STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2017-002048

THE STATE,

Respondent,

vs.

PHILLIP ANTOINE STACKHOUSE,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

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

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

Post Office Box 616
Bennettsville, SC 29512
(843) 479-6516

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his broad discretion by failing to dismiss Appellant's murder indictment based on an alleged violation of Appellant's speedy trial rights because the approximately eighteen-month span of time between Appellant's arrest for murdering a fellow inmate at a correctional institution and Appellant's trial for that murder was not excessively or unreasonably lengthy, did not result from any intentional willfulness or unreasonable neglect on the part of the State, and did not cause any meaningful prejudice to Appellant, who had not yet been released from prison on an unrelated charge by the time he was tried for his most-recent victim's murder.

STATEMENT OF THE CASE

In February of 2016, Appellant Phillip Antoine Stackhouse, an inmate confined at a South Carolina Department of Corrections correctional facility located in Bennettsville, South Carolina, was arrested after he fatally stabbed a fellow inmate with a knife or some other sharp object. In October of 2016, the Marlboro County Grand Jury indicted Appellant for one count of murder and one count of possession of a weapon during the commission of a violent crime.[1] On September 18, 2017, a jury trial was commenced solely on the murder charge in the Marlboro County Court of General Sessions with the Honorable Steven H. John, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of forty-two years. Appellant then filed a timely notice of appeal.[2]

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[1] Appellant's middle name was mistakenly identified on the indictments as "Antonio" instead of "Antoine," which is his actual middle name, and defense counsel moved for the indictments to be dismissed based on that minor spelling error. (Trl. Tr. p. 42). However, the trial judge denied defense counsel's motion while simply permitting the solicitor to amend the inadvertent misspelling on the indictments. (Trl. Tr. p. 42).

[2] Subsequent to Appellant's murder trial, the solicitor dismissed the possession of a weapon during the commission of a violent crime charge. (Indictment (2016-GS-34-0427)).

STATEMENT OF FACTS

Around 5:55 a.m. on the morning of February 23, 2016, Officer Patrice McQueen, who was a correctional officer at Evans Correctional Institution, looked out into the "C" Unit at the prison from a control room and observed Appellant Phillip Antoine Stackhouse, who was an inmate confined at that particular facility, emerge from Cell 219 embroiled in a fight with another inmate named Oliver Johnson ("Victim"). (Trl. Tr. pp. 68-71; pp. 74-76; p. 92; p. 94). As she continued to look on, the officer saw Victim stumble and fall face down onto the ground after Appellant swung his arms at him in a wild fashion. (Trl Tr. pp. 74-77). At that point, she observed Appellant begin to run down the stairs from the second tier where Cell 219 was located while Victim remained behind motionless on the floor. (Trl. Tr. pp. 77-78).

In response to what she witnessed, Officer McQueen immediately requested assistance from other officers before quickly heading into the unit to assist Victim. (Trl. Tr. pp. 79-80; p. 96; pp. 111-112). When she did so, she passed by Appellant and confronted him about what she had observed, but Appellant denied doing anything improper. (Trl. Tr. pp. 79-80). Officer McQueen then swiftly continued to Victim's position and found him face down in a large pool of blood outside of Cell 219, which was his assigned cell. (Trl. Tr. pp. 80-82). Shortly after that, other correctional officers arrived on the scene to assist, and they secured the area while Victim was rapidly transported to the prison's medical unit for treatment. (Trl. Tr. p. 82; pp. 85-86; pp. 115-116; p. 119; pp. 128-131; pp. 142-144; pp. 154-155).

Once Victim was delivered to the medical unit, nurses attempted to tend to his injuries until paramedics could arrive. (Trl. Tr. pp. 164-165; pp. 172-173; p. 176; pp. 178-181). However, Victim was not breathing, had no pulse, and had no heartbeat at that time. (Trl. Tr. p. 166; p. 173; p. 180). Furthermore, he had lost a substantial amount of blood and had suffered six

stab wounds, including a "long" and "deep" stab wound to his head and face along with other stab wounds to his neck, chest, and shoulder. (Trl. Tr. pp. 165-167; p. 169; p. 174; pp. 179-180; p. 201). A short time later, paramedics arrived on the scene and quickly transported Victim to a hospital. (Trl. Tr. pp. 198-200; pp. 204-206; pp. 208-209; p. 213; p. 217). Ultimately though, Victim had already succumbed to his injuries and was pronounced dead within minutes of arriving at that location. (Trl. Tr. pp. 199-200; p. 205; pp. 209-210; pp. 214-215).

