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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Jennifer B. McCoy, Circuit Court Judge

Opinion No. 2025-UP-338 (S.C. Ct. App. Filed October 8, 2025)

THE STATE,

RESPONDENT,

V.

RONZELL BILAH OLDS,

APPELLANT

APPELLATE CASE NO. 2022-000336

APPENDIX

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the judges err in refusing to grant the motion to dismiss based on pre-indictment delay of over four years between arrest and indictment violating Appellant's right to Due Process?

2. Did the judges err in refusing to dismiss the indictment because Appellant was denied his state and federal constitutional right to a speedy trial?

STATEMENT OF THE CASE

On February 7, 2022, the Charleston County Grand Jury indicted Appellant, Ronzell Bilah Olds, for armed robbery and possession of a weapon during the commission of a violent crime, indictments #2022-GS-10-549, 550¹. (R. p. 544-545, 548-549). On March 8, 2022, Appellant proceeded to jury trial before the Honorable Jennifer B. McCoy. Jason King and Katherine Mangan represented Appellant at trial. Benjamin Chad Simpson and Mallory Haliena prosecuted the case. The jury found Appellant guilty as charged. Judge McCoy sentenced Appellant to twenty (20) years for armed robbery and five (5) years concurrent for the weapon charge. Appellant served a timely notice of intent to appeal on March 15, 2022. This appeal follows.

¹ It is unclear who testified before the grand jury as the witness is listed as the Charleston City Police Department.

STANDARD OF REVIEW

The trial court's decision regarding pre-indictment delay is a mixed question of law and fact and will only be reversed if clearly erroneous. State v. Lee, 360 S.C. 530, 537–38, 602 S.E.2d 113, 117 (Ct. App. 2004), aff'd, 375 S.C. 394, 653 S.E.2d 259 (2007) citing United States v. Lynch, No. 94–5350, 56 F.3d 62, 1995 WL 325670, at *2 (4th Cir. June 1, 1995) (recognizing district court's decision regarding pre-indictment delay was a mixed question of law and fact and will only be reversed if clearly erroneous) (citing United States v. Beszborn, 21 F.3d 62 (5th Cir.1994), *cert. denied*, Westmoreland v. United States, 513 U.S. 934, 115 S.Ct. 330, 130 L.Ed.2d 288 (1994)).

The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard. 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. State v. Hunsberger, 418 S.C. 335, 794 S.E.2d 368 (2016).

FACTS

Appellant was arrested on January 16, 2018, and charged with several counts of armed robbery of convenience stores. Over two years later on May 26, 2020, Appellant filed a written motion to dismiss – speedy trial and pre-indictment delay. (R. pp. 1-4). The State filed a response on June 15, 2020. (R. pp. 5-11). On June 17, 2020, a hearing was held before the Honorable R. Markley Dennis. (R. pp. 12-21). In a written order signed June 23, 2020, and filed June 24, 2020, Judge Dennis denied the motion to dismiss. (R. pp. 23-24). Appellant was released on bond on July 6, 2020, and remained out of jail but on house arrest and electronic monitoring. (R. p. 28).

On January 27, 2022, Appellant filed a second written motion to dismiss – speedy trial and pre-indictment delay. (R. pp. 25-28). The State filed a motion for continuance because Appellant had still not been indicted. (R. pp. 29-41). On January 27, 2022, a hearing was held before the Honorable Deadra L. Jefferson. (R. pp. 42-84). On February 7, 2022, Appellant was indicted for the armed robbery of the Sunoco convenience store on Sam Rittenberg Boulevard. (R. pp. 544). In a written order signed and filed on February 18, 2022, Judge Jefferson denied the motion to dismiss. (R. pp. 85-90). When the case was called for trial on March 7, 2022, before the Honorable Jennifer B. McCoy, Appellant renewed both the motion to dismiss based on pre-indictment delay and the motion to dismiss based on the speedy trial violation. (R. p. 104, line 20 – R. p. 106-107, lines 1-7). Judge McCoy denied the motion to dismiss. (R. p. 107, lines 3-7). At the close of the State’s case Appellant renewed both motions to dismiss based on the unavailability of two additional witnesses. (R. p. 454, line 18 – p. 455, lines 1-22).

ARGUMENTS

1. The judges erred in refusing to grant the motion to dismiss based on pre-indictment delay of over four years between arrest and indictment violating Appellant's right to Due Process.

Appellant was arrested on January 16, 2018, for the Sunoco armed robbery but was not indicted for that armed robbery until February 7, 2022, over four years later. It appears that the Charleston County Grand Jury did not meet from March 2020, until April 2021², because of emergency protocols due to the COVID 19 pandemic. (See State's motion for continuance filed January 27, 2022, R. p. 31). Excluding this year long period of time, there is still over a two-year pre-indictment delay between arrest in January of 2018, and pandemic shutdown in March of 2020. There is an additional period of pre-indictment delay between the time the grand jury resumed in April of 2021, and the date of indictment on February 7, 2022. The length of pre-indictment delay, excluding the year of COVID, was almost three years.

In the first motion to dismiss based on pre-indictment delay filed on May 26, 2020, over two years after arrest, Appellant argued that the delay caused substantial actual prejudice because a witness, Mark A. Maschke, died on May 17, 2019. (R. p. 3). The witness could have testified that Appellant was under the influence of drugs when he was arrested and gave an incriminating statement.

On June 17, 2020, a hearing was held before Judge R. Markley Dennis on the motion to dismiss based on pre-indictment delay. In a written order dated June 23, 2020, and filed June 24, 2020, Judge Dennis denied the motion to dismiss based on pre-indictment delay. (R. pp. 23-24). In the written order Judge Dennis wrote, "After reviewing both briefs submitted by the State and

² Footnote #10 in Judge Jefferson's order indicates that in-person grand jury proceedings were suspended from April 3, 2020, until June 1, 2021. (R. p. 89).

the Defendant, hearing oral arguments, and reviewing the Defendant's interview in its entirety, this Court finds the Defendant has failed to show pre-indictment delay has caused substantial actual prejudice." (R. p. 24). This judge erred in finding no substantial actual prejudice based on the unavailable witness and refusing to dismiss the case due to an over two year period of pre-indictment delay.

In State v. Lee, 375 S.C. 394, 397, 653 S.E.2d 259, 260 (2007), the South Carolina

Supreme Court wrote:

We have adopted a two-prong inquiry when pre-indictment delay is alleged to have violated a defendant's due process rights. State v. Brazell, 325 S.C. 65, 72–73, 480 S.E.2d 64, 68–69 (1997) (citing U.S. v. Lovasco, 431 U.S. 783, 97 S.Ct. 2044, 52 L.Ed.2d 752 (1977)). First, the defendant must prove that the delay caused substantial actual prejudice to his right to a fair trial. Id. The second prong requires the court to consider the reason for the State's delay and to balance the justification for the delay against the prejudice to the defendant. Id.

Describing "substantial prejudice" the South Carolina Supreme Court in State v. Brazell, 325 S.C. 65, 73, 480 S.E.2d 64, 69 (1997), wrote:

Substantial prejudice requires a showing that "he was meaningfully impaired in his ability to defend against the state's charges to such an extent that the disposition of the criminal proceeding was likely effected [sic]." Jones v. Angelone, 94 F.3d 900 (4th Cir.1996). When the claimed prejudice is the unavailability of a witness, courts require that the defendant identify the witness he would have called; demonstrate, with specificity, the expected content of that witness' testimony; establish that he made serious attempts to locate the witness; and finally, show that the information the witness would have provided was not available from other sources. Howell supra.

Appellant showed substantial actual prejudice on May 26, 2020, the first time the first time he moved for dismissal based on pre-indictment delay. A critical witness, Mark A. Maschke, was unavailable. The witness could have testified that Appellant was under the influence of drugs when he was arrested and gave an incriminating statement. (R. p. 15, lines 2-13). The testimony was not available from other sources. The testimony would have supported Appellant's argument

at trial, to both the judge as a basis of suppression and to the jury if not suppressed, that his statement was not made voluntarily. Appellant argued to the jury in closing argument to disregard Appellant's statement to police. (R. pp. 495-506). The argument was severely weakened by the fact that Appellant was unable to provide testimony that Appellant was under the influence at the time he made the statement. Although the statement was recorded and Judge Dennis reviewed the recording and portions were played for the jury, impairment may not be detectable on the recording. The judge erred in refusing to find substantial prejudice resulting from the over two-year pre-indictment delay.

Appellant showed substantial prejudice. The next step in the analysis is to balance the reason for the delay against the prejudice. In the response to the motion to dismiss the State argues, "The reason the State failed to indict the cases was simply an oversight and not done for any tactical advantage." (R. p. 11). The State, however, acknowledges that the test adopted by our courts does not require a showing that the government intentionally delayed the indictment so as to gain a tactical advantage. (R. p. 11). See State v. Lee, 360 S.C. 530, 537, 602 S.E.2d 113, 117 (Ct. App. 2004), aff'd, 375 S.C. 394, 653 S.E.2d 259 (2007).

In State v. Lee, 375 S.C. 394, 400, 653 S.E.2d 259, 262 (2007), the South Carolina Supreme Court addressed the second part of the pre-indictment delay analysis writing, "Accordingly, the second part of the due process inquiry requires the court to consider the prosecution's reasons for the delay and balance the justification for delay with any prejudice to the defendant. Brazell, supra. When balancing the prejudice and the justification, the basic inquiry then becomes whether the government's action in prosecuting after substantial delay violates "fundamental conceptions of justice" or "the community's sense of fair play and decency." Id. (quoting U.S. v. Automated Med. Laboratories, Inc., supra at 404)."

During the June 17, 2020, hearing the State offered no valid explanation for the delay of over two years in indicting Appellant. Balancing the prejudice against the lack of justification for the delay, the judge should have dismissed the case. The judge erred in refusing to find that the pre-indictment delay violated Appellant's right to Due Process.

Almost two years later on January 27, 2022, Appellant filed a second motion to dismiss based on pre-indictment delay because the State still had not indicted Appellant for the Sunoco robbery that he was arrested for on January 16, 2018, four years earlier. (R. p. 25). The State responded by moving for a continuance. (R. pp. 31-41). A hearing on the second motion to dismiss was held on January 27, 2022, before Judge Deadra L. Jefferson. (R. pp. 42-84). In a written order dated February 18, 2022³, Judge Jefferson denied the motion to dismiss based on pre-indictment delay. (R. pp. 85). In the written order Judge Jefferson wrote:

The Court finds that the Defendant has failed to establish, by a preponderance of the evidence, that pre-indictment delay has caused substantial actual prejudice. Further, the Court finds that the Defendant has failed to show that he was meaningfully impaired in his ability to defend against the State's charges to such an extent that the disposition of the criminal proceeding was likely effected. The fact that the State "erroneously believed that the defendant's charges were indicted," and "held out to the Court in prior hearings that the case was indicted, even providing the Court with erroneous 'indictment numbers' taken from [the State's] tracking system," does not reach the level of substantial actual prejudice. Once the State discovered its oversight, the Defendant's above captioned charges were presented at the next Grand Jury. Moreover, as Judge Markley Dennis's June 23, 2020 Order states, the death of the Defendant's potential witness in this case does not cause substantial actual prejudice to the Defendant's right to a fair trial.

(R. pp. 88-89). In footnote #9 of the order Judge Jefferson wrote, "The Court has no retroactive authority to reconsider the findings of Judge Markley Dennis' Order of June 23, 2020 as suggested by Defense Counsel." (R. p. 89). Although the judge ruled on the motion to dismiss

³ On February 7, 2022, after the hearing but before the order issued, the State obtained indictments for the Sunoco robbery.

based on pre-indictment delay it appears from the footnote that she believed that she had no discretion to reconsider Judge Dennis' ruling on the motion made two years earlier. As the motion was a second motion to dismiss based on pre-indictment delay and two years had passed with no indictment, the second judge should have reconsidered the ruling by Judge Dennis. Any failure to exercise discretion is an abuse of discretion. "A failure to exercise discretion amounts to an abuse of that discretion." Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997) (citations omitted). This judge erred in refusing to dismiss the case due to pre-indictment delay.

Two years after the first motion to dismiss based on pre-indictment delay and four years after arrest, Appellant was still not indicted. At the second hearing on the motion to dismiss based on pre-indictment delay Appellant again showed substantial actual prejudice based on the fact that critical witness, Mark A. Maschke, was unavailable. As to the second prong of the pre-indictment delay analysis, reason for the delay, the State argued that the delay was justified due to COVID and a mistaken belief that the case had been indicted. (R. pp. 31-41). Excluding the year-long shut down because of COVID, from March of 2020, until April of 2021, when the grand jury reconvened, there remained an almost three-year delay between arrest in January of 2018 and indictment on February 7, 2022, for which the State offered no valid explanation. Balancing the prejudice to Appellant against the lack of justification for the almost three-year delay in indictment, the prosecution of Appellant over four years after arrest violated fundamental concepts of justice and the community's sense of fair play.

When the case was finally called to trial on March 7, 2022, Appellant renewed the motion to dismiss based on pre-indictment delay. (R. p. 104, line 20 – p. 106, 107, lines 1-7). The motion was again denied. (R. p. 107, lines 3-7). By the time the case was called to trial the manager of the Sunoco that was robbed, Tom Cullum, had passed away. (R. p. 279, lines 10-14).

The State instead called a Sunoco regional training manager to testify about general policies and procedures. The regional manager testified that, “One of the policies of the Sunoco was that we had a 2 dollar bill which was attached to a money clip and anytime they were robbed the cashier would pull the money clip and give it to the robber. These numbers were called into what would be like our own monitoring company. At the time it was called Central Monitoring Facility and they would record the serial numbers.” (R. p. 273, lines 2-9). The regional manager admitted, however, that he did not know when the two-dollar bill was put in the store that was robbed or when the serial numbers were reported. (R. p. 278, line 18 – p. 279, lines 1-9).

