IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2024-KA-00983-COA

ANTHONY DEWAYNE PITTMAN A/K/A ANTHONY D. PITTMAN A/K/A ANTHONY PITTMAN A/K/A TIGER — **APPELLANT**

v.

STATE OF MISSISSIPPI — **APPELLEE**

DATE OF JUDGMENT:	05/23/2024
TRIAL JUDGE:	HON. MICHAEL M. TAYLOR
COURT FROM WHICH APPEALED:	PIKE COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: MOLLIE MARIE McMILLIN JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BARBARA WAKELAND BYRD
DISTRICT ATTORNEY:	WILLIAM BRENDON ADAMS
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 11/03/2026
MOTION FOR REHEARING FILED:	

BEFORE BARNES, C.J., McDONALD AND EMFINGER, J.J.

McDONALD, J., FOR THE COURT:

¶1. Anthony Pittman appeals his conviction of aggravated assault in violation of Mississippi Code Annotated section 97-3-7(2)(a)(ii) (Rev. 2020)[1] rendered by a Pike County

[1] Section 97-3-7(2)(a)(ii) provides:

> A person is guilty of aggravated assault if he or she . . . (ii) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; . . . and, upon conviction, he or she shall be punished by imprisonment in the

Circuit Court jury, and he also contends his sentence as a habitual offender under Mississippi Code Annotated section 99-19-83 (Rev. 2020)[2] to life imprisonment without parole eligibility in the custody of the Mississippi Department of Corrections was unlawful. On appeal, Pittman asserts one issue, namely, that his constitutional and statutory rights to a speedy trial were violated. After reviewing the record, the arguments of the parties, and relevant precedent, we affirm the circuit court's denial of his motion to dismiss for lack of a speedy trial and affirm Pittman's conviction and sentence.

FACTS AND PROCEDURAL HISTORY

The Incident

¶2. On December 31, 2018, in Pike County, Angela Williams (Pittman's mother) hosted a New Year's Eve gathering at her home. During the gathering, Shaketia Pittman (Pittman's sister) accidentally backed her car into the car of her niece, Waldrianna ("Dree") Morgan. Shaketia and Dree got into a physical and verbal altercation regarding the accident. Pittman

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> county jail for not more than one (1) year or sentenced to the custody of the Department of Corrections for not more than twenty (20) years.

[2] Section 99-19-83 provides:

> Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more, whether served concurrently or not, in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies shall have been a crime of violence, as defined by Section 97-3-2, shall be sentenced to life imprisonment[.]

and Thomas Robinson ("TJ"), Dree's boyfriend, attempted to de-escalate the fight**,** but Pittman began arguing with Dree, which led to an argument between TJ and Pittman, who began to fight. When they stopped fighting, TJ saw that he had been stabbed and was bleeding from his abdomen. Dree's parents drove him to the hospital where TJ underwent surgery for the stab wound.

¶3. When police arrived at the scene, they arrested Pittman, but only for an outstanding warrant for grand larceny. The next day, January 1, 2019, he was charged for attempted murder.

Procedural History

2019–2021

¶4. Although charged, Pittman was not indicted on the attempted murder charge until June 5, 2020, eighteen months later. Thereafter, Pittman was not arraigned for another year, until June 14, 2021. He pled not guilty, and his attorney, Nelson Estess, asked that Pittman either be brought to Pike County a few weeks prior to his next court date or that Pittman be held in Pike County so that he (Estess) could have the opportunity to discuss trial strategy with Pittman.[3] Estess tried to get Pittman's attempted murder charge set for trial near the date of Pittman's larceny trial. The court continued the attempted murder case to the August term but did not rule on Estess's request that Pittman be held in Pike County. Pittman was

[3] Sometime in the interim, Pittman's probation on a different charge had been revoked, and he was incarcerated at the MDOC facility in Rankin County.

returned to Rankin County, where he had been held on the larceny charge.

¶5. An omnibus motion hearing was scheduled for August 10, 2021, but it was postponed until October 11, 2021, because MDOC was not transporting prisoners due to COVID-19 restrictions. At that time, the court noted that MDOC's failure to transport prisoners because of COVID-19 restrictions was beyond the control of anyone in the courthouse.[4] At the hearing, the court also noted it was aware that MDOC's failure to bring Pittman to hearings will put Pittman "past the sixty (60) days to get to trial."

