STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County
Honorable Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2017-002140

THE STATE,

Respondent,

vs.

STEVEN LOUIS BARNES,

Appellant.

INITIAL BRIEF OF RESPONDENT

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The trial judge did not abuse her broad discretion by failing to dismiss Appellant's murder indictment based on an alleged violation of Appellant's speedy trial rights because the approximately forty-four-month span of time between the end of Appellant's successful appeal of his earlier convictions and Appellant's subsequent retrial for his sixteen-year-old victim's murder was not excessively or unreasonably lengthy, was only partially attributable to the State, 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 was serving a life sentence for crimes he committed in Georgia during the time period leading up to his most-recent trial.

II.

The trial judge correctly found Appellant's issue related to a claimed violation of the Interstate Agreement on Detainers Act could not properly be relitigated prior to his most-recent trial because the South Carolina Supreme Court had already addressed that particular issue in an earlier appeal and bindingly determined no violation occurred. However, even if the issue could have been addressed again prior to the retrial, no violation of the Interstate Agreement on Detainers Act occurred based on the specific facts and circumstances of Appellant's case.

STATEMENT OF THE CASE

In January of 2002, Appellant Steven Louis Barnes was arrested following a multi-state investigation into a brutal series of events that began in Georgia and ended in South Carolina with the execution of a sixteen-year-old boy in a clearing in the woods. Subsequent to his arrest, Appellant was tried for and convicted of murder and kidnapping during a capital jury trial conducted in November of 2010 in the Edgefield County Court of General Sessions, was sentenced to death, and successfully appealed his convictions. At the conclusion of the lengthy appellate process stemming from Appellant's first trial, the solicitor withdrew the death penalty notice and served timely notice on Appellant indicating the State would seek a sentence of life without parole upon conviction pursuant to Section 17-25-45 of the South Carolina Code of Laws. On October 4, 2017, the Edgefield County Grand Jury re-indicted Appellant for murder. On October 9, 2017, a jury trial was commenced on the murder charge in the Edgefield County Court of General Sessions with the Honorable Diane Schafer Goodstein, circuit court judge, presiding. At the conclusion of the five-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to the statutorily-mandated sentence of life without parole. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On or around Labor Day in September of 2001, the sixteen-year-old victim, Samuel Sturrup ("Victim"), returned to the Augusta, Georgia, home he shared with his mother, Shirley Sturrup, in the company of an older acquaintance named William Harris. (Trl. Tr. pp. 208-211; pp. 218-219; p. 222; p. 301; p. 372; p. 455; pp. 552-553). Upon returning home, Victim took a shower and changed his clothing while Harris waited for him nearby. (Trl. Tr. p. 211). Once he finished getting ready, Victim told his mother he was going to a cookout, and Victim's mother then watched as Victim headed out for the night and rode away in a vehicle driven by Harris. (Trl. Tr. pp. 211-212). Sadly, that would be the last time Victim's mother ever saw her son alive. (Trl. Tr. p. 218).

After leaving the home, Harris drove Victim to an Augusta residence that was known as "the Green House," and Appellant Steven Louis Barnes, who went by "Big Man," was waiting for Victim there.[1] (Trl. Tr. pp. 301-304; p. 455; p. 457; p. 490; p. 551). When Victim arrived, Appellant angrily confronted him about money he believed Victim had stolen from him a few nights earlier, but Victim denied taking it. (Trl. Tr. pp. 304-305; pp. 357-358; p. 489). Despite Victim's denial, Appellant proceeded to spend the next few hours interrogating Victim about the money, assaulting him, and ordering Richard Cave and Antonio Griffin, who were high school students that Appellant had summoned to "the Green House" that night, to assault Victim along with Charlene Thatcher, who was a young runaway that worked for Appellant as a prostitute. (Trl. Tr. p. 292; pp. 301-302; pp. 304-306; p. 323; pp. 425-426; p. 429; p. 451-452; p. 462; p. 495; p. 547; pp. 554-556; p. 558; pp. 561-564).

As the assaults and interrogation continued, Victim eventually claimed—falsely—

[1] Harris was Appellant's half-brother. (Trl. Tr. p. 372; p. 457; p. 459; p. 531; p. 551).

he had, in fact, stolen Appellant's money, which he asserted was hidden at his family's residence. (Trl. Tr. p. 308; p. 321; p. 465; pp. 564-565; pp. 592-593). In response, Appellant indicated they would all go the residence to retrieve the money, but he warned he would kill everyone there if Victim was not being truthful. (Trl. Tr. p. 321; p. 565). At that point, Victim, who was visibly frightened, again asserted he did not have Appellant's money, and Appellant responded by assaulting Victim once more. (Trl. Tr. pp. 320-323; p. 467; p. 484; pp. 565-566). Appellant then produced a gun, directed everyone to walk to some nearby railroad tracks, and encouraged the others to shoot Victim. (Trl. Tr. pp. 323-324; pp. 463-464; pp. 566-567). However, no one was willing to shoot him at that time, so Appellant directed everyone back to "the Green House." (Trl. Tr. p. 325; p. 465; pp. 567-569).

When they got back to the residence, Appellant placed a phone call, and, shortly after that, Alex and Julio Hunsberger arrived in their vehicle. (Trl. Tr. pp. 325-326; p. 354; pp. 467-468; pp. 570-571). Victim was then loaded into the trunk of the Hunsberger brothers' vehicle, and everyone headed to South Carolina in two separate cars. (Trl. Tr. pp. 327-328; pp. 468-470; p. 572). Once in South Carolina, the group drove to a field in Edgefield County that was located near property connected to the Hunsberger brothers' family. (Trl. Tr. p. 470; p. 573). Appellant then ordered everyone out of the vehicles, and Victim was led to a clearing in a wooded area at gunpoint. (Trl. Tr. pp. 282-283; pp. 329-334; pp. 471-473; pp. 574-575). At that point, Appellant forced Thatcher, Cave, and Griffin to shoot Victim as he begged for his life before Appellant personally killed Victim by shooting him in the back of the head. (Trl. Tr. pp. 335-341; p. 343; p. 366; p. 473; p. 476; p. 484; pp. 576-579). After Victim had been killed, Appellant directed everyone away from the area, and they all eventually returned to Georgia after disposing of the murder weapon along the way. (Trl. Tr. p. 344; pp. 477-479; pp. 585-586).

Upon their return, Appellant ordered everyone to burn their clothing and threatened to kill anyone who talked about what had occurred. (Trl. Tr. p. 346; p. 487; pp. 589-591).

Thereafter, as days began to pass and Victim did not return home, his mother became worried and contacted the authorities in Georgia to alert them of his disappearance. (Trl. Tr. pp. 212-213; pp. 217-218; p. 263). She then began frantically searching for her son, and she made contact with Appellant multiple times in her efforts to locate him. (Trl. Tr. p. 214; p. 216). When she did so, Appellant denied knowing where Victim was and opined Victim was most likely with a particular unnamed girl.[2] (Trl. Tr. pp. 216-217). Meanwhile, a few days after the murder, Appellant contacted Griffin and informed him he discovered the money he thought had been stolen by Victim was actually shredded in his own backyard by his dogs. (Trl. Tr. p. 592). Upon delivering that news, Appellant remarked: "What's done is done." (Trl. Tr. p. 593).

Subsequently, as the reason for Victim's disappearance continued to remain a mystery to everyone but those involved, Grover Dais, a life-long resident of Edgefield County, discovered a human skull on his family's property on the afternoon of November 19, 2001, after noticing vultures in the area a few days earlier. (Trl. Tr. pp. 212-218; pp. 224-225; pp. 228-229; p. 231; p. 239; p. 242). Immediately in response, Dais alerted the authorities, and law enforcement officers from the Edgefield County Sheriff's Office quickly responded to the property to investigate. (Trl. Tr. pp. 229-230; pp. 234-234). During the ensuing searches that took place, officers recovered the skull along with various other items, including a femur bone, a number of bone fragments, a .40-caliber shell casing, some jeans, a belt with Victim's first name engraved on it, a belt buckle, and a key ring containing several items, including a supermarket rewards card connected to Victim. (Trl. Tr. p. 240; p. 244; pp. 251-252; p. 259; p. 262; pp. 393-394; p.

[2] Since the girl was fictitious, Appellant obviously did not provide Victim's mother with any identifying information. (Trl. Tr. p. 217).

399). Furthermore, officers found a dark stain on the ground in a clearing that appeared to have been the location where a body had decomposed, and several fired projectiles were later found buried nearby. (Trl. Tr. pp. 256-257; p. 391; pp. 393-394; p. 396). Ultimately, through those discoveries, the officers were able to determine the remains found on Dais's property belonged to Victim, who was confirmed to have been killed by a gunshot to the head. (Trl. Tr. pp. 262-263; pp. 637-647).

