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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES EARL SMITH,

APPELLANT

APPELLATE CASE NO. 2023-000798

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by refusing to dismiss Appellant's indictments based on a violation of Appellant's state and federal constitutional rights to a speedy trial where Appellant was arrested on June 13, 2012, the same day the offense allegedly occurred, but his case was not called for trial until May 8, 2023, nearly eleven years after Appellant's arrest?

STATEMENT OF THE CASE

A Darlington County grand jury indicted Appellant on July 18, 2013 for kidnapping and on July 20, 2017 for first degree criminal sexual conduct. R. 414-417. On December 6, 2022, Appellant filed a motion for a speedy trial. R. 404. On March 30, 2023, Appellant filed a motion to quash indictments pursuant to the right to a speedy trial. R. 405-408. On April 3, 2023, a hearing was held on Appellant's motions before the Honorable Michael Holt. R. 1. Assistant Solicitor Patti Parker represented the state. Jay Ervin and Christian Carey represented Appellant. R. 1. By order filed April 6, 2023, Judge Holt granted Appellant's motion for a speedy trial and ordered Appellant's case be placed "as the first case on the trial docket after any cases already noticed for trial." R. 409. However, by order filed that same day, Judge Holt denied Appellant's motion to quash the indictments pursuant to his right to a speedy trial. R. 410-411.

Appellant's case was called for trial on May 8, 2023 before the Honorable Thomas W. Cooper, Jr., and a jury. R. 17. Assistant Solicitor Patti Parker represented the state. Jay Ervin and Christian Carey represented Appellant. R. 17.

On May 11, 2023, the jury found Appellant guilty as indicted. R. 399, l. 18 – 400, l. 11. He was sentenced to eighteen years for each offense to be served concurrently. R. 403, ll. 8-23.

This appeal follows.

STANDARD OF REVIEW

“A court’s decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion.” State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012) (internal citations omitted). “An abuse of discretion occurs when the trial court’s decision is based upon an error of law or upon factual findings that are without evidentiary support.” Id. (quoting Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008)).

ARGUMENT

The trial court abused its discretion by refusing to dismiss Appellant's indictments based on a violation of Appellant's state and federal constitutional rights to a speedy trial where Appellant was arrested on June 13, 2012, the same day the offense allegedly occurred, but his case was not called for trial until May 8, 2023, nearly eleven years after Appellant's arrest.

Relevant Facts

Appellant was arrested during the early morning hours of June 13, 2012 after the state alleged he kidnapped and had sex with Shamika Cottingham without her consent. Appellant admitted to having sex with Cottingham but maintained it was consensual after he agreed to pay Cottingham in exchange for sex. Appellant testified that after having sex with Cottingham, he refused to pay her which is why she called the police and claimed it was nonconsensual.

The state originally scheduled Appellant's case for trial during 2017, but for whatever reason the trial did not proceed. On December 6, 2022, Appellant filed a motion requesting a speedy trial pursuant to the Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution. Appellant requested the trial court order his case be tried within a specific time period and, if his case was not tried during that time period, for the court to dismiss the case with prejudice. R. 404. Subsequently, on March 30, 2023, Appellant filed a motion to quash his indictments arguing his rights to a speedy trial were violated. R. 405. He emphasized that, at the time the motion was filed, his case had been pending for ten years and eight months without being called for trial. Appellant contended this ten year delay was presumptively prejudicial and triggered the four part balancing test outlined in Barker v. Wingo, 407 U.S. 514 (1972). R. 406.

