Circuit Court for Montgomery County
Case No.: 134894C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0027

September Term, 2024

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RAGHBIR SINGH

v.

STATE OF MARYLAND

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Reed,
Shaw,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: June 15, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Raghbir Singh appeals from the order by the Circuit Court for Montgomery County denying his motion to dismiss on speedy trial grounds. The circuit court ruled on Singh's motion on remand from this Court.[1] Singh is before us for the second time and asserts that the circuit court erred in denying his motion to dismiss.

For the following reasons, we hold that the 13-month and 14 day delay, while sufficient to require that we conduct a speedy trial analysis, does not justify a conclusion that Singh's right to a speedy trial was abridged. Accordingly, we shall affirm the decision of the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND

The basic facts in this case have been previously set forth, so we begin with a summary for context from our prior opinion:

> On [July] 11, 2017, Jennifer Johnson was found dead inside her apartment in Montgomery County. Near her body, the police recovered drug paraphernalia (a syringe and a burnt spoon with residue) and her cell phone.
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> Shortly before her death, Johnson had exchanged text messages with Amy Bormel. The text messages indicated that Bormel had arranged for a male acquaintance to deliver heroin to Johnson's workplace in exchange for $40 in cash.
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> A medical examiner later concluded that Johnson died as a result of a combined intoxication of carfentanil (an analogue of the synthetic opioid fentanyl), alprazolam (an anti-anxiety medication), and free morphine.

*Singh v. State*, 247 Md. App. 322, 327 (2020).

Following a controlled buy on the day after Johnson's death, police officers arrested Bormel and Singh. While in custody, the two provided "recorded statements," and the

[1] *Singh v. State*, 247 Md. App. 322 (2020).

police obtained a warrant to search Bormel's residence. Officers "seized phones and electronic devices," and later obtained a warrant to search these items for "evidence of the distribution of heroin or carfentanil." *Id.* at 328.

The State has brought three prosecutions against Singh with respect to the events leading up to Ms. Johnson's death. Although the operative time interval for our speedy trial analysis runs from March 29, 2018 until May 13, 2019, the date scheduled for trial, we briefly set forth summaries of the other cases filed for context.

**Case # 132294C**

The State filed charges against Bormel and Singh on July 13, 2017, the day after their arrests. *Id.* The State accused Singh of "conspiracy to distribute a controlled dangerous substance and conspiracy to possess a controlled dangerous substance with intent to distribute it." On July 14, 2017, the district court ordered that Singh should be held without bond.[2] *Id.* On August 24, 2017, a Montgomery County grand jury indicted Singh on the charges of conspiracy to distribute cocaine, conspiracy to distribute carfentanil and conspiracy to possess with intent to distribute heroin. On September 21, 2017, defense counsel filed an omnibus motion requesting, inter alia, a speedy trial.

On December 1, 2017 the parties jointly moved for a continuance. A new scheduling order was issued, setting dates for a pretrial hearing (December 14); motions hearing

[2] "At the time of his arrest, Singh had been released on bond pending a trial on unrelated burglary charges." *Id.* at 329. He entered a guilty plea to second-degree burglary on February 13, 2018 and received a sentence of 10 years' imprisonment, with all but three years suspended, which he served at a correctional facility in Washington County. *Id.* Following release, Singh was to serve two years' probation. Singh was also subject to deportation and an immigration detainer. He has since been deported.

(December 21); and jury trial (January 2, 2018). On December 14, 2017, the parties appeared for a pre-trial hearing, and defense counsel sought a continuance. Singh entered a not guilty plea on December 18, and on the 19th the State and defense filed a "Joint Motion to Continue Pre-Trial and Trial Dates." The court continued the case until January 12, 2018 for a pre-trial hearing and February 20th for trial. On January12th, the parties jointly moved for a continuance and the case was again continued until February 9 for a motions hearing. On February 9th, the State again moved for a continuance and the motions hearing was postponed until the 23rd. The court granted Singh's motion to suppress on the 23rd, and the case was set for trial on February 28. On that date, the State entered a *nolle prosequi* on all charges.