After Victim's death was discovered, law enforcement agencies in both South Carolina and Georgia jointly investigated the murder, and that investigation culminated in the arrests of Appellant and the other individuals involved in Georgia over an eight-day span of time in January of 2002.[3] (Trl. Tr. p. 267; p. 523; p. 536). Following Appellant's apprehension, an arrest warrant was issued in South Carolina on January 25, 2002, and the Governor of South Carolina requested Appellant's extradition to the state a little over a month later so he could face trial for Victim's murder. (Court's Ex. # 3 (State's Appendix), pp. 1-3). Thereafter, a hearing was held in Georgia on April 17, 2002, and Appellant waived extradition at that time. (Court's Ex. # 3, p. 4). A few days after that, a formal order was issued authorizing his extradition to South Carolina. (Court's Ex. # 3, p. 4). However, Appellant remained in Georgia for the time being, was ultimately tried and convicted of numerous charges there in December of 2003, and received an aggregate sentence of life in prison in that state. (Trl. Tr. p. 724; Order Denying Motions to Dismiss, p. 1; p. 15; Court's Ex. # 3, p. 7).

Subsequently, through a document postmarked February 12, 2005, the solicitor in Edgefield County received a request for the disposition of the charges Appellant had pending

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[3] When officers in Georgia came to arrest Appellant, he saw them coming through a surveillance system installed at his residence, and he attempted to flee through a back window. (Trl. Tr. pp. 480-481; pp. 634-635). However, the officers had the residence surrounded, and Appellant was quickly apprehended outside. (Trl. Tr. p. 482; pp. 634-635).

there pursuant to the Interstate Agreement on Detainers Act ("the IAD Act"). (Court's Ex. # 3, p. 6). In response, the solicitor arranged for Appellant, who was still imprisoned in Georgia, to be brought to South Carolina, and Appellant was extradited to the state on May 18, 2005. (Court's Ex. # 3, p. 6).

After Appellant was extradited, the Honorable William P. Keesley, circuit court judge, conducted a hearing in response to Appellant's IAD Act filing. (Court's Ex. # 3, pp. 7-9). Following the hearing, Judge Keesley issued an order on May 27, 2005, acknowledging the case would likely be tried as a capital case based on the solicitor's representations and finding good cause existed to continue Appellant's trial beyond the deadlines established by the IAD Act in light of the specific circumstances involved. (Court's Ex. # 3, pp. 7-9).

Shortly thereafter, on June 5, 2005, an attorney was appointed to represent Appellant in South Carolina. (Court's Ex. # 3, p. 10). Subsequently, on August 10, 2005, the Edgefield County Grand Jury formally indicted Appellant for kidnapping. (Court's Ex. # 3, pp. 11-12). A different attorney was then appointed to replace Appellant's earlier counsel on September 1, 2005. (Court's Ex. # 3, pp. 13-14). Following the new attorney's appointment as counsel, Appellant—while represented by counsel—filed an improper pro se "Motion to Dismiss Pursuant to the Agreement of Detainers § 17-11-10, Article V,(c)" on September 8, 2005, with the Edgefield County Clerk of Court, but that improper filing was never acted upon.[4] (Court's Ex. # 3, pp. 18-25).

Thereafter, on November 1, 2005, the Honorable J. Cordell Maddox, Jr., circuit court judge, was vested with exclusive jurisdiction over Appellant's case. (Court's Ex. # 3, p. 31). A

[4] Around the same time, Appellant personally submitted a motion seeking self-representation along with a number of letters that purportedly had been sent to his counsel and contained demands of counsel regarding his speedy trial rights. (Court's Ex. # 3, pp. 15-17; pp. 27-30; pp. 32-36).

little over a month later, the Edgefield County Grand Jury formally indicted Appellant for murder. (Court's Ex. # 3, pp. 37-38). Shortly after that, the solicitor provided written notice to Appellant through his counsel on December 13, 2005, the State would be seeking the death penalty in his case. (Court's Ex. # 3, p. 39). On that same date, Judge Maddox conducted a hearing in the Edgefield County Court of General Sessions with all parties present, including Appellant and his counsel. (Court's Ex. # 3, p. 40). Following the hearing, Judge Maddox issued an order confirming Appellant was properly arraigned and had no objections or additional requests at that time. (Court's Ex. # 3, p. 40).

A short time later, Judge Maddox issued an order that was filed on February 16, 2006, appointing an additional attorney for Appellant as required by South Carolina law. (Court's Ex. # 3, pp. 41-42). A few months after that, Judge Maddox conducted a hearing on May 16, 2006, in regard to the scheduling of the case for trial with all parties present, including Appellant and both his attorneys. (Court's Ex. # 3, p. 43). On that same date, Judge Maddox issued an order confirming he discussed potential trial dates with the parties and determined Appellant's case could not be brought to trial in 2006 "[b]ased upon the court schedule as well as that of the attorneys[.]" (Court's Ex. # 3, p. 43). As a result, Judge Maddox indicated Appellant's trial would be scheduled for January or February of 2007. (Court's Ex. # 3, p. 43).

Subsequent to that, a trial date was not scheduled until Judge Maddox issued an order dated April 17, 2008, setting Appellant's trial for the weeks of June 16, 2008, and June 23, 2008, and directing a jury to be drawn on the morning of May 19, 2008. (Trl. Tr. pp. 73-74; Court's Ex. # 3, p. 44). Thereafter, just days before the jury was to be drawn, Appellant's counsel moved for a continuance in light of the fact the defense was still not yet ready to proceed forward with the death penalty trial. (Court's Ex. # 3, p. 45). In response, Judge Maddox issued an order

finding good cause had been shown for a continuance, and Appellant's case was continued beyond the scheduled trial dates until such a time as it could be set for trial. (Court's Ex. # 3, p. 45). A few weeks after that, Judge Maddox issued an order at Appellant's counsel's request directing the Georgia Department of Corrections to permit Appellant's investigator to interview witnesses pertinent to the case who were incarcerated at that time. (Court's Ex. # 3, pp. 46-47).

Subsequently, on January 25, 2010, an order was issued appointing the Honorable R. Knox McMahon, circuit court judge, to preside over Appellant's case going forward.[5] (Court's Ex. # 3, p. 48). Following the appointment of the new judge, a capital jury trial was commenced on November 8, 2010, in the Edgefield County of General Sessions with Judge McMahon presiding.[6] (Court's Ex. # 3, p. 49). At the outset of trial, defense counsel moved for the case to be dismissed due to an alleged violation of the IAD Act. (Court's Ex. # 3, pp. 50-51). However, the trial judge denied defense counsel's motion, and the trial proceeded forward. (Court's Ex. # 3, p. 55). Subsequently, at the conclusion of the multi-week trial, the jury convicted Appellant as indicted and, following a sentencing hearing, recommended a sentence of death, which was imposed by the trial judge. (Order Denying Motions to Dismiss, p. 4). Appellant then timely filed and perfected an appeal.[7] (Order Denying Motions to Dismiss, p. 4).

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[5] According to defense counsel, Judge McMahon was appointed because the defense retained the services of an expert whose involvement necessitated Judge Maddox's recusal. (Trl. Tr. p. 74).

[6] As was later acknowledged by defense counsel, the solicitor did not seek any continuances on behalf of the State prior to Appellant's first trial for Victim's murder and, instead, engaged in repeated efforts to have the case brought to trial. (Trl. Tr. pp. 72-74).

[7] The records associated with Appellant's appeal following his capital trial are available on the South Carolina Appellate Court Public. Appellate Records for State v. Steven Barnes, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=29776.

Thereafter, following briefing and oral argument, the Supreme Court issued a divided opinion in which it reversed Appellant's convictions and remanded for a new trial due to an error regarding Appellant's attempt to waive his right to counsel. State v. Barnes, Op. No. 27322 (S.C. Sup. Ct. filed Oct. 16, 2013). After the Supreme Court issued its decision, the State filed a petition for rehearing, and the petition was denied. (Order Denying Motions to Dismiss, p. 4). However, the Supreme Court issued a substituted opinion in which it again reversed Appellant's convictions and remanded for a new trial. State v. Barnes, 407 S.C. 27, 30, 753 S.E.2d 545, 547 (2014). Importantly though, through its opinion, the Supreme Court expressly addressed Appellant's IAD Act claim and unanimously concluded he waived his rights under the act. Id. at 37, 753 S.E.2d at 550-551. The Supreme Court then issued a remittitur on January 31, 2014. (Order Denying Motions to Dismiss, p. 5).

After remittitur was issued, Appellant sought the appointment of counsel, and a hearing on the matter was held on April 23, 2014, in Lexington County Court of General Sessions with Judge Keesley presiding. Appellate Records for State v. Steven Louis Barnes, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=56950. Following the hearing, Judge Keesley issued an order on June 3, 2014, declining to rule on the matter in light of the order appointing Judge McMahon to preside over Appellant's case. Id. The Honorable Diane Schafer Goodstein, circuit court judge, was then appointed to preside over Appellant's case going forward. Id. Shortly after that, Appellant filed a pro se notice of appeal in an attempt to appeal Judge Keesley's order. Id.

