

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 STATE OF SOUTH CAROLINA,)
 vs.)
 GERALD WILLIAMSON,)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FIFTH JUDICIAL CIRCUIT

BOOK 222 PAGE 533

Indictment No: 2005-GS-40-6747

**ORDER OF DISMISSAL
 WITH PREJUDICE**

JEANETTE W. McBRIDE
 C.C.P. & G.S.
 2009 MAY 26 AM 8:44
 RICHLAND COUNTY
 FILED

This matter came before the Court on May 7, 2008 on a Motion to Dismiss the Indictment. Present at the hearing on behalf of the State was Suzanne Mayes, from the South Carolina Commission on Prosecution Coordination. Appearing on behalf of the defendant was Jack B. Swerling.

HISTORY OF THE PROCEEDINGS

The defendant was arrested on September 22, 1994 for criminal sexual conduct of a minor, the events having allegedly occurred between December 6, 1987 and June 3, 1993. The defendant was indicted for criminal sexual conduct with a minor in the first degree on February 28, 1996 by the Richland County Grand Jury (Indictment No.: 1996-GS-40-24036).

For reasons that will be discussed more fully below, the State nol prossed the indictment "with leave to re-indict if witnesses become available. Witnesses unavailable for trial." On September 25, 1996, an Order for the Destruction of Arrest Records was issued by the Honorable L. Casey Manning.

On or about November 7, 2004, the alleged victim, Kara Mangum contacted the Richland County Sheriff's Department and requested that the case be reopened. The case was assigned to Investigator Terry Downie of the Richland County Sheriff's Department and Erin Gaddy,

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Assistant Solicitor for the Fifth Judicial Circuit. A search was made by the Sheriff's Department, the Solicitor's Office, and the Richland County Clerk's Office for the records and evidence in the case, however nothing from the original investigation could be located. Because the records and evidence were unavailable, the Solicitor's Office declined prosecution pursuant to State v. Lee, 630 S.C. 530, 602 S.E.2d 113 (Ct. App. 2004). However, the case was later submitted to the Richland County Grand Jury in September of 2005 and the Grand Jury returned a true bill charging the defendant in Indictment #2005-GS-40-0747. Subsequently, the case was transferred to Suzanne Mayes of the South Carolina Commission on Prosecution Coordination.

The Court heard the Motion to Dismiss on May 7, 2008. After taking testimony, reviewing the exhibits, and hearing arguments of counsel, the Court issued an Order dated June 2, 2008 granting the defendant's motion with prejudice, with the provision that a more detailed order would follow. The Court's Order is incorporated herein by reference.

APPLICABLE LEGAL PRECEDENT

The Court is guided by the South Carolina Supreme Court's decision in State v. Lee, 375 S.C. 394, 653 S.E.2d 259 (2007), which affirmed the Court of Appeals' decision referenced above. In Lee, the Supreme Court held that the excessive pre-indictment delay violated the Due Process Clause of the Fifth Amendment.

The Court adopted a two-prong inquiry when pre-indictment delay is alleged to have violated a defendant's due process rights.

"First, the defendant must prove that the delay caused substantial actual prejudice to his right to a fair trial. The second prong requires the Court to consider the reason for the State's delay and to balance the justification for the delay against the prejudice to the defendant." Id. at 397, 653 S.E.2d at 260.

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To prove substantial prejudice, a defendant must show that he was “meaningfully impaired in his ability to defend against the State’s charges to such an extent that the disposition of the criminal proceeding was likely effected [sic].” See State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997) (citing Jones v. Angelone, 94 F.3d 900 (4th Cir 1996)).

The Court stated further that to satisfy the burden of showing substantial prejudice, a defendant “must identify the evidence and expected content of the evidence with specificity as well as show that he made serious efforts to obtain the evidence and that it was not available from another source.” Lee at 398, 653 S.E.2d at 261.

