STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. HAN 25-125

STATE OF MAINE,

Plaintiff/Appellee

v.

JASON FOLLETTE,

Defendant/ Appellant

ON APPEAL FROM ORDERS ENTERED BY THE UNIFIED CRIMINAL COURT, HANCOCK COUNTY, DOCKET NO. ELLDC-CR-2002-00910

BRIEF OF APPELLEE

Justine T. Barry (006709)
Assistant District Attorney, District 7
70 State Street
Ellsworth, Maine, 04605
(207) 667-4621
(207) 667-0784 (Fax)

Kirk Bloomer (009255)
Assistant District Attorney, District 7
70 State Street
Ellsworth, Maine, 04605
(207) 667-4621
(207) 667-0784 (Fax)

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I. INTRODUCTION

In the matter of the *State v. Jason Follette*, the State seeks to enforce the John Doe #1 Arrest Warrant and Complaint, which tolls the statute of limitations, since they describe the Appellant with reasonable certainty based on his DNA found in his semen, which he left at the crime scenes of S.M. and A.K.

II. STATEMENT OF FACTS

In the spring of 2022, members of the Maine State Police, Major Crimes Unit-North, gathered to review cold case files related to the "Hancock County Rapist." *See* App. 122. During that meeting, one rape victim was discussed in detail: S.M. *See Id*. On August 11, 1996, Ms. S.M. was sexually assaulted in her apartment, where DNA evidence from an unknown male was collected at the crime scene. *See Id*.

On October 3, 1996, S.M.'s neighbor, A.K. reported that a person had burglarized her motor vehicle and then masturbated and ejaculated onto her steering wheel. *See* App. 122. The DNA profile obtained from the steering wheel matched the same DNA profile as the assailant in S.M.'s case. *See Id.* On August 2, 2002, as the statute of limitations was about to expire and the perpetrator was still at large, Maine State Police Detective Stephen Pickering, assigned to the case, obtained an arrest warrant for a male identified by DNA analysis, however unknown by name, listed as "John Doe #1." *See Id*.

On April 6, 2022, Maine State Police Detective Dana Austin contacted Ms. S.M. to inform her that he had been assigned to the investigation. *See* App. 122. Then, on April 12, 2022, Detective Austin confirmed with former District Attorney Matthew Foster that the arrest warrant for "John Doe #1" was still active. *See Id.* On the same day, the District Attorney also stated that his office would cover the costs of genealogy testing. *See* App. 123.

Based on the approval of genealogy testing, Detective Austin authorized samples of the DNA recovered from S.M.'s attacker to be sent to Othram Inc., a company specializing in forensic genetic genealogy testing. *See* App. 123. The DNA test results revealed a significant familial connection within the Follette family—the Appellant being one of them. *See Id*. On September 6, 2022, Michael Vogen of Othram Inc. advised Detective Austin to pay close attention to brothers Jason J. Follette, Stephen N. Follette, and Justin J. Follette, sons of Stephen Follette, Sr., and Jan Shaw Alley. *See Id.*

After Det. Dana Austin seized trash from a dumpster located on or near Appellant's private dock, Appellant filed a Motion to Suppress, which was subsequently granted on May 31, 2024. *See* App. 30.

Before the Motion to Suppress Order was granted, on May 10, 2024, Det. Austin and David Simmons of the Maine State Police interviewed Justin Follette, the Appellant's half-brother. *See* App. 146. On the same day, Justin Follette signed a Maine State Police Consent to Search Form, in which "he provided a known DNA sample via buccal swab." *See* App 147. Later, on May 29, 2024, Det. Austin received the lab report from DNA Forensic Analyst Jennifer Sabean of the Maine State Crime Lab, stating, "Justin Follette is EXCLUDED as the potential donor…Justin Follette and his paternal relatives are INCLUDED as potential donors for the Y-STR DNA obtained from the sperm cutting of the comforter." S*ee* App. 147, 148. On June 4, 2024, Det. Dana Austin obtained and executed a Search Warrant for the DNA of brothers Jason and Stephen Follette, which led to findings indicating that the Appellant was the perpetrator of the crimes against S.M. and A.K. *See* App. 150.

On December 13, 2024, a hearing was held regarding a motion based on speedy trial violations. During that hearing, the State presented four witnesses: retired Maine State Police Detective Stephen Pickering, retired Hancock County Sheriff's Office Detective Stephen McFarland, Dr. David Mittelman, Ph.D., and retired Maine State Crime Lab Expert Jennifer Sabean. Additionally, during the hearing, the defense counsel's expert witness, Heather Miller Coyle, Ph.D., appeared via Zoom. *See* App. 24.

Instead of calling his expert witness, defense counsel Attorney Donald Brown called Maine State Police Detective Dana Austin to discuss a dumpster search that formed the basis for a Motion to Suppress, which was already granted in the Appellant's favor on May 31, 2024. *See* R. 214, 223, 224, 269, 271; *see* App. 30. Since Attorney Brown did not call his expert witness, and the Court ran out of time, the hearing was kept open for the defense expert witness, Heather Miller Coyle, Ph.D., to testify at a later date. *See* 269*,* 271. On February 21, 2025, the Court held a hearing where the Appellant's expert witness testified only about Y-STR testing, as she was not an expert in Forensic Genetic Genealogy. *See Id*. On February 27, 2025, the Court issued Orders including the denial of the Appellants' Motion to Dismiss based on speedy trial violations. *See* App. 60.

