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APR 24 2019

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Edgefield County  
R. Knox McMahon, Circuit Court Judge

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THE STATE,

Respondent,

vs.

MAURICE ANTHONY ODOM,

Petitioner.

Appellate Case No. 2018-001676

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**Brief of Respondent**

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ATTORNEYS FOR RESPONDENT

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## **STATEMENT OF ISSUE ON APPEAL**

The trial court did not err in denying the motion to dismiss the case based on speedy trial grounds. Odom was tried the first time shortly after he was re-indicted. Appellant caused a substantial portion of the pre-indictment delay. Appellant did not move for a speedy trial until the start of his second trial. Appellant failed to establish prejudice attributable to the delay. Further, Appellant failed to show willfulness or negligence from the State in delaying trial.

## **STATEMENT OF THE CASE**

Appellant Maurice Odom was tried and convicted by a jury of second degree burglary on June 8-10, 2015, before the Honorable R. Knox McMahon. Judge McMahon sentenced Odom to life without parole pursuant to S.C. Code §17-25-45.

## **STATEMENT OF FACTS**

On October 17, 2007, Appellant Odom and his half-brother, dressed in dark clothes, gloves, and masks, threw cinder blocks through the glass door of the Johnston IGA and stuffed ninety cartons of cigarettes in lawn bags before fleeing. This was captured on motion-activated video.

Investigator Lamaz Robinsion described what the video depicted as follows:

[T]wo individuals . . . entered the store by throwing a brick-like block towards the window. On the first attempt, it was not successful and the second attempt it was successful where the brick went through the window and then two individuals entered the store. At that point in time, one of the individuals had a blue in color shirt with like some blue in color pants and the other individual had on some black in color shirt like with a black in color pants.

Both individuals had what appeared to be ski masks over their face and gloves over their hands. The one in the black shirt entered the store first with the one in the blue shirt in pursuit behind him. They went into the store and then the next caption that comes out on the video is when they're exiting the store. During the time while

they was in the store, they, when they was entering into the store you could see what appeared to be empty . . . black lawn trash bags . . . . When they [exited] the store, it appeared that those bags had been filled.

R. p. 258, line 8 – p. 259, line 2.

Tayla Barton, the store manager, received a phone call from the store's alarm company shortly before 2:00 a.m. on October 17, 2007. Law enforcement was already present when she arrived at the store. The glass in the double-door entrance was shattered and cinder blocks lay on the store floor. The shelves for cigarettes were empty – ninety cartons of cigarettes were missing. Barton showed law enforcement the surveillance footage from the action-activated surveillance camera. R. pp. 133-41; p. 146.

Deputy Chris Miller from the Saluda County Sheriff's Office was called into Edgefield County to help set up a perimeter in the vicinity of the Johnstown IGA. He located a white Cadillac backed into the woods off Highway 191. When Deputy Miller shined the spotlight on the car, he saw two people changing out of clothes. Upon being detected, they fled into the woods. Deputy Miller stayed by the Cadillac to wait for more law enforcement to arrive. R. pp. 167-70. The dog tracking team was unable to pick up a scent. R. pp. 174-77; p. 183.

Officers collected the clothing left outside the Cadillac. R. p. 180. During the inventory search of the abandoned Cadillac, law enforcement found two cell phones and a wallet. The wallet contained Odom's South Carolina Driver's license, his North Carolina Sheriff's identification card, an employer's identification card, Odom's birth certificate, and his social security card. R. pp. 192-94.

The Cadillac bore only paper dealer tags, so officers could not run a license plate check.

However, the search yielded a bill of sale to Demetrius Odom on September 22, 2007, by Duke Boys Auto Sales. R. pp. 201-02. Jesse James Dukes, owner of Duke Boys Auto Sales, testified he sold the Cadillac to Temetrious Odom. Appellant Odom was with her when he sold her the Cadillac. Dukes knew Temetrious because she was from his hometown. He also knew Appellant Odom. R. pp. 290-91. Chief Aston turned the case over to Investigator Lamaz Robinson. R. p. 292.

