DA 23-0028

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 300

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DUSTIN LEE SEYLER,

Defendant and Appellant.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DC-22-32
Honorable Luke Berger, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Tammy Hinderman, Appellate Defender, Jeff N. Wilson, Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Thad Tudor, Assistant Attorney General, Helena, Montana

James A. Lapotka, Lake County Attorney, Benjamin R. Anciaux, Deputy County Attorney, Polson, Montana

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Submitted on Briefs: September 18, 2024

Decided: December 10, 2024

Filed:

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Dustin Lee Seyler appeals the Twentieth Judicial District Court's order denying his motion to dismiss, arguing that he did not receive a judicial determination of probable cause within a reasonable time as § 46-10-105, MCA, requires. Seyler also challenges the District Court's imposition of certain fees because they conflicted with the oral pronouncement of his sentence. We address the following issues on appeal:

1. *Is Seyler entitled to dismissal of the charges with prejudice because he did not receive a judicial determination of probable cause within a reasonable time?*

2. *Did the District Court err when it imposed the pre-sentence investigation and cost of prosecution fees in the written judgment?*

We affirm the conviction and reverse and remand for the District Court to amend the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On January 27, 2022, Dustin Seyler was arrested without a warrant and incarcerated for two counts of burglary. The Justice Court held an initial appearance the next day and set a preliminary hearing for February 7, 2022. The Justice Court set Seyler's bail at $100,000. On February 1, 2022, counsel from the Office of Public Defender filed a notice of appearance and a request for discovery. On February 3, 2022, the State filed a motion and affidavit for leave to file an information in the District Court. The Justice Court did not hold the scheduled preliminary hearing on February 7, and the District Court granted the State's motion on February 10, 2022. The State filed its information the same day.

¶3 Seyler filed a motion to dismiss, asserting that the thirteen-day delay between his initial appearance and when the District Court granted the State's motion for leave was unreasonable. The District Court denied Seyler's motion. Seyler pleaded guilty to the charges but reserved his right to appeal the District Court's ruling. At sentencing, the District Court explained that Seyler was obligated to pay restitution, surcharges of $50 for each count, victim advocate and technology user fees, and "probation and supervisory fees." The District Court told Seyler that these fees were "the extent of [his] financial obligations." In its written judgment, the District Court also required Seyler to pay $200 for the costs of prosecution and a $50 pre-sentence investigation (PSI) report fee.

STANDARDS OF REVIEW

¶4 We apply de novo review to a district court's grant or denial of a motion to dismiss in a criminal case. *State v. Carnes*, 2024 MT 101, ¶ 9, 416 Mont. 389, 548 P.3d 415 (citation omitted). Whether a defendant received a preliminary examination within a "reasonable time" under § 46-10-105, MCA, is a determination "within the discretion of the district court." *State v. Robison*, 2003 MT 198, ¶ 6, 317 Mont. 19, 75 P.3d 301 (citing *State v. McElderry*, 284 Mont. 365, 370, 944 P.2d 230, 233 (1997)). "The standard of review of discretionary trial court rulings in criminal cases is whether the trial court abused its discretion, and the reasonableness of the delay is a discretionary decision which is factually driven." *Robison*, ¶ 6 (citing *McElderry*, 284 Mont. at 370, 944 P.3d at 233).

¶5 "We review a condition imposed in a criminal sentence for legality—whether the sentence is within statutory parameters." *State v. Johnson*, 2023 MT 143, ¶ 6, 413 Mont.

114, 533 P.3d 335 (citation omitted). If the sentence is legal, we review for abuse of discretion the reasonableness of conditions or restrictions the court imposed. *Johnson*, ¶ 6. A district court abuses its discretion when it acts arbitrarily or without conscientious judgment or exceeds the bounds of reason. *Johnson*, ¶ 6.

