

**APPLICATION FOR
DISTRICT COURT JUDGESHIP**

A. PERSONAL INFORMATION

1. Full name. John Tyson Hrubes
2. Birthdate. [REDACTED]
3. Current home address. [REDACTED]
4. Email address. [REDACTED]
5. Preferred phone number. [REDACTED]
6. Judicial position you are applying for. District Court Judge – Montana Seventh Judicial District
7. Date you became a U.S. citizen, if different than birthdate. Date of Birth
8. Date you become a Montana resident. [REDACTED]

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.

Richey High School
Richey, Montana
High School Diploma
May, 2001

Montana Technical University
Butte, Montana
No Degree

Montana State University-Billings
Billings, Montana
Bachelor of Arts – History
Minor in Political Science
May, 2005

University of Montana School of Law
Missoula, Montana
Juris Doctorate
May, 2008

10. List any significant academic and extracurricular activities, scholarships, awards, or other recognition you received from each college and law school you attended.

Montana Technical University
Member of Oredigger Football Team

MSU-Billings
Cum Laude
Resident Life Assistant
History Club

University of Montana School of Law
Rural Advocacy League
Internship with UM Legal Counsel

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.

2024-Present
City of Terry
Terry City Attorney
114 Laundre Avenue
Terry, MT 59349

2023 – Present
City of Glendive
Glendive City Attorney
300 S. Merrill Avenue
Glendive, MT 59330

2018-Present
City of Circle
Circle City Prosecutor
105 Main Street
Circle, MT 59330

2015 – Present
McCone County
McCone County Attorney
905 B Avenue
Circle, MT 59330

2013 – Present
John T. Hrubes Law Office
Owner/Solo Practitioner
218 W. Bell Street, #209
Glendive, MT 59330

2009-2013
Dawson County Domestic Violence Program
Staff Attorney
108 N. Kendrick Avenue
Glendive, MT 59330

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.

Montana State Bar and Montana State Courts
May, 2009

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).

As a County and City attorney, my duties have required me to spend roughly 70-75% of my time handling the prosecution of criminal offenses and criminal litigation. The other 25-30% of my time for the County and Cities is divided between providing direct legal advice to the executive branches (County Commissioners or Mayors); drafting various contracts for the

entities or reviewing contracts proposed to them by others; reviewing and analyzing ordinances, resolutions, and policies to ensure that they comply with appropriate statute and precedent; and dealing with various employment issues, including proper discipline procedures, terminations, and hires.

In my private practice, my case load has been roughly 90% based in family law. I have been handling dissolutions of marriage, legal separations, Orders of Protection, parenting plans, child support calculations, and post-decree issues in the family law arena since my first attorney position at the Dawson County Domestic Violence Program in 2009, and have continued until the current time. I also handle as many adoptions as I am able to, as I genuinely find them to be the most fulfilling type of legal work. As a solo practitioner in eastern Montana, the other 10% of my practice has been a combination of roughly everything else. I have composed wills, power of attorney forms, buy-sell agreements, cease and desist letters, deeds, and trusts. I have been asked to mediate family law matters from other attorneys. Additionally, I have been the attorney for the Plaintiff in civil litigation for damages, as well as the attorney for the Defendant in a similar scenario. I have also represented both landlords and tenants in regards to eviction proceedings.

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).

As mentioned above, I have been asked to provide mediation by fellow attorneys for family law matters. I have also served as a mediator in a rather contentious land transfer dispute. Additionally, I have spoken to the Senior Citizens in McCone County in an effort to teach them about what considerations they should be making in regards to their estates and future plans.

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 would estimate that roughly 80% of my cases during the past ten years have included participation or appearances in state court. 19% of the remaining cases were in city court, and the remaining 1% has been in administrative proceedings through the Montana Child Support Services Division (CSSD). I have not appeared in any federal court proceedings or arbitration proceedings in my legal practice.

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 physically argued in front of the Montana Supreme Court, but I successfully represented the Appellee in *In Re Marriage of Miller*, Montana Supreme Court No. DA 21-0262.

