

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 24-0700

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JASON PAUL KELLY,

Defendant and Appellant.

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BRIEF OF APPELLANT

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On Appeal from the Montana First Judicial District Court,  
Lewis and Clark County, Judge Michael F. McMahon, Presiding.

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## TABLE OF CONTENTS

TABLE OF CONTENTS .....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF THE ISSUE.....	5
STATEMENT OF THE CASE .....	5
STATEMENT OF THE FACTS .....	8
STANDARD OF REVIEW.....	8
SUMMARY OF THE ARGUMENT .....	12
ARGUMENT .....	14
I. The District Court's affirmation of the Justice Court's denial of Kelly's Motion to Dismiss for Lack of Speedy Trial should be reversed, due to misapplication of the law and the absence of "good cause" to waive imposition upon the State of the requirements under Mont. Code Ann. § 46-13- 01(2023).....	14
CERTIFICATE OF COMPLIANCE.....	32

## TABLE OF AUTHORITIES

### Cases

<i>City of Great Falls v. Kuntz</i> , 2024 MT 2, 415 Mont. 1, 541 P.3d 766.....	23
<i>City of Helena v. Broadwater</i> , 2014 MT 185, 375 Mont. 450, 329 P.3d 589.....	24, 25
<i>City of Helena v. Grove</i> , 2017 MT 111, 387 Mont. 378, 394 P.3d 89.....	8
<i>City of Helena v. Heppner</i> , 2015 MT 15, 378 Mont. 68, 341 P.3d 640.....	11,12
<i>City of Helena v. Roan</i> , 2010 MT 29, 355 Mont. 172, 226 P.3d 601.....	9,23
<i>State v. Ariegwe</i> , 2007 Mt 204, 338 Mont. 442, 167 P.3d 8415.....	passim.
<i>State v. Belgarde</i> , 244 Mont. 500, 507, 798 P.2d 539, 544 (1990).....	11
<i>State v. Bertolino</i> , 2003 MT 266, 317 Mont. 453, 77 P.3d 543.....	25
<i>State v. Case</i> , 2013 MT 192, 371 Mont. 58, 305 P.3d 812.....	9, 12
<i>State v. Fitzgerald</i> , 1998 MT 105,288 Mont. 436, 958 P.2d 75.....	16
<i>State v. Kaufman</i> , 2002 MT 294, ¶ 12, 313 Mont. 1, 59 P.3d 1166 .....	9

*State v. Luke*,  
2014 MT 22, 373 Mont. 398, 321 P.3d 70.....8, 15

*State v. Pollack*,  
1998 MT 105, 283 Mont.162, 940 P.2d 108.....15

*State v. Ronningen*,  
213 Mont. 358, 691 P.2d 1348,(1984).....11, 23-25

*State ex rel. Long v. Justice Court, Lake County*,  
2007 MT 3, 335 Mont. 219, 156P.3d 5. ....18

*State v. Weaver*,  
2008 MT 86, 342 Mont. 196, 179 P.3d 534.....8

*State v. Wolverine*,  
2024 MT 31, 415 Mont. 201, 543 P.3d 597.... .....23-25

Statutes and Constitutions  
Mont. Code Ann. §46-16-110(3)(2023).....18, 19  
Mont. Code Ann. §46-13-401(1)(2023).....passim  
Mont. Code Ann. §46-13-401(2)(2023).....passim  
Article II, § 24 of Montana's Constitution.....18

**APPENDICES**

- Appendix ‘A’ 10.4.2024, District Court, “Justice Court Appeal Order,”  
BDC-25-2024-273, Doc. 9.
- Appendix ‘B’ 5.8.2024, Justice Court, “Judgment and Order”  
TK -510-2023-2710.
- Appendix ‘C’ 3.22.2024, Justice Court, Transcript of “Hearing on  
Motion to Dismiss.”

Appendix 'D' 3.21.2024, Justice Court, Defendant's "Motion to Dismiss for Lack of Speedy Trial: § 46-13-401(2)"

Appendix 'E' 1.29.2024, Justice Court, Defendant's "Unopposed Motion to Set for Bench Trial and Vacate Jury Confirmation Hearing."

## STATEMENT OF THE ISSUE

Whether the District Court's affirmation of the Justice Court's denial of Kelly's Motion to Dismiss for Lack of Speedy Trial should be reversed on appeal due to misapplication of the law to the facts of the case and the absence of "good cause" required to waive the statutory six-month speedy trial limit imposed on the State.

