

IN THE SUPREME COURT OF THE STATE OF MONTANA

2006 MT 92

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| STATE OF MONTANA |) | |
| |) | |
| Plaintiff and Respondent, |) | OPINION |
| |) | AND |
| v. |) | ORDER |
| |) | |
| DENISE LEWALLEN FENDER, |) | |
| |) | |
| Defendant and Appellant. |) | |

¶1 Before this Court is the State’s “Motion to Order Filing of Transcript and Extending the Briefing Schedule.” In this cause, the Appellant Denise Lewallen Fender is appealing an order of the First Judicial District Court affirming a judgment of the Justice Court of Lewis and Clark County, a court of limited jurisdiction that is a court of record. According to the State, the Appellant did not submit a written record of the May 17, 2005, hearing, but instead relied on compact discs containing an audio record of the hearing. Fender’s counsel does not oppose the State’s Motion and has informed the State that she will have prepared and then file a written transcript of the Justice Court proceedings.

¶2 In *City of Missoula v. Robertson*, Cause No. 98-029, and in *City of Kalispell v. Iams*, Cause No. 03-072, we interpreted Rule 9, M.R.App.P. as requiring the filing of a written transcript when proceedings in the courts of limited jurisdiction, that are courts of record, are only electronically recorded. Given the posture of this case and our orders in *Robertson* and *Iams*, we will grant the State’s Motion.

¶3 Notwithstanding, having reconsidered our interpretation of Rule 9, M.R. App.P., henceforth we will not require a written transcript of electronically recorded proceedings in the courts of limited jurisdiction which are courts of record. Rather, the electronically recorded record of a trial or other proceeding in a court of limited jurisdiction that is a court of record, which is appealed to this Court from a District Court, shall be filed together with the District Court record as a CD/DVD or analog tape. The clerk of the court from which the original appeal is taken must include with the CD/DVD or analog tape the following information, together with a text file reflecting the information on the CD/DVD or analog tape: originating court name; originating court case number; short case title; date(s) of proceeding; type of proceeding; and audio file name and file type. For CDs or DVDs, the preferred audio file reader, which shall be FTR Player, Microsoft Media Player or RealPlayer, also must be identified. In citing to any facts relevant to the issues presented for review from the court of limited jurisdiction that is a court of record, pursuant to Rule 23(a), M.R.App.P, the parties shall reference the location on the CD/DVD or analog tape as Start Time: HH/MM/SS, End Time: HH/MM/SS.

¶4 Therefore,

¶5 IT IS ORDERED that the State's Motion to file a written transcript and extend the briefing schedule is GRANTED. The Appellant shall file a written transcript of the Justice Court hearing or proceeding from which the appeal is taken. The State's brief on appeal shall be prepared, filed and served within thirty days following the filing of the written transcript.

¶6 IT IS FURTHER ORDERED that the Clerk of this Court give notice of this Opinion and Order by mail to counsel of record.

¶7 IT IS FURTHER ORDERED that the Court Administrator give notice of this Opinion and Order by mail or by electronic means to each judge and to each clerk of courts of limited jurisdiction that are courts of record.

¶8 IT IS FURTHER ORDERED that the Clerk of this Court furnish copies of this Opinion and Order to the Executive Director of the State Bar of Montana and to the State Law Librarian for the State of Montana with a request that they post the same to their respective web sites.

Dated this 2nd day of May, 2006.

/S/ KARLA M. GRAY
/S/ JAMES C. NELSON
/S/ W. WILLIAM LEAPHART
/S/ PATRICIA COTTER
/S/ JOHN WARNER
/S/ BRIAN MORRIS
/S/ JIM RICE