STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

OSMAN UVALDO JIMENEZ BENITEZ,

APPELLANT

APPELLATE CASE NO. 2021-001500

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether Appellant's fundamental right to a speedy trial was violated where Appellant was held for over two years in pre-trial incarceration without bond before his case was brought to trial, where Appellant did not contribute to the delay, and where he was prejudiced due to pretrial incarceration, anxiety, and the loss of potential witnesses in the interim?

STATEMENT OF THE CASE

Appellant Osman Uvaldo Jimenez-Benitez was arrested on November 1, 2019, for the offense of hit and run with death resulting. His case was true billed by the Jasper County Grand Jury on December 2, 2021. R. 579-580; R. 575; R. 576-578. Appellant's case was called for trial before the Honorable Bentley Price and a jury on December 6, 2021. R. 12. He was ultimately found guilty, and the trial court imposed a sentence of four (4) years with credit for 760 days of time served. R. 551, ll. 1-11; R. 563, ll. 4-7; R. 581-582.

STATEMENT OF THE FACTS

Appellant was arrested for hit and run with death resulting on November 1, 2019, for which he was denied bond.[1] R. 63, ll. 1-5; R. 575; R. 576-578. Counsel for Appellant (Counsel) subsequently filed a motion for bond, and it was again denied on February 11, 2021. R. 576-578. Further, Appellant rejected the State's offer to plead to the charged offense on February 23, 2021, and instead requested trial. R. 7, ll. 12-20; R. 576-578. Even after a scheduling conference in June 2021, Appellant's case was still not scheduled for resolution until November 1, 2021, yet the State had failed to even indict Appellant by that point. R. 7, ln. 21—R. 8, ln. 10; R. 63, ll. 10-17; R. 576-578. As a result, Counsel sought dismissal for violation of Appellant's speedy trial rights before the Honorable Carmen T. Mullen on November 4, 2021.[2]

During the hearing before Judge Mullen, Counsel informed the court of the procedural history, and discussed factors relevant to Appellant's motion to dismiss for violation of his speedy trial rights. R. 7, ln. 9—R. 9, ln. 20. The State acknowledged the age of Appellant's case, as well as the facts that the case was neither indicted nor placed on the trial docket. R. 4, ll. 12-17; R. 11-12. Despite Counsel's request for dismissal, the court ruled as follows: "I will do this. I will continue to deny his bond. He is a flight risk. We will put it on the December 6 trial docket." R. 10, ll. 16-18. Further, when Counsel sought to "make a motion on the record for a speedy trial," the court told Counsel, "Yes. I don't think you need to go through the factors. I

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1 According to Counsel, the basis of denial for Appellant's bond was that an immigration hold was placed on him. R. 63, ll. 4-9.

2 Based upon the hearing transcript, there is an apparent discrepancy regarding the date of Appellant's hearing. Page 1 indicates it was held "November 4, 2021," while page 4 indicates "Thursday, November 21, 2021." R. 565; R. 567, ll. 2-17. Appellant respectfully submits that the hearing occurred Thursday, November 4, 2021, and that the latter date was likely a scrivener's error (especially since November 21, 2021 was a Sunday, whereas November 4, 2021 was indeed a Thursday). Regardless of whether it was November 4th or November 21st, it is clear the matter was heard prior to Appellant's charge being submitted to the Grand Jury for consideration.

will grant your motion for a speedy trial at this time." R. 11, ll. 1-5. However, Appellant's case was not dismissed; rather, pursuant to Judge Mullen's ruling immediately beforehand, it was merely rescheduled for the term of December 6, 2021.

