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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Jasper County
Honorable Carmen T. Mullen, Circuit Court Judge

Opinion No. 2026-UP-432 (S.C. Ct. App. Filed September 2, 2026)
Lower Court Case No. 2017-GS-27-00582

THE STATE,

RESPONDENT,

V.

BENJAMIN WALTER DUBOIS III,

PETITIONER

APPELLATE CASE NO. 2023-001307

APPENDIX

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

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

STATEMENT OF THE CASE

In May of 2018, the Jasper County Grand Jury indicted Appellant, Benjamin Walter Dubois, III, for murder, indictment #2017-GS-27-00582. (R. p. 1185-1186). On October 31, 2019, Appellant appeared before the Honorable Ferrell Cothran, Jr. for a pre-trial hearing. (R. pp. 1-8). Carolyn Carmody represented Appellant. Patrick Hall represented the State. On July 13, 2023, Appellant appeared before the Honorable Robert Bonds for a pre-trial hearing. (R. pp. 9-137). Carolyn Carmody represented Appellant. Reed Evans represented the State. On July 31, 2023, Appellant proceeded to jury trial before the Honorable Carmen T. Mullen. Carolyn Carmody again represented Appellant and Reed Evan again represented the State. The jury found Appellant guilty of murder and pursuant to S.C. Code §17-25-45 Judge Mullen sentenced Appellant to life without parole. (R. p. 1168). A timely notice of intent to appeal was served on August 14, 2023. This appeal follows.

STANDARD OF REVIEW

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). The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard. Id. at 442, 735 S.E.2d at 482 (internal citation omitted). 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 442, 735 S.E.2d at 482 (internal citation omitted). State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371–72 (2016).

ARGUMENT

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

In the early morning hours of June 22, 2017, Jerry Holmes was found stabbed to death in his cell at Ridgeland Correctional Institution. (R. p. 13, line 3 – p. 14, lines 1-10). At the time of the death both Appellant and Holmes were serving sentences in the Ridgeland Correctional Institution. Tyreece Griffin, the corrections officer who was in charge of the wing when Holmes was stabbed was charged with misconduct in office and obstruction of justice for being absent without just cause and providing false information during the course of the investigation of the death of Holmes. (R. pp. 22-27; R. pp. 797-802). A video showed the officer walking out of the prison during his shift, leaving the wing unsupervised for several hours. (R. p. 51, line 8 – p. 52, lines 1-6). As the prosecutor characterized it, "And, essentially, left the unit as the sole guard and left the prison to run itself." (R. p. 14, lines 1-3).

At the time of Holmes' death at least ten of the individual cell doors on the wing were not locked. (R. p. 13, line 20 – p. 14, lines 1-3; p. 30, lines 11-22; R. p. 844, lines 1-23). On the night of the death numerous inmates were seen out of their cells. (R. p. 31, lines 1-8). One of the agents from the South Carolina Law Enforcement Division [SLED] who assisted with the investigation of the case was asked why weapons found in the common bathroom on the wing of the prison were not collected. (R. p. 393, lines 1-7). The agent answered, "There were so many weapons recovered in this case, it was hard to determine – we didn't deem that they were applicable. None of them had any suspected blood staining, and they were just found in the shower." (R. p. 393, lines 8-12).

Appellant was arrested and charged with murder on August 15, 2017. (R. p. 119, lines 17-23). Two other inmates were also charged in connection to the death. (R. p. 48, line 22 – p. 49, 50, lines 1-4). Appellant's trial took place almost six years later on July 31, 2023. Appellant's federal and state constitutional speedy trial rights were violated requiring dismissal of the indictment.

On September 13, 2017, Appellant filed a letter with the Jasper County Clerk of Court asking for a public defender, requesting Rule 5 and Brady material, and noting, "I want to file for a fast and speedy trial. Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). Appellant was indicted on May 31, 2018.

On September 13, 2019, Appellant filed another letter with the Jasper County Clerk of Court. (R. p. 1191). In the letter Appellant wrote:

> I filed for a fast and speedy trial 2 years ago and haven't received a word about it! I've never met my public defender or received any correspondence back from him. I would like for you to file a motion to dismiss for me please. I sent him a letter to do it but got not no response. I would also like <u>all</u> Rule 5 and Brady material sent to me. I am way past sick and tired of being on lock up for a crime I did not commit and being denied proper legal counsel. There is really no excuse for never meeting my public defender in the whole 2 years he's been assigned my case. I have serious disabilities and feel like I'm being discriminated against because I have these disabilities and your waiting for my cancer/ seizures to kill me before I have a chance at court. Please get this dismissed for me. As far as I know there is nothing fast and speedy about waiting over 2 years for trial after properly filing for a fast and speedy trial. It's supposed to be within 6 months or it gets dismissed. Thank you for your help and time.

(R. p. 1191).

On October 31, 2019, over two years after arrest, a hearing was held before the Honorable Ferrell Cothran, Jr. During the hearing the assistant solicitor representing the State told the judge, "He [Appellant] had sent a letter to the Clerk of Court, which I believe you have a

copy of that letter. In that letter he's talking about making a speedy trial demand, about how he has not met his public defender, about how he has not received his discovery." (R. p. 3, lines 8-13). The assistant solicitor was concerned about Appellant filing *pro se* motions. (R. p. 3, lines 17-22). The public defender representing Appellant at the hearing had only been with the Public Defender Office for a little over a month. (R. p. 4, lines 16-18). The clerk advised that the prior attorney appointed to represent Appellant was Bob Hughes. The assistant solicitor told the judge, "Well, Madam Clerk is informing me that Mr. Hughes was his only prior attorney, which causes me some concern because Mr. Hughes hasn't done work in general sessions in quite some time. And we have had two other public defenders in place since that time that were doing Mr. Hughes' cases." (R. p. 5, line 23 – p. 6, lines 1-4).

The Appellant told the judge, "I wrote him a million times, never got one letter back. Never got to meet him or nothing. I couldn't even walk when they charged me. I went through cancer surgery. I couldn't even walk to get my food from the cafeteria. I wanted to get this done because I'm supposed to go home in two years, and I want to get this done. I have wrote him a lot of letters." (R. p. 6, lines 5-12). Judge Cothran ordered the State to provide full discovery to counsel within 30 days and asked when the State planned to call the case for trial. (R. p. 6, lines 13-18). The assistant told the judge they planned to try the case in the first six months of 2020. Judge Cothran said, "Okay. If it hasn't been, then they can make a motion in front of whatever judge is here, you know, for a speedy trial, and they can go back under Judge Newman's cases and see what kind of relief they can get. Okay?" (R. p. 6, line 23 – p. 7, lines 1-2)[1].

[1] Presumably Judge Cothran's reference to "Judge Newman's cases" is a reference to State v. Hunsberger, 418 S.C. 335, 794 S.E.2d 368 (2016).

The case was not called for trial until October/November of 2022. At that time, however, defense counsel had to move for a continuance because she was sick. (R. p. 123, lines 9-18). The case was then scheduled for trial in December of 2022. The State, however, moved for a continuance to analyze phones that the State had been aware of since the beginning of the investigation. (R. p. 123, line 19 – p. 124, lines 1-11).

On December 1, 2022, Appellant completed his sentence on the underlying charge and was transferred to the Jasper County Detention Center. (See Order Denying Defendant's Motion to Dismiss for Alleged Speedy trial Violation, R. p. 1201). It appears that the case had to be continued a third time because the detention center failed to provide prescription medications Appellant needed, and was apparently given in the Department of Corrections, to maintain competency. (See Order Denying Defendant's Motion to Dismiss for Alleged Speedy trial Violation, R. p. 1201).

