

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Dorchester County
Honorable Perry M. Buckner, III, Circuit Court Judge
Appellate Case No. 2018-001599

THE STATE,

Respondent,

vs.

KEUNTE D. COBBS,

Appellant.

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SC Court of Appeals

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his broad discretion by failing to dismiss Appellant's murder and attempted murder indictments based on an alleged violation of Appellant's speedy trial rights because the approximately twenty-five-month span of time between Appellant's arrest for shooting his two victims in a restaurant bathroom and Appellant's trial on the charges arising from that shooting was not excessively or unreasonably lengthy based on the circumstances involved, did not result from any intentional willfulness or unreasonable neglect on the part of the State, and did not hamper the defense or otherwise cause any undue prejudice to Appellant.

STATEMENT OF THE CASE

In June of 2016, Appellant Keunte D. Cobbs was arrested following an investigation into a shooting that had occurred a few weeks earlier at an IHOP restaurant located in Summerville, South Carolina. In September of 2016, the Dorchester County Grand Jury indicted Appellant for murder, attempted murder, and possession of a weapon during the commission of a violent crime. In March of 2018, the Dorchester County Grand Jury additionally indicted Appellant for possession of a machine gun, sawed-off shotgun, or sawed-off rifle. On August 20, 2018, a jury trial was commenced solely on the murder and attempted murder charges in the Dorchester County Court of General Sessions with the Honorable Perry M. Buckner, III, circuit court judge, presiding. At the conclusion of the four-day trial, the jury was unable to reach a verdict on the murder charge, and the trial judge granted a mistrial on that particular charge. However, as to the attempted murder charge, the jury convicted Appellant of the lesser-included offense of assault and battery of a high and aggravated nature. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of eighteen years. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

Around 1:49 a.m. in the early morning hours of June 5, 2016, Appellant Keunte Cobbs, who was wearing a red shirt at the time, entered an IHOP restaurant located in Summerville, South Carolina, along with a confederate, sat down at a table, and ordered a grapefruit juice in a to-go cup.¹ (R. pp. 253-256; pp. 274-277; pp. 279-280; p. 358; p. 376). Thereafter, at approximately 2:12 a.m., Appellant got up and went into the restaurant's bathroom. (R. pp. 364-366). Roughly two minutes later, two individuals—Brandon Mack and Bradford Spells—came into the restaurant and quickly headed to the bathroom area. (R. pp. 352-353; pp. 368-369). Within seconds of the two entering the bathroom, numerous gunshots were fired, which led to panic inside the restaurant. (R. p. 158; p. 260; p. 274; pp. 366-367). Shortly after that, Spells, Appellant, and Mack came out of the bathroom one by one and exited the restaurant. (R. p. 263; p. 374). Appellant and his confederate then left the area while Spells and Mack, who both had been shot, collapsed outside. (R. pp. 93-94; pp. 131-132; p. 135; pp. 320-321; p. 323; p. 330; pp. 366-367).

In the ensuing aftermath, emergency medical personnel quickly responded to the scene and transported Spells and Mack to the hospital to receive treatment for their injuries. (R. pp. 130-136; pp. 141-143; pp. 319-325). Likewise, law enforcement officers from the Dorchester County Sheriff's Office rapidly headed to the restaurant and began an investigation into the shooting. (R. pp. 92-95; pp. 119-127; pp. 154-158). While conducting their investigation at the scene, the officers observed a substantial amount of blood inside the restaurant's bathroom along with numerous cartridge casings and fired bullets, found the key to Mack's vehicle on the bathroom's sink, and located Spells's cell phone. (R. p. 94; p. 158; pp. 175-177; pp. 181-183; p.

¹ By the time of trial, the identity of Appellant's confederate remained unknown. (R. p. 358; p. 366; p. 374).

389). Additionally, the officers obtained a recording of surveillance footage from the restaurant, and they were able to recover some fingerprints from the restaurant's front door, including in an area Appellant was depicted touching in the surveillance footage. (R. pp. 184-185; pp. 188-192; pp. 199-200; p. 222). Furthermore, the officers found a loaded gun outside the restaurant near the location where Spells had been found after the shooting, and the emergency medical personnel provided them with another gun that had been found in Mack's clothing.² (R. pp. 120-121; pp. 123-124; pp. 135-137; pp. 188-189).

