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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions  
The Honorable Bentley Price, Circuit Court Judge

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Appellate Case No. 2023-000590

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THE STATE,

Appellant,

v.

JUAN MANUEL RAMIREZ-SANDOVAL,

Respondent.

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**INITIAL BRIEF OF APPELLANT**

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## STATEMENT OF THE ISSUE ON APPEAL

For speedy trial purposes, intentional delays should be weighed heavily against the State, but administrative delays should be weighed less heavily and balanced with other factors. The trial court weighed the good-faith inability to secure interpreters heavily against the State and held Respondent asserted his speedy trial right "throughout" the case even though Respondent did not file a speedy trial motion until less than eight months before dismissal. Was this an error of law?

## STATEMENT OF THE CASE

On March 22, 2018, a North Charleston Municipal Judge issued arrest warrants charging Respondent Juan Manuel Ramirez-Sandoval with two counts of Criminal Sexual Conduct with a Minor in the First Degree. One warrant alleged Respondent physically forced a minor (Victim #1) to perform fellatio on him, beginning in 2008, when the victim was six years old, and continuing until 2012. (Warrant #2018A1021000244). The other alleged Respondent anally raped Victim #1, beginning in 2008 and continuing until 2012. (Warrant #2018A1021000243). Respondent was served with these warrants on March 22, 2018. (Warrants). Respondent posted bail on these charges but was taken into custody by Immigration and Customs Enforcement and held in Georgia until he was extradited back to South Carolina on June 7, 2018. (Order at 1). On May 24, 2018, an additional warrant was issued for Contributing to the Delinquency of a Minor, alleging Respondent showed pornography to Victim #1. (Warrant #2018A1021000482). Respondent was served with this warrant on June 8, 2018. (Warrant).

On August 17, 2018, a North Charleston Municipal Judge issued an additional warrant charging Respondent with Criminal Sexual Conduct with a Minor in the First Degree, alleging Respondent performed fellatio on another minor victim (Victim #2) in 2011, when the victim was 10 years old. (Warrant #2018A1021000743). Respondent was served with this warrant on August 20, 2018. (Warrant). On December 11, 2018, the State directly indicted Respondent for one

count of Lewd Act upon a Child related to Victim #2. (Indictment 2018-GS-10-06313).

Respondent was brought to trial in February 2020, less than two years after his first arrest. (Order at 1–2). On February 14, the trial ended in a hung jury and a mistrial was declared. (Order at 2). On April 3, 2020, the Supreme Court issued an order continuing all jury trials until further notice due to the Coronavirus pandemic. RE: Operation of the Trial Court During the Coronavirus Emergency, S.C. Sup. Ct. Order dated April 3, 2014.

Following the resumption of jury trials, the State and defense attempted to schedule the case for trial. A pretrial conference was held on February 28, 2022, at which the State indicated its plea offer would expire on April 28, the date set for pretrial conferences for potential trials during the week of May 6, 2022. (Order at 2). At the April 28 pretrial conference, the trial was continued because new defense counsel had been appointed. (Order at 2). The case was placed on the priority trial docket for the week of August 29, 2022, and "counsel on both sides made several attempts to confirm with the Clerk of Court that interpretation had been arranged." (Order at 2). As of July, "only one of two required interpreters was available for trial." (Order at 2–3). Defense counsel wrote a letter to the Administrative Judge for the Ninth Circuit, and a status conference was held on July 20 at which the Administrative Judge "informed the parties that this trial would not proceed as arranged due to the ongoing issues in obtaining an adequate number of

interpreters." (Order at 3). Respondent filed a motion for a speedy trial on July 21, 2022. (Motion).

A motion hearing was convened on January 31, 2023, before the Honorable Bentley Price, Circuit Court Judge. The solicitor told the court, "we were going to have a trial in August of 2022, and no interpreter. Since then, it hasn't been on the docket or anything because there's no interpreters." (Tr.p.3). At the time of the hearing, the case had been placed on the March 6, 2023 trial docket. (Tr.p.7). A status conference was held on March 3, and only one interpreter had been found for the upcoming term of court. (Timeline attached to order). At that time, the court "felt there was no alternative" and asked that an order of dismissal be prepared. (Timeline attached to order). An order of dismissal was filed on April 10, 2023. This appeal follows.

