

Constitutional and Criminal Law – Administration of the Jury Oath – Right to a Speedy Trial – Double Jeopardy

Bowman v. State, 884 S.E.2d 293, 297 (Georgia Supreme Court 2023)¹

Decided by the Georgia Supreme Court on February 21, 2023.²

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Counsel for the State of Georgia, Defendant–Appellee: Anthony Brett Williams, A.D.A., Matthew Wayne Rollins, District Attorney, Paulding County District Attorney's Office, 280 Constitution Boulevard, Room 2072, Dallas, Georgia 30132, for Appellee.⁵

Before Active Judges Chief Justice Michael Boggs and Hon. Nels S. D. Peterson, Hon. Sarah Hawkins Warren, Hon. Charlie Bethel, Hon. John J. Ellington, Hon. Carla Wong McMillian, Hon. Shawn Ellen LaGrua, and Hon. Verda Colvin⁶ Opinion authored by Chief Justice Michael Boggs.⁷

KEY ISSUES PRESENTED

In the case of *Bowman v. State*, the Supreme Court of Georgia sought to decide whether the failure to administer the required jury oath under

¹ *Bowman v. State*, 315 Ga. 707, 884 S.E.2d 293 (2023).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Bowman*, 315 Ga. 707.

⁷ *Id.*

O.C.G.A. § 15-12-139 nullified his conviction.⁸ Additionally, the Court sought to decide whether double jeopardy would apply when there was an “attempted trial” and conviction by twelve unsworn jurors. The Superior Court of Paulding County granted Defendant’s motion for discharge and acquittal, but the decision was overturned by the Georgia Court of Appeals.⁹

PROCEDURAL HISTORY & POSTURE

The Paulding County District Attorney’s Office indicted Logan Bowman on one count of aggravated child molestation, six counts of child molestation, and two counts of incest on February 17, 2013.¹⁰ Bowman’s case was brought to trial on December 1, 2014, and concluded on December 5, 2014.¹¹ The jury found Bowman guilty of one count of child molestation and one count of incest, and he was subsequently sentenced to 50 years imprisonment.¹² Bowman filed a motion for discharge and acquittal on November 17, 2019.¹³ The Paulding County Superior Court granted Defendant’s motion to discharge and acquittal on speedy trial grounds after 5 years from when Defendant was brought to trial.¹⁴ The State appealed the trial court’s decision, and the Appellate Court reversed the order holding that a trial of unsworn jurors met the requirements under OCGA § 17-7-170.¹⁵ Bowman then petitioned the Supreme Court of Georgia for certiorari, and the Supreme Court of Georgia reversed the Appellate Court’s decision, finding the trial court did not err in granting Defendant’s Motion to discharge and acquittal.¹⁶

SUBSTANTIVE FACTS

On February 17, 2013, a Paulding County grand jury indicted Logan Bowman on one count of aggravated child molestation, six counts of child

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Bowman*, 315 Ga. 707.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

molestation, and two counts of incest.¹⁷ On September 18, 2013, Bowman filed a Demand for Speedy Trial pursuant to OCGA § 17-7-170 and an Assertion of Constitutional Right to Speedy Trial. On December 1st of 2014, Bowman was brought to trial in the Paulding County Superior Court.¹⁸ Twelve jurors were summoned to the case, however, neither the court nor the court clerk administered the jury oath as required under OCGA §17-7-170.¹⁹ On December 5th, after receiving a jury charge, the unsworn jury of twelve returned a verdict acquitting Bowman on seven of the nine counts in the indictment and found him guilty on one charge of molestation and one charge of incest.²⁰ Bowman was subsequently sentenced on December 30th to a term of imprisonment for 50 years, 15 of which was to be served in confinement and the remainder to probation.²¹ Bowman then timely filed a motion for a new trial.²² On November 17, 2019, more than 4 years after the jury conviction, Bowman retained new Counsel who filed an amended motion for a new trial on statutory and constitutional grounds, arguing that the failure to administer the jury oath required the court to set aside the verdicts, his conviction, and his sentence.²³ The State conceded that no oath had been administered to the jury but argued that the December 2014 trial “constituted a trial” under OCGA §17-7-170, and that speedy trial provisions were satisfied under the Sixth Amendment of the United States Constitution and Georgia Constitution.²⁴

The trial court then set aside the verdicts, Bowman’s conviction and his sentence, relying on the precedent of *Slaughter v. State* and *Spencer v. State*.²⁵ Bowman was released from incarceration two days after the trial court granted the motion for discharge and acquittal, and the case was placed back on the trial calendar.²⁶ On appeal, the State again conceded that

¹⁷ *Bowman*, 315 Ga. 707.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Bowman*, 315 Ga. 707.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Bowman*, 315 Ga. 707.

