Circuit Court for Prince George's County
Case No. CT191113X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1779

September Term, 2022

KYEEM ANTONIO KING

v.

STATE OF MARYLAND

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

JJ.

Opinion by Reed, J.

Filed: June 20, 2025

* 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).

On October 24, 2019, Kyeem Antonio King, the Appellant, was indicted in Prince George's County on six charges: two counts of Murder in the Second Degree, two counts of use of a firearm in a violent crime, one count of carrying a handgun in a vehicle, and one count of carrying a loaded handgun in a vehicle. These charges related to the deaths of two individuals from gunshot wounds on June 1, 2019. The Appellant's case proceeded to trial on April 25, 2022. At the end of the trial, the jury found the Appellant guilty of two counts of second-degree murder and related charges. On September 7, 2022, the court sentenced the Appellant to two consecutive sentences of 40 years, suspending all but 35 years, for the second-degree murder convictions, along with additional sentences for the lesser charges. The Appellant then brought a timely appeal of his convictions.

In bringing his appeal, Appellant presents seven questions for appellate review, which we reorder as follows:

I. Did the lower court err in denying the Appellant's request for a *Daubert* hearing on that firearms testimony?
II. Did the lower court err in denying the Appellant's motion to suppress his statement?
III. Did the lower court err in denying the Appellant's motion to dismiss for speedy trial violations?[1]

[1] The Appellant's questions, as originally presented, were:

I. Did the lower court err in denying the Appellant's motion to suppress his statement?
II. Did the lower court err in denying the Appellant's motion to dismiss for speedy trial violations?
III. Did the lower court err in denying the Appellant's motion to exclude, and overruling his objection to, the testimony of a jailhouse informant who was untimely disclosed?
IV. Did the lower court err in denying the Appellant's motion for mistrial?
V. Did the lower court err in denying the Appellant's request for a *Daubert* hearing on that firearms testimony?

We affirm the trial court's rulings on the motion to suppress and motion to dismiss, however based on the post-trial decision of our Supreme Court in *Abruquah v. State*, 483 Md. 637 (2023), we hold that the firearms expert's testimony was inadmissible and that error was not harmless beyond a reasonable doubt. Accordingly, because the firearms expert's testimony was inadmissible under *Abruquah* and that error was not harmless, we reverse the judgment of the Circuit Court for Prince George's County and remand for a new trial. Since our holding requires a remand, we decline to address the remaining claims of error at trial.

FACTUAL & PROCEDURAL BACKGROUND

The following facts were testified to and evidence was admitted at trial in this case. In the early morning hours of June 1, 2019, an officer for Prince George's County Police came upon a parked car at Walker Mill Apartments. The car had its headlights on and rear doors open. Inside the car were two gunshot victims in the driver's seat and front passenger seat, Davion Brandon and Antonio Taitano-Walker.[2] Mr. Walker was found with approximately $2,500.00 in cash on his person.

Medical examiners testified that that the victims' cause of death was multiple

VI. Did the lower court err in restricting the Appellant's cross-examination of the State's witness, Christina Bentley?

VII. Did the lower court err in overruling the Appellant's objections to burden-shifting Appellee's closing arguments?

[2] The victim in the driver's seat, Mr. Taitano-Walker, was transported to the hospital. Mr. Taitano Walker was pronounced dead on June 9, 2019. The other victim, Mr. Brandon, remained at the scene.

gunshot wounds and the manner of death was homicide. Mr. Brandon suffered from twelve gunshot wounds, the majority of which were back to front injuries. The medical examiner for Mr. Brandon said that a few of the bullets had evidence of stippling, which indicates the bullets were fired at close range. Mr. Taitano-Walker suffered from five gunshot wounds, all of which were back to front.

On the ground near the car, police recovered a black pistol. No fingerprints were recovered from the pistol. The pistol had 9mm Blazer headstamp cartridges in the magazine. Blazer headstamp cartridges were on the ground in the parking lot behind the car. Similar cartridges were also found in the body of one of the victims.

