IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19-0070

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ARTHUR RAY PEOPLES,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Robert B. Allison, Presiding

APPEARANCES:

AUSTIN KNUDSEN
Montana Attorney General
C. MARK FOWLER
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
cfowler@mt.gov

TRAVIS R. AHNER
Flathead County Attorney
ALISON E. HOWARD
Deputy County Attorney
820 S. Main
Kalispell, MT 59901

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

CHAD WRIGHT
Appellate Defender
KATHRYN HUTCHISON
Assistant Appellate Defender
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147

ATTORNEYS FOR DEFENDANT
AND APPELLANT

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STATEMENT OF THE ISSUE

Whether district court correctly denied Peoples' motion to suppress evidence discovered in Peoples' apartment.

STATEMENT OF THE CASE

Appellant Arthur Ray Peoples appeals his probation revocation entered by Flathead County District Court, the Honorable Robert B. Allison, presiding. The underlying criminal matter began in 2002 when a Wal-Mart employee saw Peoples buy an unusual amount of Pseudoephedrine from the Wal-Mart Pharmacy. *State v. Peoples*, 2005 MT 3N, ¶¶ 4-6 (January 18, 2005). Police later stopped Peoples' car, and officers observed syringes, baggies containing a white substance, and other drug-related evidence in plain view inside the car. *Id*. A subsequent warrant search of Peoples' car resulted in the discovery of nearly all the precursors and materials necessary to produce methamphetamine. *Id*. On February 26, 2003, a Flathead County jury convicted Peoples of operating a clandestine laboratory and of possessing methamphetamine. The sentencing court gave Peoples, who had two prior convictions for the sale of dangerous drugs, concurrent sentences of twenty years in the Montana State Prison, with five years suspended.

While serving his suspended sentence, Peoples several times admitted, or was discovered to be, using methamphetamine. On March 16, 2018, Peoples failed

to make his residence open to a home visit by refusing to open the door to his probation officer (PO). Forced entry was required, and Peoples was located inside his residence, where methamphetamine was found in Peoples' possession. Peoples moved to suppress the evidence seized at his residence, claiming the forced entry had been unjustified. The district court, after conducting a hearing, denied Peoples' motion. The district court concluded Peoples had violated three probationary terms as alleged by the State, and the court revoked Peoples' suspended sentence. (D.C. Doc. 122.) The court sentenced Peoples to the Department of Corrections for four years and three months, with credit for 195 days of time served. (*Id*.)

STATEMENT OF THE FACTS

I. Peoples' post-release supervision history

On August 8, 2008, Peoples was paroled from his custodial sentence to Missoula Probation and Parole. Following his initial parole release, Peoples was returned many times to prison for parole violations. (D.C. Doc. 83 at 1, detailing separate parole violations in 2010, 2013, 2015, 2016.) When Peoples' prison term expired, he transitioned to serving his remaining suspended time; he got a job, found a residence, and, after his 2016 violation, was violation-free until June 1, 2017. (*Id*. at 1-3) On that day, Peoples admitted to Probation Officer Sam Stricker

that he had used methamphetamine on multiple occasions since his release. Stricker directed him to attend self-help three times per week. (*Id*.)

Two months later, Peoples admitted using meth daily. Stricker put Peoples on an increased reporting schedule and required him to obtain a chemical dependency evaluation and to start daily self-help. (*Id*.) On September 12, 2017, because Peoples had admitted to additional meth use, Peoples was referred to treatment, placed on increased reporting schedule, restricted on travel, and placed on an increased drug testing regimen. (*Id*.)

In October 2017, Peoples again admitted to using meth. (*Id*.) The DOC conducted an intervention hearing, the result of which placed Peoples in jail for four days with an additional sixteen days in jail suspended; Peoples was put in the Enhanced Supervision Program and directed to attend daily self-help sessions. (*Id*.) Peoples continued the Enhanced Supervision Program, eventually discharging successfully despite once providing a positive test for opiates. (*Id*.) On January 3, 2018, Intensive Outpatient Services discharged Peoples as unsuccessful for his continued unexcused absences from the group. (*Id*.)

