ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

Appellant,

v.

BRUCE A. HILL,

Respondent.

Appellate Case No. 2011-199807

FINAL BRIEF OF RESPONDENT

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2. The trial judge erred when he admitted into evidence a letter sent from SLED to local Horry County law enforcement, which indicated Appellant had a criminal record.

3. The trial judge erred when he granted the State a six month continuance of the 180 days it had to bring Appellant to trial under the Interstate Agreement on Detainers Act.

STATEMENT OF THE CASE

Appellant, Bruce Antwain Hill ("Hill"), murdered Charles Parker, Sr. and Diane G. Parker ("the Parkers") on the night of April 11-12, 2005. The Parkers were murdered in their home located in Horry County. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

Arrest warrants were issued in 2009 charging Hill with the Parkers' murders and the burglary of their home. At that time, Hill was serving a prison sentence in the State of Tennessee for an unrelated aggravated robbery. Hill was returned to South Carolina pursuant to his request. Hill was subsequently indicted by the Horry County grand jury for the Parkers' murders and burglary in the first (1st) degree in March of 2011. (2011-GS-26-987, 988, 1327). (R. 10). Hill was represented on the charges by Ronald D. Hazzard, Esquire. The case was prosecuted by then Solicitor Greg Hembree and Deputy Solicitor Jimmy Richardson.[1] (R. 10).

Hill proceeded to trial on September 12-14, 2011 before the Honorable Sidney H. John, Circuit Court Judge, and a jury. (R. 10). At the conclusion of the trial, the jury found Hill guilty of the Parkers' murders and burglary in the first (1st) degree. (R.329). Based on the seriousness of the crimes, Hill's prior criminal record, and the plea in mitigation of defense counsel, Judge John sentenced Hill to life imprisonment for each murder and thirty (30) years for burglary in the first (1st) degree.[2] (R. 336-37). This appeal followed.

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[1]Solicitor Hembree was subsequently elected to the S.C. Senate, and Deputy Solicitor Richardson was appointed by Govenor Haley to fill out the remainder of Hembree's term as Solicitor.

[2]Judge John was already cognizant of Hill's prior record at the time of sentencing. Hill was convicted in Tennessee of conspiracy to commit aggravated robbery and aggravated robbery, in Virginia of conspiracy, and in South Carolina of possession of cocaine in 2005, common law robbery in 2003, Criminal Domestic Violence in 2006, and Criminal Domestic Violence 2nd in 2007. (R. 305-07, 336-37).

RESPONDENT'S STATEMENT OF FACTS

Charles "Charlie" Parker, Sr. and his wife Diane Gloria Parker ("the Parkers") were murdered during the night of April 11-12, 2005 in their own home. The Parkers' home was located on Highway 90 in Horry County approximately seventy-five (75) to one hundred (100) yards from their family business, Mirror Tech, a glass installation business. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

The evidence at trial showed the Parkers were murdered as they were getting ready for bed. Mr. Parker was murdered in the bathroom of the home in his underwear. Mrs. Parker was murdered in the master bedroom in her pajamas. The Parkers' bodies were not discovered until the morning of April 12th when employees of Mirror Tech investigated why Mr. Parker was late for work. When police arrived at the scene that morning, they found a back door window pane, located just above the back door's handle, broken out. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

The Parkers were shot to death. Each victim was shot three (3) times. Even though there were at least six (6) shots fired at the scene, only three (3) fired shell casings were found. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

Crime scene investigators could not determine whether anything was stolen from the home; however, no cash was found in the home or in Mr. Parker's wallet or Mrs. Parker's purse. Mrs. Parker's jewelry was not taken from her body, and no jewelry was missing from a jewelry box. In the master bedroom where Mrs. Parker's body was found, drawers had been opened and papers scattered on the furniture. Another item, a gold boot, had been searched by the killer or killers looking for something. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

The investigation and the evidence at appellant Hill's trial showed Mr. Parker had been shot

at the door of the bathroom and in the bathroom where he collapsed. Mrs. Parker had been shot *or* shot at while reclining in bed with the covers up, after which, she threw off the covers, got out of bed, and was then murdered in the bedroom while laying on floor. Prior to her murder, Mrs. Parker was also hit over her eye and her clavicle was broken by being struck with some kind of object. (R.79-96 , 97-176, 178-209, 213-268, 269-300).

In addition to Mr. and Mrs. Parker's blood, fresh blood from an unknown third (3rd) party was found in the master bedroom and on a piece of paper found in an extra bedroom. A crime scene analyst collected four (4) separate samples of these three (3) fresh vertical blood drops and one (1) blood smear. A DNA profile was developed by the South Carolina Law Enforcement Division (SLED) forensic lab from this unknown third (3rd) party's fresh blood found in the bedroom near Mrs. Parker's body and the adjoining bedroom. The DNA from each sample belonged to one (1) specific person. This DNA profile was then entered in the CODIS national data base.[3] (R. 79-96, 97-176, 178-209, 213-268, 269-300).

Approximately two (2) years after the Parkers were murdered, Horry County police were notified by SLED that there had been a CODIS hit or match on the unknown third (3rd) person's blood/DNA found at the crime-scene. The unknown third (3rd) party DNA found in the blood drops and smear in the Parkers' home matched the DNA of appellant Bruce Antwain Hill ("Hill"). Hill was incarcerated *at the time of the CODIS hit/match* in a Tennessee prison for an aggravated robbery there. His DNA had been placed in the CODIS DNA database upon his incarceration there in 2006,

[3]CODIS is an anachronym for COmbined, DNA, Information, System.

after the Parkers' murders in April 2005. (R. 79-96, 97-176, 178-209, 213-268, 269-300).[4] Horry County investigators subsequently traveled to Tennessee, obtained a Schmerber[5] Order, and pursuant to the Order obtained a DNA buccal swab from the person of Hill for further DNA comparison.[6] The investigators who obtained the Schmerber Order and the bucal swab subsequently left the employment of Horry County and the Order and chain of custody information for this swab were lost or misplaced. Subsequently, Horry County investigators obtained a 2nd Schmerber Order, pursuant to the same a 2nd bucal swab directly from the person of Hill, and submitted the swab to SLED for comparison with the DNA profile developed from the blood drops and smear at the crime-scene. After forensic examination, SLED confirmed the unknown DNA extracted from the fresh blood of the previously unknown third (3rd) party at the crime-scene (the Parkers' home) was a scientific match to the DNA of Hill. (R. March 1, 2011 Tr. pp. 10-17, R. March 17, 2011 Tr. pp. 19-38, R. 79-96, 97-176, 178-209, 213-268, 269-300).

