THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2017-569

State of New Hampshire

v.

Hjalmar Bjorkman

Appeal Pursuant to Rule 7 from Judgment
of the Grafton Superior Court

BRIEF FOR THE DEFENDANT

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15 minutes requested for argument

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TEXT OF RELEVANT AUTHORITIES

RSA 606-A:1, Article I: The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

RSA 606-A:1, Article III (a): Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. . . .

RSA 606-A:1, Article IX: This agreement shall be liberally construed so as to effectuate its purposes. . . .

QUESTION PRESENTED

Whether the court erred by denying Bjorkman's motion to dismiss for failure to comply with time limits set by the Interstate Agreement on Detainers (IAD).

Issue preserved by Bjorkman's motion, A10-A21, the State's objection, A22-A23, the hearing on the motion, M 2-14, the court's order, T 3-5, Bjorkman's motion to reconsider, A24-A27, the State's objection to the motion to reconsider, A28-A29, and the court's order, A1-A2*.

* Citations to the record are as follows:
"A" refers to the Appendix to this brief;
"M" refers to the motion hearing held on July 21, 2017.
"T" refers to the transcript of the trial held on July 24, 2017.

STATEMENT OF THE CASE

A Grafton County grand jury indicted Bjorkman on one count of prohibited use of computer services in violation of RSA 649-B:4, I. A3-A6. The indictment alleged that Bjorkman purposely used a computer service, the website Grindr, to seduce, entice, and/or lure a person whom he believed to be a child to commit sexual assault. Id.

A jury was selected on July 10, 2017. A1. On July 24, 2017, the jury was sworn. T 8. Bjorkman stood trial and was convicted that same day. A7-A9. The court (MacLeod, J.) sentenced Bjorkman to serve two to four years at the New Hampshire State Prison. Id.

STATEMENT OF THE FACTS

In May 2016, Lebanon police officer Michael Roberts created a fake profile on the Grindr website using the name "Ty." T 18. Roberts, posing as Ty, wrote "Hey, please don't be a hater and flag me. Age is but a number. I'm younger. Looking to meet people." T 19.

On May 24, a person using the account name "HJ" contacted Ty through the Grindr website. T 19-20. In early June, Roberts replied to HJ's message and began an online conversation. T 19. Roberts stated that he was fifteen years old and did not yet have a driver's license. T 20. HJ asked Roberts whether he "like[d] getting a blowjob? I could [do] that for you. Just saying if you'd like that. What would you like?" T 23. The two then discussed meeting. T 22. HJ reported that he lived in Wilder, Vermont, and would take a taxi to New Hampshire. T 20, 27. Roberts asked the man to meet him in West Lebanon. T 22. HJ sent Roberts two photographs. T 23.

Roberts went to West Lebanon and met Bjorkman. T 29. Roberts identified Bjorkman as the man depicted in the photographs. T 23. He approached Bjorkman and could see Bjorkman was logged into the Grindr app. T 25. Roberts identified himself, explained that he was "Ty," and asked Bjorkman what he was doing there. T 25. Bjorkman told Roberts he was supposed to meet somebody that he assumed was an adult. T 25. Roberts arrested Bjorkman. T 25. Bjorkman acknowledged that he had come from Wilder to meet Ty. T 25. He explained that, based on Grindr's terms of service, he believed that Ty was at least eighteen years old. T 25.

SUMMARY OF THE ARGUMENT

The court erred in denying Bjorkman's motion to dismiss. The IAD requires that the State bring an inmate to trial within 180 days of providing the requisite notice. Failure to do so mandates dismissal with prejudice of the pending charge. Bjorkman's trial did not begin until after 180 days elapsed. Accordingly, he was not brought to trial within the IAD's timeframe. In denying Bjorkman's motion to dismiss, the court erred.

I. THE COURT ERRED IN DENYING BJORKMAN'S MOTION TO DISMISS FOR FAILURE TO COMPLY WITH TIME LIMITS SET BY THE INTERSTATE AGREEMENT ON DETAINERS.

The State indicted Bjorkman in October 2016. A3. As he was being held at a correctional facility in Vermont on an unrelated matter, Bjorkman failed to appear for his arraignment. A10. The court issued a warrant and a detainer was lodged with Vermont. Id. In early January 2017, Bjorkman completed the paperwork to initiate his transfer to New Hampshire for trial under the IAD. A13-A21; RSA 606-A:1, art. III. The Grafton County Attorney's Office received Bjorkman's IAD paperwork no later than January 17, 2017. A20. The County Attorney notified the Grafton Superior Court, which scheduled the case for trial. Id. On July 10, 2017, the parties conducted *voir dire* and jury selection. A1. Trial was scheduled to start on July 24, 2017. T 8.

Between jury selection and the commencement of trial, Bjorkman filed a motion to dismiss, arguing that he had not been brought to trial within 180 days as required by RSA 606-A:1, art. III. A10-A21. The State objected. A22-A23. The parties agreed to the applicable start and end dates. M 6 (parties concur that July 17, 2017 is the "180 day number."); A10 (the court received Bjorkman's written request on January 17, 2017); State v. Brown, 157 N.H. 555, 558 (2008) (180-day period begins to run when the request is received). The only dispute concerned when Bjorkman was "brought to trial," within the meaning of the IAD, on the date of his jury selection (July 10, 2017) or on the date his trial was to begin (July 24, 2017).

On July 21, 2017, the court held a hearing on the motion. M 1-14. It denied the motion, ruling that Bjorkman was brought to trial for purposes of the IAD at jury selection. T 3-5. The court cited caselaw interpreting the federal Speedy Trial Act in support of its interpretation of the IAD. Id. After denying Bjorkman's motion, the jury was sworn and trial began. T 8. The jury convicted Bjorkman later that day. T 74-77.

Bjorkman filed a motion to reconsider. A24-A27. Bjorkman argued that jury selection does not bring a defendant to trial under the IAD. A25. He argued the court's reliance on federal case law construing the Speedy Trial Act was misplaced as the legislative intent motivating the IAD differed from that underlying the Speedy Trial Act. A25. The State objected. A28-A29. The court issued a written order denying the motion and re-affirming its reliance on Speedy Trial Act caselaw. A1-A2. In so ruling, the court erred.

New Hampshire has adopted the IAD, a uniform interstate procedure by which out-of-state inmates may seek speedy resolution of pending New Hampshire charges. RSA 606-A. Under Article III of the IAD, an out-of-state inmate subject to a detainer triggers a deadline for trial in New Hampshire by providing the prosecutor and court with written notice. The statute requires that the inmate "shall be brought to trial within 180 days." RSA 606-A:1, art. III(a). This deadline can be extended only if: (1) the court grants a "necessary or reasonable continuance" for "good cause shown in open court, the prisoner or his counsel being present," (2) the court tolls the deadline during a period in which the defendant is "unable to stand trial," or (3) the defendant waives his

right. State v. Dolbeare, 140 N.H. 84, 86 (1995); RSA 606-A:1, arts. III(a) & VI. If the defendant is not brought to trial before the deadline, the court must dismiss the charge with prejudice. Brown, 157 N.H. at 558. The State bears the burden of showing compliance with the IAD. Id. The denial of a motion to dismiss an indictment under the IAD presents a question of law, which this Court reviews *de novo*. Id. at 556. In addition, "[a]s a congressionally sanctioned interstate compact, the IAD is a federal law subject to federal construction." Id. at 557.

This brief is divided into four sections. Section (A) argues the plain meaning of "brought to trial" provides its definition. Section (B) outlines the purpose of the IAD as shown through its text, legislative history, and historical context. Section (C) argues that, if the meaning is not plain, the purposes of the IAD are best served by a definition of "brought to trial" centered on the moment the jury is sworn and trial begins, rather than on jury selection. Section (D) argues that interpretations of the Speedy Trial Act are not persuasive as the statutes have different purposes.

