

IN THE SUPREME COURT OF THE STATE OF MONTANA
CAUSE NO. DA 23-0584

STATE OF MONTANA,
Plaintiff and Appellee,
and
WILLIE ANTOINE REDD,
Defendant and Appellant.

Appellant/Defendant's Opening Brief

On Appeal from the District Court of the Thirteenth Judicial District
of the State of Montana, In and For Yellowstone County

Before the Honorable Brett Linneweber
Cause No. DC 21-0218

RUFUS I. PEACE
Peace Law Group, LLC
7643 Gate Parkway
Suite 104-1267
Jacksonville, FL 32256
Telephone (406) 600-6647
rufus@integrityfirstlaw.com

AUSTIN KNUDSON
Montana Attorney General
C. MARK FOWLER
Bureau Chief Appellate Services
Bureau P.O. Box 201401
Helena, MT 59620-1401
dojsupremecourtefilings@mt.gov

SCOTT D. TWITO
County Attorney
Yellowstone County
PO Box 35025
Billings, MT 59107
Via eService

TABLE OF CONTENTS

| | |
|--|----|
| Table of Contents | 2 |
| TABLE OF AUTHORITIES | 4 |
| Cases | 4 |
| Statutes | 4 |
| Other | 4 |
| STATEMENT OF THE ISSUES..... | 5 |
| I. Whether the District Court erred by denying Redd’s Motion to Dismiss for multiple violations of the Interstate Agreement on Detainers, when the State lodged a warrant detaining Redd and made a written request for Redd to be transferred to State custody?..... | 5 |
| II. Whether the District Court erred by denying Redd’s Motion to Dismiss for lack of speedy trial, when the delay bringing Redd to trial was 613 days and Redd remained in custody throughout the delay? | 5 |
| III. Whether the District Court erred by denying Redd’s Motion to Dismiss for delay in his initial appearance when the delay between Redd being charged and his initial appearance was 96 days, and that delay was caused by an intentional action by the State? | 5 |
| STATEMENT OF THE CASE | 5 |
| SUMMARY OF ARGUMENT | 6 |
| STATEMENT OF FACTS | 8 |
| STANDARDS OF REVIEW | 15 |
| ARGUMENT | 16 |
| I. The District Court erred by denying Redd’s Motion to Dismiss for violations of the interstate agreement on detainers when the state invoked the agreement’s provisions and failed to meet its requirements | 16 |
| II. The district court erred by denying redd’s motion to dismiss for lack of speedy trial. | 24 |
| A. The Length of Delay Presumptively Violates Redd’s Speedy Trial rights. | 25 |
| B. The Reasons for Delay Show that Redd’s Speedy Trial Right was Violated..... | 27 |
| C. The Defendant’s Response to the Delay Weighs Heavily in Redd’s Favor..... | 32 |
| D. Redd was Prejudiced by the Speedy Trial Delay..... | 33 |
| 1. Oppressive Pretrial Incarceration..... | 33 |
| 2. Minimizing the Defendant's Anxiety and Concern..... | 36 |
| 3. Impairment of the Defendant’s Defense | 38 |
| E. On Balance the Speedy Trial Factors Favor Redd | 39 |
| III. The district court erred by denying redd’s motion to dismiss for delay in initial appearance. | |
| 41 | |
| CONCLUSION | 47 |

| | |
|--------------------------------|----|
| CERTIFICATE OF COMPLIANCE..... | 48 |
| appendix | 49 |

TABLE OF AUTHORITIES

Cases

| | |
|---|---------------------|
| <i>Barker v. Wingo</i> , 407 U.S. 514 | 33 |
| <i>Carchman v. Nash</i> , 473 U.S. 716..... | 17 |
| <i>Hope v. State</i> , 2003 MT 191 | 40 |
| <i>New Jersey v. Chirra</i> , 79 N.J. Super. 270..... | 22 |
| <i>State v. Ariegwe</i> , 2007 MT 204 | 8, 25-28, 33-39, 40 |
| <i>State v. Billman</i> , 2008 MT 326 | 28, 34, 36, 39 |
| <i>State v. Brekke</i> , 2017 MT 81..... | 16 |
| <i>State v. Burnett</i> , 2022 MT 10..... | 28 |
| <i>State v. Couture</i> , 2010 MT 201..... | 35-36 |
| <i>State v. Crazymule</i> , 2024 MT 58 | 21, 40 |
| <i>State v. Daly</i> , 2023 MT 142 | 25 |
| <i>State v. Gatlin</i> , 2009 MT 348..... | 40, 42, 45-46 |
| <i>State v. Hendershot</i> , 2009 MT 292 | 28 |
| <i>State v. Kurtz</i> , 2019 MT 127 | 34-35 |
| <i>State v. Lacey</i> , 2010 MT 6..... | 26 |
| <i>State v. Longhorn</i> , 2002 MT 135..... | 26 |
| <i>State v. McWilliams</i> , 2008 MT 59 | 16 |
| <i>State v. Nickerson</i> , 2014 MT 83..... | 17 |
| <i>State v. Norvell</i> , 2019 MT 105..... | 41-42, 45-46 |
| <i>State v. Strong</i> , 2010 MT 163..... | 40, 45-46 |
| <i>State v. Velasquez</i> , 2016 MT 216..... | 40, 45-46 |
| <i>United States v. MacDonald</i> , 456 U.S. 1 | 38 |
| <i>United States v. Mauro</i> , 436 U.S. 340 | 18-24 |
| <i>United States v. Reed</i> , 910 F.2d 621 | 22 |
| <i>Vermont v. Brillon</i> , 556 U.S. 81..... | 29 |

Statutes

| | |
|--|------------|
| Mont. Code Ann. § 46-1-202 | 40 |
| Mont. Code Ann. § 46-7-101 | 40-42, 46 |
| Mont. Code Ann. § 46-11-410..... | 19, 20, 21 |
| Mont. Code Ann. § 46-31-101, et seq..... | 17 |

Other

| | |
|--|-------|
| Interstate Agreement on Detainers..... | 17-18 |
|--|-------|

STATEMENT OF THE ISSUES

- I. Whether the District Court erred by denying Redd’s Motion to Dismiss for multiple violations of the Interstate Agreement on Detainers, when the State lodged a warrant detaining Redd and made a written request for Redd to be transferred to State custody?**
- II. Whether the District Court erred by denying Redd’s Motion to Dismiss for lack of speedy trial, when the delay bringing Redd to trial was 613 days and Redd remained in custody throughout the delay?**
- III. Whether the District Court erred by denying Redd’s Motion to Dismiss for delay in his initial appearance when the delay between Redd being charged and his initial appearance was 96 days, and that delay was caused by an intentional action by the State?**

STATEMENT OF THE CASE

Appellant Willie Antoine Redd (“Redd”) was convicted of Aggravated Assault, following a jury trial where Redd was found to have assaulted his girlfriend’s three-year-old daughter causing severe injuries to the young girl. Redd was sentenced to 20 years imprisonment at the Montana State Prison, with a 15-year parole restriction.

Redd was arrested by the U.S. Marshalls and taken into custody for an unrelated case and placed in the Yellowstone County Detention Facility (YCDF). The day after his arrest, the Yellowstone District Court issued an arrest warrant, and a few days later the court issued a *writ of habeas corpus ad prosequendum* requesting Redd be transferred back to state custody for prosecution, invoking the protections

of the Interstate Agreement on Detainers. However, Redd was not served the warrant for 91 days or seen by district court for 96 days.

Redd's first trial date was October 25, 2021, ten days prior to trial, the district court saw Redd for the first time after his initial appearance at a trial status hearing where Redd's counsel informed the court that he had not spoken with Redd or prepared for trial and requested a continuance. The attorney client relationship deteriorated, and Redd requested new counsel on December 1, 2021.