## STANDARD OF REVIEW

The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard. State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371–72 (2016). An abuse of discretion occurs when the court's decision is based on an error of law or upon factual findings that are without evidentiary support. Id.

## ARGUMENT

The trial court abused its discretion when it found a speedy trial violation prior to Respondent's second trial due to the unavailability of court interpreters, erroneously finding Respondent asserted the right "throughout the pendency of this case" and erroneously weighing the inability to secure interpreters "heavily" against the State despite the absence of bad faith or intentional delay.

The lower court abused its discretion by dismissing multiple indictments for Criminal Sexual Conduct with a Minor in the First Degree based on a delay of approximately eight months where court administration could not secure court interpreters for trial. In its order, the trial court committed errors of law by finding Respondent asserted his right to a speedy trial "throughout the pendency of this case," where Respondent did not file a speedy trial motion until less than eight months prior to the court's decision to dismiss, and by erroneously weighing the inability to secure interpreters "heavily" against the State, a punitive measure reserved for intentional or bad faith delays intended to impair the defense. This Court should reverse.

### The nature of the right.

The right to a speedy trial is guaranteed by the Sixth and Fourteenth Amendments to the Federal Constitution, and by Article 1, section 14 of the South Carolina Constitution. The right to a speedy trial is "a more vague concept than other procedural rights," making it "impossible to determine with any precision when it has been violated." Barker v. Wingo, 407 U.S. 514, 521 (1972). Accordingly, "any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case . . . ." Id. at 522.

In Barker v. Wingo, the Supreme Court adopted an "ad hoc" balancing test where the conduct of the prosecution and the defendant are weighed. Barker v. Wingo, 407 U.S. 514, 530 (1972). In Barker and subsequent cases, the Supreme Court "qualified the literal sweep of the provision by specifically recognizing the relevance of four separate enquiries: whether delay before trial was uncommonly long, whether the government or the criminal defendant is more to blame for that delay, whether, in due course, the defendant asserted his right to a speedy trial, and whether he suffered prejudice as the delay's result." Doggett v. United States, 505 U.S. 647, 651 (1992). The Barker court explained these are "some of the factors" courts should consider, along with "other such circumstances as may be relevant." Barker, 407 U.S. at 530, 533. The court explained the "amorphous quality of the right also leads to the unsatisfactorily severe remedy of dismissal of the indictment when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried." Id. at 522. In an earlier case, the court explained: "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." Beavers v. Haubert, 198 U.S. 77, 87 (1905).

In balancing the respective conduct of the parties, the Barker court distinguished between: 1) deliberate attempts to delay trial in order to hinder the defense, which should be weighted "heavily" against the government; 2) delays owing to negligence, overcrowded courts, or another "more neutral" reason, which

should be "weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government"; and 3) valid reasons, "such as a missing witness," which justify appropriate delay. Barker, 407 U.S. at 531.

#### Length of delay.

Although the constitutional right to a speedy trial attaches upon arrest or accusation, the right is fulfilled when a defendant is brought to trial. Respondent was brought to trial in February 2020, which resulted in a mistrial due to a hung jury. For purposes of a speedy trial analysis, the "length of delay" is calculated from the date of mistrial. A sufficiently long delay triggers review of the other factors. State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997).

In State v. Barnes, this Court considered a speedy trial claim where a defendant's conviction was reversed on appeal and remitted for retrial. Rejecting Barnes's argument that the length of delay should be measured by his original date of arrest, this Court explained that "courts generally measure the period of delay from the date the case was remitted from the appellate courts when conducting a speedy trial analysis in a retrial following the reversal of a defendant's conviction." State v. Barnes, 431 S.C. 66, 83, 846 S.E.2d 389, 397 (Ct. App. 2020), aff'd as modified, 436 S.C. 202, 871 S.E.2d 421 (2022). It explained "Barnes's argument that the circuit court erred in not considering the entire period between 2002 and 2017 ignores one crucial fact: Barnes received a trial in November 2010." Id. at 82–83, 846 S.E.2d at 397.

