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**PREVIEW; State v. Peoples: Unreasonable Supervision and The
Constitutional Limits of a Probation Search**

Alex Butler*

The Montana Supreme Court is set to hear oral argument on this matter Wednesday, July 7, 2021, at 9:30 a.m. in the Courtroom of the Montana Supreme Court, Joseph P. Mazurek Justice Building, Helena, Montana. Kathryn Hutchison is likely to appear on behalf of Appellant Arthur Ray Peoples (“Peoples”) and C. Mark Fowler is likely to appear on behalf of Appellee Montana (“State”).

I. INTRODUCTION

This case presents a question about the nature of the State’s intrusion during a probation search. Specifically, the Court will decide whether Missoula Probation and Parole’s probation search was a constitutionally reasonable warrantless intrusion. This case presents the opportunity for the Court to determine the limits of a warrantless probation search and the scope of a probationer’s privacy interest during a search.

II. FACTUAL AND PROCEDURAL BACKGROUND

In 2003, Arthur Ray Peoples was convicted of operation of an unlawful clandestine laboratory and criminal possession of dangerous drugs.¹ The district court sentenced Peoples to the maximum sentence of twenty years imprisonment for the clandestine laboratory offense, with five years suspended, plus a concurrent five-year sentence for the possession of dangerous drugs offense.² In August 2008, Peoples was paroled from his custodial sentence to Probation and Parole.³ In September 2017, he transitioned to probation after his prison term expired to serve the remaining suspended time.⁴

Probation Officer (“P.O.”) Sam Stricker supervised Peoples while on parole and probation.⁵ Peoples admitted to methamphetamine use on multiple occasions which required interventions by P.O. Stricker.⁶ During an October 2017 meeting, Peoples admitted to relapse and was referred to, and successfully completed, the Enhanced Supervision Program (“ESP”).⁷

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¹ Brief of Appellant at 1, *State v. Peoples*, (Mont. Oct. 2, 2020) (No. 19-0070).

² *Id.*

³ Brief of Appellee at 2, *State v. Peoples*, (Mont. Feb. 26, 2021) (No. 19-0070).

⁴ Brief of Appellant, *supra* note 1, at 4.

⁵ *Id.*

⁶ *Id.*; Brief of Appellee, *supra* note 3, at 3.

⁷ Brief of Appellant, *supra* note 1, at 4.

Peoples voluntarily complied with multiple home visits.⁸ The most recent occurring in February 2018.⁹

On March 15, 2018, Lisa Peoples, Peoples' wife,¹⁰ called P.O. Stricker and told him that she believed Peoples was using drugs and that he might have overdosed.¹¹ Ms. Peoples also stated that she had seen blood in his apartment.¹² Ms. Peoples had called P.O. Stricker in the past to report Peoples' drug use, and her reports had often been true.¹³ After this call, P.O. Stricker did not call Peoples to check in on him or to make a request for a home visit.¹⁴

On March 16, 2018, P.O. Stricker elicited additional support from two other probation officers and an agent from the U.S. Marshal's service to conduct the probation search.¹⁵ Probation and Parole gained forced entry permission and requested a U.S. Marshal's assistance because they are trained for forced entries.¹⁶

Later that day, P.O. Stricker and his team arrived at Peoples' residence, knocked on his front door, and announced their presence.¹⁷ Peoples did not answer the knock at the door.¹⁸ Then, P.O. Stricker requested a key to Peoples' apartment from Peoples' landlord.¹⁹ Peoples' landlord provided a spare key to P.O. Stricker.²⁰ P.O. Stricker and his team unlocked the front door with the key and entered the residence with guns drawn.²¹ Officers found Peoples sitting on his bed, naked.²² They handcuffed him to his bed and holstered their guns.²³ Officers discovered drug paraphernalia and a white crystalline substance later proved to be methamphetamine on his bed stand.²⁴

The State petitioned to revoke Peoples' suspended sentence due to alleged compliance violations for failing to answer his door, using

⁸ *Id.*

⁹ *Id.* at 4–5.

¹⁰ Brief of Appellee, *supra* note 3, at 4.

¹¹ Brief of Appellant, *supra* note 1, at 5.

