

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Charleston County

Robin B. Stilwell, Circuit Court Judge

RECEIVED

APR 26 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARK LORENZO BLAKE, JR.,

APPELLANT

APPELLATE CASE NO. 2016-001715

ANDERS BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF THE FACTS3

ARGUMENT

The court’s failure to dismiss the indictments violated Appellant’s state and federal constitutional rights to a speedy trial and our Supreme Court’s holding in *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012), when Appellant was arrested on April 15, 2012, indicted on August 6, 2012, but not tried until over four years later on August 8, 2016, particularly where the state first tried Appellant for offenses that occurred after Appellant’s arrest in this case.....7

CONCLUSION.....12

PETITION TO BE RELIEVED AS COUNSEL13

TABLE OF AUTHORITIES

Cases

<u>Anders v. California</u> , 386 U.S. 738, 87 S.Ct. 1396 (1967).....	13
<u>Barker v. Wingo</u> , 407 U.S. 514, 522 (1972).....	9, 10
<u>Doggett v. United States</u> , 505 U.S. 647, 652 (1992).....	9, 10, 11
<u>Hagy v. Pruitt</u> , 331 S.C. 213, 500 S.E.2d 168 (Ct. App. 1998).....	7
<u>Klopfert v. North Carolina</u> , 386 U.S. 213 (1967).....	8
<u>State v. Brazell</u> , 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997).....	9, 10
<u>State v. Cooper</u> , 386 S.C. 210, 687 S.E.2d 62, 66 (Ct. App. 2009).....	10
<u>State v. Evans</u> , 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009).....	9
<u>State v. Foster</u> , 260 S.C. 511, 197 S.E.2d 280 (1973);.....	9
<u>State v. Hunsberger</u> , 418 S.C. 335, 794 S.E.2d 368 (2016).....	9
<u>State v. Langford</u> , 400 S.C. 421, 735 S.E.2d 471 (2012),	passim
<u>State v. Monroe</u> , 262 S.C. 346, 204 S.E.2d 433 (1974).....	9
<u>State v. Waites</u> , 270 S.C. 104, 240 S.E.2d 651 (1978).....	9, 10
<u>United States v. Ingram</u> , 446 F.3d 1332, 1340 (11th Cir. 2006).....	11
<u>United States v. Cope</u> , 312 F.3d 757 (6th Cir. 2002).....	10
<u>Vermont v. Brillon</u> , 556 U.S. 81 (2009).....	9
<u>Wheeler v. State</u> , 247 S.C. 393, 147 S.E.2d 627 (1966).....	8
<u>Williams v. Bordon's, Inc.</u> , 274 S.C. 275, 262 S.E.2d 881 (1980).....	7

Statutes

S.C. Code Ann. § 1-7-330.....	7
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Constitutional Provisions

S.C. Const. art. I, § 8.....	7
S.C. Const. art. I, § 14.....	8
S.C. Const. art. V, § 4.....	7
U.S. Const. amend. VI.....	8

STATEMENT OF ISSUE ON APPEAL

Did the court's failure to dismiss the indictments violate Appellant's state and federal constitutional rights to a speedy trial and our Supreme Court's holding in State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012), when Appellant was arrested on April 15, 2012, indicted on August 6, 2012, but not tried until over four years later on August 8, 2016, particularly where the state first tried Appellant for offenses that occurred after Appellant's arrest in this case?

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant on August 6, 2012 for trafficking in cocaine, unlawful carrying of a handgun, and possession of a stolen firearm. R. 399-400. His case was called to trial on August 8, 2016 before the Honorable Robin B. Stilwell, and a jury. R. 1. Assistant Solicitors Stephanie Linder and Lauren Frierson represented the state. R. 2. Appellant waived his right to counsel and represented himself. R. 2. Jason King was standby counsel. R. 2.

On August 9, 2016, the jury acquitted Petitioner of unlawful carrying of a handgun and possession of a stolen firearm, but found him guilty of trafficking in cocaine. R. 383, ll. 1-21. He was sentenced by Judge Stilwell to twenty five years' imprisonment. R. 395, ll. 14-18.