During the trial Lieutenant Thomas Bailey with the Charleston Police Department testified that a two-dollar bill associated with the Sunoco robbery had been collected from Deonna Greene at her apartment, approximately a quarter mile from the Sunoco. (R. p. 336, lines 3-19; p. 327, lines 1-8). Sergeant Yolanda Brown with the Charleston Police Department testified that Deonna Greene was an ex-girlfriend of Appellant and that he sometimes stayed at her apartment. (R. p. 378, lines 4-8). Sergeant Brown testified that the two-dollar bill collected from Greene matched the serial number of the two-dollar bill stolen in the robbery. (R. p. 379, lines 3-5).

At the close of the State’s case Appellant renewed the motion to dismiss based on the unavailability of witness Mark A. Maschke, as argued in the previous motions to dismiss, as well as the two additional unavailable witnesses, Tom Cullum, the Sunoco manager at the time of the robbery and Deonna Greene. (R. p. 454, line 18 – p. 455, lines 1-22). The inability to question the manager and Green about the two-dollar bill was prejudicial. The trial judge did not rule on the motion but instead said, “I think that’s noted for the record. I don’t think that motion obviously is not squarely before me but you’ve had an opportunity now to delve into that a little bit more deeply and that is certainly in the record.” (R. p. 455, line 23 – p. 456, lines 1-2). The trial judge

erred in not ruling on the motion to dismiss based on pre-indictment delay when two additional witnesses were unavailable at trial. Appellant's due process rights were violated by the four-year pre-indictment delay. All three judges erred in refusing to dismiss the charges based on pre-indictment delay. As in State v. Lee, this Court should vacate the convictions.

2. The judges erred in refusing to dismiss the indictment because Appellant was denied his state and federal constitutional right to a speedy trial.

The motions discussed above with regard to pre-indictment delay also included motions to dismiss based on the violation of Appellant's federal and state constitutional right to a speedy trial. (R. pp. 1-4; pp. 25-30). Appellant was arrested on January 16, 2018, for the Sunoco armed robbery and the State did not call the case for trial until March 7, 2022, over four years later. Appellant was released on bond on July 6, 2020, but remained on house arrest with electronic monitoring until trial. (R. p. 28).

Appellant first asserted his right to a speedy trial in a written motion filed May 26, 2020, over two years after arrest. (R. pp. 1-4). In response to the written motion to dismiss the State, in regard to the speedy trial analysis, wrote:

The Defendant has been incarcerated since January 16, 2018. Even if this delay triggers a violation of speedy trial analysis, the remaining factors show there has been no violation of the Defendant's right to a speedy trial. The procedural history shows, the Defendant has not asserted a right to a speedy trial until now. The Defendant has made no request asking the State to consent to have the case tried sooner than now. In fact, the State requested the case be placed on the priority docket for the trial week of August 17, 2020, not the Defendant. For the above stated "Substantial Actual Prejudice" analysis, the Defendant has not shown prejudice by the pre-indictment delay.

(R. p. 11). As will be discussed below, actual prejudice for purposes of a speedy trial analysis, as opposed to a pre-indictment delay analysis, does not have to be shown and is just one factor the court considers.

A hearing on the motion to dismiss was held on June 17, 2020, before Judge R. Markley. In the written order denying the motion to dismiss based on a speedy trial violation Judge Dennis wrote, “In considering the factors in determining whether the Defendant has been denied the right to a speedy trial, this Court has reviewed the procedural history of this case provided in the State’s brief and finds the Defendant was not prejudiced by any delay in trial.” (R. p. 24). The judge erred in focusing solely on prejudice without considering other Barker v. Wingo speedy trial factors such as the length of and reason for the delay.

In State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371 (2016), the South Carolina Supreme Court wrote, “The Sixth Amendment to the United States Constitution provides, ‘In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.’ U.S. Const. amend. VI. Similarly, the South Carolina Constitution provides that “Any person charged with an offense shall enjoy the right to a speedy and public trial.” S.C. Const. art. I, § 14. A speedy trial means a trial without unreasonable and unnecessary delay. State v. Langford, 400 S.C. 421, 441, 735 S.E.2d 471, 482 (2012) (quoting Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966)). In Smith v. Hooey, 393 U.S. 374, 374–75, 89 S. Ct. 575, 575, 21 L. Ed. 2d 607 (1969), the United States Supreme Court wrote, “In Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1, this Court held that, by virtue of the Fourteenth Amendment, the Sixth Amendment right to a speedy trial is enforceable against the States as ‘one of the most basic rights preserved by our Constitution.’ Id., at 226, 87 S.Ct. at 995.” The remedy for a speedy trial violation is dismissal of the charges. Langford, 400 S.C. at 442, 735 S.E.2d at 482 (internal citation omitted).

In determining whether a defendant has been deprived of the right to a speedy trial, the court must consider four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of the right; and, (4) prejudice to the defendant. Barker v. Wingo, 407 U.S.

514, 530, 92 S.Ct. 2182, 33 L.Ed 2d 101 (1972). Although there is no fixed time in which a defendant must be tried, the right to a speedy trial may be violated where the delay is arbitrary and unreasonable. State v. Waites, 270 S.C 104, 108, 240 S.E.2d 651, 653 (1978). In a footnote in Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the Court wrote, “Depending on the nature of the charges, the lower courts have generally found post accusation delay ‘presumptively prejudicial’ at least as it approaches one year.” Doggett Fn. 1

In Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012) the Court wrote:

We begin our analysis with the “triggering mechanism” of a speedy trial claim, which is the length of the delay. Barker, 407 U.S. at 530, 92 S.Ct. 2182. We should not even examine the remaining factors “[u]ntil there is some delay which is presumptively prejudicial.” Id. The clock starts running on a defendant's speedy trial right when he is “indicted, arrested, or otherwise officially accused,” and therefore we are to include the time between arrest and indictment. United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982).

The over two-year delay between arrest and the first assertion of the speedy trial right in the present case triggers the speedy trial analysis. Considering the other factors in a speedy trial analysis, the only reason given for the delay by the State was “an oversight.” (R. p. 11). In the response to the first motion to dismiss the State submits that on December 6, 2019, at a docket meeting for trials for January 6, 2020, the case was continued without objection from either party. (R. p. 8). The case, however, had not yet been indicted and could not have proceeded to trial without waiver of grand jury presentment. Appellant did not assert his right to a speedy trial prior to filing the motion on May 26, 2020. The prejudice to Appellant was, as discussed with regard to pre-indictment delay, the fact that a critical witness, Mark A. Maschke, died on May 17, 2019, and was unavailable to testify at trial. (R. p. 2).

While Appellant showed actual prejudice, actual prejudice is not required to establish a speedy trial violation. The Court in Barker wrote:

Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. 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. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.

Barker v. Wingo, 407 U.S. 514, 532, 92 S. Ct. 2182, 2193, 33 L. Ed. 2d 101 (1972).

In Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the Court granted relief while noting that Doggett “did indeed come up short” in making “any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence.” As a result, the Court explained “we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify.” In light of the difficult nature of proving prejudice, the Court held that the importance of presumptive prejudice increases with the length of delay. Doggett, 505 U.S. at 655-656. In the absence of proof of particularized prejudice, the state’s 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 prosecution. Id. at 658. The presumption of prejudice in the present case was neither extenuated by Petitioner’s acquiescence, nor persuasively rebutted by the prosecution. Prejudice should be presumed.

In Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 189-90, 38 L. Ed. 2d 183 (1973) the United States Supreme Court wrote:

A defendant is not required to show prejudice affirmatively to win a speedy trial claim. The state court was in fundamental error in its reading of Barker v. Wingo and in the standard applied in judging petitioner's speedy trial claim. Barker v. Wingo expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial:

‘We regard none of the four factors identified above (length of delay, reason for delay, defendant’s assertion of his right, and prejudice to the defendant) as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused’s interest in a speedy trial is specifically affirmed in the Constitution.’ 407 U.S., at 533, 92 S.Ct., at 2193 (footnote omitted).

In addition to possible prejudice, any court must thus carefully weigh the reasons for the delay in bringing an incarcerated defendant to trial. In the face of petitioner’s repeated demands, did the State discharge its ‘constitutional duty to make a diligent, good-faith effort to bring him (to trial)’? Smith v. Hooey, 393 U.S. 374, 383, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969).

In Hunsberger the South Carolina Supreme Court wrote:

First, we note that the trial court’s ruling was influenced by an error of law in so much as it rested on a belief that actual prejudice—to the exclusion of presumptive prejudice—was the only type of prejudice that would support a speedy trial claim. In fact, an accused can assert actual prejudice or presumptive prejudice as the result of the State’s violation of his right to a speedy trial. 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. See Doggett, 505 U.S. at 655, 112 S.Ct. 2686 (accepting the State’s definition of actual prejudice). The United States Supreme Court also recognized that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or even identify. Id. (internal citation omitted). This is so because “time’s erosion of exculpatory evidence and testimony ‘can rarely be shown.’” Doggett, 505 U.S. at 655, 112 S.Ct. 2686 (citing Barker, 407 U.S. at 532, 92 S.Ct. 2182). When the government persistently fails to try an accused and the delay is excessive, the accused need not show actual prejudice in order to prevail in his speedy trial claim. Doggett, 505 U.S. at 657–58, 112 S.Ct. 2686. 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, 112 S.Ct. 2686 (internal citation omitted).

418 S.C. at 351, 794 S.E.2d at 376. In addition to the actual prejudice resulting from the unavailable witness, prejudice should also be presumed in the present case.

In Langford, 400 S.C. 421, 441-442, 735 S.E.2d 471, 482 (2012) the Court wrote:

The Supreme Court has counseled further that none of these factors is “either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.” Barker, 407 U.S. at 533, 92 S.Ct. 2182. Instead, they are all related and must be considered along “with such other circumstances as may be relevant.” Id. Thus, the Supreme Court created a balancing test which is a rejection of “inflexible approaches” and weighs “the conduct of both the prosecution and the defense.” Id. at 529–30, 92 S.Ct. 2182.

The over two- year delay triggers the speedy trial analysis. Balancing the fact that the State had no valid reason for the delay, the assertion of the right and the actual and presumptive prejudice to Appellant, the judge erred in denying the motion to dismiss. The delay violated Appellant’s right to a speedy trial.

Almost two years later, Appellant’s case still had not been indicted, as discussed above in issue one, and still had not been called for trial. As a result, on January 27, 2022, Appellant filed a second motion to dismiss based on the violation of Appellant’s federal and state constitutional right to a speedy trial. (R. p. 25-30). The State responded by moving for a continuance. (R. pp. 31-41). A hearing on the second motion to dismiss based on a speedy trial violation was held on January 27, 2022, before Judge Deadra L. Jefferson. (R. pp. 42-84).

In a written order dated February 18, 2022⁴, Judge Jefferson denied the motion to dismiss based on pre-indictment delay. (R. p. 85). In the written order Judge Jefferson wrote:

The Court finds that the Defense has failed to establish the “trigger” required of the interval between accusation and trial crossing the threshold dividing ordinary from “presumptively prejudicial” delay. The South Carolina Supreme Court in Hunsberger defines presumptively prejudicial as a delay that exists when an accused is not prosecuted with ordinary promptness. 418 S.C. at 343, 797 S.E.2d at 372.

(R. p. 87). Judge Jefferson additionally wrote in the written order, “The total delay in this case is not sufficient to trigger a review of the other factors for speedy trial. As a result of the delays

⁴ On February 7, 2022, after the hearing but before the order issued, the State obtained indictments for the Sunoco robbery.

precipitated by the COVID-19 pandemic, this was a routine delay in light of the Nation's state of emergency and the resulting inability to conduct jury trial in the State of South Carolina.” (R. p. 89). In footnote #13 of the order the judge wrote, “During the COVID-19 pandemic, the courts were closed, by Administrative Order, beginning March 18, 2020 and did not begin to resume Jury trials until April 5, 2021, assuming the County had an approved Safety Plan. The Defendant's [sic] was arrested o August 17, 2020.” (R. p. 90). Earlier in the order, however, the judge correctly noted that Appellant was arrested on January 16, 2018, not August 17, 2020. (R. p. 85).

Finally, the judge wrote in the order, “The Court finds the Defense has not established an inordinate delay; the reasons for the delay in the disposition of the charges are well with the usual course of trial preparation and COVID-19 pandemic and no “presumptive” prejudice has been established by the accused. Therefore, as the Court has found that the Defense has not established “presumptive delay,” the Court need not reach the other three factors. Barker v. Wingo, 470 U.S.415, 530 (1972). (R. p. 90). The judge erred, as a matter of law, in finding that the four-year delay between arrest on January 16, 2018, and the second assertion of the right to speedy trial on January 27, 2022, was not sufficient to “trigger” a review of the Barker factors. See State v. Hunsberger, 418 S.C. 335, 345, 794 S.E.2d 368, 373 (2016) (“See 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); 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). “The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard.” Hunsberger, 418 S.C. at 342, 794 S.E.2d at 371.

“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. The four-year delay triggered the speedy trial analysis and the judge should have considered the other Barker v. Wingo factors: the reason for the delay; the defendant’s assertion of the right; and, prejudice to the defendant.

As to the second Barker v. Wingo factor, reason for delay, the only reason given by the State for the first over two-year period of delay from the time of arrest on January 16, 2018, until the first assertion of the right to a speedy trial on May 26, 2020, was “an oversight.” (R. p. 11). This period of time should be weighed heavily against the State. The reasons given by the State for the second period of delay between May 26, 2020, and January 27, 2022, were “oversight” and COVID. (R. pp. 31-41). The year-long shut down due to COVID that began in March of 2020, is a neutral factor and should not be weighed against either party. It appears that jury trials resumed in September of 2021. (R. p. 30). Appellant’s case was finally called for trial on March 7, 2022. The additional six-month period of delay between jury trials resuming in September of 2021, and the call of the case in March of 2022, due to an “oversight” should be weighed heavily against the State.


As to Appellant’s assertion of the right to a speedy trial, Appellant first asserted his right on May 26, 2020, by filing a motion to dismiss based on the speedy trial violation. Appellant again asserted his right to a speedy trial on January 27, 2022, by filing a second motion to dismiss based on the speedy trial violation. The State responded to the second motion to dismiss by moving for a continuance. Appellant asserted his right to a speedy trial on two separate occasions before the case was finally called to trial in March of 2022, over four years after arrest. As to prejudice to the Appellant, as discussed above, Appellant showed both actual and presumed

prejudice from the delay. Balancing the length of the two and a half year delay, excluding the Covid shutdown, against the fact that the State did not have a valid reason for the delay, Appellant twice asserted his right to a speedy trial and the prejudice, both actual and presumed, Appellant established a speedy trial violation. The judge erred in refusing to dismiss the charges based on the speedy trial violation.