Thereafter, on June 20, 2014, the Supreme Court issued an order dismissing Appellant's pro se appeal as an improper interlocutory appeal. Id. Following the issuance of that order, Appellant filed a pro se motion to reinstate, a pro se petition for an extraordinary writ, and a pro

se petition for original jurisdiction. Id. However, on August 25, 2014, the Supreme Court issued an order denying Appellant's pro se filings and directing Judge Goodstein to conduct a hearing on Appellant's request for appointment of counsel. Id. Furthermore, on that same date, the Supreme Court issued another remittitur. Id.

Following the issuance of the second remittitur, a hearing on the matter of appointment of counsel was held on September 11, 2014, in Edgefield County Court of General Sessions with Judge Goodstein presiding. (Order Denying Motions to Dismiss, p. 5). During the hearing, Judge Goodstein appointed counsel to represent Appellant and denied the State's request to reinstate his earlier convictions due to the appointment of counsel.[8] (Order Denying Motions to Dismiss, p. 5).

In light of Judge Goodstein's rulings, the State filed a Petition for Writ of Certiorari Due to Exceptional Circumstances in the Supreme Court on September 17, 2014, and the petition was granted on November 20, 2014. (Order Denying Motions to Dismiss, p. 5). Thereafter, following briefing and oral argument, the Supreme Court issued a divided opinion in which it affirmed Judge Goodstein's order appointing counsel to Appellant. State v. Barnes, 413 S.C. 1, 2, 774 S.E.2d 454, 455 (2015). The State then petitioned for rehearing, and the petition was denied. (Order Denying Motions to Dismiss, p. 5). Subsequently, on August 10, 2015, the Supreme Court again issued a remittitur. (Order Denying Motions to Dismiss, p. 5).

Following the issuance of the third remittitur, a pre-trial hearing was held on July 7, 2017.[9] (Pre-Trl. Tr. p. 1). During that hearing, the solicitor withdrew the death penalty notice

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[8] At that time, the solicitor was prepared for trial. (Trl. Tr. p. 114).

[9] Prior to that point, one of Appellant's defense counsel obtained an order of protection in a case unrelated to Appellant's that remained in place from July of 2015 until December 16, 2016, which prevented any advancement of Appellant's case for a period of approximately seventeen

and served timely notice on Appellant indicating the State would seek a mandatory sentence of life without parole based on Appellant's prior convictions. (Pre-Trl. Tr. pp. 3-7). Furthermore, during the same hearing, Judge Goodstein scheduled Appellant's trial to begin on October 9, 2017. (Pre-Trl. Tr. p. 16). However, Judge Goodstein noted it would be necessary for her to communicate with the Supreme Court to ensure she would still be presiding over the case following the withdrawal of the death penalty notice. (Pre-Trl. Tr. p. 21).

Subsequently, on October 4, 2017, the Edgefield County Grand Jury re-indicted Appellant for murder. (Trl. Tr. p. 9; p. 118; Indictment). A few days later, a jury trial was commenced as scheduled in the Edgefield County Court of General Sessions with Judge Goodstein presiding. (Trl. Tr. p. 1). At the outset of trial, defense counsel moved for Appellant's case to be dismissed due to alleged violations of the IAD Act and Appellant's constitutional speedy trial rights.[10] (Trl. Tr. p. 15). However, after considering the arguments of counsel, the trial judge denied both motions, and the trial proceeded forward. (Trl. Tr. p. 116; pp. 160-161; pp. 180-181; Order Denying Motions to Dismiss, pp. 1-18). During trial, Cave, Griffin, and Thatcher all testified about the events that led up to Victim's death, and they identified Appellant as the individual who orchestrated Victim's execution. (Trl. Tr. pp. 301-343; pp. 453-476; pp. 552-579). Thereafter, at the conclusion of trial, the jury convicted Appellant as indicted, and the trial judge sentenced him to a mandatory term of imprisonment of life without parole. (Trl. Tr. p. 718; p. 729).

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months. (Trl. Tr. pp. 49-50; pp. 113-115; p. 163). Shortly after that, a newly-elected solicitor with no prior involvement in Appellant's case took office in Edgefield County's circuit on January 11, 2017. (Trl. Tr. p. 50; p. 59; pp. 62-63).

[10] In support of the request for dismissal, defense counsel primarily relied upon written motions that were not filed until August of 2017. (Trl. Tr. pp. 15-16; p. 56; p. 116).

ARGUMENT

I.

The trial judge did not abuse her broad discretion by failing to dismiss Appellant's murder indictment based on an alleged violation of Appellant's speedy trial rights because the approximately forty-four-month span of time between the end of Appellant's successful appeal of his earlier convictions and Appellant's subsequent retrial for his sixteen-year-old victim's murder was not excessively or unreasonably lengthy, was only partially attributable to the State, 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 was serving a life sentence for crimes he committed in Georgia during the time period leading up to his most-recent trial.

Appellant contends the trial judge erred by failing to dismiss his murder indictment based on an alleged violation of his constitutional speedy trial rights. In support of that contention, Appellant maintains the trial judge improperly failed to consider as part of her speedy trial analysis the entire time period between his arrest in connection to his sixteen-year-old victim's murder and his eventual retrial that occurred roughly forty-four months after his convictions from his earlier trial in connection to the same murder were reversed on appeal.[11] Then, relying on the "extraordinary" fifteen-year period of delay he contends the trial judge should have considered, Appellant maintains his murder indictment should have been dismissed because the delays involved were allegedly largely attributable to the State, he purportedly validly asserted his speedy trial rights at various points prior to his original trial's commencement, and he

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[11] Notably, in raising that particular claim on appeal, Appellant made an entirely conclusory argument that included no citations to any supporting authority. (App. Br. p. 9; p. 11). As a result, that unsupported and conclusory argument was not properly preserved for appellate review and should be deemed abandoned on appeal. See State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (finding an argument to be abandoned where it raised in a conclusory manner); Glasscock, Inc. v. United States Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691-692 (Ct. App. 2001) (holding an argument raised on appeal in a conclusory fashion without citation to authority was abandoned for appellate purposes and noting "South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review").

suffered presumptive—but otherwise unspecified—prejudice as a result of the delays.[12] To the contrary, the trial judge correctly limited her speedy trial analysis to the delays that occurred between the point when remittitur was issued at the conclusion of Appellant's appeal of his original convictions and the date of Appellant's retrial for his victim's murder as those were the only delays pertinent to the analysis. Furthermore, the trial judge in no way abused her discretion by failing to dismiss Appellant's case based on an alleged speedy trial violation because the roughly forty-four-month period of delay at issue was not excessively or unreasonably lengthy, was only partially attributable to the State, 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, who was serving a life sentence for crimes he committed in Georgia during the time period he was awaiting retrial. Under such circumstances, Appellant's speedy trial rights were not violated, and the trial judge correctly declined to impose the extreme sanction of dismissal in his case. Appellant's conviction should be affirmed.

RELEVANT FACTS

Less than two months before Appellant's most-recent trial was scheduled to begin, defense counsel submitted a motion seeking for the case to be dismissed based on an alleged

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[12] Significantly, in his appellate brief, Appellant does not contend the trial judge abused her discretion by finding no speedy trial violation occurred due to the delays incurred from the date of the issuance of remittitur in January of 2014 to the date of the retrial in October of 2017. (App. Br. pp. 4-17). Instead, Appellant *solely* contends the trial judge abused her discretion by not finding a speedy trial violation occurred in light of the delays associated with the entire period of time between the date of his arrest in January of 2002 and the date of the retrial. (App. Br. pp. 4-17). Therefore, assuming the trial judge correctly determined the speedy trial analysis in Appellant's case should have been limited to the time period from the end of his first appeal to the retrial date, any issue Appellant had with the trial judge's speedy trial ruling has been abandoned on appeal as Appellant has not challenged the trial judge's finding no speedy trial violation occurred from the limited period of January of 2014 to October of 2017. See State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (instructing unchallenged and unappealed rulings are the law of the case).

violation of Appellant's state and federal constitutional rights to a speedy trial. (Pre-Trl. Tr. p. 16; Trl. Tr. p. 15; Speedy Trial Motion, pp. 1-21). In support of that motion, defense counsel discussed the various actions undertaken in Appellant's case from the point of his 2002 arrest until his scheduled retrial and maintained the State was responsible for eight years and seven months of delays during that time period. (Speedy Trial Motion, pp. 11-14). Furthermore, defense counsel appeared to suggest the reasons for the delays were not satisfactory, alleged Appellant repeatedly asserted his speedy trial rights through his IAD Act claim and various pro se filings, and argued Appellant suffered "enormous" prejudice as a result of the delays due to potential discrepancies in the testimony of the witnesses and the "severe" conditions of his confinement while awaiting trial.[13] (Speedy Trial Motion, pp. 14-20). For those reasons, defense counsel contended Appellant's speedy trial rights were violated and his case should be dismissed based on the roughly eight-year delay before his original trial and the roughly fifteen-year delay before his scheduled retrial. (Speedy Trial Motion, pp. 20-21).

