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STATE OF WISCONSIN

IN SUPREME COURT

No. 2022AP959-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

LUIS A. RAMIREZ,

Defendant-Appellant.

PETITION FOR REVIEW AND APPENDIX

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INTRODUCTION

Under *Barker v. Wingo*, a constitutional claim of a speedy trial violation requires a circuit court to make an ad hoc fact-based analysis balancing (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of his right; and (4) prejudice.[1] Here, in a decision recommended for publication, the court of appeals held that a 46-month delay justified reversing Luis Ramirez's conviction for battery by a prisoner and ordered the complaint against him dismissed. While no one disputes that the delay here was significant, the court's application of the *Barker* factors to the circumstances was novel and flawed.

Regarding the second factor, the court held the State to an unattainable standard, requiring it to provide a specific accounting for delays like why a particular witness was unavailable, or why time passed between court-set hearings. On the third factor, it gave significant credence to Ramirez's pro se request for a speedy trial, two years into the proceedings, while he was represented by counsel. The court issued its relief even though it agreed that Ramirez was not prejudiced by the delay. And in so ruling, the court unreasonably set aside the factual and credibility findings of the circuit court and that court's weighing of the four factors.

This Court's review is needed to revisit the meaning and proper application of the *Barker* test and clarify its standards and burdens. This Court has not considered these issues in 34 years; since then, the court of appeals has developed this area of law. This decision creates contradictory precedent, it pushes the standards and burdens beyond the bounds of *Barker* and reasonableness, and it stands poised to create confusion in lower courts.

[1] *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

ISSUES PRESENTED

1. Under the second factor of *Barker*, delays in bringing a defendant to trial are not counted when they are "caused by something intrinsic to the case, such as witness unavailability," or "attributed to the ordinary demands of the judicial system"; they are neutral when they occur due to a congested court calendar or lack of resources.

Here, the court of appeals weighed periods of time heavily against the State even when it provided valid or neutral reasons for delays (such as witness unavailability or a double-booked courtroom). The court held that witness unavailability was a valid reason only if they were ill or missing, and it faulted the State for not accounting for every moment that passed between scheduled hearings.

Did the court of appeals create a new requirement departing from *Barker* and other precedent?

This Court should accept review to clarify what level of specificity the State must provide in explaining delays.

2. Under the *Barker* balancing test, a court's determination that the defendant did not want a speedy trial and could show only minimal prejudice outweighs a lengthy delay even if it is primarily attributable to the State. Here, the circuit court made findings and credibility determinations that Ramirez did not want a speedy trial, based on his postconviction testimony, the delayed and pro se nature of his requests, and the nature of Ramirez's other requests accompanying his pro se filings. The court of appeals reversed those findings and determinations, which prompts two related questions:

A. How should a reviewing court weigh a defendant's pro se requests, particularly where counsel never renews them and counsel never objects to adjournments?

B. How should a reviewing court treat a circuit court's findings that a defendant did not want a speedy trial when those findings are based in part on credibility determinations?

This Court should accept review and clarify how courts are to assess uncounseled "assertions" of the right and the circuit court's credibility determinations.

3. Did the court of appeals correctly hold that the State, showed a "cavalier disregard" for Ramirez's constitutional speedy trial rights where the State offered explanations for every adjournment, the court and parties were actively preparing for trial, Ramirez never made a speedy trial demand through counsel, he was in prison on another conviction while the case was pending, and the circuit court determined that Ramirez never wanted a speedy trial and was not prejudiced?

This Court should accept review and hold that the State did not show a cavalier disregard for Ramirez's speedy trial rights, Ramirez's assertions of his right were not effective, and Ramirez could show no actual prejudice.

CRITERIA FOR REVIEW

All three issues presented concern a defendant's right to a speedy trial and hence involve "[a] real and significant question of federal . . . constitutional law." Wis. Stat. § (Rule) 809.62(1r)(a). Relatedly, as to all three issues, a decision by this Court "will help develop, clarify or harmonize the law, and . . . [t]he question presented . . . is [one] of law of the type that is likely to recur unless resolved by the supreme court." Wis. Stat. § (Rule) 809.62(1r)(c)3. And finally, the court of appeals' decision conflicts with controlling opinions of the

United States Supreme Court and this state's appellate courts. Wis. Stat. § (Rule) 809.62(1r)(d).

