

APPLICATION FOR
DISTRICT COURT JUDGESHIP

A. PERSONAL INFORMATION

1. Full name. Alexander Joshua Roth
2. Birthdate. [REDACTED]
3. Current home address. [REDACTED]
4. Email address. [REDACTED]
5. Preferred phone number. [REDACTED]
6. Judicial position you are applying for. 13th Judicial District Department 4
7. Date you became a U.S. citizen, if different than birthdate. Born a citizen.
8. Date you become a Montana resident. Montana has been my permanent residence since 1999, though I left during my period of enlistment in the United States Marine Corps, and during my legal education at the University of Miami, I maintained my permanent residency in Montana. I believe it would have been late winter or early spring of 1999 when I became a Montana resident.

B. EDUCATIONAL BACKGROUND

9. List the names and location (city, state) of schools attended beginning with high school, and the date and type of degree you received.

Bonneville High School, Iona, Idaho. GED spring 1999; Montana State University-Bozeman 1999-2002; Montana State University-Billings 2005-2007, Bachelor's of Science in Liberal Studies (Spring 2007); The University of Miami-School of Law-2010-2013, Juris Doctor (Spring 2013).
10. List any significant academic and extracurricular activities, scholarships, awards, or other recognition you received from each college and law school you attended.

I was a 3L Senator of the Student Bar Association, a member of the Bar and Gavel (The University of Miami-School of Law's highest honor society), Vice President and President of the Student Veteran's Association in my 2nd and 3rd year respectfully. I was also the Chief Notes and Comments Editor for the National Security and Armed Conflict Law Review Volume II.

C. LEGAL AND PROFESSIONAL EXPERIENCE

11. In chronological order (beginning with most recent), state each position you have held since your graduation from law school. Include the dates, names and addresses of law firms, businesses, or governmental agencies with which you have been affiliated, and your position. Include the dates of any periods of self-employment and the name and address of your office.

I opened my own legal practice immediately after joining the bar in October of 2013. While I initially worked from my home office, address listed above, I have, since 2016, maintained my office at 2722 3rd Ave N Suite 400, Billings, MT 59057.

12. In chronological order (beginning with most recent), list your admissions to state and federal courts, state bar associations, and administrative bodies having special admission requirements and the date of admission. If any of your admissions have terminated, indicate the date and reason for termination.

I joined the United States District Court, District of Montana in November of 2019. I was a member of the Yellowstone Area Bar Association from 2018-2019, though I am not certain on the exact dates. I joined the State Bar of Montana October 1st, 2013.

13. Describe your typical legal areas of concentration during the past ten years and the approximate percentage each constitutes of your total practice (i.e., real estate, water rights, civil litigation, criminal litigation, family law, trusts and estates, contract drafting, corporate law, employment law, alternative dispute resolution, etc).

The focus of my practice has been criminal defense. Throughout the past 8 years of practice I have focused heavily on Criminal law representing hundreds of clients throughout the eastern half of the State. I have been a plaintiff's attorney in civil litigation less than 10 times. I have represented one client in an employment law issue to resolution, and I have had only a few family law matters that I assisted on. Given the high number of cases I have handled the

approximate percentage of Criminal cases I have handled would represent over 99% with the other cases at less than 1%.

14. Describe any unique aspects of your law practice, such as teaching, lobbying, serving as a mediator or arbitrator, etc. (exclude bar activities or public office).

I would consider my unique specialty to be Criminal cases involving self-defense. I am an NRA certified firearms instructor and have over 10 years teaching firearms safety and self-defense, experience in law enforcement and the military. I have represented numerous defendants where there was a question of lawful self-defense, including a trial for assault with a weapon, where the Jury returned a not guilty verdict for the assault with a weapon charge, due to self-defense.

15. Describe the extent that your legal practice during the past ten years has included participation and appearances in state and federal court proceedings, administrative proceedings, and arbitration proceedings.

I appear in court in front of Judges at least 3-4 times during a normal week for hearings. As a solo practitioner I have taken 5 cases through to a jury verdict, although I have done the full preparations for jury trials countless times, only to have them dismissed or pled out the day of trial. I have participated in 2 civil arbitrations, several employment administrative proceedings for the employment law case I was retained on. I have appealed the results of two of the trials, with one being reversed and remanded for new proceedings.