In the back seat of the car where the victims were found, police recovered the Appellant's cell phone. The phone had a picture of a black Glock model 19 9mm handgun taken on May 23, 2019. Investigators also found text messages between one of the decedents, Mr. Walker, and the Appellant. The Appellant texted the photo to Mr. Walker, in texts that described a debt that Mr. Walker owed to the Appellant.

Surveillance footage was recovered from a nearby tobacco store. The footage showed both decedents in Mr. Taitano-Walker's car. The footage showed that the Appellant was also present in the backseat, along with two other individuals named Chifawn Watts and Fred Hinton.

The Appellant was indicted in the District Court for Prince George's County on October 24, 2019 on six charges: two counts of Murder in the Second Degree, two counts of use of a firearm in a violent crime, one count of carrying a handgun in a vehicle, and one count of carrying a loaded handgun in a vehicle.

The case proceeded to trial before the Honorable Lawrence V. Hill, Jr. on April 25, 2022 through April 29, 2022. The jury heard the facts as described above, along with additional witnesses described in more detail below where relevant. On May 4, 2022, the Appellant was convicted of two counts of second-degree murder, two counts of use of a firearm in a crime of violence, transporting a handgun in a vehicle, illegal possession of a regulated firearm, and wearing, carrying, and transporting a handgun. The Appellant was sentenced on September 7, 2022. The Appellant was sentenced to two consecutive sentences of 40 years, suspending all but 35 years, for the second-degree murder convictions.[3] On October 5, 2022, the Appellant timely appealed his conviction. The facts will be supplemented in each section.

DISCUSSION

I. *Admission of Firearms Expert Testimony*

A. Facts

Jaimie Smith was a firearms examiner for the Prince George's County Police Department Forensic Sciences Division. The State notified the Appellant on February 5, 2020, that the State intended to call Jaimie Smith as an expert in the area of firearm and toolmark examination.

[3] The Appellant was sentenced to two additional consecutive sentences of 20 years, suspending all but 10 years, for the use of a firearm in a crime of violence charges. For transporting a handgun in a vehicle, the Appellant was sentenced to 3 years concurrent with the use of a firearm in a crime of violence charge. The wearing, carrying, and transporting a handgun charge also merged into this charge. Lastly, for illegal possession of a firearm, the Appellant was sentenced to 5 years consecutive to the use of a firearm in a crime of violence charge.

Discovery took place over the following months. On July 7, 2021, the Appellant requested the State to provide complete disclosure of the expert's materials, including "contact information, source documents and CVs." On July 13, 2021, the State emailed the Appellant asking if the Appellant was requesting bench notes for the firearms examination or for the State's DNA expert. The next day, the Appellant responded, requesting the bench notes for the DNA expert, but making no mention of bench notes for the firearms expert.[4] In the Appellant's Opposition to Continuance filed on July 16, 2021, the Appellant requested "DNA source documents and bench notes" but again made no mention of discovery related to the firearms expert.

In the week leading up to the rescheduled trial, the Appellant still did not have the bench notes and source documents for Jaimie Smith. On April 21, 2022, the Appellant raised this issue before the Honorable Beverly Woodard. The Appellant argued that they had been "particularly" requesting the firearms documents since 2021. The Appellant sought the relief of complete exclusion of the testimony of any expert where the complete discovery had not been provided or alternatively the immediate disclosure of the items the Appellant requested. The Appellant argued that exclusion was the better remedy because even if the source documents were turned over on the day of the hearing there was insufficient time to retain an expert to review Mr. Smith's testimony and advise the

[4] The Appellant's full response said, "We don't want to push the trial. While we would like to have the supporting documentation for the DNA, what we are most interesting [sic] in was the supporting documentation about the phone records." This exchange was in the context of the impending July 25, 2021, trial date, which was then continued, as described under the speedy trial issue.

Appellant on how to cross-examine Mr. Smith or whether to request a *Daubert*[5] hearing. Judge Woodard pointed out that the Appellant was willing to go to trial back in 2020 without having received the bench notes from the firearms examiner.

