

Circuit Court for Baltimore City
Case No. 000116221003

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 622

September Term, 2018

MAURICE JAMES HARRISON

v.

STATE OF MARYLAND

Wright,
Kehoe,
Friedman,

JJ.

Opinion by Wright, J.

Filed: April 22, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Baltimore City convicted Maurice James Harrison, appellant, of possession of a regulated firearm by a prohibited person; wearing, carrying, or transporting a handgun in a vehicle; conspiracy to wear, carry, or transport a handgun; and possession of ammunition by a prohibited person. He was then sentenced to a total term of five years' imprisonment without the possibility of parole. In this appeal, he presents the following questions for our review:

1. Did the trial court err in denying Harrison's motion to dismiss for violation of his constitutional and statutory right to a speedy trial?
2. Did the trial court commit plain error in failing to instruct the jury on the elements of possession of ammunition by a prohibited person?
3. Does Harrison's commitment record misstate the offenses of conviction and sentences in violation of [Md.] Rule 4-351?

For the reasons that follow, we shall remand this case to the circuit court to correct Harrison's commitment record and affirm in all other respects.

BACKGROUND

Harrison does not challenge the sufficiency of the evidence, we therefore recite only those facts relevant to the issues on appeal. *See Washington v. State*, 190 Md. App. 168, 171 (2010).

On July 14, 2016, Harrison was arrested by Baltimore City police for several gun-related offenses. Following his August 8, 2016 indictment, the State moved to consolidate his trial with that of his co-defendant, Charles Jeffries. On September 22, 2016, Harrison's assigned public defender filed an omnibus motion for a speedy trial, and

on October 6, 2016, after Harrison's retained attorney had entered his appearance, a second omnibus speedy trial motion was filed.

On December 7, 2016, the first scheduled trial date, the State informed the circuit court that the assigned prosecutor was in trial on another case and requested a postponement. Harrison's attorney did not object. The circuit court granted the State's postponement request for good cause and reset the trial date for March 3, 2017.

On that date, the prosecutor notified the circuit court that he had recently discovered that evidence had been provided to Harrison that had not been given to his co-defendant. The prosecutor acknowledged that the State was responsible for the oversight. He then requested to postpone the trial because Jeffries' attorney wanted time to review the evidence, and because it was "the State's preference that the cases stay together." Harrison's attorney stated that he was objecting to the postponement request "merely for the record." The circuit court granted the request for good cause, charged the delay to the State, and set a new trial date for May 9, 2017.

On that date, the prosecutor informed the circuit court that the State had disclosed newly discovered evidence to Harrison's and Jeffries' attorneys the night before. The State explained that Jeffries had made "no PIN" telephone calls while incarcerated, thereby circumventing the State's earlier search for jail calls under his inmate number. The prosecutor noted that, based on his review of the calls, Jeffries' statements were possibly incriminating toward him and posed a potential *Bruton*¹ issue. The prosecutor

¹ *Bruton v. United States*, 391 U.S. 123 (1968), held that a defendant's confrontation clause rights are violated when a non-testifying defendant's confession

stated that he was prepared to sever the cases and proceed to trial with Harrison that day. Harrison's attorney responded that Harrison "[was] aware of this issue and is not objecting to issuing a postponement." Because Harrison was incarcerated on another matter, the court recessed the hearing so that his attorney could consult with him. When the hearing resumed, the court granted the postponement request for good cause and charged the delay to the State.

On the new trial date of July 20, 2017, the State requested that the trial be held over until the following day because the assigned prosecutor was in trial on another matter. Harrison's attorney stated that a scheduling conflict precluded his holding the trial over for one day. He also noted that the State had severed the trials because Jeffries' jail telephone calls were inadmissible against Harrison. Harrison's attorney also informed the circuit court that he had recently learned that the recovering officer in his case was "newly internet famous," and that that he wanted to "explore the Internal Affairs side of it." He objected to the State's postponement request for the record but stated that, "frankly, I would prefer it be postponed." The court postponed the trial for good cause, charged the delay to the State, and reset the trial date for October 10, 2017.

