STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County
R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

vs.

MAURICE A. ODOM,

Appellant.

Appellate Case No. 2015-001294

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072
(803) 359-8352

ATTORNEYS FOR RESPONDENT

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II.

The trial court did not err in denying the motion to dismiss the case based on speedy trial grounds. Appellant caused a substantial portion of the delay. Appellant did not move for a speedy trial until the start of his second trial. Appellant failed to establish prejudice attributable to the delay. Further, Appellant failed to show that the State intentionally or maliciously delayed trial.

STATEMENT OF THE CASE

Appellant Maurice Odom was tried and convicted by a jury of second degree burglary on June 8-10, 2015, before the Honorable R. Knox McMahon. Judge McMahon sentenced Odom to life without parole pursuant to S.C. Code §17-25-45.

STATEMENT OF FACTS

On October 17, 2007, Appellant Odom and his half-brother, dressed in dark clothes, masks, and gloves, threw cinder blocks through the glass door of the Johnston IGA and stuffed ninety cartons of cigarettes in lawn bags before fleeing. This was captured on motion-activated video.

Investigator Lamaz Robinsion described what the video depicted as follows:

> [T]wo individuals . . . entered the store by throwing a brick-like block towards the window. On the first attempt, it was not successful and the second attempt it was successful where the brick went through the window and then two individuals entered the store. At that point in time, one of the individuals had a blue in color shirt with like some blue in color pants and the other individual had on some black in color shirt like with a black in color pants.
>
> Both individuals had what appeared to be ski masks over their face and gloves over their hands. The one in the black shirt entered the store first with the one in the blue shirt in pursuit behind him. They went into the store and then the next caption that comes out on the video is when they're exiting the store. During the time while they was in the store, they, when they was entering into the store you could see what appeared to be empty . . . black lawn trash bags . . . . When they [exited] the store, it appeared that those bags had been filled.

Tr. p. 281, line 8 – p. 282, line 2.

Tayla Barton, the store manager, was the State's first witness. Shortly before 2:00 a.m. on October 17, 2007, Barton received a phone call from the store's alarm company. Law enforcement was already present when she arrived at the store. The glass in the double-door entrance was shattered and cinder blocks lay on the store floor. The shelves for cigarettes were empty, ninety cartons of cigarettes were missing. Barton showed law enforcement the surveillance footage from the action-activated surveillance camera. Tr. pp. 156-64; p. 169.

Officer Shawn Campbell responded to the call. The alarm sounded at 1:44 a.m., he arrived at 1:46 a.m. He summoned the store manager to the store. Tr. pp. 180-83. Deputy Chris Miller from the Saluda County Sheriff's Office was called into Edgefield County to help set up a perimeter in the vicinity of the Johnstown IGA. He located a white Cadillac backed into the woods off Highway 191. When Deputy Miller shined the spotlight on the car, he saw two people changing out of clothes. Upon being detected, they fled into the woods. Deputy Miller stayed by the Cadillac to wait for

more law enforcement to arrive. Tr. pp. 190-93.

Arriving at 2:30 a.m., Johnstown Police Chief Chris Aston was briefed about the incident, including the video and the Cadillac. Chief Aston went over to the Cadillac and waited for the dog tracking team to respond. Tr. pp. 197-200. The dogs were unable to pick up a scent. Tr. p. 206.

Officers collected the clothing left outside the Cadillac. Tr. p. 203. Additionally, officers determined the abandoned Cadillac needed to be towed, and pursuant to policy, conducted an inventory search of the vehicle. Tr. p. 204-05. During the inventory search of the Cadillac, law enforcement found two cell phones and a wallet. The wallet contained Odom's South Carolina Driver's license, his North Carolina Sheriff's identification card, an employer's identification card, Odom's birth certificate, and his social security card. Tr. pp. 215-17.

The Cadillac bore only paper dealer tags, so officers could not run a license plate check. However, the search yielded a bill of sale to Demetrius Odom on September 22, 2007, by Duke Boys Auto Sales. Tr. pp. 224-25. Jesse James Dukes, owner of Duke Boys Auto Sales, testified he sold the Cadillac to Temetrious Odom. Appellant Odom was with her when he sold her the Cadillac. Dukes knew Temetrious because she was from his hometown. He also knew Appellant Odom. Tr. pp. 313-14. Chief Aston turned the case over to Investigator Lamaz Robinson. Tr. p. 315.

