

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

REPLY BRIEF OF APPELLANT
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LEGAL ARGUMENTS

I. THIS APPEAL OF THE TRIAL COURT’S DENIAL OF DEFENDANT’S MOTIONS TO DISMISS ON GROUNDS OF THE STATUTE OF LIMITATIONS AND A SPEEDY TRIAL VIOLATION QUALIFIES UNDER AN EXCEPTION TO THE FINAL JUDGMENT RULE.

A. THE JUDICIAL ECONOMY EXCEPTION.

The State cites outdated case law in support of its argument that the judicial economy exception should not apply: “In almost every situation in which an appeal is taken from a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.” Red Brief at page 13, quoting *Town of Minot v. Starbird*, 2012 ME 25, ¶ 9, 39 A.3d 897.¹ Ten years after the *Town of Minot* case, this Court clarified in *Maples v. Compass Harbor Vill. Condo. Ass’n*, 2022 ME 26, ¶ 17 n. 9, 273 A.3d 358, “that the availability of the judicial economy exception does not depend on our deciding the case in a certain way..., and, with respect to the first requirement, a party need only demonstrate that, in at least one alternative, our ruling on appeal might establish a final, or practically final, disposition of the entire litigation...(internal and external citations omitted)

¹ The State must be aware that that case has been overruled, as Appellant pointed out that fact in his opposition to the State’s motion to dismiss this appeal as interlocutory.

(emphasis added). Thus, the fact that this Court’s ruling will dispose of the entire case only if it rules in Appellant’s favor does not preclude the application of the judicial economy exception.

B. THE COLLATERAL ORDER EXCEPTION.

The State agrees that this case is “novel and unique” (Red Brief, page 20) and that it presents major unsettled questions under Maine law (Red Brief, pages 15, 21). Inexplicably, however, the State argues that the trial court’s order denying the motion to dismiss is not a determination that is separable from the gravamen of the litigation. Red Brief, page 21. On the contrary, the legal issues relating to application of the statute of limitations and the constitutional right to a speedy trial are completely separate from the gravamen of this case, which is Jason Follette’s guilt or innocence of the crimes with which he is charged. As will be discussed below, Appellant has also demonstrated the irreparable loss of substantial rights if this appeal is not heard until after the entry of a final judgment in this case.

C. THE DEATH KNELL EXCEPTION.

The State argues that the death knell exception to the final judgment rule does not apply “since Appellant obstructed his speedy trial rights.” Red Brief, page 16. The State does not elaborate on that claim beyond arguing that there have been certain delays in the case due to various motions to continue filed by Appellant after he was arrested and charged in November 2022. That argument misses the

point. This appeal does not focus on the delay between Appellant's arrest in November 2022 and an eventual trial, but rather the time between the John Doe complaint in 2002 and Jason Follette's arrest over twenty years later, in 2022.² If the "John Doe" complaint was sufficient to commence the criminal proceeding for purposes of the statute of limitations, as the State contends, it also started the clock ticking on Appellant's right to a speedy trial. It is beyond dispute that a twenty-year delay is far from speedy.

The State argues that Appellant has not demonstrated the irreparable loss of substantial rights, which is a necessary predicate to application of the death knell exception. In doing so, the State fails to acknowledge that Jason Follette has been living under a cloud of suspicion based on the charges against him stemming from alleged crimes that occurred nearly three decades ago. Moreover, since his arrest, Jason Follette has been forced to live with the public accusation and suspicion that he may have committed these crimes, which he adamantly denies. Under M.R. Evid. 201, this Court can take judicial notice of the fact that this case has received

² The post-arrest delays in getting this case to trial were not overly significant at the time Appellant filed his motion to dismiss on speedy trial grounds in January 2024 and thus were not discussed in that motion (which was not decided until February 2025, over a year after its filing). Appellant does not waive his speedy trial rights as to post-arrest delays, but for purposes of this appeal, the focus is on the delay between the August 2002 John Doe complaint and Appellant's arrest in November 2022.

significant press attention³ and Jason Follette is living under the public stigma of having been accused of sexual assault.

