STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2022AP959-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

LUIS A. RAMIREZ,

Defendant-Appellant.

ON REVIEW FROM A DECISION OF THE COURT OF APPEALS REVERSING A JUDGMENT OF CONVICTION AND POSTCONVICTION ORDER ENTERED IN COLUMBIA COUNTY CIRCUIT COURT, THE HONORABLE W. ANDREW VOIGT, PRESIDING

REPLY BRIEF OF PLAINTIFF-RESPONDENT-PETITIONER

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ARGUMENT

Ramirez has not meaningfully addressed the legal questions presented.

The State is asking this Court to fix the law as developed by the court of appeals on constitutional speedy trial claims by doing the following: (1) clarify and limit the heightened and impractical standards to which the court of appeals held the State under the second *Barker*[1] factor; (2) clarify application of the third *Barker* factor and deference due to the postconviction court's factual and credibility findings in these matters; and (3) explain the applicability of presumptive prejudice, as developed by the U.S. Supreme Court in *Doggett*,[2] under the fourth *Barker* factor.

It is also asking this Court for reversal by applying the facts of this case to that corrected law. In his response brief, Ramirez focuses on this last point and seeks affirmance of the outcome at the court of appeals. In doing so, he emphasizes the multiple delays in his case and summarizes the court of appeals' decision that reached the result he personally favors.

Ramirez loses sight of why we are here. He offers little to show or explain how the court of appeals' decision created workable and correct precedent. By focusing on the outcome that he wants for his particular case, he largely disregards the legal questions raised regarding the precedent created here. Ramirez's milquetoast response avoiding these legal questions serves to validate the State's concerns that the court of appeals created vague and unworkable precedent that will set up prosecutors and courts to fail when addressing these claims in future cases.

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

[2] *Doggett v. United States*, 505 U.S. 647 (1992).

For the reasons below and in the State's opening brief, this Court should reverse; more importantly, however, it should fix the problems that the court of appeals' decision created.

A. Ramirez does not respond to the State's point on the first *Barker* factor.

There is not much to debate in this case regarding the first *Barker* factor. The 46-month delay here satisfies the threshold required to reach the remaining three factors; beyond that, the length of the delay is one of several factors considered under *Barker*'s prejudice prong.

Ramirez argues that the court of appeals correctly weighed the length of the delay heavily based on the relatively straightforward nature of his case. (Ramirez's Br. 19.) He does not explain why that approach was consistent with *Doggett*, when *Doggett* makes clear that any weight from the length of the delay is relevant to the fourth factor. *Doggett v. United States*, 505 U.S. 647, 652, 657 (1992). He also does not explain why it is sound and reasonable for a court, at the start of the analysis, to declare a length of delay "extreme" and weigh it heavily against the government before considering what happened during that period and why. (Pet-App. 14.)

As discussed, the delay here triggers the other factors but the first factor does not carry independent weight. (State's Br. 15.)

B. Under the second *Barker* factor, this Court should address "ordinary demands," "why-not-sooner," and "cavalier disregard."

Ramirez likewise focuses on the fact-specific outcome under the second *Barker* factor, while offering little response to the State's arguments requesting clarification on what constitutes the "ordinary demands" of the justice system; whether the State must provide two reasons for

adjournments, i.e., both a reason for an adjournment and a "why-not-sooner" explanation for the new date; and whether and under what circumstances "cavalier disregard" applies.

1. Unobjected-to time periods between scheduled hearings are part of the "ordinary demands of the judicial system."

As argued (State's Br. 18–19, 21–23, 30), the time that passed here between scheduling conferences and hearings should be attributable to the "ordinary demands of the justice system"; it does not require justification or weigh against the government. *Norwood v. State*, 74 Wis. 2d 343, 354, 246 N.W.2d 801 (1976). Time passing between scheduled hearings defies explanation. Further, especially if neither party objects to the new hearing date and (as was the case here) if there is no active speedy trial demand, it is unlikely that the court or parties will create a record explaining the obvious: that the next hearing was set for the earliest date that the court and parties were all available and likely to be prepared for it.