¶6. The omnibus motion hearing was scheduled for October 11, 2021, but again MDOC failed to transport Pittman, likely because of COVID-19 restrictions.[5] On November 9, 2021, the rescheduled hearing date, both the State and defense counsel agreed to a continuance because MDOC failed to transport Pittman once again for reasons unstated. At that hearing, there was no discussion of rescheduling the motion hearing or trial.

2022–2023

¶7. Between April 12, 2022 and November 13, 2023, there were thirteen dates when either trial or hearings on motions were set and MDOC failed to transport Pittman to court

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[4] We take judicial notice of the Mississippi Supreme Court's numerous administrative orders between March 13, 2020, and January 2022 acknowledging the President's declaration of a national emergency due to COVID-19. *See*, *e.g., In re: Emergency Order Related to Coronavirus Covid-19*, No. 2020-AD-00001-SCT (Miss. Mar. 13, 2020). These orders allowed for restrictions of court proceedings to prevent the spread of the virus, among them giving courts explicit discretion to extend deadlines, reschedule hearings, limit the number of participants in hearings, et cetera.

[5] Many docket entries simply state that MDOC failed to transport Pittman but did not provide a reason.

each time. On one of those dates, November 13, 2023, MDOC took Pittman to the wrong place.

¶8. In addition to dates when MDOC failed to transport him, Pittman's counsel asked for several continuances to adequately prepare for trial because counsel had not had the opportunity to meet with Pittman due to MDOC lockdowns and restrictions. For example, on June 21, 2022, the court held a hearing on defense counsel's motion for continuance because of MDOC's numerous failures to transport Pittman, which allegedly had impacted counsel's ability to prepare for trial. Pittman did attend that June 21, 2022 hearing and told the court that he might hire private counsel and that he was concerned his constitutional rights were being violated by the delay. Pittman also expressed that he had filed motions with the Mississippi Supreme Court for a fast and speedy trial.[6] The circuit court informed Pittman that the transportation issues were due to MDOC restrictions and COVID-19, and they were not his attorney's fault. At that time, Pittman's trial was reset for August 9, 2022, but on that date, MDOC failed to transport Pittman for no reason stated. Trial was then continued to November 1, 2022, and again MDOC failed to transport Pittman.

¶9. On April 10, 2023, defense counsel filed a motion for Pittman to undergo a mental evaluation, which the court took under advisement. At the hearing on the motion, Pittman appeared and requested a continuance because his family hired private counsel for him, but

[6] The Supreme Court dismissed the speedy trial motions Pittman filed, finding that they were pending before the circuit court. The Supreme Court also dismissed Pittman's motion for post-conviction relief, motion to show cause, and motion to be returned for trial.

he did not disclose the name of the new attorney to the court. Also during that court appearance, Pittman again expressed concerns about the delay of his trial and his frustrations with the progress of his case. At a May 8, 2023 status hearing, defense counsel requested another continuance because counsel could not be in court due to a conflict. On May 15, 2023, a court administrator failed to enter a transport order for Pittman. The parties thus agreed to a continuance until June 12, 2023.

¶10. On August 15, 2023, Pittman filed a pleading with the Supreme Court asking the Court to order his return to Pike County and that trial be set on his attempted murder charge. The pleading was entitled "Motion to Show Cause, Motion to be Returned for Trial, to Dismiss Charges, Demand for Trial and for Appointment of Counsel." The Supreme Court sent a copy of Pittman's pleading to the Pike County judge requesting a response.

2024

¶11. On February 6, 2024, defense counsel filed a motion for continuance stating that the defense needed more time to prepare. Pittman asked the court to appoint new counsel for him. At a hearing on both requests on February 13, 2024, Pittman demanded a trial. The court also ordered a competency evaluation because of Pittman's behavior. The court wanted to ensure that Pittman understood why he was on trial.[7]

Order on Speedy Trial

[7] On March 6, 2024, Dr. Webb submitted a report concluding that Pittman was competent to stand trial.

