

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**Apr 27 2020**

**SC Court of Appeals**

Appeal from Kershaw County  
Honorable L. Casey Manning, Circuit Court Judge  
Appellate Case No. 2019-000441

THE STATE,

Respondent,

vs.

SHERWIN ALFONZO GREEN,

Appellant.

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## **STATEMENT OF ISSUE ON APPEAL**

Appellant waived any issue he may have had with the propriety of the circuit court judges' rulings on his motions seeking dismissal for a purported violation of his speedy trial rights by subsequently entering unconditional guilty pleas to a variety of charges. However, even assuming Appellant's challenge to the denial of his speedy trial dismissal motions could somehow properly be considered on appeal even after he pled guilty, the circuit court judges did not abuse their broad discretion by declining to dismiss Appellant's charges because the approximately thirty-three month period of delays between Appellant's arrest and the plea proceedings did not result from any intentional efforts on the part of the State to hinder Appellant's defense, did not cause any meaningful prejudice to Appellant, and largely resulted from a choice made by the defense to delay the resolution of Appellant's case in an effort to obtain a reward for cooperation Appellant wished to provide in another defendant's capital murder case.

## STATEMENT OF THE CASE

In November of 2012, Appellant Sherwin Alfonzo Green was arrested following an altercation with his estranged wife and subsequently released from custody within a few days. A short time after that, Appellant was arrested again following another incident with his estranged wife that involved him breaking into her home, holding her against her will at knifepoint for several hours, and threatening to harm her and her children. In May of 2013, the Kershaw County Grand Jury indicted Appellant for first-degree burglary, kidnapping, possession of a firearm by a person convicted of a violent crime, and possession of a stolen pistol.<sup>1</sup> Prior to trial, Appellant—amongst other things—sought for the charges to be dismissed based on an alleged violation of his speedy trial rights. Following a hearing on the matter, the Honorable Robert E. Hood, circuit court judge, denied that motion through an order issued on July 29, 2015. Subsequently, on September 29, 2015, Appellant—after again unsuccessfully seeking dismissal—appeared in the Kershaw County Court of General Sessions and entered guilty pleas to kidnapping, second-degree burglary, and both firearm-related charges before the Honorable L. Casey Manning, circuit court judge. At the conclusion of the plea hearing, Judge Manning accepted Appellant’s guilty pleas and sentenced him to an aggregate twenty-year term of imprisonment. Thereafter, Appellant filed several motions for reconsideration of his sentence, and a hearing was held on the matter on August 15, 2017, in the Richland County Court of General Sessions with Judge Manning again presiding. On March 8, 2019, Judge Manning issued an order that reduced Appellant’s sentence to an aggregate twelve-year term of imprisonment. Appellant then timely filed a notice of appeal.

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<sup>1</sup> On at least one occasion, the first-degree burglary indictment was subsequently amended by the Kershaw County Grand Jury. (Plea Tr. p. 6; Amended Indictment # 2013-GS-28-0458).

## STATEMENT OF FACTS

Around the Thanksgiving holiday in 2012, Appellant became embroiled in an altercation with his estranged wife, Raketia Green (“Victim”), and several of her family members, including her then-fourteen-year-old son. (Plea Tr. pp. 28-29; p. 42). As a result of that altercation, Appellant, who was a convicted felon, was arrested, and he was subsequently charged with domestic violence along with several firearm-related offenses after law enforcement officers recovered a stolen nine-millimeter pistol he had brandished during the course of the incident.<sup>2</sup> (July 2013 Hearing Tr. p. 3; Plea Tr. p. 42; Arrest Warrant # 2012A2820200175; Arrest Warrant # 2012A2820200175).

Following his arrest, Appellant remained in custody for several days before he was able to obtain release on bond. (Plea Tr. pp. 42-43). Once he had done so, Appellant waited a day or two, and then he broke into his estranged wife’s home while she was away celebrating her birthday. (Plea Tr. pp. 42-43). After he made his way inside, he hid in Victim’s basement and waited there for her to return home. (Plea Tr. pp. 43-44; p. 48). When she did, Appellant continued waiting until Victim went to sleep before emerging from the basement and awakening her by pressing a knife to her stomach. (Plea Tr. pp. 43-44). Appellant then held Victim captive for nearly seven hours and repeatedly threatened to kill her and her children, who were asleep in the home, while making a variety of demands. (Plea Tr. pp. 44-45).

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<sup>2</sup> By the time of the incident, Appellant had been convicted of numerous crimes in several different states over the course of a criminal career that spanned multiple decades. (Plea Tr. pp. 50-52). Amongst his earlier crimes, Appellant had previously been convicted of burglary, attempted armed robbery, assault, grand larceny, petit larceny, forgery, check fraud, credit card fraud, vandalism, breaking and entering, possession of cocaine, possession of marijuana, and destruction of property. (Plea Tr. pp. 50-52). In fact, Appellant’s prior criminal record was so extensive the judge who subsequently accepted his guilty pleas refused to allow the solicitor to present it in its entirety because he had heard “enough.” (Plea Tr. p. 49; p. 52).

Early the next morning, Victim begged Appellant to let her take her children to school while promising to give him anything he wanted when she returned, and Appellant—perhaps because Victim had complied with all his demands up to that point—agreed to her proposal. (Plea Tr. pp. 44-46). Victim then left her home with her children, and, as soon as she was safely away, she alerted the police of what was going on. (Plea Tr. p. 46). In response, officers quickly responded to Victim’s home and found Appellant, who did not actually live there, outside. (Plea Tr. p. 46). At that point, Appellant rapidly took off, and a chase ensued. (Plea Tr. p. 46). Ultimately, following a lengthy search, Appellant was eventually tracked down and taken into custody.<sup>3</sup> (Plea Tr. pp. 46-47; Arrest Warrant # 2012A2820200181; Arrest Warrant # 2012A2820200183).

