

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. HAN-2025-509

STATE OF MAINE,
Appellee,

- against -

ANDERSON HAREWOOD,
Appellant

Appeal from the Unified Criminal Docket
for the County of Hancock and State of Maine

Brief of the Appellant

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Table of Contents

Statement of the Issues	4
Summary of the Arguments	5
Statement of Facts	6
Law	10
Argument	14
Conclusion	20

Cases

<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	10, 12
<i>Clarence Strunk v. United States</i> , 412 U.S. 434 (1973)	14
<i>Kloper v. North Carolina</i> , 386 U.S. 213 (1967).....	10
<i>State v. Cadman</i> , 476 A.2d 1148, 1150 (Me. 1984)	13
<i>State v. Norris</i> , 2023 ME 60	16
<i>Winchester v. State</i> , 2023 ME 23.....	13

Statutes

15 M.R.S. §§1411-1415.....	19
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Other Authorities

Chief Justice Valerie Stanfill, <i>A Report to the Joint Convention of the First Regular Session of the 131st Maine Legislature</i> , presented March 23, 2023	7
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Rules

M.R. Crim. P. 12(b)(3)(A)	18
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Statement of the Issues

- I. DID THE TRIAL COURT ERR IN DENYING MR. HAREWOOD'S MOTION TO DISMISS FOR A SPEEDY TRIAL VIOLATION.

Summary of the Arguments

- I. The trial court erred in denying Mr. Harewood's motion to dismiss. In November of 2023, more than five years after the initial charges, the State failed to subpoena a necessary witness for trial. After picking a jury, and on the eve of trial, the State had to dismiss the case for lack of evidence. This caused a significant delay in Mr. Harewood's trial for the sole purpose of delaying his trial in order to shore up their own unpreparedness. The trial court failed to attribute the reasons for delay after November of 2023 properly as *all* of that time was only necessary because the State wasn't prepared after *five years* of litigation. The lack of preparation was solely because subpoenaing their witness would have been somewhat burdensome for them to have secured that witness's appearance. As such, they made a poor tactical choice not to bother and when that litigation choice backfired, and in an attempt to fix it they intentionally violated Mr. Harewood's constitutional rights.

Statement of Facts

Mr. Harewood was originally arrested on this case on or about October 9, 2018. (A. 52-55). An indictment was returned on December 6, 2018, and he pleaded not guilty on January 24, 2019. Mr. Harewood is from New York and during the time his case was pending appeared in person at every court date, but his case took some time to wind its way through the court system. The COVID-19 pandemic hit in March of 2020 and the Maine Supreme Judicial Court closed the court system that month, continuing all criminal cases through various emergency orders over the next seven months. (A. 31).

Mr. Harewood appeared electronically over the next several years as his case was delayed, mostly due to the COVID-19 pandemic. (A.31-33) While during the ensuing three years there was turnover due to Mr. Harewood's change in counsel this did not delay his case in any significant way. The entirety of the Maine court system came to a screeching halt due to the inability to hold trials during the pandemic, this inability to try cases continued well into 2023. This fact was pronounced by the Chief Justice in her 2023 State of the Judiciary presented that the Maine Courts had "about 65% more cases pending now than before the pandemic *primarily because of our inability to hold any jury trials for a significant period of time*" Chief Justice Valerie Stanfill, *A Report to the Joint Convention of*

the First Regular Session of the 131st Maine Legislature, presented March 23, 2023.

On January 6, 2023, he was scheduled for a docket call whereby he failed to appear and a warrant was issued. However, in subsequent filings he explained he was not provided actual notice from his attorney. Given his lack of notice he, understandably, lost faith in his counsel and retained counsel who immediately filed a motion to recall the warrant. (A.33). New counsel filed additional motions that, while ultimately unsuccessful, were “legitimate, good faith pretrial motion practice.” (A. 45).

