RECEIVED
Mar 20 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Jennifer B. McCoy, Circuit Court Judge
Appellate Case No. 2022-000336

THE STATE,

Respondent,

vs.

RONZELL BILAH OLDS,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
O.T. Wallace Building
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

COUNTER-STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

STANDARD OF REVIEW 13

ARGUMENT 14

I. All three circuit court judges who were presented with Appellant's dismissal motions correctly declined to the dismiss the charges based on the roughly four-year period of pre-indictment delay between Appellant's arrest in connection to the Sunoco armed robbery and indictment because: (1) Appellant failed to establish he suffered substantial actual prejudice as a result of the delay involved in his case; and (2) even if Appellant did somehow satisfy his heavy burden of establishing the requisite prejudice, a proper balancing of the case-specific circumstances involved nonetheless did not and would not support a conclusion his due process rights were violated by the delay. 14

II. The three circuit court judges who were presented with Appellant's speedy trial dismissal motions did not abuse their broad discretion by declining to dismiss Appellant's charges because the approximately forty-eight-month period of delay between Appellant's arrest and trial did not result from any intentional efforts on the part of the State to hinder Appellant's defense, did not cause any meaningful prejudice to Appellant, and resulted in large part from difficulties caused by the unexpected onset of a global pandemic. 24

CONCLUSION 35

TABLE OF AUTHORITIES

South Carolina Cases:

State v. Allen, 370 S.C. 88, 634 S.E.2d 653 (2006). 13

State v. Barnes, 431 S.C. 66, 846 S.E.2d 389 (Ct. App. 2020). 32

State v. Barnes, 436 S.C. 202, 871 S.E.2d 421 (2022). 32

State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997). 15, 16, 17, 19, 20, 26, 27

State v. Brewer, 438 S.C. 37, 882 S.E.2d 156 (2022). 19

State v. Chapman, 289 S.C. 42, 344 S.E.2d 611 (1986). 30

State v. Cooper, 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2009). 34

State v. Dukes, 256 S.C. 218, 182 S.E.2d 286 (1971). 28

State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007). 6

State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009). 6

State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009). 34

State v. Hunsberger, 418 S.C. 335, 794 S.E.2d 368 (2016). 13

State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000). 26

State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012). 25, 30, 32, 34

State v. Lee, 375 S.C. 394, 653 S.E.2d 259 (2007). 15, 16, 17

State v. Monroe, 262 S.C. 346, 204 S.E.2d 433 (1974). 33

State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). 26

State v. Reaves, 414 S.C. 118, 777 S.E.2d 213 (2015). 13, 30, 33

State v. Robinson, 335 S.C. 620, 518 S.E.2d 269 (Ct. App. 1999). 26, 32, 33, 34

State v. Saxon, 261 S.C. 523, 201 S.E.2d 114 (1973). 19

State v. Smith, 307 S.C. 376, 415 S.E.2d 409 (Ct. App. 1992). 28

State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984). 30

State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978). 25, 27, 31

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). 13

Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966). 30

United States Supreme Court Cases:

Barker v. Wingo, 407 U.S. 514 (1972). 26, 27, 29

Beavers v. Haubert, 198 U.S. 77 (1905). 25

California v. Trombetta, 467 U.S. 479 (1984). 15

Doggett v. United States, 505 U.S. 647 (1992). 25

Strunk v. United States, 412 U.S. 434 (1973). 29

United States v. Ewell, 383 U.S. 116 (1966). 25

United States v. Gouveia, 467 U.S. 180 (1984). 17

United States v. Loud Hawk, 474 U.S. 302 (1986). 25, 34

United States v. Lovasco, 431 U.S. 783 (1977). 15

United States v. Marion, 404 U.S. 307 (1971). 17, 23

Vermont v. Brillon, 556 U.S. 81 (2009). 28, 31

Other State Cases:

Elias v. Superior Ct., 294 Cal. Rptr. 3d 178 (Cal. Ct. App. 2022). 27

Hallowell v. State, 178 A.3d 610 (Md. Ct. Spec. App. 2018). 29

Henderson v. Commonwealth, 563 S.W.3d 651 (Ky. 2018). 32

Manix v. State, 895 So. 2d 167 (Miss. 2005). 29

Millard v. Lynaugh, 810 F.2d 1403 (5th Cir. 1987). 33

Ratchford v. State, 785 A.2d 826 (Md. Ct. Spec. App. 2001). 26, 28

Osman v. Commonwealth, 883 S.E.2d 249 (Va. Ct. App. 2023). 31

People v. Canosa, 598 N.Y.S.2d 784 (N.Y. App. Div. 1993). 22, 30

People v. Garcia, 822 N.Y.S.2d 322 (N.Y. App. Div. 2006). 21

People v. LoPizzo, 543 N.Y.S.2d 88 (N.Y. App. Div. 1989). 28

Salahuddin v. State, 592 S.E.2d 410 (Ga. 2004). 32

State v. Carlson, 258 N.W.2d 253 (N.D. 1977). 28

State v. Paige, 977 N.W.2d 829 (Minn. 2022). 29

Vlahos v. State, 518 P.3d 1057 (Wyo. 2022). 29

Other Federal Cases:

Jones v. Angelone, 94 F.3d 900 (4th Cir. 1996). 15, 16, 17, 22

United States v. Anderson, 902 F.2d 1105 (2d Cir. 1990). 28

United States v. Baker, 424 F.2d 968 (4th Cir. 1970). 23

United States v. Bracy, 67 F.3d 1421 (9th Cir. 1995). 13

United States v. Brock, 782 F.2d 1442 (7th Cir. 1986). 23

United States v. Brown, 742 F.2d 359 (7th Cir. 1984). 16, 20

United States v. Madden, 682 F.3d 920 (10th Cir. 2012). 13

United States v. Medina-Arellano, 569 F.2d 349 (5th Cir. 1978). 23

United States v. Moran, 759 F.2d 777 (9th Cir. 1985). 22

United States v. Royals, 777 F.2d 1089 (5th Cir. 1985). 21

United States v. Sanfilippo, 572 F. Supp. 3d 1269, 1282 (S.D. Fla. 2021). 21

United States v. Summers, 666 F.3d 192 (4th Cir. 2011). 13

Other Authorities:

U.S. Const. amend. V. 15

U.S. Const. amend. VI. 24

U.S. Const. amend. XIV, § 1. 15

S.C. Const. art. I, § 3. 15

S.C. Const. art. I, § 14. 24

Rule 4, SCRCrimP. 20

STATEMENT OF ISSUES ON APPEAL

I.

"Did the judges err in refusing to grant the motion to dismiss based on pre-indictment delay of over four years between arrest and indictment violating Appellant's right to Due Process?"

II.

"Did the judges err in refusing to dismiss the indictment because Appellant was denied his state and federal constitutional right to a speedy trial?"

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Did the three circuit court judges who were presented with Appellant's dismissal motions all err by declining to the dismiss the charges based on the roughly four-year period of pre-indictment delay between Appellant's arrest in connection to the Sunoco armed robbery and indictment when: (1) Appellant failed to establish he suffered substantial actual prejudice as a result of the delay involved in his case; and (2) even if Appellant did somehow satisfy his heavy burden of establishing the requisite prejudice, a proper balancing of the case-specific circumstances involved nonetheless did not and would not support a conclusion his due process rights were violated by the delay?

II.

Did the three circuit court judges who were presented with Appellant's speedy trial dismissal motions abuse their broad discretion by declining to dismiss Appellant's charges when the approximately forty-eight-month period of delay between Appellant's arrest and trial did not result from any intentional efforts on the part of the State to hinder Appellant's defense, did not cause any meaningful prejudice to Appellant, and resulted in large part from difficulties caused by the unexpected onset of a global pandemic?

