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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Appellant,

-against-

NO. 19

TYSON (KENNETH),

Respondent.

20 Eagle Street
Albany, New York
February 11, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Christy Wright
Official Court Transcriber

1 CHIEF JUDGE WILSON: Good afternoon. The first
2 case on today's calendar is People v. Tyson.

3 MR. HILLERY: Good afternoon, Your Honors. And
4 may it please the court. Michael Hillery appearing for the
5 People. With the court's permission, I'd like to reserve
6 two minutes for rebuttal time.

7 CHIEF JUDGE WILSON: Yes.

8 MR. HILLERY: Thank you. The dismissal of this
9 indictment against Mr. Tyson, an inmate at Collins
10 Correctional Facility, was not justified, and I'd like to
11 begin with just a few words, if I may, on the nature of the
12 charge, which is the third Taranovich factor. The
13 defendant, in throwing human waste at a corrections
14 officer, performed an act of violent contempt.

15 JUDGE CANNATARO: Counsel, I'm sorry. Before you
16 launch too deep into the merits of the Taranovich factors,
17 I want to ask you a question that's kind of left field.
18 And if you can help me with it, great. If not, we'll
19 figure it out later. It recently came to my attention that
20 the copy of the indictment that we have in the record in
21 this case does not have the signature of the grand jury
22 foreperson on it anywhere that we can see. And that's a
23 CPL requirement, and I'm a little concerned that it might
24 even be a jurisdictional requirement, because I'm not sure
25 you can have a true bill without the jury - - - the grand

1 jury foreperson signature. Can you speak to that at all?

2 MR. HILLERY: Well, Judge, I can't speak
3 specifically with regard to this case.

4 JUDGE CANNATARO: I'm only talking about this
5 case, unless you have a practice in your office of not
6 including that in the record.

7 MR. HILLERY: Well, Judge, I can say that there
8 have been times when the point has been raised that there
9 is an indictment without the signature page. And in fact,
10 in the court file is the indictment with the signature
11 page. Sometimes there are two separate documents that are
12 joined. They're stapled together, so - - -

13 JUDGE CANNATARO: I have two, but they both seem
14 to be signed by John Flynn, district attorney, not the
15 grand jury foreperson.

16 MR. HILLERY: Right. Right, Your Honor. I can't
17 speak to that here because it was never raised, and I'm at
18 a disadvantage in the sense that I don't have - - -

19 JUDGE CANNATARO: Do you - - - last question, I
20 promise. And then you can get back to your - - -

21 MR. HILLERY: That's - - - that's fine.

22 JUDGE CANNATARO: - - - regular programing. Do
23 you have any notion of whether that might be a
24 jurisdictional defect if it's really not there?

25 MR. HILLERY: If there was no signature page, it

1 could be. Oftentimes, when it has been raised, in my
2 experience, I know this is not with regard to the specific
3 case, but the signature page hasn't been included when in
4 fact it exists.

5 JUDGE CANNATARO: Okay.

6 MR. HILLERY: It's just part of - - -

7 JUDGE CANNATARO: Okay.

8 MR. HILLERY: - - - you know, it's joined, it's
9 stapled. I - - - but I can't speak specifically to this
10 because it's not been raised.

11 JUDGE CANNATARO: Fair enough. Thank you.

12 JUDGE GARCIA: Counsel, to go back to Taranovich
13 and your point on the nature of the crime, my understanding
14 of that, and perhaps it's not complete, is that that goes
15 to how complex the crime is for purposes of how long does
16 it take you to get together an indictment. So what would
17 the nature - - - it may be, as you describe it, a
18 particularly heinous act or a violent act, even. But how
19 does that affect the Taranovich analysis?

20 MR. HILLERY: There are two components, Your
21 Honor. And I think, yes, there is the seriousness of the
22 crime, the nature of the offense itself, the conduct of the
23 defendant, and then, of course, there is the complexity of
24 the crime. How many witnesses are involved, difficulty
25 with witnesses, the - - - all of the complexities with

1 evidence gathering, delays necessitated perhaps by concerns
2 of the integrity of testimony. All of that is in play.