The State's argument also fails to acknowledge that while these charges are pending against him, Appellant remains subject to bail conditions that impose restrictions on his personal freedom. See Appendix, page 5 (11/10/22 bail set at \$100,000.00 cash bail bond – no use or possession of dangerous weapons or firearms. Random search. No contact with S.M. Heather Haskell, Amy Henderson, Erica Jennejohn, Rachel Martin, Christina Warner).⁴ The bail bond was posted by Appellant's wife, Becky Follette. Bail was subsequently amended to allow a surety bail bond rather than a cash bail bond in October 2023 (Appendix, page 8); however, all other bail conditions remain in effect. This Court has recently

³See, as just a few of the many examples of news articles, the following:

[https://www.bangordailynews.com/2025/03/05/hancock/hancock-police-courts/maine-judge-upholds-dna-rape-charges-jason-follette-hancock-county/](https://www.bangordailynews.com/2025/03/05/ Hancock/hancock-police-courts/maine-judge-upholds-dna-rape-charges-jason-follette-hancock-county/);
https://www.ellsworthamerican.com/news/cops/defendant-in-decades-old-sexual-assault-case-appeals-to-maine-supreme-court/article_6c0c44b2-f337-459e-b000-7c1fc15ebf45.html;
<https://www.facebook.com/bangordailynews/posts/jason-follette-58-of-gouldsboro-remains-the-primary-suspect-in-the-1996-rape-of-/918840160271974/>;
<https://www.forensicmag.com/592152-First-Rape-Case-Solved-in-Maine-using-Forensic-Genetic-Genealogy/>;
https://www.ellsworthamerican.com/news/cops/more-dna-evidence-obtained-in-1996-rape-case/article_7c4445bc-33c8-11ef-9367-7f1bb2ce1e58.html;
<https://www.bangordailynews.com/2024/09/10/hancock/hancock-police-courts/jason-follette-rape-case-not-dismissed-xoasqli29i/>

⁴ It is a mystery to Appellant why he is prohibited from contact with four of the six listed individuals. He is charged only with crimes relating to S.M. and A.K. Henderson.

noted that “courts may also consider whether bail conditions create significant restrictions of a defendant’s liberty.” *State v. Engroff*, 2025 ME 83, ¶ 37 n. 11 (citing *Moore v. Arizona*, 414 U.S. 25, 26-27 (1973)). The bail restrictions on Appellant’s freedom cause him irreparable losses which he will never regain if resolution of these issues is delayed until after trial.

II. THE TRIAL COURT ERRED IN DENYING JASON FOLLETTE’S MOTION TO DISMISS BASED ON THE STATUTE OF LIMITATIONS.

The State does not dispute that the applicable statute of limitations was six years and that it would have expired if no charges were filed by 2002. The State claims, however, that the “John Doe” warrant and complaint filed nine days before the expiration of the statute of limitations tolled that statute such that the charges brought against Jason Follette over 20 years later, in November 2022, are timely.

While it is true that some states have held that a “John Doe” warrant is sufficient to toll the statute of limitations when the potential defendant is identified by a unique DNA profile, none of those cases have involved a delay of over two decades, as does the present case.⁵ Moreover, the courts in *Dabney* and *Dixon* both

⁵ See *State v. Dabney*, 663 N.W.2d 366 (Wis. App. 2003) (less than a year between John Doe complaint and identification of defendant); *State v. Danley*, 853 N.E.2d 1224 (Ohio Ct. C.P. 2006) (less than three years between John Doe complaint and identification of defendant); *People v. Martinez*, 855 N.Y.S.2d 522 (N.Y. App. Div. 2008) (three years between John Doe complaint and identification of defendant); *People v. Robinson*, 224 P.3d 55 (Cal. 2010) (one month between John Doe complaint and identification of defendant); *State v. Burdick*, 395 S.W.3d 120 (Tenn. 2012) (eight years between John Doe complaint and identification of defendant); *State v. Younge*, 321 P.3d 1127 (Utah 2013) (two and a half years between John Doe complaint and identification

discussed the fact that more than just a genetic profile may be needed to develop an adequate description. See *Dabney*, 671 N.W.2d at 854 (“We are, however, persuaded by Dabney’s suggestion that in addition to the DNA profile, the particular physical characteristics known to police would have further enhanced the completeness of the complaint and warrant.”); *Dixon*, 938 N.E.2d at 884 n. 16 (“While we indorse the practice of incorporating DNA profiles in an indictment, where a proper name remains unknown, we leave unanswered the question whether an indictment naming only a DNA profile, without more, comports with the particularity requirement of art. 12 of the Declaration of Rights of the Massachusetts Constitution.”). This Court should follow the logic of those courts and find that a DNA sequence alone, *i.e.*, a string of numbers that is meaningless with a comparator, is not sufficient to identify a defendant for purposes of tolling the limitations period.