Chief Lamaz Robinson, Chief Aston's successor, was an investigator at the time of the burglary. Chief Robinson arrived at the scene and examined the video. He then investigated the abandoned Cadillac. Chief Robinson noted clothes outside the car by the door. He also examined one of the cell phones. Chief Robinson discovered the phone was on because it lit up when he held it. The cell phone advised that it was owned by Maurice Odom. The other cell phone contained a

contact list with a number for "Momma." The officers called the number, and Co-defendant Brandon Donaldson's mother answered, which is how Donaldson was caught for his part in the burglary. Tr. p. 254; pp. 278-288. The clothes found outside the Cadillac included a blue shirt, a black shirt, dark jeans, and a pair of gloves. Tr. p. 299. DNA found on some other clothes discovered inside the Cadillac were a 1 in 140 quadrillion match to Odom's DNA. Tr. pp. 369-70.

Donaldson is Odom's half-brother. Donaldson could not give an exact count on the number of his siblings, seventeen or eighteen. He testified Odom picked him up and they drove from Blackville in Barnwell County where they lived. Tr. pp. 243-44. Donaldson did not seem to know the specifics of what they were planning, but he knew they were about to make some money by doing "something crazy." Tr. p. 270, lines 1-15. They parked the Cadillac in the bushes. They were wearing dark clothes, Donaldson identified the blue shirt that was State's Exhibit 17, and identified himself as the blue-shirted burglar in the store video. They smashed the glass door to the grocery store. They stuffed their bags full of cigarettes. They ran to the Cadillac and were taking off their burglary clothes when a light shined on them. Donaldson testified he left his bag of cigarettes behind and surmised Odom must have grabbed the bag. They both ran away. Although not expressly stated, it seems they split up. Donaldson called a friend to pick him up. Tr. pp. 244-53.

ARGUMENT

I.

The trial court did not err in sentencing Appellant to life without parole based on Appellant's 1994 convictions for CSC with a minor and burglary because no finding was made by the original sentencing court that the sexual conduct for Appellant's CSC conviction was consensual and because Appellant's 2015 burglary conviction supplied the requisite second strike regardless of whether the CSC conviction could be used under the recidivist statute.

Odom argues the trial court erred in finding Odom's prior conviction for criminal sexual conduct with a minor in the second degree could be used to enhance his sentence to life without parole. The trial court did not err because the original sentencing court did not make a finding that the sexual conduct between Odom and his victim from the prior conviction was consensual. Further, Odom pled guilty to a violent burglary shortly after he was served with the notice of life without parole, therefore Odom gained a sufficient amount of strikes for the State to seek, and the trial court to sentence, Odom to life without parole.

At the time of the offense, under S.C. Code §16-3-655(3), a person was guilty of criminal sexual conduct in the second degree if the person engaged "in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim."

S.C. Code §17-25-45, the life without parole statute, was substantially amended by 1995 Act. No. 83, §18. As part of this amendment, the legislature enumerated a number of offenses as either serious or most serious offenses. In particular, under §17-25-45(C)(1), the legislature specified the conditions under which criminal sexual conduct with a minor would be considered a serious offense:

> 16-3-655 Criminal sexual conduct with minors, except where evidence is presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3).

S.C. Code §17-25-45 (Supp. 1996).

This identical language remains in the current statute, even though section 16-3-655(3) is no longer correct citation. S.C. Code §17-25-45 (Supp. 2015). The legislature subsequently amended S.C. Code §16-3-655 in 2005, and redesignated paragraphs (1) to (3) as paragraphs (A) to (C). 2005 Act. No. 94 §1. In 2006, the legislature amended S.C. Code § 16-3-655 to include what is commonly referred to as the "Romeo provision," that only becomes applicable if the actor is under eighteen years of age and the victim is fourteen or older. 2006 Act No. 342 § 3. Further, §16-3-655(C) was redesignated as §16-3-655(B)(2). Id. However, the legislature failed to update S.C. Code § 17-25-45 to reflect the structural changes in S.C. Code 16-3-655 in either the 2005 or 2006 amendments.[1]