3 Here, looking at both prongs, we have the
4 heinousness of the act, to be sure which is a deliberate
5 act intended to dehumanize the officers involved.

6 JUDGE TROUTMAN: But to Judge Garcia's question
7 with respect to the People's ability to prosecute that, how
8 did that impact your ability to prosecute sooner rather
9 than later?

10 MR. HILLERY: Well, complexity, of course, takes
11 different forms. Certain cases are complex for different
12 reasons.

13 JUDGE HALLIGAN: Well, why is this one in
14 particular complex?

15 MR. HILLERY: Well, Judge, I think the People had
16 to be sure about the nature of the substance that was
17 thrown, which required laboratory - - - scientific
18 laboratory testing.

19 JUDGE TROUTMAN: Could not the officer give
20 testimony with respect to what the liquid was?

21 MR. HILLERY: It's for - - - yes, Your Honor, but
22 it's for the People to determine whether or not they have
23 enough evidence to go forward.

24 JUDGE HALLIGAN: That would be true, I would
25 think, the need to do some testing to verify a substance,

1 for example, in a wide range of drug cases, wouldn't it?

2 MR. HILLERY: That would be true, Your Honor.

3 Yes. Yes.

4 JUDGE HALLIGAN: And so a delay of that long you
5 think would be appropriate in any case where there's the
6 need to test a substance?

7 MR. HILLERY: I think there is some delay with
8 testing, especially given the backlog that is experienced
9 frequently by labs across the state.

10 JUDGE HALLIGAN: Are there any other reasons that
11 you would point us to why it's a complex case?

12 JUDGE TROUTMAN: Because after testing, there was
13 still delay, correct?

14 MR. HILLERY: Yes, there was some delay, Judge.
15 But I want to be clear on that point because we're - - - we
16 are talking about delay as we should, but it's important to
17 know what delay we're talking about. So fourteen months on
18 the outside is what the People are responsible for.

19 CHIEF JUDGE WILSON: And four months of those are
20 to get the lab report.

21 MR. HILLERY: That's right.

22 CHIEF JUDGE WILSON: So we're looking at ten
23 months after you had the lab report?

24 MR. HILLERY: And I would suggest even less than
25 that, Your Honor, because the People didn't learn about

1 this case until August of 2022. The act happened December
2 25th, Christmas Day, 2021. So really, when the People
3 learned about this case, they moved to indict the matter
4 within six months of learning of it.

5 JUDGE CANNATARO: Is it your position that any of
6 the delay that took place on the DOCCS side of it is not
7 chargeable to the People?

8 MR. HILLERY: We didn't know about it, Judge. I
9 would say it wasn't chargeable to the People.

10 JUDGE CANNATARO: Well, in a case like this,
11 where DOCCS seems to be taking the lead in the
12 investigation of it, it seems as if we have some case law
13 that would at least suggest that that time has to be
14 imputed to you as well.

15 MR. HILLERY: I don't think so. Your Honor, this
16 wasn't a State Police investigation. This was being
17 handled internally at the facility. The State Police
18 responsibility sort of - - - well, at the lab, of course,
19 we have testing at a New York State forensic laboratory.
20 But as far as the investigation on site, that was
21 performed, to the best of my knowledge by Collins
22 correctional officers or investigators.

23 JUDGE HALLIGAN: Maybe you could return to the
24 question of complexity. Is there anything other than the
25 need to test the substance that makes this complex?

1 MR. HILLERY: Well, there was - - - if we look at
2 the certificate of compliance that the People presented
3 here, there were, to my memory, thirteen witnesses here at
4 the correctional facility. And then there were five
5 potential witnesses from Erie County Medical Center,
6 medical professionals. So we have eighteen witnesses right
7 there. There was video evidence.

8 JUDGE RIVERA: To - - - I'm sorry. To say the
9 gentleman threw urine on the DOCCS officer, all those
10 witnesses were necessary?

