

William M. Windsor  
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Defendant, Pro Se

FILED MAY 14 2015  
CLERK OF DISTRICT COURT  
MISSOULA, MONTANA

**MONTANA FOURTH JUDICIAL DISTRICT COURT  
MISSOULA COUNTY**

State of Montana,  
Plaintiff,  
v.  
William Michael Windsor,  
Defendant.

§ Dept. No. 3  
§ Cause No. DC-14-509  
§ MOTION TO DISMISS  
§ FOR VIOLATION OF  
§ ~~MCA 46-13-401~~

**RIGHT TO SPEEDY TRIAL**

COMES NOW William M. Windsor, Defendant, and files this “Motion to Dismiss for Violation of the Right to a Speedy Trial,” and shows the Court as follows:

**INTRODUCTION**

1. William M. Windsor was arraigned in Ellis County Texas on October 29, 2014 on two felonies and three misdemeanors (actually five misdemeanors as William M. Windsor has never been convicted of any crime and felonies may be charged only following prior convictions).
2. These were charged in an Information filed in the Fourth Judicial District Court in Missoula County Montana on October 3, 2014.
3. May 14, 2015 is the 198th day since William M. Windsor was arraigned and pled not guilty.
4. MCA 46-13-401 provides that this Court should order the prosecution to be dismissed, with prejudice, as William M. Windsor has not been brought to

trial within six months, and the trial was never postponed upon the Defendant's motion.

### **FACTUAL BACKGROUND**

5. On October 3, 2014, William M. Windsor was charged with five counts of violation of an alleged protective order. DC-14-509 Docket #3 is the Information.

6. On October 28, 2014, William M. Windsor was taken into custody in Ellis County Texas on a Bench Warrant. DC-14-509 Docket #5 is the Bench Warrant.

7. On October 29, 2014, William M. Windsor was arraigned on the charges, and he pled not guilty. Exhibit 1 hereto is a true and correct copy of the document signed at the Arraignment. Bond had been set at \$100,000 on the five charges. DC-14-509 Docket #5.

8. Bond was again set at \$100,000 at the October 29, 2014 Arraignment. Missoula County Montana Judge John W. Larson denied the bond that William M. Windsor obtained from an Ellis County Texas bail bond company and from Brad at Your Bondsman in Missoula Montana.

9. On May 4, 2015, the Criminal Jury Trial Preparation Order was issued in DC-14-509. (DC-14-509 Docket #40 is this Order.) It sets the trial for June 22-24, 2015.

10. June 22, 2015 will be 237 days from the date of William M. Windsor's arraignment.

11. On May 9, 2015, William M. Windsor was released from the Missoula County Detention Center on bond.

12. William M. Windsor had been incarcerated for 134 days.

## ARGUMENT

**MCA 46-15-401 PROVIDES THAT THIS COURT SHOULD ORDER THE PROSECUTION TO BE DISMISSED, WITH PREJUDICE, AS WILLIAM M. WINDSOR HAS NOT BEEN BROUGHT TO TRIAL WITHIN 6 MONTHS, AND THE TRIAL WAS NEVER POSTPONED UPON THE DEFENDANT'S MOTION.**

13. MCA 46-15-401 provides that the misdemeanor charges must be dismissed. This is the law:

**MCA 46-15-401. Dismissal at instance of court or prosecution.** (1) The court may, either on its own motion or upon the application of the prosecuting attorney and in furtherance of justice, order a complaint, information, or indictment to be dismissed. However, the court may not order a dismissal of a complaint, information, or indictment, or a count contained in a complaint, information, or indictment, charging a felony, unless good cause for dismissal is shown and the reasons for the dismissal are set forth in an order entered upon the minutes. (2) **After the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant's motion is not brought to trial within 6 months.** [emphasis added.]

14. William M. Windsor's right to a speedy trial is also guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article II, section 24 of the Montana Constitution.

