STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILLIP ANTOINE STACKHOUSE,

APPELLANT

APPELLATE CASE NO 2017-002048

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

STATEMENT OF THE CASE

On October 18, 2016, the Marlboro County Grand jury indicted Appellant, Phillip Antoine Stackhouse, for murder, indictment #2016-GS-34-0426. On March 22, 2017, Appellant appeared before the Honorable Daniel D. Hall and moved for a speedy trial. (March 22, 2017, Tr. p. 5, lines 1-6). During this hearing Appellant was represented by Patricia Rivers who was standing in for Michael Stephens. Judge Hall denied the motion for a speedy trial. (March 22, 2017, Tr. p. 6, lines 2-22). On July 24, 2017, Appellant appeared before the Honorable Paul M. Burch. At this hearing the State moved for a continuance. (July 24, 2017, Tr. p. 3, lines 1-16). Appellant objected to the State's motion for a continuance and renewed the motion for a speedy trial. (July 24, 2017, Tr. p. 3, line 18 – p. 4, lines 1-22). Judge Burch granted the State's continuance motion but also ordered that if the case was not tried during the September term, bond could be considered. (July 24, 2017, Tr. p. 5, line 20 – p. 6, lines 1-11). When Judge Burch was informed that bond had not been set on the charge because Appellant was serving an active sentence in the South Carolina Department of Corrections, he set a $100,000.00 bond. (July 24, 2017, Tr. p. 7, lines 1-25).

On September 18, 2017, Appellant proceeded to jury trial before the Honorable Steven H. John. As in the July 2017, hearing, Michael Stephens represented Appellant. As in both previous hearings, Elizabeth Munnerlyn represented the State. The jury found Appellant guilty and Judge John sentenced Appellant to forty- two (42) years in prison. A timely notice of intent to appeal was served on October 2, 2017. This appeal follows.

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to dismiss the indictment because Appellant was denied his state and federal constitutional right to a speedy trial?

STANDARD OF REVIEW

The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard. 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. State v. Hunsberger, 418 S.C. 335, 794 S.E.2d 368 (2016).

ARGUMENT

The trial judge erred in refusing to dismiss the indictment because Appellant was denied his state and federal constitutional right to a speedy trial.

The jury found Appellant guilty of the fatal stabbing of Oliver Johnson on February 23, 2016, inside of Evans Correctional Institution. Appellant was arrested on February 25, 2016. (July 24, 2017, Tr. p. 5, lines 12-13). Appellant was indicted eight months later in October of 2016. (Indictment, R. p. **). On March 22, 2017, Appellant asserted his right to a speedy trial. (March 22, 2017, Tr. pp. 4-7). When the case was not tried in July of 2017, Appellant re-asserted his right to a speedy trial. (July 24, 2017, Tr. pp. 3-7). Appellant was finally tried on September 18, 2017.

The Sixth Amendment to the United States Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. Similarly, the South Carolina Constitution provides that "Any person charged with an offense shall enjoy the right to a speedy and public trial." S.C. Const. art. I, § 14. A speedy trial means a trial without unreasonable and unnecessary delay. State v. Langford, 400 S.C. 421, 441, 735 S.E.2d 471, 482 (2012) (quoting Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966)). In Smith v. Hooey, 393 U.S. 374, 374–75, 89 S. Ct. 575, 575, 21 L. Ed. 2d 607 (1969), the Unites States Supreme Court wrote, "In Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1, this Court held that, by virtue of the Fourteenth Amendment, the Sixth Amendment right to a speedy trial[1] is enforceable against the States as 'one of the most basic rights preserved by our Constitution.' Id., at 226, 87 S.Ct. at 995."

The remedy for a speedy trial violation is dismissal of the charges. Langford, 400 S.C. at 442, 735 S.E.2d at 482 (internal citation omitted).

In determining whether a defendant has been deprived of the right to a speedy trial, the court must consider four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right; and, (4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed 2d 101 (1972). Although there is no fixed time in which a defendant must be tried, the right to a speedy trial may be violated where the delay is arbitrary and unreasonable. State v. Waites, 270 S.C 104, 108, 240 S.E.2d 651, 653 (1978). In a footnote in Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the Court wrote, "Depending on the nature of the charges, the lower courts have generally found post accusation delay 'presumptively prejudicial' at least as it approaches one year." Doggett Fn. 1

In Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012) the Court wrote:

> We begin our analysis with the "triggering mechanism" of a speedy trial claim, which is the length of the delay. Barker, 407 U.S. at 530, 92 S.Ct. 2182. We should not even examine the remaining factors "[u]ntil there is some delay which his presumptively prejudicial." Id. The clock starts running on a defendant's speedy trial right when he is "indicted, arrested, or otherwise officially accused," and therefore we are to include the time between arrest and indictment. United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982).