Several months later Redd was appointed new counsel and after an initial continuance, filed Redd's first Motion to Dismiss for violations of the Interstate Agreement on Detainers, which was denied. Redd's trial was delayed multiple times for reasons beyond Redd's control until October 24, 2022. Shortly before trial, Redd retained private counsel and waived his speedy trial right for all time past October 24, 2022, leaving 613 days for consideration in this appeal. Redd's private counsel filed two motions to dismiss, one based upon a lack of speedy trial, and another for a delay in arraignment, both were denied. Redd was eventually taken to trial and found guilty of Aggravated Assault.

SUMMARY OF ARGUMENT

Redd argues that the district court erred by denying his motions to dismiss, on the basis that the State violated the Interstate Agreement on Detainers, by failing to take him to trial within 120 days, failing to accept custody of Redd, and in the

alternative that Redd was returned to federal custody prior to trial, all violations of the Interstate Agreement on Detainers that required dismissal with prejudice.

Redd further argues the 613 days between being accused and trial violated his right to a speedy trial. Applying the four factor *Ariegwe* test, the 613-day delay is presumptively prejudicial, with 300 days of the delay charged against the State, and importantly the first 91 days attributable to the State's intentional decision not to bring Redd to trial. Moreover, Redd suffered prejudice from the delay as his confinement was oppressive, with Redd being locked down 23 hours per day for much of the time, and Redd suffered increased anxiety and stress based upon the delay. Further, Redd affirmatively asserted his desire for speedy trial while only agreeing to delays necessary to preserve other vital rights. This was a violation of Redd's right to a speedy trial and warranted dismissal.

Finally, Redd argues the 96-day delay between being arrested and his initial appearance warranted dismissal. This delay was a result of an intentional choice by the State, and based upon this Court's precedent, the appropriate remedy is dismissal. While this Court has determined in several cases that dismissal without prejudice is appropriate, it has repeatedly indicated that where the delay was caused by intentional State action, the remedy is dismissal with prejudice. This is the situation in Redd's case, and dismissal with prejudice was warranted.

STATEMENT OF FACTS

Beginning at 11:30 in the morning of February 2, 2021, until between 2:30 and 3:00 am on February 3, 2021, Redd was babysitting the three-year-old child of his then girlfriend, Taylor Morgan (“Taylor”). See Transcript of Proceedings, Jury Trial Day 5, March 13, 2023 (“Tr. JT Day 4”), 960:13-16, 964:10-11, 966:49-22; Doc. 1, Motion for Leave to File Information with Supporting Affidavit. Redd was the only person with the three-year-old throughout the day and into the early morning of February 3, 2021. See Doc. 1. When Taylor’s daughter was returned, her daughter was injured and Taylor, concerned for her daughter’s safety, took her daughter to the emergency room. Tr. JT Day 4, 969:14-971:8.

Taylor initially told the doctors she was driving when she was forced to hit the brakes and her daughter, being unsecured, flew into the windshield causing injuries to the little girl. Transcript of Proceedings, Jury Trial Day 5, March 14, 2023 (“Tr. JT Day 5”), 984:20-985:2.

Doctors determined the three-year-old’s injuries were severe and life threatening, so they organized a life flight to Denver Children’s Hospital. Transcript of Proceedings, Jury Trial Day 1, March 8, 2023 (“Tr. JT Day 1”), 197:21-198:4. Doctors were unconvinced by Taylor’s description of how her daughter became injured, and law enforcement was notified. *Id.*, 200:2-22.

The investigation quickly turned toward Redd as the only person with the three-year-old prior to her being injured. Tr. JT Day 4, 727:15-17, 832:9-14.

On February 17, 2021, Redd was arrested by U.S. Marshalls and transported to the Billings Police Department (“BPD”), at least in part in response to a request for assistance from BPD, but officially for an unrelated probation violation. Transcript of Proceedings, December 16, 2022, Motions Hearing (“Tr. Dec 16, 2022”), 15:14-19;33:6-10;16:16-25. At BPD, officers interviewed Redd, and he was then taken to the Yellowstone County Detention Facility (“YCDF”). *Id.*, 17:23-18; 19:19-22. While it was disputed, it appears that BPD officers transported Redd from the interview to YCDF. *Id.*, 19:19-20:25; 22:1-5; 70:22-25.

The following day, the State filed its Information charging Redd with Aggravated Assault, for purposefully or knowingly causing serious bodily injury to the three-year-old. Doc. 3. The same day (February 18, 2021), the district court issued a Warrant of Arrest directing all peace officers in Montana to immediately take Redd into custody and bring him before the court or “the most accessible Judge in this County without unnecessary delay.” Doc. 5.

On February 19, 2021, the State petitioned the district court to issue a *writ of habeas corpus ad prsequendum*, and on February 22, the district court issued the writ. See Doc. 6 & 9.

Between February 18, and May 20, 2021, Redd remained at the YCDF, without representation and having not been served the State’s warrant. On May 20, 2021, Redd was sentenced in the federal case, and on the same day served the State’s warrant. See Doc. 37, Redd’s Motion to Dismiss, Exhibit A; Doc. 38, State’s Response to Motion to Dismiss, ¶ 4, and Exhibit A.

Redd was arraigned on May 24, 2021, 95 days after the warrant was issued. See Doc. 10, Minute Entry. On July 2, 2021, Redd was first assigned counsel, who was quickly replaced on July 6 by attorney Tomicich from the Office of Public Defenders (“OPD”). See Doc. 14 & 15.

On September 25, 2021, Redd sent his first “kite” to Tomicich asking him to visit and stating “I do not wish to waive my right to speedy trial rights. I have yet to see you since you’ve been appointed, which was July 6th, 2021. Please respond.” Tr. Dec 16, 2022, 71:16-25; 72:1-18.

On October 27, 2021, Redd sent a second “kite” to Tomicich informing him that Redd opposed any motion to continue, and he “will not, under any circumstances, waive my right to a speedy trial.” *Id.*, 73:1-8.

On November 4, 2021, Redd sent a “kite” stating “[P]lease be advised I will not waive my right to speedy trial.” *Id.*, 73:15-74:3.

On October 15, 2021, 10 days prior to trial, the district court held a status hearing. Transcript of Proceedings, October 15, 2021, Status Hearing (“Tr. Oct. 15, 2021”), generally; Tr. Dec 16, 2022, 85:18-21.

At the hearing, Tomicich informed the district court he and the State had conferred, and they requested scheduling conference because Tomicich had not seen Redd due to believing Redd was in federal custody. Tr. Oct. 15, 2021, 4:7-16.

At some point in late October, Redd met with Tomicich but was not provided any discovery in his case. *Id.*, 74:8-16. Then on November 10, 2021, Redd sent another “kite” informing Tomicich that Redd opposed “any continuance and will not waive my right to a speedy trial.” *Id.*, 74:15-23.

On November 13, 2021, Redd again sent a “kite” informing Tomicich that he opposed any continuance, and refused to waive his right to a speedy trial. *Id.*, 75:7-16.

On November 24, 2021, the district court convened a scheduling conference. See Transcript of Proceedings, November 24, 2021, Scheduling Conference, generally. At this hearing, it was determined no omnibus hearing had occurred, and Redd spoke up about his growing concerns with Tomicich. *Id.*, 4:13-14. Redd further expressed his frustration regarding what happened to the October 25, 2021 trial date because no motion had been filed to continue it, and no one communicated what happened to him. *Id.*, 8:15-25.

The district court set a December 1, 2021, Finely/omnibus hearing and stated the court would then set a new trial date and entertain Redd's concern with his counsel at that time. *Id.*, 9:18-10:3.