DISCUSSION

¶6 *1. Is Seyler entitled to dismissal of the charges with prejudice because he did not receive a judicial determination of probable cause within a reasonable time?*

¶7 Section 46-10-105, MCA, requires that after a criminal defendant's initial appearance, "in all cases in which the charge is triable in district court, the justice[] court shall, within a reasonable time, hold a preliminary examination." The preliminary examination ensures that "there is an independent judicial determination of probable cause." *State v. Higley*, 190 Mont. 412, 419, 621 P.2d 1043, 1048 (1980) (citations omitted). For a case that is triable in district court, the justice court is not required to hold the prescribed preliminary examination if the defendant waives a preliminary examination; if the district court grants leave to file an information; or if an indictment is returned. Section 46-10-105, MCA. When a defendant does not receive a judicial determination of probable cause within a reasonable time, the charges must be dismissed. *Robison*, ¶ 7 (citation omitted). Whether the delay was reasonable is a factual inquiry that depends on factors including "length of the delay, reasons for the delay, whether the defendant has been incarcerated or prejudiced, whether the defendant has counsel, the seriousness or complexity of the charge, and other relevant matters." *Robison*, ¶ 12.

¶8 Seyler urges the Court to revisit our holding in *McElderry* that "a determination of a 'reasonable time' pursuant to § 46-10-105, MCA, is within the discretion of the district court." *McElderry*, 284 Mont. at 370, 944 P.2d at 233 (citing *Higley*, 190 Mont. at 434-35, 621 P.2d at 1056). Seyler contends that the Court misinterpreted *Higley*, which he argues did not apply abuse of discretion to a determination of reasonable time under § 46-10-105, MCA. Seyler asks the Court to "overrule *McElderry* and *Robison* on the narrow issue of the standard of review for the 'reasonable time' inquiry under § 46-10-105, MCA."

¶9 The State responds that the Court should decline to overrule decades of precedent on this issue. In addition to *McElderry* and *Robison*, the State argues, the Court has applied abuse of discretion to the same issue in at least three other cases. *See McElderry*, 284 Mont. at 370, 944 P.2d at 233; *Robison*, ¶ 6; *State v. Gatlin*, 2009 MT 348, ¶ 15, 353 Mont. 163, 219 P.3d 874; *State v. Haller*, 2013 MT 199, ¶ 5, 371 Mont. 86, 306 P.3d 338; *Mulkey v. Eighteenth Jud. Dist. Ct.*, No. OP 17-0598, 390 Mont. 424, 410 P.3d 173 (Oct. 24, 2017).

¶10 As reflected in the standard of review discussed above, we review the court's denial of a motion to dismiss de novo to determine whether the court correctly applied the law to the facts it found. *Carnes*, ¶ 9 (citation omitted). Factual findings, however, are reviewed for clear error. *Matter of A.M.G.*, 2022 MT 175, ¶ 18, 410 Mont. 25, 517 P.3d 149 (citation omitted). Reasonableness is a fact-based inquiry, as Seyler acknowledges, and the District Court's determination of reasonable time under § 46-15-105, MCA, is a discretionary decision. *Gatlin*, ¶ 15; *see also In re Marriage of Waters*, 223 Mont. 183, 189, 724 P.2d 726, 730 (1986) (holding that whether a Rule 60(b)(6) motion is made within a reasonable

time "will depend on the particular facts of the individual case" which "are addressed to the sound discretion of the court"); *In re A.S.*, 2016 MT 156, ¶¶ 11, 22, 384 Mont. 41, 373 P.3d 848 (in parental rights termination, whether parent is likely to change within reasonable time is reviewed for abuse of discretion); *State v. Chilinski*, 2014 MT 206, ¶ 36, 376 Mont. 122, 330 P.3d 1169 (citation omitted) (reasonableness of sentencing conditions reviewed for abuse of discretion). Our standard of review for a reasonable time determination under § 46-10-105, MCA, has remained consistent for more than four decades. *See McElderry*, 284 Mont. at 370, 944 P.2d at 233; *Robison*, ¶ 6 (citation omitted); *Gatlin*, ¶ 15; *Haller*, ¶ 5 (citation omitted); *Mulkey*, 390 Mont. 424, 410 P.3d 173. The State is correct that changing the standard of review would require overruling at least five prior cases. Seyler has not demonstrated manifest error in our rulings. *See State v. Gatts*, 279 Mont. 42, 51, 928 P.2d 114, 119 (1996) (citations omitted) (recognizing that "stare decisis does not require us to follow a manifestly wrong decision" but that "courts should not lightly overrule past decisions"). We decline to upset this settled precedent.

