IN THE

Supreme Court of the United States

No.

MARK ANTHONY SPELL,

Petitioner,

v.

STATE OF LOUISIANA,
CITY OF ZACHARY

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE CITY COURT OF ZACHARY, LOUISIANA,
Hon. Judge Lonny A. Myles, Presiding
4510 Main Street,
Zachary, Louisiana 70791

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QUESTIONS PRESENTED

This case presents the following questions:

1. Does the Sixth Amendment permit the prosecution of a misdemeanor speeding ticket after the lapse of more than twenty years if there is no evidence the Defendant absconded from the jurisdiction, or the State took steps to prosecute?

2. Does Fifth and Fourteenth Amendment Due Process allow a state to hold and prosecute a routine misdemeanor in perpetuity if the State statute allows such a circumstance?

RELATED CASES

City of Zachary v. Mark Anthony Spell, No. 99-0672, City Court of Zachary.
Judgment entered Aug. 5, 2020

State of Louisiana v. Mark Anthony Spell,
No. 2020 KW 0867, Louisiana Court of Appeal, First Circuit. Judgment entered Feb. 18, 2021

State of Louisiana v. Mark Anthony Spell,
No. 2021-KK-00403, Louisiana Supreme Court. Judgment entered May 11, 2021

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PETITION FOR A WRIT OF CERTIORARI TO THE CITY COURT OF ZACHARY, LOUISIANA

Petitioner Mark Anthony Spell respectfully prays that a writ of certiorari issue to review the judgment and decision of the City Court of Zachary, Louisiana entered in this matter on the 5th day of, August 2021.

OPINION BELOW

No court has issued an opinion; the rulings and a decision were made by the initial trial court, Zachary City Court, Hon. Judge Lonny Myles presiding. Because the matter was a misdemeanor, review by the Court of Appeal, First Circuit was discretionary, and denied on February 18, 2021. Review by the Louisiana Supreme Court was discretionary and denied on May 11, 2021. The rulings are reprinted at Appendix A, 1a, 3a and Appendix C, 23a.

JURISDICTION

Jurisdiction is appropriate under the provisions of 28 U.S.C. 1257 (a); Petitioner's brief is timely filed within the special delay allowed by the Order of this Court dated July 19, 2021. (Order List, 594 U.S. 7/19/2021)

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment, U.S. Const., Amdt. 6 reads,

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . .."

The Fourteenth Amendment, U.S.Const.,Amdt. 14, section 1, reads:

"… No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unied States; nor shall any State deprive any person of life, liberty, or property, without due process of law. ..."

STATEMENT OF THE CASE

Defendant Mark Anthony Spell, "Pastor Spell" has gained national attention for his refusal to close his church, Life Tabernacle, during the Covid-19 emergency declared by Governor John Bel Edwards of Louisiana. While Pastor Spell was under twenty-four-hour surveillance by local authorities for that refusal, he was arrested in connection with an incident caught on surveillance. During the bonding process for that arrest, local authorities scoured old records for any other offenses and discovered a speeding ticket allegedly issued to Pastor Spell on or about May 23, 1999. An arraignment had been held back on June 16, 1999, for that citation, and a bench warrant issued when Pastor Spell allegedly failed to appear. Pastor

Spell did not abscond from the jurisdiction, always lived locally, and became prominent as the pastor of Life Tabernacle Church in Central, Louisiana. Neither the City Court of Zachary nor the Zachary City Prosecutor undertook any steps to further the prosecution, or to notify the State of Louisiana or Department of Motor Vehicles of an outstanding bench warrant.

When he was arrested on April 21, 2020, Pastor Spell was notified of the old ticket and warrant on May 20, 2020, nearly 21 years after the initial citation. He appeared at Zachary City Court on July 15, 2020 for arraignment.

Pastor Spell filed and argued a Motion to Quash the citation based upon his Sixth Amendment right to a speedy trial. That motion to quash was denied, and Pastor Spell was convicted *in absentia*, over objection of counsel, Judge Myles having denied his request to appear by Zoom conference or video, as had been as allowed and encouraged by Louisiana Supreme Court rules at the time of hearing.

REASONS FOR GRANTING THE PETITION

The Court should correct Louisiana's statutorily created and unconstitutional passive "waiver" system in which one action of a defendant waives his right to speedy trial forever, without a showing of whether such a waiver is knowing and intentional or any other factor.