¹² Brief of Appellee, *supra* note 3, at 4.

¹³ Brief of Appellant, *supra* note 1, at 5.

¹⁴ *Id.*

¹⁵ Brief of Appellee, *supra* note 3, at 4.

¹⁶ Brief of Appellant, *supra* note 1, at 6 n. 2.

¹⁷ *Id.* at 6.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 6–7.

²² *Id.* at 7.

²³ Brief of Appellee, *supra* note 3, at 5.

²⁴ Brief of Appellant, *supra* note 3, at 4–5.

drugs, and violating the law through possession of methamphetamine.²⁵ The district court denied Peoples' motion to suppress and held that the incident was not a home visit, but a probation search, and the nature of the State's intrusion was reasonable because the search was supported by reasonable suspicion.²⁶ The district court found Peoples in violation of all three Counts and revoked his suspended sentence.²⁷ The district court sentenced Peoples to the Department of Corrections for four years and three months, with credit for time served.²⁸ This appeal follows Peoples' sentencing.²⁹

III. SUMMARY OF ARGUMENTS

A. Appellant Arthur Ray Peoples

Peoples primarily argues that the State's probation search violated his right to privacy and to be free from unreasonable searches under the Montana Constitution.³⁰ He contends that the nature of the State's intrusion into his home was "outrageously disproportionate" to the suspicion of drug use which initially justified the search.³¹ Specifically, Peoples claims that a "team of government agents coerced [his] landlord, forced entry into his home, brandished semi-automatic pistols, shackled him naked, and left him on the floor that way for thirty minutes."³² Peoples relies on³³ both Article II, Section 10's heightened privacy interests³⁴ and Section 11's reasonableness clause.³⁵

First, Peoples argues that his past supervisory relationship with P.O. Stricker was cooperative and did not justify the degree of force used during the probation search.³⁶ Peoples asserts that he reported regularly, admitted to relapses, successfully completed ESP, never refused consent to home visits, and "did not deny his addiction, nor resist [P.O.] Stricker's intervention[s]."³⁷ He further contends that even though his probation conditions have diminished his expectation of privacy, they do not justify this type of intrusion into his home.³⁸

²⁵ *Id.* at 2.

²⁶ *Id.* at 3.

²⁷ *Id.*

²⁸ *Id.* at 4.

²⁹ *Id.*

³⁰ *Id.* at 11.

³¹ *Id.* at 13.

³² *Id.* at 10.

³³ *Id.* at 12.

³⁴ MONT. CONST. art. II, § 10.

³⁵ MONT. CONST. art. II, § 11.

³⁶ Brief of Appellant, *supra* note 3, at 13.

³⁷ *Id.* at 15–16.

³⁸ *Id.* at 16.

Second, Peoples argues that Probation and Parole's intrusion exceeded the nature and scope of a reasonable probation search.³⁹ He contends that the search of his home was both harassing and intimidating because the intrusion was disproportionate to the report of drug use.⁴⁰ Peoples asserts that while he did not answer the door when officers knocked and announced their presence, they still planned in advance to carry out a forcible entry with multiple officers.⁴¹

Peoples concludes that the search was a disproportionate intrusion into his home, and even though his expectation of privacy was diminished, the degree of intrusion was not justified.⁴² Peoples asks the Court to reverse the district court's denial of his motion to suppress and remand for further proceedings.⁴³

B. Appellee State of Montana

The State argues that the probation search was conducted in a constitutionally permissible manner.⁴⁴ First, the State argues the probation search was supported by reasonable suspicion.⁴⁵ The State relies on a phone call from Ms. Peoples the day before the probation search where she indicated that Peoples was using meth, may have overdosed, and that there was "lots of blood" in Peoples' residence.⁴⁶ The State maintains that, given the above information, P.O. Stricker had reasonable suspicion to conduct a search and that forced entry was required.⁴⁷

Second, the State argues that the probation search was reasonable and did not exceed its scope.⁴⁸ The State contends that, given P.O. Stricker's experience and relationship with Peoples, he was in the best position to determine whether entry was necessary to investigate a potential violation to support Peoples' rehabilitative efforts and to protect society.⁴⁹ The State asserts that a probationer expects to be "intensively" supervised, and given Peoples' history of addiction and "law-breaking," P.O. Stricker acted reasonably when he entered Peoples' home after no one answered the door.⁵⁰

³⁹ *Id.* at 17.

