

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 20-0382

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

QUINCY SMITH,

Defendant and Appellant.

OPENING BRIEF OF APPELLANT

On Appeal from the Montana Twenty-First Judicial District Court
Ravalli County, the Honorable Howard F. Recht, Presiding

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUE.....1

STATEMENT OF THE CASE.....1

STATEMENT OF THE FACTS2

SUMMARY OF THE ARGUMENT10

STANDARD OF REVIEW11

ARGUMENT12

 I. The district court erred when it denied Quincy’s motion to suppress finding Deputy Monaco did not enter a home or intrude on private property that was afforded an expectation of privacy in a manner that would have required permission or a warrant.....12

 A. Quincy had a reasonable expectation of privacy standing in the curtilage of his residence in front of the garage.12

 B. Deputy Monaco did not have a warrant or warrant exception to enter the curtilage of the residence to search and seize Quincy16

CONCLUSION.....20

CERTIFICATE OF COMPLIANCE.....21

APPENDIX.....22

CERTIFICATE OF SERVICE23

TABLE OF AUTHORITIES

CASES

Minnesota v. Olson,
495 U.S. 91, 110 S. Ct. 1684 (1990).....13

Montana Human Rights Division v. City of Billings
(1982), 199 Mont. 434, P.2d 128312

Olmstead v. United States,
(1927), 277 U.S. 438, 48 S. Ct. 564, 72 L. Ed 944..... 10, 13, 15, 17

State v. Bullock,
272 Mont. 361, 901 P.2d 61 (1995)..... 12, 13, 15, 16, 17, 20

State v. Cooper,
2010 MT 11, 355 Mont. 80, P.3d 63611

State v. Dow
(1992), 256 Mont. 12619

State v. Ellison,
2012 MT 50, 364 Mont. 276, P.3d 64612

State v. Gai,
2012 MT 235, 366 Mont. 408, P.3d 16412

State v. Saale,
2009 MT 95, 350 Mont. 64, P.3d 1220 11, 17, 18

State v. Sorenson
(1979), 180 Mont. 269, 590 P.2d 136.....19

State v. Wagner,
2013 MT 159, 370 Mont. 381, P.3d 28511

State v. Wakeford,
1998 MT 16, 287 Mont. 220, P.2d 106517

MONTANA CONSTITUTION

Art. II § 10..... 10, 12
Art. II § 11.....11

STATEMENT OF THE ISSUES

1. Quincy was a resident at 372 Hidden Valley Rd., Florence, Montana, a five-acre parcel with a house and garage located approximately 350 feet up a private driveway. The property is surrounded by fencing along the property line and a second interior fence around the home that clearly delineates the curtilage of the residence. Visibility of the home and garage is intentionally obstructed from the public by foliage and landscaping. Did Quincy have a reasonable expectation of privacy standing in the curtilage of his residence in front of the garage?

2. Deputy Monaco entered private property without a warrant or permission, drove up a 350-foot driveway through two fence lines without gates, and entered the curtilage of Quincy's residence to investigate a speeding ticket. He was informed the property was private and asked to leave immediately upon arrival. Did exigent circumstances exist to allow warrantless entry?

STATEMENT OF THE CASE

Quincy Smith was charged with DUI first offense, speeding, obstructing an officer, and resisting arrest. Quincy filed a motion to suppress in Ravalli County Justice Court arguing he had a reasonable expectation of privacy on the five-acre property and that warrantless entry to investigate violated his constitutional rights. The motion was denied by Justice of the Peace Jim Bailey prior to the reply brief being filed and without hearing. (App. A). Quincy entered into a plea agreement after the ruling preserving his right to appeal the denial of his motion to suppress. (District Court, Cause No. DC-2020-24, Document 1, Ravalli County Justice Court Record).

The action was transferred to district court, the issue was briefed, and a hearing was held before the Hon. Howard F. Recht of the Montana Twenty-First

Judicial District Court, Ravalli County. The motion was denied after the district court found law enforcement did not enter a home or intrude on private property that was afforded an expectation of privacy in a manner that would have required permission or a warrant. (App. B at 10). Quincy entered into a plea agreement after the ruling preserving his right to appeal the denial of his motion to suppress. (D.C. Doc. 24).