Nearly half a century ago this Court held that a defendant's constitutional right to a speedy trial cannot be established by any inflexible rule but can be determined only on an *ad hoc* balancing basis, in which the conduct of the prosecution and that of the defendant are weighed. A trial court should assess such factors as the length of and reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514 (1972).

In this case The City Court of Zachary allowed the prosecution of a misdemeanor traffic ticket after the passage of nearly twenty-one years between the issuance of the ticket, the original arraignment, and a subsequent notice to the Defendant to appear and answer in court. The trial court specifically ruled that *Barker* case did not apply because the Defendant was not in jail during the period of time that the matter was pending. (Ap. "C", p. 18a). This result will always be allowed in Louisiana, and its Code of Criminal Procedure is implicated, because though it sets out a

hard time limit of one year for the prosecution of misdemeanors, (La. C.Cr.P. art. 578, Ap. "D", p. 24a) it allows that year to be "interrupted" by the failure of a defendant to appear in court if notice "appears in the record." (La. C.Cr. P. art. 579, Ap. "D", p. 25a) That interruption lasts and the limitations period does not start again until the defendant appears in the specific court where he originally failed to appear, regardless of any other contact the defendant may have with the legal system and regardless of any other actions or inactions of the prosecutor. (La.C.Cr.P. art.579 C., p. 25a)

Without any consideration of prejudice to the defendant in the event of the extreme passage of time, the statute allows the time period to be interrupted indefinitely, meaning the defendant's right to speedy trial is passively waived, forever. This provision is explicitly contrary to the Court's ruling in *Barker*, and does not square with its balancing test as followed in the case of *Doggett v. United States*, 505 U.S. 647 (1992).

The Court in *Barker* explained that a passive "waiver" system was impermissible: "Such an approach, by presuming waiver of a fundamental right from inaction, is inconsistent with this Court's pronouncements on waiver of constitutional rights. The Court has defined waiver as "an intentional relinquishment or abandonment of a known right or privilege and stated 'courts should

indulge every reasonable presumption against waiver." (Citations omitted) *Barker* , at p. 526.

The balancing test set out by the Court in *Barker* gives the length of the delay as a "triggering mechanism," and states that "the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge."
Barker, 407 U.S. at p. 530, 531.

It the present case, the Louisiana statute prevents a balancing test application. The Louisiana law allows the prosecution to simply wait until the defendant shows back up, regardless of the nature of the crime. If "ordinary street crime" justifies less delay than a complicated conspiracy case, as the Court said in *Barker*, a matter less complicated than even ordinary street crime such as the speeding ticket at issue in this case should tolerate less delay. Under the present statutes the delay can be limitless. While the statute as written greatly simplifies life for the prosecutor, it impermissibly leaves charges open indefinitely for what could be an honest mistake or an improper charge on a misdemeanor that would otherwise be required to be quickly dealt with or dismissed. A failure of initial appearance and then to return to the court means that the defendant may be prosecuted on that citation

forever. A period of nearly ***twenty-one years*** for prosecution of a misdemeanor speeding ticket unconscionably prejudices the Defendant and gives no recourse for a meaningful defense. An initial failure to appear removes all responsibility from the State and the prosecution to move cases to conclusion, a result impermissible under *Barker*.

In the case of *Doggett v. U.S.*, 505 U.S. 647 (1992), the Court held that an 8 ½ year delay between the petitioner's indictment and arrest violated his right to a speedy trial. 505 U.S at pp. 657, 658. In that case the Defendant was charged with a serious crime (conspiracy to import and distribute cocaine) and was actually absent from the jurisdiction for approximately two years in Panama and Columbia. Id., p. 649. The Court held that negligence in getting the matter to trial was to be held against the government, and that it was an "unacceptable reason" and an "inexcusable oversight" Id., p. 657, for "delaying a criminal prosecution once it has begun." Further, the longer the period of delay attributable to the government's negligence, the greater the presumption of prejudice to the defendant will be. While *Doggett* dealt with an 8 ½ year delay, six years of which was attributable to the government, the delay in this case should make the presumption of prejudice conclusive, especially considering the ease in which the prosecution could have been concluded or

pursued, and the inability of the defendant after such a long time to have preserved any evidence in order to defend himself from this charge.