On April 3, 2023, a hearing was held on Appellant's motions. During the hearing, defense counsel cited to Barker v. Wingo, 407 U.S. 514 (1972), State v. Foster, 260 S.C. 511, 197 S.E.2d 280 (1973), and State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997) in support of his motion to dismiss the indictments. He argued the nearly eleven year delay in Appellant's case was presumptively prejudicial given that our appellate courts have found delays ranging from three to five years to be presumptively prejudicial. While he acknowledged Appellant first filed a motion for a speedy trial in December 2022, he emphasized this was because current counsel was only assigned the case that month. As to the prejudice to Appellant, defense counsel asserted the United States Supreme Court has recognized that excessive delay compromises the "reliability of a trial in ways that neither party can prove or identify." R. 2, l. 4 – 3, l. 22; R. 14, l. 10 – 15, l. 12. However, he further argued Appellant was prejudiced because the delay was affecting Appellant's ability to locate and interview key witnesses in the case. R. 12, l. 23 – 14, l. 7.

The assistant solicitor conceded the nearly eleven year delay was presumptively prejudicial. She asserted the main reason for the delay was "staff turnover" in both the solicitor's office and the public defender's office "through the years." The solicitor stated the case was originally assigned to her or John Holt to prosecute. She left the solicitor's office in 2016 and returned in 2019 while John Holt left the office in 2015 and never returned. As for the delay after 2019, the solicitor argued it was largely due to the COVID-19 pandemic. She also mentioned that the attorney originally appointed to represent Appellant, Jamie Scruggs, left the public defender's office sometime in 2021. Jay Ervin, who represented Appellant at trial, was assigned the case in December 2022. The solicitor did not know who represented Appellant between Scruggs's departure from the public defender's office and Ervin's appointment. In

additional to staff turnover and the pandemic, the solicitor blamed “docketing problems and just the large amount of cases we have pending in Darlington County.” The solicitor argued the delay in calling Appellant’s case for trial was not intentional.

Further, the assistant solicitor argued Appellant waived his right to a speedy trial by not asserting the right until December 2022, which is the first time Appellant filed a motion for a speedy trial. Additionally, the solicitor emphasized that the case was scheduled for trial that week (April 3, 2023), but Appellant filed a motion for a continuance. However, this motion, which was filed on March 30, 2023, was only necessary because Appellant was no longer able to locate “three key witnesses” who were interviewed by the defense investigator in July and August 2017 in preparation for the trial that was scheduled to take place that year. R. 412.

Lastly, the solicitor argued Appellant showed no prejudice caused by the delay. She asserted that while Appellant was having difficulty locating witnesses, Appellant had not shown he could not find these witnesses because of the passage of time. She also emphasized that Appellant had been out on bond since a day or two after his arrest. She maintained it would be “more prejudicial had he been sitting in jail for a length of time.” To the solicitor, it did not matter that Appellant had serious felony charges pending on his “rap sheet” since he has other felony convictions that would have affected his ability to obtain employment. She asked the court to deny the motion to dismiss based on a balancing of the four factors. R. 4, l. 2 – 10, l. 16.

By order filed April 6, 2023, Judge Holt granted Appellant’s motion for a speedy trial and ordered Appellant’s case be placed “as the first case on the trial docket after any cases already noticed for trial.” R. 409. However, by order filed that same date, Judge Holt denied Appellant’s motion to quash the indictments pursuant to his right to a speedy trial. R. 409. In the order denying Appellant’s motion to dismiss, the court “recognized” that “with employee

turnover in our Public Defender Office, as well as the COVID-19 pandemic, that some cases in this county have seen appreciable and unforeseen delay.” However, the court found only “mere months” have passed since Appellant first moved for a speedy trial in December 2022. Given this, the court indicated it was “inclined to allow this case to proceed to trial as soon as practicable” despite the “significant passage of time” since Appellant’s arrest. R. 410.

Discussion

The trial court abused its discretion by failing to dismiss Appellant’s indictments based on a violation of his state and federal constitutional rights to a speedy trial where Appellant was arrested on June 13, 2012, the same day the offense allegedly occurred, but his case was not called for trial until May 8, 2023, nearly eleven years after Appellant’s arrest.

