

**APPLICATION FOR
DISTRICT COURT JUDGESHIP**

A. PERSONAL INFORMATION

1. **Andrew J. Breuner**
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. **Montana Eighteenth Judicial District Court**
7. **NA**
8. **November 2002**

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.

Miramonte High School	Orinda, CA	(June 1985) HS Diploma
University of California, San Diego	La Jolla, CA	(March 1990) B.A. (Political Science)
Santa Clara University School of Law	Santa Clara, CA	(May 1993) J.D.

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

University of California, San Diego	Graduated <i>cum laude</i>
Santa Clara University School of Law	Law Review Merit Scholarship Certificate of Excellence in Legal Research and Writing

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.

City Judge	Belgrade City Court of Record 91 E. Central Avenue Belgrade, MT 59714	March 2015-present
Adjunct Instructor	Montana State University Department of Sociology & Anthropology P.O. Box 172380 Bozeman, MT 59717	Aug. 2019-present
Defense Counsel	Beaverhead County DUI Accountability Court 2 S. Pacific Dillon, MT 59725	Sept. 2018-Oct. 2019
Asst. Custodian	Manhattan Christian School 8000 Churchill Road Manhattan, MT 59741	Aug. 2018-June 2019
Attorney-Owner	Law Office of Andrew J. Breuner PO Box 603 Gallatin Gateway, MT 59730	Oct. 2003-Aug. 2018
Owner	B&B Finest Custom Coffees Commercial Roasting and Distribution 10607 W. River Street Truckee, CA 96161	June 1999-Oct. 2002
Ski Instructor	Squaw Valley Ski Corp. 1960 Olympic Valley Road Olympic Valley, CA 96146	Nov. 2000-April 2001 [and Nov. 1994-April 1995]
Adjunct Instructor	Santa Clara University School of Law 500 El Camino Real Santa Clara, CA 95053	Aug. 1998-May 1999 [and Aug. 1996-Dec. 1997]

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**Litigation Associate, Crosby, Heafey, Roach & May
[now Reed-Smith]
1999 Harrison Ave.
Oakland, CA 94612**

Oct. 1993-Nov. 1994

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.

State Bar of Montana	Oct. 2003
U.S. District Court (MT)	Oct. 2003
U.S. Court of Appeal (9th Cir.)	Jan. 1994
U.S. District Court (N.D. Cal)	Jan. 1994
State Bar of California	Dec. 1993

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).

I have been the full-time city judge for the City of Belgrade for since March 2015. I served as defense counsel for District Judge Luke Berger's Beaverhead County DUI Accountability Court in 2018-2019. Prior to these positions I had a solo law practice in which I primarily practiced in the areas of criminal defense, juvenile law and representing parents in dependency-neglect matters.

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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 was adjunct instructor at the Santa Clara University School of Law where I supervised their criminal defense clinic in 1996-1997 and 1998-1999. I also taught a class in criminal procedure while at Santa Clara.

I currently teach an upper division sociology course in criminal law and procedure at Montana State University as an adjunct.

Over the last five (5) years I have also organized and/or judged numerous mock trials at the high school and college level.

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.

In have represented clients in fourteen different Montana courts (i.e. district courts in seven (7) judicial districts and seven (7) different limited jurisdiction courts) over a ten year period--- primarily in criminal defense and dependency-neglect work.

I also handled guardianship and order of protection matters.

Over the course of that ten-year period, I was in the courtroom on a weekly and sometimes daily basis.

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.

In the Matter of T.R. 1 and T.R. 2 (DA 12-0098)

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.

Representative of these, among numerous others, would include:

Representing a county inmate in a conditions-of-confinement/§ 42 U.S.C 1983 action in both state and federal district court

Serving as lead defense counsel in a Ponzi scheme prosecution addressed to alleged losses in the millions of dollars

Discovery practice (written and depositions) in defense-side asbestos/toxic tort litigation.

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.

Andrew J. Breuner, Comment, *Expression by Association: Towards Defining an Expressive Association Defense in Unruh-Based Sexual Orientation Discrimination Actions*, 33 SANTA CLARA L. REV. 467 (1993)

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.

Montana State University (Sociology 313), Principles of Criminal Law and Procedure (Fall 2019; Spring 2020; Spring 2021; Fall 2021).