Subsequent to his arrests in quick succession, Appellant was indicted in May of 2013 for first-degree burglary, kidnapping, possession of a firearm by a person convicted of a violent crime, and possession of a stolen pistol.<sup>4</sup> (Plea Tr. pp. 28-31; Indictments). Approximately two months later, defense counsel filed a motion requesting a fast and speedy trial on those charges, and a hearing was conducted on the matter before the Honorable DeAndrea G. Benjamin, circuit court judge. (July 2013 Hearing Tr. p. 1; p. 3; Motion for Fast and Speedy Trial, pp. 1-2). During the course of the hearing, defense counsel requested a speedy trial on Appellant’s behalf, and Judge Benjamin granted that request. (July 2013 Hearing Tr. p. 3). However, in doing so, Judge Benjamin indicated she did not want to put a specific time period in place in regard to

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<sup>3</sup> Based on messages Appellant sent to an accomplice during the course of the manhunt, Appellant hid under a porch in an effort to avoid being captured. (Plea Tr. p. 48). Furthermore, the messages revealed Appellant also informed his accomplice he was going to hurt Victim when he had a chance to do so. (Plea Tr. p. 48).

<sup>4</sup> In addition to those charges, Appellant was also charged with domestic violence, and he was convicted of that offense during separate proceedings. (Plea Tr. p. 42).

when the case had to be tried. (July 2013 Hearing Tr. pp. 3-4). The solicitor then confirmed the docket in Kershaw County was full for the remainder of the calendar year, and Judge Benjamin responded by suggesting the parties conduct a status conference towards the end of the year to work on setting the matter for trial once the next year's schedule was available. (July 2013 Hearing Tr. p. 4).

Thereafter, in December of 2013, a status conference was held by telephone in accordance with Judge Benjamin's suggestion, but the matter was not scheduled for trial at that time or during a number of status conferences that followed. (July 2015 Hearing Tr. p. 12; Plea Tr. p. 6). However, in May of 2015, another status conference was held, and, during it, Appellant's case was finally scheduled for a trial set to begin on July 27, 2015.<sup>5</sup> (Plea Tr. p. 6).

A little less than two weeks before the scheduled trial date, defense counsel submitted a motion for all Appellant's charges to be dismissed based on an alleged violation of Appellant's speedy trial rights.<sup>6</sup> (July 2015 Motion to Dismiss All Charges, pp. 1-2). In response to that motion, a hearing was conducted on the matter before the Honorable Robert E. Hood, circuit court judge. (July 2015 Hearing Tr. p. 1; p. 3).

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<sup>5</sup> Notably, Appellant's trial could have potentially been scheduled as early as June of 2015, but the July trial date was selected based on a continuance request made by defense counsel. (July 2015 Hearing Tr. pp. 30-31).

<sup>6</sup> In addition to the speedy trial dismissal motion, defense counsel also submitted a motion seeking the disqualification of the solicitors that were actively handling Appellant's case, the reinstatement of the solicitor originally assigned to handle the matter, and the enforcement of a plea agreement purportedly offered by the original solicitor. (July 2015 Motion to Enforce Plea Agreement, pp. 1-2). In seeking that relief, defense counsel referred to a pro se letter written by Appellant for further details about the purported plea offer. (July 2015 Motion to Enforce Plea Agreement, p. 2). Notably, in that letter, Appellant made claims suggesting the purported plea offer was a conditional one subject to defense counsel checking with another solicitor to see "if she's okay with it." (July 2015 Pro Se Letter to Court, p. 3). Appellant's letter went on to explain the "infamous and notorious" solicitor who reviewed the purported plea offer was not, in fact, okay with it, which resulted in the plea offer being revoked and replaced with one apparently not to Appellant's liking. (July 2015 Pro Se Letter to Court, pp. 3-4; p. 6).

During the hearing, defense counsel offered an account of the events leading up to that point, and he claimed the thirty-three month period of delays that had been incurred was entirely attributable to the State's bad faith actions.<sup>7 8</sup> (July 2015 Hearing Tr. pp. 5-26). In making that particular claim, defense counsel alleged the State intentionally refused to allow Appellant's case to go forward in order to secure Appellant's cooperation in a capital murder case involving Nickolas Miller, who—according to Appellant—had sought Appellant's assistance in a plot to assassinate a witness. (July 2015 Hearing Tr. pp. 5-7; pp. 12-14; pp. 17-18; pp. 20-21; p. 23). He further asserted the State allowed Vincent Missouri, who had also provided information about Miller while in custody, to plead guilty much sooner, and he maintained Appellant's case was no different than the Missouri's case involving a drug charge aside from the fact Appellant had out-of-state charges from both Maryland and Virginia that required him to be kept in custody. (July 2015 Hearing Tr. pp. 6-8; p. 13). Additionally, as to Appellant's assertion of his speedy trial rights, defense counsel noted he filed a motion requesting a speedy trial on Appellant's behalf, and he contended *Judge Hood* granted that motion while extending "a little bit of leeway" as to when the case should be resolved. (July 2015 Hearing Tr. pp. 10-11). Furthermore, defense counsel argued Appellant was prejudiced by the delays because two of Appellant's "key" witnesses allegedly left the state, one did not want to be involved in the matter, and one purportedly had developed "some severe memory problems." (July 2015 Hearing Tr. pp. 15-16; pp. 18-19). Beyond that, defense counsel alleged Appellant claimed to have recorded his

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<sup>7</sup> Although defense counsel repeatedly asserted the period of delays involved in Appellant's case up to that point was thirty-three months, the actual time period that elapsed between Appellant's arrest date of December 4, 2012, and the hearing date of July 24, 2015, was actually thirty-one months and twenty days. (July 2015 Hearing Tr. p. 1; p. 6).

<sup>8</sup> At the outset of the hearing, defense counsel also submitted a lengthy memorandum with various exhibits attached to it as support for his dismissal motion. (July 2015 Hearing Tr. pp. 4-5; Court's Ex. # 1 (Memo in Support of Motion to Dismiss Charges with Attachments)).

conversations with the victim during the incident and one of the recordings had apparently been lost while the other was inaudible, and he further alleged Appellant had suffered from depression and anxiety as a result of his incarceration.<sup>9</sup> (July 2015 Hearing Tr. p. 19; p. 22; p. 25).