When the case was finally called to trial on March 7, 2022, Appellant renewed the motion to dismiss based on the speedy trial violation. (R. p. 104, line 20 – p. 106, 107, lines 1-7). The motion was again denied. (R. p. 107, lines 3-7). At the close of the State’s case Appellant renewed the motion to dismiss for the speedy trial violation based on the unavailability of witness Mark A. Maschke, as argued in the previous motions to dismiss, as well as the two additional unavailable witnesses, Tom Cullum, the Sunoco manager at the time of the robbery and Deonna Greene. (R. p. 454, line 18 – p. 455, lines 1-22). The trial judge did not rule on the motion but instead said, “I think that’s noted for the record. I don’t think that motion obviously is not squarely before me but you’ve had an opportunity now to delve into that a little bit more deeply and that is certainly in the record.” (R. p. 455, line 23 – p. 456, lines 1-2). The trial judge erred in not ruling on the motion to dismiss based on a speedy trial violation when two additional witnesses were unavailable at trial. As discussed in the first issue with regard to pre-indictment delay, the inability to question the manager and Green about the two-dollar bill was prejudicial. Adding the two additional unavailable witnesses into the prejudice of the speedy trial balancing analysis further demonstrates the violation of the state and federal constitutional right to a speedy trial. All three judges erred in refusing to dismiss the charges based on the speedy trial violation.

CONCLUSION

Based on the due process violation resulting from pre-indictment delay, this Court should vacate the convictions. Based on the speedy trial violation, this Court should dismiss the charges.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of May, 2023.

CERTIFICATE OF COUNSEL

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

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May 09 2023

SC Court of Appeals


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This 9th day of May, 2023.

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May 09 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONZELL BILAH OLDS,

APPELLANT

APPELLATE CASE NO. 2022-000336

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above referenced case have been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS) this 9th day of May, 2023.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

RECEIVED**Apr 21 2023****SC Court of Appeals**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Jennifer B. McCoy, Circuit Court Judge
Appellate Case No. 2022-000336

THE STATE,

Respondent,

vs.

RONZELL BILAH OLDS,

Appellant.

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II. The three circuit court judges who were presented with Appellant’s speedy trial dismissal motions did not abuse their broad discretion by declining to dismiss Appellant’s charges because the approximately forty-eight-month period of delay between Appellant’s arrest and trial did not result from any intentional efforts on the part of the State to hinder Appellant’s defense, did not cause any meaningful prejudice to Appellant, and resulted in large part from difficulties caused by the unexpected onset of a global pandemic.24

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STATEMENT OF ISSUES ON APPEAL

I.

“Did the judges err in refusing to grant the motion to dismiss based on pre-indictment delay of over four years between arrest and indictment violating Appellant’s right to Due Process?”

II.

“Did the judges err in refusing to dismiss the indictment because Appellant was denied his state and federal constitutional right to a speedy trial?”

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Did the three circuit court judges who were presented with Appellant’s dismissal motions all err by declining to the dismiss the charges based on the roughly four-year period of pre-indictment delay between Appellant’s arrest in connection to the Sunoco armed robbery and indictment when: (1) Appellant failed to establish he suffered substantial actual prejudice as a result of the delay involved in his case; and (2) even if Appellant did somehow satisfy his heavy burden of establishing the requisite prejudice, a proper balancing of the case-specific circumstances involved nonetheless did not and would not support a conclusion his due process rights were violated by the delay?

II.

Did the three circuit court judges who were presented with Appellant’s speedy trial dismissal motions abuse their broad discretion by declining to dismiss Appellant’s charges when the approximately forty-eight-month period of delay between Appellant’s arrest and trial did not result from any intentional efforts on the part of the State to hinder Appellant’s defense, did not cause any meaningful prejudice to Appellant, and resulted in large part from difficulties caused by the unexpected onset of a global pandemic?

STATEMENT OF THE CASE

In January of 2018, Appellant Ronzell Bilah Olds was arrested following an investigation into an armed robbery of a convenience store. Later that same month, Appellant was arrested in connection to a string of similar armed robberies committed a few weeks earlier, and he was served with additional arrest warrants in April of 2018 stemming from yet another earlier armed robbery. In May of 2020, Appellant filed a motion seeking dismissal of all his charges. On June 17, 2020, a virtual hearing was held on Appellant's motion before the Honorable R. Markley Dennis, Jr., circuit court judge. Subsequent to that hearing, Judge Dennis issued an order denying Appellant's motion. Thereafter, in January of 2022, the State submitted a motion seeking a continuance in Appellant's case, and Appellant again submitted a motion seeking for all his charges to be dismissed. On January 27, 2022, a virtual hearing was held on the motions before the Honorable Deadra L. Jefferson, circuit court judge. Subsequently, in February of 2022, the Charleston County Grand Jury indicted Appellant for armed robbery and possession of a weapon during the commission of a violent crime in connection to the January 2018 incident. A few days after that, Judge Jefferson issued an order denying Appellant's latest dismissal motion. On March 7, 2022, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Jennifer B. McCoy, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty years for armed robbery and five years for possession of a weapon during the commission of a violent crime.¹ Appellant then timely filed a notice of appeal.

¹ In imposing Appellant's sentence, the trial judge granted Appellant 1,510 days of credit for time served, including 609 days of discretionary credit for time Appellant spent on monitored house arrest prior to trial. (R. p. 539; p. 541).

STATEMENT OF FACTS

Around 1:43 a.m. in the early morning hours of January 16, 2018, a skinny masked man entered the Sunoco convenience store located on Sam Rittenberg Boulevard in the West Ashley area of Charleston, approached the cashier, pointed a gun at her, and demanded money. (R. pp. 292-296; pp. 300-301; pp. 315-318; p. 322; p. 376; pp. 422-423). In response, the cashier quickly handed over the cash from the store's register, including—consistent with her training—a lone two-dollar bill that the store kept on hand solely for use during robberies. (R. pp. 293-294; p. 301). The robber then rapidly fled from the store with the two-dollar bill and the rest of his loot, and he headed in the direction of nearby Orleans Road. (R. p. 321). Significantly, unbeknownst to him at that time, the serial number from the two-dollar bill he had just stolen was recorded in advance to aid in identifying the perpetrator in the event of a robbery like the one he had just committed. (R. pp. 273-274; p. 293; p. 332; p. 377).

During the ensuing investigation into the robbery, Appellant was identified as a suspect following a review of the store's surveillance footage, and, as a result, several officers went to the apartment of Appellant's ex-girlfriend, Deonna Greene, in search of him.² (R. pp. 295-296; pp. 317-319; pp. 326-327; pp. 377-378). Appellant was known to frequently be at that location, and Greene's apartment was situated only a quarter of a mile away from the Sunoco store that had been robbed. (R. pp. 326-327; State's Ex. # 2 (Photograph)). Upon arriving there, the officers did not find Appellant, but they were able to speak with Greene. (R. pp. 327-328). As a result of doing so, they obtained a quantity of cash that included a single two-dollar bill. (R. p. 336; p. 355; pp. 378-379; pp. 440-443; State's Ex. # 17 (Photograph)). The serial number from

² Greene's apartment was part of Orleans Garden Apartments. (R. p. 319).

that two-dollar bill was then compared to the recorded serial number from Sunoco's records, and, critically, the numbers proved to be an exact match. (R. pp. 332-334; p. 337; pp. 378-379).

Later that same day, Appellant was tracked down, arrested in connection to the Sunoco robbery, and brought to the police station. (R. pp. 382-383). Detective Yolanda Brown of the Charleston Police Department met with Appellant at that location, and he agreed to an interview after being advised of and waiving his rights. (R. pp. 383; p. 394; Court's Ex. # 1 (Interview Recording)). During the course of the conversation that followed, Appellant confirmed he stayed with Greene at her apartment on the night of the robbery, and he further confirmed he left her some money, including a two-dollar bill, on that date.³ (R. p. 339; pp. 395-396; pp. 398-399; Court's Ex. # 1). Initially though, Appellant—who was not yet aware the officers connected that two-dollar bill to the robbery—insisted he had not been involved in the incident. (R. pp. 332-333; p. 367; p. 396; Court's Ex. # 1). However, as the interview continued, Detective Brown confronted Appellant with the information about the serial number match, and Appellant, who was still wearing what appeared to be the same distinctive white belt he wore during the robbery, eventually candidly confessed he was, in fact, the robber.⁴ (R. pp. 338-339; pp. 400-401; pp. 404-405; p. 412; Court's Ex. # 1).

In the weeks and months that followed Appellant's arrest, Appellant was served with *eight* additional arrest warrants—for a total of ten—stemming from similar crimes committed in

³ Appellant perhaps made those admissions because, as he would later acknowledge during the interview, he had spoken with Greene earlier that day and had been alerted by her about the officers coming to her apartment in search of him. (Court's Ex. # 1). Tellingly, after Appellant revealed Greene had informed him about the officers' visit to her apartment, he quickly followed that by stating: "Y'all don't supposed to know that." (Court's Ex. # 1).

⁴ In confessing, Appellant described the robbery as a "stupid decision" on his part, and he revealed he did it because he thought he could get away with it in light of all the other armed robberies that had been committed in the area. (Court's Ex. # 1).

the weeks leading up to the Sunoco robbery. (R. pp. 552-592). In response to those charges, the solicitor—in June of 2018—submitted a plea offer to Appellant that would have allowed him to collectively resolve all ten, and that offer was set to expire on September 7, 2018. (R. p. 6). As the expiration date neared, defense counsel contacted the solicitor and successfully requested it be extended until October 8, 2018. (R. p. 7). Days later, Appellant was indicted for three of his offenses from December of 2017. (R. pp. 1-2; p. 7). Thereafter, on the revised expiration date, defense counsel asked the court to schedule a plea hearing for December 6, 2018, and, in doing so, defense counsel noted Appellant would “accept or reject” at that time. (R. p. 7). Following that, when the December date arrived, defense counsel indicated Appellant was rejecting the plea offer at that time but discussions with him concerning a possible guilty plea would continue. (R. p. 7). Shortly after that, Appellant formally rejected the State’s plea offer on the record. (R. p. 7).

Subsequent to those events, plea discussions apparently continued until—on November 26, 2019—Appellant’s case was set for a January 2020 trial by the court. (R. pp. 7-8). However, a few days after that, Appellant’s case was continued *without* objection from *either* party. (R. p. 8). Then, following that, South Carolina’s courts and grand juries—including the trial courts and grand jury in Charleston County—were forced to shut down in March of 2020 in response to the emergency caused by the global COVID-19 pandemic. (R. p. 44).

Shortly after the shutdown took effect, a status conference was held in Appellant’s case. (R. p. 8; p. 11). As a result of it, the court placed the matter on the “priority docket” *at the solicitor’s request* and—with the hope trials would soon be able to resume—scheduled it to be tried on August 17, 2020. (R. p. 8; p. 11). However, just days after that, defense counsel submitted a motion seeking for all Appellant’s charges—indicted and unindicted—to be

dismissed based on pre-indictment delay and a purported speedy trial violation.⁵ (R. pp. 1-4). In response, a circuit court judge conducted a *virtual* hearing on the matter. (R. pp. 12-13).

During the course of that virtual hearing, defense counsel contended he believed his “strongest” argument was the two arrest warrants related to January 2018 Sunoco robbery should be dismissed due to pre-indictment delay. (R. p. 14). As support for that contention, defense counsel asserted he had heard an as-of-then-unconfirmed “rumor” Mark Maschke, who supposedly *could* have testified Appellant was under the influence of drugs at the time of his arrest, had died from a drug overdose. (R. p. 15). Defense counsel explained he believed Maschke’s testimony was potentially relevant to the issue of whether Appellant’s confession was voluntarily made, and, thus, he claimed Maschke’s death caused substantial actual prejudice to the defense. (R. p. 3; p. 15). Beyond that, defense counsel—without further elaboration—noted he “put some speedy trial arguments” in the dismissal motion as well.⁶ (R. p. 16). In rebuttal, the solicitor contended defense counsel’s claims related to Maschke were not sufficient to establish substantial actual prejudice because multiple other sources, including Appellant himself, could provide insight regarding Appellant’s condition at the time of his law enforcement

⁵ In addition to those grounds, defense counsel also referenced the timelines set out in Rule 3 of the South Carolina Rules of Criminal Procedure. (R. p. 2). However, as our courts have recognized and explained, that particular rule is administrative in nature, and, thus, noncompliance with the timelines set out in it does *not* itself warrant dismissal of criminal charges. See State v. Edwards, 374 S.C. 543, 572, 649 S.E.2d 112, 127 (Ct. App. 2007) (recognizing Rule 3 is purely “administrative” and instructing a solicitor’s delay in complying with the timelines set out in that rule “does not within itself invalidate a warrant or prevent subsequent prosecution”), rev’d on other grounds, 384 S.C. 504, 682 S.E.2d 820 (2009).

⁶ Specifically, as to those arguments, defense counsel identified some general law on the right to a speedy trial before simply asserting: “[Appellant] also moves to dismiss all of [his] charges based on violation of his right to a speedy trial. [Appellant] has been incarcerated since January 16, 2018. [Appellant] has suffered actual prejudice due to the death of witness Mark A. Maschke. [Appellant] believes this delay is so lengthy as to result in a finding of presumptive prejudice that would trigger analysis of the other factors.” (R. pp. 2-4).

interview. (R. pp. 17-18). Furthermore, the solicitor argued Appellant's speedy trial rights had not been violated because his case could not have been tried any earlier, and he noted more indictments were expected to be issued the following month. (R. p. 18).