On October 6, 2017, the circuit court heard Harrison's motion to subpoena the internal affairs files for one of the officers involved in his arrest. Defense counsel explained that a highly publicized incident of alleged evidence tampering had been captured on a Baltimore City police officer's body-worn camera, and that the officer who

naming the defendant as a participant in the crime is introduced at their joint trial, even if the jury is instructed to consider the confession only against the defendant.

had prepared the sworn statement of charges in his case was present during the incident. The defense argued that Harrison was entitled to the officer's internal affairs records to determine whether they contained impeachment or exculpatory evidence.

On October 10, 2017, the new trial date, the defense informed the circuit court that the State had recently filed a motion to have the internal affairs records of another officer involved in Harrison's arrest disclosed under protective order. Harrison's attorney stated that it would be "malpractice" for him to not wait for the court's ruling on the motion when the evidence was potentially exculpatory. The circuit court granted the postponement request for good cause and charged the delay to the State. The court subsequently denied Harrison's motion to subpoena police internal affairs records without prejudice but granted the State's motion to disclose the records under protective order.

On November 11, 2017, Harrison's attorney requested to postpone the trial because his wife was undergoing surgery. The circuit court granted the request and charged the postponement to the defense.

Before Harrison's first trial commenced on January 10, 2018, defense counsel moved to dismiss the charges for violation of Harrison's speedy trial rights. At the motions hearing held that same day, the defense argued that, of the 481-day delay from

his September 16, 2016 arraignment until trial,² only 54 days were attributable to the defense. He also noted that Harrison had not waived his rights under Md. Rule 4-271.³

Defense counsel noted that Harrison had been incarcerated on a parole retake during the pendency of the case but argued that, “I don’t think that it matters what his prejudice is or what I’m alleging it is . . . we have arrived at the point where it is a presumed prejudice because we’re well over a year.” The State responded that each postponement was found by the circuit court to be for good cause. The State also emphasized that when it sought to sever the cases and proceed to trial, the defense “wanted to see what was going to happen with the co-defendant’s case before going forward.” Harrison’s attorney conceded that good cause had been found for each postponement request but argued that the administrative judge had not made “a distinct finding of good cause to go beyond *Hicks*.”

The circuit court denied the motion to dismiss and found as follows:

THE COURT: So it looks like, yes, July 14th, 2016, the defendant was charged. July 17th, 2016, Mr. Harrison made bail. He has always been on the street on this case --- for this case, not regarding parole violation, but on this case since July 17th, 2016.

² On appeal, Harrison asserts that the start date for speedy trial purposes is his July 14, 2016 arrest date rather than his arraignment date.

³ In a criminal case, a defendant’s trial date must be scheduled no later than 180 days after the earlier of the defendant’s initial appearance in circuit court or the appearance of counsel, unless the administrative judge, or his or her designee, finds “good cause” for a postponement. Md. Code (2001, 2018 Repl. Vol.), § 6-103 of the Criminal Procedure Article (“CP”); Md. Rule 4-271. The 180-day deadline, known as the “*Hicks* date,” emanates from *State v. Hicks*, 285 Md. 310 (1979). “Dismissal is the appropriate remedy where the State fails to bring the case to trial within the 180-day period and good cause has not been established.” *Choate v. State*, 214 Md. App. 118, 139 (2013) (citing *Hicks*, 285 Md. at 318).

He was indicted, I believe, Judge Lesser was on that 8/11/2016. He was arraigned 9/16/2016.

Mr. Wheatcroft you entered your appearance 10/6/2016.

First State's request for postponement because they were unavailable was December 7th first trial date. That was postponed to March 3rd, 2017. Then from that date it was postponed for consolidation with the co-defendant to May 9, 2017.

And then the issue about the jailhouse calls regarding the co-defendant and new State's evidence, the rationale to keep these cases together. It was postponed from May 9, 2017 to July 20, 2017.

