

SUPREME COURT OF NORTH CAROLINA

State v. Farook

2022-NCSC-59 · No. No. 457PA20 · Decided May 6, 2022

SUMMARY

The Supreme Court of North Carolina held that the trial court improperly admitted testimony from the defendant’s former attorney concerning defense strategy and the reasons for delay, violating the attorney-client privilege. The Court recognized that the more than six-year delay was presumptively prejudicial under the Sixth Amendment speedy-trial framework, but remanded for a rehearing because the State might present other evidence explaining the delay. The Court reversed the Court of Appeals to the extent it granted the defendant’s motion to dismiss.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Justice Earls
JURISDICTION	North Carolina
DECIDED	May 6, 2022
DOCKET	No. 457PA20
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought discretionary review of a unanimous Court of Appeals decision reversing the denial of Farook's motion to dismiss for violation of his Sixth Amendment speedy-trial right and vacating his convictions. The Supreme Court affirmed the Court of Appeals' evidentiary ruling concerning attorney-client privilege, reversed its decision granting the motion to dismiss, and remanded for further proceedings.
STANDARD OF REVIEW	The Supreme Court reviews Court of Appeals decisions for errors of law. Denial of a motion to dismiss on speedy-trial grounds presents a constitutional question of law reviewed de novo. Unpreserved evidentiary errors are reviewed for plain error.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of North Carolina
PARTIES	State of North Carolina v. Khalil Abdul Farook

TOPICS

speedy trial

sixth amendment

privilege

criminal procedure

appellate procedure

PRACTICE AREAS

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court plainly erred by admitting testimony from Farook's former attorney concerning privileged communications and confidential trial strategy at the speedy-trial hearing.
2. Whether the State could rely on privileged attorney testimony to explain the delay without a waiver of the attorney-client privilege.
3. Whether the trial court properly applied the Barker v. Wingo framework to the length and reasons for delay, assertion of the speedy-trial right, and prejudice.
4. Whether a defendant may establish prejudice on a Sixth Amendment speedy-trial claim through actual or presumptive prejudice rather than proof of actual prejudice alone.

HOLDINGS

1. The trial court plainly erred by admitting testimony from Farook's former attorney concerning the attorney's strategy to delay the case and related confidential communications where Farook did not waive the attorney-client privilege.
2. A delay exceeding six years is unreasonable and presumptively prejudicial for purposes of triggering the Barker inquiry and shifts to the State the burden of rebutting and explaining the delay.
3. A criminal defendant may establish prejudice for a speedy-trial claim through either actual prejudice or presumptive prejudice; actual prejudice is not required in every case.
4. The case must be remanded for the trial court to reconsider the speedy-trial claim using competent, nonprivileged evidence and the proper Barker analysis.

KEY QUOTATIONS

“A privilege exists if (1) the relation of attorney and client existed at the time the communication was made, (2) the communication was made in confidence, (3) the communication relates to a matter about which the attorney is being professionally consulted, (4) the communication was made in the course of giving or seeking legal advice for a proper purpose although litigation need not be contemplated[,] and (5) the client has not waived the privilege.” (¶ 31)

“And as the Court clarifies in Doggett, a criminal defendant may establish prejudice for purposes of his speedy trial claim through proof of either actual prejudice or presumptive prejudice.” (¶ 51)

“On remand, the trial court should consider any competent, non-privileged evidence of the reason for the delay in this case.” (¶ 55)

FACTUAL BACKGROUND

Farook was arrested and indicted in June 2012 after his vehicle crossed the centerline and struck a motorcycle, killing Tommy and Suzette Jones; a witness reported that Farook left the scene. He remained incarcerated for 2,302 days while the case was repeatedly calendared but not reached, and he was represented by four different attorneys. At the 2018 speedy-trial hearing, his former attorney testified for the State that delaying the case had been a defense strategy and also discussed court congestion and his professional workload.

PROCEDURAL HISTORY

Farook was indicted in 2012 after a fatal automobile collision and remained incarcerated for more than six years before trial. The superior court denied his speedy-trial motion after relying in part on testimony from his former attorney, and Farook was convicted and sentenced to two terms of life imprisonment without parole plus twenty-nine to forty-four months. The Court of Appeals reversed and vacated the convictions. The Supreme Court granted discretionary review, held that privileged testimony was improperly admitted and that the trial court misapplied the prejudice inquiry, and remanded for a new evaluation of the speedy-trial claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals must remand to the trial court. The trial court must consider competent, nonprivileged evidence concerning the reasons for delay; independently weigh the length of delay, reasons for delay, assertion of the speedy-trial right, and prejudice under Barker; apply the rule that prejudice may be actual or presumptive; and allow additional evidence as necessary to determine whether Farook's speedy-trial right was violated and whether the motion to dismiss should be granted and the convictions vacated.

CASES CITED

- Barker v. Wingo, 407 U.S. 514 (1972)
- Doggett v. United States, 505 U.S. 647 (1992)
- State v. Farmer, 376 N.C. 407 (2020)
- State v. Spivey, 357 N.C. 114 (2003)
- State v. Webster, 337 N.C. 674 (1994)
- State v. Wilkerson, 257 N.C. App. 927 (2018)
- Moore v. Arizona, 414 U.S. 25 (1973) (per curiam)
- State v. Murvin, 304 N.C. 523 (1981)
- Upjohn Co. v. United States, 449 U.S. 383 (1981)
- State v. McIntosh, 336 N.C. 517 (1994)
- State v. McNeill, 371 N.C. 198 (2018)
- State v. Williams, 363 N.C. 689 (2009)
- State v. Grooms, 353 N.C. 50 (2000)
- State v. Buckner, 351 N.C. 401 (2000)

- State v. White, 340 N.C. 264 (1995)
- Simmons v. United States, 390 U.S. 377 (1968)
- State v. Lawrence, 365 N.C. 506 (2012)
- State v. Salinas, 366 N.C. 119 (2012)
- Beavers v. Haubert, 198 U.S. 77 (1905)
- State v. Neas, 278 N.C. 506 (1971)
- Vermont v. Brillon, 556 U.S. 81 (2009)

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