

Apr 11 2023

SC Court of Appeals

FILED

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF GENERAL SESSIONS  
FOR THE NINTH JUDICIAL CIRCUIT

2023 APR 10 AM 9:03

Plaintiff,

JULIE J. ARMSTRONG  
CLERK OF COURT

Warrant No(s): 2018A1021000743;  
2018A1021000482; 2018A1021000243;  
2018A1021000244;

vs.

BY MSS

Indictment(s): 2018GS1006307; 2018GS1004451;  
2018GS1004448; 2018GS1004450;  
2018GS1006313

JUAN MANUEL  
RAMIREZ SANDOVAL,

ORDER ON DEFENSE  
MOTION FOR SPEEDY TRIAL  
AND FOR DISMISSAL

Defendant.

This matter comes before the Court on Defense’s Motion for Speedy Trial. A hearing was held on January 31, 2023, and all parties were present in person. For the reasons set forth below, the Court GRANTS the Defense’s motion to dismiss charges against Juan Ramirez Sandoval (“Defendant”). The Defense’s other request for relief, a surety bond of \$40,000.00, is hereby denied as moot.

**I. Background/Procedural History**

On March 22, 2018, the Defendant was arrested on two counts of criminal sexual conduct with a minor, 1<sup>st</sup> degree, warrants 2018A1021000244 and 2018A1021000243. These cases were indicted on September 25, 2018, and October 2, 2018, respectively. When the Defendant posted bail in April 2018, he was immediately transferred to the custody of Immigration and Customs Enforcement (ICE). The Defendant was then held at an ICE detention facility in Ft. Stewart Georgia until he was extradited to South Carolina on/or about June 7, 2018, upon request of the State.

On June 9, 2018, the State filed additional charges against the Defendant: contributing to the delinquency of a minor, warrant 2018A1021000482, indicted on September 25, 2018, and a

third count of criminal sexual conduct with a minor, 1<sup>st</sup> degree, warrant 2018A1021000743, indicted on December 11, 2018. The State directly indicted the Defendant on one count of lewd act upon a minor on December 11, 2018 (indictment 2018GS1006313). The Defendant was never tried on the third count of criminal sexual conduct with a minor (warrant 2018A1021000743) or for lewd acts upon a minor (indictment 2018GS1006313). However, the Defendant was tried on two counts of criminal sexual conduct with a minor and contributing to the delinquency of a minor (warrants 2018A1021000244-243 and 2018A1021000482), during the week of February 10, 2020. On February 14, 2020, at the conclusion of trial, the jury was unable to reach a unanimous verdict, and the judge declared a mistrial. Because the Defendant and several witnesses speak Spanish, the trial was conducted with the assistance of two interpreters, in accordance with the rules of court and best practices for court interpretation.

A Guilty Plea/Status Conference was held on February 28, 2022, where the Defendant wished to formally reject the State's offer. At the hearing, the State indicated an expiration date to the offer of April 8, 2022, which coincided with the pre-trial conference. As a result, the Defendant was not able to reject the State's offer on the record. The Pre-trial Conference was held on April 8, 2022, for the trial week of May 6, 2022, and trial was continued because new defense counsel had been appointed due to the departure of the Defendant's prior counsel. There was no indication as to whether interpreters had been retained for the trial week of May 6, 2022.

In May 2022, the State, with the consent of Counsel, placed this case in its Priority Docket List for retrial during the week of August 29, 2022. This trial was to be called first that same week. As the trial date was approaching, counsel on both sides made several attempts to confirm with the Clerk of Court that interpretation for trial had been arranged. The Clerk of Court kept the parties informed of their progress throughout. Ultimately, only one of two

required interpreters was available for trial. In seeing that trial would likely fall through, counsel for the Defendant wrote to the Administrative Judge on July 14, 2022, seeking guidance regarding these issues. On July 20, 2022, at a Status Conference, Counsel for Defendant attempted to address the issues outlined in her letter from six days earlier. On that date, the Administrative Judge informed the parties that this trial would not proceed as arranged due to the ongoing issues in obtaining the adequate number of interpreters.<sup>1</sup> No further guidance was provided with respect to another date certain. On July 21, 2022, the Defense filed the Motion for Speedy Trial that is the subject of this order. This Motion was not scheduled and heard until January 31, 2023.

