

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0156

CITY OF GREAT FALLS,

Plaintiff and Appellee,

v.

HANNAH ROSE KUNTZ,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, The Honorable John Parker, Presiding

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STATEMENT OF THE ISSUE

Whether Kuntz's statutory right to a speedy trial under Mont. Code Ann. § 46-13-401(2) was violated when the municipal court granted the City's three continuances, the last one being based on a witness being quarantined due to COVID-19 and reset the trial for two days after the speedy trial deadline.

STATEMENT OF THE CASE

Appellant Hannah Kuntz (Kuntz) was arraigned on a misdemeanor violation of a protective order on July 13, 2020. (Doc. 1, Arraignment Mins.) The municipal court initially set Kuntz's jury trial for September 24, 2020. (Doc. 1, Order Setting Jury Trial.) After granting the City of Great Falls's (City) third motion to continue, which was based on the complaining witness being quarantined due to COVID-19, the municipal court reset Kuntz's trial for January 15, 2021. (Doc. 1, 12/3/20 Order.)

Kuntz subsequently filed a motion to dismiss for lack of speedy trial. After the municipal court denied Kuntz's motion to dismiss, finding that good cause existed for the delay in her proceedings, Kuntz pleaded guilty. (Doc. 1, Notice of Appeal; Order Denying Def.'s Mot. to Dismiss.) Kuntz now appeals the district court's order affirming the municipal court's order. (Docs. 12, 13.)

STATEMENT OF THE FACTS

I. The offense

On July 12, 2020, Michael Kuntz (Michael), who shares three children with Kuntz, was doing laundry at his residence while the children were playing outside. (Doc. 1, Probable Cause Affidavit.) That same day, Kuntz asked her friend to drive Kuntz to Michael's house so she could see her children. (*Id.*) Kuntz arrived and hugged the children, who were in the driveway area of the home. (*Id.*) Michael stepped outside, saw Kuntz, and Kuntz began yelling at Michael. (*Id.*) Because at that time Michael had an order of protection for him and the three children against Kuntz, Michael contacted law enforcement. (*Id.*)

Great Falls Police Officer Lance Souza (Officer Souza) responded, finding Kuntz within 1,500 feet of Michael's residence. (*Id.*) Kuntz admitted that there was a protection order that prohibited her from coming within 1,500 feet of Michael or her three children. (*Id.*) Nonetheless, Kuntz told Officer Souza she "was glad she got to see the kids and didn't care if she went to jail." (*Id.*) Officer Souza subsequently arrested Kuntz for violation of a protective order. (*Id.*)

II. Procedural history

Following Kuntz pleading not guilty to violation of a protective order on July 13, 2020, the Office of the State Public Defender (OPD) appointed Paul Gallardo (Gallardo) to represent Kuntz. (Doc. 1, Notice of Appointment of

Counsel.) However, on September 10, 2020, OPD moved to rescind counsel for Kuntz. (Doc. 1, Mot. to Rescind Appointment of Office of State Public Defender.) The municipal court granted OPD's motion on September 11, 2020. (Doc. 1, Order Rescinding the Appointment of Office of State Public Defender.) On September 14, 2020, Gallardo notified the municipal court that he would remain as Kuntz's counsel. (Doc. 1, Notice of Appearance.)

On September 18, 2020, the City moved to continue Kuntz's trial based on a witness being unavailable. (Doc. 1, 9/18/20 Mot. to Continue.) Kuntz's counsel had not responded at the time the motion was filed. (*Id.*) The City noted that the speedy trial deadline was January 11, 2021. (*Id.*) Later, Kuntz moved for a hearing to determine financial eligibility for OPD services on September 21, 2020. (Doc. 1, Mot. for Hr'g to Determine Financial Eligibility for Public Defender Services.)

On September 22, 2020, the municipal court reset Kuntz's jury trial to October 30, 2020. (Doc. 1, 9/22/20 Order Continuing.) The municipal court also set a hearing on Kuntz's financial eligibility for October 13, 2020. (Doc. 1, Order.) On October 13, 2020, the municipal court appointed the Office of State Public Defender to represent Kuntz. (Doc. 1, Appointment of State Public Defender.)

On October 19, 2020, the City moved the municipal court to continue Kuntz's jury trial, again based on an unavailable witness. (Doc. 1, 10/19/20 Mot. to Continue.) The City noted again that Kuntz's speedy trial date ran on January 11,

2021. (*Id.*) Kuntz’s counsel did not object to this motion to continue. (*Id.*) The municipal court subsequently reset Kuntz’s jury trial to December 2, 2020. (Doc. 1, 10/23/20 Order Continuing.)

