RECEIVED
Sep 04 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Bentley Price, Circuit Court Judge
Honorable Heath P. Taylor, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIS TERREL IVEY,

APPELLANT

APPELLATE CASE NO. 2024-001916

INITIAL BRIEF OF APPELLANT

MOLLY M. KEEGAN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

ARGUMENTS

I.
The trial court's failure to dismiss appellant's pending charges violated his right to a speedy trial where appellant was arrested on June 15, 2018, but the case was not called for trial until November 4, 2024, over six years after appellant's arrest 3

Standard of review 3
Relevant facts 3
Discussion 10

II.
The trial court erred by denying appellant's motion for a directed verdict as to the ABHAN charge because the state failed to establish that appellant had the necessary *mens rea* to support the charge. 19

Standard of review 19
Relevant facts 19
Discussion 24

III.
The trial court abused its discretion by refusing to provide a jury charge on specific intent related to the ABHAN charge because subsection (b) functions like an attempt statute. 29

Standard of review 29
Relevant facts 29
Discussion 32

CONCLUSION 36

TABLE OF AUTHORITIES

South Carolina Cases

Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001) ... 35

Doe v. State, 421 S.C. 490, 808 S.E.2d 807 (2017). ... 34

Langford v. Stonebreaker, 2024 WL 4542342 (2024) ... 14, 15

Smith v. State, 412 SC. 472, 772 S.E.2d 286 (Ct. App. 2015) ... 29

State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006) ... 29

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) ... 19

State v. Chapman, 289 S.C. 42, 344 S.E.2d 611 (1986) ... 15

State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000). ... 24, 25, 26

State v. Ferguson, 302 S.C. 269, 395 S.E.2d 182 (1990) ... 24, 25

State v. German, 439 S.C. 449, 887 S.E.2d 912 (2023) ... 34

State v. Green, 397 S.C 268, 724 S.E.2d 664 (2012) ... 35

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013) ... 19, 27, 28

State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009) ... 19

State v. Hunsberger, 418 S.C. 335, 794 S.E.2d 368 (2016) ... *passim*

State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994). ... 25

State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017) ... 33

State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) ... *passim*

State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007) ... 32

State v. Lewis, 434 S.C. 158, 863 S.E.2d 1 (2021) ... 35

State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010) ... 29, 32, 33

State v. McSwain, 445 S.C. 276, 914 S.E.2d 124 (2025) ... 34

State v. Neuman, 384 S.C. 395, 683 S.E2d 268 (2009) 34, 35

State v. Passio, 433 S.C. 666, 861 S.E.2d 785 (Ct. App. 2021) 19, 28

State v. Perry, 440 S.C. 396, 892 S.E.2d 273 (2023) 29

State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2008) 11, 16

State v. Robinson, 426 S.C. 579, 828 S.E.2d 203 (2019) 29

State v. Smith, 430 S.C. 226, 845 S.E.2d 495 (2020) 33

State v. Taylor, 436 S.C. 28, 870 S.E.2d 168 (2022) 29

State v. Waites, 270 S.C 104, 240 S.E.2d 651 (1978) 10, 18

United States v. Clemons, 442 S.C. 670, 901 S.E.2d 280 (2024) .... *passim*

Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966) 3

United States Cases

Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182 (1972). .... *passim*

Borden v. United States, 593 U.S. 420, 141 S. Ct. 1817 (2021) 26

Doggett v. United States, 505 U.S. 647, 112 S. Ct. 2686 (1992) .... *passim*

Klopfer v. North Carolina, 386 U.S. 213, 87 S. Ct. 988 (1967) 3

Kolender v. Lawson, 461 U.S. 352, 103 S. Ct. 1855 (1983) 34, 35

Moore v. Arizona, 414 U.S. 25, 94 S. Ct. 188 (1973) 12

Pollard v. United States, 352 U.S. 354, 77 S. Ct. 481 (1957) 11

United States v. Marion, 404 U.S. 307, 92 S. Ct. 455 (1971) 11

Voisine v. United States, 579 U.S. 686, 136 S. Ct. 2272 (2016) 26

Other Jurisdictions

U.S. v. Molina-Solorio, 577 F.3d 300 (5th Cir. 2009) 12

United States v. Clark, 83 F.3d 1350 (11th Cir. 1996) 12

United States v. Ferreira, 665 F.3d 701 (6th Cir. 2011) 12

United States v. Frith, 181 F.3d 92 (4th Cir. 1999) 12

United States v. Ingram, 446 F.3d 1332 (11th Cir. 2006) 13

United States v. Mack, 56 F.4th 303 (4th Cir. 2022) 33

Statutes

Model Penal Code § 2.02(2)(c) 26

S.C. Code Ann. § 16-1-60 25

S.C. Code Ann. § 16-3-600 33

S.C. Code Ann. § 16-3-600(B) 25

S.C. Code Ann. § 16-3-600(B)(1) 27, 33

S.C. Code Ann. § 16-3-600(B)(1)(b) 33, 34, 35

S.C. Code Ann. § 17-25-45 25

S.C. Code Ann. § 56-5-2910 28

S.C. Code Ann. § 56-5-2920 28

S.C. Code Ann. § 56-5-750 .... 27, 28

S.C. Code Ann. § 56-5-750(C)(1) (Supp. 2016) 27, 28

Constitutional Provisions

S.C. Const. art. I, § 14 3

U.S. Const. amend. VI 3

STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court's failure to dismiss appellant's pending charges violated his right to a speedy trial where appellant was arrested on June 15, 2018, but the case was not called for trial until November 4, 2024, over six years after appellant's arrest?

II.

Whether the trial court erred by denying appellant's motion for a directed verdict as to the ABHAN charge where the state failed to establish that appellant had the necessary *mens rea* to support the charge?

III.

Whether the trial court abused its discretion by refusing to provide a jury charge on specific intent related to the ABHAN charge because subsection (b) functions like an attempt statute?

STATEMENT OF THE CASE

Appellant was initially arrested and charged in June 2018, with assault on a police officer while resisting arrest, attempted unlawful taking of a weapon from law enforcement, failure to stop for blue lights, two counts of possession of a weapon during the commission of a violent crime, and two counts of murder.[1] Appellant was subsequently charged with assault and battery of a high and aggravated nature (ABHAN) in July 2021, for an incident which occurred while incarcerated. On October 24, 2024, he was directly indicted by the Charleston County grand jury for ABHAN which was alleged to have occurred during his June 2018 arrest. R*(indictments). Appellant remained without bond and incarcerated in pretrial detention since his arrest in June of 2018.

The prosecution, represented by Daniel W. Cooper and Jewell Marie Gearding, called appellant's case for trial on November 4, 2024, before the Honorable Heath P. Taylor. Tr. 1. Grant Bradley Smaldone represented appellant. Tr. 1. The jury ultimately found appellant guilty of ABHAN and failure to stop for blue lights and acquitted him of attempted unlawful taking of a weapon from a law enforcement officer. Tr. 276, ll. 5-23. Judge Taylor imposed a total imprisonment sentence of eighteen years. Tr. 285, l.24 – 285, l. 6. Appellant filed a timely notice of appeal. R*(notice of appeal).

This brief follows.

[1] Following trial, the state dismissed the two counts of murder, two counts of possession of a weapon during the commission of a violent crime, and the 2021 ABHAN. The state also did not move forward on the charge of assault on a police officer while resisting arrest. Tr. 45, ll. 9-10.

ARGUMENTS

I.

The trial court's failure to dismiss appellant's pending charges violated his right to a speedy trial where appellant was arrested on June 15, 2018, but the case was not called for trial until November 4, 2024, over six years after appellant's arrest.

Standard of Review

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy trial." U.S. Const. amend. VI; *see also Klopfer v. North Carolina*, 386 U.S. 213, 87 S. Ct. 988 (1967); *Wheeler v. State*, 247 S.C. 393, 147 S.E.2d 627 (1966). Likewise, our state constitution guarantees that "[a]ny person charged with an offense shall enjoy the right to a speedy 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)).

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). The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard. *Id.* 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 372 (citing *Langford*, 400 S.C. at 442, 735 S.E.2d at 482).