11 MR. HILLERY: Well, Judge, I think - - -

12 JUDGE RIVERA: I mean, listen, I think the court
13 has been clear. Of course, you've got to have some leeway
14 to define how you're going to prosecute a case. I'm not
15 trying to say otherwise, but this does seem to be an odd
16 argument to make, given that you got the lab report. I'll
17 give you all those other months. You have the lab report,
18 and you have the person who was the subject of the urine
19 throw.

20 MR. HILLERY: And that's a fair point, Your
21 Honor.

22 JUDGE RIVERA: The officer who was, of course,
23 attacked.

24 MR. HILLERY: Yes, it's a fair point, Your Honor,
25 but we didn't have the benefit of this being captured on

1 video. What we have is video capturing the corrections
2 officers moving into the cell. And then what happens in
3 the cell is a matter of testimony.

4 JUDGE SINGAS: Well, how many witnesses did you
5 put in the grand jury?

6 MR. HILLERY: Two witnesses, Your Honor. There
7 were two witnesses, Corrections Officer Michael Reynolds,
8 who was the victim here. And then I believe it was
9 Corrections Officer Alicia Harrington who responded to
10 collect evidence.

11 JUDGE SINGAS: And then - - -

12 JUDGE RIVERA: And how many people were in the
13 cell? If you're saying you didn't have the video of what
14 happened in in the cell, I mean, who's going to testify to
15 that?

16 MR. HILLERY: Well, there were - - - there were
17 five corrections officers that entered the cell and the
18 defendant.

19 JUDGE RIVERA: Okay.

20 MR. HILLERY: So - - -

21 JUDGE RIVERA: Still not adding up to eighteen.

22 MR. HILLERY: Well, there were people involved in
23 the investigation process, the collection of evidence.

24 JUDGE RIVERA: So you mean for purposes of the
25 chain of custody, that kind of thing?

1 MR. HILLERY: Moving to the - - - that kind of
2 thing as well, Your Honor.

3 CHIEF JUDGE WILSON: Was there a disciplinary
4 proceeding in the prison that happened before that?

5 MR. HILLERY: The defendant was ultimately moved
6 to solitary confinement. I don't know the precise nature
7 of the hearing and the protocol followed that led to that
8 result, but the defendant did spend time in solitary
9 confinement.

10 JUDGE TROUTMAN: Seven months?

11 JUDGE RIVERA: But did he spend time - - - I
12 think it was whatever it was, six or seven months, because
13 that's perhaps the result of a hearing, a disciplinary
14 matter, or was it the time for him to be released?

15 MR. HILLERY: No, Judge, I - - -

16 JUDGE RIVERA: From incarceration?

17 MR. HILLERY: I believe that was in response to
18 this event - - -

19 JUDGE RIVERA: Okay.

20 MR. HILLERY: - - - and the culmination of a
21 hearing of some kind.

22 JUDGE TROUTMAN: How does that impact the fact
23 that - - - if at all, that he was placed in solitary
24 confinement?

25 MR. HILLERY: Well, the Taranovich factor, the

1 fourth of the five factors, deals with the length of pre-
2 trial incarceration. That, I think, contemplates that
3 through inaction by the state, by the People, the defendant
4 now is in jail or in prison. He was already in prison.

5 JUDGE HALLIGAN: But he wasn't in SHU?

6 MR. HILLERY: I'm sorry, Judge.

7 JUDGE HALLIGAN: He wasn't in solitary?

8 MR. HILLERY: That's right, Judge, at that point.

9 JUDGE HALLIGAN: And I think you're telling us
10 that his placement in solitary was solely a result of
11 disciplinary action taken in response to this incident. Do
12 you know when he was placed in solitary? How long after
13 the incident?

14 MR. HILLERY: I do not know, Judge. I'm not sure
15 that the record that we have makes that clear.

16 JUDGE TROUTMAN: Do you dispute - - -

17 MR. HILLERY: I only know that it was seven
18 months.

19 JUDGE TROUTMAN: Do you dispute that his
20 placement in the Special Housing Unit altered his
21 confinement? That it was significantly different because
22 of the restrictions there?