Subsequently, at the outset of Appellant's trial, the trial judge conducted a hearing on the speedy trial dismissal motion. (Trl. Tr. pp. 15-16). In support of the motion, defense counsel reasserted his claims regarding the delays prior to Appellant's most-recent trial and maintained the entire period from Appellant's arrest to retrial was pertinent to the speedy trial analysis. (Trl. Tr. pp. 21-26; pp. 37-39). However, defense counsel conceded the speedy trial issue had not previously been addressed by a circuit court judge, was not raised at Appellant's first trial, and was not raised on appeal following the conclusion of that trial. (Trl. Tr. p. 78). Furthermore,

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[13] Notwithstanding the fact Appellant was serving a life sentence for crimes he committed in Georgia at the time he was being confined in South Carolina prior to the retrial, the specific conditions of Appellant's pre-trial confinement were the direct result of his own commission of numerous disruptive, violent, and vexing acts at the various facilities where he was held prior to the retrial. (Trl. Tr. pp. 53-55; p. 724; Order Denying Motions to Dismiss, p. 1; p. 15; Court's Ex. # 3, p. 7; Court's Ex. # 4 (Safekeeper Affidavit), pp. 1-6).

defense counsel conceded the various pro se filings submitted by Appellant while he was represented by counsel did not have to be considered as valid assertions of his rights due to the prohibition on hybrid representation in South Carolina. (Trl. Tr. pp. 37-39). Nevertheless, defense counsel inconsistently argued those pro se filings somehow could and should be considered as proper speedy trial assertions. (Trl. Tr. pp. 37-39). In rebuttal, the solicitor argued the only relevant time frame for the speedy trial analysis in Appellant's case was the time period from the issuance of remittitur following the reversal of his capital murder conviction to the date of his most-recent trial, which the solicitor acknowledged was sufficiently lengthy such that consideration of the relevant speedy trial factors was warranted. (Trl. Tr. pp. 40-41; pp. 46-47; Court's Ex. # 2 (State's Speedy Trial Issue Memorandum), pp. 6-9; p. 21). The solicitor then discussed the various periods of delay involved in the case, noted the State made repeated attempts to get Appellant's case scheduled for trial and did nothing to intentionally delay the case, pointed out Appellant was responsible for a number of the delays, and asserted Appellant suffered no meaningful prejudice as a result of any delays that were incurred.[14] (Trl. Tr. pp. 48-55; p. 63; Court's Ex. # 2, pp. 9-22).

After considering the arguments of counsel, the trial judge found no speedy trial violation occurred in Appellant's case. (Trl. Tr. p. 116; pp. 180-181; Order Denying Motions to Dismiss, p. 18). In support of that conclusion, the trial judge determined the relevant time period for the speedy trial analysis in Appellant's case began with the issuance of remittitur in January of 2014

[14] Notably, supporting the solicitor's assertions, defense counsel candidly acknowledged he engaged in regular meetings with the solicitor prior to Appellant's most-recent trial, characterized those meetings as "very substantive," and noted the solicitor gave Appellant's case "full attention" during the time period leading up to the scheduling of the retrial. (Trl. Tr. p. 58; p. 60). Moreover, defense counsel further acknowledged he never suggested to the solicitor Appellant's case needed to be scheduled for trial during the course of their discussions leading up to the retrial. (Trl. Tr. p. 60).

after his original convictions were reversed, reviewed the various delays that were incurred from that point in time going forward, and found delays totaling approximately two years and three months were attributable to the State. (Trl. Tr. pp. 108-116; pp. 161-175; Order Denying Motions to Dismiss, pp. 8-9). However, the trial judge concluded the reasons for the delays were largely neutral, determined the delays were not deliberately caused by the State, found Appellant only validly raised a speedy trial claim for the first time in August of 2017, and held the prejudicial effects of the delays were largely minimal while Appellant received a benefit from the delays through the withdrawal of the death penalty notice.[15] (Trl. Tr. pp. 109-116; pp. 161-175; Order Denying Motions to Dismiss, pp. 9-14). Following that ruling, the trial judge proceeded with an analysis of the entire time period involved in Appellant's case in the event it proved to be necessary and concluded no speedy trial violation occurred even if the delays involved in that time period were considered due to the fact the earlier delays were largely attributable to continuances requested by the defense coupled with the fact some time was legitimately needed for investigation and preparation prior to the original death penalty trial. (Trl. Tr. p. 175; pp. 178-181; Order Denying Motions to Dismiss, pp. 14-18). Accordingly, for all those reasons, the trial judge declined to impose the extreme sanction of dismissal in Appellant's case. (Trl. Tr. pp. 180-181; Order Denying Motions to Dismiss, p. 18).

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

[15] In finding the reasons for the delays was largely neutral, the trial judge noted she regularly engaged in status conferences with the parties in an effort to get Appellant's case scheduled for trial, and she indicated a number of the delays were associated with the solicitor's preparations and discussions with defense counsel, which ultimately led to the withdrawal of the death penalty notice. (Trl. Tr. p. 59; p. 61; Order Denying Motions to Dismiss, p. 11).

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, 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[.]"). Critically though, the criminal trial process is designed to move at a deliberate pace due to the many procedural safeguards involved, and, thus, the essential guarantee provided by the right to a speedy trial is the orderly expedition of a charge as opposed to mere speedy expedition. United

States v. Ewell, 383 U.S. 116, 120 (1966); see Beavers v. Haubert, 198 U.S. 77, 87 (1905) ("The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.").

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 is necessarily dependent on the particular circumstances of each case. Langford, 400 S.C. at 442, 735 S.E.2d at 482. 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 speedy trial rights have 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 date of Appellant's retrial for Victim's murder occurred on a date roughly fifteen years and eight months after his arrest in connection to the crime. However, because Appellant's retrial was preceded by an earlier trial that Appellant had already received along with an appeal in which no speedy trial issues were raised or addressed, the relevant delays for purposes of the speedy trial analysis in Appellant's case involved a period of roughly forty-four months that began with the issuance of remittitur following Appellant's successful appeal of his earlier convictions and ended with the start of his retrial for Victim's murder. See Levin v. State, 816 S.E.2d 170, 177 (Ga. Ct. App. 2018) ("Where . . . there has been an appeal or a dismissal of the charges and a subsequent re-indictment, the court measures the delay from the filing of the remittitur in the trial court."); Icgoren v. State, 653 A.2d 972, 978 (Md. Ct. Spec. App. 1995) ("[I]n construing a party's right to a speedy trial under the Sixth Amendment of the Federal Constitution . . ., we are *generally*, absent extraordinary circumstances not present here, only concerned with the period between the receipt of an appellate mandate, if the next prior conviction is reversed, and the subsequent retrial, or the period between the declaration of a

mistrial and the commencement of the retrial."); Duplantis v. State, 708 So. 2d 1327, 1334 (Miss. 1998) ("[T]he speedy trial clock begins to run for purposes of determining a violation of a defendant's right to speedy retrial on the date this Court reverses his first conviction."); State v. Kula, 579 N.W.2d 541, 547 (Neb. 1998) (concluding a speedy trial analysis conducted in regard to a retrial following an appellate grant of a new trial should only involve an examination of the time period between the appellate decision and the retrial *unless* the error necessitating the grant of the new trial was the result of misconduct purposefully designed to delay the proceedings or deny the defendant a right to a speedy trial); see also State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) ("[A] party cannot acquiesce to an issue at trial and then complain on appeal."); State v. Passmore, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005) ("The issue preservation requirement applies to assertions of constitutional violations[.]"); cf. Brewington v. State, 705 S.E.2d 660, 662 (Ga. 2011) ("While typically the time for speedy trial attaches at the date of arrest (or date of indictment/accusation if earlier), in this case appellants Brewington and Gary Brown were actually tried. Although they moved for dismissal on speedy trial grounds prior to their November 2009 trial, they did not appeal the denial of that motion prior to being tried. Therefore, as to these two defendants, the relevant time frame for purposes of the instant motion to dismiss on constitutional speedy trial grounds is from the date of the mistrial, November 25, 2009, through the date the motion was denied on March 16, 2010."). Nonetheless, as the pertinent delays involved in Appellant's case totaled over three years, those delays—just as the solicitor acknowledged during the retrial—were sufficiently lengthy such that consideration of the relevant speedy trial factors was necessary. See Barker, 407 U.S. 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 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 first of the relevant factors, the delays involved in Appellant's case were unquestionably lengthy. Cf. Brazell, 325 S.C. at 76, 480 S.E.2d at 70 (characterizing a delay of three years and five months as "lengthy"). However, a substantial amount of the delays that occurred prior to Appellant's retrial were not attributable to the State. Specifically, following the issuance of remittitur in January of 2014, Appellant sought the appointment of counsel from a trial judge without jurisdiction over his case and then promptly attempted to pursue an improper interlocutory appeal of the trial judge's non-merits-based order, which directly resulted in over four months of delays that extended from April of 2014 until August of 2014 and that were in no way attributable to the State. 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 State v. Miller, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986) ("In South Carolina, a criminal defendant may not appeal until sentence has been imposed."). Beyond those delays, one of Appellant's defense counsel was unable to work on Appellant's case due to an order of protection that was in place from July of 2015 until December of 2016, which resulted in roughly seventeen additional months of delay that were not caused by the State in any way. See 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). Accordingly, when those delays are subtracted from the approximately forty-four-month period from the original issuance of remittitur to Appellant's retrial, the State could only truly be held responsible for delays totaling a little less than twenty-three months in Appellant's case, which was not an exceptionally lengthy period of time for a murder case to be brought to trial in a county with a limited number

of terms of court. See 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."); see also United States v. Gregory, 322 F.3d 1157, 1162 (9th Cir. 2003) (holding an twenty-two-month period of delay "was not excessively long" for speedy trial purposes).