At the December 1, 2021 hearing, Redd asked for new counsel and again questioned the district court regarding speedy trial because 200 days had passed since the warrant was served.¹ Transcript of Proceedings, December 1, 2021, Omnibus/Finley Hearing ("Tr. Dec. 1, 2021"), 4:25-5:5; 5:24-6:5; 7:1-4. After questioning Redd, the district court allowed Tomicich to withdraw and ordered Redd be appointed a new attorney. *Id.*, 12:8-15.

On January 26, 2022, Redd was appointed new counsel, who was replaced a few days later by attorney Gordon, contracted by OPD. See Doc. 26 & 27.

On March 7, 2022, the district court held a status hearing and Gordon informed the court Redd opposed any continuances and asked to confirm a trial date. Transcript of Proceedings, March 7, 2022, Status Hearing, 4:10-13. Again no omnibus had occurred. *Id.*, 6:11-19.

On March 21, 2022, a bond reduction hearing was held and Redd's request for a bond reduction was denied. See Doc. 35.

On April 1, 2022, a status hearing was held, and Redd requested a continuance to file a Motion to Dismiss, and trial was reset until May 9, 2022.

¹ This was Redd's assertion, but the correct number of days was 195.

On April 7, 2022, Redd filed his Motion to Dismiss for violations of the Interstate Agreement on Detainers. See Doc. 37 & 42.

On April 29, 2022, the district court *sua sponte* reset Redd's trial to May 23, 2022. Transcript of Proceedings, April 29, 2022, Status Hearing, 7:25-8:6.

On May 4, 2022, the district court was notified that attorney Gordon had suffered a personal emergency. Although it is unknown what the emergency was, the district court was satisfied and Redd's trial was vacated. See Doc. 44, Minute Entry.

On June 20, 2022, Gordon was back from the emergency and the district court reset Redd's trial to occur October 24, 2022. See Doc. 46-47.

On August 25, 2022 the district court issued its Order Denying Redd's Motion to Dismiss, reasoning the *writ of habeas corpus ad prosequendum* was not a detainer so the Interstate Agreement on Detainers did not apply. See Doc. 54.

On October 3, 2022 attorney Stephens, privately retained by Redd, appeared on Redd's behalf. Doc. 77. A Status of Counsel hearing occurred the next day, and Stephens requested a continuance to prepare for trial, and Redd waived his right to speedy trial from the October 24, 2022 trial setting forward. Transcript of Proceedings, October 4, 2022, Status of Counsel Hearing, 11:22-12:1.

Redd then filed his Motion to Dismiss based upon the denial of his right to a speedy trial, and Motion to Dismiss based upon delay in his initial appearance. Doc 83, 84, 92 & 93.

On December 16, 2022, the district court held a hearing on Redd's Motions, based upon testimony, upon arrival at the YCDF Redd was placed in "Class A," or maximum security custody, where he was locked in a cell 23 hours per day, without the normal accommodations inmates in general population receive. Tr. Dec. 16, 2022, 47:22-24; 55:3-16. In Class A, Redd received virtually no rehabilitative programming. *Id.*, 79:7-80:5. AA would come to YCDF approximately every two weeks, but often could not make it to Class A. *Id.*, 79:9-15. Aside from sporadic visits from AA, Redd did occasionally attend bible study. *Id.*, 79:25-80:5.

While incarcerated, Redd suffered from indigestion and could not eat the normal meals provided and could not afford commissary items due to the expense. *Id.*, 78:14-79:6. Further, Redd had difficulty contacting his family, while his family were being targeted by an online campaign against Redd, causing Redd increased stress and anxiety. *Id.*, 79:25-80:5.

Redd was transferred from Class A to general population in September 2022, making Redd's stay in Class A, locked down 23 hours per day, approximately 20 months. Doc. 130, Order Denying, Conclusions of Law ¶ 64.

On February 23, 2023, the district court denied Redd's Motion to Dismiss for lack of speedy trial, and Motion to Dismiss for delay of initial appearance. Doc. 129 & 130.

On March 14, 2023 Redd was found guilty by a jury of Aggravated Assault and on May 2, 2023 sentenced to 20 years imprisonment at the Montana State Prison, with a 15 year parole restriction. See Doc. 177, Judgment.

Redd now appeals his conviction for Aggravated Assault.

STANDARDS OF REVIEW

Denial of a motion to dismiss in a criminal trial presents a question of law, reviewed to determine if the district court's conclusions of law are correct. *State v. McWilliams*, 2008 MT 59, P 22, 341 Mont. 517, 178 P.3d 121.

This Court reviews a district court's decision on a speedy trial claim de novo to determine whether the decision was correct. *State v. Brekke*, 2017 MT 81, ¶ 10, 387 Mont. 218, 392 P.3d 570, citing *State v. Velasquez*, 2016 MT 216, ¶ 6, 384 Mont. 447, 377 P.3d 1235.

All issues presented by Redd are reviewed do novo to determine if the district court's decisions were correct.

ARGUMENT

I. THE DISTRICT COURT ERRED BY DENING REDD’S MOTION TO DISMISS FOR VIOLATIONS OF THE INTERSTATE AGREEMENT ON DETAINERS WHEN THE STATE INVOKED THE AGREEMENT’S PROVISIONS AND FAILED TO MEET ITS REQUIREMENTS

The Interstate Agreement on Detainers Act (IAD) is a compact between states and the Federal Government; adopted by Montana in 1963 it is codified at Mont. Code Ann. § 46-31-101 through § 46-31-204 (2023). *State v. Nickerson*, 2014 MT 83, ¶ 7, 374 Mont. 354, 322 P.3d 421. While the IAD is codified in Montana law, it is a federal law subject to federal construction and is to be liberally construed to effectuate its purposes. *Nickerson*, at ¶ 7, citing to *Carchman v. Nash*, 473 U.S. 716, 719, 105 S. Ct. 3401, 3403, 87 L. Ed. 2d 516 (1985); IAD, Article IX.

The IAD was created to address the concerns regarding speedy trial rights of persons already incarcerated in other jurisdictions and the effect of detainers impacting prisoner treatment and rehabilitation. IAD, Article I.

Article II, Section 1 defines a “state” to include the United States and every state comprising the United States. Article II, Section 2 and 3 define the “sending state” as the state in which the prison is physically incarcerated, and the “receiving state” as the state in which trial is to be had on the charges.

Article IV, Section 1 allows the jurisdiction where the charges are pending to have an inmate “against whom the officer has lodged a detainer and who is serving

a term of imprisonment in any party state made available...upon presentation of a written request for temporary custody...” When such a request is made, Article IV, Section 3 mandates that trial must commence within 120 days of arrival of the prisoner in the receiving state, and the prisoner must be tried in the receiving state prior to return to the sending state (Article IV, Section 5).

Noncompliance with Article IV’s mandates—specifically, the 120-day trial deadline, or the prohibition on pre-trial return to the sending state requires dismissal with prejudice. In this case, the State violated both provisions: it failed to commence Redd’s trial within 120 days of his transfer to Montana custody, and it permitted his return to federal custody before trial in August 2023. Further, the State failed to accept custody of Redd, violating Article V, Section 3, which likewise requires dismissal with prejudice.

A. The IAD was Triggered on February 22, 2021 When the State Made a Written Request for Redd’s Transfer to State Custody

The IAD applies when a “detainer” is lodged by the receiving state (Montana) with the sending state (Federal Government), followed by a “written request for temporary custody.” Article IV, Section 1.

At the district court Redd argued that both or either the warrant or the *writ of habeas corpus ad prosequendum* served as a detainer, while the State maintained that neither served such a purpose. The State primarily relied upon *United States v. Mauro*, 436 U.S. 340, 98 S. Ct. 1834 (1978), which is the seminal case interpreting

the triggering of IAD provisions. The State argued that *Mauro* established a hard and fast rule that *writs of habeas corpus ad prosequendum* are not detainers. While this is correct, it is not a full reading of *Mauro*, and a more complete review of *Mauro* supports Redd's contention his case should have been dismissed under the IAD.