A. The Plain Meaning of "Brought to Trial."

The phrase at issue in this case, "brought to trial," is not defined within the IAD. Where words are undefined, the court's "starting point" for statutory construction "must be the language employed by Congress." Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979). The assumption is "that the legislative purpose is expressed by the ordinary meaning of the words used." Richards v.

United States, 369 U.S. 1, 9 (1962). Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive. Am. Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982).

The ordinary meaning of being brought to trial is to have a trial begin. To legal practitioners and laypeople alike, the common meaning of being brought to trial involves the calling of witness, the hearing of evidence, and the resolution of the controversy in question. It is doubtful regular participants in the judicial process would remark that a defendant had been "brought to trial" after jury selection. The Court has used this common sense meaning of "brought to trial" throughout its IAD cases. See Dolbeare, 140 N.H. at 87 (holding the IAD requires "the State to provide *a trial* within 180 days.") (emphasis added); State v. Sprague, 146 N.H. 334, 338 (2001) (calculating the IAD end date as the "date the defendant was *to be tried.*") (emphasis added); Brown, 157 N.H. at 561 ("To comply with the IAD, *trial* needed to begin by October 26, 2006.") (emphasis added). Cf. Martinez v. Illinois, 134 S.Ct. 2070, 2075 (2014) (a defendant is "put to trial" for double jeopardy purposes "when a jury is empaneled and sworn."). The Court should continue with that same meaning here. An interpretation of "brought to trial" as occurring at jury selection is contrary to the phrase's plain meaning.

B. The Text, History, and Background of the IAD.

In the alternative, if the Court finds the plain meaning of "brought to trial" is not clear on its face, the Court must look to its meaning in the context

of the statute. Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 666 (2007) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.") (citation omitted); King v. Burwell, 135 S.Ct. 2480, 2496 (2015) ("A fair reading of legislation demands a fair understanding of the legislative plan.").

The Court must adopt a construction of "brought to trial" that is consistent with the purposes of the IAD statute. The IAD's purpose is expressed in its first article: "The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation." RSA 606-A:1, art. I. The statute aims to ensure the orderly and expeditious resolution of pending out-of-state-charges for the sake of advancing prisoners' treatment and rehabilitation. Courts have recognized that "[t]he purpose of the statute is to benefit prisoners." Brown, 157 N.H. at 566 (quoting State v. Miller, 691 A.2d 377, 382 (N.J. Super. Ct. App. Div. 1997). See also Id. (quoting Miller for the proposition that "it has been properly held that since the purpose of the IAD is remedial, it should be accorded liberal construction in favor of prisoners within its purview."); Cuyler v. Adams, 449 U.S. 433, 449 (1981) (the IAD's legislative history "emphasizes that a primary purpose of the Agreement is to protect prisoners against whom detainers are outstanding."); Fex v. Michigan, 507 U.S.

43, 55 (1993) (Blackmun, J. dissenting) ("The IAD's primary purpose is not to protect prosecutors' calendars, or even to protect prosecutions, but to provide a swift and certain means for resolving the uncertainties and alleviating the disabilities created by outstanding detainers.").

The legislative history of the IAD confirms this purpose. The drafters of the Agreement were concerned that "a prisoner who has had a detainer lodged against him is seriously disadvantaged by such action." Cuyler v. Adams, 449 U.S. at 449 (quoting the IAD's legislative history). Such inmates are "filled with anxiety and apprehension and frequently do[] not respond to a training program." Carchman v. Nash, 473 U.S. 716, 720 (1985) (quoting the IAD's legislative history). Beyond the psychological impact, detainers affect inmates' rehabilitative opportunities, as an inmate subject to a detainer is often "kept in close custody, which bars him from treatment such as trustyships, moderations of custody and opportunity for transfer to farms and work camps." Id. (quoting same). Furthermore, "in many jurisdictions [inmates with detainers are] not eligible for parole" and thus will serve longer sentences than they would otherwise. Id. (quoting same). Overall, an inmate with a detainer has "little hope for his release after an optimum period of training and treatment, when he is ready for return to society with an excellent possibility that he will not offend again." Id. (quoting same). Accord United States v. Mauro, 436 U.S. 340, 353 (1978); Cuyler, 449 U.S. at 449. See also Daniel E. Casagrande, The Effect of the Interstate Agreement on Detainers Upon Federal Prisoner Transfer, 46 Fordham L. Rev. 492, 494 (1977) (The Effect of the IAD) *available at*

https://ir.lawnet.fordham.edu/flr/vol46/iss3/(last visited Feb. 15, 2018) (detainers subject prisoners to maximum-security status and automatic denial of parole).

The concern for detained prisoners languishing in rehabilitative limbo suggested the need for a deadline. Prior to the IAD, courts and prosecutors were able to misuse detainers to prolong a prisoner's period of incarceration. "Abuses" of detainers "were often flagrant." Id. "Federal judges or prosecutors filed detainer warrants against state prisoners for the sole purpose of preventing parole, even though they had no genuine intention to prosecute the charges." Id. ("One prosecutor wrote that a convict could 'sit and rot in prison' rather than be brought promptly to trial in the prosecutor's jurisdiction."); Carchman, 473 U.S. at 729-30 (noting adoption of the IAD was motivated by the misuse of unsubstantiated detainers). Even after charges were dropped, detainers were left in place until the prosecuting agency chose to remove them. Id. Thus, detainers could be used by courts and prosecutors to punish defendants without oversight or the burden of trial.

The wrongs the IAD addressed and the goals it sought to achieve were clear. The statute sought to guarantee a prisoner's right to speedy trial to facilitate his rehabilitation, and not to uphold society's interest in the speedy resolution of cases involving defendants detained out-of-state. To achieve its intended end, the statute demands that it "shall be liberally construed so as to effectuate its purposes." RSA 606-A:1, art. IX. The IAD enforces compliance by requiring dismissal of charges with prejudice for failure to comply with its

timing rules. RSA 606-A:1, art. V. The states adopting the IAD thus countenanced dismissal of even those cases impacting public safety as the necessary cost of promoting the statute's inmate-centered goals. Cf. Reed v. Farley, 512 U.S. 339, 368 (1994) (Blackmun, J., dissenting) ("The dismissal with prejudice of criminal charges is a remedy rarely seen in criminal law, even for constitutional violations.")

C. The IAD's purposes are best served by interpreting "brought to trial" as occurring when jurors are sworn or double jeopardy otherwise attaches.

Defendants, counsel, and the court participate in a progression of proceedings that lead from charge to trial. Jury selection, like a final pretrial or dispositional hearing, does not adjudicate the charge, but rather moves the case closer toward that end. It serves a limited purpose: selecting an impartial factfinder for a later trial. State v. Wamala, 158 N.H. 583, 594 (2009) ("*voir dire* is but a means to achieve the end of an impartial jury").

In this context, jury selection resembles the act of designating a particular judge to hear a bench trial. The *identity* of the factfinder is established, but the performance of the fact-finding role is deferred to trial's commencement. It would be odd to declare a defendant "brought to trial" for IAD purposes upon designation of the presiding judge; such a designation could occur long before the adjudication of the charges begins. It is equally inconsistent to describe a defendant as "brought to trial" upon selection of the jury.