In rebuttal, the solicitor acknowledged a motion for a speedy trial had properly been filed in July of 2013 but refuted defense counsel's claim it had been heard and granted by Judge Hood. (July 2015 Hearing Tr. pp. 27-29). Similarly, as to the cause for the delays, the solicitor confirmed defense counsel advised the State Appellant wished to provide information against Miller in order to receive a benefit, and she indicated defense counsel was alerted no deals would be made until after Miller's trial was concluded "if" Appellant wanted consideration for his cooperation. (July 2015 Hearing Tr. p. 29). After the State's position was conveyed to defense counsel, the solicitor stated defense counsel consistently informed the State Appellant did, in fact, wish to cooperate and would wait until Miller's case was over to have his charges addressed. (July 2015 Hearing Tr. p. 30). Then, after Miller's case was resolved in March of 2015, the solicitor indicated the State was prepared to try Appellant's case by June of that year but the matter was continued until July at the request of the defense. (July 2015 Hearing Tr. pp. 30-31). Moreover, as to defense counsel's prejudice claims, the solicitor asserted defense counsel never attempted to examine Appellant's phone prior to June of 2015, the State was never in possession of the recording defense counsel claimed was missing, and there was no evidence any efforts had been made on the part of the defense to locate or secure the witnesses defense counsel claimed were unavailable as a result of the delays. (July 2015 Hearing Tr. pp. 30-33).

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<sup>9</sup> Although defense counsel's attributed the issues with the inaudible recording to the delays, he did not offer any explanation whatsoever as to how the delays actually caused the recording not to function. (July 2015 Hearing Tr. p. 19).

Following those remarks, defense counsel did not at any point dispute the solicitor's claim he had consistently informed the State Appellant wished to wait until Miller's case was resolved in an effort to receive a reward for the cooperation he was offering. (July 2015 Hearing Tr. pp. 34-45). Instead, defense counsel simply asserted Appellant had personally been sending him "volumes of letters" indicating he did not personally agree to "sit and wait for three years." (July 2015 Hearing Tr. pp. 38-39; p. 42). Beyond that, defense counsel requested a continuance in Appellant's case until September of 2015 in order for additional evidence to be analyzed. (July 2015 Hearing Tr. pp. 42-43). In response to that request, Judge Hood asked Appellant directly if he wished to and was willing to waive his speedy trial claims by seeking yet another continuance, and Appellant responded: "Yes, sir." (July 2015 Hearing Tr. pp. 43-44). Judge Hood then took the matter under advisement. (July 2015 Hearing Tr. p. 45).

Just a few days later, Judge Hood issued an order denying the dismissal motion after analyzing the factors relevant to a speedy trial claim. (Order Denying Motion to Dismiss, pp. 1-3). In doing so, Judge Hood initially looked to Appellant's assertion of his speedy trial rights and found those rights were first validly exercised through a motion filed—but not ruled upon—in July of 2013, and, significantly, his basis for that particular finding was defense counsel's inaccurate representation the judge had personally granted the motion, which Judge Hood knew not to be accurate. (Order Denying Motion to Dismiss, pp. 1-2). Likewise, Judge Hood looked to the reasons for the delays and found Appellant "chose not to have his charges disposed" until after Miller's case was resolved in an effort to obtain a benefit for providing cooperation.<sup>10</sup> (Order Denying Motion to Dismiss, p. 2). As a result, Judge Hood determined the majority of

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<sup>10</sup> Perhaps tellingly, Appellant does not acknowledge at any point in his appellate brief Judge Hood's express finding Appellant chose to wait to have his case resolved until after he had an opportunity to provide assistance in Miller's case. (App. Br. pp. 1-20).

delays incurred were incurred with Appellant's consent for the purpose of securing an advantage, and he further determined the remainder of the delays resulted from continuances sought by the defense. (Order Denying Motion to Dismiss, pp. 2-3). Beyond that, Judge Hood looked to the prejudice suffered by Appellant, and, upon doing so, he concluded the prejudice Appellant claimed to have suffered as a result of the delays—the loss of four witnesses—was not actually the result of the delays but, instead, was the result of Appellant's failure to make any efforts to locate, secure, or speak with the witnesses at any point prior to July of 2015 even though he knew of them as far back as 2012. (Order Denying Motion to Dismiss, p. 3). For all those reasons, Judge Hood found Appellant's speedy trial rights had not been violated. (Order Denying Motion to Dismiss, p. 3).

Following Judge Hood's ruling, defense counsel requested several more continuances for a variety of different reasons, including due to a swollen knee, before Appellant's case could be brought to trial, and Judge Benjamin even threatened defense counsel with sanctions for doing so.<sup>11</sup> (Plea Tr. pp. 6-7; pp. 12-13). After several more weeks elapsed due to defense counsel's continuance requests, defense counsel filed another motion for Appellant's case to be dismissed based on an alleged violation of Appellant's speedy trial rights.<sup>12</sup> (Sept. 2015 Motion to Dismiss All Charges, pp. 1-2). In that motion, defense counsel repeated the same arguments made in the dismissal motion he had filed several months earlier while failing to acknowledge at any point

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<sup>11</sup> On appeal, Appellant now claims defense counsel broke his leg instead of simply suffering from a swollen knee, but, in doing so, he does not identify anything that actually supports that claim. (App. Br. p. 8).

<sup>12</sup> In addition to the successive dismissal motion, defense counsel also filed another motion seeking enforcement of a purported plea agreement. (Sept. 2015 Motion to Enforce Plea Agreement, pp. 1-2). Notably, that motion was highly similar to the original one defense counsel filed seeking the same relief, but, in the most recent motion, defense counsel did directly acknowledge the plea offer he was seeking to be enforced had actually been revoked. (Sept. 2015 Motion to Enforce Plea Agreement, p. 2).

his earlier motion had been denied by Judge Hood. (July 2015 Motion to Dismiss All Charges, pp. 1-2; Sept. 2015 Motion to Dismiss All Charges, pp. 1-2).

