

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. DA 22-0607

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CITY OF THOMPSON FALLS,

Plaintiff and Appellee,

v.

SETH ANDREW KELLER-KEITH

Defendant and Appellant.

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**APPELLANT'S OPENING BRIEF**

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On appeal from the Montana Twentieth Judicial District Court,  
Sanders County, The Honorable Molly Owens, Presiding.

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## **STATEMENT OF THE ISSUE**

- I. Did the district court abuse its discretion when it dismissed Seth Keller-Keith's appeal because his attorney was thirty minutes late to an omnibus hearing?

## **STATEMENT OF THE CASE**

This is an appeal from the Twentieth Judicial District Court, Sanders County. On January 12, 2022, following a jury trial in Thompson Falls City Court, Seth Keller-Keith ("Keller-Keith") was convicted of two counts of misdemeanor partner or family member assault ("PFMA"). He appealed to Sanders County District Court in a timely manner. The district court dismissed Keller-Keith's appeal under Mont. Code Ann. § 46-17-311(5), based on failure to appear after his attorney was thirty minutes late to an omnibus hearing. Keller-Keith appeals, arguing that the district court abused its discretion in dismissing his appeal.

## **STATEMENT OF THE FACTS**

On June 22, 2021, the City of Thompson Falls charged Seth Keller-Keith with two counts of misdemeanor PFMA in violation of Mont. Code Ann. § 45-5-206(1)(c). (*See*, Doc. 1, Exhibit A, 6/22/2021 *Complaint and Affidavit*). He was appointed a public defender, and the case proceeded

to a jury trial on January 12, 2022. (Ex. A, 11/8/2021 *Public Defender Appointment* and 1/12/2022 *Trial Minutes*). Keller-Keith was found guilty of both counts. (Ex. A, 1/12/2022 *Verdict*). On February 14, 2022, the court sentenced Keller-Keith to 730 days incarceration, with 724 days suspended. (Ex. A, 1/12/2022 *Judgment*). On the same day, Keller-Keith filed a timely notice of appeal with the Sanders County District Court. (Ex. A, 2/14/2022 *Notice of Appeal*)

On February 24, 2022, the city court issued a notice of appeal and transferred the case to the district court. (Doc. 1). The district court then ordered an omnibus hearing for July 28, 2022, and a jury trial for August 8, 2022. (Doc. 2). The office of the state public defender assigned counsel for Keller-Keith. (Doc. 4). On May 27, 2022, the district court issued an amended jury trial setting order, moving the omnibus hearing to July 26, 2022. (Doc. 5). On July 19, 2022, the district court issued a second jury trial setting order moving the omnibus hearing to August 9, 2022, and the trial to September 12, 2022. (Doc. 8).

Shortly thereafter, defense counsel filed an unopposed motion to continue the jury trial as Keller-Keith was seeking admission into a thirty to sixty-day inpatient treatment program. (Doc. 9). The city did

not oppose this motion. *Id.* The court granted the continuance and re-set trial for November 7, 2022. (Doc. 10).

This case came before the district court for the omnibus hearing on August 9, 2022 (Doc. 11). Defense counsel appeared and reported that Keller-Keith began treatment at the Rimrock Foundation yesterday and would be there for thirty to sixty days (Doc. 11, 8/9/2022 Trans. at 6:15-18). So, presumably, Keller-Keith would graduate from Rimrock between September 8, 2022, and October 8, 2022.

Mr. Goen, the prosecutor, failed to appear for the hearing. Judge Owens stated, “And I don’t see Mr. Goen on Zoom or in court...I guess Mr. Goen didn’t think that we had a hearing today? Which is somewhat understandable. So[,] when should we have an omnibus hearing on this?” (*Id.* at 6:10, 6:19-22). Judge Owens re-scheduled the omnibus hearing for September 27, 2022, hoping that would give Keller-Keith enough time to complete treatment. (*Id.* at 7:1-10).