**Case # 133553C**

On March 29, 2018, Singh was indicted on three charges: murder, distribution of heroin and conspiracy to distribute heroin.[3] On April 27, 2018, defense counsel entered an appearance and filed a demand for speedy trial, as well as omnibus Rule 4-252 motions. On May 2nd, the State moved to consolidate Singh's case with the prosecution of Amy Bormel.

The circuit court entered a scheduling order on May 8, 2018, setting July 26th for a status hearing and September 17, 2018, for trial. On July 30, 2018, Singh, who at the time was incarcerated on the burglary conviction, wrote the circuit court stating that he had

[3] This indictment triggered the speedy trial clock. *Singh v. State*, 247 Md. App. at 345-46.

received a bench warrant in Case No. 133553C and stated that he "would like to take care of this matter as soon as possible."

At the hearing on December 14, 2018, after Singh rejected a plea offer, the prosecutor announced that it was withdrawing the offer and would proceed with a "superseding indictment" on the 20th. Singh's counsel represented that Singh "wishes to proceed to trial." Counsel emphasized that "[f]or the record, we object to any postponement of the trial date and the continuation of motions. Mr. Singh wants to be heard, have his day in court as soon as possible."

**Case # 134894C**

On December 20, the grand jury returned the "superseding" indictment in the case before us, charging Singh with the following: Second-degree murder, involuntary manslaughter, two counts of distributing narcotics, a single count of distributing fentanyl/heroin mix, two counts of conspiracy to distribute narcotics and one count of conspiracy to distribute a fentanyl/heroin mix. On January 3, 2019 the state entered a *nolle prosequi* on all charges in Case No. 13355C. "Defense counsel 'strenuously object[ed] to the entry of a nolle prosequi' and noted that Singh had previously asserted his right to a speedy trial." *Singh*, 247 Md. App. at 333. On January 18, the defense filed a demand for a speedy trial. In response to Singh's discovery requests, the State represented that "'[d]iscovery materials regarding the [new] case have been provided' to the defense 'in the related case.' … All discovery was provided in that case and the State is adopting that same discovery.'" *Id.*

On February 19, 2019, the court denied Singh's motion to dismiss, and Singh agreed to enter a conditional guilty plea to involuntary manslaughter. The court sentenced Singh to 10 years, with all but 6 years suspended. Singh was credited with 1 year and 223 days for time served. On February 26th, Singh filed an appeal from the denial of his motion to dismiss. Singh had preserved his right to appeal an adverse ruling on the speedy trial motion.

**This Court's Prior Decision**

Singh exercised his option to appeal from the circuit court's denial of his motion to dismiss. Before us he asserted that the circuit court used the incorrect time period to evaluate his right to a speedy trial and sought a remand for a new hearing on his motion based on the correct start of the speedy trial clock. We agreed with Singh, ruling that the speedy trial starting point was the March 29, 2018 indictment, and not the later December 20, 2018 superseding indictment. *Singh*, 247 Md. App. at 348.

In view of our holding, we remanded this matter to the circuit court without affirmance, reversal, or modification of the judgment. *Id.* at 349.

**Remand Proceedings**

We provided instructions for the circuit court as follows:

On remand, the circuit court should conduct further proceedings for the purpose of re-evaluating Singh's motion to dismiss on speedy trial grounds.

The original indictment of March 29, 2018, triggered Singh's right to a speedy trial on the charges of murder, manslaughter, distribution of heroin, and conspiracy to distribute heroin. As to those charges, the delay includes the period from that date until May 13, 2019, the date scheduled for trial on the superseding indictment. This delay was 410 days (about one year, one month, and 14 days), a duration that is presumptively prejudicial. *See Glover v. State*, 368 Md. [211,] 223 [(2002)]. Therefore, the court should analyze that delay under the four-factor analysis established in *Barker v. Wingo*, 407 U.S. [514,] 530 [(1972)].

The analysis is not necessarily the same for the charges added in the superseding indictment based on the same conduct at issue in the original indictment. The new counts alleged the distribution of carfentanil, distribution of a mixture containing heroin and carfentanil, conspiracy to distribute carfentanil, and conspiracy to distribute a mixture containing heroin and carfentanil.