As previously stated, prior to their murders, the Parkers owned a glass installation business, Mirror Tech. The Parkers' home was located adjacent to this business. At trial, Hill was also connected to an employee of the Parkers' glass installation business. Hill was arrested approximately one (1) week after the Parkers' murders in Horry County in the company of Kahlil Moore ("Moore") on an unrelated charge. Moore was employed with the Parkers' glass installation

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[4]The jury was not aware Hill had committed and been convicted of an aggravated robbery in Tennessee after the Parkers' murders or that he was serving time in a Tennessee prison when the CODIS hit occurred.

[5]Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826 (1966).

[6]When a CODIS hit is made, law enforcement is instructed to obtain a bucal sample from the identified party and submit the same for further more exact and detailed DNA analysis and comparison by the forensic DNA lab. (R. 232).

business until approximately four (4) months before the Parkers' murders. Moore had also been inside the Parkers' home on several occasions before their murders. Hill was never employed by the Parkers, nor was there any evidence he had ever been inside the Parkers' home other than at the time of the murders. At the time of his arrest with Moore on the unrelated charge, only one (1) week after the Parkers' murders, Hill listed his address as being in Horry County, S.C. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

ARGUMENT I.

The trial judge did not err when he granted the State's request to disallow any mention of Richard Gagnon's convictions for the same crimes for which Appellant stood trial.

At trial, the State established Hill's guilt of the Parkers' murders and the burglary of their home by proving his DNA was found in fresh blood at the scene of the double murders, and by establishing his connection to Kahlil Moore, a former employee of the Parkers' business "Mirror Tech."[7] Appellant Hill now alleges the trial court should have allowed him to discuss before his jury the fact that Richard Gagnon had been **convicted** of this crime by a separate jury. Hill is wrong. Judge John did not abuse his discretion in declining to allow admission of Richard Gagnon's convictions. In fact, Judge John correctly followed the law.

Standard of Review

In criminal cases, an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). Thus, the appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.; State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 504 (Ct. App. 2004). On appeal, the appellate court is limited to determining whether the trial court abused its discretion.

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[7]At Hill's trial, the State did not attempt to establish any connection to Richard Gagnon, a co-perpetrator, who was convicted of his role in the Parkers' murders in 2007 based on statements Gagnon made to a cell-mate and other evidence introduced in Gagnon's trial. (See BOR, Gagnon). Gagnon told a cell-mate he and another person committed the murders. The cell-mate also testified Gagnon was worried about the fact that someone else's blood (DNA) was found at the crime scene that did not belong to either victim. The jury in Gagnon's trial was aware that this unknown 3rd person's DNA was found in the crime scene, but police had not been able to identify that person, Hill, at the time of Gagnon's trial. (See BOA, Gagnon). Gagnon has since been granted a new trial based on after-discovered evidence that has no relation to appellant Hill's case. (Order of Judge John granting new trial, Gagnon).

State v. Walker, 366 S.C. 643, 653, 623 S.E.2d 122, 127 (Ct. App. 2005). The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982); State v. Patterson, 367 S.C. 219, 230, 625 S.E.2d 239, 245 (Ct. App. 2006). This Court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001)(internal citations omitted).

Standard of Review / Admission of Evidence

The admission or exclusion of evidence is within the sound discretion of the trial judge and is reversible only for an abuse of discretion. State v. Morris, 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008) State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005). "The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009); State v. Cope, 385 S.C. 274, 283, 684 S.E.2d 177 (Ct. App. 2009). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007); Wilson, 345 S.C. at 5-6. 545 S.E.2d at 829. The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of discretion. State v. Rosemond, 335 S.C. 593, 518.S.E.2d 588 (1999). The trial court's decision will not be overturned unless controlled by an error of law resulting in undue prejudice. State v. Brown, 389 S.C. 84, 697 S.E.2d 622 (Ct. App. 2010). "A trial judge's

determination of admissibility of evidence will not be disturbed absent a showing of abuse of discretion that has resulted in prejudice to the complaining party. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989); State v. Hamilton, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001)(*overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

The Lack of Merit of this Ground

At his trial, in a pre-trial hearing, appellant Hill sought to introduce evidence before his jury that someone else had been *convicted* of the murders of Charles and Diane Parker, Richard Gagnon. (R. 51-60). Judge John did not prohibit Hill from questioning any witness whether there was any evidence developed in the case that someone else was present committing or participating in the crime; however, Judge John ruled Hill could not elicit from witnesses *the result* of a co-defendant's or co-perpetrator's trial. (R. 51-60). Judge John's ruling was correct. Whether a co-defendant or co-perpetrator had been *convicted* of the crime is simply irrelevant to whether the State could prove appellant Hill was guilty of double murder and burglary in the 1st degree.

Rule 401
Definition of "Relevant Evidence"

> Relevant evidence" means evidence having any tendency to make, the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 401, SCRE. "Evidence which is not relevant is not admissible." Rule 402, SCRE. In those cases where a co-defendant has been convicted on a charge arising out of the same facts as the defendant is being tried on, evidence of such conviction is irrelevant to the issue of the defendant's guilt or innocence and may not be introduced unless the convicted co-defendant or accomplice testifies. State v. Moore, 337 S.C. 104, 522 S.E.2d 354 (Ct. App. 1999)(cataloging cases); State v.