⁴⁰ *Id.* at 24.

⁴¹ *Id.* at 24–25.

⁴² *Id.* at 27.

⁴³ *Id.* at 28.

⁴⁴ Brief of Appellee, *supra* note 3, at 9.

⁴⁵ *Id.*

⁴⁶ *Id.* at 11.

⁴⁷ *Id.*

⁴⁸ *Id.* at 12.

⁴⁹ *Id.* at 12–13.

⁵⁰ *Id.* at 13–14.

Third, the State argues that Peoples’ Opening Brief contains “factual inaccuracies and exaggerations” which does not comport with the record.⁵¹ The State asserts that officers did not coerce Peoples’ landlord, the intrusion was not violent when guns were “temporarily unholstered,” and Peoples was naked because he could have put clothes on and answered the door when officers knocked and announced.⁵²

The State concludes that the probation search was supported by reasonable suspicion, and it did not exceed its scope. The State asks the Court to affirm the district court’s denial of Peoples’ motion to suppress.⁵³

IV. ANALYSIS

The Court’s standard of review of a district court’s denial of a motion to suppress will likely be whether the court’s findings of fact are clearly erroneous and whether the court’s interpretation and application of the law is correct.⁵⁴ First, the Court will need to determine whether reasonable suspicion justified the probation search. The Court will likely find that officers had reasonable suspicion to conduct a probation search of Peoples’ residence. Second, the Court will need to determine whether the nature of the State’s intrusion was constitutionally reasonable. The Court will likely hold that the search was unconstitutional because P.O. Stricker’s request was not reasonable, and the search was harassing and intimidating. Therefore, the Court will likely reverse the denial of Peoples’ motion to suppress evidence.

The Fourth Amendment of the United States Constitution and Article II, Section 11 of the Montana Constitution protect citizens against unreasonable searches and seizures.⁵⁵ Further, Article II, Section 10 of the Montana Constitution provides that the right of individual privacy shall not be infringed without the showing of a compelling state interest.⁵⁶ Montana’s unique constitution affords citizens a “greater right to privacy” and broader protection than the Fourth Amendment.⁵⁷ To determine whether there has been an unlawful government intrusion into one’s privacy, the Court will analyze the following factors: (1) whether the person has an actual expectation of privacy; (2) whether society is willing

⁵¹ *Id.* at 16.

⁵² *Id.* at 16–18.

⁵³ *Id.* at 22. (The State’s Response Brief incorrectly refers to “Passmore’s requested relief.” The author edited the cited language to better fit their brief).

⁵⁴ Brief of Appellant, *supra* note 1, at 10 (citing *State v. Conley*, 415 P.3d 473, 475 (Mont. 2018)).

⁵⁵ U.S. CONST. amend. IV; MONT. CONST. art. II, § 11.

⁵⁶ MONT. CONST. art. II, § 10.

⁵⁷ Brief of Appellee, *supra* note 3, at 7 (citing *State v. Elison*, 14 P.3d 456, 468–69 (Mont. 2000)).

to recognize that expectation as objectively reasonable; and (3) the nature of the State’s intrusion.⁵⁸

Long jurisprudence defines the rights of person on probation. A probationary sentence is a form of contract between the court and the probationer, “eliminating certain privacy expectations.”⁵⁹ A probationer is aware that his “activities will be scrutinized.”⁶⁰ However, a criminal conviction and probationary sentence does not “eviscerate all of the defendant’s rights of privacy.”⁶¹ Though a probationer has a reduced privacy interest, this does not “automatically mean a probationer has no privacy expectations.”⁶²

A. Reasonable Suspicion

The Court must first determine whether reasonable suspicion justified the probation search. Generally, a search violates the Fourth Amendment if it is not conducted pursuant to a validly issued warrant supported by probable cause.⁶³ Under Montana law, a valid search warrant must state facts showing probable cause made under oath and particular description of the things to be seized.⁶⁴ Probable cause exists whether there is a reasonable belief that an offense has been committed and the evidence sought exists at the designated place.⁶⁵

