

7-9-2013

## State v. Tinoco Appellant's Reply Brief Dckt. 39659

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Tinoco Appellant's Reply Brief Dckt. 39659" (2013). *Not Reported*. 747.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/747](https://digitalcommons.law.uidaho.edu/not_reported/747)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
 )  
 Respondent, )  
 )  
 vs. ) S.Ct. No. 39659-2012  
 ) District Case No. CR-2011-8142-C  
 )  
 JORGE FERREIRA TINOCO, )  
 )  
 Appellant. )  
 \_\_\_\_\_ )

---

REPLY BRIEF OF APPELLANT

---

Appeal from the District Court of the Third  
Judicial District of the State of Idaho  
In and For the County of Canyon

---

HONORABLE BRADLEY S. FORD  
District Judge

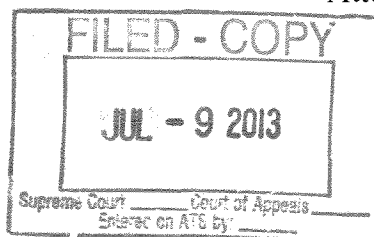
---

Robyn Fyffe  
NEVIN, BENJAMIN, McKAY & BARTLETT LLP  
303 West Bannock  
P.O. Box 2772  
Boise, ID 83701  
(208) 343-1000

Idaho Attorney General  
Criminal Division  
P.O. Box 83720  
Boise, ID 83720-0010  
(208) 334-2400

Attorneys for Appellant

Attorneys for Respondent



**TABLE OF CONTENTS**

I. Table of Authorities ..... ii

II. Argument in Reply ..... 1

    A. The District Court Erred in Denying Mr. Tinoco’s Motion to Dismiss Because the Delay in Bringing Him to Trial Violated His Speedy Trial Rights ..... 1

        1. Section 19-3501 governs the period before and following a mistrial .... 1

        2. The time period between a mistrial and retrial applies in the constitutional speedy trial analysis ..... 3

III. Conclusion ..... 4

**I. TABLE OF AUTHORITIES**

**FEDERAL CASES**

*Barker v. Wingo*, 407 U.S. 514 (1972) ..... 1, 3, 4  
*United States v. Hall*, 551 F.3d 257 (4th Cir. 2009) ..... 3

**STATE CASES**

*BHC Intermountain Hospital, Inc. v. Ada County*, 150 Idaho 93, 244 P.3d 237 (2010) ..... 2  
*Clayton v. State*, 822 So. 2d 1141 (Miss. App. 2002) ..... 4  
*State v. Avelar*, 129 Idaho 704, 931 P.2d 1222 (Ct. App. 1996) ..... 2  
*State v. Manley*, 220 S.W.3d 116 (Tex. App. 2007) ..... 4  
*State v. O'Neal*, 203 P.3d 135 (N.M. App. 2008) ..... 4  
*State v. Scroggie*, 114 Idaho 188, 755 P.2d 485 (Ct. App. 1988) ..... 2, 3  
*State v. Talmage*, 104 Idaho 249, 658 P.2d 920 (1983) ..... 2  
*State v. Young*, 136 Idaho 113, 29 P.3d 949 (2001) ..... 2  
*State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007) ..... 2

**DOCKETED CASES**

*Goncalves v. Com.*, \_\_\_ S.W.3d \_\_\_, \_\_\_, Supreme Court of Kentucky Docket No. 2010-SC-000142-MR (February 21, 2013) (2013 WL 646171) ..... 3

**STATE STATUTES**

I.C. § 19-3501(3) ..... 1, 2, 3

## II. ARGUMENT IN REPLY

### A. **The District Court Erred in Denying Mr. Tinoco's Motion to Dismiss Because the Delay in Bringing Him to Trial Violated His Speedy Trial Rights**

Mr. Tinoco's trial was delayed outside the speedy trial period because of the district court's error. Because the reason for the delay cannot constitute "good cause," the case should have been dismissed without resorting to analysis of the factors established by *Barker v. Wingo*, 407 U.S. 514 (1972). Even when those factors are considered, the circumstances demonstrate that Mr. Tinoco's rights to speedy trial as protected by I.C. § 19-3501(3) and the state and federal constitutions were violated and that the case should have been dismissed.

The state urges that Mr. Tinoco's claim is "without merit" because his first trial, which ended in mistrial due to the district court's error, occurred within six months. *See* Respondent's Brief, p. 5. Without citation to authority beyond the language of I.C. § 19-3501, the state contends that "the statute does not require a trial must go [sic] to verdict with six months of arraignment." *Id.* Initially, the statutory phrase "brought to trial" must be construed within the context of the right the statute was enacted to protect and, thus, cannot refer to a trial that ends prior to the presentation of evidence. Further, Mr. Tinoco's motion to dismiss was filed pursuant to the Sixth Amendment to the United States Constitution and Article I, Section 13 of the Idaho Constitution in addition to I.C. § 19-3501. Even if the period prior to the mistrial is not considered under the statutory analysis, it should be under the constitutional analysis.