Brown, 306 S.C. 448, 412 S.E.2d 440 (Ct. App. 1991). However, when a co-defendant testifies for the purpose of exculpating the defendant on trial, such testimony is admissible on the co-defendant's credibility, not the guilt or innocence of the defendant on trial. State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976). *See* United States v. Mitchell, 1 F.3d 235, 245 (4th Cir. 1993); United States v. Blevins, 960 F.2d 1252, 1260 (4th Cir. 1993); Hunter v. Indiana, 578 578 N.E.2d 353, 356 (1991)("[E]vidence of a conviction or guilty plea of others charged with the same offense as the defendant is not substantive evidence of the defendant's guilt or innocence...The trial court should receive the ...evidence ...only as it bears on the testifying co-defendant's credibility and should, on request, instruct the jury regarding its limited purpose."); Missouri v. Johnson, 787 S.W.2d 872, 874 (Mo. App. 1990)(similar); State v. Mullens, 179 W.Va. 567, 371 S.E.2d 64, 70 (1988)(similar); Stokes v. Alabama, 462 So.2d 964, 967 (Ala. Crim. App. 1985)(outcome of co-defendant's case is simply irrelevant to the guilt or innocence of the defendant and may not be received as substantive evidence at defendant's trial); *see also* 23 C.J.S. *Criminal Law* Section 996 (1989)(co-defendant's conviction may not be admitted as substantive proof of the accused's guilt, complicity, or lack of guilt).[8] Richard Gagnon did not testify at appellant Hill's trial. As a result, Judge John did not abuse his discretion in excluding the convictions of a co-defendant or co-perpetrator for the same crime in Hill's trial.[9] This appellate ground must be dismissed.

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[8]*See also* United States v. Solomon, 795 F.2d 747 (9th Cir. 1986); United States v. Halbert, 640 F.2d 1000 (9th Cir. 1981); Wharton's Criminal Evidence, 25:42, South Carolina (2012); Trial Handbook for South Carolina Lawyers 25:18 (2012). *See generally* State v. Mercer, 381 S.C. 149, 672 S.E.2d 556 (2009); State v. Charping, 333 S.C. 124, 508 S.E.2d 851 (1998).

[9]In his brief, Hill ignores all of the precedent cited above. (See BOA).

ARGUMENT II.

The trial judge did not err when he admitted into evidence a letter sent from SLED to local Horry County law enforcement, notifying them there was a CODIS match between the DNA found at the crime scene and Hill's DNA.

Standard of Review / Admission of Evidence

The admission or exclusion of evidence is within the sound discretion of the trial judge and is reversible only for an abuse of discretion. Morris, 376 S.C. at 205, 656 S.E.2d at 368; Pagan, 369 S.C. at 208, 631 S.E.2d at 265; Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999); State Stanley, 365 S.C. at 33, 615 S.E.2d at 460. "The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009); Cope, 385 S.C. at 283, 684 S.E.2d 177. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Pittman, 373 S.C. at 577, 647 S.E.2d at 170; Wilson, 345 S.C. at 5-6. 545 S.E.2d at 829. The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of discretion. Rosemond, *supra*. The trial court's decision will not be overturned unless controlled by an error of law resulting in undue prejudice. Brown, *supra*. "A trial judge's determination of admissibility of evidence will not be disturbed absent a showing of abuse of discretion that has resulted in prejudice to the complaining party. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989).; Hamilton, 344 S.C. at 353, 543 S.E.2d at 591 (*overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)).

The Lack of Merit of this Ground

At trial, because the Parkers were murdered in 2005 and Hill was not arrested until 2009, the

State introduced the fact that the CODIS hit occurred in 2009; the Horry County Police Department was notified by SLED of the CODIS hit; and as a result the State obtained a Schmerber order and obtained a DNA buccal sample from appellant Hill, which was subsequently sent to SLED for DNA analysis. (R. 60-63, 210-13, 229-40). SLED notified Horry County of the CODIS hit by a letter which was read to the jury:

> Dear [Detective] Neal Livingston
>
> The short tandem repeat, STRPCR DNA profile developed from item 19 was compared to the COmbined DNA Index System, CODIS. This profile matches the STRPCR DNA profile developed from Bruce Antwain Hill. This information is provided for investigative purposes only. If the suspect is charged, an additional biological specimen must be submitted for court purposes. This search was conducted by Lieutenant David McClure with the South Carolina Law Enforcement Division.

(R. p. 232, ll. 10-18, State's Ex. 70). As a result of this notification, the Schmerber order was obtained and a buccal swab was taken from Hill on March 17, 2011, which resulted in the development of Hill's DNA profile from the swab, and which matched the fresh blood found inside the Parkers' residence. (R. 236-40, 256-268). The State did not introduce any evidence explaining why Hill's DNA was in the CODIS database. Nevertheless, appellant argues the admission of the letter from SLED notifying the Horry County Police Department of the CODIS hit should have been excluded because it informed the jury he had a prior criminal record. (R. 60-65, 210-13). Appellant is wrong.

This same contention has been rejected in courts throughout the United States. Whatley v. State, ___So.3d ___, 2010 WL 3834256 (Ala. Crim. App. 2010), *Opinion After Remand* (December 16, 2011), *Not yet released for publication* ("We agree with the states that have considered this issue, and we hold that testimony of the mere existence of a defendant's DNA profile in the CODIS data

base does not 'per se' imply the existence of a criminal history."); Missouri v. McMillian, 295 S.W.3d 537, 540 (Mo. Ct. App. 2009)("In cases where a 'hit' or match is made, the State needs to be able to explain how a particular individual became a suspect, especially where, as here, a considerable period of time has passed since the offense." "...[T]he mere fact that McMillan's DNA profile was present in a statewide database did not constitute an improper reference to other crimes"); People v. Harland, 251 P.3d 515, 518 (Colo. Ct. App. 2010)("We therefore reject defendant's assertion that [police officer's] testimony mentioning the DNA databases necessarily led the jury to speculate that defendant had prior criminal convictions. Under the circumstances here, any inference of such prejudice is itself speculative."); People v. Jackson, 232 Ill.2d 246, 272, 903 N.E.2d 388, 402 (2009)("[W]e are unwilling to assume, as defendant does, that the jury had any preconceived notions of the types of persons from whom DNA had been collected and stored for [law enforcement] to reference through the 'codus [sic] ... [or] data base administrator' in Springfield."); Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009)("Atteberry argues ... the jury could have inferred that, because Atteberry's DNA profile was in the database, he had been convicted in the past. This is nothing more than speculation. Moreover, evidence which creates a mere inference of prior bad conduct does not fall within the purview of Evidence Rule 404(b)."); People v. Meekins, 34 A.3d 843, 828 N.Y.S.2d 83 (2006)(affirming admission of evidence concerning match on DNA database).[10] While South Carolina has never specifically addressed the

