

**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 APPELLANT
JASON FOLLETTE**

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INTRODUCTION

This case is highly unusual and presents novel issues of both statutory and constitutional law relating to criminal charges brought against the defendant over **twenty-six years** after the alleged crimes, despite the fact that the statute of limitations for those crimes was six years.¹ In 1996, the Maine State Police (MSP) collected DNA evidence from two reported crime scenes. After significant delays, evidence from the two crime scenes was analyzed by the MSP Crime Lab in 1999 and a partial DNA profile was developed. In August of 2002, 9 days before the statute of limitations was going to expire, the State obtained an arrest warrant for John Doe #1, an unknown male with the DNA profile indicated. That is where the story should have ended, as no suspect was identified prior to the expiration of the statute of limitations. However, some **20 years** later, the DNA samples were sent to a private lab, Othram, Inc., for further testing and genetic research. Following further investigation described below, the John Doe warrant was amended to name Jason Follette as the defendant on November 8, 2022.

STATEMENT OF FACTS

On August 11, 1996, S.M. _____ reported that she was forced to perform oral sex on an unknown male assailant in her apartment in Hancock, Maine. Appendix, page 111 (hereinafter A-____), ¶¶ 2-4. On August 14, 1996, Maine

¹ That statute has since been amended but is not retroactive to the present case.

statute of limitations was set to expire. A complaint against “John Doe #1, Unknown Male” described by his DNA profile was filed on the same date, August 2, 2002. A-117.

Nearly twenty years later, on April 15, 2022, Detective Dana Austin of the Maine State Police authorized DNA Forensic Analyst Jennifer Sabeau to send out the suspect’s DNA profile extract related to this case to Othram, Inc., a private DNA laboratory. A-123, ¶ 9. On September 6, 2022, Michael Vogen from Othram, Inc. advised Detective Austin that his investigation should work to exclude as potential suspects the sons of Stephen Follette Sr. and Jan Shaw Alley, which included at least three known brothers, Stephen Jr., Jason and Justin Follette. A-123, ¶ 12. On October 6, 2022, Detective Austin retrieved two bags of trash from a dumpster on Jason Follette’s privately owned property. A-127 to A-129, ¶¶ 30-39. On October 11, 2022, Detective Austin delivered samples from the trash bags to the Maine State Police Crime Laboratory. A-130, ¶ 41. On October 13, 2022, DNA Forensic Analyst Jennifer Sabeau advised Detective Austin that DNA from the trash bag samples matched the S.M. evidence DNA profile. A-130, ¶ 42.

On November 2, 2022, Detective Austin prepared a DNA affidavit in support of a request for a search warrant for Defendant Jason Follette’s DNA, which was approved on November 2, 2022 by Judge Terence Harrigan. A-131, ¶ 47; A-102. On November 3, 2022, the search warrant for Jason Follette’s DNA

was executed and the evidence taken to the Maine State Police Crime Laboratory. A-132, ¶¶ 53, 55. On November 4, 2022, Analyst Sabeau advised Detective Austin that the Follette DNA sample matched the S.M. sample DNA profile. A-132, ¶ 56. On November 8, 2022, the State amended the John Doe complaint to name Jason Follette as the defendant. A-63. Jason Follette was thereafter arrested on charges of gross sexual assault and burglary of a motor vehicle, which offenses are alleged to have occurred on August 11, 1996 and October 3, 1996. A-63.