On the date of this hearing, upon questioning from the Court, the Defendant stated that he did not wish to plead guilty to an offer from the state of time served and asserted his right to a jury trial. The Court was also made aware that the week prior, the Clerk of Court's scheduling system – Court Plus – had automatically generated a trial date of March 6, 2023, for this trial. When the parties and the Court inquired whether interpreters were available for a trial on the week of March 6, 2023, the Clerk informed that no interpreters had responded to availability inquiries. The Defendant has remained detained without a bond.

## **II. Standard**

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy trial.” *U.S. Const. amend. VI*; *see also Klopfer v. North Carolina*, 386 U.S. 213 (1967); *Wheeler v. State*, 247 S.C. 393, 147 S.E.2d 627

---

<sup>1</sup> The court takes judicial notice that securing interpretation for trial has been an ongoing issue in this county at least since the return to court after the interruptions caused by the COVID-19 pandemic. Counsel for the State and the Defense and a representative of the Clerk of Court's office have advised that interpreters are unwilling to make the time commitments required of a week-long trial in general sessions court in light of the low pay and limited security. Interpreters are independent contractors who may and do choose to turn down work from the courts in favor of more lucrative, more secure opportunities in the private sector and in medical interpreting.

(1996). Our State's constitution also guarantees that "[a]ny person charged with an offense shall enjoy the right to a speedy and public trial." *S.C. Const. art. I, § 14*. A speedy trial means a trial without unreasonable and unnecessary delay. *State v. Langford*, 400 S.C. 421, 441, 735 S.E.2d 471, 475 (2012). In *Barker v Wingo*, the Supreme Court set out a four-part balancing test for courts to assess in determining whether a particular defendant has been deprived of his right to a speedy trial. 407 U.S. 514, 530 (1972) ("[W]e identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant."). These factors are recognized and have been adopted by the South Carolina Supreme Court. *State v. Waites*, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978). In assessing these factors, courts are not to give one more weight than another, but they must balance each one of them equally. *Barker*, 407 U.S. at 534. If a court determines a defendant's rights to a speedy trial have been violated, a dismissal of the charges "is the only possible remedy." *Id.* at 522.

### **III. Discussion**

#### **A. The Length of Delay Triggers the Speedy Trial Analysis**

To determine if the delay is presumptively prejudicial, a court's analysis for a speedy trial claim begins with looking at the length of delay. *Langford*, 400 S.C. at 443; *Barker*, 407 U.S. at 530. A determination that the delay is unreasonable or not customary, is required to trigger the remainder of the four-part *Barker* analysis. *See Doggett v. United States*, 505 U.S. 647, 651-52 (1992) (stating that, "to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay, since, by definition, he cannot complain that the government has denied him a 'speedy' trial if it has, in fact, prosecuted his case with customary promptness.") (citations omitted). The length of time sufficient to trigger the *Barker* analysis is also dependent on the

circumstances of each case, therefore the triggering length of time will necessarily vary from case to case. *Langford*, 400 S.C. at 442.

Generally, the clock starts running on a defendant's speedy trial right when the defendant is indicted, arrested, or otherwise accused. *Id.* However, because the first trial of this case resulted a mistrial, it is appropriate for the Court to start the speedy trial clock in the retrial, from the date the trial judge declared a mistrial on the first trial. *See State v. Barnes*, 431 S.C. 66, 83-84, 846 S.E.2d 389, 397-98 (Ct. App. 2020), *aff'd*, 436 S.C. 202, 871 S.E.2d 421 (2022). The *Barnes* case is the only case where a Court in South Carolina deals with a similar question involving the attachment of speedy trial rights in a retrial. In *Barnes*, the Court of Appeals dealt specifically with the attachment of speedy trial rights following the reversal of a conviction on direct appeal. *Id.* at 82 (“[W]e agree with the circuit court’s conclusion that the date on which defendant’s speedy trial rights attach in a retrial following the reversal of a conviction on direct appeal is a novel question of law in South Carolina.”). Although *Barnes* did not squarely answer when the speedy trial right clock begins to run in the retrial after mistrial, the discussion of its analysis suggests the proposition offered by Counsel for the Defendant. *See Id.* at 83-84.