III. APPELLANT'S APPEAL OF THE TRIAL COURT'S ORDERS BEFORE FEBRUARY 27, 2025, ARE TIME-BARRED

On March 19, 2025, Appellant filed his Notice of Appeal with the Hancock County Court. *See* App. 20. In that Notice, Appellant indicated that he would appeal Orders from May 31, 2024, August 28, 2024, and February 27, 2025. *See Id*. Pursuant to the Maine Rules of Appellate Procedure 2B (b) (1), "the time within which an appeal may be taken in a criminal case shall be 21 days after entry into the docket of the judgment or order appealed from." *See* M.R. App. P. 2B (a) (1) ("A judgment or order is entered within the meaning of this Rule when it is entered into the docket."); *see also State v. Belony,* 2025 ME 26, at ¶ 8.

Since the Appellant did not appeal the Orders issued on May 31, 2024, and August 28, 2024, within twenty-one days, any challenges to those Orders on an interlocutory basis are barred as they fall outside the statute of limitations.

IV. THE TRIAL COURT'S ORDER FROM FEBRUARY 27, 2025, DENYING APPELLANT'S MOTION TO DISMISS, DOES NOT FIT INTO ALL OF THE EXCEPTIONS UNDER THE FINAL JUDGMENT RULE AS APPELLANT CLAIMS

Generally, appeals can only be made from final judgments. *See Fiber Materials, Inc. v. Subilia*, 2009 ME 71, 974 A.2d 918. The Maine Supreme Court typically reviews "only final judgments and not interlocutory orders, absent an exception to the final judgment rule." *See Dep't of Agric. v. Ouellette,* 2007 ME 117. The final judgment rule promotes judicial economy by avoiding piecemeal appeals, minimizing delays, and ensuring that appellate courts review cases with a complete record. *See State v. Beaulieu,* 2025 ME 4, at ¶10. The final judgment rule also "saves the appellate court from deciding issues which may ultimately be mooted, thus not only leaving a crisper, more comprehensible record for review in the end but also in many cases avoiding an appeal altogether." *See Fiber Materials, Inc. v. Subilia*, 2009 ME 71, ¶ 12, 974 A.2d 918, 924, citing *Griswold v. Town of Denmark,* 2007 ME 93, ¶ 16, 927 A.2d 410, 417.

Exceptions to the rule are carefully limited to prevent unnecessary disruption of the trial process while safeguarding critical rights that would otherwise be irreparably harmed. *See State v. Black, 2014 ME 55; see State v. Maine State Employees Asso., 482 A.2d 461; see also State v. Drown,* 447 A.2d 466.

While the Maine Supreme Court has recognized three exceptions to the Final Judgment Rule, none of the Appellants' issues fall squarely within these limited exceptions.[1] *See State v. Maine State Employees Asso.*, 482 A.2d 461 (discussing the Judicial Economy, Death Knell, and Collateral Doctrine exceptions to the Final Judgment Rule).

A. THE LAW COURT MIGHT USE THE JUDICIAL ECONOMY EXCEPTION TO DETERMINE WHETHER THE STATUTE OF LIMITATIONS IS TOLLED BY THE JOHN DOE WARRANT AND COMPLAINT

As part of his appeal, Appellant conflates speedy trial rights with statute of limitations as his basis for dismissal under the Judicial Economy Exception to the Final Judgment Rule. The Judicial Economy Exception only applies to interlocutory appeals when (1) review of a non-final order can lead to a nearly complete resolution of the entire case, and (2) the interests of justice require immediate review. *See Maples v. Compass Harbor Vill. Condo. Ass'n*, 2022 ME 26, 273 A.3d 358; *Quirion v. Veilleux*, 2013 ME 50, ¶ 9, 65 A.3d 128; *State v. Maine State Employees Assn.*, 482 A.2d 461.

[1] In the present matter, the Appellant alleges that the Order dated February 27, 2025, which tolled the statute of limitations for Gross Sexual Assault Class (A), Gross Sexual Assault Class (B), and Burglary to a Motor Vehicle Class (C), is partially the basis for the appeal and falls within all three exemptions to the final Judgment Rule.

The Judicial Economy Exception “may be invoked in those rare cases in which appellate review of a non-final order can establish a final, or practically final, disposition of the entire litigation ... [and] the interests of justice require that an immediate review be undertaken.” *See Cutting v. Down E. Orthopedic Assocs., P.A.,* 2021 ME 1, ¶ 16, 244 A.3d 226, 231, citing *Town of Minot v. Starbird*, 2012 ME 25, ¶ 9, 39 A.3d 897. "In almost every situation in which an appeal is taken from a non-final judgment that requires further proceedings, our decision will only effectively dispose of the entire matter if we decide in favor of one alternative but would require further litigation if we reach the opposite conclusion, thereby precluding application of the exception.” *See Town of Minot v. Starbird, 2012 ME 25, P9*.

In the *United States of America, Dep. of Agriculture, Rural Housing Service v. Carter*, the Court determined that “[i]f the availability of the judicial economy exception depended on our deciding the case in a certain way, then the judicial economy exception would eviscerate the final judgment rule because we would have to decide the merits in order to determine if the appeal was properly before us. Thus, the judicial economy exception does not apply.” *See United States of Am., Dep't of Agric., Rural Hous. Serv. v. Carter,* 2002 ME 103, ¶ 13, 799 A.2d 1232, 1236.

In this case, the Law Court may decide under the Judicial Economy Exception to the Final Judgment Rule to review whether the “John Doe #1” warrant and complaint tolled the statute of limitations since the charging instrument and circumstances are unique and have not been previously considered in Maine. In his brief, the Appellant incorrectly claims that the trial court "primarily looked at events occurring after Jason Follette was arrested." *See* Blue Br. 12. Additionally, the Appellant argues that his constitutional claim "actually focuses on the delay that occurred between the 'John Doe' arrest warrant in 2002 and the amendment of the warrant twenty years later…" *See* Blue Br. 12, 13. During this period, the Appellant asserts that the statute of limitations either did or did not expire; if it had, then speedy trial rights are invoked, and the case should be dismissed. *See* Blue Br. 13, 14. The Appellant also claims that if the statute of limitations had expired, the case should also be dismissed. *See* Id.