Chief Lamaz Robinson, Chief Aston's successor, was an investigator at the time of the burglary. Chief Robinson arrived at the scene and examined the video. He then investigated the abandoned Cadillac. Chief Robinson noted clothes outside the car by the door. He also examined one of the cell phones. Chief Robinson discovered the phone was on because it lit up when he held it. The cell phone advised that it was owned by Maurice Odom. The other cell phone contained a contact list with a number for "Momma." The officers called the number, and Co-defendant Brandon Donaldson's mother answered, which is how Donaldson was caught for his part in the burglary. R. p. 231; pp. 255-65. The clothes found outside the Cadillac included a blue shirt, a black shirt, dark jeans, and a pair of gloves. R. p. 276. DNA found on some other clothes discovered inside the Cadillac were a 1 in 140 quadrillion match to Odom's DNA. R. pp. 346-47.

Donaldson is Odom's half-brother. Donaldson could not give an exact count on the number of his siblings, seventeen or eighteen. He testified Odom picked him up and they drove from Blackville in Barnwell County where they lived. R. pp. 220-21. Donaldson did not seem to know the specifics of what they were planning, but he knew they were about to make some money by doing "something crazy." R. p. 247, lines 1-15. They parked the Cadillac in the bushes. They were wearing dark clothes, Donaldson identified the blue shirt that was State's Exhibit 17, and identified

himself as the blue-shirted burglar in the store video. They smashed the glass door to the grocery store. They stuffed their bags full of cigarettes. They ran to the Cadillac and were taking off their burglary clothes when a light shined on them. Donaldson testified he left his bag of cigarettes behind and surmised Odom must have grabbed the bag. They both ran away. Although not expressly stated, it seems they split up. Donaldson called a friend to pick him up. R. pp. 221-30.

### **STANDARD OF REVIEW**

Odom challenges the trial court's denial of his speedy trial motion, made shortly after his motion to relieve counsel at the start of his second trial. The standard of review for this Court is whether the trial court abused its discretion. State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012) (finding the trial court's ruling on a motion for speedy trial will not be reversed absent an abuse of discretion); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (noting a trial court abuses its power of discretion when it commits an error of law or when there has been a factual conclusion without any evidentiary support).

## ARGUMENT

**The trial court did not err in denying the motion to dismiss the case based on speedy trial grounds. Odom was tried the first time shortly after he was re-indicted. Appellant caused a substantial portion of the pre-indictment delay. Appellant did not move for a speedy trial until the start of his second trial. Appellant failed to establish prejudice attributable to the delay. Further, Appellant failed to show willfulness or negligence from the State in delaying trial.**

Odom contends the trial court abused its discretion in denying his first-time, last-minute motion for speedy trial; for believing in the credibility of the State's explanations for the delay; for recognizing Odom's role in the delay by his failure to appear for court in February 2009 – leading to the dismissal of the first set of indictments; for not finding the State caused the delay by not searching for Odom once he willingly became a fugitive; and for allowing his attorneys time to prepare for trial each time he changed attorneys. Odom believes that none of the time he was a fugitive should be weighed against him. He finds a sinister motive in the State allowing his attorneys time to prepare for trial and wants this Court to find the trial court erred in not inferring some unspecified tactical advantage to the State for its alleged part in the delay of the trial.

Odom failed to appear for court. He later changed attorneys several times. Odom was frequently jailed in other counties as he accumulated new burglary charges elsewhere. Odom began his second trial moving to relieve his attorney and hire a prior attorney. Presumably, if his motion was granted, trial would have been delayed further. Upon denial of this motion, Odom's counsel moved, for the first time, for a speedy trial although he was unable to show actual prejudice from the delay. The trial court did not err in denying Odom's motion to dismiss based on an alleged violation of his right to a speedy trial.

### **Relevant time frames for determination of speedy trial rights**

Importantly, because the prosecution dismissed the first set of indictments in February 2009, and was not reindicted until 2013, only the time frame between his arrest in October 2007 and the dismissal of indictments in 2009, and the time from the 2013 indictments to the second trial on June 2015 may be considered for the speedy trial clock. State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997) (finding period of time between nolle prosequere of indictments on January 26, 1988 and reindictment in July 1994 was not part of the consideration in determining if Brazell's speedy trial rights were violated).