¶12. On that same day, February 13, 2024, the court considered Pittman's August 2023 pleading before the Mississippi Supreme Court and entered an order denying Pittman's motion for a speedy trial for several reasons. The circuit court noted under Mississippi Code Annotated section 99-17-1 (Rev. 2020), "all offenses for which indictments are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned." The court noted that Pittman had filed two written motions "for a fast and speedy trial" in his larceny case that had been denied. Pittman had been arraigned on June 14, 2021, and the omnibus hearing set for August 9, 2021, was continued by agreement of the parties. The court found that "the rest of Pittman's appearances before the court reflect that Pittman himself has caused delays at almost every turn." The court stated that "indisputabl[y], there have been delays in Pittman's criminal causes." However, the court found that Pittman caused the delays in getting the case to trial by agreeing to continuances and by alleging that he had "retained new counsel, but refusing to name said attorney." The court also stated that throughout the pendency of Pittman's cases, it faced "unprecedented challenges" with the COVID-19 pandemic, which caused unavoidable delays. The court found that Pittman was not entitled to relief due to the delays.

¶13. On March 12, 2024, the circuit court responded to the Supreme Court's order (*see supra* ¶10) by forwarding the Supreme Court a copy of its February 13, 2024 order and informing the Court that it had considered Pittman's speedy trial claims and dismissed them. Then on March 22, 2024, the Supreme Court dismissed Pittman's motion he had filed in the

appellate court.

¶14. At a docket call on May 14, 2024, Pittman requested to represent himself. The circuit court informed Pittman that he was permitted to represent himself but that the possibility of a not-guilty verdict at trial as a pro se defendant was slim. Pittman and his mother requested more time to find Pittman a lawyer, but the court denied the request because Pittman had a lawyer, Estess, and witnesses were already set to arrive the next week for trial. At that hearing, the court gave Pittman time to weigh the options of proceeding pro se or using Estess as his attorney. A status conference was held on May 20, 2024, to determine whether Pittman would be representing himself pro se at trial. The court instructed Pittman that he could represent himself but made him use Estess as his standby counsel. Trial began the next day, on May 21, 2024.

¶15. At trial, the victim, law enforcement officers, medical professionals, and family members who were present at the time of the altercation testified. After three days, the jury found Pittman guilty of aggravated assault as a lesser-included offense of attempted murder. The court sentenced Pittman as a habitual offender to life imprisonment without parole eligibility on May 23, 2024, because he had been previously convicted on more than one felony and served more than a year on those convictions (one for kidnapping, which is a crime of violence).

Post-trial

¶16. On June 7, 2024, Pittman's attorney, Estess, filed a motion for a new trial raising five

grounds, including the court's denial of Defendant's motion for a speedy trial. Estess later stated that as Pittman's advisory counsel, he filed the motion for a new trial on Pittman's behalf so that Pittman would not lose his opportunity to appeal. The circuit court held a hearing on the motion for a new trial on June 24, 2024, and entered an order denying it that same day. For some unknown reason, the June 24, 2024 order was also stamped filed in the record on July 2, 2024.

¶17. On July 26, 2024, Pittman, pro se, filed a second motion for a new trial as well as a motion for an extension of time to appeal. The court did not rule on Pittman's second motion for a new trial or the motion for an extension of the appeal deadline. On August 6, 2024, Pittman, pro se, filed a third motion for a new trial, which the court did not consider. On August 26, 2024, Pittman filed a notice of appeal. On August 7, 2025, this Court found special circumstances existed to suspend the thirty-day deadline to appeal and accepted Pittman's appeal as timely.

¶18. On appeal, Pittman raises a single issue: the violation of his right to a speedy trial.

Discussion

¶19. Criminal defendants are guaranteed the right to a speedy trial by the United States and Mississippi Constitutions. U.S. Const. Amend. VI; Miss. Const. art. 3, § 26; *Taylor v. State*, 412 So. 3d 1208, 1215 (¶12) (Miss. Ct. App. 2025). Defendants also have a statutory right to trial within 270 days of arraignment under Mississippi Code Annotated section 99-17-1. In determining whether a speedy trial violation occurred, we must consider the totality of the

circumstances. *Bateman v. State*, 125 So. 3d 616, 628-29 (¶40) (Miss. 2013).