In the present case, the State argues that it had to use the DNA profile to identify a defendant, “[s]ince the Appellant’s named identity was unknown and the only description available was the DNA evidence left at the crime scenes...”. Red Brief, page 25. On the contrary, the DNA profile was not the only description available. The State had a physical description of the alleged perpetrator from

of defendant); *State v. Carlson*, 845 N.W.2d 827 (Minn. App. 2014) (two and a half years between John Doe complaint and identification of defendant); *Washington v. Boughton*, 884 F.3d 692 (7th Cir. 2018) (seven years between John Doe complaint and identification of defendant); *Commonwealth v. Dixon*, 938 N.E.2d 878 (Mass. 2010) (two years between John Doe complaint and identification of defendant); *State v. Neese*, 366 P.3d 561 (Ariz. App. 2016) (six years between John Doe complaint and identification of defendant).

S.M. which it could have, but did not, include in the John Doe warrant and complaint.⁶ See Appendix, page 111. It is Appellant’s position that allowing a criminal complaint against “John Doe” with a particular genetic code, with no further description whatsoever, to circumvent the applicable limitations period is contrary to the very existence and purpose of a statute of limitations. That result is also contrary to the principle that the enactment of new laws is the province of the Maine Legislature, not the judiciary. The Maine Legislature has already acted in 2019, extending the statute of limitations in criminal cases of sexual assault from six years to twenty years.⁷ To allow a John Doe warrant and complaint to nullify the statute of limitations is contrary to the Legislature’s determination of the appropriate limitations period.

Statutes of limitations are strictly construed in favor of the bar which they were intended to create. *White v. McTeague, Higbee, Case, Cohen, Whitney & Toker, P.A.*, 2002 ME 160, ¶ 8, 809 A.2d 622. “The purpose of a finite limitations period is ‘to provide eventual repose for potential defendants and to avoid the

⁶ To the extent the State claims the S.M. and A.K. crimes with which Appellant is charged were part of a series of crimes in the area by the same perpetrator (see discussion in Section III below), it also had physical descriptions from other alleged victims and two positive identifications of a person not meeting Jason Follette’s description.

⁷ See 17-A M.R.S. § 8(2-A), as amended by “An Act to Ensure Access to Justice for Victims of Sexual Assault”, 2019 Me. SP 20, enacted June 27, 2019. That law is not retroactive to the sexual assault alleged in this case, which occurred on August 11, 1996. Even if that amendment did apply to this alleged crime, the twenty-year statute of limitations would still have expired in August 2016, over six years before Jason Follette was arrested in November 2022.

necessity of defending stale claims.” *Angell v. Hallee*, 2012 ME 10, ¶ 8, 36 A.3d 922 (quoting *Dowling v. Salewski*, 2007 ME 78, ¶ 11, 926 A.2d 193). In *Toussie v. United States*, 397 U.S. 112 (1970), the U.S. Supreme Court noted:

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time....

Id. at 114. Statutes of limitations are also an assurance of diligence on the part of law enforcement, encouraging law enforcement officials to investigate and prosecute crimes in a timely manner (or, conversely, to discourage inefficient or dilatory law enforcement), since “[c]riminal prosecution should be based on reasonably fresh and trustworthy evidence.” *State v. Moore*, 185 N.E.3d 216, (Ohio App. 2022).

In addition to now providing a twenty year limitations period for crimes involving unlawful sexual contact or gross sexual assault, Maine law also contains a tolling provision applicable in certain instances when (1) a potential defendant is absent from the state; (2) a prosecution against the accused for the same crime based on the same conduct is pending; or (3) a prosecution against the accused for the corresponding juvenile crime based on the same conduct is pending in Juvenile Court. See 17-A M.R.S. § 8(3)(A-C). Those tolling provisions were legislatively-created, unlike the alleged tolling which the State champions in this case. Statutes of limitations, and any tolling thereof, is the province of the Legislature, not the courts.

As the State notes in its brief (Red Brief, pages 28-29), federal law has already been enacted which addresses the statute of limitations in federal criminal cases in which a person is identified only through DNA testing.⁸ Several states have also enacted similar legislation to address the situation where a suspect is identified only by their DNA markers.⁹ If Maine is to adopt a tolling provision in cases involving DNA evidence, it should be the Legislature who does so, not the judiciary. The Court should find that the John Doe warrant and complaint, which contained no other description of the perpetrator other than a DNA sequence, was insufficient to commence a prosecution against Jason Follette within the applicable statute of limitations. Because no charges were brought against Jason Follette until more than twenty years after the statute of limitations expired, the trial court erred in denying Follette's motion to dismiss the case.