On May 16, 2023, Appellant filed[2] a notice of motion to dismiss based on the speedy trial violation. (R. p. 1192, Notice of Motion to Dismiss- Speedy Trial; See Order Denying Defendant's Motion to Dismiss for Alleged Speedy trial Violation). On July 13, 2023, a hearing was held before the Honorable Robert Bonds on Appellant's motion to dismiss based on the speedy trial violation. (R. pp. 9-137). Judge Bonds denied the motion to dismiss and asked the State to prepare an order. (R. p. 136, lines 12-15). The judge noted that the motion to dismiss was filed in May of 2023, and stated, "May of '23. And, of course, that is two months ago, a month ago. And so I do hear you that, basically – you know, I don't understand why this motion wasn't filed a year ago, or two years ago, or 18 months ago, and, now that does resonate with me. And I think you were making a reference to that, Mr. Evans." (R. p. 135, lines 2-8). The

[2] The notice is dated May 12, 2023, but appears to have been filed July 21, 2023.

judge also noted that most of the items listed as missing or destroyed in paragraph five of the notice relating to prejudice would have been missing or destroyed if the case had been tried in 2019. (R. p. 135, lines 9-24; R. p. 1193).

On July 21, 2023, Appellant filed the memorandum in support of the motion to dismiss based on the speedy trial violation. (R. pp. 1194). The written order denying the motion was filed on July 27, 2023. The written order correctly found that the nearly six-year delay was sufficient to trigger the speedy trial analysis. (R. p. 1204). The order, however, failed to properly weigh the factors surrounding the almost six-year delay. The judge erred in failing to properly weigh the factors and dismiss based on the speedy trial violation.

The trial started on July 31, 2023. The State made the trial judge aware of Judge Bonds' ruling denying the motion to dismiss based on the speedy trial violation. (R. p. 143, line 13 – p. 144, lines 1-13). Appellant renewed the motion to dismiss at the close of the State's case. (R. pp. 997 – 1003). The trial judge denied the motion. (R. p. 1012, line 15 – p. 1013, 1014, lines 1-21). The trial judge noted the lockdown, turnover in both the Solicitor's office and the Public Defender office and found that the three continuances were all necessary. (R. p. 1012, line 15 – p. 1013, lines 1-21). The judge stated, "So with that said I do not think, again, that the time of trial is contrary or unreasonable in this case, given all those things, which might even be called." (R. p. 1014, lines 18-21). The trial judge failed to acknowledge that the almost six-year delay was sufficient to trigger the speedy trial analysis. The trial judge failed to properly weigh the factors surrounding the almost six-year delay. The trial judge erred in refusing to dismiss based on the speedy trial violation.

In State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012) the South Carolina Supreme Court wrote:

> The Sixth Amendment to the United States Constitution provides, in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy ... trial." U.S. Const. amend. VI. Similarly, the South Carolina Constitution guarantees that "[a]ny person charged with an offense shall enjoy the right to a speedy ... trial." S.C. Const. art. I, § 14. The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense. State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978).

Appellant's constitutional rights to a speedy trial guaranteed by both the United States Constitution and the South Carolina Constitution were violated in the present case.

In State v. Hunsberger, 418 S.C. 335, 342–43, 794 S.E.2d 368, 372 (2016), the South Carolina Supreme Court wrote:

> An accused's speedy trial right begins when he is "indicted, arrested, or otherwise officially accused." Langford, 400 S.C. at 442, 735 S.E.2d at 482 (citing United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982)). To trigger a speedy trial analysis, the accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from "presumptively prejudicial" delay, since, by definition, he cannot complain that the government has denied him a "speedy" trial if it has, in fact, prosecuted his case with customary promptness. Doggett v. U.S., 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness. See Doggett, 505 U.S. at 651–52, 112 S.Ct. 2686 (1992). Once the accused has met this initial burden, a court must look to four factors, among the totality of the circumstances, to decide whether the defendant's right to a speedy trial has been denied. Barker v. Wingo, 407 U.S. 514, 530–31, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); see also Langford, 400 S.C. at 441, 735 S.E.2d at 482. 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. Barker at 531–32, 92 S.Ct. 2182. A speedy trial claim must be "analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2008) (citing Barker, 407 U.S. at 530, 92 S.Ct. 2182).

The State agreed that the almost six-year delay triggered the speedy trial analysis stating, "Going through the Barker v. Wingo factors, I agree with Miss Carmody that the length of delay is sufficient to trigger the rest of the analysis." (R. p. 128, lines 13-16). The written order

correctly found that the nearly six-year delay was sufficient to trigger the speedy trial analysis. (R. p. 1204). Both judges, however, erred by failing to properly weigh the factors surrounding the almost six-year delay and dismiss the charge based on the speedy trial violation.

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 [Barker 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. If a court concludes that this right has been violated, dismissal of the charges "is the only possible remedy." Id. at 522, 92 S.Ct. 2182.

Viewing the four Barker v. Wingo factors in terms of the circumstances of this case and balancing the conduct of the prosecution and the defense, Appellant's constitutional rights to a speedy trial were violated. As in Hunsberger, because the timeline is essential to determining that Petitioner's speedy trial rights were violated, important dates are outlined below:

- August 15, 2017 – arrest
- September 13, 2017 – letter to clerk of court
- May 31, 2018 – indictment
- September 13, 2019 – letter to clerk of court
- October 31, 2019 – hearing before Judge Cothran
- October 2022 – defense motion for continuance – defense counsel illness
- November 2022 – prosecution motion for continuance – evidence not analyzed
- December 2022 – Appellant completed sentence on underlying charge
- January 2023 – continuance - failure to receive medications
- April 2023 – bond denied

- May 2023 – notice of motion to dismiss based on speedy trial violation
- July 13, 2023 – hearing on motion to dismiss
- July 31, 2023 - trial

1. Length of Delay

As to the first Barker factor, length of delay, as discussed above, the written order correctly finds that the nearly six-year delay was sufficient to trigger the speedy trial analysis. The written order, however, does not assign responsibility for the length of the delay. In Hunsberger, the South Carolina Supreme Court determined that the full ten-year delay between arrest and trial was not wholly attributable to the State. In the present case, for over two years, from the time of Appellant's arrest in August of 2017, until October 31, 2019, when a hearing was finally held before Judge Cothran, the State made no attempt to call this case for trial. During this over two-year time frame Appellant was without the assistance of counsel, despite Appellant's request for representation in his letter to the Jasper County Clerk of Court filed September 13, 2017, and numerous attempts to contact the public defender. (R. p. 1189; October 31, 2019, R. p. 6, lines 5-12). In a letter to Appellant from the Jasper County Clerk of Court dated September 18, 2017, a clerk stated that a copy of Appellant's letter was given to the Public Defender's Office and the Solicitor's Office. (R. p. 1190). Appellant was indicted on May 31, 2018. The over two-year delay when the State made no attempt to call the case for trial is wholly attributable to the State.

The next three-year time frame from the hearing before Judge Cothran on October 31, 2019, to when defense counsel moved for a continuance because she was sick in October of 2022, can not be wholly attributable to the State because part of that time involved lockdown due

to the COVID-19 pandemic. Some of this three-year time frame though, perhaps half - eighteen months, must be attributed to the State. None of this time frame should be attributed to Appellant. The month-long delay from October 2022 to November 2022, due to defense counsel's illness, should not be attributed to either the State or Appellant. The eight-month time frame from November 2022, until the time of trial on July 31, 2023, is wholly attributable to the State. The State is responsible for an over four-year delay in calling the case for trial. The four-year delay should be weighed heavily against the State.

When the motion was renewed at trial the trial judge also failed to assign responsibility for the length of the delay, instead finding that the delay was reasonable. (R. p. 1014, lines 18-21). The trial judge erred. The delay was not reasonable. Appellant was not responsible for the delay. Both judges erred in failing to assign responsibility to the State for four years of the almost six-year delay and weighing that factor heavily against the State.

2. Reasons for Delay

As to the second Barker factor, reasons for delay, in State v. Hunsberger, 418 S.C. 335, 346, 794 S.E.2d 368, 374 (2016), the South Carolina Supreme Court wrote:

> The State's justifications for delay in trying a defendant are weighted differently: (1) a deliberate attempt to delay trial as a means to hamper the defense weighs heavily against the State; (2) negligence or overcrowded dockets weigh less heavily against the State, but are ultimately its responsibility; (3) a valid reason, such as a missing witness, justifies an appropriate delay; and (4) delays occasioned by the accused weigh against him. Langford, 400 S.C. at 443, 735 S.E.2d at 483 (internal citation omitted). Ultimately, justifying the delay between charge and trial is the responsibility of the State. Langford, 400 S.C. at 443, 735 S.E.2d at 483 (internal citation omitted).