23 MR. HILLERY: It was, Judge. It's fair to say,
24 but I think it bears mention here that the People had no
25 ability to control that outcome. Whether the People

1 delayed three months or ten months had no impact on that
2 aspect of this case. I'm going to demonstrate - - -

3 JUDGE GARCIA: Let me ask you this, that question
4 in a different way. That point, if you had decided not to
5 go forward with these charges, would that have affected his
6 solitary confinement at all?

7 MR. HILLERY: I don't believe it would have at
8 all, Judge.

9 JUDGE CANNATARO: If he had been charged and
10 tried and acquitted, would that have affected his solitary?

11 MR. HILLERY: I don't believe it would have,
12 Judge. I think this is an administrative response to a
13 situation that represents a clear and present danger to the
14 security of the facility.

15 JUDGE CANNATARO: That's a separate
16 administrative issue.

17 MR. HILLERY: Separate issue.

18 JUDGE RIVERA: Well, given the amount of time he
19 spent in SHU, you might not have - - - even if he had moved
20 timely, it's not clear that he wouldn't have still spent
21 that time in SHU.

22 MR. HILLERY: That's fair, Judge, yes. I see my
23 time has expired. Thank you, Your Honors.

24 CHIEF JUDGE WILSON: Thank you.

25 MR. GILLMAN: May it please the court, Braeden

1 Gillman for Kenneth Tyson. This was a simple case. This
2 was not a complex case. It was not a matter of who done it
3 or where. Everything was confined within Collins
4 Correctional Facility.

5 JUDGE SINGAS: Have you found any New York cases
6 where a fourteen-month delay has been determined to be a
7 violation of due process?

8 MR. GILLMAN: Yes. So there is Wallace from this
9 court, as well as the Brown case from the 4th Department,
10 which the Brown case is fourteen months and the Wallace
11 case was eleven months.

12 JUDGE SINGAS: Okay. And are you counting the
13 time between - - - the five months between when the
14 officers shirt was submitted until the result came back?

15 MR. GILLMAN: Yes, we are because during - - -

16 JUDGE SINGAS: Why?

17 MR. GILLMAN: Yes, because during the duration of
18 that time, that material was in the possession of the New
19 York State Police. And that should have been imputed to
20 the possession.

21 JUDGE CANNATARO: Wait. That was the New York
22 State Police lab, right? Not some investigatory arm of the
23 police?

24 MR. GILLMAN: Yes. So three days after the
25 shirt's sent to the New York State Police lab, and then

1 they follow up at the end of February, three months after
2 the incident, requesting the nature of the allegations, as
3 well as the - - - what had - - - what was sent and why it
4 needed to be tested.

5 JUDGE CANNATARO: Right. And I'm - - - yeah,
6 there were delays, obviously, and I think it bears
7 mentioning that DOCCS even reached out to the lab to try to
8 move things along at a certain point. But you know, lab
9 delays, that's very hard - - - even if you grant that it's
10 the - - - in the possession of the New York State Police
11 that's very hard to view as a as a dilatory sort of action
12 on the part of either the State Police or DOCCS, especially
13 when they're asking them to hurry it up.

14 MR. GILLMAN: At some point. There was a
15 systemic breakdown in communication. You know, we want our
16 law enforcement partners, whether they be DOCCS, New York
17 State Police, or the District Attorney's Office, to
18 cooperate in these investigations.

19 JUDGE HALLIGAN: Can you point us to cases where
20 a delay in testing that appears to be the product of a
21 backlog, as opposed to some dilatory behavior on the - - -
22 on behalf of, you know, a particular law enforcement
23 officer counts for purposes of Taranovich?

24 MR. GILLMAN: I cannot currently, however - - -

25 JUDGE HALLIGAN: So you'd be asking us to count

1 those months, nonetheless?

2 MR. GILLMAN: I would, and part of that is
3 because if the reason the People provide that they had no
4 knowledge of this delay in testing because they didn't know
5 about the investigation, but also independent to that - - -
6 that the - - - there was a delay in the backlog. It
7 doesn't make sense that once they had the material in
8 August of 2022, eight months later, they didn't move
9 forward.

10 JUDGE CANNATARO: Are you saying - - -

11 JUDGE HALLIGAN: But that's a separate window of
12 time, right, August to - - - going forward is separate from
13 the months during which there was a testing backlog and
14 there was no result?