Counting from the date of mistrial, the Defendant has been waiting for a retrial for two years and eleven months. The Court takes notice that a substantial portion of the post-mistrial delay occurred during court closures and slow-downs caused by the COVID-19 pandemic. The Court, however, notes that this Defendant has been in continuous custody since the beginning of 2018 and no reliable schedule for a trial of this matter could be developed on the trial terms available before July 2023. The Court further takes notice that trials have been being regularly scheduled after the COVID interruption since the second half of 2021.

The Court finds the two-year-eleven-month delay is presumptively prejudicial and meets the threshold requirement for a speedy trial claim. In *Waites*, 270 S.C. at 108, the South Carolina Supreme Court held that a two-year-and-four-month delay in the Defendant's prosecution was sufficient to trigger the remaining analysis under *Barker*. See also *Langford*, 400 S.C. at 442 (holding that a delay of twenty-three months between arrest and trial was presumptively prejudicial and triggered the remainder of the *Barker* inquiry). This case is additionally unique in that there continues to be uncertainty as to how much longer the Defendant will have to wait to be brought to trial because of the ongoing uncertainty regarding the required interpretation. I find that the length of delays, in addition to the unique circumstances of this case, are sufficient to trigger further review of the three remaining *Barker* factors discussed below.

B. Reasons for the Delay

In considering reasons for delays, courts give different weight, depending on whether they originate from the State, the Defendant, or are neutral in nature. *Langford*, 400 S.C. at 443. Accordingly, where delays are related to the State's deliberate attempt "to delay the trial as a means of impairing the accused's ability to defend himself", the delays should be weighed heavily against the State. *Id*; *State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007). Neutral reasons for delays are not weighed as heavily against the State but count against it because, even if neutral, the "ultimate responsibility for the trial of a criminal defendant rests with the State". *Langford*, 400 S.C. at 443 (quoting *Pittman*, 373 S.C. at 549). While *Langford* shifted control of the docket to the courts, to the extent delays are controlled by forces within or beyond the courts' control, such delays must still be weighed against the State. The rule announced in *Barker* is that "which comports with constitutional principles, places the primary burden on the courts and the prosecutors to assure that cases are brought to trial." 407 U.S. at

529. Where delays are brought about by the Defendant, those delays are usually weighed heavily against him. *Vermont v. Brillon*, 556 U.S. 81, 81-82 (2009).

Counsel for the Defendant has conceded that the local Solicitor has *not* attempted to deliberately delay the Defendant's trial or impinged on his ability to exercise that right. Although coming up with an expiration date of April 8, 2022, at the Guilty Plea/Status Conference held on February 28, 2022, could have caused a delay, Counsel for the Defendant did not allege that this was a significant factor that contributed to delays. The case would have proceeded to trial during the week of May 6, 2022, provided there were two interpreters available. Counsel for the Defendant has also informed the Court that she is not aware of information pertaining to interpretation or lack thereof, for the week of May 6, 2022. The reappointment of new counsel on April 25, 2022, also did not contribute to any significant delays. Despite the continuance, all parties agreed to the August 29, 2022, date certain for a trial.<sup>2</sup> Upon this agreement, the Clerk of Court was given notice of the number of interpreters required. Ultimately, despite diligent efforts by the Clerk of Court's office, efforts to obtain interpretation were not successful and have resulted in an indefinite delay to Defendant's trial. These indefinite delays attributed to lack of interpretation (or court resources) should be counted and weighed heavily against the State as the responsibility for bringing a case to trial ultimately falls not only on our prosecutors, but on our courts. *Barker*, 407 U.S. at 529. No date certain, time frame, or other guidance were provided to the parties when interpretation was not secured in June 2022. Despite appearing neutral in nature, I find that the State's inability to bring the Defendant to trial due to the government's inability to provide appropriate legal interpretation to this Defendant is a factor that weighs heavily against the State.

---

<sup>2</sup> This trial date was agreed to in May 2022.

C. Assertion of the Right to Speedy Trial

A defendant has some responsibility in asserting his right to a speedy trial and his assertion of the right is one of the factors that courts consider in determining whether the right has been denied. *Barker*, 407 U.S. at 529. However, a defendant who fails to make a demand for a speedy trial is not automatically deemed to have waived that right forever. *Id.* at 528-30 (rejecting the demand-waiver rule as insensitive to a right deemed fundamental). In their analysis, courts are to consider the circumstances of each case and the manner in which a defendant has exercised his right. *Waites*, 270 S.C. at 108. However, “[m]erely indicating readiness to proceed with trial does not in itself constitute a formal demand of that right.” *Waites*, 270 S.C. at 109 (quoting *People v. Wyatt*, 365 N.E.2d 373, 375 (Ill. App. Ct. 1st Dist. 1977)).

