IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

APPEAL NO. 30944

STATE OF SOUTH DAKOTA,

Appellee,

-vs-

SOLOMAN B. LONGCHASE,

Appellant.

APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
HYDE COUNTY, SOUTH DAKOTA

THE HONORABLE MARGO D. NORTHRUP
CIRCUIT COURT JUDGE, PRESIDING

BRIEF OF APPELLANT
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PRELIMINARY STATEMENT

For the convenience of the Court, Appellant will adopt the following abbreviations for use in its Appellate Brief. Appellant Soloman Longchase will be referred to as "Longchase." Appellee the State of South Dakota will be referred to as the "State." Reference to the Settled Record will be indicated by "SR ___." Reference to transcripts will be made by citation to settled Record.

JURISDICTIONAL STATEMENT

This is an appeal by Longchase of a Judgment of Conviction entered by the Hyde County Circuit Court, Judge Margo D. Northrup, presiding, entered December 2, 2024, after a plea of guilty and subsequent sentencing. This Court has jurisdiction over this appeal pursuant to SDCL 15-26A-3 and SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES

I. WHETHER LONGCHASE'S PROSECUTION IS BARRED BY HIS RIGHT TO A SPEEDY TRIAL AS FOUND IN THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 7 OF THE SOUTH DAKOTA CONSTITUTION?

The circuit court denied a motion to dismiss on said grounds.

Authority:

U.S. Const. amend. VI
S.D. Const. art. VI, § 7
Barker v. Wingo, 407 U.S. 514 (1972)
United States v. Erenas-Luna, 560 F.3d 772 (8th Cir. 2009)
State v. Starnes, 86 S.D. 636, 200 N.W.2d 244 (1972)
State v. Karlen, 1999 S.D. 12, 589 N.W.2d 594

II. WHETHER ORDERING LONGCHASE TO PAY COURT APPOINTED COUNSEL FEES WITHOUT CONSIDERATION OF HIS ABILITY TO PAY VIOLATES HIS CONSTITUTIONAL RIGHT TO COUNSEL AND DUE PROCESS?

The circuit court awarded recoupment of attorney fees.

Authority:

U.S. Const. amend. VI
S.D. Const. art. VI, § 7
SDCL 23A-40-10
SDCL 23A-40-11
James v. Strange, 407 U.S. 128 (1972)
Fuller v. Oregon, 417 U.S. 40 (1974)
White Eagle v. State, 280 N.W.2d 659 (S.D. 1979).
State v. Tennin, 674 N.W.2d 403 (Minn. 2004)

STATEMENT OF THE CASE AND FACTS

A Complaint was signed on September 15, 2022, and filed in this matter on September 21, 2022. SR 16-18. On September 21, 2022, a request for an arrest warrant was filed. SR 1-15. The documentation in the request for an arrest warrant included information that stated Longchase was located at the Hughes County Jail. SR 13. A warrant of arrest was filed the following day, which indicated Longchase's location was at the Hughes County Jail. SR 19. Thereafter, a grand jury indictment was filed on December 20, 2022. SR 21-23. Another warrant for arrest was issued on December 29, 2022, which also indicated his location was (still) at the Hughes County Jail. SR 25.

Despite knowing where Longchase was and Longchase being at the same jail where he would have been held if an arrest warrant had been served on Longchase, the State did not provide Longchase an initial appearance or serve an arrest warrant on Longchase until at least April, 2024, if at all. Longchase finally had an initial appearance on April 9, 2024, where he was first advised of the charges in Hyde County. SR 570. At that time, he requested court-appointed counsel. SR 573. At the hearing, the Circuit Court Judge advised him "You have the right to have an attorney at every stage of the proceeding. If you cannot afford an attorney, I would appoint one to represent you.

However, that's not a gift. That's something that you'd have to pay back at the conclusion of your case." SR 583.

An arraignment was held on May 14, 2024, the date for which was set at the initial appearance. SR 577, 582. At that hearing, the first hearing with defense counsel present, defense counsel raised the speedy trial right issue and requested a hearing date for a motion to dismiss on the same, which was set for the next available hearing date. SR 593-595. At the hearing, Agent Charles Swanson of the DCI was called as a witness. SR 606. Agent Swanson testified that he was the lead investigator as it related to this matter. SR 607. Agent Swanson testified that he was aware Solomon Longchase was in detention at the Hughes County Jail from the date he interviewed Longchase in late 2022 through January of 2023, when he received a furlough. SR 610-611. Longchase then did not return to custody until December 13, 2023[1]. SR 618. Longchase remained in custody continuously from December 13, 2023, until his initial appearance on April 9, 2024. To this day, there is no evidence in the record that a warrant of arrest was ever served on Longchase.

According to Agent Swanson, it was his understanding that he did not need to serve the arrest warrant on Longchase or that simply giving a copy to the Hughes County Jail was service of the warrant. SR 643. Agent Swanson "expected [Longchase] to remain in custody, serve his time on his preceding charges and then be served with his warrant as was always standard operating procedure at that jail." SR 641. Agents Swanson further stated he chose not to serve on Longchase because "the [Hughes

[1] Longchase was charged with escape for failing to return from his furlough on February 1, 2025, and was found guilty of that offense in Hughes County Circuit Court. SR 181-187.

County] jail prefers to have their warrants just provided to the staff when there are preceding charges on that individual." SR 637. In addition, Agent Swanson testified that, the time Longchase was on escape status didn't matter, because: "In my mind, the warrant had been served. I had done my due diligence. I provided the legal document to the jail." SR 643.

However, the circuit court judge thereafter denied the motion to dismiss reasoning: "It appears to this Court that the [*Barker*] factors narrowly weigh in favor of the State." SR 214. A trial date was set to begin on November 14, 2024. SR 222-23. That trial date was roughly 26 months after the formal complaint and arrest warrant was filed in this matter and 23 months after the Indictment was filed in this matter. SR 16, 19, 21. Thereafter, Longchase entered into a plea agreement with the State where he pleaded to Grand Theft and Simple Assault, and the State dismissed the remaining charges. SR 257-259; 745-745.

At sentencing, along with his other sentencing arguments, Longchase objected to the imposition of attorney fees unless and until the circuit court conducted an analysis of Longchase's ability to pay, and, that under the circumstances of this case, Longchase did not have the ability to pay. SR 766-767. The State entered no evidence and made no argument regarding Longchase's ability to pay attorney fees.

The trial court then sentenced Longchase to a concurrent sentence of eight years in the state penitentiary, with three years suspended, on the grand theft count and 90 days in the county jail on the simple assault count. SR 552- 554. In addition, the Judgement of Conviction requires that Longchase "reimburse Hyde County for his court appointed attorney fees." *Id.* The judge's only analysis regarding attorney fees was as follows:

> I think that attorney's fees are appropriate. I will order both of those, including the rest of the finances. There's no reason that Mr. Longchase will not be able to be employed once he is out of the penitentiary and, of course, those wouldn't be due and owing until he was out of the penitentiary to be able to work and make those payments.

SR 776. The written Judgment of Conviction does not indicate that the payment obligations were stayed while Longchase was in prison. SR 554.

STANDARD OF REVIEW

This Court reviews a circuit court's decision regarding an alleged violation of speedy trial rights or right to counsel based upon the Sixth Amendment of the United States Constitution and Article VI, § 7 of the South Dakota Constitution in the same manner as other alleged violations of constitutional rights or a violation of the statutory right to a speedy trial as codified at SDCL 23A-44-5.1, i.e. the 180-day rule. Specifically, this Court "review[s] findings of fact under the clearly erroneous standard. Once the facts have been determined, however, the application of a legal standard to those facts is a question of law reviewed de novo. [And,] an alleged violation of a constitutionally protected right is a question of law reviewed de novo." *State v. Ball*, 2004 S.D. 9, ¶ 21, 675 N.W.2d 192, 199 (*quoting State v. Hodges*, 2001 SD 93, ¶ 8, 631 N.W.2d 206, 209); see also *State v. Cottrill*, 2003 SD 38, ¶ 6, 660 N.W.2d 624, 627 ("A [circuit] court's findings of fact on the issue of the [speedy trial rights] are reviewed using the clearly erroneous rule. However, this Court reviews the determination of whether [speedy trial rights were violated] as well as what constitutes good cause for delay under a *de novo* standard." (internal citations omitted)).

ARGUMENTS AND AUTHORITY

I. LONGCHASE'S PROSECUTION IS BARRED BY THE SPEEDY TRIAL CLAUSE OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 7 OF THE SOUTH DAKOTA CONSTITUTION.

A. LONGCHASE'S PROSECUTION VIOLATED HIS RIGHT TO A SPEEDY TRIAL.

The Sixth Amendment of the United States Constitution and Article VI, § 7 of the South Dakota Constitution guarantee a defendant the right to a speedy trial. *State v. Karlen*, 1999 S.D. 12, ¶ 17, 589 N.W.2d 594. "SDCL 23A-44-5.1 creates statutory rights in addition to a defendant's constitutional right to a speedy trial. By way of that statute, [the South Dakota Supreme Court has] affirmatively stated the defendant's right to a disposition of his criminal case within 180 days unless good cause can be shown for the delay. SDCL 23A-44-5.1 is a statutory and not constitutional requirement, thus it stands on a different legal footing than constitutional claims and requires an analysis separate and distinct from constitutional claims." *State v. Hoffman*, 409 N.W.2d 373, 375 (S.D. 1987).

The Sixth Amendment to the United States Constitution has long been held to be incorporated to state prosecutions, as recognized by the South Dakota Supreme Court:

> In *Klopfer v. North Carolina*, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1, the Supreme Court of the United States held that by virtue of the Fourteenth Amendment the Sixth Amendment right to a speedy trial is enforceable against the states, stating further, "The history of the right to a speedy trial and its reception in this country clearly establish that it is one of the most basic rights preserved by our Constitution." *Id.*, 386 U.S. at 226, 87 S.Ct. at 995, 18 L.Ed.2d at 9. And again quoting *Klopfer*, "We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment." *Id.*, 386 U.S. at 223, 87 S.Ct. at 993, 18 L.Ed.2d at 9. Article 6, Section 7 of the South Dakota State Constitution is in accord with these basic rights, providing in part, "In all criminal prosecutions the accused shall have the right . . . to a speedy

> public trial by an impartial jury of the county or district in which the offense is alleged to have been committed." This right is likewise recognized as being one of the basic rights of a defendant in SDCL 23-2-11.

State v. Starnes, 86 S.D. 636, 641-642, 200 N.W.2d 244, 248 (1972).

When determining whether a defendant's right to a speedy trial under the Sixth Amendment of the United States Constitution and Article VI, § 7 of the South Dakota Constitution has been denied, a Court must consider four factors: "(1) The length of the delay; (2) the reason for the delay; (3) whether the accused asserted the right [for a speedy trial]; and (4) whether the accused was prejudiced by the delay." *Karlen,* 1999 S.D. 12, ¶ 18 ((*citing Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2193, 33 L. Ed. 2d 101, 116-7 (1972)) and *State v. Goodroad*, 521 N.W.2d 433, 437 (SD 1994)).

1. Length of Delay

The first factor, length of the delay, "is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *State v. Holiday*, 335 N.W.2d 332, 334-35 (SD 1983) (*quoting Barker*, 407 U.S. at 530). However, if a delay is determined to be "presumptively prejudicial," the other factors must be considered. *Karlen,* 1999 S.D. 12, ¶ 19 (citing *Goodroad*, 521 N.W.2d at 437).

> [The Supreme Court] has found delays of more than one year to be presumptively prejudicial. *See Jones*, 521 N.W.2d at 668 (fourteen-month delay was presumptively prejudicial); *Goodroad*, 521 N.W.2d at 437-41 (twenty-seven-month delay was presumptively prejudicial, but dismissal was denied because the defendant was responsible for much of the delay); *State v. Krana*, 272 N.W.2d 75, 77-78 (SD 1978) (thirty-nine-month delay was presumptively prejudicial, but dismissal was denied because the defendant was responsible for much of the delay); *State v. Black Feather*, 249 N.W.2d 261, 264 (SD 1976) (thirty-three-month delay was presumptively prejudicial); *State v. Starnes*, 86 S.D. 636, 651, 200 N.W.2d

> 244, 253 (1972) (twenty-five-month delay resulted in dismissal of charges). We have also found no presumption of prejudice in delays of less than eight months. *See State v. Stock*, 361 N.W.2d 280, 284 (SD 1985) (delay of seven months was not enough to constitute a constitutional violation); *Holiday*, 335 N.W.2d at 335 (five-month delay was not presumptively prejudicial); *State v. Pickering*, 87 S.D. 331, 338, 207 N.W.2d 511, 515 (1973) (four-month delay was not sufficient to require dismissal of charges).

Karlen, 1999 S.D. 12, ¶ 20. The delay is to be measured from the earlier of either the arrest of the defendant or the filing of an indictment or other charging document. *See State v. Stock, 361 N.W.2d 280, 282 (S.D. 1985) (citing United States v. Marion*, 404 U.S. 307, 320-21 (1971)).

As shown in the analysis in *Karlen* and as reasoned by the circuit court judge, the delay presented in this case is more than sufficient to trigger an analysis of the *Barker* factors. Longchase requested a speedy trial in this case, but the trial date given to him was roughly 26 months after the formal complaint and arrest warrant was filed in this matter and 23 months after the Indictment was filed in this matter. That is nearly twice the delay required to trigger an analysis of this being presumptively prejudicial.

2. Reason for Delay

Under the second *Barker* factor, the Court must consider the reasons for the delay and evaluate "whether the government or the criminal defendant is more to blame.'" *United States v. Erenas-Luna*, 560 F.3d 772, 777 (8th Cir. 2009) (*quoting Doggett v. United States*, 505 U.S. 647, 651 (1992). "We weigh an intentional delay by the government heavily against it. We weigh negligence by the government less heavily but still regard such negligence as a considerable factor in the weighing process." *Id.*

This case presents a situation of intentional delay. There can be no other explanation. From the face of the pleadings in this case and the testimony from Agent

Swanson, the State was aware of the whereabouts of Longchase for a significant portion of the delay, including when both warrants were issued, yet did nothing to arrest him or move the prosecution forward.

Indeed, this may be the most egregious example of an intentional delay that can be shown. Longchase was in custody in the jail where he would be held for the instant charges. The State simply needed to go hand Longchase a copy of the arrest warrant. They simply affirmatively chose not to do so. This is far more egregious than other cases where the state did not perform a good faith or diligent search for a defendant. This was an affirmative choice to not serve a warrant on a person when they had actual knowledge of his location.