In the written order denying the motion to dismiss for a speedy trial violation the judge wrote, "The State argued that the significant General Sessions backlog in Jasper County, while

regrettable, was a legitimate contributing factor to the delay in bringing this case to trial. The State further noted that it had previously informed Judge Cothran of its hope to try the case in the first six months of 2020, but was deterred by the onset of the COVID-19 pandemic. Finally, the State noted that the last three delays were caused by legitimate continuances set forth above. The Court is persuaded that the State's delays were valid." (R. p. 1204). The judge erred in failing to weigh some of the reasons for the delay against the State. The State offered no valid reason for the two-year delay between Appellant's arrest in August of 2017, until October 31, 2019, when a hearing was finally held before Judge Cothran.

While the significant General Sessions backlog in Jasper County weighs less heavily against the State than a deliberate attempt to delay, the overcrowded docket is ultimately the State's responsibility. See Hunsberger. This reason must be weighed against the State. The reasons for the second and third continuances must also be weighed against the State. The second continuance was due to negligence on the part of the State. After the case was first continued in October of 2022, due to defense counsel's illness, the case was scheduled for trial on November 28, 2022. In the written order denying the motion to dismiss for a speedy trial violation the judge wrote:

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

(R. p. 1202-1203). The State's motion for a continuance was made five years after the arrest of Appellant, four years after indictment, and after the case had already been continued once due to defense counsel's illness. During the hearing on the motion to dismiss counsel for Appellant argued that this was the first time since 2017, that anyone from the Solicitor's Office had actually looked at the physical evidence. (R. p. 123, line 19 – p. 124, lines 1-11). The State was negligent in failing to have the phones analyzed earlier. This reason must be weighed against the State.

The third continuance was granted "to ensure that the Defendant was placed on the proper medication" after being transferred from the South Carolina Department of Corrections to the Jasper County Detention Center. (R. p. 1203). The delay caused by the detention center's failure to provide prescription medications Appellant needed, and was apparently given in the Department of Corrections, to maintain competency cannot be attributed to Appellant. This reason must also be weighed against the State.

When the motion was renewed at trial the trial judge also erred in failing to weigh some of the reasons for the delay against the State. As discussed above, the State offered no valid reason for the two-year delay between Appellant's arrest in August of 2017, until October 31, 2019, when a hearing was finally held before Judge Cothran. The trial judge noted as reasons for the delay the lockdown, turnover in both the Solicitor's office and the Public Defender office and found that the three continuances were all necessary. (R. p. 1012, line 15 – p. 1013, lines 1-21). Turn over in offices, like overcrowded dockets, should weigh against the State, not Appellant. See Vermont v. Brillon, 556 U.S. 81, 94, 129 S. Ct. 1283, 1292, 173 L. Ed. 2d 231 (2009) ("The general rule attributing to the defendant delay caused by assigned counsel is not absolute. Delay resulting from a systemic "breakdown in the public defender system," 183 Vt., at 479 – 480, 955

A.2d, at 1111, could be charged to the State. Cf. Polk County, 454 U.S., at 324–325, 102 S.Ct. 445."). As to the continuances, the trial judge also failed to weigh the second and third continuances against the State. Both judges erred in failing to weigh most of the reasons for the delay against the State.

3. The Accused's Assertion of the Right to a Speedy Trial

As to the third Barker factor, the accused's assertion of the right to a speedy trial, Appellant first asserted his right to a speedy trial in his letter to the clerk of court dated September 13, 2017. In the letter Appellant wrote, "I want to file for a fast and speedy trial. Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). It is unclear when counsel was appointed, but Appellant was effectively without representation for two years despite his request for representation in his letter to the Jasper County Clerk of Court filed September 13, 2017, and numerous attempts to contact the public defender. (R. p. 1189; R. p. 6, lines 5-12). In a subsequent letter to the clerk of court dated September 13, 2019, Appellant wrote that he had filed a motion for a speedy trial two years earlier. He also wrote that had never met or heard back from his public defender. (R. p. 1191).

The judge failed to address the two *pro se* letters in the written order denying defendant's motion to dismiss. (R. p. 1201, Order Denying Defendant's Motion to Dismiss). The judge erred in refusing to consider the *pro se* assertion of the right to a speedy trial when Appellant was effectively deprived representation. In the written order the judge referenced the hearing before Judge Cothran on October 31, 2019, where the State indicated the plan to try the case in the first six months of 2020. (R. p. 1205). The judge wrote:

> Of course, neither the State nor Judge Cothran were aware that we would enter a global pandemic in that time frame.
>
> The Court notes that since that time, even following a resumption of jury trials as the pandemic began to wane, the Defense has never filed a written motion for a speedy trial. The Defendant has made reference to his desire for one during several bond hearings, but the present motion to *dismiss* the case is the first filing on the subject.
>
> I find the Defendant has asserted his right, but that the State has never been subject to an order to try the case by a particular date. I also find that the Defendant and his counsel were satisfied with the previous trial dates in November of 2022, December of 2022, and January of 2023, prior to the continuances which were granted on each occasion.

(R. p. 1205). The judge correctly found that Appellant asserted his right to a speedy trial. The judge erred in not weighing this factor in favor of Appellant. Defense counsel did not need to file a written motion for a speedy trial when Appellant had already requested a speedy trial. There is no requirement that a judge order the State to try the case by a particular date in order to prevail on a motion to dismiss based on a speedy trial violation. There is no requirement that a defendant assert the right to a speedy trial, although the Appellant in the present case asserted his right and then filed a motion to dismiss based on the violation of the speedy trial right.

In Barker the Court wrote:

> We reject, therefore, the rule that a defendant who fails to demand a speedy trial forever waives his right. This does not mean, however, that the defendant has no responsibility to assert his right. We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right. Such a formulation avoids the rigidities of the demand-waiver rule and the resulting possible unfairness in its application. It allows the trial court to exercise a judicial discretion based on the circumstances, including due consideration of any applicable formal procedural rule. It would permit, for example, a court to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed. It would also allow a court to weigh the frequency and force of the objections as opposed to attaching significant weight to a purely pro forma objection.

Barker v. Wingo, 407 U.S. 514, 528-529, 92 S.Ct. 2182, 2191 (1972).

Appellant asserted his right to a speedy trial on September 13, 2017, following his arrest in August of 2017. (R. p. 1189). Two years later on September 13, 2019, Appellant, having not received any response from the public defender, wrote to the clerk of court again and advised that he moved for a speedy trial two years ago. (R. p. 1191). The written order denying the motion to dismiss references the fact that Appellant expressed his desire for a speedy trial during bond hearing. As the South Carolina Supreme Court in Hunsberger wrote, citing Barker, "The accused's assertion of the right, however, is entitled strong evidentiary weight in determining whether the accused is being deprived of the right. Barker, 407 U.S. at 531–32, 92 S.Ct. 2182." 418 S.C. at 349, 794 S.E.2d at 375. Appellant asserted his right to a speedy trial and the assertion of the right weighs in favor of Appellant.

4. Prejudice

As to the fourth Barker factor, prejudice to the accused, in State v. Barnes, 431 S.C. 66, 89, 846 S.E.2d 389, 400–01 (Ct. App. 2020), aff'd as modified, 436 S.C. 202, 871 S.E.2d 421 (2022), this Court wrote:

> "The final factor—prejudice to the defendant—requires a reviewing court to analyze the three different types of prejudice the speedy trial right seeks to prevent: (1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) the possibility the defense will be impaired." Reaves, 414 S.C. at 131, 777 S.E.2d at 219. "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." Langford, 400 S.C. at 445, 735 S.E.2d at 484 (quoting Barker, 407 U.S. at 532, 92 S.Ct. 2182); but see Loud Hawk, 474 U.S. at 312, 106 S.Ct. 648 ("[T]he Speedy Trial Clause's core concern is impairment of liberty ....").
>
> In the order denying the motion to dismiss the judge wrote:

> The Defendant's argument that he has suffered prejudice from the delay of his trial is without merit. While the Defendant did raise issues concerning the preservation of evidence in this case which may have hampered his defense, those issues were present as soon as SLED declined to collect the items, just hours after the incident. It may well be that the Defense only learned of those issues recently, but that does not mean they were caused by delay.
>
> The Defendant has been awaiting trial for more than five and a half years on this case. However, this pre-trial incarceration can hardly be said to be oppressive, given that he had been serving a ten year active sentence at the time of the incident and arrest, and was only released from said sentence on December 1, 2022. All prior incarceration in this case was concurrent with his previous sentence. For the same reason, having already pled *nolo contendre* to a "Most Serious" offense (Voluntary Manslaughter), the Defendant cannot credibly claim that he has suffered anxiety from the charge.

