

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Eighth Judicial District**

A. PERSONAL INFORMATION

1. Full Name: **Theresa Lynn Diekhans**
 - a. What name do you commonly go by? **Theresa**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED]
Phone: [REDACTED]
4. Office Address: **109 2nd St. W, NW Entrance, Havre, MT 59501**
Phone: **406-808-7104**
5. Length of residence in Montana: **51 Years 11 Months**
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
2019-- Current	Havre	MT
2003 – 2019	Great Falls	MT

B. EDUCATIONAL BACKGROUND

7. List the names and location of schools attended beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Great Falls High School	Great Falls, MT	May 1987	High School Diploma
University of Puget Sound	Tacoma, WA	Transferred 1988	
University of Montana	Missoula, MT	Transferred 1990	
College of Great Falls	Great Falls, MT	December 1992	Bachelors of Science Communication
Gonzaga School of Law	Spokane, WA	May 2003	Juris Doctorate

8. List any scholarships, awards, honors and citations that you have received:

I received a yearly scholarship to Gonzaga Law School.

Top pledge winner for Bowl for Kids Sake for Big Brother's Big Sisters of Great Falls 2012

High School National Honor Society 1987

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

No

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Montana Supreme Court	October 2003
U.S. District Court, District of Montana	October 2003

11. Indicate your present employment. (List professional partners or associates, if any).

Montana Public Defenders Office, currently Regional Public Defender of Region 6.

I am honored to work with Stephanie McKnight, Penelope Oteri, Lawrence LaFountain, and Casey Moore. Also honored to be colleagues with and work with many of the public defenders throughout Montana.

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Montana Office of Public Defender	Regional Public Defender	3-2019 -- Current
Montana Office of Public Defender	Assistant Public Defender	7-2015 – 3-2019
Montana Attorney General	Assistant Attorney General	10-2020 – 12-2014
Cascade County Attorney's Office	Deputy County Attorney	5-2005 – 10-2020
Smith Walsh Clarke and Gregoire	Associate	5-2004 – 5-2005
Jardine Stephenson Blewett and Weaver	Associate	9-2003 – 5-2004
Spokane City Attorney's Office	Legal Intern	6-2002 – 5-2003

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

I did take a six and half-month sabbatical from January 2015 until July 2015. I worked for Aflac insurance while I took the time to analyze and think about what I

wanted to do as a profession. The break allowed me to know I wanted to continue to practice law. The time also helped me decide I wanted to practice in the public sector area of law and continue and work for the people of the State of Montana.

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

As a public defender I spend my time representing clients, both adults and juveniles who have been accused of committing crimes. My clients also include those whom the State has filed to have involuntarily committed or whom the State or a family member is seeking guardianship of. It is also my honor to represent both parents and youths in Youth in Need of Care (YINC) hearings. As the Regional Public Defender, I also advise, guide and help my attorneys in their representation of their clients. When I was an associate public defender, the bulk of my practice was representing Juveniles in Youth Court and representing parents in YINC proceedings.

While at the Attorney Generals Office I was in the Child Protection Unit and represented the State and DPHHS-CPS in YINC hearings. I filed petitions and represented the Department in hearings and proceedings where abuse and neglect was alleged against parents. I also trained CPS workers and County Attorneys on YINC law.

As a Deputy County Attorney, I also represented the Department in YINC hearings. I also prosecuted juveniles in Youth Court and prosecuted some adults in felony cases. My first 2 years at the Cascade County Attorney's Office I was the civil deputy and worked with the County Commissioners and other departments as their advisor and attorney.

Currently:

80 % of my time is criminal

20 % is quasi civil (YINC, Youth, Involuntary commitments, and Guardianships)

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

While in private practice I represented clients in custody proceedings and divorces. I also worked on contracts, easements, and insurance defense cases. While at the attorney general's office I trained on dependency and neglect law.

16. If you specialize in any field of law, what is your specialty?

While I am now representing any clients of the Office of Public Defender, the bulk of my last 15 years has been in juvenile and YINC law. I am an expert and extremely versed in the Dependency and Neglect area of the law in Montana.