Even if this was negligent delay, it would warrant dismissal. In *Doggett v. United States*, the Supreme Court considered negligent delay caused by the government's failure to locate the defendant after his indictment. 505 U.S. 647, 648. When the government's negligence causes the delay, this factor weighs in favor of the accused. *See Id.* at 652-53, 657 ("Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun"); *see also Erenas-Luna*, 560 F.3d at 777 ("We weigh negligence by the government 'less heavily' [than misconduct] but still regard such negligence as 'a considerable factor in the weighing process'") (*quoting United States v. Walker*, 92 F.3d 714, 717 (8th Cir. 1996).

In *United States v. Rodriguez-Valencia*, the Eighth Circuit found the government was not negligent in locating the defendant when they had "searched computer databases,

public utilities, welfare benefits, insurance records, identification-cards, and driver's licenses; interviewed family, friends, and neighbors in Missouri and California; monitored phone records; requested fingerprints; prepared extradition paperwork; and coordinated with law enforcement in the United States and Mexico." 753 F.3d 801, 807 (8th Cir. 2014). Conversely, in *Erenas-Luna*, the Eighth Circuit found government negligence where the government admitted it had "dropped the ball" and allowed the case to "slip through the cracks," and "made no efforts to locate and arrest [defendant] over a three-year period and missed multiple opportunities to apprehend [defendant] in a timely manner." 560 F.3d at 777.

This case, at a minimum, is more severe than *Erenas-Luna.* Here, the warrant itself stated exactly where Longchase was located. Not only that, Longchase was in custody at the jail that he would be (and currently is) held for this exact charge. The South Dakota Supreme Court and United States Supreme Court have both held that being incarcerated in another state is not good cause for delay under the Sixth Amendment: most certainly being in the jail where the defendant would be housed for the offense at issue cannot be good cause, and that is even more true when the warrant includes language that indicates that is the defendant's location. *See Smith v. Hooey,* 393 U.S. 374, 374 (1969) (the Sixth Amendment right to a speedy trial made obligatory on the states by the Fourteenth Amendment may not be dispensed with merely because the accused under a state charge is serving a prison sentence imposed by another jurisdiction); *State v. Opheim*, 84 S.D. 227, 169 N.W.2d 716 (1969) (recognizing requirement *Hooey* holding, reasoning "By its decision in the Hooey case, the Supreme

Court exploded the concept that when separate sovereignties are involved no duty devolves upon the prosecuting state to seek custody for trial.").

The circuit court heavily relied on Longchase absconding for weighing this factor against Longchase. However, Agent Swanson repeatedly testified that it did not matter how long Longchase was being held on Hughes County matters, regardless of how long it delayed his Hyde County file, and that he would have not taken any action to serve Longchase the warrant, regardless of whether he was on a furlough or did not return from a furlough. Agent Swanson testified it was his expectation that Longchase would need to resolve his Hughes County files before Longchase received an initial appearance or attorney in his Hyde County file (or even become aware of the warrant or charge) and that it was his assumption that Longchase would not "ever be released" from jail.

Agent Swanson provided no rational basis as to why the warrant should not have been served on Longchase when he was personally aware of where he was, which would have started the prosecution in this case. Of course, service of the warrant would have also led to an initial appearance which would have triggered his codified 180-day rights and right to counsel. There is also no explanation as to what the Court and counsel know to be common practice: that people are held at the Hughes County Jail with pending and active file in multiple counties within the Sixth Circuit *very* regularly and people are regularly served warrants when in custody, specifically if it is in the jail where they would be held for both files. That is likely common practice because it is required by several rulings from the United States Supreme Court and the South Dakota Supreme Court. Accordingly, this factor weighs against the State.

3. Assertion of Right

The third *Barker* factor is whether the accused has asserted his right to a speedy trial. *Doggett*, 505 U.S. at 651. As accepted by the circuit court, a person cannot be expected to invoke his right to a speedy trial if he has not been informed of the charges brought against him, nor appeared in court to invoke such a right. *Rodriguez-Valencia*, 753 F.3d at 807; *Doggett*, 505 U.S. at 654 ("Doggett is not to be taxed for invoking his speedy trial right only after his arrest"); *United States v. Richards*, 707 F.2d 995, 997 (8th Cir. 1983) (where the defendant was "unaware of the indictment before his arrest… his failure to assert his right to a speedy trial [after arrest] cannot be weighed against him").

Longchase raised this issue at the earliest possible date that he could. Accordingly, this factor should be weighed in his favor.

4. Prejudice

The fourth and final Barker factor is whether the delay has prejudiced Longchase. In considering this factor the court should assess the interests served by the speedy trial right, which are: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Barker*, 407 U.S. at 532. Of these interests, prejudice causing impairment of the defense is the most serious. *Young v. United States*, 953 F. Supp. 2d 1049, 1063 (D.S.D. 2013) (citing *Erenas-Luna*, 560 F.3d at 778). "Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect." *Starnes*, 86 S.D. at 649 (*quoting Barker*, 407 U.S. at 532)

The level of prejudice a defendant must show under this factor depends on the circumstances of the case. *Erenas-Luna*, 560 F.3d at 778. Actual prejudice must be

shown if the government exercised reasonable diligence in pursuing the defendant. *Id.* at 778-79 (*citing Doggett*, 505 U.S. at 656; *United States v. Brown*, 325 F.3d 1035 (9th Cir. 2003). If the government is negligent, prejudice can be presumed if there has been an excessive delay. *Id.* at 779. According to the Eighth Circuit, "[w]hen a defendant establishes only presumptive prejudice, but not particularized prejudice, he can still prove a Sixth Amendment violation if he has help from the other *Barker* factors." *United States v. Flores-Lagonas*, 993 F.3d 550, 564-65 (8th Cir. 2021). "For example, a defendant may be entitled to relief if he has shown presumptive prejudice and that the government's negligence caused the delay." *Id.* (*citing Doggett* 505 U.S. at 658). Here, the combination of both presumed prejudice and actual prejudice weighs heavily in favor of Longchase. Further, under either presumed or actual prejudice individually, Longchase should prevail.

In addition to actual prejudice for lack of ability of evidence and for increased and unnecessary incarceration, because the government was intentional in its delay regarding Longchase, he can prevail on presumptive prejudice alone. That would be true even in the case of negligent delay.

In *Doggett*, the United States Supreme Court stated that "we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." 505 U.S. at 655. Accordingly, when postaccusation delay is excessive, "the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows," and a court's "toleration of… negligence varies inversely with its protractedness and its consequent treat to the fairness of the accused's trial." Id. at 657. Mr. Longchase

continued to suffer prejudice to his defense. In *Erenas-Luna*, the Eighth Circuit found that a three-year delay between indictment and arraignment entitled the defendant to a presumption of prejudice. 560 F.3d at 780. *See also United States v. Ingram*, 446 F.3d 1332, 1339 (11th Cir. 2006) (finding a two-year delay "intolerable" and presuming prejudice where the first three *Barker* factors weighed in defendant's favor). The Eighth Circuit vacated the district court's denial of defendant's motion to dismiss and remanded, instructing to apply a presumption of prejudice in defendant's favor. *Erenas-Luna,* 560 F.3d at 780. This factor should therefore be weighed in Mr. Longchase's favor. Under this factor, the Court must apply a presumption of prejudice in Longchase's favor.

Furthermore, if the State can somehow show that it was not negligent, which, frankly, is not possible given they had actual knowledge of the location of Longchase for months, Longchase can still demonstrate specific prejudice that resulted from the delay.

As a starting point, Longchase was actually prejudiced based on his lengthy pretrial incarceration. This was discussed at length in *Barker*, , where the US Supreme Court reasoned:

> We have discussed previously the societal disadvantages of lengthy pretrial incarceration, but obviously the disadvantages for the accused who cannot obtain his release are even more serious. The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense.

Id. at 532-533. This is further documented because video evidence from the gas station was lost in this case because of the passage of time, as was recognized by Agent Swanson. SR 697. Had the prosecution been timely commenced, Longchase may have

had an ability to prevent spoilation of that evidence. Longchase has additionally suffered substantial prejudice in not scheduling this trial in a speedy fashion which would allow witness testimony when their memory was "fresh". Each is a sufficient example of documented actual prejudice suffered. Therefore, factor weighs overwhelmingly heavily in Longchase's favor.

Looking at all of the factors, each of them weighs in favor of the Defendant. Indeed, when this Court dealt with similar issues in *State v. Starnes*, the Court required dismissal of a roughly two-year delay when the defendant was in custody in the South Dakota Penitentiary. 86 S.D. 636, 200 N.W.2d 244 (1972). This Court recognized *Hooey* and found the two-year delay was sufficient to warrant dismissal. *Id.* at 642-45. However, in this case, the defendant was *being held in the same jail* that he would be held once the warrant was served during much of the delay. In fact, the lead agent *interviewed* Longchase at that location. No writ was even needed. No cost to transport him was necessary. Agent Swanson simply needed to hand a warrant to Longchase, in the same town where Agent Swanson is stationed. The State's Attorney simply needed to start the prosecution. The State chose not to take such actions. Agent Swanson's conscious decision not to serve Longchase was a willful violation of Longchase's rights, and this conviction should be reversed as a result.

B. A RIGHT TO SPEEDY TRIAL APPEAL IS NOT WAIVED BY A GUILTY PLEA.

It is expected that the State will argue that this issue is waived by Longchase's guilty plea, based upon the reasoning of *State v. Andrews*, 2007 S.D. 29, 730 N.W.2d 416. *Andrews* relies on, and incorporates, the reasoning of *State v. Grosh*, 387 N.W.2d 503, 507 (S.D.1986), that:

> [A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea ...

Andrews, 2007 S.D. 29, ¶ 5 (quoting *Grosch*, 387 NW2d at 507).

However, as recognized in *Andrews*, there are exceptions to this rule. Indeed, the exact situation at issue in this case was recognized in *Grosch*. There the Court reasoned:

> Nonjurisdictional defects are defects-which would not prevent a trial from taking place-because of a constitutional infirmity, *Culton,* 273 N.W.2d at 202; and when a criminal defendant pleads guilty, he waives alleged violations of his constitutional right to counsel and right to effective assistance of counsel, which transpired prior to his plea of guilty. *Korman v. State,* 262 N.W.2d 161, 161 (Minn.1977); *People v. Johnson,* 125 Mich.App. 76, 79-80, 336 N.W.2d 7, 7-8 (1983). Thus, herein, when Mr. Grosh voluntarily and intelligently pleaded guilty, he waived the nonjurisdictional defect he asserts on appeal, because such defect, *unlike double jeopardy and the right to a speedy trial,* does not prevent a trial from taking place. *See Menna v. New York,* 423 U.S. 61, 96 S.Ct. 241, 46 L.Ed.2d 195 (1975); and *People v. Davis,* 123 Mich.App. 553, 332 N.W.2d 606 (1983). Had Mr. Grosh not waived the alleged defect concerning the right to defend by counsel of choice, the remedy would be to reverse and remand for a new trial and an outright reversal of the conviction would not be the remedy.

State v. Grosh, 387 N.W.2d at 507–08 (S.D. 1986) (emphasis added).

In this case, Longchase is not appealing a nonjurisdictional defect that is waived by a guilty plea, because, as reasoned in *Grosch,* the speedy trial violation would have prevented the trial from taking place. Indeed, *Grosch* explicitly found that a speedy trial violation is not waived by a guilty plea, unlike a nonjurisdictional defect. Accordingly, this appeal issue has not been waived, and the appropriate remedy is an outright reversal of the conviction.

II. ORDERING LONGCHASE TO PAY COURT APPOINTED COUNSEL FEES WITHOUT CONSIDERATION OF HIS ABILITY TO PAY VIOLATES HIS CONSTITUTIONAL RIGHT TO COUNSEL AND DUE PROCESS.

"[A]ppointed counsel serves an invaluable service in maintaining the integrity of our criminal justice system." *Duffy v. Cir. Ct., Seventh Jud. Cir.*, 2004 S.D. 19, ¶ 10, 676 N.W.2d 126, 130. "The Sixth Amendment to the United States Constitution guarantees a right to counsel for criminal defendants." *Id.* "The importance of this right has been expressed by the United States Supreme Court in numerous cases. It was succinctly explained in *United States v. Chronic*:

> An accused's right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases "are necessities, not luxuries." Their presence is essential because they are the means through which other rights of the person on trial are secured. Without counsel, the right to a trial itself would be "of little avail," as this Court has recognized repeatedly. "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other right he may have."

Id. (*citing United States v. Chronic*, 466 U.S. 648, 653–54 (1984)).

The Sixth Amendment applies to proceedings in state courts through the Fourteenth Amendment. *Gideon v. Wainwright*, 372 U.S. 335, 342-44 (1963). "[A]ny person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." *Id.* at 344. "[W]ithout the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible ... though not guilty he faces the danger of conviction because he does not know how to establish his innocence." *Id.* at 345 (*quoting Powell v. Alabama*, 287 U.S. 45, 68-69, (1932).

Well before the sounding of *Gideon's* trumpet, since prior to statehood, South Dakota recognized this right. As reasoned by the Chief Justice in the 2024 State of the Judiciary:

> When we refer to indigent defense, we are talking about the constitutional right of every person charged with a crime, who is facing the possibility of incarceration and is unable to afford an attorney, to be appointed counsel at the expense of the state. Our predecessors long ago recognized the priority of indigent defense when the Dakota Territory Legislature in 1868 passed a law providing that "[i]f it appears to the court before which such arraignment is had, that the defendant is unable to procure counsel to conduct his defense, it shall be the duty of the court to assign to said defendant any member of the Bar in said cause." The law went on to provide that the county where the charge originated was responsible for payment of counsel. Since statehood, South Dakota leaders have continued to uphold the importance of indigent defense through a county-funded system.

Chief Justice Steven R. Jensen, 2024 State of the Judiciary, January 10, 2024, https://ujs.sd.gov/uploads/sc/judiciarymessage/booklet/2024_STATE_OF_THE_JUDICIARY_MESSAGE_BOOKLET.pdf

A law unconstitutionally burdens defendants' Sixth Amendment rights if it unduly pressures defendants to waive the right to trial or right to counsel. In *United States v. Jackson*, the Supreme Court outlined the applicable principle: Even where a State's criminal justice objectives are legitimate, "they cannot be pursued by means that needlessly chill the exercise of basic constitutional rights." 390 U.S. 570, 582 (1968) (further citations omitted). The United States Supreme Court has repeatedly sought to protect the rights of indigent defendants from being chilled due to inability to pay. *See, e.g, Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("There can be no equal justice when the kind of trial a man gets depends on the amount of money he has."). "Under any state system for recouping the costs of court-appointed attorney's fees, it is essential that 'the

program under all circumstances must guarantee the indigent defendant's fundamental right to counsel without cumbersome procedural obstacles designed to determine whether he is entitled to court-appointed representation.'" *Hanson v. Passer*, 13 F.3d 275, 279 (8th Cir. 1994) (*quoting Alexander v. Johnson,* 742 F.2d 117, 124 (4th Cir.1984)).