Ramirez argues that in assessing "ordinary demands," reviewing courts must opine on whether the case was moving at an "appropriate speed" and "whether the time taken between hearings or scheduled trial dates, was actually necessary to carry out the ordinary demands of justice given the specific circumstances of the case in question." (Ramirez's Br. 25.) As support, he cites general language in case law stating that "the court system 'has great responsibility to see to it that what resources it has operate as efficiently and as justly as possible.'" (Ramirez's Br. 25 (quoting *Hadley v. State*, 66 Wis. 2d 350, 369, 225 N.W.2d 461 (1975)).)

Ramirez's proposed rule would seemingly require circuit courts in every criminal case to make a full record every time they set a new date explaining why the next date was picked and why the intervening time was "actually

necessary to carry out the ordinary demands of justice," regardless of whether there was an active speedy trial demand or even a whiff of one. Creating such a requirement is hardly an efficient or just use of the circuit court's limited resources.

Moreover, there are no standards for what makes an appropriately expedient delay as opposed to an unnecessarily lengthy one. Ramirez highlights the absence of evidentiary hearings or motions filed between scheduled dates to claim that the multi-month delays here were unreasonable, unnecessary, or inefficient. (Ramirez's Br. 25.) That reasoning is grounded in hindsight. Courts and parties generally will require significant lead time to prepare for trial, secure their witnesses' appearances, file pretrial motions, investigate discovery and defense leads, and work through potential plea offers. Much of that activity will not appear on the record or manifest in a motion or a hearing.

Courts and parties also routinely set new trial or hearing dates for the next available date that agrees with everyone's schedules. That discussion does not always appear on the record; indeed, here, the circuit court made many of these scheduling decisions through off-the-record status conferences "to try to keep [the case] moving." (R. 161:3.) Ramirez's proposed rule would seemingly require all of those discussions to be on the record, resulting in an unnecessary and inefficient use of limited court resources, all in case there is a constitutional speedy trial claim in the future.

Ramirez's proposed approach—and the court of appeals' ruling deeming the passage of time between hearings to weigh against the government for any periods judged too long on a standardless scale—is unworkable. Adopting this reasoning will more likely incentivize defendants to not object to lengthy adjournments (so they can later claim a speedy-trial violation) than it will shorten periods of time between hearings.

2. The State is not required to provide two explanations (i.e., both the reason for an adjournment and why the next hearing is not set sooner).

Related to the court of appeals' rejection of the "ordinary demands" explanation for time passing between scheduled hearings, the court of appeals also required the State to provide two explanations for adjournments: (1) the reason for the adjournment and (2) why the new date is the soonest available (i.e., the "why-not-sooner" explanation). As argued (State's Br. 26–28), the second requirement is amorphous, unworkable, and not required by *Barker* and its progeny.

The State understands Ramirez to agree with the court of appeals that two explanations are required. (Ramirez's Br. 22–27.) However, as with Ramirez's proposal that reviewing courts must judge the "appropriate speed" or "necessity" of time between hearings, Ramirez provides no guidelines or rationale for why and when the State must provide these two explanations. Again, nothing in *Barker* or its progeny requires two explanations for a single adjournment. To the extent that Wisconsin courts have suggested that the "why-not-sooner" explanation is necessary, that language was in a case where the State provided nearly no explanations for over 14 months of delays and failures to calendar the case following a prompt speedy-trial request. *State v. Borhegyi*, 222 Wis. 2d 506, 513, 588 N.W.2d 89 (Ct. App. 1998). That language in *Borhegyi* should be limited to its facts or, at most, adjournments following a defendant's prompt and unequivocal speedy-trial demand.

Finally, Ramirez misunderstands the State's factual arguments on the delays leading up to the first trial date on April 13, 2017. (Ramirez's Br. 26.) The 17 days between the status conference and the first trial date was, as with all the previous spans of time, attributable to the ordinary demands

of the judicial system. (State's Br. 21–22.) It did not weigh against the State because that 17 days, like all the previous periods, occurred within the agreed-upon (and not-objected-to) timeframe for when trial would occur. (State's Br. 22.)

3. "Cavalier disregard" should be limited to the circumstances in *Borhegyi*.