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. One challenging and important issue that I have routinely dealt with in my time as a criminal prosecutor is the mental health of the Defendant that has been charged. We do not have the resources in our rural area to accommodate all the mental health needs that are present here. Many of these individuals can meaningfully contribute to society if they have the proper medication and treatment. With that said, the victims of these crimes also have the right to not have criminal actions taken against them, and it is a prosecutor's duty to protect those in society. The proper resolution to these matters is always a delicate balancing act between the needs of the Defendant to help prevent recidivism; the needs of the victim to feel that justice has been served and to make them whole; and the needs of the general public.
2. Another challenging and important issue that I have frequently dealt with is the arguing of parenting factors in contested parenting plan actions. Making sure that a child is in the best environment available can play a vital role in that child's educational, physical, and mental development. Society benefits as a whole when our children are being put in positions to succeed.
3. A challenging and complex legal issue that I have dealt with involves both civil and criminal actions against a business entity that owned property in Montana. The sole owner of the business entity lived out of Montana and had passed away. The surviving wife of the solo owner disclaimed the property owned by the business entity and refused service of process for either the civil or criminal matters. I was tasked with researching and ultimately utilizing the proper tools and procedures so that those responsible for damages could be held accountable, and that those damaged could be made whole.

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.

N/A

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.

N/A

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 provided between 20-50 hours of pro bono service each year for four of the past five years, with the lone exception being the first year I was both the McCone County Attorney and the Glendive City Attorney. Throughout my private practice, I have always tried to keep room in my case load for at least one pro bono family law matter, whether that be a dissolution of marriage, a parenting plan, or a post-decree issue. Additionally, I have drafted Wills and power of attorney forms pro bono for elderly residents in both Dawson and McCone County.

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.

N/A

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

N/A

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 was a member of the Seventh Judicial District Treatment Court from roughly 2015-2023. As part of the team, I was occasionally required to preside as substitute Judge over court proceedings. Each Court proceeding would typically involve seeing between 15-30 participants, including the participants that needed to be sanctioned for noncompliance. I would estimate that I sat in as substitute treatment court judge roughly 10-12 times over the 8 years.

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

I grew up in the very rural community of Richey, Montana; located in northern Dawson County. While my parents did not make their living from agriculture, they did own a small farm that afforded me the basic agricultural experience to understand all that a farm entails. This knowledge and experience has already been invaluable during multiple dissolution of marriage cases I have had, in which a farming operation has been subject to division. This agricultural knowledge would further assist me as a judge, as agriculture is one of the top facets of the economy here in the Seventh Judicial District. Whether it be a dissolution of marriage with a farm; a dispute over farm land; a contractual disagreement for farm services; or a contested estate involving a farm; having agriculture in my background would assist me in being prepared to deal with any of these issues as judge.

During the summer in between my third and fourth year of undergraduate college, I went back home to Richey, Montana and gained employment as a roustabout in Sidney, Montana for what was then Mitchell's Oilfield Service. Through that employment, I not only learned about the ins and outs of the shale fracking industry and oil production in eastern Montana, but I also experienced the feeling of long days of manual labor. As with agriculture, the oil industry is still a large portion of the economy in the Seventh Judicial District; particularly Richland County. This intimate knowledge of the industry would better prepare me as judge for any issues that may arise in which the basis is related to the oil field, or if one or more of the individuals involved in the matter are employed in the oil field.

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.

N/A

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.

McCone County Attorney: Re-elected in 2022
McCone County Attorney: Re-elected in 2018
McCone County Attorney: Elected in 2014

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.
- No
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

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.
- No
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
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.

The biggest reason that I am seeking office as a district court judge is that I feel a tremendous responsibility to serve the residents of the Seventh Judicial District, who I have lived with for 33 of my 41 years of life. I have been fortunate enough to have been able to practice in front of some terrific district court judges in my over 15 years of practice. They have displayed consistency, compassion, reasonableness, honesty, and humility. These judges set the standard by which I would model my own judgeship, if appointed. I feel that my personal background and my diverse legal experience in both civil and criminal matters would allow me to best serve the residents as a district court judge.

But in addition to knowing what a good district court judge should be like, I also had the misfortune of practicing in front of one particular judge from a different Judicial District that displayed the qualities that a judge should not have. I will not mention this judge by name, but he displayed arrogance, a complete lack of compassion for all parties to matters, and a complete lack of consistency and reasonableness. I have seen the looks on the faces of individuals when that judge made a seemingly arbitrary ruling that was not rooted in law, mandatory precedent, or even his own prior rulings. I saw the anguish on a family member's face when the judge paid no attention to physical domestic violence in regards to a parenting plan, despite the opposing party admitting to it. I witnessed attorneys in the courtroom shake their heads as the judge arrogantly told them what they needed to do, despite the statutory language saying the opposite. These would be the things that I would make sure did not happen if appointed, so that the residents of the Seventh Judicial District can continue to have faith that the judiciary will perform its essential functions and serve them.

