DA 22-0054

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 154

SHANDOR S. BADARUDDIN,

Plaintiff and Appellant,

v.

STATE OF MONTANA and the
NINETEENTH JUDICIAL DISTRICT COURT,
HONORABLE MATTHEW CUFFE, Presiding,

Defendants and Appellees.

APPEAL FROM: District Court of the Nineteenth Judicial District,
In and For the County of Lincoln, Cause No. DC 19-75
Honorable Matthew J. Cuffe, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Colin M. Stephens, Stephens Brooke, P.C., Missoula, Montana

Peter F. Lacny, Datsopolous, MacDonald & Lind, PC, Missoula, Montana

For Appellees:

Kirsten K. Madsen, Special Deputy Lincoln County Attorney, Commissioner of Securities & Insurance, Office of the Montana State Auditor, Helena, Montana

For Amicus Curie National Association of Criminal Defense Lawyers:

Donald M. Falk, Schaerr Jaffe, LLP, San Francisco, California

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Submitted on Briefs: June 14, 2023

Decided: July 30, 2024

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Shandor S. Badaruddin (Badaruddin) appeals a January 25, 2022 Order imposing monetary sanctions and fees against him in the amount of $51,923.61, entered by the Nineteenth Judicial District Court, Lincoln County, for his actions as defense counsel at the trial conducted herein. We consider:

> *Did the District Court abuse its discretion by sanctioning Badaruddin for his conduct at trial?*

¶2 We have determined to reverse the imposition of the sanction.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 The underlying matter in which the sanction was imposed was *State v. Hartman*, No. DC 19-75, a criminal proceeding in the Nineteenth Judicial District Court. The defendant in that case, Kip Hartman, was charged with nine felony counts related to securities and insurance fraud. Badaruddin served as Hartman's attorney up to and throughout his trial.

¶4 From its beginning, the case was burdened with the challenges faced by all courts during 2020-2021, related to management of proceedings during the Covid-19 pandemic. Among other things, Covid-19 precautions included limiting group sizes, maintaining physical distance, utilization of face masks, and occasional postponement of court sessions. The Nineteenth Judicial District Court itself had limited staffing and was managed by a single judge. The courthouse was too small to conduct the trial in compliance with pandemic regulations, so the District Court secured the Memorial Events Center in Libby, Montana, for Hartman's trial. The case was continued multiple times due to the pandemic,

but the District Court eventually scheduled the trial to run for nine days, beginning Tuesday, January 26, 2021.

¶5 Pressed by delays and a backed-up calendar in the weeks following the scheduled trial because of the pandemic, the District Court was adamant about completing the trial in the scheduled nine days. It ordered that the parties would be allotted equal time to present their respective cases. Hartman's trial was complex, involving several nuanced issues related to securities and insurance fraud. The District Court indicated during the final pretrial conference that it would be "keeping a clock" to ensure that both the prosecution and defense received equal time, but did not then formalize how time would be kept or what trial activities would or would not count towards each side's time allotment.

¶6 The trial began on January 26, 2021, and on the next day, Day 2, the District Court informed Badaruddin that his cross-examination of State witnesses would be included in the computation of his allotted trial time. Near the end of Day 4, Badaruddin expressed a concern to the District Court that he was not going to have enough time to put on his case because it did not appear the State was "going to wrap it up anytime soon." The State took two more days for its case-in-chief, and at the end of Tuesday, February 2 (Day 6), after the District Court heard the defense motion under § 46-16-403, MCA, Badaruddin asked for more trial time:

> Badaruddin: Your Honor, I'd like to object on the grounds that my client's being denied his state and federal due process rights to present a defense. I can't do it in two days. I thought I had two-and-a-half, by the way. I thought I had a portion of Friday. I was counting on that. Am I wrong?

The Court: You have—I told you on Monday morning you had 14 hours to use however you want.

Badaruddin: Yes, sir.