During pretrial hearings before the trial court the week of December 6, 2021, Counsel again argued *inter alia* that the charge against Appellant should be dismissed due to violation of his speedy trial right pursuant to state and federal law. R. 62, ln. 17—R. 67, ln. 12; R. 575; R. 576-578. Specifically, Counsel asserted Appellant had been held in pretrial incarceration since his arrest on November 1, 2019, without bond—a period of over 750 days. Counsel further argued the reason for delay should not be deemed mere negligence. Specifically, Counsel highlighted the facts that no new evidence had been gleaned in the case, yet the State waited until the week prior to trial to even present the matter to the grand jury for indictment even though the grand jury had met in at least 12 months over the past two years. R. 63, ln. 1—R. 64, ln. 11; R. 576-578. Additionally, Appellant had neither sought nor consented to a continuance in the matter, and instead demanded a jury trial when he rejected the State's plea offer on February 23, 2021. R. 64, ln. 24—R. 65, ln. 12; R. 576-578. Finally, Counsel argued that Appellant was prejudiced in the following ways: that he has been held in jail for the entire pretrial time period despite the presumption of innocence; that, as a result of his life being put on hold, he could no longer support his wife and child; his wife and child left the country; that he has experienced extreme anxiety and damage to his reputation as he sat in jail for an indeterminate amount of time despite an order from the court to try the matter; and that "[t]here are witnesses in this case that are no longer available, that they've left the country" and are unable to be located. R. 65, ln. 13—R. 66, ln. 8; R. 576-578.

The State agreed that Appellant had been held in custody since his arrest,[3] but claimed there had been "a couple other prosecutors on it, as is the case a lot of times." R. 66, ll. 20-23. The State further acknowledged that the matter was only indicted the week prior to trial, but claimed "a lot of circuits wait until the last minute to indict everything before they go to trial, so that's not actually out of the ordinary." R. 66, ln. 23—R. 67, ln. 1.[4] Further, both Counsel and the State acknowledged that Appellant's speedy trial motion was previously raised before Judge Mullen in November, wherein the court simply scheduled the case for trial without dismissing it; however, as the State acknowledged, the defense "might need to put it on the record again." R. 66, ll. 14-20; R. 67, ll. 12-21. The trial court denied Appellant's motion. R. 67, ll. 11-12.

During his trial, Appellant called no witnesses to testify before the jury in his defense. R. 493, ll. 17-18; R. 506, ll. 2-15. Appellant was found guilty of hit and run with death resulting, and the trial court sentenced him to four (4) years incarceration, with credit for 760 days of time served. R. 551, ll. 1-11; R. 563, ll. 4-7.

At Appellant's post-trial motions hearing for a new trial on February 18, 2022, Counsel again reraised her prior motions on behalf of Appellant, including the issue of violation of his speedy trial right. The trial court again denied the motion. R. 568, ln. 21—R. 569 ln.1; R. 570, ll. 4-5. This appeal follows.

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3 Specifically, the State conceded that "[y]es, it was—he has been in custody for this amount of time." R. 66, ll. 20-21.

4 The State relied upon this refrain in its argument before Judge Mullen as well. R. 9, ll. 22-23.

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 (citing State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012)). "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. 418 S.C. at 342, 794 S.E.2d at 372.

ARGUMENT

Appellant's fundamental right to a speedy trial was violated where Appellant was held for over two years in pre-trial incarceration without bond before his case was brought to trial, where Appellant did not contribute to the delay, and where he was prejudiced due to pretrial incarceration, anxiety, and the loss of potential witnesses in the interim.

Appellant's fundamental constitutional right to a speedy trial was violated both at Appellant's hearing November 4, 2021, and again during pretrial motions December 6, 2021. First, after hearing and granting Counsel's motion for speedy trial, the hearing court failed to apply the appropriate remedy of dismissal. Instead, the hearing court failed to apply the four factors necessary for analyzing a speedy trial violation, and even when it claimed to have granted Appellant's motion for a speedy trial the court simply rescheduled the matter for another trial date. Further, when the matter was placed before the trial court, that court too failed to consider the four factors necessary for analyzing a speedy trial violation claim, and instead summarily denied the motion. Accordingly, the hearing court erred as it failed to apply the prescribed remedy of dismissal, and trial court's ruling was erroneous as it is without evidentiary support and likewise failed to apply the proper remedy.