Ultimately, after considering the arguments of counsel and reviewing a recording of Appellant's interview with law enforcement, the circuit court judge declined to dismiss the charges. (R. pp. 23-24). In reaching that conclusion, the circuit court judge found Appellant failed to establish he suffered substantial actual prejudice as a result of Maschke's death. (R. pp. 23-24). Likewise, based on a review of the case's procedural history and the absence of any delay-caused prejudice, the circuit court judge concluded Appellant's speedy trial rights had not been violated. (R. p. 24).

Following that ruling, the global pandemic continued to cause problems on worldwide, national, and state levels and resulted in the solicitor being unable to present additional indictments to the grand jury as intended. (R. pp. 45-46). And, by April of 2021, that particular solicitor was no longer working for the Ninth Circuit Solicitor's Office, which required Appellant's case to be reassigned to a new solicitor. (R. p. 44; pp. 46-47). Meanwhile, by that point, Appellant was personally no longer in pre-trial incarceration because he obtained release on bond in July of 2020. (R. pp. 50-51).

Once Appellant's case was reassigned, the new solicitor reviewed the records associated with it in his office's case management system and mistakenly concluded the charges related to the Sunoco robbery had already resulted in the issuance of indictments due to the fact indictment numbers and a grand jury meeting date were identified in the system. (R. p. 35. p. 47). Proceeding forward under that mistaken belief, the solicitor communicated with defense counsel about the case while also participating in several status conferences about it with a circuit court

judge. (R. p. 47). Significantly, during those communications and status conferences, the solicitor made statements to defense counsel and the circuit court judge demonstrating his erroneous belief Appellant's case had already been indicted. (R. p. 48; p. 59). Despite being aware of the solicitor's error, defense counsel did not correct it for either the solicitor *or* the circuit court judge, and the circuit court judge ended up—after jury trials finally resumed in Charleston County in September of 2021—scheduling Appellant's unindicted case related to the Sunoco robbery for trial on January 31, 2022. (R. pp. 29-30; p. 43; p. 48).

Thereafter, one week before that trial was set to begin, the solicitor discovered the necessary indictments had not actually been issued, and he immediately responded by contacting defense counsel, who advised him Appellant would *not* be willing to waive presentment of his charges to a grand jury.⁷ (R. p. 48). At that point, the solicitor quickly submitted a request for a continuance to the circuit court judge while also arranging for the indictments to be presented to the grand jury as soon as possible, which was on February 7, 2022. (R. pp. 29-41; p. 49). Meanwhile, defense counsel submitted another motion to dismiss based on pre-indictment delay and a purported speedy trial violation.⁸ (R. pp. 25-28). In response to those motions, the circuit court judge promptly conducted another virtual hearing. (R. pp. 42-43).

During the course of that hearing, the solicitor explained Appellant's case had been placed by the court on several prior trial dockets but the current docket on which it had been

⁷ Since Appellant had at least claimed to desire a speedy trial, the solicitor offered to go forward with the trial as already scheduled if Appellant was willing to waive presentment to the grand jury. (R. p. 31).

⁸ Notably, in that motion to dismiss, defense counsel appeared to acknowledge he heard the solicitor express a mistaken belief the indictments had already been issued during the status conference that led to Appellant's case being scheduled for trial in January of 2022 but nevertheless allowed that mistake to go uncorrected. (R. pp. 25-26).

placed was the first time it had a “realistic opportunity to be reached.”⁹ (R. p. 44). The solicitor further explained he was requesting the State’s *first* continuance in Appellant’s case and proceeded to recount the “oversight” that led to the need for it along with the pandemic-related factors—including a lengthy shutdown of the courts for trial purposes—that had resulted in numerous delays in the case. (R. pp. 44-49; p. 67). In rebuttal, defense counsel pointed to the length of the delays incurred up to that point and described them as an “extraordinarily long time.” (R. p. 50). However, he also candidly conceded “the virus” existed. (R. p. 50). He then proceeded to repeat his earlier claim Appellant suffered substantial actual prejudice due to the death of Maschke. (R. p. 57). At the conclusion of the hearing, the circuit court judge took the matter under advisement with the understanding the case would go forward with trial during the week of March 7, 2022, which was the first available term of court for which it could be scheduled, if she ultimately did not agree to dismiss the charges. (R. pp. 75-76; pp. 81-83).

Shortly thereafter, the solicitor presented the indictments to the grand jury, and, on February 7, 2022, the grand jury indicted Appellant for armed robbery and possession of a weapon during the commission of a violent crime. (R. p. 95; pp. 544-545; pp. 548-549). Just over a week after that, the circuit court judge issued an order denying Appellant’s latest dismissal motion. (R. pp. 85-90). In declining to dismiss, the circuit court judge concluded Appellant had failed to establish the factors necessary to establish a violation of his speedy trial rights, and, consistent with the earlier order denying relief, she further found he failed to demonstrate substantial actual prejudice as required for a grant of relief based on pre-indictment delay. (R. pp. 87-80).

⁹ Later on during the hearing, defense counsel readily acknowledged Appellant’s case had only previously been placed by the court on two earlier trial dockets and, even then, was not really “in the running” for actually going forward. (R. p. 59).

Following that ruling, Appellant proceeded forward to trial as scheduled. (R. p. 91; p. 95). Toward the outset of trial, defense counsel renewed Appellant's motion to dismiss, and the trial judge again denied the motion. (R. pp. pp. 104-107). An in camera hearing was then held to determine the voluntariness of Appellant's confession, and, during the course of that hearing, several officers testified about Appellant's seeming lack of intoxication or impairment at the time of the interview. (R. pp. 110-163; pp. 167-185). In addition to that, the recording of the interview was introduced, and, on it, Appellant was depicted providing lucid and appropriate responses to the officers' questions. (Court's Ex. # 1). Furthermore, Appellant testified about the interview but did *not* claim he confessed due to marijuana intoxication or an overborne will. (R. pp. 200-217). Instead, Appellant, who described himself as only being "a little high" at the time of the interview, asserted he confessed due to his efforts *to be polite*. (R. p. 210; pp. 214-215; p. 217). Ultimately, after considering everything presented, the trial judge ruled Appellant's confession was voluntary and admissible.¹⁰ (R. pp. 244-245).

As the trial proceeded forward, testimony and evidence was presented detailing the armed robbery of the Sunoco store and the ensuing investigation into it that led to Appellant being identified as the robber, including evidence and testimony linking Appellant to the unique two-dollar bill stolen during the incident. (R. pp. 271-279; pp. 292-310; pp. 312-367; pp. 374-423; pp. 439-444). Likewise, the details of Appellant's confession to law enforcement were presented, and portions of the interview recording were played for the jury along with a recording of candid incriminating admissions Appellant made from jail following his arrest. (R. pp. 338-339; pp. 382-412; pp. 434-438; State's Ex. # 22 (Jail Call Recording)).

¹⁰ In reaching that conclusion, the trial judge correctly noted the mere fact a defendant smoked marijuana was not something that would render a statement automatically inadmissible. (R. pp. 244-245).

Following the presentation of that testimony and evidence, the solicitor rested the State's case, and defense counsel renewed the previously-raised dismissal motion. (R. p. 452; pp. 454-455). As support for that renewed motion, defense counsel reiterated his claim Maschke's death resulted in prejudice to the defense because Maschke purportedly could have corroborated Appellant's in camera testimony about smoking marijuana prior to his interview with law enforcement.¹¹ (R. pp. 454-455). Furthermore, defense counsel additionally pointed to the absence of Greene, who investigators *for the State* had not been able to locate for trial, along with his recent discovery of the death of the Sunoco store's manager, who was not present during the robbery, as additional sources of prejudice caused by the delays in Appellant's case.¹² (R. pp. 292-293; pp. 446-448; pp. 454-455). However, in pointing to those two witnesses, defense counsel did *not* claim to have made *any* efforts to locate them at any point and did *not* provide any specifics as to what testimony—favorable for the defense or otherwise—he thought they might have provided if present. (R. pp. 454-455). The trial judge responded by simply noting defense counsel's position for the record. (R. pp. 455-456).

Subsequently, Appellant's case was submitted to the jury, and, after a little over two hours of deliberations, the jury convicted Appellant as indicted. (R. p. 520; pp. 531-532). Following that, the trial judge sentenced Appellant to an aggregate twenty-year term of imprisonment. (R. p. 541). And, in imposing that sentence, the trial judge granted Appellant

¹¹ Based on information presented to the trial judge by defense counsel, Maschke died on May 17, 2019, at his residence in Mount Pleasant, South Carolina. (R. p. 543).

¹² Earlier on during trial, testimony was presented establishing the manager of the robbed Sunoco store died roughly a year before Appellant's trial. (R. p. 279). Likewise, testimony was presented from an investigator from the Ninth Circuit Solicitor's Office indicating he attempted to locate Greene unsuccessfully for approximately a month and was prepared to issue a subpoena on behalf of the State if she could be located. (R. pp. 446-448).

credit for all the time he served in pre-trial incarceration *and* while released from custody on bond. (R. p. 539; p. 541).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing on appeal a ruling on a dismissal motion predicated upon pre-indictment delay or an alleged speedy trial violation, the appellate court reviews the trial judge's ruling under an abuse of discretion standard. State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371-372 (2016); see United States v. Madden, 682 F.3d 920, 929 (10th Cir. 2012) (explaining an appellate court "reviews the denial of a motion to dismiss based on preindictment delay for abuse of discretion"); United States v. Bracy, 67 F.3d 1421, 1426 (9th Cir. 1995) ("The denial of a motion to dismiss for impermissible pre-indictment delay is reviewed for abuse of discretion."); State v. Reaves, 414 S.C. 118, 132, 777 S.E.2d 213, 220 (2015) ("[A] trial court's decision as to whether to dismiss an indictment based on speedy trial grounds is reviewed for an abuse of discretion."). "An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006); see United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

I.

All three circuit court judges who were presented with Appellant’s dismissal motions correctly declined to dismiss the charges based on the roughly four-year period of pre-indictment delay between Appellant’s arrest in connection to the Sunoco armed robbery and indictment because: (1) Appellant failed to establish he suffered substantial actual prejudice as a result of the delay involved in his case; and (2) even if Appellant did somehow satisfy his heavy burden of establishing the requisite prejudice, a proper balancing of the case-specific circumstances involved nonetheless did not and would not support a conclusion his due process rights were violated by the delay.

Appellant contends all three judges that declined to dismiss his case based on pre-indictment delay reversibly erred by failing to do so. As support for that contention, Appellant maintains he suffered—contrary to the findings of the three judges presented with his dismissal motions—substantial actual prejudice as a result of the roughly four-year period of delay between the time he was arrested and indicted in connection to the Sunoco robbery. Furthermore, Appellant maintains the purported lack of justification for that period of delay established it “violated fundamental concepts of justice and the community’s sense of fair play” and, thus, his due process rights were violated by the pre-indictment delay in his case. To the contrary, the judges who were presented with Appellant’s dismissal motions correctly declined to impose the extreme sanction of dismissal because: (1) Appellant failed to establish he suffered substantial actual prejudice as a result of the pre-indictment delay involved in his case; and (2) even if Appellant did somehow satisfy his heavy burden of establishing the requisite prejudice, a proper balancing of the circumstances involved did not and would not support a conclusion his due process rights were violated by the delay. Under such circumstances, the judges in Appellant’s case did not abuse their discretion by declining to dismiss his charges based on the pre-indictment delay involved, and their rulings on the matter were fully supported by the evidence and testimony presented to them. Appellant’s convictions should be affirmed.

Pursuant to the United States Constitution and the South Carolina Constitution, no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. V; U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. Through the constitutional guarantee of due process, a criminal defendant is entitled to a criminal proceeding that is fundamentally fair. See California v. Trombetta, 467 U.S. 479, 485 (1984) (“Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness.”).

In the context of delay between the commission of a crime and the issuance of an indictment, due process “plays a limited role in protecting against oppressive pre-indictment delay.” State v. Brazell, 325 S.C. 65, 72, 480 S.E.2d 64, 68 (1997); see United States v. Lovasco, 431 U.S. 783, 789 (1977) (recognizing “the Due Process Clause has a limited role to play in protecting against oppressive delay”). However, delay alone is *not* sufficient to demonstrate a due process violation. Jones v. Angelone, 94 F.3d 900, 907 (4th Cir. 1996). Instead, when determining whether a particular period of pre-indictment is violative of due process, a two-prong inquiry must be applied. Brazell, 325 S.C. at 72, 480 S.E.2d at 68.

Pursuant to the first prong of the analysis, the defendant bears the burden of establishing the pre-indictment delay caused “substantial actual prejudice” to the defendant’s ability to receive a fair trial. State v. Lee, 375 S.C. 394, 397, 653 S.E.2d 259, 260 (2007). Critically, that burden is a heavy one and requires the defendant to prove the existence of actual—as opposed to theoretical or speculative—prejudice that meaningfully impaired the defendant’s ability to defend against the charges to such an extent the criminal proceeding was likely affected. Id. at 397-398, 653 S.E.2d at 260-261; see Jones, 94 F.3d at 907 (“This is a heavy burden because it requires not only that a defendant show actual prejudice, as opposed to mere speculative

prejudice, . . . but also that he show that any actual prejudice was *substantial*—that he was meaningfully impaired in his ability to defend against the state’s charges to such an extent that the disposition of the criminal proceeding was likely affected.” (citations omitted)).

When a claim of substantial actual prejudice is predicated on the unavailability of a witness, the defendant must prove several things for the claim to be a viable one. Brazell, 325 S.C. at 73, 480 S.E.2d at 69. Specifically, the defendant must: (1) identify the witness that would have been called but for the delay; (2) demonstrate with specificity the expected contents of the witness’s testimony; (3) establish the defense made “serious attempts” to locate the witness; and (4) show the information that would have been provided by the witness was not available from any other sources. Id. Meanwhile, “[v]ague and conclusory allegations of prejudice resulting from the passage of time and the absence of witnesses are insufficient to constitute a showing of actual prejudice stemming from pre[-]indictment delay.” United States v. Brown, 742 F.2d 359, 362 (7th Cir. 1984) (citation and internal quotations omitted).