15 MR. GILLMAN: Yes.

16 CHIEF JUDGE WILSON: And so why should we charge
17 the time between May 1st and August to the People? They
18 say they didn't know about it until then.

19 MR. GILLMAN: Well, we - - - again, we want our
20 law enforcement partners, New York State Police, to move
21 forward and notify the district attorneys of this material.
22 If this sits in a - - - in the New York State Police lab
23 for months or years on end, there's - - - it really doesn't
24 behoove Mr. Tyson, but it also is bad for complainants as
25 well that the complainant here - - - if this was a serious

1 people - - - a serious matter as the People allege, there
2 should have been diligence and haste with which this
3 prosecution was brought forward.

4 JUDGE GARCIA: Counsel, it's - - - there's
5 something in this case. I mean, perhaps it's a relatively
6 short amount of time compared to what we've seen in other
7 cases where given this discussion about the police lab and
8 how long was it there and why was it there, and then it was
9 in the police custody, you know, when did it get to the
10 People? And it seems we're breaking - - - one, we have a
11 short time frame and we're breaking it down into segments,
12 and it seems like the courts are then being asked to manage
13 and judge a process based on what was reasonable in this
14 segment of time.

15 And did this prosecutor get it here in this time,
16 in a reasonable time? And did this happen? And it just
17 doesn't seem like a business the courts should be in to
18 some extent. So how do we factor that in? I mean, you
19 could make this type of motion five months after the
20 arrest. You can make it ten months. You can make it
21 fourteen, you can make it years. But here we have a
22 relatively short period of time, so we're pulling apart the
23 segments that are involved and then judging whether it's
24 reasonable or, you know, does a prosecutor have this
25 obligation to do this and does - - - did the police get it

1 over and why didn't they get it over in time? And that
2 just seems like a business that maybe we shouldn't be
3 reaching into at this level.

4 MR. GILLMAN: We asked the court to apply the
5 Taranovich factors, and I think this is central to the
6 holding of Taranovich that this court does look at, or any
7 court that's evaluating this, looks at the holistic reasons
8 provided by the People.

9 JUDGE GARCIA: And we're managing that process,
10 then, though, we're telling you this is the amount of time
11 you should really have to do this task, and this is the
12 amount of time you should really have to get this over to
13 the People. And this is the amount of time the lab should
14 take. And this is when you should send the evidence. And
15 it seems to me, particularly with a short time frame that
16 that isn't what speedy trial - - - constitutional speedy
17 trial is about.

18 MR. GILLMAN: I would disagree. This - - - I
19 don't know that this - - - this was a short time relative
20 to the case law in a short time. But when we look at the
21 other cases, there are cases where there's missing
22 witnesses, there are confidential drug buys where there
23 needs to be a long - - - prolonged period of
24 confidentiality.

25 JUDGE CANNATARO: Well, Counsel, I think you



1 would have to argue that this - - - this was a long time in
2 order to advocate for your position. But implicit in that
3 question is shouldn't there be a starting point where you
4 look at the period of delay in its totality and ask whether
5 this is something we really need? Do we need to, like,
6 then break it down into its constituent parts and talk
7 about where things could have been faster, if the overall
8 impression is that the delay itself isn't inordinate? Does
9 Taranovich require us to dive in no matter how long the
10 delay is?

11 MR. GILLMAN: Well, the first factor is the
12 extent to your point, but I think the reason really has to
13 be attuned to the - - - the length of the delay here and
14 the six months after August of 2022, where all - - - all
15 that was offered by the People was that they needed color
16 photographs and the preservation of video evidence when
17 they admit that all they needed to indict here - - -

18 JUDGE CANNATARO: But you're breaking it down
19 into its constituent parts again. I'm talking about the
20 fourteen months from December 25th, 2000 whatever - - -

21 MR. GILLMAN: '21.

22 JUDGE CANNATARO: Fourteen months later, February
23 2023, when he's indicted, if someone looks at that and just
24 sort of says, well, that doesn't strike me as a shocking
25 delay, do you still have to do Taranovich?