After those motions were litigated and ruled jury selection was held on November 15, 2023. (A. 108). As the case approached trial the State and Mr. Harewood filed competing motions *in limine* regarding the State’s proposed chemist witness, Timoth Schwarze. (A. 45, 81, 85). Mr. Schwarze had not done the original testing of the alleged drugs. Another chemist, Evan Hurley had done the testing, however, he had retired and moved to a nearby New England state and would not return without being subpoenaed. (A. 98). As such, his presence would have been “somewhat burdensome.” (A. 93). A hearing was held on those motions, and the trial court (*Murray, J.*) ultimately ruled the testimony inadmissible, as it would have violated Mr. Harewood’s confrontation rights. (A. 92).

The State was unprepared for this ruling as they had won a similar argument in a prior case, *State of Maine v. Clifton Thomas*, the State had been able to proceed.¹ Even though they had been put on notice as to the potential of objection by the Defense, and they knew that it was an issue at least of enough significance to warrant appeal, they did not even attempted to attain the presence of Mr. Hurley. (A. 100). Since they did not come prepared for trial, they did not have sufficient evidence to prove the case beyond a reasonable doubt. Since they lacked the evidence to proceed, despite having five years to prepare, they dismissed the case and announced their intention to reindict Mr. Harewood.

In other words, the State announced that it was intentionally and knowingly infringed on Mr. Harewood's speedy trial rights because they come unprepared. (A. 108). Mr. Harewood vehemently objected to a dismissal and in no uncertain terms told the Court on November 20, 2023, the day the trial was supposed to start, that "the defendant is asserting his speedy trial rights." (A. 108).²

Mr. Harewood was forced to travel from New York to Ellsworth and a jury was picked on November 15, 2023. (A. 60). Mr. Harewood, having retained undersigned counsel, was required to pay for counsel to travel to Ellsworth, spend all day in court picking a jury, and travel back to his home in Sanford, ME.

¹ This Court reversed the trial court's ruling in that matter, meaning the Court in Mr. Harewood's case ended up being correct regarding the inadmissibility of Mr. Schwarze's testimony.

² This is an especially important point as the trial court incorrectly found that in his new case "there is no indication that the Defendant asserted his speedy trial right at any time prior to filing of [his motion to dismiss]."

Additionally, the dismissal was not filed until November 18, 2023, two days before trial. Mr. Harewood had already paid for hotel accommodations for counsel and because of the uncertainty surrounding the dismissal counsel was still required to travel from Sanford to Ellsworth. Furthermore, Mr. Harewood travelled from New York to Maine although he was able to stop his travel in Portland rather than go all the way to Ellsworth.

Mr. Harewood objected to the dismissal and asserted his right to a speedy trial. Mr. Harewood was prepared and ready to try the case in November of 2023 and resolve the matter one way or another. (A. 108). The State was unprepared for an adverse evidentiary ruling that they were aware of in the months leading up to trial. (108-109). The State made the strategic litigation choice to not subpoena or otherwise procure the appearance of Mr. Hurley and when their gamble did not pay off, they dismissed the case for lack of evidence. (A. 101). The State should be held to their poor strategic planning rather than Mr. Harewood. Had the State requested a continuance it almost certainly would have been denied for issues related to Mr. Harewood's speedy trial rights. Dismissing the case and reindicting does not somehow cure those issues.

Law

United States Constitution:

The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...” This right has been deemed fundamental and made applicable to the states by the Fourteenth Amendment. *Kloper v. North Carolina*, 386 U.S. 213 (1967).

As the United States Supreme Court noted in *Barker v. Wingo*, the right to a speedy trial not only protects fairness to the accused, but societal interests as well. *Barker v. Wingo*, 407 U.S. 514 (1972). In *Barker*, the Court delineated a balancing test applicable to the analysis of whether a defendant’s federal right to a speedy trial has been violated. The Court outlined four factors which should be considered in it the balancing test: the length of the delay, the reason for the delay, Mr. Harewood’s assertion of his speedy trial right, and prejudice to Mr. Harewood. *Id.* at 530. The Court noted that it found “none of the four factors identified above as either necessary or sufficient condition to the finding of a deprivation of the right of a speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.” *Id.* at 533.