Class is comprised primarily of upper division criminology students. Typically enrolls 34 students.

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 not tracked these hours since approximately 2017. As a judge I look for opportunities to serve the community. I have regularly addressed driver's education classes on how traffic laws impact young drivers. I have also assisted homeschool and college mock trial programs on a number of occasions. I have made several presentations to the Belgrade Chamber of Commerce, Building Belgrade program to discuss the city court's role in city government. A couple of months ago I extended an open offer to the Belgrade School District to address students on the workings of the city court. Finally, I have advised non-profit organizations on legal issues numerous times over the past five years where I was ethically able to do so.

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.

None

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

None

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 been the full-time Belgrade City Court Judge since 2015. The City Court primarily handles misdemeanor, traffic and order of protection matters. There are approximately 1500 filings per year---though we will likely exceed that number this year.

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

I owned a commercial coffee roasting and distribution business for over five years. I have also worked in construction, landscape nursery sales, construction, dairy (milking and maintenance), as a ski instructor and assistant school janitor.

At the time we moved to Montana in 2002, I had been active in Rotary (Truckee, California) for several years (specialty coffee classification) where I had the opportunity to learn valuable information about numerous businesses, professions, and trades from business leaders in the community.

I have served on boards for a number of non-profit organizations.

As a judge, the people and interests that come before you come from all walks of life and sectors. Judges with a wider scope of work and life experience possess a more meaningful and authentic sense of both the kinds of conflicts and challenges that arise in the real world and how their decisions will impact the parties before them.

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.

Not since approximately 2012.

(Since moving to Montana in 2002, I have served on the boards of Catholic Radio (KOFK), the Petra Academy and Love in the Name of Christ (Love Inc.)

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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.

None

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.

None.

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

None.

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.

During the one (1) year that covered my last semester of high school and first semester of college (1985-1986) I was charged with and entered guilty pleas to three (3) misdemeanor offenses including one count of being minor in possession of alcohol; one count of disturbing the peace; and a DUI. I was eighteen years old at the time of the first two (2) incidents; and nineteen years old at the time of my DUI. I successfully discharged all of these sentences. Each involved my irresponsible use of alcohol and I regret my poor judgement that led to them. I do believe that my own experiences have afforded me insights and wisdom in working with juvenile clients and addressing minors and young adults in city court proceedings (particularly as regards drug, alcohol and peer pressure issues).

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).

None.

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.

None

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.

None.

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.

None.

G. JUDICIAL PHILOSOPHY

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

I believe I am the best equipped person to handle the unique challenges the new fourth judgeship will create. Not only do I have considerable experience as a lawyer and judge in the areas of law that comprise a substantial share of the weekly dockets, I have also addressed staff hiring and human resources, new infrastructure, inter-department and agency relations and developing technology needs in the judicial setting. I have made numerous appearances before the city council to address judicial priorities and I have submitted court budgets and worked with executive branch personnel for over six (6) fiscal years.

I have managed a busy, limited jurisdiction court and its staff through the COVID pandemic without closure and adapting to changing directives and priorities.

As a limited jurisdiction judge, I have attended 3-day judge schools every fall and spring each year for the past six years and taken and passed the required judge's exams.

The new judge needs to hit the floor running while simultaneously building a new department, adapting to shared spaces, and participating in the inevitable changes coming to the Law and Justice Center campus.

Finally, I understand that judges must exercise sound discernment over profoundly life impacting decisions in a context of complex and conflicting interests. I am often reminded (by historical displays in my office) of my late father's role as a crew member on a B-47 jet bomber in the Cold War 1950s. These airmen flew challenging missions that carried potentially global implications for peace or conflict.

On a smaller (but no less important scale), judges operate in a similar dynamic. I believe I possess the character and intellect to well meet the challenges of the bench in a manner that preserves the integrity of the court's role, the rule of law, and the dignity of all those with business before the court.