17. Do you regularly appear in court? **Yes.**

What percentage of your appearance in the last five years was in:

Federal court	_____ %
State or local courts of record	100%
Administrative bodies	_____ %
Other	_____ %

18. During the last five years, what percentage of your practice has been trial practice? **80 %**

19. How frequently have you appeared in court?

30+ times per month on average.

20. How frequently have you appeared at administrative hearings?

None

21. What percentage of your practice involving litigation has been:

Civil	0%
Criminal	80%
Other (Quasi YINC, Involuntary Comm.)	20%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

I have not appeared in front of the Montana Supreme Court.

23. State the number of jury trials that you have tried to conclusion in the last ten years.

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24. State the number of non-jury trials that you have tried in the last ten years.

Over 200 including contested YINC Adjudication and Terminations of parental rights.

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

**Karen Alley
Hill County Attorney
Hill County Attorney's Office
315 4th St.
Havre, MT 59501
(406) 265-5481 ext. 2423
Criminal Cases
Youth in Need of Care, Juvenile
Civil Commitment, Guardianship**

**R. Tim Jeffrey
Hill County Deputy Attorney
Hill County Attorney's Office
315 4th St.
Havre, MT 59501
(406) 265-5481 ext. 2423
Criminal Cases
Youth in Need of Care, Juvenile**

**Richard Williamson
Hill County Deputy Attorney
Hill County Attorney's Office
315 4th St.
Havre, MT 59501
(406) 265-5481 ext. 2423
Criminal cases**

**Stephan Gannon
Chouteau County Attorney
Chouteau County Attorney's Office
PO Box 459
Ft. Benton, MT 59442
(406) 622-3246
Criminal Cases**

**Eric Owens
Blaine County Deputy Attorney
Blaine County Attorney's Office
PO Box 1567.
Chinook, MT 59523
(406) 357-3220**

**Kelsey Harwood
Blaine County Attorney
Blaine County Attorney's Office
PO Box 1567
Chinook, MT 59423
(406) 357-3220**

Criminal cases, Juvenile Cases
Youth in Need of Care

Robert Padmos
Liberty County Attorney
Liberty County Attorney's Office
PO Box 683
Chester, MT 59522
(406) 759-5174
Criminal cases, Juvenile cases,
Civil Commitment, Guardianship

Dylan Jensen
Valley County Attorney
Valley County Attorney's Office
501 Court Square #20
Glasgow, MT 59230
(406) 228-6286
Criminal cases, Juvenile Cases

Tamara Barkus
Havre City Attorney
Havre City Attorney's Office
PO Box 1512
Havre, MT 59501
(406) 265-7871
Criminal cases

Valerie Winfield
Cascade County Deputy Attorney
Cascade County Attorney's Office
121 4th St. #2A
Great Falls, MT 59401
(406) 265-7871
Criminal cases, Juvenile Cases
Youth in Need of Care

Joshua Racki
Cascade County Attorney
Cascade County Attorney's Office
121 4th St. #2A
Great Falls, MT 59401

Criminal Cases, Juvenile cases
Youth in Need of Care,
Civil Commitment, Guardianship

Mark Harshman
Chinook City Attorney
PO Box 1594
Chester, MT 59523
(406) 357-4444
Criminal Cases

Dan O'Brien
Phillips County Attorney
Phillips County Attorney's Office
PO Box 1279
Malta, MT 59538
(406) 357-3220
Criminal Cases, Juvenile cases

Matthew Robertson
Cascade County Deputy Attorney
Cascade County Attorney's Office
121 4th St. #2A
Great Falls, MT 59401
(406) 454-6915
Criminal Cases, Juvenile Cases
Youth in Need of Care

Ryan Ball
Cascade County Deputy Attorney
Cascade County Attorney's Office
121 4th St. #2A
Great Falls, MT 59401
(406) 454-6915
Criminal cases

Amanda Lofink
Cascade County Deputy Attorney
Cascade County Attorney's Office
121 4th St. #2A
Great Falls, MT 59401