In *James v. Strange*, 407 U.S. 128 (1972), and *Fuller v. Oregon,* 417 U.S. 40 (1974), the Supreme Court examined these considerations in the context of state regimes for recoupment of indigent defense fees. Two principles emerge from these cases: First, recoupment laws violate the Equal Protection Clause if they fail to provide indigent defendants with the same exemptions other civil debtors enjoy. Second, even where indigent defendants receive the same exemptions as other debtors, recoupment laws may still violate the Sixth Amendment if they pressure indigents to forgo counsel by failing to consider their ability to repay counsel fees and may violate procedural due process rights if it is not tailored to impose an obligation of repayment only upon those with a foreseeable ability to meet it.

In *James*, the Supreme Court reached only the first of these two issues, holding that Kansas's recoupment system violated the Equal Protection Clause by "strip[ping] from indigent defendants the array of protective exemptions Kansas has erected for other civil judgment debtors." *James*, 407 U.S. at 135. Conversely, *Fuller* upheld Oregon's recoupment statute, finding no Equal Protection Clause violation because a "convicted person . . . retains all the exemptions accorded other judgment debtors," and finding no undue burden on the Sixth Amendment or violation of Procedural Due Process rights because the statute was "tailored to impose an obligation only upon those with a foreseeable ability to meet it, and to enforce that obligation only against those who

actually become able to meet it without hardship." *Fuller*, 417 U.S. at 47, 54 (emphasis added). This second issue is the one implicated by the present case.

South Dakota's statutory scheme for recoupment of attorney fees is set up in SDCL ch. 23A-40. Specifically, it sets up a two prong system by which 1) a sentencing may order a defendant for whom counsel was appointed to reimburse the county for appointed counsel fees "[i]f the court finds that funds are available for payment from or on behalf of a defendant[,]" SDCL 23A-40-10, and 2) an lien on "upon all the property, both real and personal, of any person . . . for whom legal counsel or a public defender has been appointed . . . . in an amount to be determined by a judge of the circuit court or a magistrate judge[,]" SDCL 23A-40-11.

SDCL 23A-40-10 as applied to a condition of probation was upheld by this Court in *White Eagle v. State*, 280 N.W.2d 659 (S.D. 1979). This Court has not yet specifically addressed the constitutionality of recoupment when ordered as court costs with a sentence of incarceration. However, in *White Eagle,* the Court reasoned that "the enforcement of the conditions must be within the constitutional guidelines established in *Fuller* and discussed in this opinion." *White Eagle*, 280 N.W.2d at 662. Such relied on the statutory requirement "that the court make a finding that 'funds are available for payment from or on behalf of a defendant' before repayment will be required." *Id.*

Longchase is not making a facial challenge to the constitutionality of either SDCL 23A-40-10 or SDCL 23A-40-11. Rather, Defendant submits the only way to constitutionally construe both SDCL 23A-40-10 and SDCL 23A-40-11 in a constitutional manner is to require that, if a judge is going to order recoupment of attorney fees, a sentencing judge must have an evidentiary hearing and perform an analysis regarding the

ability to repay at the time of sentencing, which is also required by the plain language of SDCL 23A-40-10. In addition, Longchase submits that any lien created pursuant to SDCL 23A-40-11 is limited to what the Court orders pursuant to SDCL 23A-40-10. In this case, however, the circuit court judge made no such finding, as required by *Fuller*, and its progeny, and by the language of SDCL 23A-40-10. Accordingly, the Court failed to follow the requirements of state law, and the process was unconstitutional as applied to Longchase under the facts of this case.

Specifically, the language in SDCL 23A-40-10 requires: "[I]f the court finds that funds are available for payment from or on behalf of a defendant to carry out," then "the court may order that the funds be paid, as court costs or as a condition of probation[.]" *Id.* That language is plainly not limited to collection of a recoupment order, but rather, it is directed to a sentencing judge to make an ability to pay analysis at sentencing, as an order to pay court costs or the conditions of probation would be included in the original Judgment of Conviction, not in a collection action or revocation proceeding. Simply stated, the plain language of SDCL 23A-40-10 contemplates an ability to pay hearing at the time of sentencing as is required by *Fuller*.

Moreover, SDCL 23A-40-11's lien is limited to "an amount to be determined by a judge of the circuit court or a magistrate judge[,]" naturally referencing the amount that would be ordered by the sentencing court in the judgment of conviction pursuant to the immediately preceding statute, i.e. SDCL 23A-40-10. Moreover, SDCL 23A-40-11 references a determination by a judge regarding what amount of fees would be subject to a lien but then creates no mechanism for a court hearing prior to attachment and enforcement of a lien as it relates to a defendant's ability to pay. As a result, SDCL 23A-

40-11 must be referring to the pre-sentencing hearing required by SDCL 23A-40-10. Otherwise, SDCL 23A-40-11 would authorize the automatic attachment and enforcement of a lien on *all* personal and real property of an indigent defendant without any judicial hearing at all regarding ability to pay, which is plainly volitive of a defendant's right to counsel and due process rights. Even though Longchase's reading of these statutes is most natural reading, even if it were not, it is the only constitutional reading of these statutes and therefore the statute must be construed as such. *State v. Krahwinkel*, 2002 S.D. 160, ¶ 43, 656 N.W.2d 451, 466 (*citing State v. Morrison*, 341 N.W.2d 635, 637 (S.D.1983)) ("If we can, we must reasonably construe a statute as constitutional and valid.").

The fact that a trial court judge must perform an analysis of the ability to repay analysis at the time of sentencing prior to entering a recoupment order has been held as required by the substantial majority[2] of courts that have addressed the issue.[3] A summary

---

[2] *See Olson v. James*, 603 F.2d 150, 155 (10th Cir.1979) (stating court may not constitutionally order a defendant to repay court-appointed attorney fees "unless he is able to pay them or will be able to pay them in the future considering his financial resources" and concluding statute that made repayment mandatory without regard to ability to pay had chilling effect on defendant's right to counsel); *Fitch v. Belshaw*, 581 F.Supp. 273, 277 (D.Or.1984) (holding statute that imposed repayment obligation without any procedure to determine defendant's ability to pay "unconstitutionally chills an indigent defendant's exercise of Sixth Amendment right to counsel"); *State v. Oehlerking*, 709 P.2d 900, 903 (Ariz. Ct. App. 1985) (trial court erred in ordering reimbursement of such costs by accused where no finding was made that accused in fact had financial resources to offset costs of legal services); *People v Nilsen* 199 Cal App 3d 344, 244 Cal Rptr 814 (Cal. 1st Dist. 1988) (Order requiring defendant to reimburse county for counsel fees expended for his benefit was invalid where defendant had no present ability to pay defense costs and no discernible future ability to do so.); *People v. Love*, 563, 687 N.E.2d 32 (Ill. 1997) (statute and case law require an ability to pay prior to ordering reimbursement); *State v. Drayton*, 175 P.3d 861, 880 (Kan. 2008) (noting statutory requirement that repayment be ordered only when defendant had ability to pay was included in statute to satisfy constitutional requirements); *Sikalasinh v. State*, 321 S.W.3d 792, 795 (Tex. Ct. App. 2010) (Attorney's fees for a court appointed attorney

of the case law by American Law Reports is insightful: "In those cases in which the indigent claimed that a recoupment order was invalid because his financial resources had not been properly considered, the courts have found merit in this argument where the evidence has shown that the defendant had neither the present nor the future ability to make such payments[,] but have affirmed orders of reimbursement where the evidence was otherwise[.]" 39 A.L.R.4th 597.

Indeed, a survey of the states bordering South Dakota is enlightening as to the case law on this issue. For example, the Iowa Supreme Court repeatedly has upheld the constitutionality of its recoupment statutes, but with mandatory safeguards that an order to repay in a sentence may only be to the extent the trial court, at sentencing, has considered the defendants ability to pay. *See generally State v. Harrison*, 351 N.W.2d 526, 529 (Iowa 1984).

"should not [be] included in the Judgment [when] there is no record evidence indicating [a defendant] is 'able to pay.'"); *State v. Morgan*, 789 A.2d 928, 931 (Vt. 2001) (holding "that, under the Sixth Amendment to the United States Constitution, before imposing an obligation to reimburse the state, the court must make a finding that the defendant is or will be able to pay the reimbursement amount ordered"); *In re Dove*, 381 P.3d 1280 (Wash. Ct. App. 2016); rev. denied, 398 P.3d 1070 (Wash. 2017) (In order to determine if a "defendant is or will be able to pay" the court must "make an individualized inquiry" by doing "more than 'sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry.'" Id. ¶ 15 (quoting R.C.W. § 10.01.160(3)). If there is boilerplate language in the judgment there must be "substantial evidence in the record to support the boilerplate finding in the judgment." Id. ¶ 27.); *In re Attorney Fees in State v. Helsper*, 724 N.W.2d 414, 418–20 (Wis.Ct.App.2006) (reversing repayment order because Wisconsin recoupment statute did not require determination of reasonable ability to pay, but allowing state to seek another order consistent with the constitutional requirement that prior to entry of order a hearing be held on the defendant's ability to pay).

[3] There is a small minority of jurisdictions that have interpreted *Fuller's* requirements as only being applicable upon enforcement of a recoupment obligation. *See*, e.g., *State v. Kottenbroch*, 319 N.W.2d 465 (N.D. 1982) (applied to probationers at revocation proceedings rather than incarcerated individuals). Longchase submits the minority view should be rejected by this Court.

Likewise, in *State v. Tennin*, the Minnesota Supreme Court held that a mandatory recoupment statute violated defendant's state and federal right to counsel, reasoning that it lacked Oregon's "two waiver provisions—one which could be effected at imposition and another which could be effected at implementation." 674 N.W.2d 403, 410 (Minn 2004). As reasoned by the Minnesota Supreme Court, the United States Supreme Court relied on these safeguards:

> Because the Oregon statute was "quite clearly directed only at those convicted defendants who are indigent at the time of the criminal proceedings against them but who subsequently gain the ability to pay the expenses of legal representation," the Court held that the statute did not deprive indigent defendants of the right to counsel. *Id.* at 46, 94 S.Ct. at 2121. "Defendants with no likelihood of having the means to repay are not put under even a conditional obligation to do so, and those upon whom a conditional obligation is imposed are not subjected to collection procedures until their indigency has ended and no 'manifest hardship' will result." *Id.* In effect the statute provided two possibilities for indigent criminal defendants to be relieved of having to pay for legal services: "Oregon's legislation is tailored to impose an obligation only upon those with a foreseeable ability to meet it, and to enforce that obligation only against those who actually become able to meet it without hardship." *Id.* at 54, 94 S.Ct. at 2125 (emphasis added).

Id. at 408.

The Montana Supreme Court has found that a sentencing court "cannot sentence a defendant to pay the costs of court-appointed counsel unless the court determines the defendant is or will be able to pay them." *State v. Ellis*, 167 P.3d 896, 900 (Mont 2007). Correspondingly, in Wyoming, a similar position was presented and the State agreed that it was improper for the trial court to order recoupment "without first determining whether Keller had the ability to pay and making a finding in that regard." *Keller v. State,* 771 P.2d 379, 387 (Wyo. 1989).

The Nebraska Supreme Court found that their statutes "require that when a defendant is appointed counsel after a finding of indigence, a determination that the defendant is no longer indigent is necessary before the court can require reimbursement of fees for the court-appointed attorney as a condition of probation." *State v. Wood*, 511 N.W.2d 90, 94 (Neb. 1994). Without a determination that a defendant is no longer indigent an "abuse of discretion takes place" because "the sentencing court's reasons or rulings are clearly untenable and unfairly deprive a litigant of a substantial right and a just result." *Id.* at 95. Although this decision is based on statutory language, that language is almost certainly a reflection of *Fuller's* requirement that a sentencing judge make findings regarding ability to pay at the time of an award of recoupment.

Turning to the case at hand, the circuit court made no findings regarding ability to pay, other than: "There's no reason that Longchase will not be able to be employed once he is out of the penitentiary and, of course, those wouldn't be due and owing until he was out of the penitentiary to be able to work and make those payments." SR 776. However, there is no evidence in the record to support him having any assets or regarding his ability to find stable employment that would support a finding of his ability to pay. Simply stating that someone *could* find a job after release from prison does not meet the constitutional standard. Longchase is indigent and has essentially been in custody or unemployed for multiple years prior to his conviction and then was sentenced to prison for a term of years. Unlike a situation where a defendant is being sentenced to probation with prospects of employment, there is no such evidence in the record that would support Longchase had or has any assets or any future ability to pay.

Despite the statutory language and dictates in case law, the circuit court in this case failed to have a meaningful hearing or engage in meaningful consideration of Longchase's ability to pay. Unfortunately, this process is not out of the norm in South Dakota. This ongoing problem was addressed in "The Right to Counsel in South Dakota: Evaluation of Trial-Level Indigent Defense Representation in Adult Criminal Cases" report that was prepared by the Sixth Amendment Center and at the request of the Office of the State Court Administrator of the South Dakota Unified Judicial System. *See* Sixth Amendment Center, "*The Right to Counsel in South Dakota: Evaluation of Trial-Level Indigent Defense Representation in Adult Criminal Cases*", September 2024, https://6ac.org/wp-content/uploads/2024/09/6AC-South-Dakota-Report-2024-FINAL.pdf.

The findings of the Sixth Amendment Center regarding recoupment were:

> Ability to pay. Because recoupment can chill an indigent person from asserting their right to counsel, the *Fuller* Court found that an ability to pay assessment is a necessary procedural safeguard in any government recoupment practice.[225]
>
> However, similar to the state having no standards for determining a person's indigency to qualify for an appointed attorney (see Chapter 3 on Providing Counsel at Critical Stages), state law and court rules do not establish any standards, metrics, or thresholds at which a defendant is unable to pay. The statutes state only that indigent defendants must repay the costs "[i]f the court finds that funds are available for payment"[226] and that the court cannot revoke probation for nonpayment without a hearing if the defendant does not have the ability to pay.[227] Every judge in the state is free to adopt their own criteria and process for making this determination. But how much available money must an indigent defendant have to be able, or unable, to pay?
>
> Contrary to national standards, South Dakota does not require an ability to pay hearing where an "attorney is present and with the opportunity to present witnesses and to have a written record of the judicial findings" on the actual costs of representation and the defendant's present ability to pay those costs.[228] The statute does not provide the defendant with an opportunity to assert the right to "petition for remission of fees, in the event of future inability to pay."[229] In all seven counties evaluated for this study, no judge has presided over a hearing for determining an indigent defendant's ability to pay recoupment, and no appointed attorney has contested a court-ordered recoupment on behalf of their client.
>
> **FINDING 9: The state's recoupment practice can interfere with the appointed attorneys' constitutional duty to exercise independent judgment about how to conduct the defense.**

Id. at 45.