[10]*For additional information see* Deals v. Burghuis, 2011 W.L. 2745904 (No. 1:08-cv-1000, June 16, 2011)(W.D. Mich. 2011)(unpublished order)("The only unfairly prejudicial effect of the DNA evidence asserted by petitioner is that these witnesses mentioned that the DNA found at the scene was matched with petitioner using the CODIS database. Petitioner asserts that this 'as good as tells the jury that [petitioner] has a prior record ...' The Court of Appeals correctly noted that this argument is based on speculation and assumption concerning inferences that the jury might have made.'")

issue of CODIS, it has held similarly with similar type evidence. *See* State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999)(fact that defendant's fingerprints were on file did not mean defendant had a criminal record). Further, the S.L.E.D. agent who wrote the letter to Horry County notifying it of the CODIS hit or match testified at Hill's trial to what was in the letter. (R. 229-32). Furthermore, there was no testimony that Hill had previously been convicted of another crime. That was not the State's purpose in offering the evidence. (R. 60-65, 210-13, 225-28, 229-43, 252-268). Accordingly, there simply is no merit to this appellate ground. Hill cannot show error or prejudice in the admission of this evidence. As a result, Judge John did not abuse his discretion in admitting the letter from SLED notifying Horry County of the CODIS match. This ground must be dismissed.

ARGUMENT III.

Hill is not entitled to vacation and dismissal of his convictions and sentences for the murders of Charles and Diane Parker and the burglary of their home under the Interstate Agreement of Detainers Act.

Arrest warrants were not issued for Hill until 2009 after the CODIS hit on his DNA. In June of 2009, the Horry County Police Department by faxed letter forwarded Hill's *arrest warrants* in the Parkers' murders and another case to the Tennessee Department of Corrections, asked that they be placed in Hill's prison folder, and asked that a hold be placed on Hill.[11] The Solicitor's Office did not file a formal detainer with the Tennessee Department of Corrections or the prison where Hill was

[11]Hill's DNA also matched DNA developed from another burglary and armed robbery in Horry County. When Horry County police forwarded the arrest warrants to the Tennessee Department of Corrections they also forwarded the arrest warrants from this additional crime as well.

incarcerated or request that he be returned to Horry County.[12] In August of 2010, the Tennessee Department of Corrections notified Hill of the outstanding warrants against him in South Carolina. (Agrmt. on Detainers Form I, pp. 1-2). On August 26, 2010, Hill submitted a request to have all of his warrants in South Carolina disposed of by submitting an Article III Agreement on Detainers Form II. (2 pages). The Solicitor's Office and the Clerk of Court for Horry County received this request on September 3, 2010. Hill was thereafter returned to South Carolina *pursuant to his request* set forth in the Article III Form he completed. On March 1, 2011, the State moved for a continuance in open court before Judge Stephen John, the administrative judge and trial judge in this case. Hill was present at the hearing along with his counsel, and at the hearing the State set forth its reasons for the need for a continuance. At the conclusion of the hearing, Judge John found and concluded the State had shown "good cause" for the continuance and a continuance was reasonable and necessary. The Horry County grand jury did not return indictments against Hill until March 31, 2011. The State was prepared to call the case for trial in July 2011. (R. 40-46 June 16, 2011 Tr., pp. 1-7). On June 16, 2011, Hill moved for a continuance which was also granted by Judge John. (R. 43-46 June 16, 2011 Tr., pp. 4-7). Hill's case then proceeded to trial in September after which he was convicted of all charges.

Hill contends on appeal he is entitled to dismissal with prejudice of the indictments and convictions for the murders of Charles and Diane Parker and the burglary of their home because under the Interstate Agreement on Detainers Act (IAD) he is entitled to dismissal of the charges

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[12]The letter from the Horry County Police Department informed the Tennessee prison officials that the Solicitor would extradite Hill upon his release from prison there or possibly bring him back before the expiration of the sentence. However, neither of these two (2) ever occurred. The State did not seek to extradite Hill or seek his return under Article IV of the Interstate Agreement on Detainers Act. (June 9, 2009 letter to Tenn. DOC from Horry Police).

where the State did not bring him to trial within 180 days of his request for disposition or it did not obtain a continuance for good cause. Hill is wrong for three (3) separate reasons: (1) Hill is not entitled to dismissal of his convictions because the IAD was not triggered in this case; (2) the trial judge did not abuse his discretion in granting a timely continuance request where good cause was shown and the continuance was reasonable and necessary; and (3) Hill waived any right to dismissal by requesting a continuance himself.

I.

The Interstate Agreement on Detainers Act is an interstate compact entered into by 48 states, including South Carolina, also the District of Columbia, and the federal government. S.C. Code Ann. Section 17-11-10; State v. Tucker, 276 S.C. 412, 656 S.E.2d 403 (Ct. App. 2008). As a result, in interpreting the statute it must be remembered the Act is an interstate compact entered into by the signatory parties.[13] Hill's *request* for disposition was made under Article III of the Interstate Agreement on Detainers Act (IAD) which reads as follows:

> (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state *any untried indictment, information or complaint on the basis of which a detainer has been lodged against a prisoner*, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of **the indictment, information or complaint**; provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

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[13]As a congressionally sanctioned interstate compact within the Compact Clause of the United States Constitution, Art. I, Section 10, cl. 3, the IAD is a federal law subject to federal construction. New York v. Hill, 528 U.S. 110, 111 (2000); Cuyler v Adams, 449 U.S. 433 (1981).