Mauro was two appeals combined for resolution, the first appeal was for Mauro and a second defendant named Fusco. 436 U.S. at 345, 98 S. Ct. at 1839. Mauro and Fusco were both serving time at New York State Prison and were both indicted by a U.S. District Court. *Ibid.* Pursuant to two separate *writs of habeas corpus ad prosequendum* both were transferred to federal custody for arraignment; however, due to overcrowding, the U.S. District Court ordered both men be returned to state custody while they awaited trial. *Ibid.* Both defendants moved to dismiss their cases alleging their return to state custody mandated dismissal under IAD, Article IV. *Id.*, 436 U.S. at 345, 98 S. Ct. 1839.

The US District Court granted the dismissal, and the Second Circuit Court of Appeals affirmed. *Id.*, 436 U.S. at 345, 98 S. Ct. 1839-1840.

The second appeal involved a defendant named Ford, who was arrested on federal warrants in Chicago on October 11, 1973. *Id.*, 436 U.S. at 346, 98 S. Ct. 1840. Shortly after, Ford was turned over to Illinois custody and extradited to Massachusetts to face trial on unrelated charges. *Id.*, 436 U.S. at 346, 98 S. Ct. 1840. After Ford was transferred to Massachusetts, federal officials lodged the federal

warrant as a detainer. *Id.*, 436 U.S. at 346, 98 S. Ct. 1840. Following Ford's conviction in Massachusetts, the U.S. District Court issued a *writ of habeas corpus ad prosequendum*, bringing Ford into federal custody for arraignment and prosecution. *Id.*, 436 U.S. at 346, 98 S. Ct. 1840. Trial was set for May 28, 1971, but after several continuances, trial began August 8, 1975. *Id.*, 436 U.S. at 346-47, 98 S. Ct. 1840. Ford moved for dismissal under the IAD, Article IV arguing the government failed to take him to trial within 120 days, and dismissal was required. *Id.*, 436 U.S. at 347, 98 S. Ct. 1840-1841. The U.S. District Court denied the motion and the Second Circuit Court of Appeals reversed and remanded for the dismissal with prejudice.

The Government appealed Mauro, Fusco and Ford's cases, and the U.S. Supreme Court granted certiorari.

In Mauro/Fusco's appeal, the Court held that a *writ of habeas corpus ad prosequendum* was not the equivalent of a detainer for purposes of the IAD, so the IAD did not apply. *Id.*, 436 U.S. at 349, 98 S. Ct. 1841.

However, in Ford's case, the Court held that when a detainer (warrant in Ford's case) is issued to the custodian of the prisoner, and the Government later uses a *writ of habeas corpus ad prosequendum* to request custody of that prisoner, the IAD applies, and it must be complied with. *Id.*, 436 U.S. at 360-61, 98 S. Ct. 1848. The Court pointed out that the IAD requires two steps, the first being a detainer and

the second being a written request by the receiving state for custody. *Id.*, 436 U.S. at 361-365, 98 S. Ct. 1848-49. In Ford's case, the warrant served as a detainer, and the Court explicitly held that a *writ of habeas corpus ad prosequendum* constituted a written request for temporary custody under the IAD and affirmed the Court of Appeals' dismissal of Ford's case. *Id.*, 436 U.S. at 362-365, 98 S. Ct. 1848-50.

Ford's facts in *Mauro* are on point with Redd's case, Redd was subject to federal custody, and while in that custody, the State issued a warrant that was sent to the detention facility keeping Redd, thereafter the State requested temporary custody of Redd through a *writ of habeas corpus ad prosequendum*, this invokes the protections of the IAD.

Moreover, this Court has considered the function of a warrant serving as a detainer and explicitly stated that when a person is in custody the warrant, whether it is served on the person or not, functions as a detainer. *State v. Crazy mule*, 2024 MT 58, ¶ 12, 415 Mont. 536, 545 P.3d 66. While Crazy mule (like Redd) was not immediately served with the warrant after it was issued, this Court held that the warrant acted as a detainer and Crazy mule was entitled to all time served from the time the warrant was issued, not from the date of service. *Ibid.*

Both *Mauro* and *Crazy mule* support Redd's argument the State invoked the provisions of the IAD and failed to live up to its requirements under the IAD.

B. The State Failed to take Temporary Custody of Redd by not Proceeding after Redd was Immediately Available to the State

Article V, Section 3 mandates that if the receiving state (Montana) refuses or fails to accept temporary custody, then the information must be dismissed with prejudice.

A prisoner's rights under the IAD are not subject to intentional or negligent sabotage by government officials. *United States v. Reed*, 910 F.2d 621, 626 (9th Cir. 1990). When a receiving state requests temporary custody but fails to act with “all reasonable dispatch” to exercise custody, the receiving state has failed to accept custody and the case must be dismissed, with prejudice. See *New Jersey v. Chirra*, 79 N.J. Super. 270, 278, 191 A.2d 308, 312 (Super. Ct. 1963).

The IAD was triggered on February 22, 2021, when the *writ of habeas corpus ad prosequendum* was issued, yet the State decided not to serve Redd with the arrest warrant or information until May 20, 2021, 87 days later and three quarters through the time in which Redd was required to be brought to trial.

There can be no argument Redd was not immediately available to the State, he was physically in the State’s custody the entire time. The State had every right to access Redd or bring him before the district court but decided not to, the State’s actions constitute at least negligence but were likely intentional. Either the State endeavored under the false belief Montana had no jurisdiction, or the State planned the delay and intentionally refrained from serving the warrant upon Redd.

The State's actions constituted a failure to accept custody under the IAD and compelled dismissal of Redd's case, with prejudice.

C. The State Violated the IAD by Exceeding the 120-day Requirement

The *writ of habeas corpus ad prosequendum* was issued on February 22, 2021, as Redd was immediately available, and the Article IV 120-day requirement ran June 22, 2021.

Throughout this period, Redd remained in custody at YCDF, without counsel and confined.

In fact, Redd's first day in court was May 24, 2021, when he appeared without assigned counsel for his initial appearance on the State's information, filed 91 days earlier.

From May 24, 2021 until October 15, 2021, Redd did not see the court and only spoke to his counsel for the first time at the status hearing, ten days prior to the first trial setting. Redd's counsel stated he learned that morning Redd was no longer subject to federal jurisdiction, so he had taken no action on the case. This was 235 days after Redd was available to the State, and by this time, the State had already violated the IAD by nearly twice the allowable time.

The first trial setting was October 25, 2021, 125 days after the June 22, 2021 deadline and 245 days after Article IV of the IAD was triggered. During the entirety of this period, Redd was physically in the custody of the State and could have been

brought before the district court at any time. While the State may argue the Federal Government would not surrender Redd, this situation is contemplated within the IAD, in the case of federal prisoners “the appropriate authority in the receiving state shall be entitled to temporary custody...or to the prisoner’s presence in federal custody at the place for trial.” Article V, Section 1. Meaning, even if Redd was in federal custody the entirety of the time, he could have been brought to trial without delay.

There was no effort on the part of the State to bring Redd to trial within 120 days of requesting custody, and Redd had no opportunity to object to this delay prior to the 120 days expiring, as such the State violated the IAD, and the only remedy is dismissal with prejudice.