On February 28, 2022, at the Guilty Plea/Status Conference, the Defendant wished to reject the State’s offer on the record. At the hearing, the State indicated an expiration date of April 8, 2022, the date of the pre-trial conference, to its offer. As a result, the Defendant did not have an opportunity to reject the offer on the record. The Defendant’s rejection had already been communicated to the prosecutor prior to April 2022. Because the Defendant asserted his innocence and did not wish to accept the State’s plea offer, he did not object when his case was put on the August 29, 2022, Priority Docket List for trial, in May 2022. As the trial date was nearing, the Clerk of Court continued to encounter issues in securing one additional required interpreter for trial. In seeing that this might affect the start date of trial, Counsel for Defendant sought guidance and intervention from the Court so that the Defendant may be tried in a timely manner. At the July 20, 2022, Status Conference, Counsel for Defendant attempted to address the issues outlined in her letter to the Administrative Judge and was informed that trial could not proceed because there were no interpreters available to cover the trial. At this hearing, the Court

also instructed the Clerk of Court to work backwards and get availability dates from interpreters for this trial. No further guidance was provided to the parties since then, and no trial dates were set by the Court. Counsel for the Defendant then filed a Motion for Speedy Trial on July 21, 2022. On January 31, 2023, at the Speedy Trial hearing, upon questioning from the Court, the Defendant stated he did not wish to enter a guilty plea to the offer of time served and, again, asserted his right to a trial through an interpreter.<sup>3</sup> The efforts described herein, indicate that the Defendant has sufficiently asserted his right to a speedy trial throughout the pendency of this case.

D. Prejudice to Defendant from Delays

Prejudice to the Defendant should be “assessed in the light of the interests of defendants which the speedy trial right was intended to protect”. *Barker*, 407 U.S. at 532. Those interests include preventing “oppressive pre-trial incarceration,” “anxiety and concern for the accused,” and “the possibility that the [accused’s] defense will be impaired” by the loss of memories. *Id.*

The Defendant has provided several examples of prejudice affecting his trial. For one, he is affected by concerns related to the seriousness of the allegations – criminal sexual conduct with a minor – and the stigma that the allegations create inside and outside of the jail. Inside the jail, he fears that others will know of the details of the accusations and the repercussions that that may have for him. Most significantly, the Defendant is prejudiced by his continued indefinite pre-trial detention and the fact that the State is unable to bring him to trial and is unlikely to be able to bring him to trial in the near future. This hinders the Defendant from presenting any defense at all.

---

<sup>3</sup> When the Defendant has appeared at hearings, including the January hearing on this motion, court interpretation has been handled by an employe of the Charleston County Public Defender’s Office who is court-certified to perform that service. Based on that employee’s other job duties and affiliation with the Defendant’s counsel, he could not properly serve as one of the interpreters for the trial of this matter.

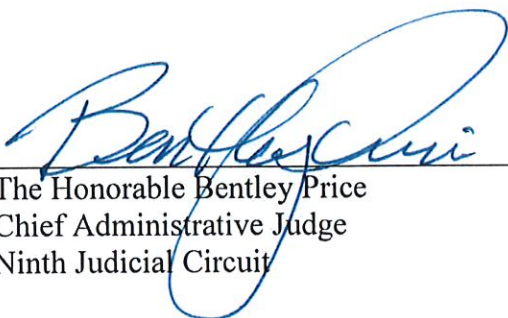
**ORDER**

Having heard argument from the Defense and the State, and upon review of all the relevant factors, the Court finds that the Defendant's rights to a speedy trial and due process under the U.S. and State Constitutions have been violated. The Court hereby:

GRANTS the Defendant's Motion for Speedy Trial and given the inability to secure certified interpreters for trial, dismisses pending charges against the Defendant.

FURTHER, the Court makes it clear today that this ruling is based on procedural matters brought before the Court, and not on the merits of the case.

IT IS SO ORDERED.

  
\_\_\_\_\_  
The Honorable Bentley Price  
Chief Administrative Judge  
Ninth Judicial Circuit

Charleston, South Carolina  
Dated: April 7<sup>th</sup>, 2023

**FILED**  
2023 APR 10 AM 9:03  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_