

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0584

STATE OF MONTANA,

Plaintiff and Appellee,

v.

WILLIE ANTOINE REDD,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Brett Linneweber, Presiding

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STATEMENT OF THE ISSUES

1. Whether the court erred in denying Redd's motion to dismiss alleging a violation of the Interstate Agreement on Detainers.
2. Whether the court erred in denying Redd's motion to dismiss alleging a violation of his right to a speedy trial.
3. Whether Redd's initial appearance was held without unnecessary delay.

STATEMENT OF THE CASE

The State charged Appellant Willie Antoine Redd with aggravated assault alleging he severely injured his girlfriend's three-year-old daughter. (Docs. 1, 3.) Redd eventually moved to dismiss on the ground that he was not tried within the time required by the Interstate Agreement on Detainers (IAD), his right to a speedy trial was violated, and he was not arraigned in a timely manner. (Docs. 37, 84, 93.) After conducting hearings, the court denied the motions. (Docs. 54, 129-30.)

Redd was convicted of aggravated assault following a five-day jury trial.

STATEMENT OF THE FACTS

I. The offense

On February 2, 2021, Redd offered to watch his girlfriend Taylor's three-year-old daughter, A. Redd left Taylor's apartment with A. at 11:30 a.m. He

later called Taylor and told her he had spanked A. because she had urinated in his car. He said he would come home, but did not do so. (Trial Tr. 352, 958-964.)

Taylor worked from 6 p.m. to 2 a.m. Around midnight, Redd called Taylor and told her A.'s lip was busted open because his car had been shot at, and he fled at high speed while A. was unrestrained. (*Id.* at 964-65.)

Redd did not meet up with Taylor until 3 a.m., when he had her get a ride from work to a car wash so he could give her a ride home. He rode in the back with A. Taylor did not see the extent of A.'s injuries until they got home. Taylor insisted A. needed to go to the hospital. Redd resisted and insisted A. was fine. Eventually, Taylor took A. to the hospital. (*Id.* at 346-49, 844, 965-73.)

When A. arrived at the hospital, she was lethargic and had irregular breathing, bruises across her body, dried blood on her body, and low blood pressure. (*Id.* at 178-79, 212-13.) She was flown to Colorado for emergency care. (*Id.* at 277.) She had life threatening injuries, including a subdural hematoma, lacerations of the liver, spleen, and kidney, a severe lung injury, and a fractured vertebra. (*Id.* at 186-97, 526, 535.) A pediatrician specializing in child abuse determined A.'s injuries were caused by blunt trauma and could not have been caused in the manner Redd described. (*Id.* at 528-29.)

Redd later told law enforcement someone had shot at him while he was in the car with A., and she was injured when he fled at high speed while she was

unrestrained. (*Id.* at 680-81.) Law enforcement's investigation indicated Redd had shot into his BMW. (*See id.* at 675-77, 690-95, 710-11, 763-75, 909, 925.) The car had blood stains matching A.'s DNA and clumps of hair inside, which were consistent with A.'s injuries and inconsistent with Redd's explanation. (*Id.* at 650-52, 702, 728-29, 743-45, 902.)

II. Procedural history

A federal warrant for a probation violation was served on Redd on February 17, 2021. (Doc. 37, Ex. A.)

The State charged Redd by Information with aggravated assault on February 18, 2021. (Doc. 3.) The same day, the State district court issued an arrest warrant for Redd. (Doc. 5.) The next day, the State petitioned for a writ of habeas corpus ad prosequendum directing federal authorities to bring Redd before the Montana court, so he could appear for arraignment. (Doc. 6.) The State explained that Redd was confined in the Yellowstone County Detention Facility (YCDF) under the custody and control of the United States Justice Department. (*Id.*) The court issued the writ on February 22, 2021. (Doc. 9.)

Redd remained in federal custody until May 20, 2021, when a United States district court revoked his federal sentence and sentenced Redd to 12 months in prison. (Doc. 37, Ex. A.) On May 20, 2021, a United States marshal issued an

Order to Produce directing the YCDF to deliver Redd to the custody of Yellowstone County that day pursuant to the writ. (Doc. 38, Ex. A.) The arrest warrant issued in this case was served on him that day. (Doc. 95, Ex. 2.)

Redd was arraigned May 24, 2021. (Doc. 10.) A defense attorney was present, but that attorney was not assigned to Redd's case. (*Id.*; ROA.) The court ordered the Office of the State Public Defender (OSPD) to appoint counsel for Redd. (Doc. 11.) Two days later, the court scheduled hearings and scheduled the trial for October 25, 2021. (Doc. 13.)

A notice of appearance was entered on July 2, 2021, and J. Gregory Tomicich filed a notice of appearance on July 6, 2021. (Docs. 14-15.)

On October 15, 2021, Tomicich requested a continuance and a scheduling conference. (10/15/21 Tr. at 4.) Tomicich said he had mistakenly thought the State did not have jurisdiction. He said he had not visited Redd, but he would do so soon. (*Id.*) Redd complained he had not received any response from Tomicich. (*Id.* at 4-5.) The court instructed Redd to let the court know if he wanted a hearing on his representation, but the court warned him that would delay his case for months. (*Id.* at 5.) Redd did not want to replace his counsel. (*Id.* at 6.)

At a November 24, 2021 status hearing, the prosecutor said he had completed an omnibus form and sent it to Tomicich, but he did not know what happened after that. (11/24/21 Tr. at 4.) The court indicated it would schedule an

omnibus hearing and set the trial date at that hearing. (*Id.* at 4-5, 7, 9.) Tomicich offered that the omnibus hearing could be held that day, but Redd objected. (*Id.* at 10-11.) The court set the omnibus hearing for the next week and indicated the trial date needed to get scheduled. (*Id.* at 13-15.) Redd complained about Tomicich, and the court warned Redd again that if he substituted his attorney, his trial would likely “be pushed back at least a couple of months, probably more than that.” (*Id.* at 16.)

On December 1, 2021, Redd requested a substitution of counsel. (12/1/21 Tr. at 4.) The court warned Redd that obtaining new counsel “would result in a delay of at least several months[,]” and that delay would be attributed to him. (*Id.* at 5, 7.) The court inquired into Redd’s complaints and granted the substitution of counsel. (*Id.* at 8-12.) Redd was not willing to have his omnibus hearing until he obtained substitute counsel. (*Id.* at 12.) The court informed him that would “delay things even further.” (*Id.*) The court directed Tomicich to make sure the OSPD started searching for substitute counsel. (*Id.* at 13.)

