

IN THE SUPREME COURT OF THE STATE OF MONTANA
OP 22-0190

JARED BARTH,

Petitioner,

v.

MONTANA FOURTH JUDICIAL DISTRICT COURT, THE HONORABLE
JOHN W. LARSON, PRESIDING JUDGE,

Respondent.

**RESPONDENT DISTRICT COURT'S RESPONSE TO
PETITION FOR WRIT OF SUPERVISORY CONTROL**

Appearances:

Petitioner

Jared Barth, *Pro Se*
Missoula County Jail
2340 Mullan Rd.
Missoula, MT 59802

Attorney for the State

Brittany Williams, Esq.
Deputy County Attorney
Missoula County Courthouse
Missoula, Montana 59802

Respondent

John W. Larson, District Judge
Fourth Judicial District Dept. 3
Missoula County Courthouse
200 West Broadway
Missoula, MT 59802
johlarson@mt.gov

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INTRODUCTION

Comes now, the Honorable John W. Larson, District Judge, (Respondent District Court), presiding over Cause Nos. DC-21-371 and DC-21-414, *Barth v. Mont. Fourth Judicial Dist. Court*, and responds to Defendant/Petitioner's Petition for Writ of Supervisory Control.

BACKGROUND

Respondent District Court finds the procedural facts relevant to Petitioner Barth's second Petition for Writ of Supervisory Control as the following.

On February 24, 2021, the State filed a Petition for Commitment *In the Matter of Jared G. Barth*, Cause No. DI-21-26.

On or about July 6, 2021, Defendant was charged in Missoula County Cause Number DC-21-371, with Count 1: Criminal Mischief, a Felony, in violation of Mont. Code Ann. § 45-6-101(1)[2]. The June 30, 2021, Motion and Affidavit for Leave to File Information, in Cause Number DC-21-371, provides that Missoula City Officers were called to the Russell Smith Federal Courthouse based on a report of Mr. Barth breaking windows on the outside of the building. The Affidavit provides in pertinent part:

The Defendant stated he did not trust "the Feds" and accused the government of surveilling him, the Defendant never admitted to breaking the windows, but did not deny the accusation.

(See Court Doc. 1, Cause No. DC-21-371; June 30, 2021, Motion and Affidavit for Leave to file Information). The Motion and Affidavit for Leave to File Information further provides that seven (7) windows were broken on the outside of the Russell Smith Federal Courthouse, totaling approximately \$70,000 in damages.

On or about July 27, 2021, Defendant Barth was charged in Cause Number DC-21-414, with Count 1: Robbery, a Felony, in violation of § 45-5-401, MCA, wherein the State alleges Mr. Barth pulled a knife and made a stabbing motion towards Mikhail Bobko, owner of an auto parts yard. Mr. Barth purportedly yelled “give me the money” when Mr. Bobko stated he would not cover the cost for Mr. Barth tires to be serviced at Tire Rama. Responding officers reported Mr. Barth made paranoid statements during the entire contact.

Respondent District Court has held various hearings in these cases. (See Exh. 1, Hearing Transcripts). On September 30, 2021, Respondent District Court held a hearing and Mr. Barth’s counsel, Stephanie McKnight, advised that Defendant opposes having a mental health evaluation. During the September 30, 2021, hearing, Mr. Barth advised that he has a conflict with his attorney, and Respondent District Court directed Mr. Barth to go through the process to get new counsel and continued the hearing to October 28, 2021.

On October 28, 2021, Ms. McKnight advised that per Dr. Scolatti’s, evaluation, fitness is not an issue and upon inquiry, Ms. McKnight advised that she

has not provided the evaluation to the State. During the October 28, 2021, hearing the State opposed Mr. Barth's release and asserted Mr. Barth has an extensive criminal history, and is a danger to the community. Respondent District Court continued the hearing to November 3, 2021.

On November 3, 2021, Respondent District Court held a hearing and the Court advised that an email has been received from Ms. McKnight that is mostly redacted, which consisted of an email communication with Dr. Scolatti. In the November 3, 2021, hearing, Respondent District Court determined that Dr. Scolatti's one-line conclusion as to fitness was insufficient, and that there was enough concern with Mr. Barth's mental health for his attorney to request an evaluation and additional information was needed to determine Mr. Barth's ability to understand the proceedings and conditions of release.

On November 19, 2021, Dr. Scolatti was sworn and testified before Respondent District Court, and Defendant advised he wanted a new attorney. Dr. Scolatti concluded that Defendant was fit to proceed. On November 19, 2021, Respondent District Court further advised that Ms. McKnight remains as counsel and Defendant must go through the proper procedure to request new counsel. During the November 19, 2021, hearing, Respondent District Court stayed further proceedings until the State Hospital prepares an evaluation.

On January 5, 2022, Respondent District Court issued an Order for

Evaluation; Order for Transport; and Order Vacating Hearing(s) providing that the Superintendent of the Montana State Hospital designate at least one qualified psychiatrist, licensed clinical psychologist or advanced practice registered nurse to examine and report upon Defendant's mental condition for a period not exceeding 60 days or a longer period that the Court determines to be necessary for the purpose. (*See* Court Doc. 25, Cause No. DC-21-414).

On February 22, 2022, the Montana Supreme Court denied and dismissed Mr. Barth's first Writ in Cause Nos. DC-21-371 and DC-21-414, finding Mr. Barth inappropriately attempting to litigate his criminal proceedings in the Montana Supreme Court.

On April 18, 2022, Mr. Barth filed a second Petition for Supervisory Control in Cause Nos. DC-21-414 and DC-21-371, asserting he was deemed fit to proceed last year in his two pending criminal cases and that a second evaluation at the Montana State Hospital is now required. Mr. Barth also contends that he has been in jail since July 14, 2021.

On April 29, 2022, Mr. Barth filed a Motion to Dismiss in Missoula County Cause No. DC-21-414, asserting violation of his speedy trial rights and due process rights, asserting 286 days of incarceration. Mr. Barth also contends there is exculpatory evidence on his cell phone that has not been obtained. On May 3, 2022, Mr. Barth filed a similar Motion to Dismiss in Missoula County Cause No.

DC-21-371. (See Court Doc. 21, Cause No. DC-21-371).

ARGUMENT

I. Supervisory Control Inapplicable.

Article VII, Section 2(2) of the Montana Constitution grants this Court “general supervisory control over all other courts.” The Montana Supreme Court has exercised its supervisory control authority with caution, due in part to the Supreme Court’s deference to the district courts’ ability to manage their own dockets pursuant to the Montana Rules of Civil Procedure. Rule 14(3) of the Montana Rules of Appellate Procedure provides that supervisory control is an extraordinary remedy and is sometimes justified when “urgency or emergency factors exist making the normal appeal process inadequate, when the case involves purely legal questions, and when one or more of the following circumstances exist:

(a) The other court is proceeding under a mistake of law and is causing a gross injustice; (b) Constitutional issues of state-wide importance are involved; (c) The other court has granted or denied a motion for substitution of a judge in a criminal case.”

Unless a mistake of law has been established, “which, if left uncorrected, would cause a significant injustice for which there is no adequate remedy of appeal,” the Supreme Court does not exercise supervisory control. *Lohmeier v. Montana Eighteenth Judicial Dist.*, 2007 Mont. LEXIS 197, ¶ 4 (citations omitted). “Supervisory Control is sometimes justified by circumstances of an emergency

nature, as when a cause of action or a right has arisen under conditions making the consideration in the trial courts and due appeal to this Court an inadequate remedy.” *State ex rel. Thompson v. Thirteenth Judicial Dist.*, 2007 Mont. LEXIS 107, ¶ 2 (citing M.R.App.P., Rule 17(a)). The Montana Supreme Court has been cautious in granting applications for writs of supervisory authority, limiting exercise of this remedy to extraordinary circumstances and the need to prevent an injustice. *Martz v. Montana Sixth Judicial Dist. Court*, 2007 Mont. LEXIS 196, ¶ 2 (citations omitted). Writs have been granted on the basis that “if the district court proceeded based upon a mistake of law, the course of discovery, the cost of preparation, and the trial itself would be adversely affected.” *Truman v. Montana Eleventh Judicial District*, 2003 MT 91, ¶ 15, 315 Mont. 165, 68 P.3d 654 (citing *Plumb v. Fourth Judicial Dist. Court, Missoula Co.*, 279 Mont. 363, 370, 927 P.2d 1011, 1016 (1996)). Considerations include whether allowing the district court’s ruling to proceed to appeal would require a retrial, whether litigants would lose the protection of the law, and how the district court’s ruling would affect the case moving forward. *Redding v. Mont. First Judicial Dist. Court*, 2012 MT 144A, 281 P.3d 189.