16. If you have appeared before the Montana Supreme Court within the last ten years (including submission of amicus briefs), state the citation for a reported case and the case number and caption for any unreported cases.

I have not appeared before the Montana Supreme Court, of the appeals I've filed they have been from courts of limited jurisdiction to the District Court. Of the appeals made after trials, one began in Justice Court and after the appeal was denied by the District Court the Client did not wish to assume the costs to appeal to the Montana Supreme Court. In the second matter I filed a motion to set aside the verdict in the District Court, which was denied. As I was appointed this case through the Office of the Public Defender, their appellate department took over the case. This case was reversed by the Supreme Court for the issue on which my motion was based.

17. Describe three of the most important, challenging, or complex legal issues you have dealt with or legal proceedings in which you have participated during your practice.

1. I dealt with a series of cases, all involving the same officer, where the officer would stop a vehicle for a minor traffic offense. After stopping the vehicle he would order the driver back to his patrol vehicle and interrogate the terrified person until they consented to a search. This would often occur after the officer making coercive statements. *Rodriguez v. U.S.*, 741 F.3d 905 (2015) was new law, however, Judge Simonton in Glendive continually denied my motions to suppress or dismiss in these cases. So in each new case, I had to raise the same argument in a different or unique way. The Montana Supreme Court later granted an appeal based on one of my motions in these cases.

2. In the State of Montana, in every self-defense trial I have been involved in, to raise the defense of self-defense the defendant must testify and make admissions. This means to exercise your 2nd Amendment right of self-defense at trial, you must waive your 5th Amendment right against self-incrimination. Montana stands out from states with similar self-defense laws, and even from the written code with this stance. To raise a claim of self-defense the defendant should only have to raise a *prima facie* case. Often this may require the defendant to testify, but the brightline rule that Montana has seemed to adopt, wherein testimony is required to raise the defense, requires trading one constitutional right for another. Evidence establishing a *prima facie* case can be established through witness testimony and other direct evidence. I very carefully laid the groundwork for this issue to be appealed in my last self-defense trial, but the jury returned a not guilty verdict, rendering the issue moot.

3. The lack of funds available for public defender cases often creates issues that create challenges for trials or hearings. In my experience is the inability to receive pre-approval to have a self-defense expert hired in a timely enough manner that adequate notice can be provided. I have learned to deal with this in a few ways, for example if the difference between defensive and offensive injuries is an issue: during *voir dire* I ask if there are any boxers or people that have been in fights. I then will ask follow on questions about gloves and the purpose of the gloves, if they have ever had a boxers fracture of the fist, what their knuckles would look like if they didn't properly wrap their hands; next I would use law enforcement officers, inquiring about their "Use of Force Continuum" training, by asking leading questions to get the basic ideas to the jury; if the defendant has to testify I use his first hand experience and ask questions to highlight the lack of offensive injuries in a self-defense case; Finally, I wrap all this up into to closing laying it out for the jury that the types of injuries present, thus presenting an idea normally requiring expert testimony through the resources available.

18. If you have authored and published any legal books or articles, provide the name of the article or book, and a citation or publication information.

Although I have not authored or published any legal books or articles, I was the Chief Notes and Comments Editor for the University of Miami School of Law National Security and Armed Conflict Law Review. I was also a research assistant to Professor Markus Wagnur, who is a prolific author and may have included my name as an assistant, though the work would be his own.

19. If you have taught on legal issues at postsecondary educational institutions or continuing legal education seminars during the past ten years, provide the title of the presentation, date, and group to which you spoke.

I have not instructed for either CLEs or at any post-secondary educational institutions.

20. Describe your pro bono services and the number of pro bono hours of service you have reported to the Montana Bar Association for each of the past five years.

I have worked limited *pro bono* hours. However, I do take on a large number of indigent clients through my MOU with the Office of the Public Defender. These cases pay substantially less than I typically charge to represent clients.

21. Describe dates and titles of any offices, committee membership, or other positions of responsibility you have had in the Montana State Bar, other state bars, or other legal professional societies of which you have been a member and the dates of your involvement. These activities are limited to matters related to the legal profession.

I have not served as an officer for any State Bar Organization or other legal professional society.

22. Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, and type of discharge received.

After September 11th, 2001 I enlisted as an infantryman in the United States Marine Corps. Due to the high number of enlistments I went to boot camp on January 13th, 2003. I served with 4th Recon Battalion out of Ft. Sam Houston, Texas, was attached to 3rd Bn. 25th Marine Regiment for a deployment to Iraq. That unit has the distinction of being the most heavily engaged unit of the was up to that point, and of having suffered the most KIA of any comparably sized units. After returning from Iraq, served with 4th Recon Bn. Company B, in Billings as a reservist, until that unit became the Anti-terrorism Battalion, who I served with until my discharge 12 January, 2009. I completed my career as a Corporal. After this I had an inactive term with completed in the summer of 2010. I was honorably discharged at completion of contract.

23. If you have had prior judicial or quasi-judicial experience, describe the position, dates, and approximate number and nature of cases you have handled.

I have no prior judicial or *pro tempe* experience.

24. Describe any additional business, agricultural, occupational, or professional experience (other than legal) that could assist you in serving as a judge.

I come from a ranching family, here in Yellowstone County, though my experience with that was mostly when I was younger, and as I recall mostly involved fixing fences. My experience in the Marines, not so much as when I was simply an infantryman, but later in my career where I was responsible for those under my command, managing and mentoring those under me required the proper temperament, compassion, and sternness. My work in Law Enforcement in Stillwater County prior to going to Law School, provides me with insight as to what is actually happening as opposed to the dry, written reports that the lawyers and Judges see

D. COMMUNITY AND PUBLIC SERVICE

25. List any civic, charitable, or professional organizations, other than bar associations and legal professional societies, of which you have been a member, officer, or director during the last ten years. State the title and date of any office that you have held in each organization and briefly describe your activities in the organization and include any honors, awards or recognition you have received.

I have been on the Board of Directors for Dog Tag Buddies, since 2018. In that time we have seen DTB grow to a statewide organization that I believe is responsible for directly preventing veteran suicides. I also work with Montana Warrior Wishes, initially as a member, and since 2019 on the Board of Directors. This organization provides immediate aid to veterans in need, often before the larger organizations can step in. By providing money for car repairs, a short term hotel stay, or assisting a veteran in need to find a job, more secure housing, or reliable transportation Montana Warrior Wishes is able to step in and assist at those moments when the veteran is feeling despair. I believe this organization, though its actions another that is helping lower the number of veteran suicides in our state.

26. List chronologically (beginning with the most recent) any public offices you have held, including the terms of service and whether such positions were elected or appointed. Also state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

The only occasion where I ran for public office was the newly created Judicial Position in Judicial District XIII Department 7, in 2018. Judge Colette Davies won the race and currently occupies the position.

E. PROFESSIONAL CONDUCT AND ETHICS

27. 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.

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

No.

29. 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.

Yes, in 2009, I was arrested several days after attempting to break up a bar fight. I pled *nolo contendere* to obstruction of justice for not remaining at the scene and explaining the event to officers, and received a fine and a 30 day deferred sentence after which the record was to have been expunged.

30. Have you ever been found liable in any civil proceedings for damages or other legal or equitable relief, other than marriage dissolution proceedings? If so, provide the citation of a reported case or court and case number for any unreported case and the year the proceeding was initiated (if not included in the case number).

No

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

No. I strive to live my life as honorably as possible. Although I make mistakes, I try to keep them small and never repeat them.

F. BUSINESS AND FINANCIAL INFORMATION

32. Are you currently an owner, officer, director, or otherwise engaged in the management of any business other than a law practice? If so, please provide the name and locations of the business

and the nature of your affiliation, and state whether you intend to continue the affiliation if you are appointed as a judge.

Yes, I am an owner of Stillwater Tactical, located at 103 Eastlick Rd. Molt, Mt 59057. I would step away from this business if appointed. I also sit on the Board of Directors for Dog Tag Buddies, and Montana Warrior Wishes, both 501c3 charities. I regretfully believe the potential for conflict that arises from those positions would require me to step away from them if appointed.

33. Have you timely filed appropriate tax returns and paid taxes reported thereon as required by federal, state, local and other government authorities? If not, please explain.

Yes, though I prefer to pay lumpsum at the end of the tax year instead of quarterly filings, I have always paid my taxes.