On September 27, 2022, this case came before the court for the omnibus hearing. (9/27/2022 Trans. at 10:4-7). At the start of the hearing, neither Keller-Keith nor his public defender were present. (Doc. 13). Mr. Goen appeared in person. (Doc. 13). Mr. Goen stated that he had not

heard from defense counsel, and it was his understanding that Keller-Keith was in treatment<sup>1</sup>. (Trans. at 10:18-24). Despite failing to appear at the last hearing, Mr. Goen boldly moved the court to dismiss the appeal because defense counsel and Keller-Keith failed to appear. *Id.* Judge Owens indicated that she would grant his motion and requested a proposed order. (*Id.* at 11:5-7). Thirty minutes later, defense counsel appeared and informed the court that she was late because she was in a hearing in another jurisdiction. (Doc. 11).

Two days later, the court issued its written order dismissing the case. (Doc. 13). The court recited Mont. Code Ann. § 46-17-311(4) and found that counsel's delay due to a hearing in another jurisdiction *was not* good cause to deny the City's motion to dismiss the case, "the Court does not find this to be good cause. Defendant's counsel was aware that she needed to appear at 10:00AM. However, she did not communicate her scheduling conflict ahead of time with either the Court or the State's

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<sup>1</sup> Mr. Goen additionally stated that he had doubts about Keller-Keith's attendance at treatment because he did not have confirmation that he was there, and this had occurred three or four times in this case and others. It is unclear what Mr. Goen is referencing when he claimed "this had occurred" before. Perhaps he was implying that Keller-Keith was previously dishonest about his treatment attendance or had a history of nonappearances — but a review of the record in both the city court and district court case fails to support either interpretation. (Trans. at 10:18-24).

attorney.” *Id.* On the same day, Keller-Keith filed a timely notice of appeal with this Court. (Doc. 15).

### **STANDARD OF REVIEW**

An abuse of discretion occurs when a court acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *State v. Ziolkowski*, 2014 MT 58, 374 Mont. 162, 321 P.3d 816 (citing *State v. Belanus*, 2010 MT 204, ¶ 15, 357 Mont. 463, 240 P.3d 1021).

### **SUMMARY OF THE ARGUMENT**

The district court abused its discretion when it dismissed Keller-Keith’s appeal after his public defender was thirty minutes late to the omnibus hearing. The court acted arbitrarily without the employment of conscientious judgment and exceeded the bounds of reason by (1) holding that Keller-Keith’s public defender failed to appear when she appeared thirty minutes late to his omnibus hearing; and by (2) holding that the tardiness of Keller-Keith’s public defender, due to her conflicting court schedule, failed to constitute “good cause” to overcome dismissal of the appeal.

## ARGUMENT

### I. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DISMISSED KELLER-KEITH'S APPEAL AFTER HIS PUBLIC DEFENDER WAS THIRTY MINUTES LATE TO THE OMNIBUS HEARING.

A defendant has an absolute right to a jury trial in both the court of limited jurisdiction and then again, *de novo* in district court, on appeal. *State v. Rensvold*, 2006 MT 146, ¶ 20, 332 Mont 392, 139 P.3d 154 (citing *Woirhaye v. Montana Fourth Judicial District Court*, 1998 MT 320, ¶ 22, 292 Mont. 185, 972 P.2d 800). This is a right guaranteed under the federal constitution in Article III, Section 2, clause 3 and the Sixth Amendment and Article II, Sections 24 and 26 of the Montana Constitution. *Rensvold*, ¶ 19 (citing *Woirhaye*, ¶¶9-11). This right is also codified in Mont. Code Ann. § 3-6-110 and Mont. Code Ann. § 46-17-311(1).

However, “[I]f, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court’s own initiative or on motion by the prosecution...” Mont. Code Ann. § 46-17-311(5) The term “good cause” under this statute is not explicitly defined.

In the context of a misdemeanor charge, a defendant only “fails to appear” if *both* the defendant and their counsel fail to appear, unless the court has previously informed the defendant that her personal attendance is required. *State v. Clark*, 2006 MT 313, 335 Mont. 39, 149 P.3d 551.