On this issue, the Sixth Amendment Center recommended the following:

> **RECOMMENDATION 3: South Dakota should consider ending its recoupment practice.**
>
> South Dakota's recoupment practice chills indigent defendants from exercising their right to counsel. The state should follow national standards and not require indigent defendants to "contribute to or reimburse defense services."[245]
>
> Once CILS establishes, and UJS adopts as court rule a statewide indigency determination standard that is applied at the outset of every criminal case, the state can be assured that only those who are truly indigent receive services from an appointed attorney. The state should presume that an indigent person who qualified for appointed counsel at the start of the case cannot reimburse the cost of indigent defense services at the conclusion of the case.
>
> However, in some circumstances (although uncommon), a person's indigency status can change during the pendency of a case. If the state determines that it is in its best financial interest to ensure this smaller subset of poor defendants repay the cost of services, then the state legislature should mandate minimum procedural safeguards to mitigate recoupment's chilling effect. At the conclusion of each appointed case for each defendant:
>
> - The court must conduct a hearing to determine the defendant's present ability to pay the cost of services. This ability-to-pay hearing must be an evidentiary hearing on the imposition of costs and determination of the defendant's present ability to pay those costs, with an attorney representing the defendant and with the opportunity to present evidence, including witnesses, and to have a written record of the judicial findings and the right to petition for review.[246] The statute should make clear the standard of proof and burden of proof.
> - If at the conclusion of this hearing the court finds the defendant has the ability to pay, the court may assess a fee *up to a fixed amount*, based on a fee schedule by case type set by the state.
>
> All payments should be made to UJS, and the state should not use a collections agency to enforce payment. All revenue collected should go to the state general fund.

Id. at 54.

Some of the Sixth Amendment Center's recommendations are policy recommendations that, admittedly, are more appropriately considered by the Legislature, such as whether the State should follow "national standards" and never require indigent defendants to "contribute or reimburse defense services" and what collection mechanism should be used for valid recoupment claims if authorized. *Id.* However, some of the recommendations are not policy recommendations, but are simply an admonishment that there are constitutional and statutory requirements regarding recoupment that this Court can, and should, simply require circuit courts to follow. The most basic of those is that this Court enforce the plain language of state law, precedent of the United States

Supreme Court and the vast majority of cases and require sentencing judges to conduct an evidentiary hearing to determine a defendant's present and future ability to pay at the time of sentencing prior to requiring recoupment of attorney's fees from indigent defendants. The circuit court did not do that in this case, and no evidence supports requiring recoupment in this case. Accordingly, this Court should reverse the Judgement of Conviction as it relates to the recoupment of attorney fees.

CONCLUSION

Longchase prays that the Court enter its order reversing and vacating the judgment of conviction and reversing the order for recoupment of court appointed counsel fees.

REQUEST FOR ORAL ARGUMENT

Appellant, by and through his counsel, respectfully requests the opportunity to present oral argument before this Court.

Dated this 17th day of April, 2025.

MAY, ADAM, GERDES & THOMPSON LLP

BY: /s/ Justin L. Bell

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on the date above written one electronic copy of the Brief of Appellant and all appendices in the above-entitled action was electronically served on:

MARTY J. JACKLEY
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The undersigned further certifies that one original of the Brief of Appellant in the above-entitled action was mailed by US Mail, First Class, to Ms. Shirley A. Jameson-Fergel, Clerk of the Supreme Court, State Capitol, 500 East Capitol, Pierre, SD 57501 on the date above written.

MAY, ADAM, GERDES & THOMPSON LLP

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CERTIFICATE OF COMPLIANCE

Justin L. Bell, attorney for Appellant, hereby certifies on the date above written that the foregoing Brief of Appellant complies with the type-volume limitation imposed by SDCL 15-26A-66(2). Proportionally spaced typeface Times New Roman has been used. Brief of Appellant does not exceed 32 pages. This brief contains 8,162 words exclusive of the Table of Contents, Table of Authorities, Jurisdictional Statement, Statement of Legal Issues, Appendix, Certificate of Service, and Certificates of Counsel. Counsel relied on the word count of Microsoft Word, the word processing software used to prepare this Brief at font size 12, Times New Roman, and left justified.

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APPENDIX

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS	
COUNTY OF HYDE	)	SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff,	)	34CRI22-000007
vs.	)	JUDGEMENT OF CONVICTION
SOLOMAN B. LONGCHASE, D/O/B 12/10/1970 Defendant.	)	

A Complaint was filed with this Court on August 21, 2022, charging the above-named Defendant with the crime of **COUNT 1:** AGGRAVATED ASSAULT DOMESTIC INTIMIDATION, (SDCL 22-18-1.1), Class 3 Felony; **COUNT 2:** AGGRAVATED KIDNAPPING (SDCL 22-19-1), Class C Felony; **COUNT 3:** GRAND THEFT (SDCL 22-30A-17), Class 4 Felony; **COUNT 4:** INTERFERENCE WITH EMERGENCY COMMUNICATION (SDCL 49-31-29.2), Class 1 Misdemeanor; **COUNT 5:** FALSE IMPERSONATION TO DECEIVE LAW ENFORCEMENT (SDCL 22-40-1) Class 1 Misdemeanor, which was superseded by an Indictment.

An Indictment was filed with this Court on December 20,2022 charging the Defendant with the crimes of **COUNT 1:** AGGRAVATED ASSAULT DOMESTIC INTIMIDATION, (SDCL 22-18-1.1), Class 3 Felony; **COUNT 2:** AGGRAVATED KIDNAPPING (SDCL 22-19-1), Class C Felony; **COUNT 3:** GRAND THEFT (SDCL 22-30A-17), Class 4 Felony; **COUNT 4:** INTERFERENCE WITH EMERGENCY COMMUNICATION (SDCL 49-31-29.2), Class 1 Misdemeanor; **COUNT 5:** FALSE IMPERSONATION TO DECEIVE LAW ENFORCEMENT (SDCL 22-40-1) Class 1 Misdemeanor;

An Amended Complaint and Information was filed with this Court on October 21st, 2024. A plea agreement was entered and filed on October 10,2024. The Defendant and the State agree that the Defendant will plead guilty to GRAND THEFT, a violation of SDCL 22-30A-17, a Class 4 Felony and SIMPLE ASSAULT DOMESTIC VIOLENCE, a violation of SDCL 22-18-1 (4), a Class 1 Misdemeanor;

The Defendant was arraigned on the charges of GRAND THEFT and SIMPLE ASSAULT DOMESTIC VIOLENCE on October 18, 2024, appearing in person with counsel, Justin Bell. Prosecuting Attorney, Emily J. Sovell, appeared for the State. The Defendant was advised of his constitutional and statutory rights pertaining to the charges against him, including possible penalties. The Defendant plead "GUILTY" to the following charges listed in the amended complaint: **COUNT I:** SIMPLE ASSAULT DOMESTIC VIOLENCE, in violation of SDCL 22-18-1(4), a Class 1 Misdemeanor and COUNT III: GRGAND THEFT, in violation of

SDCL 22-30A-17. The State orally dismissed in open court **COUNT II:** AGGRAVATED KIDNAPPING, in violation of SDCL 22-19-1, a Class C Felony; and **COUNT IV:** INTERFERENCE WITH EMERGENCY COMMUNICATIONS in violation of SDCL 22-30A-17, a Class 4 Felony, and COUNT V: FALSE IMPERSONATION TO DECIEVE LAW ENFORCEMENT in violation of SDCL 22-40-1, a Class 1 Misdemeanor.

It is the determination of this Court that Defendant has been regularly held to answer for said offense; that his plea was voluntary, knowing and intelligent; that he was represented by competent counsel or knowingly waived representation; that a factual basis existed for the plea and the same are accepted by the Court and Defendant is found guilty of **COUNT I:** SIMPLE ASSAULT DOMESTIC VIOLENCE, in violation of SDCL 22-18-1(4), a Class 1 Misdemeanor. **COUNT III:** GRAND THEFT, in violation of SDCL 22-30A-17, a Class 4 Felony.

And the Court having inquired if any legal cause existed why judgment and sentence should not be pronounced, and no just cause being asserted or shown,

COUNT I:

IT IS HEREBY ORDERED AND ADJUDGED, AND DECREED that the Defendant, SOLOMAN LONGCHASE, on COUNT I: SIMPLE ASSAULT DOMESTIC VIOLENCE, (SDCL 22-18-1(4)), shall serve ninety (90) days in the County Jail.

IT IS FURTHER ORDERED AND ADJUDGED, AND DECREED that the Defendant, SOLOMAN LONGCHASE, on COUNT I: SIMPLE ASSAULT DOMESTIC VIOLENCE, (SDCL 22-18-1(4)), shall pay court costs in the amount of $96.50.

IT IS FURTHER ORDERED AND ADJUDGED, AND DECREED that the Defendant, SOLOMAN LONGCHASE, on COUNT I: SIMPLE ASSAULT DOMESTIC VIOLENCE, (SDCL 22-18-1(4)), shall reimburse Hyde County for his court appointed attorney fees.

COUNT III:

IT IS FURTHER ORDERED AND ADJUDGED, AND DECREED that the Defendant, SOLOMAN LONGCHASE, on COUNT III: GRAND THEFT, (SDCL 22-30A-17), shall serve Eight Years (8) in the South Dakota State Penitentiary, with three (3) years suspended and credit for fifty-three (53) days served.

IT IS FURTHER ORDERED AND ADJUDGED, AND DECREED that the Defendant, SOLOMAN LONGCHASE, on COUNT III: GRAND THEFT, (SDCL 22-30A-17), shall pay a fine of $500.00; court costs in the amount of $116.50; and $6,090.50 for restitution to victim K.H.

IT IS FURTHER ORDERED AND ADJUDGED, AND DECREED that the Defendant, SOLOMAN LONGCHASE, on COUNT III: GRAND THEFT, (SDCL 22-30A-17), shall reimburse Hyde County for his court appointed attorney fees.

IT IS FURTHER ORDER that the sentences for County I and III shall run concurrently with one another but shall run consecutively with the sentence currently imposed by Hughes County and the Hughes County Sheriff or one of his deputies shall be responsible for the Defendant's transportation to the South Dakota State Penitentiary, for execution of this sentence.

Dated this____ day of November, 2024, at Pierre, Hughes County, South Dakota.

12/2/2024 12:54:44 PM

Attest:
McQueen, Jennifer
Clerk/Deputy

BY THE COURT:

Margo D Northrup

Honorable Margo Northrup
Circuit Court Judge

NOTICE OF RIGHT TO APPEAL

You, SOLOMAN LONGCHASE, are hereby notified that you have a right to appeal as provided by SDCL 23A-32-15, which you must exercise by filing within thirty (30) days from the date that this Judgment and Sentence is signed, attested and filed, written Notice of Appeal with the Hyde County Clerk of Courts, together with proof of service that copies of such Notice of Appeal have been served upon the Attorney General of the State of South Dakota, and the Hyde County State's Attorney.

CIRCUIT COURT OF SOUTH DAKOTA
SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY COURTHOUSE
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July 25, 2024

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Re: 34CRI22-7 State of South Dakota v. Solomon Longchase

MEMORANDUM DECISION

Solomon Longchase (Defendant) by and through his attorney, Justin Bell, filed a Motion to Dismiss the Indictment on May 24, 2024 alleging a violation of his Sixth Amendment right to a speedy trial. This Court heard oral arguments on June 11, 2024. After considering the briefs, the arguments raised by the parties, and the entire record, the Court now issues this Memorandum Decision DENYING Defendant's Motion to Dismiss.

BACKGROUND

Defendant is charged with five separate counts. These charges include Aggravated Assault Domestic Intimidation, Aggravated Kidnapping, Grand Theft, Interference with Emergency Communication, and False Impersonation to Deceive Law Enforcement. A Complaint was signed on September 15, 2022, and filed in this matter on September 21, 2022. On September 21, 2022, a request for an arrest warrant was filed. A warrant of arrest was filed the following day, indicating Defendant's location was at the Hughes County Jail. At the time, Defendant was being held on separate Hughes County charges. On December 20, 2022, a grand jury Indictment was filed. Another warrant for arrest was issued on December 29, 2022, which indicated Defendants location was still at the Hughes County Jail. On the same day the second warrant was issued, DCI Agent Trevor Swanson sent an email to the Hughes County State's Attorney, the Hyde County State's Attorney, and the Hyde County Sheriff, indicated that the updated warrant had been faxed to the Hughes County Jail where Defendant was being held. At the time of the Indictment, Defendant

was being held on four separate Hughes County warrants (32CRI22-25, 32CRI220215, 32CRI22-384, and 32CRI22-757).

On January 30, 2023, Defendant was released in the Hughes County cases on a medical furlough. He failed to return from the furlough and was charged with an additional Hughes County felony file on February 7, 2023 (32CRI23-60). A warrant was issued in the Hughes County case and Defendant was arrested on December 13, 2023 and held at the Hughes County Jail. Defendant resolved the pending Hughes County files, and a Judgement of Conviction was filed on April 11, 2024.

Upon resolution of the Hughes County cases, Defendant was served with the Hyde County warrant. Defendant had an initial appearance on April 9, 2024. There was no return of warrant of arrest filed in the Hyde County Clerk of Courts file. The trial for this case has not been scheduled.

ISSUE

I. WHETHER THE DELAY FOLLOWING THE INDICTMENT VIOLATED DEFENDANT'S STATUTORY AND CONSTITUTIONAL RIGHT TO SPEEDY TRIAL.

LEGAL STANDARD

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy…trial." U.S. Const. amend. VI. "The general rule is that the speedy trial right attaches when the defendant is arrested or indicted, whichever comes first." *United States v. Frias*, 893 F.3d 1268, 1272 (10th Cir. 2018) (quoting *Jackson v. Ray*, 390 F.3d 1254, 1261 (10th Cir. 2004)).

The South Dakota Supreme Court has held that the "180-day rule" is a rule of procedure, not a constitutional requirement and, therefore, requires a separate analysis. *State v. Two Hearts*, 2019 S.D. 17, 925 N.W.2d 503 (quoting *Hays v. Weber*, 2002 S.D. 59, ¶ 16, 645 N.W.2d 591, 596. Pursuant to SDCL 23A-44-5.1, a defendant must be brought to trial within 180 days from the date the defendant first appeared before any "judicial officer on an indictment, information or complaint." *Id.* (citations omitted).

ANALYSIS

A. Statutory Right to a Speedy Trial

Trial dates have not yet been set for this file. Neither party disputes that it has been less than 180 days since Defendant's initial appearance. As such, this Court finds that there has not been a statutory violation of Defendant's rights under SDCL 23A-44-5.1.