(406) 265-7871
Criminal cases, Juvenile Cases
Youth in Need of Care

(406) 454-6915
Criminal cases

Criminal Trials in Last 2 years:

Counsel of Record:
Matthew Robertson
Cascade County Attorney's Office
Judge
121 4th Street, #2A
Great Falls, MT 59401 (406) 454-6915
Tampering with Witnesses or Informants, Assault
State v. Shawn Fleger, DDJ-17-060(B)
Trial Dates: January 9-10, 2018 – Guilty misd. Assault

District Court Judge:
Hon. Elizabeth Best
Eighth Judicial District Court

(406) 771-3950

Counsel of Record:
Karen Alley
Hill County Attorney's Office
315 4th St.
Havre, MT 59501
Assault on a Peace Officer
State v. Thompson St. Pierre, DC-19-103
Trial Dates January 16-17, 2020, Guilty

District Court Judge:
Hon. Kaydee Snipes Ruiz
Twelfth Judicial District Court Judge
(406) 265-5481

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have not appeared before any administrative boards or commissions.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

I have not published.

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

Montana Bar Association since 2003

Cascade County Bar Association, Secretary 2004

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

I have not been involved in any clubs or professional societies within last 5 years. I was on the Board for Big Brother's Big Sisters of Great Falls from 2003 – 2015. I was president of the Board from 2011 – 2014. I was also on the Board of the Montana Children's Sex Abuse Response Team (MCSART) from 2011 – 2015. I was a member of the Great Falls Kiwanis. I am a member of the Kappa Alpha Theta Sorority.

30. Have you ever run for or held public office or sought a judicial appointment? If so, provide the details.

I have never run for office.

I did put my name in for Judicial appointment in 2015 for Cascade County bench left open by Judge Neill's retirement.

31. Explain your philosophy of public involvement and practice of giving your time to community service.

Community Service and Public Involvement are an integral part of our society. The strength of a community is found in its volunteers. It takes people willing to devote their time and expertise that make communities prosper and demonstrate diversity. If people did not get involved and donate their time, experience, and help, little would be

accomplished and everyone would just languish in their homes. Society needs the coaches and volunteers who donate his/her time and patience to the Youth in the community. They teach our Youth sportsmanship, how to win or lose, and how to be a team member. Society needs the gardener who is willing to donate time to plant flowers and plants in parks, by courthouses, in the community so we can all enjoy beauty and growth. Society needs that person who is willing to go to the nursing home, retire home, and to shut ins to provide a friendly face and ear. Without these people and the many more who devote their time and energy, society would disappear. It is the volunteers who make our communities and country the great society that they are.

E. PROFESSIONAL CONDUCT AND ETHICS

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

No

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No.

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No

F. BUSINESS AND FINANCIAL INFORMATION

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

No

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

N/A

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

N/A

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

No

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes.

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? ☒ Yes ☐ No

If not, please explain.

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?
____ Yes **X** No

If yes, please explain.

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No

G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

Research and brief writing has not been a large portion of my practice but I do my own research and brief writing when needed. I have also been gifted with incredible colleagues who are willing to share their knowledge and briefs when have similar arguments and issues and have utilized them as often as I can. I have primarily worked on dismissal and particularized suspicion issues in the last few years. I am always looking at the new case law in the Youth in Need of Care areas as that is a very specific arena and changes can happen quickly. Research takes up more of my time, as I find I research issues in preparation for oral arguments in Court. I am always checking to see if any new rulings or law has been issued before I go into a hearing. I also have spent time researching for the attorney's in my region, to help them with the briefs and issues they are presenting to the Court.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

None.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable. The writing sample should be as recent as possible.
48. What percentage of your practice for the last five years has involved research and legal writing?
- 10 %
49. Are you competent in the use of Westlaw and/or Lexis?
- Yes to both, however in last 10 years have used primarily Lexis.

H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

My family is my primary focus and interest. I enjoy spending time cheering on my nieces and nephew in their activities. Spending as much time with family and close friends is my main focus. I enjoy playing golf with my family and friends and have been on Woman's golf league for last 2 years in Havre. I enjoy watching sports and television, primarily the Food Network. I am an avid reader and read at least 2 books a week.

