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STATE OF MONTANA
Case Number: DA 19-0738

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19-0738

STATE OF MONTANA,

Plaintiff and Appellee,

v.

AMBER BURNETT,

Defendant and Appellant.

REPLY BRIEF OF APPELLANT

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, the Honorable Robert G. Olson, Presiding

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On appeal, Ms. Burnett raises legal errors in the District Court's speedy trial analysis, of which this Court's review is *de novo*. (*See* Appellant's Br. 22-37.) The District Court erred by attributing all of the State's 466 -day delay as institutional, a 141-day period was the result of lack of diligence which weighs more heavily against the State and in favor of a speedy trial violation.

I. The 466-day delay violated Burnett's right to a speedy trial.

A. The State's need to reset Amber's first trial date because it waited until plea negotiations ended to complete its investigation is a lack of diligence.

The District Court and the State are wrong to attribute delay caused by the State's reliance on a plea agreement as institutional delay for purposes of a speedy trial analysis. *State v. Small,* 279 Mont. 113, 119, 926 P.2d 1376, (1996). The law does not require a defendant to choose between her constitutional right to a speedy trial and the ability to engage in plea negotiations. *Small,* 279 Mont. 113, 118, (1996). As Burnett's March 18, 2019, trial date approached, the State requested it be reset because Burnett had rejected a plea offer it expected her to accept. The State had halted any further investigation of the evidence in its possession pending resolution of the plea negotiations. When

Burnett declined the State's offer, the State was unprepared and needed time to "finalize the investigation" and "prepare this matter for trial." (App. A, 5, ¶ 19.) The State then took three more months to complete its investigation and amend the Information with new charges. (App. A, Pg. 5, ¶ 24.) Where, as here, the State forgoes its prosecution to wait for the defendant to respond to a plea offer, that time cannot be counted as institutional delay.

Contrary to the State's assertion on appeal, there is no loophole in the State's obligation to afford a speedy trial when it believes the evidence is strong and thus in the State's estimation, it would be wise to accept its plea offer. (Appellee 21.) The assertion is also misleading given Ms. Burnett was eventually acquitted of the most serious allegation: felony assault for allegedly tasing her daughter. (App. C.)

The State must ensure a speedy trial, regardless of ongoing "good-faith" plea negotiations. *Small*, 279 Mont. 113, 118, 926 P.2d 1376 (1996). Like here, the prosecution in *Small* also had a "good faith" belief the defendant would ultimately plead guilty. The State "was under the impression" Small just needed to come sign the appropriate paper but had procrastinated doing so. *Small*, 279 Mont. 113, 118, 926 P.2d 1376

(1996). This Court found the delay caused when the State failed to proceed with prosecution weighed more heavily against the State and in favor of a speedy trial violation. *Small,* 279 Mont. 113, 119, 926 P.2d 1376, (1996).

On appeal, the State makes an empty distinction between the facts in *Small* and this case in an attempt to avoid *Small*'s holding. The effect of the State's continuance here was the exact same as in *Small*, a prolonged delay caused by the State's anticipation of a plea deal. In *Small,* the State asked to vacate a trial date in anticipation of a plea agreement and did not set another for 270 days. *Small,* 279 Mont. 113, 119, 926 P.2d 1376 (1996). Here, the State had a trial date but in anticipation of a plea agreement stopped its investigation and did not prepare for trial. When the trial date arrived, the prosecution was unprepared and asked for a later date. As a result, the trial was set 141 days later. By contrast, the State's reliance on *State v. Stewart* is inapplicable because there it was the ***defendant*** who caused the delay when he requested the court not pull a jury when it otherwise would in anticipation of his plea. *State v. Stewart*, 2017 MT 32, ¶ 13, 386 Mont.

315, 389 P. 3d 1009. Here, like *Small*, it was the State's inaction which caused the 141- day delay and weighs in favor of dismissal.

B. The State's unnecessarily slow review of evidence did not justify delay.

The State asserts Ms. Burnett's case is different than *Velasquez*, where the "crime lab's workload" was the cause of a continuance. (Appellee 18.); *State v. Velasquez,* 2016 MT 216, 384 Mont. 447, 377 P.3d 1235. Here, one detective stopped reviewing video evidence altogether while plea negotiations were pending, and then once the prosecutor told her to start working again, she required three additional months to finish. Both *Velasquez* and *Mayes* resulted in dismissal after the State's inefficient method for obtaining necessary evidence, a drug lab analysis, caused delay. *Velasquez*, ¶ 53; *State v. Mayes,* 2016 MT 305, ¶ 25, 385 Mont. 411, 384 P.3d 102.