The length of delay that is prejudicial depends on the circumstances of each case. *Id.* at 530-31. One of those circumstances is the complexity of the case. A

shorter delay is permissible in a straightforward “street crime” case than in a more complex case. *Id.* The length of delay is measured from the time of arrest, indictment, or information, whichever occurs first. *Dillingham v. U.S.*, 423 U.S. 64 (1975).

Regarding the second factor, the reason for the delay, the Court in *Barker* held:

[D]ifferent weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay. *Barker* at 531 (footnote omitted).

The third factor is the defendant’s assertion of his speedy trial right.

Although the right to a speedy trial is fundamental, the defendant has the responsibility to assert his right. *Id.* The Court in *Barker* held that, “The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right.” *Id.* at 531-32.

The final factor, prejudice to the defendant, is considered “in the light of the interests of defendants which the speedy trial right was designed to protect.” *Id.* at 532. The Court proceeded to highlight three of those interests: “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the

accused; and (iii) to limit the possibility that the defense will be impaired.” *Id.* Footnote omitted. The Court noted that the defense being impaired is the most critical of those interests because, when a delay impairs a defendant’s ability to defend himself, the entire system of fairness is skewed. When, after a delay, a witness is missing or unavailable, the prejudice is “obvious.” There is also prejudice when a witness’ memory is impaired. *Id.* Oppressive pretrial incarceration is another significant prejudice to the defendant. *Id.* at 533. Pretrial incarceration should be taken seriously because the defendant is incarcerated despite the presumption of innocence. Moreover, pretrial incarceration hinders a defendant’s ability to prepare his defense. There is also prejudice to a defendant who is not incarcerated pre-trial because “he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion, and often hostility.” *Id.*

However, even when a Defendant is released he can still suffer prejudice. The *Barker* court noted that “we indicated that 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.” *Barker v. Wingo*, 407 U.S. 514, 532 n.33, (1972).

The *only* remedy for a speedy trial violation is dismissal of the indictment. *Id.* at 522. Emphasis added.

The Constitution of Maine

The right to a speedy trial is also guaranteed by the Constitution of Maine: “In all criminal prosecutions, the accused shall have a right...to have a speedy, public and impartial trial...” Me. Const. Art. I, § 6. The right to a speedy trial is one that Maine holds dear being “one factor motivating Maine’s separation from the Commonwealth.” *Winchester v. State*, 2023 ME 23 ¶19. The Law Court in *Winchester* made sure to emphasize Maine’s history of protecting the right to speedy trial. *See Id.* at ¶¶9-23. The Law Court provided that “under article I, section 6 of the Maine Constitution, a flexible balancing test is applied to determine whether the right to a speedy trial has been violated, examining the length of delay, the reasons for delay, the accused’s invocation of the right, and prejudice.” *Id.* at ¶14.

As it relates to the length of the delay, the Court explained that “the ordinary delay associated with the criminal justice process does not result in a speedy trial violation.” Additionally, “even when a delay extends beyond what we would ordinarily expect and becomes ‘conspicuously excessive,’ the State may show that no violation occurred by pointing to mitigating factors.” *Id.* (quoting *State v. Cadman*, 476 A.2d 1148, 1150 (Me. 1984)).

In addition, the reason for the delay and “whether the delays are attributable to the accused or the State.” *Id.* at ¶28. However, the Supreme Court has provided

that “unintentional delays caused by overcrowded court dockets or understaffed prosecutors are among the factors to be weighed less heavily than intentional delay, calculated to hamper the defense, in determining whether the Sixth Amendment has been violated, but as we noted in *Barker v. Wingo* they must ‘nevertheless...be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.’” *Clarence Strunk v. United States*, 412 U.S. 434 (1973).