The Court also discussed the second prong of the test – the reason for the State’s delay. “When balancing the prejudice and justification, the basic inquiry then becomes whether the government’s action in prosecuting after substantial delay violates ‘fundamental conceptions of justice ‘or’ the community’s sense of fair play and decency.’” Id. at 398, 653 S.E.2d at 261. The absence of any prosecutorial bad faith motive is not fatal to a defendant’s Fifth Amendment Due Process claim.

REVIEW OF TESTIMONY AND EXHIBITS

1. Dana Outen, a paralegal with the Fifth Circuit Solicitor’s Office testified that she made a thorough search of all their records, and found no records or evidence relating to the 1994 arrest or 1996 Indictment of the defendant.

2. Allen Carter is the Director of the Richland County Department of Social Services. He testified that his agency conducted a thorough search of their records and could find no records relating to any investigation of the defendant in connection with this case.

3. Gary White is an attorney practicing in Columbia. In 2003, he handled a civil lawsuit for Mr. Mangum in connection with this case, but the only document he could locate was a handwritten statement of Kara Mangum, dated September 7, 1994.

4. Investigator Terry Downie of the Richland County Sheriff's Department testified that he was contacted in September 2004 when Ms. Mangum requested that her case be reopened. Investigator Downie conducted a search of the records at the Richland County Sheriff's Department and could find no records or evidence relating to the 1994 arrest and 1996 Indictment of the defendant except an index card with file identifying information. He completed an incident report which is dated November 7, 2004, and noted that Ms. Mangum said that the defendant molested her by fondling her vaginal area, simulated intercourse with her and performed oral sex on her – there were no allegations of penetration. Investigator Downie also noted that Ms. Mangum now felt that she was old enough to prosecute the case. From that statement he inferred that Ms. Mangum did not go forward with the case in 1996 because she felt she was too young at the time.

5. Barbara Scott, Clerk of Court for Richland County, testified that a search had been conducted in her office and no records could be located relating to the 1994 arrest or 1996 Indictment of the defendant.

6. Britton Zier, the victim advocate with the State Commission on Prosecution Coordination was called to testify. Ms. Zier testified that she contacted Ron Mangum, father of Kara Mangum, and requested that he furnish her office any evidence he might have in his possession relating to this case and in particular, a copy of a videotape he made of an interview he conducted with Ms. Mangum detailing the allegations in this case. She followed this request with a subpoena for him to produce any of this information. Ms. Zier also explained that she

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made a number of efforts to get Mr. Mangum to come to the hearing, including an offer to reimburse him for a rental car, hotel accommodations, plane fare and a bus ticket. Mr. Mangum said he did not have a copy of the videotape; that only one copy existed and he gave it to the investigators in the case. He also told her that he had no other documents or evidence relating to the case other than the statement his daughter made in 1994. Mr. Mangum told Ms. Zier that due to his medical bills and inability to travel, he would not be coming to the hearing and he did not.

7. Kara Mangum was called as a witness. She was born in 1984 and was nine years of age when the defendant was charged, eleven years of age at the time of the dismissal in 1996, twenty years of age when she requested that the case be reopened and twenty-three years of age at the time of the hearing.

After making the allegations against the defendant in 1994, she moved to Georgia with her father who was successful in getting a Georgia Family Court to award him custody. According to Ms. Mangum, she had no independent recollection of any discussions that the case would be dismissed in 1996, but later acknowledged that her father told her it was being dismissed. In 2004, she told her father that she wanted to reopen the case. Ms. Mangum acknowledged that her father had made a videotape of her discussing the case, but she had no idea where the tape was.

Under cross-examination, she admitted that she told Investigator Downie that she was now old enough to go forward with the case, and in 1996 she was not. She admitted that she has problems with her memory. She acknowledged that she made the decision to not proceed with the case in 1996 because she was too young. (Tr. p. 72).

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Ms. Mangum admitted that her father was the one that initiated this action, that he was a psychic who could predict the future, and that she had inherited that quality. She acknowledged that he had a number of aliases that he used while she was growing up and moving around.