Appellant was arrested on February 25, 2016, and not tried until over a year later on September 18, 2017. The over one-year delay in the present case triggers the speedy trial analysis. In balancing the Barker factors, as to the first factor, the length of the delay, the over one-year delay should be weighed against the State.

As to the second factor from Barker, the reason for the delay, during the March 22, 2017, hearing when Appellant first asserted his right to a speedy trial, the State offered no reason for the delay and simply told the judge, "We were prepared to respond to the speedy trial motion, we are preparing this for trial. We hope to call it during our May term but certainly no later than our next summer term. We don't have the July and August terms yet because they just haven't been

set, but we plan to either have it tried in May or in our next term following that." (March 22, 2017, Tr. p. 5, lines 14 – 19). The case was not called to trial in May. In July the State moved for a continuance because the forensic pathologist was at a conference out of state. (July 24, 2017, Tr. p. 3, lines 4-16). The delay in the present case is wholly attributed to the State. During the July hearing the State, again, offered no reason for the delay and no explanation as to why the case was not called in May, as discussed during the March hearing. A May trial date would have avoided the scheduling conflict the forensic pathologist had in July.

Even neutral reasons weigh against the State because "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Barker, 407 U.S. at 531.

> 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, 505 U.S. at 657. The State's failure to provide any reasonable explanation for the delay in calling the case for trial from the time of arrest in February of 2016, until July of 2017, weighs heavily against the State. The State's negligence in failing to call the case earlier created the need for the State to seek a continuance in July because of the scheduling conflict with a witness. The

continued delay between July 2016, and the trial in September of 2016, should also be weighed against the State.

As to the third factor from Barker, Appellant's assertion of the right to a speedy trial, Appellant asserted the right to a speedy trial during the March 2017, hearing, during the July 2017, hearing and again when the case was finally called to trial in September 2017. (March 22, 2017, Tr. p. 5, lines 1-6; July 24, 2017, Tr. pp. 3-7; September 18, 2017, Tr. p. 43, lines 14-20). "Whether a defendant previously asserted the right to a speedy trial is not alone dispositive of whether he is entitled to relief. See Barker, 407 U.S. at 533, 92 S.Ct. 2182 (holding none of the four factors are either necessary or sufficient to find a denial of the right to a speedy trial). The accused's assertion of the right, however, is entitled strong evidentiary weight in determining whether the accused is being deprived of the right. Barker, 407 U.S. at 531–32, 92 S.Ct. 2182." State v. Hunsberger, 418 S.C. 335, 349, 794 S.E.2d 368, 375 (2016). Appellant's assertion of the right to a speedy trial is strong evidence that he was deprived of the right to a speedy trial.

As to the fourth factor from Barker, prejudice, a defendant is not required to show prejudice affirmatively to win a speedy trial claim. Moore v. Arizona, 414 U.S. 25, 26 (1973); see also United States v. Ferreira, 665 F.3d 701, 706-707 (6th Cir. 2011); U.S. v. Molina-Solorio, 577 F.3d 300, 307-308 (5th Cir. 2009); United States v. Frith, 181 F.3d 92 (4th Cir. 1999); United States v. Clark, 83 F.3d 1350, 1353-1354 (11th Cir. 1996). In Doggett the Court granted relief while noting that he "did indeed come up short" in making "any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." As a result, the Court explained "we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify." In light of the difficult nature of proving prejudice, the Court held that the

importance of presumptive prejudice increases with the length of delay. Doggett, 505 U.S. at 655-656. In the absence of proof of particularized prejudice, the state's negligence and a substantial delay will compel relief unless the presumption of prejudice is either "extenuated, as by the defendant's acquiescence, or persuasively rebutted" by the prosecution. Id. at 658.