OSPD had not yet found substitute counsel as of January 10, 2022. (1/10/22 Tr. at 4.) The State expressed concern that Redd needed to get new counsel “as expeditiously as possible.” (*Id.*)

On January 24, 2022, an OSPD attorney filed a notice of appearance to ensure that someone was appointed, but the OSPD was still looking for long-term

counsel. (1/24/22 Tr. at 4.) The OSPD struggled to find an attorney willing to take the case due to the nature of the offense and Redd's history. (*Id.*)

On February 1, 2022, Amanda Gordon filed a notice of appearance. (Doc. 27.) Gordon was not present at the February 7, 2022 status hearing, so it was reset. (2/7/22 Tr. at 1, 4.) The court informed Redd that Gordon was "a very good attorney." (*Id.* at 5.) The court scheduled the trial for April 11, 2022, to keep the case on track. (*Id.*)

At a March 7, 2022 status hearing, Gordon said Redd was "against any continuances[,]" so she just needed to confirm the trial date. (3/7/22 Tr. at 4.) The court indicated it would schedule an omnibus hearing. (*Id.* at 7.)

An omnibus hearing was held March 17, 2022. (3/17/22 Tr.) The court gave Gordon two weeks to file motions. (*Id.* at 5.) The State offered to expedite providing Gordon discovery. (*Id.* at 7.) Gordon informed the court she was "completely available" for the trial. (*Id.* at 9.)

On April 1, 2022, Gordon requested the trial date be continued so she could file pretrial motions, including a motion to dismiss. (Docs. 36, 130 at 15.) The court granted the motion. (Doc. 36.) The court set the trial for May 9, 2022. (*Id.*)

On April 7, 2022, Gordon filed a motion to dismiss alleging a violation of the IAD. (Doc. 37.) At an April 29, 2022 status hearing, the court set a hearing on

the motions and scheduled the trial in Redd's other case for May 9, 2022, and his trial in this case for May 23, 2022. (4/29/22 Tr. at 6-8.)

Before the scheduled hearing, "Gordon contacted the State and the Court to advise of a personal emergency that would prevent her from both appearing at the hearing and preparing for the May 23, 2022, trial." (Doc. 130 at 5.) The Court reset the trial for October 24, 2022. (Doc. 46.)

The hearing on the motion to dismiss for violation of the IAD was held July 6, 2022. (7/6/22 Tr.) At the conclusion of that hearing, the court stated that the October trial date was "set in stone." (*Id.* at 43-44.) The court subsequently denied the motion to dismiss. (Doc. 54, available at Appellant's App. D.)

On September 19, 2022, the State requested a status hearing to assess the preparedness of counsel because arranging the appearance of out-of-state witnesses was expensive. (Doc. 65 at 2.) At the September 27, 2022 hearing, the parties planned for a seven to ten-day trial. (Doc. 70.) Jay Reno was appointed to participate as cocounsel. (Doc. 72.)

On October 3, 2022, Gordon moved to withdraw, over the State's objection, stating that Redd had retained Robert Stephens Jr. (Doc. 80.) The court held a hearing the next day. (10/4/22 Tr.) Stephens explained Redd had hired him. (*Id.* at 5.) The court granted Gordon's motion to withdraw. (*Id.*) Stephens requested 90 days to prepare for trial because he had not yet received the

voluminous discovery. (*Id.* at 5-6.) The State expressed frustration because it had been preparing for trial. (*Id.* at 6-7.) Redd waived his right to speedy trial for the delay that occurred after the October 24, 2022 trial date. (*Id.* at 10-11.)

On October 7, 2022, Stephens moved to dismiss for violation of the right to a speedy trial.

On October 24, 2022, the court held an omnibus and status hearing. (10/24/22 Tr.) The court set the trial for March 8, 2023, and stated that date was “set in stone.” (*Id.* at 17-18.)

In October 2022, Stephens moved to dismiss, alleging a violation of the right to a speedy trial, (Docs. 83-84), and a delay in his initial appearance, (Docs. 92-93). The court subsequently denied those motions after holding a hearing. (12/16/22 Tr.; Docs. 129-31.)

On March 7, 2023, the day before the trial began, Stephens moved to withdraw, stating that Redd had discharged him. (Doc. 144.) The court held a hearing. After inquiring into Redd’s complaints about counsel, the court concluded there was not a seemingly substantial basis to substitute counsel. (3/7/23 Tr. at 11-26.) The court explained to Redd that Stephens’s strategy was “sound” and Stephens had done “an excellent job” arguing his motion during the hearing the day before. (*Id.* at 18-20.) The court did not think there was a breakdown in communication, but rather dissatisfaction with the result. (*Id.* at 21.)

The court found Redd made the motion in bad faith, and it was a dilatory tactic. (*Id.* at 22-24.)

The trial was held March 8-14, 2023.

III. The motion to dismiss for violation of the IAD

Redd moved to dismiss for violation of the IAD, arguing the State violated Article IV of the IAD when it failed to bring him to trial within 120 days. (Doc. 37 at 8-11.) Redd argued that he was delivered to Montana when the district court issued a Writ of Habeas Corpus on February 22, 2022. (*Id.* at 8-9.) He asserted even if the clock started at the arraignment, 120 days had passed. (*Id.* at 9.) Redd also asserted the warrant issued February 18, 2021, was served on him, and that acted as a detainer, triggering the IAD. (7/6/22 Tr. at 12, 28-29.)

The State argued the IAD did not apply because the writ and arrest warrant were not detainers, and the State did not file a detainer. (Doc. 38; 7/6/22 Tr. at 5-11, 16-17). The State also argued Redd was not entitled to dismissal because 1) the time when Redd could not be tried had to be tolled, and 2) Redd waived his right to a trial within 120 days when he failed to object to the trial setting. (7/6/22 Tr. at 1, 9-13.)

The court denied Redd's motion to dismiss, concluding the IAD did not apply because a detainer was not filed. (Doc. 54, available at Appellant's App. D.)

The court also found, in the alternative, that the time when Redd did not have counsel, and therefore could not stand trial, should be tolled. (*Id.* at 6 n.3.)