34. Have you, your spouse, or any corporation or business entity of which you owned more than 25% ever filed under title 11 of the U.S. Bankruptcy Code? If so, give details.

No.

G. JUDICIAL PHILOSOPHY

35. State the reasons why you are seeking office as a district court judge.

I believe in a life of service. After September 11th, 2001 I joined the Marines, to serve my country in its time of need. Not only did I enlist, but I left college and enlisted into the infantry. I could have continued at MSU and taken the officer track, or as I scored in the 99th percentile on the ASVAB I could have chosen any military occupation there was. I chose the one that is the most dangerous, believing if it had to be done, I would not shirk away. After leaving the Marines, I worked with Stillwater County Sheriff's Office, again helping the community, being a first responder. After my arrest in 2009, I left and went to Law School, because having felt that injustice, of being in a situation where all I was trying to do was the right thing and having faced that I thought I could better serve as a lawyer. As a lawyer, I take on massive amounts of indigent clients, because they need their constitutional rights protected. I believe in the Constitution and the God given rights it protects. I believe we need judges who have the not only that same belief but the fortitude to stand behind it.

36. What three qualities do you believe to be most important in a good district court judge?

Knowledge, a good judge has a solid basis and understanding of the law.

Moral Compass, a good judge knows right from wrong, not just legal from illegal.

Temperament, a good judge does not act out of anger but should be driven by a pursuit of justice.

37. What is your philosophy regarding the interpretation and application of statutes and the Constitution?

I consider myself a constitutionalist. I interpret this to mean that our Government is one of enumerated powers, with all other powers belonging to the people, I believe in the separation of powers and checks and balances upon those powers. I disagree with creating new laws from the bench, the judiciary should only act as a constitutional check upon the legislature, not an alternate source of laws. The originalism philosophy as championed by Justice Scalia, would be the Constitutional philosophy that I heavily identify with. The Constitution is the bedrock upon which our nation is built. It is the document that holds us all together and ensures that the power of the government is held in check, so that the government cannot disregard the rights of the individual. Statutes are the governance the people choose, so long as it conforms with the higher law of the Constitution. Judges are bound by these.

H. MISCELLANEOUS

38. Attach a writing sample authored entirely by you, not to exceed 20 pages. Acceptable samples include briefs, legal memoranda, legal opinions, and journal articles addressing legal topics.

Montana v. Yang, MOTION TO DISMISS AND/OR SUPPRESS AND BRIEF IN SUPPORT, attached.

39. Please provide the names and contact information for three attorneys and/or judges (or a combination thereof) who are in a position to comment upon your abilities.

1. The Honorable Ashley Harada:
13th Judicial District, Department 8,
PO BOX 35044
Billings, MT 59107
(406) 869-8012

2. J. David Arthur, ESQ:
2722 3rd Ave. N Suite 400
Billings, MT 59101

(702) 287-4877

3. The Honorable Olivia Rieger
207 W. Bell
Glendive, MT 59330
(406) 377-2666

CERTIFICATE OF APPLICANT

I hereby state that to the best of my knowledge the answers to all questions contained in my application are true. By submitting this application I am consenting to investigation and verification of any information listed in my application and I authorize a state bar association or any of its committees, any professional disciplinary office or committee, educational institutions I have attended, any references furnished by me, employers, business and professional associates, law enforcement agencies, all governmental agencies and instrumentalities and all other public or private agencies or persons maintaining records pertaining to my citizenship, residency, age, credit, taxes, education, employment, civil litigation, criminal litigation, law enforcement investigation, admission to the practice of law, service in the U. S. Armed Forces, or disciplinary history to release to the Office of the Governor of Montana or its agent(s) any information, files, records, or reports requested in connection with any consideration of me as a possible nominee for appointment to judicial office.

I further understand that the submission of this application expresses my willingness to accept appointment as District Court Judge if tendered by the Governor, and my willingness to abide by the Montana Code of Judicial Conduct and other applicable Montana laws (including the financial disclosure requirements of MCA § 2-2-106).