The State discusses how this case satisfies those criteria in the Argument section below.

STATEMENT OF THE CASE

On May 5, 2015, while serving lengthy sentences for felony convictions of armed robbery and battery to law officers, Ramirez attacked a correctional officer by stabbing him in the head and neck with a sharpened pencil. (R. 2:2–3.) At the time of the attack, Ramirez was at Columbia County Correctional Institution on administrative confinement status (a more restrictive status than that of the general prison population) and living in a disciplinary segregation housing unit. (R. 2:2.)

On February 1, 2016, the State charged Ramirez with battery by a prisoner and disorderly conduct, both with repeater and use-of-a-dangerous-weapon enhancers. *Columbia County Case Number 2016CF31 State of Wisconsin v. Luis A. Ramirez*, Wis. Cir. Ct. Access, https://wcca.wicourts.gov/caseDetail.html?caseNo=2016CF000031&countyNo=11&index=0&mode=details#records (last visited May 24, 2024); (Pet-App. 70).[2] After a two-day trial, which began 46 months later on December 3, 2019, he was convicted of both crimes and received a consecutive 15-year sentence. (R. 92:1; 163; 164.)

Ramirez filed a postconviction motion to vacate his conviction and dismiss the complaint, alleging that the 46-month delay in bringing him to trial violated his constitutional speedy trial rights. (R. 121.) The postconviction

[2] The State obtains some information on timing from the CCAP record, from which this Court may take judicial notice. *See* Wis. Stat. § 902.01; *State v. Aderemi*, 2023 WI App 8, ¶ 7 n.3, 406 Wis. 2d 132, 986 N.W.2d 306.

court held a hearing at which Ramirez testified. (R. 142.) The focus of that hearing was primarily for Ramirez to assert that he was prejudiced by the delay. There, Ramirez testified that he was placed in disciplinary separation for 360 days after the attack, after which he returned to administrative confinement status. (R. 142:6.) He remained on administrative confinement status while the criminal charges here were pending. He asserted that the delays in the case caused health issues and that but for the pending case, he would have been released to the general population. (R. 142:7–12, 18, 22–23.)

In an oral ruling, the postconviction court denied Ramirez relief. The court held that the length of the delay in the case was presumptively prejudicial and much of it was chargeable to the State. (Pet-App. 55–57.) However, there were at least neutral explanations for the delays, and some were of Ramirez's making. (Pet-App. 55–56.) As the circuit court stated, the causes of the delay were difficult to account, in part because only it and Ramirez "experienced this case from start to finish." (Pet-App. 55.) And to that point, Ramirez "was not frequently a participant in the many off-the-record status conferences that were held in this case in an effort to try to keep it moving." (Pet-App. 55.)

The court explained that the delays were caused by multiple circumstances:

> To the Court's recollection and certainly consistent with my own notes from those status conferences, at least some portion of the delay . . . was due to the Defendant himself at his insistence that additional video evidence of this incident existed and was available and had not been disclosed by the State.
>
> More than once, those discussions revolved around getting commitment from the defense attorney about whether or no Defendant wanted to have his trial sooner or wanted to have his trial with

> what we now know I believe is nonexistent additional video evidence.
>
> There is no way really to tell the count of days associated with that because there were so many other things going on at the same time. Among them the retirement of the District Attorney, the new attorney assigned from the District Attorney's Office, [and] at least twice, the courthouse moved [its] entire operation to a temporary location and back.
>
> We operated in a three judge courthouse with only one courtroom that could accommodate a jury trial for almost a full year during this time.
>
> None of those issues are in any way the responsibility of the Defendant, but it is safe to say that certainly this case more than any other was operating in a vacuum.

(Pet-App. 55–57.) Accordingly, the court agreed that the collective issues reflected a "more than necessary period of delay that's chargeable to the State," but that period was not "any way near as wide a margin as asserted by [Ramirez]." (Pet-App. 57–58.)

The court also determined that Ramirez's pretrial assertion of his speedy trial right did not weigh heavily in his favor. (Pet-App. 58.) It highlighted a motion hearing at which Ramirez made a pro se speedy trial demand, while still remaining insistent that a "mythical additional video" was missing from discovery, and while asserting that he wanted his attorney to file a change of venue motion. (Pet-App. 58–59.) The court determined that those actions were "patently inconsistent with someone whose only goal is to get to trial as quickly as possible, which is essentially what [Ramirez] is now asserting." (Pet-App. 59.)