In these cases, no emergency factors exist, making the normal appeal process inadequate. Respondent District Court respectfully submits that no mistake of law can be identified, and Respondent District Court’s determination

that Mr. Barth submit to an evaluation at the Montana State Hospital is supported by applicable statutes Respondent District Court is required to follow and the record.

II. Respondent District Court's Decision Supported by Statutory Authority and the Record.

Mont. Code Ann. § 46-14-221 sets forth clear requirements regarding determination of fitness to proceed. Under M.C.A. § 46-14-221(1),

The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it may be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 6-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

As detailed by the relevant statutory guidelines, the issue of a defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. On September 30, 2021, Ms. McKnight informed Respondent District Court that Mr. Barth opposed a mental health evaluation. Respondent District Court has held many hearings on this issue and per statutory guidelines, the Court plays a role in fitness to proceed. (See Exh. 1, Oct. 28, 201, Hearing Transcript, p. 10: 16-18).

Dr. Scolatti interviewed Defendant on September 30, 2021. During the

November 3, 2021, hearing, Respondent District Court noted and counsel for defense and the State addressed the issue that Dr. Scolatti made no specific findings regarding any determination as to fitness. At Mr. Barth's own attorney request, Ms. McKnight asked if Dr. Scolatti could make more specific findings.

During the November 3, 2021, hearing, Ms. McKnight specifically stated,

The redacted portion is the e-mail I had sent to Dr. Scolatti requesting an update as to whether he had met with Mr. Barth. That was the response. I did reach out asking if he could put together the findings for the Court regarding a little bit more detail. However, my e-mail was declined.

(See Exh. 1; Nov. 3, 2021, Transcript, p. 15:18-25). Respondent District Court found Dr. Scolatti's one-line conclusion unsatisfactory and State's counsel concurred. (See Exh. 1; Nov. 3, 2021, Transcript, p. 17-18).

On November 19, 2021, the District Court heard testimony from Dr. Scolatti and Dr. Scolatti elucidated his reasons for finding Defendant Barth fit to proceed. Dr. Scolatti stated that Mr. Barth "didn't seem to be in any psychological distress, so he could conform his behavior before the Court and while in court. And he seemed to be able to protect himself and utilize the safeguards that the Court has provided for him—or that the law, the statutes, had provided for him." (See Exh. 1; November 19, 2021, Hearing Transcript). Dr. Scolatti stated his opinion regarding fitness based on the interview on September 30, 2021. (See Exh. 1; November 19, 2021, Hearing Transcript, p. 39:9-12). At the end of the November

19, 2021, hearing, Defendant spoke extensively about his desire for new counsel and Respondent District Court explained the complaint form with the Office of the Public Defender and waiver process. (*See* Exh. 1; November 19, 2021, Hearing Transcript, p. 44). In response to Defendant's comments regarding effectiveness of counsel and Defendant's fitness to proceed, Respondent Court specifically stated the following:

I am not allowing you yet to proceed as pro se, because I don't understand that it's voluntary. And I will seek further input from Dr. Scolatti and/or the state hospital if you do seek to represent yourself. And it's to protect everybody and make sure that we don't waste anybody's time.

(*See* Exh. 1; November 19, 2021, Hearing Transcript, p. 44-45. Given the nature of Defendant's comments made during the November 19, 2021, hearing, Respondent District concluded that further evaluation was warranted.

On February 9, 2022, Mr. Barth filed the first Writ of Supervisory Control, which also provided a rambling discussion as to Mr. Barth's perception of his counsel's effectiveness and Ms. McKnight's assessment that Mr. Barth was in a manic state. (*See* J. Barth v. 4th Jud. District, OP-22-0072, Petition for Writ of Supervisory Control, Cause Nos. DC-21-371 and DC-21-414). On February 22, 2022, the Montana Supreme Court, found Mr. Barth had not presented a purely legal question for review, dismissing his Petition and noting "[w]e do not take control of counsel in an on-going proceeding." *Barth v. Mont. Fourth Judicial*

Dist. Court, OP 22-0072.

Respondent District Court also takes judicial notice of Missoula County Cause No. DI-21-26 (*In the Matter of Jared G. Barth*), wherein a Petition for Commitment was initiated by the State on February 24, 2021. On March 3, 2021, the Petition for Commitment was dismissed without prejudice, as Mr. Barth's treatment providers at West House reported Mr. Barth's mental health condition had stabilized to an extent, allowing release from West House. Shortly thereafter, in June and July 2021, the State filed the present cases at issue. In Cause No. DC-21-371, the State specifically alleged that Mr. Barth believed that the government was surveilling him, and the State further alleges Mr. Barth broke the outside of seven windows at the Russell Smith Federal Courthouse. (*See Court Doc. 1, Cause No. DC-21-371; June 30, 2021, Motion and Affidavit for Leave to File Information*). Responding officers to the incident reported in Cause No. DC-21-414 also noted Mr. Barth's paranoid state during the entire contact. (*See J. Barth v. 4th Jud. District, OP-22-0072, Exhibits to Petition for Writ of Supervisory Control, Cause Nos. DC-21-371 and DC-21-414*)

The record is replete with support for Respondent District's decision to order Mr. Barth for evaluation. Respondent District Court notes that Mr. Barth is presently number seven (7) on the Montana State Hospital list for an evaluation; however, Respondent District Court has been informed that some of the cases

ahead of Mr. Barth's may be resolved without evaluation, making the wait time shorter.

CONCLUSION

Deferential standards of review are reserved for matters such as determinations of fact. *State v. Davis*, 2016 MT 102, 383 Mont. 281, 371 P.3d 979. Respondent District Court respectfully submits it exercised sound discretion in the above order for evaluation. No urgency or emergency factors exist that make the normal appeal process inadequate and fact determinations are still underway in this case as noted by the Montana Supreme Court's Order, noting that there remain "many fact-intensive aspects to this matter." (*See* Feb. 22, 2022, *Barth v. Mont. Fourth Judicial Dist.* (OP 22-0072)). Supervisory control is not warranted because the District Court is not proceeding under any mistake of law causing a gross injustice or otherwise. M. R. App. P. 14(3).

RESPECTFULLY SUBMITTED this 23rd day of May 2022.



JOHN W. LARSON, Respondent

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11(4)(c) and 14, M.R.App.P., the Respondent Montana Fourth Judicial District Court, Missoula County, the Honorable John W. Larson, Presiding Judge, hereby provides a Certificate of Compliance. This response brief to Petitioner's Petition for Writ of Supervisory Control was created as follows:


- x Double-spaced
- x Proportionally Spaced Times New Roman test typeface of 14 point typeface
- x Does not exceed 4,000 words (Word Count: 2,517, excluding tables and certificates)

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

Jared Barth, *Pro Se*
Missoula County Jail
2340 Mullan Rd.
Missoula, MT 59802

Brittany Williams, Esq.
Deputy County Attorney
Missoula County Courthouse
Missoula, Montana 59802


Brenda K. Johnson

1 MONTANA 4TH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

2

3 STATE OF MONTANA,)

4 Plaintiff,)

5 -vs-)

6 JARED GLENN BARTH,)

7 Defendant.)

8

9 Missoula County Courthouse
10 200 West Broadway Street
11 Missoula, Montana

12 September 30, 2021

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16 TRANSCRIPT OF PROCEEDINGS

17 Heard Before

18 Honorable John W. Larson, District Court Judge

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25 Reported by Jennifer K. Wells
Official Court Reporter for the State of Montana
Residing in Missoula, Montana

A P P E A R A N C E S

Leta Womack, Deputy County Attorney
Missoula County Attorney's Office
200 West Broadway
Missoula, Montana 59802,
appearing on behalf of the Plaintiff.

Stephanie McKnight, Esq
Office of the Public Defender
610 Woody
Missoula, Montana 59802,
appearing remotely via Zoom on behalf of the
Defendant.