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

1. Consistency – A judge needs to be consistent in their rulings as well as the amount of work they put into each case. While each case presents unique facts and circumstances, a judge's ruling on any particular issue should not be a surprise to the attorneys practicing in front of the Court. Likewise, a judge's effort in "minor" cases should be the same as it is for more serious ones. Each matter that comes before the Court is important for someone, and they should be afforded the courtesy of being treated to the same effort from the Court as any other.
2. Reasonableness/Fairness – I believe these two qualities are essentially interchangeable in this context, and should be considered together. A judge needs to be reasonable in all matters that come before the Court. If the judge is being reasonable, they are almost surely also being fair.
3. Temperament – This is much more of a "catch-all" quality, as I believe it encompasses many underlying behaviors such as humility, patience, compassion, and level-headedness. Theoretically, any attorney that has passed the Montana Bar examination is capable of doing the necessary research to be able to make competent

legal rulings as a judge. But not every attorney has the temperament that is best suited for the bench. A judge that is patient and shows compassion earns the respect of the community it serves. A judge that shows humility and level-headedness earns the respect of the attorneys that practice in front of that Court. When the judge is respected by both the general public and the surrounding legal community, all will have confidence that the judicial process is functioning as intended.

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

My philosophy is that the framers of the U.S. Constitution created three separate branches of the government for a very good reason. It is an assault on our very form of government if a judge injects their own personal beliefs in matters and attempts to “legislate from the bench”. The Legislature makes the statutes, and regardless of the judge’s personal opinions, they are duty-bound to follow them. If I were to be appointed, I would interpret and apply the law as written, not as I would prefer it to be written, or think it should be written.

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.
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.

Rennie Wittman
16th Judicial District Judge-Elect
1010 Main Street
Miles City, MT 59301
(406) 346-6109

Dan Rice
Prairie County Attorney/Miles City City Attorney
513 Main Street
Miles City, MT 59301
(406) 232-4070

Darcy Wassmann
Fallon County Attorney
121 E. Center Avenue
Baker, MT 59313
(406) 778-2422

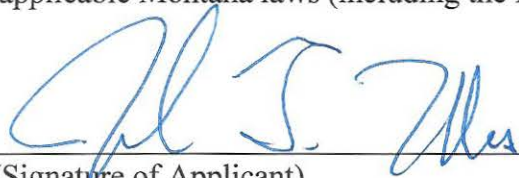
CERTIFICATE OF APPLICANT

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).

12/16/24

(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 Monday, December 16, 2024

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

1 John T. Hrubes
2 McCone County Attorney
3 P.O. Box 58
4 Circle, MT 59215
5 Telephone: (406) 485-3530
6 Attorney for Plaintiff

7 **IN THE JUSTICE COURT, MCCONE COUNTY MONTANA**
8 **BEFORE THE HONORABLE SALLY HICKOK, JUSTICE OF THE PEACE**

9 STATE OF MONTANA,
10 Plaintiff,

CAUSE NO. TK-2017-0183

11 v.

12 KURT EDWARD GOESCH,
13 Defendant.

**STATE'S RESPONSE TO
DEFENDANT'S MOTION TO
SUPPRESS**

14 COMES NOW the Plaintiff, by and through John T. Hrubes, McCone County Attorney,
15 and respectfully submits this Response to Defendant's Motion to Suppress.

16 **FACTS**

17 On November 24, 2017, a complaint was made by Scott and Mistica Hisdahl that they
18 had discovered coolers, ammunition, miscellaneous hunting items, two (2) sets of mule deer
19 antlers without tags, and deer meat. The Hisdahls lease the land, including the quonset, from
20 Tom Rudolph, and had no knowledge of anyone using the quonset besides themselves.
21 Undersheriff Lonny Jensen called Fish Wildlife and Parks Captain Ron Howell of the complaint,
22 and then headed to the property in question. Captian Howell called Warden Todd Tryan, and the
23 two started driving towards the property. Scott Hisdahl was there when Undersheriff Jensen
24 arrived, and he led Undersheriff Jensen into the quonset and showed him the items he and his
25 wife had found. Undersheriff Jensen then called Captain Howell again, and relayed to him what
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1 was found. Undersheriff Jensen advised Captain Howell that he was going to try and find the
2 individuals who all of the items belonged to, and Captain Howell advised him to get their
3 hunting licenses if he was able to contact them.