II. The March 16, 2018, home visit that required forced entry

Stricker's decision to conduct a home visit on March 16, 2018, and the way the home visit required by clear necessity a forced entry into Peoples' apartment,

were intensely contested matters at the suppression hearing. (*See* 9/21/18 Supp. Hr'g Tr. at 4-52.) Stricker had learned from Peoples' ex-wife, who had proven to be a reliable source of information, that Peoples was not only using meth again, but that he may have overdosed. (*Id*. at 14-15.) The ex-wife also said she had seen "a large amount of blood in his apartment." (*Id*. at 14:20-21.) Stricker brought others with him: two other POs and Agent Shane Meinhold of the U.S. Marshals Service. (*Id*. at 15-16.) Stricker had Meinhold present because, based on a consultation with a DOC supervisor, forced entry might have been required and marshals are better trained at forced entries (such as kicking in doors). (*Id*. at 15-16.)

Entry by physical force proved unnecessary. Stricker knocked on Peoples' door for a long time, also loudly announcing who they were. (*Id*. at 19.) Peoples failed to respond. Then Stricker simply asked the property management company for a key to Peoples' residence. (*Id*. at 18.) The manager complied by supplying to law enforcement a key to Peoples' apartment. (*Id*. at 18.) Stricker testified that the use of a key for entry is still considered a "forced entry" under DOC policy, even though Stricker's entry into the residence was neither forceful nor violent. (*See id*. at 17-18.) The front door was simply opened with the key, and Stricker and others then entered the residence. (*Id*. at 18.)

Law enforcement discovered Peoples seated on his bed, apparently conscious but naked, and near him were drug paraphernalia and a white crystalline

substance that later proved to be meth. (*Id*. at 19.) They handcuffed Peoples to his bed. (*Id*. at 46.) At one point guns had been drawn, but they were reholstered by the time they handcuffed Peoples. (*Id*. at 46:14.) Because of the suspected meth, probable cause existed that the crime of felony possession had been committed, Stricker called the Missoula Police Department. (*See id*. at 19-20.) Because blood was also found in the apartment, Stricker's coworker called the Missoula County Sheriff's Office. (*Id*. at 20.) Soon afterward, Peoples was booked on new felony charges. (*Id*. at 21-23.) The State will discuss additional facts on the record in the arguments that follow.

SUMMARY OF THE ARGUMENT

Peoples asserts that a racially-biased PO "orchestrat[ed] a multi-agency forced entry search" that made a "violent intrusion" into his apartment after the PO "coax[ed] and "coerced" Peoples' landlord into helping them break into the house. (Opening Br. at 10, 13, 16, 21, 24-25.) The record belies these factual inaccuracies and exaggerations.

The totality of the circumstances establishes that the PO had reasonable suspicion to conduct a probationary search of Peoples' residence, as supported by substantial evidence. Peoples was on probation, and since 2003 had been on notice that he was subject to a warrantless search of his person, residence, and vehicle

upon reasonable suspicion. He was repeatedly sanctioned to increased reporting, chemical dependency treatment, self-help meetings, restricted travel, jail time, and increased drug testing. A prior search of his residence, not in dispute in this appeal, revealed that he was still using methamphetamine and was in possession of drug paraphernalia. Peoples repeatedly used meth both while on probation and parole. The PO learned from Peoples' ex-wife (whose credibility had been previously demonstrated) that Peoples was using meth, that there was a lot of blood in Peoples' residence, and that he may have overdosed. The PO arrived at Peoples' apartment, loudly knocked and announced himself, but received no answer. A key was obtained from the building management, and the officers entered Peoples' residence. Peoples was located on his bed with a bag of a white crystalline substance near him in plain view.

ARGUMENT

The district court correctly denied Peoples' motion to suppress evidence discovered in Peoples' apartment.

A. Applicable law

1. Standard of review

This Court reviews a district court's ruling on a motion to suppress to determine whether the court's underlying factual findings were clearly erroneous and whether the court's interpretation and application of the law were correct.

State v. Conley, 2018 MT 83, ¶ 9, 391 Mont. 164, 415 P.3d 473. Findings of fact are clearly erroneous if they are not supported by substantial credible evidence, if the court misapprehended the effect of the evidence, or if this Court's review of the record leaves a definite or firm conviction that a mistake has been made. *Id*.