STATEMENT OF THE CASE

In January of 2018, Appellant Ronzell Bilah Olds was arrested following an investigation into an armed robbery of a convenience store. Later that same month, Appellant was arrested in connection to a string of similar armed robberies committed a few weeks earlier, and he was served with additional arrest warrants in April of 2018 stemming from yet another earlier armed robbery. In May of 2020, Appellant filed a motion seeking dismissal of all his charges. On June 17, 2020, a virtual hearing was held on Appellant's motion before the Honorable R. Markley Dennis, Jr., circuit court judge. Subsequent to that hearing, Judge Dennis issued an order denying Appellant's motion. Thereafter, in January of 2022, the State submitted a motion seeking a continuance in Appellant's case, and Appellant again submitted a motion seeking for all his charges to be dismissed. On January 27, 2022, a virtual hearing was held on the motions before the Honorable Deadra L. Jefferson, circuit court judge. Subsequently, in February of 2022, the Charleston County Grand Jury indicted Appellant for armed robbery and possession of a weapon during the commission of a violent crime in connection to the January 2018 incident. A few days after that, Judge Jefferson issued an order denying Appellant's latest dismissal motion. On March 7, 2022, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Jennifer B. McCoy, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty years for armed robbery and five years for possession of a weapon during the commission of a violent crime.[1] Appellant then timely filed a notice of appeal.

---

[1] In imposing Appellant's sentence, the trial judge granted Appellant 1,510 days of credit for time served, including 609 days of discretionary credit for time Appellant spent on monitored house arrest prior to trial. (Trl. Tr. p. 489; p. 491).

STATEMENT OF FACTS

Around 1:43 a.m. in the early morning hours of January 16, 2018, a skinny masked man entered the Sunoco convenience store located on Sam Rittenberg Boulevard in the West Ashley area of Charleston, approached the cashier, pointed a gun at her, and demanded money. (Trl. Tr. pp. 242-246; pp. 250-251; pp. 265-268; p. 272; p. 326; pp. 372-373). In response, the cashier quickly handed over the cash from the store's register, including—consistent with her training—a lone two-dollar bill that the store kept on hand solely for use during robberies. (Trl. Tr. pp. 243-244; p. 251). The robber then rapidly fled from the store with the two-dollar bill and the rest of his loot, and he headed in the direction of nearby Orleans Road. (Trl. Tr. p. 271). Significantly, unbeknownst to him at that time, the serial number from the two-dollar bill he had just stolen was recorded in advance to aid in identifying the perpetrator in the event of a robbery like the one he had just committed. (Trl. Tr. pp. 223-224; p. 243; p. 282; p. 327).

During the ensuing investigation into the robbery, Appellant was identified as a suspect following a review of the store's surveillance footage, and, as a result, several officers went to the apartment of Appellant's ex-girlfriend, Deonna Greene, in search of him.[2] (Trl. Tr. pp. 245-246; pp. 267-269; pp. 276-277; pp. 327-328). Appellant was known to frequently be at that location, and Greene's apartment was situated only a quarter of a mile away from the Sunoco store that had been robbed. (Trl. Tr. pp. 276-277; State's Ex. # 2 (Photograph)). Upon arriving there, the officers did not find Appellant, but they were able to speak with Greene. (Trl. Tr. pp. 277-278). As a result of doing so, they obtained a quantity of cash that included a single two-dollar bill. (Trl. Tr. p. 286; p. 305; pp. 328-329; pp. 390-393; State's Ex. # 17 (Photograph)). The serial number from that two-dollar bill was then compared to the recorded serial number

[2] Greene's apartment was part of Orleans Garden Apartments. (Trl. Tr. p. 269).

from Sunoco's records, and, critically, the numbers proved to be an exact match. (Trl. Tr. pp. 282-284; p. 287; pp. 328-329).

Later that same day, Appellant was tracked down, arrested in connection to the Sunoco robbery, and brought to the police station. (Trl. Tr. pp. 332-333). Detective Yolanda Brown of the Charleston Police Department met with Appellant at that location, and he agreed to an interview after being advised of and waiving his rights. (Tr. pp. 333; p. 344; Court's Ex. # 1 (Interview Recording)). During the course of the conversation that followed, Appellant confirmed he stayed with Greene at her apartment on the night of the robbery, and he further confirmed he left her some money, including a two-dollar bill, on that date.[3] (Trl. Tr. p. 289; pp. 345-346; pp. 348-349; Court's Ex. # 1). Initially though, Appellant—who was not yet aware the officers connected that two-dollar bill to the robbery—insisted he had not been involved in the incident. (Trl Tr. pp. 282-283; p. 317; p. 346; Court's Ex. # 1). However, as the interview continued, Detective Brown confronted Appellant with the information about the serial number match, and Appellant, who was still wearing what appeared to be the same distinctive white belt he wore during the robbery, eventually candidly confessed he was, in fact, the robber.[4] (Trl. Tr. pp. 288-289; pp. 350-351; pp. 354-355; p. 362; Court's Ex. # 1).

In the weeks and months that followed Appellant's arrest, Appellant was served with *eight* additional arrest warrants—for a total of ten—stemming from similar crimes committed in

---

[3] Appellant perhaps made those admissions because, as he would later acknowledge during the interview, he had spoken with Greene earlier that day and had been alerted by her about the officers coming to her apartment in search of him. (Court's Ex. # 1). Tellingly, after Appellant revealed Greene had informed him about the officers' visit to her apartment, he quickly followed that by stating: "Y'all don't supposed to know that." (Court's Ex. # 1).

[4] In confessing, Appellant described the robbery as a "stupid decision" on his part, and he revealed he did it because he thought he could get away with it in light of all the other armed robberies that had been committed in the area. (Court's Ex. # 1).

the weeks leading up to the Sunoco robbery. (Arrest Warrants). In response to those charges, the solicitor—in June of 2018—submitted a plea offer to Appellant that would have allowed him to collectively resolve all ten, and that offer was set to expire on September 7, 2018. (Response to Motion to Dismiss, p. 2). As the expiration date neared, defense counsel contacted the solicitor and successfully requested it be extended until October 8, 2018. (Response to Motion to Dismiss, p. 3). Days later, Appellant was indicted for three of his offenses from December of 2017. (First Motion to Dismiss, pp. 1-2; Response to Motion to Dismiss, p. 3). Thereafter, on the revised expiration date, defense counsel asked the court to schedule a plea hearing for December 6, 2018, and, in doing so, defense counsel noted Appellant would "accept or reject" at that time. (Response to Motion to Dismiss, p. 3). Following that, when the December date arrived, defense counsel indicated Appellant was rejecting the plea offer at that time but discussions with him concerning a possible guilty plea would continue. (Response to Motion to Dismiss, p. 3). Shortly after that, Appellant formally rejected the State's plea offer on the record. (Response to Motion to Dismiss, p. 3).

Subsequent to those events, plea discussions apparently continued until—on November 26, 2019—Appellant's case was set for a January 2020 trial by the court. (Response to Motion to Dismiss, pp. 3-4). However, a few days after that, Appellant's case was continued *without* objection from *either* party. (Response to Motion to Dismiss, p. 4). Then, following that, South Carolina's courts and grand juries—including the trial courts and grand jury in Charleston County—were forced to shut down in March of 2020 in response to the emergency caused by the global COVID-19 pandemic. (Jan. 2022 Hrg. Tr. p. 3).

Shortly after the shutdown took effect, a status conference was held in Appellant's case. (Response to Motion to Dismiss, p. 4; p. 7). As a result of it, the court placed the matter on the

"priority docket" *at the solicitor's request* and—with the hope trials would soon be able to resume—scheduled it to be tried on August 17, 2020. (Response to Motion to Dismiss, p. 4; p. 7). However, just days after that, defense counsel submitted a motion seeking for all Appellant's charges—indicted and unindicted—to be dismissed based on pre-indictment delay and a purported speedy trial violation.[5] (First Motion to Dismiss, pp. 1-4). In response, a circuit court judge conducted a *virtual* hearing on the matter. (June 2020 Hrg. Tr. pp. 1-2).