The United States and Montana Constitutions draw a firm line at the entrance to a home.⁶⁶ A warrantless search inside a home is per se unreasonable, “subject to a few specifically established and well-delineated exceptions.”⁶⁷ One such exception is a probation search.⁶⁸ The “special needs” of supervision justify a departure from the “usual warrant and probable cause requirements.”⁶⁹ A probation officer may conduct a warrantless search of a probationer’s residence if the officer has

⁵⁸ Brief of Appellant, *supra* note 1, at 12–13 (quoting *State v. Therriault*, 14 P.3d 444, 450 (Mont. 2000)).

⁵⁹ *Conley*, 415 P.3d at 476 (citing *State v. Burke*, 766 P.2d 254, 257 (Mont. 1988)).

⁶⁰ *Id.*

⁶¹ *Id.* (citing MONT. CONST. art. II, § 10; *State v. Moody*, 148 P.3d 662, 666 (Mont. 2006)).

⁶² *Id.*

⁶³ Brief of Appellee, *supra* note 3, at 7 (citing *Katz v. United States*, 389 U.S. 347, 357 (1967)).

⁶⁴ MONT. CODE ANN. § 46-5-221 (2021).

⁶⁵ *State v. Burchill*, 454 P.3d 633, 639 (Mont. 2019).

⁶⁶ *State v. Thomas*, 471 P.3d 733, 737 (Mont. 2020); *Payton v. New York*, 445 U.S. 573, 590 (1980) (“[T]he Fourth Amendment has drawn a firm line at the entrance to the house.”).

⁶⁷ Brief of Appellant, *supra* note 1, at 18 (citing *State v. Hubbel*, 951 P.2d 971 (Mont. 1997) (citations omitted)).

⁶⁸ *State v. Burke*, 766 P.2d 245, 256 (Mont. 1988) (adopting *Griffin v. Wisconsin*, 483 U.S. 868, 880 (1987) (holding that the need for flexibility within the probation system and the special relationship existing between a probationer and his probation officer justified departing from the usual warrant requirement)).

⁶⁹ *Id.* (citing *Griffin*, 483 U.S. at 873–74).

reasonable suspicion of a probation violation.⁷⁰ The reasonable suspicion standard is substantially less than the probable cause standard because of the probationer's diminished expectation of privacy.⁷¹ To require a warrant for a probation search would "artificially raise a probationer's privacy interest to a level inconsistent with conditional liberty status."⁷² The Court will determine whether sufficient grounds existed for reasonable suspicion by reviewing the totality of the circumstances.⁷³

The Court will likely not dedicate much time during oral argument discussing *whether* officers had reasonable suspicion, but rather *what* supported their reasonable suspicion. The State argues that Peoples' past violations, the nature of his alleged probation violation, and the phone call from Ms. Peoples justified the probation search.⁷⁴ However, Peoples does not dispute that the State had reasonable suspicion, rather, as discussed below, he disputes the proportionality of the search to the alleged probation violation—personal drug use and possible overdose.⁷⁵

Here, the Court will likely find that officers had reasonable suspicion of a probation violation to justify a warrantless search of Peoples' residence. P.O. Stricker received a phone call from Ms. Peoples where she stated that Peoples was using drugs and may have overdosed.⁷⁶ She also stated that there was blood in his residence.⁷⁷ Peoples does not dispute her credibility because in the past, her reports had often been confirmed to be true.⁷⁸ With this report and his past understanding of Peoples' addiction issues, P.O. Stricker likely had reasonable suspicion that Peoples violated a condition of his probation.

B. *The Nature of the State's Intrusion*

The heart of oral argument will likely lie in discussing the relationship between the grounds for reasonable suspicion and the nature and conduct of the State's search. This part of the analysis depends upon what facts supported P.O. Stricker's reasonable suspicion and how those facts limit or expand the scope of a reasonable search. The outcome could further constrict a probationer's already diminished expectation of privacy

⁷⁰ Brief of Appellant, *supra* note 1, at 18 (citing *State v. Moody*, 148 P.3d 662, 665 (Mont. 2006)).