July 20, 2017 State was unavailable. Postponed to 10/10/2017. More discovery was just provided. Postponed to November 17, 2017. And then, yes, Mr. Wheatcroft, of course you have to be available when your spouse has surgery. So that was postponed until today's date.

In terms – and you did state that Mr. Harrison had a parole violation? He was retaken on that parole violation, but now he has been determined – I'm not sure. But he is out on the street?

[DEFENSE COUNSEL]: Correct, Your Honor.

THE COURT: So in terms of speedy trial, in [*Barker v. Wingo*, 407 U.S. 514, (1972)], the standard – let's see – by which speedy trial violations are evaluated, the Court held that the right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. A balancing test in which the conduct of both prosecution and defense are weighed, and the Court is to determine whether a defendant's 6th Amendment right to a speedy trial was violated.

Four factors are weighed in this analysis[:] the length of the delay, the reason for the delay, the defendant's assertion of the right, and prejudice to the defendant.

So the length of the delay has been from the time that it got indicted up here 8/11/2016 until now has been August, September, October, November,

December, January – oh, more than a year. I’m sorry, more than a couple years.

The reasons for the delays, I find appropriate for both sides. And each of the preceding judges have found good cause for those delays. So I don’t find it – if the defendant was incarcerated, I definitely would find probably more of a prejudice. But I don’t find that this defendant Mr. Harrison has been prejudiced.

While I weight all four factors that are considered, therefore, I do note your request for speedy trial. But at this point, I am going to deny it.

Harrison proceeded to trial, which resulted in a mistrial. His second trial commenced on January 29, 2018.

DISCUSSION

I.

A. Denial of Motion to Dismiss for Speedy Trial Violation

Harrison first argues that the circuit court erred in denying his motion to dismiss for a violation of his Sixth Amendment right to a speedy trial.⁴ He contends that the anxiety and personal factors that resulted from the presumptively prejudicial length of the delay were actual prejudice that the circuit court overlooked in its analysis of the *Barker* factors. The State concedes that the delay was sufficient to trigger constitutional scrutiny but asserts that a balancing of the relevant factors weighs against dismissal of the charges. We agree with the State.

⁴ The Speedy Trial Clause of the Sixth Amendment of the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy trial”

A defendant's right to a speedy trial is guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution and the Maryland Declaration of Rights. *Henry v. State*, 204 Md. App. 509, 548-49 (2012). We assess a defendant's claim that the State violated his speedy trial right under the four-factor balancing test announced in *Barker*, 407 U.S. at 530-32, *see also Peters v. State*, 224 Md. App. 306, 359 (2015), *cert. denied*, 445 Md. 127. Those factors are: 1) the length of the delay; 2) the reason for the delay; 3) the defendant's assertion of the right; and 4) prejudice to the defendant. *Peters*, 224 Md. App. at 359-60. No single *Barker* factor, considered in isolation, is "either necessary or sufficient to find a violation of the speedy trial right; instead, they are related factors and must be considered together with such other circumstances as may be relevant." *Hallowell v. State*, 235 Md. App. 484, 513 (2018) (quotations and citations omitted).

In reviewing a circuit court's denial of a motion to dismiss on the grounds of a speedy trial violation, we accept its findings of fact unless clearly erroneous, but "perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand." *Id.* at 513 (quoting *Glover v. State*, 368 Md. 211, 221 (2002)).