## STATEMENT OF THE CASE

Kelly was arraigned and pleaded not guilty to one misdemeanor charge in Justice Court on September 1, 2023. (9.1.2023 JC ROA) The six-month deadline for the State to conduct a trial under §46-13-401 (2) was March 1, 2024. (9.1.2023 JC ROA)

At the Omnibus Hearing on October 4, 2023, a Jury Trial was scheduled for February 20, 2024, with a jury confirmation hearing set for January 29, 2024. (10.5.2023 JC ROA)

On January 25, 2024, Kelly filed an Unopposed Motion to set a Bench Trial and Vacate the Jury Confirmation Hearing. (Appx. E at 1)

On February 22, 2024, the Justice Court set the trial for March 22, 2024. (2.22.2024 JC ROA)

On March 21, 2024, Kelly filed a “Motion to Dismiss for Lack of Speedy Trial: §46-13-401 (2)” and a “Brief in Support of Motion to Dismiss for Lack of Speedy Trial: §46-13-401 (2).” (Appx. D. 1-6) Kelly argued there was insufficient evidence of “good cause” for waiving the misdemeanor speedy trial requirements under §46-13-401 (2), MCA, and relevant case law. (Appx. D. 1-6)

The State responded the following day, arguing that Kelly waived his right to a speedy trial under §46-13-401 (2), MCA, because he filed a pretrial motion, which the state characterized as a “continuance” of the jury trial. (3.22.2024, JC Doc.) (Appx. C. 3,12)

A hearing on Kelly’s motion to dismiss was held on the day of trial. (Appx. C. 2-14) Kelly argued under a Statutory Speedy Trial Rights claim. (Appx. C. 2, 9-11) He contended that no “good cause” existed for the Justice Court or the State to delay the trial. Kelly maintained that his motion did not, directly or indirectly, postpone the trial and that the primary issue was the State’s inaction, as it did not diligently prosecute the case. (Appx. C. 3, 9-11) The State argued that unfair surprise, the late filing of the motion, its current readiness for

trial, and judicial economy were reasons to oppose the motion. The State pointed out that Kelly's Motion to set a bench trial as "good cause" to continue with the trial and deny Kelly's motion. (3.22.2024, JC; Appx C at 8-11)

The Justice Court denied Kelly's motion, ruling that the misdemeanor speedy trial statute, MCA §46-13-401 (2), did not apply to Kelly's misdemeanor case. (Appx C at 11, 12, 13, 14) The Justice Court applied parts of the balancing test for felony cases under *State v. Ariegwe* related to prejudice. (Appx. C. at 13, 14.) Kelly appealed the Justice Court decision to the District Court. (5.9.2024 JC ROA)

The District Court upheld the Justice Court's decision as "correct when it held that § 46-13-401 (2), MCA, did not apply to Kelly's case." (Appx. A. at 6) Therefore, Kelly was "not entitled to have his misdemeanor charge dismissed." (Appx. A. at 7) The District Court identified Kelly's motion as extending his trial, and that § 46-13-401 (2), MCA, did not apply to Kelly's case because "good cause" for the trial delay beyond 180 days was established by the "totality of the

circumstances.” (Appx. A. at 5) The District Court concluded that Kelly did not claim a constitutional Speedy Trial violation. (Appx. A. at 5)

Kelly timely filed an appeal to the Montana Supreme Court. (DC Doc. 12)

### STATEMENT OF THE FACTS

Kelly was arraigned and pleaded not guilty to one misdemeanor charge in Lewis and Clark County Justice Court on September 1, 2023. (9.1.2023 JC ROA) The six-month deadline date for the State to conduct a trial under §46-13-401 (2) was March 1, 2024. (9.1.2023 JC ROA) At the Omnibus Hearing on October 4, 2023, a Jury Trial was set for February 20, 2024, with a jury confirmation hearing scheduled for January 29, 2024. (10.5.2023 JC ROA)

On January 25, 2024, Kelly chose a Judge Trial and, with the State's approval, waived his right to a Jury Trial and filed an unopposed “Motion to set for Bench Trial and Vacate Jury Confirmation Hearing.” (Appx. E at 1) Kelly showed respect for the Court’s schedule by using the phrase, “at the earliest convenience of the court.” (Appx. E

at 1) He did not request a continuance, object to the current trial date, or propose a specific date for trial. (Appx. E at 1)

