STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Edgefield County

Honorable Eugene C. Griffith, Circuit Court Judge

K. C. LANGFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001397

SUPPLEMENTAL APPENDIX

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Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

K.C. LANGFORD, III,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court judge err when he did not dismiss Langford's case in May 2010 when Langford motioned for dismissal for violating his right to a speedy trial, and when the state sought a continuance of that trial so it could further pressure a formerly cooperating co-defendant, who elected to assert his right to remain silent under the 5th Amendment of the federal Constitution, into testifying for the state at the subsequent trial?

STATEMENT OF THE CASE

K.C. Langford was indicted by the Edgefield County grand jury of burglary, first degree, armed robbery, and kidnapping during its May, 2010 term. A criminal conspiracy charge was true billed in December, 2008. He was tried before the Hon. William P. Keesley and a jury on September 6, 2010 after the case was initially called to trial in May, 2010. He was convicted and sentenced to 20 years for kidnapping, armed robbery, and burglary. He received a concurrent sentence of 5 years for conspiracy.

This appeal timely follows.

ARGUMENT

The trial court judge erred when he did not dismiss Langford's case in May 2010 when Langford motioned for dismissal for violating his right to a speedy trial, and when the state sought a continuance of that trial so it could further pressure a formerly cooperating co-defendant, who elected to assert his right to remain silent under the 5th Amendment of the federal Constitution, into testifying for the state at the subsequent trial.

Langford was convicted of events alleged to have occurred on August 14, 2008. On that date, Langford and two others, Alvin Phillips and Bryan Phillips (brothers) allegedly observed the owners of a local Chinese restaurant return to their home after their business closed for the night. Having watched them for some period of time, they realized that the victims were likely carrying money in a bag they regularly transported from the restaurant back to their home each night after the restaurant closed.

Around 10:30 that evening, the three attacked one of the owners of the restaurant (the father) while he was outside watering plants. One codefendant struck the victim on the head, and another codefendant entered the house and stole the black bag. The restaurant owner's son was also attacked when he walked outside of the house to see where his father was. There were two women who remained inside the house. The victims are Chinese and speak the Mandarin dialect. It appears that law enforcement developed the suspects after receiving information from a confidential informant who may have been seeking some help with a Family Court bench warrant. R. 302, ll. 21-24.

Alvin Phillips gave a statement to law enforcement in connection with these events, and he constituted the sole evidence tending to implicate Langford in these crimes. Phillips' testimony was critical for the state to secure the conviction in this case. Neither Langford

nor Bryan Phillips gave statements to police, and there was no forensic evidence connecting them to these crimes. During the trial which began on January 23, 2011, Alvin Phillips testified that he and the others committed this crime and that they split the proceeds upon its completion. R. 150- 219. At the time of this second trial, Phillips had already pleaded guilty to armed robbery, but had not been sentenced. He testified he was not promised anything in exchange for his testimony. R. 172, l. 12- 173, l. 19. He further testified that the other indictments were still outstanding. R. 203, ll. 11-15. He admitted he "rehearsed" his testimony with the solicitor prior to testifying in this trial. R. 204, ll. 11-18.

While in pretrial detention, Phillips signed two statements stating that neither Langford nor his brother was involved in these crimes. R. 190, ll. 11-14. These were admitted into evidence at trial. R. 194-195. In May, 2010, when this case was initially called for trial, Phillips admitted that he refused to testify on that day. R. 190. The case was then continued, and Judge Keesley issued an order on motion for speedy trial and regarding bond on May 20, 2010.