Meanwhile, as the medical personnel futilely attempted to save Victim's life, Appellant was removed from his own cell, which was Cell 122, and was transferred to a separate holding cell.[3] (Trl. Tr. pp. 137-138; pp. 157-158; p. 193; p. 235). Officers then began investigating the unit where the stabbing had occurred. (Trl. Tr. pp. 193-194; pp. 233-239). During the course of that investigation, officers removed shoes and clothing items from Appellant's cell and collected swabs from blood stains located inside it. (Trl. Tr. pp. 193-194; pp. 235-236). Furthermore, officers found a bloodstained shirt with the number "122" on it hidden inside a trashcan near the entrance of the unit, and the shirt was also collected as evidence. (Trl. Tr. pp. 238-242).

On the following day, Dr. Erin Presnell, an expert forensic pathologist, conducted an autopsy of Victim's body. (Trl. Tr. pp. 297-299). During the autopsy, Dr. Presnell discovered Victim had suffered two deep cuts to his face, including one that penetrated all the way to his skull, along with multiple stab wounds to his neck, shoulder, armpit area, and chest. (Trl. Tr. pp. 304-305). Based on Victim's injuries, Dr. Presnell determined Victim was killed by a stab wound that penetrated nearly four inches deep into his body and fatally punctured his lung, heart, and aorta. (Trl. Tr. pp. 307-310).

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[3] In the immediate aftermath of the stabbing, Appellant did not have any obvious or visible injuries. (Trl. Tr. pp. 250-252).

Subsequently, as the investigation into the incident continued, the various pieces of evidence collected after the stabbing were analyzed by a forensic serologist and a forensic DNA analyst at SLED. (Trl. Tr. pp. 265-293). Based on tests conducted, the analysts ascertained both blood collected from a bench in Appellant's cell and blood found on the shirt discovered hidden inside the trashcan was, in fact, Victim's blood. (Trl. Tr. p. 283). Furthermore, the analysts determined DNA matching Appellant's DNA profile was located all over the discarded shirt in areas in which the person wearing the shirt would have been expected to transmit genetic material. (Trl. Tr. p. 284; p. 293).

Ultimately, as a result of the investigation into the stabbing, Appellant was indicted for murder and possession of a weapon during the commission of a violent crime, and he proceeded forward to trial solely on the murder charge. (Mar. Tr. p. 4; Trl. Tr. pp. 12-13; Indictment (2016-GS-34-0426); Indictment (2016-GS-34-0427)). During the course of trial, Officer McQueen recounted her experiences on the date of the incident and identified Appellant as the person she directly observed assaulting Victim just before he was found face down in a large pool of blood. (Trl. Tr. pp. 68-112). In addition to her testimony, the other correctional officers and medical personnel who responded after the fatal stabbing testified about their experiences related to the incident, and the evidence collected and analyzed after the stabbing, including the shirt with Victim's blood and Appellant's DNA on it, was presented to the jury. (Trl. Tr. pp. 113-124; pp. 126-147; pp. 149-161; pp. 164-169; pp. 172-176; pp. 178-182; pp. 191-194; pp. 198-201; pp. 204-206; pp. 208-211; pp. 213-218; pp. 220-222; pp. 225-226; pp. 230-259; pp. 262-293; pp. 297-313; pp. 455-457; pp. 283-284; p. 293). Likewise, Jason Goins, who was Appellant's roommate at the time of the incident, offered his account of the stabbing and testified he observed Appellant repeatedly stab Victim after the two had quarreled earlier that morning. (Trl.

