Circuit Court for Prince George's County
Case Nos. CT11-1854X & CT12-0043C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1364
No. 1366

September Term, 2016

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MARVIN REYES-MENDOZA

v.

STATE OF MARYLAND

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Berger,
Reed,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: August 14, 2018

*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.

On January 31, 2014, a jury in the Circuit Court for Prince George's County convicted Appellant, Marvin Reyes-Mendoza, of attempted first degree murder and crimes related to a drive by shooting. In his first appeal to this Court, *Reyes-Mendoza v. State*, No. 0604, 2015 WL 6125558 (Md. App. Sept. 29, 2015) ("*Reyes-Mendoza* I"), Appellant raised five questions for our review, including a speedy trial claim. The speedy trial issue was remanded to the circuit court, where the court denied Appellant's Motion to Dismiss for Speedy Trial Violation. As a result, Appellant brings this consolidated appeal to challenge that denial.

Having noted a timely appeal, Appellant raises one question for our review, which we have reworded and rephrased as follows:

I. Did the circuit court err in denying Appellant's Motion to Dismiss for Speedy Trial Violation?

For the reasons set forth below, we hold, as we did previously, no error or abuse of discretion on the statutory speedy trial claim. For the constitutional speedy trial claim, we affirm the lower court.

## FACTUAL AND PROCEDURAL BACKGROUND

Appellant, Marvin Reyes-Mendoza, was arrested for his connection with the gang, Mara Salvatrucha ("MS-13"), wherein on November 15, 2011, he participated in a drive-by shooting. Appellant was arrested twice: once on November 15, 2011, and again on January 12, 2012. His trial date was set for June 7, 2012, but because of eight postponements, it was nearly two years before Appellant was tried. At no time during this

delay, did Appellant waive his right to a speedy trial or his rights under *State v. Hicks*, 285 Md. 310 (1979).

Prior to trial, on December 30, 2013, Appellant filed a Motion to Dismiss due to violations of Maryland Rule 4-271, Criminal Procedure Article Section 6-103, and his U.S. Sixth Amendment Right to Speedy Trial and his Maryland Speedy Trial rights. In his motion, Appellant argued because he waited nearly two years between arrest and trial, the court abused its discretion and violated his Constitutional right to a speedy trial. That motion was denied.

On January 31, 2014, Appellant was convicted by a jury in the Circuit Court for Prince George's County of attempted first-degree murder, first-degree assault, participation in gang activity, conspiracy to commit murder in the first-degree, conspiracy to commit first-degree assault, use of a handgun in a crime of violence, fleeing or attempting to elude police, and intimation of a witness. On May 2, 2014**,** the court sentenced Appellant to life imprisonment, with all but forty-five years suspended and five years supervised probation for the count of attempted first degree murder. Moreover, he received a five year sentence for the conviction of the use of a handgun in a crime of violence that was ordered to run consecutive to the aforementioned sentences.

Following the sentence, Appellant properly appealed, and in *Reyes-Mendoza* I, asked several questions to this Court. In one of his questions, he asked whether "there was a violation under the 6th Amendment Constitutional Right to a speedy trial in review of the Balancing test of *Barker v. Wingo*, 407 U.S. 514 (1972)?" Appellant argued that because the trial judge did not analyze the four-factor analysis test set forth in *Barker*, his

constitutional rights were violated. In an unreported opinion, this Court agreed with Appellant, holding:

> Here, the circuit court did not conduct the *Barker* analysis, and therefore it failed to make factual findings on each of the prongs of the requisite four-factor analysis. Accordingly, we agree that a remand to the circuit court for it to conduct the requisite *Barker* analysis and make specific findings in that regard.

*Reyes-Mendoza v. State*, No. 0604, 2015 WL 6125558 (Md. App. Sept. 29, 2015).