#### 1. **Section 19-3501 governs the period before and following a mistrial**

The "court, unless good cause to the contrary is shown, must order the . . . indictment to be dismissed . . . if a defendant, whose trial has not been postponed upon his application, is not

brought to trial within [six months] from the date that the defendant was arraigned.” I.C. § 19–3501(3). The clear and plain language of the statute does not refer to any period following a remittitur from an appeal after a trial has once been held. *State v. Avelar*, 129 Idaho 704, 706, 931 P.2d 1222, 1224 (Ct. App. 1996); *State v. Scroggie*, 114 Idaho 188, 190, 755 P.2d 485, 487 (Ct. App. 1988). However, a mistrial fails to bring about any resolution to a case whereas a retrial following an appeal occurs after a defendant has been brought to a trial that resulted in a verdict. In *State v. Talmage*, 104 Idaho 249, 658 P.2d 920 (1983), the defendant explicitly complained about the delay between a first trial, which resulted in mistrial, and a second trial. The defendant did not argue and the Court did not address whether the period prior to the first trial could be properly considered in the speedy trial analysis. Thus, it does not appear that Idaho has addressed the significance of the phrase “brought to trial” in the context of a mistrial.

Further, the phrase “brought to trial” can be reasonably limited to refer to a trial that adjudicates the charges faced by the accused or, as contended by the state, the mere commencement of trial. When a statute’s language is capable of more than one reasonable construction, it is ambiguous and a must be construed with legislative intent in mind, which is ascertained by examining the reasonableness of the proposed interpretations, the policy behind the statute, and its legislative history in addition to the literal words of the statute. *BHC Intermountain Hosp., Inc. v. Ada County*, 150 Idaho 93, 95, 244 P.3d 237, 239 (2010); *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007).

The right to a speedy trial is designed: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired. *State v. Young*, 136 Idaho 113, 118, 29 P.3d 949, 954 (2001). Mr. Tinoco

remained in custody throughout the proceedings and it is hard to perceive how the mistrial due to the *Batson* issue helped minimize his anxiety. At least where a mistrial is declared after a deadlocked jury, the defense can be said to have derived some benefit from the opportunity to test the state's case. Here, no evidence was presented and the mistrial's occurrence addressed none of the concerns the legislature meant to address in enacting I.C. § 19–3501(3).

Further, a delay caused by a mistrial could be attributable to the defense, prosecution or, as here, the district court. Whether a mistrial warrants dismissal on speedy trial grounds is best assessed by application of the *Barker v. Wingo* factors and assessing whether the mistrial constituted good cause. Accordingly, the phrase “brought to trial” within the meaning of I.C. § 19–3501 contemplates a trial that results in a verdict.

**2. The time period between a mistrial and retrial applies in the constitutional speedy trial analysis**

“In the absence of a statute explicitly setting the time frame within which a retrial must occur following an appeal, the speedy trial inquiry should be approached with the constitutional analysis, applying the *Barker* balancing test.” *Scroggie*, 114 Idaho at 190, 755 P.2d at 487.

Although some states have adopted the position that the speedy trial “clock” starts anew following a mistrial, other jurisdictions hold that the speedy trial analysis applies to the time period between a mistrial and retrial. *Goncalves v. Com.*, \_\_\_ S.W.3d \_\_\_, \_\_\_, Supreme Court of Kentucky Docket No. 2010–SC–000142–MR (February 21, 2013) (2013 WL 646171). The “latter approach is appropriate because the four-factor *Barker* analysis allow for full and proper consideration of intervening mistrials under the second factor, the reasons for delay.” *Id.*; see also *United States v. Hall*, 551 F.3d 257, 272 (4th Cir. 2009) (noting “at least three valid bases”

for delay including mistrial in addition to complicated prosecution and defense pre-trial proceedings); *Clayton v. State*, 822 So.2d 1141, 1145 (Miss. App. 2002) (when a trial results in a mistrial, the time of retrial remains within the discretion of the trial court, although a substantial delay may still violate the constitutional right to a speedy trial); *State v. O'Neal*, 203 P.3d 135, 142 (N.M. App. 2008) (considering mistrial among various reasons for delay); *State v. Manley*, 220 S.W.3d 116, 124 (Tex. App. 2007) (same).

Even if the statutory obligation to bring a defendant to trial within six months is satisfied by a trial that ends in mistrial, a mistrial does not satisfy the constitutional guarantee of a speedy trial. Rather, the delay caused by a mistrial must be evaluated in the context of the *Barker* factors including the reason for the delay occasioned by the mistrial. As discussed in greater detail in Mr. Tinoco's Opening Brief, his trial was delayed because the district court misled counsel as to when the *Batson* challenge could be heard, which ultimately required the district court to declare a mistrial. As found by the district court, Mr. Tinoco "stood on his speedy trial rights" throughout the proceedings" [Tr. Vol. 5, p. 33, ln. 18-21] and was continually incarcerated. The reason for the delay, weighed against the other *Barker* factors, establishes that Mr. Tinoco's constitutional speedy trial rights were violated. Accordingly, this Court should reverse Mr. Tinoco's judgment of conviction and sentences and remand this case with instruction to grant the motion to dismiss.

### III. CONCLUSION

For the reasons set forth above and in Mr. Tinoco's Opening Brief, he respectfully asks that this Court vacate his judgment of conviction and sentences and remand for further proceedings.



Respectfully submitted this 9 day of July, 2013.

A handwritten signature in black ink, appearing to read 'RF', is written over a horizontal line.

Robyn Fyffe  
Attorney for Jorge Tinoco

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of July, 2013, I caused two true and correct copies of the foregoing to be mailed to:

Nicole Schafer  
Office of the Attorney General  
Criminal Division  
P.O. Box 83720  
Boise, ID 83720-0010



---

Robyn Fyffe