Ms. Mangum was asked about allegations in her September 7, 1994 statement that the defendant "would put his finger inside my pee pee area. In May of this year, he started putting his 'thing' in me, and about the end of the second grade he started using vibrators on me. He would try to put them inside of me." She also was asked about allegations in her statement that "he used some kind of gel in a squeeze tube. He put it on his thing and put it in my pee pee." She admitted signing the statement, but offered several excuses as to why the allegations in that statement were inconsistent with her 2004 statement in which there is no allegation of penetration. She also acknowledged that during the examination by Dr. Susan Breeland in 1994 she never made any allegations of penetration.

Mr. Swerling also queried Ms. Mangum about the video her father had made. When asked if her father may have been correcting or prompting her to describe what the defendant did, she admitted that it was possible that he had (Tr. p. 85). Ms. Mangum also admitted that she had told her mother the defendant did not touch her (Tr. p. 86). Her mother and the defendant married after her divorce from Mr. Mangum.

8. Ron Mangum, the brother of Kara, testified. He stated that after his father moved to Georgia with the children and got custody, he returned to South Carolina to live with his mother. He described a nomadic life with his father where they moved some thirty-five times because of bills coming due. He also testified that the reason his father would not return to South Carolina was because there was a bench warrant for his arrest due to substantial sums he owed his mother

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for child support – somewhere between \$50,000 and \$80,000. His father was eventually arrested in Beaufort in 1999 on the bench warrant issued by the Richland County Family Court.

Mr. Mangum also testified that Kara had told him that she had no sexual contact with the defendant and there was no oral sex or penetration. According to Mr. Mangum, his father had told Kara that he would make sure their mother and the defendant were never happy, and that he would make sure their lives were a living hell.

9. Erin Gaddy testified at the hearing as well. She is Assistant Director for the Elder Disability Program at the National College of District Attorneys, and was formerly an Assistant Solicitor in the Fifth Judicial Circuit. Ms. Gaddy was assigned the Mangum case when it was reinitiated in 2004. Ms. Gaddy and Investigator Downie determined that all records and evidence relating to the earlier prosecution had been destroyed following the expungement order in 1996. She also described discussing the case with Robert Elam who had handled the case in 1996 when it was nol prossed. Mr. Elam told her about the videotape that is referenced above and that the videotape “went against every Child Advocacy Center principle, that it went against every protocol that we have for child forensic investigations, and that it would strongly hamper the prosecution’s case.” (Tr. pp. 100-101). Ms. Gaddy also testified that she and Investigator Downie tried to reinvestigate the case as if it had never been brought, “but it was unable to be investigated at that point.” (Tr. p. 104).

In view of the lack of evidence and records from the earlier prosecution and the recent Court of Appeals’ decision in Lee, Ms. Gaddy was of the opinion, and still is, that a prosecution of the defendant would be in violation of his due process rights under the Constitution due to the prejudicial pre-indictment delay. She notified the Mangums of her decision not to go forward on the case in a letter dated February 25, 2005. She was not aware, and the record is not clear as to

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how the case was eventually presented to the Grand Jury, but that information is not necessary to a resolution of this case on the merits.

10. Robert Elam is an Assistant Solicitor in the Fifth Judicial Circuit and handled the case in 1996. He not proessed the case and consented to the expungement. Mr. Elam has worked for the Solicitor's Office for fourteen years. He testified he had no success in getting Ms. Mangum or her father to come to South Carolina to prosecute the case, despite the fact that he was prepared to go forward. Mr. Elam had no recollection of what documents were in the file prior to it being expunged, but he had a clear recollection of the videotape made by Mr. Mangum. He said the tape was "horrifying" with respect to the manner in which the interview was conducted. Mr. Mangum would ask a question and then challenge Ms. Mangum about her answers. He would state to Ms. Mangum "that's not what you told me. Didn't you tell me whatever other words were used, something else happened?" (Tr. p. 135). Mr. Elam felt that the tape was clearly exculpatory, and would be an effective tool for impeachment in the hands of a defense lawyer. To him, it was clearly a critical piece of evidence and would have to be turned over to the defense. He also testified that during the interview Ms. Mangum was giggling, and while he thought it might be nerves, he believed it would cast a pretty bad impression. (Tr. p. 134). Mr. Elam communicated the fact that he was not proressing the case to the Mangums.