(R. p. 1205-1206). The judge erred.

First, as to the judge's finding that Appellant did not suffer from prejudicial oppressive pre-trial incarceration because he was serving a sentence on an unrelated charge, in Smith v. Hooey, 393 U.S. 374, 378–79, 89 S. Ct. 575, 577, 21 L. Ed. 2d 607 (1969) (n. 7, 8 omitted), the United States Supreme Court wrote:

> At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from 'undue and oppressive incarceration prior to trial.' But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge. First, the possibility that the defendant already in prison might receive a sentence at least partially concurrent with the one he is serving may be forever lost if trial of the pending charge is postponed. Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pendency of another criminal charge outstanding against him.
>
> And while it might be argued that a person already in prison would be less likely than others to be affected by 'anxiety and concern accompanying public accusation,' there is reason to believe that an outstanding untried charge (of which even a convict may, of course, be innocent) can have fully as depressive an effect upon a prisoner as upon a person who is at large.

As a result of the pending charge, Appellant's conditions in prison on the unrelated charge worsened. In his letter filed with the clerk dated September 13, 2017, Appellant wrote, "Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). In his letter filed with the clerk dated September 13, 2019, two years after the first letter and after not receiving any response from the public defender, Appellant wrote, "I am way past sick and tired of being on lock up for a crime I did not commit and being denied proper legal counsel." (R. p. 1191). Appellant suffered prejudice from the delay in the form of oppressive pre-trial incarceration that required lock down while serving the sentence on the unrelated charge.

Second, a defendant is not required to show prejudice affirmatively to win a speedy trial claim. Moore v. Arizona, 414 U.S. 25, 26 (1973); see also United States v. Ferreira, 665 F.3d 701, 706-707 (6th Cir. 2011); U.S. v. Molina-Solorio, 577 F.3d 300, 307-308 (5th Cir. 2009); United States v. Frith, 181 F.3d 92 (4th Cir. 1999); United States v. Clark, 83 F.3d 1350, 1353-1354 (11th Cir. 1996). 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 Appellant's acquiescence, nor persuasively rebutted by the prosecution. Prejudice should be presumed because of the excessive almost six year delay.

In Barnes this Court wrote:

> "[A]n accused can assert actual prejudice or presumptive prejudice as the result of the State's violation of his right to a speedy trial." Hunsberger, 418 S.C. at 351, 794 S.E.2d at 376. "Actual prejudice occurs when the trial delay has weakened the accused's ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." Id. "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. "While presumptive prejudice cannot alone support a speedy trial claim, it is part of the mix of relevant facts, and its importance increases with the length of time." Id.

431 S.C. at 89, 846 S.E.2d at 401. Appellant suffered actual prejudice in the form of oppressive pre-trial incarceration as the result of the State's violation of Appellant's speedy trial rights as well as presumptive prejudice because of the almost six-year delay.

Both judges erred as a matter of law in failing to weigh the Barker factors. The error of law constitutes an abuse of discretion. Balancing the Barker factors, four years of the almost six-year delay in trying the case is wholly attributable to the State and that delay should be weighed heavily against the State. The reasons for the delay must be weighed against the State. Appellant's assertion of his right to a speedy trial weighs in Appellant's favor. Appellant showed actual and presumptive prejudice, weighing in Appellant's favor. The weighing of the Barker factors shows that the State violated Appellant's speedy trial rights. The violation requires dismissal of the charges.

CONCLUSION

Based on the argument above, this Court should reverse the decision of the circuit court to deny the motion to dismiss based on the violation Appellant's right to a speedy trial.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of March, 2025.

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Mar 05 2025
SC Court of Appeals

CERTIFICATE OF COUNSEL

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

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Mar 05 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN WALTER DUBOIS III,

APPELLANT

APPELLATE CASE NO. 2023-001307

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Kaylee C. Kemp, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 5th day of March, 2025.



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

The Honorable Carmen T. Mullen, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

BENJAMIN WALTER DUBOIS, III,

Appellant.

Appellant Case No. 2023-001307

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APPELLANT'S STATEMENT OF THE ISSUE

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

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE

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

STATEMENT OF THE CASE

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

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

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

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

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

RESPONDENT'S STATEMENT OF FACTS

Summary of the Crime

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

That evening, Appellant approached Chappell and Holmes' cell under the guise that he was going to share drugs with Holmes. (R. p. 550-555). Unbeknownst to Holmes, Appellant flashed the ice pick he had in his waistband to Chappell. (R. p. 551). Chappell testified that he took Appellant's signal to mean that Chappell needed to leave the cell. (R. p. 551-552). Chappell left the cell, and as he started to walk away, he heard a "thudding noise and gurgling and Country[1] trying to yell." (R. p. 552).

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

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

Pre-Trial Proceedings

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

"The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard." *State v. Hunsberger*, 418 S.C. 335, 342, 794 S.E.2d 368, 371 (2016). "An abuse of discretion occurs when the court's decision is based on an error of law or upon factual findings that are without evidentiary support." *Id*. at 342, 794 S.E.2d at 371–72.

ARGUMENT

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

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

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

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

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

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

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

Length of Delay

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

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

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

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

"To trigger a speedy trial analysis, the accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay, since, by definition, he cannot complain that the government has denied him a 'speedy' trial if it has, in fact, prosecuted his case with customary promptness." *Doggett v. U.S.*, 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). "Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness." *See Doggett*, 505 U.S. at 651–52, 112 S.Ct. 2686 (1992).

Based on the length of time between Appellant's arrest and the speedy trial motion hearing, a review of the remainder of the speedy trial factors is warranted. "Once the accused has met this initial burden, a court must look to four factors, among the totality of the circumstances, to decide whether the defendant's right to a speedy trial has been denied." *Barker v. Wingo*, 407 U.S. 514, 530–31, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); *see also Langford*, 400 S.C. at 441, 735 S.E.2d at 482.

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

Reason for Delay

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

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

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

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

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

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

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

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

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

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

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

Accused's Assertion of the Right to a Speedy Trial

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

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

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

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

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

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

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

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

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

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

Prejudice

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

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

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

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

> Well, we know they collected the weapons, never tested them, never bothered to check whose DNA was on them, but they did test the towel, the towel that's in the trash with the weapons in -- outside of cell four, close to cell five? Whose DNA is on the towel? Four people.
>
> There's four people's DNA on the towel.
>
> Agent Williams testified that he had received information that this could have been recorded, right? I asked about that, wow, okay

> The cell phone's there, that cell phone -- what about the cell phone right there on the screen in this picture? Is that -- so is this the murder weapon and the cell phone that reported the incident?
>
> And we don't bother to test these weapons to see for DNA? They tested other things and said well, they couldn't come up with a conclusive result, they never bothered.

(R. p. 118).

As to presumptive prejudice, Appellant asserts that the 6-year delay alone violated his right to a speedy trial. "While presumptive prejudice cannot alone support a speedy trial claim, it is part of the mix of relevant facts, and its importance increases with the length of time." *Doggett*, 505 U.S. at 656-657, 112 S.Ct. 2693 (internal citation omitted).

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

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

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

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

[Conclusion and Signature Page to Follow]

CONCLUSION

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

Respectfully submitted,

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March 5, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

The Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

BENJAMIN WALTER DUBOIS, III

Appellant.

Appellate Case No. 2023-001307

PROOF OF SERVICE

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

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

This is the 5th day of March 2025.

s/ Kaylee C. Kemp
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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.

Benjamin Walter Dubois, III, Appellant.

Appellate Case No. 2023-001307

Appeal From Jasper County
Carmen T. Mullen, Circuit Court Judge

Unpublished Opinion No. 2026-UP-432
Submitted July 1, 2026 – Filed September 2, 2026

AFFIRMED

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

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, and Senior Assistant Deputy Attorney General Melody Jane Brown, all of Columbia; and Solicitor Isaac McDuffie Stone, III, of Bluffton, all for Respondent.

