)

After calling 911, J.H. went down to Case's house and briefly met the officers who had already arrived on scene. (*See* 2/14/22 Tr. at 21.) They included Sgt. Pasha, Captain Dave Heffernan (Captain Heffernan), and Officer Blake Linsted (Officer Linsted). (*Id.* at 26.) Shortly thereafter, Chief Bill Sather (Chief Sather) responded to the scene due to the seriousness of the situation. (*Id.* at 26, 120.) J.H. spoke with Captain Heffernan and he stated that the officers might have to go inside the house. (*Id.* at 21.) J.H. expressed that Case had made a comment on the phone about shooting the police. (*See id.* at 21 (J.H. stating that Case "was prepared" for the officers to enter the house), 24 (J.H. stating that she told the officers that Case made a comment like he would be "coming out shooting").)

Provided with this information, the officers were aware of the serious and dangerous nature of the situation. (*See* 2/14/22 Tr. at 26, 120, 128, 131, 139, 161.) Specifically, prior to entering the house, the officers knew that Case was suicidal, had a gun, and J.H. had heard Case "cock a gun and then a loud pop and then there was no more conversation with him." (*Id.* at 26, 28, 48, 70-71.) The officers also knew that Case had said not to call the police because there would be trouble and "[h]e would have a shootout with them." (*Id.* at 26, 119 (Sgt. Pasha stating he was aware that Case "had threatened to shoot it out with law enforcement if they ever came in his house").)

The officers knocked on Case's front door, walked around the house several times yelling and calling his name, and knocked on a basement door in the back of the house. (2/14/22 Tr. at 27, 72, 136-38.) Case did not respond. (*Id.* at 28, 138.) The officers also began shining their lights into the windows of the house to see if Case was hurt and bleeding. (*Id.* at 27-28, 136-37.) While looking through the windows, the officers saw beer cans and a holster for a handgun on the kitchen counter, but not the gun. (*Id.* at 28, 36, 61.) The officers found the empty holster important because it meant that "there's a gun obviously easily accessible somewhere inside the house." (*Id.* at 28, 41, 70.) The empty holster further confirmed J.H.'s report that Case had a gun. (*Id.* at 48.)

While looking through the front window, the officers observed what appeared to be a handwritten suicide note on a coffee table in the living room. (2/14/22 Tr. at 61, 63, 70, 100-02, 130-31.) The officers were familiar with Case from prior police interactions, either directly or indirectly through other law enforcement officers, and from personal contacts. (2/14/22 Tr. at 33-36, 67-69, 127-28, 183-86.) The officers were aware that Case became "erratic" when consuming alcohol and had made prior threats of suicide. (*Id.* at 34-36, 67-68, 128, 159, 183-84.) The officers suspected Case had consumed alcohol that evening based on J.H.'s statements and the beer cans. (*See id.* at 36.)

During his prior threats of suicide and his interactions with police, Case had previously been "belligerent with law enforcement and problematic." (*See id.* at 69.) Specifically, the officers were aware of at least four previous incidents involving Case. (2/14/22 Tr. at 33-35, 48-50, 66-69, 127-28, 183-85.) Like in this incident, Case had previously threatened

to commit suicide at his home. (*Id.* at 34.) During the first incident, Case's coworkers and law enforcement responded to his home after he threatened suicide. (*Id.*) Case's coworkers took his guns and his truck away from him after he threatened to drive away and hurt himself. (*Id.*) Another time, Case reportedly caused a "lockdown" at a school after he threatened suicide. (2/14/22 Tr. at 33-35, 49-50, 128, 184.) During a third incident, Case was at the "7 Gables" by Georgetown Lake and consuming alcohol when he got into a fight and bit a man's ear off. (*Id.*) (*Id.* at 35, 67, 127-28.)

Finally, the officers were aware of a fourth incident where Case had threatened suicide by Georgetown Lake. (2/14/22 Tr. at 67-68.) Case reportedly tried to fire his weapon during this incident, and even pulled the trigger, but the gun did not fire. (*Id.* at 116.) Officers responded to the lake but were unable to locate Case. (*Id.* at 67.) As the officers were heading back into town, they found Case parked in his vehicle. (*Id.* at 68.) The officers tried to get Case to exit and speak with them, but he became "very uncooperative at that point," and refused to follow the officers' requests. (*Id.*) When Case finally exited the vehicle, he began "screaming back and forth," and "arguing" with the officers. (*Id.*) Despite the officers' multiple commands for Case not to place his hands back into his vehicle, he went "flying into the car, like reaching in there very quickly." (*Id.*)

Officer Linsted, who was on scene during this previous incident, testified that it was "something that I think somebody in a rationale state of mind that had cops screaming at him to go—to not go back into there, would not have done." (2/14/22 Tr. at 68.) Officer Linsted described the situation as "a red flag" because



Case could have been reaching for a weapon and trying to force officers into a “suicide by cop” situation. (*Id.* at 69; *see also id.* at 62 (Officer Linsted describing concerns about “suicide by cop” methods of self-harm and how they force a law enforcement officer to draw their service weapon and discharge it); *see also id.* at 67 (stating that Case’s name was discussed by the department from a training standpoint when discussing potentially dangerous situations).)

Back at the house, Captain Heffernan called Chief Sather for “extra help” and “backup,” and he responded to the scene shortly thereafter. (2/14/22 Tr. at 26, 33, 60, 111, 120.) Chief Sather made the decision that the officers were going to enter the house to look for Case and “render emergency aid” if possible. (*Id.* at 50-51, 120-21, 160-62, 167-68, 197-98.) Because Case had reportedly threatened to harm any responding officers, they “proceed[ed] with caution.” (*Id.* at 32-33.)

In addition to the seriousness of the situation, Chief Sather responded to the scene to increase the number of people present when law enforcement entered the house because it would reduce the risk of harm to the officers. (2/14/22 Tr. at 26, 33, 77-78, 111, 120.) Specifically, the officers were concerned that they were walking into an ambush. (*Id.* at 139.) In preparation for entry, Captain Heffernan retrieved a “ballistic” shield from the police station “to increase officer safety,” in addition to the officers’ bulletproof vests. (*See* 2/14/22 Tr. at 33, 38-39, 132.) Given that it was nighttime and dark, some of the officers retrieved their personal weapons from their vehicles, rather than the “patrol rifles” that were provided by the department. (*Id.* at 75-76, 133-34.) Sgt. Pasha testified later that he used his personal weapon,

instead of a patrol rifle, primarily because his weapon had a mounted light, i.e., a “flashlight,” which the department’s rifles lacked. (*Id.* at 133-34.)

Sgt. Pasha testified that he felt more comfortable with his personal weapon in the situation. (2/14/22 Tr. at 135.) Sgt. Pasha explained that, unlike the department’s rifles, his weapon had a light and he maintained, cleaned, and was personally responsible for the weapon. (*Id.*) Sgt. Pasha also had permission to use the weapon on shift and was “qualified” to use it. (*Id.* at 133-34.) Sgt. Pasha knew that the gun would “function” if he needed to fire it. (*Id.* at 135-36.)

### **Entry**

At the front door, the officers announced themselves and entered. (*Id.* at 39, 79, 130-39.) Once inside, the officers “[v]ery loud[ly]” identified themselves as police and continued to yell the entire time. (*Id.* at 39-40.) The officers stated they were the police department and there to help. (*Id.* at 138-39.) The officers walked through the first floor of the house and looked through a bedroom but did not locate Case. (*Id.* at 139.) Again, the officers called out for Case, but “the house was dead quiet.” (*Id.* at 140.) The officers walked through the kitchen and bathroom. (*Id.* at 140-41.) Chief Sather read the note in the living room and confirmed that it appeared to be a suicide note. (Trial Tr. at 92; State’s Trial Ex. 10.) At the east side of the house, the officers found a staircase that went both upstairs and downstairs. (2/14/22 Tr. at 140-41.) Sgt. Pasha and Officer Linsted went upstairs, while Chief Sather and Captain Heffernan went downstairs. (*Id.* at 141.)

While walking up the stairs, Sgt. Pasha called for Case and stated that they were the police and there to help him. (2/14/22 Tr. at 142.) There was no response.

(*Id.*) At the top of the narrow staircase, Sgt. Pasha and Officer Linsted found an open doorway and a bedroom on the right side of the hallway, and another room on the left side. (*Id.*) Sgt. Pasha turned to his right and entered the first door. (*Id.* at 141-43.)

Immediately after Sgt. Pasha entered the room, he observed an open bay closet on the left side of the room with a curtain covering it. (2/14/22 Tr. at 143-44.) Sgt. Pasha saw the curtain open with “a violent pull,” and observed Case “grinning or like clenching his teeth and . . . what appeared to be a black object coming out, coming out of the curtain.” (*Id.* at 143-45.) Sgt. Pasha testified at both the suppression hearing and trial that he believed the object was a gun and that he was about to be shot. (2/14/22 Tr. at 145-46; Trial Tr. at 71-73.) Sgt. Pasha turned his weapon towards Case and fired one round. (*Id.* at 145-46.)