Quincy appeals from the district court decision denying his motion to suppress. (App. B). An aerial view of the 5-acre property located at 372 Hidden Valley Rd., Florence, Montana is attached as Appendix C. (App. C; Ex. 1 admitted 5/18/20 Tr. at 36).

STATEMENT OF THE FACTS

Quincy grew up in the Bitterroot Valley before moving to Oregon to start his career as a golf pro. After 11 years in Oregon and Washington, Quincy and his family decided to move home. Quincy's new employment in Missoula started a few weeks before they could close on their new home, so Quincy moved back to Montana before his family. (5/18/20 Tr. at 80-81). During this time, he lived with his longtime friend, Jacques Hennequin and Jacques' wife, Carli, in their home located at 372 Hidden Valley Road, Florence, Montana.

Quincy was a resident in the home in the weeks before and after his contact with law enforcement, helped with household expenses such as groceries and utilities, and Jacques and Carli believed he had a right to privacy as a resident of the

home. (5/18/20 Tr. at 67, 81-82). Carli testified Quincy was a very neat roommate and even took photos of Quincy's room on April 19, 2019 to send her mother showing how perfect and organized Quincy maintained his room. (5/18/20 Tr. At 65; Ex. 5, 6, and 7 admitted 5/18/20 Tr. at 66).

372 Hidden Valley Road is a five-acre parcel in Ravalli County, Montana with a fence around the property line and an interior fence around the yard, house, and garage. The property is surrounded by foliage and landscaping and is accessed by an approximately 350-foot-long private driveway. The house and garage are not readily visible from Hidden Valley Road. The property has a gate, but it was not closed. The property is not posted with no trespassing signs. (5/18/20 Tr. at 63-64). An aerial map of 372 Hidden Valley showing the layout of the property, curtilage, fence lines, and foliage is attached as Appendix C. (App. C; Ex. 1 admitted 5/18/20 Tr. at 36).

Carli Hennequin testified to privacy of the home shown in Exhibit 1:

MR. SCHULTE: And I have previously entered Exhibit 1, and, Your Honor, could we please provide that to Miss Hennequin.

THE COURT: I am providing the original of Exhibit 1.

Q. (By Mr. Schulte) Do you recognize what I've handed you, Carli?

A. Yes, it looks like a layout of my home.

Q. When did you guys purchase this residence?

- A. October of 2018.
- Q. And will you describe the property that we are looking at.
- A. Yup. It's a five-acre parcel. We have an exterior fence around the five acres. We also have an interior fence. So, got a lot of foliage, trees, very secluded, private; kind of the goal of being out in the country.
- Q. And was that seclusion, that privacy, was that appealing to you when you found this home?
- A. Yes.
- Q. Are there any gates on the property?
- A. There are.
- Q. Where are the gates?
- A. Towards the -- on the driveway, kind of coming in.
- Q. And can you -- if we were to look at Exhibit 1, are they on the driveway right where it turns off Hidden Valley Road? Is it more towards the house?
- A. It's a little bit further up the driveway towards the house. I'd say halfway to three-quarters.
- Q. Does it meet that interior fence that is around the nucleus of the house?
- A. Correct.
- Q. How long is that driveway?
- A. About 350 feet.

Q. Do you believe you have complete privacy when you were standing at your garage?

A. Yes.

Q. Do you believe that anyone would have an expectation of privacy there?

A. Yes.

Q. Would you ask people to leave that area if they were there uninvited?

A. Yes.

(5/18/20 Tr. at 63-64).

Jacques Hennequin testified to the privacy of the home shown in Exhibit 1:

Q. And if you look under your hands there, you will see a photo marked as Exhibit 1. I believe it is still there.

THE COURT: No, it's not. But I'm handing the witness Exhibit 1.

MR. SCHULTE: Thank you, Your Honor.