¶20. The United States Supreme Court established a four-part test to determine if a defendant's right to a speedy trial has been violated. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The Mississippi Supreme Court has applied these factors as well. *See Bateman*, 125 So. 3d at 628 (¶40). "The relevant factors to be considered are (1) the length of delay; (2) the reason for delay; (3) whether the defendant asserted his right to a speedy trial; and (4) whether the defendant has been prejudiced by the delay." *Id.* The Mississippi Court of Appeals has held:

> Courts must 'engage in a difficult and sensitive balancing process' of the four factors because none of the factors is 'either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.

Berryman v. State, 337 So. 3d 1116, 1126 (¶32) (Miss. Ct. App. 2021) (citing *Barker*, 407 U.S. at 533)).

¶21. A review of a ruling on an alleged speedy trial violation depends in part on whether the trial delay rose from good cause. *Giles v. State*, 306 So. 3d 830, 835 (¶9) (Miss. Ct. App. 2020) (quoting *DeLoach v. State*, 722 So. 2d 512, 526 (¶12) (Miss. 1998)). When an accused raises a speedy trial violation before the trial court, the courts must consider the questions of "whether there was 'good cause' for a delay and whether the defendant has been prejudiced by any delay." *Berryman*, 337 So. 3d at 1126 (¶33) (quoting *State v. Woodall*, 801 So. 2d 678, 680-81, 687 (¶¶7, 29, 31) (Miss. 2001)). This Court will uphold the trial court's finding

if substantial, credible evidence supports it. *Woodall*, 801 So. 2d at 680 (¶7).. If no probative evidence supports the trial court's finding of good cause and the finding is clearly erroneous, this Court will ordinarily reverse. *Id.*

(1) *Length of Delay*

¶22. "The constitutional right to a speedy trial attaches when a person has been accused [;] [t]herefore, the speedy-trial clock begins running with the defendant's arrest, indictment, or information, whichever occurs first." *Berryman*, 337 So. 3d at 1126 (¶34) (citations and quotation marks omitted) (quoting *Stark v. State*, 911 So. 2d 447, 450 (¶7) (Miss. 2005)). The length of delay alone is not enough to assert a speedy trial violation, but it does act as a "triggering mechanism" for inquiry into the other *Barker* factors. *Barker*, 407 U.S. at 530. Our Supreme Court has stated that "any delay exceeding eight months is presumptively prejudicial" and requires analysis of the remaining *Barker* factors. *Stark*, 911 So. 2d at 450 (¶7). "Once the delay is deemed presumptively prejudicial, the burden shifts to the prosecution to produce evidence justifying the delay and to persuade the trier of fact of the legitimacy of these reasons." *Brown v. State*, 436 So. 3d 810, 823 (¶41) (Miss. Ct. App. 2026) (quoting *McBride v. State*, 61 So. 3d 138, 142 (¶9) (Miss. 2011)).

¶23. In this case, Pittman was arrested on December 31, 2018, for an outstanding larceny warrant and then charged with attempted murder on January 1, 2019. Pittman was indicted on June 5, 2020, and arraigned on June 14, 2021, but he was not tried until May 21, 2024. Thus, Pittman's delay of approximately sixty-five months from arrest to trial is presumptively

prejudicial. Because of the length of the delay and the presumption it raises that the delay was prejudicial, we move on to analyzing the other *Barker* factors.

(2) *Reasons for Delay*

¶24. When the length of the delay is presumptively prejudicial, "the burden shifts to the prosecution to produce evidence justifying the delay and to persuade the trier of fact of the legitimacy of these reasons." *Brown*, 436 So. 3d at 823 (¶41). "[D]ifferent reasons for delay are assigned different weights." *Williams v. State*, 305 So. 3d 1122, 1132 (¶31) (Miss. 2020). For example, prosecution's "[d]eliberate attempts to delay the trial to hamper the defense are weighted heavily against the government." *Id.* Negligence or overcrowded courts are considered more neutral reasons for delay that are still weighted against the government, but less heavily. *Id*. "Delays caused by the defense, such as requests for continuances, will toll the running of the speedy-trial clock for the length of time attributable to the continuance." *Taylor*, 412 So. 3d at 1216 (¶15) (quoting *Courtney v. State*, 275 So. 3d 1032, 1042 (¶27) (Miss. 2019)). If the record is silent as to why there was a delay, then it weighs against the State because the burden is on the State to prove good cause for the delays. *Harris v. State*, 311 So. 3d 638, 655 (¶80) (Miss. Ct. App. 2020). In short, "the State must prove either that the defendant prompted the delay or that the State had good cause." *Berryman*, 337 So. 3d at 1127 (¶36) (quoting *De La Beckwith v. State*, 707 So. 2d 547, 606 (Miss. 1997)). If the trial court's factual determination is based on substantial, credible evidence, then we will uphold the trial court's decision. *Id.* (citing *DeLoach*, 722 So. 2d at 516 (¶12)).