On remand, the circuit court should determine whether the State could have, with diligence, brought the additional charges related to carfentanil distribution on March 29, 2018. If the court determines that the State could have done so, then the starting point as to those charges is the date of the original indictment. If the court determines that the State could not have done so, then the starting point as to those charges is the date of the superseding indictment. The scheduled trial date was only 144 days (about four months and 23 days) after the superseding indictment, a duration that is not "of constitutional dimension." *See State v. Gee*, 298 Md. [565,] 578 [(1984)].

In sum, the court should analyze the factors set forth in *Barker v. Wingo* as to the charges from the original indictment and as to the additional charges from the superseding indictment if the court finds that the State could have, with diligence, brought those charges at the time of the original indictment.

*Singh v. State*, 247 Md. App. at 348-49.

On remand, the case was initially assigned to the trial judge who conducted a hearing on January 13, 2022. On January 19, 2023, the trial judge denied the motion to dismiss, and on February 15, 2023 Singh appealed from that decision. The trial judge's opinion was recalled, and the appeal was dismissed on May 3, 2023. This matter was then reassigned to another circuit court judge, who held a hearing on July 25, 2023. He concluded that Judge Boynton's opinion was "null and void."

The circuit court issued its findings and conclusions in an Opinion and Order dated March 6, 2024. In its Opinion and Order, the court noted that "[b]y the time this matter was received … the defendant had served his time" and had "been deported[.]"[4] The circuit court then outlined "two questions on remand:"

1. Whether the State could have, with diligence, brought the additional charges related to carfentanil distribution on March 29, 2018?

2. If that is the starting point, then analyze the factors set forth in Barker v. Wingo as to the charges brought on that date.

The court outlined the parties' contentions and discussed at length the State's actions in prosecuting this case. Answering "the Appellate Court First Question," the circuit court found that the State had not proceeded with diligence.[5] He attributed the delay to the prosecution, and explained:

[4] At the hearing before the judge, defense counsel stated that Singh was "overseas."

[5] The circuit court discussed our Supreme Court's decision in *Thomas v. State*, 464 Md. 133 (2019). He noted that "[o]ne of the more stimulating arguments of the state is that they could not charge the defendant with two counts … of second-degree murder … and involuntary manslaughter … until after the resolution of the *Thomas* case." The *Thomas* Court held that distributing heroin to a person who then dies from an overdose constituted (continued)

> The State elected not to pursue the manslaughter charges in March of 2018 but then did so in December of 2019. Here the court finds that this line of argument does not persuade the court that it was diligent; it simply made a legal decision in March of 2018 not to charge the defendant with manslaughter. They simply decided not to put a controversial charge in the indictment. This cannot be a reason to supplant the defendant's right to a speedy trial. ... This is what happened here and does not seem to be fair or just.
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> ***
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> The court for reasons stated above finds that with diligence the state could have charged the defendant with the carfentanil counts in the original indictment.
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> ***
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> The court has found that the state with diligence could have brought the carfentanil charges on March 29, 2018. The state's attorney represents the state here but many other parties from the police to executive functioning agencies control the extent of public tax paying money will be spent on items such as testing. The state must live with the bureaucratic limitations placed on them. Testing which normally should be done promptly does not occur when limitations are placed on people that the state's attorney does not control. It is unfortunate for the state's attorney office as it must navigate around the limitations placed on it by the executive departments of the county.

The circuit court then addressed the speedy trial issue and embarked on the four-step balancing test set forth by the Supreme court in *Barker v. Wingo*, 407 U.S. 514 (1972).[6]

"wanton and reckless disregard for human life," amounting to "gross negligence involuntary manslaughter." *State v. Thomas*, 464 Md. at 171, 180. Singh points out that this case was not addressed at Singh's postponement hearing on July 13, 2018 in Case # 133553C before an assignment judge.

[6] "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Barker v. Wingo*, 407 U.S. 514, 533 (1972). "[N]one of the four factors" are "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Id*.

The court initially found that the "length of delay is clearly of constitutional dimensions. This much of delay is presumed prejudicial." The court continued that Singh had asserted his right to a speedy trial and stated that "[t]he state agrees that this occurred."[7] At this point, having attributed the delay to the State, that the length of delay was "presumed prejudicial,"[8] and that Singh had asserted his right to a speedy trial, the circuit

[7] In its brief to this Court, the State, citing four instances, maintains that the "frequency and force" of Singh's objections and assertions of the right "do not weigh heavily in favor of dismissal."