**A. The district court exceeded the bounds of reason in holding that Keller-Keith’s public defender failed to appear.**

In Montana, there continues to be a constitutional crisis regarding the untenable caseloads of public defenders. The Office of the State Public Defender is overburdened and understaffed. *Lindquist v. Mont. Thirteenth Judicial Dist. Court*, 410 Mont. 538, 517 P.3d 883 (2022). Often, public defenders are double-booked and juggling multiple hearings and obligations.

The district court acted arbitrarily and exceeded the bounds of reason in holding that Keller-Keith’s public defender failed to appear when she was thirty minutes late to the omnibus hearing. She was held up in a hearing in another jurisdiction, causing her to be late to Keller-Keith’s omnibus hearing. Defense counsel’s tardiness is not synonymous with failure to appear. While a court should expect strict adherence to

hearing dates and times, Montana's maxims of jurisprudence require reasonableness. Mont. Code Ann. §1-3-33. Given the state of our public defender system and the workloads of individual public defenders, it is reasonable to afford them leniency when they are double-booked in multiple jurisdictions.

Furthermore, the district court did not demand strict adherence to hearing dates and times at the hearing immediately preceding this one. (*See* Trans. at 6). At that hearing, the city attorney failed to appear entirely. Yet, the court stated it was somewhat reasonable that he failed to appear and simply continued the hearing — immediately granting him leniency. (Trans. at 6:10, 6:19-22).

Then, at the continued hearing, after failing to appear previously, the city attorney boldly moved for dismissal of the case due to the defense's nonappearance. Despite appearing just thirty minutes later, the defense was not granted any leniency — the court immediately dismissed the appeal because the defense failed to appear. Unlike *Ziolkowsky*, where the district court gave the defendant 70 minutes to appear, the district court here offered no such compassion. The district

court exceeded the bounds of reason when it dismissed Keller-Keith's appeal for failure to appear.

**B. Even if Keller-Keith's public defender failed to appear, the district court still exceeded the bounds of reason because good cause existed to prevent the district court from dismissing his appeal.**

Good cause is generally defined as a "legally sufficient reason" and is referred to as the burden placed on a litigant, usually by court rule or order, to show why a request should be granted or an action excused. *State v. Ziolkowski*, 2014 MT 58, ¶ 14, 374 Mont. 162, 321 P.3d 816 (citing *State v. Luke*, 2014 MT 22, ¶ 15, 373 Mont. 398, 321 P.3d 70 (citing *City of Helena v. Roan*, 2010 MT 29, ¶ 13, 355 Mont. 172, 226 P.3d 601)).

A defendant's deliberate choice to not attend their hearing does not constitute good cause. *Ziolkowsky*, ¶ 14. In *Ziolkowsky*, the defendant had notice of the trial date, failed to appear, and the trial was held in absentia. *Id.*, ¶ 8. A jury subsequently convicted her of all four counts. *Id.* She appealed to the district court for a trial *de novo*. *Id.*, ¶ 9. *Ziolkowsky* appeared at the first hearing. *Id.* The court directed her to comply with the public defender's eligibility criteria and set the case for an omnibus hearing or indigence hearing on February 28 at 9:00 a.m. *Id.* The court specifically directed *Ziolkowsky* to appear at this hearing. *Id.*

Ziolkowsky failed to appear at 9:00 a.m. for the hearing. *Id.* ¶ 10. The court gave her 70 minutes, until 10:10 a.m., to see if she would appear. *Id.*, ¶ 10. When she did not appear, the court granted the State’s motion to dismiss Ziolkowsky’s appeal under Mont. Code Ann. § 46-17-311(5). She then filed notice of appeal with this Court. Ziolkowsky did not dispute her failure to appear, explaining, “I was not about to subject myself to the horrors of the court after my last experience in the lower court.” *Id.*, ¶ 14.