Q. (By Mr. Schulte) Jacques, what are we looking at in this photo?

A. Overview of our property. It's the first driveway on the left once you turn onto Hidden Valley Road South.

Q. How many acres is the property?

A. Five.

- Q. What sort of fencing exists that we can see in this photo?
- A. It's got 360 degrees of fencing around the perimeter for pastureland, and then it has got an internal perimeter that we have as formal lawn.
- Q. Is that interior perimeter fenced, too?
- A. Yes, yes.
- Q. How long is the driveway?
- A. Approximately 350 feet to the garage, maybe a little further.
- Q. And is there -- I see that there's a lot of foliage around the property.
- A. There has been trees planted to block out neighbors, and, you know, things of that nature, some fruit trees.
- Q. How would you describe the privacy of the nucleus of the home where the house and the garage are located?
- A. It's set back off the road. You really can't see it. You know, depending on certain angles you can kind of see back there, but we try to keep it as private as possible.
- Q. Was that a consideration when you purchased the home?
- A. That was the biggest consideration, yes.
- Q. Why is that important to you?

A. Just privacy. We are excited to have some barnyard animals and stuff, be able to spread out. Just excited to move back to Montana.

(5/18/20 Tr. at 69-71).

On May 15, 2019 Quincy and Jacques were returning home and decided to stop and look at the house that Quincy and his family had just made an offer to purchase. The house was located at 5335 Malek Court, Florence, Montana which was about three-quarters of a mile away from Jacques house where Quincy was living. After spending a few minutes at the house, Quincy and Jacques left to go home, turning eastbound on Hidden Valley Road. (5/18/20 Tr. at 83).

Ravalli County Sheriff Deputy Nicholas Monaco was westbound on Hidden Valley Road. Deputy Monaco observed a vehicle traveling eastbound that he believed was travelling 57 mph in a 40-mph zone. (5/18/20 Tr. at 42). Deputy Monaco activated his lights, turned around, tried to catch up to the vehicle, and observed it turn down a residential driveway. (5/18/20 Tr. at 43). Quincy's vehicle was never visible in Deputy Monaco's cruiser dash cam in the 21 seconds it took him to turn around and enter the private property. (5/18/20 Tr. at 52; Ex. 3 admitted 5/18/20 Tr. at 58 (video 1-2019-05-15_21-46-24_13-27)).

Quincy and Jacques did not see Deputy Monaco's lights until they had parked at home and exited the vehicle. They did not accelerate to avoid Deputy Monaco or extinguish the lights attempting to go unnoticed. (5/18/20 Tr. at 73, 83-84). Deputy Monaco drove up the private driveway, crossed two fence lines, entered the curtilage

of the home, and approached the vehicle which was now parked next Jacques's jeep in front of the garage on the property. (5/18/20 Tr. at 53-54, 59; Ex. 3 admitted 5/18/20 Tr. at 58 (video 1-2019-05-15_21-46-24_13-27)). Deputy Monaco encountered Quincy and Jacques in front of the garage having already exited Quincy's vehicle. Quincy and Jacques did not enter the residence and lock the doors, instead, they waited for Deputy Monaco to exit his vehicle, informed him it was private property, and asked him to leave. (5/18/20 Tr. at 55, 73-74, 84).

Deputy Monaco called in Quincy's vehicle as a "blackout out at res" at 22:05:13. (Ex. 2 admitted 5/18/20 Tr. at 32). Ravalli County Sheriff Sergeant Jered Guisinger, who arrived on scene several minutes later, testified that "blackout" was a synonym of "parked" in this situation. (5/18/20 Tr. at 33). At 22:06:21, Deputy Monaco was admittedly investigating a speeding ticket but requested backup in "code protocol," the highest protocol possible, with lights and sirens. (5/18/20 Tr. at 55; Ex. 2 admitted 5/18/20 Tr. at 32). Sergeant Guisinger arrived several minutes later, during which time Deputy Monaco was repeatedly asked to leave the private property and return with a warrant. (5/18/20 Tr. at 55, 73-74, 84; Ex. 2 admitted 5/18/20 Tr. at 32.).