Turning to the second of the relevant factors, the delays incurred that were attributable to the State were incurred for legitimate reasons and did not result from any willful, intentional, or improper attempts to delay the retrial. See State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State's prosecution). Specifically, some of the delays that occurred following the issuance of remittitur in January of 2014 were associated with the process of determining which trial judge would preside over Appellant's case, which was a largely neutral reason for delay. See Jakupovic v. State, 696 S.E.2d 247, 250 (Ga. 2010) (explaining delays associated with changing judge assignments weigh minimally against the State). Similarly, the delays between September of 2014 and August of 2015 were incurred by the State's filing of an appeal in the Supreme Court's original jurisdiction, which was a legitimate reason for delay that was extended due to the Supreme Court's decision to *grant* the State's petition before ultimately rejecting the State's arguments in a *divided* opinion. See Loud Hawk, 474 U.S. at 315 ("Given the important public interests in appellate review, it hardly need be said that an interlocutory appeal by the Government ordinarily is a valid reason that justifies delay. In assessing the purpose and reasonableness of such an appeal, courts may consider several factors. These include the strength of the Government's position on the appealed issue, the importance of the issue in the posture of the case, and—in some cases—the seriousness of the crime."). Furthermore, the delays between January of 2017 and July of 2017 were incurred

based on the need for a newly-elected solicitor to become familiar with Appellant's case and the expansive record that had been developed in it up to that point, which was a largely neutral reason for delay.[16] 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 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). Thereafter, the delays between July of 2017, which was the time period during which Appellant's retrial was scheduled, and the date of retrial were related to the availability of a suitable term of court for the trial, which was a neutral reason for delays. Cf. State v. Chapman, 289 S.C. 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."). Thus, as all the delays attributable to the State were incurred for reasonable and legitimate purposes as opposed to for the improper purpose of delay, the non-willful reasons for the delays involved in Appellant's case did not establish his speedy trial rights were violated. See 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, is entitled to reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay.").

Turning to the third of the relevant factors, Appellant did not raise any claims related to his speedy trial rights until roughly forty-two months after the appeal of his original convictions

[16] Significantly, the solicitor had been prepared to go forward with Appellant's retrial prior to the issuance of the order of protection for one of Appellant's defense counsel. (Trl. Tr. p. 114). However, by the time the order of protection expired over a year later, a new solicitor had been elected, and no members of the prosecution team that had previously been involved in Appellant's case were still involved with it. (Trl. Tr. p. 71).

had ended and until after his retrial had already been scheduled.[17] Cf. Waites, 270 S.C. at 109, 240 S.E.2d at 653 ("We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial."); see also Langford, 400 S.C. at 440, 735 S.E.2d at 481 (recognizing delay is not an uncommon defense tactic). In fact, Appellant never actually sought a speedy trial and, instead, waited until just two months before his scheduled retrial was set to begin to seek *dismissal*, which was a requested remedy consistent with a desire to avoid the prospect of trial entirely as opposed to a genuine desire for 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)); see also Barker,

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[17] In seeking a reversal of the trial judge's refusal to dismiss his case for a speedy trial violation, Appellant contends he properly asserted his constitutional speedy trial rights years before he filed his speedy trial dismissal motion in August of 2017 through his submission of an IAD Act claim and various pro se filings. (App. Br. pp. 13-15). Importantly though, Appellant's IAD Act claim did not constitute an assertion of his constitutional speedy trial rights since an IAD Act claim is based on distinct statutory—as opposed to constitutional—provisions. See State v. Nickerson, 322 P.3d 421, 423 (Mont. 2014) ("The constitutional right to a speedy trial is distinct from the right to a speedy trial under the IAD."); see also State v. Allen, 269 S.C. 233, 237-238, 237 S.E.2d 64, 67-68 (1977) (analyzing a constitutional speedy trial claim separately and distinctly from an IAD Act claim); State v. Tucker, 376 S.C. 412, 416, 656 S.E.2d 403, 405 (Ct. App. 2008) (recognizing "the rights created by the IAD are statutory in nature and do not rise to the level of constitutionally guaranteed rights"). Moreover, to the extent Appellant submitted various pro se filings that might have referenced his speedy trial rights, those filings were submitted while he was represented by counsel and, thus, were legal nullities as opposed to valid assertions of his constitutional rights that could properly be considered at trial and on appeal. See State v. Stuckey, 333 S.C. 56, 58, 508 S.E.2d 564, 564-565 (1998) (holding substantive pro se filings submitted by a criminal defendant who is represented by counsel should not be accepted and cannot properly be considered by the court).

407 U.S. at 535 ("[T]he record strongly suggests that while he hoped to take advantage of the delay in which he had acquiesced, and thereby obtain a dismissal of the charges, he definitely did not want to be tried."). Accordingly, Appellant's failure to timely and legitimately seek a speedy retrial in his case greatly weakened any claim he may have had of a violation of his speedy trial rights. See Barker, 407 U.S. at 531-532 ("The defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that *failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.*" (emphasis added)). Moreover, the fact Appellant's scheduled retrial was conducted shortly after he first filed his speedy trial dismissal motion helped ensure his speedy trial rights were not violated since he actually received a trial almost immediately after he asserted his rights. 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).

Finally, turning to the fourth of the relevant factors, Appellant did not suffer any meaningful prejudice as a result of the delays associated with his case and, instead, actually received a benefit from the delays in the form of the State's withdrawal of the death penalty notice. See Barker, 407 U.S. at 532 ("Prejudice . . . should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired."); see also United States v. James, 712 F. App'x 154, 163 (3rd Cir. 2017) (recognizing prejudice resulting from delays can be offset for speedy trial purposes by a defendant's receipt of a benefit as a result of the same delays); Pittman, 373 S.C. at 553, 647 S.E.2d at 157 (concluding

Pittman's speedy trial rights were not violated where he "received some benefits as a result of the delay"). Additionally, Appellant did not suffer any actual prejudice, such as the loss of a witness or some evidence helpful to the defense, due to the delays involved in his case and, thus, his defense was not impaired by any delays.[18] See Ewell, 383 U.S. at 122 (rejecting a claim of prejudice as insubstantial, speculative, and premature where the defendants "mention no specific evidence which has actually disappeared or has been lost" and "no witnesses who are known to have disappeared"); 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."). Moreover, to the extent the delays could have had any impact on the memories of the witnesses who testified during the retrial, that impact would have affected the State equally if not more so in light of the fact the State had the burden of proving Appellant's guilt beyond a reasonable doubt. See Ewell, 383 U.S. at 122-123 ("[I]t should be recalled that the problem of delay is the Government's too, for it still carries the burden of proving the charges beyond a reasonable doubt."); cf. Smith, 307 S.C. at 381, 415 S.E.2d at 412 ("His argument that he was prejudiced because his witnesses' memories faded also lacks merit because the same disadvantage hampered the State."). Furthermore, because Appellant was serving a life sentence imposed for crimes he committed in Georgia throughout the entire period of time he was awaiting his retrial, Appellant was *not* incarcerated for any period of time in South Carolina during which he would not have otherwise been incarcerated. See State v. Monroe, 262 S.C. 346, 350, 204 S.E.2d 433, 435 (1974) ("During the period of delay, he was fully occupied serving time under valid sentences for which he received full credit."); see also Loud Hawk, 474 U.S. at 312 (instructing "impairment of

[18] On appeal, Appellant has not even attempted to identify any actual prejudice suffered as a result of the delays involved in his case and, instead, has elected to rely solely on a presumption of prejudice in seeking reversal of the trial judge's speedy trial ruling. (App. Br. pp. 14-17).

liberty" is the most important concern for speedy trial purposes). Accordingly, the absence of any actual prejudice resulting from the delays leading up to Appellant's retrial strongly demonstrated Appellant's speedy trial rights were not violated by the delays. 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.").