In *Velasquez*, the Court determined the State did not act with diligence because it knew about the substantial backlog at the Crime Lab but "the record reveal[ed] no evidence that the State attempted to pursue any possible alternative testing locations." *Velasquez*, ¶ 19. This Court found a "failure to even inquire" into a faster alternative was "dilatory inaction" on the part of the State. *Velasquez*, ¶ 20. In *Mayes*,

the State failed to explain its delay in submitting evidence to the Crime Lab. *Mayes*, ¶ 11. This Court found these delays were a result of lack of diligence not institutional delay when the State did not demonstrate it explored more timely methods of preparing evidence. The State must justify trial delay. *Velasquez*, ¶¶ 18-19.

Velasquez and *Mayes* establish the State's inconvenience at having to explore more efficient means of reviewing evidence does not justify long delay. The State failed to show reasonable diligence when it didn't explore any more efficient method of reviewing video evidence. The State possessed the video evidence for over a year and could have split the task among multiple investigators. Instead, the State delayed the video review and then left the project to one overwhelmed detective to review at snail's pace. (Appendix A, Pg. 4, ¶ 16; 8/5/2019 Tr. at 182.) Due to the extended delay here, 466 days total, the State has a high burden to show "reasonable diligence" in preparing evidence. Just as this Court found a failure to seek a faster alternative of obtaining evidence was not institutional in *Mayes* and *Velasquez*, here, the District Court erred when it condoned the delay caused by the State's inefficient video review.

The State tries to pin part of the 141-day video review delay on Burnett due to her counsel's unavailability in April and May. Defense counsel's availability in April or May was irrelevant because the record shows the State needed both months to complete its investigation. In mid-March, the State requested a continuance because it was not ready for trial. By April 16, 2019, when the State responded to Burnett's motion to dismiss, it admitted it had made only limited progress when it represented it had only identified four additional charges. (App. A, Pg. 5, ¶ 23.) As the State concedes on appeal, it did not identify the remaining nine charges until completing the video review in June. (Appellee 10.) Defense counsel had returned well before June, so the entire 141 days between the first trial date and the second is due to a lack of diligence by the State.

In addition, the State does not accurately address the cause of Burnett's third continuance prior to the omnibus hearing. This continuance was not necessary only, as the State implies, because the video evidence was voluminous. Instead, this delay is attributable to the State because it provided flawed discovery with key videos missing and mislabeled date and time references. (D.C. Doc. at 20.) In total, the

prejudice falls in favor of the defendant and warrants reversal. *Velasquez*, ¶¶ 51–53.

C. The long-pending allegations and restrictive bail conditions were debilitating and humiliating to Amber.

The State claims it made a "strong showing," (Appellee 13), that its 466-day delay did not unduly prolong the disruption to Ms. Burnett's life or aggravate her anxiety and concern about the pending prosecution. *Ariegwe*, ¶ 97. There is little substance to the State's claim. In support, the State mainly points to a relatively short 9-day period of incarceration. (Appellee 25.) But the significant length of the delay, 266 days beyond the threshold, requires a keener focus on the extent that the pretrial delay prolonged disruption and aggravated Amber's anxiety and concern. *Ariegwe,* ¶ 97.

Then, the State appears to argue, without authority, Ms. Burnett had an affirmative duty to successfully amend her bail conditions in order to ameliorate the impact of the State's inordinately long delay. (Appellee 27). Burnett had no such obligation. "It has never been incumbent upon a defendant to assist the State in his own prosecution." *State v. Fuller*, 276 Mont. 155, 166, 915 P.2d 809 (1996).

Ms. Burnett and her father provided specific, detailed testimony about how Amber's bail restrictions impacted her ability to work and alienated her from family and support. The State did not refute Ms. Burnett's testimony about her employment nor offer any opposing evidence of its own. (6/10/2019 Tr. at 18-21.) Amber testified the restrictions caused her to lose her job as a cocktail waitress. (6/10/2019 Tr. at 13.) She was not allowed to be anywhere that served alcohol, and thus unsurprisingly could not find another waitressing job. Amber then tried to secure work through a temp agency called Terry Express but they would not hire her due to her bail conditions. (6/10/2019 Tr. at 13.)