Both the United States Constitution and the South Carolina Constitution protect the fundamental right of a defendant 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."). "An accused's speedy trial right begins when he is indicted, arrested, or otherwise officially accused." Hunsberger, 418 S.C. at 342, 794 S.E.2d at 372 (quoting Langford, 400 S.C. at 442, 735 S.E.2d at 482) (internal quotations omitted). "A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process." Barker v. Wingo, 407 U.S. 514, 527, 92 S.Ct. 2190, 2193, 33 L.Ed2d 101 (1972).

"The remedy for a speedy trial violation is dismissal of the charges." Hunsberger, 418 S.C. at 342, 794 S.E.2d at 371 (citing Langford, 400 S.C. at 442, 735 S.E.2d at 482).

"[T]o 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." Doggett v. United States, 505 U.S. 647, 654, 112 S.Ct. 2686, 2692, 120 L.Ed.2d 520 (1992) (citing Barker, 407 U.S. at 530-31, 92 S.Ct. at 2192). See also Langford, 400 S.C. at 442-443 (holding a twenty-three-month delay was presumptively prejudicial); Hunsberger, 418 S.C. at 344-45, 794 S.E.2d at 373 (holding that a thirty-six-month was presumptively prejudicial); State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (holding a twenty-eight-month delay triggered a speedy trial analysis). "A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis." Barker, 407 U.S. at 531, 92 S.Ct. at 2192. Four factors identified by the courts in analyzing a speedy trial violation claim include the following: (1) length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (3) prejudice to the defendant. Barker, 407 U.S. at 531, 92 S.Ct. at 2192; Hunsberger, 418 S.C. at 343, 794 S.E.2d at 372.

The facts of the present case readily meet the threshold for triggering a speedy trial analysis. Appellant was held without bond for over two years. He was arrested on November 1, 2019, and denied bond the next day. Despite seeking bond afterward, the court continued to deny his request, and instead kept Appellant in jail without bond where he was available for trial until the State eventually called the case to trial on December 6, 2021. Under such conditions, Appellant was "not prosecuted with ordinary promptness;" rather, the interval between accusation and trial constituted a "presumptively prejudicial" delay. Hunsberger, 418 S.C. at 342-43, 794 S.E.2d at 372.

Further, when weighed among the delineated four factors necessary for analyzing a speedy trial violation, the circumstances of Appellant's case militate in favor of Appellant. The first factor, length of delay, "is necessarily dependent upon the particular circumstances of the case." Barker, 407 U.S. at 530-31, 92 S.Ct. at 2192. "To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." Id. 407 U.S. at 531, 92 S.Ct. at 2192. Here, Appellant was held in jail for over two years for what was literally a crime that allegedly occurred in the street. While serious, it was far less complex than many other cases. As Counsel succinctly stated, "[i]n this particular case, there is no evidence that has been received and no new evidence since June 17, 2020. The case at this time is now more like an ordinary street crime. It has become very straightforward with age." R. 6, ll. 6-9. This assertion was born-out by the State's witnesses at trial as well. No crime scene reconstruction expert testimony was submitted, and the only technical testimony came mostly from the following witnesses: the South Carlina Department of Vehicles records custodian to submit vehicle registration information;[5] the Jasper County Emergency Services Coordinator to explain why 911 calls were not recorded;[6] the DNA expert;[7] and the pathologist to explain the manner of death.[8] None of the evidence proffered by these witnesses necessitated such a substantial delay in calling Appellant's case for trial. Accordingly, this factor weighs in favor of Appellant.

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[5] R. 239, ln. 15—R. 242, ln. 10.

[6] R. 243, ln. 17—R. 248, ln. 19.

[7] DNA analyst Timothy French indicated on cross-examination that he became involved with the case when the DNA samples he tested were brought to his lab on December 6, 2019. R. 479, ll. 2-6.

[8] Dr. Susan Presnell performed the autopsy in this case at MUSC on October 28, 2019. R. 486, ll. 3-4.