After being shot, Case fell back and Officer Linsted began to render aid. (2/14/22 Tr. at 147-48, 307.) When Case fell, he dropped his gun, a black “1911 style” semi-automatic pistol, into a laundry basket next to him. (2/14/22 Tr. at 148; Trial Tr. at 282, 307.) Captain Heffernan entered the room shortly thereafter and removed Case’s handgun. (2/14/22 Tr. at 148.) The gun was loaded with .45-caliber bullets and “was cocked and ready to go.” (2/14/22 Tr. at 193-94; Trial Tr. at 282-83 (investigating agent testifying that the gun had a round inside the chamber, the hammer was back, and it was ready to be fired).) Although Case resisted Officer Linsted’s efforts to render aid, he and the other officers were able to assist Case downstairs and into an ambulance. (2/14/22 Tr. at 87-89.) While en route to the hospital, Case kept saying he wanted the responders “to let him die, that he didn’t want to live anymore.” (Trial Tr. at 193-94.) Case also “kept

making the statement that he should have shot [the officers] in the head.” (*Id.*)

Chief Sather immediately called the Division of Criminal Investigation (DCI), and agents responded to secure the scene and investigate. (2/14/22 Tr. at 149-50, 194; Trial Tr. at 94-95, 275-76.) The officers were instructed not to gather any evidence and to leave the scene. (2/14/22 Tr. at 149-50, 195.) DCI agents applied for and obtained a search warrant for the house. (Trial Tr. at 275-76.) Upon searching the house, the agents located a “fired” .45-caliber cartridge casing in the kitchen and a “bullet defect, bullet hole on the kitchen floor.” (*Id.* at 286-89.) They also found a “broken cellular phone on the kitchen counter.” (*Id.* at 286, 298-99, 348 (Case testifying that he threw the phone against the kitchen cabinets after calling J.H.).) Agents also located numerous additional beer cans in the home, including in the second upstairs room next to a rocking chair that overlooked the front door of the house. (*See id.* at 280, 296-98 (DCI agent: “I believe that [Case] knew that the police were there based on his own statements, that he was sitting in his rocking chair drinking a beer.”).)

### **Pretrial and trial proceedings**

Case filed a motion to suppress evidence and argued that all evidence collected by law enforcement was obtained pursuant to an illegal search and seizure in violation of his rights. (Docs. 26 at 2, 27 at 1.) Case argued that police unlawfully entered his home without a warrant and illegally searched his home. (Doc. 27 at 14-15.) Case further argued that police lacked an exception to the warrant requirement, such as “emergency aid” or “exigent circumstances coupled with probable cause” (*Id.* at 16-17.) Case also filed a motion to dismiss and asserted the State lacked

probable cause to charge assault on a peace officer. (Docs. 28, 29.) Specifically, Case argued that the State could not show he caused reasonable apprehension of serious bodily injury because Sgt. Pasha never observed Case's gun before he fired. (*See id.* at 21-22, 24.)

In its response, the State asserted that the officers' entry into the home was lawful because there were "exigent circumstances" created by Case's conduct that made it necessary for them to enter the house, namely, for officers to prevent Case from committing suicide or to render aid if he had already shot himself. (Doc. 32 at 5-6.)

The district court held a hearing on the motion to suppress on February 14, 2022, and J.H. and the officers testified. (Doc. 55.2.) At the hearing, the State argued the police were not investigating a crime, but "were trying to stop someone from committing suicide." (2/14/22 Tr. at 207-08.) The State cited Mont. Code Ann. §§ 53-21-102 and -129, in support of its argument. (*Id.*) These statutes define "emergency situation" and authorize a peace officer to detain and take into custody a person during an emergency situation that "appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others." Mont. Code Ann. §§ 53-21-102(7)(a) (defining "Emergency situation"), -129(1) (authorizing a peace officer to detain a person during an emergency).

Following argument, the district court orally denied the motion to suppress and issued a written order, citing its oral ruling. (2/14/22 Tr. at 213-15; Doc. 56 at 2.) The court orally ruled that there was an "emergency" and "exigency" created by Case's threats of suicide justifying the officers' entry. (2/14/22 Tr. at

213-14 (“[I]s that an emergency? Is that exigency? Yes, it is, clearly.”), (“They had to go in that house. They had to go in that house.”).)

Case later “renewed” his motion to suppress prior to trial. (Docs. 79-80.) The State responded and continued to argue that the officers’ entry in the home was lawful because there were “exigent circumstances’ associated with the emergency created by the Defendant’s conduct.” (Doc. 87 at 6-8 (citing Mont. Code Ann. §§ 53-21-102(7), -129(1)), 10 (citing *Kentucky v. King*, 563 U.S. 452, 460 (2011); *Brigham City v. Stuart*, 547 U.S. 398, 403-04 (2006)).) Contrary to Case’s position on appeal, the State specifically stated that it had not asserted the officers’ entry into the home was lawful pursuant to the “Community Caretaker Doctrine.” (Doc. 87 at 7-8.)

The district court held a hearing on the renewed motion to suppress on September 28, 2022, and orally denied it.<sup>2</sup> (Docs. 102.1, 103.) The district court issued a subsequent written order denying the renewed motion “for failure to present new arguments and facts to warrant reversing the Court’s previous ruling.” (Doc. 103.)

Case proceeded to trial and was unanimously convicted by jury. (Doc. 115.) At trial, the State called numerous witnesses to testify, including Sgt. Pasha. (Trial Tr. at 41-80, 102-30, 137-56, 370-75.) Sgt. Pasha testified that he and the other officers called out for

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<sup>2</sup> A transcript of the September 28, 2022 hearing was never ordered or requested by Case for his appeal. (Doc. 139.) Under the Rules of Appellate Procedure, it is the appellant’s “duty to present the supreme court with a record sufficient to enable it to rule upon the issues raised.” M. R. App. P. 8(2). This Court may affirm “the district court on the basis the appellant has presented an insufficient record.” *Id.*

Case multiple times while walking in the house and up the stairs but received no response. (*Id.* at 65-67.) Sgt. Pasha stated that the house's upstairs lights were off and it was completely dark. (*Id.* at 68.) When Sgt. Pasha entered the room, he testified, he saw the closet "curtain in the corner of [his] eye jerking very violently." (*Id.* at 70.) When he saw the "violent aggressive jerking motion," Sgt. Pasha testified he turned his weapon with the flashlight towards the motion and saw Case in the closet. (*Id.* at 70-71.) Sgt. Pasha testified:

I saw that motion immediately and I started turning to it. And as I was turning, my light was on the wall and so it started lighting up more and more and more, and I seen the defendant. He appeared to have an aggressive like look on his face. His teeth were gritted or grit. And as I was sweeping, I saw what appeared to me to be a dark object coming from—like coming from between the abdomen area of the defendant and the curtain.

(*Id.* at 71.) Sgt. Pasha stated that he "thought the worst at that point," and that Case had baited the officers into the room and ambushed them. (*Id.* at 72-73.) Sgt. Pasha testified that he believed Case was holding a weapon and that he was about to be shot. (*Id.* at 72-73.) Sgt. Pasha also testified that he had previously been shot at in the line of duty. (*See id.* at 118 ("I was recently involved in a case not too long prior to this where I was shot at.")) Sgt. Pasha's body camera video and several photographs of the incident were admitted as exhibits and published for the jury. (*Id.* at 101 (State's Trial Ex. 6 ("Video 2"), 102-04 (State's Trial Exs. 30-98).)

Following his conviction, Case moved for a new trial and argued that his conviction under Mont. Code Ann. § 45-5-210(1) was not supported by the evidentiary record. (Docs. 129-30.) Following the State's response, Case filed a reply brief and asserted a *Brady* claim that he had neglected to raise in his opening motion. (Docs. 131, 133 at 6, 134 at 1.) The State opposed the newly raised *Brady* claim and the court denied Case's motion for a new trial. (Docs. 134-35.) Noting the alleged *Brady* argument, the district court found that Case had not raised the claim in his opening brief, and instead argued it for the first time in his reply brief. (*Id.* at 4.) In denying the claim, the Court found it "w[ould] not address the Defendant's improperly raised argument." (*Id.*)

### **SUMMARY OF THE ARGUMENT**

This Court should affirm the district court's denial of the motion to suppress because it correctly concluded that the officers' warrantless entry into the home was constitutionally permitted because of the emergency and exigent circumstances. First, this Court may affirm the district court under the emergency aid exception to the warrant requirement, which has been expressly recognized by the United States Supreme Court, and multiple federal and state courts. This exception has also been impliedly adopted by this Court. Under this exception, police may enter a home without a warrant or probable cause in the event of an emergency. Because of Case's threats of suicide, in addition to J.H.'s report that he had a gun and had fired it, possibly harming himself, the officers were authorized to enter the home to render assistance to Case.

This Court may also affirm the district court's denial of Case's suppression motion because it correctly



concluded that exigent circumstances justified the officers' entry into the home. Although Case contends the officers lacked probable cause that he had committed an offense, numerous courts have applied the exigent circumstances exception in the absence of facts that establish a criminal offense was committed. Further, at the time the officers entered the home, there were facts establishing probable cause that Case committed a criminal offense when he fired his gun in his home. Thus, this Court may affirm the district court's denial of the suppression motion based on emergency or exigency.