Thereafter, in September of 2015, Judge Manning conducted a hearing on the successive speedy trial dismissal motion. (Plea Tr. p. 1; p. 3). During the course of the hearing, defense counsel reasserted his contention Appellant's case should be dismissed based on a purported violation of Appellant's speedy trial rights and recounted the various things that had occurred up to that point. (Plea Tr. pp. 3-22). In doing so, defense counsel conceded the defense was responsible for all the delays incurred since June of 2015. (Plea Tr. pp. 6-7). However, defense counsel contended the State was solely responsible for the remaining thirty-month period of delays while maintaining Appellant never personally acquiesced in any of those delays. (Plea Tr. pp. 9-11). Significantly though, defense counsel appeared to acknowledge his own role in the delays and candidly stated:

In our prior hearing in front of Judge Hood, Judge Hood asked how it was that [Appellant] -- because through the course of all of this I was performing what I thought was my ethical obligation to my client to try and seek the best sort of plea deal that I could get for my client. So I did ask the [S]tate several times, well, what kind of deal are we looking at if, you know, he testifies, I know you're not going to promise anything, I'm just trying to figure out what help you may or may not be willing to give and even further trying to figure out if they even needed his help to -- for the trial.

(Plea Tr. pp. 10-11).

Following defense counsel's remarks, the solicitor noted Judge Hood had already denied Appellant's speedy trial dismissal motion and, based on that, asserted defense counsel's successive motion was improper pursuant to Rule 4 of the South Carolina Rules of Criminal Procedure. (Plea Tr. p. 20). The solicitor further noted Judge Hood denied the motion after determining Appellant consented to the delays in an attempt to secure an advantage for himself

by testifying in Miller's case. (Plea Tr. p. 20). In rebuttal, defense counsel contended Rule 4 was inapplicable because new evidence had been found. (Plea Tr. p. 21). As to that new evidence, defense counsel asserted he was able to obtain information related to the hearing conducted before Judge Benjamin in July of 2013. (Plea Tr. p. 21). He also alleged Judge Hood had stated the defense would be "more than free" to make the same motions again when the matter was before a trial judge. (Plea Tr. pp. 21-22). Ultimately, after considering the matter, Judge Manning denied defense's counsel's motion. (Plea Tr. pp. 20-22).

On the following day, Appellant again appeared before Judge Manning, and the solicitor stated the parties had reached a plea agreement.<sup>13</sup> (Plea Tr. pp. 23-24). Specifically, the solicitor indicated Appellant would be pleading guilty with the understanding he would not receive a sentence of more than twenty years and, in exchange, would no longer be facing mandatory life without parole. (Plea Tr. pp. 23-34; Recon. Hearing Tr. p. 4). As the plea hearing continued forward, Appellant confirmed he understood all his charges, his potential sentences, and his constitutional rights. (Plea Tr. p. 27; pp. 32-34). He further confirmed he wished to waive his rights, including his right to trial, and plead guilty to kidnapping, second-degree burglary, and the two firearm-related charges. (Plea Tr. pp. 28-34). Appellant then admitted his guilt to the offenses and confirmed he was entering the guilty pleas because he was, in fact, guilty. (Plea Tr. pp. 35-37). At that point, the solicitor recounted the facts of Appellant's crimes, and Judge Manning accepted Appellant's guilty pleas. (Plea Tr. pp. 41-49). Thereafter, Judge Manning sentenced Appellant to an aggregate twenty-year term of imprisonment for his convictions and expressly noted Appellant would receive credit for the entirety of the time he served in pre-plea incarceration. (Plea Tr. pp. 56-58).

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<sup>13</sup> By the time of Appellant's guilty pleas, thirty-three months and twenty-one days had elapsed since his most-recent arrest. (Plea Tr. p. 3; p. 23).

Subsequent to the plea hearing, defense counsel filed a motion seeking reconsideration of Appellant’s sentence and requested an opportunity to “elaborate on” instances of help Appellant had provided to the State. (Motion to Reconsider, p. 1). Roughly eight months later, defense counsel submitted an amended motion for reconsideration. (Amended Motion to Reconsider, pp. 1-3). In that revised motion, defense counsel again asked the plea judge to reconsider Appellant’s sentence based on assistance that had been provided to the State. (Amended Motion to Reconsider, pp. 1-3). Beyond that, defense counsel alleged—inaccurately—Appellant “ha[d] never gotten a ruling based on the merits” of the “compelling” speedy trial dismissal motions that had been filed because Judge Hood purportedly denied relief on the basis “he was not the proper judge to hear the motion” while Judge Manning solely denied the motion based on the State’s “creative” argument regarding Rule 4.<sup>14 15</sup> (Amended Motion to Reconsider, pp. 1-2). Furthermore, defense counsel maintained Appellant’s due process rights had been violated. (Amended Motion to Reconsider, p. 1; Order Denying Motion to Dismiss, pp. 1-3).

In response to the motions, a hearing was held on the matter. (Recon. Hearing Tr. p. 1; p. 3). During the course of the hearing, defense counsel presented several witnesses who provided details about an incident in which Appellant alerted them of another inmate’s purported plan to kill an officer at the detention center. (Recon. Hearing Tr. pp. 4-10). One of those witnesses further confirmed Appellant routinely provided information about other inmates, and he stated

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<sup>14</sup> Notably, to the extent the amended motion sought for additional matters to be addressed beyond those identified in the initial timely post-trial motion, that motion was not proper since those matters had not been timely raised as required. See State v. Pfeiffer, 427 S.C. 10, 13, 828 S.E.2d 764, 766 (2019) (explaining an untimely successive post-trial motion cannot be used to raise matters not raised in or related to the matters properly raised in a timely post-trial motion).

<sup>15</sup> In addition to raising a new claim related to the denial of the speedy trial dismissal motion, defense counsel also used the amended reconsideration motion to ask for a ruling on his motion seeking enforcement of the plea agreement he believed had been extended. (Amended Motion to Reconsider, p. 2).

the information Appellant provided was “most often” true. (Recon. Hearing Tr. pp. 7-9).

Following the presentation of that testimony, defense counsel asked for Appellant’s sentence to be reduced to five years. (Recon. Hearing Tr. p. 12). Furthermore, defense counsel appeared to again contend the speedy trial dismissal motion had not yet been ruled upon.<sup>16</sup> (Recon. Hearing Tr. p. 11). Judge Manning then took the matter under consideration. (Recon. Hearing Tr. p. 21).

Subsequently, over a year later, Judge Manning issued an order denying—once again—the motion for Appellant’s case to be dismissed based on an alleged violation of Appellant’s speedy trial rights without further explanation. (Order on Motion to Reconsider, pp. 1-2). However, in addition to denying the dismissal motion, Judge Manning elected to grant Appellant’s request for reconsideration of his sentence and reduced Appellant’s aggregate sentence to a twelve-year term of imprisonment. (Order on Motion to Reconsider, p. 2). Furthermore, Judge Manning again confirmed Appellant would be given credit for all the time he had already served. (Order on Motion to Reconsider, p. 2).