The delay between October 2007 and February 2009 is readily explainable. The prosecution expected that private counsel who represented Odom at a bond hearing was going to take on full representation. Further, Odom failed to appear at some point, leading to dismissal of the indictments.

The second period of time, from August 2013 until June 2015, also is readily explainable. Odom was tried the same month for the first time the same month as indicted. That case ended in a mistrial and his attorney was relieved. In his place, Odom was appointed a public defender who ultimately represented him at trial and made the speedy trial motion the day of his second trial, on June 8, 2015.

Note Odom never raised any issue concerning pre-indictment delay. See Brazell, 325 S.C. (noting the due process clause plays a limited role in protecting against oppressive pre-indictment delay). That ground would not be proper to consider now on appeal. State v. Primus, 349 S.C. 576, 583, 564 S.E.2d 103, 107 (2002) (an issue not raised in the brief to the Court of Appeals, but instead

raised for the first time in the petition for rehearing is not properly preserved for the Supreme Court's consideration in a petition for writ of certiorari) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Further, Odom is unable to meet the high threshold for showing substantial actual prejudice. *Brazell*, 325 S.C. at 68-69 (finding when claiming prejudice from the unavailability of a witness, courts required the identity of the witness, demonstration with specificity of the expected content of the testimony, show the efforts to locate the witness, and proof the information the witness would provide was unavailable from other sources).

### **Speedy-trial rights**

An accused is entitled to a speedy trial under the Sixth and Fourteenth Amendments of the United States Constitution and under Article 1, Section 14, of the Constitution of South Carolina.

Whether or not a person accused of crime has been denied his constitutional right to a speedy trial is a question to be answered in the light of the circumstances of each case. A speedy trial does not mean an immediate one; it does not imply undue haste, for the state, too, is entitled to a reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay.

*Wheeler v. State*, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966). The United States Supreme Court (USSC) explained: "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." *Beavers v. Haubert*, 198 U.S. 77, 87 (1905); *see also, Barker v. Wingo*, 407 U.S. 514, 522 (1972) (finding "any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case").

This Court observed the following:

The Supreme Court of the United States has deemed this right

“generically different from any of the other rights enshrined in the Constitution for the protection of the accused.” . . . This is due in large part to the reality that “[d]elay is not an uncommon defense tactic” and “deprivation of the right to a speedy trial does not per se prejudice the accused’s ability to defend himself.”

State v. Langford, 400 S.C. 421, 440-41, 735 S.E.2d 471, 481 (2012) (quoting Barker).

The Barker court identified several factors in determining whether a defendant was denied the right to a speedy trial including: (1) the length of delay, (2) the reason the government uses to explain the delay, (3) when and how the defendant asserted his speedy trial right, and (4) the prejudice to the defendant. Barker, 407 U.S. at 530; see also, State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (citing factors for consideration). “The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” Barker, 407 U.S. at 530.

#### **Delay triggers further review**

In the instant case, the delay is sufficient to trigger further review. See State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (finding delay of two years and four months sufficient to trigger further review). The time from arrest to trial was substantial, almost six years until the first trial, under two years thereafter for the next. The crime occurred October 17, 2007, and Odom was arrested on October 30, 2007. Odom’s second trial started on June 8, 2015, seven years and eight months later. However, this delay is reduced to sixteen months before the 2008 indictments were dismissed in February, 2009, and twenty-two months from the August 2013 indictments until trial on June 8, 2015. Brazell, supra. So the computation becomes only thirty-eight months.

Further, Odom was tried the first time without ever raising a speedy trial motion. Since he

did not raise a speedy trial motion and was tried, albeit not convicted, the speedy trial clock should run anew from the time the mistrial was granted. See Nottingham v. State, 135 A.3d 541 (Md. Ct. Sp. App. 2016) (finding ordinarily the relevant time period for speedy trial analysis in the event of a retrial following a mistrial is from the time the mistrial is declared to the second trial); Clancy v. State, 886 So.2d 166 (Ala. Crim. App. 2003) (finding for purposes of speedy trial analysis, the court must consider the delay between the mistrial and second trial); State v. Grayson, 775 S.E.2d 222 (Ga. Ct. App. 2015) (calculating time for speedy trial analysis from time of mistrial and finding that because the case was retried within eight months, the time period was not presumptively prejudicial). Therefore, the analysis would be further reduced to the twenty-two month time period between the first and second trial.