Next, the district court was within its discretion to deny Case's motion for a new trial because he failed to meet his burden to show that the prosecution committed a *Brady* violation. Case's argument that the State should have disclosed that Sgt. Pasha had previously been shot at ignores that the jury was required to evaluate apprehension of serious bodily injury from a reasonable officer's perspective, and not Sgt. Pasha's subjective perspective. Therefore, Sgt. Pasha's previous experience of being shot at is not relevant to whether a reasonable officer—and not Sgt. Pasha individually—would have experienced apprehension under the situation. This fatal flaw in Case's reasoning undercuts his entire speculative argument.

Lastly, sufficient evidence supported the conviction as Sgt. Pasha testified that he observed Case aggressively coming out of the closet with a dark object that he believed was a gun. Sgt. Pasha also testified that he thought Case was going to shoot him and he was aware Case had a gun, was drinking and suicidal, and had already fired the gun that night. Furthermore, this Court has steadfastly maintained that a person need not personally observe a weapon to

experience reasonable apprehension of serious bodily injury. Viewing this evidence in the light most favorable to the prosecution, sufficient evidence was presented to support Case's conviction.

## **ARGUMENT**

### **I. Standards of review**

"The standard of review for a district court's denial of a motion to suppress is whether the court's findings of fact are clearly erroneous and whether those findings were correctly applied as a matter of law." *State v. Wakeford*, 1998 MT 16, ¶ 18, 287 Mont. 220, 953 P.2d 1065.

This Court "will affirm the district court when it reaches the right result, even if it reaches the right result for the wrong reason." *State v. Ellison*, 2012 MT 50, ¶ 8, 364 Mont. 276, 272 P.3d 646.

This Court's "review of constitutional questions, including alleged *Brady* violations, is plenary." *State v. Ilk*, 2018 MT 186, ¶ 15, 392 Mont. 201, 422 P.3d 1219. The Court "review[s] the district court's decision to grant or deny a new trial for abuse of discretion." *Ilk*, ¶ 15.

This Court "review[s] a challenge to the sufficiency of evidence to determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Michelotti*, 2018 MT 158, ¶ 9, 392 Mont. 33, 420 P.3d 1020.

**II. The officers' entry into Case's home did not violate his federal or state constitutional rights.**

In denying Case's motion to suppress, the district court found that the officers' warrantless entry into the home was justified by the emergency and exigent circumstances created by Case's threats of suicide and J.H.'s report of a "pop," i.e., a gunshot. (2/14/22 Tr. at 213-15; Doc. 56 at 2.) Because of the emergency and exigent circumstances, the district court found that the police were required to enter the house and assist Case. (*See* 2/14/22 Tr. at 214.) The district court correctly concluded that the officers' entry did not violate either the federal or Montana constitutions because it was reasonable under the circumstances. Consequently, this Court may affirm the district court's order under the emergency aid exception to the warrant requirement, or because exigent circumstances made it necessary for the officers to enter the house.

**A. The officers' warrantless entry was justified under the emergency aid exception.**

"The Fourth Amendment of the United States Constitution, and Article II, Section 11, of the Montana Constitution, affords all persons the freedom from unreasonable searches and seizures." *Wakeford*, ¶ 21. "Warrantless searches and seizures conducted inside a home are per se unreasonable, subject to a few carefully drawn exceptions." *Wakeford*, ¶ 21; *see also King*, 563 U.S. at 459 ("[T]his presumption may be overcome in some circumstances because the ultimate touchstone of the Fourth Amendment is reasonableness.")

(cleaned up)<sup>3</sup> (citing *Brigham City*, 547 U.S. at 403; *Michigan v. Fisher*, 558 U.S. 45, 47 (2009) (per curiam)). “One well-recognized exception applies when ‘the exigencies of the situation’ make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.” *King*, 563 U.S. at 460 (citing *Mincey v. Arizona*, 437 U.S. 385, 394 (1978)). “A variety of circumstances may give rise to an exigency sufficient to justify a warrantless search, including law enforcement’s need to provide emergency assistance to an occupant of a home, engage in ‘hot pursuit’ of a fleeing suspect, or enter a burning building to put out a fire and investigate its cause.” *Missouri v. McNeely*, 569 U.S. 141, 149 (2013) (cleaned up).

“Under the ‘emergency aid’ exception, for example, ‘officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.’” *King*, 563 U.S. at 460 (citing *Brigham City*, 547 U.S. at 403; *Fisher*, 558 U.S. at 49 (upholding warrantless home entry based on emergency aid exception). “This ‘emergency aid exception’ does not depend on the officers’ subjective intent or the seriousness of any crime they are investigating when the emergency arises.” *Fisher*, 558 U.S. at 47 (citing *Brigham City*, 547 U.S. at 403). “It requires only ‘an objectively reasonable basis for believing,’ that ‘a person within [the house] is in need of immediate aid.” *Fisher*, 558 U.S. at 47 (citing *Brigham City*, 547 U.S. at 406; *Mincey*, 437 U.S. at 392). “[T]he test, . . . is not what [the officer] believed, but whether there was ‘an

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<sup>3</sup> This response uses “cleaned up” to indicate that internal quotation marks, alterations, punctuation marks, or citations have been omitted.

objectively reasonable basis for believing' that medical assistance was needed, or persons were in danger." *Fisher*, 558 U.S. at 49.

"Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." *Mincey*, 437 U.S. at 392 (citing *Wayne v. United States*, 115 U.S. App. D.C. 234, 241, 318 F.2d 205, 212 (1963) (opinion of Burger, J.) ("The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency."); *Brigham City*, 547 U.S. at 403-04 (citing *Georgia v. Randolph*, 547 U.S. 103, 118 (2006) ("[I]t would be silly to suggest that the police would commit a tort by entering . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur.")).

In *Fisher*, the United States Supreme Court found that an officer's warrantless entry into a home was justified under the Fourth Amendment pursuant to the emergency aid exception to the warrant requirement. *Fisher*, 558 U.S. at 48-49. There, officers responded to a complaint of a disturbance at a residence. *Id.* at 45. Upon approaching the area, a couple directed the officers toward a house where they said a man was "going crazy." *Id.* At the house, the officers found a truck in the driveway with its front end smashed, damaged fence posts along the property, and broken house windows. *Id.* at 45-46. The officers observed blood on the pickup, on clothes inside it, and on the doors of the house. *Id.* at 46. Inside the house they saw a man screaming and throwing things. *Id.* The back door of the house was locked, and a couch had been placed blocking the front door. *Id.*

The officers knocked and Fisher refused to answer. *Fisher*, 558 U.S. at 46. Officers observed a cut on Fisher's hand and asked him whether he needed medical attention. *Id.* "Fisher ignored these questions and demanded, with accompanying profanity, that the officers go to get a search warrant." *Id.* An officer "then pushed the front door partway open and ventured into the house. Through the window of the open door [the officer] saw Fisher pointing a long gun at him." *Id.* Fisher was charged with assault with a dangerous weapon and moved to suppress evidence, arguing that the officer had violated the Fourth Amendment when he entered the house. *Id.*

The United States Supreme Court ultimately found that the officer's entry into the house was lawful under the emergency aid exception to the warrant requirement. *Fisher*, 558 U.S. at 48-49. The Court concluded the officer's entry was reasonable based on the facts observed by the officer upon responding to the reported disturbance. *Id.* at 47-49. Specifically, signs of a recent injury outside the house, possibly from a car accident, and Fisher screaming and throwing things inside the house. *Id.* at 48. The Court noted that Fisher could have been throwing things at another person or "hurt himself in the course of his rage." *Id.* Invoking the emergency aid exception, the Court found it was reasonable to believe Fisher needed treatment or police assistance. *Id.* at 49. Notably, *Fisher* did not find that the officer possessed probable cause before entering the home.

The United States Court of Appeals for the Ninth Circuit has adopted a two-pronged test for applying the "emergency doctrine." *United States v. Snipe*, 515 F.3d 947, 950-54 (9th Cir. 2008). The Ninth Circuit has applied this doctrine in cases where officers have

entered a home without a warrant based on reports of gunfire or in response to 911 calls requesting assistance, among other situations. *E.g.*, *United States v. Russell*, 436 F.3d 1086, 1090-91 (9th Cir. 2006) (warrantless entry of home upheld where a series of 911 calls suggested one individual had shot another inside a house and the shooter was still inside when the officers arrived); *Snipe*, 515 F.3d at 949 (warrantless entry upheld after police entered a home in response to a 911 call in which a “very hysterical sounding” caller “screamed . . . [g]et the cops here now”); *Ames v. King County*, 846 F.3d 340, 350 (9th Cir. 2017) (officers responding to person’s possible suicide attempt and drug overdose were entitled to qualified immunity because their search of a vehicle was reasonable pursuant to the emergency exception).

This test “asks whether: (1) considering the totality of the circumstances, law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm; and (2) the search’s scope and manner were reasonable to meet the need.” *Snipe*, 515 F.3d at 952. Furthermore, “if law enforcement, while respond[ing] to an emergency, discovers evidence of illegal activity, that evidence is admissible even if there was not probable cause to believe that such evidence would be found.” *Id.* (cleaned up). The Ninth Circuit stated that a probable cause requirement would be “superfluous” because the United States Supreme Court “failed to conduct any traditional probable cause inquiry” when applying the emergency aid exception in *Brigham City*. *Id.* Instead, the Ninth Circuit recognized that *Brigham City* “assumed that probable cause to associate the emergency with the place to be searched exists whenever law enforcement officers have an objectively reasonable basis for

concluding that an emergency is unfolding in that place.” *Id.*

Turning to the facts of this case, the district court correctly determined that the officers’ entry into the home was justified because of the emergency created by Case’s phone call to J.H. (2/14/22 Tr. at 213-15; Doc. 56 at 2.) Applying the emergency aid doctrine under the totality of the circumstances, the officers had an objectively reasonable basis for concluding there was an immediate need to protect Case from seriously harming himself or to render aid if he had already shot himself. *Snipe*, 515 F.3d at 952. Indeed, because Case may have injured himself, it was reasonable for the officers to believe he may need medical assistance or be in danger, i.e., bleeding to death. *Fisher*, 558 U.S. at 49.