There is no uniform limit on when, after jury selection, trial must begin. In New Hampshire, a defendant can select a jury and wait weeks for the commencement of trial. State v. Laferriere, 2015 N.H. LEXIS 118, * 2 (Oct. 21, 2015) (3JX non-precedential order) (noting the defendant's trial date was several weeks after jury selection). Jury selection does not inexorably bind the court to begin the trial with the selected jurors. Unsworn jurors may be released and trial postponed when, for example, a witness goes missing or the preceding trial lasts longer than anticipated. The IAD's goal of moving the case to final disposition within a specified time is not served merely upon selection of an unsworn jury.

The error of using jury selection as the safe harbor for the IAD deadline becomes clear upon consideration of double jeopardy caselaw. That law provides "jeopardy attaches when a defendant is 'put to trial' and in a jury trial, that is 'when a jury is empaneled and sworn.'" Martinez v. Illinois, 134 S.Ct. at 2075 (citation omitted). See also Serfass v. United States, 420 U.S. 377, 391 (1975) ("the Court has consistently adhered to the view that jeopardy does not attach until a defendant is put to trial before the trier of the facts, whether the trier be a jury or a judge.") (quotation omitted). Until that point arrives, a defendant has not been brought to trial and the State is not precluded from aborting the prosecution with a view to renewing it at some later time. Id. Thus, the occurrence of jury selection does not ensure that trial is imminent; actions of the court or the State can interrupt the progress toward adjudication without barring future prosecution.

Additionally, A jury selection rule is susceptible to manipulation of the court schedule to subvert the statute's intent. See, e.g., Linda M. Ariola, et al., The Speedy Trial Act: An Empirical Study, 47 Fordham L. Rev. 713, 744, n. 183 (1979) *available at* https://ir.lawnet.fordham.edu/flr/vol47/iss5/(last visited Feb. 15, 2018) (in jurisdictions where "trial is deemed to commence on the date on which *voir dire*, i.e. jury selection, begins . . . [s]everal judges indicated that to avoid violation of the [Speedy Trial] Act, they often held *voir dire* on a date within the prescribed limits but then delayed actual hearing of testimony up to one month thereafter.") (citations omitted); United States v. Brown, 819 F.3d 800, 810 (6th Cir. 2016) (noting that, in the context of the Speedy Trial Act, where trial may be said to begin at *voir dire*, some trial courts have attempted to "evade the spirit of the Act" by starting trial significantly after *voir dire* "pay[ing] mere 'lip service' to the Act's requirements.").

Defining "brought to trial" consistently with its double jeopardy meaning serves the stated purpose of the IAD statute. Establishing a deadline that requires the case to be tried or definitively dropped brings finality to the detainer as sought by the IAD statute. Moreover, it ensures the deadlines will not be manipulated to artificially start cases within the deadline. Finally, it protects inmates' interests in a speedy adjudication to facilitate rehabilitation.

D. Speedy Trial Act jurisprudence does not shed light on the meaning of "'brought to trial" as used in the IAD as the statutes have different purposes.

In denying Bjorkman's motion to dismiss, the trial court relied on federal Speedy Trial Act caselaw to interpret the IAD. A1-A2; T 4 (citing United States v. Rodriguez, 63 F.3d 1159 (1st Cir. 1995); United States v. Gonzalez, 671 F.2d 441 (11th Cir. 1982); United States v. Odom, 674 F.2d 228 (4th Cir. 1982)). At times, lower federal courts have concluded that the IAD and Speedy Trial Act share the same purpose and thus should be interpreted together. See, e.g., Odom, 674 F.2d at 231 (relying on the canon of interpretation that "related statutes *having the same purpose* should be construed together.") (emphasis added).

Although in the most general sense the IAD and the Speedy Trial Act both address "speedy trials," the different purposes of the two statutes manifest in their legislative histories, texts, and remedies. The Speedy Trial Act has two purposes: first, "to protect a defendant's right to a speedy trial," and, second, "with the public interest firmly in mind," to protect a societal interest in prompt dispositions. Zedner v. United States, 547 U.S. 489, 501-02 (2006). The Speedy Trial Act, as "a product of national concern with increasing crime rates in the late 1960's," created a speedy trial scheme designed to serve both society and defendants' interests in prompt resolutions. See Anthony Partridge, Legislative History of Title I of the Speedy Trial Act of 1974, (Fed. Judicial Center 1980) *available at* www.fjc.gov/sites/default/files/ 2012/LHistSTA.pdf, p.11 (last visited Feb. 15, 2018) (Legislative History of the Speedy Trial Act) (The Speedy

Trial Act addresses the concern that "the trial of a criminal case should not be unreasonably delayed merely because the defendant does not think that it is in his best interest to seek prompt disposition of the charge.").

The IAD was not similarly dual-purposed. As set forth in the legislative history cited above, the IAD aimed to preserve an inmate's opportunity for rehabilitation and reform in the face of pending out-of-state charges *for the inmate's benefit.* Brown, 157 N.H. at 566 (citing Miller, 691 A.2d at 382, for the proposition that "[t]he purpose of the statute is to benefit prisoners [and so] it should be accorded liberal construction in favor of prisoners within its purview.").

The different purposes of the two acts are evident in their choice of remedies. The Speedy Trial Act allows the court discretion in selecting an appropriate remedy, while the IAD demands strict adherence to dismissal with prejudice. Compare Zedner, 547 U.S. at 499 (upon a violation of the Speedy Trial Act's timing requirements, the court applies a balancing test to "choose whether to dismiss with or without prejudice.") with Dolbeare, 140 N.H. at 86 (upon a violation of the IAD's timing requirements, "the charges must be dismissed with prejudice."). Legislative history of the Speedy Trial Act indicates that dismissal without prejudice was abandoned as a mandatory remedy because such a "dismissal sanction is assessed against society." Legislative History of the Speedy Trial Act at 32-33. In the final legislation, the remedy for a violation of the Speedy Trial Act deadline was made discretionary "by floor amendment as a compromise . . ." Id.

The Speedy Trial Act seeks a well-balanced compromise between societal interests and defendants' interests; the IAD does not. The court's conclusion that a jury selection rule should apply in the context of the IAD because it does in the Speedy Trial Act is misplaced as the statutes have different purposes. Although a rule that trial commences at jury selection may suit the text and purposes of the Speedy Trial Act, it does not advance the prisoner-centered purpose of the IAD statute. By concluding that Bjorkman was "brought to trial" under the IAD at the time of jury selection, the trial court erred. The Court must therefore reverse the ruling of the trial court.

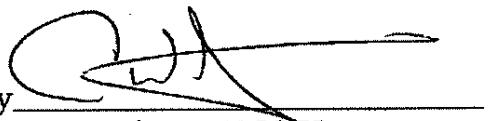
CONCLUSION

WHEREFORE, Hjalamar Bjorkman respectfully requests that this Court reverse the denial of the Motion to Dismiss and his conviction.

Undersigned counsel requests 15 minutes of oral argument.

The appealed decision is in writing and is appended to the brief.

Respectfully submitted,



By_____
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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief have been mailed, postage prepaid, to:

Criminal Bureau
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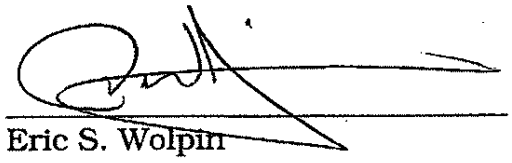

Eric S. Wolpin

DATED: February 26, 2018.

APPENDIX

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STATE OF NEW HAMPSHIRE
SUPERIOR COURT

GRAFTON, SS. Docket No. 16-CR-379

State of New Hampshire

v.