Relevant Facts

Pretrial speedy trial motions

On June 15, 2018, appellant was arrested for failure to stop for blue lights and attempted unlawful taking of a weapon from a law enforcement officer and several other outstanding

warrants, including: two counts of murder and two counts of possession of weapon during commission of a violent crime. Appellant was subsequently charged for ABHAN for an incident that occurred while he was incarcerated in Al Cannon Detention Center on July 21, 2021. Finally, on October 24, 2024, appellant was directly indicted by the Charleston County grand jury for ABHAN which was alleged to have occurred during his June 2018 arrest. R * (indictments).

Appellant consented to two scheduling orders on January 28, 2020, and August 12, 2021, with the latter providing that trial would not be scheduled until February 1, 2022. R * (Scheduling orders).

Importantly, appellant has consistently asserted his speedy trial rights. For instance, he first asserted his speedy trial rights on September 12, 2022, by moving for a speedy trial. R. *(2022 motion for speedy trial). On January 6, 2023, he moved to dismiss his case or in the alternative set a reasonable bond. R. *(Jan. 2023 motion to dismiss).

On February 2, 2023, the trial court held a hearing on appellants motion for a speedy trial. Mtn. Tr. 2, ll. 5-8.[2] Procedurally, defense counsel argued that appellant had been incarcerated since his June 15, 2018, arrest and had several bond hearings. Mtn. Tr. 2, ll. 12-15. Regarding the speedy trial motion, defense counsel argued that appellant had been incarcerated for nearly five years, there was outstanding discovery mainly comprising of DNA evidence that "SLED ha[d] just been sitting on," and contended that it was unfair for appellant to remain in jail because "SLED [did not] want to test for DNA." Mtn. Tr. 3, l. 17 – 4, l.6. He also highlighted the potential concerns of spoliation or tampering due to the length of time the DNA evidence went untested. Mtn. Tr. 4, ll. 2-3. Defense counsel requested that a speedy trial be granted, or,

[2] The Honorable Bentley Price heard the speedy trial motion and ultimately entered the order granting a speedy trial.

in the alternative, for release on PR bond. Mtn. Tr. 4, ll. 7-10. Regarding bond, defense counsel argued that appellant was thirty-one years old, he had lived in the area his whole life, he had family present, and he had five children. Mtn. Tr. 4, ll. 11-25. Finally, defense counsel argued that pursuant to the case management order, appellant had waited "nine times the case management order's declaration," for DNA, which was prejudicial. Mtn. Tr. 5, ll. 10-19. He maintained that the remedy was dismissal without prejudice. Mtn. Tr. 5, 20 – 6, l. 2.

The state responded that appellant's case had been assigned to an analyst since January of 2020. Mtn. Tr. 6, ll. 13-14. The state posited that SLED was moving to a new lab, and there was "nothing [the state] can do about that." Mtn. Tr. 6, ll. 15-17. The state conceded that appellant had been in jail for five years but argued that appellant had two separate murder charges, two charges for possession of a weapon, failure to stop and assaulting a police officer while resisting arrest, and that he "picked up an ABHAN charge inside the jail." Mtn. Tr. 6, l. 18 – 7, l. 1. The state continued that both murder cases had DNA evidence waiting with SLED that it believed would be dispositive and asserted that waiting for SLED was "not the State's fault." Mtn. Tr. 7, ll. 17-23. The court responded that, "[n]o, it's definitely y'all's fault," citing to the prejudice addressed in *Langford*. Mtn. Tr. 7, l. 24 – 8, l. 2. The state replied that it understood that, as a solicitor, it was "part of the State with SLED" but contended that the state had not done anything inappropriately. Mtn. Tr. 8, ll. 3-6. The state continued that it had not "failed to do something" and reiterated that, although it wished it had another DNA lab, "this [was not] the fault of the State." Mtn. Tr. 8, l. 21 – 8, l. 2. The court again determined that "[t]his was 100 percent the fault of the State, and [appellant was] being prejudiced by that by sitting in there for five years." Mtn. Tr. 9, ll. 3-5. The court granted the motion for a speedy trial and reminded "everybody

what the ramifications . . . and what [could] be [the] ultimate resolution if [it] grant[ed] the speedy trial motion and it's not adhered to." Mtn. Tr. 9, ll. 8-9, 12-15.

Thereafter, the trial court, in recognizing that appellant's speedy trial rights had been violated, granted the motion for a speedy trial in a written order on February 14, 2023. R. *(Court's Exhibit 1). It further ordered that appellant was to be tried within ninety (90) days. R. *(Court's Exhibit 1). Moreover, the court's order provided that appellant was to receive a hearing to address bond, as he had been held without bond since his 2018 arrest. R. *(Court's Exhibit 1). Despite that, on July 18, 2023, Judge Price denied the defense motion to set a reasonable bond. R. *(July 2023 order denying bond). However, the court ordered that if appellant's case was not disposed of prior to July 31, 2023, a reasonable bond should be set. R. *(July 2023 order denying bond). On October 31, 2023, Judge Price again denied appellant's motion to set bond. R. *(Oct. 2023 order denying bond). Appellant never received a bond. Appellant remained in pretrial detention for approximately six-and-a-half years.

Nevertheless, following the trial court's order granting a speedy trial, on May 25, 2023, defense counsel filed a motion to dismiss because appellant had not received a speedy trial. R. *(May 2023 Motion to dismiss). He argued that an order granting a speedy trial was issued on February 14, 2023, but as of May 25, 2023, appellant had not been tried for any of the alleged offenses. R. *(May 2023 Motion to dismiss). As a remedy, defense counsel requested dismissal with prejudice and a hearing. R.*(May 2023 motion to dismiss).

On March 20, 2024, defense counsel again moved for dismissal due to speedy trial violations. R. *(Mar. 2024 motion to dismiss). He argued that the court issued an order granting a speedy trial, but no relief had been granted. R. *(Mar. 2024 motion to dismiss). Defense counsel requested dismissal with prejudice of appellant's pending Charleston County General

Sessions charges because he had suffered extreme delay and an immense length of pretrial detention. R. *(Mar. 2024 motion to dismiss). Defense counsel attached several exhibits to his motion, including: orders denying bond, the prior motions to dismiss, and consent scheduling orders. R. *(Mar. 2024 motion to dismiss).

Finally, on October 31, 2024, defense counsel filed his third motion to dismiss with prejudice for speedy trial violations following the trial court's order granting relief. R. *(Oct. 2024 motion to dismiss). He reiterated that the court ordered a speedy trial on all warrants, but no relief had been seen. R. *(Oct. 2024 motion to dismiss). He maintained that he had not waived his right to a speedy trial under the United States or South Carolina Constitutions. R. *(Oct. 2024 motion to dismiss). For a third time, defense counsel requested dismissal with prejudice of appellant's pending charges. R. *(Oct. 2024 motion to dismiss).

Assertion of speedy trial rights at trial

It was not until appellant's case was called to trial on November 4, 2024, that the court addressed the outstanding defense motions for dismissal based on speedy trial violations. Tr. 27, ll. 7-8. During pretrial, defense counsel reiterated that the court had previously granted a speedy trial on February 14, 2023, and that he had filed several motions to dismiss after appellant's case was not called to trial, in violation of the court's order. Tr. 27, ll. 6-16. He argued that appellant had been in jail for more than six years and that "this case has been delayed, delayed, reassigned, delayed, SLED didn't test the evidence until they had it for about five years on – on a related charge." Tr. 28, ll. 17-24. He entered the 2023 Order granting a speedy trial as Court's Exhibit 1. Tr. 29, ll. 17-23; R *(Court's Exhibit 1). He argued that although appellant was directly indicted for ABHAN in October of 2024, that did not change the analysis as that charge was

based on the same underlying facts. Tr. 30, ll. 1-8. He emphasized that the speedy trial violation encompassed the 2024 ABHAN indictment. Tr. 30, ll. 6-8.

The state responded and provided "background." Tr. 30, l. 25 – 31, l. 1. The state explained that the charged murders occurred separately in October and December of 2017. Tr. 31, ll. 1-5. The state explained that appellant was located by the United States Marshals Service and arrested on June 15, 2018. Tr. 31, ll. 5-6. The state conceded that, by its own fault, it did not send the DNA evidence for these cases to SLED until 2019 or 2020. Tr. 31, ll. 8-11. The state argued, however, that SLED was incredibly backlogged. Tr. 31, l. 15. The state received DNA results in late July or early August of 2023; however, the state ultimately did not use the DNA evidence and dismissed the two pending murder charges. Tr. 32, ll. 3-6.