Second, "[c]losely related to length of delay is the reason the government assigns to justify the delay." Barker, 407 U.S. at 531, 92 S.Ct. at 2192. "A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government." Barker, 407 U.S. at 531, 92 S.Ct. at 2192. However, "A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Id. Here, the State knowingly delayed Appellant's case, even in face of the circuit court ordering it to be tried. For instance, when Appellant was again denied bond on February 11, 2021, the State was told by the Court to make an offer. When Appellant rejected the offer to plead guilty to the charged offense only days later and requested a trial, the State failed to place it on the trial docket. R. 7, ll. 10-20. Further, when a status conference was held in June 2021 and the State was instructed to place Appellant's case on the docket for November 1, 2021, the State again failed to do so and in fact still failed to even indict the matter by then. R. 7, ll. 21-24; R. 63, ll. 10-19; R. 576-578. This outright rejection of the court's scheduling order by refusing to even indict Appellant's case, let alone calendar it for the term previously ordered by the court, should constitute intentional conduct as it reveals a deliberate attempt by the State to delay Appellant's trial. Under such circumstances, the State's repeated recalcitrance in the face of both Appellant's demand for a jury trial and the court's direction to do the same amounts to a deliberate attempt to delay Appellant's trial, and weighs in favor of Appellant.

However, even if the State's dilatory conduct is deemed negligent rather than intentional, it still weighs against the State and in favor of Appellant "since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Barker, 407 U.S. at 531, 92 S.Ct. at 2192. When pressed by the court, the State proffered the explanation that

Appellant's case was assigned to more than one prosecutor during its time matriculating in the Solicitor's Office; yet, the assistant solicitor prosecuting Appellant's case at trial in December 2021 indicated that she was also the prosecutor on the case when Appellant had his bond hearing February 11, 2021. R. 4, ll. 15-16; R. 9, ln. 22—R. 10, ln. 12; R. 66, ll. 21-23. Further, when Appellant sought dismissal pursuant to his speedy trial rights in both November and December 2021, the State recited its other excuse claiming, "a lot of circuits wait until the last minute to indict everything before they go to trial, so that's not actually out of the ordinary."[9] R. 9, ll. 22-23; R. 66, ln. 23—R. 67, ln. 1. Under such circumstances, even if not "a deliberate attempt to delay the trial in order to hamper the defense," the State's conduct certainly amounts to negligence, and still weighs in favor of Appellant. Id.

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9 The State's excuse on the record that "a lot of other circuits" wait until the last minute to indict and that it is "not out of the ordinary" is essentially an admission that it regularly violates Rule 3 of the South Carolina Rules of Criminal Procedure:

> **(c) Action on Warrant.** Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court.
>
> **(d) Extensions of Time.** The solicitor may petition the circuit court for an order delaying action on the warrant, as set forth above, for successive ninety (90) day periods if the circuit court specifically finds good cause for such delay for each successive ninety day period.

Rule 3, SCRCrimP (c) and (d). Such excuses should not be countenanced by this or any court as acceptable. Simply stated, an excuse that is tantamount to saying "everyone else is doing it" does not make it right.

The third factor, assertion of the right to a speedy trial, likewise favors Appellant. Here, although a "defendant has no duty to bring himself to trial," Appellant clearly asserted his right in February 2021, when he rejected the State's offer to plead guilty to the charged offense, and instead demanded a trial. Barker, 407 U.S. at 527, 92 S.Ct. at 2190; R. 7, ll. 10-20; R. 65, ll. 6-12; R. 576-578. Appellant also brought the matter up during the June 2021 status conference, and again November 4, 2021, before the circuit court after the State failed to indict and try the case in the November 1, 2021 term. As indicated above, rather than accepting Appellant's choice and scheduling the matter for trial, the State instead failed to calendar the case for multiple subsequent terms of court. As such, this factor too weighs in Appellant's favor.

