

26-5624

No. _____

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED

AUG 24 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

DENNIS BAILLARGEON,

Petitioner,

v.

STATE OF NEW HAMPSHIRE, BRENDAN T. CARROLL, ESQ., and PELHAM POLICE

DEPARTMENT,

Respondents.

On Petition for a Writ of Certiorari to the

Rockingham County Superior Court, State of New Hampshire

PETITION FOR A WRIT OF CERTIORARI

RECEIVED

AUG 27 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

Whether a criminal defendant's due process rights under the Fourteenth Amendment are violated when a prosecutor, in direct response to the trial court's inquiry into what remains to be disclosed to the defense, gives an answer that omits material information the prosecutor already possesses — here, that previously available video evidence had become unavailable — where that omission occurs at the precise moment the court is deciding whether to grant a continuance, and forecloses the defendant's ability to seek that continuance on its true and more compelling ground.

LIST OF PARTIES

All parties appear in the caption. Respondents are the State of New Hampshire, Brendan T. Carroll, Esq., and the Pelham Police Department.

RELATED CASES

State v. Baillargeon, No. 2023-0407, New Hampshire Supreme Court. Judgment entered Aug. 22, 2024.

State v. Baillargeon, Salem Circuit Court. Motion for New Trial denied June 27, 2025 (for lack of jurisdiction).

Baillargeon v. New Hampshire Attorney General, No. 1:26-cv-00515-SE-AJ, U.S. District Court for the District of New Hampshire. Pending.

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OPINIONS BELOW

The opinion of the Rockingham County Superior Court, State of New Hampshire, dismissing Petitioner's petition for writ of error coram nobis, appears at Appendix A and is unpublished.

The order of the Superior Court denying Petitioner's motion for reconsideration appears at Appendix B and is unpublished.

The order of the New Hampshire Supreme Court declining discretionary review pursuant to Rule 7(1)(B) appears at Appendix C and is unpublished.

The order of the New Hampshire Supreme Court denying reconsideration of that decline appears at Appendix D and is unpublished.

JURISDICTION

This Court has jurisdiction to review this case under 28 U.S.C. § 1257(a), which authorizes review by writ of certiorari of “final judgments or decrees rendered by the highest court of a State in which a decision could be had.”

Petitioner sought review of the Rockingham County Superior Court's January 27, 2026 order dismissing his petition for writ of error coram nobis by filing a Rule 7 Notice of Discretionary Appeal with the New Hampshire Supreme Court, the mechanism by which that court exercises discretionary review over such orders. On May 13, 2026, the New Hampshire Supreme Court declined to accept that appeal pursuant to its Rule 7(1)(B), without opinion or stated reasoning. Petitioner's timely motion for reconsideration of that decline was denied on June 8, 2026, also without substantive reasoning.

This Court's own rules presuppose precisely this circumstance. Supreme Court Rule 13.1 states that “[a] petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.” That the Rule provides a timing mechanism specifically for this scenario indicates that, where a lower state court's judgment is subject to discretionary review by the state's highest court and that review is declined, the lower court's judgment remains the operative judgment for purposes of this Court's review — otherwise the Rule's timing provision for discretionary-review declines would have no work to do.

Because the New Hampshire Supreme Court's discretionary decline did not disturb, replace, or issue any competing judgment on the merits of Petitioner's coram nobis petition, the Superior

Court's January 27, 2026 order is the "final judgment... of the highest court of a State in which a decision could be had" within the meaning of § 1257(a). No further state court proceeding remains available to Petitioner to challenge that order.

This petition is timely filed within 90 days of the New Hampshire Supreme Court's June 8, 2026 denial of Petitioner's motion for reconsideration, pursuant to Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1: "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

28 U.S.C. § 1257(a): "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari..."

Sup. Ct. Rule 13.1: "A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review."

STATEMENT OF THE CASE

On June 22, 2023, Petitioner Dennis Baillargeon proceeded to a pro se trial in the 10th Circuit Court – District Division – Salem, on charges stemming from a January 15, 2015 traffic stop. At the outset of trial, Petitioner requested a continuance, stating he had not received discovery. In response to the trial court's inquiry into what remained to be disclosed, the prosecutor, Attorney Brendan T. Carroll, represented that there was “nothing other than the arrest report” to provide. The trial court denied the continuance, granting Petitioner a brief recess to review the report before trial proceeded.

Only during the cross-examination of the State's sole witness, Sgt. Adam Thistle, did it emerge that a dashboard-camera recording of the stop — which existed at the time of the 2015 stop — had become unavailable due to a 2018-2019 records-system changeover at the Pelham Police Department. Petitioner was found guilty of four of the six charged offenses.

Petitioner appealed to the New Hampshire Supreme Court, which affirmed in a reasoned opinion on August 22, 2024, addressing, among other things, whether the loss of the recording violated due process under the standard applicable to lost or destroyed evidence. *State v. Baillargeon*, 2024 N.H. LEXIS 198.