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<sup>16</sup> Likewise, defense counsel also again asserted his motion seeking enforcement of the plea agreement he believed had been extended had not been ruled upon, and the solicitor refuted the existence of any such plea agreement. (Recon. Hearing Tr. p. 11; p. 16).

## 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

**Appellant waived any issue he may have had with the propriety of the circuit court judges' rulings on his motions seeking dismissal for a purported violation of his speedy trial rights by subsequently entering unconditional guilty pleas to a variety of charges. However, even assuming Appellant's challenge to the denial of his speedy trial dismissal motions could somehow properly be considered on appeal even after he pled guilty, the circuit court judges did not abuse their broad discretion by declining to dismiss Appellant's charges because the approximately thirty-three month period of delays between Appellant's arrest and the plea proceedings did not result from any intentional efforts on the part of the State to hinder Appellant's defense, did not cause any meaningful prejudice to Appellant, and largely resulted from a choice made by the defense to delay the resolution of Appellant's case in an effort to obtain a reward for cooperation Appellant wished to provide in another defendant's capital murder case.**

Appellant contends the circuit court judges involved in his case erred by failing to dismiss his charges based on an alleged violation of his speedy trial rights. In support of that contention, Appellant maintains his charges should have been dismissed based on the delays incurred between his arrest and subsequent entry of guilty pleas because the delays were purportedly presumptively prejudicial, the State allegedly purposefully caused the delays to “coerce” him into providing cooperation in another case, he properly asserted his right to a speedy trial, and his defense was supposedly prejudiced by the delays.<sup>17</sup> To the contrary, the

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<sup>17</sup> In seeking a reversal on appeal, Appellant also challenges Judge Manning's decision to deny his successive speedy trial dismissal motion by relying on Rule 4 of the South Carolina Rule of Criminal Procedures, and, in doing so, he argues the successive motion was actually proper because it was purportedly not based on the same facts as the original motion since an additional two months of delays had been incurred. (App. Br. pp. 11-12). Importantly though, the two months of additional delays incurred were *not* the basis of the successive motion since those delays resulted from continuances requested by defense counsel. (Plea Tr. pp. 6-7; p. 21-22). Instead, the successive motion was based entirely on the same facts that had been presented to Judge Hood, and the only new facts sought to be relied upon were related to defense counsel's attempt to correct his earlier misrepresentation about who actually ruled on the original request for a speedy trial. (Plea Tr. pp. 3-22; July 2015 Motion to Dismiss All Charges, pp. 1-2; Sept. 2015 Motion to Dismiss All Charges, pp. 1-2). Therefore, as the successive dismissal motion was based entirely on the same facts that were—or could have been—presented to support the original dismissal motion, Judge Manning properly declined to readdress a matter that had already been ruled upon by Judge Hood. See Rule 4(b), SCRCrimP (“If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion

circuit court judges in no way abused their discretion by refusing to dismiss Appellant’s case based on an alleged speedy trial violation because the thirty-three-month period of delays involved was not the result of any willful or intentional efforts on the part of the State to hinder Appellant’s defense, did not result in any meaningful prejudice to Appellant, and largely resulted from a choice made by the defense to delay the resolution of Appellant case in an effort to potentially profit from cooperation Appellant offered to provide in another case. Under such circumstances, Appellant’s speedy trial rights were not violated and the extreme sanction of dismissal was not warranted. Appellant’s convictions should be affirmed.

**A. Waiver of the Speedy Trial Claim by Appellant’s Subsequent Entry of a Guilty Plea**

When charged with a crime, a criminal defendant may choose to—and has a right to—enter a guilty plea to the offense.<sup>18</sup> See State v. Armstrong, 263 S.C. 594, 597, 211 S.E.2d 889, 890 (1975) (“Of course it is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.”). By entering a guilty plea in South Carolina, a criminal defendant admits all elements of the charged offense, waives all other non-jurisdictional defects and defenses, and leaves open for review *only* the sufficiency of the indictment. State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000); see State v. Snowdon, 371 S.C. 331, 333, 638 S.E.2d 91, 92 (Ct. App. 2006) (“Generally, a knowing and voluntary guilty plea waives all non-jurisdictional defects and defenses, including claims of constitutional violations.”). As a result, “[a] defendant who pleads guilty usually may not later raise independent claims of constitutional violations.” Gibson v.

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upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void.”); see also Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (recognizing a party cannot relitigate a matter that could have been raised earlier).

<sup>18</sup> Although a defendant has a right to plead guilty, a trial judge is under no absolute obligation to accept such a plea. Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999).

State, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999). In fact, once a guilty plea has been entered, nothing remains but for a circuit court judge to enter judgment against the defendant and determine the appropriate punishment for the admitted crime. See Boykin v. Alabama, 395 U.S. 238, 242 (1969) (“A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.”); see also State v. Sims, 423 S.C. 397, 400, 814 S.E.2d 632, 633 (Ct. App. 2018) (“Few principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” (citation and internal quotations omitted)).

In the case sub judice, Appellant sought for his case to be dismissed based on an alleged violation of his speedy trial rights, and, after analyzing and weighing the facts and circumstances before him, Judge Hood, who was the first circuit court judge to consider the speedy trial dismissal request, rejected Appellant’s claim of a constitutional violation and found Appellant’s speedy trial rights had not been transgressed. Thereafter, Appellant reasserted his claim to another circuit court judge a few weeks later, and that circuit court judge—Judge Manning—also rejected Appellant’s speedy trial claim. At that point, Appellant elected to waive his constitutional rights, including his right to trial, and unconditionally pled guilty, and his validly-entered guilty pleas were properly accepted by Judge Manning.<sup>19</sup>

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<sup>19</sup> Demonstrating the unconditional nature of Appellant’s guilty pleas, Appellant did *not* improperly condition those pleas on anything, including on an ability to appeal the circuit court judges’ denials of his speedy trial claims, but, instead, unreservedly admitted his guilt with no conditions attached. See Easter v. State, 355 S.C. 79, 81, 584 S.E.2d 117, 119 (2003) (“To be valid, a guilty plea must be unconditional.”); see also State v. O’Leary, 302 S.C. 17, 18, 393 S.E.2d 186, 187 (1990) (“Guilty pleas are unconditional and, in an accused attempts to attach any condition, the trial Court must direct a plea of not guilty.”); cf. State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 379-380 (2004) (finding Downs’s guilty plea was unconditional because Downs “never attempted to reserve the right to later deny his guilt”).