The state then argued that appellant was arrested while in jail for ABHAN in 2021. Tr. 32, ll. 7-9. The state explained that, after receiving the DNA evidence from SLED, it provided a plea offer on September 7, 2023, which appellant rejected. Tr. 32, ll. 13-14. The state explained that a second offer was made on November 10, 2023, which was also rejected. Tr. 32, ll. 15-16. The state argued that the COVID-19 pandemic "knocked them back," as the last trial was in March of 2020, and there was not another trial until September of 2021. Tr. 32, ll. 22-24. The state maintained that it was "doing the best" that it could. Tr. 33, ll. 11-13. The state thus contended that the delay was at "no fault of mine or my office." Tr. 34, l. 7. The state argued that some of the delay was appellant's own actions from "the new assault in the jail." Tr. 34, ll. 17-19. The state continued that waiting for SLED was a benefit to appellant and that there had not been a violation of the speedy trial order but rather a "result of the circumstances." Tr. 34, l. 24 – 35, l. 4. The state concluded that it had "not violated the order purposefully" and asked the court to deny the motion. Tr. 35, ll. 13-17.

Defense counsel responded that appellant was entitled to a speedy trial that he never got. Tr. 35, l. 23. He requested dismissal based on the speedy trial violations. Tr. 36, ll. 1-2. The court took the matter under advisement but noted that a jury was picked, and the trial was ready to start the next day. Tr. 36, ll. 3-13.

The following day, the court denied the motion to dismiss for speedy trial violations. Tr. 42, ll. 24-25. The court reiterated the four factors it had to consider and noted that *Langford* was clear that a speedy trial did not mean an immediate trial. Tr. 40, ll. 2-13. The court noted that the state was entitled to a reasonable time to prepare its case. Tr. 40, ll. 12-13. It determined that six years was a sufficient trigger requiring analysis of the remaining factors. Tr. 40, ll. 21-23. The court continued that deliberate action by the state weighed heavily against it but that there were other neutral reasons to consider. Tr. 40, l. 24 – 41, l. 4. The court cited overcrowded dockets, negligence, and COVID-19 as neutral reasons. Tr. 41, ll. 2-4. It explained that appellant consented to "effectively two continuances by scheduling orders" but noted it was somewhat complicated with COVID-19. Tr. 41, ll. 15-18. It noted that alleged commission of another crime while incarcerated weighed against appellant. Tr. 41, ll. 20-22. The court cited the DNA from SLED delay and determined it was the fault of no one in the room, thereby concluding that the reason for delay factor was "a wash between the parties." Tr. 41, ll. 22-25.

As to assertion of speedy trial rights, the court determined that "there was certainly a motion obviously made in early 2023 and an order. I – I don't have any idea why. Nothing was done pursuant to Judge Price's order. There are certainly no other motions filed. That's over a year." Tr. 42, ll. 1-5. Finally, as to prejudice, the court stated that *Hunsberger* noted that presumptive prejudice alone does not support dismissal. Tr. 42, ll. 6-12. It noted that argument

was largely focused on the length of delay and did not identify any intentional delay in the record. Tr. 42, ll. 13-25. The court ultimately denied the motion to dismiss. Tr. 42, ll. 13-25.

Discussion

When analyzing speedy trial violations, 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. Waites*, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978).

"An accused's speedy trial right begins when he is indicted, arrested, or otherwise officially accused." *Hunsberger*, 418 S.C. at 342, 794 S.E.2d at 372 (citing *Langford*, 400 S.C. at 442, 735 S.E.2d at 482) (internal quotation marks omitted). To trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial "has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay." *Doggett v. United States*, 505 U.S. 647, 652, 112 S. Ct. 2686, 2690 (1992) (quoting *Barker v. Wingo*, 407 U.S. 514, 530-531, 92 S. Ct. 2182, 2192). Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness. *Hunsberger*, 418 S.C. at 343, 794 S.E.2d at 372. The length of the delay that will trigger the inquiry is dependent upon the peculiar circumstances of the case. *Barker*, 407 U.S. at 530-531, 92 S. Ct. at 2192. Generally, the delay tolerated for an ordinary street crime is less than for a serious, complex conspiracy charge. *Id.* at 531, 92 S. Ct. at 2192.

First, the trial court properly ruled that a delay of over six years triggered analysis of the remaining factors, as the delay was presumptively prejudicial. Tr. 40, ll. 21-23; *Doggett*, 505 U.S. at 652, 112 S. Ct. at 2690; *Hunsberger*, 418 S.C. at 343, 794 S.E.2d at 372.

Having established that appellant met his initial burden, a court then looks to four factors, considering the totality of the circumstances, to decide whether the appellant's right to a speedy

trial has been denied. *Hunsberger*, 418 S.C. at 343, 794 S.E.2d at 372 (citing *Barker*, 407 U.S. at 530-531, 92 S. Ct. at 2192; *Langford*, 400 S.C. at 441, 735 S.E.2d at 482). However, one factor alone is not dispositive of entitlement to relief. *Id.* (citing *Barker*, 407 U.S. at 533, 92 S. Ct. at 2193). The 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 530-531, 92 S. Ct. at 2192). A speedy trial claim must be "analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." *Id.* (citing *State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2008)).

Moreover, the Supreme Court has afforded different weights to the different reasons for the presumptively prejudicial delay. On the far end of the spectrum is a deliberate delay by the prosecution to impede the defendant's ability to defend himself. A prosecutor acts improperly if he intentionally delays a trial to gain some tactical advantage over a defendant or to harass a defendant. *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192 & n. 32 (citing *United States v. Marion*, 404 U.S. 307, 325, 92 S. Ct. 455, 466 (1971); *Pollard v. United States*, 352 U.S. 354, 361, 77 S. Ct. 481, 485-86 (1957)). Such a reason should be weighed heavily against the prosecution. Even neutral reasons weigh against the state, because "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192.

The third factor of the speedy trial analysis is the defendant's assertion of his right to a speedy trial. According to the Supreme Court, "[w]hether and how a defendant asserts his right is closely related to the other factors" because the strength of his efforts will be affected by the other factors. *Barker*, 407 U.S. at 531-532, 92 S. Ct. at 2192-93. Notably, the accused's assertion of his right to a speedy trial "is entitled to strong evidentiary weight in determining

whether the accused is being deprived of the right." *Hunsberger*, 418 S.C. at 349, 794 S.E.2d at 375 (citing *Barker*, 407 U.S. at 531-532, 92 S. Ct. at 2192-93).

Concerning prejudice, a defendant is not required to show prejudice affirmatively to win a speedy trial claim. *See Moore v. Arizona*, 414 U.S. 25, 26, 94 S. Ct. 188, 189 (1973) (explaining that "[w]e regard none of the four factors . . . as either a necessary or sufficient condition to finding a deprivation of the right of a speedy trial."); *see also United States v. Frith*, 181 F.3d 92 (4th Cir. 1999); *U.S. v. Molina-Solorio*, 577 F.3d 300, 307-308 (5th Cir. 2009) (determining that where the first three factors together weigh heavily in favor of the accused, the Court may conclude that they warrant a presumption of prejudice, relieving the accused of his burden); *United States v. Ferreira*, 665 F.3d 701, 706-707 (6th Cir. 2011); *United States v. Clark*, 83 F.3d 1350, 1353-1354 (11th Cir. 1996) (noting that "government negligence and a substantial delay will compel relief unless the presumption of prejudice is either extenuated, as by the defendant's acquiescence, or persuasively rebutted by the Government." (internal quotation marks omitted).