2. Constitutional and statutory provisions

Montana's Constitution article II, section 11, and the Fourth and Fourteenth Amendments of the United States Constitution protect citizens from unreasonable searches and seizures. *See* Mont. Const. art. II, § 11; U.S. Const. amends. IV, XIV. Additionally, the Montana Constitution provides that the right of individual privacy shall not be infringed without the showing of a compelling State interest. Mont. Const. art. II, § 10. *State v. Elison*, 2000 MT 288, ¶ 46, 302 Mont. 228, 14 P.3d 456 ("Montana's unique constitutional language affords citizens a greater right to privacy, and, therefore, provides broader protection than the Fourth Amendment in cases involving searches of private property.").

A search typically violates the Fourth Amendment if it is not conducted pursuant to a validly issued warrant supported by probable cause. *Katz v. United States*, 389 U.S. 347, 357 (1967). Both federal and state law acknowledge certain specific exceptions to the need for a warrant. *California v. Acevedo*, 500 U.S. 565, (1991); *State v. Evjen*, 234 Mont. 516, 765 P.2d 708 (1988); Mont. Code Ann. § 46-5-101 ("A search of a person, object, or place may be made and evidence,

contraband, and persons may be seized" when the search is conducted pursuant to a valid search warrant or "in accordance with judicially recognized exceptions.").

One such exception is a search pursuant to a person's conditions of probation, which does not necessarily violate the Fourth Amendment when conducted pursuant to state law and supported by reasonable suspicion to believe contraband might be found. *Griffin v. Wis.*, 483 U.S. 868 (1987) (holding that the need for flexibility within the probation system and the special relationship existing between a probationer and his PO justified departing from the usual warrant requirement); *United States v. Wryn*, 952 F.2d 1122, 1124 (9th Cir. 1991) (reasonable suspicion also may be established by narrowly tailored restrictions included within a probation agreement).

The same is true under Montana's Constitution. *See State v. Burke*, 235 Mont. 165, 766 P.2d 254 (1988) (adopting "reasonable cause" warrantless search standard for POs from *Griffin*, supra); Mont. Admin. R. 20.7.1101(7) (establishing probation or parole condition that, upon reasonable cause, the probationer shall submit to a search of his residence by a PO at any time without a warrant). As this Court has explained, exceptions are allowed "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'" *State v. Boston*, 269 Mont. 300, 304,

889 P.2d 814, 816 (1994) (citations omitted) (need to supervise probationers constitutes "special needs"); *Burke*, 235 Mont. at 169-70, 766 P.2d at 256.

Moreover, in order to supervise a probationer, a PO is granted a "degree of flexibility" given his awareness of the original offense and history of working with the probationer, and, because of this expertise, "the probation officer [is] in a far superior position to determine the degree of supervision necessary in each case." *Burke*, 235 Mont. at 169, 766 P.2d at 256. Further, a PO's expertise in supervising a probationer is relevant when evaluating the scope of a probation search and it is also recognized that "delay associated with obtaining a warrant plus the greater evidentiary burden would . . . substantially inhibit the effectiveness of the probation system." *Id*.

B. The State met its burden of showing a justified warrantless search conducted in a constitutionally compliant manner.

1. The probation search was supported by reasonable suspicion.

In Montana, a warrantless search initiated by a defendant's PO pursuant to the terms of his probation does not violate a probationer's constitutional rights. *State v. Small*, 235 Mont. 309, 310, 767 P.2d 316, 317 (1989). There must be a factual foundation justifying a probationary search, and the search must not be used as an instrument of harassment or intimidation. *State v. Fischer*, 2014 MT 112, ¶ 11, 374 Mont. 533, 323 P.3d 891 (citing *Burke*, 235 Mont. at 171, 766 P.2d

at 257). A PO "must be able to supervise the probationer, and upon his judgment and expertise, search the probationer's residence or cause it to be searched." *Fischer*, ¶¶ 13, 17; *Burke*, 235 Mont. at 171, 766 P.2d at 257. The applicable standard for a warrantless probationary search is "reasonable suspicion," which this court has explained is "substantially less than the probable cause standard, because of the probationer's diminished expectation of privacy." *Fischer*, ¶ 11 (citing *State v. Moody*, 2006 MT 305, ¶ 12, 334 Mont. 517, 148 P.3d 662). Whether reasonable grounds exist to conduct a probationary search is a factual inquiry determined by the totality of the circumstances. *Fischer*, ¶ 11; *State v. Smith*, 2008 MT 7, ¶ 15, 341 Mont. 82, 176 P.3d 258, *abrogated on other grounds, State v. Stops,* 2013 MT 131, 370 Mont. 226, 301 P.3d 811; *State v. Fritz*, 2006 MT 202, ¶ 10, 333 Mont. 215, 142 P.3d 806.