The State did not “take affirmative steps to inform the judge about the speedy trial deadline.” (Appx. A. at 6) The State neither requested a date within that time frame nor obtained a written waiver of speedy trial from Kelly. As a result, the unwarned Justice Court scheduled the trial for March 22, 2024, but did not file its order setting the bench trial until February 22, 2024, two days after the original jury trial date. This setting appeared to remain on the Justice Court calendar without a new setting until it was discovered on February 20, 2024. (20.20.2024 JC ROA; 20.22.2024, JC ROA)

On March 21, 2024, the day before the bench trial was scheduled to begin, Kelly filed a “Motion to Dismiss for Lack of Speedy Trial: §46-13-401 (2),” and a “Brief in Support of Motion to Dismiss for Lack of Speedy Trial: §46-13-401 (2).” (Appx. D. 1-6) The title of Kelly’s motion highlighted his reliance on misdemeanor statutory speedy trial rights under §46-13-401 (2), MCA, and related caselaw. (Appx. D. 1-6)

A hearing on the motion to dismiss was held just before the trial started. (Appx. C. 2-14) Kelly argued that his motion did not directly or indirectly delay his trial date. (Appx. C. 3, 9-11) He challenged whether the State's action was enough to prosecute the case without unreasonable delays. He contended that the State had not shown evidence of "good cause" to justify delaying Kelly's trial beyond the March 1, 2024, speedy trial deadline, as set by §46-13-401 (2), MCA. (Appx. C. 3, 9-11) Therefore, Kelly's case should be dismissed under the statute. (Appx. C. 3, 9-11)

The State responded the following day, arguing that it was unfairly caught off guard by the motion and that both the Justice Court and the State were inconvenienced. (3.22.2024, JC; Appx C at 8-11) The State's position was that Kelly waived his right to a speedy trial under §46-13-401 (2), MCA, because he filed a pre-trial motion, which the state repeatedly described as a "continuance" of the trial. (3.22.2024, JC; Appx C at 8-11) The District Court, Justice Court, and the State criticized Kelly and openly vilified him on the record for defending his speedy-trial rights. (Appx. A. at 3, 6, 8.)

Kelly was charged with one misdemeanor. The State prosecuted the misdemeanor in Justice Court, which handles only misdemeanor offenses. (9.1.2023 JC ROA) However, the Justice Court ruled that the misdemeanor speedy trial statute, MCA §46-13-401 (2), did not apply to Kelly's case. (Appx. C. at 12, 13, 14.) The Justice Court determined that Kelly was not prejudiced by the trial delay, applying the 'prejudice to the defendant' prong of the balancing test for felony cases under *State v. Ariegwe*, ruling that 200 days was a more reasonable time frame to allow for delay rather than the 180 days outlined in the statute, and denied Kelly's motion. (Appx. C. at 13, 13,14.)

Kelly appealed the decision to the District Court. (5.9.2024 JC ROA) The District Court found that sufficient "good cause" existed to justify exempting the State and the Justice Court from applying MCA §46-13-401 (2). (Appx. A. at 7)

The District Court determined that the "Justice Court was correct when it held that § 46-13-401 (2) did not apply to Kelly's case," therefore, he was not eligible to have his misdemeanor charge dismissed under § 46-13-401 (2). (Appx. A. at 7)

Kelly timely appealed both decisions to the Montana Supreme Court.

(DC Doc. 12)

## STANDARD OF REVIEW

This Court reviews district court appellate decisions using the same standards of review as if the case had been appealed initially here. *City of Helena v. Grove*, 2017 MT 111, ¶4, 387 Mont. 378, 394 P.3d 189 (citations omitted).

Whether a criminal defendant's statutory right to a speedy trial Whether a violation occurred under § 46-13-401(2), MCA, is a question of law that this Court reviews de novo. *State v. Luke*, 2014 MT 22, ¶10, 373 Mont. 398, 321 P.3d 70 (citation omitted). The application of legal standards to a trial court's factual findings involves mixed questions of law and fact, which are reviewed de novo. *State v. Weaver*, 2008 MT 86, ¶10, 342 Mont. 196, 179 P.3d 534 (citation omitted).