Because he unconditionally admitted his guilt and entered his guilty pleas, Appellant waived any non-jurisdictional defects and defenses he may have had in his case. See Vogel v. City of Myrtle Beach, 291 S.C. 229, 231, 353 S.E.2d 137, 138 (1987) (“A plea of guilty constitutes a waiver of nonjurisdictional defects and defenses, including claims of violations of constitutional rights prior to the plea. It conclusively disposes of all prior issues *including independent claims of deprivations of constitutional rights.*” (emphasis added and citations omitted)). Critically, amongst the claims waived by his act of pleading guilty, Appellant waived his ability to challenge the propriety of the circuit court judges’ rulings on his speedy trial claim since such a claim was *not* jurisdictional in nature.<sup>20</sup> See Washington v. Sobina, 475 F.3d 162,

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<sup>20</sup> In arguing he can properly appeal the denial of his speedy trial claim despite the fact he subsequently pled guilty, Appellant primarily relies on the United States Supreme Court’s decision in Class v. United States, \_\_\_ U.S. \_\_\_, 138 S. Ct. 798 (2018). Importantly though, the decision in Class involved the exercise of federal supervisory authority and, thus, was not controlling as to state court criminal procedures. See Class, 138 S. Ct. at 803 (“The question is whether a guilty plea by itself bars a *federal* criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal.” (emphasis added)); see also Murphy v. Florida, 421 U.S. 794, 797-798 (1975) (“Noting that the jurors had been exposed to information with a high potential for prejudice, this Court [in Marshall v. United States, 360 U.S. 310, 311-312 (1959)] reversed the conviction. It did so, however, expressly ‘(i)n the exercise of (its) supervisory power to formulate and apply proper standards for enforcement of the criminal law in the federal courts,’ and not as a matter of constitutional compulsion. In the face of so clear a statement, it cannot be maintained that Marshall was a constitutional ruling now applicable, through the Fourteenth Amendment, to the States.” (citation omitted)). Moreover, looking to the nature of his appellate claim, Appellant is currently attempting to appeal rulings on a speedy trial claim, which, notably, is a claim that does *not* preclude a case from going forward merely by being asserted but, instead, only leads to dismissal *if* a violation is determined to have occurred following the weighing and balancing of a number of relevant factors related to the case-related conduct. See Hunsberger, 418 S.C. at 342-343, 794 S.E.2d at 371-372 (recognizing the evaluation of a speedy trial claim involves analyzing a number of factors to determine whether a speedy trial violation has been established and instructing the merits of such a claim falls within the trial judge’s discretion); see also United States v. Curcio, 712 F.2d 1532, 1539 (2d Cir. 1983) (stating a “defendant who has been convicted on a plea of guilty may challenge his conviction on any constitutional ground that, if *asserted* before trial, would forever preclude the state from obtaining a valid conviction against him, regardless of how much the state might endeavor to correct the defect” (emphasis added)). As a result, the decision in Class,

166 (3d Cir. 2007) (“[T]he right to a speedy trial is non-jurisdictional, and is therefore waived by an unconditional and voluntary guilty plea.”); Speed v. United States, 518 F.2d 75, 77 (8th Cir. 1975) (“[I]t is well settled that a plea of guilty waives any claim to denial of a speedy trial.”); Griffin v. State, 604 S.E.2d 155, 156 (Ga. 2004) (“Having voluntarily entered a plea of guilty, appellant cannot raise as a defense his right to a speedy trial.”); Anderson v. State, 577 So. 2d 390, 392 (Miss. 1991) (explaining the “right to a speedy trial, whether of constitutional or statutory origin[,]” is waived by entry of a guilty plea and identifying numerous state and federal decisions reaching the same conclusion); Smith v. State, 871 P.2d 186, 188 (Wyo. 1994) (“Constitutional challenges to pretrial proceedings, including speedy trial violations, are non-jurisdictional defenses.”); see also People v. Sanders, 137 Cal. Rptr. 3d 830, 836 (Cal. Ct. App. 2012) (“In criminal proceedings, the essence of a speedy trial issue or a due process claim based on delay is that the passage of time has frustrated the defendant’s ability to defend the allegations against him. The weighing process required to establish a constitutional speedy trial violation necessitates consideration of prejudice to the accused in the particular context of the case. By pleading guilty, a defendant concedes the absence of prejudice, having admitted all matters

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which only addressed the narrow question of whether a federal defendant could appeal a conviction due to the alleged unconstitutionality of the statute it was based on, did not establish Appellant’s current claim related to *case-related government conduct* that occurred before he pled guilty could properly be appealed following the entry of a valid guilty plea. See Class, 138 S. Ct. at 803 (“A valid guilty plea . . . renders irrelevant—and thereby prevents the defendant from appealing—the constitutionality of case-related government conduct that takes place before the plea is entered.”). Thus, like the denial of an immunity claim or a claim seeking dismissal for a violation of the Interstate Agreement on Detainers Act, Appellant’s non-jurisdictional speedy trial claim could be—and was—waived by his choice to plead guilty in a South Carolina state court. Cf. Sims, 423 S.C. at 402, 814 S.E.2d at 634 (“Sims’ statutory immunity claim warrants no exception to the rule against conditional pleas and the key role it plays in ensuring the finality of judgments.”); State v. Tucker, 376 S.C. 412, 418, 656 S.E.2d 403, 406-407 (Ct. App. 2008) (holding Tucker waived any and all claims related to a violation of the Interstate Agreement on Detainers Act, which would require dismissal if violated, by entering a valid guilty plea).

essential to the conviction. . . . In essence, a defendant who pleads guilty after the court denies a motion to dismiss for a speedy trial violation waives the right to a speedy trial. Thus, a guilty plea forecloses a defendant from asserting on appeal a claimed violation of the constitutional right to a speedy trial.” (citations, brackets, and internal quotations omitted)).