Here, the totality of the circumstances establish that Stricker had reasonable suspicion to conduct a probationary search of Peoples' residence. This conclusion is supported by the following facts observed by the district court and supported by substantial evidence. Peoples was on probation, and since 2003 had been on notice that he was subject to a warrantless search of his person, residence, and vehicle upon reasonable suspicion. (D.C. Doc. 61, 2003 Judgment and Sentence, at 4:11-16.) He was repeatedly sanctioned to increased reporting, chemical dependency treatment, self-help meetings, restricted travel, jail time, and increased

drug testing. He failed to complete Intensive Outpatient Services for unexcused absences.

Just a month prior to these allegations occurring, a search of his residence revealed that he was still using methamphetamine and was in possession of drug paraphernalia. Peoples knew his status as a probationer and knew of his noncompliance by continuing to use illegal drugs and failing to complete the requirements set out by his PO; Peoples repeatedly used meth while both on probation and parole, as evidenced by his parole violations, dirty UAs, multiple admissions of illegal drug use in most of the months of the previous nine months before the search. A February 8, 2018, home visit to Stricker of Peoples' residence revealed that he possessed drug paraphernalia and he admitted he had been using meth. A day before the March 16, 2018, home visit, Stricker learned from Peoples' ex-wife (whose credibility had been previously demonstrated) that Peoples was using meth, that there was a lot of blood in Peoples' residence, and that he may have overdosed. Stricker believed he had reasonable cause to conduct a search, and he anticipated a forced entry; for that reason, Stricker was accompanied by an agent from the U.S. Marshals Service. They were later joined by City of Missoula Police Officers, as there was evidence of a new crime, and Missoula County Sheriff's Officers to investigate the blood evidence. Stricker arrived at Peoples' apartment, loudly knocked and announced himself, but received no answer; a key

was obtained from the building management, and the officers entered Peoples' residence. Peoples was located on his bed with a bag of a white crystalline substance near him in plain view.

The district court's findings are "supported by substantial evidence" and the court did not "misapprehend[ed] the effect of the evidence." *See Conley*, ¶ 9. Nor does the record leave a definite or "firm conviction that a mistake has been made." *Id*. The totality of these facts and circumstances supports the district court's conclusion of law: that Stricker had reasonable suspicion to conduct a probation search at Peoples' residence, which was based on a correct interpretation and application of the law. *See Conley*, ¶ 9; *Fischer*, ¶ 11 ("reasonable suspicion" is "substantially less than the probable cause standard").

2. The probation search did not exceed its scope.

This Court has recognized that a PO's expertise and understanding of the nature of a probationer's offense and history is relevant when considering the scope of a probation search. This rationale has been consistently affirmed regarding the physical parameters of a probation search. *See, e.g., Burke*, 235 Mont. at 169-70, 766 P.2d at 257; *Boston*, 269 Mont. at 305-06, 889 P.2d at 817; *Fritz*, ¶ 11; *Smith*, 2008 MT 7; and *Conley*, supra.

Given Officer Stricker's experience, and his awareness of Peoples' conviction history and repeated relapses, his entering Peoples' residence with a key

was justified. Stricker was in the best position to determine whether the entry was reasonably necessary to discover the contraband, for the rehabilitation of the offender, for the protection of society, and for the protection of Peoples. In *State v. Burke*, 235 Mont. at 169, 766 P.2d at 256, this Court stated:

> The probation officer acts upon a continued experience with the probationer, with knowledge of the original offense, and with the probationer's welfare in mind. Because of his expertise, we view the probation officer in a far superior position to determine the degree of supervision necessary in each case.