A trial court is better equipped to understand the background and evidence of a case; therefore, its factual findings will not be overturned unless the court commits clear error. *State v. Kaufman*, 2002 MT 294, ¶12, 313 Mont. 1, 59 P.3d 1166 (citation omitted).

“A factual finding is clearly erroneous if it is not supported by substantial evidence, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves this Court with the definite and firm conviction that a mistake has been made.” *City of Helena v. Roan*, 2010 MT 29, ¶ 7, 355 Mont. 172, 226 P.3d 601 (citation omitted).

In felony cases, the Supreme Court applies a four-part balancing test to decide whether a defendant's constitutional right to a speedy trial has been violated. However, the Supreme Court does not use this balancing test for misdemeanors because Montana's statutory protections for misdemeanors are more strict than the constitutional analysis conducted by the Court. *State v. Case*, 305 P.3d 812, 371 Mont. 58 (2013).

Whether a misdemeanor charge must be dismissed under the speedy-trial statute involves interpreting and applying the statute, which is a legal question reviewed for correctness. *State v. Case*, 305 P.3d 812, 371 Mont. 58 (2013).

## SUMMARY OF THE ARGUMENT

The District and Justice Courts misapplied legal authority regarding Kelly's misdemeanor speedy trial right by relying on the balancing test for felony offenses under *Ariegwe*, rather than Mont. Code Ann. §46-13-401 (2). (Appx. C. at 12-14), (Appx. A. at 6-7).

The District and Justice Courts erred in determining that Kelly had waived his misdemeanor speedy trial right when he filed a motion to waive his jury trial right, vacate a pretrial jury confirmation hearing, and set a bench trial at the court's "earliest convenience." (Appx. C. at 12-14), (Appx. A. at 6-7).

The District Court erred in determining that "good cause" existed to excuse the Justice Court and the State from imposition of the misdemeanor speedy trial rights statutory requirements under §46-13-401 (2). (Appx. A. at 6-7)

## ARGUMENT

I. The District Court's affirmation of the Justice Court's denial of Kelly's Motion to Dismiss for Lack of Speedy Trial should be reversed due to the misapplication of the law and the absence of "good cause" to waive the requirements imposed on the State under Mont. Code Ann. § 46-13-401(2023).

The District and Justice Courts misapplied legal authority regarding misdemeanor speedy trial rights by relying on select aspects of the balancing test for felony offenses under *Ariegwe*. They should have considered the speedy trial rights under Mont. Code Ann. §46-13-401 (2), which applies solely to misdemeanor cases. *City of Helena v. Heppner*, 2015 MT 15, 378 Mont. 68, 341 P.3d 640.

The Supreme Court does not apply the *Ariegwe* balancing test to misdemeanors because Montana's statutory speedy-trial protections for misdemeanors are "more strict than [our] constitutional analysis." *State v. Ronningen*, 213 Mont. 358, 362, 691 P.2d 1348, 1350 (1984); see also *State v. Belgarde*, 244 Mont. 500, 507, 798 P.2d 539, 544 (1990).

The Legislature has specified that: After a defendant enters a plea to a misdemeanor charge, the court, unless there is a good reason to the contrary, shall dismiss the prosecution with prejudice if the defendant's trial, not postponed upon the defendant's motion, is not held within six months.

Suppose the basis of the motion is solely a constitutional claim. In that case, the Supreme Court applies a four-part balancing test to

determine whether a defendant's constitutional right to a speedy trial has been violated. See *Ariegwe*, ¶ 113. The Supreme Court has previously held that while “*Ariegwe* has no application in a statutory speedy-trial claim,” a defendant is not prevented from pursuing both his statutory right to a speedy trial and his constitutional right to a speedy trial in the same case. *City of Helena v. Heppner*, 2015 MT 15, ¶¶ 13, 18, 378 Mont. 68, 341 P.3d 640. A statute cannot override a constitutional provision, so a defendant can seek constitutional protections for a speedy trial if his claims under statutory protections fail or are otherwise unavailable. *Heppner*, ¶ 18

