

RECEIVED

Mar 05 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

The Honorable Carmen T. Mullen, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

BENJAMIN WALTER DUBOIS, III,

Appellant.

Appellant Case No. 2023-001307

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

KAYLEE C. KEMP
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6307

ISAAC MCDUFFIE STONE, III
Fourteenth Circuit Solicitor's Office
Post Office Box 1880
Bluffton, South Carolina 29910

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

APPELLANT’S STATEMENT OF THE ISSUE.....1

RESPONDENT’S COUNTERSTATEMENT OF THE ISSUE.....2

STATEMENT OF THE CASE.....3

RESPONDENT’S STATEMENT OF FACTS.....4

STANDARD OF REVIEW.....7

ARGUMENT

The circuit court properly reviewed and balanced the circumstances contributing to the delay of Appellant’s trial, finding that the delay was not wholly attributable to the State, nor was the delay intentional or negligent, and that Appellant could not demonstrate prejudice, and thereby properly denied Appellant’s motion to dismiss pursuant to a violation of his speedy trial rights.....8

CONCLUSION.....19

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972).....	8, 10
<i>Doggett v. U.S.</i> , 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992).....	10, 17
<i>People v. Hairston</i> , 46 Ill.2d 348, 263 N.E.2d 840 (1970).....	11
<i>State v. Barnes</i> , 431 S.C. 66, 846 S.E.2d 389 (Ct. App. 2020) <i>aff'd as modified</i> , 436 S.C. 202, 871 S.E.2d 421 (2022).....	13, 15
<i>State v. Brazell</i> , 325 S.C. 65, 480 S.E.2d 64 (1997).....	9
<i>State v. Cooper</i> , 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2009).....	9
<i>State v. Hunsberger</i> , 418 S.C. 335, 794 S.E.2d 368 (2016).....	7, 9, 13, 16
<i>State v. Kennedy</i> , 339 S.C. 243, 528 S.E.2d 700, (Ct. App. 2000), <i>aff'd</i> , 348 S.C. 32, 558 S.E.2d 527 (2002).....	16
<i>State v. Langford</i> , 400 S.C. 421,735 S.E.2d 471 (2012).....	8, 9, 10, 16
<i>State v. Reaves</i> , 414 S.C 118, 777 S.E.2d 213 (S.C. 2015).....	13, 15
<i>State v. Robinson</i> , 335 S.C. 620, 518 S.E.2d 269 (Ct. App. 1999).....	9, 15
<i>State v. Pittman</i> , 373 S.C. 527, 647 S.E.2d 144 (2007).....	8, 9, 13
<i>State v. Waites</i> , 270 S.C. 104, 240 S.E.2d 651 (1978).....	9, 11, 15
<i>United States v. Loud Hawk</i> , 474 U.S. 302, 106 S.Ct. 648 (1986).....	16
<i>United States v. MacDonald</i> , 456 U.S. 1, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982).....	9
Statutes	
S.C. Code § 17-25-45.....	3
Constitutional Provisions	
S.C. Const. art. I, § 14.....	8
U.S. Const. amend. VI	8

APPELLANT'S STATEMENT OF THE ISSUE

Did the circuit court err by failing to properly weigh the factors surrounding the almost six-year delay between arrest and trial and then refusing to grant the motion to dismiss as a violation of Appellant's state and federal constitutional right to a speedy trial?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE

Did the circuit court properly review and balance the circumstances contributing to the delay of Appellant's trial, finding that the delay was not wholly attributable to the State, nor was the delay intentional or negligent, and that Appellant could not demonstrate prejudice, thereby properly denying Appellant's motion to dismiss pursuant to a violation of his speedy trial rights?

STATEMENT OF THE CASE

In May of 2018, the Jasper County Grand Jury indicted Appellant, Benjamin Walter Dubois, III, for the murder of Jerry Douglas Holmes. (2017-GS-27-00582) (*See* Indictment R. p. 1185).