A probationer expects to be intensively supervised, including by means of routine, random house calls. Entering a probationer's residence to ascertain his whereabouts and safety is reasonable, particularly one with Peoples' history of addiction and law-breaking. Stricker's violation report, which was incorporated into the State's petition for revocation, similarly provided that Peoples had "deliberately made [his] whereabouts unknown" and other "reasonable efforts were made to locate" Peoples but had "been unsuccessful." (D.C. Doc. 83.)

Contrary to Peoples' startlingly inaccurate assertions in his opening brief that he was cooperatively compliant with Stricker, the record shows Peoples was chronically and progressively noncompliant with his probation. He was continually relapsing into drug use, so much so, and with such increasing frequency, that Peoples was endangering his own life. His credible ex-wife reported Peoples may have overdosed. *Cf. Boland v. State*, 242 Mont. 520, 792 P.2d 1 (1990) (an

arresting officer may rely on information supplied by a reliable third person). Stricker acted reasonably and responsibly and when he determined Peoples' welfare required entering his premise after Peoples refused to answer his door to Stricker's loud knocking and announcements of his presence.

In addition, failure to diligently supervise a probationer or parolee may threaten the safety of the public, and expose the State to civil liability for the reasonably foreseeable consequences of a PO's negligence. *Starkenburg v. State*, 282 Mont. 1, 16-19, 934 P.2d 1018, 1027-29 (1997). Stricker knew Peoples' original crime was operating a clandestine methamphetamine lab, a consideration which, if Peoples manufactured his own meth, would have created a dangerous, toxic environment for Peoples and the surrounding apartments. *See United States v. Layne*, 324 F.3d 464, 470-71 (6th Cir. 2003) (despite there being no apparent evidence of actual or "imminent" harm, the court of appeals upheld defendant's sentencing enhancement based on the "inherent" hazards resulting from the storage and use of several highly toxic and flammable chemicals used to make methamphetamine); *United States v. Whited*, 473 F.3d 296, 299 (6th Cir. 2007) ("[M]any of the chemicals involved in the production of methamphetamine are toxic, inherently dangerous, highly flammable, and pose a serious risk to those who inhale them.") (citations and internal quotation marks omitted); *United States v. Chamness*, 435 F.3d 724, 727 (7th Cir. 2006) ("Coleman fuel is flammable and can

be explosive. Muriatic acid is toxic and can cause severe burns. The acid and salt are combined to create hydrochloric acid, and the evidence before the district court indicated such an acid is a strong irritant of the eyes, mucous membranes, and skin.") (internal citations omitted); *see also State v. Trossman*, 2009-NMSC-034, ¶ 23, 146 N.M. 462, 472, 212 P.3d 350, 360 (because of the hazards inherent in methamphetamine production and the likelihood that an entire house used in processing methamphetamine could become contaminated, police typically use fully contained suits to enter houses containing methamphetamine labs). While this record does not show evidence that Peoples' apartment was actually contaminated, Stricker did find methamphetamine in the house. At the very least, Stricker had reasonable grounds to believe evidence of Peoples' drug use, including the drugs (contraband) themselves, was in his apartment. *See Conley*, ¶¶ 27-36 (McKinnon, J., concurring opinion, joined in part by Baker, J.) ("Given the nature of Conley's conviction, the probation officers' familiarity with Conley's history and issues surrounding his addiction, and the circumstances of the encounter, there were articulable facts supporting reasonable suspicion that the interior of the vehicle in which Conley recently exited contained evidence of his drug use. We have consistently applied the foregoing authority and principles to uphold searches of an area that was within the control of the probationer.").

C. Peoples' opening brief, charging the State with unreasonable conduct, is replete with factual inaccuracies and exaggerations.

Entering into a probationer's home, if done only to harass or intimidate him, would not be reasonably related to a PO's duties or reasonable in any sense of the word. *Burke*, 235 Mont. at 171, 766 P.2d at 257 (holding that a "search should not be used as an instrument of harassment or intimidation"). However, that did not happen here. Stricker was simply looking for a probationer in his charge and possible contraband; he knocked and announced his presence to Peoples loudly, was refused entry, and based in part on a report of contraband, blood, and a possible overdose, entered the apartment. Thus, Stricker's entry into the residence was reasonable.