Ultimately, Spells survived the injuries he sustained in the shooting, but he declined to provide any information to or otherwise cooperate with the officers investigating the incident. (R. pp. 353-354; p. 384; p. 388). Meanwhile, Mack—who had been shot five times in the left side of his body—died within just a few days of the shooting due to the severity of his injuries, and he was not able to provide any information to the investigating officers prior to his death. (R. pp. 329-339; p. 344; p. 346; p. 403). Nonetheless, despite the lack of information from the victims, officers were able to identify Appellant as a suspect through information obtained from recorded footage captured at the restaurant along with information provided by a source who indicated Appellant confessed to shooting the victims because they purportedly owed him a substantial sum of money. (R. pp. 288-317; pp. 507-510). As a result, Appellant was arrested at a motel on June 27, 2016. (R. p. 404; pp. 507-510).

Subsequent to his arrest, Appellant was indicted for a number of offenses, including murder and attempted murder. (R. p. 2; p. 19; pp. 511-518). After that, Appellant apparently did not request the appointment of counsel or retain counsel to represent him for an extended period

² Through subsequent analysis of the recovered cartridge casings, fired bullets, and guns, an expert forensic firearms examiner was able to determine neither Mack's gun nor Spells's gun fired any of the projectiles recovered from the scene of the shooting. (R. pp. 226-246).

of time, which resulted in defense counsel not being appointed until June 12, 2017. (R. p. 5; p. 26; p. 53; p. 494). Once defense counsel had been appointed, defense counsel then promptly filed a discovery request in order to properly prepare Appellant's case for trial. (R. pp. 495-498).

Thereafter, in December of 2017, defense counsel filed—for the first time—a motion seeking a speedy trial, and a hearing was quickly conducted on that motion. (R. p. 2; p. 499). During the hearing, the solicitor that was representing the State at that time indicated he believed the State would be prepared to move forward by the next month and asked for Appellant's case to be placed on the court's docket for a January 2018 trial. (R. pp. 2-3). The solicitor further asserted the issue of bond could be revisited if the State was not prepared to go forward with the trial at that time. (R. p. 3). In response, defense counsel agreed with the solicitor's proposed course of action, and the trial judge issued an order scheduling Appellant's case for trial in January of 2018 and indicating the matter of bond could be addressed if the case did not go forward on the scheduled date. (R. p. 3; p. 500).

However, around the time of the scheduled January 2018 trial, the solicitor originally assigned to handle Appellant's case abruptly left the solicitor's office, and Appellant's trial could not go forward as planned. (R. p. 6; pp. 53-54; pp. 59-60). As a result, the circuit court judge who previously scheduled the case issued an order setting bond for Appellant on his murder and attempted murder charges. (R. p. 6; p. 510). Appellant's case was then reassigned to a new solicitor for prosecution. (R. p. 6; p. 55).

Roughly five months after that, defense counsel filed a second motion seeking a speedy trial along with a motion seeking a reduction in Appellant's bond, and, once again, a hearing was promptly held in response to the motion. (R. p. 5; pp. 502-503). During the hearing, the solicitor recounted the circumstances associated with Appellant's case up to that point and explained the

State intended to try the matter by August of that year. (R. pp. 5-6). The solicitor further noted many of the delays that had been incurred resulted from a need for further investigation, the gathering of witnesses, and attempts to obtain additional information and were not caused by any deliberate or intentional efforts to hamper the defense. (R. p. 12). The circuit court judge then declined to take any additional actions at that time. (R. pp. 16-17).

Thereafter, consistent with the solicitor's representations during the second speedy trial hearing, Appellant's case proceeded forward to trial on the murder and attempted murder charges in August of 2018. (R. pp. 5-6; p. 19). Towards the outset of trial, defense counsel moved for the case to be dismissed based on an alleged violation of Appellant's speedy trial rights.³ (R. pp. 21-22; p. 24; pp. 504-506). In seeking dismissal, defense counsel noted Appellant first requested a speedy trial roughly seventeen months after he was arrested but was not brought to trial until eight months after that request was made and twenty-five months after his arrest date. (R. pp. 25-26; p. 30). Additionally, defense counsel contended Appellant did not do anything to delay the case, asserted the case was not complex, maintained an eighteen-month period of time should have been more than enough time to prepare the case for trial, and alleged all the delays incurred were caused by the State. (R. pp. 30-32; p. 34; p. 36). However, defense counsel did acknowledge the solicitor originally assigned to prosecute Appellant's case left the solicitor's office around the scheduled January 2018 trial date, which led to a new solicitor being assigned to handle the matter at that time.⁴ (R. p. 27).