Based on Case’s phone call to J.H. and her personal report at the scene, the officers knew Case had threatened suicide and fired his gun, possibly injuring himself. Additionally, prior to entry, the officers observed an empty gun holster, beer cans, and what appeared to be a suicide note. The officers were also aware Case had previously displayed suicidal and violent behaviors. Based on these facts, it was objectively reasonable to conclude that Case may have harmed himself or was going to attempt suicide. These facts satisfy the first prong of the emergency aid exception. *Snipe*, 515 F.3d at 952; *see also Fisher*, 558 U.S. at 49.

Case contends that the officers’ testimony that he may have needed emergency assistance or been injured was speculative. (Br. at 24.) However, “[o]fficers do not need ironclad proof of ‘a likely serious, life-threatening’ injury to invoke the emergency aid exception.” *Fisher*, 558 U.S. at 49; *see also Caniglia v.*



*Strom*, 141 S. Ct. 1596, 1604 (2021) (Kavanaugh, J., concurring) (“The Fourth Amendment does not require officers to stand idly outside as the suicide takes place.”). “Only when an apparent threat has become an actual harm can officers rule out innocuous explanations for ominous circumstances.” *Fisher*, 558 U.S. at 49 (citing *Brigham City*, 547 U.S. at 406 (“The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties.”). As discussed, the officers were aware Case was suicidal and had reportedly fired his gun. These facts support the finding that Case may have needed emergency assistance.

Indeed, Case concedes that the circumstances objectively indicated to the officers that a person may have already committed suicide or intended to commit suicide, but argues that the officers failed to confirm a suicide was in progress. (Br. at 30.) Case demands more than the Fourth Amendment requires as the officers did not need absolute proof that he was injured before entering the house. Rather, the officers simply required an “objectively reasonable basis for believing” that someone could be injured inside the house. *Snipe*, 515 F.3d at 951 (quoting *Brigham City*, 547 U.S. at 406).

Next, applying the second prong of the doctrine, the scope and manner of the officers’ entry and search were also reasonable. *Snipe*, 515 F.3d at 951-54 (test considers the manner and scope of both the officers’ entry and subsequent search); *Brigham City*, 547 U.S. at 406 (considering whether the manner of the officers’ entry was reasonable). Prior to entering Case’s house, the officers confirmed with J.H. that Case was home and observed his truck at the house. They also walked around Case’s house for several minutes, knocking on the front and back doors and yelling for him. They

shined lights into the windows of the house. Prior to entering the house, they again yelled for Case. Upon entry, they did not search through drawers or hidden areas where a person physically could not be hiding. Instead, they quickly walked through the first floor of the house looking and calling for Case. When he did not come out of his hiding spot, the officers separated and walked through the basement and second floor looking for Case. While walking upstairs, the officers again yelled for Case.

The above facts support the conclusion that the manner and scope of the officers' search was reasonable. *Snipe*, 515 F.3d at 954 (officers' entry and search of house was reasonable because they knocked and announced their presence before entering, they identified themselves upon entry and said they were responding to an emergency call, and the subsequent scope of their search was reasonable and confined to the areas of the house likely to include individuals in harm's way).

Case contends that the time it took the officers to enter the house weighs against the district court's finding that the police acted reasonably under the circumstances. (Br. at 30-31.) However, given the dangers presented by the situation, the officers acted reasonably by taking time to prepare before making entry.

Case's argument ignores that the officers promptly responded to J.H.'s 911 call, and immediately went to the house to begin assessing the situation. Upon arriving at the house, the officers were aware that Case might attempt to harm them if they entered. The officers also suspected that Case had been drinking and were aware that he had acted erratically and violently in the past when consuming alcohol. Looking

inside the house, the officers observed an empty gun holster and beer cans, which confirmed that Case likely had a gun and was drinking. Based on these facts, it was reasonable for the officers to be concerned that Case might behave erratically and turn his gun on them.

Based on these facts, it was also reasonable for the officers to wait for Chief Sather to arrive at the scene before making entry as the officers testified that additional personnel when making entry would increase officer safety and reduce the risk of harm. Further, retrieval of the shield when making initial entry, particularly in a “fatal funnel[]” like the front door, when the chance of being fired upon was most likely, was reasonable given the possibility that Case could have tried to ambush the officers when they entered. (*See* 2/14/22 Tr. at 79 (“[D]oorways are referred to as fatal funnels. That’s like the most dangerous place you’re going to be in in any house.”), 139.) The officers’ retrieval of their personal weapons from their vehicles was also appropriate given that it was nighttime, the house was dark, and the weapons had flashlights. Given the dynamic and dangerous nature of the situation, the officers’ decisions to use weapons they personally maintained and trusted to function when needed should not be second guessed. Accordingly, the time the officers took to prepare before making entry was reasonable given the dangers presented by the situation.

**B. The officers’ entry did not violate Case’s rights under the Montana Constitution.**

Case contends that this Court should refrain from affirming the district court’s denial of the motion to suppress based on the emergency aid exception

because Montana’s Constitution provides broader protections than the United States Constitution. (Br. at 20, 29.) Although Case acknowledges that the emergency aid doctrine has been federally recognized as an exception to the Fourth Amendment’s warrant requirement, he contends that Montana’s right to privacy precludes its application in this matter. (Br. at 29.) Case also erroneously asserts that this Court previously “rejected” the doctrine in *State v. Saale*, 2009 MT 95, ¶ 8, 350 Mont. 64, 204 P.3d 1220.<sup>4</sup> (*Id.*)

As a threshold point, this Court should decline to engage in a unique, state constitutional analysis because Case has failed to meet his burden of proof that a unique aspect of the Montana Constitution, or the background material related to it, provides support for the greater protection that he seeks to invoke. Specifically, that Montana’s constitution prohibits the warrantless entry of the police in order to respond to an emergency. Although Case broadly asserts an enhanced right in this matter, he fails to support his argument with legal authority, supporting analysis, or other “sound and articulable reasons” that compel this Court to recognize the enhanced protections he suggests. *State v. Covington*, 2012 MT 31, ¶ 21, 364 Mont. 118, 272 P.3d 43.

Critically, in *Covington*, this Court clarified that merely invoking heightened state constitutional protections cannot establish the existence of a specific rule applicable to a litigant’s circumstances. *See Covington*, ¶¶ 20-21, 25. Rather, “[this Court] accordingly will undertake a unique, state constitutional

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<sup>4</sup> In *Saale*, the Court did not reject the emergency aid doctrine. Rather, it simply held “that the State failed to demonstrate the existence of truly exigent circumstances justifying the warrantless entry into Saale’s home.” *Saale*, ¶16.

analysis only when the appellant has satisfied his burden of proof that a unique aspect of the Montana Constitution, or the background material related to the provision, provides support for the greater protection that he seeks to invoke.” *Covington*, ¶ 21. Consequently, because Case fails to conduct any legal analysis to support his argument, this Court should refrain from developing his argument for him and decline to address the issue. *State v. Cybulski*, 2009 MT 70, ¶ 13, 349 Mont. 429, 204 P.3d 7 (“[I]t is not this Court’s obligation to conduct legal research on behalf of a party or to develop legal analysis that might support a party’s position.”).

Additionally, notwithstanding Case’s failure to adequately raise this issue, the State notes that this Court has previously found that an officer’s warrantless entry into a home during an emergency did not violate Montana’s Constitution. For example, in *Lewis*, the Court found that Montana’s unique constitutional protections did not prohibit an officer’s initial warrantless entry into a residence during a fire. *State v. Lewis*, 2007 MT 295, ¶¶ 20-21, 28-29, 340 Mont. 10, 171 P.3d 731 (concluding that the officer’s initial “entry, prompted by the exigent circumstance of a fire, was lawful”). Notably, *Lewis* did not hold that the officer possessed probable cause that the defendant had committed an offense before entering the home. Furthermore, in *State v. Loh*, 275 Mont. 460, 474, 914 P.2d 592, 601 (1996), the Court also examined an officer’s warrantless entry in the context of a fire and concluded that the intrusion did not violate the Fourth Amendment or article II, section 11, of Montana’s Constitution. *Loh*, like *Lewis*, did not conclude the officer’s entry was supported by probable cause. Therefore, contrary to Case’s argument on appeal, this Court has repeatedly found that an

officer's warrantless entry into a home during an emergency, even without probable cause, does not offend an individual's unique rights under Montana's Constitution.