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

I have appeared in the courtrooms of approximately 60 different judges in my 28 years as an attorney. The qualities I believe are most important are:

- 1) Wisdom. A good trial judge has life experience that provides insight into how court protocols impact professionals and how application of the law impacts parties in the real world.*
- 2) Decisiveness. Trial judges have a legal obligation to make decisions in a timely, competent manner that promotes confidence in the judicial system. On the administrative/management side, a decisive judge leads his/her judicial department with clear direction and expectations.*
- 3) Humility. The best judges do not rely on mean-spiritedness to compel respect. They are both firm and kind. They do not pretend to possess a photographic memory of the law. Like good attorneys, they know the sources to consult---and are not embarrassed to check and confirm a legal understanding others might expect them to know. They are good listeners, open-minded and not afraid to change their mind when recognition of an error, thoughtful reflection or new information requires it.*

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

Our three co-equal branch system of government is best served by judges who ‘stay in their lane’ and recognize the importance of the separation of powers required by our state and federal constitutions.

The judiciary best performs its independent role by interpreting and applying laws as they are written and with the employment of established rules of statutory interpretation. Where authoritative state and/or federal law is insufficient to address an issue, legal principles from our common law heritage are the rule of decision in Montana.

Excessively mechanical applications of the law which gratuitously elevate form over substance, avoid meaningful and necessary legal analysis, or deprive statutes of the usefulness that the legislature intended for them are also harmful.

It is also important to recognize that district court judges are trial judges. This means that both statutory and decisional law require and expect district judges to exercise discretion on a regular basis. Our laws contain both “shall” and, equally important, “may” references. There is an enormous range of situations, both in litigated and transactional matters, where judges are exercising both legal discernment and fact-finding functions.

Not surprisingly, appellate review of district courts’ exercises of discretion makeup a significant portion of the Montana Supreme Court’s docket.

Therefore, it is essential that disciplined interpretations and application of constitutional provisions and statutes are accompanied by the exercise of sound discretion when the law demands it.

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.

A legal opinion with order is attached with minor redactions and edits to protect privacy.

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.

Hon. Luke M. Berger

Hon. Holly B. Brown

Hon. Raphael J. He Does It

Contact for above references supplied separately.

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).

September 27, 2021
(Date)

/s/ Andrew J. Breuner
(Signature of Applicant)

IN THE BELGRADE CITY COURT OF RECORD, GALLATIN COUNTY, MONTANA

<p>CITY OF BELGRADE, STATE OF MONTANA</p> <p>Plaintiff,</p> <p>vs.</p> <p>A.D.</p> <p>Defendant.</p>	<p>Case No: TK-125-xxxx-xxxx</p> <p>ORDER</p>
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[This matter came before the Court on the parties’ timely filed briefs addressed to defendant A.D’s Motion to Suppress]

A.D. is charged with driving under the influence of alcohol (DUI) in violation of section 61-8-401, Montana Code Annotated (MCA).

A.D. argues that the blood test result in this case must be suppressed because: 1) The 2008 DUI offense used in the telephonic warrant application for a blood draw is time barred by application of a 10 year look back; and 2) the telephonic warrant application contained false information about “5 prior offenses” and thus lacked the statutory basis for approval of a blood draw warrant under section 61-8-402(5), MCA.

A.D. further requests that the circumstances at issue necessitate dismissal of the DUI charge altogether and in further of justice.

In response, the State argues that the basis for the 10 year limitation on the use of prior DUI offenses is, by express statutory terms, limited to penalty enhancement under section 61-8-734(b), MCA and should not be applied for purposes of assessing the statutory requirements for blood warrants in 61-8-402(5).

Additionally, the State claims that A.D. has failed to meet his initial burden of producing substantial evidence of materially false information as required for holding an evidentiary hearing to assess the falsity claim as explained in *State v. Minez*, 2004 MT 115.

Finally, the State maintains that even if excision were required, the resulting application would still contain sufficient factual allegations to satisfy probable cause for a blood draw warrant.

The parties appear to agree that A.D. was stopped for an alleged headlamp violation; that the arresting officer conducted a DUI investigation based on numerous signs of impairment; and

that A.D. refused all tests for impairment including breath tests.

The parties also agree that the arresting officer applied to the Hon. John C. Brown for a blood draw warrant and noted, among other things, that A.D. had “five (5) prior convictions” for DUI.

Finally, the parties appear to agree that these convictions were, in fact, attributable in the criminal history database to a person with a similar name and other similar identifying information to A.D..