29 September 2021

(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 Wednesday, October 13, 2021

Mail the signed original to:

Hannah Slusser
Governor's Office
P.O. Box 200801

Helena, MT 59620-0801

Send the electronic copy to: hannah.slusser@mt.gov

Alexander J. Roth
ROTH LAW OFFICE
2722 3rd Ave. N., Suite 400
Billings, MT 59101
406-272-3527

MONTANA SEVENTH JUDICIAL DISTRICT COURT, DAWSON COUNTY

STATE OF MONTANA,	)	Cause No. DC 16-128
	)	
Plaintiff,	)	Hon. Katherine M. Bidegaray
vs.	)	
	)	MOTION TO DISMISS
BER LEE YANG,	)	AND/OR SUPPRESS AND BRIEF
	)	IN SUPPORT
Defendant.	)	

The Defendant, Ber Lee Yang, by and through counsel, hereby moves this Honorable Court for an order dismissing the case for an illegal arrest, pretextual stop, illegally extending a traffic stop with the intent to develop probable cause to search, non-mirandized custodial interrogation, as well as, all the subsequently gathered evidence gathered following this search as fruit of the poisonous tree, for the reasons pursuant to the Amendment IV of the Constitution of the United States of America, Article II sections 10 and 11 of the Montana State Constitution, and the case law under *Miranda v. Arizona*, 384 U.S. 436 (1966); and 46-5-401 Montana Code Annotated.

FACTS

On or about December 7th, 2016 at approximately 7:27 a.m. Trooper Barry Kilpela observed a vehicle driving approximately 84 MPH in an 80 MPH zone. The vehicle slowed at

1 about the same time as Trooper Kilpela checked the vehicles speed. Trooper Kilpela initiated a
2 stop, without turning on his body microphone approached the vehicle. Trooper Kilpela then
3 removed the driver from the vehicle, in order to issue a speeding ticket. He then begins to
4 interrogate the driver, in an attempt to establish probable cause to search for drugs, by asking
5 questions about bags observed in the back of the vehicle, requesting a "triple I" record, which is a
6 criminal history search that is not necessary for a traffic stop. He proceeds to interrogate Mr. Yang
7 further, inquiring more details about his travel, and his personal information. Mr. Yang's English
8 is poor and often does not respond with proper answers, to questions about if the contents of the
9 vehicle belong to him or the driver of the other vehicle, Mr. Yang replies that he is my friend.
10 When asked about where he is to return the vehicle to, Mr. Yang replies I think 2 days. At
11 approximately 25 minutes into the stop, Trooper Kilpala concludes the traffic stop, Mr. Yang
12 repeatedly asks to speak to an attorney and Trooper Kilpala continues questioning him after he has
13 requested an attorney. Although Trooper Kilpela has stated that the traffic stop is concluded, he
14 does not allow Mr. Yang to leave, thus detaining Ms. Ber Lee Yang, while Trooper Kilpela
15 continues to interrogate Mr. Yang after Mr. Yang has asked numerous times for his attorney.
16 Trooper Kilpela specifically tells Mr. Yang that he is not free to leave approximately 5 minutes
17 after telling him that the traffic stop is over. Even though Mr. Yang has invoked his right to
18 counsel, Trooper Kilpela continually asks questions of Mr. Yang.

22 Approxitely 45 minutes into the stop Trooper Kilpela, in violation of Montana Highway
23 Patrol policy, Trooper Kilpela turns on his body microphone. He mirandizes Ber Lee Yang, to
24 which she replies that he can talk to her but that she does not understand, in broken English.
25 Trooper Kilpela asks if she understands lawyer, Ms. Yang's reply is unintelligible, but Trooper
26 Kilpela then says that you don't understand lawyer. Trooper Kilpela then proceeds to interrogate
27 Ms. Yang. Ber states that she was visiting her husband in Sacramento and that she is from
28

1 Minnesota, and that her husband was going to drive her home. Trooper Kilpela then directs Ber
2 to lift up the blankets. He then returns to his patrol vehicle.