The trial court's interpretation of the law in Louisiana is not faulty; Louisiana has codified a system of passive waiver of speedy trial rights in articles 578 and 579 of its Code of Criminal Procedure. The trial court followed Louisiana Supreme Court precedent in the case of *State* v. *Romar,* 2007-K-2140, (La. 2008), 985 So.2d 722. In that case, the court reconciled differences in the Louisiana courts of appeal by reversing the lower courts which had quashed the prosecution of the defendant. The defendant in *Romar* had been charged with driving while intoxicated, a "non-capital felony." Id., p. 7, 985 So.2d 722 at p. 725. The defendant had been charged in 1997, missed court dates in April of 1998 where he was represented by counsel and June of 1998 when his surety bond was revoked and a bench warrant issued. Over eight years lapsed before the defendant was brought to court on another charge and within three months of his appearance on that charge he brought a motion to quash the DWI, which was granted by the lower court and the appellate court. In that case, the Louisiana Supreme Court did not rely on or cite the *Barker* decision, and did not conduct a "balancing" test, but instead cited *United States v. Marion*, 404 U.S. 307 (1971), a case in which the Court held that pre-indictment delays did not implicate the right to a speedy trial. The Court in *Marion* extolled

the virtues of legislative statutes of limitations, "Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice; they 'are made for the repose of society and the protection of those who may [during the limitation] . . . have lost their means of defence.' These statutes provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced."

United States v. Marion, 404 U.S. 307, at 322 (1971). (citations omitted.)

The problem with the Louisiana Supreme Court's decision in *Romar* is that the statutes of limitation lose their meaning and the predictability and fairness cited in *Marion* if the statutes themselves provide for an interruption that is limitless, depends solely on the behavior of the defendant, and constitutes a passive waiver of the right to a speedy trial that *Barker* warned against. In *Romar* the Court allowed that an outstanding bench warrant for a failure to appear could be allowed to be outstanding indefinitely, acting as a "trip wire" for prosecution to begin again when the defendant committed some other act bringing himself to a court's attention. 985 So.2d 722 at p. 727.

Previous to the *Romar* decision, the State of Louisiana adopted the principles of *Barker* in the case of *State* v. *Reaves,* 376 So.2d 136, (La. 1979). In that

case, like the case at bar, the underlying offense was alleged to be a misdemeanor, "possession of a single marijuana cigarette. . ." Id, p. 137. The defendant was arrested and charged in that matter and appeared at all stages of the proceedings. In that case, the delay was only four months from initial charge to the filing of a motion to quash-from January 27, 1979, until April 18, 1979. No speedy trial motion was ever filed by the Defendant.

The State had continued the trial on four occasions, the last time because their witness again failed to appear. When a further continuance was denied, the State nolle prossed and rebilled the defendant on the same day in order to continue the prosecution. The defendant then filed a motion to quash and brought the issue of speedy trial before the court. The trial court granted the motion to quash on speedy trial grounds, and the State appealed the motion to quash directly to the Louisiana Supreme Court. The Court analyzed the case under the principles of *Barker* and ruled in favor of the defendant.

Petitioner in this case applied to the Louisiana Supreme Court to consider the Constitutional precedents, the *Barker* and *Doggett* cases, and to reconcile the differences between *Romar* and *Reaves* in interpreting Louisiana's Code of Criminal Procedure, to no avail. For the Louisiana Supreme Court to leave the *Romar* case

untouched in light of the clearly egregious facts of this case means that the law in Louisiana permits a passive waiver of the Constitutional right to a speedy trial, which is impermissible according to this Court's precedents. A one-time failure to appear, even assuming that the State has the correct defendant, cannot mean that a misdemeanor defendant may be prosecuted forever and be consistent with the balancing tests in *Barker*.

Minority opinions in this Court's cases of *United States v. Marion* and *Doggett v. United States* reach opposing opinions on whether or not the Sixth Amendment right to speedy trial allows an accused a right of "repose." (Compare the dissenting opinion of Justice Thomas in *Doggett* to the concurrence of Justice Douglas in *Marion*.) Justice Thomas noted that the Due Process clause protects defendants from "fundamentally unfair treatment." 505 U.S. 647 at p. 666. Petitioner submits that a time span of twenty-one years for the minor offense of speeding is fundamentally unfair in that Petitioner's defense is completely compromised by the passage of time for such a minor offense. Due Process is also implicated when statutes of limitations are completely subsumed by the exceptions created in the statutes.

The expectation of the public and the "reasonable man" are that the time for prosecution of misdemeanors and petty crimes will expire after some reasonable period, usually provided by statute, and

that serious crimes, such as homicide, manslaughter, and serious sexual crimes will take longer to expire. The unreasonable suspension of prosecution for petty crimes for an indefinite period causes a large backlog of warrants in the courts of limited jurisdiction, and an unreasonable apprehension of the populace towards police, fearing prosecution from some years-old petty crime.