1 Thursday, September 30, 2021

2 (Whereupon, the following proceedings
3 were had in open court, in the presence of the
4 Defendant:)

5 THE COURT: Then do you have Mr. Barth
6 there?

10:27:46

7 THE DEFENDANT: Good morning.

8 THE COURT: Two cases.

9 THE DEFENDANT: How's it going, sir?

10 THE COURT: Good. And you can hear me.
11 And Ms. McKnight is also on Zoom, with Ms. Womack
12 for the state. So in this case, as far as the
13 omni, Ms. McKnight, in one case and a status in
14 the other.

15 MS. MCKNIGHT: I received the omni from
16 Ms. Williams this morning. So I'm going to need
17 additional time to fill those out and actually
18 e-file those with the Court. We are still waiting
19 on information from Dr. Scolatti, which I reached
20 out to him yesterday to get an update.

10:28:10

10:28:26

21 THE COURT: So we will go down to the
22 28th. If you get information earlier, you can ask
23 for an earlier hearing. October 28th for both the
24 omni and the update.

25 Is that okay for you, Ms. McKnight?

10:28:43

1 MS. MCKNIGHT: That works for,
2 Your Honor. I do -- It's my understanding that
3 Mr. Barth continues to object to any mental health
4 assessment.

5 THE DEFENDANT: Actually, I never told 10:28:58
6 her that. And, hey, sir, I have a conflict of
7 interest. I have contacted the Bar Association
8 about this woman, and the Deputy County -- or
9 Deputy Regional Public Defender. She refuses to
10 come in and see me. She has had my discovery on 10:29:15
11 this alleged robbery since July 22nd. She just
12 sent it to me here on -- what was it -- just on
13 the 28th of this month. I have the conflict
14 report right here, sir. And I am asking for
15 you -- I have tried to put in a petition, I 10:29:35
16 believe, for ineffective assistance of counsel. I
17 want this lady removed immediately off of my case.
18 She has done me absolutely no good. She tells me
19 that she is going to release the paperwork. I
20 signed a release for my family to get the 10:29:51
21 paperwork. She absolutely refuses to do so. I
22 can't get her to file any motions for me. As you
23 can see, sir, I've had to file all the motions
24 myself to you. And if anything, I would like to
25 go over all of those motions, because this is -- 10:30:07

1 THE COURT: That's not going to happen
2 now, sir. If you want to deal with her
3 employment, you have to deal with her employer,
4 who is the OPD administrator here. And there's
5 papers that you need to file with him. I am not
6 going to get in the middle of that. I'm going to
7 delay the matter until the 28th to see if the air
8 can clear or clarify with regard to you and who is
9 representing you.

10:30:21

10 So you are remanded at this time, sir.

10:30:34

11 THE DEFENDANT: And, sir, she just
12 blatantly lied to you, so just for the record.

13 THE COURT: You're remanded.

14 (End of proceedings.)

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3 STATE OF MONTANA,

4 Plaintiff,

5 -VS-

6 JARED GLENN BARTH,

7 Defendant.

8

9 Missoula County Courthouse
200 West Broadway Street
0 Missoula, Montana

11 October 28, 2021

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15 TRANSCRIPT OF PROCEEDINGS

16 Heard Before

17 Honorable John W. Larson, District Court Judge

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24 Reported by Jennifer K. Wells
Official Court Reporter for the State of Montana
25 Residing in Missoula, Montana

A P P E A R A N C E S

Matt Jennings, Deputy County Attorney
Missoula County Attorney's Office
200 West Broadway
Missoula, Montana 59802,
appearing on behalf of the Plaintiff.

Stephanie McKnight, Esq
Office of the Public Defender
610 Woody
Missoula, Montana 59802,
appearing remotely via Zoom on behalf of the
Defendant.

1 Thursday, October 28, 2021

2 (Whereupon, the following proceedings
3 were had in open court, in the presence of the
4 Defendant:)

5 THE COURT: So we have a probation 10:02:29
6 officer, and Ms. McKnight for Barth, two cases.

7 MS. MCKNIGHT: Correct, Your Honor. And
8 I don't know if the Court saw it. I had filed a
9 motion for bail reduction to \$25,000 or O.R.

10 THE COURT: Did you propose any 10:02:43
11 conditions?

12 MS. MCKNIGHT: He is willing to do the
13 previous conditions that were set by the Court in
14 his prior matter. And he does have ties to the
15 community and work and can live with his dad. 10:02:59
16 Both his parents and his siblings live in the
17 Missoula area. And I did receive an e-mail from
18 Dr. Scolatti. There is the issue regarding
19 fitness. And that is not at issue. He evaluated
20 Mr. Barth, and Mr. Barth cooperated with him. So 10:03:24
21 that is why we request a bond reduction to be
22 released on his own recognizance or to \$25,000.

23 THE COURT: So did the state get
24 Dr. Scolatti's report?

25 MS. MCKNIGHT: It was not a report, Your 10:03:43

1 Honor. It was an e-mail. I don't believe I
2 passed along that information, but I can forward
3 the e-mail to the prosecutor.

4 THE COURT: I would think the prosecutor
5 would be interested.

10:03:56

6 MR. JENNINGS: Yes, Your Honor.

7 THE COURT: So we will wait on that
8 until Ms. Williams has a chance to comment, unless
9 Ms. Williams has some other notes.

10 MR. JENNINGS: She does not agree with
11 his release at this time and remains opposed for
12 reasons that have been previously stated. I would
13 be happy to repeat those.

10:04:11

14 THE COURT: Let's let her look at what
15 the eval says. I don't know if she's going to
16 have a chance to do it today. Realistically, I
17 don't think it will happen until next week. We
18 could do it on a Wednesday if everybody gets on
19 the same page. We could set him at 11:00 on
20 Wednesday, because that doesn't conflict with
21 Department 1. So that's the best I can do today,
22 Ms. McKnight. So 11:00 Wednesday, the 3rd of
23 November.

10:04:24

24 MS. MCKNIGHT: That will work. And it's
25 a very short e-mail. It's not a very large

10:04:44

10:04:58

1 evaluation that she would need to review.

2 THE COURT: Right. I just don't know
3 where Ms. Williams is. She could be tied up in
4 another court.

5 MR. JENNINGS: Well, Your Honor,
6 reflecting on her past notes, I doubt an e-mail
7 saying there is no fitness issue is going to make
8 much of a difference here. That tends to make me
9 believe that this is more criminological behavior
10 versus a mental health episode that could be
11 treated in the community. Ms. Williams continues
12 to be very concerned about his pretrial score,
13 which is a negative seven, and extensive criminal
14 history. So I think those are greater factors at
15 this time than a mental health eval.

10:05:06

10:05:18

10:05:31

16 THE COURT: I understand that. But, I
17 mean, the Court plays a role in fitness to proceed
18 as well. And I generally don't do one-liners from
19 Dr. Scolatti. Dr. Scolatti, in my experience,
20 does more than one-liners.

10:05:48

21 And if we're going to be doing things in
22 this case, is he on a schedule to go to the state
23 hospital already, Ms. McKnight?

24 MS. MCKNIGHT: No, Your Honor. It was
25 not found that he was -- Based on Dr. Scolatti's

10:06:05

1 e-mail, that was not requested.

2 THE COURT: By you or by the state.

3 They haven't seen it, and I haven't. So I need to
4 see the report, given the issue, to be assured,
5 because otherwise we get in a situation on down 10:06:25
6 the road where, you know, somebody quarrels with
7 what Dr. Scolatti did or didn't do and why no one
8 looked into it further. So I would rather get it
9 settled up front than later. So you can send me
10 this and the state, because the state may want to 10:06:44
11 raise fitness to proceed, irregardless of their
12 position of release.

13 MR. JENNINGS: That's possible,
14 Your Honor.

15 MS. MCKNIGHT: We will provide a copy to 10:07:00
16 the Court and the state.

17 THE COURT: Thank you.

18 Then you've got the omni. Do you want
19 to continue that, as well, until next Wednesday or
20 did you get it filed? 10:07:14

21 MS. MCKNIGHT: I will have it filed by
22 next Wednesday.

23 THE COURT: Great. And so we will
24 continue the trial scheduling until that time, as
25 well. 10:07:21

1 He's remanded.
2 (End of proceedings.)
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3 STATE OF MONTANA,)

4 Plaintiff,

5 -VS-

6 JARED GLENN BARTH,

7 Defendant.

8

9 Missoula County Courthouse
200 West Broadway Street
10 Missoula, Montana

11 November 3 , 2021

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A P P E A R A N C E S

1
2 Brittany Williams, Deputy County Attorney
3 Missoula County Attorney's Office
4 200 West Broadway
5 Missoula, Montana 59802,
6 appearing remotely via Zoom on behalf of the
7 Plaintiff.