Jason Follette promptly asserted his right to a speedy trial, A-65, and moved to suppress the DNA evidence as having been illegally obtained via a warrantless search of a dumpster on Follette's private property. Jason also moved to dismiss the charges based on the statute of limitations and the violation of his right to a speedy trial. A-67; A-77; A-94. Before ruling on the motions to dismiss, the Superior Court granted the motion to suppress the DNA evidence as illegally obtained on May 31, 2024.² Rather than dismiss the charges, however, five days later the State sought another search warrant for the DNA of both Jason Follette

² Once the initial DNA evidence against Jason Follette was thrown out in May 2024 as having been illegally obtained, the case should have been dismissed. Instead, the MSP sought a new search warrant via an affidavit which omitted mention of the illegal search and relied solely on the Othram information. A-139. If that information alone was sufficient to provide the basis for a search warrant in the first place, the MSP wasted nearly an additional two years by conducting the illegal dumpster dive and forcing Follette to battle for his constitutional right to freedom from illegal searches and seizures. Had the State dismissed the case upon exclusion of the DNA evidence, a subsequent charge against Jason Follette based on a second search warrant would clearly have been barred by the statute of limitations.

and his brother, Stephen Follette, Jr.³ A-139. The court granted that request and Jason's DNA was again taken and tested in June 2024.⁴ A-108. On February 27, 2025, the Superior Court issued an order which, among other rulings, denied the motions to dismiss based on the statute of limitations and the speedy trial violation. A-22. This appeal followed.

³ The affidavit in support of that warrant omitted the illegally obtained evidence from the dumpster dive and sought both brothers' DNA based solely on Othram's unsupported conclusion that MSP should work to exclude the brothers as suspects. A-139.

⁴ Jason filed a second motion to suppress and sought a *Franks* hearing. Jason also filed various motions regarding the State's intentional withholding of certain exculpatory evidence. The trial court's rulings on those motions are not raised in the present appeal because they are not immediately appealable.

ISSUES PRESENTED FOR REVIEW

- I. WHETHER THIS APPEAL OF THE TRIAL COURT’S DENIAL OF DEFENDANT’S MOTION TO DISMISS ON GROUNDS OF THE STATUTE OF LIMITATIONS AND A SPEEDY TRIAL VIOLATION QUALIFIES UNDER AN EXCEPTION FO THE FINAL JUDGMENT RULE.**
- II. WHETHER THE TRIAL COURT ERRED IN DENYING JASON FOLLETTE’S MOTION TO DISMISS BASED ON THE STATUTE OF LIMITATIONS.**
- III. WHETHER THE TRIAL COURT ERRED IN DENYING JASON FOLLETTE’S MOTION TO DISMISS BASED ON THE VIOLATION OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.**

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.

Normally, a party cannot appeal a decision until a final judgment has been rendered in the case. *See Andrews v. Dep't of Env'tl. Prot.*, 1998 ME 198, ¶ 4, 716 A.2d 212, 215. However, the issues of the expiration of the statute of limitations over twenty years before charges were brought against Jason and the violation of his right to a speedy trial present novel issues of both statutory and constitutional law which should be decided on a pre-judgment appeal. This Court has recognized three exceptions to the so-called final judgment rule: the collateral order exception, the death knell exception, and the judicial economy exception. *See State v. Maine State Employees Ass'n*, 482 A.2d 461, 463-65 (Me. 1984). This appeal has elements which overlap these categories such that more than one may apply. Defendant will address each of them in turn.

A. THE JUDICIAL ECONOMY EXCEPTION.

The judicial economy exception is available 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." *Cutting v. Down East Ortho. Assoc., P.A.*, 2021

ME 1, ¶ 16, 244 A.3d 226 (citation omitted). The judicial economy exception is invoked “when there are particularly unique circumstances in the history of a case such as exceedingly long litigation, multiple pending proceedings involving the same party, or litigation subject to inordinate delay.” *Id.*, 2021 ME 1 at ¶ 18 (citations omitted).