S.C. Code Ann. Section 17-11-10, Art. III (2003)(emphasis added). Further, throughout the IAD, not just in Article III, the Act refers to detainers *based on* "untried indictments, informations, or complaints." S.C. Code Ann. Section 17-11-10 Art. I, Art. II, Art. III, Art. IV, Art. V.

Hill's argument that Judge John erred under the IAD in granting a continuance of the 180 days to bring him to trial under Article III fails because the IAD and its time provisions were not triggered and are not applicable in this case. The "detainer"[14] filed against Hill by police was based on arrest warrants, not an "untried indictment, information or complaint" as provided in the Act. Several jurisdictions which have addressed this issue have found that a detainer based only on an arrest warrant or warrants does not trigger the IAD 180 day provision under which the State must bring a defendant to trial, because it is not a detainer *based on* an "untried indictment, information, or complaint" as set forth in the Act. Herbert v. State, 288 Ga. 843, 708 S.E.2d 260 (Ga. 2011)(detainer based on arrest warrant and not pending indictment does not bring defendant within protections of the IAD);[15] State v. Carlton, 276 Ga. 693, 583 S.E.2d 1 (2003)(IAD does not apply to detainers based on arrest warrants or unindicted charges); Denson v. State, 376 Ga. App. 456, 459, 731 S.E.2d 130, 132-33 (Ga. App. 2012)(same);[16] Churchwell v. State, 44 So.3d 645 (Fla. App. 2010)(detainer based on arrest warrants alone is not an "untried indictment, information, or

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[14]For IAD purposes a detainer is "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent." Fex v. Michigan, 507 U.S. 43, 44 (1993); Carchman v. Nash, 473 U.S. 716, 719, 205 S.Ct. 3401, 3403 (1985).

[15]The South Carolina Supreme Court has previously relied on Georgia's interpretation of the IAD. *See* State v. Johnson, 278 S.C. 668, 301 S.E.2d 138 (1983).

[16]*For additional information see* Williams v. County of Forsyth, 2008 W.L. 4445074 (N.D. Ga. 2008)(*Unpublished).*

complaint" and does not trigger the IAD); Taylor v. State, 582 So.2d 152 (Fla. Ct. App. 1991)(detainer based only on arrest warrant does not constitute detainer based on "untried indictment, information, or complaint" and IAD was therefore not triggered or applicable);[17] Locklear v. Commonwealth, 7 Va. App. 659, 376 S.E.2d 793, 795 (1989)(detainer based only on arrest warrant does not fall within the meaning of an untried indictment, information or complaint as described in the IAD); Valentine v. Commonwealth, 18 Va. App. 334, 337-38, 443 S.E.2d 445, 446-47 (1994)(same, noting holding in Locklear); John L. Costello, *Virginia Criminal Law and Procedure,* Section 52.7[4], at 874 (4th Ed. 2008)(*citing* Locklear, 7 Va. App. at 663 , 376 S.E.2d at 795);[18] Crawford v. State, 669 N.E.2d 141 (Ind. 1996)(detainer based on arrest warrant is not based on indictment, information, or complaint as meant in the Act and therefore does not trigger IAD time requirements);[19] State v. Robinson, 863 N.E.2d 894, 897 (Ind. Ct. App. 2007); Blakely v. District Court, 232 Mont. 178, 755 P.2d 1380, 1384 (1988)(similar); *see* United States v. Bottoms, 755 F.2d 1349 (9th Cir. 1985); United States v. Hall, 974 F.2d 1201 (9th Cir. 1994); United States v. Fulford, 825 F.2d 3, 20 (3rd Cir. 1987).[20]

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[17]*For additional information see* Welleske v. Buss, 2011 W.L. 4056085 (N.D. Fla 2011)(*Unpublished).*

[18]*For additional information see* Smith v. Commonwealth, 2010 W.L. 5071192 (Va. App. 2010)(Unpublished); Payton v. Commonwealth, 2009 W.L. 1286418 (Va. App. 2009)(*Unpublished*).

[19]North Carolina appears to agree with these decisions. *See* State v. Prentice, 170 N.C. App. 593, 613 S.E.2d 498 (N.C. Ct. App. 2005)(holding arrest warrant can serve as a detainer and trigger the IAD only if it is based on a true-billed indictment pending before the court, as there was in this case, but must also meet other required factors, which were not met in this case).

[20]*Contra* State v. Moore, 774 S.W.2d 590 (Tenn. 1989)(noting "[w]hile we think the better view and the more consistent interpretation of the Compact is that an untried 'indictment,

Like the jurisdictions cited above, a defendant in South Carolina cannot be tried or immediately brought to trial on an arrest warrant for murder and burglary in the 1st degree. He must be indicted. S.C. Const. Art. I, Section 11; S.C. Code Ann. 17-19-10, 30. Therefore, a detainer based solely on an arrest warrant for these charges does not trigger the 180 day time provision of the compact. Carlton; Churchwell; Locklear; Crawford; Blakely. Further, South Carolina, like other courts, has construed what constitutes a detainer triggering the Act stringently. State v. Knowles, 275 S.C. 312, 270 S.E.2d 133 (1980)(conditional revocation of probation warrant does not constitute detainer based on untried indictment, information or complaint that triggers the IAD).[21]

The above cited decisions comport with the language throughout the IAD which refers to detainers *in signatory states* based on "untried indictments, informations, or complaints." S.C. Code Ann. Section 17-11-10 Art. I, Art. II, Art. III, Art. IV, Art. V. *See specifically* S.C. Code Ann. Section 17-11-10, Art. II.(c)("'*Receiving state*' shall mean the state **in which trial is to be had on** an indictment, information or complaint pursuant to Article III or Article IV hereof.") *emphasis added.* The IAD by its very name and nature is an interstate compact (or treaty) between the signatory parties, and what it is contemplating is a mechanism for disposing of detainers *based on untried formal charging documents* which can be immediately brought to trial such as an indictment,

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information, or complaint' is a charging instrument upon which the requesting state may proceed to trial, and not merely a warrant of arrest..", because *of practice* of filing detainers based on arrest warrants court refused to overrule previous decision that an arrest warrant can trigger the provisions of the IAD). *See also* State v. Smith, 316 Md. 223, 557 A.22d 1343 (1989).