As for cavalier disregard, Ramirez generally argues that the court of appeals' application of *Borhegyi* was sound and that his case, like Borhegyi's, "was continued without explanation" and without details on why new trial dates "were not scheduled more promptly." (Ramirez's Br. 27.) Yet here, the State painstakingly identified reasons for all of the continuances and adjournments. (State's Br. 17–32.) Just as nothing in *Barker* or its progeny requires a second "why-not-sooner" explanation or justifications for the "ordinary demands" of time passing between scheduled hearings, it is egregious to label quiet time spans between hearings "cavalier disregard" and weigh that span heavily against the government.

Cavalier disregard is not a standard grounded in *Barker*, (State's Br. 23–25); it is a court-of-appeals–created factor that adds confusion, not clarity, to the analysis. And to the extent that cavalier disregard remains a standard in Wisconsin's constitutional speedy-trial jurisprudence, this Court should limit it to the facts of *Borhegyi*: cases involving (1) a prompt and effective speedy trial demand; (2) wholly unexplained adjournments or ignored hearing dates; and (3) no other evidence of any acknowledgment by the State or court of the active speedy trial demand.

Here, the court of appeals' categorizing as cavalier disregard the State's explained adjournments—especially those that occurred well before Ramirez suggested that he wanted a speedy trial—was unreasonable and created unworkable precedent.

C. Under the third *Barker* factor, Ramirez's speedy trial demands carry little weight in his favor.

Ramirez acknowledges that the analysis of the third *Barker* factor takes into consideration the request, its timing, and whether the circumstances reflect an earnest desire for a speedy trial. (Ramirez's Br. 30 (citing *Hadley*, 66 Wis. 2d at 361).) He asserts that his requests warrant strong evidentiary weight because: (1) he claimed to never have abandoned his first pro se request and (2) the postconviction court erroneously found that Ramirez accompanied his second speedy-trial request with other requests that, if pursued, would have delayed trial. (Ramirez's Br. 30–34.)

As for Ramirez's first pro se request made on September 26, 2018, (R. 59), counsel indicated that that request was "abandoned or set aside because I was pursuing an NGI defense." (R. 110:2.) Consistent with that recollection, counsel informed the court on December 5, 2018, that Ramirez was no longer considering an NGI defense. (R. 149:1–2.) And at that hearing, the circuit court set trial to start on April 3, 2019, which was "the first date that all parties were available for trial." (R. 149:1–2; Pet-App. 81.) There is no indication that at the December 5 hearing, Ramirez resurrected his speedy-trial demand; in all events, the record reflects that the court set trial for the earliest possible date. Accordingly, that first request by Ramirez was abandoned and there is no basis to believe that the court and parties were on notice that Ramirez desired a speedy trial until April 2019.[3]

[3] While Ramirez later denied abandoning his first request, that denial lacks force given that counsel clearly was considering an NGI defense, the lack of objection to the April 2019 trial date, and the fact that Ramirez did not reinstate his demand until after that trial date moved.

Ramirez misreads the State's brief to argue that *both* of his speedy-trial demands were abandoned and earn *no* weight in the analysis. (Ramirez's Br. 31–32.) The State has made neither of those arguments. Ramirez did not abandon his second demand, filed shortly after the court rescheduled the April 3, 2019, trial date. Moreover, as argued (State's Br. 33–39), Ramirez's demands—particularly the second one from April 2019—weigh in his favor, albeit minimally.

Ramirez also argues that the court of appeals properly reversed the circuit court's factual findings, despite the highly deferential standard of review applied to such findings on appeal. (Ramirez's Br. 28–29, 32–33.)[4] Those findings related to Ramirez's repeated requests for discovery of a video (a previously litigated issue that Ramirez re-raised several times before trial).