The Court: That's what you got. I'll tell you exactly tomorrow morning how many hours you have left. If we have to add on because the State has gone over its times, and I allow them three questions only, I will allow that to yours. And if we have to go into Friday to adjust for that, we can; okay?

Badaruddin: Yes, sir.

The Court: That's what I'm telling you. Whatever the 14 hours were the State had, I think somewhere in the neighborhood of ten, you had somewhere in the neighborhood of 14. And I've just been doing—I did subtraction yesterday. I'll do subtraction tonight.

Badaruddin: Yes, sir. I don't challenge the Court's calculations.

The Court: I know.

Badaruddin: --only that I still don't have enough time. And I'd ask for more, like maybe till Monday, maybe five minutes. But whatever the Court can consider giving me, I don't have enough time left in the week. And I'm going to use it as efficiently as possible. But in the end, I don't see how I can do it, consistent with [Hartman's] right to effective assistance of counsel and due process and a fair trial. Maybe he needs more time. That's what I'm suggesting to the Court.

The Court: . . . [T]his is my initial reaction to it, Mr. Badaruddin. I have the breakdowns of directs and crosses. And I have been, I think, quite clear from the beginning of this how much time anyone had to utilize. And I think it was the first day you told me you were keeping track too.

Badaruddin: Yes, sir.

The Court: So this doesn't come as a surprise. It shouldn't come as a surprise. You, on multiple of these witnesses, you crossed longer than there was direct. And I make no comment on that.

I think that's entirely appropriate in certain circumstances. You chose how to defend this case.

Badaruddin: . . . [W]hile I know how much time I've used, I don't think I've wasted it. Sometimes things happen while the witness is on the stand, and I can choose to sit down or keep going. And that's a difficult decision when it's the Defendant's due process rights that weigh in the balance.

The Court: And I'm not suggesting that you wasted any.

Badaruddin: Thank you, Your Honor. I'm constantly mindful of the clock ticking.

The Court: I appreciate that.

Badaruddin: So I just ask that my client's due process rights to present his defense not suffer for the sake of the constraints we're under. It's his only chance.

¶7 On the morning of Day 7, the District Court denied Badaruddin's motion for more time. During its oral ruling on the motion, the District Court informed the parties that, on Day 5, it had started counting each side's time by hours, rather than days. Badaruddin then commenced presentation of Hartman's defense. Near the end of Day 8, Thursday, February 4, 2021, Badaruddin finished examining his eleventh witness at 4:45 p.m. The District Court informed Badaruddin that he had fifteen minutes of time remaining for presentation of his defense. However, the final defense witness was Hartman, who Badaruddin indicated was going to testify. Badaruddin explained it would not be possible to get through Hartman's testimony in the fifteen minutes remaining. Citing *McCoy v. Louisiana*, 584 U.S. 414, 138 S. Ct. 1500 (2018), Badaruddin argued that Hartman was entitled to testify and that preventing him from doing so because of his own

mismanagement of the time, which Badaruddin said was ineffective assistance of counsel, and was reversible error. He stated:

> I made a decision as to what witnesses to call, how long—what questions to ask on cross. I tried to be efficient. I have failed. But I cannot mismanage Mr. Hartman's right to testify away. And if I have, I submit the Court must intervene to protect his right to testify.

When pressed by the District Court about how much more time would be needed for Hartman to testify, Badaruddin said, "Nine counts. I forget how many applications. All these tax issues. Yeah, I think he needs three hours." The District Court remarked:

> You've been planning this the whole time. You have acted strategically, tactically. You have considered every step that you have taken. You have proceeded in a calculated, methodical, and consistent approach through the entirety of the case . . . .

¶8 This moment, near the end of Day 8, was the first time the District Court raised a concern over its perception of Badaruddin's tactical maneuvering, and contrasted the District Court's earlier comments that seemed to indicate the opposite, quoted above. The District Court followed this admonition by briefly discussing the nature of Hartman's potential testimony. After that, the trial recessed for the day and the District Court told Badaruddin it would consider his motion for three more hours of time, plus the necessary additional time for cross-examination of Hartman.