51. Describe the jobs that you have held during your lifetime.

My first job was in high school when Shopko came to Great Falls. I helped to set up the store and then spent the next year working as a stocker while finishing High School. I then had various jobs through college and had my first job out of college working for a Office Supply Company in Great Falls. I started working inside the store, then became an outside salesperson who called on clients and then became a manager for the Company. I learned how to deal with people and try to find out what they and their companies needs were and provide those items.

After a few years, my Sister and her Husband were looking for someone they could trust to work for them. I moved to Glasgow Montana and help them run Aces and Eights, a restaurant and casino, and Deuces Wild, a sports bar and casino. I managed both business for them. The five years managing those businesses taught me how to manage employees, how to interact with many different types of people, and how to manage money and a budget. I also learned how to interact with people of many different backgrounds and experiences.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

I have not done any pro bono work for the last five years. While I wanted to, I was working on my case load and my many clients. Before that, I provided pro bono work to the non-profits I was involved with. That would be Big Brother's Big Sisters of Great Falls, the Montana Children's Sex Abuse Response Team, and Lourdes Athletic Boosters.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

My Father is who has had the largest influence on me and my view of the system. Dad was always telling us to do good and be kind. He would often ask us, his children, if we had done a good deed that day. Dad was always willing to help out anyone who needed it and fought for and cheered on the underdog. He was quiet and let his actions speak for him. He just did what he believed was right and what need to be done. He respected everyone he interacted with and worked hard for all of his family and friends.

This is how I view our justice system. Just do the right thing and do what needs to be done. Protect and fight for those who need it and cannot fight for themselves. Our system, when it works correctly, is how my dad was: quiet, hardworking, respectful, and there for everyone, not matter their race, creed, financial status, and gender.

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

The ability to listen and be fair are the most important qualities for a good district court judge. A judge must be able to be listen to all of the points of view presented to him/her and to weigh all of the facts and law presented to him/her without allowing any preconceived, personal views to interfere. A judge must put personal ideals and feelings aside and view each case on its individual merits.

A good judge must also have conviction and confidence. The judge must be able to stand up to the people and press who will not like a decision he/she may make. The judge must also be diligent and thoughtful in his/her decisions.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

The law is the law but facts are what apply to the law and make the law work. Of course, facts are based on individual points of view and vary from case to case and even people within the case have a different point of view of the facts. This is where the balancing between precedence and flexibility lives. It is important to recognize and follow precedence. It is equally important to allow the facts to the case in front of the court to dictate how the precedence, the law, applies. If we are to just follow precedence, there would not be 27 amendments to our U.S. Constitution. Without flexibility, the law would

not have the ability to learn and change, as society recognizes misconceptions and misunderstandings and just wrong thinking. Without flexibility, minorities and woman would not have the ability to vote. Without precedence, freedom of speech and press would have not true power and authority. The law needs to be able to grow and change as society grows and changes, but also needs to be stable enough to not just change on a whim.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

I have been an attorney for 17 years and view a judge to be most difficult position in the legal profession. It is also the most important role in the legal profession in ensuring individuals rights while protecting society. We are in a precarious time in society right now and need the right people in the right roles. I will be the right person for this judicial position. I am ready to listen, to consider, and to make the hard decisions. I do not look to become a judge to promote a specific political or social agenda. I seek this position to work to protect our U.S. and State constitution, the rights of all individuals of Montana, and business of Montana.

57. What items or events in your career have distinguished you or of which you are most proud?

The last 17 months being the Region 6 Regional Public Defender are what I am most proud of in a career I am proud of. I have had the honor of working with and leading an incredible group of people. I have been able to advise, guide, mentor, and lead both experienced attorneys and new attorneys. I have also learned a great deal about the law

and how to work with our clients from my team. It has been and continues to be an incredible experience for me.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

I have been accused of being brutally honest and blunt. My own mother told me multiple times I needed to learn tact. I have worked over the years to learn how to present my position, while still being honest. It is a struggle I still have but have made great strides in recognizing when to say what I need to say and how to say it.