The State fails to show how the compounding effect of isolation and joblessness over time, a result of restrictions on her liberty, did not unduly affect Ms. Burnett's ability to function. Ms. Burnett's bail conditions restricted her freedom of movement both by time of day (8:00 p.m. curfew), and geographically, (restricted from leaving the State and entering certain establishments). The speedy trial right is in part meant to prevent unnecessarily prolonged and confining restrictions. *See*, *State v. Betterman*, 2015 MT 39, ¶ 22, 378 Mont. 182, 342 P.3d 971 (the

speedy trial right's "concern is that a person presumed innocent is nevertheless deprived of his liberty.")

The State grasps at straws by arguing Amber was not as isolated as she says because the record shows she was "going out into the community" to attend anger management and parenting classes in relation to a parenting plan imposed in her DN case. (Appellee 26.) As Burnett's opening brief describes, the pre-trial bail restrictions prevented her from seeing her husband, her children, or spending time with any friends who were fellow mothers of young children. Given the length of the delay, Amber's ability to attend daytime parenting classes which were mandatory to fulfill a reunification plan falls far short of the State's heightened burden to show Ms. Burnett was not prejudiced.

Finally, the State claims the 466-delay did not cause more anxiety or concern to Ms. Burnett than any other timely prosecution would. Amber was charged with several counts of assault, but above all, she was deeply troubled by the State's ultimately untrue allegation that she tased her daughter. Amber had to wait 466 days to clear her name of this conduct. Her significant anxiety over this charge was supercharged when a representative of the Great Falls police testified in the related

DN proceeding that they had (nonexistent) video footage of the tasing event. (6/10/2019 Tr. at 15-16, 17, 20; 8/6/2019 Tr. at 5.) The aim of the speedy trial right is to protect "the presumptively innocent from long-enduring unresolved criminal charges." *Betterman v. Montana*, 136 S. Ct. 1609, 1618 (2016). A delay of 466 days, all attributable to the State, requires a more persuasive showing. Ms. Burnett's right to a speedy trial was violated and requires dismissal.

II. The State failed to prove felony perjury.

A. The State conceded the District Court's second factual finding cannot support a perjury conviction.

On appeal, the State concedes the District Court's second factual finding (about knowledge of a video camera) is outside the charge. (Appellee 35, fn. 1.) The sufficiency of the perjury conviction is limited by what the State's amended Information actually alleged. *Jackson v. Virginia*, 443 U.S. 307, 314 (1979)(a conviction "upon a charge not made" is not a constitutional conviction; only a conviction based on sufficient proof of the charged offense is). Due process requires this finding be afforded no weight in Ms. Burnett's sufficiency analysis.

B. Under *Scanlon*, the nature of the State's proof of falsity is insufficient as a matter of law.

Amber denied she pressed a taser device to her daughter in the DN proceeding. (State's Exhibit 44, pg. 4, ln 24.) She immediately qualified the statement by explaining there are two parts on a taser device: a taser, and a flashlight. (State's Exhibit 44, pg. 5, ln 1-4.) No one asked her what she meant by that. In her criminal trial, the district court found Amber committed felony perjury because she later agreed she put the flashlight part of a taser device to her daughter without activating it or telling her daughter what the device was. The State provided insufficient evidence to prove beyond a reasonable doubt that by this, Amber knowingly gave false testimony. In addition, the State failed to prove Amber did not retract the statement.

The elements and nature of the proof necessary to prove perjury are stringent and specific. *State v. Scanlon*, 174 Mont. 139, 167, 569 P.2d 368, (1976)(citation omitted). Proof of falsity of a statement requires direct evidence through the testimony of two witnesses. *Scanlon*, 174 Mont. 139, 167, 569 P.2d 368, (1976). Alternatively, it requires the testimony of one witness and independent "corroborating circumstances" "sufficient to turn the scale and overcome the oath of the

defendant." *Scanlon*, 174 Mont. 139, 160, 569 P.2d 368, (1976). This is the "direct evidence" rule and sets the State's evidentiary burden to prove perjury apart from other offenses. Mont. Code Ann. § 26-1-301; Mont. Code Ann. § 45-7-201(7).