Both parties cite to a DUI conviction in 2008----though the parties apparently disagree as to whether any other convictions (including those referenced in the warrant application) are attributable to A.D..

I. IS THE 10 YEAR LOOK BACK PERIOD FOR DUI SENTENCE ENHANCEMENT APPLICABLE TO PRIORABILITY FOR PURPOSES OF TELEPHONIC BLOOD WARRANTS?

A.D. argues that uncertainty about the meaning of “prior conviction” in the implied consent/ blood warrant statute, 61-8-402, should be resolved by reference to the 10 year look back period for assessing second DUI offense priorability as defined in 61-8-734(b).

In other words, A.D. asserts that his prior conviction is time barred with respect to the warrant that was used to draw a sample of his blood.

The State argues that by its plain language meaning, the 10 year look back period in 61-8-734(b) is “for purposes of sentencing” and not applicable to limiting qualifying offenses for blood warrant applications.

In 61-8-402, an investigating officer who encounters a test refusal may seek a warrant to collect a sample of blood if the person has a prior Montana drinking and driving conviction or a conviction under a “similar statute.” § 61-8-402(5), MCA.

The meaning of “prior conviction” does not contain a time limitation in 61-8-402(5).

To determine legislative intent, courts first apply the plain meaning of statutory language. *State v. Gatts*, 928 P.2d 114, 117 (Mont. 1996) citing *Clarke v. Massey*, 897 P.2d 1085, 1088 (Mont. 1995). This involves giving words their “usual and ordinary meaning.” *Gatts*, 928 P.2d at 117 citing *Were v. David* (1996), 275 Mont. 376, 385.

The Court disagrees that the absence of limiting time language in 61-8-402(5) creates a question about whether there is an applicable time limitation. This is because the statute A.D. looks to for such a limitation, 61-8-734(b), contains straight forward language limiting the 10 year look back period to “sentencing” purposes. § 61-8-734(b), MCA.

Had the legislature intended to apply a similar look back to blood warrant applications, it could have done so.

A.D. also argues that applying the 10 year look back language to address the lack of such information in 61-8-402(5), is warranted by Montana’s more expansive interpretation of privacy rights under Art. II, § 10 of the Montana Constitution.

However, A.D. cites no authority for the principle that the plain meaning of statutory language should be ignored in order to expand privacy rights in this or any other context.

Additionally, where Montana has taken a more expansive interpretation of privacy interests under the Montana Constitution in search and seizure cases, it has done so with respect to warrantless searches and *not* search warrant cases where there has been a determination of probable cause by a neutral magistrate. See *State v. Elison*, 2000 MT 288, ¶ 54 (“We have concluded that that the category of *warrantless searches* which may be conducted under the Montana Constitution is narrower than the category of searches which may be conducted pursuant to the Fourth Amendment”)(emphasis added).

The ‘narrower’ interpretation referenced in *Elison* has meant that rather than recognizing blanket exceptions to the warrant requirement like the “automobile exception”, the Montana Supreme Court has required a case specific showing of both probable cause plus some other generally recognized and accepted exception to the warrant requirement such as plain view, searches incident to arrest or exigent circumstances. *Elison*, 14 P.3d at 471.

In this case there is no question of a warrantless search because the arresting officer applied for and was granted a blood draw warrant.

Therefore, the Court declines the extension of the 10 year DUI sentencing enhancement limitation to applications for blood draw warrants.

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II. IS AN EVIDENTIARY HEARING REQUIRED TO ASSESS DEFENDANT’S CLAIM THAT THE WARRANT APPLICATION CONTAINED MATERIALLY FALSE INFORMATION?

A.D. maintains that the blood evidence in this case must be suppressed because the application contained the false statement that A.D. had “5” prior convictions.

The State argues that A.D. has failed to make the “substantial preliminary showing” of falsity required by *State v. Minez*. 2004 MT 115, ¶¶ 20-23 citing *Franks v. Delaware* (1978), 438 U.S. 154; and *State v. Worrall*, 1999 MT 55.

Such a showing would necessitate an evidentiary hearing where the defendant bears the burden of showing that the warrant application contains a materially false information by a preponderance of the evidence. *Minez*, ¶ 22 citing *Worrall*, ¶¶ 32 and 34.