On October 31, 2019, Appellant appeared before the Honorable Ferrell Cothran, Jr. for a pre-trial hearing. (*See* October 31, 2019, Transcript, R. p. 1). Carolyn Carmody, Esquire represented Appellant and Assistant Solicitor Patrick Hall of the 14th Circuit Solicitor's Office represented the State. The purpose of the hearing was for Appellant to meet his newly appointed attorney, Ms. Carmody, and for the court to instruct Applicant, at the State's request, in regard to filing his own motions when he was represented by counsel. (October 31, 2019, Transcript, R. p. 4).

On July 13, 2023, Appellant appeared before the Honorable Robert Bonds for a pre-trial hearing. (*See* July 13, 2023, R. p. 9). Ms. Carmody represented Appellant and Reed Evans represented the State. Appellant filed two motions alleging that his due process rights had been violated and that he has been denied the right to a speedy trial. (July 13, 2023, Transcript, p. 4). At its conclusion, the court denied the speedy trial motion and instructed the State to write an order. (July 13, 2023, R. p. 136).

On July 31, 2023 – August 4, 2023, Appellant proceeded to jury trial before the Honorable Carmen T. Mullen. Ms. Carmody represented Appellant and Mr. Evans represented the State.

The jury found Appellant guilty of murder pursuant to S.C. Code § 17-25-45. (Trial R. p. 1168-1169). Judge Mullen sentenced Appellant to life without parole. (R. p. 1179; *see also* sentence sheet R. p. 1185). A notice of intent to appeal was served on August 14, 2023.

RESPONDENT'S STATEMENT OF FACTS

Summary of the Crime

On the evening of June 21, 2017, Jerry Holmes was reviewing some documents with his cellmate, Casey Chappell, prior to his court appearance the following day. Holmes, along with Appellant, were housed in Ridgeland Correctional Institution.

That evening, Appellant approached Chappell and Holmes' cell under the guise that he was going to share drugs with Holmes. (R. p. 550-555). Unbeknownst to Holmes, Appellant flashed the ice pick he had in his waistband to Chappell. (R. p. 551). Chappell testified that he took Appellant's signal to mean that Chappell needed to leave the cell. (R. p. 551-552). Chappell left the cell, and as he started to walk away, he heard a "thudding noise and gurgling and Country¹ trying to yell." (R. p. 552).

Chappell then saw Appellant leave the cell covered in blood and another individual attempting to help Appellant clean up the trail of blood he left as he walked. (R. p. 554-555). Chappell testified that he was unsure of what to do next and waited in a different open cell for a correctional officer to return. (R. p. 556). Holmes' body was discovered early the next morning around 3-4 AM. (R. p. 840). His cause of death was a stab wound that went into the neck and cut through multiple blood vessels. (R. p. 770).

On August 15, 2017, Appellant was arrested and charged with murder. Two other inmates were also charged in connection to Holmes' death.

Pre-Trial Proceedings

On September 13, 2017, Appellant filed a letter with the Jasper County Clerk of Court asking for a public defender, requesting Rule 5 and *Brady* material. (September 13, 2017, letter).

¹ "Country" is a nickname Holmes was known as, and Appellant was known as "Animal". (R. p. 533).

Appellant was formally indicted on May 31, 2018. (*See* Indictment R. p. 1185-1186). On September 13, 2019, Appellant filed, while represented by counsel, another letter with the Jasper County Clerk of Court, asking for a motion to dismiss to be filed on account of the delay. (September 13, 2019, letter).

On October 31, 2019, a hearing was convened before the Honorable Ferrell Cothran, Jr. The purpose of the hearing was to address Appellant's letters that he had sent to the Clerk of Court requesting discovery material, making a speedy trial demand and that he had not yet met his public defender. (October 31, 2019, R. p. 3). Due to the overturn in the public defender's office, Appellant was appointed a new attorney who had been with the office for about a month. (October 31, 2019, R. p. 4). Judge Cothran ordered the State to provide full discovery to counsel within 30 days. (October 31, 2019, R. p. 6). The State informed the court that they planned to call the case within the first six months of 2020. (October 31, 2019, R. p. 6). Judge Cothran stated that if the case had not been called at that time, the defense can motion for a speedy trial, "to see what kind of relief they can get." (October 31, 2019, R. p. 6-7).