³ Notably, during the hearing held just two months earlier, defense counsel expressly stated he was not yet seeking dismissal for an alleged speedy trial violation in Appellant's case but intended to do so in the future. (R. p. 13).

⁴ During the June 2018 pre-trial hearing, the circuit court judge who originally scheduled Appellant's case for trial in January of 2018 expressly noted she did not intend for her

In order to establish prejudice from the delays, defense counsel also called Appellant to the witness stand, and Appellant testified on his own behalf. (R. pp. 36-37). Through his testimony, Appellant asserted he had been incarcerated for roughly twenty-five months as a result of the charged offenses and claimed the incarceration had caused him a great deal of anxiety. (R. pp. 37-38). Additionally, Appellant alleged the incarceration had resulted in the loss of his job, home, and cars and had been difficult on his children. (R. p. 38). However, Appellant candidly admitted he was “staying strong” and would “be alright” despite what had occurred up to that point. (R. p. 39). Moreover, on cross-examination, Appellant acknowledged he lost his home, which was rented, and job as a club promoter as a result of and at the time of his arrest as opposed to due to the passage of time. (R. pp. 39-42). Furthermore, Appellant admitted his car had actually been lost when it was stolen several months before his arrest while claiming he had simply been unable to get it back because he was incarcerated due to his arrest. (R. pp. 41-43). Beyond that, Appellant made no reference to any actual prejudice caused to his defense as a result of the delays associated with his case, and he did not mention anything about any purported exculpatory evidence he would have been able to present if not for the delays incurred, including anything about the contents of his cell phones. (R. pp. 37-43).

Following Appellant’s testimony, defense counsel proffered the testimony of Lieutenant Dwayne Peters, who had taken over the Dorchester County Sheriff’s Office’s investigation of Appellant’s case following the departure of the original investigator assigned to handle the matter. (R. p. 45; pp. 347-348). During his testimony, Lieutenant Peters acknowledged three cell phones had been seized from Appellant’s motel room at the time of Appellant’s arrest and had subsequently been lost. (R. pp. 46-48). However, he confirmed those phones were missing

scheduling order to require dismissal if Appellant’s case was not tried by the scheduled date. (R. pp. 16-17).

and had been lost by the original investigator at some point between June of 2016 and December of 2016, which meant they were lost within just a few months of Appellant's arrest. (R. p. 39; pp. 46-49). Moreover, Lieutenant Peters confirmed one of the victim's phones was recovered from the scene of the shooting, had been analyzed, and was determined to contain no communications with Appellant. (R. pp. 46-47).

After listening to that testimony and considering the circumstances presented, the trial judge found the length of the delays involved in Appellant's case was sufficient to trigger a speedy trial analysis. (R. pp. 51-53). At that point, the solicitor responded by offering a variety of explanations for the delays. (R. pp. 53-61). Initially, the solicitor noted some delays resulted from the fact Appellant did not request the appointment of counsel or retain counsel for almost an entire year after his arrest. (R. p. 53). Additionally, the solicitor indicated the lead investigator assigned to the case left the sheriff's office by January of 2017 while the solicitor originally assigned to prosecute the case suddenly left the solicitor's office in January of 2018, which led to the case needing to be reassigned in multiple respects.⁵ (R. pp. 53-55; pp. 59-60). Moreover, due to the sudden nature of the original solicitor's departure, the solicitor asserted he was not able to consult with the original solicitor about the case to aid with his own prosecution of it. (R. pp. 59-60). Beyond that, the solicitor indicated some of the delays were associated with the time necessary to locate all the witnesses involved in the case, including out-of-state witnesses. (R. pp. 55-56). Furthermore, the solicitor stated a substantial portion of the delays were associated with the gathering and locating of evidence, including after the case was

⁵ Later on during trial, Lieutenant Peters explained Detective Keith Elmore, who was the original investigator handling Appellant's case, left the sheriff's office in December of 2016 to become a chief deputy coroner. (R. p. 349). Lieutenant Peters further explained he did not take over the investigation until February or April of 2018 and had not been involved in it until that point in time. (R. p. 349).

scheduled for an August 2018 trial during the pre-trial hearing conducted in June of that year. (R. pp. 57-59). Finally, as to the prejudice factor, the solicitor noted the delays only led to the discovery of additional evidence and did not result in the loss of any witnesses while the personal prejudice Appellant claimed to have suffered appeared to have resulted from Appellant's arrest itself as opposed to being a product of the length of the delays that followed it. (R. pp. 60-61).