Because the relevant circumstances in Appellant's case do not suggest the forty-four-month period of delays—of which less than twenty-three months could properly be attributed to the State—between the end of Appellant's appeal of his original convictions and his retrial for Victim's brutal murder 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.[19] See Loud Hawk, 474 U.S. at 317 ("We cannot hold, on the facts before

[19] Even assuming the time period from Appellant's arrest in January of 2002 to the end of his first appeal in January of 2014 could somehow properly be considered as part of the speedy trial analysis, the delays associated with that particular period of time also did not violate Appellant's speedy trial rights due to the fact they were not excessive, were not willful or purposeful, were incurred for legitimate reasons, were not incurred following any valid constitutional speedy trial right assertions, and did not result in any meaningful prejudice to Appellant. See Barker, 407 U.S. at 530 (instructing the pertinent factors to be considered as part of a speedy trial analysis are the length of the delay, the reasons for the delay, whether any assertions of a defendant's speedy trial rights were made, and whether any prejudice resulted from the delay). Specifically, looking to the circumstances associated with the earlier delays, the delays incurred between January of 2002 and December of 2003 were largely attributed to the fact Appellant was being prosecuted at that time for crimes he committed in Georgia, which constituted a legitimate reason for the delays that could not be held against to the State. See Hunsberger, 418 S.C. at 345-346, 794

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. 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

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S.E.2d at 373 ("[W]hen a defendant violates the laws of multiple sovereigns, one jurisdiction must necessarily wait at the 'prosecutorial turnstile.' " (citation omitted)). Likewise, a number of the delays were associated with continuances granted at defense counsel's request, time granted for investigative purposes at defense counsel's request, and the longer period of time need for preparations in a defense penalty case, which constituted legitimate reasons for delay that were almost entirely attributable to the defense. See Vermont v. Brillon, 556 U.S. 81, 92-93 (2009) (recognizing delays caused by defense counsel's continuance requests are attributable to the defendant and not the State when conducting a speedy trial analysis). Additionally, a number of the delays were associated with the changing judge assignments in Appellant's case, which constituted a largely neutral reason for delay. See Jakupovic, 696 S.E.2d at 250 (instructing delays associated with changing judge assignments only weigh minimally in a speedy trial analysis). Furthermore and highly significantly, none of the delays resulted from the lack of preparedness on the part of the solicitor as the solicitor consistently expressed a readiness to proceed forward with Appellant's original trial prior to its commencement, which strongly demonstrated none of the delays were willfully incurred for the purpose of intentional delay. See Pollard v. United States, 352 U.S. 354, 361 (1957) (recognizing the constitutional right to speedy trial is designed to guard against "purposeful or oppressive" delay); cf. Hunsberger, 418 S.C. at 344, 794 S.E.2d at 372 (identifying the fact the solicitor declined the trial judge's invitation to conduct Hunsberger's trial during a special term of court as significant to the speedy trial analysis). Finally, the delays between the date of Appellant's trial in November of 2010 and the end of the subsequent appeal in January of 2014 were simply not relevant to any speedy trial analysis as Appellant had already received a trial by that point in time. See United States v. Bizzard, 674 F.2d 1382, 1386 (11th Cir. 1982) ("The time between a conviction and a reversal which requires retrial is clearly not counted for speedy trial purposes."). Accordingly, even if the broader time frame Appellant contends should have been considered could have properly been considered as part of the speedy trial analysis in his case, the trial judge nonetheless did not abuse her broad discretion by declining to impose the extreme sanction of dismissal since no speedy trial violation actually occurred no matter which time span was considered. Cf. Pittman, 373 S.C. at 552, 647 S.E.2d at 156-157 ("The record does not reflect any intentional or malicious delays by the prosecution, nor does the record reflect any negligent prosecutorial behavior in connection with this case. Additionally, the delays attributable to the defense were also reasonable in light of the circumstances of this case. Although it took a long time for the case to come to trial, any delay was the result of the complexities of this case. The justifications for the delay offered by both parties in this case weigh in favor of a finding that Appellant was not deprived of his right to a speedy trial.").

was at least forty-four months). Accordingly, the trial judge did not abuse her broad discretion by failing to dismiss 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). Appellant's conviction should be affirmed.

II.

The trial judge correctly found Appellant's issue related to a claimed violation of the Interstate Agreement on Detainers Act could not properly be relitigated prior to his most-recent trial because the South Carolina Supreme Court had already addressed that particular issue in an earlier appeal and bindingly determined no violation occurred. However, even if the issue could have been addressed again prior to the retrial, no violation of the Interstate Agreement on Detainers Act occurred based on the specific facts and circumstances of Appellant's case.

Appellant contends the trial judge erred by declining to dismiss his appeal for an alleged violation of the IAD Act. In support of that contention, Appellant readily acknowledges our Supreme Court already addressed and rejected the IAD Act claim in an earlier appeal. Nonetheless, Appellant asserts the trial judge could have and should have reconsidered the issue and dismissed the murder indictment because the IAD Act's time limits were purportedly "clearly" exceeded in his case. To the contrary, the Supreme Court addressed Appellant's claim of an IAD Act violation in an earlier appeal and found Appellant had waived the issue, which was a ruling that became the law of the case and, thus, was not subject to further review or alteration by the trial judge. Therefore, the trial judge correctly declined to reconsider the Supreme Court's binding ruling on the matter. However, even if the trial judge could have somehow addressed an issue that had already been resolved with finality by the Supreme Court, Appellant still would not have been entitled to dismissal because no IAD Act violation occurred in his case in light of the continuances properly granted prior to the expiration of the IAD Act's applicable time limits. Appellant's conviction should be affirmed.

RELEVANT FACTS

Shortly after Appellant's case was rescheduled for his most-recent trial, defense counsel submitted a motion seeking for the case to be dismissed based on an alleged violation of the IAD Act's timelines. (Pre-Trl. Tr. p. 16; Trl. Tr. p. 15; IAD Act Motion, pp. 1-6). In support of that

motion, defense counsel acknowledged numerous continuances were granted in Appellant's case after the IAD Act matter had been raised. (IAD Act Motion, pp. 3-5). Likewise, defense counsel acknowledged the Supreme Court had already rejected Appellant's claim of an IAD Act violation. (IAD Act Motion, p. 5). Nonetheless, defense counsel maintained the orders granting the continuances were somehow improper because they were purportedly "issued with irregularity" and without Appellant's express consent or waiver. (IAD Act Motion, p. 5). Furthermore, defense counsel asserted the continuances granted did not "adequately cover" the full period of time from Appellant's extradition to South Carolina until Appellant's first trial while the record from that trial allegedly did not contain all the relevant information regarding the IAD Act issue. (IAD Act Motion, p. 5). For those reasons, defense counsel argued Appellant's case should be dismissed for an IAD Act violation. (IAD Act Motion, p. 6).

Subsequently, at the outset of Appellant's trial, the trial judge conducted a hearing on the IAD Act dismissal motion. (Trl. Tr. pp. 15-16). In support of the motion, defense counsel again conceded Appellant's IAD Act claim had previously been addressed and rejected by the Supreme Court, and he then rested on the arguments raised in the pre-trial motion. (Trl. Tr. pp. 15-16). Following those remarks, the solicitor asserted the Supreme Court had already ruled definitively on Appellant's IAD Act issue through its earlier decision and, therefore, argued that issue could not appropriately be raised again to the trial judge. (Trl. Tr. pp. 40-41; Court's Ex. # 1 (State's IAD Issue Memorandum), pp. 6-8). Moreover, the solicitor argued no IAD Act violation occurred in Appellant's case even if the issue could have properly been addressed by the trial judge. (Court's Ex. # 1, pp. 8-17).

After considering the arguments of counsel, the trial judge concluded Appellant's IAD Act issue had already been resolved. (Trl. Tr. p. 68; p. 160). Furthermore, the trial judge found

nothing new had been presented calling into question the Supreme Court's decision on that particular issue. (Trl. Tr. pp. 160-161). Specifically, the trial judge held:

> The Supreme Court decision in [Appellant]'s initial trial reversing [Appellant]'s conviction and sentence of death . . . fully disposed of the IAD claim. [Appellant] has failed to present any new evidence to justify questioning that decision. Additionally, there has been no new IAD action commenced subsequent to that decision. Accordingly, [Appellant's] motion to dismiss for violation of the IAD is hereby denied.

(Order Denying Motions to Dismiss, p. 6). Therefore, the trial judge declined to dismiss Appellant's case based on an alleged IAD Act violation. (Trl. Tr. pp. 160-161; Order Denying Motions to Dismiss, p. 6; p. 18).

STANDARD OF REVIEW

On appeal, an appellate court sits to review a trial judge's rulings solely for errors of law. State v. Hurell, 424 S.C. 341, 351, 818 S.E.2d 21, 26 (Ct. App. 2018). In cases involving issues regarding compliance with the requirements established by the IAD Act, the IAD Act's terms are mandatory and a ruling contrary to those terms ordinarily constitutes an error of law. State v. Patterson, 273 S.C. 361, 363-364, 256 S.E.2d 417, 418 (1979); see State v. Holbrook, 274 S.C. 4, 6, 260 S.E.2d 181, 182 (1979) ("[T]he 120 day time limitation imposed under [one of the IAD Act's articles] is mandatory and required dismissal of the charges against appellants with prejudice."). However, when a continuance is requested within the time limits established by the IAD Act, a trial judge is vested with broad discretion in regard to whether to grant or deny one, and the trial judge's ruling on the matter will not be disturbed on appeal absent a clear and prejudicial abuse of discretion. See State v. Hill, 409 S.C. 50, 59-60, 760 S.E.2d 802, 807 (2014) ("[W]e will reverse a circuit court's decision to grant a continuance under the IAD only when it amounts to an abuse of discretion."); Patterson, 273 S.C. at 363, 256 S.E.2d at 418 ("It is

axiomatic that the decision to grant a continuance is generally within the trial court's discretion."); see also State v. Ravenell, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010) ("The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion."); State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005) ("The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion."). Significantly, appellate reversals of trial judges' rulings on continuance requests "are about as rare as the proverbial hens' teeth." State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957).