Due to the Covid-19 pandemic, Appellant's case was not called in until October 2022. Defense counsel moved for a continuance because she was sick. (July 13, 2023, R. p. 123). The case was again called in November 2022. Prior to trial, the State moved for a continuance to analyze phones collected by SCDC in relation to Appellant's case. (July 13, 2023, R. p. 123-124).

The continuance was granted, and Appellant's case was scheduled for trial in December 2022, however the case had to be continued a third time. The detention center failed to refill prescription medications that Appellant apparently needed to maintain competency. (*See* Order Denying Defendant's Motion to Dismiss for Alleged Speedy Trial Violation R. p. 1203).

On May 16, 2023, Appellant filed a notice of motion to dismiss based on the speedy trial violation. On July 13, 2023, a hearing was held before the Honorable Robert Bonds on Appellant's motion to dismiss based on the speedy trial violation. (*See* July 13, 2023, R. p. 9). Judge Bonds denied the motion to dismiss and asked the State to prepare an order. (July 13, 2023, R. p. 136). On July 21, 2023, Appellant filed the memorandum in support of the motion to dismiss based on the speedy trial violation. The written order denying the motion was filed on July 27, 2023.

Appellant's case was called to trial on July 31, 2023, with the Honorable Carmen T. Muller presiding. The State made the trial judge aware of Judge Bonds' ruling denying the motion to dismiss based on the speedy trial violation. (July 31, 2023, R. p. 143-144). Appellant renewed the motion to dismiss at the close of the State's case. (July 31, 2023, R. pp. 997-1003). The trial judge denied the motion. (July 31, 2023, R. pp. 1012-1016). The trial judge noted the lockdown, turnover in both the Solicitor's office and the Public Defender's office and found that the three continuances were necessary. (R. p. 1012-1013).

After a four-day trial, the jury convicted Appellant of the murder of Jerry Holmes. Judge Mullen sentenced Appellant to life without parole. (R. p. 1179; *see also* sentence sheet, R. p. 1187).

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 (2016). “An abuse of discretion occurs when the court's decision is based on an error of law or upon factual findings that are without evidentiary support.” *Id.* at 342, 794 S.E.2d at 371–72.

ARGUMENT

The circuit court properly reviewed and balanced the circumstances contributing to the delay of Appellant’s trial, finding that the delay was not wholly attributable to the State, nor was the delay intentional or negligent, and that Appellant could not demonstrate prejudice, and thereby properly denied Appellant’s motion to dismiss pursuant to a violation of his speedy trial rights.

Appellant contends that the trial judge erred by failing to properly weigh the factors related to the six-year delay of Appellant’s trial.

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally guaranteed right to a speedy trial. *See* U.S. Const. amend. VI; S.C. Const. art. I, § 14. That right is designed to limit undue pre-trial incarceration, to protect against anxiety stemming from public accusation of a crime, and-most seriously-to limit the possibility of a lengthy pre-trial delay impairing an accused’s defense. *Barker v. Wingo*, 407 U.S. 514, 532 (1972); *see State v. Langford*, 400 S.C. 421,440, 735 S.E.2d 4 71, 481 (2012) (“The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense.”); *State v. Pittman*, 373 S.C. 527, 550, 647 S.E.2d 144, 155-156 (2007).

In order to trigger a speedy trial analysis, a defendant’s trial must have been delayed for a period of time that is presumptively prejudicial, which necessarily depends on the particular circumstances of each case. *Langford*, 400 S.C. at 442, 735 S.E.2d at 442. Notably, “a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case.” *Langford*, 400 S.C. at 442–443, 735 S.E.2d at 482 (“holding a twenty-three month delay was presumptively prejudicial”) (internal citation omitted);

See *State v. Cooper*, 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2009) (“reaching the *Barker* factors when there was a forty-four month delay”); *State v. Waites*, 270 S.C. 104, 240 S.E.2d 651 (1978) (“holding a twenty-eight month delay triggered speedy trial analysis”).

However, even where a delay that is presumptively prejudicial exists, a speedy trial determination “is not based on the passage of a specific period of time” and delay alone is not singularly dispositive. *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155 (emphasis added); see *State v. Brazell*, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (recognizing “delay alone is not dispositive”).