On February 3, 2025, in response to a professional-conduct grievance Petitioner had filed against him, Attorney Carroll submitted a formal letter to the New Hampshire Attorney Discipline Office. In that letter, Carroll stated that “during preparation for trial (the week leading up to trial), the State discovered the old footage was no longer available.” This was the first time the specific timing of Carroll's own knowledge — that he was aware of the footage's unavailability during the week before trial, the same period in which Petitioner's continuance request and

Carroll's "nothing other than the arrest report" representation occurred — was established in Petitioner's own words, by Carroll himself, on the record.

Based on this newly disclosed timing, Petitioner filed a petition for writ of error coram nobis in Rockingham County Superior Court on October 2, 2025. The Superior Court dismissed the petition on January 27, 2026, on the ground that Petitioner had not shown "sound reasons" for failing to raise the issue earlier, reasoning that the footage's unavailability had already been "discussed at trial." Petitioner's motion for reconsideration was denied on March 5, 2026. Petitioner then sought discretionary review by the New Hampshire Supreme Court under Rule 7(1)(B); that Court declined review, without opinion, on May 13, 2026, and denied reconsideration of that decline, again without opinion, on June 8, 2026.

**THIS PETITION PRESENTS A CLAIM THE 2024 DIRECT APPEAL DID NOT
ADDRESS**

On direct appeal, this Court's predecessor proceeding addressed a distinct question: whether the State's loss of the dashboard camera footage — through a 2018-2019 system changeover — violated due process under the bad-faith/culpable-neglect standard applicable to lost or destroyed evidence. *State v. Baillargeon*, 2024 N.H. LEXIS 198, at *4-5 (Aug. 22, 2024). The Court held the record supported an implicit finding of no bad faith in the loss of the footage, and that Petitioner had not shown, beyond speculation, that the footage was material. *Id.*

That holding does not resolve, and could not have resolved, the claim presented here. The 2024 opinion concerned only the circumstances of the footage's loss — a matter outside any individual's control, attributable to a systems transition. It did not, and had no occasion to, address whether Attorney Carroll's in-court representation — his affirmative statement that there was “nothing other than the arrest report” to disclose, made in direct response to the trial court's inquiry — was itself misleading. That claim did not exist on direct appeal because the evidentiary basis for it did not exist until February 3, 2025, when Carroll's own letter to the New Hampshire Attorney Discipline Office first established, in his own words, that he had known of the footage's unavailability during the week preceding trial — precisely the period during which the general disclosure inquiry was made.

The distinction is not merely temporal but doctrinal: the 2024 opinion resolved a Dukette lost-evidence bad-faith claim; this petition presents a due process claim grounded in the accuracy of a specific in-court representation, evaluated independently of any finding regarding the

footage's loss. A finding of no bad faith in how evidence was lost does not resolve whether a subsequent representation about that loss, made at a decision-critical moment, was misleading.

ARGUMENT

I. The Denial of Petitioner's Continuance, Based on an Incomplete Representation to the Trial Court, Violated Due Process

A criminal defendant's right to a continuance sufficient to prepare a defense is protected by the Due Process Clause of the Fourteenth Amendment. *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964). Whether denial of a continuance offends due process is evaluated by reference to “the circumstances of the case as those circumstances appear from the reasons presented to the trial judge at the time the request was made and denied.” *Id.* No more prejudice need be shown than that the denial “made a potential avenue of defense unavailable to the defendant.” See *March v. State*, 105 N.M. 453, 456 (1987) (citing *State v. Orona*, 92 N.M. 450, 452 (1979)).

Here, the circumstances presented to the trial court at the moment of decision were materially incomplete. When the trial court asked whether there was “anything other than the arrest report” to disclose, Attorney Carroll — who, by his own later admission, had known during the preceding week that the dashboard-camera recording no longer existed — answered that there was not. The trial court's assessment of Petitioner's continuance request, and its determination that Petitioner had been afforded adequate time and information to prepare, necessarily rested on this representation. Petitioner was left to argue for a continuance based on an inability to obtain a copy of the arrest report, rather than on the loss of evidence he did not yet know was gone, and the corresponding need to prepare an alternative defense built around the two witnesses — Chris Farrell and Erik Stairs — he had identified nearly three months earlier at the March 30, 2023 Trial Management Conference.

Had the trial court been accurately informed, it would have been evaluating a fundamentally different request: not a defendant's inability to review a document already available to him, but a defendant confronting, for the first time, the loss of what he reasonably understood to be his primary evidence, mid-litigation, after having repeatedly and unsuccessfully sought discovery in the interim. See Affidavit of Dennis Baillargeon (Dec. 27, 2023) ¶¶ 13-14 (attesting to three unreturned calls to Carroll's office between the TMC and trial, and that Petitioner did not learn of the recording's loss until the day of trial). Under *Ungar*, the due process inquiry asks what was before the court when it exercised its discretion — and what was before this court was incomplete.