This appeal follows.

STATEMENT OF THE FACTS

Appellant, who represented himself, moved pretrial to dismiss the indictments in this case pursuant to State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) arguing the forty-eight month delay from the date of his indictment until his case was called to trial was unreasonable and violated his constitutional right to a speedy trial. R. 18, l. 11 – 19, l. 8.

Appellant was arrested for trafficking in cocaine, among other charges, on April 15, 2012 after he was stopped for speeding on Interstate 526 in Charleston County. R. 132, l. 10 – 133, l. 3. Appellant was indicted for these offenses on August 6, 2012, approximately four months after his arrest. R. 399-400.

While Appellant was incarcerated and awaiting trial, he filed three *pro se* motions for a speedy trial. These motions were filed on October 7, 2015, November 10, 2015, and June 1, 2016.¹ It does not appear that a hearing was ever held on Appellant's *pro se* motions nor did the trial court ever rule on these motions.²

Despite Appellant asserting his right to a speedy trial on numerous occasions, Appellant was not tried until *over four years* after he was indicted. Notably, he was incarcerated during the majority of this four year period awaiting trial after his bond was revoked.

¹ Undersigned counsel obtained these dates from the Charleston County Public Index. Counsel received copies of these speedy trial motions from the Charleston County Clerk of Court. However, the print on the copies counsel received was extremely light and not legible. An employee of the Charleston County Clerk of Court's Office told counsel that Appellant wrote these motions in pencil, which is why they are not legible when copied. Consequently, counsel requested these motions be transported to the Court instead of including them in the physical Record on Appeal.

² Appellant was represented by counsel at the time he filed these *pro se* motions.

For reasons that lack merit, the state tried Appellant on June 14, 2016, almost two months before Appellant's trial in this case, for a less serious offense that occurred ten months *after* his arrest for trafficking in cocaine.³ R. 401-402.

Appellant argued pretrial that his indictments should be dismissed due to the "prosecution's abuse of docket control" and failure to dispose of cases "in chronological order."⁴ R. 18, l. 19 – 20, l. 1. He maintained that the "prosecution deliberately neglected three counts of 48-month-old cases to resolve one 36-month-old case that was a less serious offense." He asserted that the state's "deliberate negligence" of his case caused "oppressive pretrial incarceration." He concluded "that the prosecution had ample time and opportunity to bring" his case to trial, but failed to do so because of its "ill motives." R. 20, l. 2 – 22, l. 1. Therefore, he requested the trial judge dismiss the indictments.

The assistant solicitor admitted, "Yes, this case in front of you is old," but blamed the lengthy delay on confusion related to Appellant's various charges and attorneys. She explained, "Mr. Blake [Appellant] was arrested in April of 2012 for trafficking and two gun charges; and then he was arrested in February of 2013 for multiple additional drug charges; then he was arrested in April of 2013 for failure to stop for a blue light and attempted murder." After Appellant was arrested for attempted murder, the state moved to revoke his bond, which was

³ Appellant was arrested on February 23, 2013 for possession with intent to distribute heroin. He was indicted for this offense on June 3, 2013. R. 401-402. The state tried Appellant for this charge two months before it tried him for trafficking in cocaine.

⁴ Appellant cited to the Disposition of Cases in General Sessions Order filed by our Supreme Court together with its opinion in State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012), in support of his argument. This order states, "Any cases, including non-track cases, pending four (4) or more years from the date of indictment by the Grand Jury shall be dismissed by the CJAP [Chief Judge for Administrative Purposes]." Appellant asserted that, pursuant to this order, his case should be dismissed because more than four years had passed from the date of his indictment. As noted later, this order was held in abeyance by a subsequent order from the Supreme Court.

granted. Consequently, Appellant has been continuously incarcerated since early April 2013. R. 22, ll. 5-19.