Judge McMahon did not err in finding that the CSC conviction was appropriate for enhancement because under the plain language of §17-25-45, exclusion as a most serious offense only occurs when "the court, after the conviction, **makes a specific finding on the record** that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was

[1] On a related note, at the time of sentencing on August 12, 2002, a person convicted for second degree criminal sexual conduct with a minor under §16-3-655(3) was automatically required to register on the sex offender registry unless "the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16-3-655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article." S.C. Code §23-3-430 (Supp. 2001). Accordingly, Odom was too old at the time of the offense to qualify for the registry statute's Romeo clause and was required to register on the registry.

younger than the actor, as contained in Section 16-3-655(3)." (Emphasis added). In the instant case, after accepting the plea, Judge Brown did not make any finding on whether or not the offense resulted from consensual conduct. Further, the plain language of the statute dictates any finding shall be made by "the court, after conviction," a clear reference to the presiding judge over the conviction and sentence, and not a judge presiding over a subsequent charge. Seckinger v. The Vessel, Excalibur, 326 S.C. 382, 483 S.E.2d 775 (Ct. App. 1997) (Statutory language should be given its plain and ordinary meaning unless something else in the statute requires an alternative meaning).

Additionally, life without parole was required because Odom gained an additional conviction for second degree burglary that Judge McMahon erroneously refused to consider. Notice for life without parole was served on August 14, 2014. On January 5, 2015, Odom pled guilty to burglary in the second degree, violent offense, in Newberry County before the Honorable Eugene C. Griffith, Jr. Under §17-25-45(H), the solicitor is required to serve written notice that the State is seeking life without parole on the defendant and the defendant's attorney ten days prior to trial. However, §17-25-45(H) **does not** contain a requirement that the defendant be informed of which of the defendant's prior convictions constitutes strikes or will otherwise be relied upon.

The solicitor in the instant case cited both State v. Burdette, 335 S.C. 34, 515 S.E.2d 525 (1999) and James v. State, 372 S.C. 287, 641 S.E.2d 899 (2007) when the solicitor argued that Odom's 2015 conviction provided an additional strike. Burdette controls the result. In Burdette, the appellant argued the notice of intent to seek life without parole under §17-25-45 required a listing of the offenses triggering the recidivist statute's application and without a list, he could not be "fully informed" of the nature of the charges against him. The Supreme Court observed that under §17-25-

45(H), the State is required to give notice to the defendant that it seeks to apply the recidivist statute, but noted the statute did not address the content requirement for the notice. Burdette, 335 S.C. at 38-39, 515 S.E.2d 525, 527-28. The Supreme Court rejected the appellant's argument, finding as follows:

> [S]ection 17-25-45(H) only requires the solicitor inform the defendant that the recidivist sentencing statute will be applied upon conviction. Specifically listing the triggering charge from the current case is unnecessary because Defendant has been fully informed of the charges against him in the indictment, and he has been informed that the State will apply the recidivist statute. Determining which of the indicted offenses triggers the statute merely requires looking at the list of offenses listed in section 17-25-45.

Id. at 39-40, 515 S.E.2d at 528, accord James v. State, 372 S.C. 287, 295, 641 S.E.2d 899, 905 (2007) ("[S]o long as the defendant and his counsel, at least ten days prior to trial, possess actual notice of the State's intention to seek a sentence under South Carolina's recidivist statute, the statute has been satisfied.").

In the instant case, Odom did not contest that he pled to a serious offense only a few months prior to trial and after he was already served with notice the solicitor was seeking life without parole, so as a matter of law, Judge McMahon should have considered the 2015 burglary conviction as a strike, thus meeting the three strikes provision of §17-25-45.

Accordingly, Odom was properly sentenced to life without parole under §17-25-45 because: (1) no finding was made that Odom's CSC conviction stemmed from consensual conduct and (2) the 2015 burglary conviction along with the 1994 burglary conviction provided the requisite strikes to trigger a life without parole sentence, regardless of whether the CSC conviction was sufficient under the recidivist statute.

II.

The trial court did not err in denying the motion to dismiss the case based on speedy trial grounds. Appellant caused a substantial portion of the delay. Appellant did not move for a speedy trial until the start of his second trial. Appellant failed to establish prejudice attributable to the delay. Further, Appellant failed to show that the State intentionally or maliciously delayed trial.