During the course of that virtual hearing, defense counsel contended he believed his "strongest" argument was the two arrest warrants related to January 2018 Sunoco robbery should be dismissed due to pre-indictment delay. (June 2020 Hrg. Tr. p. 3). As support for that contention, defense counsel asserted he had heard an as-of-then-unconfirmed "rumor" Mark Maschke, who supposedly *could* have testified Appellant was under the influence of drugs at the time of his arrest, had died from a drug overdose. (June 2020 Hrg. Tr. p. 4). Defense counsel explained he believed Maschke's testimony was potentially relevant to the issue of whether Appellant's confession was voluntarily made, and, thus, he claimed Maschke's death caused substantial actual prejudice to the defense. (June 2020 Hrg. Tr. p. 4; First Motion to Dismiss, p. 3). Beyond that, defense counsel—without further elaboration—noted he "put some speedy trial arguments" in the dismissal motion as well.[6] (June 2020 Hrg. Tr. p. 5). In rebuttal, the solicitor

---

[5] In addition to those grounds, defense counsel also referenced the timelines set out in Rule 3 of the South Carolina Rules of Criminal Procedure. (First Motion to Dismiss, p. 2). However, as our courts have recognized and explained, that particular rule is administrative in nature, and, thus, noncompliance with the timelines set out in it does *not* itself warrant dismissal of criminal charges. See State v. Edwards, 374 S.C. 543, 572, 649 S.E.2d 112, 127 (Ct. App. 2007) (recognizing Rule 3 is purely "administrative" and instructing a solicitor's delay in complying with the timelines set out in that rule "does not within itself invalidate a warrant or prevent subsequent prosecution"), rev'd on other grounds, 384 S.C. 504, 682 S.E.2d 820 (2009).

[6] Specifically, as to those arguments, defense counsel identified some general law on the right to a speedy trial before simply asserting: "[Appellant] also moves to dismiss all of [his] charges

contended defense counsel's claims related to Maschke were not sufficient to establish substantial actual prejudice because multiple other sources, including Appellant himself, could provide insight regarding Appellant's condition at the time of his law enforcement interview. (June 2020 Hrg. Tr. pp. 6-7). Furthermore, the solicitor argued Appellant's speedy trial rights had not been violated because his case could not have been tried any earlier, and he noted more indictments were expected to be issued the following month. (June 2020 Hrg. Tr. p. 7).

Ultimately, after considering the arguments of counsel and reviewing a recording of Appellant's interview with law enforcement, the circuit court judge declined to dismiss the charges. (Order, pp. 1-2). In reaching that conclusion, the circuit court judge found Appellant failed to establish he suffered substantial actual prejudice as a result of Maschke's death. (Order, pp. 1-2). Likewise, based on a review of the case's procedural history and the absence of any delay-caused prejudice, the circuit court judge concluded Appellant's speedy trial rights had not been violated. (Order, p. 2).

Following that ruling, the global pandemic continued to cause problems on worldwide, national, and state levels and resulted in the solicitor being unable to present additional indictments to the grand jury as intended. (Jan. 2022 Hrg. Tr. pp. 4-5). And, by April of 2021, that particular solicitor was no longer working for the Ninth Circuit Solicitor's Office, which required Appellant's case to be reassigned to a new solicitor. (Jan. 2022 Hrg. Tr. p. 3; pp. 5-6). Meanwhile, by that point, Appellant was personally no longer in pre-trial incarceration because he obtained release on bond in July of 2020. (Jan. 2022 Hrg. Tr. pp. 9-10).

---

based on violation of his right to a speedy trial. [Appellant] has been incarcerated since January 16, 2018. [Appellant] has suffered actual prejudice due to the death of witness Mark A. Maschke. [Appellant] believes this delay is so lengthy as to result in a finding of presumptive prejudice that would trigger analysis of the other factors." (First Motion to Dismiss, pp. 2-4).

Once Appellant's case was reassigned, the new solicitor reviewed the records associated with it in his office's case management system and mistakenly concluded the charges related to the Sunoco robbery had already resulted in the issuance of indictments due to the fact indictment numbers and a grand jury meeting date were identified in the system. (Jan. 2022 Hrg. Tr. p. 6; Motion for Continuance, p. 8). Proceeding forward under that mistaken belief, the solicitor communicated with defense counsel about the case while also participating in several status conferences about it with a circuit court judge. (Jan. 2022 Hrg. Tr. p. 6). Significantly, during those communications and status conferences, the solicitor made statements to defense counsel and the circuit court judge demonstrating his erroneous belief Appellant's case had already been indicted. (Jan. 2022 Hrg. Tr. p. 7; p. 18). Despite being aware of the solicitor's error, defense counsel did not correct it for either the solicitor *or* the circuit court judge, and the circuit court judge ended up—after jury trials finally resumed in Charleston County in September of 2021—scheduling Appellant's unindicted case related to the Sunoco robbery for trial on January 31, 2022. (Jan. 2022 Hrg. Tr. p. 2; p. 7; Motion for Continuance, pp. 1-2).

Thereafter, one week before that trial was set to begin, the solicitor discovered the necessary indictments had not actually been issued, and he immediately responded by contacting defense counsel, who advised him Appellant would *not* be willing to waive presentment of his charges to a grand jury.[7] (Jan. 2022 Hrg. Tr. p. 7). At that point, the solicitor quickly submitted a request for a continuance to the circuit court judge while also arranging for the indictments to be presented to the grand jury as soon as possible, which was on February 7, 2022. (Jan. 2022 Hrg. Tr. p. 8; Motion for Continuance, pp. 1-14). Meanwhile, defense counsel submitted another

[7] Since Appellant had at least claimed to desire a speedy trial, the solicitor offered to go forward with the trial as already scheduled if Appellant was willing to waive presentment to the grand jury. (Motion for Continuance, p. 3).

motion to dismiss based on pre-indictment delay and a purported speedy trial violation.[8] (Second Motion to Dismiss, pp. 1-4). In response to those motions, the circuit court judge promptly conducted another virtual hearing. (Jan. 2022 Hrg. Tr. pp. 1-2).

During the course of that hearing, the solicitor explained Appellant's case had been placed by the court on several prior trial dockets but the current docket on which it had been placed was the first time it had a "realistic opportunity to be reached."[9] (Jan. 2022 Hrg. Tr. p. 3). The solicitor further explained he was requesting the State's *first* continuance in Appellant's case and proceeded to recount the "oversight" that led to the need for it along with the pandemic-related factors—including a lengthy shutdown of the courts for trial purposes—that had resulted in numerous delays in the case. (Jan. 2022 Hrg. Tr. pp. 3-8; p. 26). In rebuttal, defense counsel pointed to the length of the delays incurred up to that point and described them as an "extraordinarily long time." (Jan. 2022 Hrg. Tr. p. 9). However, he also candidly conceded "the virus" existed. (Jan. 2022 Hrg. Tr. p. 9). He then proceeded to repeat his earlier claim Appellant suffered substantial actual prejudice due to the death of Maschke. (Jan. 2022 Hrg. Tr. p. 16). At the conclusion of the hearing, the circuit court judge took the matter under advisement with the understanding the case would go forward with trial during the week of March 7, 2022, which was the first available term of court for which it could be scheduled, if she ultimately did not agree to dismiss the charges. (Jan. 2022 Hrg. Tr. pp. 34-35; pp. 40-42).

---

[8] Notably, in that motion to dismiss, defense counsel appeared to acknowledge he heard the solicitor express a mistaken belief the indictments had already been issued during the status conference that led to Appellant's case being scheduled for trial in January of 2022 but nevertheless allowed that mistake to go uncorrected. (Second Motion to Dismiss, pp. 1-2).

[9] Later on during the hearing, defense counsel readily acknowledged Appellant's case had only previously been placed by the court on two earlier trial dockets and, even then, was not really "in the running" for actually going forward. (Jan. 2022 Hrg. Tr. p. 18).

Shortly thereafter, the solicitor presented the indictments to the grand jury, and, on February 7, 2022, the grand jury indicted Appellant for armed robbery and possession of a weapon during the commission of a violent crime. (Trl. Tr. p. 6; Indictments). Just over a week after that, the circuit court judge issued an order denying Appellant's latest dismissal motion. (Order, pp. 1-6). In declining to dismiss, the circuit court judge concluded Appellant had failed to establish the factors necessary to establish a violation of his speedy trial rights, and, consistent with the earlier order denying relief, she further found he failed to demonstrate substantial actual prejudice as required for a grant of relief based on pre-indictment delay. (Order, pp. 3-6).