**C. The district court correctly denied Case's suppression motion because the officers' entry was justified under exigent circumstances.**

"Warrantless searches and seizures are per se unreasonable absent a few carefully drawn exceptions." *Lewis*, ¶ 21. "One such exception is the existence of exigent circumstances." *Lewis*, ¶ 21. "Exigent circumstances for conducting a warrantless search exist where it is not practicable to secure a warrant." *Lewis*, ¶ 21 (cleaned up). This Court has "defined exigent circumstances as those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other person, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." *Lewis*, ¶ 21 (cleaned up).

Legal authorities are unclear on whether emergency and exigency exist as independent exceptions to the warrant requirement, or whether an emergency is one of many exigencies where an officer's warrantless entry is constitutionally permitted. *See Russell*, 436 F.3d at 1094 (Thomas, J., concurring and dissenting in part) ("We have defined two 'specifically established and well-delineated exceptions' to the warrant requirement: exigency and emergency.") (quoting *United States v. Martinez*, 406 F.3d 1160, 1164 (9th Cir. 2005)); *McNeely*, 569 U.S. at 149 (stating that "[a] variety of circumstances may give rise to an exigency

sufficient to justify a warrantless search, including law enforcement's need to provide emergency assistance to an occupant of a home").

Nevertheless, whether an emergency is viewed as an independent exception to the warrant requirement or another exigency exception, the circumstances of this case satisfy both standards. As discussed, the facts established through Case's phone call to J.H., her 911 call and in-person report to the officers, the officers' awareness of Case's history, and their observations of the holster, beer cans, and note, are all circumstances that would cause a reasonable person to believe that entry into the house was necessary to prevent physical harm to Case or to render aid.

Case counters that, even if an exigency was present, the officers lacked probable cause that he committed an offense. (Br. at 23-25.) This Court has held that the exigency exception to the warrant requirement requires both exigent circumstances and probable cause. *Wakeford*, ¶ 22; *but see Lewis*, ¶ 28 (concluding that the officer's entry was lawful because of the exigent circumstance of a fire, but not finding that the officer had probable cause that an offense had been committed). This Court has also repeatedly stated that, "[p]robable cause exists if the facts and circumstances within the officer's personal knowledge, or imparted to the officer by a reliable source, are sufficient to warrant a reasonable person to believe that the suspect has committed an offense." *Wakeford*, ¶ 22 (cleaned up).

Although the district court did not find there was probable cause that Case committed an offense, the facts presented by the State in support of its argument that exigent circumstances permitted the officers' entry were sufficient to establish that Case had

violated Montana law, specifically Mont. Code Ann. § 45-8-343(1). Pursuant to this statute, “every person who willfully shoots . . . [a] firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding \$25 or such greater fine or a term of imprisonment, or both, as the town or city may impose.” Mont. Code Ann. § 45-8-343(1).

Here, prior to entry, the officers were aware of facts that established probable cause that Case had violated this statute. Specifically, J.H. called 911 and reported that Case had a gun inside his Anaconda home, and she believed she heard him fire it, i.e., she heard a “pop.” (2/14/22 Tr. at 25-26, 28, 48, 70-71.) J.H. then went to the scene and personally relayed these facts to the officers. (*Id.*) Importantly, J.H. was not acting anonymously, and was a reliable source. These facts are sufficient to establish probable cause that Case violated Mont. Code Ann. § 45-8-343(1). *See Wakeford*, ¶ 22.

Admittedly, the State did not argue below that the officers retained probable cause prior to entering the house. (*See* Doc. 32; *see also* Doc. 87 at 6 (stating that the officers lacked probable cause).) This is because the officers’ subjective intent was not to enter and search the house for evidence of a crime, but to render assistance to Case pursuant to Mont. Code Ann. § 53-21-129(1). (2/14/22 Tr. at 207-08.) However, in previous decisions, this Court has found that probable cause existed under the circumstances despite the lower court’s failure to do so. *See Wakeford*, ¶ 31. Consequently, even though the district court did not find probable cause that Case may have violated Mont. Code Ann. § 45-8-343(1), this Court may affirm on that basis. *Wakeford*, ¶¶ 31-33; *Ellison*, ¶ 8.



**III. The district court did not abuse its discretion when it denied Case's motion for a new trial because he failed to meet his burden to show that the State committed a *Brady* violation.**

Case argues that the State committed a *Brady* violation because it did not disclose until trial that Sgt. Pasha had previously been shot at while on duty. (Br. at 20-21, 39-42.) First, the district court was within its discretion to deny the motion for a new trial based on the claimed *Brady* violation because Case waited until he filed his reply brief in support of the motion to raise the argument. (Doc. 135 at 4 (citing *Kapor v. RJC Inv., Inc.*, 2019 MT 41, ¶ 29, 394 Mont. 311, 434 P.3d 869 (“Reply briefs filed in the district court must be confined to new matters raised in the response brief.”))).) This is particularly true, here, as Case was aware of the incident at trial given that Sgt. Pasha testified he had previously been shot at while in the line of duty. (Trial Tr. at 118.) Thus, he could have raised the issue at that time or when he filed his initial motion. Accordingly, because Case belatedly raised the issue, the district court was within its discretion to decline to review the claim. However, Case also fails to meet his burden to establish a *Brady* violation.

“A failure by the State to disclose exculpatory evidence to a defendant is a violation of the defendant’s Fourteenth Amendment guarantee of due process.” *Ilk*, ¶ 29. “To prove a due process violation under *Brady*, a defendant must show: (1) the State possessed evidence, including impeachment evidence, favorable to the defense; (2) the prosecution suppressed the favorable evidence; and (3) had the evidence been disclosed, a reasonable probability exists that the outcome of the proceedings would have

been different.” *Ilk*, ¶ 29. “The defendant bears the burden of proving all three prongs to establish a *Brady* violation.” *Ilk*, ¶ 30.

Under the first prong of the analysis, “[t]he defendant bears the burden of preserving issues for appeal, including the existence of potentially undisclosed *Brady* material.” *Ilk*, ¶ 31. “The defense must make a showing of more than mere speculation about materials in the government’s files.” *Ilk*, ¶ 31 (cleaned up). “Favorable evidence includes evidence that has the potential to lead directly to admissible exculpatory evidence.” *Ilk*, ¶ 31 (cleaned up).

First, Case does not meet his burden to show that the State possessed evidence favorable to the defense. Case contends that evidence Sgt. Pasha had previously been shot at was “directly relevant to the issue of whether the officer’s apprehension of serious bodily injury was reasonable.” (Br. at 34.) Case’s argument is fatally flawed. Critically, the question of whether a person’s apprehension of serious bodily injury was reasonable is not viewed subjectively, but is “an objective standard, i.e., whether a reasonable person would feel apprehensive when faced with the conduct complained of.” *Michelotti*, ¶ 27. Thus, Sgt. Pasha’s experience of being shot at was not material to whether his apprehension was reasonable during the incident in question. Rather, the jury was tasked with considering whether a reasonable officer—not Sgt. Pasha based on his personal emotions—would have been apprehensive when Case jumped out of the closet with his gun. Case is mistaken that this information was exculpatory.

Case suggests that this information would have led to exculpatory material, like Sgt. Pasha was suffering from “PTSD,” or it could have “open[ed] new avenues

for impeachment of the witness.” (Br. at 40-42.) Case also suggests that this information would have affected Sgt. Pasha’s credibility, even though he volunteered this information at trial. Case’s arguments are speculative and should be rejected by this Court as he provides no evidence to support these claims. *Ilk*, ¶ 31.

Next, turning to the second factor, Case fails to prove the State suppressed any favorable evidence. *Ilk*, ¶ 34. In the State’s response to Case’s alleged *Brady* claim, it affirmed that it did not possess any materials showing Sgt. Pasha had been diagnosed with PTSD, and asserted that it would be “preposterous to propose that part of discovery should entail listing the details and names of every case an officer has ever investigated or testified in.” (See Doc. 134 at 4-5.) Case fails to show, beyond speculation, that the State suppressed information that Sgt. Pasha was diagnosed with PTSD, or was otherwise not fit for duty, because this information was not in the possession of the State—most likely because it does not exist. Additionally, although the State recognizes it possessed files relating to the prior incident where Sgt. Pasha was shot at by a different defendant, the State did not suppress this information because it was not exculpatory and was thus beyond the scope of Case’s pretrial request for production. (See Doc. 9.)

Finally, turning to the third prong, Case fails to show that, “had the evidence been disclosed, a reasonable probability exists that the outcome of the proceedings would have been different.” *Ilk*, ¶ 37. “A reasonable probability of a different result is . . . shown when the government’s evidentiary suppression undermines confidence in the outcome of the trial.” *Ilk*, ¶ 37 (cleaned up).

Importantly, Sgt. Pasha disclosed the incident during his testimony. The jury was thus aware of the information prior to convicting Case. As a result, Case cannot meet his burden to show that there would have been a reasonable probability that the outcome of his trial would have been different had the jury learned of these facts—because it had.

Furthermore, because the jury was tasked with determining whether a reasonable officer would have experienced reasonable apprehension under the circumstances, an objective standard, Sgt. Pasha's previous experience of being shot at would not have affected the verdict. Because Case cannot satisfy his burden to show that the State committed a *Brady* violation, the district court did not abuse its discretion when it denied his motion for a new trial.