Hjalmar A. Bjorkman

ORDER on MOTION to RECONSIDER

The defendant was convicted of one felony count of illegal use of computer services following a one day trial on July 24, 2017. *See RSA 649-B:4, I.* The defendant had been transported pursuant RSA 606-A from Vermont, where he was serving a sentence of incarceration, to New Hampshire to face trial in this case. Prior to the verdict the defendant made an oral motion to dismiss citing RSA 606-A, III arguing that the State had failed to bring him to trial within 180 days after he was "delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction" and subsequent to "his request for a final disposition to be made of the indictment, information or complaint[.]" *Id.* The State objected. The court denied the defendant's motion holding that the defendant's trial commenced within the required 180 period with jury selection on July 10, 2017, when the defendant appeared before the court and both parties actively participated in attorney conducted voir dire. *See RSA 500-A:12-a.*

The defendant has filed a motion requesting that the court reconsider its prior ruling and dismiss the case. (Index #23). The State objects. (Index #25). Both parties acknowledge that there is no New Hampshire case or statutory law directly

on point. In denying the defendant's motion to dismiss, this court relied on related federal case law. *See United States v. Gonzalez*, 671 F.2d 441 (11th Cir. 1982). "The [Interstate Agreement on] Detainer[s] Act has appropriately been characterized as a statutory right to speedy trial." *United States v. Odom*, 674 F.2d 228, 230 (1982)(internal quotations and citation omitted). "The Detainer Act and the Speedy Trial Act deal with the same subject matter. Both were enacted to serve the best interest of the public and the defendant by requiring the prompt disposition of criminal charges." *Id.* at 231. Additionally, "related statutes having the same purpose should be construed together." *Id.*

Upon consideration of the pleadings and arguments set forth in the parties' pleadings, the court finds and holds that there are no issues of fact or law which were not previously considered by the court in its oral order of July 24, 2017 or which warrant a different result than that determined by the court in said order.

As such, the Motion to Reconsider is DENIED.

SO ORDERED, this 12th day of August 2017.

Lawrence A. MacLeod, Jr.
Presiding Justice

CLERK'S NOTICE DATE
9/13/2017

CC:

Count 1
RSA 649-B:4,I
Offense: Certain Uses of Computer Services Prohibited
CLASS B Felony
Information Use Only

Superior Court Case: 215-2016-CR- 379
Charge ID: 1324917550

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

At the Superior Court holden at North Haverhill within and for the County of Grafton, upon the 21st day of October, in the year of our Lord Two Thousand Sixteen

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath, present that:

HJALMAN A. BJORKMAN

DOB: 04/27/1965

of or formerly of 200 Depot, Wilder, VT 05088, on or about the 9th day of June 2016, in Lebanon, in the County of Grafton, aforesaid

No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit any of the following: Any offense under RSA 632-A, relative to sexual assault and related offenses.

1. HJALMAN A. BJORKMAN ACTED PURPOSELY;

2. UTILIZE A COMPUTER ON-LINE SERVICE, TO WIT: GRINDR;

3. TO SEDUCE AND/OR ENTICE AND/OR LURE A CHILD, OR ANOTHER PERSON WHO HE BELIEVED TO BE A CHILD TO WIT: GRINDR SCREEN NAME "TY" A PERSON WHO HE BELIEVED TO BE UNDER 16 YEARS OF AGE ;

4. TO ENGAGE IN CONDUCT THAT WOULD BE A VIOLATION OF ANY OFFENSE UNDER RSA 632-A RELATIVE TO SEXUAL ASSAULT AND RELATED MATTERS, COMMUNICATED WITH "TY" ON TEXT MESSAGES AS FOLLOWS:

"TY": Hi
H.B.: "Love ya"

H.B.: "Hi how's it going want to get together".

"TY": "What do you have in mind?"
H.B.: "What ever you like"

H.B.: "What would you like I'm all yours open for ideas"

H.B.: "I live in wilder Vermont were do you live".

H.B.: "Close I hope".

H.B.: "Do you like getting a Blow job".

H.B.: "I could do that for you".

H.B.: "Just saying if you'd like that".

H.B.: "What would you like".

"TY": "I live in west Lebanon".

"TY": "Who doesn't like blow jobs lol".

H.B.: "Do you drive".

"TY": "No I can't get my license yet".

H.B.: "To bad".

"TY": "Ya it stinks"

"TY": Do you drive?"

H.B.: "I'd like to see you tonight".

H.B.: "I have a car but I don't drive".

"TY": "Oh. Why not?".

H.B.: "Lost it".

"TY": "Damn that sucks".
"TY": "How old are you?"

H.B.: "Years ago for drinking".

H.B.: "A young 45".

"TY": "I'm 15. So I get my license in December".

H.B.: "Cool".

"TY": Yup".
"TY": "Do you ever get to west leb?"

H.B.: "Through".

H.B.: "Can you get a ride".
"TY": "I can't tonight I don't think".

"TY": "Can u".

H.B.: "I don't know maybe a cab".
"TY": "I could meet you if you find a ride".

H.B.: "Were".

H.B.: "If you can have some one give you a ride I can pay gas".

"TY": "I don't have any one. Sorry".

"TY": "How far away do you live?"

"TY": "Can a cab take you".

H.B.: "Wilder post office".

"TY": "Oh. I wouldn't want to walk that far".

H.B.: "Can you come here by cab I'll pay".
"TY": "I'm uncomfortable going over there. I'm a bit shy and would feel more comfortable closer to home".

H.B.: "Were would you like to meet".

"TY": "I live walking distance to kilton library's".

H.B.: 'Let's see if I can get a cab".

H.B.: "Be right back".

H.B.: "Ok".

"TY": "Ok. Let me know asap".

H.B.: "I can get a cab I 10 mins".

"TY": "Ok. Kilton library".
H.B.: "Cool".

H.B.: "See you soon".

"TY": "How long?"

H.B.: "20 mins".

H.B.: "I'm here".

"TY": "What are you wearing?".

H.B.: "Jeans gray ja".

contrary to the form of the statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

Foreperson

Deputy County Attorney
PVF

Arraignment_____ Trial: Bench ☐ Jury ☐
Waiver Date_____ Judge_____ Reporter_____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Grafton Superior Court
3785 D.C. Highway
North Haverhill NH 03774

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Hjalmar Bjorkman**
Case Number: **215-2016-CR-00379**
Name: **Hjalmar Bjorkman, 200 Depot Wilder VT 05088**
DOB: **April 27, 1965**

Charging document: Indictment

Offense:	Charge ID:	RSA:	Date of Offense:
Computr Svc; Use Prhbtd	1249785C	649-B:4	June 09, 2016

Disposition: Guilty/Chargeable By: Jury on 07/24/2017

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

September 26, 2017 (Date) | Hon. Lawrence A. MacLeod, Jr. (Presiding Justice) | David P. Carlson (Clerk of Court)

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: DPC
Clerk of Court

SHERIFF'S RETURN

I delivered the defendant to the **New Hampshire State Prison** and gave a copy of this order to the Warden.

Date _____ Sheriff _____

J-ONE: ☒ State Police ☐ DMV

C: ☒ Dept. of Corrections ☒ Offender Records ☐ Sheriff ☒ Office of Cost Containment
☒ Prosecutor Paul V. Fitzgerald, ESQ ☐ Defendant ☒ Defense AttorneyConstantine Hutchins, III, ESQ
☒ Sentence Review Board ☒ Sex Offender Registry ☒ Other Grafton HOC ☐ _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Grafton County Superior Court

Case Name: State v. Hialmar A. Bjorkman

Case Number: 215-2016-CR-0379 Charge ID Number: 1249785C
(if known)

STATE PRISON SENTENCE

Plea/Verdict: GUILTY TRUE	Clerk: Carlson
Crime: Certain Uses of Computer Services Prohibited	Date of Crime: 06/09/16
Monitor: Bemis Greska	Judge: Bornstein MacLeod

A finding of GUILTY/TRUE is entered.