The *Winchester* Court also emphasized that “our precedent contains adamant language that the accused must assert the right to a speedy trial.” *Id.* at ¶29. Here, Mr. Harewood asserted forcefully that he wanted to continue and have his trial back in November or else the case should be dismissed with prejudice. Furthermore, the final factor is related to “the prejudice to the defendant caused by the delay.” *Id.* at ¶30. The Court “identified three harms that the right to a speedy trial seeks to prevent: (1) undue and oppressive incarceration prior to trial; (2) the accused’s anxiety and concern accompanying public accusation; and (3) impairment of the accused’s ability to mount a defense.” *Id.*

Argument

Here the length of the delay between the alleged violation and final resolution was 2,587 days or seven years. A significant part of that delay can be attributable to the COVID-19 pandemic, however, the Court should treat this

similarly to how the *Strunk* case characterized understaffing and backlogged caseloads. While it should weigh less heavily than intentional delay, it should still weigh against the State in some form as otherwise, it would lay against defendants whose ability to have their matters heard ground to a halt during this period.

However, if the trial had gone ahead as of November of 2023, then Mr. Harewood would never have raised *any* sort of speedy trial issue. Despite the passing of over five years, no motion to dismiss was filed as it was known that the pandemic was a generation delay that was largely out of control of any of the specific actors in the Maine Criminal Legal System. However, given the critical constitutional rights at play here, the Court should recognize that the State had a special duty to ensure that it was prepared for trial. Instead, the State took a calculated risk, and it just so happened their math was bad. Instead of owning their mistake and continuing to trial, or just accepting defeat, the State chose to intentionally delay Mr. Harewood's trial.

Second, what part of the delay is attributable to the State. As Stated above, the period of time between March of 2020 and January 2023 is largely due to the pandemic. The trial court incorrectly characterized some of that delay to the Defendant, while also minimizing any delays attributable to the State. However, as the Chief Justice said in 2023 trials were unable to be held during that period of time. The trial court found that this pandemic time was "either a neutral factor or a

factor in favor of the State.” (A. 41) (emphasis added). While Mr. Harewood asserts that this should be a slightly negative factor on the State at worst for Mr. Harewood that time should be neutrally attributed and certainly not a “factor in favor of the state.” *See State v. Norris*, 2023 ME 60 ¶¶25-26 (finding that the pandemic weighed in favor of neither the defendant or the state).

The Trial Court erred in the time frame it applied to the pandemic as well. It seems to find that the pandemic lasted less than a year finding that “no event was able to be held until a docket call was held on January 5, 2021, a period of 294 days.” (A. 40). However, as pointed out above, Justice Stanfill was informing the legislature in 2023 that practically no trials had been held in Maine since March of 2020. While some events, mostly virtual, were able to be held after January of 2021, courts did not have a realistic ability to hold trials until 2023. As such, when the Trial Court goes on to attribute blame to the Defendant for periods of delay after January 2021, it seems to ignore the reality that for another two years almost no trials were held in the State of Maine.

It was right around January or 2023 that the pandemic was beginning to wind down and trials were beginning again. Additionally, the period of time between January of 2023 and November 2023, was good faith motion practice by new counsel. If that is attributed to the Defendant that is reasonable, although there were slight delays in scheduling and ruling on those motions.

However, the trial court's most egregious errors in its analysis lie in its attribution of blame after November of 2023. The Court found that the only period of time after November of 2023 that was attributable to the State was the seventy-two days from the dismissal to re-indictment. This is a gross misapplication of the facts in this case. The State dismissed the case on the literal eve of trial in November of 2023 knowing that the Defendant objected to the dismissal. He specifically objected to the dismissal on speedy trial grounds with the trial being able to occur in mere minutes of the State withdrew its dismissal. Every second of delay after November 20, 2023, is completely attributable to the State for the specific purpose of prejudicing the defense. This action was clearly done to weaken the defense case, and bolster the State's, because they had come unprepared.

The Court seems to suggest that because the Defendant waited until May 29, 2024 to file his motion to dismiss that 104 days is attributable to the Defendant. (A. 45). Never mind, that the motion was only needed because of the infringement of Mr. Harewood's speedy trial rights. The Maine Rules of Criminal Procedure specifically barred Mr. Harewood from filing such motions until *after* his dispositional conference: "Motions to dismiss...shall be served upon the opposing party, but not filed with the court, at least seven days before the dates set for the dispositional conference. If the matter is not resolved at the dispositional

conference the motions shall be filed with the court no later than the next court day following the dispositional conference.” M.R. Crim. P. 12(b)(3)(A). In this instance, at the dispositional conference, counsel for Mr. Harewood, requested fourteen days of additional time to file the motion, which the Court granted. As such, if this court wants to attribute those additional fourteen days against Mr. Harewood, fine. However, it is patently unreasonable to not hold the other time from November of 2023 until the final disposition of that motion on or about November 2026 against the State.