8
9 Stephanie McKnight, Esq
10 Office of the Public Defender
11 610 Woody
12 Missoula, Montana 59802,
13 appearing remotely via Zoom on behalf of the
14 Defendant.
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1 Wednesday, November 3, 2021

2 (Whereupon, the following proceedings
3 were had in open court, in the presence of the
4 Defendant:)

5 THE COURT: We have Ms. McKnight and
6 Ms. Williams. We have the jail. We are on the
7 record.

10:47:00

8 You can hear me, Mr. Barth?

9 THE DEFENDANT: Yes, sir. How is it
10 going this morning?

11:02:56

11 THE COURT: Good. Good. So I received
12 this e-mail from Ms. McKnight that seems to be a
13 redacted report, just because it's a large black
14 space. I don't know if Ms. Williams saw that
15 either.

11:03:14

16 So is that what you received, this big,
17 black blotch from Dr. Scolatti?

18 MS. MCKNIGHT: The redacted portion is
19 the e-mail I had sent to Dr. Scolatti requesting
20 an update as to whether he had met with Mr. Barth.
21 That was the response. I did reach out asking if
22 he could put together the findings for the Court
23 regarding a little bit more detail. However, my
24 e-mail was declined. His e-mail box is full right
25 now, but I do have that communication out.

11:03:27

11:03:53

1 THE COURT: I might be able to make it
2 easier. I will just subpoena Dr. Scolatti with
3 his file to come into the courtroom, because I am
4 understanding you received more than the one-liner
5 from Dr. Scolatti or not -- You just received the
6 one-liner from him that he's fit to proceed?

11:04:07

7 MS. MCKNIGHT: Correct, Your Honor, that
8 was -- What I received is the un-redacted portion.
9 The redacted bottom was my e-mail to him. So that
10 was what I received.

11:04:23

11 THE COURT: We have someone working on
12 the door here. Are you expecting anyone? Maybe
13 it's another case, I guess.

14 THE CLERK: It's his mother.

15 DEBRA PERRY: Sorry about that.

11:04:48

16 THE COURT: Who are you, ma'am?

17 DEBRA PERRY: I'm Jared Barth's mother.

18 THE COURT: Okay.

19 So your mother is in the courtroom.

20 And so if I am to understand it right,

11:04:57

21 Ms. McKnight, you are supposed to go and make your
22 decision based on a one-liner from Dr. Scolatti?

23 MS. MCKNIGHT: Well, I feel that his

24 conclusion, I can rely on. Based on that, I

25 don't -- no longer have those concerns. The other

11:05:15

1 parties are welcome to address those, but I feel
2 like it's not an issue.

3 THE COURT: Well, it's certainly
4 unsatisfactory to me. I mean, you have a very
5 experienced professional psychiatrist who is being 11:05:31
6 paid, I believe, a lot of money by the Office of
7 Public Defender to do these evaluations. And in
8 the past, they have been shared with the Court and
9 the state so that everybody has some understanding
10 of what has occurred. But by just, you know -- 11:05:43
11 And you're not the only one. Another attorney in
12 another county has gotten these one-liners from
13 Dr. Scolatti, as well. I guess it reflects some
14 kind of change of policy. I don't know if it's a
15 budgetary issue or what, but it's certainly -- In 11:06:04
16 these complex cases, one-line conclusions are not
17 up to the standard of practice that I am used to
18 or I think that's even acceptable in the
19 profession. And to make an attorney have to guess
20 about everything that the doctor looked at or was 11:06:23
21 concerned about, and just have no information,
22 again, is baffling, to say the least. But you're
23 in middle. I'm not trying to be critical of you.
24 That's all you got.

25 So under the statute, the Court has a 11:06:43

1 role in determining fitness to proceed. And based
2 on this, I don't have basically anything. I don't
3 know what the state's position is or if the state
4 is somehow willing to accept these one-liners.

5 MS. WILLIAMS: Judge, I would echo your 11:07:01
6 concerns. I think potentially this could have
7 some ramifications on any sort of appeal issue
8 down the road. And I also wouldn't want to set
9 Ms. McKnight up for some sort of ineffective
10 assistance claim down the road that potentially 11:07:18
11 could be avoided if Dr. Scolatti were to provide
12 his whole report or otherwise inform the Court as
13 to any procedural charge, whether or not that's
14 due to financial changes or anything. I do
15 believe that it would be important at this 11:07:35
16 juncture to have additional information from
17 Dr. Scolatti.

18 THE COURT: So I will issue the subpoena
19 duces tecum. And I just received information in
20 another county that the doctor didn't do a report. 11:07:46
21 Well, maybe that's the case, but the doctor did
22 something. And so if we have to go to this extent
23 to find out what he did and what he was concerned
24 about, I think we need it upfront. I think
25 there's cases in this jurisdiction that have gone 11:08:05

1 on for years because of the issues about whether
2 the Defendant was fit to do this or that at a
3 particular time in his case. So I don't want to
4 start us down that road. I want Mr. Barth's case
5 handled expeditiously. And there was enough of a
6 concern to Ms. McKnight and the Court, based on
7 Ms. McKnight's concerns and the Defendant's
8 performance on other occasions, to request this.
9 But I am certainly not going to be satisfied with
10 a one-liner.

11:08:19

11:08:33

11 And again, I am not being critical of
12 Ms. McKnight. She's just the person who got the
13 letter. So I will issue that. I think it will
14 probably take a couple of weeks to, again, be fair
15 to Dr. Scolatti so he can come into the courtroom
16 and provide his testimony and/or documents so we
17 can understand what happened.

11:08:49

18 But it's your information, Ms. McKnight,
19 that he is the contract psychiatrist available to
20 the Office of Public Defender to handle these
21 concerns?

11:09:07

22 MS. MCKNIGHT: Correct.

23 THE COURT: Okay. And I see Mr. Davis
24 was on there for a little bit too. I don't know
25 if he's helping out, but I know him to be an

11:09:17

1 investigator with your office. And I know that
2 sometimes he does various things to help you guys
3 out. But I think in this matter, it's between the
4 attorney and the psychiatrist. And so I will --
5 And I will not get the holidays in the middle of
6 this either. So I think I will -- I think we have
7 a date for some things on December 8th.

11:09:34

8 THE DEFENDANT: Excuse me, sir? Are we
9 still going to be able to address the bail
10 reduction today since I did comply with the state
11 and all of the circumstances that go along with
12 this alleged crime? I will address some of them.
13 This should be viewed as an alleged --

11:09:58

14 THE COURT: And, sir, you're speaking to
15 the merits of your case. That's why you have an
16 attorney. So you shouldn't be saying anything to
17 the merits of your case. One of the concerns the
18 Court had, and I believe the state and the
19 probation office, was concerning your fitness and
20 ability to understand conditions and implement
21 them. As I have just indicated, a one-line
22 response from a well-established psychiatrist in
23 this town is insufficient to meet my concerns.
24 But perhaps probation and/or the state have a
25 different take on their comfort level at this

11:10:17

11:10:32

11:10:52

1 point with Mr. Barth.

2 MS. MCKNIGHT: Your Honor, just to
3 clarify, he's not on probation. He had been on
4 Pretrial Services.

5 THE COURT: Okay. So he's not on --

11:11:05

6 MS. MCKNIGHT: I did want to address the
7 Court, because last week it tuned out the audio.
8 There were some audio issues. So when we did
9 address bail, and my request to reduce that to
10 O.R. or 25,000, Mr. Barth wasn't able to -- The
11 audio from the jail was not cooperating,
12 essentially. So he did not know the results from
13 that. And so I did tell him I would bring that up
14 with the Court again since we had audio issues
15 last week.