On November 25, 2020, the City moved to continue Kuntz’s jury trial based on Michael being quarantined due to COVID-19. (Doc. 1, Mot. to Continue.) Kuntz’s counsel had not responded by the time the motion was filed. (*Id.*) Again, the City informed the Court that speedy trial runs on January 11, 2021. (*Id.*) The municipal court reset Kuntz’s trial for January 15, 2021. (Doc. 1, 12/03/20 Order Continuing.)

The municipal court subsequently denied Kuntz’s motion to dismiss for lack of speedy trial. (Doc. 1, Order Denying Def.’s Mot. to Dismiss.) The municipal court found that good cause existed for the delay as all three continuances were based on witnesses being unavailable, with the third continuance being based on Michael being quarantined as a result of COVID-19. (*Id.* at 2.) The municipal court then explained it “considered a number of issues and looked to the guidance from government officials and agencies, as well as looking to the guidelines and recommendations of the Montana Supreme Court” before it continued the trial set for December 2, 2020. (*Id.* at 3.) The municipal court reasoned that it had “concern about the possibility of fewer than the required number of jurors appearing for jury duty and the potential prejudice that could result as well as the public health risk to

any jurors who potentially appeared, as well as all parties involved, including witnesses.” (*Id.*) The municipal court further noted that Kuntz was not incarcerated during this period and had not had her liberty restricted in any meaningful way. (*Id.*) With all of that, the municipal court found that the trial occurring four days after the speedy trial deadline was “acceptable.” (*Id.*)

Kuntz subsequently changed her plea to guilty and appealed the municipal court’s denial of her motion to dismiss to the district court. After oral argument, the district court concluded that the municipal court’s factual findings were not clearly erroneous nor were the municipal court’s conclusions of law legally incorrect. (Doc. 12 at 2.)

STANDARD OF REVIEW

On appeal from a municipal court, the district court functions as an intermediate appellate court. *City of Helena v. Grove*, 2017 MT 111, ¶ 4, 387 Mont. 378, 394 P.3d 189. When acting in its appellate capacity, the district court is confined to review of the record and questions of law. *Grove*, ¶ 4.

This Court reviews a district court’s appellate decisions under the applicable standard of review as if originally appealed to this Court. *Grove*, ¶ 4. Because whether a criminal defendant’s statutory right to speedy trial has been violated constitutes a question of law, this Court employs de novo review for correctness. *Grove*, ¶ 4.

SUMMARY OF THE ARGUMENT

The totality of the circumstances provided good cause to reset Kuntz's trial to two days after the six-month speedy trial deadline. At the same time the City filed its first motion to continue, based off the unavailability of a witness, OPD had moved to rescind Kuntz's counsel. Although her attorney alerted the municipal court he would remain her attorney, he was not officially reappointed as Kuntz's attorney until a few days before the City moved, unopposed, for a continuance, again due to witness unavailability. Notably, Kuntz did not object to the second continuance.

Ultimately, the trial was continued a third time because Michael was quarantined for COVID-19. Out of an abundance of caution, the municipal court set out the trial, scheduling it for January 15, 2021, two days after the January 13, 2021 speedy trial deadline. The unavailability of witnesses, particularly the unavailability of Michael due to COVID-19, and the ongoing pandemic established good cause to hold the trial two days after the six-month speedy trial period. Accordingly, the municipal court correctly denied Kuntz's motion to dismiss after finding that good cause supported the trial being set shortly after the six-month speedy trial deadline.

ARGUMENT

Kuntz’s statutory right to a speedy trial was not violated.

Kuntz contends that because the City did not establish that good cause existed for Kuntz’s trial being set two days after the speedy trial deadline, Kuntz’s case should be dismissed. (Appellant’s Br. at 10.) Montana Code Annotated § 46-13-401(2) provides that “[a]fter the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant’s motion is not brought to trial within 6 months.” As this Court has explained, “misdemeanor charges will be dismissed pursuant to this provision only if two conditions are met: (1) the defendant has not asked for a postponement; and (2) the State has not shown good cause for the delay.” *City of Helena v. Roan*, 2010 MT 29, ¶ 9, 355 Mont. 172, 226 P.3d 601 (citation and quotation marks omitted). “The statute itself serves as the sole standard of whether ‘good cause’ for the delay has been shown.” *Id.* (citation and quotation marks omitted).