At the end of the hearing, Judge Woodard noted that the Appellant initially made the request for the bench notes and source materials for the firearms expert. Judge Woodard found that there was a discovery violation, but did not find that the failure to provide the discovery for the firearms expert was intentional. Judge Woodard denied the motion for the exclusion of the firearms expert and said the expert could still testify, but the State had to provide the bench notes and source materials to the Appellant. The State then turned over the required discovery materials.

On April 25, 2022, now before the trial and appearing before Judge Hill, the Appellant again raised the issue. The Appellant said that after reviewing the bench notes, the Appellant found "several inconsistencies between the standard operating procedures and the actual procedures that were applied in this case . . . ." The Appellant said that given the limited time frame the forensics department of the Maryland Office of the Public Defender was unable to raise or put forward a well-supported *Daubert* challenge. The Appellant argued that based on the change in expert standards in *Rochkind v. Stevenson*, 471 Md. 1, 27 (2020), the inability to hold a *Daubert* hearing created a prejudice against the Appellant's right to competent counsel. Appellant's counsel pointed out that since the *Rochkind* decision, the admissibility of firearms examination testimony was "a live issue

[5] Referencing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

in the Court" on, referencing the initial remand that would lead to the Supreme Court of Maryland's decision in *Abruquah v. State*, 483 Md. 637, 652 (2023), discussed in more detail below. Given the general questions as to the reliability of firearms examination, Appellant's counsel said they could not "intelligently and ethically confront Mr. Smith because of this late disclosure."

The court asked the Appellant whether they wanted a *Daubert* hearing or a continuance. The Appellant said having a *Daubert* hearing was "absolutely necessary." However, the Appellant then argued that a continuance would violate the Appellant's speedy trial right, while proceeding without a *Daubert* hearing would violate the Appellant's right to confront witnesses and face a challenge in the appellate courts. Based on that, the Appellant said the appropriate remedy would be to entirely exclude the firearms examiner.

The Appellant agreed with Judge Hill's statement that "your issue is not with the science, it's with the person [sic] didn't follow procedures." The Appellant also said they did not have an expert ready because problems the Appellant alleged were in Mr. Smith's testimony were only revealed by the bench notes. The Appellant described that the issue was that multiple test fires were not completed for determining individual characteristics, going against standard operating procedure. The Appellant argued that he was foreclosed from retaining an expert that could have concluded that this failure to follow procedure made the opinion unreliable. While the Appellant had reached out to an expert in firearms analysis, the expert said he would not be able to testify by the time of trial.

The Appellant admitted they were not able to address the issues of admissibility and reliability under *Daubert* without the bench notes. The Appellant referenced that there is a PCAST study[6] that has called into question the general reliability of firearms examination, but then stated that they did not retain experts who could testify to that opinion. Judge Hill and Appellant's counsel discussed why the bench notes were not shared until the week before trial, and the State pointed out that the bench notes were never mentioned during the prior motions hearings. The Appellant concluded by stating that he would "file a request for a *Daubert* hearing at this point in time . . . however, we are just not – we would not be prepared to proceed on one . . . ."

The court denied the motion in limine to exclude the examiner. The court noted that the field of firearms examination "is not at issue" because "there's been several hearings, several motions, several status conferences" during the case and the issue of the field was never raised at those times. The court noted that this *Daubert* issue was not mentioned before the court previously. Based on the arguments, the trial court found that the Appellant was capable of impeaching the witness on cross-examination on any failures to follow operating procedures. As a result, the court denied the Appellant's request to exclude Mr. Smith's testimony and denied the request for a continuance.

[6] Referring to Executive Office of the President, President's Council of Advisors on Science and Technology, *REPORT TO THE PRESIDENT*, *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (2016), available at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf (last accessed June 16, 2025), archived at https://perma.cc/3QWJ-2DGR.

Before Mr. Smith testified, the Appellant renewed his objection to Mr. Smith's testimony as a firearms examiner and restated his "intention for a *Daubert* hearing because [he] had received the discovery untimely" and since the *Daubert* hearing could not occur because of time restraints.

