

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 21-0645

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

JUNE LEE WOLVERINE,

Defendant and Appellant.

OPENING BRIEF OF APPELLANT

On Appeal from the Montana Eighth Judicial District Court, Cascade County, the Honorable John A. Kutzman, Presiding

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 <u>The District Court’s Affirmance of the Justice Court’s DENIAL of Defendant’s Motion to Dismiss for Lack of Speedy Trial, should be reversed by this Appellate Court, as soon as possible, because the Defendant is not a “fugitive from justice” and could not get to Justice Court for trial, thus no good cause exists to waive or ignore the statutory six (6) month speedy trial limit imposed upon the State.</u>	
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3 **STATEMENT OF THE ISSUE**

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6 Whether the November 08, 2021, State of Montana, Cascade
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8 County District Court's Affirmance of the Cascade, Montana County
9 Justice's Courts Order of Denial dated January 21, 2022, of Ms.
10 Wolverine's, the Defendant, Motion to Dismiss filed prior to trial
11 scheduled for January 12, 2021, violated the six (6) month trial deadline
12 that expired on November 12, 2020. Pursuant to M.C.A. § 46-13-401(2)
13 (2021) the speedy trial clock expired on November 12, 2020. The
14 November 12, 2020 deadline is mandated by law in M.C.A. § 46-13-
15 401(2) (2021), and in the event of failure by the State to make that
16 deadline, denial of the Defendant's constitutional and statutory right to
17 a speedy trial that must commence no later than six (6) months after
18 entry of Ms. Wolverine's "Not Guilty" plea to the subject misdemeanor
19 charges, warrants a REVERSAL of the affirmed conviction, together
20 with prejudicial dismissal of all misdemeanor charges in Plaintiff's
21 Complaint, and the Justice court's conviction and sentence vacated ab
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STATEMENT OF THE CASE

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5 On November 8, 2021, the Cascade County Justice Court ordered

6 the denial of Ms. Wolverine’s “Motion to Dismiss (DUI and related

7 charges) for Lack of Speedy Trial: M.C.A. § 46-13-401(2).” ¹Ms. Wolverine

8 initially pled “Not Guilty” to Driving Under the Influence and other

9 related traffic citations, on May 12, 2020, which plea triggered the

10 Defendant’s statutory six (6) month misdemeanor speedy trial clock’s

11 November 12, 2020, deadline for trial, or dismissal with prejudice if the

12 State failed to meet the deadline and the Defendant’s speedy trial rights

13 were violated.

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19 A trial was originally scheduled for August 6, 2021, but Ms.

20 Wolverine remained incarcerated in the Cascade County Jail, with a

21 federal hold, and the County jail incarceration barred the Defendant from

22 physically appearing at that trial; the trial was eventually reset to

23 November 12, 2021, and also reset to January 12, 2022. On January 11,

24 2022, the Defendant filed her “Motion to Dismiss for Lack of Speedy

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¹ Justice Court record at “C1 Justice Court record at “CR” in the District Court file.

1 Trial: M.C.A. § 46-13-402(2),” arguing that “[T]he State must prove the
2 existence of good cause for the delay, citing *State v. Bertolino, 2003 MT*
3 *266, ¶15, 317 Mont. 453, 77 p. 3d 543; and quoting State v. Romingen,*
4 *213 Mont. 358, 362, 691, p. 2d 1348, 1351 (1984).*
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6


7 In review, Ms. Wolverine agrees that she remained in federal
8 custody in the Great Falls Detention Center from May 11, 2020, to
9 November 24, 2020, when she was transferred to a federal facility. CR at
10 8 in District Court file, page 3, District Court “Order on Appeal” dated
11 November 8, 2021. The State of Montana filed a Motion to Continue the
12 August 6, 2020, trial date, by its motion to continue filed September 22,
13 2020. The Defendant did not object. In its motion, the State advised that
14 “The Defendant is incarcerated in federal custody, but not this matter.”
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16 The State’s Uncontested Motion to Continue was granted, and a new trial
17 date was reset to November 12, 2021, and then to January 12, 2021.
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22 The Justice Court denied Defendant’s Motion to Dismiss due to
23 speedy trial violation, on January 21, 2021,¹. The Justice Court’s
24 rationale for its denial included Ms. Wolverine’s non-appearance at trial
25 on August 6, 2020, as “good cause” for November 12 date to be reset and
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¹ Justice Court record at “CR” in the District Court file.