1 MR. GILLMAN: Yes, you do. And that's just the
2 first prong. We have to go to the other prong. So for
3 example, that Mr. Tyson was for seven months in solitary
4 confinement, and then for the time after that, he was
5 seeking to rehabilitate himself.

6 CHIEF JUDGE WILSON: Well, the seven months of
7 confinement may have had nothing to do or - - - why don't
8 you - - - what did it have to do with the delay?

9 MR. GILLMAN: With the - - -

10 CHIEF JUDGE WILSON: Yeah. If the People had had
11 indicted him August 15th, which you might not agree that
12 that would be timely, but let's assume for the moment it
13 would be, how would that have affected his seven months in
14 solitary?

15 MR. GILLMAN: If the People had indicted in the
16 first seven months of 2022 - - -

17 CHIEF JUDGE WILSON: Yeah.

18 MR. GILLMAN: - - - he would have been provided
19 defense counsel who could have helped with the
20 administrative process.

21 CHIEF JUDGE WILSON: Well, that might have been
22 over by then. We don't - - - do we know that?

23 MR. GILLMAN: No, we don't, but we have to rely
24 on the facts of this case, which are that he was - - - he
25 was in solitary confinement for those seven months.

1 CHIEF JUDGE WILSON: Do you know which seven
2 months?

3 MR. GILLMAN: Yes. From December 25th, 2021 to
4 some time - - - June - - - July 14th.

5 CHIEF JUDGE WILSON: So the seven months would
6 have already run by the time - - - if we're hypothesizing
7 he might have been indicted in August, the seven months
8 would have already run.

9 MR. GILLMAN: Right, that is correct, Your Honor.
10 And that's - - -

11 CHIEF JUDGE WILSON: So I'm failing to see the
12 connection between the delay in the indictment and his
13 seven months in solitary.

14 MR. GILLMAN: Well, there is - - - it's an
15 administrative enhancement based on the same conduct.

16 CHIEF JUDGE WILSON: Right, with a different
17 standard of proof. But it's also already happened by the
18 time we get to August. I'm still struggling.

19 MR. GILLMAN: Yes. So he - - - during that time,
20 he experienced social, emotional, physical, and mental - -
21 -

22 CHIEF JUDGE WILSON: Right. But - - -

23 JUDGE RIVERA: No, I think the point is he's in
24 SHU. Even if they had moved more quickly, it would not
25 have made a difference.

1 MR. GILLMAN: Right.

2 JUDGE RIVERA: That's the point.

3 MR. GILLMAN: That is correct.

4 JUDGE HALLIGAN: When did they make the - - -
5 when was he initially placed in SHU? I think you just said
6 December 2021, right?

7 MR. GILLMAN: Yes.

8 JUDGE HALLIGAN: Okay. And so even if the
9 indictment had proceeded more expeditiously, I don't
10 understand how it is that the fact that the indictment - -
11 - let's say there was an indictment handed down in three
12 months, the decision to place him in SHU would have taken
13 place three months prior. That determination would already
14 have been made. So I think the questions you're getting
15 are what's the causal connection between what you claim is
16 undue delay and the fact that he spent those seven months
17 in SHU?

18 MR. GILLMAN: The causal connection is the
19 underlying conduct and the actual detention.

20 JUDGE HALLIGAN: No, but the decision - - - the
21 causal connection between the decision to place him in SHU
22 and the time at which an indictment was handed down. They
23 seem causally disconnected, even if the conduct is the
24 same.

25 MR. GILLMAN: I understand your point, Your



1 Honor. I think it's also important to also look at his
2 ability to rehabilitate himself, which was litigated below
3 that he underwent domestic violence training, anger
4 management training. He received a job.

5 JUDGE SINGAS: But that - - - you're talking
6 about prejudice now, right?

7 MR. GILLMAN: That is correct.

8 JUDGE SINGAS: And don't we, when we talk about
9 prejudice under Taranovich, talk about prejudice to the
10 defense and their ability to mount a defense versus just a
11 generalized prejudice that you're talking about right now?