¶9 On the morning of Day 9, Friday, February 5, 2021, the District Court asked counsel if he had any further argument, and Badaruddin said he did not. The State took no position on the extension of time, but counsel explained that it would just like to ensure equal time for cross-examination and rebuttal if Hartman testified.

¶10 The District Court stated that Hartman could not properly testify within the 15 minutes the defense had remaining and, noting that instructions would need to be settled and closing arguments conducted, reasoned that allowing Hartman to testify for three hours would extend the trial beyond the allotted time, and then, without warning, declared a mistrial:

> The Court: . . . it's clearly going to take at least two more days . . . . Now for the record, and I said it yesterday, I don't think this was an accident. I think it was an intentional move, deliberate, strategic, and tactical, based on the conduct of Mr. Badaruddin. Mr. Badruddin, throughout the entirety of this case, has been in constant communication with his client. They have talked back-and-forth. They have known what was going on. Mr. Badaruddin, for his own witnesses, did not have paper exhibits available. He had to pack a computer around this place to show them. I don't know why that is. I think that it was a deliberate attempt to stall the proceedings. I think from the beginning there has been a deliberate attempt to stall this proceeding. So having made that finding, and knowing that Mr. Hartman has that right, he gets to testify, and he should testify for as long as he feels is appropriate and necessary, we don't have the time to get this done within the allotted period of time. I have no choice but to declare a mistrial. I have to. Because he has those rights. And I can't put it any place else.
>
> But having done that, here's what I'll tell you. Mr. Badaruddin will be responsible for the costs associated with these nine days. That means the facility, that means the jury, that means the State's witnesses, that means the State's added costs of room, board, and lodging. Because as has been pointed out to me repeatedly, I have the sua sponte obligation to protect this Defendant's rights from the deliberate, tactical, strategic, consistent, and calculated maneuvers of his attorney.

¶11 At this point, Badaruddin switched course:

Badaruddin: We object to the mistrial. But I just want to point out to the Court, I think we can get him done in 90 minutes. Mr. Hartman would like to --

The Court: That is different than what you told me last night.

Badaruddin: We tightened it up last night. I've talked to Mr. Hartman. I said look, we've got to have a plan for tomorrow. We've got to use as little time as possible.

The Court: So then what we have is, so now I rely on what you tell me, I come in here and I make a ruling, and you say Oh, wait, Judge, no, I'll do it much shorter. And then you file an appeal saying The judge made me shorten it up because he threatened me with a mistrial. Sit down, Mr. Badaruddin, I have no more questions for you, sir.

¶12 The District Court rejected Badaruddin's new proposal and reiterated that the mistrial occurred because of intentional and strategic conduct by Badaruddin. The District Court felt it "ha[d] no choice but to declare a mistrial," stated "I don't think its appropriate for me to reconsider," and subsequently issued an Order formally declaring a mistrial on February 5, 2021. That Order recounted more of Badaruddin's perceived tactics: waiting until breaks were over to set up video calls; having lengthy interactions with witnesses as they were being called to the stand; and struggling to find exhibits. It further indicated that sanctions, including costs to the State, would be imposed on Badaruddin, and that they would be assessed at a later date. After a hearing, the District Court entered a written order on January 25, 2022, imposing as a sanction against Badaruddin for costs of counsel appointed to represent Badaruddin in the sanction proceeding and all costs related to the conduct of the trial in the total amount of $51,923.61, pursuant to § 37-61-421, MCA, and reasoned:

> Mr. Badaruddin, by his own admission, mismanaged the time that had been allocated to the defense, despite the Court's frequent and clear reminders. Mr. Badaruddin's conceded mismanagement threatened to disrupt the administration of justice throughout the Nineteenth Judicial District, which is managed by a single judge from a single courthouse. The threat extended to potential delays to trial and hearings in criminal cases where (unlike here) a criminal defendant was held in custody. This Court's observations were that Mr. Badaruddin's deliberate conduct was to the detriment of his client, knowingly delaying proceedings instead of prioritizing his client's Sixth Amendment right to take the stand. Once this Court identified a conflict between Mr. Badaruddin and his client, Mr. Badaruddin exacerbated his actions, offering to limit his client's testimony despite previously informing the Court that any limitation of such testimony would violate his client's constitutional rights.
>
> Mr. Badaruddin was gaming the system for tactical advantage . . . .

¶13 Meanwhile, before this Court, Badaruddin also filed six original proceedings that sought reversal of rulings made by the District Court during the *Hartman* case, each captioned *Hartman v. Montana Nineteenth Judicial District Court*, and numbered OP 20-0069; OP 20-0017; OP 20-0027; OP 21-0076; OP 21-0536; and OP 22-0037. Along the way, we cautioned Badaruddin about his tactics:

> It is apparently necessary to reiterate for Hartman's benefit that supervisory control is an *extraordinary* remedy that is sometimes justified when urgency or emergency factors exist making the normal appeal process inadequate. It is *not* a substitute for a direct appeal, nor an avenue to circumvent the normal appeal process. We caution Hartman against petitioning for further writs that are similarly without merit.

Hartman v. Nineteenth Jud. Dist. Ct., No. OP 20-0069, 399 Mont. 551, 460 P.3d 400 (Feb. 11, 2020) (emphasis in original). Undeterred, Badaruddin pressed on with his appellate tactics and filed further meritless petitions. In November 2021, we denied the

pending petition and sanctioned Badaruddin in the amount of $500, noting we had previously warned him, and stating:

> Clearly, that warning was insufficient as Hartman filed a fourth petition whose lack of merit is not merely similar, but is identical to its three predecessors. Under M. R. App. P. 19(5), this Court may impose sanctions for the filing of a petition determined to be frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial or reasonable grounds . . . . [W]e are cognizant of the delay Hartman's filings have caused the District Court, as well as his waste of this Court's time.

Hartman v. Nineteenth Jud. Dist. Ct., No. OP 21-0536, 407 Mont. 440, 500 P.3d 579 (Nov. 9, 2021).

¶14 After the District Court's mistrial declaration, Badaruddin petitioned for supervisory control over that decision, arguing that retrial of Hartman was barred by the double jeopardy clause of the Fifth Amendment to the United States Constitution. After surveying the record, as discussed above, this Court denied the writ, noting that Badaruddin's ineffective assistance had created "the dilemma the District Court faced," and reasoning that his actions had placed the court "in an untenable situation." We explained that the District Court could have: (1) proceeded with the trial under the understood schedule and ended Hartman's testimony, thus setting up an appeal and possible reversal for ineffective assistance of counsel for losing Hartman's right to testify; (2) allowed additional time for the trial at the expense of the constitutional rights of other parties before the court who had not likewise mismanaged their opportunities; or (3) declared a mistrial. Reasoning that it "would be ironic" if "the District Court's alleged abrogation of Hartman's constitutional right to testify could result in his retrial, but the

District Court's protection of the same right could not," we concluded Hartman was "not entitled to such a windfall," and concluded the District Court had not abused its discretion by declaring a mistrial. *Hartman v. Nineteenth Jud. Dist. Ct.*, No. OP 22-0037, 408 Mont. 542, 507 P.3d 142 (Mar. 8, 2022).