4 Shortly after, the Defendant, along with Aaron Hughes, arrived at the property in a Ford
5 Explorer. Undersheriff Jensen asked Defendant and Hughes if they knew whose property they
6 were on, to which Hughes replied "Tom Rudolph's". Hughes stated that he was a family friend
7 of Tom Rudolph, who is the legal owner of the property. He further stated that he and the
8 Defendant had received personal permission from Mr. Rudolph to hunt on his property and use
9 his quonset. Hughes then called Mr. Rudolph, and Undersheriff Jensen spoke with him, and
10 verified that Hughes and the Defendant did indeed have permission to hunt. Undersheriff Jensen
11 then asked both Defendant and Hughes for their hunting tags, and both gave him 2017 Deer B
12 tags, that had not been validated. Undersheriff Jensen did not proceed further with his
13 investigation, opting instead to wait for Captain Howell and Warden Tryan.

14 Captain Howell and Warden Tryan arrived at the location roughly ninety (90) minutes
15 later, as they drove down from Glasgow, Montana. They spoke with Defendant and Hughes, and
16 both admitted to killing the deer in the quonset; one (1) mule deer buck each. Both further stated
17 that they did not know they couldn't shoot mule deer bucks on the Deer B tags that they had,
18 which are for antlerless whitetail deer only. Warden Tryan, having previously recognized the
19 names of the Defendant and Hughes, spoke with both and reminded them that he had spoken
20 with them back in 2015 for hunting with the wrong tags in the wrong area. Both were issued
21 citations for Hunting Without a Valid License, as well as Unlawful Possession of a Game
22 Animal, and the deer meat and antlers were seized.
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ARGUMENT

I. THE DEFENDANT HAS STANDING TO CHALLENGE THE SEIZURE OF
THE DEER MEAT AND ANTLERS

Defendant correctly cites applicable precedent for standing to challenge search and Seizure under the Fourth Amendment. One of the current charges against the Defendant is Unlawful Possession of a Game Animal, in violation of § 87-6-202(1), MCA, due to the deer meat and antlers that were found by Scott and Mistica Hisdahl; later shown to Undersheriff Jensen; and then ultimately seized by Wardens Howell and Tryan. As in *State v. Bullock*, 272 Mont 361, the Defendant is charged with a crime that “includes an allegation of a possessory interest in property which is seized”, as the plain language of the statute implies that the Defendant was in possession of the animal. As such, the Defendant has standing to challenge the search and seizure of the deer meat and antlers in this matter.

II. THE SEARCH OF THE QUONSET ON TOM RUDOLPH’S PROPERTY WAS
VALID

Defendant argues that Wardens Howell and Tryan, due to ultimately seizing the deer meat and antlers in the quonset, were the ones that searched the quonset without a warrant, and that such a warrantless search is outside of the scope of the powers afforded to game wardens under Montana law.

At the outset of this argument, Defendant incorrectly attributes the search to Wardens Howell and Tryan. While it is true that Wardens Howell and Tryan were the ones who physically seized the deer meat and antlers, the first law enforcement officer to search the inside of the quonset was Undersheriff Jensen. Undersheriff Jensen observed the deer meat and antlers

1 and it was at that point that he called Warden Howell. Defendant, on lines 2 and 3 of the second
2 page of his brief, even states in his own factual background that “Jensen, in turn, contacted
3 Howell and advised him what he found in the quonset.”

4 Defendant does not make any argument as to the validity of Undersheriff Jensen’s search
5 of the quonset, but given that it is clearly established that he was the one that performed the
6 search, and not Wardens Howell and Tryan, a brief analyzation is prudent. It is agreed that
7 Defendant has standing to argue search and seizure validity due to the charges against him.
8 Additionally, there is no disagreement that Undersheriff Jensen did not have a warrant when he
9 searched the quonset and found the deer meat and antlers. Absent a warrant, Undersheriff Jensen
10 would have had to have a judicially recognized exception to the warrant in order to search the
11 quonset (46-5-101(2), MCA). In this matter, it is undisputed that Undersheriff Jensen had the
12 third party consent of Scott and Mistica Hisdahl to search the quonset, which is a judicially
13 recognized exception to a warrant, so long as the third party had actual authority to give that
14 consent (*State v. McLees*, 2000 MT 6, P28). The Hisdahls received the actual authority to
15 consent to Undersheriff Jensen’s search due to their status as lessees of the farmland and
16 buildings owned by Tom Rudolph; including the quonset in question. Going further, per their
17 lease agreement with Mr. Rudolph, the Hisdahls were the ones to have sole discretion as to who
18 hunts the property or who stores anything there. It was the unanticipated presence of
19 Defendant’s deer meat and antlers that initially caused the Hisdahls to contact law enforcement
20 in the first place.