[21]Although this specific issue was not raised, in another case dealing with the IAD, this Court appeared to follow a similar interpretation of the language in question here. *See* State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003)("The IAD clearly requires an inmate send written notice to the appropriate prosecuting officer of his desire for final disposition of outstanding indictments against him in that jurisdiction.").

information, or criminal complaint. State v. Carlton, 276 Ga. 693, 583 S.E.2d 1 (2003)(A complaint stands on equal footing with an indictment or information on bringing charges to trial, noting a common sense reading of Art. III. of the IAD dictates that a complaint must be a charging instrument upon which an individual can go to trial, and the use of the word "untried" as a qualifier for all three terms, "indictment, information, or complaint," logically compels the conclusion that one must be able to be tried on each); Locklear v. Commonwealth, 7 Va. App. 659, 376 S.E.2d 793 (1989)(recognizing there are some states in which documents entitled complaints are instruments upon which detainees could be immediately tried upon return to the receiving state and this is what the Act refers to not arrest warrants); Crawford v. State, *supra* at 148 (similar).

Finally, if the drafters of the IAD intended for detainers based on mere arrest warrants to be covered by the Act, they could have done so by simply stating that the Act applied to detainers based on arrest warrants; however, they did not. Locklear v. Commonwealth, 7 Va. App. 659, 376 S.E.2d 793 (1989)(where appellant was being detained in N.C. pursuant to his prison sentence and detainer based on outstanding arrest warrant the Court found it "would be rewriting the Act if we added by interpretation the words 'arrest warrant' to untried indictment, information, and complaint"). Instead, the language clearly indicates the Act is only applicable to detainers based on "untried indictments, information or complaints[.]" in the receiving state. S.C. Code Ann. Section 17-11-10. As a result, since the IAD time provisions were not triggered by Hill's request for disposition of a detainer based only on arrest warrants, this appellate ground must be dismissed.

II.

Furthermore, even if this Court were to find that a detainer based on arrest warrants and not "an untried indictment, information, or complaint" brought Hill within the application of the Act,

Judge John did not err in finding the State had shown good cause for a continuance and granted a necessary and reasonable delay. S.C. Code Ann. Section 17-11-10, Art. III(a).

The purpose of the IAD is to encourage the expeditious and orderly disposition of outstanding charges against prisoners and the determination of the proper status of any and all detainers based on untried indictments, information, or complaints. S.C. Code Ann. § 17-11-10, Art. I. (2003); United States v. Mauro, 436 U.S. 340 (1978); State v. Patterson, 273 S.C. 361, 256 S.E.2d 417 (1979); *see also* State v. Finley, 277 S..C. 548, 551, 290 S.E.2d 808, 809 (1982); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). However, as this Court found in State v. Tucker, 376 S.C. 412, 416, 656 S.E.2d 403, 405 (Ct. App. 2008), "[n]umerous courts have held the rights created by the IAD are statutory in nature and do not rise to the level of constitutionally guaranteed rights."[22] Further, this Court in Tucker recognized the Third Circuit's characterization of the IAD as "a set of procedural rules," and its reasoning that "[t]he statutory right to dismissal due to an administrative violation of these rules is therefore 'not "fundamental" even though its impact

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[22]*See* Reed v. Farley, 512 U.S. 339, 352-54, 114 S.Ct. 2291, 2299-2300 (1994)(discussing IAD violation in context of non-constitutional claims); Cross v. Cunninham, 87 F.3d 586, 588-9 (1st Cir. 1996); Diggs v. Owens, 833 F.2d 439, 442 (3rd Cir. 1987)(IAD is set of procedural rules, the violation of which does not infringe upon a constitutional right); Reed v. Clark, 984 F.2d 209, 210 (7th Cir. 1993), *aff'd sub nom*, 512 U.S. 339 (1994)(IAD procedures are not constitutional rights); Camp v. U.S., 587 F.2d 397, 400 (8th Cir. 1978)("the IAD amounts to nothing more than a statutory set of procedural rules which clearly do not give rise to the level of constitutionally guaranteed rights."); Greathouse v. U.S., 655 F.2d 1032, 1034 (10th Cir. 1981)(*per curiam*)(IADA rights are statutory, not fundamental or constitutional in nature); Yellen v. Cooper, 828 F.2d 1471 (10th Cir. 1987)(same); Pethel v. McBride, 219 W.Va. 578, 638 S.E.2d 727 (2006)(same); Seymore v. Alabama, 846 F.2d 1355, 1359 (11th Cir. 1988)(addressing IADA as non-constitutional claim); State v. Vinson, 182 S.W.3d 709, 711 (Mo. Ct. App. 2006)(IAD rights are statutory not constitutional); Finley v. State, 295 Ark. 357, 748 S.W.2d 643, 647 (1988)(IAD provisions do not rise to the level of constitutionally protected rights); State v. Noonahal, 241 Wis. 2d 397, 626 N.W.2d 1, 4 (Ct. App. 2001)(rights under IAD are statutory, not constitutional, in nature)

on a defendant may be great.'" Id., *quoting* United States v. Palmer, 574 F.2d 164, 167 (3rd Cir. 1978).[23] *See also* People v. Nitz, 219 Ca. App. 3d 164, 170 268 Cal. Rptr. 54 (1990)("[t]he IAD amounts to nothing more than a set of procedural rules, and the rights it protects in no way affect the fairness and accuracy of the fact-finding procedure or other due process or trial rights.").