Bowman had indeed properly invoked his constitutional right to a speedy trial.²⁷ The State argued that Bowman's prior trial was sufficient to meet the definition of a trial under OCGA §17-7-170 and the Appellate Court agreed.²⁸ The Appellate Court denied Bowman's Speedy Trial arguments finding that the purported trial was sufficient and thus, he had been tried within the period of his constitutional rights.²⁹ In the opinion of the Supreme Court, "administration of the jury oath now codified at OCGA § 15-12-139 is an indispensable prerequisite to a legally valid jury trial."³⁰ The Court further explained that where there is no lawful jury, there cannot be a trial at all ("Without the oath, there is no jury; and without the jury, there is no trial.")³¹ The Supreme Court also noted jeopardy did not attach as the "trial" was merely an "attempted trial" and in order for jeopardy to attach, it would require an empaneled and sworn jury.³² Thus, while Bowman's conviction, sentence, and verdicts were thrown out, he was not entitled to jeopardy protections and could be tried again for the same crimes.³³ Moreover, the Supreme Court held that the Appellate Court failed to give proper weight to the constitutional background of the speedy trial statutes and prior precedent.³⁴ Ultimately, Bowman's Constitutional right to a speedy trial had been violated because there was never a proper trial more than six years after his indictment.³⁵ Ultimately, Bowman's Constitutional right to a speedy trial had been violated because he had yet to be properly tried after more than 6 years from his indictment, and thus, prosecution could not subject Bowman to a new, proper trial for his alleged crimes.³⁶

LEGAL ANALYSIS LEADING TO THE COURT'S DISPOSITION

A. Prior Relevant Law

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Bowman*, 315 Ga. 707.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

The Court relied on O.C.G.A. § 15-12-139 – Jury Oath³⁷, U.S. Const. amend. VI – Speedy and Public Trial³⁸, and O.C.G.A. § 17-7-170 (a) – Demand for speedy trial; service; discharge and acquittal for lack of prosecution; expiration; reversal on direct appeal; mistrial and retrial³⁹ in its decision on the case. Moreover, the Court relied on decisions from *Slaughter v. State*⁴⁰ and *Spencer v. State*.⁴¹

In *Slaughter*, the Court held that a criminal defendant could not waive the administration of the jury oath prescribed by Georgia Law, and that in the absence of an administration of the oath, no trial has been deemed to have occurred.⁴² Moreover, the Court found that the defendant’s conviction was a mere nullity because no valid trial had taken place, and thus, the defendant could not be convicted.⁴³

Similarly to *Slaughter*, the Court in *Spencer* held that in absence of the administration of the jury oath, no trial had occurred.⁴⁴ Thus, the defendant’s conviction was deemed null.⁴⁵ However, the Court went on to hold that double jeopardy could not attach in a case where the defendant had not been tried.⁴⁶ Ultimately, an “attempted trial,” despite the image of a trial occurring, could not absolve the defendant of subsequent prosecution for the same crime through the application of double jeopardy.⁴⁷

Regarding the present case, *Bowman*, the Court took one step further than the holdings in *Slaughter* and *Spencer*, holding that a defendant’s Constitutional right to a speedy trial is violated when no valid trial has taken

³⁷ O.C.G.A. § 15-12-139.

³⁸ U.S. Const. Amend. IV.

³⁹ O.C.G.A. § 17-7-170 (a).

⁴⁰ *Slaughter v. State*, 100 Ga. 323 (1897).

⁴¹ *Spencer v. State*, 281 Ga. 533 (2007).

⁴² *Slaughter*, 100 Ga. 323.

⁴³ *Id.*

⁴⁴ *Spencer*, 281 Ga. 533.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

place within the statutory time frame and there has been no attempt to cure the defect from the failure to administer the jury oath to hold a valid trial.⁴⁸

B. Changes, Modifications, Clarifications, & Extensions to Georgia Law Made in Bowman v. State

The Georgia Supreme Court clarified prior precedent in criminal cases where the required jury oath was not administered. Furthermore, jeopardy does not attach to these cases as no valid trial has occurred. The Court specifically noted that the Appellate Court “failed to give proper weight to the constitutional background of the applicable speedy trial statute and this Court's precedents.”⁴⁹ This highlights the importance of ensuring a criminal defendant’s constitutional rights above other factors which may have deprived the defendant of such rights. The process of administering the jury oath is essential for a lawful trial to occur. Failure to administer the oath will result in a nullified verdict, which jeopardizes the risk of depriving a defendant of a speedy trial if no lawful trial takes place within the required time.

IMPACT UPON GEORGIA IN CRIMINAL & CONSTITUTIONAL PRACTICES

Trial courts must ensure that required procedural processes are strictly followed while bringing an individual to trial. Constitutional and statutory rights afforded to criminal defendants are to be weighed heavily when determining whether a violation has occurred. The mere failure to administer a jury oath has substantial consequences that can result in the overturning of convictions and/or constitutional violations.⁵⁰ As a result, the State must start entirely from scratch to indict and later try defendants which is both timely and costly to prosecutors. Moreover, with the passage of time, evidence once available may cease to exist, memories may be forgotten, and witnesses may be unavailable, which inevitably makes proving the case in trial even more difficult.

⁴⁸ *Bowman*, 315 Ga. 707.

⁴⁹ *Id.*

⁵⁰ *Slaughter*, 100 Ga. 323.

The implications of failing to adhere to a defendant's right to a speedy trial means that prosecutors must effectively start over from the beginning in indicting and trying the defendant.⁵¹ Depending on the crime for which the defendant was charged, this could present serious issues in cases where the statute of limitations has run, and the defendant cannot be charged for the crimes at all. Notwithstanding the financial and evidentiary burdens resulting from having to refile a case, where a defendant can avoid prosecution for crimes they have committed, justice fails to be served to the victims of alleged crimes.⁵² Concerns for safety for the public should also be taken into consideration where a defendant may recommit. The courts thus must ensure the proper procedural processes have been taken to avoid such consequences. Upon the realization that a procedural process may not have been properly followed, Prosecutors should notify the court promptly to avoid a later discharge and acquittal.

Prepared by: *Morgan Knowles*

⁵¹ *Bowman*, 315 Ga. 707.

⁵² *Id.*