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant’s right to a speedy trial has been violated is necessarily dependent on the specific circumstances of the defendant’s particular case. *State v. Robinson*, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). A court analyzing a speedy trial claim should consider: “(1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) whether any prejudice was suffered by the defendant as a result of the delay.” *Barker*, 407 U.S. at 530.

Length of Delay

“An accused’s speedy trial right begins when he is ‘indicted, arrested, or otherwise officially accused.’” *State v. Hunsberger*, 418 S.C. 335, 343, 794 S.E.2d 368, 372 (2016); *Langford*, 400 S.C. at 442, 735 S.E.2d at 482 (citing *United States v. MacDonald*, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982)). Appellant was arrested on August 15, 2017, while still incarcerated for his previous criminal conviction.

On September 13, 2017, Appellant filed a letter with the Jasper County Clerk of Court asking for a public defender, requesting Rule 5 and *Brady* material, and noting, “I want to file for a fast and speedy trial. Because of this pending charge I now have to remain in security detention

(Isolation) until this is resolved.” (September 13, 2017, letter, R. p. 1189). Appellant was indicted on May 31, 2018. (*See* Indictment, R. p. 1185). On September 13, 2019, Appellant filed another letter with the Jasper County Clerk of Court. (September 13, 2019, letter, R. p. 1191). A hearing was convened on October 31, 2019, to address Appellant’s filing of *pro se* motions while he was represented and to ensure that Appellant met with his new attorney, Ms. Carmody. (October 31, 2019, R. p. 4).

On July 13, 2023, a hearing was convened pursuant to Appellant’s, through his counsel, speedy trial motion. The Court heard argument from both parties on the motion. At its conclusion, the court denied the speedy trial motion and instructed the State to write an order. Appellant’s case was called to trial on July 31, 2023.

“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.” *Doggett v. U.S.*, 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). “Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness.” *See Doggett*, 505 U.S. at 651–52, 112 S.Ct. 2686 (1992).

Based on the length of time between Appellant’s arrest and the speedy trial motion hearing, a review of the remainder of the speedy trial factors is warranted. “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.” *Barker v. Wingo*, 407 U.S. 514, 530–31, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); *see also Langford*, 400 S.C. at 441, 735 S.E.2d at 482.

Nevertheless, analysis of the remainder of the factors demonstrates Appellant's right to a speedy trial was not violated by the delay.

Reason for Delay

“In order to establish the denial of a speedy trial, it must be demonstrated the delay was attributable to the State.” *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) citing *State v. Dukes*, 256 S.C. 218, 182 S.E.2d 286 (1971). “The constitutional guarantee of a speedy trial is protection only against delay which is arbitrary or unreasonable.” *Id.* citing *People v. Hairston*, 46 Ill.2d 348, 263 N.E.2d 840 (1970).

Appellant alleges that the hearing judge and the trial judge failed to assign responsibility to the State for four years of the almost six-year delay and erred in not weighing that factor heavily against the State. Appellant contends that the State offered no valid reason for the two-year delay between Appellant's arrest in August of 2017, until October 31, 2019, when a hearing was finally held before Judge Cothran. However, the record indicates that the State had shared discovery with Appellant's former counsel, whom Appellant contends he was unable to contact, and due to the turnover in both offices, Appellant's case was inevitably delayed. In determining the period of delay attributable to the State, Judge Bonds wrote,

The State argued that the significant General Sessions backlog in Jasper County, while regrettable, was a legitimate contributing factor to the delay in bringing this case to trial. The State further noted that it had previously informed Judge Cothran of its hope to try the case in the first six months of 2020, but was deterred by the onset of the COVID-19 pandemic.

(Order Denying Defendant's Motion to Dismiss, R. p. 1204). Deliberate efforts to delay trial to injure the defense's case should be weighed heavily against the State, however, neutral reasons are not weighted as such.

Appellant's case was then called to trial in October of 2022, however due to defense counsel's illness, the case was continued to November of 2022. There is no evidence to suggest the State was not prepared to move forward with Appellant's trial at this time, and that had defense counsel been well, the case would have moved forward. There is no evidence of intentional delay as to the first continuance.

