

**STATE OF MAINE  
ANDROSCOGGIN, ss**

**SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT  
DOCKET NO.: AND-25-07**

**STATE OF MAINE**  
**APPELLEE**

**VS.**

**HEATHER MARICHAL**  
**APPELLANT**

**On appeal from the Unified Criminal  
Docket**

**(Brief of Appellee)**

**Neil E. McLean  
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**Submitted by:**

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**I: CASE SUMMARY:**

On October 1, 2021, the defendant was charged with Operating Under the Influence, Class D crime with the arraignment scheduled for November 24, 2021. The State filed a Motion for Imposition of Conditions of Release which was addressed at arraignment with bail set at personal recognizance with conditions. Attorney Loboizzo was retained and entered a plea of Not Guilty by mail. The Dispositional Conference was scheduled for May 16, 2022. That conference was continued and held on August 18, 2022. The case was not resolved and was then set for Docket Call on November 30, 2022.

The case was not reached and reset for Docket Call on April 26, 2023. The case was again not reached and scheduled for another Dispositional Conference on May 18, 2023. The case was not resolved and again scheduled for Docket Call on August 30, 2023. The case was not reached for trial and scheduled for Docket Call on November 29, 2023. The case was again not reached for trial and was set for Docket Call on January 31, 2024. The case was again not reached for trial and was set for another Docket Call on March 24, 2024. Defense filed for a capias to secure the attendance of a civilian witness. Docket Call was again held in April 2024 with the

case not being reached. Docket Call was set again for May 1, 2024. Defendant filed a Motion to Continue which was granted and Docket Call again set for July 8, 2024. The civil habeas for the defense witness remained outstanding. Docket Call was set for August 8, 2024 and the case was yet again not reached. Docket Call was again set for October 30, 2024; the capias remained outstanding. The next Docket Call was December 16, 2024. Defense filed a Motion In Limine seeking the admission of hearsay statements recorded on police video. On November 25, 2024, the Court issued another warrant for the arrest of the civilian witness requiring the witness to appear in the Androscoggin Superior Court on December 16, 2024. Ruling on the Motion *In Limine* was deferred till the December 16 date.

On November 25, 2024, the warrant remained unexecuted. The Court directed the Clerk to call the Oxford County Sheriff's Office to encourage them to attempt to locate the witness. At the December 16, 2024 Docket Call, the warrant remained unexecuted; the Motion *In Limine* was denied; the defense request for a further continuance was denied; the defendant entered a conditional guilty plea and was sentenced thereon.

The Court sentenced the defendant to three (3) days Androscoggin County Jail plus a \$600.00 fine and a license suspension of 150 days. A stay of execution was granted as to both the sentence and the fine to allow for the processing of the appeal. The defendant remains on bail pending this appeal.

## **II: STATEMENT OF FACTS:**

The factual statement is derived from the summary provided during the Rule 11 proceeding by both the defense and prosecution. That summary included the following facts the State believes relevant to this appeal:

1. The defendant was on the wrong side of the road on Court Street when she crashed into a vehicle in its proper lane of travel. (T. 29)
2. The defendant told the responding officers she was the driver and only occupant of the vehicle. (T.29-30, 31))
3. When specifically asked if she was driving, she stated: 100%, I'm the only one in the car. (T. 22)
4. When one of the responding officers looked into the defendant's car, a Chevy Spark, he noted the driver's seat was pulled forward and was very close to the steering wheel and the passenger's seat had items on it that would prevent a person from occupying the seat. (T. 22)
5. The defendant admitted consuming alcohol and tested by Intoxilyzer with a .21. (T. 30)

These facts, and all reasonable inferences therefrom, must be viewed in the light most favorable to the State. *State v. Emerson*, 675 A.2d 978, 979 (Me.1996).

Additionally, on the issue of the capias, the Trial Justice outlined the actions taken by the court. Specifically, stating she called the Oxford Criminal Clerk and asked her to contact the Norway Police Department and inform them the capias “needed to be executed.” (T.13). “At this point, the Court has done everything that it needs to do. It cannot do any more.” (T.13)

## **STATEMENT OF THE ISSUES**

1. Whether the denial of the defense Motion to Continue was a due process violation, under the Federal and State constitutions.
2. Whether the Trial Justice abused her discretion in denying the continuance request and Motion *In Limine*.

