STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2020-000095

THE STATE,

Respondent,

vs.

KEUNTE D. COBBS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Did the trial court err by failing to direct a verdict in favor of Appellant when the State failed to prove substantial circumstantial evidence of either malice aforethought or sudden heat of passion based upon sufficient legal provocation nor did they disprove an element of self-defense?

II.

Did the trial court err by failing to dismiss the charges based upon the speedy trial provisions of both the state and federal constitutions when the two-year delay in the first trial and the eighteen month delay in the second trial were attributable to the State not being prepared to try Appellant's case?

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Are Appellant's appellate arguments challenging the trial judge's refusal to grant his directed verdict motion properly preserved for appellate review when those arguments were neither raised to nor ruled upon by the trial judge? Moreover, notwithstanding any issue preservation concerns, did the trial judge correctly decline to grant a directed verdict motion when the evidence presented during trial was sufficient for the jury to rationally and logically conclude Appellant was not acting in self-defense when he fatally shot his victim and was guilty of either murder or voluntary manslaughter?

II.

Did the trial judges who presided over Appellant's two murder trials abuse their broad discretion by refusing to dismiss Appellant's case based on an alleged violation of Appellant's speedy trial rights when neither the roughly twenty-five-month span of time that preceded the first trial, which ended in a mistrial, nor the roughly sixteen-month span of time incurred prior to the second trial was excessively or unreasonably lengthy based on the circumstances involved, resulted from any intentional willfulness or unreasonable neglect on the part of the State, hampered the defense, or otherwise caused 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. 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.[1] At the conclusion of the four-day trial, the jury convicted Appellant of the lesser-included offense of assault and battery of a high and aggravated nature ("ABHAN") but was unable to reach a verdict on the murder charge. Following that, Judge Buckner granted a mistrial on the murder charge and sentenced Appellant to a term of imprisonment of eighteen years for ABHAN. Appellant then timely appealed.

While that appeal was ongoing, a second jury trial was commenced on the murder charge in the Dorchester County Court of General Sessions on February 6, 2020, with the Honorable Diane Schafer Goodstein, circuit court judge, presiding.[2] At the conclusion of the four-day trial, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter. Following the verdict, Judge Goodstein sentenced Appellant to a thirty-year term of imprisonment. Appellant then timely filed a notice of appeal.

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[1] Shortly before trial, the murder indictment was amended to correct a scrivener's error in the original. (Amended Indictment).

[2] The records associated with Appellant's appeal from his ABHAN conviction are currently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. Keunte D. Cobbs, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=68286.

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 and sat down at a table.[3] (2nd Trl. Tr. p. 322; pp. 403-404; p. 416; p. 419; p. 459; State's Ex. # 76 (Surveillance Footage)). Thereafter, at approximately 2:12 a.m., Appellant got up and went into the restaurant's bathroom, and his confederate followed in the same direction and waited nearby. (2nd Trl. Tr. p. 458; p. 463; State's Ex. # 76). Roughly two minutes later, two individuals—Brannon Mack and Bradford Spells—came into the restaurant and quickly headed to the bathroom area. (2nd Trl. Tr. pp. 464-465; State's Ex. # 76). Within seconds of the two entering the bathroom, numerous gunshots were fired, which led to panic inside the restaurant. (2nd Trl. Tr. p. 204; p. 222; p. 405; pp. 408-411; p. 415; pp. 464-465). Shortly after that, Spells, Appellant, and Mack came out of the bathroom one by one and exited the restaurant. (2nd Trl. Tr. p. 218; p. 464; State's Ex. # 76). Appellant and his confederate then quickly left the area while Spells and Mack, who both had been shot, collapsed outside. (2nd Trl. Tr. p. 205; p. 208; pp. 222-223; p. 235; pp. 468-469; pp. 470-471; State's Ex. # 76).

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. (2nd Trl. Tr. pp. 222-224). Likewise, law enforcement officers from the Dorchester County Sheriff's Office rapidly headed to the restaurant and began an investigation into the shooting. (2nd Trl. Tr. pp. 203-204; p. 237; pp. 243-245; p. 447). While conducting their investigation at the scene, the officers observed a substantial amount of blood inside the restaurant's bathroom along with

[3] Years later, the identity of Appellant's confederate still remains unknown. (2nd Trl. Tr. p. 28; p. 464).

numerous cartridge cases and fired bullets, found the key to Mack's vehicle on the bathroom's sink along with some money, and located Spells's cell phone. (2nd Trl. Tr. pp. 205-206; p. 246; pp. 262-267; p. 275; p. 303; p. 482). 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 footage. (2nd Trl. Tr. pp. 211-212; pp. 217-218; pp. 279-284). 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 amongst Mack's clothing.[4] (2nd Trl. Tr. pp. 225-227; p. 232; p. 237; pp. 239-240; p. 242).

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. (2nd Trl. Tr. p. 452; pp. 474-475). Meanwhile, Mack—who had been shot approximately six 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. (2nd Trl. Tr. p. 207; p. 231; p. 235; State's Ex. # 92 (Transcript of Testimony), pp. 82-91; p. 96; p. 98). 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. (Arrest Warrants). As a result, Appellant was tracked down and arrested at a motel on June 27, 2016. (2nd Trl. Tr. p. 448; Arrest Warrants).

[4] Through subsequent analysis of the recovered cartridge cases, 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 recovered projectiles connected to the shooting. (2nd Trl. Tr. p. 324; pp. 328-331; p. 333; p. 335; pp. 385-386).

Subsequent to his arrest, Appellant was indicted for a number of offenses, including murder and attempted murder, and he proceeded forward to trial solely on the murder and attempted murder charges. (1st Trl. Tr. I p. 8; Indictments). Ultimately, at the conclusion of that first trial, the jury convicted Appellant of the lesser-included offense of ABHAN in connection to the non-fatal shooting of Spells. (1st Trl. Tr. II p. 278). However, the jury was unable to reach a verdict on the murder charge stemming from the fatal shooting of Mack. (1st Trl. Tr. II p. 274). After those decisions were reached, the trial judge declared a mistrial on the murder charge, sentenced Appellant to an eighteen-year term of imprisonment for the ABHAN conviction, and awarded Appellant credit for all the time he served in pre-trial custody toward his ABHAN sentence. (1st Trl. Tr. II pp. 276-277; p. 291).

Thereafter, roughly sixteen months later, Appellant again proceeded forward to trial on the murder charge. (2nd Trl. Tr. p. 6; pp. 117-119). At the conclusion of the second trial, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter. (2nd Trl. Tr. p. 620). Following the verdict, Appellant personally addressed the court, indicated he was "very remorseful," explained it was human nature "to feel remorse for something that you know you did wrong," and candidly apologized to Mack's family. (2nd Trl. Tr. pp. 630-632). The trial judge then sentenced Appellant to a thirty-year term of imprisonment for voluntary manslaughter, ordered that sentence to run concurrently to Appellant's earlier sentence for ABHAN, and expressly stated Appellant would receive credit for the time he had served. (2nd Trl. Tr. pp. 632-633).

ARGUMENT

I.

Appellant's appellate arguments challenging the trial judge's refusal to grant his directed verdict motion are not properly preserved for appellate review because those arguments were neither raised to nor ruled upon by the trial judge. However, notwithstanding any issue preservation concerns, the trial judge correctly declined to grant a directed verdict motion because the evidence presented during trial was sufficient for the jury to rationally and logically conclude Appellant was not acting in self-defense when he fatally shot his victim and was guilty of either murder or voluntary manslaughter.