Notably, our Supreme Court has recognized that "an 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. "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." *Id.* However, "[w]hen the government persistently fails to try an accused and the delay is excessive, the accused need not show actual prejudice in order to prevail on a speedy trial claim." *Id.* (citing *Doggett*, 505 U.S. at 657-58, 112 S. Ct. at 2693-94). Moreover, "[w]hile 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.*; *see also*

Doggett, 505 U.S. at 658, 112 S. Ct. at 2693-94 (holding an accused's right to a speedy trial was violated when his trial was delayed eight years with no showing of actual prejudice); *United States v. Ingram*, 446 F.3d 1332, 1340 (11th Cir. 2006) (holding that a two-year delay from indictment to trial resulted in a speedy trial violation when the first three factors weighed against the State and there was no actual prejudice).

As the United States Supreme Court has observed, unreasonable delay threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by the loss of memories and exculpatory evidence. *Barker*, 507 U.S. at 532. The Court observed that loss of memory "is not always reflected in the record because what has been forgotten can rarely be shown." *Id.* According to the Court, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Id.* Being detained hinders a defendant's ability to gather evidence, contact witnesses, and prepare his defense. *Id.* at 533. Even a defendant who is not in jail prior to trial is disadvantaged "by restraints on his liberty and by living under a cloud of anxiety, suspicion, and often hostility." *Id.*

Turning to the factors, the trial court abused its discretion by denying appellant's motion to dismiss due to speedy trial violations because it improperly balanced the relevant factors. Because appellant's speedy trial rights were violated, the proper remedy was dismissal. *Langford*, 400 S.C. at 442, 735 S.E.2d at 482.

Length of the delay

As discussed, the length of delay between appellant's arrest and eventual trial, which amounted to over six years, is presumptively prejudicial and triggers a speedy trial analysis.

Such a delay is exceptionally long. Moreover, appellant never received a bond and remained incarcerated for the entirety of the approximate six-and-a-half years. R. *(July 2023 order denying bond; Oct. 2023 order denying bond). Therefore, because appellant remained in continuous custody for an extraordinary length of time, this factor must be weighed heavily against the state. *See Hunsberger*, 418 S.C. at 446, 794 S.E.2d at 373 (determining that the state was responsible for an eight-year delay between arrest and trial, and thus, the extraordinary delay weighed heavily against the state).

Reason for the delay

The stated reasons for the delay by the prosecution in calling appellant's case to trial were overcrowded dockets in Charleston County, delays with SLED testing, the COVID-19 pandemic, and appellant's 2021 ABHAN charge. Tr. 30, l. 25 – 35, l. 17. The trial court determined that the reason for delay was "a wash" between the parties. Tr. 41, ll. 24-25. However, this was an error. In so finding, the court improperly balanced the conduct of appellant and the state as to this factor and committed an abuse of discretion. *Hunsberger*, 418 S.C. at 343, 794 S.E.2d at 372; *see also Langford v. Stonebreaker*, 2024 WL 4542342 (2024) (granting habeas corpus relief on two grounds concerning violations of petitioner's speedy trial rights and determining that the four *Barker* factors weighed in favor of petitioner and that the South Carolina Supreme Court's ruling was an unreasonable determination of facts and an unreasonable application of applicable law).

The court's determination that the delays from SLED testing were the fault of no one in the room is contrary to the state's concession that it did not send the DNA evidence to SLED until 2019 or 2020, after appellant's June 2018 arrest. Tr. 31, ll. 9-11; 41, ll. 22-24. At best, the

state waited over a year to send the DNA evidence to SLED.[3] The trial court's finding that no one was at fault for delays stemming from SLED's testing also disregarded the reasoning underlying the court's prior order granting appellant's motion for a speedy trial which attributed the SLED delay as "100 percent the fault of the State." Mtn. Tr. 9, ll. 3-5; Tr. 41, ll. 22-24. Further, while it may be true that SLED is backlogged, that delay must be attributed to the state because it failed to timely submit DNA evidence to SLED for testing, despite being "well aware," of SLED's backlog. Tr. 31, ll. 13-15; *see e.g., Langford v. Stonebreaker*, 2024 WL 4542342 (2024) (determining that twenty-month delay due to the state's failure to find a Chinese interpreter weighs against the state, as the delay was only permitted because the docket was under solicitor control). Such a failure is more than simple negligence. *But see State v. Chapman*, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) (determining that delay caused by the normal condition of the docket and the state's effort to locate a witness were not "willful neglect on the state's part."). In addition, the state's contention that waiting for SLED benefitted appellant is immaterial. Tr. 34, l. 24 – 35, l. 4. That the state had weak evidence against appellant cannot justify its extraordinary delay and its refusal to call appellant's case to trial.

Next, although the COVID-19 pandemic undoubtably impacted the ability to try cases, by determining that COVID-19 presented a neutral reason for delay, the trial court failed to acknowledge that appellant was arrested in June of 2018, over a year-and-a-half before the start of the pandemic. Tr. 41, ll. 4-19. Nor can it be said that most of the delay in this case was

---

[3] Notably, the state provided that appellant's case was not assigned to an analyst until January of 2020. *See* Mtn. Tr. 6, ll. 13-14. Conservatively, a year-and-a-half elapsed before appellant's case was even assigned to a SLED analyst, despite the state's repeated assertion that SLED's backlog was largely responsible for the delay. The record belies this contention. The state, itself conceded that as a solicitor, it was "part of the State with SLED." Mtn. Tr. 8, ll. 3-6. The state also, by its own admission, acknowledged that it failed to submit its DNA evidence to SLED until 2019 or 2020. Tr. 31, ll. 9-11. The resulting delay is thus directly attributable to the state and anything but neutral.

attributable to the COVID-19 pandemic, given that the delay began well before the pandemic and continued well after the state resumed calling cases to trial. Moreover, the two scheduling orders that appellant consented to in 2020 and 2021 were, as the court acknowledged, complicated by COVID-19, and minimal in number. Tr. 41, ll. 15-18; R. *(scheduling orders).[4]

To continue, the overcrowded dockets in Charleston County must weigh against the state. *See Barker*, 407 U.S. at 531, 92 S. Ct. at 2192 (explaining that negligence or overcrowded courts should be weighed less heavily but considered since the ultimate responsibility for such circumstances rests with the government rather than the accused). Even considering that appellant was charged with ABHAN in 2021, the state ultimately dismissed that case, which indicates that it was not a particularly complex case. Nor did it have any bearing on the charges appellant was eventually tried for. Finally, although the state argued that it did the best that it could, that is not the standard, and the state ultimately bears the responsibility for overcrowded dockets. *See Barker*, 407 U.S. at 530-531, 92 S. Ct. at 2192 (citing *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155) (noting that the "ultimate responsibility for the trial" of the accused "rests with the State."); *see also* Tr. 33, ll. 12-13.

In sum, the state failed to timely submit its DNA evidence to SLED, delayed in calling the case to trial for a year-and-a-half before the start of the COVID-19 pandemic, and relied on overcrowded dockets to justify its uncommonly long delay of over six years. The state further acted in bad faith by refusing to call appellant's case to trial after the state was ordered to do so by the trial court. R *(Court's Exhibit 1); *see also Doggett*, 505 U.S. at 656-57, 112 S. Ct. at 2693 (explaining that "*Barker* stressed that official bad faith in causing delay will be weighed

[4] Even excluding the time that the state argued trials were not conducted due to COVID-19, from March 2020 to September 2021, Tr. 32, ll. 22-24, and the consent order noting that appellant's trial would not be scheduled until after February 1, 2022, R* (scheduling orders), appellant suffered over four years of delay.

heavily against the government, and a bad faith delay the length of this negligent one would present an overwhelming case for dismissal.") (internal citation omitted). Therefore, the reasons given for delay weigh against the state, and the trial court abused its discretion by finding that this factor was "a wash." Tr. 41, ll. 24-25.

Assertion of right to speedy trial

There is no question that appellant asserted his right to a speedy trial. Likewise, there is no question that the trial court erred by failing to determine that this factor weighed heavily in favor of appellant. Appellant moved for a speedy trial in September of 2022 and to dismiss in January 2023, and the trial court granted his motion requesting a speedy trial in February of 2023. R. *(2022 speedy trial motion; Jan. 2023 motion to dismiss; 2023 order granting speedy trial). The trial court ordered that he was to be tried within ninety (90) days, but his case was not called to trial until November 4, 2024, over a year-and-a-half later. The state continually refused to call appellant's case to trial and expressly disobeyed the court's order. The state's contention that it did not "purposefully disobey the order" is inapposite and nonsensical. Tr. 35, ll. 13-17.