Finally, the ability of the State or prosecuting jurisdiction to hold in abeyance a citation and warrant indefinitely is a tool too amenable to abuse. While a defendant maintains a popularity in the local jurisdiction, he may never again see a traffic ticket. When a defendant is no longer a favored person, he may be picked up by the State by surprise at the whim of a local official, long after an assumed statute of limitations has run for a misdemeanor, as a tool to suppress unwanted behavior or unpopular opinion. A hidden charge could be held, like a secret weapon, until needed against a particular defendant, perhaps used to buttress an otherwise unlawful arrest. The time and date of an event would be nearly impossible to challenge since all alibi evidence would be lost after a long period of time. Evidence normally accessible, such as radar calibration records, would be dependent upon the State to maintain, when it would normally be accessible within a reasonable time period after a citation. Louisiana's Code of Criminal Procedure, articles 578 and 579, as interpreted by the Louisiana

Supreme Court in *Romar* are violative of the U.S. Constitution. The Sixth Amendment's guarantee of a speedy trial, as interpreted by this Court in *Barker* and *Doggett* and the Fifth and 14th Amendments Due Process clause provide this court with reason to review the statutes of Louisiana's Code of Civil Procedure as cited in this case find them to be unconstitutional due to the implied passive waiver they create to the right of speedy trial and to the violation of Due Process when the exceptions to statutes of limitations subsume the rule entirely.

CONCLUSION

For the foregoing reasons, Pastor Spell respectfully requests that this Court issue a writ of certiorari to review the judgment of the City Court of Zachary.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE SUPREME COURT OF THE STATE OF LOUISIANA, DATED MAY 11, 2021

THE SUPREME COURT OF
THE STATE OF LOUISIANA

No. 2021-KK-00403

STATE OF LOUISIANA,

VS.

MARK ANTHONY SPELL.

IN RE: Mark Anthony Spell - Applicant Defendant; Applying For Supervisory Writ, Parish of East Baton Rouge, Zachary City Court Number(s) 99-0672, Court of Appeal, First Circuit, Number(s) 2020 KW 0867;

May 11, 2021

Writ application denied.

WJC
JLW
SLC
JTG
JBM
PDG

Hughes, J., would grant.

Appendix A

Supreme Court of Louisiana
May 11, 2021
/s/_____
Chief Deputy Clerk of the Court
For the Court

APPENDIX B — ORDER OF THE STATE OF LOUISIANA COURT OF APPEAL, FIRST CIRCUIT, DATED FEBRUARY 18, 2021

STATE OF LOUISIANA COURT
OF APPEAL, FIRST CIRCUIT

NO. 2020 KW 0867

STATE OF LOUISIANA,

VS.

MARK ANTHONY SPELL.

IN RE: Mark Anthony Spell, applying for supervisory writs, Zachary City Court, Parish of East Baton Rouge, No. 99-0672.

Feb 18 2021

BEFORE: WHIPPLE, C.J., CHUTZ AND WOLFE, JJ.

WRIT DENIED.

VGW
WRC
EW

COURT OF APPEAL, FIRST CIRCUIT

/s/_____
DEPUTY CLERK OF COURT
FOR THE COURT

APPENDIX C — EXCERPTS OF TRANSCRIPT OF THE PARISH OF EAST BATON ROUGE, ZACHARY CITY COURT, STATE OF LOUISIANA, DATED AUGUST 5, 2020

PARISH OF EAST BATON ROUGE
ZACHARY CITY COURT
STATE OF LOUISIANA

HONORABLE JUDGE LONNY A. MYLES
WEDNESDAY, AUGUST 5, 2020
DOCKET NO. 99-0672 - SPEEDING (05/23/99)

CITY OF ZACHARY
VERSUS
MARK ANTHONY SPELL

Zachary City Court
Zachary, Louisiana

[4]CITY OF ZACHARY VERSUS
MARK ANTHONY SPELL

DOCKET NO. 99-0672 - SPEEDING (05/23/99)

THE COURT:

All right. This is the matter of the *City of Zachary versus Mark Spell.*

You can sit back there if you wish to, Mr. Wittenbrink. If you want to sit back further, that is fine with me, as long as you speak up.

Is your client going to come in?