Odom failed to appear for court. He later changed attorneys several times. Odom was frequently jailed in other counties as he accumulated new burglary charges elsewhere. Odom began his second trial moving to relieve his attorney and hire a prior attorney. Presumably, if his motion was granted, trial would have been delayed further. Upon denial of this motion, Odom's counsel moved, for the first time, for a speedy trial although he was unable to show actual prejudice from the delay. The trial court did not err in denying Odom's motion to dismiss based on an alleged violation of his right to a speedy trial.

An accused is entitled to a speedy trial under the Sixth and Fourteenth Amendments of the United States Constitution and under Article 1, Section 14, of the Constitution of South Carolina.

> Whether or not a person accused of crime has been denied his constitutional right to a speedy trial is a question to be answered in the light of the circumstances of each case. A speedy trial does not mean an immediate one; it does not imply undue haste, for the state, too, is entitled to a reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay.

Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966). The United States Supreme Court (USSC) explained: "The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice." Beavers v. Haubert, 198 U.S. 77, 87 (1905); see also, Barker v. Wingo, 407 U.S.

514, 522 (1972) (finding "any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case").

The South Carolina Supreme Court observed the following:

> The Supreme Court of the United States has deemed this right "generically different from any of the other rights enshrined in the Constitution for the protection of the accused." . . . This is due in large part to the reality that "[d]elay is not an uncommon defense tactic" and "deprivation of the right to a speedy trial does not per se prejudice the accused's ability to defend himself."

State v. Langford, 400 S.C. 421, 440-41, 735 S.E.2d 471, 481 (2012) (quoting Barker).

The Barker court identified several factors in determining whether a defendant was denied the right to a speedy trial including: (1) the length of delay, (2) the reason the government uses to explain the delay, (3) when and how the defendant asserted his speedy trial right, and (4) the prejudice to the defendant. Barker, 407 U.S. at 530; see also, State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (citing factors for consideration). "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." Barker, 407 U.S. at 530.

In the instant case, the delay is sufficient to trigger further review. See State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (finding delay of two years and four months sufficient to trigger further review). The delay was substantial, almost six years until the first trial, under two years thereafter for the next. The crime occurred October 17, 2007, and Odom was arrested on October 30, 2007. Odom's second trial started on June 8, 2015, seven years and eight months later.

However, the delay was occasioned by several factors. The State noted Odom made bond after being arrested on the charges. Odom bonded out in February 2008. Tr. p. 61, lines 6-8; p. 64,

line 21. Odom amassed new charges in other counties at a dizzying rate and was incarcerated on some of those other charges. Odom was not incarcerated, nor did the State seek to revoke his bond, on the Edgefield charges. Tr. p. 61. The State noted that Odom **never** filed a motion for speedy trial. Tr. p. 61.

Odom managed to stay out of trouble for about seven months after making bond, until he was arrested for a Lexington County burglary, for which he received a bond in September 2008. The solicitor noted that Odom also had Barnwell charges pending that predated these charges. He subsequently was charged in Laurens and Newberry counties to boot. Judge Keesley set a curfew in lieu of revoking his bond after Odom picked up new charges in Lexington County. Tr. pp. 65-66. Odom was first represented by Greg Seigler, Esquire, but Odom subsequently retained Marion Moses, Esquire, for his 2008 bond hearing. Tr. p. 66. The prosecution noted some uncertainty existed as to whether Moses would continue to represent Odom: "We at first thought Mr. Moses would have him on all of this, and he ended up just representing him for the purposes of the bond hearing, Your Honor." Tr. p. 66, lines 10-17.

Notably, Odom failed to appear on February 12, 2009. At that point, the prosecution dismissed the indictments. Odom failed to provide a reason for his failure to appear. Tr. pp. 66-67; p. 70, lines 23-25. The trial court noted the failure to appear and addressed it to Odom's attorney, observing, "He could or could not have been in jail. I don't know the answer to that question, but he wasn't here." Tr. p. 70, line 23 – p. 71, line 2. Rather than offer an explanation for the failure to appear, Odom's counsel merely confirmed the trial court's observation with "Yes, sir." Tr. p. 71, line 3. Accordingly, it seems likely Odom failed to appear not because he was incarcerated

elsewhere, but because he chose not to appear. Nonetheless, Odom became a fugitive on February 12, 2009, and no evidence indicates Odom made any attempt to contact the Solicitor's Office, the Court, or the Clerk of Court after February 2009.