☐ The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b. See attached RSA 631:2-b Sentencing Addendum.

☒ 1. The defendant is sentenced to the New Hampshire State Prison for not more than 4 year(s), nor less than 2 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

☒ 2. This sentence is to be served as follows: ☒ Stand committed ☒ Commencing September 26th, 2017.

☐ 3. _____ of the minimum sentence is suspended and _____ of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends _____ years from ☐ today or ☐ release on charge ID: _____.

☐ 4. _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

☐ 5. _____ of the minimum sentence shall be suspended by the Court on application of the defendant provided the defendant demonstrates meaningful participation in a sexual offender program while incarcerated.

☐ 6. The sentence is: ☐ consecutive to charge ID(s) _____
☐ concurrent with charge ID(s) _____.

☒ 7. Pretrial confinement credit: 307 days

☒ 8. The Court recommends to the Department of Corrections:
- ☐ Drug and alcohol treatment and counseling
- ☒ Sexual offender program
- ☐ Sentence to be served at the House of Corrections
- ☐ Other: _____

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

Case Name: State v. Hjalmar A. Bjorkman
Case Number: 215-2016-CR-0379 (1249785C)
STATE PRISON SENTENCE

PROBATION

☐ 9. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: ☐ Forthwith ☒ Upon Release
The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.

☐ 10. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

☐ 11. **Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.**

OTHER CONDITIONS

☒ 12. Other conditions of this sentence are:

~~☒ A. The defendant is fined $ 1,000.00 plus statutory penalty assessment of $ 240.00.~~
~~☒ The fine, penalty assessment and any fees shall be paid: ☐ Now ☐ By _____ OR~~
~~☒ Through the Department of Corrections as directed by the Probation/Parole Officer. A 10% service charge is assessed for the collection of fines and fees, other than supervision fees.~~
~~☐ $ _____ of the fine and $ _____ of the penalty assessment is suspended for _____ years(s).~~
A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

☐ B. The defendant is ordered to make restitution of $ _____ to: _____.
☐ Through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
☐ At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
☐ Restitution is not ordered because: _____.

☒ C. The defendant is to meaningfully participate in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

☒ D. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.

☐ E. Under the direction of the Probation/Parole Officer, the defendant shall tour the:
☐ New Hampshire State Prison ☐ House of Corrections

☐ F. The defendant shall perform _____ hours of community service with a registered charity and provide proof to ☐ the State or ☐ probation within _____ of today's date.

☐ G. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.

☐ H. Law enforcement agencies may ☐ destroy the evidence ☐ return evidence to its rightful owner.

☐ I. The defendant and the State have waived sentence review in writing or on the record.

☒ J. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

☒ K. Other: **Remain compliant with the Sex Offender Registration requirements.**

9/26/17
Date

Presiding Justice

Lawrence A. Macleod, II
Presiding Justice

STATE OF NEW HAMPSHIRE

Grafton County Superior Court

Grafton, ss July Term, 2017

State of New Hampshire

v.

Hjalmar Bjorkman

215-16-CR-379

Motion to Dismiss - Interstate Agreement on Detainers

NOW COMES the defendant, Hjalmar A. Bjorkman, by and through counsel, Tony Hutchins, Esq., and respectfully requests this Honorable Court to dismiss the above-captioned matter with prejudice in accordance with the provisions of the Interstate Agreement on Detainers.

1. Mr. Bjorkman is charged with Use of Computer Services Prohibited. At the time the charge was brought in the Lebanon Circuit Court, Mr. Bjorkman sought, and was appointed counsel. The office of the public defender was assigned and defense counsel was appointed to represent him. At that time, Mr. Bjorkman was incarcerated and was serving a sentence in the State of Vermont.
2. On October 21, 2016, Mr. Bjorkman was indicted on the same charge and was scheduled for arraignment on November 7, 2016. Because Mr. Bjorkman was still incarcerated in Vermont and serving a sentence there, he failed to appear. The Court was informed at that time that Mr. Bjorkman was serving a sentence in Vermont. A capias was issued and a detainer was lodged on Mr. Bjorkman in Vermont.
3. Mr. Bjorkman timely filed a Demand for a Speedy Trial in accordance with the provision of the Interstate Agreement on Detainers (IAD). (See Attachment A). In accordance with the provisions of the IAD, Mr. Bjorkman caused Vermont officials to inform the Grafton County Attorney of Mr. Bjorkman's IAD demand. This letter was authored and sent by Morgan Rogers who is the NCIC and Extradition Administrator for the Vermont Department of Corrections. The Court received this letter on January 17, 2017 along with

a cover letter from Administrative Assistant Christine Ash of the Grafton County Attorney Office (See Attachments B & C). While there is no indication when the Grafton County Attorney received the letter notifying her that Mr. Bjorkman had made a Demand in accordance with the IAD, it must have done so at least by the date it provided a copy of the letter to the Court. State v. Brown, 157 NH 555, 558 (2001)(180-day period begins to run on the date the State receives a defendant's request for final disposition of his charges); See also Fex v. Michigan, 507 US 43, 52 (1993).

4. The IAD requires that a case be dismissed if it is not "brought to trial within 180 days after the State receive(s) his request for final disposition of his charges. State v. Brown, *supra* at 556 (2001); see RSA 606-A:1, art. III(a).

5. Because Mr. Bjorkman "caused to be delivered to the prosecuting officer and the appropriate Court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint", on or prior to January 17, 2017, the time for final disposition would have had to occur within 180 days of that date, unless a continuance, in accordance with the requirements of the IAD, had been sought an granted. Mr. Bjorkman made no such request and none was granted.

6. The 180-period period required by the IAD thus would have expired on July 16, 2017, however, because that day was a Sunday, it instead expired on July 17, 2017. See Super Ct. R. 2 (Computation of Time). The case was not brought to trial within the period of time required by the IAD, therefore this Court must dismiss the case with prejudice. State v. Brown, *supra* at 565; See also State v. Dolbeare, 140 NH 84 (1995).

WHEREFORE, Mr. Bjorman, through counsel, respectfully prays this Honorable Court:

A. Grant this Motion without a hearing and Dismiss the matter with prejudice; and

B. Grant such other relief as is just and proper.

Respectfully submitted:

Tony Hutchins
Public Defender
N.H. Bar #7904
485 NH Route 10 Unit 3
Orford, NH 03777
(603) 353-4440

CERTIFICATION

I, Tony Hutchins, Public Defender, do hereby certify that a copy of this Motion to Dismiss - Interstate Agreement on Detainers has been forwarded this 18th day of July, 2017 to the Grafton County Attorney's Office.

Tony Hutchins
Public Defender

FORM II

INTERSTATE AGREEMENT ON DETAINERS

Six copies, if only one jurisdiction within the state involved has an indictment, information or complaint pending. Additional copies will be necessary for prosecuting officials and clerks of court if detainers have been lodged by other jurisdictions within the state involved. One copy should be retained by the inmate. One signed copy should be retained by the institution. Signed copies must be sent to the Agreement Administrators of the sending and receiving states, the prosecuting official of the jurisdiction which placed the detainer, and the clerk of the court which has jurisdiction over the matter. The copies for the prosecuting official and the court must be transmitted by certified or registered mail, return receipt requested.

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: (1) Lara J Saffo Prosecuting Officer Grafton County,New Hampshire
(Jurisdiction)

(2) Clerk of Grafton County Superior Court Grafton County, New Hampshire
(Jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below in which indictments, informations or complaints are pending. .