Following that ruling, Appellant proceeded forward to trial as scheduled. (Trl. Tr. p. 1; p. 6). Toward the outset of trial, defense counsel renewed Appellant's motion to dismiss, and the trial judge again denied the motion. (Trl. Tr. pp. pp. 48-51). An in camera hearing was then held to determine the voluntariness of Appellant's confession, and, during the course of that hearing, several officers testified about Appellant's seeming lack of intoxication or impairment at the time of the interview. (Trl. Tr. pp. 54-107; pp. 111-129). In addition to that, the recording of the interview was introduced, and, on it, Appellant was depicted providing lucid and appropriate responses to the officers' questions. (Court's Ex. # 1). Furthermore, Appellant testified about the interview but did *not* claim he confessed due to marijuana intoxication or an overborne will. (Trl. Tr. pp. 144-161). Instead, Appellant, who described himself as only being "a little high" at the time of the interview, asserted he confessed due to his efforts *to be polite*. (Trl. Tr. p. 154; pp. 158-159; p. 161). Ultimately, after considering everything presented, the trial judge ruled Appellant's confession was voluntary and admissible.[10] (Trl. Tr. pp. 188-189).

[10] In reaching that conclusion, the trial judge correctly noted the mere fact a defendant smoked marijuana was not something that would render a statement automatically inadmissible. (Trl. Tr. pp. 188-189).

As the trial proceeded forward, testimony and evidence was presented detailing the armed robbery of the Sunoco store and the ensuing investigation into it that led to Appellant being identified as the robber, including evidence and testimony linking Appellant to the unique two-dollar bill stolen during the incident. (Trl. Tr. pp. 221-229; pp. 242-260; pp. 262-317; pp. 324-373; pp. 389-394). Likewise, the details of Appellant's confession to law enforcement were presented, and portions of the interview recording were played for the jury along with a recording of candid incriminating admissions Appellant made from jail following his arrest. (Trl. Tr. pp. 288-289; pp. 332-362; pp. 384-388; State's Ex. # 22 (Jail Call Recording)).

Following the presentation of that testimony and evidence, the solicitor rested the State's case, and defense counsel renewed the previously-raised dismissal motion. (Trl. Tr. p. 402; pp. 404-405). As support for that renewed motion, defense counsel reiterated his claim Maschke's death resulted in prejudice to the defense because Maschke purportedly could have corroborated Appellant's in camera testimony about smoking marijuana prior to his interview with law enforcement.[11] (Trl. Tr. pp. 404-405). Furthermore, defense counsel additionally pointed to the absence of Greene, who investigators *for the State* had not been able to locate for trial, along with his recent discovery of the death of the Sunoco store's manager, who was not present during the robbery, as additional sources of prejudice caused by the delays in Appellant's case.[12] (Trl. Tr. pp. 242-243; pp. 396-398; pp. 404-405). However, in pointing to those two witnesses, defense counsel did *not* claim to have made *any* efforts to locate them at any point and did *not*

[11] Based on information presented to the trial judge by defense counsel, Maschke died on May 17, 2019, at his residence in Mount Pleasant, South Carolina. (Defense's Ex. # 5 (Letter)).

[12] Earlier on during trial, testimony was presented establishing the manager of the robbed Sunoco store died roughly a year before Appellant's trial. (Trl. Tr. p. 229). Likewise, testimony was presented from an investigator from the Ninth Circuit Solicitor's Office indicating he attempted to locate Greene unsuccessfully for approximately a month and was prepared to issue a subpoena on behalf of the State if she could be located. (Trl. Tr. pp. 396-398).

provide any specifics as to what testimony—favorable for the defense or otherwise—he thought they might have provided if present. (Trl. Tr. pp. 404-405). The trial judge responded by simply noting defense counsel's position for the record. (Trl. Tr. pp. 405-406).

Subsequently, Appellant's case was submitted to the jury, and, after a little over two hours of deliberations, the jury convicted Appellant as indicted. (Trl. Tr. p. 470; pp. 481-482). Following that, the trial judge sentenced Appellant to an aggregate twenty-year term of imprisonment. (Trl. Tr. p. 491). And, in imposing that sentence, the trial judge granted Appellant credit for all the time he served in pre-trial incarceration *and* while released from custody on bond. (Trl. Tr. p. 489; p. 491).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing on appeal a ruling on a dismissal motion predicated upon pre-indictment delay or an alleged speedy trial violation, the appellate court reviews the trial judge's ruling under an abuse of discretion standard. State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371-372 (2016); see United States v. Madden, 682 F.3d 920, 929 (10th Cir. 2012) (explaining an appellate court "reviews the denial of a motion to dismiss based on preindictment delay for abuse of discretion"); United States v. Bracy, 67 F.3d 1421, 1426 (9th Cir. 1995) ("The denial of a motion to dismiss for impermissible pre-indictment delay is reviewed for abuse of discretion."); State v. Reaves, 414 S.C. 118, 132, 777 S.E.2d 213, 220 (2015) ("[A] trial court's decision as to whether to dismiss an indictment based on speedy trial grounds is reviewed for an abuse of discretion."). "An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006); see United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

I.

All three circuit court judges who were presented with Appellant's dismissal motions correctly declined to the dismiss the charges based on the roughly four-year period of pre-indictment delay between Appellant's arrest in connection to the Sunoco armed robbery and indictment because: (1) Appellant failed to establish he suffered substantial actual prejudice as a result of the delay involved in his case; and (2) even if Appellant did somehow satisfy his heavy burden of establishing the requisite prejudice, a proper balancing of the case-specific circumstances involved nonetheless did not and would not support a conclusion his due process rights were violated by the delay.

Appellant contends all three judges that declined to dismiss his case based on pre-indictment delay reversibly erred by failing to do so. As support for that contention, Appellant maintains he suffered—contrary to the findings of the three judges presented with his dismissal motions—substantial actual prejudice as a result of the roughly four-year period of delay between the time he was arrested and indicted in connection to the Sunoco robbery. Furthermore, Appellant maintains the purported lack of justification for that period of delay established it "violated fundamental concepts of justice and the community's sense of fair play" and, thus, his due process rights were violated by the pre-indictment delay in his case. To the contrary, the judges who were presented with Appellant's dismissal motions correctly declined to impose the extreme sanction of dismissal because: (1) Appellant failed to establish he suffered substantial actual prejudice as a result of the pre-indictment delay involved in his case; and (2) even if Appellant did somehow satisfy his heavy burden of establishing the requisite prejudice, a proper balancing of the circumstances involved did not and would not support a conclusion his due process rights were violated by the delay. Under such circumstances, the judges in Appellant's case did not abuse their discretion by declining to dismiss his charges based on the pre-indictment delay involved, and their rulings on the matter were fully supported by the evidence and testimony presented to them. Appellant's convictions should be affirmed.

Pursuant to the United States Constitution and the South Carolina Constitution, no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. V; U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. Through the constitutional guarantee of due process, a criminal defendant is entitled to a criminal proceeding that is fundamentally fair. See California v. Trombetta, 467 U.S. 479, 485 (1984) ("Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness.").

In the context of delay between the commission of a crime and the issuance of an indictment, due process "plays a limited role in protecting against oppressive pre-indictment delay." State v. Brazell, 325 S.C. 65, 72, 480 S.E.2d 64, 68 (1997); see United States v. Lovasco, 431 U.S. 783, 789 (1977) (recognizing "the Due Process Clause has a limited role to play in protecting against oppressive delay"). However, delay alone is *not* sufficient to demonstrate a due process violation. Jones v. Angelone, 94 F.3d 900, 907 (4th Cir. 1996). Instead, when determining whether a particular period of pre-indictment is violative of due process, a two-prong inquiry must be applied. Brazell, 325 S.C. at 72, 480 S.E.2d at 68.