11:11:22

11:11:40

16 THE DEFENDANT: Yeah, because the whole
17 purpose of this meeting is to address bail. And
18 like I said, sir, I was complying with your guy's
19 requests. I've been more than cooperative. I am
20 not a danger to this community. I have a place to
21 go. I am well established. My dad owns multiple
22 homes here in the area. And I also have work
23 through my father if am released. So I can go out
24 and be a productive member of the community
25 without any more incidences that you guys want to

11:11:53

11:12:13

1 allege.

2 THE COURT: Well, Ms. Williams, your
3 position?

4 MS. WILLIAMS: Judge, I will pull up his
5 pretrial screen. As the Court may recall,
6 Mr. Barth scored a negative seven on pretrial
7 screening. The Court is well aware of what is
8 required of them to recommend a release. I would
9 also echo the Court's concern that, given that we
10 don't have a clear idea of any sort of mental
11 health issues that Mr. Barth is facing, I have
12 concerns that he is not safe to be released into
13 the community at this time until those procedures
14 can be in place.

11:12:33

11:12:55

15 THE DEFENDANT: And, sir, you have
16 addressed -- He's a very professional man, and he
17 said that I am fit to proceed, meaning that I have
18 no mental health issues.

11:13:11

19 THE COURT: Well, it's true that he
20 provided the Court one line, but that's not why
21 these people are involved in these cases. They're
22 involved to give us a very comprehensive look at
23 issues that are there or appear to be there. And
24 to just simply get a one-line back in not only
25 your case, sir, but in other cases where in the

11:13:27

11:13:45

1 past this professional has produced a report. And
2 it appears from the document -- And I guess -- I
3 think counsel has clarified that.

4 It really isn't Dr. Scolatti's report
5 that is redacted. It's your additional request to
6 Dr. Scolatti?

11:14:01

7 MS. MCKNIGHT: Correct.

8 THE COURT: So in my mind, I haven't
9 gotten anything from Dr. Scolatti. And I am
10 trying to get that. I can, obviously, bring it up
11 on the calendar a lot earlier, and he can just
12 tell me if he's unavailable or try to make
13 alternate arrangements. But given the urgency
14 that you request, sir, I can put him on the
15 calendar this Friday. And we will just see what
16 he has to say and let Counsel also raise whatever
17 concerns they might have.

11:14:16

11:14:41

18 But in view of the score on pretrial
19 supervision, which is essentially disqualifying, I
20 don't have any real basis to believe that a money
21 bond will assure your compliance. So I need some
22 sort of better look at your mental health in order
23 to make a decision. So pending that, I am denying
24 a reduction in bond and denying your release, even
25 if you attempt to post bond until we get a written

11:15:00

11:15:21

1 report from a professional.

2 So I will put it on the calendar for
3 Friday at 1:30. We will issue a subpoena duces
4 tecum to Dr. Scolatti and proceed, sir. So we
5 won't hang you up with a lot of delay. But I am
6 going to take another day or two to find out
7 what's going on now with Dr. Scolatti.

11:15:40

8 THE DEFENDANT: Yes, sir. And so with
9 this -- So I understand this trial report, I had
10 one that says five, and then on the other side it
11 says six. And that's for like the new criminal
12 score. Is that the same thing you guys are
13 talking about? It says pretrial assessment at the
14 top of it.

11:15:54

15 THE COURT: And again, I will let you
16 and your attorney address that.

11:16:08

17 MS. MCKNIGHT: I will get you a copy of
18 all the pretrial in both cases, Jared, so that you
19 have all of the -- in both cases.

20 THE COURT: And you're --

11:16:25

21 THE DEFENDANT: Sorry, sir. I also sent
22 her the copies of what I have and then my NCIC
23 report that you guys provided, just to address it
24 with the Court. It says a ton of inaccuracies.
25 It says that I have been in prison here in this

11:16:44

1 state. And I can prove that I wasn't. And I have
2 them here at the jail. So they are on the kiosk,
3 so I can't physically have them.

4 MS. MCKNIGHT: And, Your Honor, we are
5 looking into that additionally. I do have the 11:17:00
6 omnibus motion -- or those are to be filed.
7 Maybe -- Just to let the Court and Ms. Williams
8 know that those are coming down the pipeline, but
9 I am looking into those issues. And I have tried
10 to update Mr. Barth also. I did get an e-mail 11:17:19
11 back from Ms. Williams about the release of your
12 cell phone. And I just have a form to get that
13 filled out to get that back out of the state's
14 possession. So we should have that relatively
15 soon. 11:17:36

16 THE DEFENDANT: And that cell phone had
17 evidence on it that I am requesting that you guys
18 look at.

19 MS. MCKNIGHT: That's what we are going
20 to be doing, Mr. Barth. 11:17:45

21 THE DEFENDANT: Okay.

22 THE COURT: So obviously, you are in
23 contact with Dr. Scolatti. If you would let him
24 know by your e-mail that I will be issuing that
25 subpoena duces tecum for 1:30 on Friday. I am not 11:17:57

1 trying to interfere drastically with his schedule.
2 So if he wants to work through you to get a better
3 time when it's more convenient, I am willing to do
4 that. But Mr. Barth is obviously concerned, and
5 the Court is concerned, as is the state. So if we
6 need to get someone else involved for a mental
7 health evaluation, we will see what other
8 resources we can utilize. And one, of course,
9 being the state hospital. But that's a fairly
10 long line. And but it does give us a
11 comprehensive report. At the same time, when it
12 does come into play, the state hospital has up to
13 90 days to complete that report.

11:18:16

11:18:33

14 So that's why having a little more
15 information at the outset is more helpful to the
16 Court in these complex cases than having
17 one-liners. But that's my view. And certainly,
18 we will hear from Dr. Scolatti about his view.

11:18:52

19 Ms. William, do you have any other
20 issues or concerns?

11:19:15

21 MS. WILLIAMS: No, Your Honor, not at
22 this time. Thank you.

23 THE COURT: And if the state is in
24 possession of other mental health records or
25 mental health references, then I think those

11:19:25

1 should be made available, as well, so that
2 everything is shared both ways, to be fair to
3 Dr. Scolatti. He may not be aware of some issues
4 that the state is aware of.

5 THE DEFENDANT: I have never had any 11:19:43
6 mental health diagnosis, sir. So when they did
7 the involuntary commitment, they said that I was
8 being deceptive. And that's why they did the
9 fitness. And they never asked for a second one.
10 I got an affidavit that I had provided to the 11:19:59
11 judge about what was happening. And this is just
12 all kind of evidence that it was not done
13 properly, sir. So they never gave me a mental
14 diagnosis.

15 THE COURT: So again, he's making 11:20:20
16 references to some sort of commitment proceedings,
17 Ms. McKnight and Ms. Williams. So if you're aware
18 of what he is talking about, again, that's going
19 to be helpful. Voluntarily placements, and
20 whether it's voluntary or involuntary, certainly 11:20:36
21 are going to be helpful.

22 MS. WILLIAMS: Your Honor, I do see at
23 least a case in our system regarding that. I will
24 speak with Mr. Parker to see if he has an
25 objection to me filing a motion to unseal those 11:20:52

1 records for Dr. Scolatti to review, and for you,
2 Your Honor, of this previous mental health
3 commitment petition. So I will speak with
4 Mr. Parker to see if he has an objection to me
5 filing a motion, Your Honor.

11:21:09

6 THE COURT: Sure. And I would be
7 interested in what that objection is, because, I
8 mean, we are having to deal with the Defendant.
9 And we're not going to try to -- We're going to
10 keep it confidential. The file will remain
11 sealed, but certainly available to other
12 professional evaluators, such as Dr. Scolatti.
13 And if we need the state hospital, it would be
14 made available to the state hospital. And they
15 may, in fact, have been involved in the past.

11:21:19

11:21:34

16 THE DEFENDANT: And so, out of
17 curiosity, sir, why am I even actually having a
18 mental examination for this alleged robbery? I
19 never made any statements to anybody, other than
20 this was a -- you know, a self-defense claim. So
21 I am not understanding why I am even being ordered
22 to take a mental examination. And when I asked
23 you last time, it was because you wanted it. And
24 I was told it was because of the involuntarily
25 commitment is why you wanted it.