Tr. pp. 318-368). Furthermore, Clifford Thompson, an inmate who worked in the law library at Broad River Correctional Institution, testified Appellant requested legal assistance from him after being transferred to the same prison subsequent to the incident and personally admitted to stabbing someone during a fight at his former prison. (Trl. Tr. pp. 397-400; pp. 417-422; pp. 424-425).

Following the presentation of that testimony and evidence, Appellant, who readily admitted he was incarcerated at the time of trial in connection to an unrelated charge of assault and battery with intent to kill, testified in his own defense and offered his own account of the incident. (Trl. Tr. pp. 479-491). Specifically, on the date of the incident, Appellant claimed he went to a location near Victim's cell to pray and was asked to move from his position by Victim and Goins, who purportedly wanted to masturbate together while looking at a correctional officer. (Trl. Tr. pp. 479-480). However, Appellant asserted he did not comply with their request and was subsequently assaulted by Victim based on his refusal to do so. (Trl. Tr. p. 480). At that point, Appellant alleged he responded by punching Victim three times in total, knocked him down with a punch to the chin without injuring him, and returned to his cell for coffee. (Trl. Tr. p. 480; pp. 485-486). Appellant then implied Goins must have been the one to have killed Victim over an alleged debt while denying he personally had any involvement in Victim's stabbing death. (Trl. Tr. p. 481; p. 484; p. 491).

At the conclusion of trial, the jury convicted Appellant of Victim's murder. (Trl. Tr. p. 545). Following the verdict, the trial judge sentenced Appellant to a forty-two-year term of imprisonment. (Trl. Tr. pp. 555-556).

ARGUMENT

The trial judge did not abuse his broad discretion by failing to dismiss Appellant's murder indictment based on an alleged violation of Appellant's speedy trial rights because the approximately eighteen-month span of time between Appellant's arrest for murdering a fellow inmate at a correctional institution and Appellant's trial for that murder was not excessively or unreasonably lengthy, did not result from any intentional willfulness or unreasonable neglect on the part of the State, and did not cause any meaningful prejudice to Appellant, who had not yet been released from prison on an unrelated charge by the time he was tried for his most-recent victim's murder.

Appellant contends the trial judge erred by failing to dismiss his indictment for murder based on an alleged violation of his speedy trial rights. In support of that contention, Appellant maintains his murder indictment should have been dismissed based on the roughly eighteen-month delay between his arrest and trial because the delay was purportedly presumptively prejudicial, the delay was allegedly wholly attributable to the State and was the product of inexcusable negligence, and he asserted his speedy trial rights at various points prior to the trial's commencement. To the contrary, the trial judge in no way abused his discretion by failing to dismiss Appellant's case based on an alleged speedy trial violation because the eighteen-month delay at issue was relatively minor, was not the result of any willfulness or unreasonable neglect on the part of the State, and did not result in any actual or meaningful prejudice to Appellant. Under such circumstances, Appellant's speedy trial rights were not violated and the extreme sanction of dismissal was not warranted. Appellant's conviction should be affirmed.

RELEVANT FACTS

On February 23, 2016, Appellant fatally stabbed another inmate incarcerated along with him at Evans Correctional Institution. (Trl. Tr. pp. 68-69; pp. 73-78; p. 310). Two days later, Appellant was formally arrested for and charged with his victim's murder. (July Tr. p. 5;

Indictment (2016-GS-34-0426)). Thereafter, on October 18, 2018, the Marlboro County Grand Jury indicted Appellant for murder.[4] (Indictment (2016-GS-34-0426)).

Subsequent to the issuance of the murder indictment, Appellant's defense counsel moved for a speedy trial, and, on March 22, 2017, a hearing was conducted on the motion in the Marlboro County Court of General Sessions with the Honorable Daniel Dewitt Hall, circuit court judge, presiding. (Mar. Tr. p. 1; p. 4). Notably though, defense counsel was not personally available for the hearing due to a death in his family, so Appellant was represented at the hearing by temporary stand-in counsel. (Mar. Tr. p. 4; July Tr. p. 3). During the course of the hearing, stand-in counsel maintained—incorrectly—Appellant was solely being held in the South Carolina Department of Corrections as a result of the pending murder charge and had completed the sentence he was serving at the time he killed Victim. (Mar. Tr. pp. 4-5; Trl. Tr. pp. 547-548). As a result, stand-in counsel requested Appellant receive a speedy trial or, in the alternative, have a bond amount set. (Mar. Tr. p. 5). In response, the solicitor indicated she was in process of preparing Appellant's case for trial and hoped to proceed forward with the trial either during the upcoming May 2017 term of court or the next available term of court after that. (Mar. Tr. p. 5).