Pursuant to the first prong of the analysis, the defendant bears the burden of establishing the pre-indictment delay caused "substantial actual prejudice" to the defendant's ability to receive a fair trial. State v. Lee, 375 S.C. 394, 397, 653 S.E.2d 259, 260 (2007). Critically, that burden is a heavy one and requires the defendant to prove the existence of actual—as opposed to theoretical or speculative—prejudice that meaningfully impaired the defendant's ability to defend against the charges to such an extent the criminal proceeding was likely affected. Id. at 397-398, 653 S.E.2d at 260-261; see Jones, 94 F.3d at 907 ("This is a heavy burden because it requires not only that a defendant show actual prejudice, as opposed to mere speculative

prejudice, . . . but also that he show that any actual prejudice was *substantial*—that he was meaningfully impaired in his ability to defend against the state's charges to such an extent that the disposition of the criminal proceeding was likely affected." (citations omitted)).

When a claim of substantial actual prejudice is predicated on the unavailability of a witness, the defendant must prove several things for the claim to be a viable one. Brazell, 325 S.C. at 73, 480 S.E.2d at 69. Specifically, the defendant must: (1) identify the witness that would have been called but for the delay; (2) demonstrate with specificity the expected contents of the witness's testimony; (3) establish the defense made "serious attempts" to locate the witness; and (4) show the information that would have been provided by the witness was not available from any other sources. Id. Meanwhile, "[v]ague and conclusory allegations of prejudice resulting from the passage of time and the absence of witnesses are insufficient to constitute a showing of actual prejudice stemming from pre[-]indictment delay." United States v. Brown, 742 F.2d 359, 362 (7th Cir. 1984) (citation and internal quotations omitted).

If—and only if—the defendant satisfies the heavy burden of establishing the existence of substantial actual prejudice, the analysis shifts to the second prong. Brazell, 325 S.C. at 72, 480 S.E.2d at 68; see Jones, 94 F.3d at 907 ("[I]n order to maintain a due process claim the defendant must show actual prejudice. . . . It is incumbent upon the defendant, if he is to prevail upon such a claim, to establish that he has been so prejudiced."). Pursuant to that second prong, most states and federal courts require a defendant to—in addition to providing substantial actual prejudice—also demonstrate the pre-indictment delay resulted from an *intentional* effort on the part of the State to obtain an unfair tactical advantage. See Lee, 375 S.C. at 401, 653 S.E.2d at 262 (Toal, C.J., dissenting) ("In accordance with the majority of the federal circuits that have addressed the issue, I would hold that pre-indictment delay does not violate the Fifth Amendment's due

process clause unless a defendant can show both actual prejudice and that the State has intentionally delayed the issuance of an indictment in order to gain an unfair tactical advantage."); see also United States v. Gouveia, 467 U.S. 180, 192 (1984) ("[T]he Fifth Amendment requires dismissal of an individual . . . *if* the defendant can prove that the Government's delay in bringing the indictment was a deliberate device to gain an advantage over him and that it caused him actual prejudice in presenting his defense." (emphasis added)); Jones, 94 F.3d at 905 ("[E]very circuit, other than our own and the Ninth Circuit, has indeed held that, in order to establish that a lengthy pre-indictment delay rises to the level of a due process violation, a defendant must show not only actual substantial prejudice, but also that the government intentionally delayed the indictment to gain an unfair tactical advantage or for other bad faith motives." (citations and internal quotations omitted)).

However, in South Carolina, a showing of prosecutorial bad faith has been determined *not* to be required to demonstrate a due process violation based on pre-indictment delay. Lee, 375 S.C. at 399, 653 S.E.2d at 261. Instead, pursuant to our state's more-lenient version of the second prong, the trial judge "must consider the prosecution's reasons for the delay and balance the justification for delay with any prejudice to the defendant." Brazell, 325 S.C. at 72, 480 S.E.2d at 68-69. When conducting such a case-specific balancing test, "the basic inquiry then becomes whether the government's action in prosecuting after substantial delay violates fundamental conceptions of justice or the community's sense of fair play and decency." Id. at 73, 480 S.E.2d at 69 (citations, brackets, and internal quotations omitted)). Necessarily, that determination involves "a delicate judgment based on the circumstances on each case." United States v. Marion, 404 U.S. 307, 325 (1971).

In the case sub judice, a period of four years and twenty-two days elapsed between Appellant's arrest in connection to the January 2018 Sunoco robbery and the Charleston County Grand Jury's issuance of indictments related to that incident. Although that period of pre-indictment delay was seemingly longer than typical or expected, Appellant's due process rights were nonetheless not violated by the delay under the case-specific circumstances involved because: (1) Appellant failed to establish he suffered substantial actual prejudice as a result of the delay; and (2) even if Appellant could somehow meet that heavy burden in his case, a proper balancing of the circumstances involved did not support a conclusion his due process rights were violated by the delay. Therefore, the extreme sanction of dismissal—just as the judges in Appellant's case concluded—was not warranted, and Appellant's dismissal motions were properly rejected each and every time they were advanced.

Initially, turning to the first prong of the applicable analysis, Appellant—in his effort to establish the requisite substantial actual prejudice—primarily pointed to the loss of the testimony of Maschke, who was with Appellant at the time of his arrest and died roughly sixteen months later. As to why Maschke's testimony was purportedly so crucial, Appellant claimed he could have offered insight into Appellant's level of intoxication at the time of his arrest, which was supposedly pertinent to the issue of whether Appellant's subsequent confession to law enforcement was voluntarily made. Importantly though, Appellant failed to establish—as was necessary for any further analysis to be warranted—either Maschke's testimony was unavailable from any other source or its absence meaningfully impaired the defendant's ability to defend against the charges to such an extent the criminal proceeding was likely affected.

Most significantly, that is true because Appellant's condition at the time of his interview with law enforcement following his arrest was something that was both auditorily-and-visually

recorded and could be testified by multiple other people, including *Appellant himself*. In light of that, Maschke—who was only theoretically capable of providing insight regarding Appellant's condition at the time of arrest—could not provide any testimony about Appellant's degree of intoxication that could not be established via other independent means. See Brazell, 325 S.C. at 73, 480 S.E.2d at 69 (explaining a defendant claiming prejudice based on the unavailability of a witness must establish—amongst other things—"the information the witness would have provided was not available from other sources"). Moreover, even if Maschke had been present for Appellant's trial, Appellant's appropriate responses and behavior as reflected through the interview recording demonstrated he was not—if intoxicated at all—impaired to such a degree the voluntariness of his confession would or could have been impacted, and such a conclusion was further supported by the fact Appellant—who presumably knew more about how he was feeling at the time of the interview than anyone else—personally only described himself as being "a little high" when he spoke with the officers following his arrest. See State v. Saxon, 261 S.C. 523, 529, 201 S.E.2d 114, 117 (1973) ("Proof of intoxication, short of rendering the accused *unconscious of what he is saying*, goes to the weight and credibility to be accorded to the confession, but does not require that the confession be excluded from evidence." (emphasis added and citations and internal quotations omitted)); cf. State v. Brewer, 438 S.C. 37, 47, 882 S.E.2d 156, 161 (2022) (affirming the trial judge's decision to admit statements Brewer made to law enforcement *prior to* becoming incoherent while explaining "the trial court understood the relevance of intoxication and rendered its decision based on our case law that requires a degree of intoxication sufficient to render a person incapable of comprehending what she is doing"). Resultantly, Maschke's absence did not and could not meaningfully impair Appellant's defense in any way, and, therefore, Appellant—just as the judges recognized when rejecting his dismissal

motions—failed to establish he suffered the degree of prejudice necessary to support a finding his due process rights were violated as a result of pre-indictment delay.[13]