#### **Cause of delays**

The delays were occasioned by several factors. The State noted Odom made bond after being arrested on the charges. Odom bonded out in February 2008. R. p. 38, lines 6-8; p. 41, line 21. Odom amassed new charges in other counties at a dizzying rate and was incarcerated on some of those other charges. Odom was not incarcerated, nor did the State seek to revoke his bond, on the Edgefield charges. R. p. 38. The State noted that Odom **never** filed a motion for speedy trial. R. p. 38.

Odom managed to stay out of trouble for about seven months after making bond, until he was arrested for a Lexington County burglary, for which he received a bond in September 2008. The solicitor noted that Odom also had Barnwell charges pending that predated these charges. He subsequently was charged in Laurens and Newberry counties to boot. Judge Keesley set a curfew in

lieu of revoking his bond after Odom picked up new charges in Lexington County. R. pp. 42-43. Odom was first represented by Greg Seigler, Esquire, but Odom subsequently retained Marion Moses, Esquire, for his 2008 bond hearing. R. p. 43. The prosecution noted some uncertainty existed as to whether Moses would continue to represent Odom: “We at first thought Mr. Moses would have him on all of this, and he ended up just representing him for the purposes of the bond hearing, Your Honor.” R. p. 43, lines 10-17.

Notably, Odom failed to appear on February 12, 2009. At that point, the prosecution **dismissed the indictments**. Odom claims in his brief that the State was not ready to try the case because it did not indict Odom until 2013. However, as noted by the prosecution, in a passage Odom quotes in the brief, he was indicted in 2008. Odom failed to provide a reason for his failure to appear. R. pp. 43-44; p. 47, lines 23-25. The trial court noted the failure to appear and addressed it to Odom’s attorney, observing, “He could or could not have been in jail. I don’t know the answer to that question, but he wasn’t here.” R. p. 47, line 23 – p. 48, line 2. Rather than offer an explanation for the failure to appear, Odom’s counsel merely confirmed the trial court’s observation with “Yes, sir.” R. p. 48, line 3. Accordingly, it seems likely Odom failed to appear not because he was incarcerated elsewhere, but because he chose not to appear. Nonetheless, Odom became a fugitive by February 12, 2009, and no evidence indicates Odom made any attempt to contact the Solicitor’s Office, the Court, or the Clerk of Court after February 2009.

Odom was finally incarcerated in 2011 on charges in the Eighth Judicial Circuit. R. p. 44. However, he was not indicted until August 2013, so the speedy trial clock was not running. The instant case was called for trial on August 6, 2013, and ended in a mistrial. R. p. 39. The State

**noted it attempted to call the case prior to 2013**, but the case was delayed because Odom changed lawyers from Seigler, who was appointed, to Jerry Screen, Esquire, who Odom's family hired. The State noted the discovery process started all over. R. p. 39, lines 7-10.

After the mistrial, Screen was relieved, stating he was only retained to try the case one time. Apparently that motion was granted and the public defender's office was appointed. R. p. 39. Inexplicably, Odom suggests this Court should find the State's decision to not call the case to allow new defense attorneys to prepare the case should be held against the State as tactical or negligent reasons rather than for reasons of fairness and consideration in allowing Odom's attorneys to be prepared for trial. At least some of this time following mistrial is attributable to Odom and should nonetheless weigh neutrally against the State.

Accordingly, the State offered a reasonable accounting for the delays, **which Odom's counsel did not refute**. They include the fact Odom was represented by three different attorneys prior to the August 2013 trial, and a fourth for the June 2015 trial. More importantly, Odom inexcusably failed to appear rendering himself a fugitive. Consequently, the prosecution needed to **dismiss the indictments** in 2009. R. pp. 43-44; p. 70, lines 23-25. It is disingenuous to conclude, as suggested by Odom, that the State was not prepared to prosecute Odom because it did not attain indictments prior to 2013. It had the indictments in 2009 when Odom failed to appear and needed to dismiss them.