Deputy Monaco testified:

Q. Now, both Mr. Smith and Mr. Hennequin asked you to leave the property, correct?

A. I believe so.

- Q. And they asked you multiple times?
- A. I can't remember if they requested to leave or if they were just advising that it was private property.
- Q. Did you take their advisement that it was private property that they wanted you to leave?
- A. I guess so, yes.
- Q. And it was very clear they wanted you to leave?
- A. Oh, yes.
- Q. From the very beginning?
- A. Sure.
- Q. And did they ask you to get a warrant if you wanted to come back?
- A. Later in the contact they did.
- Q. Did you ever get a warrant?
- A. I obtained a telephonic search warrant for the Defendant's blood, but not a warrant with regard to any other aspect of the stop.
- Q. But you had the ability to get a warrant, as evidenced by the fact that you received one for the blood?
- A. Yes.

(5/18/20 Tr. at 55-56).

Deputy Monaco continued to engage Quincy and Jacques for several minutes, despite repeated and ongoing requests to vacate the property, while Sergeant Guisinger responded with lights and sirens in “code protocol.” (5/18/20 Tr. at 55, 73-74, 84; Ex. 2 admitted 5/18/20 Tr. at 32). Sergeant Guisinger arrived on scene and exited his patrol vehicle. Quincy was told he was under arrest by Deputy Monaco. Quincy turned around and raised his hands in the air and Sergeant Guisinger immediately shot Quincy in the back with his taser. Sergeant Guisinger did not issue any warning, testified he was on scene less than 10 seconds, and his body camera showed him being out of his cruiser only 5 seconds, before tasing Quincy. (5/18/20 Tr. at 37-38; Ex. 3 admitted 5/18/20 Tr. at 58 (video 19OFF0955-19 BC (1))).

Quincy was searched, seized, and cited.

SUMMARY OF THE ARGUMENT

Quincy had a reasonable expectation of privacy standing in the curtilage in front of the garage at his residence. Mont. Const. Art. II § 10; *Olmstead v. United States*, (1927), 277 U.S. 438, 466, 48 S. Ct. 564, 568, 72 L. Ed 944, 951. The house and garage sit on 5-acres, have an outer fence around the entire property line, and an inner fence around the house and garage delineating the curtilage. The property is surrounded by foliage and landscaping and can only be accessed by an approximately 350-foot-long private driveway. If you do not have a right to privacy

in the heart of your five-acre home in Ravalli County, where do you have a right to privacy in Montana?

Deputy Monaco violated Quincy's constitutional right to be free from unreasonable search and seizure when he made warrantless entry into the property without permission and searched and seized Quincy. Mont. Const. Art. II § 11. No exigent circumstances existed to allow warrantless entry into the property and this Court has expressly rejected the notion that possibly being intoxicated and trying to elude officers are exigent circumstances that allow warrantless entry. *State v. Saale*, 2009 MT 95, ¶¶ 4, 16, 350 Mont. 64, 204 P.3d 1220.

The evidence gathered against Quincy in violation of his constitutional rights must be suppressed.

STANDARD OF REVIEW

This Court reviews the grant or denial of a motion to suppress to determine whether the lower court's findings of fact were clearly erroneous and whether the court correctly interpreted and applied the law to those facts. *State v. Wagner*, 2013 MT 159, ¶ 9, 370 Mont. 381, 303 P.3d 285.

A finding of fact is clearly erroneous if it is not supported by substantial credible evidence, if the lower court has misapprehended the effect of the evidence, or if this Court's review of the record creates a firm conviction that a mistake was made. *State v. Cooper*, 2010 MT 11, ¶ 5, 355 Mont. 80, 224 P.3d 636 (citation omitted).

This Court reviews lower court rulings that are appealed to district court as if the appeal originally had been filed in this Court. *State v. Gai*, 2012 MT 235, ¶ 11, 366 Mont. 408, 288 P.3d 164 (citing *State v. Ellison*, 2012 MT 50, ¶ 8, 364 Mont. 276, 272 P.3d 646). This Court examines the record “independently of the district court’s decision” to review the trial court’s findings, conclusions, and ruling. *Ellison*, ¶ 8.