In *State v. Ariegwe*, 167 P.3d 815 (Mont. 2007), the Montana Supreme Court held that the defendant's right to a speedy trial, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article II, section 24 of the Montana Constitution, was not violated in spite of a 408-day interval between accusation and trial. (*Ariegwe*, 167 P.3d at 858-59.) The court revised its pre-*Ariegwe* analysis of speedy trial claims in order to realign itself with the United States Supreme Court's balancing approach for federal speedy trial claims.<sup>6</sup> Although the court's new analysis

applied a four-factor balancing test based upon the United States Supreme Court's general approach for analyzing speedy trial claims, its version was grounded in the Montana Constitution, which provides a right to a speedy trial that is independent of the Federal Constitution. *Id.* —Because the [F]ederal [C]onstitution establishes the floor and not the apex of constitutional rights, state action may violate our Montana Constitution, but not violate any [F]ederal [C]onstitutional guarantee.' *Id.* at 830 (quoting *Buckman v. Mont. Deaconess Hosp.*, 730 P.2d 380, 384 (Mont. 1986)). The court determined that the defendant was not deprived of his right to a speedy trial because he did not suffer prejudice due to the delay, which outweighed the other factors of the balancing test. *Ariegwe*, 167 P.3d at 859.

A criminal defendant's right to a speedy trial is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article II, Section 24 of the Montana Constitution. *Ariegwe*, ¶ 20. In felony cases, we apply a four-part balancing test to determine whether a defendant's constitutional right to a speedy trial has been violated. *See Ariegwe*, ¶ 113. We do not apply this balancing test to misdemeanors, however, because Montana's statutory speedy-trial protections regarding misdemeanors are "more strict than [our] constitutional analysis[.]" *State v. Ronnigen*, 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 directed that: After the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant's motion is not brought to trial within 6 months. Section 46-13-401(2), MCA.

15. William M. Windsor's charges are misdemeanors, though three of the five are being listed on paper as "felonies." (See "Motion to Declare All Charges are Misdemeanors," filed contemporaneously herewith. This Motion is referenced and incorporated herein as if attached hereto.)

16. William M. Windsor is charged with violation of MCA 45-5-626:

**MCA 45-5-626 (3)** An offender convicted of violation of an order of protection shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense. **Upon conviction** for a second offense, an offender shall be fined not less than

\$200 and not more than \$500 and be imprisoned in the county jail not less than 24 hours and not more than 6 months. **Upon conviction** for a third or subsequent offense, an offender shall be fined not less than \$500 and not more than \$2,000 and be imprisoned in the county jail or state prison for a term not less than 10 days and not more than 2 years.

17. In Montana, the first two **convictions** for violation of a protective order are misdemeanors. After that, they are felonies. William M. Windsor has not been convicted of anything, so all five charges must be treated as misdemeanors. One or more of the charges could be changed to a felony only if he is first found guilty of two misdemeanors.

18. The protective order statute, MCA Title 40 Chapter 15, was created to stop a pattern of conduct. Increased penalties for “subsequent offenses” were developed to provide a deterrent to continued illegal conduct. Charging five violations at one time is not what the legislature intended, and it violates William M. Windsor’s rights against double jeopardy.

19. William M. Windsor has a right to a speedy trial guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution, as well as article II, section 24 of the Montana Constitution. That right has been violated.

20. The Sixth Amendment to the U.S. Constitution provides in part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . . U.S. CONSTITUTION Amendment VI.”

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law. U.S. CONST. amend. XIV, § 1; ... [T]he right to a speedy trial is fundamental and is imposed by the Due Process Clause of the Fourteenth Amendment on the States. *Barker v. Wingo*, 407 U.S. 514, 515 (1972) (quoting *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967)).

In all criminal prosecutions the accused shall have the right to . . . a speedy public trial . . . *MONTANA CONSTITUTION* Article II, § 24. *See also State v. Steward*, 543 P.2d 178, 180 (Mont. 1975) (explaining that the current speedy trial guarantee emanates from article II, section 24 of the 1972 Montana Constitution, and the previous Montana Constitution, adopted in 1889, contained the identical language guaranteeing a speedy trial in article III, section 16, of that constitution).

21. William M. Windsor has a valid claim under § 46-13-401, MCA, because the trial was never postponed upon his own motion. *See State v. Ronningen*, 213 Mont. 358, 362, 691 P.2d 1348, 1350 (1984) (“If the defendant requests the postponement the six-month trial deadline does not apply.”).