In Smith v. State, 579 S.E.2d 829 (Ga. Ct. App. 2003), the defendant argued he was denied a speedy trial due to a nearly fourteen-year delay. The delay was occasioned by his failure to appear for trial. The Georgia Court of Appeals observed, "Smith, with full knowledge of his duty to report

for trial, and the consequences of his failure to do so, left DeKalb County and failed to appear for trial. He avoided arrest on the outstanding bench warrant for almost 14 years.” Id. at 832. Nonetheless, Smith argued Georgia was negligent in tracking him down and the negligence caused the delay and violation of his speedy trial rights. The court scoffed, “Criminal procedure is not a game, and one who fails to appear as noticed and leaves the prosecuting county will not be heard to complain that the State failed to thwart his wrongdoing.” Id.

Odom relies extensively on Doggett v. United States, 505 U.S. 647 (1992). But that case is readily distinguishable. In Doggett, the defendant was indicted in 1980, but left for Colombia before being arrested or otherwise being put on notice that he was wanted for trafficking narcotics. Through negligence on the part of the government, it took six years after his return to the United States and eight and half years after he was indicted, for the government to arrest Doggett for the charges for **which he had no prior knowledge**. Id. at 650-651; 653-54.

Notably, while the government contended in the Supreme Court that Doggett was on notice of the charges, the Supreme Court noted that the district court found he was not on notice and further the government conceded that fact in the record. Id. at 653-54. However, the Supreme Court noted that if it was true he was on notice of the charges, “Barker’s third factor, concerning invocation of the right to a speedy trial, would be weighed heavily against him.” Id. at 653. Therefore, it was reasonable for Doggett to first raise his speedy trial motion when he was arrested, eight years after the indictment. Id. The Supreme Court noted a justifiable reason for a delay maybe that the government may need time to track the defendant down and attached great weight to that and other enumerated considerations. Id. at 656.

Odom also found himself in and out of a number of county jails. Vermont v. Brillon, 129 S.Ct. 1283, 1290 (2009) (noting “delay caused by the defense weighs against the defendant . . .”); Pittman, 373 S.C. at 551, 647 S.E.2d at 156 (“While the ultimate responsibility for timely completion of the trial rests with the State, the defense’s contributions to the delay cannot be ignored.”). Odom should have stopped burglarizing so he would stop accumulating charges in other jurisdictions.

In contrast, the record is devoid of any evidence that the prosecution intentionally or maliciously caused delays. Pittman, 373 S.C. at 552, 647 S.E.2d at 156 (“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.”); State v. Robinson, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) (finding Robinson did not satisfy his burden of showing the delay resulted from neglect and willfulness of the State and there was no evidence the delay was willful or intentional). Odom asks this Court to assume improper tactics on the part of the State although it is difficult to understand what tactical advantage the State is presumed to have gained. Instead, this Court should assume that the State’s decision not to call the case when new defense attorneys needed to become familiar with the case a benign decision. There is no record of any of the defense attorneys seeking to have the case called for trial.

#### **Belated motion for speedy trial**

More importantly, Odom never made a motion for a speedy trial until the day of his second trial. The New Mexico Supreme Court observed the following:

Rights under this amendment are fundamental in nature so that a failure to assert them does not constitute waiver, but the timeliness

and vigor with which the right is asserted may be considered as an indication of whether a defendant was denied needed access to speedy trial over his objection or whether the issue was raised on appeal as afterthought.