Here, this Court’s decision could finally resolve this case, which presents highly unique circumstances involving a defendant charged in 2022 with crimes that took place in 1996, despite a six-year statute of limitations. The statute of limitations issue would clearly be dispositive of the entire case.⁵ Likewise, this case raises a serious issue under the Maine and U.S. Constitutions about the right to a speedy trial. Although the Superior Court’s discussion of the speedy trial right primarily looked at events occurring after Jason Follette was arrested,⁶ Defendant’s constitutional claim actually focuses on the delay that occurred between the issuance of the “John Doe” arrest warrant in 2002 and the amendment of that

⁵ Defendant recognizes that this Court has held that unless an exception applies, a “denial of a motion to dismiss an action as barred by the statute of limitations...is plainly interlocutory and not reviewable until a final judgment has been entered.” *Tornesello v. Tisdale*, 2008 ME 84, ¶ 12, 948 A.2d 1244 (quoting *Porrazzo v. Karofsky*, 1998 ME 182, ¶ 5, 714 A.2d 826). Defendant contends that an exception applies in this unusual case where the State used a “John Doe” warrant to attempt to toll the statute for twenty years before naming Jason Follette as defendant.

⁶ The Superior Court attributed the delay in this case since November 2022 to “litigation associated with the several motions filed by Follette.” See Order of February 27, 2025, page 22 (A-43). Jason Follette should not be penalized for defending his constitutional rights; indeed, he successfully moved to suppress evidence that had been illegally obtained in violation of the Fourth Amendment right to be free from warrantless searches and seizures.

warrant twenty years later in November 2022 to specifically identify Jason Follette as the accused. There was also a lengthy delay thereafter until the Court issued its ruling suppressing the illegally obtained DNA evidence in May 2024.

Once the initial DNA evidence against Jason Follette was thrown out in May 2024 as having been illegally obtained, the case should have been dismissed. Instead, the MSP sought a new search warrant via an affidavit which omitted mention of the illegal search and relied solely on the Othram information. If that information alone was sufficient to provide the basis for a search warrant in the first place, the MSP wasted nearly an additional two years by conducting the illegal dumpster dive and forcing Follette to battle for his constitutional right to freedom from illegal searches and seizures. Effectively, therefore, the present case against Jason Follette began on June 4, 2024 when the MSP obtained a second warrant for Jason's DNA, nearly **twenty-eight years** after the alleged crimes.

There are two possible outcomes of this appeal that could finally resolve this case. Defendant's argument focuses on the interplay between the statute of limitations and the constitutional right to a speedy trial. For purposes of the statute of limitations, "[a] prosecution is commenced when a complaint is made or an indictment is returned, whichever first occurs." *State v. Borucki*, 505 A.2d 89, 91 (Me. 1986) (emphasis in original) (quoting 17-A M.R.S. § 8(6)(B)). The question, therefore, is whether the "John Doe" complaint and arrest warrant was sufficient to

commence the prosecution and effectively toll the statute of limitations. Defendant contends that it was not, and if this Court agrees, that would end this litigation. That is the first possible dispositive outcome. If the Court disagrees, however, and finds that the prosecution was “commenced” in 2002 for purposes of the statute of limitations, then Defendant’s right to a speedy trial also attached at that time. The right to a speedy trial is guaranteed by Maine Constitution and the Sixth Amendment to the United States Constitution. The **only** remedy for a speedy trial violation is dismissal of the indictment. *Barker v. Wingo*, 407 U.S. 514, 522 (1972); see also *Winchester v. State*, 2023 ME 23, ¶ 8, 291 A.3d 707; M.R.U. Crim. P. 48(b)(1).

This Court has held that the clock on the right to a speedy trial begins to run at the time when the defendant becomes formally accused. *Winchester*, 2023 ME 23 at ¶ 41, n. 19. Thus, if the “John Doe” DNA warrant sufficiently identified Jason Follette by his DNA profile to commence prosecution against him, then it also started the clock on Jason Follette’s right to a speedy trial. The State cannot have it both ways. If the “John Doe” warrant issued in August 2002 was sufficient to toll the statute of limitations for over twenty years, then it was likewise sufficient to trigger Defendant’s constitutional right to a speedy trial, and that right has been violated by the excessive decades-long delay in this case. If this Court agrees, that would also effectively put an end to the entire case; thus, that is the

second possible dispositive outcome. Because this case presents a unique issue involving an extraordinary decades-long delay in the prosecution of the defendant, this Court should reach the merits of the issues under the judicial economy exception to the final judgment rule.