[8] The use of the phrase "presumed prejudicial," or words to that effect in speedy trial analyses can be confusing. The initial "prejudice" from the delay is a procedural threshold finding that prompts the four-element *Barker* analysis. After triggering that inquiry, the "presumed prejudicial" delay becomes substantive and is examined as part of the four factors. According to commentators on criminal procedure:

> With respect to this first factor, the Court in Barker declared that "length of the delay is to some extent a triggering mechanism," so that "[u]ntil there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."
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> * * *
>
> More compelling is the criticism that the Court in *Barker* was "not quite clear" as to how it is to be determined what length of time suffices to trigger further inquiry. The reference to "delay which is presumptively prejudicial" contributes to this confusion, but viewing the case in its entirety it seems fair to say that this phrase does not mean a period of time so long that it may actually be presumed the defense at trial would be impaired. Nor does it mean that once a sufficient time has been shown the prosecution has the burden of establishing that in fact there was no prejudice. "Probably, the Court meant to say simply that a claim of denial of speedy trial may be heard after the passage of a period of time which is, prima facie, unreasonable in the circumstances."

(continued)

court then turned to the central issue in this appeal, whether Singh suffered prejudice from the delay. The court determined that the delay did not result in any prejudice. He explained:

> Here what is most important is that the defendant was for the entirety of this case was incarcerated on the unrelated burglary case.[9] The defense offers some angles that the defendant could have done certain things, but this court is not persuaded that the defendant could have availed himself of these avenues. So, there can be no oppressive pretrial incarceration. As for the third factor, the impairment of the defense; the court is not persuaded by the long hearing we held, and the memorandum filed by counsel that the defense was impaired during this long delay.
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> The issue of the second factor, anxiety, and concern; the court is not persuaded that the defendant has carried its burden in this regard. The biggest or countervailing point here this court agrees with the state; the defendant was completely locked up throughout this matter on another matter and had issues with immigration. Any ICE detainer was a huge cloud if not a storm that the defendant could not get around regardless of this case.

The circuit court denied Singh's motion and this appeal ensued. Singh asks us to determine whether the circuit court erred in denying his motion to dismiss on speedy trial grounds.

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Wayne LaFave, et al, 5 *Criminal Procedure* § 18.2(b) The Length of the Delay, pp. 128-29 (4th ed. 2015) (footnotes omitted).

[9] Singh completed his burglary sentence before the scheduled trial date in this case but was confined thereafter on pretrial custody and was under an immigration detainer. As noted by the circuit court, Singh has since been deported.

## DISCUSSION

### Standard of Review

In reviewing the lower court's judgment on a motion to dismiss for lack of a speedy trial, the appellate court will conduct its own independent constitutional analysis. *Glover v. State*, 368 Md. 211, 220 (2002). "We perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand; in so doing, we accept a lower court's findings of fact unless clearly erroneous." *Id*. at 221. "This analysis should be practical, not illusionary, realistic, not theoretical, and tightly prescribed, not reaching beyond the peculiar facts of the particular case." *Singh v. State*, 247 Md. App. at 337 (cleaned up).

### Speedy Trial

The right of an accused to a speedy trial is guaranteed by the Speedy Trial Clause of the Sixth Amendment to the United States Constitution. The provision is binding on the states through the Due Process Clause of the Fourteenth Amendment. *Klopfer v. North Carolina*, 386 U.S. 213, 222-23 (1967). The right is also secured by Article 21 of the Maryland Declaration of Rights. *See, e.g., Nottingham v. State*, 227 Md. App. 592, 613 (2016) (citing *State v. Kanneh*, 403 Md. 678, 687 (2008)).[10] "'The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.'" *Barker v. Wingo*,

[10] The Speedy Trial Clause provides: "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" U.S. Const. amend VI.

Article 21 of the Maryland Declaration of Rights states: "in all criminal prosecutions, every man hath a right … to a speedy trial by an impartial jury[.]" Md. Decl. of Rights, art. 21.

407 U.S. at 522 (quoting *Beavers v. Haubert*, 198 U. S. 77, 87 (1905)). The "speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." *United States v. MacDonald*, 456 U.S. 1, 8 (1982).