State v. Garza, 212 P.3d 387, 398 (N.M. 2009) (citing United States v. Netterville, 553 F.2d 903 (5th Cir. 1977)). Here, in the instant case, Odom forestalled trial to hire an attorney, went to trial, and only at the start of the second trial – and only after his motion to relieve counsel and seek his private attorney once more – did Odom’s counsel make a motion for speedy trial. The eleventh-hour motion was not seeking redress of a constitutional wrong, but was the last ditch effort for Odom to avoid the consequences of his failed career as a burglar. Robinson, 335 S.C. at 626, 518 S.E.2d at 272 (finding speedy trial rights were not violated where the case was tried within ten months after the first formal motion was filed, even though the case took five years to go to trial); Harris v. State, 827 S.W.2d 949, 957 (Tx. Ct. App. 1992) (finding “appellant’s lack of a timely demand for a speedy trial indicates strongly that he did not really want a speedy trial”); Sosniak v. State, 734 S.E.2d 362, 369 (Ga. 2012) (finding no speedy trial violation where defendant “waited over five years until the trial court would no longer grant his requests for a continuance to assert his right to a speedy trial. The trial court did not err in finding this eve-of-trial-request untimely, and it properly weighted this factor against [defendant]”). “If an incarcerated defendant will suffer because of a delay in the trial of his case he knows it. He should make his need for a speedy trial known to the authority with power to fix the trial date.” United States v. Penland, 300 F. Supp. 354, 355 (D. Mont. 1969), *aff’d*, 429 F.2d 9 (9th Cir. 1970).

Odom complains the trial court placed undue emphasis in his failure to assert his speedy trial right. Barker makes clear a court should find the defendant’s failure to timely assert the right

significant, explaining:

Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. **The defendant's assertion of his speedy trial right, then, 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.**

Barker, 407 U.S. at 531-32 (emphasis added). So the trial court was following Barker when it took into consideration that Odom, while represented by various attorneys, never asserted his right until the eve of the **second** trial. This is not an abuse of discretion because Barker tells the states to give this factor strong evidentiary weight – it would be an abuse of discretion for the trial court not to find this a significant factor in its determination.

The State called the case once prior to August 2013, tried the case in August 2013, and tried the case again twenty-two months later. Odom was represented at all times, and at no time did any of his attorneys – even the one finally making the motion on the day of trial – see fit to move for a speedy trial. The record suggests Odom did not really want a speedy trial, he just wanted a windfall. See Barker at 536 (explaining “barring extraordinary circumstances, we would be reluctant indeed to rule that a defendant was denied this constitutional right on a record that strongly indicates, as does this one, that the defendant did not want a speedy trial.”). Indeed, the trial starts with Odom seeking a new attorney, or rather, for the family to hire back Screen. Odom waited until May 27, 2015, to file the motion to relieve counsel. So presumably, Odom actually wanted a continuance, which is the

opposite of a speedy trial. R. pp. 13-14.

### **Prejudice**

In considering the fourth prong of the test, whether Odom suffered prejudice, Barker is again instructive:

Prejudice, of course, 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. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past.

Barker, 407 U.S. at 532.

The time spent incarcerated pre-trial on very serious charges should not alone constitute sufficient prejudice to justify dismissal of the case. See State v. Kennedy, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (Ct. App. 2000) (“We are unwilling, however, to hold that the prejudice he suffered by his pretrial incarceration is sufficient to warrant dismissal of his charges for a speedy trial violation.”). Of course, there was little pre-trial detention in this case because Odom was released on bond. He utilized his time to accumulate pre-trial detention in other counties. Nor should Odom’s unfocused remonstrations – made while he was attempting to receive new counsel and therefore further delay trial – be taken seriously. Odom’s willingness to accumulate new charges in other counties belies anxiety against this lone charge from Edgefield. See Taylor v. United States, 471 A.2d 999, 1003 (D.C. 1983) (“A bare assertion that one has been upset or concerned about a pending criminal prosecution is not sufficient. . . . It does not escape the attention of this court that the

appellant has a criminal record which dates back to 1955. Consequently, it is unlikely that at this late stage in appellant's life, the prospect of a pending prosecution would result in such acute physical maladies.”).

Odom's primary claim for prejudice was the death, within the first year of his arrest, of one of Odom's brothers. According to Odom's attorney, the brother died in a car accident in June or July 2008, eight or nine months after Odom was arrested for the burglary charge. R. p. 45. There simply is no nexus between any unreasonable delays by the State in subsequent years and Odom's brother's death a few months after Odom's arrest and around the time he was released on bond and not appearing for court.