11:21:50

11:22:08

1 THE COURT: Well, certainly that plays a
2 role in it, sir. And until I am satisfied that
3 you're fit to proceed after hearing from
4 professionals, -- and certainly the state and
5 Ms. McKnight have opportunities, as well, to be 11:22:23
6 involved in that issue. But I want to be
7 extremely careful and safe with regard to any
8 release issues to make sure that you can
9 understand them and implement them. And if there
10 is need for further kind of treatment or 11:22:40
11 evaluation, that that's pursued. I can't do it by
12 myself. That's why both OPD and, on occasion, the
13 state hospital are involved. So we're at a very
14 beginning point. And I am trying to get
15 sufficient information, and I am trying to proceed 11:22:55
16 expeditiously and give your case a priority.

17 THE DEFENDANT: Yes, sir. And I
18 appreciate you addressing the issue, sir.

19 MS. MCKNIGHT: And to clarify,
20 Your Honor, I do realize that there was -- I 11:23:10
21 believe Mr. Parker, in the case that Ms. Williams
22 was referring to, I want to say that Dr. Scolatti
23 was involved in that. However, he may have
24 reports stemming from that that he has collateral
25 information -- 11:23:27

1 THE COURT: Sure.

2 MS. MCKNIGHT: -- in making his
3 determination.

4 THE COURT: And that would be extremely
5 helpful, his involvement or his awareness of it. 11:23:33
6 I am not sure you passed that information to him,
7 that there was a collateral proceeding. I am not
8 suggesting you did. But certainly his knowledge
9 of that collateral proceeding is important. The
10 one line you received back doesn't indicate 11:23:50
11 anything. And so that's why I am continuing the
12 matter until Friday at 1:30.

13 He's remanded. And even if he attempts
14 to post bond, he won't be released until we have
15 the issue concerning his mental health clarified 11:24:10
16 and resolved.

17 THE DEFENDANT: Thank you, sir.

18 THE COURT: Thank you.

19 (End of proceedings.)
20
21
22
23
24
25

3 STATE OF MONTANA,)
4 Plaintiff,)
5 -vs-) Cause Nos.
6 JARED GLENN BARTH,) DC-21-414 and
7 Defendant.) DC-21-371
)

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24 Reported by Jennifer K. Wells
25 Official Court Reporter for the State of Montana
 Residing in Missoula, Montana

A P P E A R A N C E S

1
2 Brittany Williams, Deputy County Attorney
200 West Broadway
3 Missoula, Montana 59802,
appearing remotely via Zoom on behalf of the
4 State of Montana.

5 Stephanie McKnight, Esq.
Office of the State Public Defender
6 610 Woody Street
Missoula, Montana 59802,
7 appearing remotely via Zoom on behalf of the
Defendant.
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1 Friday, November 19, 2021

2 (Whereupon, the following proceedings
3 were had in a closed courtroom, in the presence of
4 the Defendant:)

5 THE COURT: So, Mr. Barth, you can hear
6 us?

01:48:33

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And both Ms. McKnight and
9 Mr. Williams?

10 MS. WILLIAMS: Yes, Your Honor.

01:49:13

11 THE COURT: And so we are now ready to
12 proceed. I am going to have Dr. Scolatti sworn.
13 Thereupon,

14 DR. SCOLATTI,
15 a witness of lawful age, having been first duly
16 sworn to tell the truth, the whole truth and
17 nothing but the truth, testified upon his oath as
18 follows:

19 THE COURT: We have both Barth cases.
20 Ms. McKnight is counsel for Mr. Barth. Mr. Barth
21 is present by Zoom from the detention facility.
22 Ms. McKnight is by Zoom here. And Ms. Williams is
23 also by Zoom, the prosecutor.

01:49:33

24 So in this case, Dr. Scolatti, were you
25 asked by an OPD attorney to do a fitness to

01:49:51

1 proceed evaluation?

2 THE WITNESS: Yes, I was.

3 THE COURT: And when you do those
4 fitness to proceed evaluations, is it your
5 practice to consider about ten points of concern,
6 more or less?

01:50:04

7 THE WITNESS: Yes, that's correct.

8 THE COURT: And there's been some e-mail
9 back and forth to indicate your bottom line. And
10 I think you have explained that if you get to the
11 bottom line, you don't fill in the first ten if
12 you find them fit to proceed unless there's some
13 special request.

01:50:17

14 THE WITNESS: Exactly, yes.

15 THE COURT: And so with regard to
16 Mr. Barth, I have done an order to get him in line
17 for the state hospital.

01:50:29

18 THE DEFENDANT: Sir, can I speak?

19 THE COURT: I will let you speak in a
20 minute, Mr. Barth. But again, your attorney is
21 going to counsel you not to say things.

01:50:50

22 But I think in this matter --

23 THE DEFENDANT: Sir, so if it's all
24 right, then I might speak about --

25 THE COURT: No. It's not all right that

01:51:03

1 you speak. I am asking you not to speak because
2 we're trying to --

3 THE DEFENDANT: Sorry, sir.

4 THE COURT: And I know you're very
5 courteous. But this Zoom stuff is sometimes hard 01:51:13
6 to understand what people are saying. So I am
7 trying to focus --

8 THE DEFENDANT: I can understand.

9 THE COURT: -- on Dr. Scolatti here
10 first. And the attorneys will have chances to ask 01:51:23
11 him questions. At the end I will let your
12 attorney counsel you on what you might or might
13 not say. And in the last analysis, you will
14 probably get to say what you want, but you do so
15 knowing that you could incriminate yourself and 01:51:41
16 could cause more difficulties. That's why I am
17 asking you to wait a minute. We are not flying to
18 France. No one has got to leave.

19 THE DEFENDANT: I just would like to
20 speak before you give your final judgment, sir. 01:51:55

21 THE COURT: Well, I can understand that.
22 But, again, it's my courtroom. It's my hearing.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Dr. Scolatti has taken time
25 out of his schedule to be here, and the attorneys 01:52:09

1 have taken time to be here too.

2 So, Doctor, did you look to see if there
3 were any other proceedings in this county
4 concerning -- or were you advised of any other
5 proceedings in this county concerning Mr. Barth's
6 mental health?

01:52:30

7 THE WITNESS: Yes. Actually, the way
8 that the e-mails came down and the request for
9 this is that, first, Ms. McKnight asked me to
10 conduct the evaluation. I suggested at that point
11 that it sounded more like a mental state of the
12 time of the offense suggestion or question. So
13 maybe she should find an evaluator to do that
14 evaluation. She copied me back again saying that
15 the last time that she had talked to him, he was
16 in a manic state and nothing could be done.

01:52:45

01:53:04

17 Then I went and saw him. And at the
18 same time, Mr. LaFontaine from the Public
19 Defenders' Office contacted me because he was
20 representing him on a misdemeanor charge. And so
21 I went and saw him on the 30th of September.

01:53:20

22 THE COURT: And I don't know if it's
23 your practice or what your limits are, but in our
24 system you can actually look into the system and
25 see if there are any specific cases, not only

01:53:38

1 criminal cases, but also cases -- mental health
2 cases. And I don't know what your practice is in
3 that area or if you rely on what the attorneys
4 tell you.

5 THE WITNESS: I relied on what the
6 attorneys sent me, yes.

01:53:51

7 THE COURT: So in regards to these ten
8 areas, then, can you --

9 What I am going to do, Counsel, is just
10 ask him to elucidate what his findings in these
11 ten areas are so there will be a record of it.
12 And certainly, that may impact your decision
13 and/or my decision about this order for the state
14 hospital to follow up with their evaluation. But
15 at least I want to get the basis for
16 Dr. Scolatti's conclusion.

01:54:08

01:54:28

17 THE WITNESS: Basically, I first asked
18 him what he was charged with, he was able to say
19 robbery and go through his description of the
20 events. And at the end of that I said, well,
21 what's your defense going to be? And he said that
22 I am innocent of this, I didn't rob the guy.

01:54:44

23 So we went through that a little bit and
24 the details surrounding the auto parts and what he
25 believed happened. He seemed to understand the

01:55:03

1 possible penalties -- Well, he did understand the
2 possible penalties of being convicted of robbery.
3 He felt that he should be acquitted, and that that
4 would be the best possible outcome. He did a good
5 job of describing what the roles of the defense
6 attorney and the prosecution and the judge was
7 going to be in the case.