Where the defendant succeeds in establishing the material falsity of information in the warrant application, the false information must be excised and the remaining language reexamined for a determination of probable cause. *Minez*, ¶ 20 citing *Franks*, 438 U.S. at 155-156.

Here, the Court disagrees with the State that A.D. has failed to make such a showing.

A.D. quotes language from a sworn warrant application. That application is attached to the State’s answer brief. It appears that the arresting officer’s testimony was recorded and witnessed and the application materials affirmatively state that A.D. had five (5) prior convictions. The parties’ briefs and attachments provide considerable equivocation----specifically that that information used in the warrant application to characterize A.D.’s prior convictions were referenced to an “A.D.” with a similar but different middle name, age, description and other identifying information.

While the State explained that the database flagged the ‘other’ A.D. as a possible alias that might necessitate a fingerprint comparison, none of this qualification appears in the warrant applications referenced by A.D. and attached to the State’s answer brief.

A.D.’s showing here is not at all like the mere conclusions referenced by the *Minez* in *State v. Feland*. *Minez*, ¶ 23 citing *State v. Feland* (1994), 267 Mont. 112, 115.

The Court is also aware of the Supreme Court’s treatment of the blood draw application in

City of Missoula v. Williams, where the Court essentially declined to submit the legal definition of “similar offense” to a *Worrall* inquiry based on the fact that its review was limited to the information available “within the four corners of the affidavit” and without requiring that the reviewing magistrate undertake a legal inquiry into the definition of terms or other questions of law therein. 2017 MT 282, ¶ 21.

While the Court is inclined to agree with Justice Sandefur’s special concurrence—which argues that in the context of 61-8-402(5), a *Worrall* assessment should extend to whether information in the warrant application was legally correct to determine whether the investigating officer had the grounds to apply for a blood draw in the first place (*Williams*, ¶¶ 32-35 (Sandefur, J. specially concurring)), the facts here are distinguishable.

In *Williams*, the investigating officer stated in her affidavit that the defendant had a prior conviction under a “similar” DUI statute in Arizona and referenced the statute specifically. *Williams*, ¶ 3. While the Supreme Court concluded that the Arizona statute was *not* similar to Montana’s as a matter of law, the Court held that the application was nonetheless valid because the reviewing judge was not required to conduct a legal comparison of the statutes like the priorability assessment for purposes of sentencing in *State v. McNally*. *Williams*, ¶¶ 17-22 (citing *State v. McNally*, 2002 MT 160).

The question in this case does not turn on the legal definition of ‘prior conviction’ or other terminology. In fact, the Court has already addressed the legal definition of ‘prior offense’ above.

Rather, the issue here is whether a *factual* representation of prior convictions was materially false, and if so, what the appropriate remedy is. This allegedly false information is germane because the State is relying on a prior offense or offenses to establish the lawfulness of the blood draw at issue.

And while satisfying 61-8-402(5) does not, by itself, provide probable cause for issuance of a warrant, a probable cause showing for a blood draw warrant certainly would have to address one or more of the prerequisites in that statute.

Thus, at a minimum, a hearing must address the following:

1. Whether the arresting officer’s warrant application contained materially false information;
2. what information must be excised from the warrant application if A.D. establishes material falsity by a preponderance of the evidence;

3. does the application still satisfy probable cause including grounds for a blood draw under 61-8-402(5) if material is excised from the warrant application; and
4. is dismissal of the charge the proper remedy if the excised application fails to satisfy probable cause and tainted evidence is suppressed?

The Court has determined that A.D. has made a substantial preliminary showing of material falsity and that this matter requires an evidentiary hearing to address, as necessary and at a minimum, the above issues.

Therefore,

IT IS ORDERED THAT:

- 1) Defendant's Motion to Suppress and Dismiss on the basis that the "prior conviction" was time-barred (as discussed in sub. "I" above) is DENIED.
- 2) Defendant's Motion to Suppress and Dismiss is taken under advisement pending an evidentiary hearing addressed to the issues listed in sub. "II" above.
- 3) A hearing is scheduled for _____, **20**__ at _____ **a.m./p.m.**

DATED: _____

Andrew Breuner
Belgrade City Court Judge

cc: _____ City Prosecutor
 Defendant

Defendant's attorney