The State, in dismissing the case on the eve of trial after five years of pending charges, knew that it was creating a massive speedy trial issue. The time that it took to re-indict and litigate that issue is obviously and only attributable to the State. Furthermore, the time after the motion that it took after the motion to set the case for trial again is also attributable to the State. After the motion was decided by the trial court in November of 2024 it was not set for a docket call in March of 2025 and then a status conference in April. After that April status conference it was scheduled for a new docket call on September 3, 2025. It was around this time that the parties were able to negotiate the conditional plea agreement that has this case before this court.

Third, Mr. Harewood forcefully objected to the dismissal and asserted his right to a speedy trial on the record on November 20, 2023, when the trial was

supposed to begin. A jury was picked on November 15, 2023 and counsel was present and ready to begin the trial. Counsel had successfully identified a significant constitutional violation in the State's case and exploited it to exclude a key witness for the State. While the State had identified the issue and taken steps to avoid the constitutional violation, it instead chose to roll the dice and risk Mr. Schwarze would be an excluded witness. In doing so, they failed to procure Mr. Hurley's presence through the out-of-state subpoena process codified in 15 M.R.S. §§1411-1415.

Lastly, Mr. Harewood was prejudiced by the State's actions. He has been subject to bail conditions continuously since October of 2018. While not reaching the level of pretrial incarceration, bail conditions are still oppressive and an infringement on Mr. Harewood's rights. Furthermore, the fact that Mr. Harewood went through the process of picking a jury and preparing for trial should increase the prejudice of the second factor significantly. The lead up to trial can be the most anxiety inducing part of a criminal case. By the time a Defendant gets to the day of trial they often simply want an end to the case whether they are found guilty or acquitted they at least have a resolution. By unnecessarily delaying his trial the State increased Mr. Harewood's anxiety and concern.

Lastly, it is important to note that this type of delay almost always leads to prejudice that cannot always be pointed out on the record facts as "loss of

memory...is not always reflected in the record because what has been forgotten can rarely be shown.” *Barker* at 532. However, in this case prejudice to Mr. Harewood’s defense is not just lack of memory, but also in what was revealed about the defense strategy. The State is required to prove the case beyond a reasonable doubt. A key part of the defense leading up to trial was two-fold the confrontation issues related to Mr. Hurley and Mr. Schwarze which were likely to lead to the exclusion of the chemical testing. Furthermore, if Mr. Schwarze was able to testify as to the graphs he would not have been able to testify as to Mr. Hurley’s chain of custody and ensuring the quality of his testing.

Conclusion

A key role of defense counsel is to hold the government to its proof and ensure that the State has enough *admissible* evidence to prove their case. If the Court sanctions the dismissal of cases after adverse evidentiary rulings then it is actively incentivizing the State to dismiss cases after motions in limine are filed or litigated so it can fix its case after having a sneak peek at the defense strategy. This not only implicates all defendant’s due process rights but also clogs the Courts and promotes judicial inefficiency by promoting getting as close to trial as possible and then dismissing so as to better prepare for the now revealed defense strategy. It also disincentivizes the Defense from an open dialogue with the Court and the State because the defense doesn’t know if the State may repeat this sort of

strategy which worked such detriment to Mr. Harewood. Worse of all, it unnecessarily and unconstitutionally delayed Mr. Harewood's trial for the specific purpose of prejudicing the defense.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Daniel A. Wentworth', is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I, Daniel A. Wentworth, counsel for the Appellant, hereby certify that I have delivered via email copies of the Appellant's Brief to the State through AAG Dawn Corbett. Once approved, I hereby certify that two true copies will be delivered to the State by either in hand deliver or certified mail.

April 28, 2026
Date



Daniel A. Wentworth, Esq.