B. THE COLLATERAL ORDER EXCEPTION.

In order to invoke the collateral order exception to the final judgment rule, the appellant must establish that: (1) the decision is a final determination of a claim separable from the gravamen of the litigation; (2) it presents a major unsettled question of law; and (3) it would result in irreparable loss of the rights claimed, absent immediate review. *Doe v. Roe*, 2022 ME 39, ¶ 15, 277 A.2d 369 (citation omitted). The issues on appeal are separate from the gravamen of the case, which also presents major unsettled questions of law, including whether a “John Doe” warrant is sufficient to identify the accused and thereby toll a statute of limitations, and the interplay between that determination and the accused’s right to a speedy trial; thus, it meets the first two prongs of the collateral order exception. The third prong, the irreparable loss of rights, is also a requirement of the death knell exception and, to avoid duplication, will be addressed below. Defendant contends that that prong is also met and the collateral order exception should be applied

C. THE DEATH KNELL EXCEPTION.

The death knell exception to the final judgment rule has been applied by this

Court “when the appellant’s ‘substantial rights’ were textually linked to the United States and Maine Constitutions.” *State v. Beaulieu*, 2025 ME 4, ¶ 10, 331 A.3d 280 (citing *State v. Hanson*, 483 A.2d 723, 724 (Me. 1984)) (permitting review of a motion to dismiss on double jeopardy grounds); *In re Bailey M.*, 2002 ME 12, ¶¶ 6-8, 788 A.2d 590 (allowing interlocutory review of a denied motion to open proceedings to the public, which implicated the First Amendment). The death knell exception allows a party to appeal an interlocutory order immediately if "substantial rights of a party will be irreparably lost if review is delayed until final judgment." *Webb v. Haas*, 1999 ME 74, ¶ 5, 728 A.2d 1261, 1264 (quoting *Cook v. Cook*, 574 A.2d 1353, 1354 (Me. 1990)). A right will be irreparably lost if the appellant would not have an effective remedy if the interlocutory determination were to be vacated after a final disposition of the entire litigation. *See In Re Bailey M.*, 2002 ME 12, ¶ 8, 788 A.2d 590.

This Court recently held that “[t]he limitations on individual rights that can accompany a criminal prosecution – notably arrest, bail, searches, and seizures – are more severe than those at issue in a civil case.” *State v. Beaulieu*, 2025 ME 4 at ¶ 12. The Court cited from Edward L. Barrett, Jr., *Personal Rights, Property Rights, and the Fourth Amendment*, 1960 Sup. Ct. Rev. 46, 46 that “A police decision to arrest an individual and initiate the process of criminal prosecution is in itself a significant invasion of personal liberty....” *Id.*

Jason Follette's substantial rights in this case are linked to his rights under the Maine and U.S. Constitution, as set forth above. Although Defendant would still have the right to challenge the Superior Court's rulings regarding the legal effect and interplay of the statute of limitations and the speedy trial right if he is convicted after a trial, he nonetheless will have irreparably lost certain of his individual rights. Jason Follette was subjected to a first search and seizure of his DNA evidence and arrested in November 2022 following an unlawful warrantless search, which evidence was subsequently suppressed by the Superior Court in May 2024. Jason Follette was then subjected to a second search and seizure of his DNA evidence in June 2024 when a second search warrant was granted, which defendant unsuccessfully challenged below and will challenge again on appeal if he is eventually convicted of these charges. However, in the meantime, Jason Follette remains on bail, which is significant both monetarily and because there are restrictions on the terms of his bail 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. As such, the death knell exception should apply in this highly unusual case.