You are hereby notified that the undersigned, Hialmar Bjorkman, DOB 4/27/1965, PID23569, is now
(Inmate's Name and Number)

imprisoned in Southern State Correctional Facility at Springfield, Vermont
(Institution) (City and State)

I hereby request that final disposition be made of the following indictments, informations or complaints now pending against me: Case # 215-2016-CR-379: Certain Uses of Computer Services Prohibited

Failure to take action in accordance with the Interstate Agreement on Detainers (IAD), to which your state is committed by law, will result in the invalidation of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition to your state for any proceeding contemplated hereby, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the IAD and a further consent to be returned to the institution in which I now am confined.

If jurisdiction over this matter is properly in another agency, court, or officer, please designate the proper agency, court, or officer and return this form to sender.

The required Certificate of Inmate Status (Form III) and Offer of Temporary Custody (Form V) are attached. [illegible]

Hjalmar Biorkman, PID 23569 Inmate's Printed Name and Number	 Inmate's Signature	1-3-17 Date
Edward S. Holtrop, CSS II Witness' Printed Name and Title	 Witness' Signature	1/3/17 Date

FORM III

INTERSTATE AGREEMENT ON DETAINERS

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor under Article IV, a copy of this Form should be sent to the prosecutor upon receipt by the warden of Form V. Copies of this Form should be sent to all other prosecutors in the same state who have lodged detainers against the inmate. A copy may be given to the inmate.

CERTIFICATE OF INMATE STATUS

Hjalmar Bjorkman, DOB 4/27/1965 (Inmate)

PID23569 (Number)

Southern State Correctional Facility (Institution)

Springfield, Vermont (Location)

Edward Adams (Custodial authority) hereby certifies:

1. The inmate's commitment offense(s): DLS, DUI 3, DUI 4.
2. The term of commitment under which the inmate is being held: 2 years, 6 months - 6 years
3. The time already served: 2 years, 5 months
4. Time remaining to be served on the sentence: 2 years, 5 months
5. The amount of good time earned: N/A
6. The date of parole eligibility of the inmate: 11/17/15
7. The decisions of the state parole agency relating to the inmate: (If additional space is needed, use reverse side.)
   Parole revoked 7/14/16
8. Maximum expiration date under present sentence: 5/20/19
9. Security level/special security requirements: Minimum

Indictments, informations or complaints charging the following offenses are also pending against the inmate in your state and you are hereby authorized to transfer the inmate to the custody of appropriate authorities in these jurisdictions for purposes of disposing of these indictments, informations or complaints.

Offense:	County or Other Jurisdiction:

If you do not intend to bring the inmate to trial, please inform us as soon as possible.

Edward Adams
Warden

Date: 1/3/17

CUSTODIAL AUTHORITY

Name/Title: Edward Adams, Superintendent

Institution: Southern State Correctional Facility

Address: 700 Charlestown Road

City/State: Springfield, Vermont 05156

Telephone: 802-885-9800

FORM IV

INTERSTATE AGREEMENT ON DETAINERS

Inmate's request: Copies of this Form should be attached to all copies of Form II. Prosecutor's request: This Form should be completed after the warden has approved the request for temporary custody, expiration of the 30 day period, and successful completion of a pretransfer hearing. Copies of this Form should then be sent to all officials who receive(d) copies of Form III. One copy also should be given to the inmate and one copy should be retained by the institution. Copies mailed to the prosecutor should be sent certified or registered mail, return receipt requested.

OFFER TO DELIVER TEMPORARY CUSTODY

TO: Lara J Saffo Prosecuting Officer

Grafton County, New Hampshire
(Jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

RE: Hjalmar Bjorkman No. 23569
(Inmate)

Pursuant to Article V of the Interstate Agreement on Detainers (IAD), the undersigned hereby offers to deliver temporary custody of the above-named inmate to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is:

☒ described in the attached inmate's request (Form II)
☐ described in your request for custody (Form V) of _____
(Date)

The required Certificate of Inmate Status (Form III)
☒ is enclosed
☐ was sent to you with our letter of _____
(Date)

10. Detainers currently on file against this inmate from your state: Case# 215-2016-CR-0379 Grafton Superior Court: Certain Uses of Computer Services Prohibited

Warden Dated: 1/3/17

CUSTODIAL AUTHORITY

Name/Title: Edward Adams, Superintendent

Institution: Southern State Correctional Facility

Address: 700 Charlestown Road

City/State: Springfield, Vermont 05156

Telephone: 802-885-9800

[redacted]

the Compact Administrator who will send them to the Warden of the requesting state, the prisoner in the other jurisdictions in your state listed in the offer of temporary custody and the Agreement Administrator of the state which has the prisoner incarcerated. Copies should be retained by the person filing the acceptance and the judge who signs it.

Agreement on Detainers: Form 7

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER

TO: Edward Adams, Superintendent (Warden/Superintendent/Director) — Southern State Correctional Facility, 700 Charlestown Rd, Springfield, VT 05156 (Institution & Address)

In response to your letter of January 9th, 2017, (Date) and offer of temporary custody regarding Hjalman A. Bjorkman (Name of Prisoner) who is presently under indictment, information complaint in the Grafton County Superior Court (Jurisdiction) of which I am Deputy County Attorney please (Title of Prosecuting Office) be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information or complaint names in the offer within the time specified in Article III (a) of the Agreement on Detainers.

COMMENTS: If your jurisdiction is the only one named in the offer of temporary custody, use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.

Signed: P.V.F.
Paul V. Fitzgerald
Title: Deputy County Attorney

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV (a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

Dated: 1/23/2017 Signed: (Judge) Lawrence A. MacLeod, Jr.
Presiding Justice

Grafton County Superior Court
(Court)

9

Paul V. Fitzgerald
DEPUTY COUNTY ATTORNEY

OFFICE ADMINISTRATOR
Alison Z. Farina

VICTIM/WITNESS PROGRAM
Carin E. Sillars
Sahra K. Stephens
Stacey D. Cass

INVESTIGATOR
Wayne H. Fortier

Lara J. Saffo
COUNTY ATTORNEY

3785 Dartmouth College Hig
North Haverhill, NH 0
603-787-6968 • Fax 603-7
email: county.attorney@co.gra
Victim/Witness Program • 603-787-2040 • vict

January 17, 2017

David P. Carlson, Clerk
Grafton County Superior Court
3785 Dartmouth College
N. Haverhill, NH 03774

RE: State v. Hjalman A. Bjorkman
Docket: 215-2016-CR-0379

Dear Clerk Carlson:

We have received IAD Forms II, III and IV. Please issue an Arraignment, Dispositional and Trial Schedule so that we can start the process. Thank you.

Sincerely,

Christine Ash
Administrative Assistant

State of Vermont
Department of Corrections
NOB 2 South, 280 State Drive
Waterbury, VT 05671-2000
www.doc.vermont.gov

[phone] 802-241-[illegible]
[phone] 802-241-[illegible]
[fax] 802-241-[illegible]

C

January 9, 2017

Lara J Saffo, County Attorney
Grafton County Attorney's Office
3785 Dartmouth College Hwy
North Haverhill, NH 03774

Re: The People of the State of New Hampshire v

Dear Ms. Saffo,

The above-named defendant has chosen to invoke his right to a speedy trial and return to your jurisdiction for disposition of his pending charges out of Grafton Superior Court, North Haverhill, New Hampshire, pursuant to the Interstate Agreement on Detainers. Enclosed you will find the appropriate IAD forms, II, III and IV, to start this process.

Please forward copies of IAD Forms VI and VII in response to this request under Article III of the Agreement to the appropriate parties in the State of Vermont. As a reminder, the defendant must not be released from custody at any time during the temporary transfer as he is serving a sentence in the State of Vermont. After all charges have been disposed of, the defendant must be returned to the State of Vermont Department of Corrections. If you have any questions regarding this matter, please contact me directly at 802-241-0052.