Following Appellant's appeal, he filed a Motion to Dismiss for Speedy Trial Violation, and on August 2, 2016, the Circuit Court of Prince George's County held a hearing only to apply the *Barker* analysis to Appellant's case. Appellant testified that as a result of his delayed trial, he suffered anxiety, depression, and emotional distress. He further testified that his parents lost their jobs and his brother missed time from school because they would visit him during motions hearings. Moreover, as a result of his incarceration, he was unable to continue with his plan to attend Prince George's Community College, where he had been enrolled. He further testified that he missed funerals and could no longer provide for his family. With regard to the length of the delay and the reasons for delay, the court went through the transcripts of the eight postponements and ruled on whether they were attributed to the State. In the two year timeframe between when Appellant was indicted and the trial date of January 2014, the court ruled that only nine months were attributable to the State.

For the second factor, Appellant's assertion of his right, the court held "… [Appellant] did assert his right… Albeit, he gave a blanket --- we object to any

postponements, we assert our speedy trial right." For the final factor, prejudice to Appellant, the court ruled that there was no evidence that Appellant's defense was substantially affected by the delay. Further, the court determined that his emotional and financial states were "…normal for anyone awaiting trial and who is incarcerated."

As a result of that hearing, the court denied Appellant's motion to dismiss, and this appeal followed. Additional facts will be discussed as necessary in the discussion that follows.

## DISCUSSION

## I. STATUTORY SPEEDY TRIAL

### A. Parties' Contentions

For the statutory claim, Appellant reiterates his arguments made to this Court in *Reyes-Mendoza* I. He argues that the circuit court abused its discretion in finding good cause to postpone the trial beyond the June 1, 2012, *Hicks* date. He contends that the State's second postponement request claiming: a scheduling issue between the trial date and a judicial conference; a delay in obtaining discovery from the Department of Homeland Security; and incomplete results of DNA analysis, did not amount to the requisite good cause needed to delay a proceeding past *Hicks*. He asserts that the "postponement request for documentation from homeland security and DNA results could have been obtained by due diligence prior to the *Hicks* date," and "scheduling/calendar conflict does not relieve the burden of the State to bring the Appellant to trial within *Hicks*."

The State argues that this Court remanded only the constitutional speedy trial claim, and not the statutory speedy trial claim. Therefore, it is not properly before this Court. We agree.

**B. Standard of Review**

We review determinations of what constitutes good cause in the speedy trial context, under an abuse of discretion standard, because it is a "discretionary decision within the power of the [judge] and carries a presumption of validity." *State v. Green*, 54 Md. App. 260, 266 (1983) (internal citations omitted).

An abuse of discretion occurs when, "no reasonable person would take the view adopted by the [trial] court." *North v. North*, 102 Md. App. 1, 13 (1994). Or where the court acts without "reference to any guiding rules or principles." *Id.* An abuse of discretion can further be found where the ruling is "clearly against the logic and effect of facts and inferences before the court… Or where the "ruling is violative of fact and logic." *Id.* (internal citations omitted). However, a ruling will not be reversed merely because the appellate court would not have come to the same conclusion. *Kusi v. State*, 438 Md. 362, 385 (2014) ("it is nevertheless clear that a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling.") (internal citations omitted).

**C. Analysis**

Even if we are to assume that the statutory claim is properly before this court, there would still be no abuse of discretion. To support his contention that "courts have held that State's failure to have the DNA results at time of trial was not good cause to grant

continuances past the *Hicks* date," he cites, as he did in his first appeal, *Wheeler v. State*, 165 Md. App. 210 (2005), and *Ross v. State*, 117 Md. App. 357 (1997). As we ruled in *Reyes-Mendoza I*, both cases do not apply to Appellant because they involved the use of a *nolle pros* to circumvent the *Hicks rule.* Further, in those cases this Court:

> [M]erely accepted the trial courts' findings that the unavailability of DNA results did not constitute good cause to postpone their respective trials past *Hicks*. Other cases, however, suggest that postponing a trial date due to the unavailability of DNA results can constitute good cause.

(internal citations omitted). *Reyes-Mendoza v. State*, No. 0604, 2015 WL 6125558 (Md. App. Sept. 29, 2015).