11. Johnny Gasser also testified at the hearing. Mr. Gasser is currently in private practice doing criminal defense work. He started his practice as an Assistant Solicitor in the Fifth Judicial Circuit and became Deputy Solicitor under Barney Giese. Mr. Gasser went to work at the United States Attorney's Office and served in various supervisory positions and eventually served as the Interim United States Attorney.

Mr. Gasser has handled and/or supervised thousands of cases and testified that this was the only case he ever saw that had the kind of tape referenced above. The tape was clearly exculpatory and went to the veracity and credibility of the witnesses. The tape was a critical piece of evidence and would be utilized for impeachment purposes. Mr. Gasser explained that during the taped interview, Mr. Mangum coached, corrected, and suggested things to Ms. Mangum. He was directing and prompting his daughter. Had the case proceeded to trial, the tape would have been turned over to the defense as exculpatory evidence.

Mr. Gasser also testified about the existence of a bench warrant for Mr. Mangum for failure to pay child support. He opined that in his experience, a child near the age of twelve is not too young to prosecute a sexual assault case, and that her age would not have been a reason to dismiss the case.

Mr. Gasser testified that he explained to Mr. Mangum how the tape impaired the prosecution of the case and the likelihood of getting a conviction. Both Mr. Mangum and his daughter refused to come to South Carolina to prosecute the case and after vetting the matter with other experienced prosecutors in the office, a decision was made to *nol pross* the case based on the unavailability of the witnesses and his view of his role as a prosecutor to seek justice.

Mr. Gasser also testified that in his experience, the absence of the videotape would substantially impair the defendant's rights to a fair trial.

FINDINGS OF FACT

The Court makes the following findings of fact based on the evidence presented:

1. The defendant was arrested on or about September 22, 1994, and charged with criminal sexual conduct with a minor in the first degree, in warrant number D-879753. The



7. On November 7, 2004, Kara Mangum, now almost twenty (20) years of age, contacted the Richland County Sheriff's Department and requested that the case be reopened. Even if the Court were to find that there was some legitimate excuse for Ms. Mangum's failure to appear and prosecute the case in 1996 (the Court has found above that no such excuse does exist), there is no possible justification for Ms. Mangum waiting until November of 2004 to seek to reopen the case.

8. Investigator Downie and Assistant Solicitor Erin Gaddy were assigned the case and discovered that all records and evidence relating to the case were destroyed. A search was made at the Sheriff's Department, the Solicitor's Office and the Richland County Clerk's Office. The only documents relating to the original case that could be located from other sources were Kara Mangum's original handwritten statement made in 1994 and a report from Dr. Susan Breeland who examined Ms. Mangum in 1994.

9. Investigator Downie and Erin Gaddy attempted to reinvestigate the case. Mr. Downie created a 2004 incident report, took a 2004 statement from Ms. Mangum, and took some photographs of the incident location.

10. Erin Gaddy reviewed the case and made a determination that the State could not go forward because of the prejudicial pre-indictment delay based on the ruling in the Court of Appeals case of State v. Lee, 630 S.C. 530, 602 S.E.2d 113 (Ct. App. 2004). The Court of Appeals' decision in Lee was later affirmed by the South Carolina Supreme Court. Ms. Gaddy made this determination based upon the fact that all records and evidence, with the exceptions noted above, were destroyed pursuant to the 1996 expungement order, particularly an exculpatory videotape of an interview of Ms. Mangum conducted by her father. Ms. Gaddy notified the Mangums of her decision in a letter dated February 25, 2005. The case was

presented to the Grand Jury by someone other than Investigator Downie or Erin Gaddy, and Indictment Number 05-GS-40-06747 was returned by the Richland County Grand Jury in or around September of 2005.

