IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0269

IN THE MATTER OF THE
MENTAL HEALTH OF

J.D.G.

RESPONDENT.

BRIEF OF APPELLANT

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

APPEARANCES:

TAMMY A. HINDERMAN
Division Administrator
ANTHONY REED
Assistant Appellate Defender
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147
Anthony.Reed@mt.gov
(406) 444-9505

ATTORNEYS FOR DEFENDANT
AND APPELLANT

AUSTIN KNUDSEN
Montana Attorney General
MARDELL PLOYHAR
Bureau Chief
Appellate Services Bureau
P.O. Box 201401
Helena, MT 59620-1401

JOSH RACKI
Cascade County Attorney
RYAN BALL
MICHELLE LEVINE
Deputy County Attorney
121 4th Street North
Great Falls, MT 59401

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

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STATEMENT OF THE ISSUE

In February 2025, the State sought to involuntarily commit J.D.G. It argued commitment was necessary because J.D.G. had *recently* injured others because of a mental disorder, although the alleged injuries occurred four months prior. J.D.G. moved to dismiss the Petition, arguing that the four-month-old injuries were not recent enough to establish probable cause under Mont. Code Ann. § 53-21-126(1)(b). Did the district court err in finding that the old injuries were recent enough to establish probable cause and denying J.D.G.'s motion to dismiss?

STATEMENT OF THE CASE

J.D.G. appeals the Eighth Judicial District Court, Cascade County's February 11, 2025, decision denying his motion to dismiss the State's Petition for Commitment. (DC Doc 10). 125 days earlier, on October 9, 2024, the State charged J.D.G. by information with two violent offenses. (DC Doc 1). He was taken into custody and held on $500,000 bail at the Cascade County Detention Center (CCDC). (DC Doc 8).

On January 24, 2025, after 107 days of incarceration, Dr. Susan Day evaluated J.D.G. at his cell. (DC Doc 1). Seventeen days later, on February 10, 2024, the State filed its Petition for Commitment. (DC Doc 1). The day after that, the court held an initial appearance. (DC Doc 3). Defense counsel made an oral motion to dismiss the Petition for lack of probable cause. (DC Doc 3). Relying on one case, *Matter of Mental Health of D.R.S.,* 221 Mont. 245, 718 P.2d 335 (1986), the district court denied the motion. (Initial Appearance Hr'g. Trans. 13:6–14:1, February 11, 2025). The court then set a bench trial for February 19, 2025, and a status hearing for the next day, February 12, 2024. (DC Doc 3).

At the status hearing, the court appointed J.D.G.'s sister, Deedra Suek, as friend of the respondent. (DC Doc 7). She, along with J.D.G.'s attorney, waived J.D.G.'s rights and stipulated to disposition. (DC Doc 7). The parties agreed to commit J.D.G. to the Montana State Hospital (MSH). (DC Doc 7).

J.D.G. timely appealed. (DC Doc 11).

STATEMENT OF THE FACTS

J.D.G. is a veteran of the U.S. Navy. (Pre-Trial Status and Commitment Hr'g Trans. 20:16–20, February 12, 2025). Shortly after

being discharged from service, he began experiencing mental health issues. (Pre-Trial Status and Commitment Hr'g Trans. 21:6–12). On August 28, 2024, J.D.G. was involuntarily committed and went to the MSH for treatment. (DC Doc 1). He was treated for about a month and released to the community on September 25, 2024. (DC Doc 1). Two weeks later, on October 9, 2024, he allegedly hit someone with his car and assaulted an officer. (DC Doc 1). He was charged, and promptly taken into custody. (DC Doc 1).

