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Unpublished Opinion No. 2026-UP-432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.