This Court has long recognized that due process is offended not only by outright false statements to a tribunal, but by representations that create a materially misleading impression through incompleteness. See *Alcorta v. Texas*, 355 U.S. 28, 31 (1957) (due process violated where the State's presentation, though not literally false, was arranged to create a false impression material to the defendant's case). Carroll's answer that there was “nothing other than the arrest report” was not a false statement in the narrowest sense — the arrest report did exist — but it created the same materially misleading impression that *Alcorta* condemns: that nothing else remained at issue, when Carroll knew otherwise.

II. Petitioner's Due Process Claim Is Independent of the State-Law Coram Nobis Ruling and Is Not Barred by Any Adequate and Independent State Ground

The Superior Court's dismissal of Petitioner's coram nobis petition rested on a self-contained state-law threshold: whether Petitioner demonstrated “sound reasons” for not having sought relief earlier, under *State v. Santamaria*, 169 N.H. 722 (2017), and *State v. Widi*, 170 N.H. 163

(2017). That analysis neither cited nor interpreted any federal constitutional standard; it turned on the state court's own assessment of when information regarding the recording's loss became part of the trial record.

The claim presented here is narrower, and does not ask this Court to revisit that state-law timeliness determination. Petitioner's claim is that Attorney Carroll's representation to the trial court — that there was “nothing other than the arrest report” to disclose — made while the court's continuance ruling remained undecided, deprived the trial court of the accurate information necessary to fairly exercise its discretion under *Ungar v. Sarafite*, 376 U.S. 575 (1964). This is a distinct federal question that the state courts have not resolved on the merits at any stage of this litigation, including on direct appeal, where the claim before the Court concerned only the loss of the recording under *State v. Dukette*, 127 N.H. 540 (1986), not the accuracy of Carroll's representation regarding it. See *supra* (distinguishing *State v. Baillargeon*, 2024 N.H. LEXIS 198).

Because Petitioner's federal claim exists independently of, and was not resolved by, the state courts' procedural timeliness ruling, review of that claim is not barred by the adequate-and-independent-state-grounds doctrine. See *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (state ground bars review only where it is both adequate to support the judgment and genuinely independent of the federal question presented).

REASONS FOR GRANTING THE PETITION

I. This Case Presents an Undecided Question Regarding This Court's § 1257(a)

Jurisdiction Over Judgments Left Undisturbed by a State's Reasonless Discretionary

Decline of Review

This Court has not squarely addressed whether, when a state's highest court possesses only discretionary appellate jurisdiction and declines to exercise it without opinion, the lower state court's judgment becomes the operative "final judgment... of the highest court of a State in which a decision could be had" under 28 U.S.C. § 1257(a). This Court's own Rule 13.1 presupposes an answer to that question by establishing a timing mechanism specific to it, but the underlying jurisdictional principle has not been definitively settled in a reasoned opinion of this Court. Given the number of states, including New Hampshire, whose highest courts exercise similarly structured discretionary review, resolution of this recurring procedural question would provide needed clarity beyond the circumstances of this case.

II. The Due Process Principle at Stake Bears Particularly on Self-Represented Litigants

A pro se defendant, without independent access to investigative resources or discovery tools available to counsel, is uniquely dependent on the accuracy of a prosecutor's direct representations to the court regarding what remains to be disclosed. Where, as here, a self-represented defendant's continuance request is evaluated and denied based on an incomplete representation, the resulting due process concern is not confined to the facts of a single case; it implicates the fairness of continuance proceedings in the substantial number of criminal matters nationally in which defendants proceed without counsel.

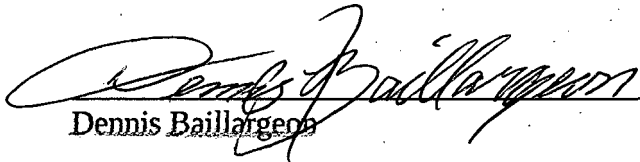
New Hampshire's own courts have recognized an unusually demanding standard for prosecutorial disclosure failures, underscoring that this is not a peripheral concern in the jurisdiction where this case arose. See *State v. Laurie*, 139 N.H. 325 (1995) (once a defendant shows favorable evidence was knowingly withheld, the burden shifts to the State to prove beyond a reasonable doubt that the evidence would not have affected the verdict); *State v. Dewitt*, 143 N.H. 24, 33 (1998) (prosecutorial duty to disclose favorable evidence extends to evidence held by any investigating law enforcement official); *State v. Shepherd*, 159 N.H. 163, 170 (2009) (favorable evidence, including impeachment evidence, is material where there is a reasonable probability the result would have differed had it been disclosed). The question presented here — whether a prosecutor's incomplete representation to the court, at the moment it mattered most, offends due process — sits squarely within the same tradition of heightened concern for prosecutorial candor that these cases reflect.

August 24, 2026

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,


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