IV. The motion to dismiss for violation of the right to a speedy trial

Redd moved to dismiss for violation of his right to a speedy trial on October 7, 2022, shortly after he retained Stephens, necessitating a continuance. (Docs. 83-84.) He based his motion on the 613 days that had elapsed between the filing of the Information on February 18, 2021, and the October 24, 2022 trial date. (Doc. 84 at 10.) Redd asserted the State was responsible for all delay except a period of four months and one week that passed between the filing of his April 7, 2022 motion to dismiss and the issuance of the denial of that motion on August 25, 2022. (Doc. 84 at 10-11; Doc. 98 at 6.) He asserted the YCDF was overcrowded and understaffed. (*Id.* at 12.) He alleged, without details, that the delay had impaired his ability to assist his attorney in identifying and locating potential witnesses. (*Id.*) He also asserted, however, that he had not yet been able to go through discovery and investigative materials with any of his counsel. (*Id.*)

The State argued the period of time before Redd's arraignment when he was in federal custody should not be attributed to either party. (Doc. 94 at 9.) The State argued the remaining delay before the first trial setting was institutional delay. (*Id.*) The State argued all the additional delay was attributable to Redd

because he continued all the trial dates. (*Id.* at 9-12.) The State argued Redd's late filing of motions, his substitutions of counsel, and his failure to request disposition of his trial under the IAD demonstrated he did not seek a timely trial. (*Id.* at 13-14.) The State argued that Redd did not suffer from oppressive pretrial incarceration, he did not provide evidence that the delay caused undue anxiety and concern, and he failed to provide any evidence that his defense was impaired. (*Id.* at 15-17.) The State argued that because the majority of the delay was caused by Redd and he failed to demonstrate prejudice, his right to a speedy trial was not violated. (*Id.*)

At the hearing, Billings Police Department (BPD) Detective Robert Miller, testified Redd was a person of interest after February 3, 2021, but the BPD could not have arrested him at that time. (12/16/22 Tr. at 38, available at Appellant's App. K at 38.) On February 17, 2021, Redd was arrested by the United States Marshal's task force on a federal warrant. (*Id.* at 15-16, 35, 39.) Redd was transported to the BPD, where Miller interviewed him about this case, but he remained in federal custody, and a federal marshal sat outside of the room during the interview. (*Id.* at 17, 35-36.) This was one of the most complicated cases Miller had investigated. (*Id.* at 41.)

Lieutenant Robert Lester testified the YCDF was filled over capacity. (*Id.* at 44-45.) He believed the overcrowding impacted the staff, but it should not impact

the inmates. (*Id.* at 46, 56.) He testified that inmates who are housed in maximum security are locked down for 23 hours a day. (*Id.* at 47.) Redd demonstrated he spent time in maximum security and sent kites requesting to be moved to the general population. (*Id.* at 51.) Redd did not send any other kites regarding the conditions of the YCDF. (Doc. 106.)

Redd's testimony demonstrated he sent kites complaining about Tomicich's failure to visit, and he informed Tomicich that he did not want a continuance and would not waive his right to a speedy trial. (12/16/22 Tr. at 72-75.) Redd testified he could not talk to Tomicich about his defenses, he only met Gordon in person once, and he did not see all of the discovery until Stephens visited him on October 4, 2022. (*Id.* at 76-77, 81.) Redd asserted his defense was impaired because of low staffing levels and inaccessibility of counsel. (*Id.* at 78.) Redd testified he had to change to a vegetarian diet because he could not eat the meat. (*Id.*) He also said the victim's family had characterized him as a bad man in Facebook posts. (*Id.* at 80.) He said he suffered from anxiety, depression, and boredom. (*Id.*) Redd acknowledged he insisted Tomicich be replaced, and Gordon filed a motion to dismiss right before a trial date. (*Id.* at 91, 93.) Redd acknowledged he did not want to have his trial on October 24, 2022, because he hired new counsel. (*Id.* at 98.)

An evidence technician testified the evidence in this case had been securely stored in the evidence facility, and Stephens had not yet requested to view it. (*Id.* at 102-11, 114-15, 117-18.) A victim and witness coordinator testified that most of the witnesses in the case were medical professionals or law enforcement officers. (*Id.* at 126.) Her office had been in contact with all of the witnesses, and she believed they could all be subpoenaed for trial. (*Id.* at 126-68, 130-31.)

The court denied Redd's motion to dismiss. (Doc. 130, available at Appellant's App. G.) The court found it had warned Redd requesting new counsel would result in delays, and Redd demonstrated he understood. (*Id.* at 9.) The court "accord[ed] little credibility and weight to [several of Redd's] complaints" that he was prejudiced. (*Id.* at 10.) The court found there was no evidence to support Redd's medical claim or dietary complaints, and the issues were not serious enough for Redd to have sent a kite about them. (*Id.*) The court found Redd did not provide evidence about the Facebook posts he complained about. (*Id.*) Similarly, the court found Redd's "self-diagnosed anxiety is without any support by any jail records." (*Id.*) The court noted Redd did not provide any evidence supporting his generalized claims about financial impact or his inability to contact his family. (*Id.*) The court noted Redd was in federal custody from February 21, 2021, until May 20, 2022, and would have been subject to the same

jail restrictions. (*Id.*)¹ The court also found Redd's claim that he could not prepare conflicted with the Court's observations in court. (*Id.* at 11.) The court explained it had observed Redd's active involvement with Gordon during a motion to dismiss hearing, Redd admitted he had been able to consult with Gordon about motions, and Gordon presented a successful argument resulting in dismissal of Redd's other case. (*Id.* at 11 n.4.)

The court concluded the 613-day delay passed the threshold for a speedy trial claim. (*Id.* at 12.) The court determined the delay before the first trial setting on October 25, 2021, was institutional delay inherent in the criminal justice system. (*Id.* at 14.) The court determined the delay between the first trial setting and the second trial setting on April 11, 2022, was attributable to Redd because it was caused by his counsel's request for a continuance and Redd's request for a substitution of counsel. (*Id.* at 14-15.) The court allocated the delay between the second trial setting and the third trial setting on May 9, 2022, to Redd because it was caused by his counsel's request for time to file a motion to dismiss. (*Id.* at 15.) Similarly, the court allocated the time between the third trial setting and the fourth trial setting on May 23, 2022, to Redd because it was caused by his

¹ The court found Redd completed his 12-month term of incarceration on his federal sentence on May 20, 2022. (Appellant's App. G at 5.) Redd received a 12-month sentence on May 20, 2021, but he may have discharged his sentence on February 16, 2021. (Doc. 37, Ex. A.)

counsel's request for a continuance to facilitate a hearing on the motion to dismiss. (*Id.* at 16.) Finally, the court allocated the period of time between the fourth trial setting and the fifth trial setting on October 24, 2022 to Redd because the delay was caused by Gordon's emergency, necessitating vacating the evidentiary hearing and continuing trial. (*Id.*) The court concluded Redd was responsible for 365 days of delay, and the State was responsible for 248 days of institutional delay. (*Id.*) The court weighed this factor in favor of the State because Redd was responsible for most of the delay.