D. Redd’s Case Warrant’s Dismissal because he was Returned to the Sending State Prior to Trial in the Receiving State

This argument is made in the alternative to Redd’s argument the State failed to accept custody of Redd. The IAD mandates dismissal when a prisoner is returned to the sending state’s custody prior to trial in the receiving state. When the State issued its *writ of habeas corpus ad prosequendum*, the Federal Government was compelled to transfer Redd to State custody for trial. Additionally, the writ specifically stated that Redd would be returned to federal custody “upon disposition of the proceedings in the above-entitled cause...” Disposition only occurs at

sentencing in a criminal case, prior to that the case is not complete. *State v. Tomaskie*, 2007 MT 103, ¶ 12, 337 Mont. 130, 157 P.3d 691.

The State will likely argue that Article IV contains a 30-day period allowing the sending state to reject the receiving state's request, so there was uncertainty if the transfer of custody would occur. First, no rejection occurred in this case, so it is irrelevant. Second, under the IAD, the Federal Government is compelled to comply, there is no option for them to deny the request to transfer the prisoner (Redd) to the State's custody. See Article V, Section 1.

Once Montana issued its *writ of habeas corpus ad prosequendum*, and Redd was available to the State, Redd was in State custody. However, the State allowed Redd to be returned to federal custody and proceed with his federal case prior to trial commencing in Redd's state case. This is a direct violation of Article IV's mandate and Redd's case should have been dismissed with prejudice.

II. THE DISTRICT COURT ERRED BY DENYING REDD'S MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL.

When the IAD's protections applies, it governs speedy trial concerns and analysis. *State v. Daly*, 2023 MT 142, ¶ 15, 413 Mont. 100, 533 P.3d 326. When the IAD's protections are not applicable, the common law of speedy trial under the United States and Montana Constitutions applies. *Ibid*.

In *State v. Ariegwe*, 2007 MT 204, 338 Mont. 442, 167 P.3d 815, this Court established a four-factor balancing test to examine speedy trial claims. at ¶ 120.

Those factors include 1. The Length of Delay, 2. The Reasons for the Delay, 3. The Defendant's Response to the Delay, and 4. Prejudice to the Defendant. *Id.*, at ¶¶ 34-35. The Court balances all four factors by looking to the facts of each case and assigning weights to each factor, no one factor is dispositive, instead they are considered together with any other relevant circumstance. *Id.*, at ¶ 153.

The primary burden of bringing an accused to trial is on the courts and prosecutors, negligence or lack of diligence in bringing the accused to trial is an unacceptable reason for delay. *Ariegwe*, ¶¶ 69 & 72, citing *Barker v. Wingo*, 407 U.S. 514, 529, 92 S. Ct. 2182, 2191 (1972). If an accused is outside of Montana's jurisdiction, the State must act diligently to acquire jurisdiction. *State v. Lacey*, 2010 MT 6, ¶ 17, 355 Mont. 31, 224 P.3d 1247, citing *State v. Longhorn*, 2002 MT 135, ¶ 22, 310 Mont. 172, 49 P.3d 48, *overruled on other grounds*.

A. The Length of Delay Presumptively Violates Redd's Speedy Trial rights.

The threshold question is whether the interval between accusation and trial exceeds 200 days thereby triggering further speedy trial analysis. *Ariegwe.*, at ¶ 121.

The right to a speedy trial begins when a person has been formally accused, whether by arrest, or by filing of an information. *Ariegwe*, ¶ 42. Once the 200-day threshold passes, a presumption of prejudice arises, and a speedy trial analysis is required. *Ariegwe*, ¶¶ 37, 41.

Here, Redd was charged by information on February 18, 2021, and at the time of Redd's motion for speedy trial, his trial was set to occur on October 24, 2022, 613 days after Redd became accused.

While Redd was brought to trial on March 8, 2023, Redd waived his right to speedy trial for the delay after October 24, 2022. Making the delay considered by the district court and which this Court should consider 613 days.

613 days clearly exceeds the 200-day threshold triggering Redd's right to a speedy trial.

The second Factor One consideration is how far the delay extends beyond the 200-day trigger, this consideration guides the application of the remaining factors. *Id.*, ¶ 123. For example, in *Ariegwe*, 408 days passed between accusation and trial, and the *Ariegwe* Court required the State to provide a "particularly compelling" justification for the delay under the Second Factor, and a highly persuasive showing that *Ariegwe* was not prejudiced by the delay. at ¶ 123. Additionally, *Ariegwe*'s requirement to demonstrate prejudice was correspondingly lower. *Ibid.*

Since 613 days passed between Redd's accusation and trial, 200 days longer than *Ariegwe*, this Court should require the State to provide a very compelling justification for the delay and a highly persuasive showing that Redd was not prejudiced. Likewise, Redd's burden of proving prejudice is correspondingly lower.

B. The Reasons for Delay Show that Redd's Speedy Trial Right was Violated.

Factor Two requires each period of delay to be identified and attributed to either the State or defendant. *Ariegwe*, at ¶ 124. Courts must assign weight to each delay based on the specific cause and motive for the delay after identifying and assigning each period of delay. *State v. Burnett*, 2022 MT 10, ¶ 21, 407 Mont. 189, 502 P.3d 703.

Delay is charged to the State unless caused by or waived by the accused for that period. *State v. Billman*, 2008 MT 326, ¶ 20, 346 Mont. 118, 194 P.3d 58, citing *Ariegwe*, ¶ 108. Institutional delay and delay for valid reasons weigh less heavily against the State, while delays caused by prosecutors' negligence or lack of diligence weigh more heavily against the State. *Billman*, at ¶ 20, citing *Ariegwe*, ¶ 108. Intentional delays by the prosecutor weigh heavily against the State. *State v. Hendershot*, 2009 MT 292, ¶ 11, 352 Mont. 271, 216 P.3d 754, citing *Ariegwe*, ¶ 68. The "specific cause and culpability for each period of delay" bears significance when the factors are balanced. *Billman*, at ¶ 20, quoting *Ariegwe*, ¶ 109.

1. First Period of Delay, Filing of Information to First Trial Date February 18, 2021 to October 25, 2021, 249 days.

This initial 249-day period should be broken into two portions, the portion prior to service of the warrant on May 20, 2021, and the remaining period until October 25, 2021.

The first period of 91 days is attributable to the State's intentional action of not serving the warrant upon Redd. Despite the State knowing exactly where Redd was and how to make service upon him, the State chose not to serve the warrant. This delay weighs heavily against the State, because it is attributable to the State's intentional decision.

The remaining 158 days is attributable to the State as institutional delay.

2. Second Period of Delay: October 25, 2021 to April 11, 2022, 168 days.

This should be divided between the State and Redd, with the first portion attributable to the State and the second to Redd, although it should be weighed lightly against both parties.

Redd appeared for the first time following his initial appearance on October 15, 2024, without having the opportunity to discuss his case with his counsel, and Redd's counsel moved for a continuance against Redd's wishes. Generally, delays caused by defense counsel are attributed to the defendant, but this is not an absolute rule, and the State may bear responsibility for delay caused by occurrences such as a breakdown in the public defender system. *Vermont v. Brillon*, 556 U.S. 81, 94, 129 S. Ct. 1283, 1292 (2009).

Redd was charged by information on February 18, 2021, and between that time and July 2, 2021, remained without an assigned counsel. On July 2, 2021, an attorney was temporarily assigned, and then replaced on July 6 by Tomicich.

Between July 6 and the October 15, 2021 status hearing Redd had no contact with Tomicich. Redd sent a kite from the jail on September 15, asking for Tomicich to come visit and telling him that Redd opposed any continuance.

At the outset of the October 15, 2021, status hearing, Tomicich requested the court set a scheduling conference and grant a continuance, against the Redd's wishes. Further, 10 days before the scheduled trial, no omnibus had been completed, and Redd had not seen any of the discovery in his case.