1. Length of Delay

First, we note that "the length of the delay, is a 'double enquiry,' because a delay of sufficient length is first required to trigger a speedy trial analysis, and the length of the delay is then considered as one of the factors within that analysis." *State v. Kanneh*, 403 Md. 678, 688 (2008) (citation omitted). "[U]nless the delay crosses the line from ordinary delay to presumptively prejudicial delay, there is no necessity for inquiry into the other factors that go into the balance." *Randall v. State*, 223 Md. App. 519, 544

(2015) (quoting *Barker*, 407 U.S. at 530). “The Court of Appeals has consistently held . . . that a delay of more than one year and fourteen days is ‘presumptively prejudicial’ and requires balancing the remaining factors.” *Lloyd v. State*, 207 Md. App. 322, 328 (2012) (citations omitted). For purposes of speedy trial analysis, we measure the length of delay “from the day of arrest or filing of the indictment, information, or other formal charges to the date of trial.” *Randall*, 223 Md. App. at 544 (quoting *Divver v. State*, 356 Md. 379, 388-89 (1999)).⁵

Of the four *Barker* factors, the length of delay is the least determinative. *Kanneh*, 403 Md. at 689-90. It is “heavily influenced by the other three factors, particularly that of ‘reasons for the delay[,]’” and “[i]t may gain weight or it may lose weight because of circumstances that have nothing to do with the mere ticking of the clock.” *Ratchford v. State*, 141 Md. App. 354, 359 (2001).

Harrison was arrested on July 14, 2016, and his first trial commenced on January 10, 2018, a total delay of 545 days, or nearly eighteen months later. Although the delay in this case was sufficient to trigger a speedy trial analysis, we do not consider the delay

⁵ Ordinarily, the starting point for calculating the length of delay following a mistrial is from the date the court declares a mistrial until the retrial commences. *Hallowell*, 235 Md. App. at 513-14; *see also Nottingham v. State*, 227 Md. App. at 592, 613 (2016). In this case, however, Mr. Harrison moved to dismiss the charges on speedy trial grounds before the first trial started, and again before the retrial commenced. Thus, for speedy trial purposes, Mr. Harrison has preserved his right to challenge the length of delay from the date of his arrest until commencement of the retrial. *See Stephens v. State*, 420 Md. 495, 504-06 (2011) (explaining that the denial of a motion to dismiss for violation of the defendant’s speedy trial right is not subject to appeal until after final judgment). We note, however, that on appeal Mr. Harrison limits his challenge to the pretrial delay from arrest until the first trial.

to be inordinate under the circumstances. Contrary to Harrison’s claim, this was not “an uncomplicated illegal possession of a firearm case.” The State had initially consolidated Harrison’s and Jeffries’ trials until newly discovered evidence was deemed inadmissible against Harrison, and the trials were severed. In addition, highly publicized allegations of police evidence tampering caused both parties to submit motions to the court seeking disclosure of the internal affairs records of two of the State’s police witnesses.

Accordingly, we find that the length of delay weighs in Harrison’s favor but not heavily.

2. *Reasons for Delay*

The second factor—the reasons for the delay—is closely related to the length of the delay in that “different reasons should be assigned different weights[.]” *Kanneh*, 403 Md. at 690 (quoting *Barker*, 407 U.S. at 531). As the Supreme Court explained in

Barker:

A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

Barker, 407 U.S. at 531 (footnote omitted).

The initial delay between Harrison’s arrest and the first scheduled trial date, approximately 146 days, is generally considered pre-trial preparation. That delay, therefore, “is accorded essentially no weight in the analysis, as that is the time it would

have taken for trial preparation in the absence of any of the ensuing postponements.”

Hallowell, 235 Md. App. at 515.

The second delay of approximately 86 days occurred because the prosecutor was in another trial and unavailable. Defense counsel did not object to the postponement. Although that delay is attributable to the State, we accord it essentially no weight given the neutral reason for the request.

The third delay of approximately 67 days resulted because the prosecutor failed to provide discovery to both defendants. The State requested the postponement to allow Harrison’s co-defendant additional time to review the evidence. Harrison’s attorney objected but stated that his objection was “merely for the record.” This delay is attributable to the State but is accorded minimal weight.

The fourth delay of approximately 72 days was requested by the State after discovering new evidence on the eve of trial. The State offered to sever the trials and proceed with Harrison’s case that day, and Harrison’s attorney did not object to the postponement. This delay to pursue evidentiary developments is attributable to the State but is accorded minimal weight.