Pursuant to Article III (a) of the IAD, resolution of detainers based on untried indictments, information or complaints against a prisoner can be triggered by the prisoner filing a request for a "final disposition" and that request for disposition must be honored by way of holding a trial within one hundred and eighty (180) days. New York v. Hill, 528 U.S. 110, 112 (2000). However, that provision is subject to continuance for good cause. Id. *See also* S.C. Code Ann. § 17-11-10. "[A]ny requested continuance may be granted only at or prior to the expiration of the 180 day period prescribed in the statute." State v. Patterson, 273 S.C. 361, 363, 256 S.E.2d 417, 418 (1979).[24] Article III of the Act reads as follows:

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[23]Violation of the provisions of the IAD does not make out a claim of lack of subject matter jurisdiction in the trial/sentencing court. State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003); Pethel v. McBride, 219 W.Va. 578, 638 S.E.2d 727 (W.Va. 2006)(cataloging federal and state cases). Nor does violation of IAD provisions alone make out a cognizable claim on federal habeas review. Reed; Matheney v. Hamby, 488 U.S. 913, n. 1 (1988)(White, J. dissenting)(pointing out majority rule, holding IAD violations without more do not state federal habeas claim); Bush v. Muncey, 659 F.2d 402, 408 (4th Cir. 1981); Kerr v. Finkbeiner, 757 F.2d 604, 607 (4th Cir. 1985)(violation of 180 day rule not cognizable); Seymour (violation of IAD is not fundamental defect cognizable in federal habeas absent showing of prejudice); Lara v. Johnson, 141 F.3d 239, 242 (5th Cir. 1998)(must show fundamental defect causing miscarriage of justice); Remeta v. Singletary, 85 F.3d 513, 519 (11th Cir. 1996)(to be cognizable defendant must show violation of IAD prejudiced him by affecting or impugning the integrity of the fact finding process); Pethel v. McBride, 219 W.Va. 578, 638 S.E.2d 727 (W.Va. 2006)(cataloging cases).

[24]If, however, a defendant makes a continuance request, his request "remove[s] his case from the scope of the automatic dismissal provisions of the statute." State v. Allen, 269 S.C. 233, 237 S.E.2d 64 (1977). *See also* State v. Finley, 277 S.C. 548, 290 S.E.2d 808 (1982) ("a defendant cannot cause the delay in the trial and then expect dismissal of the charges because the case was not tried within" the mandated statutory period).

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against a prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; *provided*, that *for good cause shown* in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter *may grant any necessary or reasonable continuance.*

S.C. Code Ann. Section 17-11-10, Art. III (2003)(emphasis added).

Even if the Act applies, the one hundred and eighty (180) day time limit did not commence until appellant Hill's request for final disposition was actually delivered to the court and the prosecuting officer of the jurisdiction that lodged the detainer against him. Fex v. Michigan, 507 U.S. 43, 52, 113 S.Ct. 1085 (1993)("We hold that the 180-day time period in Article III(a) of the IAD does not commence until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him."). Because appellant Hill's request for final disposition was delivered to the court and the prosecuting attorney on September 3, 2010, the 180-day period concluded on March 1, 2011. Id. The State sought a continuance pursuant to the provisions of the Act at or before the 180 days expired. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 19-39 March 17, 2011Tr. pp. 1-21, R. 65-75, BOA). The motion was made in open court with appellant Hill present along with his attorney. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 19-39 March 17, 2011 Tr., pp. 1-21, R. 65-75). Judge John, the administrative judge, and trial judge in this case held the state had shown good cause

for the granting of the continuance under the Interstate Agreement on Detainers Act and granted a reasonable or necessary continuance. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 5- Order of Continuance March 1, 2011, R. 6-Amended Order of Continuance, R. 19-39 March 17, 2011 Tr., pp. 1-21, R. 65-75). Thereafter, the State was prepared to try the case in July of 2011; however, appellant Hill made a motion for continuance which Judge John granted. (R. 8- Order of Continuance June 20, 2011, R. 65-75). Thereafter, the case was called for trial in September of 2011, and Hill was convicted.[25]

The question here is whether Judge John's order granting a continuance satisfies the continuance provision of the IAD. It does. Without question, "the decision to grant a continuance is generally within the trial court's discretion." Patterson, 273 S.C. at 363, 256 S.E.2d at 418. It may reversed only on an abuse of discretion. Id.; State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996). There is no question, and it is conceded by appellant Hill, the State made its request for continuance before the one hundred and eighty (180) days expired. The statute provides that the request must be made before or at the expiration of the one hundred (180) days, which was done in this case. There is no question, Judge John, the administrative judge, and the trial judge in the matter, had jurisdiction under the Act. There is no question the motion for a continuance was made, in open court, with appellant Hill present and his counsel. The request for a continuance was therefore timely under the statute and properly made before Judge John.

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[25]Hill conceded below that the State's continuance motion was made, timely made, and granted by the Court. However, he argued that the granting of the continuance was erroneous. On appeal, admitting again the motion was timely made and a continuance was granted, he argues his convictions and sentences should be vacated and the indictments for two (2) counts of murder and burglary in the 1st degree should none the less be dismissed with prejudice pursuant to the IAD because the State did not have good cause for a continuance under the IAD.

The basis for the continuance is plainly set forth in the record. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 65-75). Judge John noted the special preparations that were required in a case of this magnitude, i.e. a double murder with an accompanying charge of burglary in the 1st degree. Judge John was also the trial judge in the Gagnon murder case so he was intimately familiar with how complicated and serious the matter was. Respondent would note that the very fact that appellant's counsel recognized a need for an additional continuance based on his schedule and need of additional time in preparation for his case [R. 65-75] is implicit acknowledgment of the additional time and additional requirements of a proceeding of this nature and magnitude. In fact, Hill relied on the magnitude of this case as one of the basis for his continuance request in June of 2011. (R. 43-46 June 16, 2011 Tr., pp. 4-7). *See* State v. Aguero, 791 N.W.2d 1 (N.D. 2010)(allowable delay is based on consideration of magnitude and seriousness of the offense). The Solicitor also confirmed on the record that while Hill had been detained in the Horry County Detention Center, there had been extensive plea negotiations between the State and the Defendant. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 65-75).[26] There had even been discussions regarding a potential proffer of appellant Hill's testimony. (R. 65-75). Even more importantly, the original Schmerber Order had been lost, and the chain of custody documentation lost, and the State had a compelling need to obtain a second Schmerber Order for a 2nd DNA bucal sample for forensic comparison. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 65-75). This is also supported by the record of the March 17, 2011 hearing at which the State obtained a 2nd Schmerber Order for a 2nd bucal sample. (R. 19-39 March 17, 2011 Tr., pp. 1-

[26]Defense counsel did not deny the fact that plea negotiations were taking place before the 180 day deadline, and in fact confirmed at a September hearing that he received a written plea offer from the State on March 8, 2011. (R. 65-75). Defense counsel also conceded in a hearing immediately before the trial began, that plea negotiations were ongoing before he received the written offer on March 8th. (R. 76-78).