12 MR. GILLMAN: That is correct.

13 JUDGE SINGAS: So are you alleging any prejudice
14 to your ability to mount a defense?

15 MR. GILLMAN: Yes. So Mr. Tyson was traveling
16 from New York City to Buffalo for these proceedings to the
17 extent that he could later - - - later in the proceedings,
18 he was dismissed by the court. They allowed him to, you
19 know, not come back until the trial. But there was - - -

20 JUDGE CANNATARO: How did that prejudice him?
21 How did the travel prejudice him?

22 MR. GILLMAN: Well, he had to - - - during that,
23 he had to maintain his employment, maintain his attendance
24 at substance abuse counseling, as well as maintain a
25 relationship with parole.

1 JUDGE CANNATARO: Well, this goes back to what
2 Judge Singas was saying about generalized prejudice or
3 hardship and his ability to mount a defense. I mean, I
4 would think it would involve factors like, were any
5 witnesses lost or did any evidence disappear. That, to me,
6 is trial prejudice. Traveling doesn't seem connected. So
7 can you help me understand how that prejudices a defense?

8 MR. GILLMAN: I understand your point, Your
9 Honor. What was pleaded below was that it was - - - that
10 the prejudice was the actual rehabilitation. His - - -

11 JUDGE RIVERA: Are you arguing that we should
12 revisit the factors to consider this particular type of
13 impact on a defendant?

14 MR. GILLMAN: I am not, Your Honor. I don't
15 believe that we need to even go to prejudice. I believe
16 we're successful on the first few prongs there,
17 thereabouts. But again, I would just like to talk about
18 the color photographs and the preservation of video
19 evidence, which was the reason that was provided for the
20 six-month of delay. At that point, the People admit, you
21 know, they needed - - - they stated that they needed the
22 testing to confirm, to move forward for the indictment.

23 At that point, they had the testing, which
24 confirmed that it was in fact urine. At that point, they
25 did not move forward. This was not a complex case at that

1 point. Everything had been accumulated by DOCCS. All of
2 the witnesses were at Collins Correctional Facility, so
3 they did not need to reinvent the wheel. They really could
4 have relied on what was at that time with DOCCS, and
5 there's no - - - there's no causal connection between the
6 color of the photographs and whether that that needs to
7 move forward. And then, also the preservation of video
8 evidence, which ultimately doesn't even show the incident.
9 To Mr. Hillery's point, that they needed to - - - they
10 needed to use the video evidence - - - they needed to use
11 the testimony because the video evidence didn't even show
12 what had happened in the cell. I see that my time has
13 expired. So thank you very much.

14 CHIEF JUDGE WILSON: Thank you.

15 JUDGE HALLIGAN: Can I ask you, Counsel, the rule
16 you're asking for here, how come it doesn't tolerate or
17 maybe even incentivize lengthy lab delays or delays in
18 communication between DOCCS and the People, which I think
19 is what your adversary is suggesting?

20 MR. HILLERY: I'm sorry. How come it doesn't
21 take into account that - - -

22 JUDGE HALLIGAN: In other words, you're asking us
23 not to count the window during the lab testing, and not to
24 count the window between when the lab results came back and
25 the People got the materials from DOCCS, right?

1 MR. HILLERY: Yes, Your Honor.

2 JUDGE HALLIGAN: Why should we do that? Why does
3 that not tolerate or maybe even incentivize dilatory
4 behavior?

5 MR. HILLERY: We have two agencies operating
6 here. We have DOCCS - - -

7 JUDGE HALLIGAN: That's true all the time. And I
8 would hazard a guess that in a lot of circumstances, DOCCS
9 and the People can collaborate effectively and efficiently.

10 MR. HILLERY: That's potential - - - that's
11 potentially something that can happen, Judge. And through
12 increased communication and everything else that could be
13 realized or - - -

14 JUDGE HALLIGAN: But why not a rule that
15 encourages that, in other words, by counting that time?

16 MR. HILLERY: Well, Judge, I think we have to
17 look holistically to see whether or not in the instant case
18 that yields a fair result to the People. We did not know
19 about this.