ANALYSIS

A. Correctness of the Trial Judge's Conclusion Appellant's IAD Act Claim Could Not Be Relitigated in Light of our Supreme Court's Earlier Appellate Decision Addressing That Exact Issue

The law-of-the-case doctrine is a doctrine based on the idea a court's decision upon a rule of law reached in a case "should continue to govern the same issues in subsequent stages in the same case." Arizona v. California, 460 U.S. 605, 618 (1983). Pursuant to the law-of-the-case doctrine, "a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). In other words, that doctrine "prohibits issues which have been decided in a prior appeal from being relitigated in the trial court in the same case." Ross v. Med. Univ. of South Carolina, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). "While the [law-of-the-case] doctrine has been referenced as discretionary, it is recognized that principles 'of authority . . . do inhere in the 'mandate rule' that

binds a lower court on remand to the law of the case established on appeal.' " Atkins v. Wilson, 417 S.C. 3, 17, 788 S.E.2d 228, 235 (Ct. App. 2016) (footnote and citation omitted).

In the case at bar, Appellant sought to have his charges dismissed by the trial judge after the trial judge reviewed and reconsidered our Supreme Court's earlier decision rejecting the IAD Act claim. However, as defense counsel readily acknowledged to the trial judge and Appellant continues to acknowledge on appeal, Appellant previously raised his IAD Act claim during his earlier direct appeal and our Supreme Court *expressly* addressed and rejected that particular claim in deciding that appeal. See Barnes, 407 S.C. at 37, 753 S.E.2d at 550-551 ("[W]e need not reach any of appellant's other issues save that alleged he was entitled to dismissal of all charges under the IAD Act. On the face of this record, it appears appellant waived his speedy trial rights under this Act, and we therefore decline to reverse on this ground."); cf. Ross, 328 S.C. at 62-63, 492 S.E.2d at 68 ("In Ross I, the Court specifically determined the lower court had discretion under provisions of the APA to order discovery concerning alleged irregularities in the grievance proceedings at MUSC and, during the grievance process, MUSC's General Counsel and Vice-President had violated provisions of the APA prohibiting *ex parte* communication. In arriving at these conclusions, the Court necessarily decided the APA was applicable to MUSC's grievance proceedings. The lower court was bound by this decision as the law of the case. Accordingly, the lower court erred by concluding the APA did not apply to the grievance proceedings before MUSC."). Beyond that fact, following the issuance of the Supreme Court's decision, Appellant did not seek rehearing or raise any other challenges to the ruling on the IAD Act claim even though appellate success on that issue would have entitled him to a complete dismissal of his charges as opposed to the new trial he was able to obtain. See State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (explaining unchallenged and

unappealed rulings are the law of the case). Furthermore, nothing prevented Appellant from presenting all the information he sought to present in support of his IAD Act claim during his latest trial when he originally raised that issue to both the trial judge from the first trial and the Supreme Court on appeal. See Judy, 381 S.C. at 458, 674 S.E.2d at 153 (instructing a party cannot relitigated a matter that either could have been raised in an earlier appeal or was expressly rejected by an appellate court). Accordingly, because Appellant had a full and fair opportunity to raise his IAD Act claim and that claim was rejected by both the original trial judge and our Supreme Court, the Supreme Court's ruling on Appellant's IAD Act claim was binding and Appellant was precluded from having that issue relitigated again at the outset of his most-recent trial. See State v. Gilbert, 277 S.C. 53, 58, 283 S.E.2d 179, 181 (1981) ("Appellants' allegations that their confessions should have been suppressed have been considered by this Court and resolved adversely to the appellants. These matters are therefore res judicata." (citation omitted)); see also Taylor v. United States, 59 F. App'x 58, 60 (6th Cir. 2003) ("The law of the case doctrine holds that once an appellate court has ruled on a particular issue, absent exceptional circumstances, the ruling is final and must be followed by the district court on remand."). As a result, the trial judge correctly declined to relitigate an issue that had already been finally resolved by our Supreme Court. See State v. Patrick, 318 S.C. 352, 358, 457 S.E.2d 632, 636 (Ct. App. 1995) (holding the Supreme Court's ruling on Patrick's IAD Act claim during an earlier appeal was binding). Appellant's conviction should be affirmed.

B. Absence of an IAD Act Violation Even Assuming the Trial Judge Could Have Addressed and Reconsidered the Issue

The IAD Act is a "compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner of another State." New York v. Hill, 528 U.S. 110, 111 (2000) (citations omitted).

Critically, the IAD Act was designed to create "cooperative procedures" between the states and the federal government in order to "encourage the expeditious and orderly disposition of" outstanding charges and detainers against prisoners incarcerated in other jurisdiction based on the "uncertainties" caused by such charges and detainers. S.C. Code Ann. § 17-11-10, art. I; see State v. Finley, 277 S.C. 548, 550, 290 S.E.2d 808, 809 (1982) ("The purpose of I.A.D. is to foster the expeditious disposition of charges outstanding against prisoners so as to eliminate uncertainties which accompany the filing of detainers.").

Based on the IAD Act, two distinct deadlines are imposed upon the State after a detainer against a defendant held in another jurisdiction is filed—a 180-day deadline and a 120-day deadline. See S.C. Code Ann. § 17-11-10, art. III(a) (setting out a 180-day deadline for the commencement of trial); S.C. Code Ann. § 17-11-10, art. IV(c) (setting out a 120-day deadline for the commencement of trial). Specifically, when a defendant files a request complying with the IAD Act's requirements for final disposition in connection to a filed detainer, the defendant "shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint." S.C. Code Ann. § 17-11-10, art. III(a). Likewise, "trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving state" when a defendant is transferred pursuant to a detainer regardless of whether the defendant ever requested final disposition. S.C. Code Ann. § 17-11-10, art. IV(c). Ordinarily, if a defendant is not brought to trial within the applicable statutory period, the IAD Act requires the trial judge to dismiss the pending indictment, information, or complaint with prejudice. S.C. Code Ann. § 17-11-10, art. V(c).

Critically though, notwithstanding the deadlines established by the IAD Act, a trial judge with jurisdiction over the case is vested with statutory authority to expand the deadlines by "grant[ing] any necessary or reasonable continuance" for "good cause shown in open court" when "the prisoner or his counsel" is present. S.C. Code Ann. § 17-11-10, art. III(a); see S.C. Code Ann. § 17-11-10, art. IV(c) (providing "for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance"). Moreover, beyond the trial judge's authority to expand the deadlines for good cause, a defendant—or counsel acting on the defendant's behalf—can waive the deadlines established by the IAD Act in multiple ways, including by requesting continuances or agreeing to a trial date outside of the Act's deadlines. See Hill, 528 U.S. at 115 (recognizing defense counsel can waive an IAD claim by agreeing to a trial date outside of the deadlines established by the IAD Act); see also Finley, 277 S.C. at 551, 290 S.E.2d at 809 ("In the instant case, appellant's motion was the cause of the delay; the prosecution indicated it was ready to proceed to trial. . . . We believe a defendant cannot cause the delay in the trial and then expect dismissal of the charges because the case was not tried within the one hundred twenty day period."); State v. Allen, 269 S.C. 233, 238, 237 S.E.2d 64, 67 (1977) ("The provision in Section IV(e), for dismissal of an indictment where a prisoner is returned to the original place of imprisonment without a trial, has no application when, as here, the State is ready for trial and the prisoner requests and obtains a continuance.").

In the Appellant's case, neither the State nor any of the circuit court judges involved in the case—just as the Supreme Court has previously concluded—violated the requirements of the IAD Act before Appellant was brought to trial for Victim's murder. See Barnes, 407 S.C. at 37, 753 S.E.2d at 550-551 (declining to dismiss Appellant's case for a purported IAD Act violation).

Accordingly, even assuming Appellant's IAD Act claim could have somehow been addressed by the trial judge despite the fact it had already been addressed and rejected by the Supreme Court, no IAD Act violation occurred in Appellant's case.