From 1996 through 2021, Det. Stephen Pickering and Det. Stephen McFarland testified about their active involvement in the investigation until Det. Dana Austin took over the case in 2022. *See* R 30-42, and 43-70; *see* App. 27. Based on their testimony, the trial court concluded that law enforcement chartered a plane, set up "clandestine sting operations," and worked with the FBI, Ontario Police, and State Forensics, trying to "develop both criminal profiles and geographic profiles." *See* App. 27. Also, throughout the years, law enforcement subjected potential donors to DNA testing, where they were able to exclude over forty suspects. S*ee Id*. The trial court further acknowledged that, despite law enforcement efforts, Appellant was able to avoid detection. *See Id*.

If the Appellant is dissatisfied with the trial court's Order based on the documented case history, then his interlocutory appeal is improperly before the Law Court under the Judicial Economy Exception to the Final Judgment Rule, since the appeals process is not the time to relitigate facts. [2]

Although in many other jurisdictions, the John Doe warrants and complaints have been affirmed, this case is unique since Maine has never decided whether a John Doe warrant and complaint tolls the statute of limitations, nor has the Law Court determined when speedy trial rights attach under these circumstances. If the Law Court decides against the majority view of other jurisdictions and rules that the warrant and complaint did not toll the limitations period, a dismissal will likely be entered since the crimes occurred over twenty-nine years ago. If the Law Court finds that the statute of limitations is tolled, the Appellant will proceed to trial, where a jury will decide the outcome.

[2] In Appellant's Brief, under the Judicial Economy Section, Appellant claims that the only evidence used to obtain a second search warrant for Appellant's DNA was forensic genetic genealogy testing. *See* Blue Br. 13. However, this claim is clearly false. Twenty-one days before the Motion to Suppress was granted, on May 10, 2024, law enforcement already had a lawfully obtained DNA buccal swab from Appellant's half-brother, Justin Follette. *See* App. 146. On June 4, 2024, law enforcement was able to obtain a search warrant to collect Appellant's DNA after Appellant's half-brother's DNA proved a familial match to the perpetrator, which contradicts Appellant's statements that law enforcement solely relied on forensic genetic genealogy testing. *See Id*.

B. THE DEATH KNELL EXCEPTION DOES NOT APPLY SINCE APPELLANT OBSTRUCTED HIS SPEEDY TRIAL RIGHTS

In this case, the Appellants' reliance on the Death Knell Exception to the Final Judgment Rule fails because the Appellant has not identified any significant rights, rather "individual rights," that would be irreparably lost if the case is further delayed. *See* Blue Br. 17. The Death Knell Exception allows an appeal from an interlocutory order when substantial rights are clearly linked to the United States Constitution and would suffer irreparable harm if review is delayed until after final judgment. *See State v. Hanson*, 483 A.2d 723, *State v. Beaulieu*, 2025 ME 4, *Webb v. Haas,* 1999 ME 74 (emphasis added and quotation marks omitted). For example, this exception has been used in cases involving claims of immunity, since immunity is meant to protect not only from liability but also from the burden of litigation itself. *See State v. Beaulieu,* 2025 ME 4.

The public policy considerations disfavoring interlocutory appeals are particularly strong in criminal cases. *See State v. Hanson*, 483 A.2d 723. In *State v. Drown*, the Court determined that "the defendant has a constitutional right to a speedy trial, and obviously, the members of the public, including both the victims of crime and taxpayers, have a great interest in bringing persons accused of crime to justice promptly and efficiently. Appeals taken by the State from pretrial orders inevitably delay the commencement of trial and add to the public cost." *See State v. Drown,* 447 A.2d 466, 472 (Me. 1982).

The Death Knell Exception only applies when the injury to the Appellant's claimed right would be "imminent, concrete, and irreparable." *See Fiber Materials, Inc. v. Subilia,* 2009 ME 71, ¶ 14, 974 A.2d 918, 924. A right is considered irreparably lost if the Appellant lacks an effective remedy, especially if the interlocutory decision is vacated after the entire case is finally resolved. *See In Re Bailey M.,* 2002 ME 12, P8, 788 A.2d 590, 594. Put differently, where an interlocutory order has the practical effect of permanently foreclosing relief on a claim, that order is appealable." *Lewellyn v. Bell,* 635 A.2d 945, 947 (Me.1993) (quotation marks omitted).

The fact that a delay may cause some harm to the Appellant is not enough to constitute an "irreparable loss" when the harm is only temporary and lasts only during the litigation. *See In re Erica B.,* 520 A.2d 342, 345 (Me. 1987) (although a preliminary order suspending child custody involved a substantial right, it was not immediate because the harm was only temporary). *See also United States, Dep't of Agric., Rural Hous. Serv. v. Carter*, 2002 ME 103, ¶ 12, 799 A.2d 1232 (explaining when the exceptions apply). The cost or delay alone is insufficient to establish the irreparable loss of a right. *Dairyland Ins. Co. v. Christensen,* 1999 ME 160, ¶ 8, 740 A.2d 43, 45; *see* Alexander, *Maine Appellate Practice* § 304(a) at 203 (2008).

Whether the exception is applicable in a particular case is a fact-specific question. *See Estate of Markheim v. Markheim,* 2008 ME 138, ¶ 20, 957 A.2d 56, 61 ("[W]e will undertake appellate review of decisions denying motions to disqualify before final judgment only when *the particular facts* demonstrate that a party's substantial rights may be irreparably lost if review is delayed until final judgment." (emphasis added)). *See Fiber Materials, Inc. v. Subilia*, 2009 ME 71, ¶ 14, 974 A.2d 918, 924–25.