PER CURIAM: Benjamin W. Dubois, III, appeals his conviction for murder and sentence of life without parole, arguing the circuit court erred by denying his

motion to dismiss on the ground that his right to a speedy trial had been violated. We affirm.

FACTS/PROCEDURAL HISTORY

In the early morning hours of June 22, 2017, Jerry Holmes, an inmate at the Ridgeland Correctional Institution, was discovered stabbed to death in his cell. Dubois, who was housed in the same cellblock while serving a ten-year sentence for voluntary manslaughter, was arrested and charged with Holmes's murder on August 15, 2017.

On September 13, 2017, Dubois filed a letter with the Jasper County Clerk of Court asking for an appointed attorney, requesting discovery, and stating he "want[ed] to file for a fast and speedy trial." Dubois was indicted in May 2018. On September 13, 2019, while represented by counsel, Dubois sent another letter to the Jasper County Clerk of Court stating that he had "filed for a fast and speedy trial [two] years ago and [had not] received a word about it" and requesting that the clerk "file a motion to dismiss[]" for him. Dubois also asserted that he had never spoken with his appointed counsel.

The circuit court held a hearing to address the issues raised by Dubois's letter on October 31, 2019. At that hearing, Dubois met with his new attorney, and the circuit court ordered the State to provide her with full discovery within thirty days. The State explained that Dubois's previous attorney had not practiced in General Sessions in some time, and there had been turnover in the Solicitor's Office, but it planned to call the case for trial in the first six months of 2020. The circuit court noted that if the case was not called within that timeframe, the defense could move for relief via a speedy trial motion.

Due to the Covid-19 pandemic, the case was ultimately not set for trial until October 2022, at which time Dubois moved for a continuance because his attorney had the flu and Covid. The case was continued until November 2022, when the State moved for a continuance to analyze potential exculpatory evidence discovered during a physical review of the evidence; Dubois did not object. In December 2022, Dubois completed his sentence on his voluntary manslaughter conviction and was transferred to the Jasper County Detention Center while awaiting trial. The case was called again in January 2023 and continued for a third time because Dubois had been unable to obtain his psychiatric medications after being transferred to the detention center. The case could not be rescheduled until

July 31, 2023, because the trial rosters for the remaining terms earlier in the year had already been filled.

On May 12, 2023, Dubois filed a formal written motion to dismiss his charges on the basis that his right to a speedy trial had been violated. A hearing took place before Judge Bonds on July 13, 2023, and the circuit court denied the motion in a written order filed July 27, 2023.

Dubois's trial began on July 31, 2023, and at the close of the State's evidence, he renewed his speedy trial motion, reiterating the arguments raised in the pre-trial hearing; the circuit court denied the motion. The circuit court found the delay was not "arbitrary or unreasonable," especially given "the lockdown [that] occurred during the middle of this." It also noted turnover in both the Solicitor's Office and the Public Defender's Office contributed to the delay and found that the three continuances "were all necessary."

The jury convicted Dubois of murder, and the circuit court sentenced him to life without parole. This appeal followed.

ISSUE ON APPEAL

Did the circuit court err by improperly weighing the relevant factors and denying Dubois's motion to dismiss for a speedy trial violation?

STANDARD OF REVIEW

"The [circuit] court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard." *State v. Hunsberger*, 418 S.C. 335, 342, 794 S.E.2d 368, 371 (2016). "An abuse of discretion occurs when the court's decision is based on an error of law or upon factual findings that are without evidentiary support." *Id.* at 342, 794 S.E.2d at 371-72.

LAW/ANALYSIS

We find the circuit court conducted the balancing test set forth in *Barker v. Wingo*[1] and properly analyzed the four relevant factors; thus, it did not err in denying his motion to dismiss. *See* U.S. Const. amend. VI (providing for the right to "a speedy and public trial"); S.C. Const. art. I, § 14 (same); *Hunsberger*, 418 S.C. at 342, 794 S.E.2d at 371 ("A speedy trial means a trial without unreasonable and unnecessary

[1] 407 U.S. 514 (1972).

delay."); *id.* at 342, 794 S.E.2d at 371 ("The remedy for a speedy trial violation is dismissal of the charges.").

"An accused's speedy trial right begins when he is 'indicted, arrested, or otherwise officially accused.'" *Id.* at 342, 794 S.E.2d at 372 (quoting *State v. Langford*, 400 S.C. 421, 442, 794 S.E.3d 471, 482 (2012)). "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 . . . ." *Id.* at 342-43, 794 S.E.2d at 372. "Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness." *Id.* at 343, 794 S.E.2d at 372. When the accused has met this initial burden, the court then "must look to four factors, among the totality of the circumstances, to decide whether the defendant's right to a speedy trial has been denied." *Id.* The four factors, colloquially called the *Barker* factors, are: "(1) length of delay; (2) the reason for the delay; (3) the accused's assertion of his right to a speedy trial; and (4) whether the delay prejudiced the accused." *Id.* (citing *Barker*, 407 U.S. at 530). However, "none of these factors is 'either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.'" *Langford*, 400 S.C. at 441, 735 S.E.2d at 482 (quoting *Barker*, 407 U.S. at 533).

Instead, "[a] speedy trial claim must be 'analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense.'" *Hunsberger*, 418 S.C. at 343, 794 S.E.2d at 372 (quoting *State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2008)).

> The State's justifications for delay in trying a defendant are weighted differently: (1) a deliberate attempt to delay trial as a means to hamper the defense weighs heavily against the State; (2) negligence or overcrowded dockets weigh less heavily against the State, but are ultimately its responsibility; (3) a valid reason, such as a missing witness, justifies an appropriate delay; and (4) delays occasioned by the accused weigh against him.

Id. at 346, 794 S.E.2d at 374. "Ultimately, justifying the delay between charge and trial is the responsibility of the State." *Id.* "In order to establish the denial of a speedy trial, it must be demonstrated the delay was attributable to the State." *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978).

Here, both parties agreed, as we do, that the almost six-year delay between Dubois's arrest and the start of the trial was "presumptively prejudicial" and

sufficient to trigger an analysis of the remaining *Barker* factors. *See Pittman*, 373 S.C. at 549, 647 S.E.2d at 155 ("The inquiry into the length of the delay functions as a trigger mechanism for the analysis of the three other factors."); *id.* at 551, 647 S.E.2d at 156 (finding a delay of three years and two months between arrest and trial was sufficient to trigger analysis of the remaining factors); *Langford*, 400 S.C. at 442, 735 S.E.2d at 482 ("We should not even examine the remaining factors '[u]ntil there is some delay which is presumptively prejudicial.'" (quoting *Barker*, 407 U.S. at 530)); *id.* at 442-43, 735 S.E.2d at 482 (finding a delay of twenty-three months was sufficient to "trigger[] the remaining *Barker* inquiry"). Thus, we turn to an analysis of the reasons for the delay. *See Pittman*, 373 S.C. at 549, 647 S.E.2d at 155 ("Once the defendant has established that the delay is sufficient to warrant analysis of the other factors, the court must consider the reason for the delay.").

In this case, there are three time periods into which the delays fall: (1) two years and two months between Dubois's arrest and the October 31, 2019 hearing; (2) roughly three years between the October 31, 2019 hearing and the first trial date of October 22, 2022; and (3) ten months from the October 22, 2022 continuance until trial commenced on July 31, 2023. The State's explanations for the delay are weighed differently depending on the justification offered. *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155; *see also 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 demonstrated the delay was attributable to the State.").

Dubois's first attorney did not work on General Sessions cases, and there was also turnover amongst the solicitors assigned to the case. We find at least some of this period of delay should weigh against the State, although less heavily than an intentional delay. *See Hunsberger*, 418 S.C. at 346, 794 S.E.2d at 374 ("[N]egligence or overcrowded dockets weigh less heavily against the State, but are ultimately its responsibility . . . ."); *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155 ("Where the reason for the delay is more neutral, the court should weigh it less heavily against the State [than any intentional delays to impede the defense]."). We also note that Dubois asserted he never spoke to or met with his first attorney, so despite his personal eagerness to resolve his case, it is unlikely that the defense would have been in a position to try the case during this timeframe. *See id.* at 551, 647 S.E.2d at 156 ("While the ultimate responsibility for timely completion of the trial rests with the State, the defense's contributions to the delay cannot be ignored.").