11. The case was transferred to Suzanne Mayes by the Richland County Solicitor's Office. Ms. Mayes gathered the information she could find and turned that information over to Mr. Swerling. The information she gathered included a 1994 and 2004 statement of Kara Mangum, a 1994 report from Dr. Susan Breeland and an incident report and photographs from 2004.

12. The defendant filed a Motion to Dismiss the Indictment on May 5, 2008 alleging that the pre-indictment delay substantially impaired the defendant's rights to a fair trial and the continued prosecution of the defendant would violate the defendant's due process rights under the Constitution pursuant to the South Carolina Supreme Court decision in Lee.

13. In preparation for the hearing on the Motion to Dismiss, efforts were again made to secure any additional evidence from the 1994 - 1996 prosecution of the case, including the exculpatory videotape referenced above.

14. The Richland County Solicitor's Office, the Richland County Clerk of Court, the Richland County Sheriff's Department, and the Richland County Department of Social Services, as well as Ronald and Kara Mangum were unable to produce any records or evidence from the 1994 - 1996 prosecution, except as referenced above. The Court finds that all reasonable efforts have been made to locate any additional evidence from the State of South Carolina, and further efforts would be futile.

15. Johnny Gasser and Robert Elam viewed the videotape in question in 1996 and in their opinion the videotape was a critical piece of evidence in the case. The interview was conducted

in a manner which was inconsistent with acceptable standards. Ms. Mangum was coached, prompted, and answers were suggested to her by her father during the interview. It was clear to Mr. Gasser and Mr. Elam that the videotape was a crucial piece of evidence, cast serious doubt on the credibility of the witnesses in the case and possessed significant impeachment value to the defendant. It was also clear to them that the videotape had seriously undermined the State's successful prosecution of the case. Both testified that Ms. Mangum and Mr. Mangum refused to come to South Carolina to go forward with the prosecution and the case was properly not proessed in 1996.

16. It is of great significance to the Court that three experienced prosecutors, Mr. Gasser, Ms. Gaddy, and Mr. Elam, believe that the absence of records and evidence from the 1994 - 1996 prosecution, and in particular the videotape, would seriously impair the ability of the defendant to receive a fair trial. The tape is of particular importance because of the significant variations in Ms. Mangum's 1994 and 2004 statements as well as statements she made to Dr. Breeland in 1994 and Investigator Downie in 2004.

17. Whether Ms. Mangum or her father refused to come to South Carolina because of the bench warrant or her age is insignificant. In either event, they both sought to manipulate the judicial system to their advantage. In the first instance, they refused to cooperate and make themselves available in 1996 forcing the case to be not proessed and all records and evidence were destroyed. Furthermore, Ms. Mangum waited eight (8) years, from 1996 to 2004, to even seek to reopen the case. The Court finds that these actions by the alleged victim and her father violated the Due Process rights of the accused.

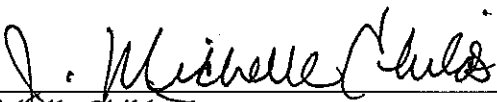
18. The videotape was exculpatory and of significant impeachment value. There may have been more, but since the file was destroyed no one will ever know. The destruction of the

records and the evidence was the direct result of the actions of Ms. Mangum and her father in refusing to return to South Carolina in 1996, and the failure to seek to reopen the case from 1996 to 2004 was also without just cause or excuse. These facts resulted in the State's pre-indictment delay which resulted in substantial prejudice to the defendant's right to a fair trial, and has meaningfully impaired his ability to defend against the charge. The prejudice to the defendant in not having the evidence and records referenced herein far outweigh any justification offered for the original dismissal in 1996 or the eight (8) year delay between 1996 and 2004. The Mangums put the State in the position it now finds itself of having to defend against allegations of prejudice from the pre-indictment delay.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court concludes that the pre-indictment delay has caused substantial actual prejudice to the defendant's right to a fair trial and the prejudice to the defendant far outweighs any reasons that have been put forth for the delay. Now therefore, it is hereby

ORDERED, that Indictment No. 2005-GS-40-0747 is dismissed with prejudice and the case is forever ended.



J. Michelle Childs
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina
5-21, 2009