On top of not identifying any loss of substantial rights, Appellant does not specify any "individual rights" that would be irreparably lost, either. *See* Blue Br. 17. Furthermore, the Appellant asserts that "Jason Follette remains on bail, which is significant both monetarily and because there are restrictions on the terms of his release with which he must comply until these charges are resolved. These restrictions on his freedom cause him irreparable loss which he will never regain if resolution of these issues is delayed until after trial." *See Id*. Appellant's statements are conclusory and inarticulate regarding the irreparable loss of rights. However, Appellant reaffirms that "[i]t would serve the interests of judicial economy to resolve the issues of interplay between the statute of limitations and the constitutional right to a speedy trial and would achieve a final resolution of the case." *See* Blue Br. 17, 18.

The State acknowledges that the Appellant filed Motions for a Speedy Trial on December 9, 2022, and December 11, 2023. *See* App. 5, 10. Since the Appellant evaded detection for over twenty-nine years, the only way he could have claimed speedy trial rights earlier was if he had surrendered himself to law enforcement. Any delay in the process has not unfairly prejudiced the Appellant. Because the John Doe Complaint and Warrant identified his DNA, and there was no match in CODIS, the Appellant has remained at large for over twenty-nine years while law enforcement diligently pursued leads, hoping to identify the perpetrator. During that time, the Appellant lived a life free from incarceration and public scrutiny.

On November 8, 2022, the State amended its John Doe Complaint to include the named Appellant, Jason Follette, with his date of birth, address, and physical characteristics as being the same person identified previously by his signatory DNA. *See* App. 63. Since then, the Appellant has filed at least seven Motions to Continue. The State has filed no such motions. On January 19, 2023, the Appellant filed his first Motion to Continue. *See* App. 6. On January 26, 2023, he filed his second Motion to Continue. *See Id*. On March 14, 2023, he filed his third Motion to Continue. *See* App. 7. On May 25, 2023, he filed his fourth Motion to Continue. *See Id*. On July 12, 2023, he filed his fifth Motion to Continue. *See Id*. On October 23, 2023, he filed his sixth Motion to Continue. *See* App. 8. On December 11, 2023, Appellant did not file a Motion to Continue; instead, he sent an email to the State and the court indicating a scheduled motion to suppress on the same day as this matter, which the court then rescheduled. *See* App. 9. On May 20, 2024, Appellant filed his seventh Motion to Continue. *See* App. 11.

Appellant has filed numerous other motions that also delay the speedy trial process, including motions for prosecutorial and judicial misconduct, among others. *See* App. 5-21.

The State has taken no action to delay this case from proceeding. Instead, the Appellant has filed multiple continuance motions that require evidentiary hearings. Thus, any delay in exercising the right to a speedy trial is solely attributable to the Appellant, including his Motion for Interlocutory Appeal. Therefore, the Death Knell Exception to the Final Judgment Rule does not apply.

C. APPELLANT HAS NOT MET ALL OF THE ELEMENTS OF THE COLLATERAL ORDER DOCTRINE

This case is novel and unique; however, those qualities alone do not exempt it from the Final Judgment Rule under the Collateral Order Doctrine since the Collateral Order Doctrine renders an interlocutory order appealable only if it (1) is a final determination of a claim separable from the gravamen of the litigation; (2) presents a major unsettled question of law; and (3) would result in irreparable loss of the rights claimed, absent immediate review. *See Dairyland Ins. Co. v. Christensen*, 1999 ME 160, 740 A.2d 43. The Appellant fails to set forth any specific issues in his brief, as required, to meet this burden. *See* Blue Br. 15.

The State recognizes that the John Doe Complaint and Warrant are issues of first impression in Maine. Nonetheless, the Appellant makes no claim that is separable from the gravamen of the case. *See* Blue Br 15. Furthermore, Appellant conflates the Collateral Order Doctrine with the Death Knell Exception to identify the third remaining element, which involves irreparable loss of his right to a speedy trial. *See Id*. However, the State has not obstructed any rights granted to the Appellant under either the Federal Constitution or the Maine Constitution. As the trial court noted, the State pursued an active investigation that has been ongoing for twenty-nine years, during which numerous other suspects have been identified and exonerated based on their DNA. *See* App. 27.

In summary, the Appellant has filed numerous motions, continuances, and this Interlocutory Appeal, all of which have further delayed the trial process. *See* App 5-21. Based on the Appellant's impeding actions and inability to articulate how he falls within this exception, the Collateral Order Doctrine should not apply as an exception from the Final Judgment Rule.

V. THE STATUTE OF LIMITATIONS DOES NOT BAR PROSECUTION SINCE LAW ENFORCEMENT OBTAINED AN ARREST WARRANT FOR A UNIQUELY IDENTIFIED PERSON AND THE COMPLAINT WAS TIMELY FILED

The statute of limitations in this case has been tolled since the State obtained a John Doe DNA arrest warrant and complaint just nine days before the six-year statute of limitations was set to expire. *See* App. 62. Pursuant to 17-A M.R.S. § 8 (2) (A), "[a] prosecution for a Class A, Class B, or Class C crime must be commenced within 6 years after it is committed." See *Id.* Under 17-A M.R.S. § 8 (6) (B) (1), "[a] prosecution is commenced whenever… [a] criminal complaint is filed…See *Id*. Under the Maine Rules of Criminal Procedure, Rule 4 (d) (1), an arrest warrant "shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty." See M. R. U. Crim. P. 4 (d) (1).