Appellant contends the trial judge reversibly erred by denying his directed verdict motion. In support of that contention, Appellant—while raising a number of arguments that were never raised to or ruled upon by the trial judge—maintains the State failed to present substantial circumstantial evidence of the required elements of murder and voluntary manslaughter and further failed to disprove the elements of self-defense. Initially, Appellant's appellate arguments are not properly preserved for appellate review because they were neither raised to nor ruled upon by the trial judge. As a result, they cannot now appropriately be addressed or considered for the first time on appeal. However, even assuming Appellant's current arguments were somehow preserved for appellate review, the State presented evidence from which the jury could rationally and logically conclude Appellant was not acting in self-defense when he fatally shot his victim and was guilty of either murder or voluntary manslaughter. Accordingly, the trial judge was required to submit the issues of self-defense, murder, and voluntary manslaughter to the jury, and she committed no conceivable error by doing just that. Appellant's conviction should be affirmed.

Relevant Facts

During the course of Appellant's second murder trial, the solicitor presented evidence including witness testimony, recorded footage, forensic evidence, and fingerprint evidence. (2nd

Trl. Tr. pp. 203-218; pp. 221-315; pp. 319-336; pp. 385-390; pp. 403-405; pp. 407-412; pp. 414-422; pp. 427-442; p. 444; pp. 446-482; State's Ex. # 76; State's Ex. # 92, pp. 79-98). Through it, the solicitor offered proof from which the jury could have reasonably and rationally concluded the following sequence of events occurred:

- Around midnight to 1:00 a.m. on the date of the incident, Appellant was hanging out with "a bunch" of other people in the Fairlawn subdivision in Dorchester County when he received a phone call from someone that led him to exclaim he was "about to kill" some specific–but unidentified—person.[5] (2nd Trl. Tr. pp. 427-428). Appellant then "jumped" into a car along with another person and headed off. (2nd Trl. Tr. p. 428).

- At 1:49 a.m., Appellant and an associate entered the IHOP restaurant located on Dorchester Road at 1:49 a.m. and sat down at a table together. (2nd Trl. Tr. p. 210; p. 282; p. 322; p. 459; State's Ex. # 76).

- At 2:12 a.m., Appellant went to the bathroom, and his associate followed behind him, stopped just outside, and waited. (2nd Trl. Tr. pp. 463-464; State's Ex. # 76).

- At 2:14 a.m., Mack and Spells, who may have been armed with concealed firearms, came into the restaurant and immediately headed to the bathroom. (2nd Trl. Tr. pp. 225-226; p. 237; p. 242; State's Ex. # 76). Once inside, Mack approached the bathroom counter and set his vehicle's key lanyard—and likely some money—down near the sink. (2nd Trl. Tr. p. 206; pp. 264-265). Within no more than twenty-five seconds of that, Appellant alone began shooting a pistol, continued to do so for a period of four seconds, and fired at least eight shots at Mack and Spells. (2nd Trl. Tr. p. 205; p. 222; pp. 265-267; p. 277; p. 335; pp. 385-386; pp. 464-465; State's Ex. # 92, pp. 82-85; p. 91). As those shots were being fired, the bathroom door was open in a manner consistent with someone attempting to leave and the muzzle of Appellant's gun was positioned to Mack's left side. (2nd Trl. Tr. p. 260; State's Ex. # 92, p. 85; p. 98). Mack was also likely positioned *on the floor* at some point during the shooting based on

[5] Later on, Appellant personally confirmed he lived in a neighborhood directly next to the Fairlawn subdivision, which was where his aunt lived, and visited that subdivision "probably once or twice a day." (2nd Trl. Tr. pp. 493-494).

the upward trajectory of one of the bullets that struck his body. (State's Ex. # 92, pp. 82-85; pp. 88-89; p. 91).

- A few seconds after the shooting ceased, Appellant, Mack, and Spells left the bathroom one by one and exited the restaurant along with Appellant's associate. (2nd Trl. Tr. p. 218; p. 464; pp. 470-471; State's Ex. # 76). When they did, none of them was holding a firearm, but Appellant was moving in a manner that suggested he had one concealed in his clothing. (2nd Trl. Tr. p. 218; p. 464; pp. 468-469; State's Ex. # 76).

- Once outside, Mack and Spells collapsed from their injuries while Appellant and his associate fled from the area without waiting for law enforcement to arrive. (2nd Trl. Tr. p. 205; p. 208; pp. 222-223; p. 235; pp. 468-469; pp. 470-471; State's Ex. # 76).

- Subsequent to that, Appellant did not report the shooting and was not ultimately arrested until he was tracked down at a motel *weeks* later. (2nd Trl. Tr. p. 205; p. 448).

Moreover, to refute any suggestion the shooting was an act of self-defense, the solicitor presented a recording of a jail call Appellant made in August of 2018. (2nd Trl. Tr. p. 453; p. 456; State's Ex. # 93 (Recording of Jail Call)). Through that recording, the jury heard Appellant deny shooting his victims or acting in self-defense and candidly state he was being encouraged to "say" self-defense even though it was not what had occurred. (State's Ex. # 93). Furthermore, the jury heard Appellant assert such a made-up "concept of what happened" would mean he shot his "own homeboys." (State's Ex. # 93).

Following the presentation of that evidence, defense counsel moved for a directed verdict and—in total—argued: "Viewing the evidence in the light most favorable to the State, I find that they have failed to present evidence to convict [Appellant] on the basis of the case. It's *almost* entirely circumstantial, and I just don't think it rises to the necessary level." (2nd Trl. Tr. pp. 484-485) (emphasis added). Upon considering those limited arguments, the trial judge denied the motion, stating:

> Of course, as you know, I'm not charged the responsibility of weighing the evidence. That's the jury's determination. I must ascertain whether or not there is evidence from which this jury can make a determination, and that there is evidence on each and every element. I find that there is evidence on each and every element of *the offense*. And on that basis, I would respectfully deny your motion, noting your exception.

(2nd Trl. Tr. p. 485) (emphasis added).

The trial then proceeded forward, and Appellant elected to testify in his own defense. (2nd Trl. Tr. p. 490). During his testimony, Appellant confirmed he knew Mack and Spells, whom he stated were friends with one of his younger cousins, and claimed the two were "shooters" or "enforcers" who "[b]asically" had a reputation for violence. (2nd Trl. Tr. pp. 492-493; p. 498; p. 511). He further alleged he had received hearsay information suggesting the two were not pleased with him because he had told them to stay away from his aunt's house in the past, and he asserted he had been warned on multiple occasions to be careful around them prior to the date of the incident. (2nd Trl. Tr. pp. 499-501). Similarly, Appellant detailed two past incidents in which he thought Mack and Spells had fired shots outside his aunt's house, including one in which they shot an individual named Shaquille White "supposedly" for stealing from them.[6] (2nd Trl. Tr. pp. 495-497; p. 512).