III. THE TRIAL COURT ERRED IN DENYING JASON FOLLETTE'S MOTION TO DISMISS BASED ON THE VIOLATION OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.

⁸ 18 U.S.C. § 3297 suspends any applicable statute of limitations for the time required to identify an individual when DNA evidence implicates his involvement in a felony offense.⁸ 18 U.S.C. § 3282(b) suspends the statute of limitations for federal sexual abuse violations by means of an indictment using a DNA profile alone to identify the person charged.

⁹ See <https://www.justia.com/criminal/procedure/criminal-statutes-of-limitations-50-state-survey/> (surveying the criminal statutes of limitations for all 50 states and specifically noting that DNA evidence may affect the applicable limitations period in Delaware, Georgia, Hawaii, Indiana, Iowa, Kansas, Louisiana, Michigan, Montana, Nevada, North Dakota, Oklahoma and Wisconsin).

The State argues that Appellant’s speedy trial right attached only when the John Doe complaint was amended in 2022 to identify Appellant as the defendant. Red Brief, page 32. That State offers no legal support for that conclusion, which is contrary to both state and federal precedent. See *United States v. Marion*, 404 U.S. 307, 313 (1971) (Sixth Amendment right to a speedy trial attaches when a criminal prosecution has begun); *State v. Engroff*, 2025 ME 83, ¶ 28, quoting *State v. Norris*, 2023 ME 60, ¶ 20, 302 A.3d 1 (“The speedy trial clock starts with an indictment, arrest, or formal accusation.”). See also *State v. Younge*, 321 P.3d 1127 (Utah 2013) (holding that clock started on speedy trial right when “John Doe” information was filed two years prior to the identification of the actual defendant); *State v. Neese*, 366 P.3d 561 (Ariz. App. 2016) (considering speedy trial claim based on length of time between John Doe indictment and trial of defendant).

If the 2002 John Doe complaint in this case was sufficient to “commence” the prosecution for purposes of the statute of limitations, then it necessarily was the triggering event for purposes of the speedy trial right as well. It would be completely antithetical to hold that prosecution commenced in 2002 for purposes of the statute of limitations, but the right to a speedy trial did not attach until 2022 when Appellant was arrested. The State fails to even address, let alone attempt to find a resolution for, this conundrum.

The State argues that the Maine State Police were diligent in investigating the two incidents giving rise to the charges in this case, involving an alleged sexual assault of S.M. and burglary of the vehicle of A.K. Those alleged crimes occurred in 1996 and DNA was collected at that time; however, the DNA was not even analyzed until 1999 and was not run through the State’s DNA database until June 2002. Other than theorizing (without any proof) that other reports of prowlers or “peeping Toms” in the same geographic area were committed by the same person who committed the S.M. and A.K. crimes, there was no specific investigation into the S.M. and A.K. crimes, as Detective Stephen McFarland candidly admitted.¹⁰ Tr. 12/13/24, p. 68.

Measured from 2002 when the John Doe complaint was filed, the delay in this case has been truly extraordinary.¹¹ Appellant was arrested in November 2022 after a warrantless search of a dumpster on Appellant’s private property gave police

¹⁰ Simply because the police continued to investigate other crimes in the area over the ensuing years does not mean that the police were actively investigating the S.M. and A.K. cases. Indeed, in the investigation of certain other incidents, the police did photo lineups which led to the positive identification of a suspect other than Appellant. Tr. 12/13/24, p. 65. The State’s attempt to link the S.M. and A.K. crimes to the ongoing investigation of a “pattern” of crimes in Hancock County falls short.

¹¹ To the extent the State suggests that Appellant could have asserted his speedy trial right during the twenty-year period between 2002 and 2022 by turning himself in to police for these alleged crimes or by voluntarily submitting his DNA into CODIS (Red Brief, pages 18, 37), it is not only legally incorrect but outrageous. Appellant maintains his innocence of these charges. The State’s argument is directly contrary to the black letter law that a criminal defendant is presumed innocent until the State proves his guilt beyond a reasonable doubt. See, e.g., *State v. McNally*, 2007 ME 66, ¶ 10, 922 A.2d 479.

probable cause to obtain a DNA sample from Appellant. That evidence was later suppressed by the trial court in a decision dated May 31, 2024 due to the invalidity of the warrantless search. Rather than dismiss the charges due to the suppression of the DNA evidence, the State scrambled to obtain a second search warrant for Appellant's DNA on June 4, 2024. By that time, it had been nearly 22 years from the John Doe complaint and nearly 28 years since the alleged crime.