The solicitor maintained that at one point Appellant had four or five attorneys, including Carlton Elliot, Jason King, Jim Smiley, and Eduardo Curry. She claimed that in February 2014, she emailed all of Appellant's attorneys "a global offer trying to get [all of Appellant's pending charges] resolved." She also filed a motion that same month for "some sort of clarification of counsel" and a hearing was held before the Honorable Roger M. Young. Judge Young ordered Jason King to represent Appellant on all of his pending charges and relieved the other attorneys. R. 22, l. 20 – 23, l. 21.

However, shortly thereafter, the solicitor said she received a letter of representation from Ashley Ameika and Bill Runyon. Therefore, she began communicating with them and emailed them an offer in November 2014. She also scheduled a hearing for January 2015 to give Appellant an opportunity to accept or reject the plea offer. The solicitor explained that this hearing was ultimately rescheduled because Ameika and Runyon had a scheduling conflict. She rescheduled the hearing for April 2015. However, this hearing was also cancelled after Ameika and Runyon moved to be relieved as counsel because Appellant "had sought legal action against them saying they were not representing his interests." R. 23, l. 22 – 25, l. 10. Ameika and Runyon were ultimately relieved as counsel by the Honorable Kristi Lee Harrington in July 2015. Judge Harrington again appointed Jason King to represent Appellant on all of his pending charges. R. 23, l. 22 – 25, l. 22.

As far as the twelve month delay between July 2015 and August 2016 when Appellant was finally tried, the solicitor's only explanation was that she wished to try Appellant for the attempted murder offense, which was his most recent arrest, first before she tried him for

trafficking. However, the key law enforcement witness in that case was unavailable because he was attending the "ATF Academy in Glynco, Georgia for a six-month period." There were also out of state witnesses in that case that were difficult to locate.

Lastly, the solicitor claimed she tried Appellant for possession with intent to distribute heroin based on his arrest in February 2013 before his older trafficking charge because the officer for the trafficking offense had to travel from the upstate while the officers for the possession charge lived in town. R. 25, l. 23 – 28, l. 22.

The trial judge ultimately denied Appellant's motion to dismiss. He ruled, "I do not find that the State has abused its prosecutorial discretion and I have heard no articulation of any legal prejudice from the alleged delay. And on those bases, I will deny your motion." R. 29, ll. 13-19.

ARGUMENT

The court's failure to dismiss the indictments violated Appellant's state and federal constitutional rights to a speedy trial and our Supreme Court's holding in *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012), when Appellant was arrested on April 15, 2012, indicted on August 6, 2012, but not tried until over four years later on August 8, 2016, particularly where the state first tried Appellant for offenses that occurred after Appellant's arrest in this case.

In *State v. Langford*, 400 S.C. 421, 428-429, 735 S.E.2d 471, 475 (2012), our Supreme Court held that S.C. Code Ann. § 1-7-330, which vests control of the criminal docket in the circuit solicitor, violates the separation of powers principle embodied in Article I, § 8 of the South Carolina Constitution. The Court asserted that the court's power to hear and decide cases "carries with it the inherent power to control the order of its business to safeguard the rights of litigants." *Id.* at 429, 735 S.E.2d at 475 (quoting *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980)) (internal quotation marks omitted). "Setting the trial docket therefore is the prerogative of the court." *Id.* at 435, 735 S.E.2d at 478. The Court asserted that vesting the solicitors, who are members of the executive branch, "with the exclusive authority to perform an inherently judicial function unquestionably is a violation of the separation of powers." *Id.* (citing *Hagy v. Pruitt*, 331 S.C. 213, 222, 500 S.E.2d 168, 173 (Ct. App. 1998)). Consequently, the Court concluded that § 1-7-330 is unconstitutional beyond a reasonable doubt. *Id.* at 436, 735 S.E.2d 479

Together with the opinion in *Langford*, the Supreme Court issued administrative orders concerning the disposition and reconciliation of cases in the Court of General Sessions pursuant to the Court's authority outlined in Article V, § 4 of the South Carolina Constitution. These orders required all cases be assigned to a 180 day track. The orders further stated, "Any case, including non-track cases, pending four (4) or more years from the date of indictment by the Grand Jury shall

be dismissed by the CJPA [chief judge for administrative purposes], unless the Solicitor shall show good cause why it should not be dismissed.” However, the Court ultimately held these administrative orders in abeyance pending further action by the Court and directed that a committee be appointed to propose a plan for the implementation of the changes necessary to docket management in the Court of General Sessions.

