

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2026 ME 100
Docket: And-25-7
Argued: September 11, 2025
Decided: September 17, 2026

Panel: STANFILL, C.J., and MEAD, CONNORS, LAWRENCE, and DOUGLAS, JJ.

STATE OF MAINE

v.

HEATHER MARICHAL

STANFILL, C.J.

[¶1] Heather Marichal appeals from a judgment of conviction for criminal OUI (Class D), 29-A M.R.S. § 2411(1-A)(A) (2026), entered by the trial court (Androscoggin County, *Archer, J.*) following her conditional guilty plea. The issue before us is whether the court abused its discretion or violated Marichal’s constitutional rights by denying Marichal’s motion to continue after a defense witness did not appear on the date of trial. We affirm.

I. BACKGROUND

[¶2] “The following facts are drawn from the State’s summary of the evidence that it would have presented to a fact finder if [Marichal] had not pleaded guilty.” *State v. Murray-Burns*, 2023 ME 21, ¶ 2, 290 A.3d 542. On or about October 1, 2021, Marichal was driving down Court Street in Auburn. She

drove onto the wrong side of the road and crashed into another vehicle. Her vehicle then ricocheted off that vehicle and veered off the road onto a neighboring property, striking a snowplow in the driveway. Marichal told a responding police officer that she had been at a “brew fest” and had consumed alcohol. Marichal also told the officer that she was the driver and sole occupant of the vehicle. Marichal took an Intoxilyzer test, which indicated that her blood-alcohol content was .21 grams of alcohol per 210 liters of breath.

[¶3] In October 2021, the State charged Marichal by complaint with criminal OUI, 29-A M.R.S. § 2411(1-A)(A). The trial was continued several times in 2022 and 2023 for reasons that are not clear from the record. The case was included on the trial list as a backup for September 2023, December 2023, and February 2024. Each time, the case was not reached for trial.

[¶4] On February 27, 2024, Marichal filed a motion for a writ of *capias ad respondendum* “pursuant to [the trial court’s] authority to enforce subpoenas under Maine Rule[] of Civil Procedure 45(f) and Title 16 § 102,” seeking to compel the appearance of a witness to the crash who, Marichal represented, would testify (consistent with prior statements to the police) that the driver was not Marichal but was instead a man who fled the scene.¹

¹ We note that 16 M.R.S. § 102 (2026) does not describe a mechanism to compel attendance at trial. Rather, it provides:

Marichal attached to the motion a subpoena that she had served on this witness on January 30, 2024, to compel his attendance for the February 2024 trial date, and she represented that the witness had ignored the subpoena.

[¶5] On March 14, 2024, the court granted the motion for the capias writ, and shortly thereafter, a civil warrant of arrest issued for the witness.

[¶6] The trial was continued twice more and was then set as a backup for the August 2024 trial list. On July 15, 2024, the State served a subpoena on the same witness to compel his attendance for the August trial date. The case was not reached in August.

[¶7] Eventually, a trial was set for December 16, 2024. On November 8, 2024, Marichal moved in limine to admit hearsay statements of the witness under Maine Rule of Evidence 804.² On November 25, 2024, the court

When a person, summoned and obliged to attend before any judicial tribunal, fails to do so without reasonable excuse, he is liable to the party aggrieved for all damages sustained thereby. The judge or justice of such tribunal may issue a capias to apprehend and bring such delinquent before him, and he shall be punished by a fine of not more than \$100 and costs of attachment, and committed until the same and costs are paid.

In addition, Maine Rule of Civil Procedure 45(f), which does not apply to a subpoena in a criminal case, provides for enforcement only by contempt. Maine Rule of Unified Criminal Procedure 17(h) provides that “[i]f a person fails to obey a subpoena served upon that person, the court may issue a warrant or order of arrest.”

² In this motion, Marichal represented that the witness had not been served with the civil arrest warrant and that “no satisfactory explanation has been provided for this failure despite calls to various sheriff’s offices.”

