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 APPELLEE

On Appeal from the Montana Third Judicial District Court,
Deer Lodge County, The Honorable Kurt Krueger, Presiding

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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*[1] claim that he had failed to raise in his opening 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.

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

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 statues 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.[2] (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 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

[2] 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*.

> 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)[3] (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

[3] This response uses "cleaned up" to indicate that internal quotation marks, alterations, punctuation marks, or citations have been omitted.

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 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 previoulsy "rejected" the doctrine in *State v. Saale*, 2009 MT 95, ¶ 8, 350 Mont. 64, 204 P.3d 1220.[4] (*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 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

[4] 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.

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, 2023.

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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

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