Finally, the court determined that the delay did not prejudice Ramirez, determining that his testimony on that point as "facially incredible." (Pet-App. 59–60.) It acknowledged that when a defendant fails "so miserably" to

show prejudice as Ramirez had done here, "that causes the Court substantial concern that it is somehow being played." (Pet-App. 60.)

It summarized that while the delay was long and a significant portion of it was the State's responsibility, Ramirez "sometimes overtly and more subtly work[ed] against his own stated interest in getting to that trial date." (Pet-App. 60–61.) It noted that Ramirez, after being found guilty, was now asserting "that [the] Court should have figured out his speedy trial was really what was most important to him." (Pet-App. 60–61.) It summed up:

> [Ramirez] can't have it both ways. He can't insist repeatedly on other things happening and then complain that while we try to figure out how those other things might happen, that somehow he was then prejudiced because of the delay that he effectively participated in requesting.

(Pet-App. 61.) That was especially so, the court noted, given that Ramirez could not show any arguable prejudice resulting from the delay. (Pet-App. 61–62.)

Ramirez moved for reconsideration, challenging the postconviction court's finding and emphasis on the "nonexistent" video, when later discovered evidence showed that the video did exist. (R. 167:2–3.) In an oral ruling, the postconviction court acknowledged that its remarks about the video's nonexistence were based on incorrect information it had at the time. (Pet-App 65.) Nevertheless, the court clarified that its point remained: "in this case . . . discussion of that video had taken on almost a special status . . . . [I]t appeared to me that every time we got close to some significant event . . . [Ramirez] again raised this issue [of] . . . . where is this video." (Pet-App. 65–66.) And those requests would cause the prosecutor to look into it and give the same answer, which was "there [was] no video." (Pet-App. 66.) The court noted that while Ramirez had a right to

discovery and a speedy trial, he constantly accompanied the latter requests with demands for a video that "he'd been repeatedly told didn't exist," along with suggesting other motions, such as a change of venue. (Pet-App. 66–67.) Accordingly, the court determined that based on his inconsistent actions and his "self-serving" postconviction testimony, Ramirez was "mostly not credible" in his desire for a speedy trial. (Pet-App. 68–69.)

Ramirez appealed. The District IV court of appeals reversed the judgment of conviction and remanded for the circuit court to dismiss the complaint. (Pet-App. 41.) In a 39-page decision recommended for publication, the court agreed that Ramirez had failed to show prejudice from the delay. (Pet-App. 4.) Nevertheless, it downplayed the State's reasons for the delays, or it asserted that the State provided "no explanation" for substantial portions of the delays such that it qualified as "cavalier disregard" (effectively weighing as heavily as bad faith or deliberate delays) for Ramirez's speedy trial rights. (Pet-App. 4.) For example, the court limited an unavailable witness to constitute a "valid" (and uncounted) reason for a continuance only if the witness could not "be compelled by court process to appear at trial." (Pet-App. 24.) It faulted the State for not explaining in circumstances where the trial date was reset (for at least neutral reasons) why the new trial could not have been set for an earlier time. (Pet-App. 24–25, 28.) The court charged the State heavily with "at least some portion" of those periods, without clarifying what portion required additional explanation or how it could do so. (Pet-App. 27–28.) It characterized as unexplained and "cavalier disregard" a delay that the record clearly reflects was a time period in which the parties were waiting on actions by defense counsel following a hearing in which Ramirez made multiple pro se demands. (Pet-App. 29–30, 34.)

In addition, the court of appeals treated Ramirez's pro se speedy trial demands as legitimate and it did not weigh against him the fact that he never objected to trial rescheduling, that none of his demands were made through counsel, and that he was not challenging counsel's performance in that respect. (Pet-App. 36–38.) It only weighed his requests less because they were made over two years into the proceedings, though the court of appeals did not lessen the weight against the State of any delays occurring before Ramirez made those demands. (Pet-App. 36–38.) It also limited the postconviction court's credibility determinations to Ramirez's testimony regarding prejudice, and declared clearly erroneous that court's factual findings that Ramirez's actions in the pretrial proceedings were inconsistent with a genuine desire for a prompt resolution. (Pet-App. 31–32, 39–40, 40 n.13.)