As Appellant argued below, under these administrative orders, Appellant’s case should have been dismissed because it was pending for more than four years after Appellant had been indicted. However, these orders are still in abeyance today.

Despite our Supreme Court’s holding in Langford nearly five years ago, the solicitor still controls the criminal docket today. It was the solicitor who decided when to call Appellant’s case to trial and the order in which it was tried. While it is undisputable that the solicitors’ control of the docket is unconstitutional, the Supreme Court asserted in Langford that “[t]o warrant reversal, [a defendant] must demonstrate that he sustained prejudice as a result of the solicitor setting when his case was called for trial.” Langford, 400 S.C. at 436, 735 S.E.2d 479

Appellant was prejudiced by the solicitor’s control of the docket because the state’s dilatory practices in calling his case to trial deprived him of his right to a speedy trial. The Sixth Amendment to the United States Constitution provides, “In all criminal prosecutions, the accused shall enjoy the right to a speedy trial.” U.S. Const. amend. VI; see also Klopfer v. North Carolina, 386 U.S. 213 (1967) Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966) Additionally, our state 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.” Langford, 400 S.C. at 440, 735 S.E.2d

at 481 (citing State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978) If a court concludes a defendant's right to a speedy trial has been violated, dismissal of the charges "is the only possible remedy." Barker v. Wingo, 407 U.S. 514, 522 (1972)

"An accused's speedy trial right begins when he is indicted, arrested, or otherwise officially accused." State v. Hunsberger, 418 S.C. 335, 794 S.E.2d 368 (2016) (quoting Langford, 400 S.C. at 442, 735 S.E.2d at 482) (internal quotation marks omitted). "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.'" Hunsberger, 418 S.C. at 342-343, 794 S.E.2d at 372 (quoting Doggett v. United States, 505 U.S. 647, 652 (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." Id. at 343, 794 S.E.2d at 372 (citing Barker, 407 U.S. at 530-531). These factors are (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) whether the delay prejudiced the defendant. Barker, 407 U.S. at 530; See Doggett v. United States, 505 U.S. 647 (1992); Vermont v. Brillon, 556 U.S. 81 (2009); State v. Foster, 260 S.C. 511, 197 S.E.2d 280 (1973); State v. Monroe, 262 S.C. 346, 204 S.E.2d 433 (1974) 270 S.C. at 107, 240 S.E.2d at 653; State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009)

The length of the delay that will trigger a speedy trial inquiry is dependent upon the peculiar circumstances of the case. Barker 407 U.S. at 530-531. Generally, the delay "tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." Id. at 531.

The United States Supreme Court in Barker found a delay between arrest and trial of well over five years to be clearly “extraordinary.” Barker, 407 U.S. at 533. Although seven months of that period was excused by the illness of a witness, the delay of “more than four years was too long a period.” Id. at 534. In Doggett, the Supreme Court noted that, depending on the nature of the charges, lower courts have generally found post-accusation delay “presumptively prejudicial” as it approaches one year. Doggett, 505 U.S. at 652; See United States v. Cope, 312 F.3d 757 (6th Cir. 2002); State v. Cooper, 386 S.C. 210, 217, 687 S.E.2d 62, 66 (Ct. App. 2009). Our Supreme Court found a two year and four month delay sufficient to trigger further review. Waites, 270 S.C. at 108, 240 S.E.2d at 653. A twenty three month delay was presumptively prejudicial where the charges were serious, but the factual proof was not complicated. Langford, 400 S.C. at 442-443, 735 S.E.2d at 482. A three year and five month delay was sufficient to trigger the analysis in State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997). Moreover, this Court affirmed a circuit court’s decision that a delay of forty four months triggered the speedy trial inquiry. Cooper, 386 S.C. at 216-217, 687 S.E.2d at 66-67.