Further, in considering this factor, the court was silent as to the weight of this factor and made factual findings that are without evidentiary support. *Langford*, 400 S.C. at 442, 735 S.E.2d at 482. Particularly, the court acknowledged that appellant was granted a speedy trial in early 2023, however, it stated that there were "certainly no other motions filed." Tr. 42, ll. 4-5. Such a finding is contradicted by the record. First, defense counsel informed the court that, after the speedy trial motion was granted, he filed a motion to dismiss for speedy trial violations, and then he filed another one. Tr. 27, ll. 13-14. Second, defense counsel filed three motions to dismiss based on speedy trial violations on May 25, 2023, March 20, 2024, and October 31, 2024, all in the court of General Sessions for the Ninth Judicial Circuit. R. *(May 2023 motion

to dismiss; Mar. 2024 motion to dismiss; Oct. 2024 motion to dismiss). Accordingly, appellant's clear and consistent assertion of his right to a speedy trial was entitled strong evidentiary weight. *Hunsberger*, 418 S.C. at 349, 794 S.E.2d at 375.

Prejudice

As to the fourth factor, a showing of prejudice is unnecessary for a finding of a deprivation of the right to a speedy trial, as no one factor is dispositive. *Hunsberger*, 418 S.C. at 343, 794 S.E.2d at 372; *see also Doggett*, 505 U.S. at 655, 112 S. Ct. at 2692 (stating that "affirmative proof of particularized prejudice is not essential to every speedy trial claim."). Nevertheless, appellant has demonstrated prejudice from the prolonged delay by the state to call his case to trial. Importantly, because of the unreasonable delay that appellant suffered he has been subjected to "oppressive pretrial incarceration," spanning six years. *Waites*, 270 S.C. at 107, 240 S.E.2d at 653. Even further, our Supreme Court has explained that where the government persistently fails to try an accused resulting in excessive delay, as here, the accused need not show actual prejudice to prevail on a speedy trial claim. *Hunsberger*, 418 S.C. at 351, 794 S.E.2d at 376. Similarly, the United States Supreme Court has found a speedy trial violation where a trial was delayed eight years with no showing of actual prejudice. *See e.g.*, *Doggett*, 505 U.S. at 657-58, 112 S. Ct. at 2693-94. Thus, the trial court erred by concluding that the lack of intentional delay supported denying the motion to dismiss for speedy trial violations. Tr. 42, ll. 6-25.

Because the factors weighed heavily in appellant's favor, he respectfully requests that this Court reverse the decision of the lower court, hold that his federal and state constitutional rights to a speedy trial have been violated, and dismiss the charges of ABHAN and failure to stop for blue lights against him.

II.

The trial court erred by denying appellant's motion for a directed verdict as to the ABHAN charge because the state failed to establish that appellant had the necessary *mens rea* to support the charge.

Standard of Review

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Passio*, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) (quoting *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)). "A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." *Id.* "On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state." *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 777 (2011). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

Relevant Facts

Trial

During trial, the state elicited no evidence that appellant had the requisite *mens rea* to sustain an ABHAN conviction. Instead, the state presented evidence that appellant engaged in a chase with officers which resulted in a car crash.

Officer Rob Kreuger testified that on June 14, 2018, he received information that appellant was wanted on warrants, and he advised the U.S. Marshals that appellant was in the area. Tr. 60, ll. 10-18. The U.S. Marshals' task force, Charleston County Sheriff's Office, and

North Charleston Police Department (NCPD) responded to the area. Tr. 60, ll. 20-24. They went to stop appellant, and he fled. Tr. 61, ll. 4-7. Kreuger testified that appellant made evasive moves, cut across traffic, and struck another vehicle causing it to flip. Tr. 62, ll. 6-8. George Donald Fogle, III, a former officer with the intelligence-led policing unit of the NCPD, testified that officer lights and sirens were on when they attempted to apprehend appellant. Tr. 65, ll. 14-19. He testified that appellant attempted to flee the traffic stop and travelled in the opposite direction of traffic. Tr. 65, l. 25; 66, ll. 2-10. The state entered Fogle's in-car dash camera into evidence. Tr. 68, l. 18 – 69, l. 3; R. *(State's Exhibit 27) (State's Exhibit 27 is on file with this Court.). During the chase, Fogle increased his speed to around ninety (90) miles per hour. Tr. 69, l. 24. Then, Sergeant Joshua Ranck, a technology coordinator with the NCPD, testified that he maintained all technology related items for the department. Tr. 76, ll. 4-12. The state entered Officer Greenwalt's and Officer Wilson Bishop's dash-cam footage from June 14, 2018. Tr. 78, l. 18 – 79, l. 12; *see also* R. *(State's Exhibit 28); R. *(State's Exhibit 29).[5]

The state called Officer Bishop, who testified that in June of 2018 he worked at NCPD and was a K-9 handler. Tr. 200, ll. 11-14. He explained that NCPD policy did not allow pursuit in oncoming traffic, so they paralleled appellant's vehicle. Tr. 204, ll. 1-5. He testified that appellant cut across the median and T-boned his vehicle causing it to flip. Tr. 204, ll. 6-8. He explained the events occurring in his dash-camera video. Tr. 204, l. 11 – 205, l. 11. He testified that after the collision, his K-9 partner was ultimately okay. Tr. 205, ll. 21-23. Bishop testified that he suffered airbag abrasions from the crash. Tr. 208, ll. 2-5. On cross-examination, he agreed that at the time of the collision appellant was on the road. Tr. 210, ll. 17-19. Bishop was

---

[5] State's Exhibit 28 is officer Greenwalt's body-worn camera where the crash can be seen from a distance. State's Exhibit 29 is officer Bishop's dash-camera footage which shows the attempt to box appellant's vehicle in, Bishop driving through a red light at approximately seventy-three (73) miles per hour, and the resulting collision. These exhibits are on file with this Court.

not trying to block the intersection and was proceeding through the red light when appellant came across the median. Tr. 211, ll. 7-14.

U.S. Marshal Robert Roe then explained that his role on June 14, 2018, was to assist state and local law enforcement when they had individuals that they were looking for. Tr. 84, ll. 14-19. He was alerted by an NCPD officer to assist with apprehending appellant. Tr. 84, l. 20 – 85, l. 13. Once he spotted appellant's car, he told everyone to get in position. Tr. 90, ll. 7-17. He acknowledged, however, that "if you turn on the blue lights and he takes off and there's a vehicle pursuit, *we created that*." Tr. 96, ll. 11-13 (emphasis added). Because appellant was in a vehicle, he decided to do a "vehicle takedown," or a "vehicle box maneuver." Tr. 97, ll. 6-8. Roe explained that he was trying to immobilize the car with the box maneuver. Tr. 100, ll. 3-4. The goal was to eliminate the vehicle fleeing down the street. Tr. 103, ll. 19-20.

Roe testified that on June 14, 2018, the maneuver was not successfully executed, as there was a hole, and appellant escaped the traffic stop. Tr. 105, ll. 17-20. Roe explained that the U.S. Marshals did not have a vehicle chase policy, and he was not allowed to chase as a lead vehicle. Tr. 108, l. 24 – 109, l. 2. He testified that NCPD said they would chase if appellant broke the box. Tr. 109, ll. 9-14. Roe followed appellant's vehicle and realized he was in the wrong direction of traffic. Tr. 110, ll. 10-15. The chase was less than a minute. Tr. 110, l. 18. The crash was at the intersection. Tr. 110, ll. 20-21; 112, ll. 18-21. After the collision, he watched the vehicle flip several times. Tr. 114, ll. 13-16.

On cross-examination, Roe testified that he witnessed the collision. Tr. 140, ll. 9-11. He explained that there were two ramps, one that went with traffic and one head-on to traffic, and he did not know which ramp appellant intended to take. Tr. 141, ll. 3-16. The K-9 vehicle was

travelling at seventy-three (73) miles per hour at point of impact. Tr. 142, l. 23 – 143, l.1. He testified that he did not know if appellant saw the other vehicle. Tr. 144, l. 23 – 145. l. 4.