Sincerely,

Morgan Rogers
NCIC and Extradition Administrator
Vermont Department of Corrections

Encl. Form II, III, IV

Cc: NH Agreement Administrator
Clerk of Court, Grafton County
Inmate File

STATE OF NEW HAMPSHIRE

Grafton, SS. Superior Court

State of New Hampshire

v.

Hjalman A. Bjorkman

Superior Court Case: 215-2016-CR-0379

Charge ID: 1249785C

STATE'S OBJECTION TO MOTION TO DISMISS

NOW COMES the State of New Hampshire, by and through the Office of the Grafton County Attorney, Paul V. Fitzgerald, Deputy County Attorney and OBJECTS to the Motion to Dismiss and states as follows:

1. The defendant is charged with one count alleging Use of Computer Services Prohibited.
2. The defendant was indicted on October 21st, 2016.
3. The defendant missed his arraignment that was scheduled for November 7th, 2016 because he was incarcerated in Vermont.
4. On January 17th, 2017, this office received the defendant's Interstate Detainer Agreement, (hereinafter "IAD") paperwork.
5. On January 17th, this office then requested the Court to schedule an arraignment, dispositional and trial schedule.
6. The Court issued a scheduling notice for a March 6th, 2017 arraignment, a final pre-trial for June 28th, 2017 and jury selection for July 11th, 2017. At a dispositional conference on May 4th, 2017, the date for jury selection was set for July 7th, 2017. Jury selection took place on July 7th, 2017 and a trial date was set for July 24th, 2017.[1]

[1] This date was chosen because of the unavailability of a State's witness who was at a training through the week of July 10-14th, 2017 and on vacation from July 20th, 2017. A draft list of trials including the instant case was sent to both counsel via email by the Court on June 29th, 2017 for review as to any conflicts.

the State's position that it was at that point in compliance with the time-limits of the IAD.

13. "The words 'brought to trial' contained in Article III mean only that a proceeding must be initiated, not that the case must be finally disposed of. State v Sprague, 146 N.H. 334 (2001).

WHEREFORE, the State requests that this Honorable Court:

A. DENY the Defendant's Motion without a hearing, and
B. Grant any other relief deemed proper and just.

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

July 19, 2017

Paul V. Fitzgerald, Esq.
Deputy County Attorney
NH Bar # 16169
Grafton County Attorney's Office
Office of the Grafton County Attorney,
3785 Dartmouth College Highway, Box 7
North Haverhill, NH 03774
(603) 787-6968

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been forwarded to Constantine Hutchins, New Hampshire Public Defender's Office, 485 NH Route 10 Unit 3, Orford, NH 03777, counsel for the defendant.

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

July 19, 2017

Paul V. Fitzgerald, Esq
Grafton County Attorney's Office

STATE OF NEW HAMPSHIRE

Grafton County Superior Court

Grafton, ss July , 2017

State of New Hampshire

v.

Hjalmar Bjorkman

215-16-CR-379

MOTION TO RECONSIDER

NOW COMES the defendant, Hjalmar A. Bjorkman, by and through counsel, Tony Hutchins, Esq., and respectfully requests this Honorable Court to reconsider its order denying the defendant's motion to dismiss the above-captioned indictment on the ground that the defendant's right be be brought to trial within 180 days was violated. See RSA 606-A:1, art. III(a).

In support of this Motion to Reconsider, it is stated as follows:

1. The defendant, Mr. Bjorkman, incorporates all of his arguments in this Motion to Dismiss.
2. The defendant had, in accordance with the requirements of the Interstate Agreement on Detainers (AID), caused the Vermont Department of Corrections Extradition Administrator to inform the Grafton County Attorney's Office that the defendant was making a demand in accordance with the IAD. All parties agree that the appropriate documents were filed with this Court on January 17, 2017.
3. On July 18, 2017, the defendant filed a Motion to Dismiss pursuant to RSA 606-A:1, art. III(a).
4. On July 19, 2017, the State objected stating that the court had granted a continuance so that the defendant could be brought to trial after the expiration of 180 days because such a continuance was reasonable or necessary. In the alternative, the State posited that the defendant had been brought to trial within the 180 time period because the voir dire and

jury selection had occurred on July 7, 2017, and that that procedure constituted being "brought to trial" within the meaning of the AID.

5. Defendant pointed out that no continuance was sought or granted and was certainly not entertained in open court with either the defendant nor defense counsel present.

6. The court, on July 24, 2017, did rule that the defendant had been "brought to trial" within the meaning of the IAD when he was present for jury selection and voir dire. The Court cited federal case law construing the Speedy Trial Act of 1974.

7. The defendant was not "brought to trial" within the meaning of the IAD. While there is no case law defining when a person is "brought to trial" in New Hampshire, courts in other States have considered when a defendant is "brought to trial".

8. The Court's reliance on federal case law construing the federal Speedy Trial Act of 1974 (the "Act") was misplaced in that the Speedy Trial Act uses terms different from the IAD and the legislative intent behind the Speedy Trial Act were different. See United States v. Gonzalez, 671 F.2d 441 (11th Cir. 1982)("In passing the Act, Congress sought to promoted not only the defendant's right a speedy trial, but also the public's interest in the efficient administration of justice."). This is in contrast to the purpose behind the IAD, in which it is expressed in Article I: "[I]t is the policy of the party states and the purposes of this agreement to encourage the expeditious and orderly disposition of such charge and determination of the proper status of any and all detainers based on untried indictments, information or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures. RSA 606-A:1. The IAD is remedial in nature and, in contrast with the Speedy Trial Act, "must be liberally construed in favor of the prisoners whom it was intended to protect." See Nelms v. State, 532 S.W.2d 923, 927 (Tenn. 1076); Commonwealth v. Fisher, 301 A.2d 605, 607 (Pa. 1973).

9. The language of the IAD contrasts with the language of the Act. The Act does not use the language "brought to trial." The Act, in contrast, nowhere uses the expression brought to trial." Instead, the Act uses the expression "commence." Thus, cases seeking definition of commencement of trial where the statute is to promote the efficient administration of justice would focus on a trial procedure that would permit more flexibility in scheduling.

The IAD, construed to the prisoner's benefit, would focus on the actual trial itself, when the previously selected jury would actually sit to hear the case.

10. California courts have wrestled with the meaning of the term "brought to trial" in connection with California's speedy trial act Cal. Pe, Code section 1382. In People v. Cory, 204 Cal. 3d, 117 (1984), the Court of Appeals of California, Second Appellate District, Division Seven stated:

> In determining whether appellant was "brought to tiral" within the meaning of section 1382 when the court impaneled a jury but then recessed the case to the next day, apparently to conclude another trial then in progress, we are both guided and governed by a recent decision of our Supreme Court rendered in a factually similar case. In Rhinehart v. Municipal Court, 35 Cal3d 772 (1984), a jury was selected on the tenth day but the case was then continued to several dys later, the court stating on the record that it was engaged in another trial and that the jury was being impaneled to avoid dismissal under section 1382. On these facts, the Supreme Court held the defendant had not been timely "brought to trial." Disapproving a prior decision that jury impanelment *per se* constitution a "bringing to trial" within the meaning of section 1382, the court observed that such a mechanistic interpretation would tolerate evasive practices. Instead the court stated, consideration must be give to "the trial court's availability and readiness to try a case." (citation omitted). The court indorsed the holding of Sanchez Municipal Court, 813 Cal. Rptr. 806, 813 (1979) that section 1382 is satisfied if, in addition to swearing of the a jury, the record objectively reflects the cases has been assigned to a court that is ready to process it and had 'committed its resources to the trial. The Rhinehart court then stated its holding a follows: '[An] accused is 'brought to trial' within the meaning of section 1382 when a case has been called for trial by a judge who is normally available and ready to try the case to conclusion. The court must have committed its resources to the tiral, and the parties must be ready to proceed sand a panel of prospective jurors must be summoned and sworn. "(Citation omitted.).