The right to a speedy trial is guaranteed to an accused . . . . [T]he protection afforded by the guarantee is activated when a criminal prosecution has begun and extends to those persons who have been formally accused or charged in the course of that prosecution *whether that accusation be by arrest, the filing of a complaint, or by indictment or information. Id.* (quoting *State v. Larson*, 623 P.2d 954, 957-58 (Mont. 1981)) (emphasis added). Therefore, the speedy trial clock for an accused begins to run at the earliest of the enumerated occurrences. *Id.*

22. William M. Windsor’s liberty was severely impaired for 134 Days. His life was completely ripped apart. He cannot afford an attorney and has found that public defenders are unable or unwilling to help, so he represents himself. He was denied use of a law library or any of the tools and resources needed to work on his case. (See DC-14-509 Docket #25.) William M. Windsor was incarcerated for 134 days, and he has never been convicted of a crime in his life. He is absolutely innocent of these outrageous charged. William M. Windsor will show this Court that he was incarcerated for the purpose of causing him to lose the rights to a multi-million dollar defamation action in Ellis County Texas. He will show that the arrest and the denial of bond was part of a plan to accomplish just that, and his civil action, Case #88611 in the 40th Judicial District Court in Ellis County Texas

was dismissed as a result. William M. Windsor asks this Court to take judicial notice of the file and orders in this case.)

The core concern of the speedy trial guarantee is the impairment of liberty. *Id.* (quoting *United States v. Loud Hawk*, 474 U.S. 302, 312 (1986)) (internal quotation omitted). The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious. It is especially unfortunate to impose them on those persons who are ultimately found to be innocent. *Id.* (quoting *Barker*, 407 U.S. at 532-33). In assessing whether the pretrial incarceration in a given case is oppressive, “the court must consider all of the circumstances surrounding the incarceration.” *Id.* Foremost among these is duration because one of the purposes of the speedy trial guarantee is to ensure that the prosecution will avoid lengthy pretrial incarceration. *Id.* Therefore, the longer the accused’s pretrial incarceration lasts, “the more likely it has been oppressive and the more likely the accused has been prejudiced by the delay.” *Id.*

23. William M. Windsor’s bogus charges are that he sent a tweet, sent an email to an attorney, and published the name “Sean Boushie” four times online in two legal documents. The official charge is violation of a Montana order of protection from 2,500 miles away in Texas. The charges are simple and ludicrous.

... the essential ingredient is orderly expedition and not mere speed. *Id.* (quoting *United States v. Marion*, 404 U.S. 307, 313 (1971)) (internal quotation omitted). Therefore, —the complexity of the charged offense(s) is also relevant here. *Id.* The United States Supreme Court reasoned that “the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.” *Id.* (quoting *Barker*, 407 U.S. at 531). Accordingly, “the length of the pretrial incarceration that is ‘oppressive’ is less for a relatively simple offense than it is for a complex charge.” *Id.* 97.

24. William M. Windsor suffers from severe claustrophobia. While he has had a slight tremor in his hands for about 10 years, his hands now shake so

badly that he has great difficulty writing, and he can't carry a bowl of soup across a jail floor to his table without being a danger to those around him. A jail nurse practitioner and a mental health person indicated this was claustrophobia-induced.

25. Ellis County Texas District Attorney Patrick Wilson even prepared a Wanted Poster for William M. Windsor on these outlandish charges. He apparently distributed it to post offices and FedEx stores all across America. Being publicly accused of committing crimes has caused great anxiety. William M. Windsor has made light of the Wanted Poster, but it looks real to those who don't know the true story, like the clerk at FedEx Kinko's in Meridian Idaho who called the police and had him arrested.

26. William M. Windsor has suffered significant economic hardship by being forced to spend money borrowed off credit cards to pay for attorneys in Texas, Idaho, and Montana to simply handle efforts to try to get him released on bond. This alone has cost him approximately \$25,000. William M. Windsor's reputation has been severely damaged, and the negative consequences of being unable to defend himself effectively at all on the criminal charges and being denied access to his legal files and evidence made it literally impossible for him to handle his civil actions in Texas, South Dakota, Missouri, California, and Montana as well as pending appeals in his civil actions. All of this was a severe hardship caused by being forced to sit in jail while awaiting trial.

27. Public scorn has been severe. The Court is asked to take judicial notice of [www.joeyisalittlekid.blogspot.com](http://www.joeyisalittlekid.blogspot.com) to see just how severe the public scorn and defamation has been.