Mr. Smith was deemed an expert in the field of tool mark and firearms identification. Mr. Smith testified to his conclusion that "the 13 fired 9mm cartridge cases were identified as having been fired in the GLOCK semi-automatic pistol." For the bullets found at the scene, Mr. Smith said eight of the fourteen bullets were "identified as having been fired in the submitted GLOCK pistol" and the other six had "insignificant individual characteristics" so the conclusion was inconclusive for those bullets.[7]

B. Parties' Contentions

The Appellant argues that the lower court erred in denying their demand for a *Daubert* hearing. The Appellant pointed out issues with Mr. Smith's reasoning and argued that a *Daubert* hearing was required to analyze whether his opinion was admissible. After the Supreme Court of Maryland's ruling on firearms testimony in *Abruquah v. State*, 483 Md. 637 (2023), the Appellant now argues that under that case's conclusion, Mr. Smith's testimony was inadmissible. The Appellant says this Court should remand the case for a new trial with expert testimony that conforms to the ruling of *Abruquah*.

[7] Mr. Smith explained how the types of conclusions he could reach were: (1) identification, meaning the ammunition was "fired in the same gun"; (2) elimination, meaning "these two ammunition components were fired in different guns"; (3) inconclusive, meaning the class characteristics match, but there is not enough information to reach a conclusion; and (4) of no value, where the ammunition does not have sufficient information to reach any conclusion.

The State argues that the defense weaponized the discovery rules to attempt to exclude the testimony of Mr. Smith. Based on the timeline of the Appellant's requests, the State argues that the trial court properly declined to hold a *Daubert* hearing and properly denied the Appellant's request to entirely exclude Mr. Smith's testimony. The State argues that the Appellant did not properly request a *Daubert* hearing and as a result, this issue is not preserved. The State argues that *Abruquah* does not broadly ban general firearms testimony and that case should not warrant a reversal for the Appellant's case.

C. Standard of Review

We review the trial court's decision to admit expert testimony for an abuse of discretion. *Abruquah v. State*, 483 Md. 637, 652 (2023) (citing *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020)). "[A] circuit court abuses its discretion by, for example, admitting expert evidence where there is an analytical gap between the type of evidence the methodology can reliably support and the evidence offered." *Id.*

Regarding a discovery violation, when the circuit court does not find that a discovery violation occurred, this Court "exercise[s] independent *de novo* review to determine whether a discovery violation occurred." *Alarcon-Ozoria v. State*, 477 Md. 75, 91 (2021) (quoting *Williams v. State*, 364 Md. 160, 169 (2001)). We review the trial court's decision on whether or not to impose a discovery violation for an abuse of discretion. *Id.* (quoting *Dackman v. Robinson*, 464 Md. 189, 231 (2019)).

D. Analysis

The first issue is whether the State complied with its discovery obligations for Jaimie Smith's testimony. In the criminal context, discovery rules exist to both assist a

defendant in preparing their defense and protect a defendant from surprise. *Sykes v. State*, 253 Md. App. 78, 109 (2021) (citing *Thomas v. State*, 397 Md. 557, 567 (2007)). The State's discovery obligations are set out in the Maryland Rules, which state that the State must provide:

> (A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;
> (B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and
> (C) the substance of any oral report and conclusion by the expert;

Md. Rule 4-263(d)(8). If a party does not comply with discovery, then the Rules state that a motion to compel discovery "based on inadequate discovery shall be filed within ten days after the date the discovery was received." Md. Rule 4-263(i)(1).

Here, the State violated its discovery obligations. The Appellant had requested the expert's "source documents" in July of 2021. This would fall under the "written reports or statements" the State is required to report under Rule 4-263(d)(8)(B). The State failed to turn over these materials until Judge Woodard required them to turn the documents over on April 21, 2022. Despite the State's noncompliance with discovery, we also note that the Appellant had multiple opportunities to assert that they were seeking the bench notes and documents related to the firearms expert and failed to assert their right to discovery until the eve of trial. At no point did the Appellant file an additional motion in accordance with Rule 4-263(i) to compel the State to turn over discovery about the firearms expert. In prior communications with the State, the Appellant focused on other missing discovery items

and did not bring back up the firearms documents. While the Appellant had no burden to bring their requests back up, Judge Hill noticed the Appellant's lack of demand over the relevant time period, noting that in reviewing the filings and hearings "there's no mention of the issue before the [c]ourt."