As we ruled in *Reyes-Mendoza* I, the trial court did not abuse its discretion in postponing the trial date past the *Hicks* date to allow the state to complete its DNA testing. Regardless, this claim is not proper before this court because it was previously ruled upon in *Reyes-Mendoza* I. Appellant attempts to receive a second bite at the proverbial apple. We hold, as we did previously, that Appellant's *Hicks* argument has no viable claim for relief.

## II. CONSTITUTIONAL SPEEDY TRIAL

### A. Parties' Contentions

Appellant claims that the circuit court erred when it denied his Motion to Dismiss for Speedy Trial Violation. He argues that the *Barker v. Wingo*, 407 U.S. 514 (1972) factors, when applied to his case, "weigh heavily against [the State's] and in Appellant's favor." The State argues that the circuit court judge correctly concluded that there was no constitutional speedy trial violation. We agree.

### B. Standard of Review

When reviewing the ruling of the trial court on a Motion to Dismiss for a Speedy Trial Violation, this Court must make its own independent constitutional analysis:

> When a claim is based upon a violation of a constitutional right it is our obligation to make an independent constitutional appraisal from the entire record. But this Court is not a finder of facts; we do not judge the credibility of the witnesses nor do we initially weigh the evidence to determine the facts underlying the constitutional claim. It is the function of the trial court to ascertain the circumstances on which the constitutional claim is based. So, in making our independent appraisal, we accept the findings of the trial judge as to what are the underlying facts unless he is clearly in error. We then re-weigh the facts as accepted in order to determine the ultimate mixed question of law and fact, namely, was there a violation of a constitutional right as claimed.

*Khalifa v. State*, 382 Md. 400, 417 (2004) (quoting *Harris v. State*, 303 Md. 685, 697-98 (1985) (internal citations omitted)). "We perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand; in so doing, we accept the lower court's findings of fact unless clearly erroneous." *Glover v. State*, 368 Md. 211, 221 (2002) (internal citations omitted).

### C. Analysis

In cases such as Appellant's, Maryland's appellate courts apply the four factor balancing test asserted by the Supreme Court of the United States in *Barker v. Wingo*, 407 U.S. 514 (1972). These factors are to be weighed to determine whether the defendant's right to speedy trial has been violated. The factors are: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of their right; and (4) prejudice to the defendant. *Id*. at 530. These factors must be considered together, as "none of these factors are… a

necessary or sufficient condition to the finding of a deprivation of the right to speedy trial." *State v. Bailey*, 319 Md. 392, 413-14 (1990).

**1. Length of Delay**

The first factor, 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) (citing *Glover v. State*, 386 Md. 211, 222-23 (2002)). The length of delay is measured from the date of arrest and there is no rule regarding the length of time that triggers the speedy trial analysis. *Id.*

Here, the incident for which Appellant was arrested occurred on November 15, 2011. Appellant was first arrested the same day of the incident, but was released on December 8, 2011, and re-arrested on January 17, 2012. Both Appellant and the State agree that the nearly two year delay is sufficient to trigger the speedy trial analysis.

Regardless, the length of the delay is not that significant given the nature and complexity of the case. *See Lloyd v. State*, 207 Md. App. 322, 328-29 (2012) ("the more complex and serious the crime, the longer a delay might be tolerated because society has an interest in ensuring that longer sentences are rendered upon the most exact verdicts possible.") (internal citations omitted). The trial court agreed with this assertion, stating "given the nature of this case and the admittance by all parties that this was a complicated case, I find that the reasons for the delay were justified also." Accordingly, we hold that although this factor weighs in Appellant's favor, it merely triggers the *Barker* analysis.

**2. Reasons for Delay**

We consider next the reasons for the delay. As the court of appeals stated in *Glover*:

> Closely related to length of delay is the reason the government assigns to justify the delay ...[D]ifferent weights should be assigned to different reasons. 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.

(internal citations omitted). Thus, we review the transcript of the circuit court judge to determine whether the delay is attributable to the State or Appellant. If it is a joint request, made by both the State and Appellant, that postponement is neither charged to the State nor the Appellant.

1. **May 7, 2012 – June 1, 2012**: Appellant was re-arrested in early 2012, and indicted on January 12, 2012. Originally, his trial was set for May 7, 2012. However, as a result of a joint request by Appellant and the State, the case was postponed for June 6 – June 7, 2012. Because this was a joint request, thus it is neutral and does not weigh against either the Appellant or the State.