3 Trooper Kilpela disproportionately stops minority drivers and non-resident drivers. In 2015
4 and the first portion of 2016 Trooper Kilpela issued a total of 289 citations and 964 warnings, of
5 these 10 citations were issued to persons of Asian descent and 19 warnings were issued to persons
6 of Asian descent for a total of 3.4% of citations issued to Asians and 1.97% of warnings issued to
7 persons of Asian descent. The population of Asians as a per cent of the population is 0.7% meaning
8 simply the fact of being of Asian descent a person is almost 5 times more likely to receive a citation
9 from Trooper Kilpela. Further, of Trooper Kilpela's 2,445 traffic stops from April 21st, 2013
10 through June 16th, 2016 1,850 stops were of Out-of-state plates, for over 75% of his stops being
11 made on Out-of-state vehicles. Trooper Kilpela has previously testified, under oath, that he could
12 not identify rental vehicles, but now claims on the warrant application that he can identify rental
13 vehicles by their bar codes.
14
15
16
17

18 LEGAL ARGUMENTS

20 I. Was Trooper Kilpela's stop of Cher Yang and Ber Lee Yag pretextual?

21 Trooper Kilpela claims that he stopped Mr. Yang because he identified the vehicle's
22 speed as 84 MPH, after seeing Trooper Kilpela he claims the vehicle slowed down. However,
23 Trooper Kilpela disproportionately stops minority drivers and non-resident drivers. In 2015 and
24 the first portion of 2016 Trooper Kilpela issued a total of 289 citations and 964 warnings, of
25 these 10 citations were issued to persons of Asian descent and 19 warnings were issued to
26 persons of Asian descent for a total of 3.4% of citations issued to Asians and 1.97% of warnings
27 issued to persons of Asian descent. The population of Asians as a per cent of the population is
28

1 0.7% meaning simply the fact of being of Asian descent a person is almost 5 times more likely to
2 receive a citation from Trooper Kilpela. Further, of Trooper Kilpela's 2,445 traffic stops from
3 April 21st, 2013 through June 16th, 2016 1,850 stops were of Out-of-state plates.
4

5 **II. Did Trooper Kilpela's extension of the stop to develop probable cause to search**
6 **for drugs violate Ms. Yang's rights?**
7

8 Trooper Kilpela extended the scope of the traffic stop, by removing Cher Yang from the
9 vehicle and interrogating him about his travels in an attempt to develop probable cause,
10 including questions about from where he was travelling, to where, for what reasons, what was in
11 the vehicle and similar questions attempting to develop probable cause. The Supreme Court of
12 the United States has held that a traffic stop becomes unlawful if it takes beyond the time to time
13 reasonably required to complete the mission of issuing the ticket. *Illinois v. Caballes*, 543 U. S.
14 405, 407 (2005); *Rodriguez v. U.S.*, 575 U.S. ____, (2015).
15

16 Here Trooper Kilpela informed Mr. Yang that he was going to issue him a warning. At
17 this point he had no further need to question or interrogate Yang as he had already concluded his
18 course of action, and no further investigation was needed for the issuance of the tickets.
19 However, Trooper Kilpela, in direct violation of the 4th Amendment rights against unreasonable
20 search and seizure as defined by the Supreme Court of the United States of America, detained
21 Ber Lee Yang pursuant to his illegal extension of his stop of Cher Yang.
22
23

24 **III. Did Trooper Kilpela's custodial interrogation of Ms. Yang violate her rights as**
25 **enumerated under *Miranda*?**
26

27 It has been well-established since *Miranda v. Arizona* that statements resulting from
28 custodial interrogation of a defendant may not be used by the prosecution unless the

1 defendant is informed, prior to questioning, that he has a right to remain silent, that any
2 statement he does make may be used as evidence against him, and that he has a right to the
3 presence of an attorney. *Miranda v. Ariz.*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16
4 L.Ed.2d 694 (1966); *State v. Kelm*, 2013 MT 115, ¶ 29, 370 Mont. 61, 300 P.3d 687; *State v.*
5 *Olson*, 2003 MT 61, ¶ 13, 314 Mont. 402, 66 P.3d 297. It is further been established that an
6 understanding and knowing waiver must be made. *Berghuis v. Thompkins*, 130 S. Ct. 2250
7 (2010).
8

9
10 Here, Ber Lee Yang stated that she did not understand, and Trooper Kilpela continued
11 questioning her anyway. Because her statements contributed to the warrant application and
12 further investigation, this Court must suppress all statements made by Ms. Vang, as well as,
13 all evidence that these statements led to as fruits of the poisonous tree.
14