Odom was finally incarcerated in 2011 on charges in the Eighth Judicial Circuit. Tr. p. 67. The instant case was called for trial on August 6, 2013 and ended in a mistrial. Tr. p. 62. The State noted it attempted to call the case prior to 2013, but the case was delayed because Odom changed lawyers from Seigler, who was appointed, to Jerry Screen, Esquire, who Odom's family hired. The State noted the discovery process started all over. Tr. p. 62, lines 7-10. After the mistrial, Screen was relieved, stating he was only retained to try the case one time. Apparently that motion was granted and the public defender's office was appointed. Tr. p. 62.

Accordingly, the State offered a reasonable accounting for the delays, which Odom's counsel did not refute. They include the fact Odom was represented by three different attorneys prior to the August 2013 trial, and a fourth for the June 2015 trial. More importantly, Odom inexcusably failed to appear rendering himself a fugitive. The prosecution needed to dismiss the indictment. Tr. pp. 66-67; p. 70, lines 23-25.

In Smith v. State, 579 S.E.2d 829 (Ga. Ct. App. 2003), the defendant argued he was denied a speedy trial due to a nearly fourteen-year delay. The delay was occasioned by his failure to appear for trial. The Georgia Court of Appeals observed, "Smith, with full knowledge of his duty to report for trial, and the consequences of his failure to do so, left DeKalb County and failed to appear for trial. He avoided arrest on the outstanding bench warrant for almost 14 years." Id. at 406. Nonetheless, Smith argued that Georgia was negligent in tracking him down and the negligence

caused the delay and violation of his speedy trial rights. The court scoffed, "Criminal procedure is not a game, and one who fails to appear as noticed and leaves the prosecuting county will not be heard to complain that the State failed to thwart his wrongdoing." Id.

Odom also found himself in and out of a number of county jails. Vermont v. Brillon, 129 S.Ct. 1283, 1290 (2009) (noting "delay caused by the defense weighs against the defendant . . ."); Pittman, 373 S.C. 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.").

In contrast, the record is devoid of any evidence that the prosecution intentionally or maliciously caused delays. Pittman, 373 S.C. at 552, 647 S.E.2d at 156 ("The record does not reflect any intentional or malicious delays by the prosecution, nor does the record reflect any negligent prosecutorial behavior in connection with this case."); State v. Robinson, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) (finding Robinson did not satisfy his burden of showing the delay resulted from neglect and willfulness of the State and there was no evidence the delay was willful or intentional).

More importantly, Odom never made a motion for a speedy trial until the day of his second trial. The New Mexico Supreme Court observed the following:

> Rights under this amendment are fundamental in nature so that a failure to assert them does not constitute waiver, but the timeliness and vigor with which the right is asserted may be considered as an indication of whether a defendant was denied needed access to speedy trial over his objection or whether the issue was raised on appeal as afterthought.

State v. Garza, 212 P.3d 387, 398 (N.M. 2009) (citing United States v. Netterville, 553 F.2d 903 (5th

Cir. 1977). Here, in the instant case, Odom forestalled trial to hire an attorney, went to trial, and only then on the eve of the second trial, only after his motion to relieve counsel and seek his private attorney once more, did Odom's counsel make a motion for speedy trial. The eleventh-hour motion was not seeking redress of a constitutional wrong, but was the last ditch effort for Odom to avoid the consequences of his failed career as a burglar. Robinson, 335 S.C. at 626, 518 S.E.2d at 272 (finding speedy trial rights were not violated where the case was tried within ten months after the first formal motion was filed, even though the case took five years to go to trial); Harris v. State, 827 S.W.2d 949, 957 (Tx. Ct. App. 1992) (finding "appellant's lack of a timely demand for a speedy trial indicates strongly that he did not really want a speedy trial"); Sosniak v. State, 734 S.E.2d 362, 369 (Ga. 2012) (finding no speedy trial violation where defendant "waited over five years until the trial court would no longer grant his requests for a continuance to assert his right to a speedy trial. The trial court did not err in finding this eve-of-trial-request untimely, and it properly weighted this factor against [defendant]").