ARGUMENT

I. The issues concern a real and significant constitutional question, which this Court has not substantively addressed in 34 years.

The United States Supreme Court decided *Barker* in 1972. Since then, this Court has addressed claims involving the speedy trial analysis a dozen times, primarily in the 1970s, with its most recent decision issued in 1990.[3] Since then, the courts of appeals have created the most-frequently-

[3] *See State v. Lemay*, 155 Wis. 2d 202, 455 N.W.2d 233 (1990); *Hatcher v. State*, 83 Wis. 2d 559, 266 N.W.2d 320 (1978); *State v. Mullis*, 81 Wis. 2d 454, 260 N.W.2d 696 (1978); *Scarbrough v. State*, 76 Wis. 2d 87, 250 N.W.2d 354 (1977); *Hipp v. State*, 75 Wis. 2d 621, 250 N.W.2d 299 (1977); *Green v. State*, 75 Wis. 2d 631, 250 N.W.2d 305 (1977); *Norwood v. State*, 74 Wis. 2d 343, 246 N.W.2d 801 (1976); *State v. Ziegenhagen*, 73 Wis. 2d 656, 245 N.W.2d 656 (1976); *Beckett v. State*, 73 Wis. 2d 345, 243 N.W.2d 472 (1976); *State v. Shears*, 68 Wis. 2d 217, 229 N.W.2d 103 (1975); *Hadley v. State*, 66 Wis. 2d 350, 225 N.W.2d 461 (1975); *Watson v. State*, 64 Wis. 2d 264, 219 N.W.2d 398 (1974); *Day v. State*, 61 Wis. 2d 236, 212 N.W.2d 489 (1973).

invoked precedent interpreting *Barker*. *See, e.g.*, *State v. Provost*, 2020 WI App 21, 392 Wis. 2d 262, 944 N.W.2d 23; *State v. Urdahl*, 2005 WI App 191, 286 Wis. 2d 476, 704 N.W.2d 324; *State v. Borhegyi*, 222 Wis. 2d 506, 588 N.W.2d 89 (Ct. App. 1998). The court of appeals here made two overarching missteps: first, it relied selectively on language from those court of appeals cases that involved distinguishable circumstances and standards that stretched the requirements in *Barker* at the time. Second, it created both limitations on and expansions of the standards in *Barker*, resulting in precedent that is likely to cause confusion for the State, the defense, and the courts in litigating these claims. Notably, the law created in this case is vague regarding what the State's burden is to explain or justify delays and how circuit courts should weigh the *Barker* factors. It also does not square with the practical realities of how courts and parties prepare for trial, reset dates, and manage court calendars.

The court's recommendation of this decision for publication underscores the need for this Court's review and guidance. Indeed, the court of appeals viewed this case as presenting an especially significant speedy trial challenge, noting three times in its decision that the 46-month delay that occurred here was "the longest total delay in any published constitutional speedy trial case in Wisconsin" since *Barker* was decided. (Pet-App. 4, 14, 40.) But where the length of the delay sits in the spectrum of delays is not the test. Rather, *Barker* demands that a circuit court conducts an ad hoc balancing of the circumstances of an individual case. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). Indeed, in assessing the lower court's application of the balancing test, the *Barker* Court held that a five-plus-year delay did not violate that defendant's constitutional speedy trial rights.

Finally, this case presents a real and significant question of constitutional law because of the extreme relief—dismissal of "charges against a defendant who has been convicted of serious criminal conduct"—that occurs when a court holds that the balancing test favors the defendant. *Borhegyi*, 222 Wis. 2d at 520; *see also Barker*, 407 U.S. at 522 (dismissal is "the only possible remedy" for a violation). If the court of appeals' decision stands without review, its incorrect reasoning and unclear standards will prompt unwarranted dismissals of criminal convictions in future cases.

Review is warranted to gain this Court's guidance and clarification on this important area of law.

II. A decision by this court will help develop, clarify or harmonize the law on questions of law likely to recur.

As to the first two issues presented, a decision by this Court "will help develop, clarify or harmonize the law, and . . . [t]he question presented . . . is [one] of law of the type that is likely to recur unless resolved by the supreme court." Wis. Stat. § (Rule) 809.62(1r)(c)3.

A. The court of appeals' decision regarding the second *Barker* factor creates confusion about how the State can satisfy its burden.