J.D.G. spent 107 days at the CCDC, without mental health treatment, before he met with Dr. Day on January 24, 2025. (DC Doc 1). During that time, J.D.G. was neither a threat, nor did he cause harm to himself, other inmates, or jail staff. (Initial Appearance Trans., 7:25–8:17). When J.D.G. met with Dr. Day, Dr. Day reported that J.D.G. was unable to discuss his mental health history with her. (DC Doc 1). She also reported that J.D.G.'s mental health records were probably available from the MSH, but there is no evidence she ever reviewed those. (DC Doc 1). Dr. Day completed a clinical interview and mental status exam with J.D.G. at his cell and concluded that he met "the diagnostic criteria for bipolar disorder with psychosis." (DC Doc 1).

On February 10, 2025, seventeen days after the evaluation, the State filed its Petition for Commitment. (DC Doc 1). The State argued that commitment was necessary under Mont. Code Ann. § 53-21-126(1)(b) because J.D.G. had recently caused harm to others, referring to the allegations of the criminal case. (DC Doc 1).

The day after filing the Petition, the court held an initial appearance. (DC Doc 3). Defense counsel moved to dismiss the Petition for lack of probable cause. (DC Doc 3). He argued that the criminal charges, which were 125 days old at that point, were not recent enough to establish probable cause. (DC Doc 3).

Before ruling on the motion, the district court sought a definition of "recent." (Initial Appearance Trans., 10:12–11:7). The court looked first at the civil commitment statutes then to Black's Law Dictionary. (Initial Appearance Trans., 10:12–24 & 11:11–21). Finding no guidance, the court turned to case law. (Initial Appearance Trans., 11:11–21). Mid-hearing, the court came across the *D.R.S.* case and asked the parties to pull it up on their computers so they could go over it together. (Initial Appearance Trans., 13:6–13:22). Based on its cursory reading of

D.R.S., the court denied J.D.G.'s motion and allowed the hearing to proceed. (Initial Appearance Trans., 13:23–14:1).

The next day, February 12, 2025, the parties reconvened for a status hearing. (DC Doc 7). J.D.G. refused to attend, and counsel, with the approval of Dr. Day as the professional person, waived his physical presence. (Initial Appearance Trans., 5:24–6:6; 13:4–17). J.D.G. appeared by Zoom. (DC Doc 7). The court appointed J.D.G.'s sister Deedra as friend of respondent without objection. (Initial Appearance Trans., 16:5–10). She and defense counsel waived J.D.G.'s rights and stipulated to commitment at the MSH for a period of time not to exceed ninety days and involuntary medication. (DC Doc 7 & 8.).

STANDARD OF REVIEW

This Court reviews a district court's civil commitment order to determine whether that court's findings of fact are clearly erroneous and its conclusions of law correct. *In re R.W.K.,* 2013 MT 54, ¶ 14, 369 Mont. 193, 297 P.3d 318. The Supreme Court exercises de novo review when deciding questions of law such as whether the district court correctly interpreted and applied relevant statutes. *Matter of S.E.*, 2022 MT 205, 410 Mont. 345, 519 P.3d 11.

An appeal from an order of involuntary commitment is not moot despite the respondent's release because the issues are capable of repetition and yet otherwise would evade review. *In re S.H.*, 2016 MT 137, ¶ 9, 383 Mont. 497, 374 P.3d 693.

SUMMARY OF THE ARGUMENT

Mont. Code Ann. § 53-21-126(1)(b) allows the State to show that J.D.G. is in need of commitment by showing that he recently caused injury to others because of a mental disorder. This subsection is unique because it is the only one that allows commitment based solely on past actions. Every other subsection requires the State to show there is an ongoing issue or the likelihood of an issue cropping up in the near future. *See* M.C.A. §§ 53-21-126(1)(a); 53-21-126(1)(b); 53-21-126(1)(c); 53-21-126(1)(d); & 53-21-126(1)(e). Mont. Code Ann. § 53-21-126(1)(b) relieves the State of that burden, but by using the term "recently," requires the alleged past action be close in time to the State's filing of the petition.

This Court has not interpreted "recently" under Mont. Code Ann. § 53-21-126(1)(b) (2023). The Court should interpret "recently" according to its plain language. This means if the State wishes to

pursue commitment under Mont. Code Ann. § 53-21-126(1)(b), it must act swiftly to file the petition for commitment, while the underlying self-injury or injury to others is still recent, new, or not long past. If the State delays, it must pursue commitment under a different subsection of Mont. Code Ann. § 53-21-126(1).