## **SUMMARY OF ARGUMENT**

1. The denial of the defense Motion to Continue was not a due process violation, under either the Federal or State constitutions as neither the court nor the prosecution prevented the defendant from securing the attendance of the witness.
2. The Trial Justice did not abuse her discretion in denying both the defense continuance request and Motion *In Limine*.



## **ARGUMENT**

### **1. THE TRIAL JUSTICE'S DENIAL OF THE DEFENSE CONTINUANCE REQUEST AND MOTION *IN LIMINE* IS NOT A DUE PROCESS VIOLATION**

The defense argues it exercised due diligence in attempting to secure the attendance of the civilian witness and the failure of the court to grant the Motion *In Limine* or continue the case amounted to a due process violation. The crux of the defense argument is that lack of service by law enforcement of the capias issued by the court undermined the right of compulsory process and is thus a violation of due process.

The reliance of the defense on the holding in *State v. Willoughby*, 507 A.2d 1060 (Me. 1986) is misplaced. The issue in *Willoughby* was the action of the trial court in quashing a served subpoena. The issue under review in the instant case is, in part, the action of the Trial Justice in denying a continuance when the defense did not offer any explanation as to why the capias was not executed or what actions, if any, were taken by law enforcement to locate the witness and execute the capias. (T. 5) The defense acknowledges that the civilian witness had been served three (3)

previous times when the case was scheduled for trial but not reached. (T. 5) As the Trial Court noted on December 16, 2024:

The warrant has been outstanding since April. This is not a surprise issue. This is an issue that we have talked about a number of times. I cannot control whether a witness shows up or not. I have done my part within the authority that I have. (T. 16)

What more can we expect a trial court to do? This trial court took an extra step in contacting the Oxford County Clerk to ensure the local law enforcement were made aware of the critical need to serve the capias.

The *Willoughby* decision is predicated on the decision in *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982). In this case, the United States Supreme Court addressed a factual situation that is very different than the one currently before this court. *Valenzuela-Bernal*, a citizen of Mexico, was convicted of transporting an illegal alien into the United States. He complained that the actions of the government in deporting the illegal alien violated his Sixth Amendment rights to compulsory process and his Fifth Amendment right to due process. In summary, the Supreme Court held that the lack of an explanation as to the materiality and favorability of the evidence from the deported passengers, does not prove there was

any violation of law. *United States v. Valenzuela-Bernal*, 458 U.S. 858, 874 (1982). It is also relevant for this Court to be mindful of the fact that governmental action in deporting the aliens was the primary reason they were not available. This is simply not the situation in the case before this Court. There is no evidence in the record of any actions taken by the government to impede the ability of the defense to secure the witness. On the contrary, the trial court properly exercised its power by issuing a *capias* to secure the attendance of the witness. Additionally, the trial justice took steps to ensure law enforcement was made aware of the need to locate and serve the witness. There is no evidence in the record of any actions taken by the defense to communicate with law enforcement on the service of the *capias* or to provide any facts that could assist them in carrying out the court order.

“When due process is implicated, we review such procedural rulings to determine whether the process struck a balance between competing concerns that was fundamentally fair.” *Adoption by Jessica M.*, 2020 ME 118, ¶ 8, 239 A.3d 633. “Although the trial court’s discretion must be exercised judiciously and with an eye toward fundamental fairness, even the arbitrary denial of a

continuance cannot sink to the level of a due process violation unless it results in actual prejudice.” *State v. Dube*, 2014 ME 43, ¶ 13, 87 A.3d 1219.

The decision to deny the continuance by the Trial Justice is consistent with the law as interpreted by this Court and does not rise to a due process violation. This Court previously ruled, in 1965 that

A presiding justice must maintain control of his docket if there is to be an orderly disposition of litigation. Whether or not a case is to be continued from term to term is within the sound discretion of the court and in a given case we look only to see if there has been a clear abuse of that discretion.