Peoples proposes characterizations of the record evidence and non-record assertions to argue the contrary: that Stricker's search was far from reasonable and was in fact overboard and tumultuous. The State used deception, Peoples asserts, when Stricker "orchestrat[ed] a multi-agency forced entry search" which made a "violent intrusion" into his apartment after Stricker "coax[ed] and "coerced" Peoples' landlord into helping them break into the house. (Opening Br. at 10, 13, 16, 21, 24-25.)

The record controverts these and other erroneous assertions of a "guns-drawn forcible entry." No violent intrusion is shown. No racial bias is

shown. No tumultuous entry is shown. Stricker used a key to open the door, which, Stricker testified, is considered by his supervisor to be only technically a "forced entry." (*See* 9/21/18 Supp. Hr'g Tr. at 17:18.) This does not mean that the entry into the house was riotous or even noisy. Stricker and the others entered the apartment with their guns temporarily unholstered as a common procedure. (*Id*. at 38:7.) Peoples does not contest the evidence suggesting this is a reasonable standard procedure in entering a probationer's house. The existence of a potential felony due to methamphetamine possession might warrant, in other circumstances, the unholstering of guns. *See, e.g.,* S*tate v. Kills on Top,* 243 Mont. 56, 82, 793 P.2d 1273, 1290-91 (1990) (Officers received a police bulletin advising them to be on the lookout for a particular car with a particular license plate as persons driving that car had been involved in an assault and a kidnapping and there was a chance that the victim was still in the car. Officers in another jurisdiction spotted the car, pulled it over and conducted a "felony stop" in which all occupants were removed at gun point and frisked for weapons.).

Contrary to Peoples' assertion (Opening Br. at 16), he did have a history of evasion. (*See* D.C. Doc. 83, ROV, indicating Peoples did not make his whereabouts known in several programs in which he was required to report.) Stricker did not cause Peoples to be originally unclothed. Peoples could have ameliorated his nude detention by putting clothes on and responding to the door

when Stricker loudly knocked. Peoples refused to do so. As far as Peoples' assertion he was left nude and handcuffed to his bed for several minutes, this was apparently due to the need of another, separate law enforcement inquiry to secure the scene. A homicide investigation took place in Peoples' apartment, and he was soon cleared. Peoples makes no assertion that this criminal inquiry was invalid or unlawful.

The record also does not support Peoples' assertions that Stricker coaxed or coerced Peoples' landlord into helping the agents "break" into the house. No record bases support these assertions. Peoples provides no supporting argument for his assertion the landlord's voluntary relinquishment of the key violated Peoples' tenant rights, and so Peoples abandons this claim. *Emery v. Federated Foods*, 262 Mont. 83, 87, 863 P.2d 426, 429 (1993) (appellants' failure to brief an issue in their opening brief results in waiver).

Contrary to Peoples' assertion on page 25 of his brief, the State is not required to offer "satisfactory explanations" of why alternative means to conduct a search were not used. The State's burden is to show that reasonable and justifiable grounds existed for the search that was conducted.

Nevertheless, the record shows that Stricker came to Peoples' apartment door with other members of his own office and one agent from the U.S. Marshals Service. Stricker testified the agent was necessary because of the agent's

experience with house entries. (*See* 9/21/18 Supp. Hr'g Tr. at 16:5.) The fact that Stricker may have anticipated entering the home does not detract from the fact that Stricker had reasonable grounds to enter.

Further, and in any event, it is not "deception" to anticipate entry into an apartment where blood has been reported and a meth addict may have overdosed. Peoples' "deception" charge misapprehends the correct analyses to the extent he attributes personal motivations to Stricker rather than scrutinizing the objective data and inferences that were available to Stricker. The governing principle of search and seizure jurisprudence is reasonableness under objective, not subjective, circumstances. *See State v. $129,970.00 in U.S. Currency*, 2007 MT 148, ¶ 34, 337 Mont. 475, 483, 161 P.3d 816, 822 ("[S]ubjective intentions play no role in ordinary probable-cause Fourth Amendment analysis." (quoting *Whren v. United States*, 517 U.S. 806, 813 (1996))). Both this Court and the United States Supreme Court have explicitly held that an officer's subjective motivations are irrelevant to a Fourth Amendment reasonableness inquiry. *E.g.*, *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006) ("An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively justify [the] action.' The officer's subjective motivation is irrelevant.") (internal citations omitted); *accord State v. Farabee*, 2000 MT 265, ¶ 23, 302 Mont. 29, 22 P.3d 175 (citing *Whren*).