Next, the second period of delay began at the October 31, 2019 hearing, when the State informed the circuit court that it intended to call the case for trial within the first six months of 2020. However, due to the Covid-19 pandemic and the subsequent backlog of cases when courts reopened, Dubois's case was not set for trial until October 2022. We find the pandemic was the reason for this delay and this is a neutral justification that should not be weighed against the State.[2]

The final period, amounting to approximately ten months of delay, arose from a series of continuances, starting with the continuance of the October 2022 trial date at Dubois's request due to his attorney's illness. The trial was rescheduled one month later, in November 2022; it was continued a second time, without objection from Dubois, due to the discovery of additional, potentially exculpatory evidence on the cell phones collected by SLED. The trial was then scheduled for January 2023 but continued a final time, at Dubois's request, because administrative difficulties between SCDC and the detention center caused him not to receive his psychiatric medications. We agree with both circuit courts that these continuances were reasonable and the delay occasioned by them was justified; thus, we do not attribute any of these ten months of delay to the State. *See id.* at 549, 647 S.E.2d at 155 ("A valid reason presented by the State may justify an appropriate delay."). In total, we find the original two-year period of delay from arrest until October 31, 2019, should be weighed against the State, although with the caveat, as discussed above, that the defense was not prepared to proceed with a trial during the entirety of that period.

The third *Barker* factor this court must consider is "the actions of the defendant in asserting the right to a speedy trial." *Id.*; *see also Barker*, 407 U.S. at 531-32 ("The defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right."). Dubois first referenced his speedy trial right in his initial pro se letter to the Jasper County Clerk's Office in September 2017, approximately one month after his arrest when he stated he would "like to file for a speedy trial;" however, the defense did not follow that letter with any official filing until Dubois's second pro se letter triggered the October 31, 2019 hearing and his case was reassigned to a new

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[2] We note that *Barker* characterized "overcrowded courts" as a "more neutral reason" for delay that is typically still weighed against the State, albeit less heavily than an intentional delay. 407 U.S. at 531. However, we find the backlog created by the pandemic was a special circumstance—not attributable to simple negligence or mismanagement of the docket by the Solicitor's Office—and therefore, we weigh it neutrally in this instance.

defense attorney. At that time, the circuit court specifically noted that if the State did not call the case for trial within the specified timeframe—i.e., the first six months of 2020—that the defense could "make a motion in front of whatever judge is here . . . for a speedy trial, and . . . see what kind of relief they can get." However, despite defense counsel's assertions that she repeatedly asked the State about the status of this case amid multiple continuances, she did not file a formal motion to dismiss until almost three-and-a-half years later in May 2023, although she was unquestionably on notice of this issue from the time of her appointment. Additionally, Dubois's trial was held within two-and-a-half months after he filed his motion. *See State v. Robinson*, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) ("Robinson maintains he first asserted his right to a speedy trial in 1994 by writing letters to the solicitor and Chief Administrative Judge indicating he was ready for trial. However, we conclude Robinson first asserted his right to a speedy trial in May 1995 when he filed the formal motion to dismiss. Robinson's trial began only ten months after his first motion was filed."); *State v. Barnes*, 431 S.C. 66, 88, 846 S.E.2d 389, 400 (2020), *aff'd as modified*, 436 S.C. 202, 871 S.E.2d 421 (2022) (indicating the fact that Barnes was tried approximately two months after he filed his motion to dismiss contributed to a finding that his rights were not violated). Thus, we find the defense's failure to diligently pursue a formal hearing on the speedy trial issue weighs against a finding that Dubois's rights were violated. *See, e.g.*, *Waites*, 270 S.C. at 108-09, 240 S.E.2d at 653 ("Apart from [Waites's] initial request for a preliminary hearing, there is no record of an actual demand by Waites for a speedy trial. We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial.").

Finally, the fourth *Barker* factor calls for an analysis of prejudice suffered by the defendant as a result of the delay. *See Pittman*, 373 S.C. at 550, 647 S.E.2d at 155 ("Finally, the [appellate c]ourt must determine whether the defendant has suffered any prejudice as a result of the delay."); *Barker*, 407 U.S. at 532 (identifying the three interests "of defendants which the speedy trial right was designed to protect" as "(i) [preventing] oppressive [pre-trial] incarceration; (ii) [minimizing] anxiety and concern of the accused; and (iii) [limiting] the possibility that the defense will be impaired"); *id.* ("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."); *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."); *id.* ("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."); *Doggett v. United States*, 505 U.S. 647, 655 (1992)

(noting that "consideration of prejudice is not limited to the specifically demonstrable, and . . . affirmative proof of particularized prejudice is not essential to every speedy trial claim").

Here, Dubois asserts he suffered "actual prejudice in the form of oppressive pre-trial incarceration . . . as well as presumptive prejudice because of the almost six-year delay."[3] We acknowledge the United States Supreme Court's reminder in *Smith v. Hooey* "that delay in bringing [an incarcerated] person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge." 393 U.S. 374, 378 (1969). We note, however, that although Dubois asserted in his pro se letters that he was being held in a more restrictive setting due to his arrest on this charge, he offered no other evidence of "oppressive pre-trial incarceration." Further, Dubois has not asserted that this circumstance made him unable to assist in preparing his defense; in fact, it is clear from the record that he was able to send letters and communicate with counsel throughout his incarceration. Moreover, as discussed above, we do not attribute the entirety of that delay to the State, and presumptive prejudice alone is insufficient. *See Hunsberger*, 418 S.C. at 351, 794 S.E.2d at 376 ("[P]resumptive prejudice cannot alone support a speedy trial claim . . . .").

Thus, although the almost six-year delay in this case is significant and troubling, after considering all of the *Barker* factors and the totality of the circumstances, we hold Dubois was not denied his constitutional right to a speedy trial. *See, e.g.*, *Robinson*, 335 S.C. at 626-27, 518 S.E.2d at 272 (finding Robinson was not denied his right to speedy trial despite a five-year delay because "[t]he case was tried within one year of Robinson's first formal motion to dismiss," the State adequately justified the delay, and "Robinson presented no evidence of actual prejudice").

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[3] During the pre-trial hearing and again at trial, Dubois argued only that he suffered prejudice due to SLED's failure to appropriately collect and preserve evidence. We agree with the circuit court that Dubois cannot show actual prejudice in these circumstances because any defects in the investigation were not the result of the delay—in fact those investigative decisions were made even before Dubois was arrested, within hours of the murder. We do not address Dubois's other arguments because they are not preserved. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."); *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("It is 'axiomatic that an issue cannot be raised for the first time on appeal.'" (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998))).

Accordingly, the judgment of the circuit court is

AFFIRMED.[4]

WILLIAMS, C.J., and MCDONALD and TURNER, JJ., concur.

[4] We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED
Sep 17 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

BENJAMIN WALTER DUBOIS III,

PETITIONER

APPELLATE CASE NO. 2023-001307

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

Opinion No. 2026-UP-432

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Benjamin Walter Dubois, III, respectfully requests this Court grant rehearing. On September 2, 2026, this Court affirmed the murder conviction finding the trial court did not abuse its discretion in refusing to find that Petitioner's constitutional right to a speedy trial was violated. State v. Dubois, Op. No. 2026-UP-432 (S.C. Ct. App. filed September 2, 2026). Counsel respectfully submits that in affirming the conviction this Court misapprehended the factors provided by Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). Respectfully, counsel submits that this Court misapprehended time periods of delay that should have been weighed against the State,

misapprehended Petitioner's assertion of the right to a speedy trial, misapprehended prejudice, and overlooked the fact that prejudice, while demonstrated here, need not be shown to prevail on a speedy trial claim. Counsel respectfully seeks rehearing and a finding Petitioner's right to a speedy trial guaranteed by both the United States Constitution and the South Carolina Constitution was violated in the present case.