As to the second *Barker* factor, the court of appeals' decision demands significantly more detail and explanation of reasons for delays than case law requires or that practicality permits. This decision leaves more questions than answers in how government actors can create a record to satisfy constitutional standards. Three examples from the court of appeals' decision demonstrate its unclarity and imposition of nearly impossible-to-satisfy legal standards.

First, courts have consistently recognized that a temporarily unavailable witness may be intrinsic to the case and that resulting adjournments to obtain their availability do not weigh against the State. *Urdahl*, 286 Wis. 2d 476, ¶ 26 (citing *State v. Ziegenhagen*, 73 Wis. 2d 656, 668, 245 N.W.2d 656 (1976); and *Barker*, 407 U.S. at 531, 534). For example, in *Urdahl*, the court held that a delay caused by the need to accommodate a material witness's vacation did not count or weigh against the State. *Id.* ¶¶ 3, 27.

Yet here, when the State explained that the first trial adjournment was due in part to an unavailable witness, the court of appeals faulted it for not explaining *why* the witness was unavailable. (Pet-App. 24.) Worse, the court of appeals indicated that delays caused by an unavailable witness would not count against the State *only* if the witness was ill or was missing and could not be forced to appear. (Pet-App. 17, 24.) That reasoning, which if correct effectively requires the State or defense to subpoena witnesses out of vacations or other obligations, does not square with *Urdahl* or common sense.

A second example: the court of appeals demanded that the State not only explain reasons for a requested adjournment, but why—when the court reset a trial date—it could not set it "more promptly" (a time period left undefined) than five or six months later. (Pet-App. 25, 27–28.) The court stated vaguely that "at least some portion" of the time periods between an adjourned and a new trial date "weighs heavily against the State." (Pet-App. 25, 27–28.) It did not explain how the State can create a record indicating why the new trial date set months in advance is the earliest available and could not be held more promptly.[4]

[4] In counsel's experience, adjournments of trial dates of five or six months are not unusual, though it of course depends on the county, the projected length of trial, the prosecutor's and counsel's calendars, and other factors.

The court looked to language in *Borhegyi* suggesting that the State had to explain why a trial could not be set sooner than a few months after an adjourned date. *Borhegyi,* 222 Wis. 2d at 513. But *Borhegyi* also did not identify a reasonable amount of time for a new trial to occur after an adjournment. But at least in *Borhegyi*, the relevant delays occurred *after* Borhegyi's counsel filed a speedy trial demand, and under circumstances where one trial date was adjourned with no explanation at all. *Id.* at 513–14. Ignoring those differences, the court of appeals here applied that language to circumstances where the State explained why holding trial on the scheduled dates was impossible and Ramirez did not object to the adjournments.

As a third example, the court of appeals weighed heavily against the State 169 days of delay between an arraignment on October 26, 2016, and the first trial date set for April 13, 2017. (Pet-App. 22.) It faulted the State for not explaining that length of time and stated, apparently based on the CCAP record, that "all court activity in this case appears to have ceased" between October 26 and April 13, other than a court order in December setting trial for April 13. (Pet-App. 20–21.) That reasoning was misguided.

It is not clear what other "court activity" the court of appeals expected to see in that time, or what the State should have provided. After the court set the trial date, there were no motions requiring a hearing. What's more, there *was* activity indicating that the parties were preparing for the April trial. That was reflected in the State's filing a witness list in February 2017. (Pet-App. 82.) It also filed motions in February and early March requesting an adjournment due to an unavailable witness and the prosecutor's estimate that trial required three days, not one. (Pet-App. 82.) In March, the trial court held a status conference and set a new trial date for September 2017. (Pet-App. 82.) Ramirez had no speedy

trial demand at the time and he did not object to the adjournment or the new trial date.

These three examples illustrate the heightened burden the court of appeals placed on the State under the second step of *Barker*. To be clear, the State agrees with the court of appeals that the 46-month delay here was too long. But the court of appeals' reasoning and language demands far more explanation for delays than what case law demands or practicality allows.

B. Regarding the third *Barker* factor, review is needed for this Court to clarify standards for the defendant's assertion of their speedy trial rights and a reviewing court's assessment of weight and credibility determinations.