On August 11, 1996, S.M. was sexually assaulted in her apartment, where DNA evidence from an unknown male was recovered from the crime scene. *See* App. 141. On August 2, 2002, as the six-year statute of limitations was due to expire, the State obtained from the court a "John Doe #1" DNA arrest warrant on a complaint charging the Appellant with Gross Sexual Assault, a Class A Crime, Gross Sexual Assault, a Class B Crime, and Burglary to a Motor Vehicle, a Class C Crime. *See* App. 61, 62.

In 2002, the State's shrewdness in pursuing the John Doe DNA arrest warrant was a novel idea inspired by another John Doe DNA arrest warrant in Wisconsin that was making national news. *See State v. Dabney*, 2003 WI App 108, 264 Wis. 2d. 843, 663 N.W. 2d 366. In that case, as DNA evidence was evolving, the District Attorney for Milwaukee County, Wisconsin, Michael McCann, sought and secured an arrest warrant for "John Doe," who was only identified by a genetic code. *See Id.*

In *Dabney,* the Court held that (1) the description of John Doe with the genetic profile identified the defendant with reasonable certainty of "who was charged" in the complaint; (2) that since the complaint was valid based on the DNA description, it was filed within their six-year statute of limitations; (3) the original complaint and arrest warrant that was issued as "John Doe" and contained only the DNA profile, did not create any lack of notice issues to implicate due process considerations; and (4) defendant failed to establish prosecutorial delay in filing the complaint naming him, specifically, and did not violate his right to due process. See *Id*.

Since the *Dabney* decision, other courts have ruled that the genetic profile in the DNA description on a John Doe arrest warrant and complaint meets the requirement of particularity with reasonable certainty for identification, ensuring notice and due process. *See State v. Dabney*, 663 N.W.2d 366 (Wis. Ct. App., 2003); *State v. Danley*, 853 N.E.2d 1224 (Ohio Ct. C.P., 2006); see *People v. Martinez*, 855 N.Y.S.2d 522 (N.Y. App. Div., 2008); see *People v. Robinson,* 47 Cal. 4th 1104, 224 P.3d 55 (2010); see *State v. Burdick*, 395 S.W.3d 120 (Tenn., 2012); *State v. Younge*, 321 P.3d 1127, 1131-33 (Utah 2013); see *State v. Carlson,* 845 N.W.2d 827 (Minn. Ct. App. 2014); *Washington v. Boughton*, 884 F.3d 692, 699-701 (7th Cir. 2018), *Commonwealth v. Dixon,* 938 N.E. 2d 878, 884-85 (Mass. 2010); *State v. Neese,* 366 P.3d 561, 564-65 (Ariz. Ct. App. 2016); *See* also U.S. Const. Amend IV (*requiring that warrants particularly describe the person* *who will be arrested); But see State v. Police,* 343 Conn. 274, 273 A.3d 211 (2022) (A John Doe arrest warrant that identified a suspect based on a general physical description that could match many people and involves mixed partial DNA profiles that were not definitively known to include the suspect's profile, and that did not specify the statistical rarity of any of the profiles, did not meet the particularity requirement of the Fourth Amendment and, therefore, did not start a prosecution to satisfy the applicable statute of limitations).

Other courts have held that once a genetic profile is determined and matched with that of a "John Doe," the prosecutor should amend the complaint with the suspect's name associated with the genetic profile. See *State v. Burdick*, 395 S.W.3d 120 (Tenn., 2012). Although the statute of limitations is tolled with the filing of the information, the amended complaint provides the suspect with the requisite constitutional notice, thereby ensuring due process. See *Id*.

As with *Dabney*, the arrest warrant and complaint here specifically identify the unique Deoxyribonucleic Acid (DNA) profile of "John Doe #1" beneath his name. The DNA profile describing the Appellant matches the DNA collected from the crime scenes of the person who assaulted S.M. and the same individual who burglarized and ejaculated onto A.K. steering wheel. *See* App. 141. The DNA description of the perpetrator's genetic profile, in both the arrest warrant and complaint, reasonably identified "who was charged." *See* App. 61, 110, 113. The probability of another unrelated Caucasian individual matching the DNA profile identifying the Appellant is 1 out of 254 trillion. *See* R. 191, 192. The total population of the Earth is less than 8 billion. *See Id*. Since the Appellant's named identity was unknown and the only description available was the DNA evidence left at the crime scenes, the State clearly met the "reasonable certainty" identification requirements of Maine Rules of Unified Criminal Procedure, Rule 4(d)(1), since the Appellant's description is contained within his DNA profile. *See Id*.

Second, on August 2, 2002, the State obtained its valid "John Doe#1" DNA arrest warrant and filed its complaint with the Appellant's DNA description just nine days before the six-year statute of limitations was set to expire, effectively tolling the statute of limitations until a named match could be found in CODIS or by some other means (*vide infra*). *See* App 61, 110. Third, the Appellant was on notice once he purposefully left his semen behind when he committed crimes against victims S.M. and A.K. DNA technology has advanced rapidly since that time. Appellant could have been identified by name if his DNA had been submitted to CODIS.

Lastly, once a DNA match was made between the Appellant and the unnamed DNA donor, the State amended its complaint immediately to include the Appellant's name on the charging instrument. *See* App. 63. Although the DNA evidence originally obtained through a dumpster search was suppressed on May 31, 2024, Jason Follette's DNA was obtained through a search warrant issued on November 2, 2022.[3] *See* App. 102. On that day, Det. Dana Austin collected a known (Buccal) DNA sample from Jason Follette. *See Id*. On November 4, 2022, Jennifer Sabean of the Maine State Police Crime Laboratory confirmed that the Appellant's DNA matched the previously obtained semen sample from S.M. comforter. *See* App. 132. On November 8, 2022, the State changed the Appellant's name on the warrant and complaint from "John Doe #1" to Jason Follette, born August 1, 1966. *See* App. 63. Since the State obtained its arrest warrant and filed its complaint within the six-year statute of limitations, the Appellant was properly put on notice; hence, the Appellant's due process rights were never violated.