1 side-step the six (6) month statutory time bar; Id., pp. 1-2, and held that:
2
3 “....Under these circumstances the Defendant’s status (the August 6
4 failure to appear for trial)....” is equivalent to that of a fugitive,” so that
5 speedy trial is “suspended.” Id. pp. 3-4, District Court Order on Appeal.
6
7 The District Court affirmed this Justice Court ruling to effect a denial of
8 Ms. Wolverine’s speedy trial guarantee, and this Appeal puts this issue
9
10 squarely before the Supreme Court or the State of Montana, for its ruling
11 upon the issue now at bar.
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14 DATED this  day of September 2023.
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16

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22 By: /s/ Charles W. Schuyler,
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24 OPD Contract Attorney
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3 STATEMENT OF THE FACTS

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5 1. It is undisputed that Defendant's January 12, 2021, trial
6 setting far exceeded the November 12, 2020, six (6) month
7 speedy trial bar, pursuant to M.C.A. § 46-13-401(2) (2021).
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9 The speedy trial time clock was triggered on May 12, 2020,
10 upon the entry of a Not Guilty plea by Defendant.
11

12 2. It is undisputed that one-hundred-eighty-three days
13 (eighteen (18) in May), (thirty (30) in June) and (thirty (30)
14 in October), (thirty-one (31) in July), (thirty-one (31) in
15 August), and (thirty-one (31) in September), (twelve (12) in
16 November = 183) passed from May 12, 2020, to November
17 12, 2020. Another sixty-one (61) days passed from
18 November 12, 2020, the second trial date, to January 12,
19 2021, for a total passage of two hundred-forty-four (244) days
20 of delay to trial, all which delay far exceeds the one-hundred-
21 eighty (180) day or six (6) month time bar from plea
22 arraignment to misdemeanor trial date.
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- 1 3. No record of delay is chargeable to the Defendant and Ms.
2 Wolverine could physically not appear in Justice Court for
3 any of the three scheduled (8/6/2020, 11/12/2020, 1/12/2021),
4 trial dates, as the State of Montana as prosecutor failed to
5 take any action, to include a request for temporary habeaus
6 corpus relief, to allow at least a temporary release of custody
7 from the federal stay, all as pointed out by the District
8 Court's Order on November 8, 2021. ¹The Defendant is not
9 required to self-prosecute by seeking court habeaus relief.
10 The State has the ultimate burden to take action to seek to
11 unblock a federal hold that operates to protect Defendant's
12 ability to defend herself, to appear personally and testify on
13 her own behalf, all of which is inherently in her speedy trial
14 right. Further, video appearances were never considered or
15 even requested by the State of Montana by the Justice Court
16 for a trial proceeding, the Defendant never waived her right
17 to appear personally at trial.
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26 4. M.C.A. § 46-13-401(2) (2021), mandates as follows and as
27 applicable to this case:
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1 **“46-13-401(2) Dismissal at instance of**
2 **court or prosecution....**

3 **(2) After the entry of a plea upon a**
4 **misdemeanor charge, the court, unless**
5 **good cause to the contrary is shown,**
6 **shall order the prosecution to be**
7 **dismissed, with prejudice, if a**
8 **defendant whose trial has not been**
9 **postponed upon the defendant's**
 motion is not brought to trial within 6
 months.”

10 5. The Defendant was never charged as “a fugitive from
11 justice,” as she was labelled in both of the lower court
12 proceedings. However, the Defendant appears in this
13 Supreme Court with no known, or referenced in the record,
14 of this action and proceeding as a “fugitive from justice.” The
15 fugitive label is clearly inapplicable to this proceeding. Such
16 a term may be found in M.C.A. Title 46, Ch. 30, Part 2 of the
17 Montana Criminal Procedure Code, upon a person’s
18 interstate flight to avoid prosecution. The fugitive label
19 implies the intent to flee as referenced by both lower Court
20 Order’s as set forth in the Appendix, at B and C, but no basis
21 for intent to flee exists anywhere in this case. Such
22 mischaracterization does not defeat the strict six (6) month
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1 misdemeanor speedy trial deadline and such
2 mischaracterization does not defeat the strict six (6) month
3 misdemeanor speedy trial deadline that governs this case.
4
5 In *State v. Case*, 2013 MT 192 ¶ 6, 371, Mont. 58 305 p. 3d
6 812, the appellate court essentially concluded that, in the
7 absence of a defense motion to continue, or upon the failure
8 of the government to show good cause for delay, the six (6)
9 month rule strictly applies. Here, through no fault of her
10 own, and without good cause shown by the State, the
11 Defendant was not brought to trial within six (6) months as
12 required by Montana law.