In this case, Ramirez made pro se speedy trial demands twice: the first over 31 months after the charges were filed, and the second seven months later. (Pet-App. 33.) The court of appeals averred that his assertions were "somewhat delayed," but it refused to assign those assertions less weight based on their pro se nature, rejected the trial court's findings and credibility determinations that Ramirez's motions were not earnest, and disregarded that Ramirez never raised a challenge to trial counsel's effectiveness for not asserting a speedy trial demand on his behalf or objecting to trial adjournments. (Pet-App. 35–38.)

This portion of the decision seemingly lowers Ramirez's burden to assert a demand for a speedy trial. While it is true that *Barker* teaches that a lack of a demand for a speedy trial is not a waiver, *Barker* also holds that a defendant bears some responsibility for asserting his right. *Barker*, 407 U.S. at 528. And how that assertion of the right weighs in the analysis is primarily a discretionary decision by the court to whom

Ramirez made the assertion. To that end, the *Barker* test envisions that this step in the analysis allows a trial court to:

> attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed. It would also allow a court to weigh the frequency and force of the objections as opposed to attaching significant weight to a purely pro forma objection.

Id. at 528–29.

Here, the circuit court made findings and credibility determinations that Ramirez's speedy trial requests were not earnest, in part because Ramirez made other requests at the time that were not consistent with a desire for a prompt resolution, because Ramirez could not show any prejudice resulting from the delay, and because it did not believe Ramirez's postconviction testimony that he desired a speedy trial. (Pet-App. 58–59.) Underscoring all of that were the facts that Ramirez was represented by counsel at the time of his demands, counsel never advanced a constitutional speedy trial motion on Ramirez's behalf, and Ramirez never alleged that his trial counsel was ineffective for neither advancing a speedy trial demand nor for assuring the court that he did not object to adjournments.

These circumstances seemingly would support a circuit court's discretion in assigning less weight to Ramirez's speedy trial demands. Yet the court of appeals treated the circuit court's findings and determinations as clearly erroneous, and viewed his pro se demands as effective requests under *Barker*, such that every delay that occurred after then weighed heavily against the State.

The court of appeals' decision creates confusion about the extent to which the trial court has discretion to weigh its impression of a defendant's assertion of a speedy trial right, and how appellate courts should treat that court's factual and credibility determinations on appeal.

III. The court of appeals' decision conflicts with precedent.

Review by this Court is warranted to confirm that the court of appeals' continued law development in this area comports with the principles in *Barker* and other constitutional speedy-trial precedent.

The State has pointed out some of these conflicts in the sections above. As noted, in *Borhegyi*, the State acted in "cavalier disregard" for a defendant's active speedy trial demand when there was no explanation for an adjournment and where the new trial "was not scheduled more promptly." *Borhegyi*, 222 Wis. 2d at 513. Here, relying on that language, the court of appeals declared that the State acted in cavalier disregard for explained, unobjected-to adjournments that occurred before there was any ostensible speedy trial demand. (Pet-App. 25, 28.) The court of appeals' decision here either conflicts with or exposes amorphous standards in *Borhegyi*.

Additionally, the court of appeals' decision limits witness unavailability to excuse a delay to situations where the witness is ill, missing, or otherwise impossible to be subpoenaed to appear. (Pet-App. 24.) That portion of the decision conflicts with its own precedent in *Urdahl*. *Urdahl*, 286 Wis. 2d 476, ¶¶ 3, 27 (declining to count a period between rescheduled hearings due to a material State's witness's scheduled vacation).

Further, in *Barker*, the Court concluded that Barker did not want a speedy trial based on the facts that Barker was represented by counsel, counsel never objected to continuances, the only possible motion for a speedy trial

indicated a desire to *not* be tried, and Barker raised no challenge to counsel's competency. *Barker*, 407 U.S. at 534–35. Those circumstances are present here, yet the court of appeals weighed Ramirez's pro se assertions of his speedy trial rights against the State. (Pet-App. 36–38.)

Finally, the court of appeals hinged its opinion on the State's failure to explain why time passed between scheduled hearings, and its failure to explain why the trial court could not set new trials for earlier dates (beyond the fact that while Ramirez's case was pending, the Columbia County courthouse was undergoing renovations for a year that reduced its available jury courtrooms from three to one). Yet this Court in *Norwood* recognized that time elapsing between hearings "can reasonably be attributed to the ordinary demands of the judicial system." *Norwood v. State*, 74 Wis. 2d 343, 354, 246 N.W.2d 801 (1976). To be sure, the time that elapsed in *Norwood* was just a few days, not months. But the court of appeals' decision fails to explain what amount of time elapsing between set hearings should be attributed to the ordinary demands of the judicial system, what circumstances may be required to explain those spans of time (and therefore are not counted), and what constitutes a delay caused by congested calendars or overcrowded courts (and therefore are weighed less heavily against the State than deliberate or bad faith delays).