2. **June 1, 2012 – September 4, 2012:** As previously discussed in the statutory claim, this delay was because DNA testing had not been concluded. This three month delay was charged to the State.

3. **September 4, 2012** – **November 5, 2012:** The State requested a postponement because its lead counsel was sick. Accordingly, this two month delay was properly charged to the State. The court properly attributed this delay to the State.

4. **October 18, 2012**: The fourth request for postponement was filed by Appellant's counsel because previous counsel had left. That request was filed on October 18, 2012. New counsel was not ready and the court appropriately charged Appellant with the fourth postponement.

5. **November 5, 2012 - February 8, 2013:** On February 8, 2013, both Appellant and the State filed for a postponement. The parties requested the dates of April 16-17, 2013. Accordingly, the delay is neutral and charged to neither party.

6. **April 11, 2013 – September 10, 2013**: Appellant requested and was granted a postponement for further investigation. The trial was moved to September 10-12, 2013. Accordingly, the delay is properly charged to Appellant.

7. **September 10, 2013 – December 9, 2013:** Appellant and the State were advised by the court to get a postponement. The court believed that the delay would have favored Appellant because the motions were ruled in his favor. Regardless, the court attributed the delay to the State. In fact, both the trial court and the State agree, that the three month delay was attributable to the State.

8. **December 9, 2013 – January 27, 2014**: The State requested a postponement because one of the detectives involved in the case was unavailable. Trial was scheduled for January 27-30, 2014. This delay was properly attributed to the State.

Out of the eight postponements requested in the two years between May 7, 2012 and January 27, 2014, nine of the sixteen months was properly chargeable to the State a remaining eight months were either attributable to Appellant or were as a result of the neutral requests. Because of the sheer nature of mathematics, reasons for delay weigh in favor of Appellant but none of the delays by the State were purposeful or for the advantage of Appellant. *See Fields v. State*, 172 Md. App. 496, 550 (2007) (holding that a constitutional violation can be found where the record demonstrates a purposeful delay of trial by the State, this can be found by giving unacceptable reasons for a delay).

### 3. Assertion of Right

The third factor is whether, and to what extent, Appellant asserted his right to a speedy trial. *See Barker* at 531. The Supreme Court in *Barker*, 407 U.S. 514 (1972) held, "the failure to assert the right will make it difficult for a defendant to prove that [they were]

denied a speedy trial." *Id.* at 532. Here, the State agrees that Appellant asserted his right to a speedy trial. Therefore, this factor weighs in Appellant's favor.

**4. Prejudice**

The final, and most important factor, is whether Appellant suffered an actual prejudice, such that as a result of the delay, his defense was impaired. *See State v. Kanneh*, 403 Md. 678 (2008); *see also, Brady v. State*, 291 Md. 261, 266 (1981) ("...Actual prejudice involves a consideration of three interests the speedy trial right is meant to protect. Whatever importance it assumes in the final outcome is a function of the facts of the particular case."). The court in *Barker*, set forth three interests this factor is created to protect: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired. *Barker* at 532. Of those, the last interest is the most serious "because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id.*

Although Appellant argues that during the delay he suffered from anxiety, depression, delay in obtaining his education, and inability to support his family, he has been unable to articulate how his defense was impaired. At most, Appellant asserts that he often appeared angry when he met with current and previous counsel. To which counsel attempted, but was precluded, to use to prove that it strained the relationship between Appellant and his counsel. We are not persuaded that Appellant's defense was actually prejudiced in this case. Considering the outcome, it is clear that Appellant was effectively represented and his case was well tried. Moreover, we hold that the delay was not so disproportionate as to cause actual prejudice to his defense.

### 5. Balancing of the Factors

After reviewing the circumstances and performing an independent review of the *Barker* factors, we conclude that Appellant's constitutional speedy trial right under the Sixth Amendment was not violated. Accordingly, the trial court properly denied Appellant's motion to dismiss.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**