Minimizing anxiety and concern caused by the presence of unresolved criminal charges is an interest protected by the right to a speedy trial. *Ariegwe*, 167 P.3d at 844. “[T]o minimize anxiety and concern accompanying public accusation” is one of the purposes of the speedy trial guarantee and is a pertinent consideration under Factor Four. *Id.* (quoting



*United States v. Marion*, 404 U.S. 307, 320 (1971)) (internal quotation omitted). An accused suffers economic hardship, damage to his or her reputation and other negative consequences while awaiting trial. *Id.* “[A] defendant awaiting trial on bond might be subjected to public scorn, deprived of employment, and chilled in the exercise of his right to speak for, associate with, and participate in unpopular political causes.” *Id.* (quoting *Barker*, 407 U.S. at 532 n.33) (internal quotation omitted). In evaluating the interest in minimizing anxiety and concern, the court should focus on the ways in which the presence of unresolved criminal charges has disrupted the accused’s life. *Id.* at 845. However, there is no way to avoid anxiety and concern on the part of the accused. *Id.* The speedy trial guarantee’s purpose is to “shorten the disruption of life caused by arrest and the presence of unresolved criminal charges” *Id.* (quoting *United States v. MacDonald*, 456 U.S. 1, 8 (1982)) (internal quotation omitted) not to eliminate disruption. *Id.* Therefore, the crucial question is whether the delay in bringing the accused to trial has unduly prolonged the disruption of his or her life or aggravated the anxiety and concern that are inherent in being accused of a crime.” *Id.* (citing *MacDonald*, 456 U.S. at 8).

28. William M. Windsor’s defense was severely impaired. He was not allowed law library access. He was not even allowed to receive legal research that friends and family members printed off the Internet and tried to mail to him. His legal mail was opened illegally in Texas. His computer and legal files were illegally seized and searched. He has likely lost the opportunity to obtain evidence from various Internet sites like Facebook that purge their history on a regular basis. William M. Windsor could not even obtain statutes or case law to use. William M. Windsor was totally denied the ability to conduct depositions. (See, for example, DC-14-509 Docket #38, which was summarily denied.) The Scheduling Order in this case gave William M. Windsor 18 days to prepare for the Pre-Trial Conference at which time he was to provide a list of all witnesses and evidence numbered in a binder, but he was incarcerated and was denied access to his evidence or any ability to conduct discovery. (See DC-14-509 Docket #44.) And while he was

finally released on bond five days ago, one of the bond restrictions is that he may have no contact with ANY witness.

The United States Supreme Court “characterized the possibility that the defense will be impaired as the most serious of the interests that the speedy trial right was designed to protect. *Ariegwe*, 167 P.3d at (quoting *Barker*, 407 U.S. at 532). An accused’s ability to mount a proper defense is hindered if witnesses die or disappear during a delay, or are unable to recall accurately events of the distant past. *Id.* at 846 (quoting *Barker*, 407 U.S. at 532). The fairness of the entire system is negatively affected if an accused cannot prepare a proper defense because of the lack of a speedy trial. *Id.* at 845. However, proving impairment of an accused’s defense is very difficult because “time’s erosion of exculpatory evidence and testimony can rarely be shown. *Id.* at 846 (quoting *Doggett*, 505 U.S. at 655) (internal quotation omitted). The accused’s inability to offer an affirmative showing that he or she has been prejudiced by the delay does not necessarily rule out the possibility that the defense has suffered. *Id.* “Loss of memory . . . is not always reflected in the record because what has been forgotten can rarely be shown.” *Id.* (quoting *Barker*, 407 U.S. at 532) (internal quotation omitted). Therefore: [T]he accused’s failure to make an affirmative showing that the delay weakened his or her ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence does not preclude a finding that the defense has been impaired. Indeed, consideration of prejudice is not limited to the specifically demonstrable, since “excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify.” *Id.* (quoting *Doggett*, 505 U.S. at 655) (footnote omitted). Therefore, without affirmative proof that the delay impaired the accused’s ability to present an effective defense, impairment must be assessed based on other factors in the analysis, such as:

[T]he length of the delay (the greater the delay, the greater the erosion of exculpatory evidence and testimony), the accused’s responses to the delay (the more imperiled the accused’s ability to present an effective defense becomes, the more likely he or she is to complain about the delay), and the duration of the pretrial incarceration (an accused who is locked up is hindered in his or her ability to gather evidence, contact witnesses, or otherwise prepare his or her defense). *Id.*

29. While *Argiwe's* four-part test should not be necessary in this case, William M. Windsor clearly prevails on the four-part test:

Factor One – Length of Delay: 237 days.

Factor Two – Reason for the Delay: The State wanted to keep William M. Windsor in jail for the purpose of interfering with his legal rights.

Factor Three – Whether the Defendant asserted the right to a speedy trial at any time prior to the commencement of the trial: See DC-14-509 Docket #43 and this Motion.