Id. at 119. The court ruled that section 1382 had been violated. Id. at 120. The Cory court then engaged in prejudice analysis not relevant here. Id. at 121.

11. The State has cited State v. Sprague, 146 N.H. 334, 336 to support it's position. Sprague merely stands for the proposition that a case need not be brought to conclusion prior to the expiration of 180 days. Id. See also State v. Grzelak, 573 N.W.2d 538 (Wisc. App. 1997); State v. White, 673 P.2d 1106, 1110 (Kan. 1983); People v. Beamon, 268 N.W.2d 310, 314 (Mich. App. 1978).

12. The remedies provided for the benefit of the prisoner are strict and severe. Violation of the AID requires dismissal with prejudice. If there is a violation of the time-frame in which to bring a prisoner to trial in the receiving state, that state's courts lose jurisdiction over the prisoner. See e.g. Resendiz v. State, 332 N.W.2d 860, 864 (Minn. 2013); State

v. Wilson, 632 N.W.2d 225, 228 (Minn. 2001). Where the State cannot show that it has provided a trial within 180 days after a prison has "caused to be delivered" a request for final dispostion, the case must be dismissed. State v. Brown, 157 NH 555, 556 (2001); State v. Dolbeare, 140 NH 84, 87 (1995).

Respectfully submitted:

Tony Hutchins
Public Defender
N.H. Bar #7904
485 NH Route 10 Unit 3
Orford, NH 03777
(603) 353-4440

CERTIFICATION

I, Tony Hutchins, Public Defender, do hereby certify that a copy of this Motion to Reconsider has been forwarded this 31st day of July, 2017 to Deputy Grafton County Attorney Paul Fitzgerald.

Tony Hutchins
Public Defender

STATE OF NEW HAMPSHIRE

Grafton, SS. Superior Court

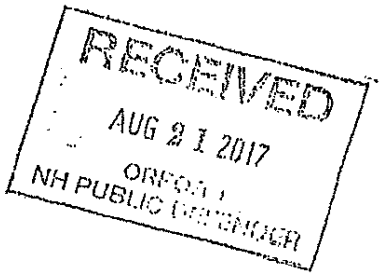
State of New Hampshire

v.

Hjalmar A. Bjorkman

Superior Court Case: 215-2016-CR-0379

Charge ID: 1249785C



STATE'S OBJECTION TO MOTION TO RECONSIDER

NOW COMES the State of New Hampshire, by and through the Office of the Grafton County Attorney, Paul V. Fitzgerald, Deputy County Attorney and states as follows:

1. The defendant moves the Court to reconsider the denial of the motion to dismiss and the State objects. The State incorporates by reference its arguments in the original objection.

2. The Agreement on Detainers, RSA 606-A:1, Article III states in part that "he shall be ***brought to trial*** within 180 days after he shall be caused to be brought to the prosecuting officer and the appropriate court".(Emphasis added).However, since no decision exist in New Hampshire, the Court appropriately looked toward federal case-law for guidance. State v Sprague, 146 N.H. 334, 336 (2001) stands for the proposition that a case need not be brought to conclusion before the expiration of the 180 days. The question then becomes when does the trial commence?

3. In U.S. v Gonzalez, 671 F.2d 441 (11th Cir. 1982), this very issue of when a trial commences was discussed. The Court held, that in the context of the Speedy Trial Act that trial commences: "We hold that, for purposes of the Act, a jury trial "commences" when the court begins the voir dire. [2] In passing the Act, Congress sought to promote not only the defendant's right to a speedy trial, but also the public's interest in the efficient administration of justice. H.Rep.No.93-1508, 93rd Cong., 2nd Sess., reprinted in (1974) U.S.Code Cong. & Ad.News 7401, 7408." Gonzalez at 443.

4. Jury selection and voir dire was conducted on July 7th, 2017 which was approximately 10 days prior to the expiration of the 180 days.

5. Therefore, the defendant's motion for re-consideration should be denied.

WHEREFORE, the State requests that this Honorable Court:

A. DENY the Defendant's Motion without a hearing; or
B. Grant any other relief deemed proper and just.

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

August 18, 2017

Paul V. Fitzgerald, Esq.
Deputy County Attorney
NH Bar # 16169
Grafton County Attorney's Office
Office of the Grafton County Attorney,
3785 Dartmouth College Highway, Box 7
North Haverhill, NH 03774
(603) 787-6968

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been forwarded to Constantine Hutchins, New Hampshire Public Defender's Office, 485 NH Route 10 Unit 3, Orford, NH 03777, counsel for the defendant.

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

August 18, 2017

Paul V. Fitzgerald, Esq
Grafton County Attorney's Office

STATE OF NEW HAMPSHIRE

Grafton County Superior Court

Grafton, ss September , 2017

State of New Hampshire

v.

Hjalmar Bjorkman

215-16-CR-379

Motion for a Ruling

NOW COMES the defendant, Hjalmar A. Bjorkman, by and through counsel, Tony Hutchins, Esq., and respectfully requests this Honorable Court to issue a ruling on his Motion to Reconsider.

1. Prior to trial, the defendant filed a Motion to Dismiss for violation of the Interstate Agreement on Detainers (IAD), RSA 606-A1, art. III(a), to which the State objected. After a hearing, the Court (McLeod, J.) denied the Motion to Dismiss immediately before trial. The defendant was convicted at trial.
2. The defendant, on July 31, 2017, timely moved to have the Court reconsider denying its Motion to Dismiss. The State has filed an Objection to that motion.
3. The defendant now requests that this Court issue a ruling on his Motion to Reconsider. The defendant intends to seek a Interlocutory Ruling from the New Hampshire Supreme Court pursuant to NH Supreme Court Rule 8. The issue raised in his Motion to Dismiss and Motion to Reconsider raises an issue that may materially advance the termination of proceedings of the litigation, and present the opportunity to decide, modify or clarify an issue of general importance in the administration of justice. Had the Court granted the defendant's Motion to Dismiss, the case would have been dismissed with prejudice in accordance with RSA 606-A1, art. IV(e). Additionally, courts have stated that violation of the IAD deadline in RSA RSA 606-A1, art. III(a) is jurisdictional and therefore the Court therefore is powerless to act after this deadline violation has occurred.

Furthermore, there is a difference of opinion on the question inasmuch there does not appear to be any case directly on point interpreting the meaning of "brought to trial" within the meaning of the IAD and the various pleadings present opposing interpretations.

4. Given the nature of the remedy sought, and the state of the law, an Interlocutory Appeal From Ruling pursuant to NH Supreme Court Rule 8 is the most expedient manner in which to proceed. For these reasons, the defendant requests that this Court issue a ruling on his Motion to Reconsider.

WHEREFORE, the defendant, Hjalmar Bjorkman, by and through counsel, Tony Hutchins, Esq., respectfully requests that this Court issue a ruling on his Motion to Reconsider.

Respectfully submitted:

Tony Hutchins
Public Defender
N.H. Bar #7904
485 NH Route 10 Unit 3
Orford, NH 03777
(603) 353-4440

CERTIFICATION

I, Tony Hutchins, Public Defender, do hereby certify that a copy of this Motion for a Ruling has been forwarded this 6th day of September, 2017 to the Deputy Grafton County Attorney Paul Fitzgerald.

Tony Hutchins
Public Defender