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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

V.

WILLIS TERREL IVEY,

APPELLANT

APPELLATE CASE NO. 2024-001916

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

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

The trial court violated appellants constitutionally guaranteed right to a speedy trial. Because the trial court abused its discretion in weighing the relevant factors, this Court should reverse appellant's convictions and dismiss the charges against him.[1]

First, it is undisputed that during the pendency of appellant's pretrial detention while he was awaiting the state to call his case to trial, South Carolina courts were shut down due to the global COVID-19 pandemic. R. 53, ll. 22-24. However, both the trial court and the state place undue weight on the impact of pandemic in an attempt to ameliorate the uncommonly long delay that appellant suffered. R. 61, ll. 2-4, 15-18; *see* BOR at 17-20. Such reliance is misplaced. While the "unpredictable and unavoidable public health crisis presented by the COVID-19 pandemic" can be a legitimate reason for delay, *see United States v. Pair*, 84 F.4th 577, 589 (4th Cir. 2023), the pandemic cannot excuse all of the delay or the state's actions in appellant's case, where a large portion of the suffered delay occurred after jury trials resumed in Charleston

[1] The state continually asserts that appellant's initial 2022 motion for a speedy trial lists only the now-dismissed murder charges. BOR at 9, 11 & n.3. However, the January 2023, motion to dismiss listed the remaining then-pending charges and the trial court's order granting a speedy trial listed all of appellant's pending charges. R. 13; 14; 306. Each subsequent motion to dismiss following the trial court's order granting a speedy trial also lists each of appellant's charges. R. 27; 31; 36. It is of no consequence that the initial motion for a speedy trial "sought a speedy trial in connection to one of the four matters," *see* BOR at 11 & n.3, especially where the trial court granted relief as to each of appellant's pending charges. In addition, it is worth noting that the state only directly indicted appellant for ABHAN in October of 2024, after it received unfavorable DNA results adverse to appellant's pending murder charges in late July or early August of 2023. R. 339; R. 53, ll. 3-6. Finally, despite the state's framing that appellant had a number of pending matters, the state moved to dismiss the two counts of murder, two counts of possession of a weapon during the commission of a violent crime, the 2021 ABHAN, and chose not to move forward on the charge for assault on a police officer while resisting arrest.

County in September of 2021. The state highlights the effect of the pandemic after courts resumed, but its reliance on the long-term impact of the pandemic fails to appreciate that the state was ordered to try appellant's case within 90 days on February 14, 2023. R. 306; BOR at 20. The pandemic cannot insulate the state from its failure to obey the court's order to bring appellant's case to trial. *See State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) ("The constitutional guarantee of a speedy trial is protection only against delay which is arbitrary or unreasonable."). The additional one year and eight month delay that appellant suffered cannot be attributed to a valid reason for delay, like the pandemic, and thus, the additional delay in combination with the state's refusal to comply with the trial court's order should be weighed heavily against the state. Moreover, despite the state's arguments to the contrary during trial, the state knowingly delayed appellant's case in the face of the trial court ordering that appellant's case be tried.[2] Thus, the state's actions should constitute intentional conduct as it reveals a deliberate attempt by the state to delay appellant's trial.

In any event, even if the state's conduct is deemed negligent rather than intentional, it still weighs against the state and in favor of appellant "since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Barker v. Wingo*, 407 U.S. 514, 531, 92 S. Ct. 2182, 2192 (1972); *see also United States v. Durham,* 791 F.Supp.3d 645, 651 (D.S.C. 2025) (citing *Doggett v. United States*, 505 U.S. 647, 657, 112

[2] Despite the state's contentions, any argument concerning the state's actions in bad faith by refusing to call appellant's case to trial in accordance with the trial court's order is sufficiently preserved for appellate review. BOR at 21 & n.5. The state argued to the trial court that it did not "purposefully" violate the trial court's order. R. 56, ll. 12-13. The trial court also made specific findings that intentional actions on the part of the state to delay the case were not in the record before it. R. 62, ll. 21-24. Therefore, it cannot be said that this issue was raised for the first time on appeal. *See State v. Bonner*, 400 S.C. 561, 564, 735 S.E.2d 525, 526 (Ct. App. 2012) ("It is well settled that issues not raised and ruled on in the trial court will not be preserved for appellate review.").

S. Ct. 2686, 2693-94 (1992)) ("As the U.S. Supreme Court made clear in *Doggett*, repeated negligent failures to act are not excused simply because they lack malice."). The state points to appellant's case being reassigned to a new solicitor and appellant's retention of new defense counsel on June 17, 2021, as reasons to justify the delay. BOR at 19-20. However, turnover in the Solicitor's office and reassignment of appellant's case does not constitute compelling reasons to justify delay. *See State v. Hunsberger*, 418 S.C. 335, 346, 794 S.E.2d 368, 374 (2016) ("Ultimately, justifying the delay between charge and trial is the responsibility of the State."); *see also State v. Brazell*, 325 S.C. 65, 76, 480 S.E.2d 64, 70 (1997) (determining that the state's claims the delay in bringing the case to trial after the appellant was re-indicted was necessary because of the complexities of the case including the location of witnesses, piecing together the circumstantial evidence, and upheaval in the solicitor's office did "not excuse the lengthy delay.").