The United States Supreme Court in *Barker* set forth a balancing test to determine whether an accused's right to a speedy trial has been abridged. *Barker*, 407 U.S. at 530. The *Barker* Court identified the following four factors to consider: "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id*. "[N]one of the four factors" are "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Id*. at 533. Instead, the factors are related and must be considered with any other relevant circumstances. *Id*. The Court in *Barker* "rejected a bright-line rule to determine whether a defendant's right to a speedy trial had been violated[.]" *Kanneh*, 403 Md. at 687. The factors that comprise this analysis have been consistently applied in our courts. *See Glover*, 368 Md. at 221; *Divver v. State*, 356 Md. 379, 388 (1999). The test set forth in *Barker* examines the respective actions of the accused and the prosecution. *Kanneh*, 403 Md. at 687.

**Prejudice**

Singh agrees with the circuit court's analysis of the initial three factors – the length of delay; attribution of that delay to the prosecution; and his assertion of the right to a speedy trial. He urges that the circuit court was wrong to find that no prejudice resulted

from the delay in this case. He primarily focuses on three elements of prejudice that, he asserts, are caused by the delay in this case.

Accordingly, this Court will "evaluate the final *Barker* factor, actual prejudice, in light of the three interests protected by the constitutional right to a speedy trial: '(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.'" *Vaise v. State*, 246 Md. App. 188, 234 (quoting *Barker*, 407 U.S. at 532), *cert. denied*, 471 Md. 86 (2020). The "most important factor in the *Barker* analysis is whether the defendant has suffered actual prejudice." *Phillips v. State*, 246 Md. App. 40, 67 (2020) (cleaned up).

**Burden of Proof**

As a preliminary matter, Singh asserts that the circuit court "made a statement which suggests that the court misunderstood the allocation of the burden of proof." Our cases have assigned to the defense, the burden of demonstrating actual prejudice. With respect to prejudice and the applicable burden of proof, this Court has explained:

> Traditionally, three approaches have been used to arrive at a determination of prejudice. One approach is that it is incumbent upon the accused to make a showing of actual prejudice or at least a strong possibility of prejudice resulting to him or to his defense from the delay. Another approach is that prejudice will be conclusively presumed and necessarily follows from long delay. The middle position, and that used in this State, is that a certain quantitative and qualitative degree of delay gives rise to a rebuttable presumption of prejudice and will shift the burden of going forward with the evidence from the accused to the State. Before that critical point is reached, there rests upon the accused, as the moving party, the burden of persuading the hearing judge either (1) that he has suffered actual prejudice, in cases where he has made no demand for a speedy trial, or (2) that he has suffered the strong possibility of prejudice, in cases where he has made a demand for a speedy trial. Once that critical point has been reached, however, the presumption of prejudice arises and the burden of going forward with the

> evidence shifts to the State. That critical point on the delay scale where the presumption arises and where the burden shifts has been denominated the point of 'substantial' delay. To rebut the presumption, the State must persuade the hearing judge that the accused suffered no serious prejudice beyond that resulting from ordinary and inevitable delay.

*Randall v. State*, 223 Md. App. 519, 553–54 (2015) (quoting *State v. Lawless*, 13 Md. App. 220, 232-33 (1971)), *cert. denied*, 457 Md. 414 (2018). *See, e.g., Henry v. State*, 204 Md. App. 509, 554-55 (2012) (citing *Ratchford v. State*, 141 Md. App. 354, 361 (2001), *cert. denied*, 368 Md. 241 (2002)). *Cf., e.g., United States v. Myers*, 930 F.3d 1113, 1120 n.5 (9th Cir. 2019) ("In certain extreme circumstances, when the delay is great and attributable to the government, the defendant need not show prejudice.").

While we agree with Singh that the circuit court appears to have assigned to him the burden of demonstrating "the second factor, anxiety, and concern," we see no basis for relief on this record. On this record, we are unable to conclude that Singh has established that he "has suffered the strong possibility of prejudice" so as to shift the burden of disproving actual prejudice to the State. Assuming that the State bore the burden of demonstrating the lack of "anxiety and concern," there is no suggestion as to how the prosecution could possibly disprove this intangible on the record before us. Similarly, inasmuch as the State demonstrated that Singh had been incarcerated in an unrelated case for a considerable portion of the delay and was also subject to an immigration hold, we conclude that the record establishes the lack of prejudice in the form of "oppressive pretrial incarceration." We note in any event that "[o]ppressive pretrial incarceration with its attendant anxiety and concern to the accused is generally afforded only slight weight." *Hallawell v. State*, 235 Md. App. 484, 518 (2018).