As to the incident itself, Appellant asserted he—while armed with a gun—went alone to the IHOP restaurant at around 1:40 a.m. or 1:50 a.m. (2nd Trl. Tr. p. 501; pp. 510-511). After arriving there, Appellant indicated he spoke with a "guy that approached or whatever" and eventually went to the bathroom. (2nd Trl. Tr. p. 504; p. 510). Upon heading inside, Appellant stated he entered a stall, and, when he later moved to exit from it, he saw Mack and Spells

[6] In recounting the details surrounding the shooting of White, Appellant initially claimed Mack and Spells personally told him they were the ones who shot White, but he later shifted his account and claimed they had actually only indirectly implied they had done so. (2nd Trl. Tr. pp. 496-497; pp. 511-512).

walking into the bathroom. (2nd Trl. Tr. pp. 504-505). Upon seeing the pair, Appellant indicated he became "scared senseless," thought "isn't these the same two that they told me was looking for me earlier," and wondered if Mack and Spells had followed him. (2nd Trl. Tr. p. 505). Appellant claimed Mack and Spells then saw him, too, and responded by beginning to reach toward their waistbands. (2nd Trl. Tr. pp. 505-506). At that point, Appellant indicated he saw Mack and Spells pull their guns, drew his own gun, "beat them to the punch," and started shooting. (2nd Trl. Tr. pp. 506-507; pp. 515-518). Appellant claimed he then continued to shoot until he could get to the bathroom's exit, which had purportedly been blocked by Mack and Spells since "[t]hey were just walking in." (2nd Trl. Tr. pp. 506-508).

In addition to providing that account, Appellant also acknowledged he had previously stated something *entirely different* during the jail call he had placed after his arrest. (2nd Trl. Tr. p. 508). Specifically, Appellant directly admitted he had earlier stated: (1) he was being encouraged to "make up" a "concept" of what happened and say the shooting was done in self-defense; (2) he did not know "nothing about no self-defense;" (3) it would mean he shot his "own homeboys" if he made such a claim; and (4) he did not shoot anyone. (2nd Trl. Tr. p. 519). Nevertheless, Appellant insisted he only made those earlier inconsistent statements out of fear of retaliation of some kind. (2nd Trl. Tr. p. 508).

Following Appellant's testimony, defense counsel presented some testimony from Lieutenant Peters confirming Spells had a reputation in the community for engaging in violent behavior, and, after that testimony was elicited, the defense rested.[7] (2nd Trl. Tr. p. 521; p. 533). Defense counsel then renewed his directed verdict motion, arguing: "As to the directed verdict, I mean, it's essentially the same argument, except now you've heard the testimony of [Appellant].

[7] Significantly, Lieutenant Peters testified he did *not* know anything about Mack's reputation. (2nd Trl. Tr. pp. 521-522).

I don't think there's sufficient evidence to give to the jury for them to reach a verdict." (2nd Trl. Tr. pp. 536-537). Once again, the trial judge denied the motion, explaining: "[A]gain, the question is, for me -- is there evidence on each and every element, and there is. I don't weigh it. I just have to ascertain if it exists. It does. And I would respectfully deny your motion, noting your exception thereto." (2nd Trl. Tr. p. 537).

Thereafter, the parties presented their closing arguments to the jury. (2nd Trl. Tr. pp. 543-590). Through his remarks, the solicitor pointed out various problems and inconsistencies with Appellant's claim of self-defense, reminded the jury Appellant himself had earlier denied shooting his victims in self-defense, and argued Appellant should be convicted of murder based on the evidence presented. (2nd Trl. Tr. pp. 543-561; pp. 586-590). Conversely, through his remarks, defense counsel contended Appellant was acting in self-defense when he shot his victims and had merely been lying when he earlier made statements to the contrary. (2nd Trl. Tr. pp. 562-586).

Following the closing arguments, the trial judge instructed the jury on the applicable law. (2nd Trl. Tr. pp. 590-614). In doing so, the trial judge affirmed the State had the burden of proving Appellant's guilt beyond a reasonable doubt, discussed the presumption of innocence, thoroughly defined reasonable doubt, explained the differences between direct and circumstantial evidence, and advised the jurors on evaluating witness credibility. (2nd Trl. Tr. pp. 591-600). Additionally, the trial judge instructed the jury on the elements of murder and—without objection—the elements of the lesser-included offense of voluntary manslaughter. (2nd Trl. Tr. pp. 602-606; pp. 614-615). Furthermore, the trial judge explained the elements of self-defense and specifically instructed the jurors the State had the burden of disproving self-defense beyond a reasonable doubt. (2nd Trl. Tr. pp. 606-609).

Subsequently, the case was submitted to the jury. (2nd Trl. Tr. pp. 614-615). Ultimately, after roughly two hours of deliberations, the jury unanimously convicted Appellant of the lesser-included offense of voluntary manslaughter. (2nd Trl. Tr. pp. 614-615; p. 620).

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). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see State v. Jenkins, 222 S.C. 359, 360-361, 72 S.E.2d 829, 829 (1952) ("It is not the function of [the appellate] court to pass upon the weight of the evidence, but only to determine its sufficiency to support the verdict[.]"); see also State v. Herndon, 430 S.C. 367, 373, n. 6, 845 S.E.2d 499, 502 (2020) ("As an appellate court, we must be careful not to weigh the evidence."). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders."); United States v. Lowery, 306 F.2d 133, 135 (4th Cir. 1961) ("It is not the function of [the appellate court] to determine guilt or innocence."); see also People v. Wilson, 484 P.3d 36,

68 (Cal. 2021) ("That a different trier of fact could have concluded otherwise does not mean the verdict is not supported by the evidence. We are not free to reform the verdict simply because another theory is plausible." (citations omitted)).

Analysis

A. Appellant's Failure to Properly Preserve His Current Arguments for Appellate Review

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Through their enforcement and application, the trial court is guaranteed a chance "to rule properly after it considered all relevant facts, law, and arguments[,]" and the appellate court is provided with everything needed to properly review whatever ruling is made within the limits of the applicable standard of review. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see Queen's Grant, 368 S.C. at 373, 628 S.E.2d at 919 ("The rationale for the [error preservation] rule is that until the trial court considers the matter and makes a ruling, an appellate court is unable to find error.").

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Thus, based on those requirements, an issue cannot ordinarily be raised or considered on appeal unless it was first presented to and ruled upon by the trial judge. State v. Freiburger, 366 S.C. 125, 135,

620 S.E.2d 737, 742 (2005); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). Likewise, an appellant is precluded from arguing one ground or theory in support of an issue during trial and then a different ground or theory in support of the issue on appeal. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

Notably, in State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998), this Court was confronted with an appellate challenge to a trial judge's directed verdict ruling that was raised on a ground different from the one actually raised during trial. Specifically, during trial, Adams sought a directed verdict solely on the basis the evidence supposedly did not rise to the level of reasonable doubt as to the charged offenses. Id. Conversely, on appeal, Adams shifted his argument and asserted the trial judge erred by denying the directed verdict motion because the State allegedly failed to present sufficient evidence of his intent to accomplish a sexual battery. Id. Because the "precise argument" Adams raised on appeal was neither raised to nor ruled upon by the trial judge, this Court found that argument was not properly preserved for appellate review and declined to address it. Id.

In the case sub judice, Appellant has raised numerous arguments on appeal in support of his contention the trial judge erred by refusing to grant a directed verdict in his case. Specifically, Appellant maintains: (1) the trial judge applied an incorrect standard when conducting her directed verdict analysis because she indicated she could not weigh the evidence and was only concerned with the matter of whether evidence had been presented as to each

element of the charged offense; (2) his motion should have been granted because the State failed to disprove an element of self-defense; (3) his motion should have been granted because the State failed to present substantial circumstantial evidence to establish he shot his victims in a sudden heat of passion upon sufficient legal provocation; (4) the appropriate standard of review that should be applied is one in which the court reviews the evidence to determine whether the State excluded every reasonable hypothesis of innocence; and (5) his case should be reversed because the State's evidence did not exclude every reasonable hypothesis of innocence.