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[4] Several days before he was indicted by the grand jury, Appellant filed a pro se motion for his case to be *dismissed* based on a speedy trial violation. (Pro Se Motion for Dismissal on Violation of Speedy Trial Rights Basis, dated Oct. 10, 2016). However, the motion was *not* filed at the time it was submitted, which was likely due to the fact Appellant was represented by defense counsel at that time. See Miller v. State, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010) ("Since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel. Because petitioner was represented by counsel, the pro se motion was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a nullity." (citations omitted)); State v. Stuckey, 333 S.C. 56, 58, 508 S.E.2d 564, 564 (1998) ("Since there is no right to hybrid representation, substantive documents filed pro se by a person represented by counsel are not accepted unless submitted by counsel."); see also Foster v. State, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989) (ordering the Clerk of Court to return a substantive pro se document filed while the petitioner was represented by counsel).

At that point, the circuit court judge denied the motion for a speedy trial and further declined to set a bond amount at that time. (Mar. Tr. pp. 6-7). As support for that ruling, the trial judge determined the case, which involved a "very serious" charge, had not yet experienced a burdensome delay since it was just over a year old and found Appellant had not suffered any meaningful prejudice since he was presently incarcerated for an unrelated crime. (Mar. Tr. p. 6). However, the circuit court judge expressly indicated the matter could be revisited if Appellant was not tried by July of that year. (Mar. Tr. p. 6).

Thereafter, on July 19, 2017, defense counsel filed a motion for Appellant's case to be dismissed, and, on July 24, 2017, a hearing was conducted on the motion in the Marlboro County Court of General Sessions with the Honorable Paul M. Burch, circuit court judge, presiding.[5] (July Tr. p. 1; p. 3; Motion to Dismiss, filed July 19, 2017). During the course of the hearing, the solicitor noted Appellant's case had been scheduled for trial during that term of court and the State was ready for trial. (July Tr. p. 3). However, the solicitor indicated a critical witness—the forensic pathologist who determined Victim's cause of death—was unavailable to appear that week because she was attending an out-of-state conference and, therefore, requested a continuance until the next available term of court, which was scheduled for just two months later. (July Tr. p. 3; Trl. Tr. pp. 297-299; p. 310). At that point, defense counsel opposed the continuance request, renewed the motion for a speedy trial, and asserted Appellant had suffered prejudice because his time in prison had allegedly somehow been extended because his murder

[5] Through that motion, defense counsel sought dismissal based on an alleged double jeopardy violation and Appellant's failure to receive a preliminary hearing. (Motion to Dismiss, filed July 19, 2017). Notably though, defense counsel did *not* expressly seek dismissal based on the lack of a speedy trial. (Motion to Dismiss, filed July 19, 2017).

case was still pending.[6] (July Tr. pp. 3-4). Defense counsel then asked for the matter to be dismissed "if it can't be tried" before alternatively asking for a reasonable bond amount to be set. (July Tr. p. 4). In rebuttal, the solicitor accurately noted Appellant was, in fact, being held in prison at that time on an unrelated charge, and she again maintained the State was prepared for trial and would be ready to proceed at the very next available term of court. (July Tr. pp. 5-6; Trl. Tr. pp. 547-548). Upon considering the matter, the circuit court judge granted the solicitor's continuance request and further set a bond amount of $100,000 for Appellant. (July Tr. pp. 6-7). In doing so, the circuit court judge noted the Fourth Judicial Circuit in South Carolina had experienced a reduction in the number of terms of court scheduled, which the circuit court judge found was a matter beyond the control of the parties.[7] (July Tr. pp. 5-6).