On November 24, 2021 status hearing, after the October trial setting had passed, the omnibus had still not been completed. Redd addressed the district court specifically inquiring about the reset of his trial date because no motion to continue had been filed and he did not know what was going on.

In reaction to Redd's ongoing concerns with counsel, the district court set a combination Finely and omnibus hearing for December 1, 2021.

At the December 1, 2021 hearing, things had come to a head between Redd and Tomichi, and Redd requested new counsel. The district court advised Redd that any delay caused by seeking new counsel would count against Redd. Presented with this option, Redd sought new counsel.

It is clear Redd was suffering from a lack of effective counsel in general, having not met with or discussed anything with his counsel 10 days prior to the scheduled trial date. Further, against Redd's express instructions, his counsel moved

for a continuance, which led up to the December 1, 2021 hearing. This delay should be attributed to the State as a breakdown in the public defender system, essentially leaving Redd without counsel for this period. This accounts for 37 of the 168 days, and it should weigh lightly against the State, similar to an institutional delay.

The remaining 131 days is attributed to Redd, although he had good reason to request new counsel, the district court advised Redd of the consequences of requesting new counsel. Given the reasons for Redd's request, it should weigh lightly against Redd.

3. Third Period of Delay: April 11, 22 to May 9, 2022, 28 days.

Redd's new counsel appeared February 1, 2022, attorney Gordon, contracted through OPD. On April 1, 2022, Omnibus Hearing, Redd requested a continuance to file motions, which happened on April 7, 2022 in the form of Redd's Motion to Dismiss for IAD violations.

This delay is attributed to Redd but should count lightly as the timing of assignment of counsel was beyond his control, and it he agreed to the continuance to protect other important rights.

4. Fourth Period of Delay, May 9, 2022 to May 23, 2022, 14 days.

This 14-day period is attributable to institutional delay and weighs against the State.

The district court attributed this delay to Redd; however, a review of the April 29, 2022, transcript shows that this delay was due to the court's calendar, not based upon a request to continue by Redd.

5. Fifth Period of Delay, May 23, 2022 to October 24, 2022, 154 days.

Unfortunately, on May 4, 2022, Redd's counsel suffered a personal emergency necessitating a continuance of Redd's trial.

While this delay is attributed to Redd, it was beyond his control and should weigh lightly against him.

6. Sixth Period of Delay, October 24, 2022 to March 8, 2023, 135 days.

This delay was not part of Redd's Motion to Dismiss for lack of speedy trial, and it was waived by Redd, so it does not factor into a speedy trial analysis.

On October 3, 2022, Redd hired private counsel to represent him for the remainder of his case. Redd's new counsel requested a 90-day continuance and Redd waived his right to speedy trial right from the October 24, 2022 forward. This leaves 613 days to be considered on appeal.

Of the 613 total days, 300 are attributable to the State, 209 as institutional delay which does not weigh heavily against the State, and 91 days which should weigh heavily against the State as an intentional act causing delay. The remaining 313 days are attributable to Redd, although much of it was outside of Redd's control.

On balance, Redd took no affirmative action to cause a delay, while the State made a tactical decision leading to the first delay, tipping the scale in Redd's favor.

C. The Defendant's Response to the Delay Weighs Heavily in Redd's Favor.

Whether the defendant actually wanted to be brought to trial promptly is an "important" consideration in ascertaining whether his right to a speedy trial has been violated. *Ariegwe*, at ¶ 76, citing *Barker*, 407 U.S. at 534, 92 S. Ct. at 2194. While the defendant's desire to be brought to trial is not always apparent, the frequency and force of the defendant's objections to pretrial delay and the reasons for acquiescence to any delays are strong indicators. *Ariegwe*, at ¶ 76.

In the present case, Redd repeatedly wrote his assigned counsel professing his desire to avoid waiving his right to a speedy trial, and while Redd did accept replacing counsel would cause a delay attributable to him, he did so out of a understandable concern with counsel. Further, Redd repeatedly inquired about his right to a speedy trial during hearings and only agreed to those continuances that were necessary to enforce his other rights.

Redd's early and repeated claims to his right to a speedy trial show he sought to enforce that right, and he should not be penalized for balancing that right against other rights he sought to enforce.

This factor weighs in Redd's favor.

D. Redd was Prejudiced by the Speedy Trial Delay

Under the fourth speedy trial factor, a court must examine whether the pretrial delay has prejudiced the defendant in light of the interests that the speedy trial right protects: (1) preventing oppressive pretrial incarceration; (2) minimizing the defendant's anxiety and concern; and (3) limiting the possibility that pretrial delay will impair the defendant's defense. *Ariegwe*, ¶ 111. The defendant must present evidence establishing prejudice and the State must present evidence showing a lack of prejudice. *Ariegwe*, ¶ 56. As a result of the extended delay in this case, the State must make a persuasive showing that the pretrial delay did not prejudice Redd, and the quantum of proof required from Redd is correspondingly lower. See *Billman*, at ¶ 36.

1. Oppressive Pretrial Incarceration

"The first interest—preventing oppressive pretrial incarceration—reflects the 'core concern' of the speedy trial guarantee: 'impairment of liberty.'" *State v. Kurtz*, 2019 MT 127, ¶ 32, 396 Mont. 80, 443 P.3d 479, quoting *Ariegwe*, ¶ 89 (internal citations and quotations omitted). As the length of incarceration increases so does the likelihood of prejudice against the defendant. *Kurtz*, at ¶ 32, citing *Ariegwe*, ¶ 90. This Court considers the duration of incarceration, complexity of the charged offenses, whether the defendant engaged in any misconduct while incarcerated, and

the conditions of the incarceration to determine if pretrial incarceration was oppressive. *Ariegwe*, ¶ 113.

Redd remained incarcerated for the entirety of his case, 613 days, longer than the 420 days found offensive in *Kurtz*. ¶ 32 The number of days alone is not determinative of whether the pretrial incarceration was oppressive.

For example, in *Couture*, the Court outlined various factors for consideration regarding the length of pretrial incarceration. *State v. Couture*, 2010 MT 201, ¶ 57-61, 357 Mont. 398, 240 P.3d 987. Among them are the defendant's request for bail, the complexity of the case, and examining if the State caused the incarceration to be extended. *Id.*, at ¶¶ 59-61.

The length of pretrial incarceration may be oppressive for a relatively simple offense but not so for a complex charge. *Id.*, at ¶ 59 (comparing pretrial incarceration for a DUI vs. deliberate homicide).

Redd's case was certainly more complex than a DUI, but not nearly as complex as a deliberate homicide, so it falls somewhere in the middle for this consideration. Redd's trial lasted five days, but the actual facts of the case were relatively straightforward. The defense did not require any mental health or other experts, nor did the defense need to conduct extensive investigations which would have necessitated longer pretrial incarceration.

The *Couture* Court also looked at the defendant's attempt to seek bail, although not determinative, the defendant's inability to post bail is relevant. Redd, like Couture, was unable to post bail throughout the duration of his case, but unlike Couture, Redd sought out a bail reduction and was denied. This weighs in favor of a finding that Redd's pretrial incarceration was oppressive.

Finally, the *Couture* Court looked to the State's actions during the case, stating that if any portion of the defendant's incarceration pending trial was due in part to a deliberate attempt by the State to delay trial, that fact would weigh in favor of finding the incarceration was unduly prolonged and oppressive. at ¶ 61.

Here, the State made a conscious decision to avoid serving Redd with the arrest warrant in this case, which would have triggered Redd's right to be arraigned and assigned counsel. When the State made this choice, it unduly extended Redd's incarceration, and this Court should find this justifies finding Redd's incarceration was oppressive.