21, R. 65-75). The record also shows that once this bucal sample was obtained SLED expedited its examination in this case over other cases so this case would move forward without any unnecessary delay. (R. 65-75). The Orders filed by Judge John show he found and concluded that good cause was shown for the continuance and a continuance was reasonable and necessary. (R. 5, 6, Order of Continuance, March 1, 2011, Amended Order of Continuance March 12, 2011).[27]

Again, this is not a question of constitutional magnitude or the basis for a speedy trial motion; rather, it is a matter of compliance with procedural rules under the IAD. The State complied with those rules and obtained a continuance **prior to the expiration of the 180 days**. And, the continuance was based on *good cause* as determined by the Court, and the Court granted a *necessary* and *reasonable* continuance. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 5-March 1, 2011Order of Continuance, R. 6-Amended Order of Continuance, R. 19-39 March 17, 2011 Tr., pp. 1-21, R. 65-75). The State was prepared to move forward with the trial ***in July*** of 2011; however, appellant sought a continuance, which was *also* granted by the Court. (R. 65-75, R. 8-Order of Continuance June 20, 2011). The case was then called for trial in September, and appellant was properly convicted of all charges by evidence proving his guilt beyond any reasonable doubt. And, after those convictions, appellant was sentenced to life imprisonment without parole and thirty (30) years concurrent.[28] Hill has not shown an abuse of discretion by Judge John.

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[27]The Amended Order of Continuance correctly reflects that Hill was brought to South Carolina pursuant to his request under Article III not Article IV; therefore, any applicable time period would be 180 days not 120 days as reflected in the original Order of Continuance.

[28]Any loss of appellant's good time credits in Tennessee would not cause appellant any prejudice because he was sentenced to life without parole and thirty (30) years here and these sentences would extend long beyond the completion of his sentence in Tennessee. Further, Hill has shown no prejudice to his defense by any delay, but quite the opposite.

This record reflects that none of the procedural rules were violated, and, further, no unnecessary delay is evident. Hill cannot show he is entitled to vacation of his convictions for murder (2 Counts) and Burglary in the 1st Degree and dismissal of the indictments with prejudice. However, to the extent the issue raised here contests the legitimacy of the tolling based on Judge John''s Order, neither case law nor the record supports Hill's position. There is no merit to this ground and it must be dismissed with prejudice.

III.

Finally, Hill's request for a continuance removed his case outside the purview of the IAD's automatic dismissal provisions. *See* State v. Allen, 269 S.C. 233, 237 S.E.2d 64 (1977)(If, however, a defendant makes a continuance request, his request "remove[s] his case from the scope of the automatic dismissal provisions of the statute."). *See also* State v. Finley, 277 S.C. 548, 290 S.E.2d 808 (1982) ("a defendant cannot cause the delay in the trial and then expect dismissal of the charges because the case was not tried within" the mandated statutory period). Hill argues that because his continuance request occurred after the expiration of the 180 days, it should not be considered as waiving the automatic dismissal provision; however, Respondent submits Hill is wrong for two (2) reasons. First, the 180 days did not expire but a proper continuance for good cause was granted by Judge John at or before the expiration of the 180 days as provided for in the statute, tolling the time period. Therefore, Hill's continuance motion did waive the automatic dismissal provision because it was made while the 180 time period was tolled. Second, Hill's continuance request constituted his taking a position contrary to his request for speedy disposition under the statute and constituted a waiver of any speedy disposition claim. *See* Brown v. Wolff, 706 F.2d 902 (9th Cir. 1983); State v. Buhl, 269 N.J. Super. 344, 635 A.2d 562 (App. Div. 1994). *See also* New York v. Hill, 528 U.S.

110 (2000)(discussing waiver of IAD requirements). Further, his motion for a continuance conceded Hill was not ready for trial when the State made its motion for a continuance. (R. 43-46 June 16, 2011 Tr., pp. 4-7). As a result, this ground must be dismissed.

CONCLUSION

For all of the foregoing reasons, Hill's convictions for the murders of Charles and Diane Parker and the burglary of their home and his resulting sentences should be affirmed.

Respectfully submitted,

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July 25, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

Appellant,

v.

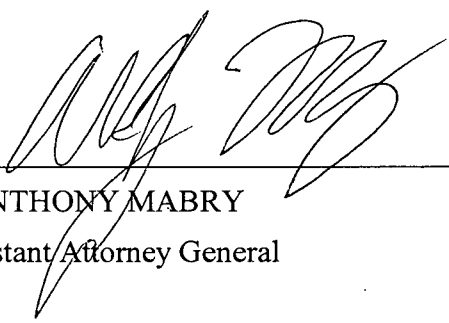
BRUCE A. HILL,

Respondent.

Appellate Case No. 2011-199807

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



J. ANTHONY MABRY
Assistant Attorney General

July 25, 2013

CERTIFICATE OF SERVICE

I, Anthony Mabry, hereby certify that I have served the ***Final Brief of Respondent*** in the foregoing action by deposition copies in the United States Mail to:

Jonathan M. Hiller, Esquire
Hiller & Hiller, PA
1053 London Street, Suite B
Myrtle Beach, SC 29577

This 25th day July, 2013.

ANTHONY MABRY
Assistant Attorney General

ALAN WILSON
ATTORNEY GENERAL

July 25, 2013

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State v. Bruce A. Hill
Appellate Case No. 2011-199807

Dear Ms. Kitchings:

Enclosed please find the original and fourteen (14) copies of the **Final Brief of Respondent** in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Anthony Mabry
Assistant Attorney General

/lbb
Enclosures

cc: Jonathan M. Hiller, Esquire
Jimmy A. Richardson, Solicitor
Sandi Wofford, Victim Assistance