Subsequently, Appellant's case was called to trial at the next available term of court, which began on September 18, 2017. (Trl. Tr. p. 1; pp. 12-13). At the outset of trial, defense counsel asked the trial judge to note the speedy trial motion raised during the July 2017 pre-trial hearing for record purposes without raising any additional arguments or motions in regard to Appellant's speedy trial rights, and the trial judge granted defense counsel's request. (Trl. Tr. p.

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[6] Tellingly, defense counsel's claim of Appellant being incarcerated solely because his murder charge was "pending" was wholly inaccurate as Appellant was *still* not due to be released from the sentence he was serving at the time he killed Victim by the time his case was brought to trial. (Trl. Tr. pp. 547-548). In fact, Appellant was not set to be released in connection to his earlier assault and battery with intent to kill conviction until January of 2018, which was a time period several months after he was brought to trial for Victim's murder. (Trl. Tr. p. 548).

[7] Supporting the circuit court judge's statement about the limited number of available terms of court, only eleven terms of court were conducted in the Marlboro County Court of General Sessions between the date Appellant murdered Victim and the date Appellant was brought to trial for Victim's murder. South Carolina Judicial Department Terms of Court Records, https://www.sccourts.org/calendar/dspTermsCRCir.cfm. Of those terms, one was held just days after the crime was committed, and three were only partial-week terms. Id. Furthermore, the term in which Appellant's case was brought to trial was the next available term of court after the solicitor successfully sought a continuance for good cause in July of 2017 and took place just six months after Appellant's first valid assertion of his speedy trial rights. Id.

43). Thereafter, the trial proceeded forward, and, on the fourth day of trial, the jury convicted Appellant as indicted.[8] (Trl. Tr. p. 545).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a ruling on a speedy trial motion on appeal, the appellate court reviews the trial judge's ruling under an abuse of discretion standard. State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371-372 (2016); see State v. Reaves, 414 S.C. 118, 132, 777 S.E.2d 213, 220 (2015) ("[A] trial court's decision as to whether to dismiss an indictment based on speedy trial grounds is reviewed for an abuse of discretion."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ANALYSIS

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally-guaranteed right to a speedy trial. See U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]"); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right to a speedy and public trial[.]"). That right is designed to protect against anxiety stemming from public accusation of a crime and to limit the possibility of a lengthy pre-trial delay impairing an accused's defense. State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471,

[8] In total, twenty-six different witnesses testified on behalf of the State during the course of trial. (Trl. Tr. pp. 3-6).

481 (2012). However, most importantly, the right to a speedy trial is chiefly designed to prevent undue pre-trial impairment of liberty. See United States v. Loud Hawk, 474 U.S. 302, 312 (1986) ("[T]he Speedy Trial Clause's core concern is impairment of liberty[.]").

In order to trigger a speedy trial analysis, a criminal defendant's trial must have been delayed for a period of time that is presumptively prejudicial, which necessarily depends on the particular circumstances of each case. Langford, 400 S.C. at 442, 735 S.E.2d at 442. Notably, "a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case." Id. In South Carolina, a delay of over two years has previously been found to be sufficient to trigger a speedy trial analysis. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain circumstances—be presumptively prejudicial. See Doggett v. United States, 505 U.S. 647, 652, n.1 (1992) ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."). However, even where a delay that is presumptively prejudicial exists, a speedy trial determination "is *not based on the passage of a specific period of time*" and delay alone is not singularly dispositive. State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (emphasis added); see State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (recognizing "delay alone is not dispositive").

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant's right to a speedy trial has been violated is necessarily dependent on the specific circumstances of the defendant's particular case. State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). When attempting to answer that question, several factors should be considered. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App.

2000). Specifically, a court analyzing a speedy trial claim should consider: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) whether any prejudice was suffered by the defendant as a result of the delay. Barker v. Wingo, 407 U.S. 514, 530 (1972). Notably though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, "they are related factors and must be considered together with such other circumstances as may be relevant." Id. "In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." Id.