Aside from the duration and reason for incarceration, the other considerations related to oppressive incarceration are whether the accused engaged in misconduct while incarcerated and the conditions of incarceration. *Couture*, ¶ 62. This requires looking at the condition of the facility and how they impact the accused. *Id.*, at ¶ 62, citing *Billman*, ¶ 41. Considerations for this might focus on whether a facility lacks

recreational opportunity, appropriate medical care, adequate food, and legal research capabilities.

Redd was incarcerated on February 17, 2021, and placed into “Class A,” or maximum security custody, which meant he was locked in a cell 23 hours per day, without the normal accommodations which inmates in general population receive. Additionally, due to being in Class A, Redd received virtually no rehabilitative programming. AA would come to the jail approximately every two weeks, but they often could not make it to Class A, and aside from this, Redd occasionally was able to attend bible study.

Redd was transferred to general population in September 2022, making Redd’s stay in Class A, locked down 23 hours per day, approximately 20 months.

During his time in jail, Redd suffered from indigestion and could not eat the normal meals provided, and that affording any commissary items was difficult due to the expense.

There is no evidence Redd committed any misconduct while incarcerated, despite this Redd spent approximately 20 months in maximum security, allowed out only one hour per day and largely cut off from the outside world. These conditions could only be described as oppressive.

2. Minimizing the Defendant's Anxiety and Concern.

The defendant's interest in minimizing anxiety and concern caused by the presence of unresolved criminal charges—"is subjective, not to mention difficult to demonstrate." *Ariegwe*, at ¶ 95. Nonetheless, it is an interest protected by the right to a speedy trial. *Ibid*.

When evaluating anxiety and concern, the focus is on the ways in which the presence of unresolved criminal charges disrupted the defendant's life. *Ariegwe*, at ¶ 97. A certain amount of anxiety and concern is inherent in being accused of a crime. *Ibid*. Courts may infer from evidence that the defendant suffered anxiety and concern, which in turn suggests that he has been prejudiced. *Id*.

The speedy trial guarantee is designed "to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges," *Id.*, quoting *United States v. MacDonald*, 456 U.S. 1, 8, 102 S. Ct. 1497, 1502 (1982). The crucial question is whether the delay in bringing the defendant to trial has unduly prolonged the disruption of his or her life or aggravated the anxiety and concern inherent in being accused of a crime. *Ariegwe*, at ¶ 97 (internal citations omitted).

Redd testified he suffered from increased anxiety while incarcerated, that the alleged victim's family and others had directed an online campaign against him, and targeted Redd's family. This disturbed Redd and caused him concern and anxiety, he further testified he was depressed and suffered from boredom and frustration. Redd testified that his frustration had grown out of an inability to prepare his case,

and the lack of contact with his family, and being cut off from the world while he awaited trial.

These concerns, along with the extended lockdown, lack of resources and programming, all mitigate toward finding Redd's incarceration was oppressive.

3. Impairment of the Defendant's Defense

Limiting the possibility that pretrial delay will impair the accused's defense is considered one of the most important interest that the speedy trial right protects because an accused's inability to present an effective defense undermines the fairness of the system. *Billman*, ¶ 47, citing *Ariegwe*, ¶ 98. An accused's inability to submit affirmative proof of impairment is not fatal to a speedy trial claim, and in those cases, this Court has focused on the other speedy trial factors to determine whether the pretrial delay has prejudiced the accused's defense. *Billman*, ¶ 48, citing *Ariegwe*, ¶¶ 99-100.

In this regard, Redd testified that on multiple occasions his counsel or their representatives attempted to bring his discovery for review at the detention facility only to be denied the ability to bring in their laptops, so no discovery review was possible.

Redd was not able to review the discovery until sometime after October 4 of 2022, 19 months after he became an accused. Throughout this entire period, Redd was never actually aware of the evidence against him, this is a basic right of every

criminal defendant which Redd was denied. The inability of Redd's counsel or their representatives to provide Redd with discovery for 19 months caused prejudice to Redd's defense.

The State will likely argue this was cured by the eventual review of discovery by Redd. However, throughout the case Redd was forced to make decisions, some of which the State will leverage against Redd, that impacted the speed of Redd's case, such as removing counsel or seeking private counsel, each of these decisions impacted Redd and potentially extended his incarceration. The eventual review is no cure to the prejudice suffered by Redd by being denied access to the discovery in his case.

E. On Balance the Speedy Trial Factors Favor Redd

After reviewing each of the four factors, courts determine whether the defendant has been deprived of the right to a speedy trial by balancing each of the factors. *Ariegwe*, at ¶ 112.

The first factor, length of delay easily weighs in favor of Redd, 613 days of delay is three times the threshold limit of 200 days. This gives rise to an obligation by the State to show a "particularly compelling" justification for the delay and a highly persuasive showing that Redd was not prejudiced by the delay. Further, as the delay was exceptionally long, Redd's burden of proof is greatly reduced to show he suffered prejudice.

While both Redd and the State are allocated roughly half of the pretrial delay, only the State affirmatively caused a delay, and all of Redd's delays are based upon reasonable circumstances, many outside Redd's control. This factor weighs in favor of Redd.

Factor Three, the defendant's response to the delay, weighs in favor of Redd, Redd consistently inquired about his speedy trial right, and informed his counsel that he would not waive his right to a speedy trial. What continuances Redd did agree to were only to enforce other rights, or when needed for new counsel, otherwise Redd remained resolute in his demand to go to trial.

Factor Four, prejudice to the defendant, weighs heavily in favor of Redd. Redd showed that he suffered anxiety, depression, and boredom, having been locked down for 23 hours per day for 20 months, cut off from the outside world. Moreover for 19 months, Redd was denied the ability to review his discovery, crippling his ability to effectively prepare or participate in his own defense. Above all else, the Court should put great weight on Redd's inability to view the discovery in his case for most of the time that Redd was an accused person.

The Court should, on balance, find that Redd's right to a speedy trial was violated, and reverse his conviction with instructions to dismiss with prejudice.

III. THE DISTRICT COURT ERRED BY DENYING REDD'S MOTION TO DISMISS FOR DELAY IN INITIAL APPEARANCE.

A person who has been arrested "must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance." Mont. Code Ann. § 46-7-101(1); *State v. Gatlin*, 2009 MT 348, ¶ 19, 353 Mont. 163, 219 P.3d 874. Mont. Code Ann. § 46-1-202(3), defines "arrest" as the "taking [of] a person into custody in the manner authorized by law." The "unnecessary delay" standard applies to the period between a defendant's arrest and his initial appearance. See *Hope v. State*, 2003 MT 191, ¶ 15, 316 Mont. 497, 74 P.3d 1039; see also *State v. Strong*, 2010 MT 163, ¶ 10, 357 Mont. 114, 236 P.3d 580 (calculating unnecessary delay under § 46-7-101(1), MCA, from the date of arrest to the date of the initial appearance).

The district court determined that Redd was not arrested until the service of arrest warrant on May 20, 2021 because the earlier February 17, 2021 interview with Billings Police Department was either noncustodial or if it was custodial, Redd was not placed into state custody at that time. Instead, the district court reasoned Redd was only arrested by the State when the warrant was served on May 20, 2021. This ignores the circumstances surrounding Redd's arrest and incarceration, and is incorrect, Redd was "arrested" on February 18, 2021, when the warrant issued further detaining Redd. See *Crazymule*, ¶¶ 12-14.

A. Redd was Arrested When the District Court Issued its Arrest Warrant While Redd was in Custody at the Yellowstone County Detention Facility

When a person is within the custody of a detention facility and the detention facility receives an arrest warrant for that person, that person is arrested for the purposes of Mont. Code Ann. § 46-7-101. *State v. Norvell*, 2019 MT 105, ¶ 19, 395 Mont. 404, 440 P.3d 634.