As an initial matter, the speedy trial deadline lapsed January 13, 2021, not January 11, 2021.¹ The “6 months means 6 calendar months rather than a specific

¹ Before the municipal court, the parties seemingly agreed that Kuntz’s speedy trial deadline was January 11, 2021. On appeal to the district court, however, the City and the district court both acknowledged that the speedy trial deadline was January 13, 2021.

number of days.” *Grove*, ¶ 6 (internal quotations and citation omitted). To calculate the six-month deadline, “count forward six months on the calendar from the month of plea to the day in the sixth month corresponding to the numerical calendar day of the date of plea.” *Grove*, ¶ 12. Accordingly, and despite the record at times stating that the speedy trial deadline was January 11, 2021, the speedy trial deadline was actually January 13, 2021, six months after Kuntz entered her plea of not guilty. *See Grove*, ¶ 12.

Second, the municipal court correctly concluded that good cause existed for resetting Kuntz’s trial to January 15, 2021. This Court has explained that “[g]ood cause is generally defined as a ‘legally sufficient reason’ and referred to as ‘the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused.’” *Roan*, ¶ 13 (quoting *Black’s Law Dictionary* 251 (Bryan A. Garner ed., 9th ed., West 2009)). “Good cause will necessarily depend upon the totality of the facts and circumstances of a particular case.” *Roan*, ¶ 13.

In *Roan*, the prosecutor requested a second continuance, based on two of the witnesses being unavailable because they were due to welcome a child via a cesarean section near the time of trial, which was set for October 16, 2008. *Roan*, ¶ 3. Roan’s speedy trial deadline was October 29, 2008. *See Roan*, ¶ 2. The city court reset Roan’s trial for January 12, 2009, prompting Roan to move to dismiss

her case, which the city court denied. *Roan*, ¶¶ 4-6. This Court affirmed, explaining that good cause existed for the delay because requiring the witness's attendance would have created a significant hardship for the witness. *Roan*, ¶ 15.

Here, like the witnesses in *Roan*, Michael was unavailable to testify based on a medical reason: he was quarantined due to COVID-19. And, just like the witnesses in *Roan*, it would have created a significant hardship for Michael had the municipal court required Michael to testify. Furthermore, requiring Michael to testify at the December 2, 2020 trial date could have resulted in health risks for others present at the jury trial.

Nonetheless, Kutz argues that this case is factually distinguishable from *Roan* because, in *Roan* the continuance occurred 10 days before the speedy trial deadline whereas here it occurred 47 days after. Kuntz's argument, however, fails to appreciate that this Court, in *Roan*, focused on the reason for unavailability—the medical issues of the witnesses—rather than the timeline of the continuance. Therefore, and despite Kuntz's contentions otherwise, *Roan* supports that good cause existed for the delay in Kuntz's trial.

Kuntz's argument that *City of Helena v. Broadwater*, 2014 MT 185, 375 Mont. 450, 329 P.3d 589, supports that the City could not establish good cause is likewise without merit. This Court has held that a crowded docket does not constitute good cause to delay a trial unless the City demonstrates that it

affirmatively attempted to provide the defendant with a trial within six months but was unable to do so because of the status of the docket. *Broadwater*, ¶ 19. Because the City did not meet that standard in *Broadwater*, this Court held that the crowded docket did not constitute good cause for a delay beyond the six-month time limit. *Broadwater*, ¶ 18.

Here, unlike in *Broadwater*, the record does not even suggest that the delay was based on the municipal court's docket. Neither the municipal court nor the City have ever asserted that the trial being set two days after the speedy trial deadline was based on a crowded docket. Instead, the City continued all three trial settings based on the unavailability of witnesses, with the last continuance based on a witness being quarantined due to COVID-19 and the municipal court further provided that it had concerns, based on the pandemic, to set it sooner than January 13, 2021.

Furthermore, the City did sufficiently alert the municipal court to the speedy trial deadline. This Court found that the State failed to demonstrate good cause in *State v. Ronningen*, 213 Mont. 358, 691 P.2d 1348 (1984), and *State v. Bertolino*, 2003 MT 266, 317 Mont. 453, 77 P.3d 543. In *Ronningen*, this Court held that the State failed to demonstrate good cause when the State took no action to ensure that the trial was held within the six-month time period after the case was rescheduled due to the judge's retirement. *Ronningen*, 213 Mont. at 362, 691 P.2d at 1350-51. In *Bertolino*, this Court held that Bertolino's disregard for court-ordered deadlines

did not constitute good cause to delay the trial beyond the six-month time limit because the record did not demonstrate that Bertolino's failure to respond to the court orders caused the delay in the trial. *Bertolino*, ¶¶ 14-16. Here, in all three motions to continue, the City noted that speedy trial ran on January 11, 2021. In other words, the City did make attempts to ensure that the municipal court set the trial before the speedy trial deadline.