The Court found that she did not appear at the February 28 hearing and did not appear “through counsel” as she had not complied with the public defender’s eligibility criteria. *Id.* ¶ 13. The Court further held that no “good cause” precluded the district court from dismissing her appeal. *Id.* ¶ 14. Instead, it appeared to the Court that Ziolkowsky deliberately chose not to attend her hearing and lacked good cause to overcome dismissal. *Id.*

This Court has issued a couple of non-cite memorandum opinions that address the district court’s authority to dismiss an appeal based on a defendant’s nonappearance. (*See, City of Missoula v. Baggerman*, 2008 MT 160N, *State v. Redfern*, 2008 MT 171N). In *Baggerman*, after the

defendant was found guilty in absentia, she appealed. 2008 MT 160N, ¶ 2. On appeal, after five months of no activity, the city requested a hearing, and the court set a status hearing. *Id.* The defendant failed to appear and the Court upheld dismissal because she had five failures to appear and lacked good cause for missing the status hearing. *Id.*, ¶¶2-3. In *Redfern*, the defendant proceeded pro se and admitted that he had “totally forgotten” about the status hearing. 2008 MT 171N. There, the Court held that forgetting to attend a hearing did not constitute good cause and upheld dismissal. *Id.*

Here, Keller-Keith’s public defender had a “legally sufficient reason” to show why the district court should not grant the City’s motion to dismiss his appeal — she was in another hearing at the same time in a different jurisdiction. She had multiple obligations to clients and courts simultaneously; while not ideal, this constitutes a “legally sufficient reason” to justify her tardiness to the omnibus hearing.

Unlike *Ziolkowsky*, this is not a case of a “deliberate choice” not to attend the hearing, nor is this a case of repeated nonappearances. Instead, Keller-Keith’s attorney made a deliberate effort to appear on his behalf while juggling multiple appearances in two jurisdictions. This case

is also unlike *City of Missoula v. Baggerman*, where the defendant was found guilty in absentia, had five failures to appear, and lacked good cause for missing a status hearing. Here, Keller-Keith was present at his trial, did not have a significant history of failure to appear, and his attorney had good cause for being thirty minutes tardy to the omnibus hearing. Finally, this case is also dissimilar to *State v. Redfern*, where the defendant lacked good cause for his failure to appear as he just forgot to attend the hearing. Here, Keller-Keith's public defender did not forget to attend the hearing; she was double-booked and had good cause for her tardiness.

Under the United States and Montana constitutions, Keller-Keith has an absolute right to a jury trial in both the city court and, then again, *de novo*, in district court. *Rensvold*, ¶ 20. The district court abused its discretion and violated Keller-Keith's constitutional rights when it arbitrarily dismissed his appeal because his public defender was thirty minutes late to his omnibus hearing.

## CONCLUSION

The district court abused its discretion when it dismissed Keller-Keith's appeal because his attorney was thirty minutes late to the

omnibus hearing. This ruling exceeded the bounds of reason by failing to grant his public defender any leniency when it had just been provided to the city attorney when he failed to appear. Furthermore, Keller-Keith's attorney had good cause for her tardiness as she was in a hearing in another jurisdiction at the same time. These facts do not warrant dismissal of Keller-Keith's appeal and this result is unjust.

For these reasons, Keller-Keith respectfully requests the Court reverse and remand this matter for a trial *de novo* in Sanders County District Court.

RESPECTFULLY submitted this 21st day of March 2024.

RYAN & MILLER, PLLC

/s/ Abigail Coburn

By: \_\_\_\_\_  
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## CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that this Appellant's Opening Brief is printed with proportionately spaced Century Schoolbook typeface of 14 points, is double-spaced except for lengthy quotations or footnotes, and does not exceed 10,000 words, excluding the Table of Contents, the Table of Authorities, Certificate of Service, and Certificate of Compliance, as calculated by my Microsoft Word software.

DATED this 21st day of May 2024.

RYAN & MILLER, PLLC

/s/ Abigail Coburn

By: \_\_\_\_\_

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## CERTIFICATE OF SERVICE

I, Abigail Marie Coburn, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-21-2024:

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