Significantly, *none* of those arguments was raised by defense counsel during trial, and the trial judge never considered or ruled upon any of them. Instead, looking to the arguments actually presented to the trial judge, defense counsel solely contended: (1) the evidence presented was not sufficient to either convict Appellant "on the basis of the case" or rise "to the necessary level;" and (2) there was not sufficient evidence "to give to the jury for them to reach a verdict." Meanwhile, defense counsel did *not* argue the trial judge should have applied a standard in which she—as a judge and not a juror—evaluated what hypotheses of innocence might exist from the evidence and whether any of them seemed reasonable to her, did *not* argue the analysis the trial judge actually applied was an improper one, and did *not* argue the State failed to disprove self-defense. Likewise, defense counsel did *not* argue the State failed to present evidence sufficient to establish the elements of the lesser-included offense of voluntary manslaughter and, instead, raised no objections whatsoever when the trial judge submitted that lesser-included offense to the jury. See Ramaker v. State, 46 S.W.3d 519, 230 (Ark. 2001) ("[I]n order to preserve challenges to the sufficiency of the evidence supporting convictions for lesser-included offenses, defendants are required to address the lesser-included offenses, either by name or by apprising trial courts of the elements of the lesser-included offenses, in their motion for directed verdict."); see also State

v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown's issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge he had no objection to the instruction); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding Rios waived his right to allege error with a jury charge on appeal where the trial court specifically asked if there were any objections to the instructions given and Rios responded there were none). He similarly did not even point to or mention a single specific element of the indicted offense of murder on which the State's evidence was purportedly lacking. See State v. Sterling, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012) ("A general directed verdict motion . . . does not preserve any issue for appeal."). Based on that, the trial judge solely limited her directed verdict analysis to the matter of whether evidence supporting all the elements of the offense—not offense*s*—charged had been presented, and, in doing so, she did *not* rule upon or consider any arguments related to self-defense, voluntary manslaughter, Appellant's "reasonable hypothesis of innocence" theory, or the propriety of the manner in which her analysis was conducted. See State v. Stone, 376 S.C. 32, 36, 655 S.E.2d 487, 488-489 (2007) ("If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call."); State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) ("Only matter that has been ruled on below can be reviewed[.]").

Under such circumstances, the new arguments Appellant has raised on appeal in support of his current challenge to the sufficiency of the evidence are not properly preserved for appellate review since they were unquestionably neither raised to nor ruled upon by the trial judge. See Bailey, 298 S.C. at 5, 377 S.E.2d at 584 ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal."); cf. State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton's challenge to the trial judge's refusal

to give a requested charge was not preserved for appellate review where Benton "argued one ground in support of a circumstantial evidence charge at trial (State only presented circumstantial evidence of intent) and argues another ground in support of the charge on appeal (palm print is circumstantial evidence)"); State v. Jordan, 255 S.C. 86, 93, 177 S.E.2d 464, 468 (1970) ("The contention of the appellant that the trial judge erred in failing to grant a directed verdict on the ground that the proof showed the commission of the crime of obtaining property by false pretenses, rather than a breach of trust with fraudulent intent, raises no issue for determination by us because such was not a ground of his motion for a directed verdict. This court has, in numerous cases, held that it will not consider a question on appeal which was not presented in the court below."); Adams, 332 S.C. at 144, 504 S.E.2d at 126 ("This precise argument was neither raised to nor ruled upon by the trial court. Appellant argued only that the evidence did not rise to the 'level of a reasonable doubt as to counts 1, 2, and 3.' . . . Adams's argument, therefore, is not preserved for our review."). Therefore, pursuant to the mandates of South Carolina's issue preservation requirements, those arguments simply cannot appropriately be considered or addressed for the first time on appeal. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"). Appellant's conviction should be affirmed.

B. Propriety of the Trial Judge's Ruling on the Directed Verdict Motion

Under our system of justice, the judge and jury have distinct roles when a jury trial is conducted in a criminal case. Shannon v. United States, 512 U.S. 573, 579 (1994). The judge is tasked with administering the proceedings, instructing the jury on the applicable law, and ensuring all sides receive a fair trial. See State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge has a duty to instruct the jury on the law applicable to the

case); State v. Stanley, 365 S.C. 24, 39, 615 S.E.2d 455, 463 (Ct. App. 2005) ("A judge has a responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of criminal justice."). Meanwhile, the jury alone has the task of finding the facts, weighing the evidence, choosing what inferences should be drawn from it, and ultimately deciding whether the State has met its burden of proving the defendant's guilt beyond a reasonable doubt. See United States v. Gaudin, 515 U.S. 506, 514 (1995) ("[T]he jury's constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence."); State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts."); State v. Pruitt, 187 S.C. 58, __, 196 S.E. 371, 373 (1938) (explaining the jury is the *sole* judge of the facts); State v. Tillman, 433 S.C. 58, 64-65, 856 S.E.2d 168, 172 (Ct. App. 2021) (instructing "it was within the *jury's* purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict"); State v. Battle, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (Ct. App. 2014) ("The task of determining the weight of the evidence lies within the exclusive province of the jury.").

Based on that distinction in roles, our Supreme Court explicitly recognized *more than six decades ago* the analysis a trial judge must apply when reviewing the sufficiency of the evidence is very different than the analysis that must be applied by a jury. State v. Littlejohn, 228 S.C. 324, 328-329, 89 S.E.2d 924, 926 (1955). As to the proper test for a jury, the jury must determine whether the evidence presented constituted proof of the defendant's guilt beyond a reasonable doubt or—stated differently—to the exclusion of every reasonable hypothesis of innocence. Id. at 328, 89 S.E.2d at 926. Importantly, such an analysis "goes to the weight of the

evidence," which makes it a matter solely for the jury. Id. at 329, 89 S.E.2d at 926. Conversely, as to the proper test for a trial judge, the trial judge must simply focus on the existence or non-existence of evidence as opposed to its weight and determine whether evidence exists from which the defendant's guilt can reasonably, rationally, and logically be deduced. Id.

Thus, when presented with a directed verdict motion challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is *not* permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) ("When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight."); see also State v. Franklin, 80 S.C. 332, __, 60 S.E. 953, 955 (1908) ("The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.").

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v.

Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 ("[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); United States v. Hernandez, 433 F.3d 1328, 1334-1335 (11th Cir. 2005) ("[O]ur standard for evaluating the sufficiency of the evidence preserves the right to trial by jury and due process of law. A jury determined Hernandez's guilt, and we respect that determination. Under our standard, we are bound by the jury's credibility determinations, and by its rejection of the inferences raised by the defendant. The evidence does not have to exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt." (citations, internal quotations, brackets in original omitted)); see also Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) ("[I]t is exclusively within the jury's province to decide how much weight the evidence deserves.").

In the case at bar, the jury was presented with three key fact-based issues to resolve. Specifically, the jury had to decide whether the State disproved at least one element of self-defense and whether the State met its burden of proof as to either murder or the lesser-included offense of voluntary manslaughter. When viewed in a light most favorable to the State as required, the evidence presented during Appellant's trial was sufficient to warrant submission of each and every one of those issues to the jury.