The fifth delay of approximately 82 days was the result of the State requesting that the trial be held over for one day because the prosecutor was in trial. Defense counsel objected explaining that his schedule prevented holding the trial over one day. He also stated that he preferred that the trial be postponed because potentially exculpatory evidence had been discovered that he needed more time to pursue. Although this delay was charged to the State, it is attributable to both parties and is accorded no weight.

Although the sixth delay was requested by the State, the record reflects that both parties had moved for the disclosure of the internal affairs records of two of the State's police witnesses. Harrison's attorney did not object to the postponement, and he stated during the postponement hearing that it would be "malpractice" for him to proceed without waiting for the ruling on whether the records would be disclosed. This delay of approximately 32 days is attributable to both parties and is accorded no weight.

The seventh delay of approximately 60 days was requested by the defense due to family medical obligations. This delay is charged to the defense but does not weigh heavily against it.

Cumulatively, of appellant's 545-day delay, 225 days are attributable to the State but do not weigh heavily against it, and 260 days are neutral. There is no evidence that the State acted in bad faith or with less than reasonable diligence, therefore, we find that the reasons for delay weigh only slightly in Harrison's favor, as "none of it evinced a deliberate attempt to delay the trial in order to hamper the defense." *Hallowell*, 235 Md. App. at 516 (quoting *Barker*, 407 U.S. at 531).

3. *Assertion of Right to Speedy Trial*

The third *Barker* factor considers whether and to what extent Harrison asserted his right to a speedy trial. 407 U.S. at 531. The "failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Id.* at 532. Here, Harrison first asserted his right to a speedy trial on September 22, 2016, and again on October 6, 2016, in omnibus motions that contained various other preliminary requests. At three separate hearings, Harrison's attorney stated no objections to the State's

postponement requests. His objection to the March 3, 2017 postponement was perfunctory, and on July 20, 2017, although Harrison's attorney objected, he stated that he would prefer a postponement to pursue potentially exculpatory evidence. The defense did not formally move to dismiss the charges until the day of the first trial. We find that Harrison asserted his speedy trial right at a reasonable time, but that, considering his repeated failure to reassert the right and his *pro forma* assertions of it, this factor weighs only slightly in his favor.

4. *Prejudice*

The final, and perhaps most important factor in the *Barker* analysis, is whether the defendant suffered actual prejudice because of the delay. *Peters*, 224 Md. App. at 364. Any prejudice must be evaluated in the context of the interests that the right to speedy trial was designed to preserve: “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” *Barker*, 407 U.S. at 532 (footnote omitted). Of these three interests, “the ‘most serious’ . . . is ‘the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.’” *Hallowell*, 235 Md. App. at 517 (quoting *Barker*, 407 U.S. at 532).

Harrison argues that he experienced actual prejudice as a result of the lengthy pretrial delay. After reviewing the record, however, we agree with the circuit court that he did not experience any actual prejudice. Apart from a parole retake on unrelated charges, Harrison was on bail during the pendency of these charges. He therefore does not argue oppressive pretrial incarceration, nor could he, based on the record. He does

not claim that any evidence was destroyed, that witnesses became unavailable, or that he suffered any specific impairment to his defense. During the hearing on the motion to dismiss, defense counsel argued that, “I don’t think it matters what his prejudice is or what I’m alleging it is. Because I think we have arrived at the point where it is a presumed prejudice because we’re well over a year.” Thus, the assertion that he experienced “more than a little anxiety” from the delay is waived, as he raised this argument for the first time in this appeal. *See* Md. Rule 8-131(a). (“Ordinarily, the appellate court will not dictate any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”). It is worth noting that the reason for the fifth and sixth delays, which accounted for 114 days, were to allow both parties to pursue evidence that was potentially beneficial to the defense. We therefore weigh this factor in favor of the State.