If—and only if—the defendant satisfies the heavy burden of establishing the existence of substantial actual prejudice, the analysis shifts to the second prong. Brazell, 325 S.C. at 72, 480 S.E.2d at 68; see Jones, 94 F.3d at 907 (“[I]n order to maintain a due process claim the defendant must show actual prejudice. . . . It is incumbent upon the defendant, if he is to prevail upon such a claim, to establish that he has been so prejudiced.”). Pursuant to that second prong, most states and federal courts require a defendant to—in addition to providing substantial actual prejudice—also demonstrate the pre-indictment delay resulted from an *intentional* effort on the part of the State to obtain an unfair tactical advantage. See Lee, 375 S.C. at 401, 653 S.E.2d at 262 (Toal, C.J., dissenting) (“In accordance with the majority of the federal circuits that have addressed the issue, I would hold that pre-indictment delay does not violate the Fifth Amendment’s due

process clause unless a defendant can show both actual prejudice and that the State has intentionally delayed the issuance of an indictment in order to gain an unfair tactical advantage.”); see also United States v. Gouveia, 467 U.S. 180, 192 (1984) (“[T]he Fifth Amendment requires dismissal of an individual . . . *if* the defendant can prove that the Government’s delay in bringing the indictment was a deliberate device to gain an advantage over him and that it caused him actual prejudice in presenting his defense.” (emphasis added)); Jones, 94 F.3d at 905 (“[E]very circuit, other than our own and the Ninth Circuit, has indeed held that, in order to establish that a lengthy pre-indictment delay rises to the level of a due process violation, a defendant must show not only actual substantial prejudice, but also that the government intentionally delayed the indictment to gain an unfair tactical advantage or for other bad faith motives.” (citations and internal quotations omitted)).

However, in South Carolina, a showing of prosecutorial bad faith has been determined *not* to be required to demonstrate a due process violation based on pre-indictment delay. Lee, 375 S.C. at 399, 653 S.E.2d at 261. Instead, pursuant to our state’s more-lenient version of the second prong, the trial judge “must consider the prosecution’s reasons for the delay and balance the justification for delay with any prejudice to the defendant.” Brazell, 325 S.C. at 72, 480 S.E.2d at 68-69. When conducting such a case-specific balancing test, “the basic inquiry then becomes whether the government’s action in prosecuting after substantial delay violates fundamental conceptions of justice or the community’s sense of fair play and decency.” Id. at 73, 480 S.E.2d at 69 (citations, brackets, and internal quotations omitted). Necessarily, that determination involves “a delicate judgment based on the circumstances on each case.” United States v. Marion, 404 U.S. 307, 325 (1971).

In the case sub judice, a period of four years and twenty-two days elapsed between Appellant's arrest in connection to the January 2018 Sunoco robbery and the Charleston County Grand Jury's issuance of indictments related to that incident. Although that period of pre-indictment delay was seemingly longer than typical or expected, Appellant's due process rights were nonetheless not violated by the delay under the case-specific circumstances involved because: (1) Appellant failed to establish he suffered substantial actual prejudice as a result of the delay; and (2) even if Appellant could somehow meet that heavy burden in his case, a proper balancing of the circumstances involved did not support a conclusion his due process rights were violated by the delay. Therefore, the extreme sanction of dismissal—just as the judges in Appellant's case concluded—was not warranted, and Appellant's dismissal motions were properly rejected each and every time they were advanced.

Initially, turning to the first prong of the applicable analysis, Appellant—in his effort to establish the requisite substantial actual prejudice—primarily pointed to the loss of the testimony of Maschke, who was with Appellant at the time of his arrest and died roughly sixteen months later. As to why Maschke's testimony was purportedly so crucial, Appellant claimed he could have offered insight into Appellant's level of intoxication at the time of his arrest, which was supposedly pertinent to the issue of whether Appellant's subsequent confession to law enforcement was voluntarily made. Importantly though, Appellant failed to establish—as was necessary for any further analysis to be warranted—either Maschke's testimony was unavailable from any other source or its absence meaningfully impaired the defendant's ability to defend against the charges to such an extent the criminal proceeding was likely affected.

Most significantly, that is true because Appellant's condition at the time of his interview with law enforcement following his arrest was something that was both auditorily-and-visually

recorded and could be testified about by multiple other people, including *Appellant himself*. In light of that, Maschke—who was only theoretically capable of providing insight regarding Appellant’s condition at the time of arrest—could not provide any testimony about Appellant’s degree of intoxication that could not be established via other independent means. See Brazell, 325 S.C. at 73, 480 S.E.2d at 69 (explaining a defendant claiming prejudice based on the unavailability of a witness must establish—amongst other things—“the information the witness would have provided was not available from other sources”). Moreover, even if Maschke had been present for Appellant’s trial, Appellant’s appropriate responses and behavior as reflected through the interview recording demonstrated he was not—if intoxicated at all—impaired to such a degree the voluntariness of his confession would or could have been impacted, and such a conclusion was further supported by the fact Appellant—who presumably knew more about how he was feeling at the time of the interview than anyone else—personally only described himself as being “a little high” when he spoke with the officers following his arrest. See State v. Saxon, 261 S.C. 523, 529, 201 S.E.2d 114, 117 (1973) (“Proof of intoxication, short of rendering the accused *unconscious of what he is saying*, goes to the weight and credibility to be accorded to the confession, but does not require that the confession be excluded from evidence.” (emphasis added and citations and internal quotations omitted)); cf. State v. Brewer, 438 S.C. 37, 47, 882 S.E.2d 156, 161 (2022) (affirming the trial judge’s decision to admit statements Brewer made to law enforcement *prior to* becoming incoherent while explaining “the trial court understood the relevance of intoxication and rendered its decision based on our case law that requires a degree of intoxication sufficient to render a person incapable of comprehending what she is doing”). Resultantly, Maschke’s absence did not and could not meaningfully impair Appellant’s defense in any way, and, therefore, Appellant—just as the judges recognized when rejecting his dismissal

motions—failed to establish he suffered the degree of prejudice necessary to support a finding his due process rights were violated as a result of pre-indictment delay.¹³

In addition to his claims regarding Maschke, Appellant—for the first time during trial—also pointed to the loss of the testimony of his ex-girlfriend, who the State was unable to locate for trial, and the Sunoco store manager, who was not present at the time of the robbery and died roughly a year before trial, as additional sources of substantial actual prejudice to his case. However, in doing so, Appellant did not indicate he had made *any* efforts—serious or otherwise—at *any* point to secure the testimony of either witness, and Appellant further failed to explain what testimony he expected the witnesses to provide that could have actually aided the defense. See Brazell, 325 S.C. at 73, 480 S.E.2d at 69 (explaining a defendant claiming prejudice based on the unavailability of a witness must—amongst other things—“demonstrate, with specificity, the expected content of that witness’ testimony” and “establish that he made serious attempts to locate the witness”). As a result, Appellant failed to meet his heavy burden of establishing the absences of those witnesses caused substantial actual prejudice that meaningfully impaired his defense as was necessary to warrant dismissal for pre-indictment delay. See Brown, 742 F.2d at 362 (explaining vague and conclusory allegations of prejudice in

¹³ On appeal, Appellant appears to suggest the second circuit court judge who rejected his request for dismissal based on pre-indictment delay abused her discretion by concluding she had no discretion to alter the first circuit court judge’s ruling on the matter. (App. Br. p. 9). Importantly though, defense counsel identified the *exact same basis* in support of his claim of substantial actual prejudice to both circuit court judges without identifying anything new that would have warranted a different conclusion on the matter when he repeated the claim for the second time. (R. p. 3; pp. 27-28). Under such circumstances, it is unclear upon what legitimate basis the second circuit court judge could have validly reached a different conclusion from the first circuit judge’s conclusion as to substantial actual prejudice since the same exact facts and arguments were presented to both of them. See Rule 4(b), SCRCrimP (“If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void.”).

connection to absent witnesses are not sufficient to constitute a showing of substantial actual prejudice stemming from pre-indictment delay).

Because Appellant did not and could not meet his burden of establishing substantial actual prejudice, he was not entitled to dismissal of his charges due to pre-indictment delay, and no further analysis on the matter was or is necessary. Cf. United States v. Royals, 777 F.2d 1089, 1090-1091 (5th Cir. 1985) (“Because defendant has failed to meet his burden of showing actual and substantial prejudice, we need not examine the reasons for the delay.”). However, even assuming the requisite degree of prejudice had somehow been established in Appellant’s case, the second prong of the analysis involving consideration of the reasons for the delay likewise did not and would not support a finding of a due process violation under the specific circumstances involved. Critically, looking to the reasons for the delay, some of it resulted from active plea negotiations designed to resolve all *ten* of Appellant’s pending charges that stemmed from a variety of different close-in-time incidents—including the Sunoco robbery—while other portions of it stemmed from the sudden widespread onset of a global pandemic that necessitated emergency measures, including the temporary suspension of the grand jury. See United States v. Sanfilippo, 572 F. Supp. 3d 1269, 1282 (S.D. Fla. 2021) (declining to dismiss based on purported pre-indictment delay and explaining “[t]he Government was delayed in seeking its indictment, not because of any deliberate stratagem, but because a global pandemic that killed hundreds of thousands of Americans forced our Court to shut down the grand jury”); cf. People v. Garcia, 822 N.Y.S.2d 322, 325 (N.Y. App. Div. 2006) (“Defendant’s attempts to negotiate a favorable preindictment plea may have contributed to the delay.”). Meanwhile, some of the delay resulted from the State’s unintentional oversight in failing to submit the indictments related to the Sunoco robbery to grand jury sooner, but the defense was at least partly to blame for the State’s failure to

do so because defense counsel knowingly allowed both the solicitor assigned to the case following a staffing change and the circuit court judge who scheduled the case for trial to take actions based on a *mistaken* belief indictments had already been issued without doing anything to correct that error. See United States v. Moran, 759 F.2d 777, 782 (9th Cir. 1985) (“If mere negligent conduct by the prosecutors is asserted, then obviously the delay and/or prejudice suffered by the defendant will have to be greater than that in cases where recklessness or intentional governmental conduct is alleged.”); cf. People v. Canosa, 598 N.Y.S.2d 784, 785 (N.Y. App. Div. 1993) (finding delay caused by a prosecutor’s mistaken belief regarding the status of an indictment was properly excluded from a speedy trial analysis because “[d]efense counsel, an officer of the court, knew [the prosecutor’s] statement [about the indictment] to be untrue, but chose to remain silent”). When those circumstances are considered in conjunction with the minimal—if any—prejudice caused to the defense by the pre-indictment delay in Appellant’s case, Appellant’s prosecution roughly forty-eight months after he robbed the Sunoco store did not violate fundamental conceptions of justice or the community’s sense of fair play or decency. Cf. Jones, 94 F.3d at 910 (“Even if Jones had established he was actually and substantially prejudiced by the pre-indictment delay, he still would not be entitled to relief under the Due Process Clause, because he has also failed to satisfy [the] second requirement that, balancing the prejudice to the defendant against the state’s reason for the delay, the delay violated fundamental conceptions of justice or the community’s sense of fair play and decency.” (citation, brackets, and internal quotations omitted)). As a result, Appellant’s due process rights were not violated even if he somehow had been able to meet his heavy burden of establishing the existence of substantial actual prejudice due to the pre-indictment delay in his case.

For all those reasons, all three judges who considered Appellant’s motion seeking dismissal based on pre-indictment delay correctly declined to impose that extreme sanction because, under the circumstances involved, Appellant’s due process rights were not violated despite the roughly four-year delay between his arrest and indictment in connection to the Sunoco robbery. See Marion, 404 U.S. at 324 (explaining not “every delay-caused detriment to a defendant’s case should abort a criminal prosecution”); United States v. Baker, 424 F.2d 968, 970 (4th Cir. 1970) (“[A] mere showing of delay in indictment and arrest is not sufficient to show a constitutional violation[.]”); cf. United States v. Brock, 782 F.2d 1442, 1444 (7th Cir. 1986) (“Since the pre-indictment delay did not prejudice Brock’s defense, we conclude that the government did not violate due process by indicting Brock over four years after his arrest.”); United States v. Medina-Arellano, 569 F.2d 349, 352-353 (5th Cir. 1978) (concluding the defendant failed to establish he was prejudiced by four years of pre-indictment delay and, thus, concluding the delay was neither fundamentally unfair nor violative of due process). Appellant’s convictions should be affirmed.

II.

The three circuit court judges who were presented with Appellant’s speedy trial dismissal motions did not abuse their broad discretion by declining to dismiss Appellant’s charges because the approximately forty-eight-month period of delay between Appellant’s arrest and trial did not result from any intentional efforts on the part of the State to hinder Appellant’s defense, did not cause any meaningful prejudice to Appellant, and resulted in large part from difficulties caused by the unexpected onset of a global pandemic.

Appellant contends all three circuit court judges involved in his case erred by failing to dismiss his charges based on an alleged violation of his constitutional speedy trial rights. In support of that contention, Appellant maintains his charges should have been dismissed based on the delay incurred between his January 2018 arrest and March 2022 trial because that delay was purportedly presumptively prejudicial, the justifications for it were allegedly unsatisfactory, he properly asserted his right to a speedy trial on multiple occasions, and his defense was supposedly actually prejudiced by the delay due to the unavailability of several witnesses. To the contrary, the circuit court judges in no way abused their discretion by refusing to dismiss Appellant’s case based on an alleged speedy trial violation because the forty-eight-month period of delay involved was not the result of any willful or intentional efforts on the part of the State to hinder Appellant’s defense, did not result in any meaningful prejudice to Appellant, and resulted in large part from difficulties caused by a global pandemic. Under such circumstances, Appellant’s constitutional speedy trial rights were not violated, and the extreme sanction of dismissal was not warranted. Appellant’s convictions should be affirmed.