Critically, regardless of whether Appellant actually triggered the 180-day deadline or the 120-day deadline was the applicable deadline that began running when Appellant was extradited to South Carolina from Georgia, the circuit court took proper statutorily-authorized actions within the deadlines established by the IAD Act. Demonstrating that fact, on a date only 102 days after the initial purported triggering event and seven days after Appellant was brought to South Carolina, Appellant appeared pro se before Judge Keesley, and a hearing was conducted on his IAD Act claim in open court. Then, two days after that, Judge Keesley issued a written order finding good cause existed to continue Appellant's trial beyond the 180-day deadline mandated by the IAD Act. Specifically, in finding good cause existed, Judge Keesley determined Appellant's case was going to be a capital murder trial, specific procedures applied to such trials in South Carolina, a presiding judge would have to be appointed, terms of court would have to be modified, the discovery associated with a death penalty case would have to be conducted, and there was no reasonable way the case could be brought to trial under the timeframe established by the IAD Act, which were all legitimate and weighty reasons for continuing Appellant's death penalty trial. See S.C. Code Ann. § 17-11-10, art. III(a) (authorizing the presiding judge to grant "any necessary or reasonable continuance" for "good cause shown in open court" when an IAD claim is before him or her); cf. Hill, 409 S.C. at 59-60, 760 S.E.2d at 807 (considering the magnitude of the charged crime in determining whether the trial judge abused his discretion by granting a "good cause" continuance under the IAD Act). Therefore, in Appellant's case, a circuit court judge with proper jurisdiction over the matter

granted a reasonable and necessary continuance upon a showing of good cause before either the 180-day deadline or the 120-day deadline of the IAD Act had expired, and there was nothing suggesting Judge Keesley abused his discretion by granting that continuance. See Hill, 409 S.C. at 59, 760 S.E.2d at 807 ("[W]e will reverse a circuit court's decision to grant a continuance under the IAD only when it amounts to an abuse of discretion."); see also Lytchfield, 230 S.C. at 409, 95 S.E.2d at 859 ("The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant. . . . [R]eversals of refusal of continuance are about as rare as the proverbial hens' teeth."). As a result, no IAD violation occurred when Appellant's case was continued past the deadlines established by the IAD Act.

Beyond the fact no IAD violation occurred as a result of Judge Keesley's grant of a proper continuance, no subsequent violation of the IAD Act occurred before Appellant was brought to trial. Critically, until February 16, 2006, it was not possible for Appellant to be brought to trial in his death penalty case as he did not have—and had not waived the right to have—the requisite two specially-qualified attorneys needed for a capital murder trial to proceed forward. See S.C. Code Ann. § 16-3-26(B)(1) ("Whenever any person is charged with murder and the death penalty is sought, the court, upon determining that such person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend such person in the trial of the action. One of the attorneys so appointed shall have at least five years' experience as a licensed attorney and at least three years' experience in the actual trial of felony cases, and only one of the attorneys so appointed shall be the Public Defender or a member of his staff."). Then, shortly after Appellant's second attorney was appointed, Judge Maddox, who by then was

presiding over Appellant's case, conducted a hearing in an effort to schedule Appellant's trial and was forced to continue the case again because neither the court's schedule nor the schedules of the attorneys—including Appellant's attorneys—were such that a trial could be scheduled for the remainder of 2006. After that, Appellant did not make any formal or legitimate requests for his case to be promptly tried and did not raise any additional arguments pursuant to the IAD Act prior to Judge Maddox scheduling his case for trial in June of 2008.[20] Instead, once the case was scheduled for that time period, Appellant's counsel *moved for a continuance* to give them time to

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[20] Critically, although no legitimate objections pursuant to the IAD Act were raised after Judge Keesley granted the initial good cause continuance, Appellant—through an improper pro se motion dated September 5, 2005, and filed on September 8, 2005—personally sought for his case to be dismissed pursuant to the IAD Act. (Court's Ex. # 3, pp. 18-25). Likewise, in November of 2005, Appellant personally submitted to the Edgefield County Clerk of Court several letters he had allegedly sent to his counsel indicating he did not wish counsel to seek any continuances on his behalf. (Court's Ex. # 3, pp. 32-36). Notwithstanding the fact it was for counsel—and not Appellant—to make the necessary scheduling decisions for the defense, none of Appellant's pro se filings, which were legal nullities in light of the fact he was represented by counsel at the time he submitted them, constituted legitimate objections under the IAD Act, and the circuit court judges involved in Appellant's case correctly took no action on any of those filings. See Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) ("There is no constitutional right to hybrid representation either at trial or on appeal."); 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); see also Hill, 528 U.S. at 115 ("Scheduling matters are plainly among those for which agreement by counsel generally controls. This case does not involve a purported prospective waiver of all protection of the IAD's time limits or of the IAD generally, but merely agreement to a specified delay in trial. When that subject is under consideration, only counsel is in a position to assess the benefit or detriment of the delay to the defendant's case. Likewise, only counsel is in a position to assess whether the defense would even be prepared to proceed any earlier. Requiring express assent from the defendant himself for such routine and often repetitive scheduling determinations would consume time to no apparent purpose. The text of the IAD, moreover, confirms what the reason of the matter suggests: In allowing the court to grant 'good-cause continuances' when either 'prisoner *or his counsel*' is present, it contemplates that scheduling questions may be left to counsel." (citation omitted)); cf. 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)).

complete their preparations for the capital trial just before a jury pool was drawn, and Judge Maddox granted the defense's request and continued the case until such time it could be set for trial. As Appellant's defense was not yet ready for trial long after Judge Keesley granted the initial good cause continuance, it is abundantly clear neither Judge Keesley nor Judge Maddox abused their broad discretion in continuing Appellant's case beyond the deadlines set out in the IAD Act.[21] See State v. Colden, 372 S.C. 428, 437, 641 S.E.2d 912, 917 (Ct. App. 2007) (recognizing trial judges have broad discretion and are shown great deference on the grant or denial of continuance requests). Moreover, by actually seeking additional continuances beyond the initial continuance granted by Judge Keesley, Appellant's defense waived any right to complain of an IAD violation when his case was finally brought to trial at a time when all sides were ready to proceed. See Hill, 528 U.S. at 115 (recognizing defense counsel—even without express consent from the client being represented—could effectively waive a defendant's right to be brought to trial within the 180-day period specified under IAD Act by agreeing to a trial date

[21] Regarding Judge Maddox's May 2008 order granting defense counsel's motion for a good cause continuance, there is no indication in the order the continuance was granted following a hearing conducted in open court with either defense counsel or Appellant present as required by the IAD Act. See S.C. Code Ann. § 17-11-10, art. III(a) (permitting a trial judge to grant "any necessary or reasonable continuance" upon "good cause shown in open court" when "the prisoner or his counsel"); S.C. Code Ann. § 17-11-10, art. IV(c) (permitting a trial judge to grant "any necessary or reasonable continuance" upon "good cause shown in open court" when "the prisoner or his counsel"). Importantly though, no objection was raised to the sufficiency of the order after it was issued, and, thus, Appellant cannot properly challenge its sufficiency now. See Hill, 528 U.S. at 118 ("[Making dismissal of an indictment turn on a hypertechnical distinction] would enable defendants to escape justice by willingly accepting treatment inconsistent with the IAD's time limits, and then recanting later on. Nothing in the IAD requires or even suggests a distinction between waiver proposed and waiver agreed to."); see generally State v. Burnett, 226 S.C. 421, 424, 85 S.E.2d 744, 746 (1954) ("A defendant may not reserve vices in his trial, of which he has notice as here, taking his chances of a favorable verdict, and in case of disappointment, use the error to obtain another trial."); State v. Ballew, 83 S.C. 82, 87, 63 S.E. 688, 690 (1909) ("The general principle that a party can not take his chances of a successful issue, reserving vices in the trial, of which he has notice, for use in case of disappointment, is universally recognized and obviously just.").

outside that time period); see also Brown v. Wolff, 706 F.2d 902, 907 (9th Cir. 1983) (explaining "[a] prisoner may waive his IAD rights ... . if he affirmatively requests to be treated in a manner contrary to the procedures prescribed by the IAD" while also finding the petitioner, by expressly agreeing to continuances up to the date of his trial, "acted contrary to the speedy trial provisions of the IAD"); United States v. McIntosh, 514 F. App'x 783, 795 (10th Cir. 2013) ("A defendant may waive his IAD rights by agreeing to a trial date that is later than the Agreement requires. Here, the Government moved to designate the case a complex case and to exclude all time prior to trial for purposes of the Speedy Trial Act. The Government's motion requested a trial date of October 24, 2010, well beyond the IAD's 120-day deadline. At a hearing on that motion, Defendant was present with his counsel and did not object to the later trial date. Because he did not do so, he waived his right to go to trial within 120 days of his arrival in the District of Kansas."); cf. Allen, 269 S.C. at 237, 237 S.E.2d at 66 (holding the defendants' request for a continuance "amounts to a waiver of their right to now contend that they were deprived of the right to a speedy trial of the charges against them"). Accordingly, just as our Supreme Court previously concluded, no IAD Act violation occurred in Appellant's case, and, therefore, Appellant was not entitled to dismissal even assuming the issue could have been addressed and reexamined by the trial judge. 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,

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ATTORNEYS FOR RESPONDENT

February 4, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County
Honorable Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2017-002140

THE STATE,

Respondent,

vs.

STEVEN LOUIS BARNES,

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, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 4th day of February, 2019.

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February 4, 2019

Kathrine H. Hudgins, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211

RE: State v. Steven Louis Barnes – Appellate Case No. 2017-002140

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 and one enclosed)
Victim Services