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17 6. As indicated on p. 12 of the District Court ruling that
18 affirmed the Justice Court's Order (refer, Appendix B) of
19 denial of Defendant's Motion to Dismiss for lack of speedy
20 trial, "... the State (in another prior unrelated proceeding in
21 that District Court) successfully used the related *writ of*
22 *habeaus corpus ad testificandum* to get a federal inmate... to
23 the State courthouse in Great Falls to testify..., citing *State*
24 *v. Lebeau*, CDC-17-277, CR178 and 179.1, District Court
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1 Order dated November 8, 2021, Order, at pp. 11-12,¹ and as
2 tabbed at Appendix “C,” pp. 11-12. No such Writ was ever
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4 filed by the State in this case, for appearance at trial by the
5
6 County incarcerated Defendant.
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8 STANDARD OF REVIEW
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- 11 1. “We review decisions by a district court acting as an
12 appellate court as if originally appealed to this Court.” *City*
13 *of Kalispell v. Salsgiver, 2019, MT 126, ¶11, 396 Mont. 57,*
14 *443, 3d 504* (citations omitted).
15
- 16 2. “We have consistently stated the standard of review with
17 respect to motions to dismiss as follows: a trial court’s grant
18 or denial of a motion to dismiss in a criminal case is a
19 question of law that we review de novo. (Citing cases). *State*
20 *of Montana v. Tyler E. Giffin, 2021 MT 190, 194, ¶8, 491*
21 *p.3d 1288.*
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- 23 3. “To invoke the plain error exception (from the general rule
24 that matters cannot be initially raised on appeal), the error
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1 must affect the “fairness, integrity, and public reputation of
2 judicial proceedings.” *State v. Akers*, 408 p. 3d 142 (Mont.
3 2017). Appellant is required to show that the District Court
4 error of affirmance of the Justice Court denial of the defense
5 motion to dismiss for a basic statutory violation of a
6 fundamental right constitutes reversible error under the
7 plain error or other standard of review. Such lower court
8 error here gives rise to a grave miscarriage of justice, leaves
9 unsettled the fairness of the proceedings and/or comprises
10 the integrity of our judicial process. The District Court’s
11 Failure to reverse the Justice Court’s Order that “DENIED”
12 Defendant’s Motion to Dismiss filed January 11, 2021,
13 Appendix A and later affirmed the Justice Court Order
14 dated January 21, 2021,¹ Appendix C, which Justice Court
15 Order was timely appealed to the District Court for appellate
16 review, all as allowed by Defendant’s express reservation of
17 appeal rights pursuant to the terms of her filed Plea
18 Agreement that was approved and followed by the Justice
19 Court, in its allowance of appeal rights, violated the
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1 Defendant's strict right to a speedy trial as guaranteed by
2 not only the provisions of M.C.A. § 46-13-401(2) (2021), but
3 also by the Sixth Amendment to the U.S. Constitution, as
4 applicable to the State of Montana pursuant to the
5 Fourteenth Amendment to the U.S. Constitution, and also
6 pursuant to Sections 16, 17, and 24, Article II, Montana
7 Constitution. Defendant's counsel in this case appealed to
8 the Supreme Court of the State of Montana from the Justice
9 of the Peace Order dated January 21, 2021, but it is
10 axiomatic that the November 8, 2021, District Court Order
11 affirming that lower Court Order's denial of Defendant's
12 Motion to Dismiss based upon alleged violation of her strict
13 right to a speedy trial as provided and guaranteed to her in
14 M.C.A. § 46-13-401(2) (2021), is at least by implication
15 included in this appeal for review by the Montana Supreme
16 Court.

17 Affirmance of a denial of the defense "Motion to
18 Dismiss for Lack of a Speedy Trial," places both the initial
19 Justice Court January 21, 2021 Order DENYING
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1 Defendant's Motion to Dismiss AND the later District Court
2 November 8, 2021 Order AFFIRMING the lower Court's
3 decision adverse to the Defendant's statutory speedy trial
4 right, both squarely before scrutinizing by this Court's
5 judicial review power, to now right two wrongs and to
6 finally enforce the more strict express "six (6) month"
7 statutory protection that checks prolonged excessing delays,
8 and that affords Montanans a more strict application of the
9 speedy trial right as expressed constitutional provisions that
10 provide a right for a speedy trial. In this case, involving
11 continuous incarceration of the Defendant albeit on a federal
12 hold, it is not enough to simply consider "balancing factors"
13 that apply to felony case appeals in the event of an alleged
14 speedy trial violation.
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22 SUMMARY OF THE ARGUMENT