In rebuttal, defense counsel referenced the prejudice to which Appellant testified, and he further asserted Appellant was prejudiced by the loss of the three cell phones that were missing, which he contended—without any evidentiary support—would have contained exculpatory evidence and would have demonstrated a lack of communication between Appellant and the victims. (R. p. 64). Additionally, defense counsel maintained no actual showing of prejudice was necessary in order for dismissal to be appropriate while contending the mere presumption of prejudice could be sufficient in Appellant's case. (R. p. 64).

After considering the arguments of counsel, the trial judge denied the speedy trial dismissal motion. (R. p. 66). In denying the motion, the trial judge found the prejudice identified by Appellant largely occurred due to his arrest as opposed to due to any delays involved in bringing the case to trial. (R. p. 65). Additionally, as to the reasons for the delays, the trial judge found some of the delays were associated with legitimate investigative needs while other delays were associated with the changes in the personnel assigned to investigate and prosecute the case. (R. pp. 65-66). Furthermore, the trial judge found Appellant did not assert his right to a speedy trial until December of 2017 and had bond set as a result of the motion. (R. p. 66). For those reasons, the trial judge concluded the extreme sanction of dismissal was not warranted based on what had been presented. (R. p. 66). However, the trial judge specifically

indicated he may revisit the issue depending on what developed during the course of trial. (R. p. 66).

Thereafter, the trial proceeded forward, and the solicitor presented testimony from the officers involved in the investigation into the shooting, a number of witnesses present in the restaurant at the time of the shooting, and the medical personnel who treated and otherwise interacted with the victims after they had been shot. (R. pp. 92-95; pp. 119-127; pp. 130-144; pp. 154-222; pp. 226-246; pp. 253-256; pp. 260-263; pp. 267-268; pp. 274-282; pp. 319-325; pp. 327-404). Likewise, Rachandra Sweed, who had provided critical information to law enforcement after the incident, testified she interacted with Appellant prior to and after the shooting and, during their interactions, he admitted to her he shot the victims at the IHOP because he was allegedly owed \$20,000.⁶ (R. pp. 288-317). Additionally, fingerprint evidence was introduced demonstrating Appellant had been present at the crime scene, a recording of surveillance footage from the restaurant was admitted into evidence and played for the jury, and Appellant was identified from the footage going into the restaurant's bathroom shortly before the victims were shot in that location. (R. pp. 98-100; pp. 184-186; pp. 188-195; pp. 199-200; pp. 355-379). Furthermore, Lieutenant Peters testified about his actions after taking over the investigation into the shooting at some point earlier that year, and the lieutenant specifically acknowledged the original investigation into the shooting was not conducted in an ideal manner, which led to the loss of the three cell phones collected at the time of Appellant's arrest and

⁶ Significantly, Sweed was from Florida but had to be transported to South Carolina from Texas for trial because she was incarcerated there at that time. (R. p. 288; p. 298).

ultimately hurt his own investigation.⁷ (R. pp. 349-351; p. 382; pp. 391-392; pp. 402-403).

However, Lieutenant Peters confirmed for the jury one of the victims' cell phones was recovered after the shooting, analyzed, and determined to contain nothing at all connected to Appellant.

(R. pp. 389-390).

At the conclusion of State's case, Appellant elected not to testify in his own defense, and the defense rested without introducing any additional testimony or evidence. (R. pp. 407- 409).

Subsequently, the case was submitted to the jury, and the jury ultimately convicted Appellant of the lesser-included offense of assault and battery of a high and aggravated nature but was unable to reach a verdict on the murder charge. (R. p. 472; pp. 480-482). In response, the trial judge declared a mistrial on the murder charge and, after Appellant apologized and expressed remorse, sentenced Appellant to an eighteen-year term of imprisonment for the assault and battery of a high and aggravated nature conviction. (R. p. 491). In imposing that sentence, the trial judge specifically noted Appellant would receive credit for all the time he served in pre-trial custody towards his sentence. (R. p. 491).