The court concluded that although Redd's kites stated he wanted a speedy trial, his conduct did not reflect a sincere desire for a speedy trial. (*Id.* at 17-19.) The court noted Redd repeatedly filed motions and requested the substitution of counsel on the eve of trial, necessitating continuances. (*Id.*) The court concluded Redd's conduct "reflects Defendant's speedy trial assertions are manufactured and made in bad faith[,]" and he did not have "an actual desire to have this matter brought to trial." (*Id.* at 19.) The court weighed Redd's responses to the delay heavily against him. (*Id.*)

The court concluded Redd was not subjected to oppressive pretrial incarceration given his overlapping federal sentence and the complexity of the case. (*Id.* at 20-21.) The court concluded pretrial delay had not unduly prolonged the disruption to Redd's life or aggravated the anxiety or concern inherent in being

accused of a crime. (*Id.* at 21-22.) The court found pretrial delays did not impair Redd's ability to present his defense. (*Id.* at 23.) The court weighed factor four heavily against Redd. (*Id.* at 24.)

Balancing the factors, the court concluded Redd's right to a speedy trial was not violated. (*Id.*)

V. The motion to dismiss alleging a delay in the initial appearance

Redd moved to dismiss arguing there was a delay in his initial appearance. (Doc. 92.) He asserted he "was arrested sometime prior to February 18th, 2021." (Doc. 93 at 1.) Redd also asserted the writ of habeas corpus ad prosequendum transferred jurisdiction of Redd to the State when the writ was issued on February 22, 2021. (Doc. 98 at 1-2.) Redd also moved to suppress arguing that if his case was not dismissed, evidence obtained during the delay should be suppressed. (Doc. 101.)

The State asserted Redd was not transferred to state custody until May 20, 2021, and it held a timely initial appearance on May 24, 2021. (Doc. 97 at 1-2, 4-5.)

The court denied this motion. (Doc. 129.) The court found Redd was not in state custody on February 17, 2021, and he was transferred to state custody for the first time on May 20, 2021, when he was served with the arrest warrant in this

case. (*Id.* at 2-4.) For the same reason, the court denied Redd's alternative motion to suppress. (Doc. 131.)

SUMMARY OF THE ARGUMENT

The court correctly denied Redd's motions to dismiss. The IAD was not triggered because the State did not lodge a detainer against Redd. As a result, he was not entitled to have his trial held within the time set out in the IAD. The IAD also did not apply when Redd was not being held on a prison sentence. Even if the IAD was triggered, the time limit was not violated because Redd's counsel was not prepared for trial any sooner. Also, Redd waived his right to be tried sooner when he failed to request an earlier trial date.

Redd's right to a speedy trial was not violated. After the period of delay leading to the first trial setting, which was caused by institutional delay and by Redd's federal custody, all remaining delay was caused by Redd's filing of motions or his requests to substitute counsel shortly before trial deadlines. Redd's conduct did not demonstrate a sincere desire to have a speedy trial, and he was not prejudiced by the delay.

Redd also had an initial appearance without unnecessary delay. He was not arrested by the State until Thursday May 20, 2021, and he had an arraignment on

the morning of Monday, May 24, 2021. His initial appearance was held in a timely manner.

ARGUMENT

I. Standard of review

The district court’s denial of a motion to dismiss in a criminal case presents a question of law that this Court reviews de novo. *State v. Nickerson*, 2014 MT 83, ¶ 6, 374 Mont. 354, 322 P.3d 421. Underlying findings of fact are reviewed to determine whether they are clearly erroneous. *Id.*; *State v. Steigelman*, 2013 MT 153, ¶ 10, 370 Mont. 352, 302 P.3d 396. Whether the facts establish a speedy trial violation is a question of law that this Court reviews de novo. *Steigelman*, ¶ 10. Whether an initial appearance was held without unnecessary delay is a question of statutory construction this court reviews for correctness. *State v. Norvell*, 2019 MT 105, ¶ 13, 395 Mont. 404, 440 P.3d 634.

II. The district court correctly denied Redd’s motion to dismiss for a violation of the IAD.

A. The IAD did not apply because Redd was not serving a term of imprisonment, and no detainer was filed.

The IAD is an interstate compact designed “to encourage the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainees based on untried indictments, informations, or

complaints.” Mont. Code Ann. § 46-31-101, Art. I; *Nickerson*, ¶ 7. Article III of the IAD provides a procedure by which an inmate can request to be tried within 180 days if a detainer has been filed. Mont. Code Ann. § 46-31-101, Art III(1); *United States v. Mauro*, 436 U.S. 340, 351 (1978). Redd has not made a claim under Article III.

Article IV of the IAD “provides the means by which a prosecutor who has lodged a detainer against a prisoner in another State can secure the prisoner’s presence for disposition of the outstanding charges.” *Mauro*, 436 U.S. at 351.

Article IV(1) provides that an officer in a state in which a charge is pending:

shall be entitled to have a prisoner against whom the officer has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated

Mont. Code Ann. § 46-31-101, Art. IV(1).

A prosecutor who has filed a detainer can secure the prisoner’s presence for disposition of outstanding charges “by presenting to the officials of the State in which the prisoner is incarcerated ‘a written request for temporary custody or availability. . . .’” *Mauro*, 436 U.S. at 351-52 (quoting Art. IV). If a prosecutor secures the presence of an inmate pursuant to Article IV, the “trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court . . . , the court having jurisdiction of the matter

may grant any necessary or reasonable continuance.” Mont. Code Ann.

§ 46-31-101, Art. IV(3); *accord Mauro*, 436 U.S. at 352.

The IAD could not have applied while Redd’s federal revocation was pending. The IAD “only applies when a person has ‘entered upon a term of imprisonment in a penal or correctional institution of a party State.’” *United States v. Glasgow*, 790 F.2d 446, 448 (6th Cir. 1985) (quoting IAD Art. III); *see also State v. Fay*, 763 So.2d 473 (Fla. App. 2000). Redd never entered a term of imprisonment in a federal institution. Instead, he was held in the YCDF while his federal revocation was pending, and then he was transferred to Yellowstone County after his federal sentencing. As a result, the IAD never applied.

Also, the IAD is triggered only if the State with untried charges files a detainer with the sending state, *Mauro*, 436 U.S. at 343-44; *see also Nickerson*, ¶ 9, and no detainer was filed. A “detainer is a notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction.” *Mauro*, 436 U.S. at 359.

The defendant has the burden to demonstrate authorities from the charging jurisdiction filed a detainer. *See United States v. Weaver*, 882 F.2d 1128, 1133 (7th Cir. 1989); *Davila v. State*, 623 S.W.3d 1, 11 (Tex. App. 2020). In *Davila*, the Texas Court of Appeals held that the IAD did not apply when the State requested and accepted temporary custody of the defendant, but the record did not contain

evidence demonstrating the State lodged a detainer with the out-of-state institution in which Davila was incarcerated. 623 S.W.3d at 11.