#### **IV. Sufficient evidence supported Case's conviction of assault on a peace officer.**

Case also appears to contend that his conviction should be reversed because the evidence presented by the State was insufficient to support his conviction. Dismissal for "insufficient evidence is only appropriate if, viewing the evidence in a light most favorable to the prosecution, there is no evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Kirn*, 2012 MT 69, ¶ 10, 364 Mont. 356, 274 P.3d 746 (cleaned up).

"A person commits the offense of assault on a peace officer or judicial officer if the person purposely or knowingly causes . . . reasonable apprehension of serious bodily injury in a peace officer or judicial officer by use of a weapon." Mont. Code Ann. § 45-5-210(1)(b)(i). This Court "ha[s] held numerous times

that it is not necessary that the victim personally observe a weapon in order to experience reasonable apprehension of serious bodily injury by use of that weapon.” *Kirn*, ¶ 14 (collecting cases).

Case’s primary contention on appeal appears to be that Sgt. Pasha could not have experienced apprehension because he only saw a “dark colored object,” and never specifically testified that he saw a gun. (See Br. at 42-44.) However, this Court has repeatedly held that “[a] person need not actually see a weapon to feel threatened by the use of that weapon.” *State v. Steele*, 2004 MT 275, ¶ 33, 323 Mont. 204, 211, 99 P.3d 210 (collecting cases). Thus, Sgt. Pasha did not have to testify that he was certain he saw Case holding a gun to feel threatened by it. *Steele*, ¶¶ 33, 39-40; *Kirn*, ¶ 14.

Furthermore, viewing the evidence in the light most favorable to the prosecution, the State presented sufficient evidence that Case purposely or knowingly used his gun to cause reasonable apprehension of serious bodily injury in Sgt. Pasha. *Kirn*, ¶ 10. Specifically, Sgt. Pasha testified that he saw the “dark object” in Case’s hand, thought it was a gun, and believed that he was about to be shot. (Trial Tr. at 71-73.) This belief was also reasonable given that Sgt. Pasha was aware Case had a gun, had fired it, and had been drinking. Furthermore, Sgt. Pasha’s body camera video was played for the jury, which allowed them to judge the incident for themselves. (See *id.* at 101.) Based on the evidence presented at trial, sufficient evidence supported Case’s conviction.

### **CONCLUSION**

This Court should affirm the district court’s denial of the motion to suppress and Case’s conviction.

Respectfully submitted this 31st day of October,  
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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 9,903 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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**CERTIFICATE OF SERVICE**

I, Michael Patrick Dougherty, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-31-2023:

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Dated: 10-31-2023

IN THE SUPREME COURT OF  
THE STATE OF MONTANA

NO. DA 23-0136

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STATE OF MONTANA,  
*Plaintiff and Appellee,*

v.

WILLIAM TREVOR CASE,  
*Defendant and Appellant.*

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**REPLY BRIEF OF APPELLANT**

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*On Appeal from the Montana Third Judicial  
District Court, Deer Lodge County,  
the Honorable Kurt Krueger, Presiding.*

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Defendant and Appellant, William Trevor Case, respectfully replies to the State's response brief as follows:

### ARGUMENT

#### **I. There is no reason for this Court to adopt the Federal emergency aid doctrine where the State's own admissions demonstrate that it is not applicable.**

As an initial matter, it appears that the State does not contest that the U.S. Supreme Court's holding in *Caniglia v. Strom*, 141 S. Ct. 1596 (2021), has impliedly overruled this Court's holding in *Estate of Frazier v. Miller*, 2021 MT 85, 484 P.3d 912, to the extent that ruling permits community caretaking/welfare checks to be performed in a personal residence without a warrant.

Rather, the State implicitly admits that this Court has not adopted the Federal emergency aid doctrine by failing to provide any authority from this Court adopting or applying this exception, and then urging the adoption and application of Federal case law to excuse its officers' conduct. (Resp. Br. at 19-29.) However, as the State correctly notes, the emergency aid doctrine requires an active emergency to which state actors respond immediately, which is the opposite of what the State admits that occurred in this case. (Resp. Br. at 20-21.) Without support, the State further argues that should this Court adopt the emergency aid doctrine they should also adopt a reasonableness standard in lieu of the requirement for immediate action. (Resp. Br. at 28-29.)

While the State quotes in support of its argument that the emergency aid exception "requires only 'an objectively reasonable basis for believing,' that 'a

person within [the house] is in need of **immediate** aid.” (Resp. Br. at 21 (quoting *Michigan v. Fisher*, 558 U.S. 45, 47 (2009) (emphasis added))), it then argues that its officers did not have to immediately render aid due to the reasonableness of their delays. (Resp. Br. at 28-29.) However, despite the State repeatedly asserting the reasonableness of the officers’ conduct, it fails to produce a single legal authority in support of its position. This is unsurprising as the Federal emergency aid exception clearly requires the immediate rendering aid, as evidenced in every case cited by the State in support of its argument.

Again, the State acknowledges that when the officers in *Fisher* arrived at the residence, they observed that “[i]nside the house they saw a man screaming and throwing things.” (Resp. Br. at 22 (citing *Fisher*, 558 U.S. at 46.)) While it is understandable why the State framed it this way, it is also important to note that the officers in *Fisher* made this observation through a window from outside the residence, *Fisher*, 558 U.S. at 46, which is the opposite of what occurred in this case where the officers arrived to a vacant and silent residence with no signs of an active emergency in progress that required immediate assistance. Further, unlike in the present case where the officers wasted approximately 45 minutes prior to making entry, in *Fisher*, the officers immediately approached the house, made contact with the defendant through the door and window, and then made immediate entry when he refused to open the door. *Id.*

Relying upon *United States v. Snipe*, 515 F.3d 947 (9th Cir. 2008), the State then argues that the circumstances in this case gave the officers “an objectively reasonable basis for concluding there was

an **immediate** need to protect Case....” (Resp. Br. at 25 (emphasis added).) And yet, despite admitting that there was an immediate need to render aid to Mr. Case, the State then argues that it didn’t have to render immediate aid due to the reasonableness of its reasons for delay. (Resp. Br. at 28-29.)

Further, unlike in *Snipe*, where the front door had been left open, 515 F.3d at 949, here the front door was closed and latched. Further, when the officers knocked on the open door in *Snipe*, immediately upon their arrival, the door opened further immediately revealing the occupants and drugs on the kitchen table, *id.*, unlike the present case where the officers opened a closed and latched door and then proceeded to search the entire residence after waiting more than 45 minutes to make entry. However, most importantly, unlike in the present case, the officers in *Snipe* made immediate entry to the residence in order to render immediate aid to a potential reported victim and then searched the house for the potential reported victim with the **permission** of the occupants. 515 F.3d at 949-950.

As such, there is no reason for this Court to adopt the Federal emergency aid exception as it clearly does not excuse the officers’ conduct in this case where they allegedly recognized an immediate need but instead of immediately rendering aid, as clearly required and demonstrated in every case cited by the State, the officers in this case wasted nearly 45 minutes before making entry while admitting on camera that Mr. Case would have been dead, had he shot himself, due to their delays. (Doc. 55.1.) In other words, the officers admitted that they would not be able to render aid to Mr. Case just prior to making their warrantless entry, thus negating any allegedly objective basis to conclude

that there was an immediate need to make entry and render aid to Mr. Case.

**II. As evidenced by this Court's explicit and repeated holdings that exigent circumstances require probable cause, and as evidenced by this Court's refusal to date to recognize the Federal emergency aid exception, the Montana Constitution clearly provides enhanced protections against warrantless searches of the residence.**

Notwithstanding the State's argument, Mr. Case has repeatedly argued from the beginning that this Court's repeated and explicit holdings that the exigent circumstances exception required probable cause, combined with the lack of explicit adoption of the Federal emergency aid doctrine, evidenced the heightened protections afforded Montana citizens under our constitution. In other words, if this Court has afforded suspected criminals this level of state constitutional protections, why would it afford law abiding citizens less. In fact, this Court has not done so, but rather has yet to adopt the Federal emergency aid exception, which does not require probable cause, and has repeatedly held that Montana law requires probable cause in addition to exigent circumstances.

While the State admits that this Court has repeatedly and explicitly held that probable cause is required under the exigent circumstances exception, (Resp. Br. at 33), it also attempts to argue that probable cause is not really required based upon the holdings of *State v. Loh*, 275 Mont. 460, 914 P.2d (1996), and *State v. Lewis*, 2007 MT 295, 340 Mont. 10, 171 P.3d 731. However, in both *Lewis* and *Loh*, the defendants did not contest the initial entry made to fight the active fire. *Lewis*, ¶ 10; *Loh*, 275 Mont. at 467.

Further, like every other case cited by the State, in both *Lewis* and *Loh*, the State's agents made immediate entry to render immediate aid.