A. *Pittman's Pre-indictment and Arraignment Delays*

¶25. In this case, Pittman was arrested and charged with attempted murder on January 1, 2019, but not indicted until June 5, 2020, 522 days later. After a review of the record, we have found no explanation for this delay. Our Supreme Court has stated that delays before an indictment are considered investigative delays and, thus, are neutral delays that should not be weighed against the State or Pittman. *Taylor*, 412 So. 3d at 1216 (¶16). An investigative delay is fundamentally unlike a delay undertaken by the government to gain a tactical advantage over the accused. *State v. Woodall*, 801 So. 2d 678, 682 (¶15) (Miss. 2001). In addition, after March 2020, much of the country came to a standstill due to COVID-19, which accounts for several months during that time. Therefore, the pre-indictment delay here cannot be deemed so unduly burdensome as to cause it to be weighed against the State and is neutral.

¶26. There was a delay of one year between Pittman's indictment and arraignment—from June 5, 2020, to June 14, 2021. However, this period fell during the height of COVID-19, which resulted in continuances and delays in the courts. This delay cannot be weighed against the State.

B. *Delays Caused by MDOC's Failure to Transport*

¶27. The first omnibus hearing was scheduled for August 10, 2021, but it had to be rescheduled because, under COVID-19 restrictions, MDOC was not transporting prisoners. There were approximately twelve other court dates, whether for trial or hearings on motions

where MDOC did not transport Pittman for reasons unstated in the record. The circuit court's February 13, 2024 order stated that the challenges faced because of the pandemic were unprecedented and beyond anyone's control. We agree, and the delay does not weigh against either party.

C. *Defense's Requested Continuances and Defense-Related Delays*

¶28. The circuit court held that Pittman contributed to the delays by asking for continuances. We note that at the June 21, 2022 hearing, defense requested a continuance because of COVID-19, MDOC's failure to bring Pittman to court, and Pittman's frustrations with the delay of trial all interfered with counsel's ability to prepare for trial. Also on June 12, 2023, defense counsel requested a continuance because Pittman was not transported. Finally, on February 6, 2024, defense counsel asked for a continuance for time to prepare for trial. Ordinarily, we would agree that Pittman's requests for a continuance would weigh against him. *May v. State*, 285 So. 3d 639, 649 (¶30) (Miss. Ct. App. 2019). But under these circumstances, the defense only needed continuances because the COVID-19 restrictions continued to cause MDOC to fail to bring Pittman to court or even to Pike County to meet with his attorney. Since COVID-19 was not something that the State or Pittman could control, these continuance requests should not be weighed against Pittman or the State.

¶29. However, other reasons that defense counsel needed a continuance can be counted against Pittman. *May*, 285 So. 3d at 649 (¶30) (holding that a defendant is bound by his lawyer's decisions as to the timing of trial and the need for a continuance despite the

defendant's prior pro se demand for a speedy trial). At the arraignment on June 14, 2021, defense counsel requested a continuance for trial to have the date closer to the trial for another charge against Pittman. Furthermore, on April 20, 2023, Pittman requested a continuance because he had a new attorney who had just received the indictment that day. At that time, Pittman also expressed concerns about his delays in going to trial and being uncooperative with his current counsel; defense counsel also requested a mental evaluation for Pittman. On May 8, 2023, defense counsel requested a continuance because of a scheduling conflict requiring counsel to be present in a different county's courthouse. Finally, on May 14, 2024, at the pretrial conference, Pittman requested a continuance for time to find a new lawyer, but the judge denied the request. Therefore, because these reasons were in the defense's control, these delays are weighed against Pittman.