Moreover, we conclude that the circuit court, with respect to potential impairment to the defense, the most important "prejudice" factor," clearly imposed the burden on the State: The court remarked that "[t]he state gives this court two reasons there was no prejudice to the defendant[.]" While Singh may parse this language differently, we conclude that the circuit court did not decide this particular question – impairment to the defense - on the basis of Singh's failure of proof. Moreover, as in the elements of pretrial anxiety and oppressive pretrial custody, establishing an impairment to the defense may best be relegated to the party experiencing its depravation depending on the circumstances.

**Oppressive Pretrial Incarceration**

As noted, Singh was initially indicted in this case on March 29, 2018. He was serving his sentence in the unrelated burglary case until January 25, 2019, and thereafter was held pending trial in this matter, which, as noted, was scheduled for May 13, 2019. Singh was also subject to an immigration detainer, and, indeed, would be deported following his release in this case. Because Singh's "confinement was the product of unrelated other offenses[]" and he was subject to an immigration detainer, we conclude that "[n]o oppressive pretrial incarceration as to the subject offenses has been shown." *State v. Statchuk*, 38 Md. App. 175, 185 (1977), *cert. denied*, 282 Md. 739 (1978). We are mindful that Singh was in pretrial custody in this case for three months and 18 days. Yet he was also subject to the immigration hold, so there appears to have been no option of full release.

**Anxiety and Concern**

Singh insists that he suffered anxiety and concern. Although he maintains that the circuit court erred in assigning him the burden of showing actual prejudice on this issue, he avers as well that the record demonstrates this aspect of prejudice. He considers it "obvious that the charge of murder, pending for over a year, would have created anxiety and concern wholly independent" of what he would have endured related to the burglary sentence. Further, the "prospect of deportation," in Singh's view, "could not have diminished the anxiety attendant to an allegation of murder." These general statements, on this record, "ha[ve] little significance." *State v. Bailey*, 319 Md. 392, 417 (1990). Indeed, actual prejudice from the anxiety and concern requires more than an assertion the appellant has had constant anxiety. *See Glover v. State*, 368 Md. at 230. Intangible factors will only prevail "if the State's sole basis for postponements is a crowded docket." *Id*. "This bald statement, in the circumstances, has little significance." *State v. Bailey*, 319 Md. at 417.

**Impairment of the Defense**

An impaired defense is the most important factor in the *Barker* analysis. *Henry*, 204 Md. App. at 554. We see no basis for Singh's complaint that his defense was impaired by the delay in this case.

Singh first argues that his defense was impaired because he was unable to find Michael Higgins, who was Ms. Johnson's boyfriend and who participated in the controlled buy of heroin from Amy Bormel. Although defense counsel had asserted at the disposition hearing on February 19, 2019, that the defense could not find Higgins, the State points out

in its brief that the prosecution had represented to the motions court that the State served Higgins with a subpoena and would ensure his availability for the defense. With respect to Dr. Heshmet, Singh argued that he "has been incredibly difficult to gain any cooperation of and to accept service of a subpoena for trial." The State responded that Dr. Heshmet continued to practice in Rockville and can "very easily be served with a subpoena."

The Court is mindful of the importance of these witnesses. Higgins was the decedent's boyfriend and was involved in the police investigation. Dr. Heshmet, according to defense counsel at the hearing, had "prescribed medication to the deceased, to my client, to Ms. Bormel." Nevertheless, we conclude that the State has demonstrated that there was no actual prejudice such that Singh's defense was impaired by the delay in this instance. It is clear that the State could produce Higgins. As to the recalcitrant Dr. Heshmet, we are confident that his reluctance could have been overcome by procedures in place to compel the appearance of a witness in a criminal trial. *See* Md. Rule 4-267.

## CONCLUSION

We conclude that the circuit court did not err in denying Singh's motion to dismiss. Accordingly, we shall affirm.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**