The Barnes court cited Brewington v. State, a Georgia case involving a speedy trial claim made after retrial where the first trial ended in mistrial due to a hung jury. The court explained "the relevant time frame for purposes of the instant motion to dismiss on constitutional speedy trial grounds is from the date of the mistrial . . . ." Brewington v. State, 288 Ga. 520, 520–21, 705 S.E.2d 660, 661–62 (2011). Other courts have reached the same result.<sup>1</sup> Graham v. State, 299 So. 3d 273, 287 (Ala. Crim. App. 2019) ("Graham ignores the fact that her first trial ended in a mistrial. The intervening mistrial impacts the starting date for examining the Barker v. Wingo factors. Under the circumstances, Alabama has joined the majority of jurisdictions, measuring the starting date for purposes of a speedy-trial analysis from the declaration of a mistrial."); State v. Short, 310 Neb. 81, 117, 964 N.W.2d 272, 303 (2021) ("Absent extraordinary circumstances, we do not consider the entire period of time beginning with the original charge or arrest in computing the length of the delay when there has been a mistrial.").

The trial court correctly held that, for purposes of a speedy trial analysis, the delay in this case began at Respondent's mistrial. (Order at 5). The trial court calculated the length of delay as 2 years and 11 months, beginning February 2020. (Order at 5).

#### Reason for delay.

The February 2020 date is important because, as the trial court acknowledged in its discussion of the length of delay, "a substantial portion of the

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<sup>1</sup> Courts have also reached the same result in the context of a statutory speedy trial violation. See, e.g. People v. Merrihew, 301 A.D.2d 970, 971, 755 N.Y.S.2d 462, 463 (2003).

post-mistrial delay occurred during court closures and slow-downs caused by the COVID-19 pandemic." (Order at 5). On April 3, 2020, the Supreme Court issued an order continuing all jury trials until further notice. RE: Operation of the Trial Court During the Coronavirus Emergency, S.C. Sup. Ct. Order dated April 3, 2020. On December 16, 2020, the Supreme Court amended its April 3, 2020 order, and allowed jury trials to proceed in limited circumstances in the discretion of the trial court pursuant to a safety plan approved by the Chief Justice. RE: Operation of the Trial Court During the Coronavirus Emergency (As Amended December 16, 2020), S.C. Sup. Ct. Order dated December 16, 2020. On January 6, 2021, all in-person proceedings in circuit court were suspended. Re: In-person proceedings and Jury trial in Circuit, Family, Probate, and Master-in-Equity Courts, S.C. Sup. Ct. Order dated January 6, 2021. This order was rescinded on February 26, 2021, allowing jury trials to resume on March 15, 2021, pursuant to safety protocols. Re: In-person proceedings and Jury trial in Circuit, Family, Probate, and Master-in-Equity Courts, S.C. Sup. Ct. Order dated February 26, 2021. On August 27, 2021, the Supreme Court again amended its April 3, 2020 order, removing the provision requiring a prior safety plan approval by the Chief Justice. RE: Operation of the Trial Court During the Coronavirus Emergency (As Amended August 27, 2021 16, 2020), S.C. Sup. Ct. Order dated August 27, 2021.

The trial court took judicial notice of the fact that "trials have been being regularly scheduled after the COVID interruption since the second half of 2021." (Order at 5). Thus, for a substantial portion of the time which elapsed before

Respondent's retrial, it was not possible to bring him to trial. See also Re: In-person Proceedings and Jury Trials in the Trial Courts, S.C. Sup. Ct. Order dated March 1, 2022 ("For the last two years, the South Carolina Judicial Branch has been forced to alter normal operating procedures in the trial courts due to the dangers caused by COVID-19. To protect the public, attorneys, judges, and court personnel, courts have been directed to halt or limit jury trials and in-person proceedings at various times due to rising rates of infection and percent positive rates.").