The district court relied solely on *D.R.S.* to support its finding that J.D.G. had "recently" injured another. That case, however, was decided under a section of the of the statute not at issue here, and under an earlier version of the statute that was missing provisions that are at issue here. *D.R.S.*, 221 Mont. at 247; M.C.A. § 53-21-126 (1983).

The Court in *D.R.S.* discussed "recently" under a different section of the statute and under a different context. The section discussed in *D.R.S.*, Mont. Code Ann. § 53-21-126(2), reads in pertinent part, "[i]mminent threat of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently *recent* in time as to be material and relevant as to the respondent's present condition." M.C.A. § 53-21-126(2) (2023) (emphasis added). This Court's interpretation of "recently" in *D.R.S.*, was connected to how the State must prove the respondent posed an "imminent threat." That is not at issue here. Mont.

Code Ann. § 53-21-126(1)(b) did not exist in 1986 when *D.R.S.* was decided, it wasn't added until 1997, nine years later, and it does not mention "imminent threat." M.C.A. § 53-21-126 (1997). "Recently" as used in Mont. Code Ann. § 53-21-126(1)(b), is unqualified and independent of whether respondent posed an imminent threat or imminent danger. *D.R.S.* did not interpret "recently" in the context of Mont. Code Ann. § 53-21-126(1)(b).

This Court decided D.R.S. on whether the district court had sufficient evidence to properly find that D.R.S. was seriously mentally ill under Mont. Code Ann. § 53-21-126(2). D.R.S., 221 Mont. at 248. This is not the issue here. J.D.G.'s case concerns whether the district court erred when it found the State had probable cause to move forward on its petition under Mont. Code Ann. § 53-21-126(1)(b). D.R.S. is not instructive for this purpose.

Under the plain meaning of Mont. Code Ann. § 53-21-126(1)(b), four months is not recent. The State had all of the information it needed to file its Petition for Commitment the day it arrested J.D.G., but it waited. The State did nothing to pursue civil commitment until the evaluation 107 days later. Then it waited another 17 days to file its

Petition for Commitment. The State simply used the civil commitment process in place of the criminal statutes meant to restore fitness or competency in a criminal matter. This does not justify the delay. The four month old charges were not recent and this Court should reverse the district court's denial of J.D.G.'s motion to dismiss.

If this Court declines to employ the plain meaning of "recently" for Mont. Code Ann. § 53-21-126(1)(b), and instead chooses to interpret it as the *D.R.S.* case interpreted "recent in time as to be material and relevant as to the respondent's present condition" in section (2), then the Court should still reverse the denial of J.D.G.'s motion to dismiss.

The State did not meet its burden under *D.R.S.* to overcome J.D.G.'s motion. In *D.R.S.*, this Court held that under Mont. Code Ann. § 53-21-126(2) the State must show that for an act to be sufficiently recent, a respondent's mental condition at the commitment hearing must remain essentially unchanged since committing that act. *D.R.S.*, 221 Mont. at 248. If the State fails to make that showing, then the injury to others is not sufficiently recent, and the State cannot rely on that act to launch involuntary commitment proceedings. *See D.R.S.*, 221 Mont. at 246.

ARGUMENT

Statutes governing involuntary commitment are critically important due to the calamitous effect of commitment, which includes loss of liberty and damage to respondent's reputation, and thus statutes are to be strictly followed. *In re A.K.*, 2006 MT 166, ¶ 11, 332 Mont. 511, 139 P.3d 849.

I. *D.R.S.* is not applicable to interpreting "recently" under Mont. Code Ann. § 53-21-126(1)(b), this Court should interpret "recently" with its plain meaning.