In *Norvell*, a case remarkably on point with Redd's case, on May 10, 2016, Norvell was arrested based upon a probation violation and placed into custody for a 72 hour hold. ¶ 5. However, upon the expiration of 72 hours, the probation officer provided an arrest warrant to the detention facility, directing the facility to hold Norvell pending felony charges in Lincoln County. *Id.*, ¶ 7. While Norvell remained in custody, law enforcement continued to investigate the felony charges against Norvell, and on May 25, 2016 the State filed its information formally charging Norvell. *Id.*, ¶ 9. On May 26, Norvell made his initial appearance for the felony charge of aggravated assault. *Ibid.* Seventeen days had passed between Norvell's arrest and his initial appearance. *Ibid.*

Norvell filed a motion to dismiss with prejudice or in the alternative to suppress all evidence found during the period of delay pursuant to Mont. Code Ann. § 46-7-101. *Id.*, ¶ 11. The district court denied the motion to dismiss but granted the motion to suppress. *Ibid.*

On appeal, Norvell argued that the proper remedy was dismissal with prejudice while the State argued that no delay occurred because Norvell was charged on May 25, 2016, and his initial appearance occurred the next day. *Id.*, ¶ 15.

This Court pointed out that by providing the detention facility with an arrest warrant, apart and separate from the purpose of the initial arrest, the warrant constituted a new arrest. *Id.*, ¶ 19.

The only slight variation between Norvell's situation and Redd's is that Redd was arrested by federal authorities for a parole violation, and nothing in the record indicates what, if any, bail or release conditions were set by the federal court. However, despite this lack of insight, when YCDF received the arrest warrant, they were required to honor it, and could not release Redd so, this was an arrest by the State.

Redd was arrested pursuant to the State's February 18, 2024 warrant because it was a further restraint upon his release from custody. As such, the provisions of Mont. Code Ann. § 46-7-101 apply.

B. Dismissal, With Prejudice, is the Appropriate Remedy

Previously this Court favored suppression of all evidence obtained during the unnecessary delay in violation of Mont. Code Ann. § 46-7-101; however, more recent cases have made clear that dismissal is the appropriate remedy for a violation of Mont. Code Ann. § 46-7-101. See *Gatlin*, ¶¶ 22-23; *Strong*, ¶ 14.

This is because unnecessarily delaying a defendant's initial appearance before a judge "shocks" the concepts of fundamental fairness, and suppression is an insufficient remedy. *Norvell*, ¶ 21.

The next question is whether the dismissal should be with or without prejudice, while in *Norvell*, *Gatlin*, and *Strong* the Court dismissed without prejudice, in each case the Court reaffirmed that a showing of prejudice would support a dismissal with prejudice.

Gatlin did not involve an unreasonable delay in bringing a defendant to an initial appearance, but a related issue, that is at the initial appearance, the court failed to advise Gatlin of his right to counsel. ¶ 21. However, Gatlin suffered no prejudice because counsel appeared on his behalf, no critical confrontations occurred, and no new evidence was gathered during the time Gatlin was without counsel. *Id.*, ¶ 27. As the Court pointed out, even if counsel had appeared immediately after the initial appearance, no additional protection from prosecution could have been provided. *Ibid.*

Strong, decided a year after *Gatlin*, involved a 42-day delay between Strong's arrest and initial appearance, which violated the requirements of Mont. Code Ann. § 46-7-101. While the Court determined to dismiss Strong's case without prejudice, it is important to note that this was the only relief requested by Strong, and the Court granted it. *Strong*, ¶ 19. While granting Strong's requested relief, the Court

reaffirmed its holding in *Gatlin*, that when a defendant is not afforded the rights in Mont. Code Ann. § 46-7-101 demonstrates prejudice, then dismissal with prejudice may be warranted. *Strong*, ¶ 20. The Court further acknowledged, the development of evidence during the delay is a factor in assessing the degree of prejudice when determining if the dismissal should be with or without prejudice. *Id.*, ¶ 21.

Norvell suffered a 17 day delay between arrest and initial appearance, and during that time the prosecutor discovered one statement made by Norvell while Norvell was incarcerated. *Id.*, ¶¶ 17 & 23. The Court determined that a timely initial appearance and appointment of counsel could not have provided additional protection from the prosecution, and determined a dismissal without prejudice was the appropriate remedy.

In Redd's case he was arrested on February 17, 2021, and did not appear for an initial appearance until May 24, 2021, 96 days later. This is a clear violation of Mont. Code Ann. § 46-7-101, under any of this Court's precedent, the question then becomes did Redd suffer prejudice during the period of delay.

Based upon testimony by law enforcement during the December 16, 2022, motions hearing, law enforcement continued to gather evidence following Redd's arrest, and well past this period including up to sending blood for serology testing in November of 2022. Like *Gatlin*, no critical confrontations occurred during the period of delay in Redd's case, but unlike *Gatlin*, new evidence was gathered by law

enforcement and the prosecutor to use against Redd. Looking to *Norvell*, in Norvell's case new evidence was discovered but it was only one piece of evidence, and in Redd's case there was multiple pieces of evidence discovered which were later used against Redd.

While these blur the line between dismissal without prejudice and with prejudice, the key question that this Court has asked in previous cases is "would the timely initial appearance and appointment of counsel have made a difference and provided additional protection from prosecution." The answer in Redd's case is yes, it likely would have made a difference, and that is a basis to establish prejudice.

While Redd was in custody, the State continued its investigation unimpeded including seeking search warrants, witness interviews, examining physical evidence, and submitting evidence to be forensically examined. Further, throughout this period, Redd simply sat in maximum security custody, which counsel may have been able to address. Unfortunately, the record does not detail exactly what evidence may be subject to suppression. However, it is clear what evidence was obtained far exceeds that in *Norvell*. All of the evidence obtained during this period was later used against Redd at trial, and if he had counsel at the outset through a timely initial appearance, counsel could have stepped in to slow or challenge the State's gathering of evidence.

Redd suffered prejudice as a result of the unreasonable delay in bringing Redd to an initial appearance, and his case should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, Redd's conviction should be reversed and the Court should remand with instructions to dismiss Redd's case with prejudice.

DATED this 9th day of March 2025.

PEACE LAW GROUP, LLC

/s/Rufus I. Peace
Rufus I. Peace
Attorney for Appellant/Defendant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes, quoted, and indented material; and that the word count calculated by Microsoft Word Professional Edition is 9,953 words, excluding the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

DATED this 8th day of February 2025.

PEACE LAW GROUP, LLC

/s/Rufus I. Peace
Rufus I. Peace
Attorney for Appellant/Defendant

APPENDIX

| | |
|---|------------|
| Judgment Appealed From | Appendix A |
| Motion to Dismiss, Interstate Agreement on Detainers..... | Appendix B |
| State’s Response to Motion to Dismiss, Interstate Agreement on Detainers | Appendix C |
| Order Denying Motion to Dismiss, Interstate Agreement on Detainers . | Appendix D |
| Motion to Dismiss, Speedy Trial | Appendix E |
| State’s Response Motion to Dismiss, Speedy Trial..... | Appendix F |
| Order Denying Motion to Dismiss, Speedy Trial | Appendix G |
| Motion to Dismiss, Initial Appearance | Appendix H |
| State’s Response Motion to Dismiss, Initial Appearance..... | Appendix I |
| Order Denying Motion to Dismiss, Initial Appearance..... | Appendix J |
| Transcript, December 16, 2022, Motions Hearing | Appendix K |

CERTIFICATE OF SERVICE

I, Rufus I. Peace, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-18-2025:

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

Scott D. Twito (Govt Attorney)
PO Box 35025
Billings MT 59107
Representing: State of Montana
Service Method: eService

Electronically Signed By: Rufus I. Peace
Dated: 03-18-2025