In addition to his claims regarding Maschke, Appellant—for the first time during trial—also pointed to the loss of the testimony of his ex-girlfriend, who the State was unable to locate for trial, and the Sunoco store manager, who was not present at the time of the robbery and died roughly a year before trial, as additional sources of substantial actual prejudice to his case. However, in doing so, Appellant did not indicate he had made *any* efforts—serious or otherwise—at *any* point to secure the testimony of either witness, and Appellant further failed to explain what testimony he expected the witnesses to provide that could have actually aided the defense. See Brazell, 325 S.C. at 73, 480 S.E.2d at 69 (explaining a defendant claiming prejudice based on the unavailability of a witness must—amongst other things—"demonstrate, with specificity, the expected content of that witness' testimony" and "establish that he made serious attempts to locate the witness"). As a result, Appellant failed to meet his heavy burden of establishing the absences of those witnesses caused substantial actual prejudice that meaningfully impaired his defense as was necessary to warrant dismissal for pre-indictment delay. See Brown, 742 F.2d at 362 (explaining vague and conclusory allegations of prejudice in

---

[13] On appeal, Appellant appears to suggest the second circuit court judge who rejected his request for dismissal based on pre-indictment delay abused her discretion by concluding she had no discretion to alter the first circuit court judge's ruling on the matter. (App. Br. p. 9). Importantly though, defense counsel identified the *exact same basis* in support of his claim of substantial actual prejudice to both circuit court judges without identifying anything new that would have warranted a different conclusion on the matter when he repeated the claim for the second time. (First Motion to Dismiss, p. 3; Second Motion to Dismiss, pp. 3-4). Under such circumstances, it is unclear upon what legitimate basis the second circuit court judge could have validly reached a different conclusion from the first circuit judge's conclusion as to substantial actual prejudice since the same exact facts and arguments were presented to both of them. See Rule 4(b), SCRCrimP ("If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void.").

connection to absent witnesses are not sufficient to constitute a showing of substantial actual prejudice stemming from pre-indictment delay).

Because Appellant did not and could not meet his burden of establishing substantial actual prejudice, he was not entitled to dismissal of his charges due to pre-indictment delay, and no further analysis on the matter was or is necessary. Cf. United States v. Royals, 777 F.2d 1089, 1090-1091 (5th Cir. 1985) ("Because defendant has failed to meet his burden of showing actual and substantial prejudice, we need not examine the reasons for the delay."). However, even assuming the requisite degree of prejudice had somehow been established in Appellant's case, the second prong of the analysis involving consideration of the reasons for the delay likewise did not and would not support a finding of a due process violation under the specific circumstances involved. Critically, looking to the reasons for the delay, some of it resulted from active plea negotiations designed to resolve all *ten* of Appellant's pending charges that stemmed from a variety of different close-in-time incidents—including the Sunoco robbery—while other portions of it stemmed from the sudden widespread onset of a global pandemic that necessitated emergency measures, including the temporary suspension of the grand jury. See United States v. Sanfilippo, 572 F. Supp. 3d 1269, 1282 (S.D. Fla. 2021) (declining to dismiss based on purported pre-indictment delay and explaining "[t]he Government was delayed in seeking its indictment, not because of any deliberate stratagem, but because a global pandemic that killed hundreds of thousands of Americans forced our Court to shut down the grand jury"); cf. People v. Garcia, 822 N.Y.S.2d 322, 325 (N.Y. App. Div. 2006) ("Defendant's attempts to negotiate a favorable preindictment plea may have contributed to the delay."). Meanwhile, some of the delay resulted from the State's unintentional oversight in failing to submit the indictments related to the Sunoco robbery to grand jury sooner, but the defense was at least partly to blame for the State's failure to

do so because defense counsel knowingly allowed both the solicitor assigned to the case following a staffing change and the circuit court judge who scheduled the case for trial to take actions based on a *mistaken* belief indictments had already been issued without doing anything to correct that error. See United States v. Moran, 759 F.2d 777, 782 (9th Cir. 1985) ("If mere negligent conduct by the prosecutors is asserted, then obviously the delay and/or prejudice suffered by the defendant will have to be greater than that in cases where recklessness or intentional governmental conduct is alleged."); cf. People v. Canosa, 598 N.Y.S.2d 784, 785 (N.Y. App. Div. 1993) (finding delay caused by a prosecutor's mistaken belief regarding the status of an indictment was properly excluded from a speedy trial analysis because "[d]efense counsel, an officer of the court, knew [the prosecutor's] statement [about the indictment] to be untrue, but chose to remain silent"). When those circumstances are considered in conjunction with the minimal—if any—prejudice caused to the defense by the pre-indictment delay in Appellant's case, Appellant's prosecution roughly forty-eight months after he robbed the Sunoco store did not violate fundamental conceptions of justice or the community's sense of fair play or decency. Cf. Jones, 94 F.3d at 910 ("Even if Jones had established he was actually and substantially prejudiced by the pre-indictment delay, he still would not be entitled to relief under the Due Process Clause, because he has also failed to satisfy [the] second requirement that, balancing the prejudice to the defendant against the state's reason for the delay, the delay violated fundamental conceptions of justice or the community's sense of fair play and decency." (citation, brackets, and internal quotations omitted)). As a result, Appellant's due process rights were not violated even if he somehow had been able to meet his heavy burden of establishing the existence of substantial actual prejudice due to the pre-indictment delay in his case.

For all those reasons, all three judges who considered Appellant's motion seeking dismissal based on pre-indictment delay correctly declined to impose that extreme sanction because, under the circumstances involved, Appellant's due process rights were not violated despite the roughly four-year delay between his arrest and indictment in connection to the Sunoco robbery. See Marion, 404 U.S. at 324 (explaining not "every delay-caused detriment to a defendant's case should abort a criminal prosecution"); United States v. Baker, 424 F.2d 968, 970 (4th Cir. 1970) ("[A] mere showing of delay in indictment and arrest is not sufficient to show a constitutional violation[.]"); cf. United States v. Brock, 782 F.2d 1442, 1444 (7th Cir. 1986) ("Since the pre-indictment delay did not prejudice Brock's defense, we conclude that the government did not violate due process by indicting Brock over four years after his arrest."); United States v. Medina-Arellano, 569 F.2d 349, 352-353 (5th Cir. 1978) (concluding the defendant failed to establish he was prejudiced by four years of pre-indictment delay and, thus, concluding the delay was neither fundamentally unfair nor violative of due process). Appellant's convictions should be affirmed.

II.

The three circuit court judges who were presented with Appellant's speedy trial dismissal motions did not abuse their broad discretion by declining to dismiss Appellant's charges because the approximately forty-eight-month period of delay between Appellant's arrest and trial did not result from any intentional efforts on the part of the State to hinder Appellant's defense, did not cause any meaningful prejudice to Appellant, and resulted in large part from difficulties caused by the unexpected onset of a global pandemic.

Appellant contends all three circuit court judges involved in his case erred by failing to dismiss his charges based on an alleged violation of his constitutional speedy trial rights. In support of that contention, Appellant maintains his charges should have been dismissed based on the delay incurred between his January 2018 arrest and March 2022 trial because that delay was purportedly presumptively prejudicial, the justifications for it were allegedly unsatisfactory, he properly asserted his right to a speedy trial on multiple occasions, and his defense was supposedly actually prejudiced by the delay due to the unavailability of several witnesses. To the contrary, the circuit court judges in no way abused their discretion by refusing to dismiss Appellant's case based on an alleged speedy trial violation because the forty-eight-month period of delay involved was not the result of any willful or intentional efforts on the part of the State to hinder Appellant's defense, did not result in any meaningful prejudice to Appellant, and resulted in large part from difficulties caused by a global pandemic. Under such circumstances, Appellant's constitutional speedy trial rights were not violated, and the extreme sanction of dismissal was not warranted. Appellant's convictions should be affirmed.

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally-guaranteed right to a speedy trial. See U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]"); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right to a speedy and public trial[.]"). That right is designed to protect against anxiety

stemming from public accusation of a crime and to limit the possibility of a lengthy pre-trial delay impairing an accused's defense. State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012). However, most importantly, the right to a speedy trial is chiefly designed to prevent undue pre-trial impairment of liberty. See United States v. Loud Hawk, 474 U.S. 302, 312 (1986) ("[T]he Speedy Trial Clause's core concern is impairment of liberty[.]"). Critically though, the criminal trial process is designed to move at a deliberate pace due to the many procedural safeguards involved, and, thus, the essential guarantee provided by the right to a speedy trial is the orderly expedition of a charge as opposed to mere speedy expedition. United States v. Ewell, 383 U.S. 116, 120 (1966); see Beavers v. Haubert, 198 U.S. 77, 87 (1905) ("The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.").