15
16 **IV. Did Trooper Kilpela's warrantless search by ordering Ber Yang to lift the**
17 **blanket constitute a warrantless search?**
18

19 Warrantless searches are *per se* unreasonable save for a few limited exceptions. *State v.*
20 *Loh*, 914 P. 2d 592 (Mont: Supreme Court 1996). There appears to be no relevant exceptions
21 in the instant case. Plain view does not apply because the officer ordered Ms. Vang to roll
22 the window down after which he stuck his head into the vehicle, exposing himself to an area
23 where there was no justification for him to be. There exists no other exigent circumstances
24 and Trooper Kilpela did not seem concerned with safety as he did not pat Ms. Vang down for
25 weapons.
26

27 Here, Trooper Kilpela ordered Ms. Yang to lift the blanket to search beyond plain view.
28 Because Trooper Kilpela's actions in searching the vehicle without a warrant led to his

1 further investigation, the Court must suppress all evidence touched by this search as a “fruit
2 of the poisonous tree.”

3
4 **V. Did Trooper Kilpela’s repeated violations of Constitutional Rights of both Ber**
5 **Lee Yang and Cher Yang, rise to the level of egregious behavior by law**
6 **enforcement?**
7

8 The highest law of the land is the Constitution. When the State’s behavior rises to the
9 level of being egregious, the appropriate remedy is dismissal. *State v. Fitzpatrick*, 291 P. 3d
10 1106 - Mont: Supreme Court 2012.

11 Here, there are a variety of factors to consider:

- 12 1. Trooper Kilpela is statistically far more likely to stop minority drivers. As cited
13 above, Trooper Kilpela’s disproportionality of citations issued to Asians is highly
14 indicative of a violation of the 14th Amendment right to equal protection on the basis
15 of race.
16
- 17 2. Trooper Kilpela’s standard practice on stops is to remove the drivers from the vehicle
18 bring them back to his vehicle and interrogate them, this significantly lengthens his
19 traffic stops. This is a direct result of his targeting individuals for drug investigations.
20
- 21 3. Trooper Kilpela repeatedly continued to interrogate Cher Yang, after Cher Yang had
22 invoked his right to an attorney. This is a direct violation of *Miranda* case law,
23 notably, *Edwards v. Arizona*, 451 U.S. 477 (1981), which states that once the right to
24 an attorney is invoked all interrogation must stop.
25
- 26 4. Trooper Kilpela violated Ms. Yang’s rights under *Miranda* when he continued
27 questioning her after she stated that she did not understand, *supra*.
28

1 5. Trooper Kilpela directed Ms. Yang to move a blanket, violating the *plain view*
2 doctrine, by through his actions trying to increase his ability to search.

3 Because Trooper Kilpela has acted without regard for the highest law of the land, his
4 behavior rises to the level of an egregious violation of the constitutional rights of all parties
5 involved.
6

7 8 **CONCLUSION**

9 Because Trooper Kilpela's contempt for the Constitutional Rights of the Citizens of
10 Montana and the United States, in that he violated Ms. Yang's rights by illegally searching
11 her car by ordering her to move the blanket, and when he extended the traffic stop in an
12 attempt to develop probable cause to search; further he violated her 14th Amendment right to
13 equal protection under the law, by disproportionately stopping drivers of Asian descent;
14 finally, by violating Ms. Vang's 5th Amendment right against self-incrimination through a
15 custodial interrogation when she stated she did not understand her rights under *Miranda*, and
16 Trooper Kilpela's overall egregious misbehavior violated the rights of Ms. Yang.
17
18

19
20 HEREOF, it is prayed that, for the reasons stated *supra*, this Honorable Court enter an
21 order suppressing all evidence gathered from the illegal search, all evidence from the illegal
22 interrogation, and all the fruit of the poisonous tree, and that the Court dismiss this matter for
23 each and/or any of the issues addressed *supra*.
24

25 DATED this ____ day of _____, _____.
26
27
28

Alexander J. Roth,

Counsel for the Defendant

CERTIFICATE OF SERVICE

This is to certify that on this _____ day of _____ 2017, a copy of the foregoing document was duly served by email, facsimile, hand delivery, or US Mail upon the following:

Dawson County Attorney
Olivia Rieger

By: _____
For ROTH LAW OFFICE