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 (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]”); S.C. Const. art. I, § 14 (“Any person charged with an offense shall enjoy the right to a speedy and public trial[.]”). That right is designed to protect against anxiety

stemming from public accusation of a crime and to limit the possibility of a lengthy pre-trial delay impairing an accused's defense. State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012). However, most importantly, the right to a speedy trial is chiefly designed to prevent undue pre-trial impairment of liberty. See United States v. Loud Hawk, 474 U.S. 302, 312 (1986) (“[T]he Speedy Trial Clause’s core concern is impairment of liberty[.]”). Critically though, the criminal trial process is designed to move at a deliberate pace due to the many procedural safeguards involved, and, thus, the essential guarantee provided by the right to a speedy trial is the orderly expedition of a charge as opposed to mere speedy expedition. United States v. Ewell, 383 U.S. 116, 120 (1966); see Beavers v. Haubert, 198 U.S. 77, 87 (1905) (“The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.”).

In order to trigger a speedy trial analysis, a criminal defendant’s trial must have been delayed for a period of time that is presumptively prejudicial, which is necessarily dependent on the particular circumstances of *each individual case*. Langford, 400 S.C. at 442, 735 S.E.2d at 482. Notably, “a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case.” Id. In South Carolina, a delay of over two years—under *normal* circumstances—has previously been found to be sufficient to trigger a speedy trial analysis. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain circumstances—be presumptively prejudicial. See Doggett v. United States, 505 U.S. 647, 652 n.1 (1992) (“Depending on the nature of the charges, the lower courts have generally found postaccusation delay ‘presumptively prejudicial’ at least as it approaches

one year.”). 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. State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (emphasis added); see Brazell, 325 S.C. at 75, 480 S.E.2d at 70 (recognizing “delay alone is not dispositive”); see also Ratchford v. State, 785 A.2d 826, 828 (Md. Ct. Spec. App. 2001) (“Along the delay continuum, the trigger of ‘constitutional dimensions’ is not itself part of the ultimate merits of a speedy trial claim. It simply marks the minimal point, short of which a court will dismiss a claim summarily and will not waste its time even inquiring into such things as reason for delay, demand-waiver, or prejudice. Beyond that minimal or triggering point, however, the claim may not necessarily have merit, but it is worthy at least of thoughtful consideration. The trigger of ‘constitutional dimensions’ is exclusively a procedural phenomenon that justifies a further analysis and then drops out of the picture.”).

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant’s speedy trial rights have 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). When attempting to answer that question, several factors should be considered. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Specifically, 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 v. Wingo, 407 U.S. 514, 530 (1972). Notably though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, “they are related factors and must be considered together with such other circumstances as may be relevant.” Id. “In sum, these

factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process.” Id.

In the case at bar, a period of roughly forty-eight months elapsed between Appellant’s January 2018 arrest in connection to the Sunoco robbery and his March 2022 trial related to that incident. Looking to that period of delay, it was likely sufficiently lengthy to warrant consideration of the relevant speedy trial factors by the circuit court judges. See id. at 530 (“Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.”); Brazell, 325 S.C. at 75, 480 S.E.2d at 70 (recognizing the length of the delay may be sufficient to trigger review of the relevant speedy trial factors); cf. Waites, 270 S.C. at 108, 240 S.E.2d at 653 (finding a delay of twenty-eight months sufficient to warrant review of the pertinent factors in a speedy trial analysis). However, it was not excessively or unreasonably long in light of the unusual circumstances of Appellant’s case, which was one that had to be prosecuted during the midst of a crisis caused by an unexpected global pandemic. Cf. Elias v. Superior Ct., 294 Cal. Rptr. 3d 178, 190 (Cal. Ct. App. 2022) (“Courts have recognized that health quarantines to prevent the spread of infectious diseases have long been recognized as good cause for continuing a trial date. A contrary holding would require trial court personnel, jurors, and witnesses to be exposed to debilitating and perhaps life-threatening illness. Public health concerns trump the right to a speedy trial. We acknowledge the unfortunate hardship to defendant from the delays in this case, but . . . neither the prosecution nor the court is responsible for the emergency that has overwhelmed the nation and much of the world.” (citations, brackets, and internal quotations omitted)). As a result, the length of the delay involved—the first of the relevant factors in a speedy trial analysis—did not and should not weigh heavily against the State for purposes of a speedy trial analysis.

Turning to the second of the relevant factors, some portion of the delay *prior to* the onset of the global pandemic was incurred as part of the normal process involved in getting any criminal case ready to go to trial and could not legitimately be held against the State for speedy trial purposes. See Ratchford, 785 A.2d at 830 (explaining the initial seven-month period of time between the date of the arrest and the case initially being scheduled for trial was “necessary for the orderly administration of justice and is not considered an unreasonable delay that calls for further accounting”); see also State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State’s prosecution). Similarly, a significant portion of the initial delay was caused by the solicitor and defense counsel engaging in good faith plea negotiations on Appellant’s behalf, and several of those months of delay were caused by defense counsel requesting for a plea offer expiration date to be extended to allow *additional time* for it to be considered. See Vermont v. Brillon, 556 U.S. 81, 92-93 (2009) (recognizing delays caused by defense counsel’s actions are attributable to the defendant and not the State when conducting a speedy trial analysis); see also State v. Dukes, 256 S.C. 218, 223, 182 S.E.2d 286, 288 (1971) (“The delay must be attributable to the State before the appellants can complain.”); cf. United States v. Anderson, 902 F.2d 1105, 1110 (2d Cir. 1990) (finding no speedy trial violation where “defense counsel agreed to delays and continuances for purposes of plea negotiations”); State v. Carlson, 258 N.W.2d 253, 259 (N.D. 1977) (concluding no violation of the defendant’s speedy trial rights occurred because “[t]he record clearly show[ed] that the defendant or his counsel were the cause for the delay of the trial, or agreed to a delay”); People v. LoPizzo, 543 N.Y.S.2d 88, 88 (N.Y. App. Div. 1989) (rejecting a claim of a constitutional speedy trial violation when “[n]early all of the preindictment delay was directly attributable to the defendant’s repeated

requests for adjournments so that plea negotiations could be considered”). Furthermore, some of the pre-pandemic delay resulted from defense counsel’s acquiescence in a court-initiated continuance of the case. See Barker, 407 U.S. at 535 (considering a defendant’s acquiescence to delay when conducting a speedy trial analysis). Then, as a result of the global pandemic, the trial courts in Charleston County were shut down from March of 2020 until September of 2021, which was a circumstance entirely beyond the control of the solicitor, the court, or Appellant himself and was not something that could be fairly held against *any* party for purposes of a speedy trial analysis. See State v. Paige, 977 N.W.2d 829, 838 (Minn. 2022) (“[W]e conclude that trial delays due to the statewide orders issued in response to the COVID-19 global pandemic do not weigh against the State.”); Vlahos v. State, 518 P.3d 1057, 1072 (Wyo. 2022) (“Delays due to COVID-19 pandemic are neutral because the pandemic was an extraordinary circumstance not attributable to either the State or [the defendant].” (citation and internal quotations omitted)). Beyond that, some portion of the post-pandemic delay resulted from the need to reassign Appellant’s case to a new solicitor following the departure of the original one handling the matter, which was a period of delay that could only be held slightly against the State if it could fairly be held against the State at all. See Strunk v. United States, 412 U.S. 434, 436 (1973) (instructing factors leading to unintentional delays such as “understaffed prosecutors” should be weighed less heavily than intentional delays in a speedy trial analysis); Manix v. State, 895 So. 2d 167, 176 (Miss. 2005) (“The State’s discretion as to which prosecutor will try a particular case is a basic tenet of our criminal justice system. This Court has never held that the State’s replacement of prosecutors amounts to a speedy trial violation warranting a reversal of a criminal conviction. Therefore, this factor is slightly weighed against the State.”); Hallowell v. State, 178 A.3d 610, 628 (Md. Ct. Spec. App. 2018) (finding the resignation of the original

prosecutor assigned to the case, which resulted in delays that were needed for a new prosecutor to get familiar with and prepare the case for trial, constituted a more neutral reason for delay in a speedy trial analysis and only weighed slightly against the State). Likewise, some of the delay incurred after jury trials resumed in Charleston County in September of 2021 resulted from the post-pandemic condition of the docket, and, due to that, the earliest Appellant's case could conceivably be tried was the end of January of 2022. See Langford, 400 S.C. at 444, 735 S.E.2d at 483 (recognizing the limited availability of terms of court can constitute a valid reason for delays); see also Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966) ("A speedy trial does not mean an immediate one; it does not imply undue haste, for the state, too, is entitled to reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay."); cf. State v. Chapman, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) ("A portion of the delay was caused by the normal condition of the docket. . . . The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay."). Finally, the delay incurred between the planned January 2022 trial date and the ultimate March 2022 trial date resulted from the newly-assigned solicitor's mistaken-but-good-faith belief indictments had already been issued in connection to the Sunoco robbery, and, significantly, defense counsel at least partially contributed to the delay that resulted from that error by allowing it to go uncorrected despite being aware of it. See Reaves, 414 S.C. at 130, 777 S.E.2d at 219 (explaining deliberate attempts to create delay to injure the defense should be weighed heavily against the State while neutral reasons, such as *mere negligence*, should be weighed *less* heavily); see also State v. Tyson, 283 S.C. 375, 377-378, 323 S.E.2d 770, 771 (1984) (considering the fact Tyson's actions contributed to the delay when conducting a speedy trial analysis); cf. Canosa, 598 N.Y.S.2d at 785 (excluding delay caused by a prosecutor's mistaken

belief regarding the status of an indictment from a statutory speedy trial analysis due to the fact defense counsel was aware of the prosecutor's confusion but remained silent instead of correcting it). Therefore, when considering the actual reasons underlying all the delay involved, the non-willful and non-intentional period of delay incurred prior to Appellant's trial did not warrant a finding Appellant's speedy trial rights were infringed.

Turning to the third of the relevant factors, Appellant unquestionably did raise a speedy trial dismissal claim at various points, but, significantly, he waited to first do so until twenty-eight months after his arrest *and* after trials were suspended—and, thus, could not possibly be conducted—due to the pandemic. See Waites, 270 S.C. at 109, 240 S.E.2d at 653 (considering the length of time Waites waited before first attempting to assert his speedy trial rights and characterizing it as “significant” when conducting a speedy trial analysis); cf. Osman v. Commonwealth, 883 S.E.2d 249, 277 (Va. Ct. App. 2023) (“[T]he third Barker factor—assertion of the right to a speedy trial—weighs only moderately in [Osman]’s favor due to the timing and frequency of his assertions. Despite having already spent sixteen months in jail, [Osman] did not assert his right to a speedy trial until March 25, 2020, only after the Supreme Court issued its first emergency order and the trial court administratively adjourned this case to a status date on May 21, 2020, in connection with the COVID-19 pandemic.”). And, once jury trials finally resumed after the pandemic-caused shutdown in Charleston County, Appellant did not renew his speedy trial dismissal motion until just before his trial was set to commence *despite* being aware it could not truly go forward due to the solicitor’s mistaken—but correctable—belief about the indictments, and, even without any corrective actions from defense counsel, Appellant’s trial was *still* able to go forward only a few weeks later. See Brillon, 556 U.S. at 90-91 (“Because the attorney is the defendant’s agent when acting, or failing to act, in furtherance of the litigation,

delay caused by the defendant's counsel is also charged against the defendant." (citation, brackets, and internal quotations omitted)); see also Langford, 400 S.C. at 440, 735 S.E.2d at 481 (recognizing delay is not an uncommon defense tactic); cf. Henderson v. Commonwealth, 563 S.W.3d 651, 665 (Ky. 2018) ("Henderson did, both in writing and verbally, assert his constitutional right to a speedy trial. Yet aside from those steps, all his actions seem intent upon causing delay and utilizing that delay to his defense's advantage. Thus, Henderson's invocation was less than 'vigorous.' "); Salahuddin v. State, 592 S.E.2d 410, 413 (Ga. 2004) ("[Salahuddin] did not assert his right to a speedy trial until fifteen months after indictment, which was nine months before the trial court heard pretrial motions. Accordingly, this particular factor, though not dispositive, must be balanced against [Salahuddin]'s interest."); State v. Barnes, 431 S.C. 66, 88, 846 S.E.2d 389, 400 (Ct. App. 2020) (finding the factor related to the assertion of speedy trial rights weighed against Barnes because he did not assert his speedy trial rights after his case was sent back for a retrial until just two months before his second trial was set to commence), aff'd as modified, 436 S.C. 202, 871 S.E.2d 421 (2022); Robinson, 335 S.C. at 626, 518 S.E.2d at 272 (considering the fact "Robinson's trial began only ten months after his first motion [asserting his right to a speedy trial] was filed" in finding no speedy trial violation occurred in Robinson's case). Thus, considering the delayed nature of Appellant's initial assertion of his speedy trial rights, his actions that were inconsistent with a genuine desire for anything other than dismissal, and his relatively prompt receipt of a trial just after the earliest available opportunity for one, Appellant's assertion of his speedy trial rights did not weigh convincingly in his favor and could not have legitimately supported a finding those rights were violated.

Finally, turning to the fourth of the relevant factors, Appellant's claims of prejudice were primarily focused on the prejudice incurred due to the loss or unavailability of several witnesses,

including Maschke. Importantly though, Maschke’s death occurred less than a year and a half after Appellant’s arrest and before Appellant’s case could realistically be brought to trial. Cf. Reaves, 414 S.C. at 132, 777 S.E.2d at 220 (concluding Reaves’s claim evidence was lost as a result of delays was not supported by the record when the evidence was most likely lost earlier during the investigation as opposed to later). Meanwhile, the loss or unavailability of the store manager and Greene appeared to hamper the State more than the defense and, thus, did not truly prejudice Appellant. See Robinson, 335 S.C. at 626, 518 S.E.2d at 272 (“[L]ost witnesses and documents are also disadvantages that hamper the State.”). Furthermore, although Appellant remained incarcerated for some period between his arrest and trial before he was able to obtain release on bond, Appellant did receive full credit toward his sentence for *all* the time between his arrest and trial, which helped to minimize any harm that could have resulted from the delay in his case. Cf. Millard v. Lynaugh, 810 F.2d 1403, 1406-1407 (5th Cir. 1987) (concluding the prejudice resulting from pre-trial incarceration was mitigating by the fact Millard received credit for the time served in pre-trial detention towards his sentence); State v. Monroe, 262 S.C. 346, 350, 204 S.E.2d 433, 435 (1974) (considering the fact Monroe received full credit for the time he spent incarcerated prior to his trial in finding his speedy trial rights were not violated). Therefore, because Appellant’s defense was not truly hampered by any of the delay and because he did not suffer any undue prejudice as a result of the delay, Appellant was not sufficiently prejudiced by the delay between his arrest and trial to justify a finding his constitutional speedy trial rights were violated.