Dr. Barry Lee Weissglass testified as an expert in occupational medicine. Tr. 172, ll. 15-20. He treated Bishop. Tr. 173, ll. 15-16, 23-25. Bishop had minor abrasions and was "otherwise not injured." Tr. 174, ll. 2-3. He testified that death, musculoskeletal injuries, or significant injuries to the spine could be sustained from an automobile accident, which a rollover could intensify. Tr. 175, l. 13 – 176, l. 17. However, he concluded that Bishop was fit to return to duty. Tr. 177, ll. 18-22. On cross-examination, Dr. Weissglass explained that he marked Bishop fit for duty the day after the accident, without delays or limitations, as his injuries were not significant enough to prevent him from preforming his duty. Tr. 178, ll. 14-23.

Thereafter, the state rested its case. Tr. 214, ll. 3-4.

Directed verdict motion

Defense counsel moved for a directed verdict as to the ABHAN charge. Tr. 214, ll. 14-16. He argued that a crime requires intent to commit the act, but, in this case, there was no intent. Tr. 214, ll. 16-20. He asserted that the evidence, testimony, and videos demonstrated that there was no intent to hit another vehicle. Tr. 214, ll. 21-23. He maintained that fleeing was the goal, not hitting or stopping. Tr. 214, l. 23 – 215, l. 2. He concluded that there was no intent, at any level, to commit ABHAN. Tr. 215, ll. 3-7.

He continued that there were minor abrasions from the airbag, and officer Bishop was cleared for duty the next day. Tr. 215, ll. 8-11. He argued that considering what could have resulted or was likely to happen made the statute an attempt statute. Tr. 215, ll.17-20. He argued that an attempt statute or a statute like assault and battery second degree (AB2d), which mirrored ABHAN "in most ways," required specific intent. Tr. 215, ll. 22-25. Thus, he argued

that appellant would have to intend to hit the vehicle, which he did not, but he also would have had to intended to hit the vehicle with the intent to cause great bodily injury or death. Tr. 216, ll. 1-4. He asserted that no evidence indicated that at a general level and "certainly nothing at the specific intent level." Tr. 216, ll. 6-9. He argued that to presume that injuries are likely would be burden shifting. Tr. 217, ll. 12-17. He contended that the factual situation was that appellant was traveling at a "fairly reasonable speed," and officer Bishop was going seventy-three (73) miles per hour through an intersection at the time of the collision. Tr. 217, l. 23 – 218, l. 3. He argued that he had to disprove hypotheticals. Tr. 218, ll. 3-4. The court responded that, although it did not "necessarily disagree," it was "stuck with what the legislature said." Tr. 218, ll. 6-8. Defense counsel responded that what the legislature said was did appellant intend to hit the officer, and nothing in the record would support that. Tr. 218, ll. 9-14.

Defense counsel distinguished from felony DUI, where the intent was to drive drunk and death was the result, arguing that appellant should have been charged with failure to stop for a blue light with great bodily injury. Tr. 222, ll. 1-24. He argued that "[w]e know the intent of the legislature because they made what he did, a crime that he is not being prosecuted for." Tr. 223, ll. 2-4. He reiterated that here, the act was hitting the cop car, which there was no intent to do, unlike intending to fail to stop for a blue light. Tr. 223, ll. 8-12. He concluded that because there was no intent, a directed verdict was proper. Tr. 223, ll. 17-19. The court ultimately denied the motion for a directed verdict. Tr. 226, ll. 22-23. Defense counsel renewed his motion for a directed verdict as to ABHAN, which the court denied for the same reasons. Tr. 228, ll. 20-23. The defense rested its case. Tr. 230, l. 18.

Verdict and Sentencing

The jury found appellant guilty of ABHAN and failure to stop for blue lights. Tr. 276, ll. 11-23. During sentencing, the state asked for the maximum sentence of twenty (20) years. Tr. 281, l. 2. In doing so, the state conceded that the two pending murder charges were "candidly not the strongest cases" and that it did not know if it would try those. Tr. 280, ll. 14-18. Similarly, the state referenced the pending ABHAN charge resulting from an incident while incarcerated and stated that "[d]epending on the sentence of the Court on this case, we may move forward and try that case." Tr. 280, ll. 19-23. It continued that "[t]he fact that he attacked an inmate in jail" made him "deserving of those 20 years." Tr. 280, ll. 13-15.

Defense counsel requested that the court punish the conduct which was failure to stop for blue lights. Tr. 283, ll. 6-7. He contended that at sentencing, legislative intent was considered and that failure to stop for blue lights with great bodily injury was punishable by ten (10) years. Tr. 283, ll. 9-12. The state responded and asked for the court to "send a message" that this conduct was not to be tolerated and again requested the maximum sentence. Tr. 285, ll. 1-9.

The court imposed a sentence of three (3) years as to failure to stop for blue lights and eighteen (18) years as to ABHAN, to be served concurrently. Tr. 285, l.24 – 285, l. 6.

Discussion

Generally, criminal liability is based upon the concurrence of two factors: the defendant's criminal intent and the actual, physical act constituting the offense. *State v. Fennell*, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000). A defendant may not be convicted of a criminal offense unless the state proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for a particular offense. *Id.* (citing *State v. Ferguson,* 302 S.C. 269, 271,

395 S.E.2d 182, 183 (1990) (required mental state for particular crime may be purpose (intent), knowledge, recklessness, or criminal negligence)).

The level of *mens rea* required for conviction of a statutory offense is a question of legislative intent. *Ferguson*, 302 S.C. at 272, 395 S.E.2d at 183. "When a criminal statute is silent as to the intent necessary for a conviction, we consider the common law and the development of the statute to decide whether the Legislature intended the crime to require criminal intent and, if so, what level of intent." *United States v. Clemons*, 442 S.C. 670, 901 S.E.2d 280 (2024) (citing *State v. Jefferies*, 316 S.C. 13, 19, 446 S.E.2d 427, 430-31 (1994)).

In 2010, the General Assembly passed the Omnibus Crime Reduction and Sentencing Reform Act which replaced this state's prior common law assault and battery offenses with statutory offenses of varying degrees. Pursuant to S.C. Code Ann. § 16-3-600(B) "a person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person and (1) great bodily injury to another person results, or (2) the act is accomplished by means likely to produce death or great bodily injury." *See* S.C. Code Ann. § 16-3-600(B). ABHAN is statutorily classified as a violent crime, pursuant to S.C. Code Ann. § 16-1-60, as a serious crime, pursuant to S.C. Code Ann. § 17-25-45, and carries a maximum of twenty years imprisonment.

Under the common law, ABHAN was misdemeanor punishable by up to ten years in prison. *Fennell*, 340 S.C. at 274, 531 S.E.2d at 516. To prove ABHAN under the common law, the state was required to show the unlawful act of violent injury to another accompanied by circumstances of aggravation. Circumstances of aggravation included the use of a deadly weapon, the intent to commit a felony, infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, a difference in gender, the purposeful infliction of

shame and disgrace, taking indecent liberties or familiarities with a female, and resistance to lawful authority. *Fennell*, 340 S.C. at 274, 531 S.E.2d at 516-17.

In *Clemons*, our Supreme Court was tasked with answering, in the abstract, whether a defendant may be convicted of AB2d and criminal domestic violence of a high and aggravated nature (CDVHAN) with a *mens rea* of recklessness as defined by the Model Penal Code. 442 S.C. at 670, 901 S.E.2d at 280. Our Supreme Court held that under some circumstances, a person may be convicted of AB2d or CDVHAN with a *mens rea* of recklessness as defined by the Model Penal Code. *Id.* at 678, 901 S.E.2d at 284. Moreover, our Supreme Court explained that there is "no one-size-fits-all *mens rea* required" for a conviction under AB2d or CDVHAN and the *mens rea* required for culpability "depends upon the a*ctus reus* of the crime being prosecuted as CDVHAN or Ab2d." *Id.* at 673, 901 S.E.2d at 282. Importantly, *Clemons* does not set forth the proposition that ABHAN can be proven with a *mens rea* of recklessness in South Carolina.