ARGUMENT

- I. The district court erred when it denied Quincy’s motion to suppress finding Deputy Monaco did not enter a home or intrude on private property that was afforded an expectation of privacy in a manner that would have required permission or a warrant.
 - A. Quincy had a reasonable expectation of privacy standing in the curtilage of his residence in front of the garage.

“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.” Mont. Const., Art. II § 10. Montana has a strong tradition of respect for the right to individual privacy and has recognized that this section grants rights beyond that inferred from the United States Constitution. *State v. Bullock*, 272 Mont. 361, 383, 901 P.2d 61, 75 (1995) (citing *Montana Human Rights Division v. City of Billings* (1982), 199 Mont. 434, 649 P.2d 1283).

The United States Supreme Court has concluded that status as an overnight guest is alone enough to show that an expectation of privacy exists in the home that society is prepared to recognize as reasonable. *Minnesota v. Olson*, 495 U.S. 91, 96-

97, 110 S. Ct. 1684, 1688 (1990). Quincy far exceeds the standard of overnight guest articulated in *Olson* and had an expectation of privacy as a resident of 372 Hidden Valley Road. Quincy was living in the home for an extended period, contributed monetarily to the home, and Carli and Jacques considered him a resident with a privacy interest. (5/18/20 Tr. at 67, 81-82).

The Fourth Amendment of the United States Constitution sets the floor for Montana, providing protection from invasion of one's house or curtilage. *Olmstead v. United States*, (1927), 277 U.S. 438, 466, 48 S. Ct. 564, 568, 72 L. Ed 944, 951. Montana has further extended the right to privacy on private land, holding a person may have an expectation of privacy in an area of land that is beyond the curtilage which the society of this State is willing to recognize as reasonable, and that where that expectation is evidenced by fencing, "No Trespassing," or similar signs, or "by some other means [which] indicates unmistakably that entry is not permitted." *Bullock*, 272 Mont. at 384. Entry by law enforcement officers requires permission or a warrant. *Bullock*, at 384.

Quincy was in the curtilage of his residence where he had a reasonable expectation of privacy. He was standing in front of the garage within the inner most of two fences, which clearly delineated the curtilage of the residence, on a five-acre parcel in Ravalli County, Montana. The five acres had an exterior fence on the property line, was surrounded by foliage and landscaping to block view, was not readily visible from the public road, and could only be accessed by driving up a 350-

foot private driveway. (5/18/20 Tr. at 63-64, 69-71). Carli testified the property has “a lot of foliage, trees, very secluded, private; kind of the goal of being out in the country.” Jacques testified the privacy of the home was “the biggest consideration” when he and Carli purchased the home. (5/18/20 Tr. at 63, 70).

Deputy Monaco drove 350-feet up the fenced driveway and into the curtilage of the property within the interior fencing without permission or a warrant. (5/18/20 Tr. at 53-56, 59; Ex. 3 admitted 5/18/20 Tr. at 58 (video 1-2019-05-15_21-46-24_13-27)). Immediately upon arrival, Deputy Monaco was informed he was on private property and asked to leave. (5/18/20 Tr. at 55-56). Deputy Monaco was hesitant to admit the private property he had entered was more secluded than other homes in the subdivisions along Hidden Valley Road, testifying:

Q. And Mr. Lower asked you if this house is more private than, let's say, others. Earlier on Hidden Valley Road, there's many more subdivision type houses, correct?

A. Yes.

Q. And those houses are much closer to the street?

A. Sure.

Q. With immediate sight lines in a very short distance.

A. Okay.

Q. And this is not one of those homes, is it?

A. It is not one of the homes that are before this home.

Q. It's a very different style of property, correct?

A. I couldn't tell you in the moment, sir. I don't know, aside from the picture you are showing me here. It does appear that the driveway to this home is longer than other driveway before it.