Factor Four – prejudice to the defendant: As stated above, the prejudice has been significant.

30. This Court must dismiss the charges as William M. Windsor has been denied a speedy trial.

WHEREFORE, William M. Windsor prays that this Court enter an order that:

- a. the charges are dismissed, with prejudice; and
- b. grant such other relief as the Court feels is appropriate.

This 14th day of May 2015,



**William M. Windsor**

**VERIFICATION**

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, William M. Windsor, who after being duly sworn deposes and states that he is authorized to make this verification on behalf of himself and that the facts alleged in the foregoing are true and correct based upon his personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

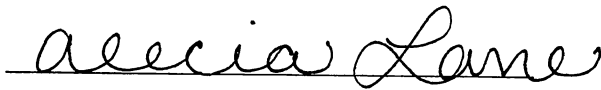
I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 14th day of May 2015.

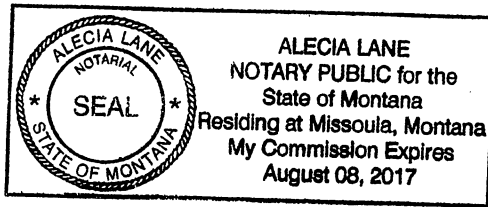


William M. Windsor

Sworn and subscribed before me this 14th day of May 2015.



Notary Public



**CERTIFICATE OF CONFERENCE**

I hereby certify that I emailed Jennifer Clark about this motion, but she did not respond.

This 14th day of May 2015,



**William M. Windsor**

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing Motion by United States Postal Service to Jennifer Clark, Deputy County Attorney, Missoula County Courthouse, 200 West Broadway Street, Missoula, Montana 59802.

This 14th day of May 2015,



**William M. Windsor**

# **Exhibit**

**1**

Arrest Report

Before me, the undersigned magistrate of the State of Texas on this day personally appeared WINDSOR, WILLIAM in the Sheriff's Office, a peace officer, and said person was given the following warning by me:

(Check each box while reading the following to the Accused)

- You are accused of committing the criminal offense(s) of:
  1. OUT OF COUNTY WARRANT/MISD-2CTS-VIOLATION PROTECTIVE ORDER FELONY 3CTS VIOLATION PROTECTIVE ORDER
- An Affidavit or Affidavits charging you with this/these offenses \*(has)\*(has not) been filed in this court.
- You have the right to remain silent.
- You are not required to make a statement, and any statement made by you may be used against you.
- You have the right to hire a lawyer and have your lawyer present prior to and during any interview and questioning by peace officers representing the State.
- If you cannot afford an attorney to represent you, you have the right to request that an attorney be appointed to represent you.
- Do you want to request appointment of an attorney?  YES or  NO
- You have the right to terminate any interview or questioning by peace officers or attorneys representing the State at any time.
- You have the right to have an examining trial.

Your bail is set at \$ 100,000  
 OUT OF COUNTY WARRANT/MISD-2CTS-  
 VIOLATION PROTECTIVE ORDER FELONY  
 3CTS VIOLATION PROTECTIVE ORDER

Person Warned: William Windsor  
 Magistrate: [Signature]  
 Title: [Signature]

Prior to, and as a condition of, release, accused shall provide to a law enforcement agency one or more specimens for the purpose of Art. 17.47 Code of Criminal Procedure and § 411.1471(a) Government Code.

- I acknowledge that I was given the above warnings and I understand my rights as explained to me in the warnings.
- Accused refused to sign acknowledgment of the warnings.

Accused \_\_\_\_\_  
 Magistrate, Officer, or Other Witness \_\_\_\_\_

Place of warning WMPDC  
 Time: 10:21 AM  
 Date: OCT 28 2014

WITNESS:  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_  
 Interpreter (if applicable) \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_  
 Phone # \_\_\_\_\_

<b>FOR CLASS C MISDEMEANOR</b>		
___ Guilty	___ Not Guilty	___ Nolo Contendre
Fine	Court	

PROBABLE CAUSE DETERMINATION

Sufficient facts have been presented to me under oath to show that probable cause exists for the accused designated above as to the following charges: MISDEMEANOR BY WARRANTS 2 MISD VIOL PROTECTIVE ORDER 3 COUNTS FELONY VIOLATION OF PROTECTIVE ORDER

Signed this \_\_\_\_\_ day of \_\_\_\_\_

NOV 6 200

OCT 29 2014  
 OCT 29 2014