The four year delay in this case between when Appellant was indicted and ultimately tried is “presumptively prejudicial,” particularly where the factual proof was not complicated. The state only called eight witnesses to testify during trial and five of those witnesses were merely chain of custody witnesses. The majority of the testimony came from two law enforcement officers who were involved in the traffic stop and a forensic chemist who analyzed the substance allegedly found in Appellant’s car and the officer’s patrol vehicle. Therefore, the factual proof was straightforward and did not, and could not, have contributed to the delay.

The state’s only justification for the delay was confusion related to Appellant’s legal representation. While Appellant’s numerous attorneys may have complicated matters, it does not justify the four year delay between when Appellant was indicted and when he was ultimately tried.

By July 2015, all of Appellant's other attorneys had been relieved and Jason King was appointed to represent Appellant on all of his pending charges. Yet, it still took the state *over a year* to try Appellant for trafficking. The solicitor never claimed she had difficulty locating witnesses nor did she assert any other complications that may have justified the four year delay in this case. Notably, the state chose to try Appellant for an offense that occurred over *ten months after* Appellant was arrested for trafficking before it tried him for the trafficking offense that is the subject of this appeal.

While Appellant was incarcerated awaiting trial, he filed three *pro se* motions for a speedy trial. These motions were filed on October 7, 2015, November 10, 2015, and June 1, 2016. Thus, it is clear Appellant repeatedly asserted his right to a speedy trial.

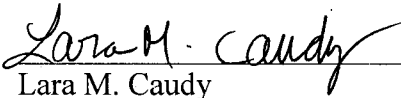
Lastly, Appellant was prejudiced by the excessive four year delay. The United States Supreme Court has held that “[w]hen the government persistently fails to try an accused and the delay is excessive, the accused need not show actual prejudice in order to prevail in his speedy trial claim.” Doggett, 505 U.S. at 657-658. The Supreme Court recognized that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or even identify. Id. at 655. Here, the extraordinary four year delay between when Appellant was indicted and when he was ultimately tried creates the presumption of prejudice. See United States v. Ingram, 446 F.3d 1332, 1340 (11th Cir. 2006) (holding that a two year delay from indictment to trial resulted in a speedy trial violation when the first three factors weighed against the state and there was no actual prejudice).

Respectfully, this Court should hold Appellant's constitutional right to a speedy trial was violated and dismiss the indictment.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court dismiss the indictment for trafficking in cocaine based on a violation of his right to a speedy trial and our Supreme Court's holding in State v. Langford, 400 S.C. 421, 735 S.E.2d. 471 (2012).

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of April, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Robin B. Stilwell, Circuit Court Judge.

THE STATE,

RESPONDENT,

V.

MARK LORENZO BLAKE, JR.,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mark L. Blake, Jr. states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial before the Honorable Robin B. Stilwell that was held on August 8-9, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

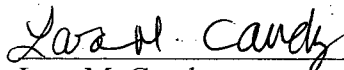
WHEREFORE, she asks the Court to relieve her as counsel for Mark L. Blake, Jr.

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SC Court of Appeals

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of April, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

April 26, 2017.



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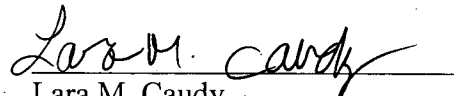
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-Billed Indictment;
- (2) Entire Trial Transcript Dated August 8-9, 2016;
- (3) State's Exhibit No. 1 (DVD of Traffic Stop);
- (4) Motion for a Speedy Trial filed October 7, 2015;
- (5) Motion for a Speedy Trial filed November 10, 2015;
- (6) Motion for a Speedy Trial filed June 1, 2016.

I certify that this designation contains no matter which is irrelevant to this appeal.

April 26, 2017



Lara M. Caudy
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