B. Constitutional Right to a Speedy Trial

To determine whether a defendant's Sixth Amendment right was violated courts must evaluate: "(1) [t]he length of the delay; (2) the reason for the delay; (3) whether the accused asserted the right for a speedy trial; and (4) whether the accused was prejudiced by the delay."

State v. Two Hearts, 2019 S.D. 17, ¶ 18, 925 N.W.2d 503 (quoting *State v. Karlen*, 1999 S.D. 12, ¶ 18, 589 N.W.2d 594, 599).

i. Length of Delay

In evaluating claims for violations of the Sixth Amendment the first factor, length of delay, serves as a triggering mechanism. *See United States v. Brown*, 498 F.3d 523 (6th Cir. 2007). "Delays of over a year are presumptively prejudicial; delays of less than one year are not." *Id.* (quoting *State v. Tiegen*, 2008 S.D. 6, ¶ 16, 744 N.W.2d 578, 585). "Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors ...." *Id.* (quoting *State v. Holiday*, 335 N.W.2d 332, 334–35 (S.D. 1983)). Here, there is a delay of 18 months and 2 weeks from when the Complaint was first filed and when Defendant had his initial appearance. There is a 15 month and 2 week delay from when the Indictment was filed and when Defendant made his initial appearance. That does not include additional time that will be necessary to prepare for trial and get this on the trial calendar. Because the length of delay is more than 12 months, it is presumptively prejudicial. As such it is necessary for this Court to evaluate the other factors.

The State argued that because the Defendant's initial appearance occurred less than two months ago, they are in compliance with the statutory timeframe. This argument ignores the fact that the indictment was issued more than a year ago. Defendant has not raised a 180-day violation, instead he has asserted a violation of his constitutional rights under the 6th Amendment.

ii. Reason for the Delay

It is the government's burden to establish an acceptable reason for its delay. *United States v. Frias*, 893 F.3d 1268, 1272 (10th Cir. 2018) (citations omitted). "[T]he reason for the delay[ ] 'weighs against the government in proportion to the degree to which the government caused the delay.'" *United States v. Gould*, 672 F.3d 930 (10th Cir. 2012) (citations omitted).

The State argued that the delay should not be held against them because any delay was a result of Defendant's own criminal charges resulting from his escapes and incarcerations outside of Hyde County. The reason for delay, up to this point, can be grouped in two segments. The first segment is while Defendant was in the Hughes County jail awaiting resolution of his Hughes County charges and the second segment is while Defendant was absconded from the Hughes County jail.

Defendant asserted that the delay should be held heavily against the State as they knew where Defendant was, in custody at the Hughes County Jail, and yet did not serve him with an arrest warrant. This is true from late September of 2022 to late January of 2023 and again from December of 2023 to April of 2024. DCI Agent Swanson initially testified that when he delivered a copy of the warrant to the Hughes County Jail, he believed it was served. He testified he never personally served a warrant on Defendant in the Hughes County Jail; he relied on jail staff. He also testified he believed it was the Hughes County Jail's Standard Operating Procedure, that the Hyde County warrant would not be served until the Hughes County cases were resolved. The

State does not address why they could not serve Defendant when they knew his location prior to his escape and after he was returned to custody at the Hughes County Jail. It appears the only reason for nonservice of the Warrant was the Hughes County Jail's standard operating procedure of holding other county warrants until the Hughes County charges are resolved. The court does not find this an acceptable reason for delay and this segment of an approximate eight-month delay weighs against the prosecution for its apparent inaction in ensuring the warrant was timely served.

Defendant was on absconder status for 317 days when he failed to return from a medical furlough. Swanson testified DCI issued a state-wide bulletin in an attempt to obtain information on his whereabouts. This segment of approximate ten-month delay weighs against the defendant. *State v. Goodroad*, 512 N.W. 2d 433 (SD 1994) (22 month delay from indictment until extradition attributable to defendant due to flight from jurisdiction to avoid prosecution). The State was only unable to serve the Defendant because he was actively absconded from law enforcement and avoiding other pending charges.

The Court acknowledges there is case law that holds delay against the state for government negligence for not pursuing a defendant while a warrant is outstanding for a lengthy period of time. For example, in *Doggett v. US* the court held that the defendant could not be faulted for a 6 year delay because there was no evidence that he had known of the charges against him until his arrest. 505 U.S. 647 (1992) The Court in *Doggett* held that the Government investigators made no serious efforts to find the defendant and as such the court could find the government negligent. When the delay is caused by the government's negligence, the court may presume prejudice if the delay was excessive. Daggett, 505 U.S. at 656–58. And in *Morales-Delgado* the court found the government negligent because they provided no explanation for why they failed to search for the defendant. The court assumed "that there is no justifiable reason and weigh this factor heavily against" the government. *United States v. Morales-Delgado,* No. 4:23-CR-40079-KES, 2023 WL 6462894, at *6 (D.S.D. Oct. 4, 2023).

This body of case law is distinguishable from the case at hand. Although there was no acceptable reason for the warrant not to be timely served when the State knew of Defendants whereabouts, a majority of the time of delay, to date, weighs against Defendant. When removing those 317 days, the case has still been pending for less than one year. The State cannot be found to be negligent for not serving a defendant who is actively absconding from law enforcement.

iii. Assertion of Speedy Trial Rights

A defendant's assertion of his right is "[p]erhaps [the] most important" of the four *Barker* factors. *Id.* (citations omitted). "[T]he defendant's assertion of the speedy trial right is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Id.* (citations and quotations omitted).

Courts have held that a person cannot invoke their right to speedy trial if they are not informed of the charges pending against them. *See United States v. Rodriguez-Valencia*, 753 F.3d

801 (8th Cir. 2014), *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992), *United States v. Richards*, 707 F.2d 995 (8th Cir. 1983).

The State argues that Defendant could have raised this demand sooner. The Court is unconvinced as Defendant was not served until April of 2024. The issue was raised in May of 2024. Defendant was not able to raise his speed trial rights any sooner because he was unaware of the charges pending against him. However, Defendant has raised the issue now and the State is on notice that the case needs to be scheduled for resolution.

iv. Prejudice to the Defendant

"[A] showing of prejudice may not be absolutely necessary in order to find a Sixth Amendment violation, [but] we have great reluctance to find a speedy trial deprivation where there is no prejudice." *Id.* (citations omitted).

"Prejudice is assessed in light of the interests the speedy trial and due process rights were designed to protect: preventing oppressive incarceration, minimizing anxiety and concern of the defendant, and limiting the possibility that the defense will be impaired." *Id.* (citations omitted). The chance that a defendant will be impaired "is the most serious 'because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.'" *Id.* Courts have held that while there is some weight for the anxiety and concern of a defendant there is a requirement that they show some sort of "special harm suffered which distinguishes his case." *Id.* Further, "the anxiety of an accused is not to be equated for constitutional purposes with anxiety suffered by one who is convicted, in jail, unquestionably going to serve a sentence, and only waiting to learn how long that sentence will be." *Id.*

In the present case, Defendant argues that he can prevail on presumed prejudice alone as a result of negligent delay created by the State. *See United States v. Flores-Lagonas*, 993 F.3d 550, 565-65 (8th Cir. 2021) (Court held defendants may be entitled to relief if shown presumptive prejudice and that the government's negligence caused the delay.). This does not take into consideration Defendant's own contribution to the delay.

However, Defendant argues that he can still demonstrate specific prejudice that resulted from the delay. The United States Supreme Court has held that:

> Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.

Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). Defendant argues that as a starting point Defendant was actually prejudiced based on his lengthy pretrial incarceration. It is worth noting that Defendant was incarcerated on separate charges.

Defendant raises concerns that there is indication that certain evidence may no longer be available due to the delay in prosecution. There is also concern that witness testimony may be less effective than when their memory was fresh. These factors could weigh in Defendant's favor but for the fact that he is responsible for a good portion of the delay and there was no evidence presented that there in fact has been an impact in the evidence.

CONCLUSION

Defendant's statutory right to a speedy trial under South Dakota Codified Law has not been violated. That does not negate Defendant's entitled to a speedy trial under the 6th Amendment of the U.S. Constitution. Courts are directed to balance each of these factors as they are closely related "and must be considered together with such other circumstances as may be relevant…because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution." *Barker*, 407 U.S. 514. It appears to this Court that the factors narrowly weigh in favor of the State. As such the Court DENIES Defendant's Motion to Dismiss. The Court will make this case a priority on the trial calendar to ensure no further delay.

Dated this 25th day of July 2024.

BY THE COURT

Margo D Northrup

Margo D. Northrup
Circuit Court Judge

days in the county jail, suspend all of that time -- or actually I'll make it concurrent. I'll run it concurrent to the criminal matter.

As a practical matter, that's going to result in a relatively short penitentiary sentence but hopefully long enough to allow you to get some of the programming to help with your alcohol issues which it appears that you do have.

I think that attorney's fees are appropriate. I will order both of those, including the rest of the finances. There's no reason that Mr. Longchase will not be able to be employed once he is out of the penitentiary and, of course, those wouldn't be due and owing until he was out of the penitentiary to be able to work and make those payments.

I'm going to include restitution in the amount of $6,090.50. I agree with Mr. Bell that the additional security camera is not appropriate and so I've deducted 320 and I've also deducted 150 for, I believe it was a reentry system from the requested amount of restitution.

There would be a fine in the amount of $500 on the felony charge in the Hyde County matter. No fine on the misdemeanor and the court costs would be included of $116.50 and I believe -- is it 86 or

United States Code Annotated
Constitution of the United States
Annotated
Amendment VI. Jury Trial for Crimes, and Procedural Rights (Refs & Annos)

U.S.C.A. Const. Amend. VI-Jury Trials

Amendment VI. Jury trials for crimes, and procedural rights [Text & Notes of Decisions subdivisions I to XXII]

Currentness

<Notes of Decisions for this amendment are displayed in multiple documents.>

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Notes of Decisions (6327)

U.S.C.A. Const. Amend. VI-Jury Trials, USCA CONST Amend. VI-Jury Trials
Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

End of Document

§ 7. Rights of accused. In all criminal prosecutions the accused shall have the right to defend in person and by counsel; to demand the nature and cause of the accusation against him; to have a copy thereof; to meet the witnesses against him face to face; to have compulsory process served for obtaining witnesses in his behalf, and to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

History: Amendment proposed by initiated measure, rejected Nov. 5, 2002.

23A-40-10. Funds available from or on behalf of defendant--Order for reimbursement--Applicability--Credit against lien.

If the court finds that funds are available for payment from or on behalf of a defendant to carry out, in whole or in part, the provisions of this chapter, the court may order that the funds be paid, as court costs or as a condition of probation, to the court for deposit with the state, county, or municipal treasurer, to be placed in the state, county, or municipal general fund or in the public defender fund in those counties establishing the office pursuant to subdivision 23A-40-7(1) as a reimbursement to the county or municipality to carry out the provisions of this section. The court may also order payment to be made in the form of installments or wage assignments, in amounts set by a judge of the circuit court or a magistrate judge, either during the time a charge is pending or after the disposition of the charge, regardless of whether the defendant has been acquitted or the case has been dismissed by the prosecution or by order of the court. The provisions of this section also apply to persons who have had counsel appointed under chapters 26-7A, 26-8A, 26-8B, and 26-8C. The reimbursement is a credit against any lien created by the provisions of this chapter against the property of the defendant.

Source: SL 1979, ch 159, § 40; SL 1983, ch 192, § 1; SL 1997, ch 146, § 1; SL 2001, ch 123, § 1; SL 2024, ch 94, § 3.

23A-40-11. Lien created against property of person for whom counsel provided--Limitation.

A lien, enforceable as provided by this chapter, upon all the property, both real and personal, of any person, including the parents of a minor child, for whom legal counsel or a public defender has been appointed under the provisions of § 23A-40-6, subdivisions 23A-40-7(2) and (3), or § 26-7A-31 may be filed. The services rendered and expenses incurred are a claim against the person and that person's estate, enforceable according to law in an amount to be determined by a judge of the circuit court or a magistrate judge and paid by the county or municipality chargeable for them. A lien on the parents of a minor child pursuant to this section may not exceed one thousand five hundred dollars plus an amount equal to any taxable court costs.

Source: SL 1969, ch 156, § 1; SDCL Supp, § 23-2-3.1; SL 1978 ch 178, § 494; SDCL Supp, § 23A-40-5; SL 1979, ch 159, § 36; SL 1983, ch 191, § 3; SL 1983, ch 192, § 2; SL 1989, ch 227, § 2; SL 1991, ch 217, § 167; SL 1998, ch 152, § 2; SL 2002, ch 122, § 1.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30944

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

SOLOMAN BRENT LONGCHASE,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
HYDE COUNTY, SOUTH DAKOTA

THE HONORABLE Margo D. Northrup
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed December 23, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30944

STATE OF SOUTH DAKOTA,

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SOLOMAN BRENT LONGCHASE,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Appellant, Soloman Brent Longchase, is referred to as "Longchase." Appellee, the State of South Dakota, is referred to as "State." References to documents are designated as follows:

Settled Record (Hyde County Criminal File No. 22-7) ..... SR

Motion Hearing Transcript (June 11, 2024) ..... MH

Sentencing Transcript (November 25, 2024).....ST

Longchase's Brief ..... AB

JURISDICTIONAL STATEMENT

On November 25, 2024, the Honorable Margo D. Northrup, Circuit Court Judge, Sixth Judicial Circuit, entered a Judgment of Conviction in *State of South Dakota v. Soloman Brent Longchase*, Hyde County Criminal File Number 22-07. SR 552-54. It was filed the following day. *Id.*

Longchase filed his Notice of Appeal on December 23, 2024. SR 561.

This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I. WHETHER LONGCHASE'S SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL WAS NOT VIOLATED?

The circuit court found Longchase was not denied his right to speedy trial based on the delay between his indictment and arrest.

Barker v. Wingo, 407 U.S. 514 (1972)

People v. Eaton, 459 N.W.2d 86, (Mich. App. 1990)

State v. Anderson, 417 N.W.2d 403 (S.D. 1988)

State v. Miller, 2006 S.D. 54, 717 N.W.2d 614

II. WHETHER THE CIRCUIT COURT DID NOT VIOLATE LONGCHASE'S SIXTH AMENDMENT RIGHT TO COUNSEL WHEN IT ORDERED HIM TO REPAY THE COURT APPOINTED ATTORNEY FEES?

The circuit court found that Longchase would be able to repay court appointed attorney fees once he was released from prison.