Bad faith or a willful violation of discovery by the State can justify the exclusion of evidence. *Thomas*, 397 Md. at 570 n.8. "[T]he mere fact that a discovery violation was inadvertent does not remove the trial court's obligation to determine whether another party was prejudiced by the violation and, if so, what sanctions might be necessary to remedy that prejudice." *Mason v. State*, 487 Md. 216, 241 (2024). As Rule 4-263 states, if there is a violation of the discovery rules:

> [T]he court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances.

Md. Rule 4-263(n). If a party argues a witness should be disqualified based on a discovery violation "disqualification is within the discretion of the court." *Id.*

Judge Woodard found that there was a discovery violation, but found it was not intentional. Judge Woodard refused to exclude the expert, but required the State to disclose the missing information. We hold that Judge Woodard properly exercised her discretion in resolving the discovery issue. The State was required to turn over the missing materials and complied with that order. Given that there was no bad faith on the part of the State, and the record does not show willful noncompliance since the Appellant did not show evidence of meaningful follow-up requests in the subsequent months, Judge Woodard's

decisions were not an abuse of discretion. Further, full exclusion of the witness was not required based on these violations and Judge Woodard properly exercised her discretion not to exclude Mr. Smith's testimony.[8]

The next issue is whether the trial court erred in denying the Appellant's demand for a *Daubert* hearing. The purpose of a *Daubert* hearing is to determine the admissibility of an expert's testimony. "[A] *Daubert* hearing may be especially useful or necessary when the opponent raises a genuine dispute over whether an otherwise reliable test may have been performed unreliably." *Muldrow v. State*, 259 Md. App. 588, 620 (2023). The admission of expert testimony in Maryland is controlled by Rule 5-702, which states:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine:
>
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
>
> (2) the appropriateness of the expert testimony on the particular subject, and
>
> (3) whether a sufficient factual basis exists to support the expert testimony.

[8] By contrast, there were more issues with expert disclosures related to the State's DNA expert. Under the Maryland rules, there are specific rules covering the discovery materials for DNA evidence that includes providing laboratory notes at least thirty days in advance of trial. *See* Md. Code, Cts. & Jud. Proc. § 10-915(c)(2)(ii). Given the State's non-compliance with that statute, Judge Woodard granted the motion to exclude the DNA expert's testimony. This further supports Judge Woodard properly exercising her discretion in resolving the discovery issues by excluding the evidence when a statute required specific disclosure.

Md. Rule 5-702. To determine whether expert testimony is sufficiently reliable, courts may rely on the non-exhaustive list of factors set out in *Rochkind v. Stevenson*, 471 Md. 1 (2020):

> (1) whether a theory or technique can be (and has been) tested;
> (2) whether a theory or technique has been subjected to peer review and publication;
> (3) whether a particular scientific technique has a known or potential rate of error;
> (4) the existence and maintenance of standards and controls; . . .
> (5) whether a theory or technique is generally accepted[;]
> . . .
> (6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying;
> (7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;
> (8) whether the expert has adequately accounted for obvious alternative explanations;
> (9) whether the expert is being as careful as [the expert] would be in [the expert's] regular professional work outside [the expert's] paid litigation consulting; and
> (10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

Rochkind, 471 Md. at 35–36 (first quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593–94 (for factors 1-5) and next quoting Fed. R. Evid. 702 Advisory Committee Note (cleaned up) (for factors 6-10)).

On April 25, 2022, the Appellant said that "we believe we have a *Daubert* challenge that we would not have known about without the bench notes because it wasn't revealed until we looked at the supporting documentation." However, the Appellant then said they were not prepared to hold a *Daubert* hearing for Mr. Smith's testimony because of the State's delay in providing discovery. As a result, the Appellant requested that the remedy

be the exclusion of the evidence, rather than a *Daubert* hearing. Based on the arguments, Judge Hill determined that the issues presented by the Appellant about how Mr. Smith applied his methodology to the firearms in the case went to the weight of the expert's testimony, not its admissibility, and could therefore be sufficiently handled through cross examination, rather than a full *Daubert* hearing. We hold that Judge Hill properly denied the request to exclude Mr. Smith's testimony and the request for a *Daubert* hearing.