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MR. WITTENBRINK:

Well, sir, he would like to come in, but he is not going to wear a mask.

THE COURT:

Well, he's not coming in then.

MR. WITTENBRINK:

I understand.

THE COURT:

Are you going to waive his presence?

THE WITTENBRINK:

Well, I'm going to file -- I want to note an objection for the record, that he is not able to come in without a mask.

THE COURT:

That's fine.

MR. WITTENBRINK:

I have another witness, his wife, Marla Shaye Spell. She would like to come in. She does not want to wear a mask.

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THE COURT:

[5]She is not coming in.

MR. WITTENBRINK:

So, I want to make that an objection.

THE COURT:

You can make that objection, that's fine.

MR. WITTENBRINK:

Are we on the record? Is this recorded on the record? Do you-all keep a record?

THE COURT:

Yes, we are on the record.

MR. WITTENBRINK:

Okay.

MR. DUPRE:

Have we started yet?

-- OFF THE RECORD

-- BACK ON THE RECORD --

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THE COURT:

All right. Now, you had -- I think, you had something else you wanted to argue, Mr. Wittenbrink?

MR. WITTENBRINK:

Yes, Your Honor. Preliminary, if Ms. Shaye Spell were in here, we would ask the Court -- have a motion for the Court to recuse himself.

Both Mr. Spell and Mrs. Spell appear that you have represented them on many occasions in the last 20 years. And that Mr. Spell has appeared before you personally to sign documents, have documents notarized, and transactions [6]completed by you.

And he believes it is improper for you to preside over this proceeding because all during that time, apparently, there was a bench warrant that you would have been in position to know about more than him, and that you didn't notify him.

So, he has formally asking for you to recuse yourself and I am as well, and that would be our motion to recuse. We think it is improper to move forward with you as the trier of facts, and that you should recuse yourself.

THE COURT:

Well, I'm not going recuse myself, because number one, I would have to have -- normally, when you recuse

yourself, I have to have information that is against your client. And I don't have any information that I know against your client.

It was 21 years ago, Mr. Wittenbrink. I knew just about everybody in Zachary. If I would have spent my life back then calling everybody that missed court, I would have spent most of my calling people.

Now, have I called a couple of people in that time, yes. I'm not going to lie to you, I have. But do I call everybody, heck, no. I didn't call -- first of all, I don't remember -- I did a lot of work for [7]Reverend Bervick Spell. Now, Mark came in and did some stuff for Reverend Bervick Spell, but I don't really remember offhand doing stuff for them.

But I am not going to recuse myself.

If I recuse myself on every case in Zachary City Court that I knew the people, I wouldn't have -- especially, 21 years ago, I wouldn't have heard many things. So, I don't recuse myself.

Secondly, do you have that motion to quash again, that you are going to put up?

MR. WITTENBRINK:

Yes, Your Honor. In regard to the Motion to Quash, trying to prosecute a misdemeanor within a year of the action, under 578, no trial should be commenced or a bail obligation be enforced on a misdemeanor case after a year from the date of institution of the prosecution.

Appendix C

579(A)3 says that prosecution is interrupted. The period of limitation is interrupted, if he fails to appear at any proceeding pursuant to actual notice. It says proof of which appears in the record. So, that burden would be on the prosecutor.

But that the Court is seeking to prosecute Mark Spell after a lapse of 21 years of time. And we would suggest to the Court -- you know, I followed the whole history of this statute and speedy trial.

[8]A speedy trial, is something that is not just a statutory right, Judge, but it is a right that is protected by the Constitution of the United States and protected by the Constitution of the State of Louisiana. And I looked at the whole history of a speedy trial in Louisiana, and there was originally a split in the circuits.

The First Circuit, and another circuit, it came down on the side that, if you didn't appear in court, the process was interrupted, period. And the Second and Third Circuit came down and said, no, if you didn't appear in court, simply stop the time for a period of time, basically, another year.

And the court -- excuse me, the prosecution of the state and the city, whoever is prosecuting, has the burden then to come back and make a reasonable effort to find the defendant and bring them to trial.

Now, that view of those two circuits, in my opinion, is consistent with the case from the United States Supreme Court and is still the law; and that is *Barker versus Wingo*.

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The United States Supreme Court said it is a balancing test, that you can't make a single rule for all cases and speedy trial because speedy trial is slippery. The defendant may not want a [9]speedy trial.