As argued (State's Br. 38–39), the record reflects that Ramirez made multiple pro se requests and complaints when he filed his second demand in April 2019, including raising multiple grievances with counsel's representation, reopening an already-litigated request for a video and arguing that he wished for a change of venue. (R. 70:1–4.) The postconviction court, which was the same judge addressing that second demand, found that Ramirez's other requests at the time were "patently inconsistent with someone whose only goal is to get to trial as quickly as possible," which reduced the weight of that request in Ramirez's favor. (R. 161:6–7; 187:4–5.) Like the court of appeals, Ramirez wrongly rejects those findings

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[4] Ramirez challenges the postconviction court's factual findings regarding his discovery and other requests accompanying his pro-se speedy trial motions under both the second and third *Barker* steps. (Ramirez's Br. 28–29, 32–33.) The State addresses both of these arguments in the context of the third *Barker* step, since the postconviction court's findings go to that step, i.e., whether Ramirez's speedy-trial requests were accompanied by actions contradicting a desire for a prompt trial.

based on hindsight-driven observations that Ramirez did not ultimately file more time-consuming motions. (Ramirez's Br. 32–33.) That rationale sidesteps the postconviction court's main point that the plausibility of Ramirez's second speedy-trial request was diminished by his additional counterproductive requests. (R. 187:6.)

Ramirez also represents that case law holds that "[t]he government may not require individuals to choose between two constitutional rights"; he argues that the postconviction court's findings to that effect impermissibly caused him "to pit his constitutional speedy trial right against his due process rights" to a fair trial and to present a defense. (Ramirez's Br. 29 (quoting *Schwantes v. Schwantes*, 121 Wis. 2d 607, 625, 360 N.W.2d 69 (Ct. App. 1984))(citing *California v. Trombetta*, 467 U.S. 479, 485 (1984)).)

Ramirez misstates the law. The language he quotes in *Schwantes* was based on *Aptheker v. Secretary of State*, 378 U.S. 500, 507 (1964), in which the Court invalidated a statute for which its constitutionality depended on individuals giving up the ability to fully exercise a First Amendment right. *Schwantes* likewise involved a question of statutory interpretation conditioning a favorable custody decision on an individual's yielding a First Amendment right. *Schwantes*, 121 Wis. 2d at 625.

In contrast, this case does not involve a statute or ruling that requires a defendant to give up a fundamental right. Moreover, speedy-trial demands frequently create tensions with other rights. A speedy-trial demand by its nature can curtail the parties' pretrial preparations, including counsel's ability to hire an expert or examine certain witnesses, or the State's ability to obtain forensic testing. Nothing about the postconviction court's ruling forced Ramirez to choose between constitutional rights, particularly given that Ramirez had no constitutional right to relitigate a discovery issue that he had already preserved for appeal.

D. This is not a *Doggett* case where presumptive prejudice requires relief.

As argued, this Court should clarify that the length of delay identified in the first step is a factor in, but not dispositive of, whether there is presumptive prejudice (like in *Doggett*) in the fourth *Barker* step. (State's Br. 39–42.)

Ramirez generally argues that we can presume prejudice here because the delay was 46 months and Ramirez asked for a speedy trial within the last eight to 14 months before trial occurred. (Ramirez's Br. 35.) He does not address the State's discussion of *Doggett* other than to suggest, incorrectly, that the State is arguing for a requirement that only delays longer than five years can be presumptively prejudicial. (Ramirez's Br. 36.)

The State is not advocating for any such bright-line rule. (State's Br. 41–42.) Rather, the totality of the circumstances here reflect that this is not a *Doggett* presumptive prejudice case. Every adjournment and continuance here had an explanation. There were no objections to the new dates set. Ramirez's pro se speedy trial requests came over three years into the proceedings, his first request was abandoned, and there is no indication at any point before those requests that the court or parties were on notice that his priority was a prompt disposition. Finally, Ramirez, who was serving a lengthy sentence on other crimes at the time, resoundingly failed to show any actual prejudice resulting from the delay.

As a final note, reversing the court of appeals will not endorse or excuse the length of the delay in this case. It will simply reaffirm that *Barker* requires a totality-of-the-circumstances analysis. And here, that totality reflects an attempt by Ramirez to exploit a series of delays largely caused by courthouse renovations and a district attorney's retirement, not a defendant ignored through systemic neglect

and apathy. This Court should reverse both the court of appeals' confusing and unworkable precedent and its dismissal of Ramirez's conviction.

CONCLUSION

The Court should reverse the decision of the court of appeals.

Dated this 17th day of January 2025.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,990 words.

Dated this 17th day of January 2025.

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CERTIFICATE OF EFILE/SERVICE

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

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