In order to trigger a speedy trial analysis, a criminal defendant's trial must have been delayed for a period of time that is presumptively prejudicial, which is necessarily dependent on the particular circumstances of *each individual case*. Langford, 400 S.C. at 442, 735 S.E.2d at 482. Notably, "a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case." Id. In South Carolina, a delay of over two years—under *normal* circumstances—has previously been found to be sufficient to trigger a speedy trial analysis. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain circumstances—be presumptively prejudicial. See Doggett v. United States, 505 U.S. 647, 652 n.1 (1992) ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches

one year.”). However, even where a delay that is presumptively prejudicial exists, a speedy trial determination “is *not based on the passage of a specific period of time*” and delay alone is not singularly dispositive. State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (emphasis added); see Brazell, 325 S.C. at 75, 480 S.E.2d at 70 (recognizing “delay alone is not dispositive”); see also Ratchford v. State, 785 A.2d 826, 828 (Md. Ct. Spec. App. 2001) (“Along the delay continuum, the trigger of ‘constitutional dimensions’ is not itself part of the ultimate merits of a speedy trial claim. It simply marks the minimal point, short of which a court will dismiss a claim summarily and will not waste its time even inquiring into such things as reason for delay, demand-waiver, or prejudice. Beyond that minimal or triggering point, however, the claim may not necessarily have merit, but it is worthy at least of thoughtful consideration. The trigger of ‘constitutional dimensions’ is exclusively a procedural phenomenon that justifies a further analysis and then drops out of the picture.”).

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant’s speedy trial rights have been violated is necessarily dependent on the specific circumstances of the defendant’s particular case. State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). When attempting to answer that question, several factors should be considered. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Specifically, a court analyzing a speedy trial claim should consider: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) whether any prejudice was suffered by the defendant as a result of the delay. Barker v. Wingo, 407 U.S. 514, 530 (1972). Notably though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, “they are related factors and must be considered together with such other circumstances as may be relevant.” Id. “In sum, these

factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." Id.

In the case at bar, a period of roughly forty-eight months elapsed between Appellant's January 2018 arrest in connection to the Sunoco robbery and his March 2022 trial related to that incident. Looking to that period of delay, it was likely sufficiently lengthy to warrant consideration of the relevant speedy trial factors by the circuit court judges. See id. at 530 ("Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."); Brazell, 325 S.C. at 75, 480 S.E.2d at 70 (recognizing the length of the delay may be sufficient to trigger review of the relevant speedy trial factors); cf. Waites, 270 S.C. at 108, 240 S.E.2d at 653 (finding a delay of twenty-eight months sufficient to warrant review of the pertinent factors in a speedy trial analysis). However, it was not excessively or unreasonably long in light of the unusual circumstances of Appellant's case, which was one that had to be prosecuted during the midst of a crisis caused by an unexpected global pandemic. Cf. Elias v. Superior Ct., 294 Cal. Rptr. 3d 178, 190 (Cal. Ct. App. 2022) ("Courts have recognized that health quarantines to prevent the spread of infectious diseases have long been recognized as good cause for continuing a trial date. A contrary holding would require trial court personnel, jurors, and witnesses to be exposed to debilitating and perhaps life-threatening illness. Public health concerns trump the right to a speedy trial. We acknowledge the unfortunate hardship to defendant from the delays in this case, but . . . neither the prosecution nor the court is responsible for the emergency that has overwhelmed the nation and much of the world." (citations, brackets, and internal quotations omitted)). As a result, the length of the delay involved—the first of the relevant factors in a speedy trial analysis—did not and should not weigh heavily against the State for purposes of a speedy trial analysis.

Turning to the second of the relevant factors, some portion of the delay *prior to* the onset of the global pandemic was incurred as part of the normal process involved in getting any criminal case ready to go to trial and could not legitimately be held against the State for speedy trial purposes. See Ratchford, 785 A.2d at 830 (explaining the initial seven-month period of time between the date of the arrest and the case initially being scheduled for trial was "necessary for the orderly administration of justice and is not considered an unreasonable delay that calls for further accounting"); see also State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State's prosecution). Similarly, a significant portion of the initial delay was caused by the solicitor and defense counsel engaging in good faith plea negotiations on Appellant's behalf, and several of those months of delay were caused by defense counsel requesting for a plea offer expiration date to be extended to allow *additional time* for it to be considered. See Vermont v. Brillon, 556 U.S. 81, 92-93 (2009) (recognizing delays caused by defense counsel's actions are attributable to the defendant and not the State when conducting a speedy trial analysis); see also State v. Dukes, 256 S.C. 218, 223, 182 S.E.2d 286, 288 (1971) ("The delay must be attributable to the State before the appellants can complain."); cf. United States v. Anderson, 902 F.2d 1105, 1110 (2d Cir. 1990) (finding no speedy trial violation where "defense counsel agreed to delays and continuances for purposes of plea negotiations"); State v. Carlson, 258 N.W.2d 253, 259 (N.D. 1977) (concluding no violation of the defendant's speedy trial rights occurred because "[t]he record clearly show[ed] that the defendant or his counsel were the cause for the delay of the trial, or agreed to a delay"); People v. LoPizzo, 543 N.Y.S.2d 88, 88 (N.Y. App. Div. 1989) (rejecting a claim of a constitutional speedy trial violation when "[n]early all of the preindictment delay was directly attributable to the defendant's repeated

requests for adjournments so that plea negotiations could be considered"). Furthermore, some of the pre-pandemic delay resulted from defense counsel's acquiescence in a court-initiated continuance of the case. See Barker, 407 U.S. at 535 (considering a defendant's acquiescence to delay when conducting a speedy trial analysis). Then, as a result of the global pandemic, the trial courts in Charleston County were shut down from March of 2020 until September of 2021, which was a circumstance entirely beyond the control of the solicitor, the court, or Appellant himself and was not something that could be fairly held against *any* party for purposes of a speedy trial analysis. See State v. Paige, 977 N.W.2d 829, 838 (Minn. 2022) ("[W]e conclude that trial delays due to the statewide orders issued in response to the COVID-19 global pandemic do not weigh against the State."); Vlahos v. State, 518 P.3d 1057, 1072 (Wyo. 2022) ("Delays due to COVID-19 pandemic are neutral because the pandemic was an extraordinary circumstance not attributable to either the State or [the defendant]." (citation and internal quotations omitted)). Beyond that, some portion of the post-pandemic delay resulted from the need to reassign Appellant's case to a new solicitor following the departure of the original one handling the matter, which was a period of delay that could only be held slightly against the State if it could fairly be held against the State at all. See Strunk v. United States, 412 U.S. 434, 436 (1973) (instructing factors leading to unintentional delays such as "understaffed prosecutors" should be weighed less heavily than intentional delays in a speedy trial analysis); Manix v. State, 895 So. 2d 167, 176 (Miss. 2005) ("The State's discretion as to which prosecutor will try a particular case is a basic tenet of our criminal justice system. This Court has never held that the State's replacement of prosecutors amounts to a speedy trial violation warranting a reversal of a criminal conviction. Therefore, this factor is slightly weighed against the State."); Hallowell v. State, 178 A.3d 610, 628 (Md. Ct. Spec. App. 2018) (finding the resignation of the original