The process of a speedy trial may be in favor of the prosecution. So -- so, the Court has to weigh and balance the length of time and the circumstances, to say whether or not it's reasonable for a person to come to trial.

And so, I would submit to you, Your Honor, under *Barker versus Wingo,* and even though it may have been -- and I think they have to prove -- it may have been Mr. Spell's fault, if he did not come to a court appearance back in 1999.

But I would submit to you, Your Honor, that Mr. Spell has now been a public figure for quite some time. He wasn't back then. He has now been a public figure for quite some time.

And I have to submit -- I'm going to show this to the prosecutor here.

MR. WITTENBRINK:

Mr. Dupre, this is an Official Driving Record from the Department of Public Safety; do you want to take a look at that?

Appendix C

MR. DUPRE :

(Viewing document.)

MR. WITTENBRINK:

So, I don't have a witness here, Judge. But I do have an official certification of the driving record for Pastor -- for Mark Anthony Spell, [10]addressed 9323 Hooper Road. And they have one infraction on his record, and that is certified as of 8/4/2020.

And he had a suspension of his driver's license from April 20, 2016, to July 13, 2016. And if Mr. Spell were here, he would tell the Court that that infraction was because he gave away a vehicle and didn't get the plate and turn the plate in.

Anyway, that is the only thing he has on his driving record, period. And that, if this bench warrant is still outstanding, it should have at least appeared. He has had his driver's license renewed seven times.

So, there is no reasonable notice to Pastor Spell, other than the original ticket, if indeed he got the original ticket. And so, in connection with this motion to quash, I would like to file this into evidence.

MR. DUPRE:

All right.

THE COURT:

Well, now, I will let -- for the weight of it, I will --

MR. WITTENBRINK:

Sure.

(The exhibit is marked as Exhibit Defense No. 1 for identification and attached hereto.)

[11]**THE COURT:**

I don't know how much weight I'm going to give that. I don't think that is really applicable myself.

MR. WITTENBRINK;

Well, just in conclusion, Judge, I do think it is the state of the law under United States Supreme Court principles at least, would be that some time -- and I can't tell you what time -- but the Court has to -- would have to decide that.

But within some reasonable time, after Mr. Spell got his ticket, if he got a ticket, and some reasonable time after he failed to appear, there would have to be some showing of some effort to contact Mr. Spell telling him; that he had an outstanding warrant and put it on his driver's license, so that he would get that flag and that he would pay it.

If Pastor Spell were here without a mask, he would say he pays all of his obligations. He has a perfect driving

record, as far as he knows, and he doesn't recall anything about this ticket because it's 21 years ago. And it is hardly fair to make him come and appear to try to defend it.

So, with that I rest my motion to quash.

THE COURT:

[12]Okay.

MR. DUPRE:

Your Honor, can I close the door?

THE COURT:

Yes.

BY MR. DUPRE:

Your Honor, the City of Zachary submits that the Code of Criminal Procedure Articles 578 and 579 are clear, and when applied to the facts of the case at bar, Louisiana law, specifically, the Code of Criminal Procedure Article 579 requires that Mr. Spell's failure to attend Court on June 16, 1999, after being duly noticed of that date, resulted in the Article 578 one year time limitation being interrupted.

The Code of Articles are clear and unambiguous. Defense Counsel argues only that the law as written is not fair, and application of the law to the facts of our case somehow deprives the defendant of a speedy -- right to a speedy trial.

Appendix C

The only jurisprudence cited by Mr. Wittenbrink is *State versus Romar,* which is a 2008 Louisiana Supreme Court case and *Barker versus Wingo,* which is a 1972 US Supreme Court case.

In *Romar,* the defendant pleaded not guilty to DUI. He failed to appear for a trial. A bench warrant was issued, and he was absent for more than eight years, until [13]he was arrested on another charge.

Defense Counsel in *Romar* did exactly what defense council in the case at bar did, namely, they filed a motion to quash, they argued that the defendant was not hiding, and that the *State* took no steps to locate the defendant.

The Louisiana Supreme Court in *Romar* held that there is no burden on the prosecution to search for a defendant who fails to appear after receiving notice.

I attempt to rest there, Judge, But just to address his constitutional argument, I will go forward.

The other case cited by Defense Counsel is *Barker* versus *Wingo.* In *Barker versus Wingo,* the defendant was arrested and sat in jail for ten months, before he was able to bond out. In our case, Mr. Spell has not spent a single night in jail.