Under the unique and compelling facts of this case, Defendant contends that this Court should hear this appeal despite the lack of a final judgment under one of the recognized exceptions to the final judgment rule. It would serve the interests of

judicial economy to resolve the issues of the interplay between the statute of limitation and the constitutional right to a speedy trial, and would achieve a final resolution of this case if this Court decides that the “John Doe” arrest warrant was insufficient to preserve the case within the statute of limitations. Likewise, it would achieve a final resolution of this case if this Court decides that the Defendant’s right to a speedy trial attached at the time the State obtained the John Doe warrant and has been violated by the over-two-decades delay since that time. Jason Follette will lose substantial rights if this appeal is not decided now, and this Court should find that one (or all) of the exceptions to the final judgment rule applies and address the merits of Defendant’s claims.

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

A trial court’s factual findings are reviewed for clear error and the legal conclusions it derived from those findings are reviewed de novo. *State v. Gagne*, 2019 ME 7, ¶ 11, 199 A.3d 1179 (citation omitted). Questions of statutory interpretation are reviewed de novo. *Id.*

Defendant moved to dismiss the charges against him based on the statute of limitations, since the charges stem from events which allegedly occurred in 1996. At the time, the statute of limitations for prosecution of such crimes was six years; thus, the statute of limitations expired in 2002. 17-A M.R.S. § 8. For the purposes

of the statute of limitations, “[a] prosecution is commenced when a complaint is made or an indictment is returned, *whichever first occurs*.” *State v. Borucki*, 505 A.2d 89, 91 (Me. 1986) (emphasis in original) (quoting 17-A M.R.S. § 8(6)(B)).

As noted above, prior to the expiration of the statute of limitations, a complaint was made and an arrest warrant was obtained against “John Doe #1, Unknown Male” with a certain DNA profile on August 2, 2002. That complaint commenced the prosecution, although no person had actually been arrested. The complaint was subsequently amended to name defendant Jason Follette in place of John Doe on November 7, 2022, over twenty years later. The question, therefore, is whether the “John Doe” complaint and arrest warrant was sufficient to commence the prosecution and effectively toll the statute of limitations. Defendant submits that it was not.

This Court has noted that although “[e]very statute of limitation has the obvious potential to permit a guilty person to escape conviction,” such measures “are justified, however, by the need to protect individuals from having to defend themselves against stale charges and by the need to provide an incentive for reasonably prompt investigation of criminal activity.” *State v. Gammon*, 519 A.2d 721, 722 (Me. 1987). “Accordingly, courts have held that criminal limitations statutes are to be liberally interpreted in favor of repose.” *Id.* Based on that principle, in *Gammon*, the court found that the commencement of a juvenile petition within the

limitations period was insufficient to commence prosecution and held that the indictment must be dismissed as barred by the statute of limitations. Likewise, the court should find that the commencement of a criminal complaint against an unknown individual, described only by a DNA profile that means nothing in the absence of a match, is insufficient to commence prosecution. Allowing a “John Doe” DNA warrant to serve as a “placeholder” for charges that may eventually be filed ten, twenty, or even fifty years later would completely eviscerate the purpose of a statute of limitations.

In *State v. Intoxicating Liquors*, 110 Me. 260, 85 A. 1060 (1913), the Court held that “[i]t is essential to the validity of a complaint and warrant, or indictment, that the party against whom it is issued should be described therein sufficiently so that he may be thereby identified as the person on whom it is to be served. If his name is not known he must be otherwise sufficiently described.” *Id.*, 85 A. at 1061. A “warrant to arrest a person described fictitiously as John Doe, without any further description or means of identification of the person to be arrested is void. *Id.* (citation omitted). This Court has apparently never had occasion to consider whether a DNA profile is sufficient to describe or identify the subject of a criminal complaint or arrest warrant.

“An accused is entitled to have an indictment describe him by his full and correct name. It is only when his full and correct name is unknown that further

particulars of identity such as physical characteristics, sex, occupation, place of residence, or other details of identification must of necessity be alleged.” *State v. O’Clair*, 292 A.2d 186, 189 (Me. 1972). The use of a “John Doe” complaint containing only a DNA profile, without any additional information to describe the subject of a criminal complaint, is a disingenuous device that would evade the statute of limitations and infringe on the constitutional rights of the accused. A description of a person by DNA profile alone is insufficient to put any particular person on notice that he is being accused of that crime, since most people do not know their DNA profile. Even the forensic DNA analyst from the Maine State Police Crime Lab, Jennifer Sabean, testified that a DNA profile is a series of numbers that “don’t mean anything in particular, when you’re just looking at them. It’s when we compare that series to the series from a known person, and we can say that they are the same, or they’re different.” Transcript of Hearing Held 12/13/24 (hereinafter “Tr. 12/13/24”), p. 162.