The State's amendment of the complaint identifying Appellant by name based on the DNA match did not operate to violate any Appellant's due process rights. The Appellant's request for dismissal on those grounds should be denied. *See* Blue Br. 18.

[3] Another search warrant was signed by the court on June 4, 2024, after Appellant's half-brother consented to have his DNA tested on May 10, 2024. See App. 146.

VI. THE APPELLANT HAS SUCCESSFULLY AVOIDED DETECTION BY LAW ENFORCEMENT SINCE HIS KNOWN DNA HAS NEVER BEEN ENTERED INTO CODIS TO MATCH THE EVIDENCE COLLECTED AT THE CRIME SCENES OF S.M. AND A.K.

Since the Appellant's known DNA had never been entered into CODIS, he remained at large for twenty-seven years while CODIS awaited a DNA match. The Federal DNA Act, adopted in 1994, granted the FBI authority to establish a national DNA databank for law enforcement purposes. See 42 U.S.C. Section 14132; *See Rivera v. Mueller,* 596 F. Supp. 2d 1163, 1165–66 (N.D. Ill. 2009). The DNA databank is commonly known as "CODIS," the acronym for the Combined DNA Index System.[4] CODIS houses an identification index of criminal justice DNA databases on the national and local levels.[5] These databases include software used to run a target comparison of a DNA record against other DNA records in the database.[6] The Federal DNA Identification Act sets out detailed compliance requirements for state and local forensic DNA laboratories to participate in CODIS. *See* DNA Identification Act of 1994, 34 U.S.C. § 12592.

Maine has also adopted CODIS pursuant to the DNA Database and Data Bank Act §1571-§1578. *See* Me. Rev. Stat. tit. 25, § 1571-§1578; *see also* Me. Rev. Stat. tit. 15, §

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[4] *See* Frequently Asked Questions CODIS and NDIS, *CODIS and NDIS Fact Sheet — FBI* (8/18/2025).
[5] See *Id. See* R. 164, 165.
[6] *See Id.*

2136. Under the DNA Database and Data Bank Act, CODIS is the "Federal Bureau of Investigation's national DNA identification index system that allows for the storage and exchange of DNA records submitted by state and local forensic DNA laboratories and is derived from the Combined DNA Index System." *See* Me. Rev. Stat. tit. 25, § 1571-§1578.

On a national level, one part of CODIS includes NDIS, the acronym for the National DNA Index System.[7] All fifty states, the federal government, the District of Columbia, the U.S. Army Criminal Investigation Laboratory, and Puerto Rico participate by contributing DNA profiles to the National DNA Index System.[8]

DNA as an investigative and evidentiary tool allows law enforcement to revisit "cold case" crimes committed years or decades earlier, where suspects have not been identified by name, but rather by their DNA.[9] Since many unsolved crimes occurred before the advancement of DNA technology, DNA profile matches often occur after ordinarily applicable limitation periods expire.[10] To counteract the injustice of the statute of limitations roadblock, Congress enacted 18 U.S.C.A. Section 3282 and 18 U.S.C.A. Section 3297. Under § 3282 (a): [i]n general —Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital,

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[7] See Frequently Asked Questions CODIS and NDIS, *CODIS and NDIS Fact Sheet — FBI* (8/18/2025).
[8] *See Id.*
[9] *See Id.*
[10] *See Id.*

unless the indictment is found, or the information is instituted within five years next after such offense shall be committed. *See* 18 U.S.C.A. §3282 (a).

Furthermore, 18 U.S.C.A. § 3297 states: "[i]n a case in which DNA testing implicates an identified person in the commission of a felony, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period." See 18 U.S.C. § 3297. The Eleventh Circuit clarified § 3297 to include a five-year statute of limitations as described under 18 U.S.C.A. Section 3282 (a). *See United States v. Hano*, 922 F.3d 1272, 1283 (11th Cir. 2019).

In *Hano*, the Eleventh Circuit rejected the defendant's challenge to the trial court's denial of a motion to dismiss the indictment on the grounds that the five-year statute of limitations had expired. See *Id.* In that case, the court stated that 18 U.S.C. § 3297 applied to Hano's indictment "because the DNA testing did not implicate him in the charges" until the indictment was filed and "well within the statute of limitations period." *Id*.

In *Hagler*, two masked men attempted to rob a bank, and DNA was recovered from clothing found in the stolen getaway car. *See United States v. Hagler*, 700 F.3d 1091 (7th Cir. 2012). Partial DNA profiles were subsequently obtained and, over the years, accumulated over forty partial matches. *Id.* However, no individual was ever clearly identified during that time. *Id.* In 2008, the biological evidence recovered from the car was retested, and a complete biological profile matched Hagler's brother, which then quickly implicated Hagler as well. *Id.*

The Seventh Circuit expanded on *Hano* when it held that under 18 U.S.C. § 3297, the statute of limitations period did not begin to run until the suspect's identification in 2008, and then later, when he was indicted in 2010 for a crime committed in 2000. *See* *United States v. Hagler*, 700 F.3d 1091 (7th Cir. 2012).