However, the trial court failed to include the delays caused by the COVID shutdown into its analysis of the reason for delay. (Order at 6–7). The COVID shutdowns were valid reasons for delay and should not weigh at all against the State. State v. Paige, 977 N.W.2d 829, 838 (Minn. 2022) (holding "trial delays due to the statewide orders issued in response to the COVID-19 global pandemic do not weigh against the State" in speedy trial analysis because COVID is an "external factor," unlike congested courts generally); United States v. Olsen, 21 F.4th 1036, 1047 (9th Cir. 2022) (recognizing pandemic as an "extraordinary circumstance" justifying delay in trial); Barker, 407 U.S. at 531 (explaining a "valid reason" will justify appropriate delay).

The trial court focused exclusively on the unavailability of court interpreters in its analysis of the reasons for delays, and this is indeed the crux of this case. The court's analysis begins in the spring of 2022, with status conferences at which the parties attempted to schedule this case for retrial. The trial court wrote in its order that the "case would have proceeded to trial during the week of May 6, 2022,

provided there were two interpreters available." (Order at 7). However, the court seemingly contradicted itself when it immediately thereafter wrote that defense counsel was "not aware of information pertaining to interpretation or lack thereof, for the week of May 6, 2022." (Order at 7). The court acknowledged that new defense counsel was appointed on April 25, 2022, but found this "did not contribute to significant delays." (Order at 7). However, earlier in its order the court wrote the May 2022 continuance was due to the fact that a new defense attorney had been appointed. (Order at 2). The timeline attached to the order of dismissal indicates Respondent's case was continued in August 2021 due to "attorney availability with the consent of the parties," removed from the September 2021 trial docket due to defense counsel's unavailability, and was removed from the January 2022 docket "due to not having two available interpreters." (Timeline attached to order of dismissal).

The trial court weighed the inability to secure interpreters "heavily against the State." (Order at 7). This was an error of law. This type of punitive measure is reserved for intentional and bad faith prosecutorial delays intended to impair the defense. See Barker, 407 U.S. at 534 (explaining government improperly delayed Barker's trial to pursue strategic advantage); Hunsburger, 418 S.C. at 348, 794 S.E.2d at 374 (2016) (same). The trial court did so despite recognizing this reason for delay "appear[ed] neutral." (Order at 7).

The inability to secure interpreters fits within the category the Barker court described as "more neutral" reasons for delays. Barker, 407 U.S. at 531. These are

delays which are not deliberate but for which the government bears the "ultimate responsibility." Id. Despite citing State v. Langford in its order, the trial court failed to correctly apply its holding. In Langford, the defendant's trial was delayed for nearly two years due in part to the prosecution's inability to locate an interpreter to enable them to communicate with the victims. Despite expressing doubts the solicitor's office used its "best efforts to secure an interpreter," the Supreme Court found there was "no evidence that it intentionally tarried in finding one." State v. Langford, 400 S.C. 421, 443, 735 S.E.2d 471, 483 (2012). The court explained that, "[a]t most, the State was negligent, and this is a neutral reason for delay which **does not weigh heavily against it.**" Id. (emphasis added). See also Kelly v. State, 305 So. 3d 1134, 1141 (Miss. 2020) (holding inability to secure court reporter was a neutral reason that weighed only "slightly" against the State); Vlahos v. State, 518 P.3d 1057, 1072 (Wyo. 2022) (holding delay "due to the court reporter's illness and COVID-19 restrictions" was neutral). Thus, the trial court's holding was directly contrary to Supreme Court precedent.

All parties agreed the State did not attempt to deliberately delay retrial. (Order at 7). Likewise, the trial court found the clerk's office made "diligent efforts" to secure interpreters. (Order at 7). In a July 8 email, a representative of the clerk's office indicated it "reached out to every interpreter that Court Administration lists for Spanish in the State and have yet to get much of a response." (Exhibit A attached to defense memorandum). In an earlier email, the clerk's office indicated it had secured two interpreters, but shortly later informed

counsel there were "no longer 2 interpreters available." (Exhibit A attached to defense memorandum). The trial court noted that interpreters are not government employees, but rather 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." (Order at 3, n.1). The court also noted the failure to secure interpreters arose "after the interruptions caused by the COVID-19 pandemic" due to "low pay and limited security." (Order at 3, n.1).<sup>2</sup>

While the ultimate responsibility rests with the government, the inability to secure interpreters in these circumstances should not weigh "heavily" against the State. At most, this failure should weigh "slightly" against the State, and should be considered alongside other factors such as the COVID shutdown and appointment of new defense counsel in April 2022. The trial court's ruling that the government's inability to secure interpreters should be weighed "heavily" against the State, as would a bad faith or intentional delay, was an error of law and abuse of discretion.