Although some courts have found that a John Doe DNA warrant can toll the statute of limitations in some circumstances, they generally require that reasonable diligence be used by law enforcement in its attempts to identify the defendant. *See, e.g., State v. Moore*, 185 N.E.3d 216, 223 (Ohio App. 2022). In the present case, law enforcement was not reasonably diligent in attempting to actually identify the perpetrator of the August 1996 and October 1996 crimes. Other than collecting

materials from which DNA evidence was recovered, the affidavit of Det. Stephen Pickering, upon which the complaint and arrest warrant were based, does not describe any other efforts made by law enforcement to discover the identity of the perpetrator between August 1996 and August 2002 when the warrant was issued. Although the crimes took place in 1996, the state crime lab did not develop DNA profiles on the samples until November 1999, over three years later. That DNA profile was not run against the Maine DNA Database until June 13, 2002, nearly three more years later, just weeks prior to the expiration of the statute of limitations. Thereafter, nearly twenty years elapsed with no apparent investigation into the alleged crimes whatsoever. Det. Dana Austin has completed at least three affidavits in which he has sworn to the truthfulness of the contents, and each of those affidavits describe this case as a “cold case.” Not one fact is recited in any of those affidavits to suggest that any work was done on this case after the issuance of the John Doe warrant in 2002 until the spring of 2022. This is not the exercise of due diligence, and the statute of limitations should not be tolled during that time.

In a hearing held on Defendant’s motion to dismiss, the trial court heard testimony from retired detectives Stephen Pickering of the Maine State Police and Stephen McFarland of the Hancock County Sheriff’s Office. That testimony showed that the investigators had a collective subjective belief that a connection existed between the crimes with which Jason Follette has now been charged and many, many

other cases or complaints in the same general geographic area over the span of many years. The State attempts to argue this is not a “cold case” because of the existence of investigations into other similar crimes in the area over a number of years. However, there was no testimony that anything specific was done to investigate these two particular crimes involving S.M. and A.K. , rather than to simply investigate other reports of criminal activity in the general area. The subjective beliefs of the investigators that a single individual may have been responsible for all of that criminal activity have never been supported by any evidence, and no reports provided in discovery show any connection between the multiple cases. Jason Follette has not been charged with any crimes other than the S.M. and A.K. incidents. Simply because the police continued to investigate other similar crimes in the area over the ensuing years does not mean that the police were actively investigating the S.M. and A.K. cases.

At best, the testimony shows that from time to time, while investigating other crimes in the area, detectives submitted DNA samples to the lab for comparison to the evidence from the S.M. and A.K. cases. In each of those instances, which consisted of approximately 40 different DNA samples, no connection was made. However, in at least two of those cases, photo lineups were done which led to a positive identification of a suspect who was not Jason Follette. Tr. 12/13/24, p. 65. Det. McFarland agreed that while he investigated a number of cases involving

prowlers or peeping Toms in the area from 2003 to 2019, he didn't do any particular work with the evidence collected from the S.M. and A.K. cases. Tr. 12/13/24, p. 68.