The State moved to continue Appellant's November 2022 trial date. In the written order denying the motion to dismiss for a speedy trial violation Judge Bonds described the events as follows:

Prior to the November term, the State invited Counsel for Defense to join a meeting with SLED and SCDC personnel to view the various pieces of physical evidence, in person in Columbia. During this visit, SCDC pulled out a bag containing cell phones which had been seized from prisoners in the aftermath of Holmes' death. While the phones were packaged together, making identification of which phone came from which inmate impossible, the bag had written on it "possible video of incident" or words to that effect. The State had been aware of the existence of the phones, but not the note or potential video evidence. Concerned for the possibility of exculpatory evidence going undetected, the State moved before Judge Mullen to continue the case just prior to the Thanksgiving holiday, in a hearing held over Webex. The Defendant did not oppose the State's motion.

(Order Denying Defendant's Motion to Dismiss, R. pp. 1202-1203). Appellant argues that Judge Bonds, as well as the trial judge, Judge Mullen, erred by failing to assign responsibility for the length of the delay, instead finding that the delay was reasonable. However, a finding of responsibility on behalf of the State does not overcome a determination that the delay was otherwise reasonable.

Appellant's case had to be continued a third time because the detention center failed to refill prescription medications Appellant needed, and was apparently given in the Department of Corrections, to maintain competency. (*See* Order Denying Defendant's Motion to Dismiss for

Alleged Speedy Trial Violation, R. p. 1203). Again, responsibility for the delay is not attributable to the State, much less does it support a finding that the State was neglectful in prosecuting Appellant.

Upon determining whether a speedy trial violation has occurred, the circuit court is tasked with balancing the conduct of the prosecution and the defense and must analyze the factors in terms of the circumstances of each case. The circuit court's determination that Appellant's delayed trial is not in violation of his speedy trial rights is reasonably supported based on the circumstances surrounding the delay.

Accused's Assertion of the Right to a Speedy Trial

“Whether a defendant previously asserted the right to a speedy trial is not alone dispositive of whether he is entitled to relief.” *Hunsberger*, 418 S.C. at 349, 794 S.E.2d at 375. *See Barker*, 407 U.S. at 533, 92 S.Ct. 2182 (holding none of the four factors are either necessary or sufficient to find a denial of the right to a speedy trial). “Accordingly, ‘the defendant’s failure to assert the right, although not conclusive, makes it more difficult to show that the right was violated.’” *State v. Barnes* 431 S.C. 88, 846 S.E.2d 400 (Ct. App. 2020) *aff’d as modified*, 436 S.C. 202, 871 S.E.2d 421 (2022) citing *State v. Reaves*, 414 S.C 118, 130, 777 S.E.2d 213, 219 (S.C. 2015) (quoting *Pittman*, 373 S.C. at 550, 647 S.E.2d at 155). “This consideration prevents a criminal defendant from strategically acquiescing in a delay [that] works to his advantage, then asking the case be dismissed at the last moment once it is called for trial.” *Id.*

In denying the motion to dismiss, Judge Bonds noted that a hearing was conducted before Judge Cothran on October 31, 2019, in which the State indicated the intent to try the case within the first six months of 2020. At that time, Judge Cothran ordered the State to provide full discovery to counsel within 30 days. (October 31, 2019, R. p. 6). Judge Cothran noted that if

Appellant's case was not called at that time, Appellant could make a speedy trial motion. Due to the pandemic, Appellant's case did not move forward, to which he presented no formal motion to dismiss on account of a speedy trial.

Appellant's case was called to trial in November of 2022. The case was continued due to defense counsel's illness. Appellant's case was again scheduled for trial in December of 2022. The State then moved for a continuance on account of discovering potential exculpatory evidence. Again, no formal motion to dismiss on account of a speedy trial violation was made.

Appellant's case was scheduled for trial one month later in December of 2022. Appellant's case had to be continued a third time because the detention center failed to refill prescription medications Appellant needed, and was apparently given in the Department of Corrections, to maintain competency. (*See Order Denying Defendant's Motion to Dismiss for Alleged Speedy Trial Violation*, R. p. 1203). Such a delay is not attributable to the State.

In his order, Judge Bonds further noted Appellant was satisfied with the previous trial dates in November of 2022, December of 2022, and January of 2023, noting that a speedy trial complaint was not made at the time of the numerous delays.