The district court below relied solely on *D.R.S.*, a case from 1986 interpreting an earlier version of Mont. Code Ann. § 53-21-126, to find probable cause for the State's Petition for Commitment. However, the court failed to notice that in 1997 the Montana State Legislature enacted several substantive amendments to Mont. Code Ann. § 53-21-126, making *D.R.S.* inapplicable to J.D.G.'s case. M.C.A. § 53-21-126 (1997). Those amendments, still part of the statute today, added subsections under section (1) that provide different ways the State may show that someone is in need of commitment. M.C.A. § 53-21-126 (2023). The earlier version, discussed in *D.R.S.,* did not contain any of those subsections, and therefore, the Montana Supreme Court did not

analyze Mont. Code Ann. § 53-21-126(1)(b) or what "recently" means in that context. This Court has never taken a case requiring it to analyze what "recently" means under this subsection. The *D.R.S.* case dealt exclusively with Mont. Code Ann. § 53-21-126(2), which explains how the State must show "imminent threat," which was not an issue in J.D.G.'s case. The reasoning in *D.R.S.* is not applicable.

This Court should adopt the plain meaning of "recently" for interpreting Mont. Code Ann. § 53-21-126(1)(b). "The plain meaning of a statute controls when the legislative intent can be determined from the plain meaning of the words used in the statute." *In re G.L.M.S.*, 2025 MT 10, ¶ 9, 420 Mont. 215, 562 P.3d 1058 (quoting *In re U.A.C.*, 2022 MT 230, ¶ 13, 410 Mont. 493, 520 P.3d 295). The statute must be read as a whole and no term should be isolated from the context of the statute. *Matter of N.A.*, 2021 MT 228, ¶ 11, 405 Mont. 277, 495 P.3d 45.

J.D.G. was committed under Mont. Code Ann. § 53-21-126(1)(b) (2023), which reads in pertinent part:

> (1) …In determining whether the respondent requires commitment and the appropriate disposition under 53-21-127, the court shall consider the following:

> (b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others.

Mont. Code Ann. § 53-21-126(1)(b) (2023).

Each subsection under Mont. Code Ann. § 53-21-126(1) provides an alternative way for a court to find that a person requires commitment. Subsection (1)(b) is unique because it deals entirely with past actions. *See* M.C.A. § 53-21-126(1)(b). Every other subsection requires the State to show an ongoing or future harm. *See* M.C.A. §§ 53-21-126(1)(a); 53-21-126(1)(b); 53-21-126(1)(c); 53-21-126(1)(d); & 53-21-126(1)(e). Mont. Code Ann. § 53-21-126(1)(b), however, relieves the State of this burden and allows a petition to move forward on a recent past act alone. Giving the term "recently" its plain ordinary meaning fits with the statute's purpose, and the legislative intent, to get someone the help they need, when they need it.

Merriam-Webster Dictionary defines "recent" as:

a: having lately come into existence: new, fresh; and

b: of or relating to a time not long past.

Recent, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/recent (last visited November 7, 2025).

It also defines "recently" as:

a: during a recent period of time: lately.

Recently, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/recently (last visited November 7, 2025).

Looking at the plain language of the statute, Mont. Code Ann. § 53-21-126(1)(b) requires the State to file its petition for commitment while the act of self-injury or injury to others is recent. That means the injury must be new. It must have occurred lately or of a time not long past. If the State delays filing its petition for commitment, it must pursue commitment under one of the other subsections of the statute.

Mont. Code Ann. § 53-21-121(2)(c) requires the State to include the factual basis for commitment in its petition. If that factual basis cannot form a prima facia case for commitment, the State cannot establish probable cause. Under Mont. Code Ann. § 53-21-122(2)(a), the district court must first consider whether probable cause exists to support the petition. *Matter of R.M.*, 270 Mont. 40, 43, 889 P.2d 1201, 1203 (1995); M.C.A. § 53-21-122(2)(a) (2023). "If the judge finds no probable cause, the petition must be dismissed." M.C.A. § 53-21-122(2)(a).