¶11 Seyler argues that the District Court erred in its application of the factors we mentioned in *Robison*. *See Robison*, ¶ 12. The District Court first erred, Seyler maintains, when it calculated the length of his delay. Seyler contends that he waited thirteen days, the time elapsed between his initial appearance on January 28 and when the District Court granted the State leave to file its information on February 10. Instead, Seyler asserts that the District Court calculated the delay based on the State's February 3 filing of its request for leave, which was incorrect under both § 46-10-105, MCA, and our decision in *Robison.*

¶12 Section 46-10-105(2), MCA, provides that the justice court is not required to hold a preliminary examination within a reasonable time if the district court has granted leave to file an information. The charges must be dismissed "if a preliminary examination is not conducted and a 'reasonable time' expires prior to the filing of an information in the district court." *Robison*, ¶ 7 (citing *McElderry*, 284 Mont. at 368, 944 P.2d at 231). The proper inquiry depends on when the court grants leave to file an information, not when the State makes its request for leave. Seyler is correct that he waited thirteen days from his initial appearance. The District Court, noting that the State sought leave to file the information within the ten-day timeframe, concluded that the three days of additional delay for the court to grant the motion was not unreasonable.

¶13 Seyler argues that the facts weigh in favor of dismissing his charges. Seyler notes that his delay lasted two days longer than Robison's and, like Robison, he was incarcerated while awaiting a judicial determination of probable cause. *See Robison*, ¶¶ 3-4, 12. Without elaboration, Seyler maintains that this delay was prejudicial because it was "dead time for purposes of preparing his defense." Seyler argues that his bail greatly exceeded Robison's and his burglary charges were not complex. The State did not argue the reasonableness factors at the District Court, Seyler contends, but limited its arguments to the length of the delay. Finally, Seyler asserts that the District Court analyzed the length of his delay but failed to consider the remaining factors.

¶14 The State maintains that it did make a reasonable time argument before the District Court and argues that the court implicitly found that Seyler's delay was not prejudicial.

See State v. Gable, 2015 MT 200, ¶ 18, 380 Mont. 101, 354 P.3d 566 (citation omitted). The State maintains that Seyler was not prejudiced by the delay because he was represented by counsel from the outset; he made no motions to lower his bail; and he never challenged probable cause. Finally, the State argues that Seyler's incarceration did not prejudice him because we held in *State v. Sor-Lokken* that "[w]hen a defendant remains incarcerated because he cannot meet bail, his incarceration is not a factor in calculating reasonable time." *State v. Sor-Lokken*, 246 Mont. 70, 76, 803 P.2d 638, 642 (1990) (citation omitted).

¶15 Weighing in Seyler's favor, these were straightforward burglary charges. The background facts comprised a single paragraph of the State's affidavit in support of motion for leave. We agree with Seyler that his incarceration necessarily carried some prejudice. Despite the contrary *Sor-Lokken* statement, we have held more recently that incarceration may be a factor in calculating reasonable time under § 46-10-105, MCA. *See Robison*, ¶ 12; *Gatlin*, ¶ 35 (Nelson, J., concurring in part) (citing *Robison*, ¶ 12).

¶16 Conversely, Seyler had an initial appearance and was promptly appointed counsel, who filed a notice of appearance and discovery request four days after Seyler was arrested. There is no support in the record for Seyler's claim that the delay affected his trial preparation. Importantly, at no point did Seyler's counsel seek to reduce his bail. Seyler argues that any delay beyond ten days should be held presumptively unreasonable. We previously addressed and dismissed this argument. *See Robison*, ¶ 10 ("In *McElderry*, this Court clearly held that no definite or 'trigger' deadlines are applicable in determining the reasonableness of the time taken to file an information."). As in *McElderry* and *Robison*,

we decline to set a deadline after which the filing of an information is presumptively unreasonable. *See Robison*, ¶ 10. Seyler's delay lasted only three days longer than the ten-day deadline he insists the Court should adopt.

¶17 Although the record does not explain why the delay occurred, particularly the court's delay after the State filed its motion for leave, the District Court determined that "in this specific factual scenario it was not an unreasonable amount of time for the probable cause determination to be made by the District Court." In *Higley*, we cited cases from other jurisdictions holding that eighteen- and sixteen-day delays were not unreasonable. *Higley*, 190 Mont. at 419-20, 621 P.2d at 1048 (citations omitted). Those delays substantially exceeded the thirteen-day delay at issue here. Additionally, Seyler does not point to evidence of prejudice to support his argument that his incarceration was "dead time" for preparing his defense. *See Higley*, 190 Mont. at 420, 621 P.2d at 1049 (citation omitted) ("the preliminary hearing is not meant to be a 'fishing expedition' for all possible evidence, and if probable cause is established to the satisfaction of the district judge by the county attorney's affidavit, the defendant has little reason to complain"). Seyler proceeded with counsel from the beginning, the length of his delay was not excessive, and he remained incarcerated on the same bond amount until sentencing. Given that counsel at no time during the case requested reduction in bail, Seyler cannot argue that his incarceration would have changed had the probable cause determination been made sooner. *See Higley*, 190 Mont. at 420, 621 P.2d at 1049 (citation omitted) (determining that "[u]nder the circumstances it is doubtful that a preliminary examination would have secured any