***A. The Justice Court Hearing on Motion to Dismiss.***

Here, Kelly filed his Motion to Dismiss based explicitly on a statutory speedy trial claim. (Appx. D. 1-6) On March 21, 2024, the day before the bench trial was scheduled to begin, Kelly submitted a “Motion to Dismiss for Lack of Speedy Trial: §46-13-401 (2)” and a “Brief in Support of Motion to Dismiss for Lack of Speedy Trial: §46-13-401 (2).” (Appx. D. 1-6) The headings in Kelly’s motion highlighted his

reliance on misdemeanor statutory speedy trial rights under §46-13-401 (2), MCA, and related case law. (Appx. D. 1-6)

Kelly referenced Ariegwe in a constitutional discussion about the prejudice of delay but supported it with statutory speedy-trial cases. (Appx. D. 5) It seems Kelly included the constitutional claim in his brief and mentioned it during the hearing. However, even a quick review of the hearing transcript and Kelly's brief shows that his main argument for dismissal was based on the provisions of §46-13-401 (2) and related case law. (Appx. D. 1-6)

In the motion, Kelly prepared a detailed, nearly comprehensive, catalog of case law, outlining, point by point, the legal precedent supporting his claim of Statutory Speedy Trial Rights under Mont. Code Ann. §46-13-401 (2). (Appx. D. 1-6) During the hearing, the Justice Court did not acknowledge Kelly's claim of Statutory Speedy Trial Rights under §46-13-401 (2), MCA, nor the relevant caselaw he included in his brief or presented during his oral argument. (Appx. C. at 2-14) Once the court saw references to Ariegwe, it instantly shifted to the constitutional claim, ignoring all other aspects. (Appx. C. at 11-12)

After determining that Kelly's statutory speedy trial claim was a constitutional claim, the Justice Court partially applied the legal framework for constitutional and felony speedy trial claims according to the balancing test outlined in *Ariegwe*, but omitted applying the facts to three of the four required prongs. (Appx. C. at 11-14)

The Justice Court denied Kelly's motion, focusing on the "prejudice to the defendant" prong, finding that a delay beyond 180 days did not prejudice Kelly. (Appx. C. at 13-14) The court ruled that a more reasonable time frame for the State to delay a misdemeanor trial before dismissal should be 200 days. (Appx. C. at 12.)

At the start of the trial that morning, 204 days had passed since Kelly was arraigned on the misdemeanor charge in this case. (Appx A at 2)

***B. The District Court's "Justice Court Appeal Order."***

On appeal, the District Court concluded that the "Justice Court was correct when it held that § 46-13-401(2) did not apply to Kelly's case," thus he was not entitled to have his misdemeanor charge dismissed. (Appx A at 4)

The basis of the District Court's ruling was that aspects of Kelly's motion had an incidental effect of delaying the trial, and that the "totality of the circumstances" provided sufficient evidence of "good cause" to waive imposition on the Justice Court and the requirements of §46-13-401 (2). (Appx. A.. at 5-7)

*1. Postponement allegedly attributable to Kelly's Motion.*

A defendant's motion has an incidental effect when it imposes a demonstrable burden on the court in scheduling a subsequent trial within six months. *State v Pollack*, 1998 MT 105, at 12-13, 288 Mont. 436, 958 P.2d 75.

In *State v. Luke*, the defendant did not appear for a pretrial conference, and rescheduling the trial promptly waived the six-month deadline. *State v. Luke*, 2014 MT 22, 373 Mont. 398, 321 P.3d 70

Any pretrial motion for continuance filed by a defendant that incidentally causes a delay beyond the six-month time limit can be considered to 'postpone trial.' "*State v. Fitzgerald*, 283 Mont. 162, 166–67, 940 P.2d 108, 111 (1997). In *State v. Fitzgerald*, the trial was

delayed past the six-month limit because the court accommodated Fitzgerald by continuing his omnibus hearing on two occasions.

The District Court said Kelly’s motion to waive his jury trial rights, vacate a jury confirmation hearing, and proceed to a bench trial had the “incidental effect” of delaying his trial.<sup>1</sup> (Appx. A.. at 5) that Kelly did not seek to “convert” the jury trial into a bench trial.<sup>2</sup> (Appx. A.. at 5) , and that Kelly’s motion requested “that his February 20, 2024, jury trial be vacated,<sup>3</sup>” which postponed the trial “at his request.<sup>4</sup>” (Appx. A.. at 5)

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<sup>1</sup> Compare: As described here and numerous other references to the facts, the District Court, Justice Court, and the State have merged a “jury confirmation *hearing date*” with a *jury trial date*.” (3.22.2024, JC Doc) (Appx. A at 2, 6,7) (Appx. C at 3,9,11,12) Kelly did not request to vacate a *trial date*; rather, he requested to vacate a *hearing date*. (Appx. E. at 1-6)

<sup>2</sup> The concomitant conversion of a defendant’s waiver of jury trial is a trial without a jury, which would “convert” as in, change form, by default to a judge trial.