Lastly, Kuntz argues that the municipal court finding that broad COVID-19 concerns also constituted good cause to set Kuntz's trial two days after the speedy trial deadline was an erroneous factual finding. (Appellant's Br. at 17.) In support of her argument, Kuntz contends that if the municipal court's concerns were true, then having a trial on January 15, 2021, was just as unsafe as January 11, 2021; (2) broad COVID-19 concerns is more appropriate to consider in a constitutional speedy trial claim; and (3) the quarantine periods changed in December 2020. (Appellant's Br. at 16-18.)

First, the municipal court's order is more appropriately construed as not explaining that January 15, 2021, is safer than January 11, 2021, but rather that setting the trial closer to the December 2, 2020 trial setting would have been unsafe in light of COVID-19 in that specific community. Second, although a constitutional speedy trial case, this Court's decision in *State v. Hesse*, 2022 MT 212, 410 Mont. 373, 519 P.3d 462 does not limit consideration of broad

COVID-19 concerns to constitutional speedy trial claims only. Nor should this Court reach a holding in the instant case.

Here, Kuntz’s criminal action occurred within the first year of the COVID-19 pandemic. Approximately two months before Kuntz was cited for the instant offense, Chief Justice McGrath issued a memorandum to all Montana courts following the Governor’s Phase 2 directive for reopening the state. (05/22/20 Chief Justice McGrath Mem.) Chief Justice McGrath continued to direct courts to limit the number of people in courtrooms and facilitate physical distancing of at least six feet. (*Id.*) Chief Justice McGrath further advised that courts must meet with local agencies (law enforcement, public health) and attorneys to plan for holding jury trials and directed that “[j]ury trials must be conducted in such a manner as to maintain social distance and protect the health of jurors and others.” (*Id.*) Courts were advised to “limit any in-court spectators” and allow persons who are at risk if exposed to COVID-19 to appear remotely upon request. (*Id.*) Finally, Chief Justice McGrath acknowledged that these unique circumstances are “fluid” and courts must remain flexible. (*Id.*)

COVID-19 was a basis for the third and final continuance that resulted in the trial being set two days past the speedy trial deadline. Because Kuntz’s criminal action occurred within the first year of the pandemic, where directives were evolving as well as COVID-19 guidelines, it was appropriate for the municipal

court, especially in light of Chief Justice McGrath's directive, to monitor the COVID-19 pandemic in its community to ascertain when it would be safe to conduct Kuntz's jury trial.

Furthermore, Kuntz's reliance on the New York Times article providing that the Center for Disease Control and Prevention (CDC) recommended that COVID-19 quarantine periods change in December 2020 has no bearing on the municipal court's good cause analysis. Michael was quarantined for COVID-19 in November 2020. Even if the change in quarantine periods was significant under the instant circumstances, there is no evidence in the record to suggest that the State of Montana had immediately adopted the CDC COVID-19 quarantine period change. Instead, the record reflects that what was known to the municipal court at that time was that Michael was quarantined for COVID-19 at the end of November 2020 and would be unavailable for the December 2, 2020 jury trial date.

In sum, the totality of the circumstances in this case provided good cause for the trial to be held two days after the six-month speedy trial deadline. The City moved to continue the first jury trial setting due to a witness being unavailable. Notably, around that same time, a question existed as to whether Kuntz was being represented by appointed counsel. By October 13, 2020, Kuntz had firmly been appointed counsel to represent her. Shortly thereafter, the City moved to continue the trial again based on the unavailability of a witness. This time, however, Kuntz

did not object to the motion. Finally, about a week before the trial, the City moved to continue the trial based on Michael being quarantined due to COVID-19. The municipal court did not err when it found that the unavailability of a witness and the broad COVID-19 concerns constituted good cause to set Kuntz's jury trial two days after the speedy trial deadline.

CONCLUSION

The municipal court correctly denied Kuntz's motion to dismiss on speedy trial grounds. Accordingly, the district court's decision affirming the municipal court's order should be affirmed.

Respectfully submitted this 12th day of October, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,188 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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CERTIFICATE OF SERVICE

I, Cori Danielle Losing, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-12-2023:

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