The State accused Amber in relevant part[1] of perjury by making a false statement denying she "ever used a taser on her children." (D.C. Doc. 45, pg. 35.) The State must prove with direct evidence, then, that Amber knowingly gave a false statement by denying "ever *using* a taser on her children." The State skirts the direct evidence question but asserts generally that Conlan's trial testimony together with Burnett's trial testimony and jail-call statement is sufficient evidence to uphold the conviction. (Appellee 37) Under *Scanlon*, the State is wrong.

Conlan's testimony at trial claiming he saw Amber electroshock N.G. with a taser is the only direct evidence offered to prove the falsity

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[1] The State's alternative allegation that Ms. Burnett denied "making a statement" about a taser on a jailhouse phone is so overbroad as to become meaningless. There is nothing inherently wrong with "making a statement" about a taser. Most importantly, because the District Court did not make any finding that Ms. Burnett denied "making a statement" about a taser on a jail-phone, further discussion of this allegation is not necessary.

of a statement denying “ever using a taser” on a child. "Direct evidence" is that which proves a fact without an inference or presumption and which in itself, if true, establishes that fact. Mont. Code Ann. §26-1-102(5). The district court did not find Conlan’s testimony credible, as evidenced by the acquittal in Count I, (where the State alleged Amber tased her daughter). Thus, his testimony is of no help to the State in defending a sufficiency claim. Even if believed, Conlan’s testimony is insufficient without independent corroboration and no other evidence corroborates Conlan’s testimony that Amber applied the electric force of a taser to her daughter until she screamed “bloody murder.” The State insists Burnett’s testimony corroborates Conlan’s but gives no explanation as to how her adamant denial she tased her daughter could corroborate Conlan’s testimony that she did. The State is left with no direct evidence to sustain the proof of falsity element.

The State alleged Ms. Burnett made a materially false statement when:

> During her testimony under oath at a hearing on January 22, 2019, the defendant **denied ever using the taser** on her children. Moreover, she denied making a statement about the taser during a jailhouse call to her father (which is recorded and in evidence.)(D.C. Doc. 45, pg. 35.)

In a light most favorable to the State, Ms. Burnett's statements that she pressed the flashlight end of a taser device to her daughter is an admission. In *Scanlon*, this Court established a party admission is insufficient to prove falsity of a statement and sustain a perjury conviction. Both the District Court and the State error by mistaking a party admission as sufficient to prove the falsity of a statement denying "using" a taser. This Court should not make the same mistake. For perjury, "[e]vidence that establishes facts from which the falsity of an alleged perjured statement may or may not be inferred is insufficient under the direct evidence rule." *Scanlon*, 174 Mont. 139, 158, (1976)(quotation and citation omitted).

By definition, a party admission is indirect evidence of a fact in dispute, that at best could prove a fact from which the fact in dispute can be inferred. *Scanlon,* 174 Mont. 139, 168, (1976). Both Amber's statements, at trial and in a jail-call, are party-admissions. In both Amber's statements, she said she pressed a tasing device to her daughter. Admitting pressing a taser device to a person, flashlight end or not, is only indirect evidence of the falsity of a statement denying "using a taser." Her statements comprise only indirect evidence of the

falsity of a statement denying “using” a taser. As in *Scanlon*, this Court must dismiss the perjury conviction because a party admission is merely indirect evidence of falsity which cannot sustain a prima facie case of perjury. The State has not met its evidentiary burden to prove the falsity of any statement.

C. The evidence is insufficient to prove if Amber made a false statement, she did so knowingly.

“A fundamentally ambiguous statement cannot, as a matter of law, support a perjury conviction.” *United States v. Camper,* 384 F.3d 1073, 1076 (9th Cir. 2004). As the State argues, Burnett can only knowingly give a false statement if a factfinder could conclude beyond a reasonable doubt that Amber understood the questions she was asked in the same way the questioner did. (Appellee 41-42.) The context of counsel’s questions is determinative of whether their meaning was clear and unambiguous. *United States v. Thomas,* 612 F.3d 1107, 1117 (9th Cir. 2010).