Here, the State cannot show probable cause because the alleged injury to others was not recent. The State delayed filing the Petition for Commitment for four months, despite having all the information it needed to involuntarily commit J.D.G. the day it arrested him. The State knew when it arrested J.D.G. that he was released from the MSH just two weeks earlier and was likely suffering from a mental disorder at the time. (DC Doc 1). Instead of proceeding with commitment, the State waited months.

Because J.D.G. had a pending criminal case at the time of his commitment, the State may have been using the civil commitment proceedings as a substitute for restoring fitness or competency under the criminal code. The State sometimes pursues civil commitment while a criminal case is pending because it's often less of a wait time than evaluating and restoring their fitness under the criminal code[1]. This does not justify the State's delay. Long wait times to restore a

1 Katheryn Houghton, *In a Broken Mental Health System, a Tiny Jail Cell Becomes an Institution of Last Resort*, KFF Health News, April 29, 2025, https://kffhealthnews.org/news/article/montana-local-jails-mental-health-last-resort-state-hospital-commitment/; Aaron Bolton, *Montana State Officials Seek More Control Over Judicial Involuntary Commitments*, KFF Health News, September 11, 2023, https://kffhealthnews.org/news/article/montana-state-officials-seek-more-control-over-judicial-involuntary-commitments/.

defendant's competency or fitness at the MSH does not justify swapping the criminal statutory scheme of Mont. Code Ann. § 46-14-221–222 for the civil statutory scheme of Mont. Code Ann. §§ 53-21-101–199.

When someone needs commitment after harming themselves or someone else, the State has an obligation to timely intervene and get that person help. A quick response from the State ensures that the person receive the necessary care and treatment in the most skillful and humane way possible with full respect for the person's dignity and personal integrity. M.C.A. § 53-21-101. Timely intervention helps ensure the protection of not only that individual but also the community. Salazar de Pablo G, et al. *Duration of Untreated Psychosis and Outcomes in First-Episode Psychosis: Systematic Review and Meta-analysis of Early Detection and Intervention Strategies*, 50 National Library of Medicine, 771-783, 2024 Jul 27 (https://pubmed.ncbi.nlm.nih.gov/38491933/). Early intervention also helps stabilize the person's mental condition before it gets worse and can prevent long term deterioration. Chistoph U. Corell, MD, *Comparison of Early Intervention Services vs Treatment as Usual for Early-Phase Psychosis*, 75, JAMA Psychiatry, 555-565, June 2018 (https://jamanetwork.com/

journals/jamapsychiatry/fullarticle/2679768. In this way, early intervention can help preserve civil liberties by reducing the likelihood of chronic disabilities, longer stays and repeated admissions at the MSH, and also reduce overall involvement in the criminal justice system.

Additionally, civil commitments have calamitous effects on a person's liberty and cause tremendous damage to their reputation. *Matter of O.L.K.*, 2024 MT 202, ¶ 11, 418 Mont. 90, 555 P.3d 767; *Matter of G.M.*, 2024 MT 49, ¶ 10, 415 Mont. 399, 544 P.3d 893. To safeguard against this, courts must strictly adhere to all procedural and substantive requirements. *G.M.*, ¶ 10. In Montana, the need for treatment alone is not a sufficient legal basis to commence involuntarily commitment proceedings against them. *See* M.C.A. § 53-21-126. Not even the presence of a mental disorder alone is sufficient. *See* M.C.A. § 53-21-126. In every instance, the law requires more. Strict adherence to the procedural and substantive requirements of the law means holding the State to its burden of probable cause. Using the plain definition of "recently" fits with the overall purpose of the civil commitment statutes and ensures courts strictly adhere to Mont. Code Ann. § 53-21-126.

Four months after someone has allegedly harmed another is not recent and does not satisfy the statutory requirement of Mont. Code Ann. § 53-21-126(1)(b). When the State seeks commitment under this subsection, it must work diligently and bring its petition quickly, while the alleged harm is still recent. When the State has delayed, as it has here, it must seek commitment under another section of the statute.