Unlike the present case, where officers did not see an active fire or other emergency, in *Lewis*, after arriving on scene the officer could observe flames behind a wood stove through a window of the defendant's apartment. *Lewis*, ¶ 4. Further, unlike the present case where officers wasted 45 minutes prior to making entry to render aid, in *Lewis*, the officer immediately broke the window to discharge his fire extinguisher. *Id.* After emptying his extinguisher and the extinguisher of a neighbor, the officer was let into the apartment by the owner of the building, which again is distinguishable from the present case. *Lewis*, ¶ 5. At the point the officer in *Lewis* made entry into the residence, there was still significant smoke coming from the structure, thus continuing to present an active emergency due to the dangers of smoke inhalation. *Id.*

Likewise, in *Loh*, officers arrived on the scene of a reported house fire and were informed by a bystander that there were possibly two individuals inside the residence. *Loh*, 275 Mont. at 464. Without delay, the officers kicked in the back door of the residence but were unable to enter due to the thick black smoke. *Id.* The officers then kicked in the front door and were able to make entry by crawling on the floor below the smoke. *Id.*

As such, the State's reliance upon *Lewis* and *Loh* is misplaced as these cases present a situation where police not only immediately responded to the scene of a reported and active emergency that was visible from outside the residence, but also made immediate entry while the emergency was still active in order to render

immediate assistance to the occupants. Further, the initial entry in both cases was not contested by the defendants.

The State next argues that if this Court's prior holdings concerning exigent circumstances are still valid, that this Court can also impliedly find probable cause despite the sworn testimony of each and every officer present that there was no probable cause nor suspicion of a crime being committed. (Resp. Br. at 35.) While the State relies upon *State v. Wakeford*, 1998 MT 16, 287 Mont. 220, 952 P.2d 1065, to support its argument that this Court may find probable cause on its own in the face of uncontradicted sworn testimony from each and every officer present that there was no probable cause or suspicion that a crime had been committed, the officers in *Wakeford* did not testify that they had no probable cause and that there was no suspicion that a crime was being committed. Rather the officers noted that they heard loud voices engaged in a potential domestic abuse situation when they arrived, and that they encountered an agitated Mr. Wakeford at the door to the room who was concealing his hands from the officers and blocking the door opening such that the officers could not see or hear the female they had heard Mr. Wakeford arguing with. *Wakeford*, ¶ 31. Although this Court found probable cause under these circumstances where the district court had not done so, the facts supported said finding, there is nothing in the holding of *Wakeford* to support a finding of probable cause in the face of sworn testimony from the officers to the contrary.

Likewise, the State's gross mischaracterization of the evidence and sworn testimony cannot create probable cause after the fact. While the State first asserts that the officers "knew Case had threatened



suicide and fired his gun,” (Resp. Br. at 25 (emphasis added)), it later walks back this misrepresentation to the Court and admits that actually the complainant only reported hearing a “pop.” (Resp. Br. at 34.) Despite this, the State only cites to the complainant’s highly suspect testimony at trial, which again makes sense as the complainant refused to tell the truth at trial, forcing Mr. Case to impeach her testimony with the actual recording of her original call to 911. In the call the complainant stated that Mr. Case “was threatening suicide and the phone just went silent, and she didn’t get a response;” and that “he said he had a loaded gun, and all I heard was clicking and, **I don’t know, I thought** I heard a pop at the end, **I don’t know.**” (Doc. 127 – Exhibit D-90 – Complainant’s 911 call to ADLC Dispatch.) Notably, the complainant never reported a gunshot to 911, nor did she communicate any alleged threats towards law enforcement from Mr. Case. *Id.*

Likewise, the responding officers all reported that there was no probable cause prior to entry as there was no suspicion that a crime had been committed. While the DCI investigators eventually found a bullet hole in the floor of the kitchen, none of the officers were aware of this prior to their entry. (Trial Tr. at 280, & Doc. 55.1.) As such, it would again defy logic to allow the existence of an alleged crime, that was unknown to the officers at the time of entry, to justify their warrantless entry, as this is the exact abuses that our state constitution allegedly protects its citizens from. In other words, the State is arguing that as long as they find any evidence of any alleged crime after the entry it can remedy the lack of probable cause prior to entry. This is the very definition of an out-of-control Orwellian type government, and it is exceptionally concerning that the very agency responsible

for upholding our state constitution is arguing that it essentially no longer applies to the proles.

As is clear from the above discussion, there is little to no support for the State's argument that probable cause is no longer required under the exigent circumstances exception. Further, like with the Federal emergency aid exception, immediacy of response, entry, and/or rendering of aid is required, but did not occur in this case. Finally, there is no support for the State's argument that once exigent circumstances exist, they exist indefinitely as long as the officer can articulate "reasonableness" for any delays, even if the officers admit such delays extend past the exigent circumstances. Rather, it is clear from every case cited by the State and Mr. Case, that under either the Federal emergency aid or Montana's exigent circumstances exceptions, the officers are permitted to make a warrantless entry in recognition of, and in exchange for, the immediate rendering of aid. This is especially true where the officers admitted prior to entry that Mr. Case would be dead due to their delays had he actually shot himself.

As such, regardless of whether this Court adopts the Federal emergency aid exception or amends this Court's prior exigent circumstances jurisprudence to remove of the last of the enhanced protections enjoyed by Montanans under our state constitution, the warrantless entry made by the officers was not excusable as there was no immediate entry nor immediate rendering of aid. Rather the officers admitted that they waited long enough for Mr. Case to die before they finally made entry.

**III. The State committed a Brady Violation by failing to disclose Sgt. Pasha had experienced being shot at three months before September 26, 2021, as that information could have been used to impeach Sgt. Pasha's testimony about what he observed as Mr. Case exited the closet, the only direct evidence of the charged offense.**

Although Sgt. Pasha testified to having been shot at previously in his career, he neglected to testify that he had been shot at three months prior to his unwarranted and near fatal entry into Mr. Case's home, the proximity of time being key. (Trial Tr. 118.) The State argues that the court did not abuse its discretion by refusing to address the *Brady* argument raised by Defense in their reply brief to their motion for a new trial. (Doc. 135 at 4.) However, the Defense was unable to raise it prior to the Reply brief as the Defense did not become aware of the proximity in time of the two incidents until almost two weeks after it had filed its motion for a new trial. (Doc. 133 at 6.) Further at the time Defense was drafting the Reply brief, a new motion for a new trial would have been untimely and summarily denied as such. (Doc. 133). Finally, the State was able to draft and file their own response brief to the new argument well before the court rendered a decision on the motion. (Doc 134.) As such the matter was fully briefed by both sides, and it was raised as soon as the Defense became aware of the issue.

This case is nothing like the case of *Kapor v. RJC Inv., Inc.*, 2019 MT 41, ¶ 29, 394 Mont. 311, 434 P.3d 869, in which RCJ raised for the first time in their reply brief an argument that they had been aware of

during the time of filing their initial brief. There must be an accommodation, in the name of judicial economy and expedience, for information that was not known prior to filing of the initial brief to be raised in the reply so long as the other side is given a chance to respond, just like in the present case, and the matter is fully briefed before the court renders a decision. The other option is to force parties to file another motion and initial brief, that further consumes the court's time, and may possibly be summarily denied on some other procedural grounds. To hold otherwise would only further encourage corrupt prosecutors to actively suppress the disclosure of favorable evidence.

As to the substantive nature of Mr. Case's *Brady* argument, the State begins their refutation of Defense's argument that Officer Pasha's mental state is not an element of the charged crime, because it is a reasonable officer standard not the individual officer and their personal apprehension. (Resp. Br. at 37.) Even though the individual officers mental state isn't the standard, it is a factor considered by the jury, and if the officer involved was so scared that he shot at movement rather than an identified individual possessing what the officer reasonably believes to be a weapon, that negates the reasonable officer standard as no crime was committed, and the subsequent charge is an attempt to cover up the officer's negligence.

In the matter at hand, Sgt. Pasha testified to observing a stern expression, gritted teeth, and a dark colored object between the curtain and Mr. Case's shirt at his mid-section. (Trial Tr. At 70-71.) Sgt. Pasha's observations were called into question by the Defense. Further, the central focus of Case's defense was that Sgt. Pasha was so agitated and scared that he shot at

movement and didn't actually see what he testified to observing prior to opening fire.

Evidence that Sgt. Pasha had been shot at **3 months** prior to the unwarranted entry into Mr. Case's home would have directly addressed the Defendant's defense that Pasha was lying in his testimony and was so scared on September 26, 2021, that he shot at mere movement, as evidenced by the BWC footage. (Doc 55.1.) Further, it's not the mere fact that Sgt. Pasha had been shot at previously in his career, but that he had been shot at in such short proximity of time to his shooting of Mr. Case, that makes the evidence exculpatory as it casts doubt on Pasha's testimony and supports the Defense's theory. The information that Sgt. Pasha had been shot at in such proximity to his shooting of Mr. Case is the missing piece of Mr. Case's defense, that Sgt. Pasha was so unreasonably afraid on September 26, 2022, prior to entering Mr. Case's home. As a result of his consuming fear, he fired at the moving curtain as evidenced by his statements at the scene. (Doc 55.1.) It was only after the weapon was found that the four officer's present were able to craft the narrative that Sgt. Pasha saw a stern look, gritted teeth, and a dark colored object he thought to be a weapon. (Doc 55.1 and *Trial Tr.* At 70-71.) This was further evidenced by Chief Sather altering the narrative to DCI over the phone, before even talking to Sgt. Pasha. (Doc 55.1.) The proximity of the two shootings in time explains why Sgt. Pasha was so afraid that night and would have been used to further impeach his perjurious testimony.