⁷¹ Brief of Appellee, *supra* note 3, at 10 (citing *State v. Fischer*, 323 P.3d 891, 894 (Mont. 2014)).

⁷² *Burke*, 766 P.2d at 257.

⁷³ Brief of Appellee, *supra* note 3, at 10 (citing *Fisher*, 323 P.3d at 894; *State v. Smith*, 176 P.3d 258, 261 (Mont. 2008) (abrogated on other grounds); *State v. Stops*, 301 P.3d 811 (Mont. 2013); *State v. Fritz*, 142 P.3d 806 (Mont. 2006)).

⁷⁴ *Id.* at 10–11.

⁷⁵ Reply Brief of Appellant at 13, *State v. Peoples*, (Mont. Apr. 12, 2021) (No. 19-0070).

⁷⁶ Brief of Appellee, *supra* note 3, at 6.

⁷⁷ *Id.*

⁷⁸ Brief of Appellant, *supra* note 1, at 5.

during a probation search. However, the Court will likely hold the search unconstitutional because the nature of the State's intrusion was unreasonable.

A probation officer is in a "far superior" position than a judge to determine the appropriate degree of supervision because of their "continued experience with the probationer, knowledge of the original offense, with the probationer's welfare in mind."⁷⁹ The probation officer determines the level of supervision "necessary to provide both rehabilitation of the probationer and safety for society."⁸⁰ This special relationship creates the justification for warrantless probation searches.⁸¹ However, there must be a factual foundation justifying a probation search and the "search should not be used as an instrument of harassment or intimidation."⁸²

At oral argument, Peoples will likely argue that the search of his home was both harassing and intimidating because it was disproportionate to the suspicion of drug use and possible overdose which initially justified the search.⁸³ He will likely reiterate that the State's justification does not support an intrusion that was pre-planned, approved for forced entry, supported by a U.S. Marshal, and involved deceiving his landlord for his apartment key.⁸⁴

The State will likely counter that P.O. Stricker's experience and awareness of Peoples' conviction history, repeated relapses, and past noncompliance issues justified his method of entry.⁸⁵ More specifically, the State might argue that they were concerned by the report of blood⁸⁶ and that if Peoples was manufacturing his own meth, it would have created a dangerous situation.⁸⁷ Also, once inside Peoples' residence, officers conducted a homicide investigation which quickly cleared Peoples.⁸⁸

Here, the Court will likely agree with Peoples that P.O. Stricker's probation search was unreasonable because the suspicion of drug use does not justify this type of intrusion and the search was harassing and intimidating. The Court has upheld probation searches as reasonable when they ripen from a home visit to a search after discovering additional

⁷⁹ *Id.* at 19 (quoting *State v. Burke*, 766 P.2d 254, 256 (Mont. 1988)).

⁸⁰ *State v. Fischer*, 323 P.3d 891, 894 (Mont. 2014).

⁸¹ Brief of Appellant, *supra* note 1, at 19–20.

⁸² *Id.* at 18–19 (quoting *Burke*, 766 P.2d at 256).

⁸³ *Id.* at 24.

⁸⁴ *Id.* at 22.

⁸⁵ Brief of Appellee, *supra* note 3, at 12–13.

⁸⁶ *Id.* at 11.

⁸⁷ *Id.* at 14–15.

⁸⁸ *Id.* at 18.

information. In both *State v. Fischer*⁸⁹ and *State v. Stucker*,⁹⁰ probation officers requested and received permission to conduct a search of a probationer's home after they discovered potential probation violations. In *Fischer*, a probation officer first conducted a home visit where Fischer admitted to multiple violations, which led to a search of her purse.⁹¹ The officer did not immediately conduct a search, rather, he initially requested to see her pills.⁹² In *Stucker*, Stucker consented to a home visit where two probation officers discovered weapons cases in plain view.⁹³ Officers then requested Stucker to open the case, which he complied, and officers discovered a prohibited weapon.⁹⁴ After discovering the weapon, officers conducted a search of his home for additional weapons.⁹⁵