This means it is not what Stricker knew subjectively, but what reasonable and objective data were available to Stricker and what might have reasonably been inferred from such data. This Court has recognized that it must lend credence to the judgment of law enforcement officers whose training and experience invoke common-sense conclusions about human behavior. *State v. St. Marks*, 2002 MT 285, ¶ 35, 312 Mont. 468, 59 P.3d 1113, overruled in part on other grounds in *State v. Brister*, 2002 MT 13, 308 Mont. 154, 41 P.3d 314. "The probable cause process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *St. Marks*, ¶ 35 (citing *State v. Gray*, 2001 MT 250, ¶ 32, 307 Mont. 124, 38 P.3d 775, and *Illinois v. Gates*, 462 U.S. 213, 231-32 (1983)).

Peoples also emphasizes his supposedly calm and cooperative behavior in the past with Stricker. Stricker could not necessarily have relied on this supposed past behavior when dealing with someone behaving under extreme meth use, especially where a possible overdose was indicated. Chronic drug use is commonly associated with aggressive and erratic behavior. *Cf. In re M.T.*, 2020 MT 262, ¶ 4,

401 Mont. 518, 474 P.3d 820 (aggressive and erratic behavior that suggested drug use). Stricker might have reasonably inferred that erratic or even violent action by Peoples was possible because of his extreme meth use, as might arguably be commonly known by law enforcement. *Cf. Vazquez v. Spearman*, 2020 U.S. Dist. LEXIS 135124, at *19 (S.D. Cal. July 30, 2020) (methamphetamine-induced psychosis, a toxic effect of high doses of methamphetamine use over several days, can mimic symptoms of mental illness, such as schizophrenia, and cause hallucinations and paranoid delusions).

It does not matter, contrary to what Peoples will certainly contend in his reply brief, that there exists no record evidence supporting Peoples' prior violence or that he in any way suffered from meth-induced psychosis. Indeed, the record is largely devoid of such evidence. Nevertheless, the issue here is whether the objective facts of the pressing health and safety circumstances led Stricker to make reasonable search and seizure determinations based on an objective reasonable person standard. As set forth above, there were objective, specific, articulable facts to support the warrantless entry into Peoples' apartment, even with guns briefly drawn, rendering it unnecessary to examine the subjective beliefs of Stricker or the other agent. This Court should continue to adhere to its long-standing constitutional standards of reasonableness that do not require this Court to ascertain an officer's subjective thought processes in investigating.

Under the clear erroneous standard, this Court does not review the record to determine whether the record will support findings of fact that differ from the district court's findings, but whether the record contains substantial credible evidence that supports the findings actually made. *Benjamin v. Anderson*, 2005 MT 123, ¶ 55, 327 Mont. 173, 112 P.3d 1039; *see also State v. Weaselboy*, 1999 MT 274, ¶ 24, 296 Mont. 503, 989 P.2d 836 (rejecting Weaselboy's suggestion that the real purpose of the officer's search of the car was to look for drugs, not to retrieve the keys, and stating "the weight of evidence and the credibility of witnesses are exclusively within the province of the trier of fact").

CONCLUSION

This Court should affirm the district court's denial of Passmore's requested relief.

Respectfully submitted this 26th day of February, 2021.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: */s/ C. Mark Fowler*
C. MARK FOWLER
Assistant Attorney General

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 5,029 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, and any appendices.

/s/ C. Mark Fowler
C. MARK FOWLER

CERTIFICATE OF SERVICE

I, C. Mark Fowler, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-26-2021:

Travis R. Ahner (Govt Attorney)
820 South Main Street
Kalispell MT 59901
Representing: State of Montana
Service Method: eService

Kathryn Grear Hutchison (Attorney)
P.O. Box 200147
Helena MT 59620
Representing: Arthur Ray Peoples
Service Method: eService

Electronically signed by Janet Sanderson on behalf of C. Mark Fowler
Dated: 02-26-2021