<sup>3</sup> Compare: The Justice Court stated in open court that, had the motion to dismiss been filed earlier, there would have been availability on the calendar to set the trial *before* the March 1<sup>st</sup> deadline. (Appx. C. at 12)

<sup>4</sup> Compare: Kelly did not request that the *trial date* be vacated.(Appx. E at 1) The exact wording is “vacate the jury confirmation *hearing*” (Appx. E at 1)

However, none of these requests impacted the Justice Court's ability to schedule a bench trial before the speedy trial deadline, or the State's ability to prosecute this case diligently before the deadline. Appx. C. at 12.), (Appx. A. at 7)

Contrary to the District Court, the Justice Court, and the State's characterization of Kelly's Motion, he did not request to vacate or postpone the trial date, nor did he specify a new date or object to any scheduled trial date, including the one already set. (Appx. E at 1), (Appx. C. at 3,8, 9-11, 12), (Appx. A. at 2,6,7), (3.22.2024, JC ROA). His motion requested three things: that the court approve his request to waive his right to a jury trial, thereby converting the trial to a bench trial; that the pretrial jury confirmation hearing be removed from the court's calendar entirely, as it was no longer necessary; and that the JC schedule the bench trial in consideration of the court's calendar, if not on the same day already scheduled.

Here, the District Court, the Justice Court, and the State repeatedly misunderstood the facts, mistakenly ruling that Kelly had waived his misdemeanor speedy trial rights by filing a pretrial motion

that changed the type of trial, not the trial date, twenty-six days before the current trial setting and thirty-six days before the speedy trial deadline, which is a long time in a lower court. (Appx. E at 1), (Appx. C. at 3,8, 9-11, 12) (Appx. A. at 2,6,7) (3.22.2024, JC ROA)

A waiver of a jury trial, which changes the trial from a jury trial to a bench trial, must be executed under Mont. Code Ann. § 46-16-110 (3). Such a waiver is not an action the defendant can take alone, as it is legally required that all parties, including the State, agree to a bench trial. Article II, Section 26, of the Montana Constitution (1972), Mont. Code Ann. § 46-16-110 (3), and *State ex rel. Long v. Justice Court, Lake County*, 2007 MT 3, 335 Mont. 219, 156 P.3d 5.

Speedy trial rights attach to all criminal prosecutions, including jailable and non-jailable offenses, jury or bench trials. Whether a bench or a jury trial, the defendant's misdemeanor speedy trial rights still apply, intact, upon waiver, as the language of § 46-16-110 (3), MCA, does not direct any action regarding the defendant's speedy trial rights upon conversion. Mont. Code Ann. § 46-16-110 (3) (2023). As no statutory directive exists that either type of trial after waiver must be

set at a particular time and date, the task of calendaring court events and trial management remains within the sole purview of the presiding court, usually in the best position to assess the time and energy required for each proceeding, given the volume of its pending cases.

Here, the Justice Court trial management order, issued at arraignment, did not specify default alternative dates for the type of trial to be conducted. (9.1.2023 JC ROA) Therefore, in Justice Court, there were no regular, preset weekly or monthly bench trial date slots designated on the court's calendar to manage its fluctuating workload, especially when a jury trial is converted to a bench trial. (Appx. C at 12).

In this case, no alternative default bench trial dates were set in a trial management system between January 25, 2024, and March 1, 2024. (Appx. C. at 12.) Thus, by the Justice Court's own admission, administrative "saves" were not implemented by the court, increasing its reliance on the State to respect the speedy trial rights of those it sought to prosecute. (Appx. C. at 12.)

Suppose such a system had been in place. In that case, Kelly's motion might have activated a default setting that postponed the trial date beyond the speedy trial deadline due to motions imposing court-ordered limits on trial scheduling, potentially causing an unintentional delay in his trial. (Appx. C. at 12.) Since no such mechanism existed in this court, any postponement was solely the responsibility of the Justice Court and the State, not an unintended side effect imposed by Kelly. (Appx. C. at 12,13.)