⁷ Throughout the trial, defense counsel repeatedly called the jurors' attention to the "terrible" manner in which the investigation was conducted in Appellant's case to support his arguments for acquittal. (R. pp. 89-90; pp. 434-435; p. 437; pp. 442-443).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a ruling on a speedy trial motion on appeal, the appellate court must review 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.”); see also State v. Palmer, 415 S.C. 502, 522, 783 S.E.2d 823, 833 (Ct. App. 2016) (affirming the trial judge’s ruling no speedy trial violation occurred after finding that ruling was supported by the evidence and based upon consideration of the appropriate factors). “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).

ARGUMENT

The trial judge did not abuse his broad discretion by failing to dismiss Appellant's murder and attempted murder indictments based on an alleged violation of Appellant's speedy trial rights because the approximately twenty-five-month span of time between Appellant's arrest for shooting his two victims in a restaurant bathroom and Appellant's trial on the charges arising from that shooting was not excessively or unreasonably lengthy based on the circumstances involved, did not result from any intentional willfulness or unreasonable neglect on the part of the State, and did not hamper the defense or otherwise cause any undue prejudice to Appellant.

Appellant contends the trial judge erred by failing to dismiss his indictments for murder and attempted murder based on an alleged violation of his speedy trial rights. In support of that contention, Appellant maintains those charges should have been dismissed based on the roughly twenty-five-month period of delays between his arrest and trial because his case was not prosecuted with ordinary promptness, the delays incurred were "mostly" caused by the State's negligence, he asserted his speedy trial rights eighteen months after he was arrested, and the delays purportedly resulted in both presumptive and actual prejudice. To the contrary, the trial judge in no way abused his discretion by failing to dismiss Appellant's charges based on an alleged speedy trial violation because the twenty-five-month period of delays incurred between Appellant's arrest and trial was not excessively or unreasonably lengthy based on the circumstances involved, was not the result of any willfulness or unreasonable neglect on the part of the State, and did not hamper the defense or otherwise result in any undue prejudice to Appellant. Under such circumstances, Appellant's speedy trial rights were not violated and the extreme sanction of dismissal was not warranted. Appellant's conviction should be affirmed.

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 limit undue pre-trial incarceration, to protect against anxiety stemming from public accusation of a crime, and—most seriously—to limit the possibility of a lengthy pre-trial delay impairing an accused’s defense. Barker v. Wingo, 407 U.S. 514, 532 (1972); see State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012) (“The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused’s defense.”); State v. Pittman, 373 S.C. 527, 550, 647 S.E.2d 144, 155-156 (2007) (“[T]he most serious interest to be protected by the guarantee to a speedy trial is the possibility of impairment of the defense.”). 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 defendant’s trial must have been delayed for a period of time that is presumptively prejudicial, which necessarily depends on the particular circumstances of each case. Langford, 400 S.C. at 442, 735 S.E.2d at 442. Notably, “a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case.” Id. In South Carolina, a delay of over two years has previously been found to be sufficient to trigger a speedy trial analysis. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain circumstances—be presumptively

prejudicial. See Doggett v. United States, 505 U.S. 647, 652, n.1 (1992) (“Depending on the nature of the charges, the lower courts have generally found postaccusation delay ‘presumptively prejudicial’ at least as it approaches one year.”). However, even where a delay that is presumptively prejudicial exists, a speedy trial determination “is *not based on the passage of a specific period of time*” and delay alone is not singularly dispositive. Pittman, 373 S.C. at 549, 647 S.E.2d at 155 (emphasis added); see State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (recognizing “delay alone is not dispositive”); see also Ratchford v. State, 785 A.2d 826, 828 (Md. Ct. Spec. App. 2001) (“Along the delay continuum, the trigger of ‘constitutional dimensions’ is not itself part of the ultimate merits of a speedy trial claim. It simply marks the minimal point, short of which a court will dismiss a claim summarily and will not waste its time even inquiring into such things as reason for delay, demand-waiver, or prejudice. Beyond that minimal or triggering point, however, the claim may not necessarily have merit, but it is worthy at least of thoughtful consideration. The trigger of ‘constitutional dimensions’ is exclusively a procedural phenomenon that justifies a further analysis and then drops out of the picture.”).

Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant’s right to a speedy trial has been violated is necessarily dependent on the specific circumstances of the defendant’s particular case. State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). When attempting to answer that question, several factors should be considered. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Specifically, a court analyzing a speedy trial claim should consider: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) whether any prejudice was suffered by the defendant as a result of the delay. Barker, 407 U.S. at 530.

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 twenty-five-month period of delays involved in Appellant’s case—while likely sufficiently lengthy to warrant consideration of the relevant speedy trial factors—was not excessively or unreasonably long in light of the unusual circumstances of Appellant’s case, which had to be reassigned in multiple respects due to the unexpected departures of both the investigator and the solicitor originally assigned to handle the matter. See Doggett, 505 U.S. at 657 (“To be sure, to warrant granting relief, negligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice.”); 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); see also United States v. Serna-Villarreal, 352 F.3d 225, 232 (5th Cir. 2003) (instructing courts conducting speedy trial analyses “generally have found presumed prejudice only in cases in which the post-indictment delay lasted at least five years”). As a result, the length of the delays—the first of the relevant factors in a speedy trial analysis—did not and should not weigh heavily against the State in Appellant’s case. Cf. United States v. Gregory, 322 F.3d 1157, 1162 (9th Cir. 2003) (holding a twenty-two-month period of delays “was not excessively long” for speedy trial purposes); Langford, 400 S.C. at 445, n. 10, 735 S.E.2d at 484 (noting a twenty-three-month period of delays between arrest and trial had not “crossed that threshold” of constituting an “extreme” delay).

Turning to the second of the relevant factors, some portion of the delays involved in Appellant’s case was incurred as part of the normal process involved in bringing any criminal

case to trial and could not legitimately be held against the State when conducting a speedy trial analysis. See Ratchford, 785 A.2d at 830 (explaining the initial seven-month period of time between the date of the arrest and the case initially being scheduled for trial was “necessary for the orderly administration of justice and is not considered an unreasonable delay that calls for further accounting”); see also 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); 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.”). Beyond that, some portion of the delays resulted from the need to reassign Appellant’s case to both a new investigator and a new solicitor following the departures of the original personnel handling the matter, which was a period of delays that could only be held slightly against the State if it could fairly be held against the State at all. See Manix v. State, 895 So. 2d 167, 176 (Miss. 2005) (“The State’s discretion as to which prosecutor will try a particular case is a basic tenet of our criminal justice system. This Court has never held that the State’s replacement of prosecutors amounts to a speedy trial violation warranting a reversal of a criminal conviction. Therefore, this factor is slightly weighed against the State.”); Hallowell v. State, 178 A.3d 610, 628 (Md. Ct. Spec. App. 2018) (finding the resignation of the original prosecutor assigned to the case, which resulted in delays that were needed for a new prosecutor to get familiar with and prepare the case for trial, constituted a more neutral reason for delay in a speedy trial analysis and only weighed slightly against the State); see also Strunk v. United States, 412 U.S. 434, 436 (1973) (instructing factors leading to unintentional delays such as “understaffed prosecutors” should be considered when conducting a speedy trial analysis but

should be weighed less heavily than intentional delays). Likewise, some of the delays involved in bringing Appellant's case to trial resulted from the need to fully investigate the matter, analyze collected evidence, and locate both in-state and out-of-state witnesses, and that portion of delays was wholly warranted under the circumstances and could not logically be held against the State, which was particularly true in light of the unexpected and unusual personnel issues that arose prior to trial. 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); cf. Barker, 407 U.S. at 531 (recognizing a missing witness is a valid reason justifying an "appropriate" delay). Moreover, based on the fact Appellant apparently did not retain or seek the appointment of counsel for nearly a year after his arrest, some portion of the delays involved was necessary for defense counsel to begin preparing the matter for trial after he was appointed, and, thus, Appellant was not completely blameless for the entirety of the twenty-five-month period of delays involved in his case. 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. Tyson, 283 S.C. 375, 377-378, 323 S.E.2d 770, 771 (1984) (considering the fact Tyson created delays through his initial lack of acceptance of appointed counsel when conducting a speedy trial analysis); cf. 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). Meanwhile, as has been readily acknowledged by Appellant himself, none of the delays involved in Appellant's case resulted from any intentional efforts on the part of the State to purposefully delay the matter or hamper Appellant's defense. See Reaves, 414 S.C. at 130, 777 S.E.2d at 219 (explaining

deliberate attempts to create delay to injure the defense should be weighed heavily against the State while *neutral* reasons, such as mere negligence, should be weighed less heavily).