In the case sub judice, the trial judge did not abuse his broad discretion by failing to dismiss the murder indictment in Appellant's case based on an alleged speedy trial violation. When considering the specific circumstances of Appellant's case, the delay of just *eighteen months* between the time Appellant was arrested and ultimately tried was not exceptionally lengthy, which was particularly true in light of the fact Appellant's case involved a murder committed inside a correctional institution, and arguably was not sufficiently lengthy to trigger a full analysis of the relevant speedy trial factors. See id. at 530 ("Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."); see also United States v. Salgado-Ramiro, 718 F. App'x 518, 519 (9th Cir. 2017) (recognizing an eighteen-month period of delay is not excessively long for speedy trial purposes); see generally United States v. Gouveia, 467 U.S. 180, 192 (1984) (recognizing there are "problems inherent in investigating prison crimes, such as the transient nature of the prison population and the general reluctance of inmates to cooperate"). However, even assuming the relatively minimal delay at issue in Appellant's case could be considered presumptively prejudicial, it nonetheless was not sufficient to result in a violation of Appellant's speedy trial

rights when weighed in relation to the other relevant factors and circumstances of the case. See Brazell, 325 S.C. at 75, 480 S.E.2d at 70 (recognizing delay—although not dispositive—may be sufficient to trigger review of the relevant speedy trial factors).

Turning to the relevant factors, the eighteen-month delay involved in Appellant's case first and foremost was relatively minimal even if it was somehow presumptively prejudicial and, thus, did not weigh heavily against the State. See Doggett, 505 U.S. at 657 ("To be sure, to warrant granting relief, negligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice."). Similarly, the delay involved in Appellant's case was at least partially justified by a legitimate need for a continuance to obtain the presence of a critical witness, was attributable to some extent to the limited number of available terms of court in Marlboro County, was at least partially attributable to the time needed to investigate the crime and analyze the various items of evidence collected, and was in no way the result of any intentional and willful delay tactics on the part of the State designed to gain a tactical advantage over Appellant.[9] [10] See Pittman, 373 S.C. at 549, 647 S.E.2d at 155 ("A valid reason presented by the State may justify an appropriate delay."); see also Langford, 400 S.C. at 444, 735 S.E.2d at 483 ("[T]he State moved with reasonable haste given the few General Sessions terms scheduled for Edgefield County during that time."); State v. Chapman, 289 S.C.

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[9] Notably, it appears the State's analysis of the evidence collected during the investigation into the fatal stabbing may not have been completed until May of 2017. (State's Exhibit # 43 (SLED DNA Analysis Report)).

[10] Although unquestionably justified, some of the delay involved in Appellant's case is at least arguably attributable to the defense since defense counsel was not present—and, thus, not available to proceed forward to trial—during the May 2017 term of court in which the issue of a speedy trial was first discussed with a circuit court judge. See State v. Dukes, 256 S.C. 218, 223, 182 S.E.2d 286, 288 (1971) ("The delay must be attributable to the State before the appellants can complain."); see also Waites, 270 S.C. at 108, 240 S.E.2d at 653 (considering Waites's counsel's actions delaying the trial when assessing whether a speedy trial violation occurred).

42, 45, 344 S.E.2d 611, 613 (1986) ("A portion of the delay was caused by the normal condition of the docket. . . . The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay."); Kennedy, 339 S.C. at 250-251, 528 S.E.2d at 704-705 (finding the complexity of the case, which required substantial time to investigate and prepare, constituted a legitimate reason for the delay in bringing the case to trial); cf. Barker, 407 U.S. at 531 (recognizing a missing witness is a valid reason justifying an "appropriate" delay). Furthermore, although Appellant unquestionably did assert his right to a speedy trial, Appellant was tried during the third term of court that took place just six months after his first valid assertion of his right to a speedy trial, which weighs against a finding of a speedy trial violation.[11] See Robinson, 335 S.C. at 626-627, 518 S.E.2d at 272 (recognizing in a case involving a five-year delay Robinson's speedy trial rights were not violated when he was tried within one year of first formally moving to dismiss his case); see also Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966) ("A speedy trial does not mean an immediate one; it does not imply undue haste, for the state, too, if entitled to reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay."). Finally, Appellant, who was not incarcerated for any period of time while awaiting trial for his victim's murder during which he would not have otherwise been incarcerated due to an unrelated charge, neither suffered any actual prejudice nor attempted to identify any actual prejudice that could have