Accordingly, because the relevant circumstances in Appellant’s case—including the fact it had to be prosecuted during a global pandemic that necessitated a lengthy shutdown of South Carolina’s trial courts and grand juries—do not support a conclusion the forty-eight month

period of delay was the result of any intentional or willful actions on the part of the State or resulted in any undue prejudice to Appellant, Appellant's speedy trial rights were not violated. Cf. Loud Hawk, 474 U.S. at 317 ("We cannot hold, on the facts before us, that the delays asserted by respondents weigh sufficiently in support of their speedy trial claim to violate the Speedy Trial Clause. They do not justify the severe remedy of dismissing the indictment."); Robinson, 335 S.C. at 626-627, 518 S.E.2d at 272 (finding—despite a total period of delay of five years—no speedy trial violation occurred when Robinson was tried within one year of his first assertion of his speedy trial rights, adequate justification was presented for delay, and no evidence of actual prejudice was introduced). Based on that, the circuit court judges who considered Appellant's various dismissal motions did not abuse their discretion by refusing to impose the extreme—and unwarranted—sanction of dismissal in Appellant's case. See Langford, 400 S.C. at 442, 735 S.E.2d at 482 ("A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion."); cf. State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years); State v. Cooper, 386 S.C. 210, 217-218, 687 S.E.2d 62, 66-67 (Ct. App. 2009) (affirming the denial of Cooper's speedy trial motion where the delay in bringing the case to trial was at least forty-four months). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 21, 2023

RECEIVED

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Jennifer B. McCoy, Circuit Court Judge
Appellate Case No. 2022-000336

THE STATE,

Respondent,

vs.

RONZELL BILAH OLDS,

Appellant.

CERTIFICATE OF COUNSEL

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

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April 21, 2023

RECEIVED**Apr 21 2023****SC Court of Appeals**STATE OF SOUTH CAROLINA
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Appeal from Charleston County
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vs.

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Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Final Brief of Respondent on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Kathrine H. Hudgins, Esq.
S.C. Commission on Indigent Defense
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Post Office Box 11589
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I further certify all parties required by Rule to be served have been served.
This 21st day of April, 2023.



CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Ronzell Bilah Olds, Appellant.

Appellate Case No. 2022-000336

Appeal From Charleston County
Jennifer B. McCoy, Circuit Court Judge

Unpublished Opinion No. 2025-UP-338
Submitted September 1, 2025 – Filed October 8, 2025

AFFIRMED

Senior Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General Mark Reynolds Farthing, both
of Columbia, for Respondent.

PER CURIAM: Ronzell Bilah Olds appeals his convictions for armed robbery and possession of a weapon during the commission of a violent crime, as well as concurrent sentences of twenty years' imprisonment for armed robbery and five years' imprisonment for possession of a weapon during the commission of a violent

crime. On appeal, Olds argues the circuit court erred in failing to grant his motions to dismiss for pre-indictment delay and violation of his right to a speedy trial. We affirm pursuant to Rule 220(b), SCACR.

1. We hold the circuit court did not err in denying Olds's motions to dismiss based on pre-indictment delay. *See State v. Lee*, 360 S.C. 530, 537-38, 602 S.E.2d 113, 117 (Ct. App. 2004) (recognizing the "[circuit court's] decision regarding pre-indictment delay [is] a mixed question of law and fact and will only be reversed if clearly erroneous," *aff'd*, 375 S.C. 394, 653 S.E.2d 259 (2007)). Olds failed to establish that the unavailability of potential witnesses resulted in substantial actual prejudice; therefore, he failed to establish that his defense was meaningfully impaired to the extent the outcome of his case would have been different. *See Lee*, 375 S.C. at 397, 653 S.E.2d at 260 (acknowledging "when pre-indictment delay is alleged to have violated a defendant's due process rights," appellate courts will first consider whether the defendant has established "the delay caused substantial actual prejudice to his right to a fair trial"); *State v. Brazell*, 325 S.C. 65, 73, 480 S.E.2d 64, 69 (1997) (indicating that to prove substantial prejudice, a defendant must show that "he was meaningfully impaired in his ability to defend against the [S]tate's charges to such an extent that the disposition of the criminal proceeding was likely [affected]" (quoting *Jones v. Angelone*, 94 F.3d 900, 907 (4th Cir. 1996))). Although Olds identified witnesses he would have called to testify at trial, we find he failed to establish "with specificity" what their testimony would have been. *See id.* (indicating when the prejudice asserted is that a witness is unavailable, the defendant must "identify the witness he would have called" and "demonstrate, with specificity, the expected content of that witness' testimony"). We further find Olds failed to establish he made any attempt to locate two of the witnesses he identified. *See id.* (indicating that when the prejudice asserted is that a witness is unavailable, the defendant must "establish that he made serious attempts to locate the witness"). Finally, we find Olds failed to establish that he could not obtain his desired testimony from another source.¹ *See id.* (indicating that when the prejudice asserted is that a witness is unavailable, the defendant must "show that the information the witness would have provided was not available from other sources").

¹ Because we hold Olds failed to prove substantial prejudice, we do not address the justification for the State's delay. *See Brazell*, 325 S.C. at 74, 480 S.E.2d at 69 ("Because [the appellant] failed to carry his burden of proving actual substantial prejudice, we need not consider the State's justification for the delay.").

2. We hold the circuit court abused its discretion by determining that the length of delay was not sufficient to trigger an analysis of the *Barker v. Wingo*² factors. See *State v. Hunsberger*, 418 S.C. 335, 342, 794 S.E.2d 368, 372 (2016) ("The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard."); *id.* at 342, 794 S.E.2d at 371-72 ("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."). We find the four-year delay between Olds's January 2018 arrest and March 2022 trial was sufficiently lengthy to trigger a speedy trial analysis. See *id.* at 342-43, 794 S.E.2d at 371-72 ("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" (quoting *Doggett v. U.S.*, 505 U.S. 647, 652 (1992))); *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (finding a two-year four-month "delay between arrest and preliminary hearing [was] disturbing" and "sufficient to trigger" review of the remaining factors).

Nevertheless, we hold Olds's right to a speedy trial was not violated. See *Hunsberger*, 418 S.C. at 343, 794 S.E.2d at 372 ("Once the accused has met this initial burden, a court must look to four factors, among the totality of the circumstances"); *id.* ("These factors are: (1) length of delay; (2) the reason for the delay; (3) the accused's assertion of his right to a speedy trial; and (4) whether the delay prejudiced the accused."); *id.* ("A speedy trial claim must be 'analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense.'" (quoting *State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2008))). First, we hold the reasons provided by the State for the delay, while varied, weigh only slightly against the State. See *Langford*, 400 S.C. at 443, 735 S.E.2d at 483 ("A deliberate attempt by the State to delay the trial as a means of impairing the accused's ability to defend himself 'should be weighted heavily against the government.'" (quoting *Barker*, 407 U.S. at 531)); *id.* ("Neutral reasons, which could include overcrowded dockets or negligence, are 'weighted less heavily' but still count against the State because it bears the ultimate responsibility for these circumstances." (quoting *Barker*, 407 U.S. at 531)). We find the approximately one-and-a-half-year delay attributable to the COVID-19 pandemic should not be held against either party because this delay was the result of a global pandemic over which neither party had control. See *Waites*, 270 S.C. at 108, 240 S.E.2d at 653 ("In order to establish the denial of a speedy trial, it must be

² 407 U.S. 514 (1972) (identifying the four factors necessary for a speedy trial analysis as "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant").

demonstrated the delay was attributable to the State."). Regarding the portion of delay prior to the COVID-19 pandemic that the State asserted was due to good faith plea negotiations, trial preparation, and a continuance, to which neither party objected, we find Olds failed to meet his burden to show that this portion of the delay was the result of the State's "willful neglect." *See State v. Smith*, 307 S.C. 376, 411-12, 415 S.E.2d 409, 411-12 (Ct. App. 1992) (indicating the burden is on the defendant to show that "delay was due to the neglect and willfulness of the State's prosecution"). As to the period of post-pandemic delay the State attributed to assignment of the case to a new assistant solicitor and the "post-pandemic condition of the docket," we find these reasons for delay "weigh[] less heavily" against the State. Additionally, we find the delay between the planned January 2022 trial and the March 2022 trial due to the State's failure to indict Olds weighs less heavily against the State because there is no indication on appeal that this delay was deliberate or willful. *See Langford*, 400 S.C. at 443, 735 S.E.2d at 483 ("Neutral reasons, which could include overcrowded dockets or negligence, are 'weighted less heavily' but still count against the State because it bears the ultimate responsibility for these circumstances." (quoting *Barker*, 407 U.S. at 531)).

Second, we hold Olds sufficiently asserted his right to a speedy trial, a factor weighing in his favor. Although Olds first asserted his right to a speedy trial in May 2020, twenty-eight months after his arrest, he did so through a motion to dismiss and long before his March 2022 trial. *See Reaves*, 414 S.C. at 130, 777 S.E.2d at 219 ("The third factor—assertion of the right—recognizes that while a criminal defendant has no responsibility to bring himself to trial, the extent to which he exercises his right to a speedy trial is significant.").

Finally, we hold Olds failed to establish either actual or presumptive prejudice. Although actual prejudice is not required for a speedy trial violation, we find Olds failed to establish actual prejudice based upon witness unavailability. *See 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."); *State v. Evans*, 386 S.C. 418, 423-24, 688 S.E.2d 583, 586-87 (Ct. App. 2009) (affirming the trial court's ruling that although the appellant lost four witnesses during a twelve-year delay, there was no "neglectful delay prejudicial to the defense" in light of the reasons for delay being transfer of the case, suppression of the defendant's statement, the appeals process, the election of a new solicitor, and in light of the uncertainty surrounding at least one of the witnesses' testimony). We hold Olds failed to establish this court should presume prejudice because although his trial was delayed for just over four years, which is at least three times the length of

delay necessary to trigger the speedy trial analysis, the delay was the result of either neutral factors or those weighing only slightly against the State and was not due to inexcusable oversights or intentional conduct by the State. *See Hunsberger*, 418 S.C. at 351, 794 S.E.2d at 376 ("[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."); *Doggett*, 505 U.S. at 657-58 (comparing the portion of the delay attributable to the prosecution's negligence to the threshold necessary to trigger a speedy trial claim for analyzing presumptive prejudice); *id.* ("[N]egligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice."); *id.* at 658 (stating that even if the length of delay is sufficiently long to presume prejudice, a defendant may still be precluded from relief if the presumption of prejudice has been extenuated or has been "persuasively rebutted").

AFFIRMED.³

WILLIAMS, C.J., and THOMAS and CURTIS, JJ., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED**Oct 23 2025****SC Court of Appeals**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

Opinion No. 2025-UP-338

THE STATE,

RESPONDENT,

V.

RONZELL BILAH OLDS,

APPELLANT

APPELLATE CASE NO. 2022-000336

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Ronzell B. Olds, respectfully requests that this Court grant rehearing. On October 8, 2025, this Court affirmed the sentences and convictions for armed robbery and possession of a weapon during the commission of a violent crime. State v. Ronzell Bilah Olds, No. 2025-UP-338 (S.C. Ct. App. filed October 8, 2025). While this Court correctly found that the circuit court abused its discretion by determining that the length of the delay was not sufficient to trigger an analysis of the Barker v. Wingo factors, this Court held Petitioner's right to a speedy trial was not violated. Respectfully, counsel submits this Court overlooked the fact that, other than the approximate one-and-a-half-

year delay caused by the COVID-19 pandemic, the reasons for the delay between Petitioner's arrest on January 16, 2018, and trial on March 7, 2022, must be weighed against the State. Respectfully, with regard to the portion of delay prior to the COVID-19 pandemic, January 16, 2018 until March of 2020, counsel submits that this Court misapprehended the Barker v. Wingo analysis with regard to the reason for the delay factor by requiring Petitioner to show that this portion of the delay was the result of the State's willful neglect. While the State's failure to indict Petitioner until February 7, 2022, should be considered willful neglect, at the very least the failure to indict is certainly negligent on the part of the State and must be weighed against the State in the same way that the post-pandemic delay must be weighed against the State. The entire delay from the January 2018 arrest to the March 2022 trial, excluding the one-and-a-half year attributable to the COVID-19 pandemic, should count against the State.

Additionally, counsel respectfully submits that this Court misapprehended the Barker v. Wingo analysis with regard to the prejudice factor. Respectfully, this Court overlooked the fact that prejudice is just one factor to consider in the speedy trial analysis and the presumed prejudice of the delay in this case was not extenuated or persuasively rebutted. Counsel seeks rehearing. Applying the correct analysis under the Barker v. Wingo factors, Petitioner's speedy trial rights were violated.

Discussion

Petitioner was arrested for the Sunoco armed robbery on January 16, 2018. Petitioner first asserted his right to a speedy trial in a written motion, captioned Motion to Dismiss – Speedy Trial and Pre-Indictment Delay, filed May 26, 2020. (R. pp. 1-4). The State filed a written response. (R. pp. 5-11). The motion was heard virtually by the Honorable R. Markley Dennis, on June 17, 2020. (R. pp. 12-21). Judge Dennis denied the motion to dismiss in a

written order signed June 23, 2020. (R. pp. 23-24). In the order denying the motion to dismiss, the judge only addressed prejudice and failed to address the other Barker v. Wingo¹ factors.