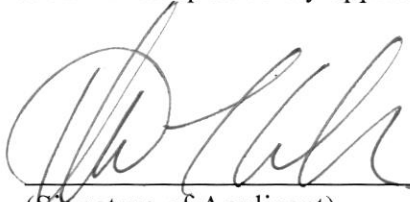
59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

I have the unique experience of working as both a prosecutor and defense attorney. I also have civil experience. The Youth in Need of Care cases are a legal melting pot utilizing both criminal, civil and family law. That is experience that will be invaluable for me on the bench. My experience prelaw is also invaluable. I have interacted with and worked with people of many different ethnicities, financial situations, and backgrounds. I will work daily to respect all the people who come before me and listen with an open mind while following the law.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 8th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

8/20/20
(Date)


(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Friday, August 21, 2020.

Mail the signed original to:

**Office of Court Administrator
c/o Lois Menzies
P.O. Box 203005
Helena, MT 59620-3005**

Send the electronic copy to: mtsupremecourt@mt.gov

Theresa L. Diekhans
OFFICE OF STATE PUBLIC DEFENDER
P.O. Box 268
109 2nd St. W.
Havre, Montana 59501
Phone: (406) 265-2199
Fax: (406) 265-0174
Attorney for Defendant

MONTANA SEVENTEENTH JUDICIAL DISTRICT COURT, BLAINE COUNTY
BEFORE THE HONORABLE YVONNE LAIRD

STATE OF MONTANA, Plaintiff, v. JASON AARON CARRYWATER, Defendant.	Cause No. DC-19-11 REPLY TO STATE'S RESPONSE AND OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE
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COMES NOW, Jason Aaron Carrywater, by and through his counsel of record, Theresa L. Diekhans, hereby replies to State's Response and Opposition to Defendant's Motion to Suppress Evidence.

This case arises out of a stop that occurred on Highway 2, outside of Harlem at approximately 1 am. Sergeant Roberge had seen the vehicle stopped at the EZ Mart earlier. He recognized the owner of the vehicle and ran his name and found a warrant for Mr. Grant. He pulled down the road and when the vehicle started toward Ft. Belknap Reservation. He pulled the vehicle over because of the warrant out for Mr. Grant. It was a non-extraditable warrant, which Sergeant Roberge knew when he pulled the car over. He told both Mr. Carrywater and Mr. Grant that he pulled them over because of the warrant for Mr. Grant but that he was not arresting either of them. At that point, he made the decision to switch the direction of his stop and expanded it to a drug investigation.

The State argues that since Grant gave permission to search the vehicle than the search was valid and therefore Defendant's motion to suppress should be denied. The State relies on *State v Snell* 2004 MT 269, 1323 Mont 157, 99 P.3d 191 and *State v Clark* 2008 MT 419, 347 Mont 354, 198 P.3d 809 for

their position. While Defense agrees these cases do allow for a warrantless search upon consent, our case can be distinguished. Unlike *Snell* and *Clark* where the questioning and request to search happened while the stop is still ongoing, here Sergeant Roberge had indicated clearly that the reason for the stop and his investigation of the stop had ended.

Law enforcement can only expand the scope of their investigation and prolong the stop only if they have articulable justification to do so.

Once a lawful stop is made, a police officer's suspicions may become further aroused and the stop may become further prolonged and the scope enlarged as required by the circumstances, *provided the scope of the investigation remains within the limits created by the facts upon which the stop is predicated and the suspicion which they arouse.*

Carlson, 2000 MT at ¶ 23 (quoting *Hulse v. State*, 1998 MT 108, ¶ 40) (emphasis in original). In this case, the consent to search came way after the reason for the stop had been finalized and Mr. Carrywater and Mr. Grant should have been released from the stop.

If an officer can complete traffic-based inquiries expeditiously, then that is the amount of "time reasonably required to complete the stop's mission"....As we said in *Caballes* and reiterate today, a traffic stop 'prolonged beyond' that point is "unlawful." The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket,...but whether conducting the sniff "prolongs" – *i.e.*, add time to – "the stop."