The Sixth Amendment to the United States Constitution provides, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” U.S. Const. amend. VI. Similarly, the South Carolina Constitution provides that “Any person charged with an offense shall enjoy the right to a speedy and public trial.” S.C. Const. art. I, § 14. “A speedy trial means a trial without unreasonable and unnecessary delay.” State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371 (2016) (citing State v. Langford, 400 S.C. 421, 441, 735 S.E.2d 471, 482 (2012)); See Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966). “The remedy for a speedy trial violation is dismissal of the charges.” Id. (citing Langford, 400 S.C. at 442, 735 S.E.2d at 482).

“An accused’s speedy trial right begins when he is indicted, arrested, or otherwise officially accused.” Id. (citing Langford, 400 S.C. at 442, 735 S.E.2d at 482) (internal quotation marks omitted); See United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982). “To trigger a speedy trial analysis, the accused must allege that the interval between

accusation and trial has crossed the threshold dividing ordinary from presumptively prejudicial delay, since, by definition, he cannot complain that the government has denied him a speedy trial if it has, in fact, prosecuted his case with customary promptness.” *Id.* at 342-43, 794 S.E.2d at 371 (citing Doggett v. U.S., 505 U.S. 647, 652 (1992)) (internal quotation marks omitted). “Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness.” *Id.* at 343, 794 S.E.2d at 371; (citing Doggett, 505 U.S. at 651-52).

“Once the accused has met this initial burden, a court must look to four factors, among the totality of the circumstances, to decide whether the defendant's right to a speedy trial has been denied.” *Id.* (citing Barker v. Wingo, 407 U.S. 514, 530-31 (1972); See Langford, 400 S.C. at 441, 735 S.E.2d at 482. “These factors are: (1) length of delay; (2) the reason for the delay; (3) the accused’s assertion of his right to a speedy trial; and (4) whether the delay prejudiced the accused.” *Id.* (citing Barker, 407 U.S. at 531-32).

Triggering Factor and Length of Delay

A defendant’s right to a speedy trial begins when he is arrested, indicted, or otherwise accused. Appellant was arrested on June 13, 2012, the same day the alleged offense occurred. The state correctly conceded during the pretrial hearing that this nearly eleven year delay was presumptively prejudicial and sufficient to trigger the remainder of the analysis. See State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978) (holding a twenty-eight month delay triggered speedy trial analysis); Langford, 400 S.C. at 442-43, 735 S.E.2d at 482 (holding a twenty-three month delay between arrest and trial was presumptively prejudicial and triggered the remainder of the analysis).

Reasons for the Delay

Turning to the second factor, the Supreme Court has stated that “different weights should be assigned to different reasons” for the delay. Langford, 400 S.C. at 443, 735 S.E.2d at 483 (quoting Barker, 407 U.S. at 531). “A deliberate attempt by the State to delay the trial as a means of impairing the accused’s ability to defend himself ‘should be weighted heavily against the government.’” Id. (quoting Barker, 407 U.S. at 531). “Neutral reasons, which could include overcrowded dockets or negligence, are ‘weighted less heavily’ but still count against the State because it bears the ultimate responsibility for these circumstances.” Id. (quoting Barker, 407 U.S. at 531); See State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (“The ultimate responsibility for the trial of a criminal defendant rests with the State.”). “Delays occasioned by the defendant, however, weigh against him.” Id. (citing Vermont v. Brillon, 556 U.S. 81 (2009)).

The excessive delay in this case should be counted and weighed against the state since the responsibility for bringing a case to trial falls on the prosecutors and the courts. See Barker, 407 U.S. at 529. The assistant solicitor maintained the delay in this case was caused by “staff turnover” at both the solicitor’s office and the local public defender’s office as well as overcrowded dockets and the pandemic. While there is no evidence the delay was intentionally caused by the state, it is still the state’s responsibility to call the case for trial. Because the “primary burden” to “assure that cases are brought to trial” is “on the courts and the prosecutors,” this factor should weigh against the state and in favor of Appellant given there is no evidence Appellant caused any delay.