IV. This case presents a good vehicle for this Court to clarify standards governing this constitutional question.

As noted, this Court has not reviewed a constitutional speedy trial claim in 34 years. Given that the *Barker* test requires trial courts "to approach speedy trial cases on an ad hoc basis," *Barker*, 407 U.S. at 530, this Court's long silence on the matter is not surprising. The reasoning in this decision, however, reflects fundamental errors in applying *Barker* that

are likely to have a cascading effect on future cases and that counsel this Court's review. *See Vermont v. Brillon*, 556 U.S. 81, 91 (2009) (stating that while "the balance arrived at in close cases ordinarily would not prompt this Court's review . . . . the Vermont Supreme Court made a fundamental error in its application of *Barker* that calls for this Court's correction").

To that end, this case presents an opportunity for this Court to consider the court of appeals' law development of a defendant's constitutional speedy trial right over the past three decades by revisiting and applying the principles announced in *Barker* to analogous facts in this case. Both cases involved a significant delay (46 months here compared to "well over five years" in *Barker*). *Barker* involved 16 continuances of trial; though *Barker* did not object to those continuances, the State offered no explanations for some of them. *Barker*, 207 U.S. at 516–17, 516 n.3. Here, Ramirez's trial was rescheduled without objection three times all based on stated reasons. Notably, in *Barker*, even though most of the delay weighed against the State because it was caused by its failure and inability to promptly try Barker's co-actor, Barker was not entitled to relief. *Id.* at 534–35. That was so because Barker was found to not want a speedy trial and could only show minimal prejudice. *Id.* Similarly, here, the postconviction court determined that Ramirez did not genuinely want a speedy trial and failed to show any prejudice resulting from the delays. (Pet-App. 60–62.)

Yet the court of appeals here reached the opposite result, requiring far more explanation from the State than required in *Barker*. It treated adjournments that had explanations, and time spans between scheduled trial dates, as unexplained and reflecting "cavalier disregard" for Ramirez's rights. (Pet-App. 34.) That the court of appeals reached such a disparate outcome in circumstances analogous to those in *Barker* reflects a "fundamental error in its

application of *Barker*," *Brillon*, 556 U.S. at 91, and justifies this Court's review.

Further, the court of appeals viewed this case as presenting a solid vehicle for law development, given that it reversed Ramirez's conviction, emphasized that the delay here was the longest in any published Wisconsin case, ordered publication, and even used the decision to advocate for better funding for courts.[5] (Pet-App. 25–26.)

The State anticipates that Ramirez will respond to this petition by arguing that the State is merely unhappy with the result and seeks error correction. True, like every petitioner that asks this Court for review, the State is requesting reversal of the outcome. That said, it is not asking this Court to normalize or wave off the 46-month delay that occurred here. The State agrees that the delay is exceptionally long. Beyond whether Ramirez is entitled to relief in this case, however, the State's greater concern is the binding nature of the court of appeals' decision, its incongruity with controlling law and practicality, and the difficulty that parties and circuit courts will have in litigating and assessing future claims based on this decision.

[5] The State is not criticizing the court of appeals for shining light on funding shortfalls in the judicial system. (Pet-App. 25–26.) To the contrary, the State endorses adequate funding for the judiciary and other government actors tasked with ensuring prompt dispositions in criminal cases. Still, the court of appeals' comments are counterproductive in this context, where the temporary shortage of space and calendar congestion stemmed not from chronic underfunding but rather courthouse improvements and renovations.

CONCLUSION

The State respectfully asks this Court to grant this petition.

Dated this 24th day of May 2024.

Respectfully submitted,

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Electronically signed by:

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition or response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition or response produced with a proportional serif font. The length of this petition or response is 5708 words.

Dated this 24th day of May 2024.

Electronically signed by:

Sarah L. Burgundy
SARAH L. BURGUNDY
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Supreme Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 24th day of May 2024.

Electronically signed by:

Sarah L. Burgundy
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