20 JUDGE HALLIGAN: You're asking for a rule that's
21 going to apply across the board, right? I mean, I
22 understand it's presented in this case, but whatever we
23 decide will obviously apply down the road.

24 MR. HILLERY: It would be great to have more
25 collaboration. And I think that is the trajectory that

1 we're on.

2 JUDGE SINGAS: Well, you're not excused that
3 time, right, in a 30.30 calculation that's charged?

4 MR. HILLERY: Well, we're - - - we shouldn't be
5 charged, judge with - - - it's my position anyway. We
6 shouldn't be charged with any delay that's occasioned by
7 what takes place with DOCCS. They're not a law enforcement
8 agency. People v. Kelly, this court decided - - -

9 CHIEF JUDGE WILSON: Well, wait a minute. So
10 even - - - sorry. So if DOCCS had notified you but hadn't
11 given you the information, you shouldn't be charged for
12 that time?

13 MR. HILLERY: That might be different, Chief
14 Justice Wilson. Yes, I agree that if we have knowledge of
15 it and we're in communication with them, we understand that
16 there's criminal conduct that's occurred, that is
17 chargeable conduct, and we intend to go forward, that's
18 different. We had no knowledge of this case until the
19 State Police, who did not investigate this case, the State
20 Police dropped off the paperwork to our office from DOCCS.
21 We had no knowledge until August of 2022. From August of
22 2022 until February of 2023, when we indicted the case, six
23 months, and I would suggest to the court - - -

24 JUDGE RIVERA: So let me ask you this. Let's say
25 each of those - - - taking perhaps the approach that Judge



1 Garcia was asking you about, if each of those steps before
2 you know took three years, each one, he's got no
3 constitutional claim that his due process has been denied
4 by delay?

5 MR. HILLERY: I will not say that he has no claim
6 because he has due process rights - - -

7 JUDGE RIVERA: Well, I thought that's what - - -
8 that's your argument, isn't it? Until you know about it,
9 the clock shouldn't start.

10 MR. HILLERY: I guess I'm - - - there's an
11 implicit assumption to what I'm saying here, Judge, and
12 that is on the outside, we're dealing with a fourteen-month
13 period, fourteen months, assuming that interpretation of
14 everything that happened, that DOCCS' knowledge is our
15 knowledge, we're still dealing with only fourteen months.
16 I think this is a situation where we know it when we see
17 it. We know dilatory tactics when we see them. We know
18 unjust delay when we see it. And in this case - - -

19 JUDGE RIVERA: And what if DOCCS was dragging its
20 feet to ensure he served all the SHU time. Why isn't that
21 possible?

22 MR. HILLERY: Well, that - - - that might be - -
23 -

24 JUDGE RIVERA: I'm not saying it is.

25 MR. HILLERY: I'm sure.

1 JUDGE RIVERA: It's your hypothetical.

2 MR. HILLERY: I agree, Judge, that that would be
3 relevant.

4 JUDGE RIVERA: Or the labs decided incarcerated
5 individual, we'll deprioritize, and then when they're asked
6 to prioritize, they move it along?

7 MR. HILLERY: I think nobody wants to see that.
8 And I think that's certainly relevant, but I don't think we
9 have any record basis to - - - to assume any of that.

10 JUDGE HALLIGAN: So then you're not saying that
11 delays in terms of lab results or DOCCS transmitting
12 information can never be taken into account in a due
13 process analysis; is that fair?

14 MR. HILLERY: I think that's - - - yes, that's
15 what I'm trying to say, Judge. I want to be fair about
16 that and I want to be clear about it. Of course, if this
17 case had languished for five years, nobody's doing
18 anything. The defendant has rights. He has due process
19 rights.

20 JUDGE CANNATARO: Well, you'd be past the statute
21 of limitations after five years.

22 MR. HILLERY: Yes, Judge. Yes. But in this
23 case, Judge, we're dealing with fourteen months. Six
24 months really if you start from when the People became
25 aware of it, and under all of the Taranovich factors

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holistically, I think this case should never have been dismissed. Unless the court has any questions, I see my time has expired. Thank you.

CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Christy Wright, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Tyson (Kenneth), No. 19 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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