In *Barker* all the delays and continuances were caused and requested by the prosecution. In our case, the 21-year delay was caused solely by Mr. Spell failing to come to court after receiving notice to do so.

Appendix C

The *Barker* Courts, this is the US Supreme Court, the *Barker* Courts balancing test that Mr. Wittenbrink would like us to apply, would like the Court to [14]apply, is designed to determine whether the State's delay in the prosecution is a violation of *a* right to speedy trial. But in our case, the only person who can be held responsible for not receiving a speedy trial is Mr. Spell himself.

Defense Counsel in the case at bar is correct in that the right to a speedy trial is a fundamental right, it is a constitutional fundamental right to due process. But the *Barker* Court, ultimately held that the Sixth Amendment does not require a fixed time period.

It is different from what he said. It doesn't say that a fixed time period is unconstitutional. It says that the State is not required to fix itself to a time period.

That is important because *Barker* was decided in 1972. And the Constitution doesn't require a strict time limitation to try cases. Despite that whole thing, Louisiana did exactly what the Constitution didn't require. It gave defendants more than the Constitution requires, By enacting 578 in 2006, the State imposed on itself a strict time limitation to try cases.

Again, 578 gives defendants more time -- I'm sorry, a more definite time than the US Constitution requires as held by the [15]Supreme Court. Article 578 deals with the State's responsibility in the speedy trial arena, and Article 579 deals with the exceptions to the hard and fast time limitations.

In other words, 579 addresses what the *Barker* Court calls the defendant's responsibility in the area -- in the arena of a speedy trial.

In fact, parts of 579 at issue here between speedy -- the interplay between speedy trial rights and delays that are caused by a defendant's actions. They are stated by the US Supreme Court as being so obvious as to almost not warrant mention when the Court stated, quote, we hardly need to add that if the delay is attributable to defendant, then his waiver -- referring to his waiver to a speedy trial -- quote, may be given effect.

In other words, 578 does not only comport with *Barker,* they are in legislative codification of *Barker.* Both the statutes and the *Barker* Court are clear, trial delays caused solely by the defendant are equal to a defendant's waiver of their right to a speedy trial.

Mr. Wittenbrink does not argue that there is an ambiguity in the law to which his client is entitled to the benefit of the doubt, he does not present any controlling jurisprudence that holds the [16]prosecutor responsible for searching for a defendant, who voluntarily stops his prosecution because he can't.

In fact, all the controlling juris diction states that there is a burden on the prosecutor to search for a defendant who fails to appear after receiving notice, that is the holding of *Romar,* which he cited, that is the holding of *State versus Stuart*, which is a 2017 Louisiana Supreme Court Case.

In fact, the *Romar* Court also said in Louisiana an arrest warrant does not become stale with the passage of time, citing Louisiana Code of Criminal Procedure Article 205. So, the warrant never dies.

The law is clear and the law is constitutional. The only person responsible for Mark Anthony Spell not receiving a speedy trial is Mark Anthony Spell. The City of Zachary respectively submits that this instant motion be denied.

THE COURT:

Anything else, Mr. Wittenbrink?

MR. WITTENBRINK:

Just briefly, Judge, *Barker versus Wingo,* did say that there is a balancing test. The balancing test requires that the State consider the length of time that has passed; and also, that there is nothing, there's no presumption that can be made, [17]even in the statute where the defendant is required to take an affirmative act and that that failure to take that affirmative act acts as a presumption of waiver.

And that is exactly what the statute does. The statute says he's got to come back to court. His failure to come back to court means the period of time is interrupted forever, So, the holding in *Barker* is there's got to be a balancing test.

We submit that a period of 21 years without even a notation on Mr. Spell's driving record, just the simplest

of clerical acts could have prevented all of this, this ticket would been paid long ago. If it was, indeed given, anything that even the simplest of clerical acts to apprise Mr. Spell of the ticket, his right to trial, or further the prosecution has not been done.

And that, therefore, under the United States Supreme Court, this is an unfair prosecution.

THE COURT:

Well, I started out as a public defender in 1974. and *Wingo* was very much a big item back in those days. I don't agree with you about what *Wingo* says.

Wingo says, as far as I'm concerned, [18]I've got somebody that is in jail, that is what it originally started about. Should he have a speedy trial so we can get him out of jail, and that's what that started about. Should have, yes, he should have a speedy trial to get him out of jail.

Your client wasn't in jail. To me, the law is clear in Louisiana. If you miss a trial -- a court date, it is suspended until you show back up, and then, it starts back up again. So, your motion to quash is denied.