Finally, as to appellant's conduct, the state can only point to two scheduling orders that appellant consented to during the height of the COVID-19 pandemic, his rejection of plea offers, and the 2021 assault and battery of a high and aggravated nature (ABHAN) charge that the state ultimately dismissed. *See State v. Langford*, 400 S.C. 421, 443, 735 S.E.2d 471, 483 (2012) ("Delays occasioned by the defendant, however, weigh against him."). Although appellant faced a number of pending charges, the complexity of those charges cannot be relied on to justify delay where the state ultimately made the decision not to move forward on the vast majority of appellant's then-pending charges.[3] Thus, a consideration of the state's purported reasons underlying the excessive delay in appellant's case reveals that the trial court's ruling that this

[3] Additionally, the charges upon which the state did chose to move forward on at trial cannot be deemed so complex as to justify the uncommonly long delay in this case as the charges resulted in a short three-day jury trial where the state called six witnesses.

factor was "a wash," between the parties was in error as the majority of the delay can be attributed to the state. R. 61, ll. 24-25. This factor must weigh heavily against the state.

Next, the state's attempt to frame appellant's assertion of his speedy trial rights as "largely neutral" is without merit. BOR at 21-22. Although appellant first asserted his right to a speedy trial on September 12, 2022, the motion was made shortly after the second consent scheduling order determined that appellant's case would not be scheduled for trial until after February 1, 2022. R. 306. Importantly, appellant's initial speedy trial motion was made long before his eventual November 2024 trial and cannot be said to represent a request for his case to be dismissed "at the last moment once it is called for trial." *State v. Reaves*, 414 S.C. 118, 130, 777 S.E.2d 213, 219 (2015) ("The third factor . . . 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."). Moreover, appellant continually asserted his right to a speedy trial by moving to dismiss his case three separate times after the trial court granted his motion for a speedy trial. R. 27; 31; 36. *But see Reeves*, 414 S.C. at 131-32, 777 S.E.2d at 220 (explaining that Reaves did not assert his rights until three years after his arrest, however, his case was called for trial later in the same month); *United States v. Robinson*, 55 F.4th 390, 400 (4th Cir. 2022) (explaining that Robinson asserted his speedy-trial right over a year after his arrest but his trial began 100 days after his assertion of his right). Because appellant sufficiently asserted his right to a speedy trial and did so long before his November 2024 trial, this factor must too weigh heavily in his favor. *Durham*, 791 F.Supp.3d at 655 (citing *United States v. Hall*, 551 F.3d 257, 271 (4th Cir. 2009) ("[C]ourts consider both the timing and vigor with which the right is asserted.").

Finally, actual prejudice is not required to establish a speedy trial violation. *See Doggett*, 505 U.S. at 655-56 (explaining that generally it must be recognized "that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify," and thus, in light of the difficult nature of proving prejudice, the importance of presumptive prejudice increases with the length of delay.). Further, in *Moore v. Arizona*, 414 U.S. 25, 26, 94 S. Ct. 188, 189-90 (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).

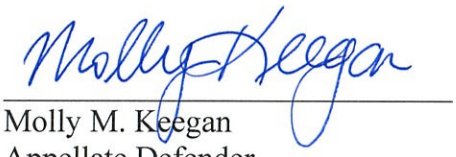
In appellant's case, he suffered excessive delay of more than six years as he was incarcerated in pretrial detention from his June 2018 arrest until his November 2024 trial, which in turn presumptively comprised the reliability of his trial. Even further, the trial court

improperly focused on intentional delay in its consideration of this factor. R. 62, ll. 6-25; *see also State v. Pittman*, 373 S.C. 527, 550, 647 S.E.2d 144, 156 (2007) (citing *Doggett*, 505 U.S. at 654) ("Consideration of prejudice is not limited to the specifically demonstrable . . . and affirmative proof of particularized prejudice is not essential to every speedy trial claim."). Because of the delay, appellant was subjected to both oppressive pretrial detention and anxiety and concern, as he sat in jail for an indeterminate amount of time despite an order from the court to try the matter. *See Doggett*, 505 U.S. at 654, 112 S. Ct. at 2692 (quoting *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193) ("[U]nreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including 'oppressive pretrial incarceration' 'anxiety and concern of the accused,' and 'the possibility that the [accused's] defense will be impaired' by dimming memories and loss of exculpatory evidence."). Thus, two of three recognized categories of prejudice—oppressive pretrial conditions, as well as anxiety and concern of the accused—weigh in favor of appellant.

Accordingly, consideration of all the relevant factors compels a finding that appellant's speedy trial rights were violated given that he suffered unnecessary and unreasonable delay, and the trial court abused its discretion by improperly balancing the factors. *See United States v. Alabi*, 786 F.Supp.3d 905, 926 (D. Md. 2025) (citing *Barker*, 407 U.S. at 533, 92 S. Ct. at 2193-94) ("A court must engage in the difficult and sensitive process of balancing the factors and do so with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution.") (internal quotations omitted).

CONCLUSION

For all these reasons, and the arguments contained in the Brief of Appellant, appellant respectfully requests that this Court reverse the decision of the lower court, hold that his federal and state constitutional rights to a speedy trial have been violated, and dismiss the charges of ABHAN and failure to stop for blue lights against him.



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This 6th day of May, 2026.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Reply 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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