Fuller v. Oregon, 417 U.S. 40 (1974)

Gideon v. Wainwright, 372 U.S. 335 (1963)

SDCL 23A-40-10

SDCL 23A-40-11

STATEMENT OF THE CASE

The Hyde County State's Attorney charged Longchase with the following:

- Count 1: Aggravated Assault- Intimidation (domestic), contrary to SDCL 22-18-1.1, a Class 3 felony;

- Count 2: Aggravated Kidnapping, contrary to SDCL 22-19-1, a Class 1 misdemeanor; or in the alternative;
- Count 2: Driving Under the Influence, contrary to SDCL 32-23-1(5), a Class C felony;
- Count 3: Grand Theft, contrary to SDCL 22-30A-17, a Class 4 felony;
- Count 4: Interference with Emergency Communication, contrary to SDCL 49-31-29.2, a Class 1 misdemeanor; and
- Count 5: False Impersonation to Deceive Law Enforcement, contrary to SDCL 22-40-1, a Class 1 misdemeanor.

SR 16-18. Three months later, the Hyde County grand jury returned an indictment with the same charges. SR 21-23.

Longchase filed a motion to dismiss alleging a Sixth Amendment violation of his right to a speedy trial. SR 47-81. After the circuit court held a hearing, it entered its memorandum decision denying the motion, finding Longchase's Sixth Amendment right to a speedy trial was not violated. SR 209-14.

Longchase then filed a motion to suppress his statements to law enforcement during an interview. SR 227-30. The court held a hearing, but a plea agreement was reached between the parties before the court reached a decision. SR 665-736.

The plea agreement stated Longchase would plead guilty to Grand Theft and Simple Assault. SR 257-59. The remaining charges would be dismissed. *Id.* The State filed an amended complaint to reflect the charges of the plea agreement. SR 269-71.

The circuit court sentenced Longchase to eight years in prison, with three years suspended for the charge of Grand Theft. SR 553. He was ordered to pay $6,090.50 in restitution and to reimburse Hyde County for court appointed attorney fees. *Id.* The circuit court also sentenced Longchase to ninety days in jail for the simple assault-domestic conviction. SR 553. The two sentences were ordered to run concurrently. SR 554.

STATEMENT OF FACTS

On August 20, 2022, Longchase and his ex-girlfriend, S.C. (DOB 7/4/1979) were on the Crow Creek Reservation attending a powwow. SR 6. They left the powwow and headed towards Hyde County. *Id.*

During the drive, the two fought. SR 11. S.C. pulled over in an attempt to turn the car around. *Id.* Longchase hit S.C. on the head, climbed on top of her, and pushed her neck down. *Id.* He took her car keys and phone and dumped the contents of her purse out into the ditch. *Id.* S.C. got out of the car to get her things and told Longchase she wasn't getting back into the car. *Id.* Longchase put his arm around her throat and pulled her to the car. *Id.* He told her, "If you don't want to be with me, I'll make sure nobody has you." *Id.*

S.C. got back into the car and Longchase drove them to a privately owned agricultural fuel pump. SR 6, 11. On the way there, he threatened her multiple times. *Id.* S.C. thought Longchase was going to kill her. SR 11. Longchase was going to steal gas, but it was not the

right kind for his vehicle. SR 11. So instead, he drove to a rural location where he ordered S.C. to get out of the car. *Id.* S.C. refused, thinking Longchase was going to kill her. *Id.* He kicked her leg, leaving a bruise. *Id.*

Two men approached in a vehicle, to check on them. SR 12. Longchase lied to the men and said he worked on their father's ranch. *Id.* During the encounter, S.C. tried to make eye contact with the men and signal for help by shaking her head "no." *Id.*

Longchase and S.C. left the area and went to a gas station in Highmore. *Id.* The men followed them. *Id.* Once Longchase stopped, the men asked him their father's name. *Id.* She mouthed "help me" to one of the men. *Id.* The man mouthed back, "help me?" and she nodded her head. *Id.* The men alerted an employee at the neighboring gas station, Willow Creek Steakhouse that S.C. needed help. SR 10.

The gas station didn't have any fuel, so they went to Willow Creek Steakhouse. SR 12. Longchase asked S.C. if she got out of the car, would she escape. *Id.* A woman exiting the store asked if things were okay and Longchase answered in the affirmative. *Id.* S.C. told Longchase that if he let her out of the car, she would not escape. *Id.* So Longchase agreed she could go inside the gas station with him. *Id.* When Longchase went into the bathroom, S.C. begged the female employee for help. *Id.* The employee called the Hyde County Sheriff and S.C. tried to stall Longchase by pretending to look for food. SR 6, 12.

Upon arrival, the sheriff approached the two and asked if everything was all right. SR 12. S.C. felt forced to answer in the affirmative because Longchase was next to her. *Id.* The sheriff separated the two, and S.C. told him that Longchase had warrants for his arrest. *Id.* Longchase provided the sheriff with a false name before taking off on foot. SR 6. The sheriff pursued Longchase but was unable to catch him. *Id.*

At around 1:30 am the next day, Kenny Hoffman's truck was stolen. *Id.* The surveillance video showed Longchase taking the truck. *Id.* The truck contained tools that were worth approximately $5,600. *Id.*

A few days later, Longchase showed up at S.C.'s residence and told her he escaped by stealing a truck. SR 12. He told her he parked it near the river at Terrance Bigeagle's residence. *Id.*

Law enforcement met with Longchase while in custody for another matter. SR 13. He admitted to telling S.C. he would kill her because he was afraid, she would leave him for someone else. SR 14. He also admitted to dragging her back into the vehicle because "he was not done talking to her." *Id.* He told law enforcement the bruise on S.C.'s leg was caused by him kicking the car door shut and the door hit her leg. *Id.* He also admitted to stealing the truck and selling several of the tools that were inside. *Id.*

STANDARD OF REVIEW

This Court reviews claims of a constitutional violation under the de novo standard of review. *State v. Schmidt*, 2012 S.D. 77, ¶ 12, 825 N.W.2d 889, 894 (citing *State v. Tiegen*, 2008 S.D. 6, ¶ 14, 744 N.W.2d 578, 585).

ARGUMENTS

I. LONGCHASE'S SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL WAS NOT VIOLATED.

"[A] voluntary and intelligent plea of guilty waives a defendant's right to appeal all nonjurisdictional defects in the prior proceedings." *State v. Ceplecha*, 2020 S.D. 11, ¶ 29, 940 N.W.2d 682, 692 (quoting *State v. Cowley*, 408 N.W.2d 758, 759 (S.D. 1987)). This includes the waiver of the right to a speedy trial. *State v. Miller*, 2006 S.D. 54, ¶¶ 14-15, 717 N.W.2d 614, 618-19.

By entering a guilty plea, Longchase waived his right to a speedy trial. He does not make the argument that his waiver was not knowingly and voluntarily made. In fact, at the change of plea hearing, the circuit court asked Longchase if he understood that by pleading guilty, he was giving up his right to "a *speedy* public trial before a jury made up of twelve citizens in Hyde County." SR 741 (emphasis added).

Longchase argues that the issue of a speedy trial is a jurisdictional issue. AB 15-16. Longchase relies on *State v. Grosch*, 387 N.W.2d 503 (S.D. 1986) which is outdated case law, to argue a speedy trial is a

jurisdictional issue. AB 16. This Court has found that the issue of a speedy trial was not jurisdictional. *See State v. Anderson*, 417 N.W.2d 403, 405 (S.D. 1988) (holding that when a defendant pleads guilty, he waives his right to a speedy trial), *Miller*, 2006 S.D. 54, ¶¶ 14-15, 717 N.W.2d at 618-19 (A defendant who voluntarily and knowingly enters a guilty plea waives his right to a speedy trial.).

Further, *Grosch* relied on a case from Michigan that stated issues of a speedy trial were not waived by a defendant entering a guilty plea because a speedy trial issues were jurisdictional issues. *People v. Davis*, 332 N.W.2d at 606, 608-09 (Mich. App. 1983). The rationale being a jurisdictional defense bars a defendant's conviction and a defendant who has been denied their speedy trial rights cannot be convicted. *Id.* So, arguments of a speedy trial violations are jurisdictional arguments. *Id.* But this line of thinking was clarified a few years later, when the same court determined that issues of personal jurisdiction can be waived by entering a guilty plea and that a speedy trial violation was a personal jurisdictional issue. *People v. Eaton*, 459 N.W.2d 86, 90 (Mich. App. 1990).

The purpose of a defendant's right to speedy trial is to ensure that factual guilt is validly established. *Id.* By entering a guilty plea, the circuit court was assured of Longchase's guilt; and thus, the need for a speedy trial is relinquished. Therefore, Longchase waived his argument for a violation of a speedy trial.

If this Court determines Longchase did not waive the issue of a speedy trial by pleading guilty, the circuit court correctly determined Longchase's constitutional right to a speedy trial was not violated.

Both the United States Constitution and the South Dakota Constitution guarantee a defendant the right to a speedy trial. *See* U.S. Const. amend. VI; S.D. Const. art. VI § 7. There is no specified number of days or months to signify when a defendant's right to a speedy trial has been violated.[1] *Barker v. Wingo*, 407 U.S. 514, 523 (1972).

This Court has adopted a four-factor analysis to determine whether a defendant's Sixth Amendment right was violated: "'(1) the length of the delay; (2) the reason for the delay; (3) whether the accused asserted the right for a speedy trial; and (4) whether the accused was prejudiced by the delay.'" *State v. Two Hearts*, 2019 S.D. 17, ¶ 18, 925 N.W.2d 503, 511 (quoting *State v. Karlen*, 1999 S.D. 12, ¶ 18, 589 N.W.2d 594, 599). "Delays of over a year are presumptively prejudicial; delays of less than a year are not." *Tiegen*, 2008 S.D. 6, ¶ 16, 744 N.W.2d at 585 (internal quotation omitted). Unless there is a presumptively prejudicial delay, this Court will not consider the remaining three factors. *Tiegen*, 2008 S.D. 6, ¶ 17, 744 N.W.2d at 586 (citing *State v. Holiday*, 335 N.W.2d 332, 334-35 (S.D. 1983)).

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[1] This Court has adopted the "180-day rule," which is a statutory rule that requires a separate analysis. *Two Hearts*, 2019 S.D. 17, ¶ 10, 925 N.W.2d at 509. Longchase is only raising the issue of a constitutional violation.

1. Length of Delay

"The Sixth Amendment right to a speedy trial attaches at the time of arrest or indictment, whichever comes first, and continues until the trial commences." *United States v. Cooley*, 63 F.4th 1173, 1177 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 261, 217 L. Ed. 2d 110 (2023) (quoting *United States v. Williams*, 557 F.3d 943, 948 (8th Cir. 2009)).

Here, the State filed the initial complaint on September 21, 2022, and the circuit court issued an accompanying arrest warrant the next day. SR 16-19. The grand jury issued an indictment on December 20, 2022, and the circuit court issued another arrest warrant on the same day. SR 21-25. Longchase's initial appearance occurred on April 9, 2024. SR 570. The delay between filing the complaint and Longchase's initial appearance is 566 days (approximately nineteen months). And the delay between the indictment and Longchase's initial appearance is 476 days (approximately sixteen months). Both calculations are longer than the one-year presumptively prejudicial window.

While Longchase's post-indictment delay was longer than one year, it does not mean his right to a speedy trial was violated. Courts have found delays longer than Longchase did not violate a defendant's Sixth Amendment rights. *See United States v. Cooley*, 63 F.4th 1173, 1178 (8th Cir. 2023) (Finding a twenty-nine-month delay was lengthy but not extraordinary.) *See also United States v. Richards*, 707 F.2d 995, 998 (8th Cir. 1983) (a thirty-five-month delay is not a Sixth Amendment

violation); *United States v. Walker*, 92 F.3d 714, 717 (8th Cir. 1996) (delay of thirty-seven months is not a violation of the Sixth Amendment); *United States v. Aldaco*, 477 F.3d 1008, 1018-20 (8th Cir. 2007) (delay of forty months is not a violation of the Sixth Amendment).

So, while Longchase's nineteen-month delay may be lengthy, it is not an extraordinary delay.

2. Reason for the delay.

Longchase argues the entire delay is due to the State because it had information on his whereabouts, the Hughes County jail, when the arrest warrants were issued. AB 8-11. But Longchase fails to mention his own conduct played a role in the delay.

In determining the reasons for the delay, "different weights should be assigned to different reasons." *Barker,* 407 U.S. at 531. For instance, if the State deliberately delays trial to hinder the defense it should weigh heavily against the State. *Id.* But if there is a "more neutral reason such as negligence" it should weigh less heavily against the State. *Id.* Similarly, if the delay is attributed to the defendant it should weigh against the defendant. *United States v. Erenas-Luna,* 560 F.3d 772, 777 (8th Cir. 2009) (citing *Vermont v. Brillon,* 556 U.S. 81, 90 (2009)).

The State charged Longchase by complaint and the circuit court issued an arrest warrant on September 22, 2022. SR 16-19. Subsequently, the grand jury returned an indictment on December 20, 2022, and an arrest warrant issued by the court nine days later. SR 21-

25. At that time, Longchase was in the Hughes County jail awaiting trial on escape charges for Hughes County. SR 149; MH 9. One month later, Longchase was granted a medical furlough in his Hughes County criminal matters. SR 152. Longchase did not return from his furlough; subsequently, escape charges were filed, and an arrest warrant was issued. SR 181. Longchase absconded until December 11, 2023. He remained in Hughes County custody until his Hughes County charges were dealt with. He first appeared in Hyde County on April 9, 2024.

From the time the first warrant was issued until Longchase's furlough on January 30, 2023, 130 days lapsed (approximately four months). Longchase then absconded for 314 days (approximately ten and a half months). From the time Longchase was back in Hughes County custody until he had his initial appearance on April 9, 2024, 120 days (approximately four months) lapsed. So, 314 days out of 566 days of the delay are attributed to Longchase.

This Court found a twenty-two-month delay from the time of indictment until extradition was attributable to the defendant because he absconded. *State v. Goodroad*, 512 N.W.2d 433, 439 (S.D. 1994). South Dakota is not alone in weighing the time from which a defendant evaded custody against the defendant. Ohio found a defendant who evaded arrest for six years weighed heavily against him as he contributed to the

delay.[2] *State v. Bruce*, 113 N.E.3d 15, 22 (Ohio 2018). Wyoming also contributes a defendant's absconder status against him when determining the reason for delay. *Durkee v. State*, 357 P.3d 1106, 1112 (W.Y. 2015).

Because Longchase contributed to much of the delay, those months he absconded should weigh against him. Therefore, the delay contributable to the State is 252 days, which under the one-year presumptively prejudicial mark.

3. Assertion of Speedy Trial Rights

The third factor considers whether a defendant asserted his right to a speedy trial. *Barker*, 407 U.S. at 531. The defendant bears the burden of alerting the State of his grievances. *Goodroad*, 521 N.W.2d at 439 (citing *Robinson v. Whitley*, 2 F.3d 562, 569 (5th Cir.1993), *cert. denied*, 510 U.S. 1167 (1994)). When a defendant claims the delay occurred post-indictment and pre-arrest, his "post-arrest assertion of his speedy trial right has little bearing on his claim." *Erenas-Luna*, 560 F.3d at 778 (8th Cir. 2009); *see also Doggett v. United States*, 505 U.S. 647, 654 (1992), *Richards*, 707 F.2d at 997.