All right. Are we ready to go to trial?

MR. DUPRE:

Yes, sir.

Appendix C

THE COURT:

All right. Call your first witness.

MR. DUPRE:

I call Bruce Chaisson.

THE COURT:

Come around, Mr. Chaisson, you will be sworn in.

MS. QUWANDA JACKSON:

(Swears in witness.)

MR. BRUCE CHAISSON:

I do.

MS. QUWANDA JACKSON:

Thank you.

THE COURT:

And for the record, Mr. Wittenbrink, [19]you are waiving the presence of your client?

MR. WITTENBRINK:

Well, Judge, I am only waiving --

Appendix C

THE COURT:

Subject to your --

MR. WITTENBRINK:

That is correct.

THE COURT:

Okay. Okay. That's fine.

BRUCE CHAISSON
ZACHARY POLICE DEPARTMENT
POLICE OFFICER - RETIRED

DIRECT EXAMINATION BY MR. DUPRE:

Q. Please give your name and address? For the record, you can use 4510 Main Street, if you would like as a former officer.

A. Bruce Chaisson, 4510 Main Street, Zachary, Louisiana.

Q. Were you employed on Sunday, May 23, 1999?

A. Yes, I was.

Q. What was your job?

Appendix C

MR. WITTENBRINK:

Objection. Go ahead.

THE COURT:

Do what?

MR. WITTENBRINK:

No. No. I withdraw it, Judge.

THE COURT:

Okay.

BY MR. DUPRE:

Q. What was your job?

A. I was running radar on Old Baker Road.

***

[44]**THE COURT:**

May 23?

MR. DUPRE:

Yes. The ticket was issued on that date.

MS. QUWANDA JACKSON:

That is the ticket issued on that date.

THE COURT:

Oh.

MR. DUPRE:

That is the ticket.

MS. QUWANDA JACKSON:

That is the form when he signed for that citation.

THE COURT:

All right. Okay.

MR. DUPRE:

Your Honor, prosecution rests.

THE COURT:

All right. Mr. Wittenbrink, do you got any witnesses?

MR. WITTENBRINK:

Your Honor, I just -- I have the witnesses here, and they are objecting to having to appear with the masks on. I would just enter that objection in the record.

Appendix C

THE COURT:

So ordered. All right.

Court is going to find him guilty of speeding. The fine is going to be 30 days [45]in jail, suspended on payment of the fine. The fine is $125 dollars plus costs on the contempt. It is going to be six months in jail, consecutive to that. The fine is going to be $500 dollars.

I will give him two months to pay it. You can appeal it.

APPENDIX D — RELEVANT STATUTORY PROVISIONS

CCRP 578

CHAPTER 2. LIMITATIONS UPON TRIAL

Art. 578. General rule

A. Except as otherwise provided in this Chapter, no trial shall be commenced nor any bail obligation be enforceable:

(1) In capital cases after three years from the date of institution of the prosecution;

(2) In other felony cases after two years from the date of institution of the prosecution; and

(3) In misdemeanor cases after one year from the date of institution of the prosecution.

B. The offense charged shall determine the applicable limitation.

Acts 2006, No. 123, §1, eff. June 2, 2006.

Appendix D

CCRP579

Art. 579. Interruption of time limitation

A. The period of limitation established by Article 578 shall be interrupted if:

(1) The defendant at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state; or

(2) The defendant cannot be tried because of insanity or because his presence for trial cannot be obtained by legal process, or for any other cause beyond the control of the state; or

(3) The defendant fails to appear at any proceeding pursuant to actual notice, proof of which appears of record.

B. The periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists.

C. If the defendant fails to appear in court pursuant to any provision of this Article and the defendant is subsequently arrested, the periods of limitations established by Article 578 of this Code shall not commence to run anew until the defendant appears in person in open court where the case on the original charge is pending, or the district attorney prosecuting the original charge has notice of the defendant's custodial location. For

purposes of this Paragraph, "notice" shall mean either of the following:

(1) Filing in the court record by either the defendant or his counsel advising the court of his incarceration with a copy provided to the district attorney and certification of notice provided to the district attorney.

(2) Following the seventy-two hour hearing provided by Article 230.1 of this Code, actual notice of arrest is provided to the district attorney and filed in the record of the proceeding of which the warrant against the defendant was issued.

Amended by Acts 1984, No. 671, §1; Acts 2013, No. 6, §1.