Without a default trial date when waiving a jury trial, Kelly couldn't know whether the Justice court, which had the authority to be flexible with scheduling, had decided if the same day set for a jury trial was suitable for a bench trial or not. (Appx. C. at 12.) If it were, then the trial date would have stayed the same. If not, it would have been rescheduled. (Appx. C. at 12.)

Notably, the State, as a regular attendee in a misdemeanor jurisdiction, should be keenly aware that converting a jury trial to a bench trial does not waive the requirements of Mont. Code Ann. §46-13-401 (2) and would not, in itself, create an "incidental effect" delaying the

trial. Even the District Court on Appeal acknowledged that, “[t]he State was in error for failing to notify the Justice Court of the speedy trial deadline,” but then stated that failure was excused because Kelly’s Motion had the “incidental effect” of postponing trial.

Finally, Kelly did not sign a waiver of speedy trial or state such in open court at any point before the delayed trial. Therefore, the court neither approved a waiver of speedy trial nor informed Kelly on the record that he was at risk of waiving his speedy trial rights, either verbally or in writing, as required to ensure the defendant understands the implications of waiving those rights in a misdemeanor case.

To suggest that Kelly’s waiver of jury trial or recognition of the court’s plenary power concerning its calendar, with the words “court’s earliest convenience,” diverted the court’s command of its own calendar is nonsense.

## *2. Good Cause: Totality of the Circumstances*

The District Court determined, under a “totality of the circumstances” analysis, that “good cause” existed to excuse the Justice Court and the State for the delay in Kelly’s trial past the statutory six-

month speedy trial deadline. (Appx. A. at 7) The Justice Court’s busy misdemeanor docket. (Appx. A. at 7) The Justice Court’s “good faith, diligent effort to bring Kelly to trial.”<sup>5</sup> (Appx. A. at 7) and that there was nothing in the record that “the Justice Court could have set Kelly’s requested 'earliest convenience' bench trial before the six-month deadline expired.”<sup>6</sup> (Appx. A. at 7)

“Good cause” is present when there is a legally sufficient reason for the delay, given the totality of the facts and circumstances of a particular case. *Wolverine*, ¶ 17 (citing *City of Helena v. Roan*, 2010 MT 29, ¶¶ 13-14, 355 Mont. 172, 226 P.3d 601). The State’s acquiescence to default court scheduling practices is insufficient to show "good cause."

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<sup>5</sup> Compare: (Appx. C. at 12, a frustrated Justice Court admits it could have set the trial before the speedy trial deadline if it had known earlier.)

See also, Justice Court Report of Action Listing for TK 515-2023-0002710. The codes “HEARSET” and “HEARNOT” indicate the Justice Court’s scheduling methods specifically for the dates 9/1/2023, 10/5/2023, 1/29/2024, 2/20/2024, 2/22/2024, and 4/16/2024.) Shows the Bench Trial was set upon the discovery of the Jury Trial setting that had not been removed. Thus, the late filing, due to administrative disorganization.

<sup>6</sup> Compare: ( Appx. C. at 12, a frustrated Justice Court admits it could have set the trial before the speedy trial deadline if it had known earlier.)

*State v. Ronningen*, 213 Mont. 358, 362, 691 P.2d 1348, 1350-51 (1984).

When the State knows a six-month deadline is set to expire under § 46-13-401(2) and the State does not notify the Court of the upcoming six-month deadline, or recommend an alternative course of action, the State has not met its burden, and there is no good cause. *Wolverine*, ¶19; see also *City of Great Falls v. Kuntz*, 2024 MT 2, ¶20, 415 Mont. 1, 541 P.3d 766.”

It is the State's burden to show that it was diligent to have a finding of good cause to excuse the delay. *Id.* At a minimum, the State must notify the Court of a forthcoming speedy-trial deadline. *Id.* The State did not notify the Justice Court. (Appx. A. at 7)

In *Wolverine*, the Montana Supreme Court determined there was no good cause for the delay because prosecutors notified the trial court of the speedy trial deadline three times, which proved good cause for delay. *State v. Wolverine*, 2024 MT 31, 415 Mont. 201, 543 P.3d 597.

The State acquiesced to the Court's trial scheduling without regard to Kelly's speedy trial deadline (Appx. A. at 7). This would be insufficient to constitute good cause under *Ronningen*.