Finally, the Defense can only speculate as to whether or not records exist of any therapy or counseling after the event in which Sgt. Pasha was

shot at because nothing of the nature was disclosed. (Resp. Br. at 38.) However, even if no such records exist, because Sgt. Pasha didn't seek counseling after being shot at, the absence of such counseling is just as exculpatory as any record of PTSD, if not more so, as the trauma had clearly not been treated, which directly lead to Sgt. Pasha's fearful behavior when he shot at a moving curtain and nearly killed Mr. Case in his home during a mental health welfare check. (Doc 55.1.)

As to the second prong of the *Illk* test, the State argues that the prosecution affirmed that it did not possess any materials showing Sgt. Pasha had been diagnosed with PTSD. Further, the prosecution stated that it would be "preposterous to propose that part of discovery should entail listing details and names of every case an officer has ever investigated or testified in." (Doc. 134 at 4-5). However, this wasn't just some case Sgt. Pasha had investigated or testified in, but a case in which he had been fired upon merely three months prior to his shooting of Mr. Case. The State was aware of the June 19, 2021, incident and the details of the case, as the prosecution was in the process of prosecuting Mr. Hill for shooting at Sgt. Pasha while Mr. Krakowka was charging and prosecuting Mr. Case in the present matter. Further it was clear from the briefs in support of the motions to suppress and dismiss that Defense had focused on Sgt. Pasha's statements at the scene and his overall exceptional level of fear exhibited in the BWC footage that was significantly greater than the other three officers present at the scene. (Doc 27, 29, & 55.1.) It is reasonable to infer that due to the date of Mr. Hill's trial, Mr. Krakowka was preparing himself and Sgt. Pasha for Hill's trial while also preparing for Case's evidentiary hearing. (Doc 133.)

The Defense is not claiming that an officer's entire investigatory and testimonial history should be included in the discovery. However, if an officer had been involved in a near death shooting just months prior to shooting a man whose welfare the officer was present to check upon, then that should also be disclosed as it carries exculpatory value similar to perjury or falsification of evidence.

In the present case, Sgt. Pasha had not been shot at in year 2 of his 8-year career, but 3 months prior to entering the home of a man in significant mental distress and gunning him down in his closet because Sgt. Pasha saw movement and "let one fly." (Doc 55.1.) That absolutely goes to the credibility of Sgt. Pasha and was suppressed by the State. Testifying to it at trial for the first time is not timely production, and the testimony did not mention the proximity of time of the two events. (Trial Tr. at 118.)

The State argues that records showing that Sgt. Pasha was suffering from PTSD or was unfit for duty on the night of September 26, 2021, weren't produced because they "most likely [don't] exist" and that the information regarding Sgt. Pasha being shot at by a different defendant was not exculpatory. (Resp. Br. at 38.) The State's argument is speculative and glaringly ignores the fact that the absence of such records is evidence in and of itself. Such a lack of counseling or treatment would have brought up several other lines of questioning for the state's chief investigator and expert witness, as well as Sgt. Pasha. If Sgt. Pasha wasn't required to attend any kind of counseling to debrief after being shot at, such information would have further supported defense's argument that Sgt. Pasha was scared and reacted to the movement he saw out of the corner of his eye, resulting in him shooting

at the moving curtain before even identifying that it was Mr. Case in the closet, let alone observing the “dark colored object.”

Sgt. Pasha would have known if he had attended any counseling or debriefing following the incident, even if the prosecutor was not aware of it. Thus Sgt. Pasha’s knowledge of his own counseling or lack thereof was within the possession of the State, as Sgt. Pasha is an agent of the State aiding in the investigation of the charged crime. The Prosecutor had an explicit duty to investigate and disclose the incident and any records of treatment or the lack thereof, all of which is exculpatory evidence. *Gonzales v. Wong*, 667 F.3d 971, 981-982 (9th Cir. 2011). The prosecution suppressed this exculpatory evidence, likely as it was detrimental to the cover-up of Sgt. Pasha’s gross negligence, when Sgt. Pasha intentionally shot at a moving curtain before identifying his target, and then wondering aloud where the mysterious firearm came from, hoping aloud that Mr. Case dropped it. (Doc 55.1 and *Trial Tr.* at 372.)

Regarding the third prong of the *Ilk* test, the State argues that Defense has failed to show that had the evidence been disclosed that there exists a reasonable probability that a different result would have occurred. (*Brief of Appellee*, at 39.) The present case is more akin to *Gonzales* than *Ilk*, as *Ilk* was claiming that additional photos taken of the same scene at a different time of day would have altered the outcome. *State v. Ilk*, 2018 MT 186, ¶ 39, 392 Mont. 201, 422 P.3d 1219. Whereas *Gonzales* was arguing that six withheld psychological reports of the prosecution’s key witness would have had resulted in further impeachment which reasonably could have altered the verdict. *Gonzales*, 667 F.3d at 971. While



the state argued that the defendant was adequately able to impeach Acker at trial and therefore the new evidence was merely cumulative, the court noted that “withheld impeachment evidence does not become immaterial merely because there is some other impeachment of the witness at trial. *Id.* Where the withheld evidence opens new avenues for impeachment, it can be argued that it is still material.” *Gonzales*, 667 F.3d at 984. Although there was other circumstantial evidence, it was Sgt. Pasha’s testimony alone that established Mr. Case exited the curtain in a manner that caused him apprehension of serious bodily injury through what Sgt. Pasha perceived to be a weapon. Testimony that would have been further impeached with the withheld evidence.

The jury was aware of part of the story of Sgt. Pasha having been shot at, but not the important part, the proximity in time between the two events. Nothing else explained Sgt. Pasha’s exceptional fear the evening he shot Mr. Case. (Doc. 55.1.) Had the defense had the information in question, it could have further supported its theory that Sgt. Pasha was overly fearful that night. The proximity in time was the missing piece of the defense’s theory that would have tied it all up for the jury. Having such a glaring hole filled in undoubtedly creates a reasonable probability that the outcome would have been different.

Much like in *Gonzales*, in the present case, Mr. Case’s whole defense theory was that Sgt. Pasha didn’t see what he testified to seeing, but that he was overly fearful for some reason that the defense couldn’t quite explain. Due to Sgt. Pasha’s heightened level of fear that night, he saw movement and opened fire before even identifying his target, let alone observing a dark colored object, or Mr. Case’s expression. The

key weakness of the defense was why was Pasha so fearful the whole time he was on scene, repeatedly expressing his fear of Mr. Case not being injured and a shootout ensuing. (Doc. 55.1.) However, with the suppressed evidence, the picture becomes crystal clear, Sgt. Pasha had been shot at and nearly killed only three months prior to September 26, 2021. It was fear and adrenaline from the June 19, 2021, shooting that came roiling back up the instant it was mentioned Mr. Case was in possession of a firearm. (Doc. 55.1.) Such information would have completed Defense's theory, filling in the rest of the picture the defense was painting for the jury. Such information would reasonably have put the whole case in such a light that the verdict is undermined.

The *Gonzales* court noted that the defendant had:

a colorable argument that the jury believed Acker despite the impeachment evidence presented to them. This argument could rest in part on the fact that Acker was an important witness for the government, especially during the penalty phase, and that '[i]n cases in which the witness is central to the prosecution's case, the defendant's conviction indicates that in all likelihood the impeachment evidence introduced at trial was insufficient to persuade a jury that the witness lacked credibility.'"

*Gonzales*, 667 F.3d at 985 (quoting *Benn v. Lambert*, 283 F.3d 1040, 1055, (9th Cir. 2002)). In its conclusion the *Gonzales* Court held "[w]hile there was other circumstantial evidence, Acker's testimony was the only direct evidence establishing that Gonzales had a premeditated plan to kill a police officer." *Gonzales*, 667 F.3d at 986. It is the same in the present case, the

jury clearly believed Pasha's testimony despite it being impeached by the BWC, and previous statements. However, had defense had the suppressed information, there exists a reasonable probability that further impeachment of Sgt. Pasha could have resulted in a different outcome.

However, had defense had the suppressed information, there exists a reasonable probability that further impeachment of Sgt. Pasha could have resulted in a different outcome.

### CONCLUSION

Mr. Case's conviction and sentence should be overturned as it was based solely upon illegally seized evidence collected during a warrantless home search and seizure of Mr. Case. Although the State urges this Court to adopt a bastardized version of the Federal emergency aid exception, there is no reason for this Court to do so as it is undisputed that the officers did not render immediate aid, but rather waited until they admitted themselves that there was no chance Mr. Case would be alive had he shot himself prior to their arrival. Likewise, the Defense has been able to support its claim that exculpatory evidence, favorable to the Mr. Case's defense, was suppressed by the actions of the prosecution, and had the suppressed evidence been disclosed there exists a reasonable probability that the result of the trial would have been different. Further, the defense had no choice but to raise this argument for the first time in its Reply Brief. Finally, the matter was fully briefed before the lower court. As such, Mr. Case's conviction and sentence should be overturned due to these serious constitutional violations.

Respectfully submitted this 14th day of December 2023.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Reply Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and quoted, indented material; and the word count calculated by Microsoft Word is 4,995, excluding the Cover Page, Table of Contents, Table of Authorities, Certificate of Compliance, Certificate of Service, and Appendices.

DATED this 14th day of December, 2023.

/s/ Nathan D. Ellis

Nathan D. Ellis

*Attorney for Defendant  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of December, 2023, I caused a true and accurate copy of the foregoing **REPLY BRIEF** to be electronically served to:

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I, Nathan Daniel Ellis, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 12-14-2023:

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