Turning to the issue of self-defense, the State introduced a recording in which Appellant personally and explicitly denied he shot his victims in self-defense. Based on that, *direct*

evidence was presented from which the jury could rationally and reasonably conclude Appellant was not, in fact, acting in self-defense when he shot Mack, and, thus, the issue of self-defense necessarily had to be submitted to the jury. See State v. Curtis, 356 S.C. 622, 633-634, 591 S.E.2d 600, 605 (2004) ("If there is *any direct evidence* or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." (emphasis added)); State v. Nesmith, 213 S.C. 60, 67, 48 S.E.2d 595, 598 (1948) (explaining direct evidence is testimony tending to directly to prove a fact in issue if believed); see also State v. Stokes, 381 S.C. 390, 398-399, 673 S.E.2d 434, 438 (2009) (recognizing a prior inconsistent statement constitutes and can be used as substantive evidence). However, even assuming the presentation of direct evidence refuting self-defense was somehow not sufficient to survive a directed verdict motion, the State also introduced evidence establishing Appellant fled from the scene after the shooting and never reported it to the police, which were actions markedly inconsistent with a genuine claim of self-defense. See People v. Hernandez, 247 P.3d 167, 177 (Cal. 2011) ("Defendant's flight from the scene was . . . inconsistent with self-defense."); State v. Tassin, 129 So. 3d 1235, 1248 (La. Ct. App. 2013) (explaining the defendant's acts of failing to report the shooting after it occurred and fleeing from the scene were inconsistent with a claim of self-defense); State v. Kirby, 697 S.E.2d 496, 502 (N.C. Ct. App. 2010) ("[Kirby]'s flight after the shooting is *clear evidence* from which the jury could reasonably infer that [Kirby] knew that he had not killed in self-defense, otherwise he would have stayed and waited for the police to come, or he would have called the police himself." (emphasis added)); People v. Blake, 21 N.E.3d 214, 217 (N.Y. 2014) (concluding Blake's flight after the shooting was conduct undermining his claim the shooting was justified and committed in self-defense); see also Jenkins v. Anderson, 447 U.S. 231, 240-241 (1980) (determining it was not

unconstitutional for Jenkins, who claimed during trial he had acted in self-defense, to be impeached with evidence establishing he remained silent about fatally stabbing his victim for the roughly two-week period that elapsed between the killing and his arrest). Likewise, some of the evidence presented—such as the evidence establishing Mack's key lanyard was found on the bathroom counter and the bathroom door was open at the time of the shooting—was inconsistent with Appellant's trial account of the shooting, which raised credibility issues that could only properly be resolved by the jury. See State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("[Richburg] contends . . . that the trial judge should have directed a verdict, as a matter of law, of not guilty in favor of the defendant on the plea of self-defense. When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. . . . Among other considerations is the credibility of the witnesses, including that of the appellant himself. When there is reason to discredit a witness because of interest or otherwise the judge is not required to take the case from the jury as a matter of law but may and should submit the issues, including credibility of the witnesses, to the jury."); cf. Wright v. West, 505 U.S. 277, 296 (1992) ("As the trier of fact, the jury was entitled to disbelieve West's uncorroborated and confused testimony. In evaluating that testimony, moreover, the jury was entitled to discount West's credibility on account of his prior felony conviction . . . and to take into account West's demeanor when testifying, which neither the Court of Appeals nor we may review. And if the jury did disbelieve West, it was further entitled to consider whatever it concluded to be perjured testimony as affirmative evidence of guilt[.]" (citations omitted)); State v. Butler, 407 S.C. 376, 382, 755 S.E.2d 457, 460 (2014) ("[T]he evidence in the present case created a jury issue on the issue of self-defense. For example, as the trial court recognized when ruling on the directed verdict motion, [Butler]'s various, inconsistent accounts of how the

stabbing occurred created credibility issues and questions of fact to be resolved by the jury."). Therefore, the issue of self-defense was properly a matter for the jury based on the evidence presented.

Turning to the issues of murder and voluntary manslaughter, the evidence introduced during trial indisputably established Appellant shot Mack and Mack died as a result. As a result, Appellant's mental state at the time of the shooting was the only matter actually in dispute as far as the murder and voluntary manslaughter charges were concerned. Based on some of the evidence presented, Appellant expressly stated he was going to kill a particular unnamed person earlier on the date of the shooting and then gunned down Mack a short time later. From that, the jury could have reasonably and rationally concluded Appellant was acting with express malice when he carried out his stated goal of perpetrating a killing. See State v. Wilds, 355 S.C. 269, 276, 584 S.E.2d 138, 142 (Ct. App. 2003) ("Express malice is when there is a deliberate intention to unlawfully take the life of another."); cf. State v. Cox, 221 S.C. 1, 5, 68 S.E.2d 624, 626 (1951) (concluding Cox's act of stating "someone would pay for this" a few weeks before he killed his wife constituted admissible evidence of *express* malice for purpose of proving the charged offense of murder). Meanwhile, based on some of the other evidence presented, Appellant was in extreme fear of the victims based on numerous threats he had heard, and, when they later came upon him in the restaurant bathroom and provocatively moved in a manner that suggested they were reaching for guns, he became "scared senseless" and proceeded to suddenly shoot Mack *at least six times*, including once while Mack was completely defenseless on the ground. From that, the jury could have reasonably and rationally concluded Appellant was acting under a sudden heat of passion upon sufficient legal provocation when he repeatedly and uncontrollably shot Mack. See State v. Starnes, 388 S.C. 590, 598-599, 698 S.E.2d 604, 609

(2010) ("[A] person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. . . . Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter—it will not justify it."); State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) ("[F]ear can constitute a basis for voluntary manslaughter."); cf. State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (including a voluntary manslaughter instruction was required where the evidence showed "the decedent and Lowry were in a heated argument and that the decedent was about to initiate a physical encounter when the shooting occurred"); State v. Gilliam, 296 S.C. 395, 397, 373 S.E.2d 596, 597 (1988) ("[Gilliam]'s testimony that the victim threatened him and then fired at him would support a finding of sufficient legal provocation and heat of passion."); State v. Oates, 421 S.C. 1, 26, 803 S.E.2d 911, 924 (Ct. App. 2017) (concluding the jury could have reasonably inferred Oates was acting under a sudden heat of passion when he shot his victim six times). Therefore, the issues of whether Mack's killing constituted murder or voluntary manslaughter were properly matters for the jury based on the evidence presented.

Accordingly, because the evidence presented was sufficient to raise issues for the jury as to murder, voluntary manslaughter, and self-defense, the trial judge was required to submit those issues to the jury so it could carry out its fact-finding role. See State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is "required" to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused's guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015); see also State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951) ("[T]o warrant the Court in eliminating the offense of manslaughter, it should very clearly appear that there is *no evidence whatsoever*

tending to reduce the crime from murder to manslaughter." (emphasis added)); cf. United States v. Zayyad, 741 F.3d 452, 464 (4th Cir. 2014) ("[I]t does not matter that the Government's evidence also supported innocent inferences. As a general proposition, circumstantial evidence may be sufficient to support a guilty verdict even though it does not exclude every reasonable hypothesis consistent with innocence. The jury was entitled to reject the theory consistent with innocence and accept the one consistent with guilt, so long as there was substantial evidence for its choice." (citations, internal quotations, and brackets in original omitted)). As a result, the trial judge correctly denied Appellant's directed verdict motion, and there is no legitimate basis upon which that ruling can be disturbed on appeal. See Cavazos v. Smith, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. . . . Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold."); United States v. Moye, 454 F.3d 390, 396 (4th Cir. 2006) ("[A]s appellate judges, we enjoy no greater vantage point on appeal than did the jury at trial and we have no right to usurp the jury's role to find facts. If we did otherwise, we would be substituting our judgment for that of the jury." (citation omitted)). Appellant's conviction should be affirmed.