Accordingly, because Appellant waived all non-jurisdictional defects and defenses—including his allegation of a violation of his speedy trial rights—by entering his guilty pleas, the issue of whether the circuit court judges abused their discretion or otherwise erred when ruling on Appellant’s speedy trial dismissal motions cannot appropriately be considered or addressed on appeal. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (“[G]uilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea.”); cf. State v. Rice, 401 S.C. 330, 333, 737 S.E.2d 485, 486 (2013) (holding Rice, who was a juvenile at the time of his offense, could not appeal an order transferring his case from family court to the court of general sessions after entering a guilty plea because such an order was not jurisdictional in nature and, thus, any claimed error Rice wished to appeal “would be a judicial error—not a jurisdictional error”). Appellant’s convictions should be affirmed.

#### **B. Propriety of the Trial Judge’s Ruling on the Speedy Trial Issue**

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, a period of roughly thirty-one months elapsed between Appellant’s arrest and Judge Hood’s denial of the first of the speedy trial dismissal motions that were properly filed, and a period of approximately thirty-three months elapsed between Appellant’s arrest and the date he entered his guilty pleas.<sup>21</sup> Regardless of which period of delays is considered, the delays involved were likely sufficiently lengthy to warrant consideration of the relevant speedy trial factors but were not so unreasonably or unnecessarily long that they alone would warrant the extreme sanction of dismissal. See Brazell, 325 S.C. at 75, 480 S.E.2d at 70 (recognizing delay—although not dispositive—may be sufficient to trigger review of the relevant speedy trial factors); 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”). Therefore, just as Judge Hood recognized, the length of the delays involved, which was the first of the factors

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<sup>21</sup> Just *six months* after he was arrested, Appellant—while represented by counsel—attempted to file a pro se motion seeking for his case to be dismissed based on an alleged violation of his speedy trial rights. (July 2015 Hearing Tr. p. 10). Notwithstanding the fact that pro se motion was improper since Appellant was represented by counsel at the time it was filed, it constituted strong evidence Appellant’s true desire was not to obtain a speedy trial in his case and, instead, was to no be tried *at all*. 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 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)).

relevant to a speedy trial analysis, warranted consideration of the remaining factors in Appellant's case. See Waites, 270 S.C. at 108, 240 S.E.2d at 653 (finding a twenty-eight month period of delay sufficient to trigger consideration of the factors relevant to a speedy trial analysis).

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."). Likewise, because the court docket in Kershaw County had already been completely filled through the end of 2013 by the time the first proper request for a speedy trial was made, some portion of the delays was attributable solely to the lack of available terms of court, which was a circumstance that could not be weighed heavily against the State. Cf. 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."). Beyond that, some portion of the delays involved was attributable to the case being reassigned to different solicitors, 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.”). Additionally, the entirety of the delays incurred subsequent to June of 2015 were—as candidly acknowledged by defense counsel—solely attributable to continuances requested by the defense, and, thus, that period of delays certainly could not be held against the State in any manner. 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). Furthermore and most significantly, the primary reason Appellant’s case was not brought to trial at an earlier date was—just as Judge Hood expressly found—the defense *chose to wait* until after Miller’s case was resolved in an effort to potentially obtain a more favorable outcome based on cooperation Appellant wished to provide.<sup>22</sup> See United States v. Anderson, 902 F.2d 1105, 1110

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<sup>22</sup> Significantly, on appeal, Appellant has not challenged—or even acknowledged—Judge Hood’s express finding Appellant chose to wait to have his case resolved until after Miller’s case was resolved in order to potentially obtain a reward for the cooperation he sought to provide. (App. Br. pp. 1-20). As a result, that particular finding has become the law of the case. See State v. Williams, 427 S.C. 148, 157, 829 S.E.2d 702, 706-707 (2019) (recognizing an unappealed ruling is the law of the case regardless of whether it was right or wrong); Dreher v. S.C. Dep’t of Health & Envtl. Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) (“[S]hould the appealing party fail to raise all of the grounds upon which a lower court’s decision was based, those unappealed findings—whether correct or not—become the law of the case.” (emphasis added)). Moreover, notwithstanding the fact it has not been challenged, Judge Hood’s finding in that regard was fully supported by the unrefuted information presented during the hearings conducted on the speedy trial issue. See Reed, 333 S.C. at 684, 511 S.E.2d at 400 (“In appeals of pretrial rulings, this Court is ‘bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.’ ” (citation omitted)); see also State v. Johnson, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015) (“Credibility findings are treated as factual findings, and therefore, the appellate inquiry is limited to reviewing whether the trial court’s factual findings are supported by any evidence in the

(2d Cir. 1990) (finding no speedy trial violation where “defense counsel agreed to delays and continuances for purposes of plea negotiations”); State v. Carlson, 258 N.W.2d 253, 259 (N.D. 1977) (concluding no violation of the defendant’s speedy trial rights occurred because “[t]he record clearly show[ed] that the defendant or his counsel were the cause for the delay of the trial, or agreed to a delay”). As a result, the vast majority of the delays incurred in Appellant’s case resulted from a choice made by the defense, and, thus, those delays could not fairly be held against the State. See Brillon, 556 U.S. at 90-91 (“Because the attorney is the defendant’s agent when acting, or failing to act, in furtherance of the litigation, delay caused by the defendant’s counsel is also charged against the defendant.” (citation, brackets, and internal quotations omitted)). Accordingly, just as Judge Hood concluded when denying the speedy trial dismissal motion, the reasons for the delays involved in Appellant’s case simply did not support a conclusion Appellant’s speedy trial rights were violated. 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.”).

Turning to the third of the relevant factors, Appellant unquestionably did—just as Judge Hood recognized—assert his speedy trial rights subsequent to his arrest by properly filing a motion requesting a speedy trial a little less than eight months after he was arrested, but that assertion was greatly undermined by the actions that followed it.<sup>23</sup> See Barker, 407 U.S. at 531

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record.”); State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (“Only the trial court and not the appellate court has the power to weigh the evidence; the trial court’s judgment will not be disturbed except for error of law or abuse of discretion.”).