The Supreme Court has held a writ of habeas corpus *ad prosequendum* “issued by a federal court to state authorities, directing the production of a state prisoner for trial on criminal charges, is not a detainer within the meaning of the [IAD].” *Mauro*, 436 U.S. at 349; *accord id.* at 361. The court explained that the IAD was drafted because of the lengthy duration of detainers, which disadvantage a prisoner and can remain lodged against the prisoner throughout a sentence. *Id.* at 353, 360. In contrast, writs of habeas corpus *ad prosequendum* are immediately executed, avoiding the problems created by detainers. *Id.* at 360-61. The court explained that the “role and functioning of the *ad prosequendum* writ . . . bear little resemblance to the typical detainer which activates the provisions of the [IAD].” *Id.* at 358. The court stated:

Unlike a writ of habeas corpus *ad prosequendum* issued by a federal district court, a detainer may be lodged against a prisoner on the initiative of a prosecutor or law enforcement officer. Rather than requiring the immediate presence of the prisoner, a detainer merely puts the officials of the institution in which the prisoner is incarcerated on notice that the prisoner is wanted in another jurisdiction for trial upon his release from prison. Further action must be taken by the receiving State in order to obtain the prisoner.

Id. at 358.

The Court held that the IAD did not apply to the defendants in *Mauro* who did not have a detainer filed against them. *Id.* at 361. The Court held that another

defendant, Ford, was entitled to dismissal of his charges because the federal government lodged a federal warrant as a detainer with the state prison authorities, federal authorities used a writ of habeas corpus ad prosequendum to obtain his presence, and then federal authorities failed to bring Ford to trial within 120 days. *Id.* at 346, 361-62. The Court clarified that a writ of habeas corpus ad prosequendum is a “request for temporary custody,” which triggers Article IV of the IAD if the State has previously lodged a detainer. *Id.* at 361-62.

The district court correctly denied Redd’s motion to dismiss under the IAD because the court’s finding that the State did not lodge a detainer is not clearly erroneous, and the IAD does not apply unless the receiving state lodges a detainer. Redd was transferred into state custody on May 20, 2021, pursuant to an Order to Produce issued by a United States marshal. (Doc. 38, Ex. A.) The Order to Produce attached the Writ, (*id.*), which is not a detainer under *Mauro*. There is no evidence the arrest warrant was ever lodged with the federal authorities or that it acted as a detainer. Redd did not demonstrate the State triggered the provisions of the IAD by lodging a detainer.

B. In the alternative, the IAD was not violated because the time when Redd could not be tried is tolled.

Even if a detainer was filed, the court correctly denied Redd’s motion to dismiss because none of the time that passed before the hearing on the motion to dismiss can count against the State because Redd was never ready to go to trial.

Article VI(1) provides that the time periods in the IAD “shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.” Mont. Code Ann. § 46-31-101, Art. VI(1).

Some courts have interpreted Article VI(1) to “exclude all those periods of delay occasioned by the defendant.” *United States v. Scheer*, 729 F.2d 164, 168 (2d Cir. 1984); accord *United States v. Nesbitt*, 852 F.2d 1502, 1516 (7th Cir. 1988). In *Scheer*, the Second Circuit concluded the defendant’s rights under the IAD were not violated because nearly all of the delays were attributable to defense motions, including a request for additional time to procure an attorney and a motion to suppress evidence. 729 F.2d at 168. Because he requested these delays for his benefit, the court concluded his rights under the IAD were not violated. *See also Nesbitt*, 852 F.2d at 1517 (periods of delay caused by defendant’s motions operated to toll the running of the IAD for those periods of delay).

Redd came into state custody on May 20, 2021. (Doc. 95, Ex. 2.) Without any tolling, the 120-day period would have expired on September 17, 2021. But Redd did not have counsel appointed until July 2, 2021, so no substantive proceeding, especially no trial, could occur during that time. Under the language of Article VI(1), that time should be tolled. Further, Redd was not ready to go to trial on October 25, 2021, or at future trial settings, so that time should also be tolled. The district court correctly tolled the timeframe when Redd could not have

stood trial. (Appellant’s App. D at 6 n.3.) Like *Scheer*, Redd or Redd’s counsel were responsible for all of the delays, so his right to be tried within 120 days was not violated.

C. Redd waived his right to be tried within 120 days when he failed to object to the trial date.

Redd waived his right to be tried within 120 days when he failed to object to the court’s May 26, 2021 order setting the trial for October 25, 2021. In *New York v. Hill*, 528 U.S. 110, 113-18 (2000), the Supreme Court held a defendant was barred from seeking dismissal of his case for failure to try him within the IAD time limit because defense counsel agreed to the trial date. Defense counsel had said the court’s proposed trial date was “fine.” *Id.* at 113. The Supreme Court held the defendant was bound by the representations of his counsel, and counsel’s representation waived Hill’s right to object to the delay. *Id.* at 114-18. The court explained that many rights may be waived by counsel, and “[s]cheduling matters are plainly among those for which agreement by counsel generally controls.” *Id.* at 114-15.

Redd similarly waived his claim that the IAD was violated. The district court scheduled the October 25, 2021 trial date on May 26, 2021. (Doc. 13.) If Redd wanted to be tried within 120 days of entering state custody, he could have objected in a timely manner. By failing to do so, Redd waived his right to be tried within 120 days.

D. Redd's arguments to the contrary are incorrect

Redd's assertions that the IAD was triggered on February 22, 2021, when the State made a written request for Redd's transfer to State custody (Appellant's Br. at 17), and that the State issued a warrant that was sent to the detention facility before the State requested the writ (Appellant's Br. at 20), are unsupported by the record. The arrest warrant was not served on Redd until May 20, 2021, and there is no evidence it was sent to the YCDF earlier. (Docs. 5, 95, Ex. 2.) Because Redd has not demonstrated the arrest warrant was lodged as a detainer, he has not demonstrated that the IAD applies.

Even if a detainer was lodged, Redd has not demonstrated it was triggered on February 22, 2021. To trigger the protections of the IAD, a state must both lodge a detainer and present "a written request for temporary custody or availability" to the officials in the sending state. Mont. Code Ann. § 46-31-101, Art. IV(1); *Mauro*, 436 U.S. at 351-52. There is not any evidence the State lodged a detainer or presented federal officials with the writ on February 22, 2021.