II.

The trial judges who presided over Appellant's two murder trials did not abuse their broad discretion by refusing to dismiss Appellant's case based on an alleged violation of Appellant's speedy trial rights because neither the roughly twenty-five-month span of time that preceded the first trial, which ended in a mistrial, nor the roughly sixteen-month span of time incurred prior to the second trial was excessively or unreasonably lengthy based on the circumstances involved, resulted from any intentional willfulness or unreasonable neglect on the part of the State, hampered the defense, or otherwise caused any undue prejudice to Appellant.

Appellant contends the trial judges erred by failing to dismiss his murder charge based on an alleged violation of his speedy trial rights. In support of that contention, Appellant maintains his murder charge should have been dismissed based on the total delays incurred from his arrest to his second trial because the State's reasons for the delays were "simply inexcusable," he clearly asserted his speedy trial rights, and he was prejudiced by the loss of his cell phones. To the contrary, the trial judges who presided over Appellant's two murder trials did not abuse their discretion by failing to dismiss Appellant's case based on an alleged violation of his speedy trial rights because the roughly twenty-five-month span of time that preceded the first trial, which ended in a mistrial, and the roughly sixteen-month span of time that was incurred prior to the second trial were not excessively or unreasonably lengthy based on the circumstances involved, did not result from 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.

Relevant Facts

Although the fatal shooting at the IHOP restaurant occurred a few weeks earlier, Appellant was not arrested until June 27, 2016. (2nd Trl. Tr. p. 15; pp. 31-32; p. 204). Subsequent to his arrest, Appellant was indicted for a number of offenses, including murder and

attempted murder. (2nd Trl. Tr. p. 6; Indictments). After that, Appellant apparently did not request the appointment of counsel or retain counsel to represent him for an extended period of time, which resulted in defense counsel not being appointed until June 12, 2017. (2nd Trl. Tr. p. 16; p. 31; Order of Appointment of Counsel, filed June 14, 2017). Once defense counsel had been appointed, defense counsel then promptly filed a discovery request in order to properly prepare Appellant's case for trial. (Motion for Discovery, filed June 19, 2017).

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. (Dec. Pre-Trl. Tr. p. 4; 2nd Trl. Tr. p. 34; Motion for Speedy Trial, filed Dec. 15, 2017). During the hearing, the solicitor that was then representing the State requested Appellant's case be placed on the court's docket for a January 2018 trial. (Dec. Pre-Trl. Tr. pp. 4-5). The solicitor further asserted the issue of bond could be revisited if the State ended up unprepared to go forward with the trial at that time. (Dec. Pre-Trl. Tr. p. 5). 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. (Dec. Pre-Trl. Tr. p. 5; 2nd Trl. Tr. p. 34; Def. Ex. # 2 (Order), p. 1).

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. (1st Trl. Tr. I pp. 154-155; pp. 160-161; 2nd Trl. Tr. pp. 33-34; State's Ex. # 1 (Pre-Trial Transcript), p. 4). As a result, the circuit court judge who previously scheduled the case issued an order setting bond for Appellant. (State's Ex. # 1, p. 4; Def. Ex. # 3 (Order), p. 1). Appellant's case was then reassigned to a new solicitor for prosecution. (1st Trl. Tr. I p. 156; 2nd Trl. Tr. pp. 33-34; State's Ex. # 1, p. 4).

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. (State's Ex. # 1, p. 3; Motion for Speedy Trial, filed June 8, 2018; Bond Motion, filed June 8, 2018). 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. (State's Ex. # 1, pp. 3-4). 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. (State's Ex. # 1, p. 10). The circuit court judge then declined to take any additional actions at that time. (State's Ex. # 1, pp. 14-15).

Following that, Appellant's case proceeded forward to a first trial on the murder and attempted murder charges in August of 2018. (1st Trl. Tr. I p. 8; State's Ex. # 1, pp. 3-4). Toward the outset of trial, defense counsel moved for the charges to be dismissed based on an alleged violation of Appellant's speedy trial rights. (1st Trl. Tr. I pp. 72-73; p. 125; Court's Ex. # 1 (Motion for Dismissal)). As support for that motion, defense counsel identified all the reasons he believed warranted dismissal, and he offered testimony from Appellant about various things that followed his arrest to show prejudice had resulted.[8] (1st Trl. Tr. I pp. 128-144). Furthermore, defense counsel proffered the testimony of Lieutenant Dwayne Peters, who had

[8] Specifically, Appellant testified his post-arrest incarceration had caused him a great deal of anxiety, had been difficult on his children, and had resulted in the loss of his job, home, and car. (1st Trl. Tr. I pp. 138-139). However, Appellant candidly admitted he lost his home and job as a result of and at the time of his arrest as opposed to due to the passage of time. (1st Trl. Tr. I pp. 140-143). Furthermore, Appellant admitted his car had actually been lost when it was stolen several months before his arrest. (1st Trl. Tr. I pp. 142-144). 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. (1st Trl. Tr. I pp. 138-144).

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. (1st Trl. Tr. I pp. 146-151). Through his testimony, Lieutenant Peters acknowledged three currently-missing cell phones had been seized from Appellant's motel room at the time of Appellant's arrest, and he confirmed those phones 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. (1st Trl. Tr. I p. 140; pp. 147-150). Lieutenant Peters further indicated one of the victim's phones was recovered at the incident scene, had been analyzed, and was determined to contain no communications with Appellant. (1st Trl. Tr. I pp. 147-148).

After listening to that testimony and considering the circumstances presented, the first trial judge found the length of the delays involved in Appellant's case was sufficient to trigger a speedy trial analysis. (1st Trl. Tr. I pp. 152-154). In response, the solicitor offered a variety of explanations for the delays. (1st Trl. Tr. I pp. 154-162). 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. (1st Trl. Tr. I p. 154). 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. (1st Trl. Tr. I pp. 154-156; pp. 160-161). Moreover, due to the sudden nature of the original solicitor's departure, the solicitor asserted he was not able to consult with him about the case to aid with his own prosecution of it. (1st Trl. Tr. I pp. 160-161). 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. (1st Trl. Tr. I pp. 156-157). Furthermore, the solicitor stated a

substantial portion of the delays were associated with the gathering and locating of evidence, including after the case was scheduled for an August 2018 trial a few months earlier. (1st Trl. Tr. I pp. 158-160). 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. (1st Trl. Tr. I pp. 161-162).

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. (1st Trl. Tr. I p. 165). 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. (1st Trl. Tr. I p. 165).

After considering the arguments of counsel, the first trial judge denied the speedy trial dismissal motion. (1st Trl. Tr. I p. 167). In doing so, the first 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. (1st Trl. Tr. I p. 166). Additionally, as to the reasons for the delays, the first 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. (1st Trl. Tr. I pp. 166-167). Furthermore, the first 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. (1st Trl. Tr. I p. 167). For those reasons, the first trial

judge concluded the extreme sanction of dismissal was not warranted based on what had been presented. (1st Trl. Tr. I p. 167).