<sup>23</sup> In seeking reversal on appeal, Appellant appears to fail to credit the fact Judge Hood considered Appellant’s assertion of his speedy trial rights as part of his speedy trial analysis while heavily faulting Judge Hood for his lack of awareness of Judge Benjamin’s ruling granting the initial request for a speedy trial. (App. Br. pp. 1-20). However, in doing so, Appellant’s conveniently omits any reference to the fact defense counsel—who, unlike the solicitors actively

(explaining “[w]hether *and how* a defendant asserts his right is closely related to the other factors” in a speedy trial analysis (emphasis added)). Importantly though, just as Judge Hood *also* recognized, Appellant’s actions after seeking a speedy trial were inconsistent with a sincere desire for a speedy trial in light of the fact defense counsel advised the State he wished to wait for his case to be resolved in an effort to potentially obtain a benefit for cooperation he sought to provide in another defendant’s case. See Henderson v. Commonwealth, 563 S.W.3d 651, 665 (Ky. 2018) (“[A]lthough a defendant may assert the right to a speedy trial, complicity in continuing dates may be inferred as acquiescing and not *vigorously* invoking the right to speedy trial.”); cf. Millard v. Lynaugh, 810 F.2d 1403, 1406 (5th Cir. 1987) (“In large part the delay is attributable to the petitioner rather than to the state. Petitioner’s motions for speedy trial were not consistent with his other actions. He and his counsel were engaged in ongoing plea negotiations which included an offer to testify at a trial in the future. Petitioner’s waiver of the state speedy trial act together with the nature of his extended plea negotiations are evidence that his efforts were directed toward the cultivation of a favorable plea bargain and not toward an early trial date. As already stated, the finding that petitioner’s motions were filed in order to create an issue to be kept in reserve and not in a sincere effort to obtain a speedy trial is supported by the evidence. Further the petitioner has not established any improper reason for the delay.”). As a result, Appellant’s assertion of his speedy trial rights could not heavily weigh in his favor since it was followed by actions that were not consistent with a true desire for a speedy trial. See Langford, 400 S.C. at 440, 735 S.E.2d at 481 (recognizing delay is not an uncommon defense tactic); cf. Henderson, 563 S.W.3d at 665 (“Henderson did, both in writing and verbally,

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handling Appellant’s case or Judge Hood, was personally present during the hearing presided over by Judge Benjamin—directly caused Judge Hood’s confusion by incorrectly telling him he was the one that actually ruled upon that motion. (App. Br. pp. 1-20).

assert his constitutional right to a speedy trial. Yet aside from those steps, all his actions seem intent upon causing delay and utilizing that delay to his defense's advantage. Thus, Henderson's invocation was less than 'vigorous.' ”).

Finally, turning to the fourth of the relevant factors, the primary prejudice Appellant claimed to have suffered as a result of the delays was the loss of favorable witnesses and the unavailability of favorable evidence. Significantly though, the information presented during the circuit court proceedings suggested the purportedly lost witnesses, who were fully known to the defense at the time of Appellant's arrest, were only lost due to inaction on the part of the defense while nothing was presented to establish the unavailability of the alleged favorable evidence was in any way attributable to the delays incurred. Cf. 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). Likewise, Appellant also claimed to have suffered prejudice purely as a result of his incarceration, but nothing was presented to suggest the conditions of Appellant's pre-plea incarceration were abnormally oppressive or onerous. 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); 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”). Additionally, as acknowledged by defense counsel, Appellant would not have been released from incarceration *even if* his charges in South Carolina had been resolved at an earlier point due to the fact he was also facing

charges in multiple other states. See United States v. Loud Hawk, 474 U.S. 302, 312 (1986) (recognizing “impairment of liberty” is a “core concern” in a speedy trial analysis).

Furthermore, although Appellant remained incarcerated during the period between his arrest and entry of guilty pleas, Appellant did receive full credit for that period of incarceration towards the aggregate sentence he ultimately received, which helped to minimize any harm that could have resulted from the time he spent in pre-plea 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); see also Millard, 810 F.2d at 1406-1407 (concluding the prejudice resulting from pre-trial incarceration was mitigating by the fact Millard received credit for the time served in pre-trial detention towards his sentence). Therefore, because Appellant’s defense was not actually 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.”).

Because the relevant factors in Appellant’s case—when properly considered—supported a conclusion the thirty-three-month period of delays between Appellant’s arrest and entry of guilty pleas to charges stemming from the terrifying acts he inflicted upon his estranged wife primarily resulted from a decision on the part of the defense to delay the trial in an effort to gain a benefit for cooperation in another case and did not cause any undue prejudice to Appellant,

Appellant’s speedy trial rights were not violated. See Loud Hawk, 474 U.S. at 317 (“We cannot hold, on the facts before us, that the delays asserted by respondents weigh sufficiently in support of their speedy trial claim to violate the Speedy Trial Clause. They do not justify the severe remedy of dismissing the indictment.”); see also Doggett, 505 U.S. at 657 (“[O]ur toleration of such negligence varies inversely with its protractedness[.]”). Accordingly, neither Judge Hood nor Judge Manning abused their 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. 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 convictions 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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ATTORNEYS FOR RESPONDENT

April 27, 2020

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

Apr 27 2020

SC Court of Appeals

Appeal from Kershaw County  
Honorable L. Casey Manning, Circuit Court Judge  
Appellate Case No. 2019-000441

THE STATE,

Respondent,

vs.

SHERWIN ALFONZO GREEN,


Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual along with physical copies to follow:

Victor R. Seeger, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This 27th day of April, 2020.

  
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**Subject:** State v. Sherwin Alfonzo Green - Appellate Case No. 2019-000441  
**Date:** Monday, April 27, 2020 4:20:00 PM  
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[Green Sherwin - Initial Brief of Respondent and Designation of Matter - Appellate Case No. 2018-000441 \(02266762xD2C78\).PDF](#)

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Dear Mr. Seeger:

If you would please acknowledge receipt of these documents by return email, we would greatly appreciate it.

Attached please find our cover letter and the State's Initial Brief of Respondent and Designation of Matter. This initial brief and designation will be submitted electronically to the Court today through AIS One Drive.

Thank you,  
Anne Mueller  
Legal Assistant



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**Apr 27 2020**  
**SC Court of Appeals**