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26 Both the Justice Court and the District Court improperly found
27 "good cause" to, in effect, "waive" the six (6) month statutory time limit
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1 allowed in order to provide a trial to the Defendant for the pending
2 misdemeanor DUI and related traffic charges. This lower court finding
3 is based on the highly questionable theory that this incarcerated
4 Defendant, Ms. Wolverine, suddenly became a fugitive of justice in
5 essence, at the time(s) of her scheduled trial in Justice Court, despite
6 the fact that she remained incarcerated in the Cascade County
7 Detention Center in Great Falls, Montana, pursuant to a federal hold.
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11 This hold was thought to render state authority useless, as the
12 prosecution simply did nothing to even attempt to procure her trial
13 attendance on August 6, 2020, and on November 8, 2020, and also on
14 January 21, 2021, for scheduled trial dates by the Justice Court in this
15 matter.
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19 The Justice and District Courts reasoned that the Defendant was
20 a bad actor (yet she was never charged by the State, for bail jumping, or
21 for being a “fugitive from justice”), and therefore both lower Courts
22 wrongfully held that “good cause” existed to, in effect, waive, at least or
23 not apply or give effect to, the Defendant’s express constitutional rights
24 as expanded by statute in Montana, and to then find that the six (6)
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1 month statutory time limit for trial of the Defendant upon entry of her
2 Not Guilty plea, did not apply for this “fugitive.”
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4 The two (2) lower Court Orders both denied Ms. Wolverine’s
5 motion to dismiss, and these Orders effectively excused the State from
6 the six (6) month limit, by ruling that the Justice Court’s setting of a
7 trial for August 6, 2020, then reset to trial for November 8, 2020 (by
8 grant of the State’s Motion to Continue), then reset to January 21, 2021,
9 was all timely, despite the Defendant’s lack of any trial proceeding by
10 November 12, 2020, which date is the final day allowed to commence
11 the statutory six (6) month bar designed to limit prolonged pretrial
12 delays of incarcerated or any Defendant, including Ms. Wolverine.
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17 To the contrary, the Defendant’s position is that there exists no
18 “good cause” to, in effect, judicially waive and not apply the statutory
19 six (6) month trial bar in this case. The Defendant takes judicial notice
20 that she is not now and never has been a “Fugitive from Justice” of the
21 record in this proceeding, as has been referenced by each Court, i.e.,
22 Justice Court and District Court. To call Ms. Wolverine a desperate
23 “fugitive from Justice” is a judicial stretch to somehow after the fact
24 justify a finding of “good cause” to twice judicially deny Ms. Wolverine’s
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1 strict speedy trial right as set forth both statutorily by the Montana
2 Legislature, and also by the federal and state highest Courts of law.
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4 The Justice and District Courts' holding that there is no failure to
5 provide a speedy trial in this case, should be reversed now for plain
6 error and a shocking violation of Defendant's statutory and
7 constitutional rights to a speedy trial that were timely asserted by a
8 diligent defense OPD counsel by a pre-trial Motion to Dismiss filed in
9 this case, on January 11, 2021, in Justice Court, and which Motion
10 subsequently "Denied," and which denial was later erroneously
11 Affirmed by the Cascade County District Court, all as argued by
12 Appellant below.
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18 ARGUMENT
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22 The District Court's AFFIRMANCE of the Justice Court's
23 DENIAL of Defendant's Motion to Dismiss for Lack of Speedy Trial,
24 should be reversed by this appellate court, as soon as possible.
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26 The two lower Great Falls courts both found that the Defendants'
27 absence at trial, and inability to attend trial, due to a "federal hold"
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1 incarceration of the Defendant in the Great Falls Detention Center,
2 served to supply to the State of Montana prosecutor “good cause,”
3 within the meaning of M.C.A. § 46-13-401(1) (2021), to avoid the six (6)
4 months statutory bar (May 12, 2020-November 12, 2020), and to
5 proceed with a January 12, 2021, trial setting as Ordered by the Justice
6 Court, all of which erased the November 12, 2020’s deadline to
7 commence a trial in Justice Court, and thus failed to afford Ms.
8 Wolverine a speedy trial as statutorily and constitutionally guaranteed.
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11 In essence, the two lower courts agreed that the six (6) month
12 speedy trial right could not be afforded to Ms. Wolverine, because the
13 State was held to have “good cause,” to violate Defendant’s speedy trial
14 right, as the Defendant found herself in a nearby courthouse lock down
15 facility, from which she could not extricate herself so that she could
16 personally appear the trial due to a federal hold. The State of Montana
17 took no action to seek Defendant’s temporary release for trial, or from
18 filing a writ of habeaus corpus in either the Justice or District Courts,
19 to obtain the physical presence of the Defendant at the Justice Court
20 trial. It is not up to the Defendant, incarcerated, to somehow escape
21 from jail confinement and to present herself for trial. Ultimately, the
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1 Justice Court placed the trial delay upon Ms. Wolverine's shoulders, but
2 Ms. Wolverine was helpless and could not personally exercise her speedy
3 trial rights, and the lower courts found that Ms. Wolverine's speedy trial
4 right did not exist when she could not possibly make it, by her own
5 efforts, to the courtroom to appear for trial without possible self-
6 prosecution that is NOT her burden to undertake or seek out.
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11 CONCLUSION