The State called the case once prior to August 2013, tried the case in August 2013, and tried the case again twenty-two months later. Odom was represented at all times, and at no time did any of his attorneys – even the one finally making the motion on the day of trial – see fit to move for a speedy trial. The record suggests Odom did not really want a speedy trial, he just wanted a windfall. See Barker at 536 (explaining "barring extraordinary circumstances, we would be reluctant indeed to rule that a defendant was denied this constitutional right on a record that strongly indicates, as does this one, that the defendant did not want a speedy trial."). Indeed, the trial starts with Odom seeking a new attorney, or rather, for the family to hire back Screen. Odom waited until May 27, 2015, to

file the motion to relieve counsel. So presumably, Odom actually wanted a continuance, which is the opposite of a speedy trial. Tr. pp. 10-11.

In considering the fourth prong of the test, whether Odom suffered prejudice, Barker is again instructive:

> Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past.

Barker, 407 U.S. at 532.

The time spent incarcerated pre-trial on very serious charges should not alone constitute sufficient prejudice to justify dismissal of the case. See State v. Kennedy, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (Ct. App. 2000) ("We are unwilling, however, to hold that the prejudice he suffered by his pretrial incarceration is sufficient to warrant dismissal of his charges for a speedy trial violation."). Of course, there was little pre-trial detention in this case because Odom was released on bond. He utilized his time to accumulate pre-trial detention in other counties. Nor should Odom's unfocused remonstrations – made while he was attempting to receive new counsel and therefore further delay trial – be taken seriously. Odom's willingness to accumulate new charges in other counties belies anxiety against this lone charge from Edgefield. See Taylor v. United States, 471 A.2d 999, 1003 (D.C. 1983) ("A bare assertion that one has been upset or concerned about a pending criminal prosecution is not sufficient. . . . It does not escape the attention of this court that the

appellant has a criminal record which dates back to 1955. Consequently, it is unlikely that at this late stage in appellant's life, the prospect of a pending prosecution would result in such acute physical maladies.").

Odom's primary claim for prejudice was the death, within the first year of his arrest, of one of Odom's brothers. According to Odom's attorney, the brother died in a car accident in June or July 2008, eight or nine months after Odom was arrested for the burglary charge. Tr. p. 68. Odom claims he could have been a potential witness, but fails to offer any indication as to what the brother might have testified to. Taylor, 471 A.2d at 1003 ("It is insufficient for a defendant merely to assert that a witness, who has now become unavailable, was necessary to the preparation of his defense." (citation omitted)). Further, due to the closeness in time between the death and the original charge, the later pre-trial delay cannot seriously be attributed to the unforeseen death occurring within a year of the burglary. Therefore, the cause of any conceivable prejudice was mere coincidence and not any unreasonable delay.

Odom caused much of the delay. He never moved for a speedy trial until the day he was actually being tried, the second time. He started out seeking to delay trial, and failed to provide evidence of actual prejudice from the delay. No evidence was presented showing any delay which might arguably be attributed to the State was intentional or malicious. Accordingly, the trial court did not err in denying the motion for speedy trial. Langford, 400 S.C. at 442, 735 S.E.2d at 482 (finding the trial court's ruling on a motion for speedy trial will not be reversed absent an abuse of discretion); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (noting a trial court abuses its power of discretion when it commits an error of law or when there has been a factual conclusion

without any evidentiary support).

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: _____
DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 28, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Edgefield County
The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No: 2015-.01294

THE STATE,

Respondent,

v.

MAURICE ANTHONY ODOM,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record Kathrine H. Hudgins, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

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

This 28th day of September, 2016.

Anne A. Mueller
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

September 28, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

Re: The State v. Maurice A. Odom
Appellate Case No: 2015-001294

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the Initial Brief of Respondent and Designation of Matter, including proof of service, in the above-referenced case.

Sincerely,

David Spencer
Senior Assistant Attorney General
S.C. Bar No: 68571

DS/aam
Enclosures

cc: Kathrine H. Hudgins (with two copies)
Ms. Trisha Allen