II. If this Court interprets "recently" in Mont. Code Ann. § 53-21-126(1)(b) to have the same meaning as in Mont. Code Ann. § 53-21-126(2), this Court should still reverse.

The district court below oversimplified and misinterpreted the *D.R.S.* case. It saw that this Court upheld an involuntary commitment based on D.R.S.'s two-and-half year old criminal charge and stopped its analysis there. (Initial Appearance Trans., 13:6–14:1). The court then denied J.D.G.'s motion because the allegations in his criminal case were less than two and a half years old. (Initial Appearance Trans., 13:6–14:1) Essentially the district court ruled that any act committed within two and half years, meets the standard for "recently" under *D.R.S.* However, this case is not that simple. If the Court determines that the "recently" language of Mont. Code Ann. § 53-21-126(1)(b) should be interpreted as the *D.R.S.* Court interpreted "recently" in Mont. Code

Ann. § 53-21-126(2), one should take a closer look at how the Court reached its conclusion.

In *D.R.S.*, the respondent was charged with committing a violent offense, armed robbery, on November 5, 1982. *D.R.S.*, 221 Mont. at 246. He tied up a clerk of the Western Warehouse Foods in Great Falls, threatened to shoot him if he didn't provide the combination to the warehouse safe, and left him under a woodpile in the cold. *D.R.S.*, 221 Mont. at 246. There is no mention in the opinion of exactly when D.R.S.'s fitness or competency was first raised or when he was first evaluated, but at some point, D.R.S. moved to suspend the criminal proceedings pursuant to the criminal procedure statute Mont. Code Ann. § 46-14-221. *D.R.S.*, 221 Mont. at 246. D.R.S. argued he lacked fitness to proceed on the charges. *D.R.S.*, 221 Mont. at 246. An evaluation showed that D.R.S. lacked fitness and the district court committed him to the MSH on January 26, 1983, 82 days after being charged. *D.R.S.*, 221 Mont. at 246. The MSH treated D.R.S. for nearly two years until he was declared fit to proceed in the fall of 1984. *D.R.S.*, 221 Mont. at 246.

By January 1985, the State failed to bring D.R.S. to trial, so the district court dismissed the charge, citing the State's delay. *D.R.S.*, 221 Mont. at 247. After dismissing the criminal charge, the court ordered the State to file a petition for an involuntary commitment and for D.R.S. to remain in custody pending the petition. *D.R.S.*, 221 Mont. at 246.

A month and a half later, on February 14, 1985, the court held a hearing on the State's petition. *D.R.S.*, 221 Mont. at 247. At the commitment hearing, D.R.S. argued that the robbery, which at this point was over two and a half years old, was not sufficiently recent as to be material and relevant to his present condition. *D.R.S.*, 221 Mont. at 247. This Court held that the robbery was material and relevant based largely on testimony from Dr. James Deming, a psychologist at the MSH who treated D.R.S. during his commitment there. *D.R.S.*, 221 Mont. at 247. Dr. Deming testified that D.R.S.'s condition remained unchanged from the time the robbery occurred, through treatment, and until the hearing two and half years later. *D.R.S.*, 221 Mont. at 248. He continued to suffer from the same conditions, confusion, neologisms,

specific bizarre ideations, and significant thought disorder. *D.R.S.*, 221 Mont. at 248.

Dr. Demming also testified to several admissions by D.R.S. that showed he would be a danger to the community if the petition were dismissed and D.R.S. released. *D.R.S.*, 221 Mont. at 248. Dr. Demming told the court that D.R.S. expressed an unwillingness to continue treatment or accept community supervision to help manage his disorder. *D.R.S.*, 221 Mont. at 248. He also told Dr. Demming that he intended to continue using alcohol if released, which Dr. Demming testified, even a small amount would render him confused, disoriented, and could result in dangerous behavior. *D.R.S.*, 221 Mont. at 248. Dr. Deming had a long history with D.R.S. and believed he was seriously mentally ill and imminently dangerous to himself and others due to his mental disease of paranoid schizophrenia. *D.R.S.*, 221 Mont. at 248.