prosecutor assigned to the case, which resulted in delays that were needed for a new prosecutor to get familiar with and prepare the case for trial, constituted a more neutral reason for delay in a speedy trial analysis and only weighed slightly against the State). Likewise, some of the delay incurred after jury trials resumed in Charleston County in September of 2021 resulted from the post-pandemic condition of the docket, and, due to that, the earliest Appellant's case could conceivably be tried was the end of January of 2022. See Langford, 400 S.C. at 444, 735 S.E.2d at 483 (recognizing the limited availability of terms of court can constitute a valid reason for delays); see also Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966) ("A speedy trial does not mean an immediate one; it does not imply undue haste, for the state, too, is entitled to reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay."); cf. State v. Chapman, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) ("A portion of the delay was caused by the normal condition of the docket. . . . The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay."). Finally, the delay incurred between the planned January 2022 trial date and the ultimate March 2022 trial date resulted from the newly-assigned solicitor's mistaken-but-good-faith belief indictments had already been issued in connection to the Sunoco robbery, and, significantly, defense counsel at least partially contributed to the delay that resulted from that error by allowing it to go uncorrected despite being aware of it. See Reaves, 414 S.C. at 130, 777 S.E.2d at 219 (explaining deliberate attempts to create delay to injure the defense should be weighed heavily against the State while neutral reasons, such as *mere negligence*, should be weighed *less* heavily); see also State v. Tyson, 283 S.C. 375, 377-378, 323 S.E.2d 770, 771 (1984) (considering the fact Tyson's actions contributed to the delay when conducting a speedy trial analysis); cf. Canosa, 598 N.Y.S.2d at 785 (excluding delay caused by a prosecutor's mistaken

belief regarding the status of an indictment from a statutory speedy trial analysis due to the fact defense counsel was aware of the prosecutor's confusion but remained silent instead of correcting it). Therefore, when considering the actual reasons underlying all the delay involved, the non-willful and non-intentional period of delay incurred prior to Appellant's trial did not warrant a finding Appellant's speedy trial rights were infringed.

Turning to the third of the relevant factors, Appellant unquestionably did raise a speedy trial dismissal claim at various points, but, significantly, he waited to first do so until twenty-eight months after his arrest *and* after trials were suspended—and, thus, could not possibly be conducted—due to the pandemic. See Waites, 270 S.C. at 109, 240 S.E.2d at 653 (considering the length of time Waites waited before first attempting to assert his speedy trial rights and characterizing it as "significant" when conducting a speedy trial analysis); cf. Osman v. Commonwealth, 883 S.E.2d 249, 277 (Va. Ct. App. 2023) ("[T]he third Barker factor—assertion of the right to a speedy trial—weighs only moderately in [Osman]'s favor due to the timing and frequency of his assertions. Despite having already spent sixteen months in jail, [Osman] did not assert his right to a speedy trial until March 25, 2020, only after the Supreme Court issued its first emergency order and the trial court administratively adjourned this case to a status date on May 21, 2020, in connection with the COVID-19 pandemic."). And, once jury trials finally resumed after the pandemic-caused shutdown in Charleston County, Appellant did not renew his speedy trial dismissal motion until just before his trial was set to commence *despite* being aware it could not truly go forward due to the solicitor's mistaken—but correctable—belief about the indictments, and, even without any corrective actions from defense counsel, Appellant's trial was *still* able to go forward only a few weeks later. See Brillon, 556 U.S. at 90-91 ("Because the attorney is the defendant's agent when acting, or failing to act, in furtherance of the litigation,

delay caused by the defendant's counsel is also charged against the defendant." (citation, brackets, and internal quotations omitted)); see also Langford, 400 S.C. at 440, 735 S.E.2d at 481 (recognizing delay is not an uncommon defense tactic); cf. Henderson v. Commonwealth, 563 S.W.3d 651, 665 (Ky. 2018) ("Henderson did, both in writing and verbally, assert his constitutional right to a speedy trial. Yet aside from those steps, all his actions seem intent upon causing delay and utilizing that delay to his defense's advantage. Thus, Henderson's invocation was less than 'vigorous.' "); Salahuddin v. State, 592 S.E.2d 410, 413 (Ga. 2004) ("[Salahuddin] did not assert his right to a speedy trial until fifteen months after indictment, which was nine months before the trial court heard pretrial motions. Accordingly, this particular factor, though not dispositive, must be balanced against [Salahuddin]'s interest."); State v. Barnes, 431 S.C. 66, 88, 846 S.E.2d 389, 400 (Ct. App. 2020) (finding the factor related to the assertion of speedy trial rights weighed against Barnes because he did not assert his speedy trial rights after his case was sent back for a retrial until just two months before his second trial was set to commence), aff'd as modified, 436 S.C. 202, 871 S.E.2d 421 (2022); Robinson, 335 S.C. at 626, 518 S.E.2d at 272 (considering the fact "Robinson's trial began only ten months after his first motion [asserting his right to a speedy trial] was filed" in finding no speedy trial violation occurred in Robinson's case). Thus, considering the delayed nature of Appellant's initial assertion of his speedy trial rights, his actions that were inconsistent with a genuine desire for anything other than dismissal, and his relatively prompt receipt of a trial just after the earliest available opportunity for one, Appellant's assertion of his speedy trial rights did not weigh convincingly in his favor and could not have legitimately supported a finding those rights were violated.

Finally, turning to the fourth of the relevant factors, Appellant's claims of prejudice were primarily focused on the prejudice incurred due to the loss or unavailability of several witnesses,

including Maschke. Importantly though, Maschke's death occurred less than a year and a half after Appellant's arrest and before Appellant's case could realistically be brought to trial. Cf. Reaves, 414 S.C. at 132, 777 S.E.2d at 220 (concluding Reaves's claim evidence was lost as a result of delays was not supported by the record when the evidence was most likely lost earlier during the investigation as opposed to later). Meanwhile, the loss or unavailability of the store manager and Greene appeared to hamper the State more than the defense and, thus, did not truly prejudice Appellant. See Robinson, 335 S.C. at 626, 518 S.E.2d at 272 ("[L]ost witnesses and documents are also disadvantages that hamper the State."). Furthermore, although Appellant remained incarcerated for some period between his arrest and trial before he was able to obtain release on bond, Appellant did receive full credit toward his sentence for *all* the time between his arrest and trial, which helped to minimize any harm that could have resulted from the delay in his case. Cf. Millard v. Lynaugh, 810 F.2d 1403, 1406-1407 (5th Cir. 1987) (concluding the prejudice resulting from pre-trial incarceration was mitigating by the fact Millard received credit for the time served in pre-trial detention towards his sentence); State v. Monroe, 262 S.C. 346, 350, 204 S.E.2d 433, 435 (1974) (considering the fact Monroe received full credit for the time he spent incarcerated prior to his trial in finding his speedy trial rights were not violated). Therefore, because Appellant's defense was not truly hampered by any of the delay and because he did not suffer any undue prejudice as a result of the delay, Appellant was not sufficiently prejudiced by the delay between his arrest and trial to justify a finding his constitutional speedy trial rights were violated.

Accordingly, because the relevant circumstances in Appellant's case—including the fact it had to be prosecuted during a global pandemic that necessitated a lengthy shutdown of South Carolina's trial courts and grand juries—do not support a conclusion the forty-eight month

period of delay was the result of any intentional or willful actions on the part of the State or resulted in any undue prejudice to Appellant, Appellant's speedy trial rights were not violated. Cf. Loud Hawk, 474 U.S. at 317 ("We cannot hold, on the facts before us, that the delays asserted by respondents weigh sufficiently in support of their speedy trial claim to violate the Speedy Trial Clause. They do not justify the severe remedy of dismissing the indictment."); Robinson, 335 S.C. at 626-627, 518 S.E.2d at 272 (finding—despite a total period of delay of five years—no speedy trial violation occurred when Robinson was tried within one year of his first assertion of his speedy trial rights, adequate justification was presented for delay, and no evidence of actual prejudice was introduced). Based on that, the circuit court judges who considered Appellant's various dismissal motions did not abuse their discretion by refusing to impose the extreme—and unwarranted—sanction of dismissal in Appellant's case. See Langford, 400 S.C. at 442, 735 S.E.2d at 482 ("A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion."); cf. State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years); State v. Cooper, 386 S.C. 210, 217-218, 687 S.E.2d 62, 66-67 (Ct. App. 2009) (affirming the denial of Cooper's speedy trial motion where the delay in bringing the case to trial was at least forty-four months). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY:____________________________
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

March 20, 2023