Further, Redd's assertion he was "immediately available to the State" (Appellant's Br. at 21) when the writ was issued is unsupported by any evidence. There is no evidence demonstrating federal authorities would have made Redd available when the writ was issued on February 22, 2021, before the resolution of his revocation proceeding. Instead, the record demonstrates a federal marshal

issued an Order to Produce on May 20, 2021, when Redd was sentenced for the revocation of his federal sentence. (Doc. 38, Ex. A.) Redd has not established he was available to the State any earlier.

Redd's argument that the State failed to accept custody, as required under Article V(3), is similarly incorrect. As explained above, there is not any evidence a detainer was filed or that the State could have taken custody before May 20, 2021.

Redd also asserts, without explanation, that he was improperly returned to the sending state in violation of Mont. Code Ann. § 46-31-101, Art. IV(5). Redd did not enter state custody until May 20, 2021, and he remained in state custody until he was tried. Redd's incarceration in the YCDF does not change the fact that he was in federal custody until May 20, 2021. Therefore, Article IV(5) was not violated.

III. The district court correctly held that Redd's right to a speedy trial was not violated.

When considering a speedy trial claim under the Sixth and Fourteenth Amendments to the United States Constitution, and article II, section 24, of the Montana Constitution, a court balances: (1) length of the delay; (2) reasons for the delay; (3) the accused's responses to the delay; and (4) prejudice to the accused. *State v. Ariegwe*, 2007 MT 204, ¶¶ 106-12, 338 Mont. 442, 167 P.3d 815. The

court must engage in a “sensitive balancing process” that considers all relevant factors. *Barker v. Wingo*, 407 U.S. 514, 533 (1972).

A. Length of delay

The speedy trial clock begins to run when a defendant is arrested or formally charged. *Ariegwe*, ¶ 42. This Court triggers the speedy trial analysis if the delay is at least 200 days. *Ariegwe*, ¶ 106. Some prejudice is presumed after the 200-day threshold passes, and that prejudice intensifies as the delay extends beyond 200 days. *Ariegwe*, ¶ 44.

The length of time between the filing of the Information on February 18, 2021, and the October 24, 2022, trial setting is 613 days. The trial did not begin until March 8, 2023, but Redd waived his right to a speedy trial concerning any delay after October 24, 2022. (10/4/22 Tr. at 10-11.) Redd calculates the delay as 613 days. (Doc. 84 at 10; Appellant’s Br. at 26.) Because Redd waived his right to a speedy trial after October 24, 2022 and relies on that calculation, the court correctly calculated the delay as 613 days. If this Court instead calculates the time until the trial began, the length of delay is 748 days.

B. Reasons for the delay

The district court must identify each period of delay in bringing the accused to trial and attribute each period of delay to the appropriate party. *Ariegwe*, ¶ 108. Any delay not caused by the accused or affirmatively waived by the accused is

attributed to the State. *Id.* The court assigns weight based on the cause and motive for the delay. *Id.* Institutional delays, such as overcrowded court dockets, and delays for valid reasons, such as complex charges or a missing witness, weigh less heavily against the State than lack of diligence, which occupies a middle ground in the culpability scale. *Id.* Bad-faith delay weighs most heavily against the State. *Id.* This Court only considers delays that result in the delay of the trial. *State v. Zimmerman*, 2014 MT 173, ¶ 15, 375 Mont. 374, 328 P.3d 1132.

1. First period of delay: 2/18/21 to 10/25/21

The delay between the filing of the Information and the first trial setting on October 25, 2021, was 249 days. This period is generally attributed to the State as institutional delay. *See, e.g., Ariegwe*, ¶ 125.

In this case, however, the time preceding May 20, 2021, should be attributed to Redd because he was in federal custody. The court could not hold hearings until he was transferred to state custody on May 20, 2021. This Court has found that “imprisonment in another state, based upon defendant’s own conduct, should be attributed to him in a speedy trial analysis.” *State v. Brekke*, 2017 MT 81, ¶ 15, 387 Mont. 218, 392 P.3d 570; *State v. Daly*, 2023 MT 142, ¶ 14, 413 Mont. 100, 533 P.3d 326. Although Redd was physically located in Montana, he was in federal custody and could not appear for an initial appearance.

The court correctly attributed the 91 days before Redd's transfer to state custody to Redd. The court should not have attributed the four days between Redd's transfer to state custody and his arraignment to Redd, but those days do not affect the overall analysis. The remaining 158 days between May 20, 2021, and October 25, 2021 are attributable to the State as institutional delay. This delay weighs less heavily than other types of delay.

2. Second period of delay: 10/25/21 to 4/11/22

The court correctly attributed the 168 days of delay between the first trial setting on October 25, 2021, and the second trial setting on April 11, 2022, to Redd. On October 15, 2021, Tomicich requested a continuance of the first trial date. (10/15/21 Tr. at 4.) The court warned Redd the case would be delayed for months if he obtained new counsel. (*Id.* at 5.) Redd indicated he did not want to replace his counsel. (*Id.* at 5-6.) Despite that representation, Redd requested a substitution of counsel on December 1, 2021. (12/1/21 Tr. at 4.) Redd accepted that obtaining new counsel would delay the case for several months. (*Id.* at 11.) Redd also refused to proceed with his omnibus hearing that day, even though the court warned him that would delay things even further. (*Id.* at 12.) As the court had warned, the substitution of counsel delayed the case for several months. (1/24/22 Tr. at 4.) Shortly after counsel was appointed, the court set the trial for April 11, 2022, to keep the case moving toward trial. (2/7/22 Tr. at 5.)

This delay was caused by Tomicich’s failure to prepare and Redd’s request for a substitution of counsel. The district court correctly attributed that delay to Redd. *Vermont v. Brillon*, 556 U.S. 81, 85 (2009) (“Assigned counsel . . . act on behalf of their clients, and delays sought by counsel are ordinarily attributable to the defendants they represent.”); *State v. Kurtz*, 2019 MT 127, ¶ 16, 396 Mont. 80, 443 P.3d 479 (“A defendant will be charged with delay caused by his or her pretrial motions.”); *Adams v. State*, 2007 MT 35, ¶ 32, 336 Mont. 63, 153 P.3d 601 (delay caused by counsel’s motion to withdraw attributable to the defendant); *State v. Rose*, 2009 MT 4, ¶ 58, 348 Mont. 291, 202 P.3d 749 (delay caused by a defendant’s inconsistent requests for substitution of counsel is attributable to the defendant).

The Supreme Court has recognized an exception to the general rule attributing time caused by defense counsel to the defense if there is a systemic breakdown in the public defender system. *Brillon*, 556 U.S. at 85, 94. But in *Brillon*, the Court declined to find a systemic breakdown in the public defender system even where the defendant was not represented by counsel for six months, appointed counsel had difficulty preparing due to a heavy workload, and two attorneys withdrew based on the termination of their contract with the public defender’s office. *Id.* at 85-90, 94.