advantage to the defendant"). On this record, the District Court did not act arbitrarily or fail to employ conscientious judgment when it denied Seyler's motion to dismiss.

¶18 Finally, Seyler insists that because the preliminary examination was delayed his charges should be dismissed with prejudice. This is an extreme remedy reserved for a more egregious case. Where Seyler had counsel, there was ample showing of probable cause for the charges, and the delay had no effect on his defense or pretrial incarceration, Seyler was not entitled to dismissal.

¶19 *2. Did the District Court err when it imposed the pre-sentence investigation and cost of prosecution fees in the written judgment?*

¶20 Seyler argues that the District Court erred when it included the $50 PSI fee and the $200 cost of prosecution fee in the written judgment because it failed to include these fees when it orally pronounced his sentence. *See State v. Calahan*, 2023 MT 219, ¶ 27, 414 Mont. 71, 538 P.3d 1129 (quoting *State v. Lane*, 1998 MT 76, ¶ 40, 288 Mont. 286, 957 P.2d 9) ("[A] sentence that is 'orally pronounced from the bench in the presence of the defendant is the legally effective sentence and valid, final judgment.'"). When it orally imposed specific financial obligations as conditions of Seyler's sentence, the District Court did not include these fees, and it expressly told Seyler, "[t]hat's going to be the extent of your financial obligations."

¶21 The State concedes that the District Court did not pronounce the $200 cost of prosecution fee in Seyler's oral sentence. But it contends that Seyler had notice of the $50 PSI fee for two reasons. First, the District Court told Seyler that "there's also probation and supervisory fees," which, the State maintains, included the PSI fee. Second, the State

argues that Seyler had notice of the PSI fee because it is statutorily mandated and it was included in the PSI report. *See* Section 46-18-111(3), MCA ("The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed . . . .").

¶22 Given a conflict between an oral sentence and a written judgment, "the oral sentence pronounced from the bench in [the] defendant's presence is the 'legally effective sentence and valid, final judgment.'" *State v. Andress*, 2013 MT 12, ¶ 33, 368 Mont. 248, 299 P.3d 316 (quoting *Lane*, ¶ 40). To decide whether the subsequent written judgment is unlawful, we examine whether the "written judgment has, without notice, substantively *increased* a defendant's criminal sentence that was previously imposed in open court in the defendant's presence." *Andress*, ¶ 34 (quoting *State v. Johnson*, 2000 MT 290, ¶ 24, 302 Mont. 265, 14 P.3d 480). Because the $200 cost of prosecution fee in Seyler's written judgment undisputedly conflicts with the oral pronouncement of his sentence and substantively increased his loss of property, it is not part of Seyler's legally effective sentence and valid, final judgment. *See Lane*, ¶ 40.

¶23 The District Court's imposition of the PSI fee also conflicted with its oral pronouncement. Seyler asserts that "[t]he PSI fee is not a fee related to probation [or] supervision, which are incurred after sentencing." Section 46-18-232, MCA, grants a court the authority to impose costs of probation and supervision. Separately, § 46-18-111(3), MCA, provides authority for imposition of the $50 PSI report fee. Seyler is correct that the fees are distinct. The court's reference at sentencing to "probation and supervisory fees" thus did not give Seyler notice that he would be required to pay a $50 fee for the PSI

report. The District Court's imposition of $50 for the PSI report substantively increased Seyler's sacrifice of property. *See Johnson*, 2000 MT 290, ¶ 24. Consequently, the $50 PSI fee conflicted with the oral pronouncement of Seyler's sentence and must be stricken from the written judgment on remand.