1. Reasons for Delay

The first delay period of two years and two months between arrest on August 15, 2017, and Petitioner's first hearing on October 31, 2019, should be wholly weighed against the State. This Court, however, initially found that only some of that time period should weigh against the State writing:

> We find at least some of this period of delay should weigh against the State, although less heavily than an intentional delay." (citation omitted). See Hunsberger, 418 S.C. at 346, 794 S.E.2d at 374 ("[N]egligence or overcrowded dockets weigh less heavily against the State, but are ultimately its responsibility ...."); Pittman, 373 S.C. at 549, 647 S.E.2d at 155 ("Where the reason for the delay is more neutral, the court should weigh it less heavily against the State [than any intentional delays to impede the defense]."). We also note that Dubois asserted he never spoke to or met with his first attorney, so despite his personal eagerness to resolve his case, it is unlikely that the defense would have been in a position to try the case during this timeframe. *See id.* at 551, 647 S.E.2d at 156 ("While the ultimate responsibility for timely completion of the trial rests with the State, the defense's contributions to the delay cannot be ignored.").

State v. Dubois, No. 2023-001307, 2026 WL 2593340, at *3 (S.C. Ct. App. Sept. 2, 2026).

On September 13, 2017, Petitioner filed a letter with the Jasper County Clerk of Court asking for a public defender, requesting Rule 5 and Brady material, and noting, "I want to file for a fast and speedy trial. Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). Petitioner was indicted on May 31,

2018. The time period when Petitioner was without representation after asking for a public defender should not be held against Petitioner and should be weighed against the State. See Vermont v. Brillon, 556 U.S. 81, 94, 129 S. Ct. 1283, 1292, 173 L. Ed. 2d 231 (2009)("The general rule attributing to the defendant delay caused by assigned counsel is not absolute. Delay resulting from a systemic "breakdown in the public defender system," 183 Vt., at 479 – 480, 955 A.2d, at 1111, could be charged to the State. Cf. Polk County, 454 U.S., at 324–325, 102 S.Ct. 445."). The whole first two-year delay should be weighed against the State.

This Court then found that the next three-year delay from October 31, 2019, until October 2022, was caused by the pandemic, a neutral reason that should not be weighed against the State. Respectfully, while part of this three-year period of delay was certainly caused by the pandemic, the whole three years is not reasonable, especially when Petitioner had already waited two years for a trial prior to the pandemic.

The final delay period from October 2022, until the trial on July 31, 2023, was caused by a defense continuance in October 2022, because defense counsel was sick, a prosecution continuance in November 2022, because the prosecution failed to analyze evidence, and a continuance in January of 2023, because the jail failed to provide correct medications. The eight-month delay period between November 2022, and the trial on July 31, 2023, should be weighed against the State. The initial two-year delay, some portion of the three-year delay, and the final eight-month delay should be weighed against the State.

This Court, however, wrote, "In total, we find the original two-year period of delay from arrest until October 31, 2019, should be weighed against the State, although with the caveat, as discussed above, that the defense was not prepared to proceed with a trial during the entirety of that period." State v. Dubois, No. 2023-001307, 2026 WL 2593340, at *4 (S.C. Ct. App. Sept. 2,

2026). While the Court correctly weighed the initial two-year delay against the State, the caveat assuming that the defense was not prepared to proceed has no place in this analysis. As discussed above, the fact that Petitioner was denied representation during the first two-year delay should be weighed against the State. See Vermont v. Brillon, 556 U.S. 81, 94, 129 S. Ct. 1283, 1292, 173 L. Ed. 2d 231 (2009)("The general rule attributing to the defendant delay caused by assigned counsel is not absolute. Delay resulting from a systemic "breakdown in the public defender system," 183 Vt., at 479 – 480, 955 A.2d, at 1111, could be charged to the State. Cf. Polk County, 454 U.S., at 324–325, 102 S.Ct. 445.").

As to the second three- year delay period, respectfully, this Court misapprehended this time frame by not weighing some of the three-year delay from October 31, 2019, until October 2022, against the State when the whole three-year period should not be attributed to the pandemic. Additionally, this Court misapprehended the final time frame by not weighing the eight-month delay period between November 2022, and the trial on July 31, 2023, against the State when continuances were needed because the State failed to analyze evidence and the jail failed to provide correct medications. The initial two-year delay, some portion of the three-year delay, and the final eight-month delay of the overall almost six-year delay in trying the case is wholly attributable to the State and that delay should be weighed heavily against the State.

2. The Accused's Assertion of the Right to a Speedy Trial

As to the third Barker factor, the accused's assertion of the right to a speedy trial, Petitioner first asserted his right to a speedy trial in his letter to the clerk of court dated September 13, 2017. In the letter Petitioner wrote, "I want to file for a fast and speedy trial.

Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). It is unclear when counsel was appointed, but Petitioner was effectively without representation for two years despite his request for representation in his letter to the Jasper County Clerk of Court filed September 13, 2017, and numerous attempts to contact the public defender. (R. p. 1189; R. p. 6, lines 5-12). In a subsequent letter to the clerk of court dated September 13, 2019, Petitioner wrote that he had filed a motion for a speedy trial two years earlier. He also wrote that had never met or heard back from his public defender. (R. p. 1191).

The judge failed to address the two *pro se* letters in the written order denying defendant's motion to dismiss. (R. p. 1201, Order Denying Defendant's Motion to Dismiss). The judge erred in refusing to consider the *pro se* assertion of the right to a speedy trial when Petitioner was effectively deprived representation. In the written order the judge referenced the hearing before Judge Cothran on October 31, 2019, where the State indicated the plan to try the case in the first six months of 2020. (R. p. 1205). The judge wrote:

> Of course, neither the State nor Judge Cothran were aware that we would enter a global pandemic in that time frame.
>
> The Court notes that since that time, even following a resumption of jury trials as the pandemic began to wane, the Defense has never filed a written motion for a speedy trial. The Defendant has made reference to his desire for one during several bond hearings, but the present motion to *dismiss* the case is the first filing on the subject.
>
> I find the Defendant has asserted his right, but that the State has never been subject to an order to try the case by a particular date. I also find that the Defendant and his counsel were satisfied with the previous trial dates in November of 2022, December of 2022, and January of 2023, prior to the continuances which were granted on each occasion.

(R. p. 1205). The judge correctly found that Petitioner asserted his right to a speedy trial. The judge erred in not weighing this factor in favor of Petitioner. Defense counsel did not need to file a written motion for a speedy trial when Petitioner had already requested a speedy trial.

There is no requirement that a judge order the State to try the case by a particular date in order to prevail on a motion to dismiss based on a speedy trial violation. There is no requirement that a defendant assert the right to a speedy trial, although the Petitioner in the present case asserted his right and then filed a motion to dismiss based on the violation of the speedy trial right.

In Barker the Court wrote:

> We reject, therefore, the rule that a defendant who fails to demand a speedy trial forever waives his right. This does not mean, however, that the defendant has no responsibility to assert his right. We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right. Such a formulation avoids the rigidities of the demand-waiver rule and the resulting possible unfairness in its application. It allows the trial court to exercise a judicial discretion based on the circumstances, including due consideration of any applicable formal procedural rule. It would permit, for example, a court to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed.It would also allow a court to weigh the frequency and force of the objections as opposed to attaching significant weight to a purely pro forma objection.

Barker v. Wingo, 407 U.S. 514, 528-529, 92 S.Ct. 2182, 2191 (1972).

Petitioner asserted his right to a speedy trial on September 13, 2017, following his arrest in August of 2017. (R. p. 1189). Two years later on September 13, 2019, Petitioner, having not received any response from the public defender, wrote to the clerk of court again and advised that he moved for a speedy trial two years ago. (R. p. 1191). The written order denying the motion to dismiss references the fact that Petitioner expressed his desire for a speedy trial during bond hearing. As the South Carolina Supreme Court in Hunsberger wrote, citing Barker, "The accused's assertion of the right, however, is entitled strong evidentiary weight in determining whether the accused is being deprived of the right. Barker, 407 U.S. at 531–32, 92 S.Ct. 2182." 418 S.C. at 349, 794 S.E.2d at 375. Petitioner asserted his right to a speedy trial and the assertion of the right weighs in favor of Petitioner.