Assertion of Right to a Speedy Trial

A defendant has “some responsibility to assert a speedy trial claim” and his assertion of the right is one of the factors that courts consider in determining whether the right has been

denied. Barker, 407 U.S. at 529. However, a defendant who fails to make a demand for a speedy trial is not automatically deemed to have waived the right forever. Id. at 528-30. Appellant first moved for a speedy trial in December 2022. While it is true Appellant did not demand a speedy trial throughout the pendency of his case, again, this does not mean Appellant waived the right. This factor is neutral.

Prejudice to the Accused

“Actual prejudice occurs when the trial delay has weakened the accused’s ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence. State v. Hunsberger, 418 S.C. 335, 351, 794 S.E.2d 368, 376 (2016) (citing Doggett, 505 U.S. at 655). “The United States Supreme Court also recognized that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or even identify.” Id. (internal citation omitted). “This is so because ‘time’s erosion of exculpatory evidence and testimony ‘can rarely be shown.’” Id. (quoting Doggett, 505 U.S. at 655); See Barker, 407 U.S. at 532. “When the government persistently fails to try an accused and the delay is excessive, the accused need not show actual prejudice in order to prevail in his speedy trial claim.” Id. (citing Doggett, 505 U.S. at 657-58). “While presumptive prejudice cannot alone support a speedy trial claim, it is part of the mix of relevant facts, and its importance increases with the length of time.” Id. (citing Doggett, 505 U.S. at 656).

The eleven year delay in this case was presumptively prejudicial. The excessive delay compromised the reliability of Appellant’s trial in ways that Appellant can neither prove nor even identify. However, Appellant also suffered actual prejudice. The delay affected Appellant’s ability to locate and secure key witnesses for trial. These witnesses were available in 2017 when Appellant’s case was first scheduled for trial. However, defense counsel had

difficulty locating these witnesses in 2023 before Appellant's case was finally called to trial. Moreover, the lead investigator passed away during the pendency of the case. Consequently, Appellant was unable to cross-examine this witness about law enforcement's investigation and the circumstances surrounding Appellant's statement to police and his consent to search his house where the offense allegedly occurred. Defense counsel made clear that he would have questioned the lead investigator about his possession of the fitted bed sheet collected from Appellant's house before the sheet was placed into evidence.

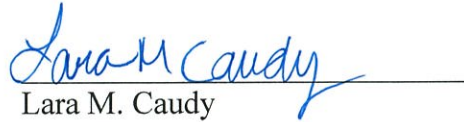
While Appellant was not incarcerated during the excessive delay, he had serious felony charges pending on his record for over a decade and suffered from the stigma sexually violent offenses carry. This is additional evidence of actual prejudice Appellant suffered because of the state's extreme delay in calling his case for trial.

Respectfully, this Court should hold the trial court abused its discretion by denying Appellant's motion to dismiss based on the violation of his constitutional rights to a speedy trial.

CONCLUSION

Based on the foregoing argument, this Court should reverse Appellant's convictions, hold his constitutional right to a speedy trial was violated, and dismiss the charges against him.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of October, 2024.

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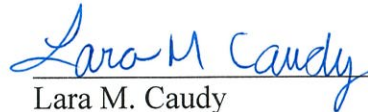
Oct 04 2024

SC Court of Appeals

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."

October 4, 2024.



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APPELLANT

APPELLATE CASE NO. 2023-000798

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above referenced case has been served upon Joshua A. Edwards, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 4th day of October, 2024.



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

From: [Mcinnis, Sara](#)
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Cc: [Caudy, Lara](#); [Susan Spencer](#)
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Good Morning Mr. Edwards,

Attached for service in the above-referenced case is the final brief of appellant, which will be filed with the Court of Appeals today, October 4, 2024, via email filing.

Thank you,

Sara McInnis

Administrative Assistant
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