¶15 However, the U.S. District Court disagreed. Upon Hartman's petition for habeas corpus, the U.S. District Court ruled that the District Court's mistrial declaration was erroneous, citing the procedure that had been utilized, particularly that Hartman had no notice the District Court was considering a mistrial and no opportunity to respond, and ultimately holding that the decision was incorrect under the circumstances of Hartman's Friday morning offer to limit his testimony to 90 minutes, thus depriving Hartman of his Sixth Amendment right to counsel and his right against double jeopardy:

> Immediately after hearing the trial court's precipitous declaration of a mistrial, counsel explained that he and Hartman had pared his testimony down to an hour and a half. The trial court refused to consider counsel's statement because it had already decided—without notice and without giving counsel an opportunity to respond—that defense counsel deliberately stalled the proceeding.
>
> This ruling was an abuse of discretion. The trial court did not explain the objective counsel hoped to realize by stalling. This Court does not perceive any strategic objective in delay that could be consistent with counsel's decision to reduce the time his client's testimony would take in order to complete trial on Friday. *Counsel's effort negated the trial court's finding that he was deliberately protracting the trial*.
>
> If the trial court had taken defense counsel's suggestion and proceeded with the trial, three outcomes were possible. First, Hartman might be convicted. Second, Hartman might be acquitted. There might be a mixed verdict, but that would not change the analysis, so it need not be separately considered. Third, the trial still might not have been completed. By stubbornly adhering

> to an arbitrary limitation on the time allotted for trial, the trial court rendered all three possible outcomes impossible.
>
> . . .
>
> *Far from indicating incompetence, alternative facts, or a deliberate strategy of delay, counsel's overnight consultation with his client to reduce the time needed for his testimony was a hallmark of competence. Counsel did not violate his client's right to testify. He provided the means to realize it. By reaching a point where trial might be completed on Friday with his client's testimony, defense counsel did precisely what the trial court, his client's constitutional rights, and the standards of the legal profession required of him.*
>
> . . .
>
> Regardless of whether defense counsel's performance is flawless or abysmal, the defendant has a federal constitutional interest in the verdict of the first jury empaneled to try him . . . . Declaring a mistrial due to defense counsel's trial errors and over the defendant's objection can compound counsel's errors by also depriving the defendant of whatever chance he had at the first jury's acquittal. In some situations, it may be necessary to declare a mistrial due to defense counsel's choices. It was not necessary here.

Hartman v. Knudsen, 2022 U.S. Dist. LEXIS 145484, at *24,*30-31, *35 (D. Mont. Aug. 12, 2022) (emphasis added). The State appealed the U.S. District Court's order granting habeas relief to the U.S. Court of Appeals for the Ninth Circuit, which affirmed the order. *Hartman v. Knudsen*, 2023 U.S. App. LEXIS 12090. In its order, the Ninth Circuit noted that "the record does not establish that Hartman's counsel provided ineffective assistance of counsel . . . .").

¶16 Badaruddin appeals the District Court's sanction order.

STANDARD OF REVIEW

¶17 We review a district court's decision to impose sanctions and other costs under § 37-61-421, MCA, for an abuse of discretion. *Valentine E. Weisz Living Tr. v. D.A. Davidson Tr. Co.*, 2018 MT 265, ¶ 32, 393 Mont. 219, 429 P.3d 926. "The test for abuse of discretion is whether the trial court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice." *In re Marriage of Epperson*, 2005 MT 46, ¶ 17, 326 Mont. 142, 107 P.3d 1268.

DISCUSSION

¶18 Under § 37-61-421, MCA, "[a]n attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably or vexatiously may be required by the court to satisfy personally the costs, expenses, and attorney fees reasonably incurred because of such conduct." As this Court has explained, this provision exists "to provide redress against persons who abuse the judicial process for their convenience, tactical reasons, personal gain, or the satisfaction of vengeful motives." *Estate of Bayers*, 2001 MT 49, ¶ 12, 304 Mont. 296, 21 P.3d 3. Although § 37-61-421, MCA, has not previously been applied to a criminal case by this Court, it applies by its plain language to "any court proceeding."