Detective McFarland did recall an incident from November 7, 1996, for which a report was generated by the investigating officer, which he opined might have been connected to the crimes that Jason Follette is charged with. That incident involved a dog tracking a suspect in a reported indecent exposure incident, which law enforcement claims led to the front door of a residence owned by Stephen Follette, Sr. and Pauline Follette. Tr. 12/13/24, p. 48. Jason Follette did not reside there at that time. Det. Austin interviewed Pauline Follette in May 2024 about that incident, but she had no recollection of it. Unfortunately, in addition to Pauline Follette's lack of memory of the incident, Stephen Follette, Sr. died on December 24, 2019. For many reasons, including the dog tracking incident, Stephen Follette, Sr. possessed information critical to Jason Follette's defense. Had the forensic genetic genealogy been conducted earlier, even by 2018, Stephen Follette, Sr. would have still been alive and available to provide testimony about a variety of relevant and important topics, including his own ancestry (and the fact that he was not a biological Follette, since he was adopted into that family), the dog tracking incident which law enforcement clearly considers important, as well as providing his own DNA.

The work performed by Othram, Inc. in this case to identify the Follette brothers as potential subjects, known as forensic genetic genealogy, has been around for at least fifteen years. Tr. 12/13/24, p. 130. Othram itself began offering these services in 2018, and there were other companies who did something similar before that. Tr. 12/13/24, p. 134; Transcript of 2/20/25 hearing, pp. 46-48. Nonetheless, no attempt was made to use forensic genetic genealogy to identify potential suspects in this case until 2022, twenty years after the statute of limitations had expired.

The developments in science which permit forensic genetic genealogy to potentially identify familial relationships from DNA testing to narrow the field of potential suspects in certain crimes is undoubtedly an invaluable tool for law enforcement in the 21st century. However, it should not be permitted to be used to dredge up cold cases from nearly thirty years ago when there was a six-year statute of limitations. Otherwise, the statute of limitations is completely meaningless in any case which includes DNA evidence. Because no charges were brought against Jason Follette until 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.

This case must also be dismissed because Defendant has not been afforded his constitutional right to a speedy trial. This court reviews a court's judgment on a

motion to dismiss a charge for failure to provide a speedy trial for abuse of discretion. *State v. Hofland*, 2012 ME 129, ¶ 11, 58 A.3d 1023 (citation omitted).

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 is 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*, 407 U.S. 514 (1972), the right to a speedy trial protects not only fairness to the accused, but societal interests as well. In *Barker*, the Court delineated a balancing test for the analysis of whether a defendant’s federal right to a speedy trial, which consists of four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his speedy trial right; and (4) prejudice to the defendant. *Id.* at 530.

The length of delay that is prejudicial depends on the circumstances of each case, including the complexity of the case. A shorter delay may be 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). Here, the length of the delay would be measured from the filing of the complaint against “John Doe #1” in 2002.

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, 407 U.S. 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. "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 highlighted 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 potential impairment of the defense is the most critical of those interests because when a delay impairs a defendant's ability to defend himself, the entire

fairness of the system is skewed. When, after a delay, a witness is missing or unavailable, the prejudice is “obvious.” There is also prejudice when a witness’s memory is impaired. *Id.* Oppressive pretrial incarceration is another significant prejudice to the defendant. 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.*

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

The Maine Constitution also guarantees the right to a speedy trial: “In all criminal prosecutions, the accused shall have a right ... to have a speedy, public and impartial trial...” Me. Const. Art. I, § 6. The Maine Rules of Unified Criminal Procedure also provide for dismissal when there is a delay in bringing a defendant to trial. M.R.U. Crim. P. 48(b)(1).

This Court has recently expounded on the scope of the right to a speedy trial under the Maine Constitution in *Winchester v. State*, 2023 ME 23, 291 A.3d 707. The test under the Maine Constitution is similar to the test under the federal constitution with one difference: that “a failure to assert the right can be determinative under the Maine Constitution but not under the United States Constitution.” *Winchester*, 2023 ME 23, ¶ 33. The test under the Maine Constitution is a four-factor balancing test, which considers (1) the length of the delay; (2) the

reasons for the delay; (3) the assertion of the right; and (4) prejudice. *Id.* at ¶¶ 25-31. This standard is flexible and its application is dependent on the unique circumstances of each case. *Id.* at ¶ 25.