Petitioner next asserted his right to a speedy trial in a written motion, captioned Motion to Dismiss – Speedy Trial and Pre-Indictment Delay, filed January 27, 2022. (R. pp. 25-28). The State moved for a continuance that same day, January 27, 2022, based on the fact that the case had still not been indicted. (R. pp. 29-41). The motion was heard via WebEx by the Honorable Deadra L. Jefferson on January 27, 2022. (R. pp. 42-84). Judge Jefferson denied the motion in a written order signed February 18, 2022.² (R. pp. 85-90). In the written order Judge Jefferson wrote:

The Court finds that the Defense has failed to establish the “trigger” required of the interval between accusation and trial crossing the threshold dividing ordinary from “presumptively prejudicial” delay. The South Carolina Supreme Court in Hunsberger defines presumptively prejudicial as a delay that exists when an accused is not prosecuted with ordinary promptness. 418 S.C. at 343, 797 S.E.2d at 372.

(R. p. 87). Judge Jefferson additionally wrote in the written order, “The total delay in this case is not sufficient to trigger a review of the other factors for speedy trial. As a result of the delays precipitated by the COVID-19 pandemic, this was a routine delay in light of the Nation’s state of emergency and the resulting inability to conduct jury trial in the State of South Carolina.” (R. p. 89). In footnote #13 of the order the judge wrote, “During the COVID-19 pandemic, the courts were closed, by Administrative Order, beginning March 18, 2020 and did not begin to resume Jury trials until April 5, 2021, assuming the County had an approved Safety Plan. The Defendant’s [sic] was arrested o August 17, 2020.” (R. p. 90). Earlier in the order, however,

¹ 407 U.S. 514 (1972).

² On February 7, 2022, after the hearing but before the order issued, the State obtained indictments for the Sunoco robbery.

the judge correctly noted that Appellant was arrested on January 16, 2018, not August 17, 2020. (R. p. 85).

Finally, the judge wrote in the order, “The Court finds the Defense has not established an inordinate delay; the reasons for the delay in the disposition of the charges are well with the usual course of trial preparation and COVID-19 pandemic and no “presumptive” prejudice has been established by the accused. Therefore, as the Court has found that the Defense has not established “presumptive delay,” the Court need not reach the other three factors. Barker v. Wingo, 470 U.S.415, 530 (1972). (R. p. 90).

When the case was finally called to trial on March 7, 2022, Petitioner renewed the motion to dismiss based on the speedy trial violation. (R. p. 104, line 20 – p. 106, 107, lines 1-7). The motion was again denied. (R. p. 107, lines 3-7). At the close of the State’s case Appellant renewed the motion to dismiss for the speedy trial violation. (R. p. 454, line 18 – p. 455, lines 1-22).

In State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371 (2016), the South Carolina Supreme Court wrote, “The Sixth Amendment to the United States Constitution provides, ‘In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.’ U.S. Const. amend. VI. Similarly, the South Carolina Constitution provides that “Any person charged with an offense shall enjoy the right to a speedy and public trial.” S.C. Const. art. I, § 14. A speedy trial means a trial without unreasonable and unnecessary delay. State v. Langford, 400 S.C. 421, 441, 735 S.E.2d 471, 482 (2012) (quoting Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966)). In Smith v. Hooey, 393 U.S. 374, 374–75, 89 S. Ct. 575, 575, 21 L. Ed. 2d 607 (1969), the United States Supreme Court wrote, “In Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1, this Court held that, by virtue of the

Fourteenth Amendment, the Sixth Amendment right to a speedy trial is enforceable against the States as ‘one of the most basic rights preserved by our Constitution.’ *Id.*, at 226, 87 S.Ct. at 995.” The remedy for a speedy trial violation is dismissal of the charges. Langford, 400 S.C. at 442, 735 S.E.2d at 482 (internal citation omitted).

In determining whether a defendant has been deprived of the right to a speedy trial, the court must consider four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of the right; and, (4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed 2d 101 (1972). Although there is no fixed time in which a defendant must be tried, the right to a speedy trial may be violated where the delay is arbitrary and unreasonable. State v. Waites, 270 S.C 104, 108, 240 S.E.2d 651, 653 (1978). In a footnote in Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the Court wrote, “Depending on the nature of the charges, the lower courts have generally found post accusation delay ‘presumptively prejudicial’ at least as it approaches one year.” Doggett Fn. 1

In Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012) the Court wrote:

We begin our analysis with the “triggering mechanism” of a speedy trial claim, which is the length of the delay. Barker, 407 U.S. at 530, 92 S.Ct. 2182. We should not even examine the remaining factors “[u]ntil there is some delay which is presumptively prejudicial.” *Id.* The clock starts running on a defendant’s speedy trial right when he is “indicted, arrested, or otherwise officially accused,” and therefore we are to include the time between arrest and indictment. United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982).

The over two-year delay between arrest and the first assertion of the speedy trial right in the present case triggers the speedy trial analysis.

This Court correctly held the circuit court abused its discretion by determining that the length of delay was not sufficient to trigger an analysis of the Barker v. Wingo factors. In the brief Respondent asserts that the approximate forty-eight-month delay between the

January 2018, arrest and the March 2022, trial “was likely sufficiently lengthy to warrant consideration of the relevant speedy trial factors by the circuit court judges.” (Brief of Respondent p. 27). A speedy trial analysis was triggered by the delay in this case.

Reason for Delay

In finding no speedy trial violation despite the delay this Court discussed the second Barker v. Wingo factor, reason for the delay, writing, “Regarding the portion of delay prior to the COVID-19 pandemic that the State asserted was due to good faith plea negotiations, trial preparation, and a continuance, to which neither party objected, we find Olds failed to meet his burden to show that this portion of the delay was the result of the State's “willful neglect.” See State v. Smith, 307 S.C. 376, 411-12, 415 S.E.2d 409, 411-12 (Ct. App. 1992) (indicating the burden is on the defendant to show that “delay was due to the neglect and willfulness of the State's prosecution”). State v. Olds, No. 2022-000336, 2025 WL 2849097, at *2 (S.C. Ct. App. Oct. 8, 2025). Respectfully, this Court erred in requiring Petitioner to prove “willful neglect” before weighing the reason for the delay against the State. While the State’s failure to indict Petitioner until February 7, 2022, should be considered willful neglect, at the very least the failure to indict was certainly negligent on the part of the State and must be weighed against the State in the same way that the post-pandemic delay must be weighed against the State.

Additionally, plea negotiations, trial preparation, and a continuance do not justify the failure to indict prior to the COVID-19 pandemic. The case could not be called for trial without an indictment. The State is solely responsible for seeking indictments. A reason given for by the State for failure to indict in a timely manner was “an oversight.” (R. p. 11). Oversight must be counted against the State.

In discussing the remainder of the delay, outside the COVID-19 delay, this Court wrote:

As to the period of post-pandemic delay the State attributed to assignment of the case to a new assistant solicitor and the “post-pandemic condition of the docket,” we find these reasons for delay “weigh[] less heavily” against the State. Additionally, we find the delay between the planned January 2022 trial and the March 2022 trial due to the State's failure to indict Olds weighs less heavily against the State because there is no indication on appeal that this delay was deliberate or willful. See Langford, 400 S.C. at 443, 735 S.E.2d at 483 (“Neutral reasons, which could include overcrowded dockets or negligence, are ‘weighted less heavily’ but still count against the State because it bears the ultimate responsibility for these circumstances.” (quoting Barker, 407 U.S. at 531)).

State v. Olds, No. 2022-000336, 2025 WL 2849097, at *2 (S.C. Ct. App. Oct. 8, 2025). The entire delay from the January 2018 arrest to the March 2022 trial, excluding the one-and-a-half year attributable to the COVID-19 pandemic, should count against the State.

Prejudice

This Court correctly held Petitioner asserted his right to a speedy trial, a factor weighing in Petitioner’s favor. In discussing prejudice, however, this Court wrote:

We hold Olds failed to establish this court should presume prejudice because although his trial was delayed for just over four years, which is at least three times the length of delay necessary to trigger the speedy trial analysis, the delay was the result of either neutral factors or those weighing only slightly against the State and was not due to inexcusable oversights or intentional conduct by the State. See Hunsberger, 418 S.C. at 351, 794 S.E.2d at 376 (“[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.”); Doggett, 505 U.S. at 657-58 (comparing the portion of the delay attributable to the prosecution's negligence to the threshold necessary to trigger a speedy trial claim for analyzing presumptive prejudice); id. (“[N]egligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice.”); id. at 658 (stating that even if the length of delay is sufficiently long to presume prejudice, a defendant may still be precluded from relief if the presumption of prejudice has been extenuated or has been “persuasively rebutted”).

State v. Olds, No. 2022-000336, 2025 WL 2849097, at *3 (S.C. Ct. App. Oct. 8, 2025).

Respectfully, this Court overlooked the fact that prejudice is just one factor to consider in the

speedy trial analysis and the presumed prejudice of the delay in this case was not extenuated or persuasively rebutted. Additionally, the failure to indict for over four years should be considered inexcusable oversight. Applying the correct analysis under the Barker v. Wingo factors, Prejudice should be presumed.

Actual prejudice is not required to establish a speedy trial violation. The Court in Barker wrote:

Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. 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. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.

Barker v. Wingo, 407 U.S. 514, 532, 92 S. Ct. 2182, 2193, 33 L. Ed. 2d 101 (1972).

In Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the Court granted relief while noting that Doggett “did indeed come up short” in making “any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence.” As a result, the Court explained “we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify.” In light of the difficult nature of proving prejudice, the Court held that the importance of presumptive prejudice increases with the length of delay. Doggett, 505 U.S. at 655-656. In the absence of proof of particularized prejudice, the state’s 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 prosecution. Id. at 658. The State’s negligence and the substantial delay compel relief. The presumption of prejudice

in the present case was neither extenuated by Petitioner's acquiescence, nor persuasively rebutted by the prosecution. Prejudice should be presumed.

In Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 189-90, 38 L. Ed. 2d 183 (1973) the

United States Supreme Court wrote:

A defendant is not required to show prejudice affirmatively to win a speedy trial claim. The state court was in fundamental error in its reading of Barker v. Wingo and in the standard applied in judging petitioner's speedy trial claim. Barker v. Wingo expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial:

'We regard none of the four factors identified above (length of delay, reason for delay, defendant's assertion of his right, and prejudice to the defendant) as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution.' 407 U.S., at 533, 92 S.Ct., at 2193 (footnote omitted).

In addition to possible prejudice, any court must thus carefully weigh the reasons for the delay in bringing an incarcerated defendant to trial. In the face of petitioner's repeated demands, did the State discharge its 'constitutional duty to make a diligent, good-faith effort to bring him (to trial)'? Smith v. Hooey, 393 U.S. 374, 383, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969).

In Hunsberger the South Carolina Supreme Court wrote:

First, we note that the trial court's ruling was influenced by an error of law in so much as it rested on a belief that actual prejudice—to the exclusion of presumptive prejudice—was the only type of prejudice that would support a speedy trial claim. In fact, an accused can assert actual prejudice or presumptive prejudice as the result of the State's violation of his right to a speedy trial. 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. See Doggett, 505 U.S. at 655, 112 S.Ct. 2686 (accepting the State's definition of actual prejudice). The United States Supreme Court also recognized that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or even identify. Id. (internal citation omitted). This is

so because “time’s erosion of exculpatory evidence and testimony ‘can rarely be shown.’” Doggett, 505 U.S. at 655, 112 S.Ct. 2686 (citing Barker, 407 U.S. at 532, 92 S.Ct. 2182). When the government persistently fails to try an accused and the delay is excessive, the accused need not show actual prejudice in order to prevail in his speedy trial claim. Doggett, 505 U.S. at 657–58, 112 S.Ct. 2686. 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, 112 S.Ct. 2686 (internal citation omitted).

418 S.C. at 351, 794 S.E.2d at 376. Prejudice should also be presumed in the present case.

In Langford, 400 S.C. 421, 441-442, 735 S.E.2d 471, 482 (2012) the Court wrote:

The Supreme Court has counseled further that none of these factors is “either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.” Barker, 407 U.S. at 533, 92 S.Ct. 2182. Instead, they are all related and must be considered along “with such other circumstances as may be relevant.” Id. Thus, the Supreme Court created a balancing test which is a rejection of “inflexible approaches” and weighs “the conduct of both the prosecution and the defense.” Id. at 529–30, 92 S.Ct. 2182.

Weighing the conduct of both the prosecution and the defense, the substantial delay and the negligence on the part of the State in failing to indict in a timely manner, Petitioner’s state and federal right to a speedy trial was violated . The following outline of events supports the finding:

- January 16, 2018 – Arrest
- March 2020 – COVID
- May 26, 2020 – 1st Motion to Dismiss for Speedy Trial Violation
- September 2021 – Jury trials resume
- January 27, 2022 - 2nd Motion to Dismiss for Speedy Trial Violation
- February 7, 2022 – Indicted
- March 7, 2022 - Trial

Oversight or negligence in the failure to indict the case in a timely manner counts against the State because the State bears the ultimate responsibility of seeking an indictment so that the case may proceed to trial. The over two-year delay prior to COVID and the six-month delay after jury trials resumed is attributable to the State. Plea negotiations, trial preparation, and a continuance are not valid reasons for the State's delay when the State could not have proceeded to trial without an indictment prior to February 7, 2022. Petitioner's assertion of his speedy trial right weighs in his favor. As in Doggett, while Petitioner may "come up short" showing actual prejudice, prejudice should be presumed. Properly balancing the length of the delay, the State's "oversight" as willful neglect, or at the least in negligently failing to indict as the reason for the delay, Petitioner's assertion of the speedy trial right, and presumed prejudice, this Court should find Petitioner's speedy trial rights were violated.

Counsel respectfully seeks rehearing and a finding that Petitioner's right to a speedy trial was violated.


Kathrine H. Hudgins
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ATTORNEY FOR APPELLANT

This 23rd day of October, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Oct 23 2025
SC Court of Appeals

Appeal from Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONZELL BILAH OLDS,

APPELLANT

APPELLATE CASE NO. 2022-000336

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Ronzell B. Olds, #358391, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 23rd day of October, 2025.



Kathrine H. Hudgins
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ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

Ronzell Bilah Olds, Appellant.

Appellate Case No. 2022-000336

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:
 Ronzell Bilah Olds
 Alan McCrory Wilson, Esquire
 Kathrine Haggard Hudgins, Esquire
 Mark Reynolds Farthing, Esquire
 The Honorable Jennifer B. McCoy

FILED
Dec 11 2025