CONCLUSION

¶24 Under the facts of this case, the District Court did not abuse its discretion in refusing to dismiss the case after it granted the State leave to file an information thirteen days following Seyler's arrest. The inclusion of the $50 PSI fee and the $200 cost of prosecution fee in the written judgment conflicted with the oral pronouncement of Seyler's sentence. We therefore affirm Seyler's conviction and remand for the District Court to strike both fees from the written judgment.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ JIM RICE

Justice Ingrid Gustafson, concurring.

¶25 Seyler seeks dismissal of two burglary charges against him, contending that the fourteen days he spent incarcerated after arrest and before receiving a judicial review of probable cause constituted unreasonable delay as during this time he had no way to prepare a defense as he did not know the basis of the charges. While I concur with this Court's

opinion that on the record before us, Seyler has failed to demonstrate prejudice to his defense due to the delay in initial appearance, I write to express concern as to the potential collateral consequences of pretrial incarceration which make prompt court appearance vital and why pretrial incarceration should be the exception used in an intentional manner to promote public safety while minimizing collateral consequences.

¶26 The increasing and disparate use of incarceration has become a critical social issue in the United States. Pretrial populations represent a significant and growing portion of mass incarceration. According to the Bureau of Justice Statistics (BJS), the proportion of unconvicted individuals in jail populations rose from 50 percent in 1985 to nearly 63 percent in 2014. Todd D. Minton & Zhen Zeng, *Jail Inmates in 2015*, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics (2015), https://perma.cc/QZ47-U8WH. During this period, the jail population increased from approximately 256,000 to nearly 745,000, with BJS estimating that nearly 95 percent of the growth in jail populations since 2000 stems from an increase in individuals held pretrial. Minton & Zeng at 4. Pretrial incarceration has far-reaching collateral consequences and is arguably the most consequential phase in the criminal process due to its association with a higher likelihood of conviction, longer terms of incarceration, and its potential to destabilize families. Approximately 490,000 individuals in jail on any given day are not convicted and are presumed innocent. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, Prison Policy Initiative (2020), https://perma.cc/47VK-UMAX. Moreover, the average length of stay in pretrial detention

has increased from 14 days in 1983 to 26 days today. Ram Subramanian et al., *Incarceration's Front Door: The Misuse of Jails in America*, Vera Institute of Justice (2015), https://perma.cc/5227-7VVM; Sandra Susan Smith et al., *The Difference a Day Makes: How Spending Even One Day in Jail Can Have Devastating Consequences*, Harvard Kennedy School Malcolm Wiener Center for Social Policy (2018), https://perma.cc/T7WC-ZFPG.

¶27 The significant reliance on pretrial incarceration is costly—not only from a budgetary perspective but also in terms of the personal toll on those incarcerated, their families, and their communities. The collateral consequences of pretrial detention include decreased earnings over time, loss of employment and public benefits, diminished future job prospects, housing instability, and an increased likelihood of new arrests and continued involvement with the criminal justice system.[1] We have known for some time that even a fairly short period of pretrial incarceration "as few as two days—correlates with negative outcomes for defendants and for public safety when compared to those defendants released within 24 hours." Subramanian et al. at 14. Studies have shown that, compared to low-risk defendants released pretrial, those detained pretrial are four times more likely to receive a prison sentence and three times more likely to be sentenced to longer terms of

[1] Will Dobbie et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108(2) American Economic Review 201 (2018); Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, 60(3) J.L. & Econ. 529 (2017); Christopher T. Lowenkamp, Marie VanNostrand & Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Laura and John Arnold Foundation (2013), https://perma.cc/NC9L-BSRT.

incarceration. Further, pretrial detention exceeding 23 hours is associated with a statistically significant increase in likelihood of new arrest pending trial. Christopher T. Lowenkamp, *The Hidden Costs of Pretrial Detention Revisited*, Arnold Ventures (2022), https://perma.cc/TF7M-BWFT. Research has shown, compared to low-risk defendants held for no more than 24 hours, those held for 8–14 days pretrial were 56% more likely to be rearrested before trial and 51% more likely to recidivate after sentence completion. Christopher T. Lowenkamp, Marie VanNostrand & Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Laura and John Arnold Foundation (2013), https://perma.cc/NC9L-BSRT. Pretrial detention also has significant economic consequences, reducing the earning potential of incarcerated individuals by lowering wages, reducing the number of weeks worked, and decreasing annual earnings. *Collateral Costs: Incarceration's Effect on Economic Mobility*, The Pew Charitable Trusts (2010), https://perma.cc/U5EX-JBA6. These findings have been consistently supported by ongoing research. *Pretrial Detention*, Advancing Pretrial Policy & Research (2020), https://perma.cc/T27Y-JVDF.[2]