The presumption of prejudice in the present case was neither extenuated by Appellant's acquiescence nor persuasively rebutted by the prosecution. In denying the speedy trial motion in March the judge stated, "The case even though it is a little bit over a year old that is – in South Carolina that in not a burdensome delay. In fact, often times cases are much older than a year, year and a half before they get tried. He is incarcerated on a sentence at this time so it doesn't appear to be any prejudice to him. As far as his standing in the community and his release he's not to be released immediately." (March 22, 2017, Tr. p. 6, lines 3-10). The judge abused his discretion in refusing to grant the speedy trial motion. First, the fact that the State routinely fails to call cases for trial in a timely manner does not deprive Appellant of his speedy trial claim. Second, the fact that Appellant was incarcerated on another charge does not deprive Appellant of a speedy trial claim, especially when Appellant was incarcerated within the State serving a sentence for a state criminal charge.

In Smith v. Hooey, 393 U.S. 374, 89 S. Ct. 575, 21 L. Ed. 2d 607 (1969), the United States Supreme Court held that the State of Texas had a constitutional duty to bring a case to trial even if the defendant was serving a federal sentence.

The Court wrote:

> At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from 'undue and oppressive incarceration prior to trial.' But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge. First, the possibility that the defendant

> already in prison might receive a sentence at least partially concurrent with the one he is serving may be forever lost if trial of the pending charge is postponed. Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pendency of another criminal charge outstanding against him.

Smith v. Hooey, 393 U.S. 374, 378, 89 S. Ct. 575, 577, 21 L. Ed. 2d 607 (1969) (fn #7 and #8 omitted). In the present case Appellant was serving a state sentence in a South Carolina prison. As noted by the Court in Smith v. Hooey, "There can be no doubt that if the petitioner in the present case had been at large for a six-year period following his indictment, and had repeatedly demanded that he be brought to trial, the State would have been under a constitutional duty to try him. Klopfer v. North Carolina, supra, 386 U.S., at 219, 87 S.Ct., at 991. And Texas concedes that if during that period he had been confined in a Texas prison for some other state offense, its obligation would have been no less." 393 U.S. at 377, 89 S. Ct. at 576–77. The trial judge in the present case erred in finding no prejudice because Appellant was incarcerated on another charge.

In Hunsberger the South Carolina Supreme Court wrote:

> First, we note that the trial court's ruling was influenced by an error of law in so much as it rested on a belief that actual prejudice—to the exclusion of presumptive prejudice—was the only type of prejudice that would support a speedy trial claim. In fact, an accused can assert actual prejudice or presumptive prejudice as the result of the State's violation of his right to a speedy trial. 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. See Doggett, 505 U.S. at 655, 112 S.Ct. 2686 (accepting the State's definition of actual prejudice). The United States Supreme Court also recognized that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or even identify. Id. (internal citation omitted). This is so because "time's erosion of exculpatory evidence and testimony 'can rarely be shown.'" Doggett, 505 U.S. at 655, 112 S.Ct. 2686 (citing Barker, 407 U.S. at 532, 92 S.Ct. 2182). When 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 657–58, 112 S.Ct. 2686. While presumptive prejudice cannot alone support a speedy trial claim, it is part of the mix of relevant facts, and its importance increases with the length of time. Doggett, 505 U.S. at 656, 112 S.Ct. 2686 (internal citation omitted).

418 S.C. at 351, 794 S.E.2d at 376. While the delay in the present case was less than the delay in Hunsberger, prejudice should still be presumed by the State's negligence in failing to call the case for trial.

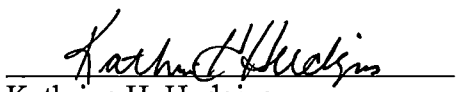
In Langford, 400 S.C. 421, 441-442, 735 S.E.2d 471, 482 (2012) the Court wrote:

> The Supreme Court has counseled further that none of these factors is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." Barker, 407 U.S. at 533, 92 S.Ct. 2182. Instead, they are all related and must be considered along "with such other circumstances as may be relevant." Id. Thus, the Supreme Court created a balancing test which is a rejection of "inflexible approaches" and weighs "the conduct of both the prosecution and the defense." Id. at 529–30, 92 S.Ct. 2182.

Considering all of the factors in the present case, the over one year delay without any reasonable explanation by the State until July 2017, when a continuance was needed because of the State's negligence in failing to call the case earlier, Appellant's clear and continued assertion of the speedy trial right and the presumptive prejudice, this Court should find that Appellant's state and federal speedy trial rights were violated.

CONCLUSION

Based on the above argument, this Court should reverse the conviction and sentence.



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This 17th day of August, 2018.