Even if the Court's docket is crowded, the Montana Supreme Court has indicated that it does not excuse the six-month requirement under § 46-13-401(2) unless the State can show good cause for delay. *City of Helena v. Broadwater*, 2014 MT 185, ¶19, 375 Mont. 450, 329 P.3d 589. The *Broadwater* holding instructed how the State could establish good cause for institutional delays. Specifically, the State can show “by affidavit or otherwise that it attempted to reschedule the trial promptly within the days remaining before the speedy trial calendar expired, but the docket made this an impossibility.” *Id.*

The State may not “simply wait for a speedy trial violation to occur because it assumes nothing can be done to prevent it.” *Wolverine*, ¶ 23. A crowded court docket alone is insufficient to establish "good cause" for delay. *Broadwater*, ¶19. Any rule to the contrary usurps the effect of § 46-13-401(2). *Id.*

Institutional delays stemming from court administration do not excuse the mandate of § 46-13-401(2), MCA. *State v. Bertolino*, 2003 MT 266, ¶15, 317 Mont. 453, 77 P.3d 543 (defendant's non-compliance with court orders does not excuse the six-month deadline imposed under

§46-13-401(2)); *Ronningen*, 213 Mont. at 362, 691 P.2d at 1350-51 (presiding judge's retirement mid-prosecution did not excuse prosecution after expiration of six-month period).

The State substantiates a showing of “good cause” with expressions of surprise and incredulity that indicate the level of disengagement the State had with this case. (Appx C at 8-11.) “Good Cause” is presented as an open vilification of Kelly, and by shifting the burden to him as though he was supposed to monitor his speedy trial right deadline, not the State. (Appx. C. at 11, 12) (Appx. A. at 3, 6, 8) (3.22.2024, JC ROA)

The State, Justice Court, and District Court all openly vilified Kelly for fairly defending his right to a speedy trial and unfairly and unjustly blamed him for the delay. (Appx. C. at 11, 12) (Appx. A. at 3, 6, 8) (3.22.2024, JC ROA)

Here, the record shows no action by the State, leaving a disorganized and frustrated Justice Court to schedule Kelly's Bench Trial without considering his right to a speedy trial. As a team, the State and the Justice Court directly caused the delay of Kelly's trial,

lacking sufficient good cause to waive the requirements of §46-13-401 (2). See Justice Court Report of Action Listing for TK 515-2023-0002710. The codes “HEARSET” and “HEARNOT” indicate the Justice Court’s scheduling methods specifically for the dates 9/1/2023, 10/5/2023, 1/29/2024, 2/20/2024, 2/22/2024, and 4/16/2024. The District Court in this case confirmed that the State was in error for failing to notify the court. (Appx A. at 7.)

### CONCLUSION

The Justice Court erred in concluding that § 46-13-401(2) was inapplicable to Kelly's case. Because it is a misdemeanor, § 46-13-401(2) applies to Kelly's case. Additionally, the Justice Court misjudged the reasonableness of setting a trial date 204 days from arraignment and whether this satisfied the good cause requirement to waive the six-month deadline under § 46-13-401(2), MCA.

Kelly was not responsible for the delay in his trial; the Justice Court failed to find good cause to justify the delay. The record from the Justice Court lacks any finding regarding that legal conclusion. § 46-13-401(2) applies to Kelly's case.

Kelly did not cause any delay, neither directly nor indirectly, through his motion or any other action involving the Justice Court, and there is no sufficient reason to waive the imposition of §46-13-401(2).

Dismissal with prejudice is the correct remedy in Kelly's case pursuant to § 46-13-401(2). Kelly respectfully requests that this Court reverse the Justice Court's denial of Kelly's Motion to Dismiss for a violation of statutory speedy trial under § 46-13-401(2) and remand to the Justice Court with instructions to dismiss with prejudice.

Respectfully submitted this 24th day of November 2025.

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By:            /s/ Darcy Critchfield  
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## CERTIFICATE OF COMPLIANCE

Under 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, and is double-spaced except for footnotes and quoted and indented material, and the word count is calculated by Microsoft Word for Windows, is 4,850 excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

*/s/Darcy Critchfield*  
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## CERTIFICATE OF SERVICE

I, Darcy Ann Critchfield, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 11-24-2025:

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