The delay in this case was not caused by a systemic breakdown in the public defender's system. Tomicich was slow to begin actively working on Redd's case, but there is no indication his deficits were caused by a breakdown in the public defender system. Although there were a few months when Redd was not appointed counsel, that time was less than in *Brillon*. Gordon's emergency caused some delay, but that does not establish a breakdown in the public defender system. Cocounsel was appointed to assist Gordon, and trial likely would have occurred on October 24, 2022, had Redd not retained private counsel. There was not a systemic failure of the public defender system.

3. Third period of delay: 4/11/22 to 5/9/22

The 28 days between April 11, 2022, and the third trial setting on May 9, 2022, are attributable to Redd. This delay was caused by defense counsel's request for a continuance to enable her to file pretrial motions, including a motion to dismiss. (Doc. 36; Appellant's App. G at 15.)² Because defense counsel caused this delay, it is attributable to Redd. *Kurtz*, ¶ 16; *State v. Hendershot*, 2009 MT 292, ¶ 7, 352 Mont. 271, 216 P.3d 754 (attributing delay caused by the defendant's late filing of a motion to dismiss to defendant).

² Redd has not provided a transcript of the hearing at which his counsel made this request.

4. Fourth period of delay: 5/9/22 to 5/23/22

The 14 days between May 9, 2022 and the May 23, 2022 trial setting are attributable to Redd. The court found that this delay was caused by Gordon's request for a continuance to facilitate a hearing on Gordon's motion to dismiss. (Appellant's App. G at 16.) Redd has not demonstrated that finding is clearly erroneous.

During the April 29, 2022 hearing, the court asked the parties how much time was needed for the trials in both of Redd's cases. The court set Redd's other trial for May 9, 2022, and set this case for May 23, 2022. (4/29/22 Tr. at 6-8.) The court set the hearing on the motions to dismiss for May 4, 2022. (*Id.* at 5-6.) While scheduling may have resulted in the continuance from May 9, 2022 to May 23, 2022, the reason the court needed to move the trials in both cases to the May dates was Redd's counsel's eve-of-trial filing of motions to dismiss. As a result, the court's finding that this time was attributable to Redd and that it demonstrated bad faith was not clearly erroneous. *Ariegwe*, ¶ 116 (“[A]ny delay directly attributable to the filing of a speedy trial motion less than *thirty* days prior to the scheduled trial date should be charged to the accused.”) (emphasis in original).

5. Fifth period of delay: 5/23/22 to 10/24/22

The 154 days between May 23, 2022, and the October 24, 2022 trial setting are attributable to Redd. The delay was caused by Gordon's off-the-record request

to continue the evidentiary hearing and the trial date based on a personal emergency. (Appellant’s App. G at 16; Doc. 44.) The court was not able to communicate with Gordon to reset the trial and hearing dates until June 23, 2022. (Appellant’s App. G at 16.) The court rescheduled the evidentiary hearing and set the trial for October 24, 2022, stating that date was “set in stone.” (7/6/22 Tr. at 43-44; Doc. 46.) The district court correctly attributed this delay to Redd because it was caused by his counsel’s unavailability and the need to hold an evidentiary hearing on a motion he filed shortly before an earlier trial date. *See Kurtz*, ¶ 16.

6. Sixth period of delay: 10/24/22 to 3/8/23

Redd states this period of delay does not factor into the speedy trial analysis because Redd waived the delay. (Appellant’s Br. at 31.) If this court considers this delay, it is attributable to Redd because he caused this delay by retaining counsel on the eve of trial.

C. Redd’s response to the delay

The court evaluates “the totality of a defendant’s responses to the delay to ascertain whether the defendant ‘actually wanted a speedy trial’ and what weight is to be given to the other three factors in [the] analysis.” *Steigelman*, ¶ 19 (quoting *Ariegwe*, ¶ 79). Instead of simply considering the number of times the accused acquiesced or objected to delay, this Court “focus[es] on the surrounding circumstances, including whether the accused asserted the speedy trial right; the

timeliness, persistence, and sincerity of the accused's objections to delay; the reasons for any acquiescence in delay; whether the accused was represented by counsel; and the accused's pretrial conduct[.]" *Zimmerman*, ¶ 22.

The court correctly weighed this factor against Redd. Despite Redd's kites requesting a speedy trial, the court found Redd's conduct reflected a lack of sincerity because he did not file his speedy trial motion until 596 days after the State filed charges, he did not request resolution of his case under Article III of the IAD, and he repeatedly filed motions to dismiss and substituted counsel on the eve of trial. (Appellant's App. G at 17-19.) The court correctly concluded this conduct "reflect[ed] a lack of desire to bring the matter to trial[.]" and "reflects Defendant's speedy trial assertions are manufactured and made in bad faith[.] (*Id.* at 17, 19.)

These findings are supported by the record and are not clearly erroneous. Redd twice substituted his counsel, resulting in the continuance of a trial date, and he filed motions that resulted in a continuance of a trial date. Significantly, Redd requested a continuance shortly before the October 24, 2022 trial date so that he could hire private counsel, even though Stephens said he would need at least 90 days to prepare. (10/3/22 Tr. at 5.) After replacing his court-appointed counsel with Stephens, Redd attempted to again obtain a substitution of counsel the day before his trial began. (Doc. 144.) The court's findings that Redd filed the speedy trial motion in bad faith and the motion was dilatory were not clearly erroneous.

(See 3/7/23 Tr. at 22-24.) Redd’s conduct supports the court’s finding that Redd did not have a sincere desire to have a speedy trial. *See Rose*, ¶ 88.

D. Prejudice

A court must examine whether the delay prejudiced the accused in light of the interests the speedy trial right protects: (1) preventing oppressive pretrial incarceration; (2) minimizing the accused’s anxiety and concern; and (3) limiting the possibilities of the defense being impaired by the delay. *Ariegwe*, ¶ 88. The impairment of the defense is the most important interest in the prejudice analysis. *Steigelman*, ¶ 29.

1. Oppressive pretrial incarceration

Whether pretrial incarceration was oppressive depends on “the duration of the incarceration, the complexity of the charged offense, any misconduct by the accused directly related to his incarceration, and the conditions of the incarceration.” *State v. Couture*, 2010 MT 201, ¶ 56, 357 Mont. 398, 240 P.3d 987. Pretrial incarceration is less oppressive for a complex charge. *Couture*, ¶ 59. Although the defendant in *Couture* was incarcerated for 924 days and spent time in solitary confinement, the circumstances of his incarceration were not oppressive, which weighed against a finding that he had been prejudiced. *Couture*, ¶ 63. This Court explained that a defendant’s incarceration due to a high bail is less

oppressive when necessitated by the nature of the offense charged or the accused's status as a high flight risk. *Couture*, ¶ 60.