5. *Balancing the Factors*

After considering the *Barker* factors in light of the attendant circumstances, we hold that Harrison’s constitutional right to a speedy trial was not violated by the delay between his arrest and trial. The length of the delay, while sufficient to trigger a speedy trial analysis, was not inordinate considering that his trial was initially consolidated, newly discovered evidence resulted in the cases being severed, and that both parties made efforts to pursue the police internal affairs records. The reasons for the delay and his assertion of the right weigh slightly in his favor, however the record does not indicate that the State engaged in dilatory tactics to hamper the defense, and Harrison does not claim that his defense was impaired. Aside from his contention that the length of delay was

presumptively prejudicial, Harrison has failed to assert any claim of actual prejudice, and we therefore weigh the fourth *Barker* factor in favor of the State. Accordingly, Harrison's Sixth Amendment right to a speedy trial was not violated, and the circuit court did not err in denying his motion to dismiss.

B. Denial of Motion to Dismiss for *Hicks* Violation

Harrison contends that the circuit court erred by not ruling on or properly evaluating his claim that his right to be tried within 180 days of his initial appearance in circuit court, in accordance with *State v. Hicks*, 285 Md. 310 (1979), was violated. After hearing defense counsel's argument, including his assertion that the administrative judge did not make a specific finding of good cause to go beyond the *Hicks* period, the circuit court reviewed each postponement and found that "[t]he reasons for the delays, I find appropriate for both sides. And each of the proceeding judges have found good cause for those delays." We assume the circuit court knew and properly applied the law applicable to Harrison's *Hicks* challenge and therefore find this claim to be without merit. *See Thornton v. State*, 397 Md. 704, 736 (2007) ("Ordinarily, we will presume that the trial judge knows the law and applies it properly.").

II.

Harrison next asks this Court to review for plain error his unpreserved claim that the circuit court erred in instructing the jury on the charge of possession of ammunition by a prohibited person. We decline to do so.

"The general rule is that the failure to object to a jury instruction at trial results in a waiver of any defects in the instruction, and normally precludes further review of any

claim of error relating to the instruction.” *Lindsey v. State*, 235 Md. App. 299, 329 (2018) (citations omitted), *cert. denied*, 458 Md. 593 (2018); *see also* Md. Rule 4-325(e) (“[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.”). Further, “in the context of erroneous jury instructions, the plain error doctrine has been used sparingly.” *Taylor v. State*, 236 Md. App. 397, 447 (2018) (quoting *Conyers v. State*, 354 Md. 132, 171 (1999)). It is “reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial.” *Hallowell*, 235 Md. App. at 505 (quoting *Newton v. State*, 455 Md. 341, 364 (2017)). We see no grounds for plain error review here.

III.

Harrison contends that his commitment record and the docket entries for this case must be corrected to accurately reflect the sentences announced by the circuit court at disposition. The State agrees, as do we.

Harrison was convicted by a jury of possession of a regulated firearm by a prohibited person; wearing, carrying, or transporting a handgun in a vehicle; conspiracy to wear, carry, or transport a handgun in a vehicle; and possession of ammunition by a prohibited person. At his April 23, 2018 disposition hearing, the circuit court imposed a five-year sentence without the possibility of parole for possession of a regulated firearm, a concurrent three-year sentence for wearing, carrying, and transporting a handgun, a concurrent three-year term for the conspiracy conviction, and a concurrent one-year term

for possession of ammunition. The docket entries and his commitment record, however, reflect convictions and corresponding sentences for three additional counts of unlawful possession of a firearm and possession of a firearm in a vehicle. “When there is a conflict between the transcript and the commitment record, unless it is shown that the transcript is in error, the transcript prevails.” *Potts v. State*, 231 Md. App. 398, 441 (2016) (citation and quotation marks omitted). Accordingly, we shall remand this case to the circuit court for correction of the commitment record and docket entries to reflect the sentence that was announced in court.

CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY TO CORRECT THE DOCKET ENTRIES AND COMMITMENT RECORD. JUDGMENTS OTHERWISE AFFIRMED. COSTS TO BE PAID BY APPELLANT.