The difference between this case and *Fischer* and *Stucker* is that Peoples did not answer his door.⁹⁶ Unlike *Fischer* and *Stucker*, no probation officer actually requested permission to conduct a search, instead they knocked and announced their presence at Peoples' front door. After Ms. Peoples' report, P.O. Stricker did not call Peoples to check on him or to request a home visit.⁹⁷ Because the Court has previously relied upon a probationer's conditions of release when determining whether a search has occurred and whether the search was reasonable,⁹⁸ here Peoples' probation conditions will likely guide the Court's decision. In relevant part, Peoples' conditions of release require that "[h]e must submit, at any time, to a warrantless search of his residence . . . at the reasonable request of his supervising officer."⁹⁹ Since Peoples never answered and the search was harassing and intimidating, the Court will likely limit this type of search, holding it unreasonable.

The Court has the opportunity to expand upon the meaning of a "harassing and intimidating" probation search. The Court has not held a probation search unconstitutional because it was harassing and intimidating. P.O. Stricker did not attempt to call Peoples or request a home visit prior to entry.¹⁰⁰ After Peoples was handcuffed, he was left

⁸⁹ 323 P.3d 891 (Mont. 2014).

⁹⁰ 973 P.2d 835 (Mont. 1999).

⁹¹ *Fischer*, 323 P.3d at 895.

⁹² *Id.*

⁹³ *Stucker*, 973 P.2d at 841.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Brief of Appellant, *supra* note 1, at 24–25.

⁹⁷ *Id.* at 5.

⁹⁸ *See, e.g.*, *State v. Burke*, 766 P.2d 254, 256–57 (Mont. 1988); *State v. Fischer*, 323 P.3d 891, 894 (Mont. 2014); *State v. Therriault*, 14 P.3d 444, 453–54 (Mont. 2000); *State v. Conley*, 415 P.3d 473, 476 (Mont. 2018).

⁹⁹ Brief of Appellant, *supra* note 1, at 2.

¹⁰⁰ *Id.* at 5.

naked, on the floor, while officers searched his residence.¹⁰¹ P.O. Stricker testified that Peoples remained “calm and compliant” throughout, even while he remained naked and handcuffed.¹⁰² After about 30 minutes, another officer arrived and stated that they should put clothes on Peoples.¹⁰³ The Court might find these facts persuasive and hold in Peoples’ favor that the search was both harassing and intimidating.

The Court will likely question the State about P.O. Stricker’s primary reason for conducting the probation search to determine the reasonable level of intrusion. The suspicion of blood in Peoples’ residence triggered Probation and Parole’s request for forced entry permission.¹⁰⁴ However, the State asserts that P.O. Stricker’s reason for entering without Peoples’ permission was “based in part on a report of” blood and a possible overdose.¹⁰⁵ And once inside Peoples’ residence, officers conducted a homicide investigation.¹⁰⁶ However, the State also claims that if Peoples was operating a clandestine lab, it would have created a dangerous environment, even though the record does not contain evidence that Peoples’ apartment was actually contaminated.¹⁰⁷ The Court will likely reject this hypothetical because, as the State admits, the record does not contain any evidence to suggest that P.O. Stricker believed Peoples was operating a clandestine lab.

V. CONCLUSION

Though probationers have a diminished expectation of privacy, their right to privacy is not extinguished. This case presents an opportunity for the Court to further clarify the privacy interests of a probationer. The Court will likely hold that officers had reasonable suspicion to conduct a probation search based on Peoples’ past addiction issues and Ms. Peoples’ report of drug use and possible overdose. Additionally, even though probation officers have discretion to supervise a probationer in a manner they see fit, that supervision must also be reasonable. The Court will likely hold the search was unreasonable because P.O. Stricker’s request was not reasonable, and the search was harassing and intimidating. Thus, the Montana Supreme Court will likely reverse the district court’s denial of Peoples’ motion to suppress and remand consistent with its opinion.

¹⁰¹ *Id.* at 8.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 6 n. 2.

¹⁰⁵ Brief of Appellee, *supra* note 3, at 16.

¹⁰⁶ *Id.* at 18.

¹⁰⁷ *Id.* at 14–15.