Following that ruling, the trial proceeded forward, and the jury ended up being unable to reach a verdict on the murder charge.[9] (1st Trl. Tr. II pp. 274-276). Based on that, the trial judge granted a mistrial as to that charge. (1st Trl. Tr. II pp. 274-276). Ultimately though, the jury was able to reach a verdict on the attempted murder charge and convicted Appellant of the lesser-included offense of ABHAN. (1st Trl. Tr. II p. 278). The first trial judge then sentenced Appellant to eighteen years of imprisonment with credit for time served. (1st Trl. Tr. II p. 291).

Subsequently, Appellant timely filed and perfected an appeal. Appellate Records for State v. Keunte D. Cobbs, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=68286. Through that appeal, Appellant challenged the first trial judge's denial of the motion to dismiss all the indictment*s* based on an alleged speedy trial violation. Id.

During the pendency of that appeal, Appellant's case proceeded forward to a second trial on the murder charge in January of 2020. (2nd Trl. Tr. p. 6; pp. 117-119). Toward the outset of the second trial, defense counsel—just as he had done during the first trial—promptly moved for dismissal based on an alleged violation of Appellant's speedy trial rights. (2nd Trl. Tr. p. 6; Def. Ex. # 1 (Motion for Dismissal)). As support for the motion, defense counsel again offered the testimony of Appellant to discuss the prejudice he had purportedly suffered, and Appellant asserted his incarceration had resulting in him losing his rental home, job, and several vehicles. (2nd Trl. Tr. pp. 7-9; p. 11). However, Appellant conceded all those losses occurred within a

[9] During the evidentiary phase of the first trial, 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. (1st Trl. Tr. II pp. 154-155).

short period of time of his arrest. (2nd Trl. Tr. pp. 11-13). Beyond that, Appellant alleged his defense was hurt by the loss of his cell phones because those items would have purportedly shown he had no contact with the victims and did not know any of the witnesses against him. (2nd Trl. Tr. pp. 10-11; pp. 13-14).

Following the presentation of Appellant's testimony, defense counsel rehashed what had occurred in Appellant's case up to that point while largely focusing on the events preceding the first trial. (2nd Trl. Tr. pp. 15-23). However, defense counsel maintained the additional sixteen-month period of delay that was incurred since the first trial should be considered "as well" for purposes of the speedy trial analysis. (2nd Trl. Tr. p. 18). Defense counsel then contended all the delays since the date of Appellant's arrest were without adequate justification. (2nd Trl. Tr. p. 47; p. 50). In addition to that, defense counsel maintained Appellant was prejudiced because his cell phones were lost at some point after his arrest. (2nd Trl. Tr. p. 23; pp. 49-50). Importantly though, defense counsel acknowledged he had never made any attempts to obtain any phone records from Appellant's service providers. (2nd Trl. Tr. p. 24). Likewise, defense counsel further conceded Appellant had already received one trial, acknowledged the solicitor lost control over the trial docket subsequent to the first trial, and admitted the State's personnel changes would have "slow[ed] things down" for the prosecution. (2nd Trl. Tr. p. 22; pp. 47-49).

In rebuttal, the solicitor recounted the history of Appellant's case and noted Appellant was being tried a second time on the murder charge roughly sixteen months after his first trial ended. (2nd Trl. Tr. pp. 31-35). Since Appellant had already been tried once, the solicitor maintained the second trial judge's analysis of the speedy trial issue should be focused on and limited to the period that had transpired since Appellant's first trial. (2nd Trl. Tr. p. 35). Regarding that time period, the solicitor affirmed none of the delays involved were deliberate.

(2nd Trl. Tr. p. 38). Instead, the solicitor explained the delays had resulted from: (1) the trial judge ordering him and others from his office to try a number of other cases first, which prevented Appellant's case from going forward earlier due to limited space on the docket; (2) time spent conducting further investigation after the first trial, which included a time-consuming attempt to employ facial recognition technology to identify Appellant's confederate; and (3) the time needed to find all the in-state and out-of-state witnesses, marshal the evidence, and once again bring everything together for the trial. (2nd Trl. Tr. pp. 38-40; pp. 45-46). Additionally, the solicitor indicated the prejudice Appellant claimed to have suffered, including the loss of the cell phones, did not result from any delays and, instead, had occurred shortly after Appellant's arrest. (2nd Trl. Tr. pp. 41-43). Furthermore, the solicitor noted Appellant did not file any speedy trial motions after his first trial ended and had been incarcerated as a result of his ABHAN conviction during that period. (2nd Trl. Tr. p. 39; pp. 43-44).

After considering the arguments of counsel, the second trial judge denied the speedy trial dismissal motion. (2nd Trl. Tr. p. 56). In doing so, the second trial judge primarily focused on the sixteen-month period of delay incurred after Appellant's first trial ended because—as she explicitly recognized—the first trial judge had already made a speedy trial determination concerning the period of delay that preceded the first trial. (2nd Trl. Tr. pp. 51-56). She then weighed the appropriate factors, including the reasons for the delays and the possible prejudice suffered, and concluded the delays incurred were sufficiently explained such that the extreme sanction of dismissal was not warranted in Appellant's case.[10] (2nd Trl. Tr. pp. 51-56).

[10] As to the reasons for the delay, the trial judge determined the delays resulted from: (1) time spent attempting to employ facial recognition technology for investigative purposes; (2) the nature of the docket in Dorchester County, which was experiencing a "serious backlog" of cases; and (3) time associated with a plea offer being extended. (2nd Trl. Tr. pp. 53-55).

Subsequently, the trial proceeded forward, and, at its conclusion, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter.[11] (2nd Trl. Tr. p. 620). Based on that conviction, Appellant was sentenced to a thirty-year term of imprisonment, and he once again received credit for time served. (2nd Trl. Tr. pp. 632-633).

Standard of Review

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."); cf. 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).

Analysis

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally-guaranteed right to a speedy trial. See U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]"); S.C. Const. art. I, § 14 ("Any person charged with an offense shall

[11] During the course of trial, Lieutenant Peters confirmed for the jury Spells's cell phone was recovered after the shooting, analyzed, and determined to contain no communications with Appellant. (2nd Trl. Tr. p. 482). In addition to that, defense counsel called the jurors' attention to the flawed nature of the investigation both through his cross-examination of Lieutenant Peters and his closing argument remarks. (2nd Trl. Tr. pp. 477-480; pp. 562-586).

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).

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. Doggett v. United States, 505 U.S. 647, 652, n.1 (1992). 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).

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, two separate periods of delay were involved: (1) a twenty-five-month period of delay extending from Appellant's arrest to Appellant's first trial on the murder charge; and (2) a sixteen-month period of delay extending from the grant of a mistrial on the murder charge during the first trial to Appellant's second trial. Based on that, the first trial judge and the second trial judge were each confronted with a different period of delay that needed to be analyzed for speedy trial purposes. See Hallowell v. State, 178 A.3d 610, 627 (Md. Ct. Spec. App. 2018) ("In a case . . . in which there was a retrial following the declaration of mistrial, the starting point for computing the length of delay *begins at the time when the mistrial was declared*, and the relevant time period runs until the commencement of the retrial." (emphasis

added)); see also Graham v. State, 299 So. 3d 273, 286-287 (Ala. Crim. App. 2019) (explaining the majority of jurisdictions measure "the starting date for purposes of a speedy-trial analysis from the declaration of a mistrial"). Accordingly, the period of delay incurred prior to Appellant's first trial was relevant to the first trial judge's speedy trial analysis while the second trial judge's analysis was properly focused on the period of delay that had not already been addressed through the first trial judge's speedy trial ruling.[12] 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 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.").