D. *Administrative Delay and Mental Evaluations*

¶30. On May 15, 2023, a circuit court administrator failed to enter a transport order for Pittman to be brought to court. However, Pittman did not claim or show that this single administrative "snafu" was caused by the prosecution's desire to "gain tactical advantage over the accused." *Barker*, 407 U.S. at 53, n. 32 (citing *United States v. Marion*, 404 U.S. 307, 325 (1971)). Also, it took Dr. Webb only a month (from February to March 2024) to perform the court-ordered evaluation of Pittman, which strengthened Pittman's argument. In addition, delays attributable to obtaining a mental evaluation requested by the defense are not counted against the State. *Perry v. State*, 233 So. 3d 750, 757 (¶15) (Miss. 2017). These

are neutral delays that should not be counted against the State or Pittman.

E. *Summary of Reasons for Delay*

¶31. In summary, the approximate sixteen-month delay between Pittman's arrest (January 2019) and indictment (June 2020) is neutral due to investigative delays and COVID-19. The delay between indictment (June 2020) and arraignment (June 2021) should not be weighed against the State due to COVID-19. The remainder of the delay, after August 2021 through May 2024, was attributable to actions of both the State and Pittman. Thus, the reasons for the delay are neutral.

(3) ***Assertion of the Right to a Speedy Trial***

¶32. The Mississippi Supreme Court has held that "[a]lthough it is the State's duty to ensure that the defendant receives a speedy trial, a defendant has some responsibility to assert this right." *Taylor*, 162 So. 3d at 785 (¶10). The defendant's failure to assert a right to a speedy trial "will make it difficult for [him] to prove that he was denied a speedy trial." *Barker*, 407 U.S. at 532. Here, Pittman filed a motion for a speedy trial in 2022. Every time he was in court, he brought up his right to a speedy trial and continued to demand a trial. In his motion for a new trial, Pittman also alleged the speedy-trial violation. Therefore, Pittman asserted his right to a speedy trial.

(4) ***Prejudice***

¶33. The Mississippi Supreme Court has made it clear that mere delay does not mean that "actual prejudice" to the defendant exists. *Graham v. State*, 185 So. 3d 992, 1005 (¶41)

(Miss. 2016). To determine whether the delay resulted in actual prejudice, the Court considers three interests that the right to a speedy trial was meant to protect. These include "(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." *Taylor v. State*, 162 So. 3d 780, 787 (¶16) (Miss. 2015). "Of these three interests, the last is the most important; and when violated, [is] the most prejudicial to the defendant," *Collins v. State*, 232 So. 3d 739, 746 (¶26) (Miss. Ct. App. 2017), because a defendant's inability to adequately prepare his case "skews the fairness of the entire system." *Barker*, 407 U.S. at 532. "Generally, proof of prejudice entails the loss of evidence, death of witnesses, or staleness of an investigation." *McCormick v. State*, 183 So. 3d 898, 903 (¶21) (Miss. Ct. App. 2015). The defendant bears the burden of showing actual prejudice. *Reed v. State*, 191 So. 3d 134, 141 (¶19) (Miss. Ct. App. 2016).

¶34. In this case, Pittman has failed to show any actual prejudice. In his appellate brief, Pittman asserts that the length of his delay, itself, was prejudicial, and repeats the times he brought the delay to the court's attention. But, as previously stated, delay raises only a presumption of prejudice; it does not prove actual prejudice, which is needed to satisfy the fourth *Barker* factor. Unfortunately, Pittman failed to show how the delay or his lengthy pretrial incarceration made him or his counsel unable to prepare for trial. Pittman asserted no prejudice due to a loss of evidence or witnesses in his motion for a new trial to the circuit court, nor does he describe any specific detriment to his defense in his brief to this Court.

Pittman failed to provide specific examples of actual prejudice, and he did not establish prejudice because of the delay.