In *Rose*, ¶ 71, this Court held that 507 days of pretrial incarceration were not unduly oppressive in light of the very serious offenses, Rose's criminal history, and the potential danger Rose's release would pose to others. In addition, an accused's "incarcerat[ion] on a separate charge while awaiting trial on the instant charge informs the issue of oppressiveness but is not dispositive." *Daly*, ¶ 27.

The court's finding that Redd's incarceration was not oppressive is not clearly erroneous. The court correctly found the case was complex, noting that there were five binders of documentation. (Appellant's App. G at 20-21.) Redd was in federal custody until February 2022, and he was in the general population since at least September 2022, where he was able to have video visits with his counsel. (*Id.* at 20.)

2. Anxiety and concern

Criminal charges engender a certain amount of inherent anxiety and concern. *Steigelman*, ¶ 23. When addressing this factor, this Court focuses "on the extent to which the pretrial delay has unduly prolonged the disruption of the accused's life or aggravated the accused's anxiety or concern." *Id.* (quotation marks and citation omitted). This Court has indicated that loss of employment, financial loss, and the curtailment of associations are factors to consider when addressing anxiety and

concern, but if the impact does not rise above what is expected of a normal detainment for the type of offense charged, the pretrial delay is not *unduly* prolonged or disruptive. *State v. Bullock*, 2017 MT 182, ¶ 26, 388 Mont. 194, 398 P.3d 881.

The district court's finding that pretrial delay did not unduly prolong the disruption of Redd's life or aggravate the anxiety and concern inherent in being accused of a crime is not clearly erroneous. Redd did not provide any details about how delay exacerbated his anxiety and concern. He complained about Facebook posts, but he did not demonstrate they were related to the delay. And he did not demonstrate his other vague concerns exceeded the concern inherent in being charged with a serious criminal offense.

3. Impairment of the defense

The impairment of the defense is concerned with "issues of evidence, witness reliability, and the accused's ability to present an effective defense." *Ariegwe*, ¶ 98. The district court's finding that Redd's defense was not impaired by the delay is not clearly erroneous. The State demonstrated that the witnesses were still available for trial and many of the witnesses were professionals who had written reports on their findings.

E. Balancing the four factors

The court correctly concluded that Redd’s right to a speedy trial was not violated. This Court and the Supreme Court have recognized “that generally a speedy trial claim would fail, ‘however great the delay,’ if the government had pursued the accused with reasonable diligence and the accused could not show specific prejudice to his or her defense as a result of the delay.” *Ariegwe*, ¶ 60 (citation omitted). In other cases with lengthy delays, this Court has found that the defendant’s right to a speedy trial was not violated where the defendant was responsible for a large portion of the delay and was not prejudiced by the delay. *See, e.g., State v. Flynn*, 2024 MT 236, ¶ 42, 418 Mont. 331, 557 P.3d 934 (742 days); *Daly*, ¶ 36 (1,361 days); *Bullock*, ¶¶ 18, 27 (571 days); *Couture*, ¶ 98 (924 days); *Rose*, ¶¶ 88-92 (507 days).

Although the length of delay weighs in Redd’s favor, the remaining factors weigh in the State’s favor. Redd is responsible for all delay after the first trial setting, which is the majority of the delay. The only delay the State is responsible for is institutional delay, which carries little weight. Further, Redd’s repeated efforts to substitute counsel and his filing of late motions demonstrates that the third factor weighs heavily against Redd. *See State v. Stewart*, 2017 MT 32, ¶ 15, 386 Mont. 315, 389 P.3d 1009. And, the record demonstrates Redd was not

prejudiced by the delay. The court correctly balanced the factors and concluded Redd's right to a speedy trial was not violated.

IV. The district court correctly denied Redd's motion to dismiss for delay of an initial appearance because he was arraigned four days after he entered state custody.

Montana Code Annotated § 46-7-101(1) requires that "[a] person arrested, whether with or without warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance." *Accord State v. Strong*, 2010 MT 163, ¶ 9, 357 Mont. 114, 236 P.3d 580. "The 'unnecessary delay' standard applies to the period between a defendant's arrest and his initial appearance, regardless of when the State files the complaint." *Norvell*, ¶ 16.

Contrary to Redd's assertion, he was not arrested pursuant to this case until May 20, 2021. The arrest warrant issued in this case was served on Redd at 5 p.m., on May 20, 2021, after he was sentenced in federal court for the revocation of his sentence. (Doc. 95, Ex. 2.) Although he was interviewed by the BPD on February 17, 2021, a federal marshal remained posted outside the door, and he remained in federal custody. (Appellant's App. K at 17.) The writ of habeas corpus ad prosequendum did not transfer custody of Redd until he was transferred to Yellowstone County's custody on May 20, 2021, pursuant to the order to produce. (Doc. 38, Ex. A.)

The district court’s finding that Redd “was in federal custody until May 20, 2021, and was not served nor arrested on the State’s warrant until Thursday May 20, 2021” (Doc. 129 at 3) is supported by the evidence and is not clearly erroneous. Because Redd was arrested around 5 p.m., on Thursday, May 20, 2021, and his initial appearance was held at 8:25 a.m., on Monday, May 24, 2021, (Doc. 10), his initial appearance was held “without unnecessary delay.”

Redd’s reliance on *Norvell* is misplaced. In *Norvell*, the defendant was originally arrested by a probation officer. He could only be held on a probation hold for 72 hours, but the probation officer requested that Norvell be held longer for the investigation of new charges. *Norvell*, ¶ 18. This Court held that when his probation hold expired and Norvell was being held on new charges, he was arrested for purposes of the new case, and an initial appearance had to be held. *Norvell*, ¶ 19. The Court held that Norvell’s initial appearance was not held within a reasonable time because 14 days elapsed between the start of Norvell’s hold on the new charges and his initial appearance. *Id.*

Norvell demonstrates that Mont. Code Ann. § 46-7-101(1) requires a defendant to have an initial appearance without unnecessary delay from when he is arrested for the charge in the case for which the initial appearance is held. Because Redd was arrested on his charge in this case on May 20, 2021, his initial appearance was held without unnecessary delay.

CONCLUSION

Redd's conviction should be affirmed because the court correctly denied his motions to dismiss.

Respectfully submitted this 11th day of August, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 9,883 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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MARDELL PLOYHAR

CERTIFICATE OF SERVICE

I, Mardell Lynn Ployhar, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-11-2025:

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