Longchase did not assert his right to a speedy trial until May 2024, when he filed a motion to dismiss alleging a constitutional violation of speedy trial rights. SR 47. Because the motion was filed post-arrest and

[2] The court reached this conclusion even after considering the state's role in failing to locate the defendant during that time as at most negligent on the state's behalf. *Bruce*, 113 N.E.3d at 22.

Longchase argued a speedy trial violation from the time between post-indictment and pre-arrest, the factor weighs in neither party's favor.

4. Prejudice

The final factor is whether Longchase suffered prejudice because of the delay. "The extent to which a defendant must demonstrate prejudice depends on the particular circumstances." *Cooley*, 63 F.4th at 1179 (quoting *Erenas-Luna*, 560 F.3d at 778). An "unreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including 'oppressive pretrial incarceration,' 'anxiety and concern of the accused,' and 'the possibility that the accused's defense will be impaired' by dimming memories and loss of exculpatory evidence." *Doggett*, 505 U.S. at 654 (quoting *Barker*, 407 U.S. at 532). The last being the most serious "because of the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *State v. Starnes*, 86 S.D. 636, 649, 200 N.W.2d 244, 252 (1972) (quoting *Barker*, 407 U.S. at 532).

Longchase did not suffer from oppressive pretrial incarceration. He was in jail before the complaint was filed. He remained in jail (except for when he absconded) on Hughes County charges during the time from the issuance of the arrest warrant until he had his initial appearance in Hyde County.

He also did not experience any anxiety or concern over the charges as he claims he was not made aware of the charges until his initial

appearance. SR 55, AB 12. By not knowing about the charges, he did not live "under a cloud of suspicion and anxiety." *Barker*, 407 U.S. at 534.

Finally, Longchase has not shown how his defense was impaired. He argues he suffered from the loss of a gas station video and "fresh" witness testimony. AB 14-15. But he neglects the fact that he confessed to Agent Swanson that he not only took the truck but also sold the tools inside it. SR 13-14. Further, the missing video would hurt his case at trial, as it is inculpatory, not exculpatory. And his case did not go to trial, so it is only speculative as to whether witnesses' memory lapsed. So Longchase is unable to show how his defense was impaired by the delay.

In considering the four *Barker* factors, the circuit court did not err when it denied Longchase's motion to dismiss. The factors favor the State as Longchase contributed to more than half the length of the delay by absconding, and he was not prejudiced by the delay. Therefore, his Sixth Amendment right to a speedy trial was not violated.

II. THE CIRCUIT COURT DID NOT VIOLATE LONGCHASE'S SIXTH AMENDMENT RIGHT TO COUNSEL WHEN IT ORDERED HIM TO REPAY THE COURT APPOINTED ATTORNEY FEES.

The Sixth Amendment of the United States Constitution guarantee's defendants in criminal prosecutions the right to assistance of counsel. *Gideon v. Wainwright*, 372 U.S. 335 (1963). And if the defendant establishes his inability to afford representation, the court

shall appoint him representation. *Id.*, SDCL 23A-40-6. South Dakota allows for the circuit courts to order a defendant repay the expense of a court appointed attorney if the court finds the defendant has the means to do so. SDCL 23A-40-10.

Repayment of court appointed attorney fees is not a novel concept or unique to South Dakota. The United States Supreme Court first addressed the issue of repayment in 1974. *See Fuller v. Oregon,* 417 U.S. 40 (1974). The Supreme Court analyzed Oregon's statute that authorized the courts to impose repayment of court appointed fees if the defendant was convicted and it was foreseeable that he would be able to repay the fees. *Id.* at 44-45. The defendant could also request cancelation of the fees if it became a hardship. *Id.* The Supreme Court upheld the statute, finding it was "directed only at those convicted defendants who are indigent at the time of the criminal proceedings against them but who subsequently gain the ability to pay the expenses of legal representation." *Id.* at 46. The Supreme Court rejected the notion that imposing court appointed attorney fees violated a defendant's right to counsel "the fact that an indigent who accepts state-appointed legal representation knows that he might someday be required to repay the costs of these services in no way affects his eligibility to obtain counsel." *Id.* at 53.

South Dakota statute, like Oregon, states if a defendant is convicted and the court finds funds are available, the court may impose

court appointed attorney fees. SDCL 23A-40-10. The circuit court ordered Longchase to repay court appointed attorney fees in the amount of $4,531.04. He argues the court should have held an evidentiary hearing and made findings on his ability to repay those fees.

At sentencing Longchase asked the court to consider his ability to repay court appointed attorney fees before imposing the repayment. ST 11. Through counsel, he argued "there's no way the [c]ourt is going to find presently my client has the ability to pay attorney's fees in this case, which is why the [c]ourt appointed counsel in the first place." ST 12. But Longchase did not mention his ability to repay those fees after he was released from prison. In fact, just moments before he stated he would like to get back into fencing and other manual labor jobs to pay restitution and pay back society. ST 5. He readily admitted he is able to work and earn money to pay restitution, but he also claims to be unable to pay the court appointed attorney fees.

Longchase further argues SDCL 23A-40-11 would allow for "the automatic attachment and enforcement of a lien on all personal and real property of an indigent defendant without any judicial hearing at all[.]" But again, the circuit court did consider Longchase's ability to repay the costs and found nothing would prevent him from working after he was released from prison.

Longchase also argues South Dakota has a "ongoing problem" when it comes to indigent representation. AB 26. He relies on a report

prepared by the Sixth Amendment Center. *Id.* He concedes that some of the recommendations regards policy issues that are more appropriate for the legislature to handle. AB 27. But urges this Court to consider the "admonishment that there are constitutional and statutory requirements regarding recoupment that this Court can, and should, simply require the circuit courts to follow." *Id.* To which, he argues the circuit court should be conducting an evidentiary hearing as to the defendant's ability to repay court appointed attorney fees. AB 27.

Again, Longchase requested the circuit court to consider his inability to repay the fees. The circuit court never denied Longchase from presenting evidence. The only thing he put forth was his own argument that he can't repay the fees. But he conveniently forgot he argued just moments prior that he was wanting to get a job to repay restitution. Longchase, himself, told the court he would repay the victim. ST 16. The circuit court at sentencing stated, "Mr. Longchase indicates that he's been employed throughout his life, I believe construction type work, and he believes that he still has the ability to continue that work once he is released from prison." ST 19. It also stated "I think that attorney's fees are appropriate... There's no reason that Mr. Longchase will not be able to be employed once he is out of the penitentiary and, of course, those wouldn't be due and owing until he was out of the penitentiary to be able to work and make those payments." ST 21. Simply put, Longchase has not shown how he was denied a hearing on

his ability to repay attorney fees nor how the court failed to make findings of his ability to repay.

Requiring a defendant to repay court appointed attorney fees does not affect an indigent defendant from obtaining legal counsel. *Fuller,* 417 U.S. at 52-54. Longchase was aware of the possibility of repayment. The application for court-appointed counsel he completed in Hughes County stated, "I understand that if I have a court-appointed lawyer, his fees are loaned and not given to me. I will be asked to repay the county *if I am able*, and a lien will be filed against my property to ensure payment." Application for Court-Appointed Counsel.[3] Further, at his initial appearance, the circuit court stated, "You have the right to an attorney at every stage of the proceeding. If you cannot afford an attorney, I will appoint one to represent you. However, that's not a gift. That's something that you would have to pay back at the conclusion of your case." SR 572. Longchase knew about his potential obligation to repay the cost of his attorney. The potential obligation did not prevent Longchase from having representation; he still requested such.

Longchase's Sixth Amendment right to counsel was not violated when the circuit court-imposed repayment of court appointed attorney fees. He admitted his ability to repay restitution, so it is not surprising

[3] The circuit court asked Longchase if he had a court appointed attorney in his Hughes County criminal cases. He did so the court appointed him counsel without having him complete a new application. SR 573-74. The circuit court appointed the same attorney to represent him in Hyde County. The State asks this Court to take judicial notice of his application filed in Hughes County criminal file 32CRI 24-428.

the court found he would be able to repay the fees once he was out of prison. Therefore, his argument fails.

CONCLUSION

Based upon the foregoing arguments and authorities, the State respectfully requests that Longchase's convictions and sentences be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 4,394 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 2nd day of June 2025.

/s/ Erin E. Handke
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 2, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Soloman Brent Longchase* was served via electronic mail upon Justin L. Bell at jlb@mayadam.com.

/s/ Erin E. Handke
Erin E. Handke
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IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

APPEAL NO. 30944

STATE OF SOUTH DAKOTA,

Appellee,

-vs-

SOLOMAN B. LONGCHASE,

Appellant.

APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
HYDE COUNTY, SOUTH DAKOTA

THE HONORABLE MARGO D. NORTHRUP
CIRCUIT COURT JUDGE, PRESIDING

REPLY BRIEF OF APPELLANT SOLOMAN B. LONGCHASE

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NOTICE OF APPEAL FILED DECEMBER 23, 2024

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ARGUMENTS AND AUTHORITY

I. LONGCHASE'S PROSECUTION IS BARRED BY THE SPEEDY TRIAL CLAUSE OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 7 OF THE SOUTH DAKOTA CONSTITUTION.

A. A RIGHT TO SPEEDY TRIAL APPEAL IS NOT WAIVED BY A GUILTY PLEA.[1]

As expected, the State submits that this issue is waived by Longchase's guilty plea, based upon the reasoning of *State v. Andrews*, 2007 S.D. 29, 730 N.W.2d 416. The State does not, and indeed cannot, argue that *State v. Grosh*, 387 N.W.2d 503, 507 (S.D. 1986), does not hold that a constitutional challenge to a speedy trial violation is not waived by a guilty plea. Instead, the State argues that *Grosh* is "outdated case law." Appellee's Brief at 7. The State cites to no cases that overturn *Grosh*, but instead cites *State v. Anderson*, 417 N.W.2d 403, 405 (S.D. 1988) and *State v. Miller*, 2006 S.D. 54, 717 N.W.2d 614.

However, *State v. Anderson* does not address a Speedy Trial constitutional challenge, but instead only deals with a 180-day rule violation. Indeed, the *Anderson* Court made clear that "Anderson has asserted no violation of his constitutional rights to a speedy trial." *Anderson,* 417 N.W.2d at 405. Moreover, the Court plainly stated its holding was limited to "a defendant's plea of guilty waives his claimed *statutory* right to dismissal under the speedy trial rule." *Id.* (emphasis added).

Likewise, *State v. Miller*, 2006 S.D. 54, 717 N.W.2d 614, is inapplicable. Indeed, Miller did not raise a speedy trial issue in his appeal, nor is such addressed in the opinion. Instead, it makes cursory reference to the fact that everyone who pleads guilty waives

[1] Longchase will address this issue out of the order it was addressed in Appellant's Brief and instead reply in the order the issue was addressed by the State.

their rights standard rights to "1) the privilege against compulsory self-incrimination, 2) the right to a speedy trial, and 3) the right to confront one's accusers." *Id.* at ¶ 14. However, simply because one waives their right to have a trial (speedy or otherwise) by entering a guilty plea, does not foreclose an appeal on a motion that was made prior to the guilty plea.

In essence, *Grosh* remains the law in South Dakota. It has not been overturned or limited by this Court, and its reasoning applies to this case. Longchase did not waive his ability to appeal his Motion to Dismiss by pleading guilty. Indeed, *Grosh* explicitly found that a speedy trial violation is not waived by a guilty plea, unlike a non-jurisdictional defect. Accordingly, this appeal issue has not been waived, and the appropriate remedy is an outright reversal of the conviction.

B. LONGCHASE'S PROSECUTION VIOLATED HIS RIGHT TO A SPEEDY TRIAL.

The parties agree on the four-factor analysis that this court has adopted when determining whether a defendant's right to a speedy trial under the Sixth Amendment of the United States Constitution and Article VI, § 7 of the South Dakota Constitution has been violated: "(1) The length of the delay; (2) the reason for the delay; (3) whether the accused asserted the right [for a speedy trial]; and (4) whether the accused was prejudiced by the delay." *State v. Karlen,* 1999 S.D. 12, ¶ 18, 589 N.W.2d 594, 599 ((citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)) and *State v. Goodroad*, 521 N.W.2d 433, 437 (SD 1994)).

1. Length of Delay

The Government concedes, as it must, that the length of delay was presumptively prejudicial. However, the Government argues the delay was not an "extraordinary

delay." However, even in those cases, the courts routinely found this factor to weigh in favor of a defendant. As shown in the analysis in *Karlen* and as reasoned by the circuit court judge, the delay presented in this case is more than sufficient to trigger an analysis of the *Barker* factors. Longchase requested a speedy trial in this case, but the trial date given to him was roughly 26 months after the formal complaint and arrest warrant was filed in this matter and 23 months after the Indictment was filed in this matter. That is nearly twice the delay required to trigger an analysis of this being presumptively prejudicial, roughly the same as in *State v. Starnes*, where this Court required dismissal based on a roughly two-year delay when the defendant was in custody in the South Dakota Penitentiary. 86 S.D. 636, 200 N.W.2d 244 (1972). Accordingly, this factor weighs in favor of Longchase.

2. *Reason for Delay*

Under the second *Barker* factor, the Court must consider the reasons for the delay and evaluate "whether the government or the criminal defendant is more to blame.'" *United States v. Erenas-Luna*, 560 F.3d 772, 777 (8th Cir. 2009) (*quoting Doggett v. United States*, 505 U.S. 647, 651 (1992). "We weigh an intentional delay by the government heavily against it. We weigh negligence by the government less heavily but still regard such negligence as a considerable factor in the weighing process." *Id.*

Unlike the cases cited by the State citing a need for an "extraordinary delay," this case presents a situation of intentional delay. There can be no other explanation given the record evidence and the testimony from DCI Agent Swanson. The State was aware of the whereabouts of Longchase for a significant portion of the delay, including when both warrants were issued, yet did nothing to arrest him or move the prosecution forward.

Although it is true that Longchase may have been on escape status, that delay would not have mattered had the State not taken the position that it would not serve the warrant until after his other pending case was concluded. Indeed, this was an affirmative choice not to serve a warrant on a person when they had actual knowledge of his location.