Therefore, the non-willful reasons for the delays involved Appellant's case simply did not warrant a finding Appellant's speedy trial rights were infringed. 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 unquestionably did seek a speedy trial subsequent to his arrest but, notably, did not do so until a period of over sixteen months had elapsed. See Waites, 270 S.C. at 109, 240 S.E.2d at 653 (considering the length of time Waites waited before first attempting to assert his speedy trial rights and characterizing it as "significant" when conducting a speedy trial analysis); see also Langford, 400 S.C. at 440, 735 S.E.2d at 481 (recognizing delay is not an uncommon defense tactic). Moreover, after Appellant first asserted his speedy trial rights, his case was brought to trial just eight months later. See Robinson, 335 S.C. at 626, 518 S.E.2d at 272 (considering the fact "Robinson's trial began only ten months after his first motion [asserting his right to a speedy trial] was filed" in finding no speedy trial violation occurred in Robinson's case). Thus, based on the delays that occurred before Appellant first sought a speedy trial coupled with the fact he received a trial less than a year after he did so, Appellant's assertion of his speedy trial rights did not weigh in his favor and could not have legitimately supported a finding his speedy trial rights were violated. Cf. Salahuddin v. State, 592 S.E.2d 410, 413 (Ga. 2004) ("[Salahuddin] did not assert his right to a speedy trial until fifteen months after indictment, which was nine months before the trial court

heard pretrial motions. Accordingly, this particular factor, though not dispositive, must be balanced against [Salahuddin]'s interest.”).

Finally, turning to the fourth of the relevant factors, the primary prejudice Appellant personally claimed at trial to have suffered as a result of the twenty-five-month period of delays involved in his case was the general anxiety caused to him and his family while he was incarcerated during the pendency of the charges, but, notably, Appellant did identify any undue or unusual factors involved in his pre-trial incarceration, which undermined the significance of that identified harm for purposes of a speedy trial analysis. See United States v. Henson, 945 F.2d 430, 438 (1st Cir. 1991) (explaining “considerable anxiety normally attends the initiation and pendency of criminal charges” and, as a result, only undue pressures are considered when conducting a speedy trial analysis); Mullinax v. State, 545 S.E.2d 891, 895 (Ga. 2001) (“Anxiety and concern of the accused are always present to some extent, and thus absent some unusual showing are not likely to be determinative in defendant’s favor.” (citations, brackets, and internal quotations omitted)); see also Langford, 400 S.C. at 445, 735 S.E.2d at 484 (“While we are cognizant of not minimizing the deleterious effects of lengthy pre-trial incarceration, the two-year delay in bringing this case to trial does not amount to a constitutional violation in the absence of any actual prejudice to Langford’s case.”); cf. United States v. Dirden, 38 F.3d 1131, 1138 (10th Cir. 1994) (“[W]hile Dirden undoubtedly experienced concern and anxiety over his impending trial, he has not alleged any special harm suffered which distinguishes his case from that of any other arrestee awaiting trial.”); Smith v. State, 564 S.E.2d 441, 443 (Ga. 2002) (rejecting a claim of a speedy trial violation where there was no evidence presented to establish Smith’s pre-trial incarceration “was oppressive to a degree beyond that which necessarily attends imprisonment”). Beyond that, Appellant asserted he was prejudiced by the loss of his job, home,

and car coupled with the State's loss of the cell phones collected at the time of his arrest due to the delays, but, significantly, all of those losses were incurred shortly after—and, in the case of Appellant's vehicle, *before*—Appellant's arrest, which meant those losses were not, in fact, caused by the delays involved in bringing Appellant's case to trial. See Reaves, 414 S.C. at 132, 777 S.E.2d at 220 (concluding Reaves's claim evidence was lost as a result of delays was not supported by the record where it was not clear when exactly the missing evidence was lost and, most likely, it happened earlier during the investigation as opposed to later). Moreover, Appellant was able to use the flaws in the investigation against the State during trial by pointing them out to the jury, and, although he claimed the loss of his phones hampered his defense by preventing him from demonstrating he had not been in contact with the victims prior to shooting, the jury nonetheless learned during trial there was no evidence Appellant had been in communication with the victims prior to the shooting through the testimony actually presented, which meant the loss of Appellant's cell phones did not actually alter or impact his defense. See id. (considering the fact Reaves was able to exploit the State's "bungled investigation" in finding the trial judge did not abuse his discretion by denying a motion to dismiss for an alleged speedy trial violation); see also Robinson, 335 S.C. at 626, 518 S.E.2d at 272 ("[L]ost witnesses and documents are also disadvantages that hamper the State."). Finally, although Appellant remained incarcerated during the period between his arrest and trial, Appellant did receive full credit for that period of incarceration towards the sentence he ultimately received, which helped to minimize any harm that could have resulted from the time he spent in pre-trial custody. See State v. Monroe, 262 S.C. 346, 350, 204 S.E.2d 433, 435 (1974) (considering the fact Monroe received full credit for the time he spent incarcerated prior to his trial in finding his speedy trial rights were not violated). Therefore, because Appellant's defense was not hampered by any of