21 Due to the presence of the third party consent by the Hisdahls, Undersheriff Jensen’s
22 warrantless search on the quonset was valid, and none of the evidence obtained should be
23 suppressed on these grounds.
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1 III. THE DURATION OF UNDERSHERIFF'S STOP OF DEFENDANT WAS
2 APPROPRIATE
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4 Defendant's Motion makes the claim that Undersheriff Jensen's stop of Defendant was
5 longer than necessary, and as a result, all evidence seized afterwards should be suppressed. In
6 making this argument, Defendant again misidentifies when the search of the quonset took place,
7 and by whom. The valid search of the quonset was performed by Undersheriff Jensen BEFORE
8 the Defendant was stopped, and the deer meat and antlers were discovered prior to any
9 interaction Undersheriff Jensen had with the Defendant. As such, the stop of the Defendant had
10 no bearing on the discovery and ultimate seizure of the deer meat and antlers in the quonset.
11

12 Defendant further erroneously states that Undersheriff Jensen's stop on the Defendant
13 was only for the potential crime of criminal trespass. Undersheriff Jensen obtained
14 particularized suspicion that crimes other than criminal trespass had been committed once he
15 performed his valid search of the quonset; discovered the deer meat and antlers; and spoke with
16 Warden Howell on the telephone. The stop of the Defendant occurred AFTER the particularized
17 suspicion was obtained as to other offenses, and thus the Defendant's claim is moot. However,
18 as with other claims, the State will still address them.
19

20 Defendant relies upon the decision in State v. Carlson, 2000 MT 320, which states "a
21 stop may not last longer than is necessary to effectuate the purpose of the stop." However, the
22 Defendant neglected to cite the more current precedent of State v. Estes, 2017 MT 226 (2017), in
23 which the Montana Supreme Court recently held that "a stop may not last longer than is
24 necessary to effectuate the purpose of the stop; however, a stop may be prolonged and the scope
25 of the investigation enlarged so long as the scope of the investigation remains within the limits
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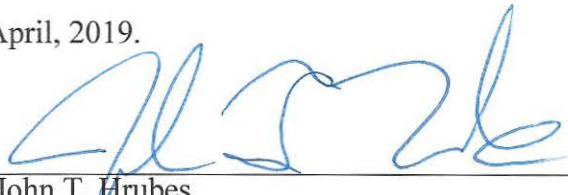
1 created by the facts and suspicions from which they arose.” Given this more recent decision, the
2 analysis needs to look into whether or not “the scope of the investigation remained within the
3 limits created by the facts and suspicions from which they arose.” Undersheriff Jensen clearly
4 obtained suspicions in this matter that other crimes may have been committed when he saw the
5 deer meat and antlers; spoke with the Hisdahls and Warden Howell about the deer meat and
6 antlers; was told by the Defendant that he had been hunting and that the deer meat and antlers
7 were his; and saw the hunting tags possessed by Defendant that were not validated. The scope of
8 the investigation remained within the limits created by the facts, and thus was not “longer than
9 necessary”.

11 CONCLUSION

12 Undersheriff Jensen performed a valid warrantless search on the quonset, with the
13 consent of the Hisdahls, and discovered the deer meat and antlers. After performing the valid
14 search and speaking with Warden Howell and the Hisdahls, Undersheriff Jensen obtained
15 particularized suspicion that criminal trespass, and other hunting violations may have been
16 committed. His stop of Defendant after obtaining the particularized suspicion for multiple
17 offenses was not unconstitutional, as there is no defined time limit for an investigatory stop when
18 particularized suspicions exists, such as we have here. In the alternative, if this Court finds that
19 Undersheriff Jensen did NOT have particularized suspicion as to other hunting crimes, the stop
20 on the Defendant was still constitutional, as per Estes, the scope of the investigation remained
21 with the limits created by the facts and suspicions from which they arose, and the initial stop as
22 to criminal trespass was not unreasonably extended.

23
24 Due to the above, Defendant’s Motion should be DENIED.
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1 DATED this 30th day of April, 2019.

2
3 

4 John T. Hrubes
McCone County Attorney

5
6
7 **CERTIFICATE OF SERVICE**

8
9 I, the undersigned, hereby certify, that on the 30th day of April, 2019, a true and exact
10 copy of the foregoing document was delivered via email, to the following:

11
12 Peter Helland
13 Attorney for Defendant
14 EMAIL: phelland@hellandlawfirm.com

15 

16 John T. Hrubes
17 Attorney at Law