The circuit court heavily relied on Longchase absconding for weighing this factor against Longchase, which is focused on by the State in the Appellee's Brief. However, Agent Swanson repeatedly testified that it did not matter how long Longchase was being held on Hughes County matters, regardless of how long it delayed his Hyde County file, and that he would have not taken any action to serve Longchase the warrant, regardless of whether he was on a furlough or failed to return from a furlough. Agent Swanson testified it was his expectation that Longchase would need to resolve his Hughes County files before Longchase received an initial appearance or attorney in his Hyde County file (or even become aware of the warrant or charge) and that it was his assumption that Longchase would not "ever be released" from jail.

Agent Swanson provided no rational basis as to why the warrant should not have been served on Longchase when he was personally aware of where he was, which would have started the prosecution of the case at hand. Of course, service of the warrant would have also led to an initial appearance which would have triggered Longchase's codified 180-day rights and right to counsel. There is also no explanation as to what the Court and counsel know to be common practice: that people are held at the Hughes County Jail with pending and active file in multiple counties within the Sixth Circuit *very* regularly and people are regularly served warrants when in custody, specifically if it is in the jail where they would be held for both files. That is likely common practice because it is

required by several rulings from the United States Supreme Court and the South Dakota Supreme Court. Accordingly, this factor weighs against the State.

3. Assertion of Right

The third *Barker* factor is whether the accused has asserted his right to a speedy trial. *Doggett*, 505 U.S. at 651. As accepted by the circuit court, a person cannot be expected to invoke his right to a speedy trial if he has not been informed of the charges brought against him, nor appeared in court to invoke such a right. *United States v. Rodriguez-Valencia*, 753 F.3d 801,807 (8th Cir. 2014); *Doggett*, 505 U.S. at 654 ("Doggett is not to be taxed for invoking his speedy trial right only after his arrest"); *United States v. Richards*, 707 F.2d 995, 997 (8th Cir. 1983) (where the defendant was "unaware of the indictment before his arrest… his failure to assert his right to a speedy trial [after arrest] cannot be weighed against him").

Longchase raised this issue at the earliest possible date that he could. Accordingly, this factor should be weighed in his favor.

4. Prejudice

The fourth and final Barker factor is whether the delay has prejudiced Longchase. In considering this factor, the court should assess the interests served by the speedy trial right, which are: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Barker*, 407 U.S. at 532. Of these interests, prejudice causing impairment of the defense is the most serious. *Young v. United States*, 953 F. Supp. 2d 1049, 1063 (D.S.D. 2013) (citing *Erenas-Luna*, 560 F.3d at 778). "Prejudice, of course, should be

assessed in the light of the interests of defendants which the speedy trial right was designed to protect." *Starnes*, 86 S.D. at 649 (*quoting Barker*, 407 U.S. at 532)

The level of prejudice a defendant must show under this factor depends on the circumstances of the case. *Erenas-Luna*, 560 F.3d at 778. Actual prejudice must be shown if the government exercised reasonable diligence in pursuing the defendant. *Id.* at 778-79 (*citing Doggett*, 505 U.S. at 656; *United States v. Brown*, 325 F.3d 1035 (9th Cir. 2003). If the government is negligent, prejudice can be presumed if there has been an excessive delay. *Id.* at 779. According to the Eighth Circuit, "[w]hen a defendant establishes only presumptive prejudice, but not particularized prejudice, he can still prove a Sixth Amendment violation if he has help from the other *Barker* factors." *United States v. Flores-Lagonas*, 993 F.3d 550, 564-65 (8th Cir. 2021). "For example, a defendant may be entitled to relief if he has shown presumptive prejudice and that the government's negligence caused the delay." *Id.* (*citing Doggett* 505 U.S. at 658). Here, the combination of both presumed prejudice and actual prejudice weighs heavily in favor of Longchase. In addition to actual prejudice for lack of ability of evidence and for increased and unnecessary incarceration, because the government was intentional in its delay regarding Longchase, he can prevail on presumptive prejudice alone.

As a starting point, Longchase was actually prejudiced based on his lengthy pretrial incarceration. This was discussed at length in *Barker*, where the US Supreme Court reasoned:

> We have discussed previously the societal disadvantages of lengthy pretrial incarceration, but obviously the disadvantages for the accused who cannot obtain his release are even more serious. The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in

> jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense.

Id. at 532-533. This is further documented because video evidence from the gas station was lost in this case because of the passage of time, as was recognized by Agent Swanson. SR 697. Had the prosecution been timely commenced, Longchase may have had an ability to prevent spoilation of that evidence. The State argues that this would have been inculpatory, rather than exculpatory evidence. However, we don't know what is on the potential videos, because the evidence was lost. At least as it relates to the kidnapping and assault charges, Longchase submits it would have been exculpatory. Preventing loss of documentary evidence is one of the motivations behind requiring a speedy trial. Longchase has additionally suffered substantial prejudice in not scheduling this trial in a speedy fashion which would allow witness testimony when their memory was "fresh". Each is a sufficient example of documented actual prejudice suffered. Therefore, this factor weighs overwhelmingly heavily in Longchase's favor.

Looking at all of the factors, each of them weighs in favor of the Defendant. In this case, Longchase was *being held in the same jail* that he would be held once the warrant was served during much of the delay. In fact, the lead agent *interviewed* Longchase at that location. No cost to transport him was necessary. Agent Swanson simply needed to hand a warrant to Longchase, in the same town where Agent Swanson is stationed. The State's Attorney simply needed to start the prosecution. The State chose not to take such actions. Agent Swanson's conscious decision not to serve Longchase was a willful violation of Longchase's rights, and this conviction should be reversed as a result.

II. ORDERING LONGCHASE TO PAY COURT APPOINTED COUNSEL FEES WITHOUT CONSIDERATION OF HIS ABILITY TO PAY VIOLATES HIS CONSTITUTIONAL RIGHT TO COUNSEL AND DUE PROCESS.

Although the State seems to argue that Longchase is arguing that recoupment is never allowed, Longchase that is not his position. As argued in the Appellants Brief, Longchase recognizes that *Fuller* upheld Oregon's recoupment statute, finding no Equal Protection Clause violation because a "convicted person . . . retains all the exemptions accorded other judgment debtors," and finding no undue burden on the Sixth Amendment or violation of Procedural Due Process rights because the statute was "tailored to impose an obligation only upon those with a foreseeable ability to meet it, and to enforce that obligation only against those who actually become able to meet it without hardship." *Fuller v. Oregon*, 417 U.S. 40 at 47, 54 (emphasis added).

In short, Longchase's request is a simple one. It is not to find recoupment unconstitutional on its face. Rather, it is simply to recognize the rule that most courts in the nation have already recognized: the second prong of *Fuller's* holding referenced above requires a sentencing court judge to perform an ability to repay analysis (including entering oral or written findings of facts and conclusion of law) based on evidence in the record at the time of sentencing prior to requiring recoupment. *See, e.g., In re Dove*, 381 P.3d 1280 (Wash. Ct. App. 2016); rev. denied, 398 P.3d 1070 (Wash. 2017) (In order to determine if a "defendant is or will be able to pay" the court must "make an individualized inquiry" by doing "more than 'sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry.'" If there is boilerplate language in the judgment there must be "substantial evidence in the record to support the boilerplate finding in the judgment."). Though Longchase cites to dozens of

cases which are in accordance with principle, the State fails to cite even one contrary authority.

Moreover, as addressed in the Appellant' brief, a proper analysis of relevant South Dakota statutory language requires the same. The language in SDCL 23A-40-10 requires: "[I]f the court finds that funds are available for payment from or on behalf of a defendant to carry out," then "the court may order that the funds be paid, as court costs or as a condition of probation[.]" *Id.* That language is plainly not limited to collection of a recoupment order, but rather, it is directed at a sentencing judge to make an ability to pay analysis at sentencing, as an order to pay court costs or the conditions of probation would be included in the original Judgment of Conviction, not in a collection action or revocation proceeding. Simply stated, the plain language of SDCL 23A-40-10 contemplates an ability to pay hearing at the time of sentencing as is required by *Fuller*.

Likewise, SDCL 23A-40-11's lien is limited to "an amount to be determined by a judge of the circuit court or a magistrate judge[,]" naturally referencing the amount that would be ordered by the sentencing court in the judgment of conviction pursuant to the immediately preceding statute, i.e. SDCL 23A-40-10. Moreover, SDCL 23A-40-11 references a determination by a judge regarding what amount of fees would be subject to a lien but then creates no mechanism for a court hearing prior to attachment and enforcement of a lien as it relates to a defendant's ability to pay. As a result, SDCL 23A-40-11 must be referring to the pre-sentencing hearing required by SDCL 23A-40-10. Otherwise, SDCL 23A-40-11 would authorize the automatic attachment and enforcement of a lien on *all* personal and real property of an indigent defendant without any judicial

hearing at all regarding ability to pay, which is plainly volitive of a defendant's right to counsel and due process rights.

Once again, the State makes no argument to the contrary. Further, it does not offer a different mode of analysis to construe these statutes. Rather, the State appears to concede that an analysis of ability to pay is required under both SDCL 23A-40-10 and SDCL 23A-40-11, but argues that such was complied with in this case. *See* Appellee's Br. at 17 ("the circuit court did consider Longchase's ability to repay the costs and found nothing would prevent him from working after he was released from prison."). Longchase submits that this was not done in this case, at least not in a way that would allow meaningful review, and since no record evidence exists to support Longchase's present or future ability to pay, the order of recoupment should be reversed.

The State bases its argument off of two theories: 1) that defense counsel argued that, if Longchase received a short sentence, such as a time served sentence, that he intended to seek employment to pay restitution (SR 760), and 2) that the circuit court found Longchase had been employed at times in his life and that the judge stated: "Mr. Longchase indicates that he's been employed throughout his life, I believe construction type work, and believes that he still has the ability to continue that work once he's released from prison[,]" (SR 774) and "I think that attorney's fees are appropriate… There's no reason that Mr. Longchase will not be able to be employed once he is out of the penitentiary and, of course, those wouldn't be due and owing until he was out of the penitentiary to be able to work and make those payments." SR 776.

As it relates to Longchase's counsel's argument that he could pay restitution if he didn't receive a lengthy prison sentence, as a primary matter, he *did* receive a lengthy

prison sentence. Longchase's counsel specifically recognized such would lead to him not having the ability to pay, arguing:

> Mr. Longchase has been a productive citizen. He's had employment. He's worked in fencing and other manual labor jobs and wants to do that, knows that there's going to be restitution at issue in this case, wants to get back is what he would like to do as relates to getting employment, paying back that restitution, paying back society and the victims in this case as relates to this matter.
> *What would prevent that and prevent restitution to the victims in this case would be a lengthy penitentiary sentence and he is asking the Court not to impose that.*

SR 760. Any chance he had to obtain employment that was potentially available to him if he received a short sentence, such as a time-served sentence, has now passed. Moreover, that statement from counsel is not evidence and cannot support factual findings that Longchase was not indigent or had the ability to pay in the future.

Moreover, the burden of proof is not on the Defendant to prove he is unable to pay. Rather, by both the plain language of SDCL 23A-40-10 and *Fuller,* the Court must make an affirmative finding that a defendant has the present or future ability to pay. SDCL 23A-40-10 requires that, prior to ordering recoupment "the court finds that funds are available for payment from or on behalf of a defendant to carry out[.]" Likewise, *Fuller* dictates recoupment be "tailored to impose an obligation only upon those with a foreseeable ability to meet it, and to enforce that obligation only against those who actually become able to meet it without hardship." *Fuller*, 417 U.S. at 47, 54 (emphasis added). Both these requirements squarely place the burden to prove the ability to repay on the party seeking recoupment. Unless 1) record evidence is presented by that party, 2) a Court makes reasonable inquiry of the defendant on the record, or 3) evidence is included in a presentence investigation report to support a determination of the present or

future ability to pay, a circuit court is both statutory and constitutionally barred from assuming ability to pay in the absence of record evidence. In short, the Defendant doesn't have the burden of proving inability to pay. Instead, both state law and the United States Constitution require an affirmative finding of the ability to pay based on evidence in the record.

With that in mind, the circuit court judge's reasoning is inadequate: "I think that attorney's fees are appropriate… There's no reason that Mr. Longchase will not be able to be employed once he is out of the penitentiary and, of course, those wouldn't be due and owing until he was out of the penitentiary to be able to work and make those payments." SR 776. Such reasoning, with no basis in record evidence, is insufficient to award recoupment either under SDCL 23A-40-10 or SDCL 23A-40-11.

This Court has routinely reversed circuit courts for failing to make detailed findings of fact and conclusions of law to support an award of attorney fees in civil matters. *See, e.g., Crisman v. Determan Chiropractic, Inc.*, 2004 S.D. 103, ¶ 30, 687 N.W.2d 507, 514 ("'This Court has consistently required trial courts to enter findings of fact and conclusions of law when ruling on a request for attorney fees' because '[w]ithout findings of facts and conclusions of law[,] there is nothing to review.'"). Longchase is asking for nothing more than similar reasoning as to how the Court analyzes awards of attorney's fees in civil matters: if the State seeks recoupment of attorney fees from an indigent defendant, there must be evidence in the record as to that defendant's present or future ability to pay (including the potential of having it included in a Presentence Investigation Report) and a judge must make oral or written findings of facts and conclusion of law regarding the same. The Constitution requires the same. The

plain language of SDCL 23A-40-10 and SDCL 23A-40-11 require that. The minimalist reasoning of the circuit court in this matter, without supporting evidence in the record, that "[t]here's no reason that Mr. Longchase will not be able to be employed once he is out of the penitentiary and, of course, those wouldn't be due and owing until he was out of the penitentiary to be able to work and make those payments" is not sufficient reasoning. Accordingly, this Court should reverse the Judgement of Conviction as it relates to the recoupment of attorney fees.

CONCLUSION

Longchase prays that the Court enter its order reversing and vacating the judgment of conviction and reversing the order for recoupment of court appointed counsel fees.

Dated this 2nd day of July, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on the date above written one electronic copy of the Brief of Appellant and all appendices in the above-entitled action was electronically served on:

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The undersigned further certifies that one original of the Brief of Appellant in the above-entitled action was mailed by US Mail, First Class, to Ms. Shirley A. Jameson-Fergel, Clerk of the Supreme Court, State Capitol, 500 East Capitol, Pierre, SD 57501 on the date above written.

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CERTIFICATE OF COMPLIANCE

Justin L. Bell, attorney for Appellant, hereby certifies on the date above written that the foregoing Brief of Appellant complies with the type-volume limitation imposed by SDCL 15-26A-66(2). Proportionally spaced typeface Times New Roman has been used. Brief of Appellant does not exceed 16 pages. This brief contains 3,881 words exclusive of the Table of Contents, Table of Authorities, Jurisdictional Statement, Statement of Legal Issues, Appendix, Certificate of Service, and Certificates of Counsel. Counsel relied on the word count of Microsoft Word, the word processing software used to prepare this Brief at font size 12, Times New Roman, and left justified.

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