Odom claims the brother could have been a potential witness, but fails to offer any indication as to what the brother might have testified to. Taylor, 471 A.2d at 1003 (“It is insufficient for a defendant merely to assert that a witness, who has now become unavailable, was necessary to the preparation of his defense.” (citation omitted)). Odom should of at a minimum proffered what evidence he expected the deceased brother to provide. Id. (“In the instant case, appellant made no proffer to the court of any evidence respecting the potentially exculpatory testimony that these witnesses would have delivered.”). Certainly, Odom should have been aware for what purpose he thought he could use his brother as a witness. Due to the closeness in time between the death and the original charge, the later pre-trial delay cannot seriously be attributed to the unforeseen death occurring within a year of the burglary.

Further, given the lack of a tactical purpose for the State's delay and the low weight, if any, that could be held against the State for delays, it is appropriate for the trial court to not find any

presumption of prejudice from the delays in bringing the case to trial. See generally State v. Hunsberger, 418 S.C. 335, 794 S.E.2d 368 (2016) (finding presumptive prejudice from ten year delay, where prosecutor declined opportunity for a special term to try defendant, the defendant made three motions for a speedy trial, and the State’s delay was intentional: “While presumptive prejudice cannot alone support a speedy trial claim, it is part of the mix of relevant facts, and its importance increases with the length of time.”) (citing Doggett, 505 U.S. at 656). In the instant case, Odom caused much of the delay and failed to make a timely request for a speedy trial while no ill motive can properly be ascribed to the State; in the mix of relevant facts, he is not entitled to a finding of presumptive prejudice merely because he cannot legitimately point to any actual prejudice.

**The Barker factors considered together support the trial court’s ruling**

None of the Barker factors are “either a necessary or sufficient condition to the finding of a deprivation of the right of [a] speedy trial.” Barker, 407 U.S. at 533. “Instead, they are all related and must be considered along with such other circumstances as may be relevant.” State v. Langford, 400 S.C. 421, 441, 735 S.E.2d 471, 481 (2012) (quoting Barker) (internal quotation marks omitted). Instead, a balancing test rejecting inflexible approaches and weighing the conduct of both the government and the defendant is employed. Langford, 400 S.C. at 441-42, 735 S.E.2d at 482.

Odom is the main cause of the delays. He failed to appear. He certainly was entitled to competent representation and the opportunity to hire counsel in lieu of a public defender; nonetheless, if not readily quantifiable from the record, each change of counsel brought on necessary delay that cannot be attributed to the State. Jerry Screen, not the State, abandoned him after the first trial, and that delay cannot be attributed to the State. The record is devoid of any suggestion the

State deliberately delayed the proceedings for some unknown tactical advantage. Any conceivable intermittent delay by the State along the way would count for little against the State, per Langford. Langford, 400 S.C. at 443, 735 S.E.2d at 483 (commenting on a 20 month delay by law enforcement to secure an interpreter to interview the victims: “Although we are not persuaded the State used its best efforts to secure an interpreter, there is no evidence that it intentionally tarried in finding one. At most, the State was negligent, and this is a neutral reason for delay which does not weigh heavily against it.”). Given Odom’s role in the delay, the absence of a showing of actual prejudice, and the failure of Odom to assert that right until the public defender he did not want made the motion for a speedy trial at the beginning of his **second** trial, the trial court did not abuse its discretion. Langford, 400 S.C. at 442, 735 S.E.2d at 482 (finding the trial court’s ruling on a motion for speedy trial will not be reversed absent an abuse of discretion); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (noting a trial court abuses its power of discretion when it commits an error of law or when there has been a factual conclusion without any evidentiary support).

**CONCLUSION**

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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April 24, 2019

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County  
The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No: 2018-001676

THE STATE, .....Respondent,

v.

MAURICE ANTHONY ODOM, .....Petitioner.

**PROOF OF SERVICE**

I, Anne Mueller, certify that I have served the within Brief of Respondent on Petitioner by delivering two copies of the same, addressed to his attorney of record, Kathrine H. Hudgins, Esquire, SCCID, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.  
This 24<sup>th</sup> day of April, 2019.



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