Looking to two distinct periods of delay involved in Appellant's case, both were likely sufficiently lengthy to warrant consideration of the relevant speedy trial factors by the trial judges. See Barker, 407 U.S. at 530 ("Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."); State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (recognizing the length of the delay may be sufficient to trigger review of the relevant speedy trial factors); see also State v. Echols, 765 N.E.2d 379, 386 (Ohio Ct. App. 2001) (instructing a delay of one year "between a mistrial and the commencement of a second trial" is generally sufficient to trigger a speedy trial analysis); Waites, 270 S.C. at 108, 240 S.E.2d at 653 (finding a delay of twenty-eight months sufficient to warrant review of the pertinent factors in a speedy trial analysis). However, neither was 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 the

[12] Significantly, on May 19, 2021, this Court issued an unpublished opinion affirming the first trial judge's speedy trial ruling. Appellate Records for State v. Keunte D. Cobbs, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=68286.

personnel originally assigned to handle the matter and which had to be tried on two separate occasions due to the inability of the first trial's jury to reach a verdict on the murder charge. Cf. United States v. Gregory, 322 F.3d 1157, 1162 (9th Cir. 2003) (holding a twenty-two-month period of delay "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 delay between arrest and trial had not "crossed that threshold" of constituting an "extreme" delay). As a result, the length of the two periods of delay involved—the first of the relevant factors in a speedy trial analysis—did not and should not weigh heavily against the State for purposes of either of the speedy trial analyses.

Turning to the second of the relevant factors, some portion of the delays prior to Appellant's first trial 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 for speedy trial purposes. See Ratchford v. State, 785 A.2d 826, 830 (Md. Ct. Spec. App. 2001) (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 prior to first trial resulted from the need to reassign Appellant's case to both a new investigator and a new solicitor following the departures of the original ones 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 Strunk v. United States, 412 U.S. 434, 436 (1973) (instructing factors leading to unintentional delays such as "understaffed prosecutors" should be weighed less heavily than intentional delays in a speedy trial analysis); 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, 178 A.3d at 628 (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). Likewise, some of the delays incurred prior to both the first trial *and* the second trial resulted from the need to fully investigate the matter, analyze collected evidence, and locate both in-state and out-of-state witnesses, and those periods of delay were wholly warranted under the circumstances and could not logically be held against the State. 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."); 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."). Furthermore, some of the delays incurred prior to the second trial were directly related to the limited availability of opportunities for the case to be tried due to the crowded condition of the docket in Dorchester County, which—just as the second trial judge recognized—was a circumstance that militated against a finding of a speedy trial violation. See Langford, 400 S.C.

at 444, 735 S.E.2d at 483 (recognizing the limited availability of terms of court can constitute a valid reason for delays). 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 delay that preceded the first trial. 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). Meanwhile, none of the delays involved in Appellant's case prior to either of the trials 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 distinct twenty-five-month and sixteen-month periods of delay that were incurred prior to Appellant's two trials simply did not warrant a finding Appellant's speedy trial rights were infringed.

Turning to the third of the relevant factors, Appellant unquestionably did seek a speedy trial subsequent to his arrest and prior to his *first* trial, but he 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). And, once he had done so, his case was brought to trial—for the first time—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); 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."). Thereafter, following the grant of a mistrial, Appellant never did anything to express an interest in a speedy *re*trial on the murder charge and, instead, waited until the second trial was set to commence before again asserting his rights. Cf. State v. Barnes, 431 S.C. 66, 88, 846 S.E.2d 389, 400 (Ct. App. 2020) (finding the factor related to the assertion of speedy trial rights weighed against Barnes because he did not assert his speedy trial rights after his case was sent back for a retrial until just two months before his second trial was set to commence). Thus, considering the delayed nature of Appellant's initial assertion of his rights, his relatively prompt receipt of a trial following that assertion, and his failure to do anything to express a desire for a speedy *second* trial, Appellant's assertion of his speedy trial rights did not weigh in his favor and could not have legitimately supported a finding those rights were violated.

Finally, turning to the fourth of the relevant factors, Appellant personally claimed he was prejudiced as a result of the periods of delay involved in his case because he and his family experienced issues while he was incarcerated during the pendency of the charges, but, significantly, Appellant did not identify any undue or unusual factors involved in his 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); 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."). Beyond that, Appellant asserted he was prejudiced by the loss of his job, home, and car coupled with the State's loss of his cell phones, but, critically, all of those losses were incurred shortly after—and, in the case of Appellant's car, *before*—Appellant's arrest, which meant those losses were not, in fact, caused by the delays involved in bringing Appellant's case to trial either a first or second time. 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."). Furthermore, although Appellant remained incarcerated during the period between his arrest and first trial, Appellant did receive full credit for that

period of incarceration toward 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). Finally, since Appellant was sentenced to an eighteen-year term of imprisonment for ABHAN at the conclusion of the first trial, Appellant was not incarcerated for any period of time while awaiting retrial on the murder charge during which he would not have otherwise been incarcerated, which—just as the second trial judge recognized—helped to minimize the prejudice he suffered during the sixteen-month period of delay that preceded his second trial. 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). Therefore, because Appellant's defense was not hampered by any of the delays and because he did not suffer any undue prejudice as a result of the delays, Appellant was not sufficiently prejudiced by the delays incurred before either of his trials to justify a finding his speedy trial rights were violated.

Accordingly, because the relevant circumstances in Appellant's case—when properly considered—do not support a conclusion either the twenty-five-month period of delay between Appellant's arrest and first trial or the sixteen-month period of delay between the grant of a mistrial and his second trial 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."); 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). Based on that, the judges who presided over Appellant's two trials did not abuse their discretion by refusing 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."); 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). 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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June 2, 2021

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SC Court of Appeals

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.

PROOF OF SERVICE

I, Mark R. Farthing, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

C. Rauch Wise, Esq.
Attorney at Law
305 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.
This 2nd day of June, 2021.

Mark R. Farthing
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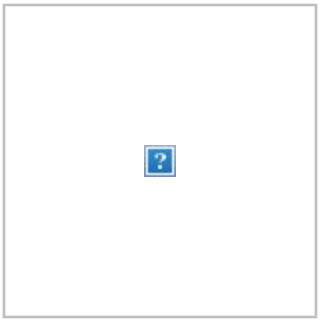
From: Mark Farthing
To: rauchwise@gmail.com
Subject: State v. Keunte D. Cobbs -- Initial Brief of Respondent and Designation of Matter
Date: Wednesday, June 2, 2021 10:24:00 PM
Attachments: Cobbs.IBOR (02598092xD2C78).PDF
image001.jpg

Mr. Wise,

Attached are electronic copies of the State's initial brief of respondent and designation of matter in the State v. Keunte D. Cobbs appeal. I will be electronically filing these documents with the Court of Appeals shortly. Hope all is well, and please let me know if you would like me to mail out some physical copies as well.

Sincerely,
Mark



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