01:55:22

8 The primary question from the attorneys
9 seemed to be would he be able to assist in his
10 defense, because they both noted some delusions,
11 that the FBI was in conspiracy against him. I
12 didn't --

01:55:40

13 THE DEFENDANT: There's --

14 THE WITNESS: He didn't relate any of
15 that to me, and I didn't see any of that in his
16 description of the offense.

01:55:54

17 He seemed to be able to testify
18 relevantly, if he were to take the stand and be
19 cross-examined. He seemed to be able -- He didn't
20 seem to be in any psychological distress, so he
21 could conform his behavior before the Court and
22 while in court. And he seemed to be able to
23 protect himself and utilize the safeguards that
24 the Court had provided for him -- or that the law,
25 the statutes, had provided for him.

01:56:16

01:56:36

1 THE COURT: So, Ms. Williams, do you
2 have any questions of Dr. Scolatti?

3 MS. WILLIAMS: I do not, Your Honor,
4 thank you.

5 THE COURT: Ms. McKnight?

01:56:47

6 MS. MCKNIGHT: Just to clarify,
7 Dr. Scolatti, is it your opinion, based on that
8 interview on September the 30th and the details we
9 just went over with that, that Mr. Barth is fit to
10 proceed?

01:57:03

11 THE WITNESS: Yes, that was my
12 conclusion at that time.

13 MS. MCKNIGHT: I have no further
14 questions, Your Honor.

15 THE COURT: So now would be the time
16 that Mr. Barth has asked for. You're his
17 attorney, Ms. McKnight. So if you want to say
18 anything to him, that's fine. Or if you wanted to
19 even go into -- I think we can do a breakout room,
20 but I'm not sure, but we would try.

01:57:11

01:57:33

21 MS. MCKNIGHT: If we could maybe go into
22 a breakout room, Your Honor, so I can make sure --
23 if there's anything additional, we can cover that.

24 THE COURT: So can you do that?

25 THE CLERK: Hang on just a minute. I

01:57:47

1 will try.

2 THE COURT: Or we can make you the
3 breakout room. Everybody in the courtroom will
4 step out, including the court reporter. And it
5 will just be you and Mr. Barth talking on the
6 system.

01:58:03

7 So, Dr. Scolatti, we are going to have
8 you step out, as well.

9 Unless you want Dr. Scolatti here with
10 you. He's your witness. So if you want him with
11 you, Ms. McKnight, that's fine. If you want him
12 outside, that's fine. But the clerk, the court
13 reporter --

14 MS. MCKNIGHT: Dr. Scolatti can stay,
15 Your Honor. I would ask that the Court and
16 Ms. Williams --

01:58:20

17 THE COURT: We can put Ms. Williams off
18 in a separate room. We can do that. The court
19 reporter and I will step out, and Dr. Scolatti can
20 come get me when you're done.

01:58:34

21 THE WITNESS: Okay.

22 (Discussion held off the record.)

23 THE COURT: So, Mr. Barth, your mother
24 wants to come into the courtroom. Is it okay if
25 your mom is in the courtroom?

02:04:11

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay.

3 So earlier there was another case, and
4 so that's why I had you step out.

5 So your mom is in the courtroom,
6 Mr. Barth. And you've talked to your attorney.
7 Do you want to say anything?

02:04:17

8 MS. MCKNIGHT: Your Honor, he has
9 indicated that he would not like to proceed with
10 me as counsel. And so regarding those matters --

02:04:30

11 THE DEFENDANT: Yes, sir. So my
12 compliant is, if I can go over it with you, sir,
13 is that -- So Ms. McKnight had come in on
14 September 28th, and she had blatantly lied to you.
15 And she said that I was refusing a mental health
16 examination, which I had not. Excuse me. And I
17 went -- Immediately after the court proceedings I
18 went and did that.

02:04:50

19 Most recently, she came in and she lied
20 again and said that I couldn't understand what was
21 happening here.

02:05:04

22 MS. MCKNIGHT: Your Honor, if we're
23 going to be having a hearing regarding the
24 effectiveness of counsel --

25 THE DEFENDANT: So, and she --

1 MS. MCKNIGHT: -- I would request --

2 THE DEFENDANT: She --

3 (Inaudible.)

4 THE COURT: You are just ruining the
5 record now, guys.

6 Just let him talk, and then we will go
7 to you. I understand that Ms. McKnight objects,
8 and that objection is noted from the beginning of
9 Mr. Barth's statement. But we can only talk one
10 at a time. So I'm going to let him speak.

02:05:35

11 THE DEFENDANT: So this is what she
12 doesn't want the state to hear, is that Richard
13 Stiles (phonetic), he -- when you guys were
14 talking about fitness to proceed, he states in
15 open court that he was fine with the results and
16 then started talking about bail. We were asking
17 for 25,000 or O.R., and he said he had no
18 recommendations. And so now the state is fine
19 with this.

02:05:48

20 And now all of a sudden you guys --
21 because I know you guys helped the state. And
22 then you guys want to sit there and switch up the
23 ace on me and to come in with an aggressive stance
24 of, oh, this isn't okay and all of this nonsense.
25 I don't -- you know, I don't like that.

02:06:01

02:06:14

1 But anyway, regardless, I've got right
2 here three different complaint forms. I have
3 tried to get to the deputy public defender, her
4 boss. She doesn't -- We haven't even talked about
5 my defense and how that's going to -- her
6 preparation for my defense. There's all kinds of
7 things. So for the last almost two months now I
8 have been trying to get ahold of Ms. McKnight, and
9 I have had zero success. I have been asking for
10 certain paperwork. It took over two months for me
11 to get my discovery. I didn't get my discovery
12 until 9/28, but yet she had it the first week of
13 July that I got put in here. So that was around
14 the 20th or something that she had the discovery.

02:06:35

02:06:53

15 I would have -- She is supposed to send
16 me paperwork to release my cell phone, because
17 there's video evidence of what happened in this
18 case. There is also other evidence on there.

02:07:09

19 Anyway, she is supposed to send me back
20 the ominous [sic] paperwork. She is supposed to
21 do a bunch of other things for me. I mean, she
22 does absolutely nothing for me. And it's getting
23 sickening that I have to keep calling over there
24 two or three times a week for almost the last two
25 months and writing over there and getting nothing

02:07:43

1 out of it. And so I need a new counsel. This is
2 ineffective assistance of counsel. And I would
3 greatly appreciate, sir, if you would honor that
4 and give me effective counsel so that we can
5 proceed to trial and get this case over with.

02:07:57

6 THE COURT: So, Mr. Barth, the Office of
7 the Public Defender has a complaint form. You've
8 got it there. You fill it out, you send it to
9 them, and they make the decision, not me.

10 THE DEFENDANT: Yeah. Sir, it is
11 ineffective at this point. I actually want to
12 represent myself pro se. And you already heard
13 the testimony from Dr. Scolatti that I am fit to
14 proceed and that I can represent myself.

02:08:10

15 THE COURT: So I am going to send over a
16 waiver -- it's about 11 pages long -- for you to
17 go through and waive all of your rights,
18 essentially, to have an attorney. And in the
19 meantime, I suggest you also file your complaint
20 with the Office of the Public Defender. But I
21 am --

02:08:26

02:08:41

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- not removing
24 Ms. McKnight. I am not allowing you yet to
25 proceed as pro se, because I don't understand that

02:08:49

1 it's voluntary. And I will seek further input
2 from Dr. Scolatti and/or the state hospital if you
3 do seek to represent yourself. And it's to
4 protect everybody and make sure that we don't
5 waste anybody's time. So, thank you, sir.

02:09:06

6 Ms. McKnight, if you wanted to say
7 something now, you could, but you could also
8 reserve.

9 MS. MCKNIGHT: Your Honor, I would
10 reserve. If there is going to be a Gallagher
11 hearing, I would ask that the state not be present
12 for that and that the Court set aside a specific
13 time regarding a Gallagher hearing and whether or
14 not Counsel would be ordered to stay onward.

02:09:18

15 THE COURT: Well, I am going to follow
16 the regular rules of having your office determine
17 whether or not there needs to be another attorney
18 appointed.

02:09:38

19 MS. MCKNIGHT: Okay.

20 THE COURT: Thank you.

02:09:50

21 And, Ms. Williams, are you okay?

22 MS. WILLIAMS: Yes, Your Honor. Do we
23 have dates further set in this matter?

24 THE COURT: I think not because,
25 basically, with my entry of the state hospital

02:10:04

1 order, it suspended further proceedings until --
2 or stayed further proceedings until the state
3 hospital evaluation is over. And at this point I
4 don't see any reason to withdraw that order.