The fourth factor favors Appellant as well, as he was prejudiced by the State's delay in prosecuting his case. "[U]nreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including 'oppressive pretrial incarceration' 'anxiety and concern of the accused,' and 'the possibility that the [accused's] defense will be impaired' by dimming memories and loss of exculpatory evidence." Doggett, 505 U.S. at 654, 112 S.Ct. at 2692 (quoting Barker, 407 U.S. at 532, 92 S.Ct. at 2193). As Counsel argued, Appellant had been held in jail for the entire pretrial time period despite the presumption of innocence. As a result, his life was put on hold and he could no longer support his wife and child, both of whom had to leave the country due to a lack of support.[10] R. 66, ln. 13—R. 66, ln. 8; R. 388, ln. 24—R. 286, ln. 23; R. 576-578. Moreover, Appellant experienced extreme anxiety and damage to his reputation. He had no prior record, yet he sat in jail for an indeterminate amount of time despite an order from the court to try the matter. R. 6. ll. 24—R. 7, ln. 1; R. 63, ll. 5-6. Thus, two of

[10] The record also indicates Appellant's child is possibly an American citizen. R. 560, ll. 15-21; R. 563, ll. 22-24.

three recognized categories of prejudice—oppressive pretrial conditions, as well as anxiety and concern of the accused—weigh in favor of Appellant.

Finally, Appellant was prejudiced by loss of witnesses as well. As Counsel indicated, "[t]here are witnesses in this case that are no longer available, that they've left the country" and are unable to be located. R. 65, ln. 13—R. 66, ln. 8; R. 576-578. While not specifically named during the hearings, it is not a far leap to consider Appellant's wife as at least one witness whom the record indicates was previously present, yet had to leave the United States due to a lack of support. Had Appellant's wife been present for trial, she could have been called as a character witness by the defense on Appellant's behalf. Had she been available to testify as to Appellant's good character, then that, coupled with Appellant's lack of a record, could have led to a "good character" argument by Counsel in his close, and potentially a request for a "non-offending good character charge." See Pantovich v. State, 427 S.C. 555, 563–64, 832 S.E.2d 596, 601 (2019) ("On remand, we believe Pantovich is entitled to a non-offending good character charge—for example, the first two paragraphs of the one he originally requested—if he introduces the requisite evidence.") (citing United States v. Akinsanya, 53 F.3d 852, 856 (7th Cir. 1995)). The impact of this deficiency is even more acutely felt where, as acknowledge by the trial court, the matter against Appellant "is a very circumstantial case." R. 501, ln. 4.

Additionally, witnesses for the State, such as Anibal, exhibited extreme difficulty in recalling specific facts in Appellant's case throughout cross-examination.[11] All of these problems regarding lack of witnesses to testify, and memory recall of those who do testify, are

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11 See, e.g., R. 295, ln. 3–R. 296, ln. 16; R. 299, ln. 19–R. 304, ln. 2; R. 304, ln. 12—R. 306, ln. 20; R. 307, ll. 3-12; R. 308, ll. 9-20; R. 317, ll. 14-16; R. 318, ll. 3-4; R. 322, ll. 18-21; R. 324, ln. 23—R. 325, ln. 8; R. 326 ll. 6-18—R. 328, ln. 15—R. 329, ln. 16; R. 330, ll. 10-12; R. 330, ln. 23—R. 331, ln. 16; R. 333 ln. 20—R. 334, ln. 14; R. 334, ln. 25—R. 335, ln. 12-21; R. 336, ll. 4-14; R. 338, ll. 15-17; R. 339, ln. 25—R. 340 ln. 7; R. 342, ll. 14-25; R. 346, ll. 17-21; R. 351, ll. 2-12; R. 353, ll. 3-6.

part in parcel of failing to call Appellant's case in a timely manner. Thus, the final category of prejudice to the defendant—the possibility that his defense will be impaired by dimming memories and loss of exculpatory evidence—also weighs in favor of Appellant. Doggett, 505 U.S. at 654, 112 S.Ct. at 2692 (quoting Barker, 407 U.S. at 532, 92 S.Ct. at 2193). Accordingly, the evidence presented readily shows that Appellant's fundamental right to a speedy trial was violated, and his case should have been dismissed as "[t]he remedy for a speedy trial violation is dismissal of the charges." Hunsberger, 418 S.C. at 342, 794 S.E.2d at 371 (citing Langford, 400 S.C. at 442, 735 S.E.2d at 482).

CONCLUSION

For the foregoing reasons, Appellant respectfully requests reversal of his conviction and sentence, and dismissal of the charge.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of November, 2023.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 15, 2023.

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