In the present matter, law enforcement found semen on victim S.M. T-shirt, comforter, flat sheet, and fitted sheet from her bed in 1996. *See* App. 122. Like *Hagler*, forty men were excluded as suspects based on DNA analysis from the time of the first crime in 1996 until Appellant's known DNA matched in 2022. *See* App. 27. On November 3, 2022, Detective Andrew Peirson executed a search warrant to collect a known (Buccal) DNA sample from Jason Follette. *See* App. 132. The next day, DNA Forensic Analyst Jennifer Sabean of the Maine State Police Crime Laboratory determined that "[t]he DNA profile obtained from the known sample from Jason Follette (Item 115A) matche[d] the DNA profile previously obtained from the sperm fraction from the cutting of the comforter (2Ac.A-SP)" in the S.M. investigation which, matched the very same DNA evidence as described in the John Doe DNA warrant and complaint. *See* App. 61; *see* R. 177, 178, 179, 182, 187, 188, 189, 190, 191, 192.

Maine has not explicitly ruled on whether DNA identification in a complaint tolls the statute of limitations when the defendant's name is unknown. The State asks this Court to adopt the majority view that when a DNA match from a John Doe arrest warrant and complaint identifies a known individual, and the charging documents are filed before the statute of limitations expires, those documents effectively toll the statute of limitations.

VII. THE STATE HAS NOT INFRINGED UPON THE APPELLANT'S RIGHT TO A SPEEDY TRIAL

The Appellant argues that he has been deprived of his right to a speedy trial under the four-factor balancing test in *Barker* v. *Wingo*. *See Barker v. Wingo,* 407 U.S. 514 (1972). In *Barker*, the U.S. Supreme Court held that it must consider the conduct of both the prosecution and the defendant to determine whether the lack of a speedy trial has prejudiced the defendant. *See Id.* The *Barker* Test focuses on (1) the length of the delay, (2) the reason for the delay, (3) the time and manner in which the defendant asserted their right, and (4) the degree of prejudice to the defendant that the delay has caused in determining whether, defendant's right to a speedy trial has been violated. *See Id*.

Appellant misapplies the *Barke*r test to the facts of this case before the Court. In *Barker*, the Supreme Court held that where the defendant was not seriously prejudiced by a more than five-year delay between arrest and trial, the defendant's Sixth Amendment right to a speedy trial was not violated even though more than four years of the period was attributable to the State's failure to, or inability, to try a coindictee and then securing coindictee's testimony at Barker's trial. *See Id.*

Here, the Appellant argues that the "length of the delay would be measured from the filing of the complaint…" *See* Blue Br. 26, 30. In this instance, the 2002 complaint tolls the statute of limitations. In 2022, Appellant's speedy trial rights attached when the DNA on the complaint matched the Appellant's and the complaint was immediately amended. The delay has not seriously prejudiced the Appellant since he has remained free and unencumbered since the filing of the complaint, and any delay after his identity became known is all attributable to his own impediments. *See* App. 5-21; *see also* infra at 13, 14.

An examination of other speedy trial challenges is likewise instructive. In the *State v. Younge*, the Utah Supreme Court similarly addressed the right to a speedy trial under *Barker*. *See State v. Younge,* 2013 UT 71, 321 P.3d 1127. In *Younge*, the defendant sexually assaulted a woman in 1996. *See Id at* ¶ 2. While the victim could not identify the defendant by name, the suspect's DNA was collected and placed in the CODIS database.

See Id. In 2000, right before the four-year statute of limitations was due to expire, the State filed charges against a "John Doe" identifying defendant only by his DNA description, and was charged with two Counts of Aggravated Sexual Assault and one Count of Robbery. *See Id at* ¶ 3.

Two years after the John Doe complaint and arrest warrant were filed, *Younge* was in Illinois detention awaiting murder charges, when the DNA database returned a match with his DNA that connected him to the sexual assault from 1996. *See Id at* ¶ 5. In 2009, the murder charges against *Younge* were dismissed. *See Id*. Next, on August 28, 2009, *Younge* was arraigned on the charges of Aggravated Sexual Assault—thirteen years after the crime was committed and nine years after the statute of limitations expired. *See Id*.

In analyzing the *Barker* factors as applied to *Younge*, the Court found that while the length of the delay weighed in *Younge's* favor since the time between 2000 and 2009 was "undeniably extraordinary," that alone was not dispositive. *See Id at* ¶ 18.

Instead, the Court reasoned that while the State could not determine *Younge's* identity, it acted in a timely manner when investigators collected available evidence, including DNA samples, and entered it into CODIS. *See Id at* ¶ 20. The Court further found that when law enforcement was made aware of the DNA match in CODIS, officers acted promptly by immediately flying to Illinois to collect a DNA sample directly from the defendant. [11]*See Id*. The Court also found that the extradition process from Illinois to Utah was not prejudicial to the defendant. *See Id.*

In weighing prejudice to the defendant under the final factor, the Court turned to the analysis of the three different forms of prejudice that the speedy trial right serves to protect against as identified in *Barker*: (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." *See Barker v. Wingo,* 407 U.S. 514 (1972). In *Younge*, the defendant did not argue the first two points but relied solely on a claim of impairment. *State v. Younge,* UT 71, ¶ 25, 321 (2013). *Younge* also argued that mounting a defense was prejudicial based on the passage of time and the unavailability of witnesses. *See Id at* ¶ 26. The Court disagreed. *See Id at* ¶ 28. Next, the court found that while the defendant was unidentifiable by name without a match in CODIS, the State quickly amended the complaint to name the defendant upon finding a match. *See Id.*.[12] Lastly, the Court found that the defendant's arguments were not compelling, but the DNA evidence connecting him to the crime was compelling. *See Id at* ¶ 28. Therefore, the Court concluded that,

[11] The Court also found that the State was timely when they amended their complaint to include the name of the defendant back in 2002. *See Id.*

[12] Since the defendant was awaiting prosecution in Illinois, Utah did not contribute to the defendant's incarceration in Illinois, which also delayed the trial and was a catalyst for the impairment. *See Id.*

based on the *Barker* test, Mr. Younge was not prejudiced by the delay in the State's prosecution. *See Id at* ¶ 29.