the delays and because he did not suffer any undue or unusual prejudice as a result of the delays, Appellant was not sufficiently prejudiced by the delays involved in his case to justify a finding his speedy trial rights were violated. See State v. Cooper, 386 S.C. 210, 218, 687 S.E.2d 62, 66 (Ct. App. 2009) (characterizing prejudice to the defendant as the most important factor in an analysis of whether a speedy trial violation occurred); see also United States v. Marion, 404 U.S. 307, 324-325 (1971) (“[N]o one suggests that every delay-caused detriment to a defendant’s case should abort a criminal prosecution.”); cf. Ratchford, 785 A.2d at 830 (“The most significant variety of actual prejudice is prejudice to the defense of the case. The appellant does not suggest any such prejudice. The appellant did not take the stand in his own defense nor did he call any defense witnesses. There is no suggestion of any lost witnesses or of how their presence might have helped the defense case. There is no suggestion of any failed memory or of how a fresher recollection would have helped the defense case. There was no prejudice to the defense of the case.”).

Because the relevant circumstances in Appellant’s case—when properly considered—do not support a conclusion the twenty-five-month period of delays between Appellant’s arrest and trial on charges stemming from his act of shooting his two victims was excessively lengthy, was the result of any intentional or willful actions on the part of the State, or resulted in any undue prejudice to Appellant, Appellant’s speedy trial rights were not violated. See United States v. Loud Hawk, 474 U.S. 302, 317 (1986) (“We cannot hold, on the facts before us, that the delays asserted by respondents weigh sufficiently in support of their speedy trial claim to violate the Speedy Trial Clause. They do not justify the severe remedy of dismissing the indictment.”); see also Doggett, 505 U.S. at 657 (“[O]ur toleration of such negligence varies inversely with its protractedness[.]”); cf. Robinson, 335 S.C. at 626-627, 518 S.E.2d at 272 (finding no speedy trial

violation where Robinson was tried within one year of his first assertion of his speedy trial rights, adequate justification was presented for delay, and no evidence of actual prejudice was introduced). Accordingly, the trial judge did not abuse his broad discretion by failing to impose the extreme—and unwarranted—sanction of dismissal in Appellant’s case. See Langford, 400 S.C. at 442, 735 S.E.2d at 482 (“A court’s decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion.”); see also Brazell, 325 S.C. at 76, 480 S.E.2d at 70-71 (“Although the delay was lengthy and the justification was unsatisfactory, Brazell’s right to a speedy trial was not denied when one balances the Barker factors. The long delay was negated by the lack of prejudice to the defense. There is no evidence that the delay was willful or intentional.”); cf. Tyson, 283 S.C. at 377-378, 323 S.E.2d at 771 (finding no speedy trial violation occurred in a case in which Tyson was tried roughly thirteen months after his arrest and roughly nine months after he first requested a speedy trial where “there was no showing of detriment other than the incarceration itself,” nothing was presented to suggest the State caused unnecessary delay, and some of the delays involved were incurred through delays in Tyson’s acceptance of appointed counsel); State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years); Cooper, 386 S.C. at 217-218, 687 S.E.2d at 66-67 (affirming the denial of Cooper’s speedy trial motion where the delay in bringing the case to trial was at least forty-four months). Appellant’s conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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February 24, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Perry M. Buckner, III, Circuit Court Judge
Appellate Case No. 2018-001599

THE STATE,

Respondent,

vs.

KEUNTE D. COBBS,

Appellant.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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