In affirming this Court wrote:

> However, despite defense counsel's assertions that she repeatedly asked the State about the status of this case amid multiple continuances, she did not file a formal motion to dismiss until almost three-and-a-half years later in May 2023, although she was unquestionably on notice of this issue from the time of her appointment. Additionally, Dubois's trial was held within two-and-a-half months after he filed his motion. See State v. Robinson, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) ("Robinson maintains he first asserted his right to a speedy trial in 1994 by writing letters to the solicitor and Chief Administrative Judge indicating he was ready for trial. However, we conclude Robinson first asserted his right to a speedy trial in May 1995 when he filed the formal motion to dismiss. Robinson's trial began only ten months after his first motion was filed."); State v. Barnes, 431 S.C. 66, 88, 846 S.E.2d 389, 400 (2020), *aff'd as modified*, 436 S.C. 202, 871 S.E.2d 421 (2022) (indicating the fact that Barnes was tried approximately two months after he filed his motion to dismiss contributed to a finding that his rights were not violated). Thus, we find the defense's failure to diligently pursue a formal hearing on the speedy trial issue weighs against a finding that Dubois's rights were violated. *See, e.g.*, Waites, 270 S.C. at 108-09, 240 S.E.2d at 653 ("Apart from [Waites's] initial request for a preliminary hearing, there is no record of an actual demand by Waites for a speedy trial. We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial.").

State v. Dubois, No. 2023-001307, 2026 WL 2593340, at *4 (S.C. Ct. App. Sept. 2, 2026).

Respectfully, while this Court acknowledged the September 13, 2017, *pro se* letter to the clerk, this Court misapprehended its significance by not considering the letter an assertion of Petitioner's speedy trial right. Petitioner's letter stating he wanted to file for a fast and speedy trial is distinguished from the letter in Robinson that just indicated he was ready for trial. In State v. Waites, 270 S.C. 104, 109, 240 S.E.2d 651, 653 (1978), the Court wrote, "We do not believe respondent's request for a preliminary hearing substitutes as a demand for a speedy trial. As stated by the Illinois Court in People v. Wyatt, 47 Ill.App.3d 686, 8 Ill.Dec. 135, 137, 365 N.E.2d 373, 375 (1977): 'Merely indicating readiness to proceed with trial does not in itself constitute a formal demand for trial.' " Petitioner's letter was an assertion of his right to a speedy

trial, not an indication of readiness to proceed to trial as in Robinson and not a request for a preliminary hearing as in Waites.

The present case is clearly distinguished from Barnes where Barnes argued he first asserted his right to a speedy trial in his previous trial that was reversed. The Court disagreed and found Barnes first asserted his speedy trial rights for the retrial on August 14, 2017, and the retrial occurred approximately two months later. Petitioner asserted his right to a speedy trial in September of 2017, and was not tried until July of 2023.

3. Prejudice

This Court addressed prejudice writing:

> Here, Dubois asserts he suffered "actual prejudice in the form of oppressive pre-trial incarceration ... as well as presumptive prejudice because of the almost six-year delay."[3] We acknowledge the United States Supreme Court's reminder in Smith v. Hooey "that delay in bringing [an incarcerated] person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge." 393 U.S. 374, 378 (1969). We note, however, that although Dubois asserted in his pro se letters that he was being held in a more restrictive setting due to his arrest on this charge, he offered no other evidence of "oppressive pre-trial incarceration." Further, Dubois has not asserted that this circumstance made him unable to assist in preparing his defense; in fact, it is clear from the record that he was able to send letters and communicate with counsel throughout his incarceration. Moreover, as discussed above, we do not attribute the entirety of that delay to the State, and presumptive prejudice alone is insufficient. See Hunsberger, 418 S.C. at 351, 794 S.E.2d at 376 ("[P]resumptive prejudice cannot alone support a speedy trial claim ....").

State v. Dubois, No. 2023-001307, 2026 WL 2593340, at *5 (S.C. Ct. App. Sept. 2, 2026).

Respectfully, this Court overlooked the fact that a defendant is not required to show prejudice affirmatively to win a speedy trial claim. Moore v. Arizona, 414 U.S. 25, 26 (1973); see also United States v. Ferreira, 665 F.3d 701, 706-707 (6th Cir. 2011); U.S. v. Molina-Solorio, 577 F.3d 300, 307-308 (5th Cir. 2009); United States v. Frith, 181 F.3d 92 (4th Cir. 1999); United States v. Clark, 83 F.3d 1350, 1353-1354 (11th Cir. 1996). 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 because of the excessive almost six-year delay.

In Barnes this Court wrote:

> "[A]n accused can assert actual prejudice or presumptive prejudice as the result of the State's violation of his right to a speedy trial." Hunsberger, 418 S.C. at 351, 794 S.E.2d at 376. "Actual prejudice occurs when the trial delay has weakened the accused's ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." Id. "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. "While presumptive prejudice cannot alone support a speedy trial claim, it is part of the mix of relevant facts, and its importance increases with the length of time." Id.

431 S.C. at 89, 846 S.E.2d at 401. Petitioner showed presumptive prejudice because of the almost six-year delay.

Additionally, Petitioner showed actual prejudice in the form of oppressive pre-trial incarceration because of the State's violation of Petitioner's speedy trial rights. As a result of

the pending charge, Petitioner's conditions in prison on the unrelated charge worsened. In his letter filed with the clerk dated September 13, 2017, Petitioner wrote, "Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). In his letter filed with the clerk dated September 13, 2019, two years after the first letter and after not receiving any response from the public defender, Petitioner wrote, "I am way past sick and tired of being on lock up for a crime I did not commit and being denied proper legal counsel." (R. p. 1191). Petitioner suffered prejudice from the delay in the form of oppressive pre-trial incarceration that required lock down while serving the sentence on the unrelated charge.

Respectfully, this Court misapprehended the prejudice showing by seeming to require that Petitioner show the oppressive pre-trial incarceration prevented him from assisting in his defense. This Court wrote, "Further, Dubois has not asserted that this circumstance made him unable to assist in preparing his defense; in fact, it is clear from the record that he was able to send letters and communicate with counsel throughout his incarceration." First, as discussed above, a defendant is not required to show prejudice affirmatively to win a speedy trial claim. Second, in Smith v. Hooey, 393 U.S. 374, 378–79, 89 S. Ct. 575, 577, 21 L. Ed. 2d 607 (1969) (n. 7, 8 omitted), the United States Supreme Court wrote:

> At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from 'undue and oppressive incarceration prior to trial.' But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge. First, the possibility that the defendant already in prison might receive a sentence at least partially concurrent with the one he is serving may be forever lost if trial of the pending charge is postponed. Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pendency of another criminal charge outstanding against him.

> And while it might be argued that a person already in prison would be less likely than others to be affected by 'anxiety and concern accompanying public accusation,' there is reason to believe that an outstanding untried charge (of which even a convict may, of course, be innocent) can have fully as depressive an effect upon a prisoner as upon a person who is at large.

Petitioner's letters demonstrated oppressive pre-trial incarceration as discussed in Smith v. Hooey.

Balancing the Barker factors, the initial two-year delay, some portion of the three-year delay, and the final eight-month delay of the overall almost six-year delay in trying the case is wholly attributable to the State and that delay should be weighed heavily against the State. The reasons for the delay must be weighed against the State. Petitioner's assertion of his right to a speedy trial weighs in Petitioner's favor. Petitioner showed actual and presumptive prejudice, weighing in Petitioner's favor. The weighing of the Barker factors shows that the State violated Petitioner's speedy trial rights. The violation requires dismissal of the charges. Counsel respectfully requests rehearing and asks this Court to reverse the decision of the circuit court to deny the motion to dismiss based on the violation Appellant's right to a speedy trial.

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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

This 17th day of September, 2026.

RECEIVED
Sep 17 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN WALTER DUBOIS III,

PETITIONER

APPELLATE CASE NO. 2023-001307

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-entitled case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Benjamin Walter Dubois, #295690, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 17th day of September, 2026.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

The South Carolina Court of Appeals

The State, Respondent,

v.

Benjamin Walter Dubois, III, Appellant.

Appellate Case No. 2023-001307

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:
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Kathrine Haggard Hudgins, Esquire
Donald J. Zelenka, Esquire

FILED
Oct 15 2026

Isaac McDuffie Stone, III, Esquire
The Honorable Carmen T. Mullen