#### Assertion of the right.

The trial court found Respondent "sufficiently asserted his right to a speedy trial throughout the pendency of his case." (Order at 9). This was an error of law. Respondent did not file a speedy trial motion until July 2022. (Order at 9). Our case law identifies the filing of a formal motion as the point at which a defendant asserts his right to a speedy trial.

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<sup>2</sup> On March 9, 2023, less than one week after the trial court announced its intention to dismiss this case, the Supreme Court issued an order increasing the hourly pay for court interpreters. Re: Appointment of Qualified Court Interpreters for Non-English-Speaking Persons and Payment for their Services, S.C. Sup. Ct. Order dated March 9, 2023.

In State v. Robinson, the defendant was arrested in April 1991 and tried in 1996. State v. Robinson, 335 S.C. 620, 623–24, 518 S.E.2d 269, 271 (Ct. App. 1999). He filed a motion to dismiss for failure to prosecute in May 1995. Id. at 626, 518 S.E.2d at 272. Robinson argued he asserted his right in 1994 by writing letters to the solicitor and Chief Administrative Judge indicating he was ready for trial. Id. The Supreme Court rejected the argument, holding Robinson first asserted his right to a speedy trial in May 1995 when he filed the formal motion to dismiss. Id. The court noted Robinson's trial "began only ten months after his first motion was filed." Id. The court concluded Robinson's right to a speedy trial had not been violated, explaining he "was tried within one year of [his] first formal motion to dismiss." Id. at 626, 518 S.E.2d at 272. See also Hunsberger, 418 S.C. at 350, 794 S.E.2d at 375 (assertion of right occurred at filing of speedy trial motion); Langford, 400 S.C. at 444, 735 S.E.2d at 483 (same). While Respondent did not oppose or unduly delay his trial, he did not assert his right to a speedy trial until July 2022, well under a year before the trial court decided to dismiss this case.

#### Prejudice.

Respondent suffered the prejudice inherent in pretrial incarceration. However, there is no evidence the delay in retrial hindered his defense, which the United State Supreme Court has recognized as the "most serious" type of prejudice that can result from delay. Doggett, 505 U.S. at 654. The delay was just as likely to weaken the State's case, as victims of criminal sexual conduct often have their credibility attacked and memory questioned based on the passage of time. The State alleged the abuse of Victim #1 occurred from 2008, when the victim was 6

years old, until 2012. (Warrants). The passage of time did not benefit the State's case. Robinson, 335 S.C. at 626, 518 S.E.2d at 272 (finding no prejudice from delay and noting "lost witnesses and documents are also disadvantages that hamper the State"). While the trial court identified legitimate sources of prejudice in the anxiety and uncertainty Respondent faced from lengthy pretrial incarceration, the court did not identify any harm to Respondent's case, and Respondent offered no evidence or argument in that regard. See Barker, 407 U.S. at 534 (finding no prejudice and no speedy trial violation in part because there was "no claim that any of Barker's witnesses died or otherwise became unavailable owing to the delay").

#### Conclusion.

While the prospect of the continued inability to secure interpreters was understandably concerning to the trial court, the court's speedy trial analysis was severely flawed. When the trial court dismissed this case, there had been no speedy trial violation. See Robinson, 335 S.C. at 626, 518 S.E.2d at 272 (finding no speedy trial violation where trial was held less than one year after assertion of the right). There were other avenues available to the court, such as granting Respondent's alternative request that he be released from imprisonment. (Motion for speedy trial). At the motion hearing, defense counsel asked for a bond "and that trial be set within 90 days of today." (Tr.p.5). Instead, the court decided to dismiss the indictments with prejudice sooner than defense counsel requested, permanently barring the State from seeking justice for allegations of unspeakable crimes against two children. The order of dismissal contains multiple errors of law. The trial court abused its discretion, and this Court should reverse.

## CONCLUSION


For all the foregoing reasons, this Court should reverse and remand this case back to the trial court.

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