The order states, in pertinent part:

> The case was scheduled to be tried beginning Monday of this week. This defendant and one other codefendant were facing a jury trial, and a third codefendant had agreed with the State to testify against them. All three defendants have been incarcerated for 20 months, and only the cooperating witness had given any statement. Since the defendants wore masks, the case hinges almost exclusively on the testimony of the cooperating defendant. Some of the purported victims needed the services of an interpreter, and the State had gone to a great deal of time and expense in arranging an interpreter for Mandarin Chinese, having to bring the interpreter from another state since none are certified in South Carolina.
>
> At the last moment, the cooperating witness changed his mind and declared that he was not going to testify and would assert his privilege under the 5th Amendment to the Constitution of the United States. That created

> Bruton[1] problems and confrontation clause issues that necessitate that the defendant who was formerly cooperating now has to be tried first. However, the state could not go forward with the trial of the defendant who formerly had been cooperative since the attorney for that defendant had just received an appointment to the case by substitution of counsel and had only had the discovery for 8 days. The State agreed that the new attorney had not had sufficient time to adequately prepare for trial.

After this order was filed, Langford filed an additional speedy trial motion on May 25, 2010 referencing his earlier motion of June 22, 2009.

After Langford was convicted of these crimes, and given an opportunity to address the trial court, he again informed the court that he had been ready to go forth at the time the first case was called to trial. He told the court that he felt prejudiced by the trial court's granting the State's continuance and that he felt his right to a speedy trial had been violated. R. 461-468. Langford also addressed this issue prior to the start of his trial, and referencing the earlier continuance. R. 33, l. 4- 35, l. 3. The trial court judge reiterated that his reasons for granting the continuance related to "the Bruton analysis." R. 475, ll. 3-7.

The trial court judge erred because this situation does not implicate Bruton. Even if all three codefendants had been tried together, Bruton would only have forced Phillips' statement to redact references to Langford and his brother. What the judge characterized as a "Bruton problem" was really only the state's difficulty in securing a conviction against the co-defendants without Alvin Phillips' testimony. Granting a continuance based on their inability to prove Langford's guilt at the time the state called the case to trial, as an exercise of their authority to do so, was an abuse of the trial court judge's discretion, and also a violation of Langford's right to a speedy trial.

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[1] Bruton v. United States, 391 U.S. 123 (1968).

Langford was denied his right to a speedy trial. In Doggett v. United States, 505 U.S. 647 (1992), the United States Supreme Court outlined the analytical framework for assessing speedy trial claims. There are four relevant inquires: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy trial, and (4) whether the defendant suffered any prejudice as to the delay's result. Id. at 651. See Barker v. Wingo, 407 U.S. 514 (1972). And see Vermont v. Brillon, 129 S.Ct. 1283 (2009); 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).

In order to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial "has crossed the threshold dividing ordinary from "presumptively prejudicial" delay." Id. at 652 (*quoting* Barker at 530-531). The Supreme Court notes in footnote 1 that, depending on the nature of the charges, lower courts have generally found post-accusation delay "presumptively prejudicial" as it approaches one year. Id. The South Carolina Supreme Court found, in State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978), a two-year and four-month delay sufficient to trigger further review.

Langford was prejudiced by the delay between his arrest and trial dates. As the United States Supreme Court has observed, unreasonable delay threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by the loss of memories and exculpatory evidence. Doggett at 2692 (*quoting* Barker at 532). Langford was significantly prejudiced because he was incarcerated for 28 months before he was brought to trial. And see United States v. Loud Hawk, 474 U.S. 302, 312 (1986) ("[T]he

Speedy Trial Clause's *core concern* is impairment of liberty.") (emphasis added). And see Doggett (defendant granted relief even though he was released on bond and the Court found that Doggett "did indeed come up short" with respect to showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence.)

For analyzing Langford's claims, the following dates are relevant:

Langford arrested	10-3-08	See arrest warrants.
Langford first asserted right to speedy trial by filing *pro se* motion	6-22-09	See Notice of Motion and Notice of Motion for Dismissal of Charges (filed May 25, 2010), and Motion for a Fast and Speedy Trial (filed June 29, 2009)
Case indicted	5-5-2010	Indictment
Case initially called for trial	5-20-2010	See Judge Keesley's order.
Case again called for trial	9-6-2010	See sentencing sheet which shows sentence date of 9-9-10. Date on the transcript is not accurate.