In the context of a trial where she was charged and acquitted of using a taser to frighten her daughter, Amber cannot have knowingly given a false statement when she denied “using” or “threatening” her daughter with a taser. Acquittal on Count I, the taser assault charge,

very nearly establishes Amber not only didn't knowingly make a false statement but actually answered truthfully when she said she didn't threaten or harm her children with a taser. In Count I, Amber was explicitly charged and acquitted of assaulting her daughter by causing her reasonable apprehension of being tased. Nevertheless, on appeal, the State asks this Court to infer Amber's knowledge of the "falsity" of her statements denying "threatening" her child with a taser device because N.G.'s fear of being disciplined with a taser "would have been apparent." (Appellee 38.) The State asks this Court to speculate that N.G. "would have expected" she was about to be tased. (Appellee 38.) The State is wrong to infer knowledge of falsity from this context. Amber did not cause her daughter to feel fearful of being tased. She was judged innocent, on the merits[2], of causing her daughter to fear being tased. This Court must not agree with the State's suggestion that Amber should have known her actions caused her daughter fear of

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[2] Contrary to the State's inaccurate assertion that Amber's acquittal was based on a "compulsion defense," (Appellee 40), she was acquitted because the district court found the State had not proved Amber tased her daughter or caused her daughter to feel reasonable apprehension of being shocked by a taser. (Appendix B, pg. 7, ¶ 6.)

being tased and therefore knowingly made a false statement when she denied "threatening" or "harming" her.

Next, Amber's statement she did not *press* a taser to her daughter was too equivocal to be knowingly false. Other extrinsic evidence relevant to the defendant's understanding of the question may help a finder of fact determine whether the defendant understood the question the same way the government did. *Camper*, 384 F. 3d 1073, 1076 (9th Cir. 2004).

In Ms. Burnett's opening brief, undersigned counsel inadvertently attributed the questioner in the DN proceeding as an adverse party, the prosecutor. The State is correct the questioner was Ms. Burnett's counsel. (Appellee 33-34.) However, Burnett's argument still stands. While it was her counsel to ask the direct questions in the DN proceeding, for a perjury conviction, clarification of the ambiguous statement through cross-examination remains the responsibility of the prosecutor. A felony perjury prosecution is a "drastic sanction…to cure a testimonial mishap that could readily have been reached with a single additional question" by alert counsel. *Bronston v. U.S.*, 409 U.S. 352 (1973).

Amber's DN testimony came in the middle of facing an untrue accusation that a roommate had watched her tase her daughter. She stood criminally accused of both discharging the electroshock current of a tasing device to her daughter's chest until she screamed "bloody murder" (Count I) and committing felony perjury by "denying using a taser device on her children." Amber was innocent of the tasing charge but stood accused, for well over a year, by a roommate who claimed he witnessed the event. While she was trying to defend herself against Conlan's allegation in court, and in the local news media[3], a representative of the Great Falls police department falsely stated during a DN proceeding that police had video footage of Amber using a taser on her daughter. (8/6/2019 Tr. at 5.) When Amber gave the testimony at issue in the perjury charge, her counsel's questions were specifically referencing the Great Falls officer's claim about video footage. (State's Exhibit 44, pg. 4, ln 14-15.) Amber's trial testimony

[3] *See* e.g., April 28, 2018, KRTV Great Falls, "Amber Marie Burnett faces two felony charges after allegedly abusing two children with a belt and a taser." Source: https://www.krtv.com/news/2018/04/28/burnett-faces-two-felony-counts-of-assault-on-a-minor/

demonstrates why, in this context, she answered her counsel's questions the way she did:

> Q. All right. At any time during your testimony under oath, did you indicate that you held the flashlight end of the taser to [N.G.]?
> A. Did I indicate it? No, I did not.
> Q. Okay. You actually denied the taser incident.
> A. Yes, because it didn't happen. You all are sitting here questioning me: Did I tase my child? You're sitting here asking me -- drilling me like many others after I was arrested. Sworn testimony of Nicholas Conlan that I tased my child.
> Q. Actually, the question, Amber, was: Did you ever press a taser against one of your children?
> A. No, I did not.
> Q. You never held the flashlight end to the child?
> A. Holding it and acting on it is different.
> Q. And you were asked: "Did you ever threaten any of the children with the taser?" To which you responded: "No."
> A. Exactly.
> Q. "Did you make any statements on the jail phone calls that you threatened the children with a taser?" And you said: "No."
> A. Correct.
> Q. So which is it?
> A. I didn't tell my kids what it was. They didn't know what it was from me.
> Q. They certainly knew what it was when you were hitting them though.
> A. I did not tell my children what it was, what I was doing. To protect my children so they weren't scared. As a parent, we are to protect our children --
> Q. -- and --
> A. -- and that is exactly what I did. (8/6/2019 Tr. 46-48.)