This Court, in *D.R.S.*, relied heavily on Dr. Demming's testimony. *D.R.S.*, 221 Mont. at 248. He was familiar with D.R.S.'s treatment and mental health history and very familiar with D.R.S.'s mental condition throughout the case. Dr. Demming worked with D.R.S. at the MSH from around the time of the robbery throughout his commitment.

D.R.S., 221 Mont. at 248. This qualified Dr. Demming to testify to D.R.S.'s mental condition at each crucial stage, allowing him to conclude that D.R.S.'s mental condition remained essentially unchanged. The Court found that this satisfied that recency requirement in Mont. Code Ann. § 53-21-126(2) (1983).

Here, if the Court applies the same standard to the recency requirement in Mont. Code Ann. § 53-21-126(1)(b) (2023), the State still failed to show J.D.G.'s mental condition remained unchanged. The State did not have anyone testify to J.D.G.'s mental condition at the time the alleged harm to others occurred. Nor did it use an evaluator familiar with J.D.G.'s mental disorder at that time. By the time Dr. Day evaluated him months later, it was too late. Dr. Day had never worked with J.D.G. in the past, had no information about his prior mental health condition, and never reviewed his medical or mental health records. Dr. Day also never consulted with any mental health professionals who were familiar with J.D.G.'s mental condition. She could have contacted the MSH to request J.D.G.'s records, or discuss his condition with his treating therapists, but she didn't do either. The gap between the underlying offense and the evaluation, together with Dr.

Day's lack of information regarding J.D.G.'s past, prevented her from assessing whether his condition remained substantially unchanged over those four months.

Even if Dr. Day could have shown that J.D.G.'s mental condition remained unchanged, the State never attempted to make that argument or show it. Neither Dr. Day's report nor her testimony connected J.D.G.'s mental health condition at the time of the alleged offenses to his mental health condition at the initial appearance.

The State should have sought an evaluation by a mental health professional familiar with J.D.G.'s mental health history. It could have used one of the treating mental health professionals from J.D.G.'s first stay at the MSH. Someone who worked with him just two weeks before the alleged violent offense. If that was unfeasible, the State could have had the MSH professional testify in court or at least consult with Dr. Day on her report.

The State never did any of this, and it did not establish that J.D.G.'s mental health condition remained unchanged. Therefore, the State lacked probable cause to support its Petition for Commitment

under *D.R.S.*, and this Court should reverse the district court's decision to deny J.D.G's motion to dismiss.

CONCLUSION

The nearly 40 year old statute this Court interpreted in *D.R.S.* did not contain the subsection used to commit J.D.G. here. This Court has not specifically addressed what "recently" means under Mont. Code Ann. § 53-21-126(1)(b). The Court should apply this statute with the plain meaning of "recently." If the State delays filing its petition, probable cause is not met under subsection (1)(b), but the State is still free to seek commitment under any other subsection.

Alternatively, if the Court determines that the standard in *D.R.S.* used to interpret Mont. Code Ann. § 53-21-126(2), is appropriate for interpreting Mont. Code Ann. § 53-21-126(1)(b), the State still failed to show that J.D.G.'s mental condition remained unchanged, and this Court should reverse the district court's ruling and grant J.D.G.'s motion to dismiss for lack of probable cause.

Respectfully submitted this 10th day of November, 2025.

OFFICE OF STATE PUBLIC DEFENDER
APPELLATE DEFENDER DIVISION
P.O. Box 200147
Helena, MT 59620-0147

By: /s/ Anthony Reed
ANTHONY REED
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook 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 4,495, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Anthony Reed
ANTHONY REED

APPENDIX

CERTIFICATE OF SERVICE

I, Anthony P. Reed, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 11-12-2025:

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

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: State of Montana
Service Method: eService

Electronically signed by Zoe McBride on behalf of Anthony P. Reed
Dated: 11-12-2025