(*Woodman, J.*) issued an order indicating that it would issue another arrest warrant for the witness and that if the witness did not appear there would be further argument on the motion in limine. The following was entered on the docket: “Clerk to tell Oxford County Sheriff’s Office to try to locate witness and PR him to 12/16/24.” On December 6, 2024, the State served another subpoena on the witness to compel him to appear at the December trial.

[¶8] The witness did not appear for the trial scheduled for December 16, 2024. The court (*Archer, J.*) permitted further argument on the motion in limine, during which the court clerk indicated that the arrest warrant was not reissued because the computer system would not allow such a reissuance. The clerk further represented that the clerk had called the police department in the town where the witness resided “and gave them a date of today.” The court also stated that on the previous Friday, it had spoken with a court clerk in the county where the witness resided, after which that clerk contacted the police department and “alerted them that [the warrant] needed to be executed.”

[¶9] At that point, Marichal moved to continue the trial. The court denied the motion for continuance, stating:

The first warrant that was issued was on April 8. This is not a new issue. It’s not a surprise issue. This is a 2021 case. And the Court cannot control whether someone responds to a subpoena or

whether a warrant is executed, and so the motion to continue is denied.

The court also denied the motion in limine, determining that the witness was unavailable under Rule 804(a) but that the witness's statements did not fall into one of the hearsay exceptions contained in Rule 804(b).

[¶10] Following these rulings, Marichal entered a conditional guilty plea, reserving the right to appeal the court's denial of the continuance.³ *See* M.R.U. Crim. P. 11(a)(2). The court entered a judgment of conviction and imposed a sentence of three days in jail, a \$600 fine, and a 150-day license suspension. Marichal timely appealed. *See* 15 M.R.S. § 2115 (2026); M.R. App. P. 2B(b)(1).

II. DISCUSSION

A. Motion to Continue

[¶11] Marichal argues that the court abused its discretion in denying her motion to continue. “We review a court's denial of a motion to continue for an abuse of discretion[,] examining whether the denial had any adverse prejudicial effect on the movant's substantial rights and viewing each case largely upon its

³ Marichal also reserved the right to appeal the denial of the motion in limine, but on appeal she has not developed any argument regarding that denial.

We note that contrary to a requirement of Maine Rule of Unified Criminal Procedure 11(a)(2), the parties did not certify that the case is not appropriate for application of the harmless error doctrine. Because we determine that there was no error, we need not reach the issue of harmlessness.

own facts and circumstances.” *State v. Hunt*, 2023 ME 26, ¶ 16, 293 A.3d 423 (quotation marks omitted). Where, as here, a defendant seeks a continuance because of the unavailability of a witness, the defendant “has the burden of establishing that the evidence sought will be relevant and competent, that a continuance will make its procurement likely, that due diligence was used to obtain the evidence before the commencement of trial, and the length of the continuance is reasonable.” *State v. Damboise*, 1997 ME 126, ¶ 4, 695 A.2d 1203 (quotation marks omitted).

[¶12] Here, the trial court did not abuse its discretion in denying Marichal’s motion to continue because Marichal failed to meet her burden in two respects. First, Marichal did not show that she used due diligence to obtain the witness’s presence at the trial in December. Significantly, Marichal did not subpoena the witness for the December trial date. She had subpoenaed the witness once before to attend an earlier trial date, but when the witness ignored that subpoena Marichal did not move for a material-witness warrant. *See* 15 M.R.S. § 1104 (2026) (“If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure the presence of that person by subpoena, the court may order the arrest of that person and may require that person to give

bail for that person’s appearance as a witness”); *see also* M.R.U. Crim. P. 17(h) (authorizing issuance of a warrant if a person fails to obey a subpoena). If Marichal had moved for a material-witness warrant rather than for a civil capias writ, the witness could have been arrested prior to the trial date and made to give bail. *See* 15 M.R.S. § 1104. That procedure is not available under the capias statute, the purpose of which is to ensure the payment of money damages resulting from a failure to appear. *See* 16 M.R.S. § 102.