¶19 Here, the District Court found that imposition of monetary sanctions was warranted because Badaruddin "knowingly" delayed the proceeding in an effort to force the District Court to declare a mistrial. In the District Court's view, it was not merely that Badaruddin wasted time during the trial, but that his remarkable consistency in doing so reflected a

deliberate strategy to derail the trial by raising Hartman's right to testify after Badaruddin had expended all of the available trial time.

¶20 Badaruddin argues he was never put on notice about the District Court's concerns until the very end of the trial. He admits he erred in failing to manage time, but nevertheless asserts that sanctions were not warranted because his failure was not objectively unreasonable in light of the time constraints imposed by the District Court and because any delays caused by him during trial were not deliberate.

¶21 Badaruddin's contention he was not "on notice" about time concerns is clearly belied by the record. Even with the few positive comments by the District Court about Badaruddin's efforts along the way, noted above, he was nonetheless on notice the entire time about the "big picture" time concern. There is little dispute, including acknowledgment by Badaruddin, that he mismanaged the trial time the defense had been allotted, at least until, as the U.S. District Court found, he offered to efficiently finish up his case with 90 minutes of Hartman's testimony on Friday morning. The problem is that Badaruddin's failure to properly manage the time ended in a legal windfall for his client and creates the impression that defense counsel may permissibly engage in such strategy with impunity, deliberately disrupting a trial court's time management, as long as it is designed to benefit the client. While we disagree with this proposition, we must acknowledge and credit the U.S. District Court's order entered in the case.

¶22 The District Court's finding that Badaruddin "was gaming the system for tactical advantage," leaving the District Court with insufficient time to conclude that the trial

within the allotted time, and thus necessitating mistrial, led to its ruling that "Mr. Badaruddin will be responsible for the costs associated with these nine days" as a consequence of his behavior. However, the U.S. District Court's ruling has undermined this factual premise for both the mistrial and the consequential award of sanctions. As noted above, the U.S. District Court found that Badaruddin's late effort to efficiently finish the trial on Friday morning "negated the trial court's finding that he was deliberately protracting the trial," and was a "hallmark of competence." *Hartman*, 2022 U.S. Dist. LEXIS 145484, at *24, *31. Its conclusion thus laid the error for the trial's termination upon the District Court:

> Without giving notice that it was contemplating a mistrial, the trial court declared one on the morning of the last day of a nine-day trial. This ruling, when the trial court believed Hartman needed three hours to testify, was precipitous. Whether it was an abuse of discretion or not, the trial court then stood by its mistrial ruling *because* defense counsel reduced the time his client would need for his testimony so that the case might be ready for the jury the same day . . . .
>
> The Court is not saying that a trial judge can never have adequate grounds to declare a mistrial if she is convinced defense counsel's performance is unreasonable or unprofessional. But a trial judge must always be mindful of how much he or she does not know. The questions counsel asks of the defendant and how long a witness examination should take fall entirely within the heartland of the confidential attorney-client relationship and the Sixth Amendment. The client had a right to testify, and defense counsel did what he thought appropriate to realize it. The trial court unnecessarily substituted its own judgment for counsel's and thereby deprived Hartman of both his Sixth Amendment right to counsel and his federal constitutional protection against double jeopardy. Hartman is entitled to the writ he seeks.

Hartman, 2022 U.S. Dist. LEXIS 145484, at *40-41 (emphasis in original). This ruling also undermined this Court's conclusion that the District Court had not abused its discretion

in declaring the mistrial. *Hartman v. Nineteenth Jud. Dist. Ct.*, No. OP 22-0037, 408 Mont. 542, 507 P.3d 142 (Mar. 8, 2022).[1]

¶23 It is important to note that both this Court and the U.S. District Court reviewed the District Court's mistrial declaration under an abuse of discretion standard of review, making each case subject to a review of the particular circumstances that occurred and the trial court's response thereto. Particular here are the concerns about a defendant's right to testify and a trial court's right to control the proceeding, about which the U.S. District Court commented, and with which we agree:

> This Court has found no authority holding that a defendant has a right to testify "for as long as he feels is appropriate or necessary," as the trial court said. With a few qualifications not relevant here, a defendant who testifies is treated "just like any other witness." *Portuondo v. Agard*, 529 U.S. 61, 70, 120 S. Ct. 1119, 146 L. Ed. 2d 47 (2000) . . . . He is subject to the "ordinary power of a trial judge," *Brooks v. Tennessee*, 406 U.S. 605, 612-13, 92 S. Ct. 1891, 32 L. Ed. 2d 358 (1972); *Menendez v. Terhune*, 422 F.3d 1012, 1030-32 (9th Cir. 2005), to control the trial, including by preventing "excessive consumption of time," *Menendez*, 422 F.3d at 1033 (citing *United States v. Scheffer*, 523 U.S. 303, 308, 118 S. Ct. 1261, 140 L. Ed. 2d 413

[1] It is worth noting the U.S. District Court's observations about the dilemma presented here to the District Court:

> Neither party has cited a single case where a mistrial was declared solely because the trial court set a limit on the number of trial days and time ran out. The Court has not found one . . . . If running out of time, alone, were a proper reason to declare a mistrial, it seems likely many cases would say so. On the other hand, the usual palliative for shortness of time is judicial control of the trial day—longer jury hours, shorter breaks, and dealing with legal issues outside of jury time. Or here, simply allowing Hartman a reasonable period of time to testify. If running out of time is not a sound reason for a mistrial, then the trial court's declaration of one was clearly erroneous, whether it was due to defense counsel's deliberate delay or poor time management. Hartman would still be entitled to dismissal of the charges.

Hartman, 2022 U.S. Dist. LEXIS 145484, at *23 n.3.

> (1998); *Rock v. Arkansas*, 483 U.S. 44, 55, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987); *Chambers v. Mississippi*, 410 U.S. 284, 295, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)); Mont. R. Evid. 403 . . . . *Like the testimony of any other witness, the length of Hartman's testimony had to be balanced against the time available and the facts to be established or refuted*.

Hartman, 2022 U.S. Dist. LEXIS 145484, at *25 (emphasis added).

¶24 The order of the U.S. District Court, affirmed by the Ninth Circuit Court of Appeals granted habeas relief on the basis of federal, double jeopardy protections, and included findings that Badruddin's actions "negated the trial court's finding that he was deliberately protracting the trial," were "precisely what the trial court, his client's constitutional rights, and the standards of the legal profession required of him," and constituted "a hallmark of competence." While the individual assessment of an attorney's performance by a federal judge may not implicate the Supremacy Clause, which "provides 'a rule of decision' for determining whether federal or state law applies in a particular situation," *Kansas v. Garcia*, 589 U.S. 191, 202, 140 S. Ct. 791, 801 (2020) (citation omitted), we are mindful of the federal court's assessment of the case and give it respectful consideration. More critically is the application of a state statute, § 37-61-421, MCA, which provides in pertinent part: "[a]n attorney or party to any court proceeding who . . . multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct." The District Court sanctioned Badaruddin by imposing costs associated with the nine days of Hartman's trial when it concluded that Badaruddin had caused the time to be wasted. However, the federal courts subsequently held that the District Court

erred in declaring a mistrial and that Hartman could not be retried on double jeopardy grounds. As a result, there can be no "multipli[cation] [of] the proceedings," since Hartman already underwent the one and only trial to which he was entitled. Because the multiplying of proceedings is a necessary predicate for an award of sanctions under § 37-61-421, MCA, there no longer remains a proper basis for sanctions. Likewise, because all of the costs that were awarded as a sanction are costs that were necessarily incurred in a trial that will not be repeated, there is no way to consider these costs to be "*excess* costs, expenses, and attorney fees." Section 37-61-421, MCA (emphasis added). Consequently, it is necessary to conclude the District Court erred and that the sanction order must be reversed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR

Justice Ingrid Gustafson did not participate in the decision of this Opinion.