5 Counsel might want to brief that if they want to.
6 But right now my order to stay and suspend the
7 proceedings is in effect.

02:10:22

8 And when he gets to the state hospital
9 and returns, then, with a report, then we will
10 take up matters. But right now he's awaiting to
11 be transported to the state hospital.

02:10:36

12 MS. MCKNIGHT: And, Your Honor, the
13 waiver -- the 11-page waiver that you referred to,
14 is that something that you're going to mail to the
15 detention center or would you like me to do that?

02:10:52

16 THE COURT: I don't think so, because,
17 again, I want to make sure that if he were to
18 waive, that it would be a voluntary, intelligent,
19 knowing waiver. So that would be the process. If
20 he is found fit to proceed by the state hospital
21 and there's no other issues, then I would proceed
22 with that. Again, your office can take whatever
23 avenue they want in light of the order to stay
24 proceedings.

02:11:02

25 MS. WILLIAMS: Your Honor, if I could

02:11:24

1 just make a request. Given the statutory
2 deadlines to keep these sorts of cases moving for
3 evaluation purposes, could I just ask that we have
4 a status hearing somewhere between the 45- and
5 60-day mark just to ensure that this doesn't get
6 lost in my e-mail, if I happen to get a copy of
7 the evaluation from the state hospital?

02:11:37

8 THE COURT: Sure. And, I mean, we will,
9 first of all, notify you when he goes. And then
10 everybody's calendar will be there. And at that
11 point if you want to make a motion for some sort
12 of status, it's going to be somewhat problematic
13 in that, you know, he will be in the middle of an
14 evaluation. But I just did a hearing with
15 somebody at the beginning of an evaluation. So I
16 think that connection can be made.

02:11:53

02:12:10

17 MS. WILLIAMS: Okay. Thank you, Your
18 Honor.

19 THE COURT: So we will do it that way,
20 and we will start with the notice when he is
21 transported. And then we will check in at 45
22 days. And then if Ms. McKnight wants to check in
23 at a different time, that's fine, too. But all
24 other hearings would be vacated pending the
25 results of that.

02:12:18

02:12:36

1 Thank you very much. We are in recess
2 until 3:00.

3 (End of proceedings.)

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C E R T I F I C A T E

STATE OF MONTANA)
 : ss.
County of Missoula)

I, Jennifer K. Wells, Official Court Reporter for the State of Montana, residing in Missoula, Montana, do hereby certify:

That I was duly authorized to and did report the proceedings in the above-entitled cause;

That the foregoing pages of this transcript constitute a true and accurate transcription of my stenotype notes of said proceedings;

That the video/audio proceedings held on September 30, 2021, October 28, 2021, November 3, 2021, and November 19, 2021, were reported to the best of my ability;

I further certify that I am not an attorney nor counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand on this, the 5th day of April, 2022.

/s/ Jennifer K. Wells
Jennifer K. Wells
Official Court Reporter

FILED APR 29 2022

SHIRLEY E. FAUST, CLERK

By: 

Jared Barth

Missoula County Jail

2340 Mullan Rd

Missoula, MT 59808

Montana Fourth Judicial District Court, Missoula County

DEPT 3

State of Montana

cause no. DC-21-414

V

motion to dismiss

Jared Glenn Barth

I am asking the court to dismiss, under (MCA 46-13-401) the above named cause number. Because the defendant's Speedy Trial Rights under Montana Constitution, Article II, section 24 and the Sixth Amendment have been violated. Also his Due Process Rights under Article II, section 17 and the Fourteenth Amendment. The defendant is well past his 200 day trigger date. There has been a total of 286 days of incarceration with the trial being suspended for 157 days. We can see (Dickey v Florida, 398 U.S. 30, 37-38, 90 S.Ct. 1564 1569, 26 L.Ed 2d 26 (1970)). Although a great many accused persons seek to put off the confrontation as long as possible, the right to a prompt inquiry into criminal charges is fundamental and the duty 31

of the charging authority is to provide a prompt trial' Judge Larson said there needed to be a mental Health exam. Which was taken on September 30, 2021. The defendant was found to be fit to proceed with no mental Health problems. The defendant's counsel at the time Stephaine McKnight and District Attorney Rich Salo's said they were fine with the results. This of been the end of this conversation. see (MCA 46-14-221(1)) states: If neither the prosecutor nor the defendant's counsel contests the findings of the report filed under (MCA 46-14-206,) the court may make the determination on the basis of the report. Judge Larson had District Attorney Brittany Williams came to the next court date but before this Williams made and signed the omnibus memorandum. The defendant and his Attorney also signed this, it states there will be no more mental Health exams, conducted or requested. Before signing this paperwork, Larson said that if the defendant made bail, he could not leave the jail. The Sheriff's took the defendant's cell phone because he told them about a video of what happened is on it. He also told his attorney and the courtroom multiple times. There is text messages, phone calls, and pictures of injuries on both parties. This exculpatory evidence still has not been obtained since his arrest on July 14, 2021. This violates

(MCA 46-15-322(1)(B)(D).) (B) The state shall immediately and on a continuing basis, Disclose and make available for inspection all physical or documentary evidence in the state's possession that the state may use at trial or which was obtained from or belonged to the Defendant. (D) Disclose all exculpatory evidence known to the state, including evidence that would tend to reduce the Defendant's potential sentence. See (State v Belgarde, 962 P.2d 571, 289 Mont. 287 (Mont 1998)). "A Criminal defendant has a constitution right to obtain exculpatory evidence and denial of this right is a violation of due process." Ineffective assistance of counsel violates the Sixth Amendment and Montana constitution Article II, Section 24. The defendant is being forced to represent himself, which has been documented with the Missoula public defender's office and the Montana Supreme court. See Supreme court case numbers (OP-22-0072 and OP-22-0190). "I believe it more important to recognize that the speedy trial factors are not to be 'talismanic' in their effect, especially if they hinder the big picture." This was said in (Jack Dean Mayes v State of Montana, 2016 MT 305, 385 Mont. 411, 384 P.3d 102 (Mont 2016)) What has happened with these intentional delays, has caused a great prejudice against the defendant. The only possible remedy is

dismissal of case. seen in (State v Bonsante, 313 A.2d 134, 112 R.I. 547 (R.I. 1973)). The supreme court has ruled that a dismissal of an indictment is a drastic but appropriate remedy in instances where there has been a denial of one's right to a speedy trial. (Strunk v United States, 412 U.S. 434, 93 S.Ct. 2260, 37 L.Ed. 2d 56 (1973)). The state maintains that the first dismissal constitutes no bar to the prosecution's recharging the accused for the same crime that was embraced by the first indictment. However, we believe that the whole thrust and spirit of Strunk is that in matters of speedy trial the prosecution has but one bite at the apple. [112 R.I. 549] Apart from Strunk, we believe that now at a time when we have recognized the doctrine of estoppel against public agencies so as to avoid injustice or fraud (Ferrelli v Employment Sec. Dept., 106 R.I. 588, 261 A.2d 906 (1970)), we should hold that the State's failure to award Bonsante a speedy trial acts as a bar of estoppel to any further prosecution for the same or another closely related offense. Any other view would open the way for a complete abrogation of the pertinent parts of the Sixth Amendment. The prosecution, if the State's view were to prevail, would never need oppose a speedy trial dismissal because it could simply take the necessary steps to obtain a second indictment. The defendant has mailed a copy to the District

attorney and the court of clerk, missoula county.

Relief Sought

1. Dismissal of cause number DC-21-414

Date this 26 day of April, 2022

JIMBA BARTH
Jared Barth

CERTIFICATE OF SERVICE

I, John W. Larson, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Other to the following on 05-23-2022:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Kirsten H. Pabst (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Brittany Lynn Williams (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Jared Barth (Petitioner)
Inmate
Missoula County Jail
2340 Mullan Road
Missoula MT 59808
Service Method: Conventional

John W. Larson (Respondent)
200 W Broadway
Missoula MT 59802
Service Method: Conventional

Electronically signed by Brenda Johnson on behalf of John W. Larson
Dated: 05-23-2022