[¶13] Second, Marichal did not show that a continuance would have made the witness’s future appearance likely. By the time of the trial date, the matter had been pending for over three years, during which time it had been scheduled for trial numerous times; Marichal and the State had served subpoenas on the witness; the court had issued a civil warrant for his arrest;⁴ the court clerk had notified the police of the trial date; and the court had made the police aware of the necessity of executing the warrant—all to no avail. Considering these repeated, unsuccessful efforts, nothing in the record suggests that further time would have resulted in the production of the witness. *See Hunt*, 2023 ME 26, ¶ 17, 293 A.3d 423 (“[T]he party seeking a continuance has

⁴ Marichal represented to us during oral argument that the warrant was “never entered into the system.” Any defect with the warrant is not apparent from the record, however. Furthermore, the court clerk represented that the relevant police department was aware of the warrant.

the burden of establishing a substantial reason why granting the continuance would further justice.” (quotation marks omitted)).

[¶14] Accordingly, where Marichal did not exercise due diligence to compel the witness’s attendance and did not show a likelihood that a continuance would result in the procurement of the witness, the court did not abuse its discretion in denying her request for a continuance. *See Damboise*, 1997 ME 126, ¶ 4, 695 A.2d 1203; *Hunt*, 2023 ME 26, ¶¶ 10-12, 17, 293 A.3d 423 (affirming the denial of a continuance where, among other factors, the defendant subpoenaed agencies in Massachusetts but took no steps to enforce the subpoenas).

B. Compulsory Process

[¶15] Marichal also argues that the denial of her request for a continuance violated her rights to compulsory process and due process under the Sixth and Fourteenth Amendments to the United States Constitution.⁵ *See Washington v. Texas*, 388 U.S. 14, 19 (1967) (“The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the

⁵ Marichal also refers to her right to compulsory process under article I, section 6 of the Maine Constitution, but she has not developed an independent argument based on the Maine Constitution. *See, e.g., State v. Norris*, 2023 ME 60, ¶ 33, 302 A.3d 1 (“For a claim under the Maine Constitution to be deemed preserved for our review, . . . the party advancing the claim cannot merely allude to or cite the Maine Constitution but must develop [the] argument.”).

right to present a defense This right is a fundamental element of due process of law.”); *see also State v. Mitchell*, 2010 ME 73, ¶ 31, 4 A.3d 478 (“Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.” (quotation marks omitted)), *abrogated on other grounds by, State v. Gleason*, 2025 ME 52, ¶¶ 15-17, 339 A.3d 774.

[¶16] A defendant’s constitutional right to compel the attendance of witnesses in her favor is violated only if “the sovereign’s conduct . . . impermissibly interfere[s] with the right to mount a defense.” *United States v. Theresius Filippi*, 918 F.2d 244, 247 (1st Cir. 1990) (quotation marks omitted). “The contested act or omission must be attributable to the sovereign, and it must cause the loss or erosion of material testimony which is favorable to the accused.” *Id.*; *see also United States v. Moussaoui*, 382 F.3d 453, 463 (4th Cir. 2004) (“The Sixth Amendment can give the right to compulsory process only where it is within the power of the . . . government to provide it.” (alteration and quotation marks omitted)).

[¶17] Here, Marichal has not demonstrated that the witness’s absence was due to an act or omission of the State. Indeed, Marichal did not try to

subpoena the witness for the last trial date at all.⁶ Because Marichal did not show that the witness's absence on the day of trial was attributable to the action or inaction of the State, the court did not violate Marichal's constitutional rights by denying her request for a continuance.

The entry is:

Judgment affirmed.

Julia R. Casey, Esq. (orally), Loboizzo Law, Brunswick, for appellant Heather Marichal

Neil E. McLean, District Attorney, and Patricia A. Mador, Asst. Dist. Atty. (orally), Lewiston, for appellee State of Maine

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⁶ The State subpoenaed the witness for the final trial date, even though it did not intend to call the witness. We need not decide the extent to which a defendant may rely on or enforce a subpoena served by the State, however, because that issue is not before us.