Maine's Law Court recently opined on the *Barker* test in *Winchester v. State,* noting in that case that the speedy trial provision of the Maine Constitution is not designed for specific, bright-line rules and was intended to be sufficiently flexible to apply as circumstances change, on a case-by-case basis. *See Winchester v. State,* 2023 ME 23, 291 A.3d 707; *see* Me. Const. art. 1, § 6.

In *Winchester,* the defendant filed a post-conviction review claim asserting ineffective assistance of counsel and that his rights to a speedy trial had been violated based on a fifteen-month delay by the court in ruling on his Motion to Suppress. *See Id at* ¶ 3. The Court clarified that one nuanced difference between the federal and Maine tests for evaluating violations of the right to speedy trial claims is that a failure to assert the right can be determinative under the Maine Constitution but not under the United States Constitution. *See Id at* ¶ 33; *see* U.S. Const. Amend. 6; Me. Const. art. 1, § 6.

In *Winchester,* the Court declared that the three harms the speedy trial right is designed to prevent are: (1) undue and oppressive incarceration prior to trial; (2) anxiety and concern accompanying public accusation; and (3) impairment of the accused's ability to mount a defense. *See Id at* ¶ 30; *see* Me. Const. art. 1, § 6. When analyzing a claim of violation of speedy trial rights, delay caused by the State intending to prejudice the defense receives the most substantial weight in favor of the defendant in the analysis. *See Id at* ¶ 45; *see* Me. Const. art. 1, § 6.

Under the analysis in *Winchester*, Appellant's claim of prejudice given the length of the delay between the original complaint and the amended complaint is fundamentally flawed. *See* Blue Br. 26. The DNA evidence collected from the crime scenes of S.M. and A.K. linked the same assailant, identified as "John Doe #1." Despite extensive efforts, law enforcement could not attach an identified name to "John Doe #1. *See* App. 27. Between 1996 and 2022, forty DNA samples from suspects were compared to the S.M. and A.K. semen samples. *See Id*. Unless "John Doe #1" came forward or committed a crime requiring him to submit his DNA to the database, his identity would otherwise remain unknown.

On November 8, 2022, the State amended its John Doe Complaint to include the named Appellant, Jason Follette, with his date of birth, address, and physical characteristics. *See* App. 63. Since then, the Appellant has filed numerous Motions to Continue.[13] The State has filed no such motions.

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[13] On January 19, 2023, the Appellant filed his first Motion to Continue. *See* App. 6. On January 26, 2023, he filed his second Motion to Continue. *See Id*. On March 14, 2023, he filed his third Motion to Continue. *See* App. 7. On May 25, 2023, he filed his fourth Motion to Continue. *See Id*. On July 12, 2023, he filed his fifth Motion to Continue. *See Id*. On October 23, 2023, he filed his sixth Motion to Continue. *See* App. 8. On December 11, 2023, Appellant did not file a Motion to Continue; instead, he sent an email to the State and the court indicating a scheduled motion to suppress on the same day as this matter, which the court then rescheduled. *See* App. 9. On May 20, 2024, Appellant filed his seventh Motion to Continue. *See* App. 11. Lastly, in that same vein, Appellant has filed numerous other motions that also delay the speedy trial process. *See* App. 5-21.

Any delay in the process has not unfairly prejudiced the Appellant. The Appellant remained free of incarceration for twenty-seven years while law enforcement diligently pursued leads, hoping to tie the person who committed the crimes to the DNA profile described in the charging instruments. Also, during that time, the Appellant lived a life free of public scrutiny based on the crimes alleged, given his anonymity during that period. Since the State has not done anything to prevent the case from proceeding at any stage to date, the delay in trial rests solely with the Appellant.

VIII. CONCLUSION

The "John Doe #1" DNA Arrest Warrant and Complaint are valid since the DNA description identifies the Appellant with specificity and reasonable certainty. Appellant has had an outstanding arrest warrant for the past twenty-seven years, which he avoided by not submitting—or having to submit—his DNA into CODIS, where it would have matched the S.M. and A.K. semen samples. Since Appellant has remained free from incarceration for over twenty-nine years and filed numerous motions to continue during this process, the State has not violated his right to a speedy trial.

For the reasons stated above, the State respectfully requests that Appellant's appeal be dismissed.

Respectfully Submitted,

Date: 9/1/2025

/s/ Justine T. Barry____
Justine T. Barry (006709)
Assistant District Attorney,
District 7
70 State Street
Ellsworth, Maine 04605
(207) 667-4621
(207) 667-0784 (Fax)

Date: 9/1/2025

/s/Kirk Bloomer
Kirk Bloomer (009255)
Assistant District Attorney,
District 7
70 State Street
Ellsworth, Maine 04605
(207) 667-4621
(207) 667-0784 (Fax)

Certificate of Service

I, Justine Barry, Esq., certify that on September 1, 2025, I served a conforming copy of this pleading on Donald F. Brown, Esq., counsel for the Appellant, via email.

Date: 9/1/2025

/s/ Justine T. Barry_____
Justine T. Barry (006709)
Assistant District Attorney, District 7
70 State Street
Ellsworth, Maine 04605

(207) 667-4621
(207) 667-0784 (Fax)

Date: 9/1/2025

/s/ Kirk Bloomer
Kirk Bloomer (009255)
Assistant District Attorney, District 7
70 State Street
Ellsworth, Maine 04605
(207) 667-4621
(207) 667-0784 (Fax)