Rodriguez v. United States, 135 S. Ct. 1609, 1616 (2015) (citations and brackets omitted). Sergeant Roberge had no particularized suspicion that an ongoing crime was occurring or about to occur when he had Carrywater exit the vehicle, question him and then ask Grant for consent. As in *Rodriguez*, asking Mr. Carrywater to step out of the car and questioning him, prolonged the stop unlawfully. Similarly to *State v Kaufman* 2002 MT 294, 313 Mont 1, 59 P.3d 1166, as soon as Sergeant Roberge told both Mr. Carrywater and Mr. Grant the reason he stopped them was because of the warrant for Mr. Grant but he was not going to arrest him, the reason for the stop ended. He specifically stated he stopped them because of the warrant and that he was not arresting anyone. He had particularized suspicion to pull over the vehicle because of the warrant but his reasons to expand the scope were general in nature, not

specific. Sergeant Roberge states in his report his particularized suspicion to expand the scope was because

1. the car took 600 feet to turn on its blinker and pull over at night on the highway,
2. that Mr. Carrywater appeared fidgety and uneasy and Mr. Grant appeared nervous, would not make eye contact, and could not find his registration, and
3. that Carrywater's jaw appeared to protrude.

None of these things separately or together indicate Mr. Carrywater had committed, was committing, or about to commit an offense to expand the scope of the original reason for the stop. *State v. Wilson*, 2018 MT 268, P28, 393 Mont 238, 246, 430 P. 3d. 77, 82 holds, "particularized suspicion requires more than a mere generalized suspicion or undeveloped hunch of criminal activity." Here, all Sergeant Roberge had was generalized suspicion. There is no time frame set for a car to stop as the expectation is that the car will pull over in a place that make it safe for the vehicle and the officer. Mr. Carrywater was driving on highway 2, at night, and pulled over when he could find a safe place to pull over. It is also not unusual for a person to have difficulty in finding their registration. As in *State v. Reeves*, 2019 MT 151, 396 Mont. 230, 444 P. 3d 394, there is nothing illegal in any of these behaviors. Nervousness and unease are also not reasons for particularized suspicion as the Montana Supreme Court stated in *State v. Broken Rope*, 278 Mont. 427, 432, 925 P.2d 1157, 1160 (1996), and also supported by the 9th Circuit Court of Appeals, and the United States District Court for the District of Idaho. Carrywater's jaw also apparently protruding, while it may be a sign of a meth user, it could also be sign of a medical condition or a nervous habit and not a sign of criminal activity. All of the other indicators the State relies on in their brief on pages 7 -- 8 happen after Sergeant Roberge had Mr. Carrywater step out of the vehicle and began questioning him, *after he prolonged the reason for the stop*.

Mr. Carrywater did not believe he could refuse Sergeant Roberge's request to step out of the vehicle and talk with him. He did not say I have some concerns, he stated "hey buddy, can you do me a favor and stop out of the vehicle *quick so I can get you on your way*." While this appears to be a request,

adding on the “so I can get you on your way” indicates the stop was ongoing and Carrywater could not just drive away. Sergeant Roberge expanded the stop beyond the initial reason for the stop unlawfully. Sergeant Roberge had no objective data or articulable facts from which he could make reasonable inferences and no suspicion that Mr. Carrywater and Mr. Grant had committed, was committing, or about to commit an offense beyond the original reason for the stop. It was only after he spoke with Mr. Carrywater for many minutes that he then eventually asked Mr. Clark for permission to search the car. The request to search came after he had already prolonged the stop and long after Mr. Carrywater and Mr. Grant should have been on their way home.

Therefore, the stop should have ended at approximately 1:26:48, when he ended the reason for the initial stop, and any further questioning should be suppressed and the consent given determined invalid as it happened after Sergeant Roberge expanded the scope of the stop without particularized suspicion.

DATED this ____ day of November, 2019.

Theresa L. Diekhans
Attorney For Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of November, 2019, I served a true and correct copy of the foregoing Motion on:

Kelsie W. Harwood
Blaine County Attorney's Office
P.O. Box 1567, Chinook, MT 59523

OFFICE OF STATE PUBLIC DEFENDER