Total time from arrest to trial—**673 days**

Langford asserted his right to a speedy trial **260** days after he was arrested. The state chose to wait **546** days to even indict his case. It waited **561** days to even attempt to try his case. Eventually, Langford spent **673** days in pre-trial detention waiting for the state of South Carolina to try him for these crimes. **All** of this time is attributable to the state since Langford did not take any actions to prolong his case.

> *Barker* made it clear that "different weights [are to be] assigned to different reasons" for delay. Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense,

> it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun. And such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness . . . and its consequent threat to the fairness of the accused's trial. Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal suspects assigned to a low prosecutorial priority. The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.

Doggett at 657.

It is also relevant, in considering appellant's claim, that, although the charges are serious, the prosecution of this case was not complex. Indeed, the state only called percipient witnesses and law enforcement witnesses. This was not a difficult case to prosecute, in the sense that there were out of state witnesses or professional expert witnesses whose schedules needed to be taken into account. See Barker, 407 U.S. at 530- 531: "[T]he delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." Additionally, the defense did not call any expert witnesses, did not request any competency evaluations, nor make any continuance motions. See State v. Pittman, 373 S.C. 527, S.E.2d 144 (2008). Also, appellant did not receive any benefit from the delay, a fact which, too, militates in favor of granting him relief. *Cf.* State v. Cooper, 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2009).

It is also relevant to the Court's analysis that the state was not prepared to try the case until May 5, 2010—561 days after the arrest warrant was served-- when it finally had the case indicted. The state simply allowed appellant to languish in the county jail for nearly

2 years before it even indicted his case. This fact is especially egregious in light of the fact that, in South Carolina, the state controls the docket system. Without judicial oversight to ensure that defendants are not left to do "solicitor time" in the county jail, it weighs heavily against the state that they attached no priority at all to appellant's case until nearly two years after the first warrant was served. These facts militate strongly in favor of resolving Langford's speedy trial issue in his favor. See State v. Gleaton, 288 Ga. 373, 703 S.E.2d 642 (2010) (finding the trial court judge did not abuse his discretion granting defendants' motions to dismiss indictments for violations of state and federal rights to speedy trial when the State effectively abandoned the case after the witnesses recanted).

Additionally, the solicitor control of the docket system was abusive, as it allowed Langford to languish in the county detention center for nearly 2 years before it even sent his case to the grand jury.[2] And then, once the state obtained its continuance because its case fell apart, it waited an additional **112** days to call his case to trial, even in light of the fact that Langford filed 2 motions for a speedy trial. The state abused its authority over the docket by "gaming" the system to increase its chances of securing a conviction against Langford, even while he was asserting his right to a speedy trial. The state's actions in this case subverted Langford's federal right to a speedy trial by its abusive exercise of the solicitor controlled docket system, and it denied Langford his right to due process.

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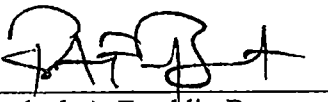
[2] See S.C. Code Ann. §1-7-330 (1976): **Attendance at circuit courts; preparation and publication of docket.** The solicitors shall attend the courts of general sessions for their respective circuits. Preparations of the docket for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. *Provided,* however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term. (emphasis in original).

The trial court judge erred when denied Langford's speedy trial claims in May 2010 and granted the state a continuance so they could exert pressure on the formerly cooperating witness to testify against Langford and his co-defendant. Langford was denied his right to a speedy trial. Respectfully, Langford asks this Court to reverse his convictions.

CONCLUSION

For the preceding reason, Langford respectfully asks this Court to reverse his convictions.

Respectfully submitted,



Elizabeth A. Franklin-Best
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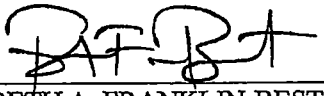
ATTORNEY FOR APPELLANT

This 20th day of March, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 20th day of March, 2012.

Elizabeth A. Franklin-Best
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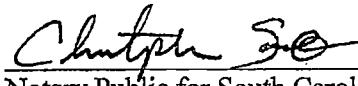
SUBSCRIBED AND SWORN TO before me
this 20th day of March, 2012.



(L.S.)
Notary Public for South Carolina

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