In assessing the length of the delay, the court looks at whether the delay is longer than the ordinary delay associated with the criminal justice process. *Id.* at ¶ 26. Here, the delay between the filing of the complaint and in August 2002 and a potential trial is in excess of twenty-three years, well beyond any ordinary delay. That factor therefore weighs heavily in favor of the defendant. Indeed, the federal test for a speedy trial violation includes a presumption that delay of around one year is considered presumptively prejudicial. *Id.* at ¶ 36 (citing *United States v. Carpenter*, 781 F.3d 599, 610 (1st Cir. 2015)). See also *State v. Willoughby*, 507 A.2d 1060, 1065 (Me. 1986) (concluding that a fourteen-month delay was sufficient to trigger review for a speedy trial violation under *Barker*). If one year is presumptively prejudicial, then a delay of over twenty years should be considered as conclusively prejudicial as a matter of law.

The State may argue that the clock did not begin to run on defendant's right to a speedy trial until he was arrested in November 2022. This Court has held that the clock begins to run at the time when the defendant becomes formally accused. *Winchester* at ¶ 41, n. 19. Here, the State has taken the position that Jason Follette was formally accused when the "John Doe" arrest warrant with his alleged DNA

profile was issued in August 2002. If that John Doe DNA warrant is found sufficient to toll the statute of limitations, then it necessarily means that the prosecution of Jason Follette commenced in August 2002, and the speedy trial right must start to run on that date. The State cannot have it both ways.

The second factor, the reason for the delay, also weighs in favor of the defendant. The delay was not caused by the defendant but caused by the State's dilatory investigative tactics. The alleged crime occurred in 1996 but the DNA was not analyzed until 1999 and was not run through the State's DNA database until June 2002. A complaint was filed and an arrest warrant was issued in 2002, but the State made no further efforts to resolve the case until 2022 when it finally sent the alleged DNA evidence out for further analysis, even though that type of analysis had been available as an option for many years.

The third factor, assertion of the right, also weighs in favor of defendant, as he has repeatedly asserted his right to a speedy trial. He twice filed demands for a speedy trial and moved to dismiss on grounds that his right to a speedy trial had been violated. Jason Follette did not have the opportunity to assert his speedy trial right earlier than 2022, despite the issuance of the 2002 John Doe complaint and arrest warrant, because that complaint was insufficient to put him that charges were being made against him.

The fourth factor, prejudice, weighs heavily in favor of the defendant. The alleged crime in this case occurred in August of 1996, nearly twenty-nine years ago. Prejudice includes the impairment of the accused's ability to mount a defense to the accusation. *Winchester* at ¶ 30. Since it has been twenty-nine years since the alleged crime, it will be impossible for Jason Follette to gather physical evidence or identify and interview witnesses, some of whom may have moved away or even died, and otherwise prepare his defense. The death of Jason Follette's father, who could have provided crucial testimony regarding the "dog track" incident and his own ancestry and history of being adopted rather than born into the Follette family, is a case in point. So is the lack of memory of Pauline Follette regarding the "dog track" incident. It is fundamentally unfair to require defendant to defend himself against a charge of an event that allegedly occurred 29 years ago, nearly half of defendant's own lifetime ago.

"The denial of the right to a speedy trial ... has but one extremely harsh remedy: dismissal of the charges." *Winchester* at ¶ 8 (quoting *State v. Smith*, 400 A.2d 749, 752 (Me. 1979)). Because Jason Follette has been denied a speedy trial on charges that stem from 1996, the trial court erred in denying Defendant's motion to dismiss those charges.

CONCLUSION

For the foregoing reasons, the trial court's order denying Defendant's motion to dismiss on grounds of the statute of limitations and the violation of his right to a speedy trial must be vacated. This Court should vacate the Order and remand this matter to the Unified Criminal Court with instructions to dismiss the charges with prejudice.

Dated at Bangor, Maine this 16th day of July, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2025, I caused one electronic copy of the Brief and one electronic copy of the Appendix to be served upon Appellee by sending it via electronic mail to the following address:

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