Recklessness may occur when an individual "consciously disregards a substantial unjustifiable risk," in "gross deviation from acceptable standards." *Borden v. United States*, 593 U.S. 420, 427, 141 S. Ct. 1817, 1824 (2021) (citing Model Penal Code § 2.02(2)(c)) (internal quotation marks omitted). Moreover, "[r]eckless conduct is not an accident . . . [i]t involves a deliberate decision to endanger another." *Voisine v. United States*, 579 U.S. 686, 687, 136 S. Ct. 2272, 2275 (2016).

The state failed to prove the necessary *mens rea* to sustain an ABHAN conviction for injuries arising out of a car accident. For appellant to be guilty of ABHAN under a theory of recklessness, the state would have to prove that he was indifferent to the consequences of recklessly driving his vehicle *and* that he intended to drive his vehicle into officer Bishop's

vehicle. The record contains no evidence that appellant had any intent to strike officer Bishop's vehicle. Instead, the state presented evidence that appellant fled, Tr. 61, ll. 4-7; 65, ll. 14-19, 25, and U.S. Marshal Roe testified that he did not know if appellant saw the other vehicle, Tr. 144, l. 23 – 145. l. 5. Stated differently, while the state does not have to prove that appellant intended to specifically harm any one individual, the state does have to prove that appellant intended the act that resulted in the harm. Considering the state's evidence, it did not present any direct or substantial circumstantial evidence that appellant intended to strike any vehicle, let alone officer Bishop's vehicle. *Hepburn*, 406 S.C. at 429, 753 S.E.2d at 409.

It is crucial to note that a car wreck cannot give rise to an ABHAN conviction where the injury results from a true accident, as here, because an accident lacks an intent to act or harm. Particularly, ABHAN requires that a person "unlawfully injures another person," and here, the minor abrasions to officer Bishop were a result of the car crash. *See* S.C. Code Ann. § 16-3-600(B)(1); Tr. 174, ll. 2-3; 208, ll. 2-5; 215, ll. 8-11. To the contrary, if a person drove their car directly at a pedestrian to pin them against a wall and injuries resulted, such conduct may be sufficient to sustain an ABHAN conviction. Under those facts, the individual was indifferent to the consequences of recklessly driving their car and the individual intended the act of pining an individual against a wall which caused the injuries and the resulting crime.

Moreover, while the state's evidence may have shown that appellant fled from blue lights and sirens, Tr. 61, ll. 4-7; 65, ll. 14-19, 25, the legislature has expressly criminalized failure to stop for blue lights which results in great bodily injury, *See* S.C. Code. Ann. § 56-5-750(C)(1) (Supp. 2016). Under § 56-5-750,

> (C) A person who violates the provisions of subsection (A) and when driving performs an act forbidden by law or neglects a duty imposed by law in the driving of the vehicle:

> (1) where great bodily injury resulted, is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years

See id. The legislature has not criminalized, however, failure to stop for blue lights where anything short of great bodily injury or death has occurred. *See generally* § 56-5-750. It is therefore clear that ABHAN was not drafted with the intent to prosecute car accidents arising from reckless conduct, as the legislature has expressly criminalized harm resulting from failing to stop for law enforcement's signal and from reckless driving. *See e.g.*, S.C. Code Ann. § 56-5-2910 (Reckless vehicular homicide); *id.* § 56-5-2920 (Reckless driving); *id.* § 56-5-750 (Failure to stop motor vehicle when signaled by law-enforcement vehicle). That the legislature left a gap in criminalizing less serious injuries resulting from failing to stop for a blue light or reckless driving does not allow the trial court to expand the criminal law to cover the unique factual situation in appellant's case but rather the court must apply the law as written. To submit this case to a jury, and ultimately increase appellant's sentencing exposure to up to twenty years (20) with respect to ABHAN, was an error and directly contrary to the legislature's intent.

The legislature has clearly criminalized, and proportionally penalized with ten (10) years' imprisonment, failure to stop for blue lights which results in great bodily injury. It has yet to criminalize the conduct when the result is something less than great bodily injury, as here. Accordingly, the trial court erred by allowing the ABHAN charge to proceed to the jury as no evidence existed which reasonably tended to prove appellant's guilt. *Passio*, 433 S.C. at 66, 861 S.E.2d at 789; *Hepburn*, 406 S.C. at 429, 753 S.E.2d at 409. This Court should reverse appellant's conviction and sentence for ABHAN by finding the state failed to provide evidence of the *mens rea* necessary to support the charge.

III.

<u>The trial court abused its discretion by refusing to provide a jury charge on specific intent related to the ABHAN charge because subsection (b) functions like an attempt statute.</u>

Standard of Review

"In criminal cases, appellate courts sit to review errors of law only." *State v. Robinson*, 426 S.C. 579, 591, 828 S.E.2d 203, 209 (2019) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Perry*, 440 S.C. 396, 403, 892 S.E.2d 273, 276 (2023) (citing *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)). When reviewing jury charges for error, the Court must consider the jury charge as a whole in light of the evidence and issues presented at trial. *Mattison*, 388 S.C. at 478, 697 S.E.2d at 583.

A question of statutory interpretation is a question of law, which is subject to *de novo* review. *State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022). The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Smith v. State*, 412 SC. 472, 477, 772 S.E.2d 286, 289 (Ct. App. 2015).

Relevant Facts

Charge conference

During a charge conference, defense counsel objected to the state's request to add language that ABHAN was a general intent crime. Tr. 188, l. 25 – 189, l. 3. He argued that it confused the jury. Tr. 189, l. 4. The court stated that it would leave the ABHAN charge as it was, stating that "if the legislature wanted it to be part of the statute, they could have put it in there." Tr. 189, ll. 8-14. Defense counsel objected to any language about recklessness or negligence because it would confuse the jury, and those factors did not apply. Tr. 190, ll. 1-3.

Defense counsel argued that driving down the wrong side of the road did not play a factor in this. Tr. 190, ll. 10-11. Further, defense counsel requested specific intent language on ABHAN as it related to the "accomplished by means likely to" language. Tr. 190, ll. 13-16. He argued that ABHAN, as it related to great bodily injury, was general intent but the section that said, "means likely to have caused," functioned like an attempt statute. Tr. 190, ll. 17-22. He asserted that attempt statutes were specific intent. Tr. 190, ll. 23-24. Defense counsel argued that the language in the ABHAN statute requires the act to be likely to have caused something else that made it an attempt statute. Tr. 191, ll. 13-16. Defense counsel contended that the statute was also overbroad and burden shifting because it required defense counsel to argue against hypotheticals of what could have happened. Tr. 191, ll. 17-22.

The court stated that it was "inclined on some level to agree with you that you are having to defend against a hypothetical situation," but "that's what the law is." Tr. 192, ll. 4-9. Defense counsel argued that the law is subject to interpretation. Tr. 192, ll. 11. The court determined that caselaw provided that ABHAN was general intent, and thus, there was not anything that warranted specific intent. Tr. 192, ll. 20-25. Defense counsel requested that the jury charge read that "[t]he Defendant intended to unlawfully injure another person." Tr. 195, ll. 12-13. The state requested that the court include a part that said general intent because ABHAN required general intent, which could be recklessness, citing *Clemons*.[6] Tr. 195, ll. 16-23; 196, ll. 1-13. Defense counsel responded that *Clemons* mentioned that AB2d was specific intent. Tr. 196, ll. 14-19. The court then determined that "on intent, I'm just – I'm just going to leave it like it is, and then if I'm wrong, they can fix it in Columbia." Tr. 196, ll. 20-22.

[6] *United States v. Clemons*, 442 S.C. 670, 901 S.E.2d 280 (2024).

Defense counsel again requested that as to the ABHAN charge, the language included "attempt to cause" and "intent to cause injury," and the court noted his request but left the charge as it was. Tr. 229, ll. 17-25. Defense counsel also requested language stating that "the Defendant intended to inflict death or great bodily injury to another person," and the court reiterated it would charge the statute as instructed. Tr. 230, ll. 1-8.

Charge on the law

The court provided the following charge as to criminal liability:

> In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances existing at the time. There's no way to prove intent to a mathematical certainty. There's no way medical science can dissect a person's brain and determine what the person had in mind. So the law says, Criminal intent may be inferred from the circumstances shown to have existed. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration that acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state of conscious wrongdoing. You must determine . . . what the intent defendant intended to do based on the circumstances existing at the time. Criminal intent can arise from action or failure to act. It may arise from negligence, recklessness, or an indifference to duty or consequences that are considered by the law to be the equivalent of criminal intent.