(5) ***Balancing the Barker Factors***

¶35. In this case, the length of delay is presumptively prejudicial and triggered the *Barker* analysis. The reasons for the delay are mixed—some weighing against the State, some weighing against Pittman, and some being neutral. The sixteen-month delay between the arrest and indictment (January 2019–June 2020) was due to either an investigative delay or to COVID-19. Then the delays through 2022 were neutral due to COVID-19 and MDOC's failure to transport, and they are not weighed against either party. Some of Pittman's continuance requests are weighed against him, and some are not. Assertion of the right to a speedy trial is a factor weighed in Pittman's favor because he argued this issue to the court several times. What tips the balance against Pittman is the actual-prejudice factor. The Mississippi Supreme Court has stated, "Where the delay is neither intentional nor egregiously protracted, and where there is a complete absence of actual prejudice, the balance is struck in favor of rejecting [the defendant's] speedy trial claim." *Taylor*, 162 So. 3d at 787 (¶17). Balancing all the *Barker* factors in this case, and in the absence of actual prejudice, we hold that the circuit court's decision to deny Pittman's motion for a speedy trial was based on substantial, credible evidence and that his right to a speedy trial was not violated.

CONCLUSION

¶36. Although it took an extremely long time to bring Pittman's attempted murder case to

trial, the circuit court did not err by finding those factors weighing against the State were for the most part caused by the COVID-19 pandemic and its impact on the prison system. These causes were unanticipated by the prosecutors in this state and the judicial system. Moreover, motions Pittman himself filed contributed in part to the delay. Most importantly, Pittman failed to establish any prejudice to his defense caused by the delay. After reviewing the totality of the circumstances and applying the *Barker* balancing test, we find that Pittman's constitutional and statutory rights to a speedy trial were not violated. Thus, we affirm the circuit court's judgment denying Pittman's motion, as well as Pittman's conviction and sentence.

¶37. **AFFIRMED.**

BARNES, C.J., CARLTON, P.J., LAWRENCE, EMFINGER, WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR. McCARTY, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION, JOINED BY WESTBROOKS, McDONALD AND LASSITTER ST. PÉ, JJ. WILSON, P.J., AND WESTBROOKS, J., CONCUR IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION.

McCARTY, J., SPECIALLY CONCURRING:

¶38. A defendant's constitutional right to a speedy trial is inherently tied to timely transportation to appear before the courts. While I agree with the result reached by the majority, I write separately to emphasize the troubling pattern of conduct by the Department of Corrections.

¶39. A review of the timeline in this case reflects that it was MDOC who actually, and almost entirely, was responsible for the significant number of delays in this case. Pittman's

case had to be continued at least **13 times**, spanning **over 2 years**—solely because MDOC failed to bring him to court for his hearings. The period of continuances includes:

> August 10, 2021; October 11, 2021; November 9, 2021; April 12, 2022; August 9, 2022; November 1, 2022; December 12, 2022; January 23, 2023; June 12, 2023; June 26, 2023; August 8, 2023; September 18, 2023; and October 23, 2023.

¶40. At the hearing on August 10, 2021, the trial court acknowledged the defendant's right to speedy trial, stating:

> All right. Let's see, when are - - since DOC is not transporting . . . let's continue that . . . . And the Court will note that that will put Mr. Pittman past the 60 days to get a trial date set, as required, and the Court notes that that is beyond the control of anyone in this room as MDOC has ceased transporting inmates due to Covid restrictions, and it is not anticipated that that will be any different by September, so the Court will give him the October 11th date for his omnibus in this case.[8]

¶41. During a later hearing on June 21, 2022 (for which Pittman had actually been transported and was present), the following discussion occurred:

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[8] Taking judicial notice, MDOC published a news release on March 12, 2020 which stated: "Effective immediately, the [MDOC] is suspending the transfers of inmates from all county jails to MDOC custody until further notice . . . as the MDOC establishes sanitation and prevention protocols to prevent the spread of COVID-19." *See Skinner v. State*, 270 So. 3d 1046, 1050 n.6 (Miss. Ct. App. 2018) ("a court may look to any source it deems helpful and appropriate, including official public documents, records, and publications").

Taking further judicial notice, a press release from MDOC dated May 29, 2020 which states: "As the [MDOC] remains vigilant in preventing the spread of COVID-19, the department is resuming inmate movement in a limited, controlled, and safe manner." And a press release from MDOC on October 21, 2021 provides: MDOC "announces that all state prisons will reopen to visitation beginning November 1, 2021, ending a three-month moratorium. . . . Given the drop in COVID cases, it is appropriate and beneficial for inmates to be able to see their relatives and reopening will also allow for them to participate in more programs."