Q. And in the moment you drove all the way up that driveway, correct?

A. That's right.

Q. Through two separate fence lines?

A. I couldn't tell you about fence lines, Counselor. I don't know what the fence lines were.

Q. This home is not visible from Hidden Valley Road, is it?

A. I don't know without looking at it in – I don't know.

(5/18/20 Tr. at 55-56).

Analysis regarding “No Trespassing,” or similar signs, or “by some other means [which] indicates unmistakably that entry is not permitted” pursuant to *Bullock* is not necessary because Quincy was standing in the curtilage of his residence in front of the garage. Quincy had an expectation of privacy and enjoyed protection from invasion. *Olmstead*, 277 U.S. at 466, 48 S. Ct. at 568, 72 L. Ed at 951. To the extent the Court requires evidence of some other means unmistakably

indicating entry was not permitted, the private design of the property, coupled with express instructions given to Deputy Monaco satisfy *Bullock*. Deputy Monaco was expressly instructed he was on private property and asked to leave immediately upon arrival. (App. C; Ex. 1 admitted 5/18/20 Tr. at 36; 5/18/20 Tr. at 55-56).

Deputy Monaco violated Quincy's right to privacy articulated in Article II, Section 10 of the Montana Constitution. Deputy Monaco's entry into the curtilage of Quincy's residence required permission or a warrant. *Bullock*, at 384. Deputy Monaco did not have either. (5/18/20 Tr. at 55-56). Quincy's clear and repetitive requests to vacate the curtilage of his residence were ignored and Quincy was tased for asserting his constitutional rights by Sergeant Guisinger while he had his back turned and his hands in the air. (5/18/20 Tr. at 37-38; 5/18/20 Tr. at 55-56; Ex. 3 admitted 5/18/20 Tr. at 58 (video 19OFF0955-19 BC (1))).

Deputy Monaco's warrantless entry into the curtilage of Quincy's residence against his express instructions violated Quincy's constitutional rights. The district court erred when it found Deputy Monaco did not enter a home or intrude on private property that was afforded an expectation of privacy in a manner that would have required permission or a warrant. (App. B at 10).

- B. Deputy Monaco did not have a warrant or warrant exception to enter the curtilage of the residence to search and seize Quincy.

The Fourth Amendment of the United States Constitution and Article II, Section 11, of the Montana Constitution, protect people from unreasonable searches

and seizures. *State v. Wakeford*, 1998 MT 16, ¶ 21, 287 Mont. 220, 953 P.2d 1065. Warrantless searches and seizures conducted inside a home are per se unreasonable, subject to a few carefully drawn exceptions. *Wakeford*, ¶ 21. The constitutional protections extend to the curtilage of a residence. *Olmstead*, 277 U.S. at 466, 48 S. Ct. at 568, 72 L. Ed at 951.

Exigent circumstances are an exception to the warrant requirement. *Wakeford*, ¶ 22. Exigent circumstances are “those that would cause a reasonable person to believe that entry (or other 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.” *Wakeford*, ¶ 24. The State bears the heavy burden of showing the existence of exigent circumstances. *Wakeford*, ¶ 24.

Entry by law enforcement officers requires permission or a warrant. *Bullock*, at 384. Deputy Monaco’s warrantless entry into the curtilage of Quincy’s residence violated his constitutional rights. An almost identical issue was heard in *State v. Saale* 2009 MT 95. Saale was involved in a one vehicle roll-over accident in Clinton, Montana after leaving the Turah Pines Bar. Various individuals witnessed the accident and exited their vehicles to give aid. The witnesses helped Saale out of her vehicle, which was on its side, and observed her to be highly intoxicated but apparently not seriously injured. Saale’s husband, Chris Saale, arrived, placed Saale in his truck, and drove away from the area. Law enforcement arrived on scene within

minutes of the crash and were informed by witnesses that Saale had left the area. Subsequent investigation revealed that Saale had gone to her nearby residence. *State v. Saale*, 2009 MT 95, ¶ 3, 350 Mont. 64, 65-66, 204 P.3d 1220, 1221.