Tr. 260, l. 21 – 261, l. 22 (internal quotation marks omitted). The court then provided the following charge for ABHAN:

> A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another, and great bodily injury to another person results, or the act is accomplished by means likely to produce death or great bodily injury. Great bodily injury means bodily injury which causes a substantial risk of death, or which causes serious permanent

disfigurement or protracted loss of impairment of the function of a bodily member or organ.

Tr. 264, ll. 5-13. The court provided that if the state failed to prove ABHAN beyond a reasonable doubt, the jury could consider whether appellant committed several lesser-included offenses: assault and battery first-degree, assault and battery second-degree, or assault and battery third-degree. Tr. 264, l. 14 – 26, l. 11. Regarding the attempted unlawful taking of a firearm from a law enforcement officer charge, the court provided both a charge on attempt and specific intent. Tr. 267, ll. 12-24. After the court charged the jury on the law, it elicited objections, and defense counsel renewed his previous requests. Tr. 270, ll. 13-18.

The jury submitted a note requesting the law read by the judge. Tr. 271, l. 24 – 272, l. 1; *see also* R. *(Court's Exhibit 2). The court determined it would bring the jury back in to determine what they needed recharged. Tr. 272, ll. 6-13. The jury had a question of intent. Tr. 273, ll. 4-5. The court then recharged the intent section. Tr. 273, l. 18 – 274, l. 20.

After the jury returned to deliberations, defense counsel requested the intent charge he referenced in closing be read. Tr. 275, ll. 2-8. The court noted the defense objection and stated that his request was part of the attempted unlawful taking charge and that the intent section that was read "essentially cover[ed] it." Tr. 275, ll. 9-13.

Discussion

The law charged to the jury is determined by the evidence presented at trial. *Mattison*, 388 S.C. at 479, 697 S.E.2d at 583. A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues. *State v. Lee-Grigg*, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007). There is no error, however, if the charge actually given sufficiently covers the substance of the requested charge. *Mattison*, 388 S.C. at 479, 697 S.E.2d at 583.

In order for the state to prove ABHAN, it must show that a person unlawfully injures another person and great bodily injury results *or* the "act is accomplished by means likely to produce death or great bodily injury." S.C. Code Ann. § 16-3-600(B)(1). In this case, the state could not establish great bodily injury as the only evidence it presented of injuries sustained by officer Bishop were minor abrasions from the airbags. Tr. 174, ll. 2-3; 208, ll. 2-5; 215, ll. 8-11. Thus, the state was required to show that the act was accomplished by means likely to produce death or great bodily injury to sustain a conviction for ABHAN. S.C. Code Ann. § 16-3-600(B)(1)(b).

However, while subsection (a) of the statute may require general intent, *see State v. Smith*, 430 S.C. 226, 234, 845 S.E.2d 495, 499 & n.9 (2020) (stating that ABHAN is a general-intent crime), subsection (b) functions like an attempt, and thus, the court abused its discretion by failing to provide a specific intent charge, as requested by defense counsel, *United States v. Mack*, 56 F.4th 303, 307 (4th Cir. 2022) (explaining that attempt is a specific intent crime, meaning that the accused must intend to complete the acts comprising the underlying offense). In addition, the General Assembly has designated ABHAN as a lesser-included of attempted murder, which requires specific intent, *see State v. King*, 422 S.C. 47, 63-64, 810 S.E.2d 18, 26-27 (2017), and designated that the remaining degrees of assault, all of which include attempt language, are lesser-included offenses of ABHAN, *see generally* S.C. Code Ann. § 16-3-600.

Although the court charged on specific intent related to appellant's attempted unlawful taking charge, the court's charge did not sufficiently cover appellant's request because his request was specific to ABHAN and the level of intent required to be convicted of ABHAN. *Mattison*, 388 S.C. at 479, 697 S.E.2d at 583. Likewise, albeit discussing AB2d and CDVHAN, the *Clemons* court determined that some of the criminal acts proscribed by these circumstances

may be committed with general intent while the sections dealing with attempt may require specific intent. *See generally Clemons*, 442 S.C. at 670, 901 S.E.2d at 280. In addition, the jury's question requesting to have a copy of the charge on the law and clarification regarding intent emphasizes its confusion as to criminal intent. R. *(Court's Exhibit 2).

Even further, § 16-3-600(B)(1)(b) is unconstitutionally vague facially and as-applied to appellant. *See State v. German*, 439 S.C. 449, 466, 887 S.E.2d 912, 920 (2023) (citing *Doe v. State*, 421 S.C. 490, 502, 808 S.E.2d 807, 813 (2017)) (explaining that a facial challenge claims that a law is invalid "*in toto*–and therefore incapable of any valid application," and thus, "a plaintiff must establish that a law is unconstitutional in all of its applications," whereas an as-applied challenge requires that the "party challenging the constitutionality of the statute claims that the application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional.") (quotations omitted).

A statute is presumed constitutional, and the validity will be upheld, unless its repugnance to the constitution is clear beyond a reasonable doubt. *State v. McSwain*, 445 S.C. 276, 282-83, 914 S.E.2d 124, 127 (2025). This general presumption of validity can be overcome only by a clear showing the act violates some provision of the constitution. *Doe*, 421 S.C. at 501, 808 S.E.2d at 813. Moreover, "[t]he void-for-vagueness doctrine rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." *State v. Neuman*, 384 S.C. 395, 402, 683 S.E2d 268, 272 (2009). Generally, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 1858 (1983). To satisfy due process concerns, a statute must be

sufficiently definite to ensure that a person at common intelligence would not have to guess at the statute's meaning. *State v. Lewis*, 434 S.C. 158, 168, 863 S.E.2d 1, 6 (2021) (citing *State v. Green*, 397 S.C 268, 280, 724 S.E.2d 664, 670 (2012)).

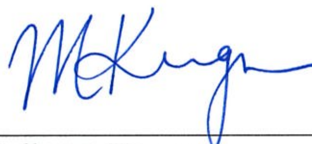
Subsection (b) of the ABHAN statute is unconstitutionally vague. The average citizen is not on notice that a car accident, where they did not intend to collide with another vehicle, could subject them to criminal prosecution for ABHAN which carries a maximum of twenty years' imprisonment and is a violent offense. *Kolender*, 461 U.S. at 357, 103 S. Ct. at 1858. Nor does the statute communicate to the average citizen what conduct is prohibited. *Id.* For instance, the statute criminalizes an "act . . . accomplished by means likely to produce death or great bodily injury." *See* S.C. Code Ann. § 16-3-600(B)(1)(b). An invariable number of acts *could* be likely to produce death or great bodily injury. Because of this, the statute does not provide fair notice and leads to arbitrary and discriminatory enforcement. *Neuman*, 384 S.C. at 402, 683 S.E2d at 272; *Kolender*, 461 U.S. at 357, 103 S. Ct. at 1858. Perhaps most offensively, the statute requires the accused to defend against hypothetical scenarios, as here. *See* Tr. 191, ll. 17-22. For instance, in this case, neither great bodily injury nor death occurred but appellant was required to argue against what *could* have been likely to result. Tr. 191, ll. 17-22; *Lewis*, 434 S.C. at 168, 863 S.E.2d at 6. The result is that § 16-3-600(B)(1)(b) is void-for-vagueness. *See Curtis v. State*, 345 S.C. 557, 571, 549 S.E.2d 591, 598 (2001) (explaining that a statute may be constitutional and valid in part and unconstitutional and invalid in part as language may be severable so long as the constitutional portion of the statute remains complete in and of itself).

Therefore, appellant's conviction and sentence for ABHAN should be reversed.

CONCLUSION

Based on the foregoing arguments, as to Issue I, appellant respectfully requests this Court reverse the decision of the lower court, hold that his federal and state constitutional rights to a speedy trial have been violated, and dismiss the charge of ABHAN and failure to stop for blue lights against him.

As to Issues II and III, appellant respectfully requests that this Court reverse and remand his conviction and sentence for ABHAN.



Molly M. Keegan
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of September, 2025.