14 Ms. Wolverine respectfully requests this Court reverse the District
15 Court Order on January 21, 2023, affirming the Cascade County Justice
16 Court's wrongful finding and conclusion that Defendant was a "fugitive
17 from justice" during the six (6) month statutory period allowed for trial
18 in Montana, which allowed these state courts to in essence waive the
19 statutory and constitutional speedy trial requirement in her case, to
20 allow Defendant's to prosecution by the January 12, 2021, latest trial
21 setting, and to unlawfully convict her on January 21, 2021, of the
22 subject misdemeanor(s) all in violation of her strict right to a speedy
23 trial as guaranteed in the State of Montana and in the United States of
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1 America. It is noted that the fact that the State of Montana can and
2 does legally provide a stricter and more generous speedy trial limit to
3 protect a Defendant, than the broader rights afforded in the Sixth
4 Amendment to the U.S. Constitution.
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7 Despite these statutory and constitutional express rights to a
8 speedy trial, the Defendant was incarcerated on a federal hold and
9 could not personally appear at a scheduled trial of August 6, 2020, then
10 reset for November 12, 2020, again reset for January 12, 2021, due to
11 the continuing federal hold and a State motion to continue trial, which
12 motion was not contested by the defense . The State of Montana elected
13 to contest the defense Motion to Dismiss for speedy trial violation filed
14 on January 11, 2021. The Justice Court took “judicial notice” of prior
15 instances of the State’s failed attempts to arrange for temporary release
16 of a federal hold, in earlier cases. The Justice Court then made the leap
17 to find and conclude and label this Defendant to actually be equivalent
18 to a “fugitive from justice” all expressly then affirmed by the District
19 Court, which also agreed that the Justice Court properly found the
20 Defendant to be a “fugitive of justice” since she could not get out of jail
21 for her trial.
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1 Such judicial “rationale” by the lower courts constitutes plain
2 error, as the Defendant was not physically able to appear as she was
3 incarcerated by the State of Montana on a federal hold which the State
4 of Montana allowed to exist by not even attempting to obtain a
5 temporary release of Ms. Wolverine for her trial, by filing a Writ of
6 Habeas Corpus or other means of relief in this case. The fact that
7 certain State initiated Cascade County arrangements had apparently
8 previously failed to release a federally held county-incarcerated
9 prisoner, cannot in any way excuse or release the State Appellee from
10 filing for habeas relief in this case, to seek to allow Ms. Wolverine to
11 appear in Justice Court on August 6, 2020, or on November 8, 2020, or
12 on January 12, 2021, for her trial. The State of Montana simply did
13 nothing but continue to prosecute an incarcerated prisoner who could
14 not physically appear at trial to defend herself.

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22 This appellate Court now has the opportunity to put the burden
23 squarely upon the State of Montana to prosecute the misdemeanor
24 Defendant to trial within six (6) months of arraignment and plea entry,
25 or to show good cause why exceeding that limit does not prejudice an
26 incarcerated Defendant. No “good cause” to violate the six (6) month
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1 limit exists in this case, and it is NOT Defendant's own delay that
2 caused the violation of the State speedy trial six (6) month rule in this
3 case.
4

5 The Defendant's Justice Court conviction on January 21, 2021, of
6 misdemeanor DUI and related traffic offenses, as affirmed by the
7 Cascade County District Court on November 8, 2021, should be
8 promptly REVERSED, and the Defendant's suspended sentence and
9 fine vacated, and the DUI and related misdemeanor charges also
10 DISMISSED with prejudice.
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16 Respectfully Submitted on this 6th day of September 2023.
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18
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1 APPENDIX

2 TABLE OF CONTENTS

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6 Order filed January 22, 2021, in Cascade
7 County, Justice Court.....App. A

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10 Order on Appeal filed November 8, 2021,
11 in Cascade County District Court.....App.B

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13 Motion to Dismiss for Lack of
14 Speedy Trial: § 43-13-401(2).....App. C

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CERTIFICATE OF SERVICE

I, Charles W. Schuyler, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 09-06-2023:

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Electronically signed by Darla Schuyler on behalf of Charles W. Schuyler
Dated: 09-06-2023