[Defense Counsel]: Judge, as with other cases we've had issues, with DOC staffing and Covid concerns, being able to get Mr. Pittman transported at times.

[Court]: . . . they [MDOC] haven't brought you . . . for your hearings and when we've needed you because of Covid, one thing and another . . . .

. . . From the bench, MDOC has failed to transport you several times, Covid lockdowns, all those things have happened.

. . . your attorney can't get you transported - - I can't get you transported if they're on lockdown because of Covid. That's what's happened. It's not a lack of anybody - - we all understood you needed to be here.

[Pittman]: . . . I'm not - - we not on no lockdown, though.

[Court]: You don't now, but you did in prior times when we have attempted to transport you, bring you back here. And there's nothing your attorney - - there's nothing I can do about that.

Pittman's trial *still* did not occur for another 2 years.[9] In those 2 years, MDOC accounted for **at least 10** continuances for failing to transport Pittman to court.

¶42. "The courts do not manage MDOC inmates or operate the department of corrections." *Spiers v. State*, 257 So. 3d 842, 844 (¶7) (Miss. Ct. App. 2018) (quoting *Jefferson v. State*, 958 So. 2d 1276, 1287 (¶34) (Miss. Ct. App. 2007)). As such, the trial courts are necessarily without the power to force MDOC to uphold its duties of bringing a defendant to court. The only power held by the trial courts is the power to sign transport orders instructing MDOC

[9] Taking judicial notice, our Mississippi Supreme Court issued its last COVID-19 related emergency order on January 27, 2022, in which it held: "Individual judges have the discretion to postpone jury trials scheduled through Friday, February 25, 2022." (Emergency Administrative Order-27). The emergency orders were not extended beyond this date of February 2022. Despite the cutoff date excusing COVID-19 related continuances being February 25, 2022, Pittman's trial *still* did not occur for another 2 years.

to bring a defendant to a specific courthouse at a specific time. *See Nicolaou v. State*, 596 So. 2d 863, 865 n.3 (Miss. 1992) ("The circuit court and this Court retain the power to order the prisoner returned for specific purposes, e.g., to testify in another trial or where his presence is required to fully protect his own rights.").

¶43. Rather, the MDOC "commissioner is vested with the *exclusive* authority and responsibility for the management and control of the correctional system and for the proper care, treatment, feeding, clothing, and management of the offenders confined therein." *Spiers*, 257 So. 3d at 844 (¶7) (emphasis added) (quoting *Jefferson*, 958 So. 2d at 1287 (¶34)).

¶44. Because MDOC works intimately within and around the Judiciary, and because of its vital role in the executive function of the courts, it must honor and respect this system we both serve. Our goal is the efficient, orderly, and lawful administration of justice. MDOC should work to serve these goals, and not against them.

¶45. MDOC's failure to fulfill its duty by failing to transport a defendant to court hearings may have a direct and substantial impact on a defendant's right to a speedy trial. Although there was enough evidence of actions taken by defendant's counsel and the trial court to salvage the State's timing and trial procedures in this case, this will not be true in all cases.

¶46. Given MDOC's conduct in this case, in the future we should consider whether MDOC's repeated failure to transport a defendant might constitute "good cause" for delay. And, to which party MDOC's failures should be attributed to and/or credited against for the

Barker balancing test.[10]

WESTBROOKS, McDONALD AND LASSITTER ST. PÉ, JJ., JOIN THIS OPINION.

[10] "[T]he Mississippi Department of Corrections . . . 'is a department of the state of Mississippi and enjoys the same immunity as the state itself[.]'" *Campbell v. Harrison Cnty. Cir. Ct.*, No. 1:24-CV-224-HSO-BWR, 2025 WL 1703676, at *6 (S.D. Miss. May 14, 2025) (quoting *Hines v. Miss. Dept. of Corrs.*, No. 00-60143, 2000 WL 1741624, at *3 (5th Cir. Nov. 14, 2000)) (citing Miss. Code Ann. §§ 47-5-8 and 47-5-10). In the same sense, one could earnestly argue that delays caused by MDOC's failure to transport a defendant as in this case may be construed against the State and in favor of the defendant.