[11] Notwithstanding the fact Appellant's pro se speedy trial motion from October of 2016 was not a proper motion since he was presumably represented by counsel when it was submitted, that motion would not have constituted a valid assertion of Appellant's speedy trial rights since it sought dismissal as opposed to an actual speedy trial. See United States v. Frye, 489 F.3d 201, 211-212 (5th Cir. 2007) ("An assertion of [the] right [to a speedy trial] is a demand for a speedy trial, which will generally be an objection to a continuance or a motion asking to go to trial. . . . Frye's repeated motions for dismissal of the capital charge are not an assertion of the right, but are an assertion of the remedy. A motion for dismissal is not evidence that the defendant wants to be tried promptly. . . . Frye's motions for dismissal do not amount to an assertion of his speedy trial rights." (citations and internal quotations omitted)).

resulted from the eighteen-month delay involved in his case, which strongly supports a conclusion his speedy trial rights were not violated. See State v. Cooper, 386 S.C. 210, 218, 687 S.E.2d 62, 66 (Ct. App. 2009) (characterizing prejudice to the defendant as the most important factor in an analysis of whether a speedy trial violation occurred); see also Loud Hawk, 474 U.S. at 315 (recognizing the "possibility of prejudice" is generally not alone sufficient to support a claim of a speedy trial violation); see generally United States v. Marion, 404 U.S. 307, 324-325 (1971) ("[N]o one suggests that every delay-caused detriment to a defendant's case should abort a criminal prosecution."); cf. Langford, 400 S.C. at 446, 735 S.E.2d at 484 ("[H]e cannot point to any evidence of anxiety caused by the stigma of being accused of these crimes.").

Because the relevant circumstances in Appellant's case—when properly considered—do not suggest the eighteen-month delay between Appellant's arrest and trial for a brutal murder he committed was the result of any unreasonable or willful actions on the part of the State or resulted in any meaningful prejudice to Appellant, Appellant's speedy trial rights were not violated and the extreme sanction of a dismissal of Appellant's murder indictment was wholly unwarranted. See Loud Hawk, 474 U.S. at 317 ("We cannot hold, on the facts before us, that the delays asserted by respondents weigh sufficiently in support of their speedy trial claim to violate the Speedy Trial Clause. They do not justify the severe remedy of dismissing the indictment."); see also Doggett, 505 U.S. at 657 ("[O]ur toleration of such negligence varies inversely with its protractedness[.]"); cf. United States v. Clark, 83 F.3d 1350, 1354 (11th Cir. 1996) ("On balance, in light of the Government's unintentional delay of less than two times the one-year benchmark and Clark's minimal showing of prejudice, the district court erred in dismissing the indictment on Sixth Amendment grounds."). Accordingly, the trial judge did not abuse his broad discretion by failing to impose the extreme sanction of dismissal in Appellant's case. See Langford, 400

S.C. at 442, 735 S.E.2d at 482 ("A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion."); see also Brazell, 325 S.C. at 76, 480 S.E.2d at 70-71 ("Although the delay was lengthy and the justification was unsatisfactory, Brazell's right to a speedy trial was not denied when one balances the Barker factors. The long delay was negated by the lack of prejudice to the defense. There is no evidence that the delay was willful or intentional."); cf. State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years); Cooper, 386 S.C. at 217-218, 687 S.E.2d at 66-67 (affirming the denial of Cooper's speedy trial motion where the delay in bringing the case to trial was at least forty-four months). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

BY: _____
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

January 2, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2017-002048

THE STATE,

Respondent,

vs.

PHILLIP ANTOINE STACKHOUSE,

Appellant.

PROOF OF SERVICE

I, Mark R. Farthing, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 2nd day of January, 2019.

MARK R. FARTHING
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
JAN 02 2019
SC Court of Appeals

January 2, 2019

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Phillip Antoine Stackhouse – Appellate Case No. 2017-002048

Dear Ms. Hudgins:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Advocacy Division