Members of the Missoula County Sheriff's Department and the Clinton Rural Fire Department traveled to Saale's house, where they were met by Saale's husband, Chris. Chris refused to allow anyone into their house and refused to bring Saale outside. Officers determined they could enter the house without a warrant due to the exigent circumstances of the driver possibly being intoxicated and trying to elude officers, and due to the prospect Saale could be severely injured from the accident. *Saale*, ¶ 4. This Court rejected the notion that possibly being intoxicated and trying to elude officers were exigent circumstances that allowed a warrantless entry into a home. *Saale*, ¶¶ 4, 16.

The *Saale* precedent is directly on point and controlling. No exigent circumstances existed to allow Deputy Monaco's warrantless entry into the curtilage of Quincy's residence. Quincy was in an area where he had an expectation of privacy and no physical evidence existed that could be destroyed because no blood sample had been extracted from Quincy's body. *Saale*, ¶ 11. Deputy Monaco entered the curtilage of Quincy's residence without a warrant or permission and against his express instructions even though he had the ability to obtain a warrant and did in fact obtain a warrant later in the encounter for Quincy's blood. *Saale*, ¶ 13. Deputy Monaco testified:

Q. But you had the ability to get a warrant, as evidenced by the fact that you received one for the blood?

A. Yes.

(5/18/20 Tr. at 56).

In attempting to rehabilitate Deputy Monaco's contact with Quincy, the State argued the hot pursuit exception to the warrant requirement in district court articulated in *State v. Dow* (1992), 256 Mont. 126. In *Dow*, a victim was raped and immediately called law enforcement who followed her assailant's tracks in fresh snow back to his hotel room. Law enforcement knocked on the door, Dow answered, and they entered the room and discovered the boots with identical treading drying on the radiator. *State v. Dow* (1992), 256 Mont. 126, 128, 844 P.2d 780. In discussing the hot pursuit exception, the Court noted that "the theory is not available to peace officers unless a felony has been committed and the suspect is fleeing." *Dow*, 256 Mont. at 130 (citing *State v. Sorenson* (1979), 180 Mont. 269, 273, 590 P.2d 136, 139).

Deputy Monaco admitted he was investigating a speeding ticket and was not investigating a felony. (5/18/20 Tr. at 55, 58). Quincy did not flee, instead engaging Deputy Monaco in the curtilage of his residence in front of the garage and asked him to leave. (5/18/20 Tr. at 55-56). The hot pursuit exception to the warrant requirement is inapplicable to the case at bar.

Deputy Monaco's warrantless entry into the curtilage of Quincy's residence against his express instructions violated Quincy's constitutional right to be free from unreasonable search and seizure. The district court erred when it found Deputy Monaco did not enter a home or intrude on private property that was afforded an expectation of privacy in a manner that would have required permission or a warrant. (App. B at 10).

CONCLUSION

Entry by law enforcement officers requires permission or a warrant. *Bullock*, at 384. Deputy Monaco violated Quincy's constitutional rights to privacy and to be free from unreasonable search and seizure when he entered the curtilage of Quincy's residence and all evidence must be suppressed. Quincy respectfully requests the Court reverse the district court's denial of his motion to suppress.

Respectfully submitted this 19th day of February 2021.

By: /s/ Dwight J. Schulte
Dwight J. Schulte
Attorney for Appellant

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 4,515 excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

By: /s/ Dwight J. Schulte
Dwight J. Schulte

APPENDIX

Justice Court	Order Denying Defendant’s Motion to Suppress Blood Test Results, Motion to Compel Discovery and Motion to Suppress November 22, 2019	App. A
District Court	Opinion & Order May 26, 2020	App. B
Exhibit 1	Arial View of 372 Hidden Valley Road May 18, 2020 Hearing	App. C

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Motion for Extension of Time and Affidavit in Support to be emailed, hand-delivered and/or mailed to:

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Dated this 19th day of February 2021.

By: /s/ Dwight J. Schulte
Dwight J. Schulte
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Dwight J. Schulte, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 02-19-2021:

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