In *Doggett v. United States*, 505 U.S. 647 (1992), the defendant was indicted on federal drug charges in February 1980, but left the country before he could be arrested. He returned to the United States in 1982, but authorities did not locate him and arrest him until September 1988. Doggett moved to dismiss the indictment on grounds that the government's failure to prosecute him earlier violated his Sixth Amendment right to a speedy trial. In discussing the merits of that claim, the U.S. Supreme Court noted that because Doggett was not aware of the indictment against him, he could not demonstrate prejudice in the form of anxiety and concern over the pending charges or oppressive pretrial incarceration. *Id.* at 654. The Court also noted that Doggett failed to make any affirmative showing that the delay weakened his ability to raise specific defenses. *Id.* at 655. Nonetheless, the Court found that "affirmative proof of particularized prejudice is not essential to every speedy trial claim," noting that under *Barker v. Wingo*, 407 U.S. 514 (1972), "impairment of one's defense is the most difficult form of speedy trial prejudice to prove because

time's erosion of exculpatory evidence and testimony 'can rarely be shown.'" *Id.* (quoting *Barker*, 407 U.S. at 532). Despite Doggett's failure to prove any specific prejudice, the Court nonetheless held that the eight and a half years delay between Doggett's indictment and his arrest violated his right to a speedy trial. The court found that although the government's delay was not in bad faith, its negligence in bring the accused to trial must also be considered despite the fact that Doggett could not demonstrate exactly how his defense had been prejudiced. *Id.* at 657. The Court held that "[t]o be sure, to warrant granting relief, negligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice."

In the present case, Appellant has identified specific areas of his defense that have been negatively affected by the passage of time. Without a doubt, memories have faded that will affect the ability of Appellant and others to testify to events that occurred nearly three decades ago. Appellant has been denied the right to collect physical evidence or identify or interview witnesses. Appellant's father, who had relevant knowledge relating both to the specific charges and to the DNA evidence, is now deceased. If eight and a half years was presumptively prejudicial in *Doggett*, then well over twenty years must be considered the same here.

Winchester v. State, 2023 ME 23, 291 A.3d 707, is not to the contrary. *Winchester* was decided only under the Maine Constitution, not the U.S.

Constitution. 2023 ME 23 at ¶ 12. Nonetheless, the tests under the Maine and U.S. Constitutions are similar, as described in *Winchester*. In *Winchester*, this Court noted that there were four reasons for the speedy trial guarantee: allowing those accused to clear their names quickly, increasing the probability of a just income by preventing witnesses from dying or losing their memories, dissuading crime and providing timely punishment, and minimizing the cost of pretrial incarceration. *Id.* at ¶ 21. The first three of those four reasons are implicated in the present case and militate in favor of dismissal of these incredibly stale charges on grounds that Appellant’s right to a speedy trial has been violated.

Like the federal constitutional test at issue in *Doggett*, the Maine Constitution’s test does not require proof of actual prejudice suffered by the defendant as a result of the delay. The defendant in *Winchester* argued that he had suffered actual prejudice such as the loss of witness availability. This Court stated that “[s]uch a showing, however, is not a ‘necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.’” *Id.* at ¶ 54 (quoting *Barker*, 407 U.S. at 533). This Court declined to create a bright line, but noted that the longer the delay, the greater the presumptive or actual prejudice to the accused in terms of their ability to prepare for trial and the restrictions on their liberty. *Id.* (internal quotations omitted). There is both presumptive and actual prejudice in the present

case due to the extraordinarily long delay between the alleged crimes, the John Doe complaint, and the arrest of the Appellant.

CONCLUSION

Statutes of limitations, and tolling provisions relating to those limitations periods, are the province of the Legislature, not the judicial system. This Court should not allow a “John Doe” arrest warrant and complaint to toll the statute and serve as a placeholder, which would nullify the statute of limitations entirely. The trial court erred in holding that the John Doe complaint was sufficient to toll the statute of limitations for over twenty years until defendant was identified. The trial court further erred in holding that Appellant’s right to a speedy trial has not been violated by the decades-long delay in the prosecution of this case. The trial court’s order denying Appellant’s motion to dismiss on grounds of the statute of limitations and the violation of his right to a speedy trial must be vacated, and this matter should be remanded to the Unified Criminal Court with instructions to dismiss the charges with prejudice.

Dated at Bangor, Maine this 15th day of September, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2025, I caused one electronic copy of the Reply Brief to be served upon Appellee by sending it via electronic mail to the following address:

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