[2] Will Dobbie et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108(2) American Economic Review 201 (2018); Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, 60(3) J.L. & Econ. 529 (2017); Christopher T. Lowenkamp, Marie VanNostrand & Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Laura and John Arnold Foundation (2013), https://perma.cc/NC9L-BSRT; Don Stemen & David Olson, *Is Bail Reform Causing an Increase in Crime?*, Harry Frank Guggenheim Foundation (2023), https://perma.cc/8V9V-43C4.

¶28 Moreover, a study of over 150,000 persons detained in Kentucky showed that even short periods of pretrial detention are associated with increased rates of failing to appear:

> After controlling for other important factors, including assessed likelihood of pretrial success (by means of a statistically validated instrument), the study showed that short periods of detention increased the likelihood of failure to appear (FTA) for all people: those who were held for 2–3 days had a 9% greater likelihood of failing to appear in court than statistically similar people who were held for 1 day. This effect was particularly pronounced among people assessed as being statistically most likely to succeed pretrial: they were 22% more likely to fail to appear after being detained for 2–3 days, and 41% more likely to fail to appear after being detained for 15–30 days, than those detained for 1 day.

Pretrial Detention at 2.

¶29 The same Kentucky study also confirmed findings from earlier research that pretrial detention is associated with harsher sentencing outcomes. Individuals detained pretrial were significantly more likely to be sentenced to incarceration and to receive longer sentences compared to those released pretrial. Most notably, individuals assessed as being statistically most likely to succeed pretrial faced the most severe consequences: they were over five times more likely to be sentenced to jail and four times more likely to be sentenced to prison, compared to similarly situated individuals who were released pretrial. Similar findings were reported in Philadelphia and New York, where pretrial detention led to a 42% increase in sentence length in Philadelphia and a 150-day increase in minimum sentence length in New York. Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, 60 J.L. & Econ. 529, 546 (2017). Additionally, longer periods of pretrial incarceration have been shown to have negative criminogenic effects. Generally, the longer a defendant is

incarcerated pretrial, the more likely they are to be arrested for new criminal activity post-disposition. For example, in Kentucky, individuals detained pretrial for 2–3 days were 40% more likely to be arrested for a new offense than those detained for 1 day, increasing to a 74% higher likelihood for those detained for 31+ days. Christoper T. Lowenkamp et al., *The Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation (2013), https://perma.cc/T8WQ-BCQ8. This increased risk persisted even two years after adjudication, with individuals detained for 2–3 days being 17% more likely to recidivate, and those held for 15–30 days being 46% more likely to recidivate than those held for just 1 day. Lowenkamp et al. at 20. A study in New York also found that pretrial detention increased the likelihood of being arrested within two years of disposition by 7.5% for felony cases and by 11.8% for misdemeanor cases. Leslie & Pope at 550.

¶30 Given the research consensus that even short-term pretrial incarceration leads to worse criminogenic outcomes and increased socioeconomic instability, pretrial detention should be used sparingly and intentionally, balancing public safety with the minimization of collateral consequences. Pretrial reforms, such as the use of validated pretrial risk assessments, the elimination of money bail for most misdemeanors and nonviolent felonies, and prohibitions against setting bail amounts that individuals cannot afford, have shown promise in promoting public safety while allowing individuals to remain in their communities awaiting trial. These reforms have generally not been associated with increased crime rates. Sarah Staudt, *Releasing People Pretrial Doesn't Harm Public Safety*, Prison Policy Initiative (2023), https://perma.cc/SP4U-93KA; Jessica Li et al.,

Broken Rules: How Pennsylvania Courts Use Cash Bail to Incarcerate People Before Trial, ACLU of Pennsylvania (2021), https://perma.cc/RQ6M-WXAA.

¶31 While there is growing consensus in the research as to the significant criminogenic and socioeconomic collateral consequences of pretrial incarceration, even of short duration, the record in this case does not demonstrate the consequence of defense impairment as asserted by Seyler.

/S/ INGRID GUSTAFSON

Justice James Jeremiah Shea joins in the concurring Opinion of Justice Gustafson.

/S/ JAMES JEREMIAH SHEA