On May 16, 2023, Appellant filed a notice of motion to dismiss based on the speedy trial violation. A hearing was held on the speedy trial motion on July 13, 2023, and Appellant filed the memorandum in support of the motion to dismiss based on the speedy trial violation on July 21, 2023. At the hearing, Judge Bonds expressed concern as to why the motion was not filed "a year ago, or two years ago, or 18 months ago." (July 13, 2023, R. p. 135). Judge Bonds also noted that most of the items listed as missing or destroyed in paragraph five of the notice relating to prejudice would have been missing or destroyed if the case had been tried in 2019. (July 13,

2023, R. p. 135). The written order denying the motion was filed on July 27, 2023. Appellant’s case was called to trial days later on July 21, 2023.

Appellant argues that Judge Bonds erred in refusing to consider the *pro se* assertion of the right to a speedy trial when Appellant was “effectively deprived representation.” (Initial Brief of Appellant at 16). However, the *pro se* letters simply express the desire for his case to be tried quickly, rather than the formal filing of a motion to dismiss for a violation of his speedy trial rights. Appellant did not file a speedy trial motion after Judge Cothran made note that a speedy trial motion could be warranted if his case did not move forward in 2020, nor did Appellant file the motion until after the third continuance of his trial in 2023. *See Waites*, 270 S.C. at 109, 240 S.E.2d at 653 (“We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial.”). After filing a formal motion to dismiss, a hearing was convened, the motion was denied, and Appellant’s case was called to trial days later. *See Robinson*, 335 S.C. at 626, 518 S.E.2d at 272 (“indicating the fact that Robinson was tried within one year of his first formal motion to dismiss contributed to the finding that his speedy trial rights were not violated”).

Judge Bonds properly considered *when Appellant asserted that his speedy trial had been violated*, rather than when he demanded that he receive a speedy trial.

Prejudice

“The final factor—prejudice to the defendant—requires a reviewing court to analyze the three different types of prejudice the speedy trial right seeks to prevent: (1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) the possibility the defense will be impaired.” *Barnes* 431 S.C. at 88, 846 S.E.2d 400 quoting *Reaves*, 414 S.C. at 131, 777 S.E.2d at 219. “Of these, the most serious is the last, because the inability of a defendant adequately to

prepare his case skews the fairness of the entire system.” *Barnes* 431 S.C. at 88, 846 S.E.2d 400; 17-, 400 S.C. at 445, 735 S.E.2d at 484 (quoting *Barker*, 407 U.S. at 532, 92 S.Ct. 2182); but *see Loud Hawk*, 474 U.S. at 312, 106 S.Ct. 648 (“[T]he Speedy Trial Clause’s core concern is impairment of liberty”).

“[A]n accused can assert actual prejudice or presumptive prejudice as the result of the State's violation of his right to a speedy trial.” *Hunsberger*, 418 S.C. at 351, 794 S.E.2d at 376.

As to actual prejudice, Appellant asserts that he was held in isolation within SCDC based on his pending charge. While Appellant may have been prejudiced by his conditions as a result of the incident, the more important question is whether he was prejudiced because the delay impaired his defense. *See State v. Kennedy*, 339 S.C. 243, 251, 528 S.E.2d 700, 705 (Ct. App. 2000), *aff'd*, 348 S.C. 32, 558 S.E.2d 527 (2002). Appellant does not assert that his conditions within confinement had a bearing on his defense, in fact, Appellant was apparently able to send letters, as exemplified by his filings, and make phone calls despite his conditions. “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.” *Hunsberger*, 418 S.C. at 351, 794 S.E.2d at 376. Further the State’s continuance to analyze the cell phones, appears to benefit Appellant’s defense. Appellant asserted that the evidence the State had collected had not been tested though it was alleged to be related to the crime.

Well, we know they collected the weapons, never tested them, never bothered to check whose DNA was on them, but they did test the towel, the towel that’s in the trash with the weapons in -- outside of cell four, close to cell five? Whose DNA is on the towel? Four people.

There’s four people’s DNA on the towel.