Amber had to live with the specter of the tasing allegation, and the supposed video footage, from start to finish in the DN proceeding. She was contending with two people who falsely claimed they had seen the incident; one being her roommate who said he personally witnessed Amber tase her daughter, and the other was an investigator who said they had video footage of the event. Amber had already lost custody of her children temporarily, this unresolved tasing allegation was central to regaining it in the future. In the context of these allegations, Amber reasonably believed she was answering to whether she had used or intended to use the electroshock capabilities of a taser.

Under *Thomas,* this Court should assess the ambiguity of the meaning of the term "using a taser" in its context. *Thomas,* 612 F.3d 1107, 1117 (9th Cir. 2010). There is a vast difference between "using" a taser, "threatening to use" a taser, and "pressing" a taser device to someone who does not know what that device is capable of doing. While the State uses the terms interchangeably, the difference is that "using" a taser means to activate an electroshock current and "pressing" the device to someone does not.

By contrast in *Thomas*, the ambiguity of the words used was minimal so knowledge of falsity could be inferred. The dispositive question in *Thomas* was whether it was reasonable for the accused to believe she was not "given" performance enhancing drugs when she had them but paid for them, because "giving" tends to imply something is free. As here, the statute at issue in Thomas required proof a person "knowingly" made a false statement. *Thomas,* 612 F.3d 1107, 1114 (9th Cir. 2010). The court upheld the conviction reasoning, in context, there was very little ambiguity or room to interpret different meanings of the word, "give." Thus, a factfinder could find the accused knowingly gave a false statement when she said she was not "given" performance enhancing drugs. *Thomas,* 612 F.3d 1107, 1118 (9th Cir. 2010).

As articulated in *Thomas*, the "practice of lifting statements uttered by a witness out of context can serve no useful purpose in advancing the truth-seeking…" *Thomas*, 612 F.3d 1107, 1116 (9th Cir. 2010). The context of Amber's statements shows why she understood the questions she was being asked to be variations on the question of whether she "used" or frightened her child with a taser. In the context

of the pending criminal trial, the State did not prove beyond a reasonable doubt that any of Amber's statements were knowingly false.

D. If Amber's statement she did not "press" a taser to her daughter was knowingly false, the State still failed to prove she did not effectively retract it immediately after.

In Montana, the State must also prove beyond a reasonable doubt that Amber did not retract any false statement during the same proceeding. Mont. Code Ann. § 45-7-201(5). Amber's statement she did not press a taser to her daughter was at most ambiguous but she also effectively retracted it almost immediately. Following her statement in the DN proceeding that she did not *press* a taser to her daughter Amber spontaneously added:

> Q. Okay. Didn't do anything like that?
> Burnett: No. The---my question is, no one asked and described the taser in court, what it looks like, or how it was described. I can describe that taser. It has a red button and a black button. On one end of the taser is a taser. The other end is a flashlight. No one thought to bring that up, so I would like to bring that up on record. (State Exhibit 44, pg 5, ln 1-4.)

Amber's clarification that there were two parts of the tasing device, a taser, and a flashlight, was ambiguous at the time. Later, at trial, it became clear that she gave this explanation to qualify her

earlier statement denying pressing a taser to her daughter because she had put the flashlight but not tasing end to her daughter to mollify Conlan. Amber's above statement is either a retraction or a complete non-sequitur and it was the prosecutor's responsibility to find out which. *See*, *United States v. Schafrick*, 871 F.2d 300, 303 (2d Cir. 1989)(the rule requiring common understanding "prevents an examiner from resolving ambiguities in the elicited testimony with a perjury prosecution after the fact"). The State did not prove beyond a reasonable doubt that Amber did not retract her statement denying "pressing" a taser to her daughter.

CONCLUSION

The 466-day delay, all attributable to the State, violated Ms. Burnett's right to a speedy trial. The District Court's denial of her motion to dismiss should be reversed.

Alternatively, the State failed to prove Amber committed felony perjury. The light most favorable standard does not extend to allow speculation and conjecture to resolve an ambiguous statement after the fact. Having failed to prove Amber made a false statement, did so

knowingly, and did not retract the statement, the perjury conviction must be vacated and dismissed.

Respectfully submitted this 28th day of October, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4878, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

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Representing: State of Montana
Service Method: eService

Electronically signed by Gerri Lamphier on behalf of Kathryn Grear Hutchison
Dated: 10-28-2021