*State v. Carll*, 161 Me. 210, 214, 210 A.2d 680.

The Motion *In Limine* sought to admit the out of court statements of the civilian witness, recorded on the police video, pursuant to Rule 804, on the basis of the unavailability of the witness. The Trial Justice denied the Motion In Limine, ruling that the witness is unavailable. However, the Rule specifies the type of evidence that could be admissible, and the proffered video does not fall within the permitted evidence. (T. 8-9, 14-15)

The standard for review was recently articulated in the March 20, 2025 decision of *State v. Abdihmait Ali*: “We review a trial court’s

decision to admit or exclude hearsay evidence for an abuse of discretion.” 2025 ME 30, ¶ 13, \_\_\_ A.3d \_\_\_ (citing *State v. Fox*, 2017 ME 52, ¶29, 157 A.3d. 778). The trial court has broad discretion in determining the admissibility of evidence. *State v. Lindell*, 2020 ME 49, 229 A. 3d 791. The Trial Court in the instant case did not abuse its discretion when it concluded the proffered testimony was not within the clearly defined exceptions to the hearsay rule.

The facts before this court, when analyzed through the proper standard, compel this court to deny the appeal as to this issue.

**2. THE TRIAL JUSTICE DID NOT ABUSE HER DISCRETION IN DENING BOTH THE DEFENSE CONTINUANCE REQUEST AND MOTION *IN LIMINE***

The denial of a motion to continue is reviewed under the abuse of discretion standard. The resolution of a continuance request is reserved to the discretion of the trial court and is reviewed for an abuse of discretion. *State v. Danboise*, 1997 ME 126, 695 A.2d 1203. The party seeking the continuance has the burden of establishing that the evidence sought will be relevant and competent, that a continuance will make its procurement likely, that due diligence was used to obtain the evidence before the commencement of the trial, and the length of the continuance is reasonable. *State v. Chambers*, 624 A.2d 473,474 (Me.1993).

A more recent analysis of the denial of a motion to continue is found in *State v. Hunt*, 2023 ME 26 ¶ 12, 293 A.3d 423. This Court affirmed the denial of the requested continuance due to the age of the case, the number of continuances, the timing of the continuances, and the fact counsel represented he was prepared to go forward. Hunt was indicted in April, 2018 with the trial occurring February 22-24, 2022.

Beginning in September 2018, the defense moved several times to continue the case based on the need to review records maintained in the Commonwealth of Massachusetts. In June 2019 permission was secured to subpoena the records. In February 2020, the defense again moved to continue the case due to inability to review the records. On February 21, 2022, the day before the trial was to begin, the defense filed another continuance request based on not having the records.<sup>1</sup> The court denied the continuance and defense counsel stated he was ready for trial. Upon appeal, this court determined it was not an abuse of discretion for the trial justice to deny the requested continuance.

The same ruling is appropriate in the instant case. Defense counsel did not take any affirmative steps to secure the witness after securing a capias from the court. The record is silent on this point. The only entity following up was the trial Justice. Defense counsel could not tell the court there was a reasonable likelihood of securing the civilian witness if a continuance was granted. The capias was issued on or about March 14, 2024, some nine (9) months prior to jury selection on December 5, 2024 and the trial date of December 16, 2024. The

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<sup>1</sup> The State would note that the pandemic contributed to a significant portion of the delay in getting the case to trial.

defense had ample time to communicate with law enforcement on the status of the capias and the efforts taken to effect service. No effort was made by the defense in the intervening nine months.

On the record before this Court, there is no evidence to support a finding the Trial Justice abused her discretion in denying the continuance request.

### **CONCLUSION**

For the above stated reasons, there is no basis in the law or the facts in the record of this case to grant either issue raised in this appeal. The Appellee, therefore, respectfully requests this Court deny the appeal.

Date: April 28, 2025

Respectfully submitted:

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## **CERTIFICATE OF SERVICE**

I, Patricia A. Mador, certify that I served two copies of this Brief on Appellee upon the other parties in this matter by regular U.S. mail, postage paid, with a copy by email, at the address below:

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