Agent Williams testified that he had received information that this could have been recorded, right? I asked about that, wow, okay

The cell phone's there, that cell phone -- what about the cell phone right there on the screen in this picture? Is that -- so is this the murder weapon and the cell phone that reported the incident?

And we don't bother to test these weapons to see for DNA? They tested other things and said well, they couldn't come up with a conclusive result, they never bothered.

(R. p. 118).

As to presumptive prejudice, Appellant asserts that the 6-year delay alone violated his right to a speedy trial. "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." *Doggett*, 505 U.S. at 656-657, 112 S.Ct. 2693 (internal citation omitted).

In *Doggett*, the United States Supreme Court held that an accused's right to a speedy trial was violated when his trial was delayed eight years with no showing of actual prejudice. 505 U.S. at 658, 112 S.Ct. 2686. However, the *Doggett* Court also looked to the State's persistence in failing to prosecute the accused, noting that "the portion of the delay attributable to the Government's negligence far exceeds the threshold needed to state a speedy trial claim[.]" *Id.* 505 U.S. at 657-658, 112 S.Ct. 2694. When such neglect or excessive delay is wholly attributable to the State, "the accused need not show actual prejudice in order to prevail in his speedy trial claim." *Doggett*, 505 U.S. at 657-58, 112 S.Ct. 2686.

Appellant's case is not comparable to the circumstances in *Doggett*. Out of the three continuances contributing to the delay of Appellant's, only one was at the behest of the State. The first continuance was due to counsel's illness, a delay, while considerably neutral, was not a delay attributable to the State. When Appellant's case was scheduled for trial in November of 2022, the State requested a second continuance to review potentially exculpatory evidence which they were not previously made aware. Appellant's case was quickly called to trial again in

December 2022, only to be continued. While also considerably neutral, this continuance was due to issues with Appellant's medication distribution in SCDC which raised concern as to his competency. It was not a delay attributable to the State. It cannot be said that the State requested delay on a bad-faith basis, as the trial was rescheduled a month later. Further, the State was ready to proceed to trial prior to their continuance request exemplifying that the delay was neither strategic nor intended to maliciously hamper the defense.

Therefore, the circuit court did not err in its review of the *Barker* factors, nor did it err in its dismissal of Appellant's speedy trial motion. Given the neutrality of the delays and the lack of prejudice to Appellant, the circuit court properly reviewed the *Barker* factors, denied the motion, and the trial court properly denied the motion again at trial.

[Conclusion and Signature Page to Follow]

CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to affirm Appellant's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

KAYLEE C. KEMP
Assistant Attorney General
S.C. Bar No: 107073

By: s/Kaylee C. Kemp
KAYLEE C. KEMP

ATTORNEY FOR THE RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6307

March 5, 2025

RECEIVED

Mar 05 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

The Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

BENJAMIN WALTER DUBOIS, III

Appellant.

Appellate Case No. 2023-001307

PROOF OF SERVICE

I, **Kaylee C. Kemp**, attorney for Respondent, hereby certify that the **Final Brief of Respondent** has been forwarded to Appellant's counsel, Katherin H. Hudgins, Esq., and Chris Stock, Legal Assistant, via email today, March 5, 2025, to khudgins@sccid.sc.gov and cstock@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This is the 5th day of March 2025.

s/ Kaylee C. Kemp

KAYLEE C. KEMP
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6307
kayleekemp@scag.gov

Brandy Rankin

From: Brandy Rankin
Sent: Wednesday, March 5, 2025 11:04 AM
To: Hudgins, Kathrine
Cc: Stock, Chris; Kaylee Kemp
Subject: Final Brief of Respondent - The State v. Benjamin Walter Dubois, III
Attachments: DUBOIS FINAL BRIEF RESP -Complete with POS.pdf

Dear Ms. Hudgins,

Please find attached the Respondent's Final Brief and Proof of Service. These documents will be filed with the South Carolina Court of Appeals along with a copy of this email. Thank you.

Sincerely,
Brandy Rankin

Brandy Rankin, Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305



This email, together with any attachments, may be legally privileged. If you have received it in error, please notify the sender immediately, and then delete it from your system. This email and any replies to this email may be subject to disclosure under the Freedom of Information Act.