Even though the trial court properly denied the request for a *Daubert* hearing, after the trial and appellate proceedings began in this case, the Supreme Court of Maryland decided *Abruquah v. State*, 483 Md. 637 (2023). In that case, the Supreme Court of Maryland analyzed the admissibility of firearms identification evidence. The firearms expert testified at trial that the bullets recovered from the crime scene "at some point had been fired from [the Taurus revolver]." *Id.* at 651. After walking through the *Daubert-Rochkind* factors, the Court concluded that there was an analytical gap between the expert's opinion and "the type of opinion firearms identification can reliably support." *Id.* at 696–97. The expert was not permitted "to opine without qualification that the crime scene bullets were fired from [the defendant's] firearm." *Id.* 698. The trial court therefore abused its discretion in admitting that testimony. *Id.* at 696–97. The Court went on to find that the error was not harmless because the Court could not say, "beyond a reasonable doubt, that the admission of the particular expert testimony at issue did not influence or contribute to the jury's decision to convict [the defendant]." *Id.* (citing *Clemons v. State*, 392 Md. 339, 372 (2006)). The Court said that the evidence presented, including reports, studies, and testimony on firearm identification, does support "reliable conclusions that patterns and

markings on bullets are consistent or inconsistent with those on bullets fired from a particular firearm." *Id.* at 648.

Here, the conclusion by Mr. Smith was a similar unqualified conclusion to what was held to be improper in *Abruquah*. Mr. Smith testified that his conclusion was that "the 13 fired 9mm cartridge cases *were identified as having been fired* in the GLOCK semi-automatic pistol." (emphasis added). This goes beyond testimony that the cartridges were *consistent* with the particular firearm, which *Abruquah* said was a reliable conclusion. *Abruquah*, 483 Md. at 648. As a result, the testimony in this case goes beyond what *Abruquah* held was admissible.

Because the firearms conclusion in this case matched the testimony held to be improper in *Abruquah*, the trial court abused its discretion in admitting the testimony. The next step is whether the admission of that testimony was harmless error. In a harmless error analysis, we must be able to "declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976). We must be satisfied "that there is no reasonable possibility that the evidence complained of-whether erroneously admitted or excluded-may have contributed to the rendition of the guilty verdict." *Id.*

In this case the error was not harmless. In *Abruquah*, the court found there was not harmless error because the firearms expert "was the only direct evidence before the jury linking Mr. Abruquah's gun to the crime." *Abruquah*, 483 Md. at 697. Similarly here, there was only circumstantial evidence connecting the Appellant to the shooting. There were no direct eyewitnesses to the shootings. There was no DNA or fingerprint evidence recovered.

There was no surveillance footage of the scene itself. But the State had a photograph of a gun on the Appellant's phone that looked similar to the one recovered at the scene, and an expert then testified definitively that the gun recovered was identified as having fired the bullets that shot the victims. We cannot say beyond a reasonable doubt that the expert's testimony linking the gun to the bullets in the shooting "in no way influenced the verdict" in the absence of other direct evidence. *Dorsey*, 276 Md. at 659. As a result, the error in admitting the firearms expert's testimony was not harmless error.

Given that the testimony entered on the firearms identification violated the Supreme Court of Maryland's holding in *Abruquah*, and that error was not harmless, we must reverse the decision of the trial court and remand for a new trial.

II. *Motion to Suppress the Appellant's Statement*

A. Facts

After the shooting, the Appellant was interviewed by police on June 14 and June 17, 2019, in an interview room in the Prince George's County jail. The interviews were conducted by Prince George's County police detectives Dennis Windsor and John Paddy.[9] The interrogations were about the June 1, 2019, shooting and an unrelated homicide that occurred in November 2017. In December 2017, the Appellant spoke about that unrelated homicide with one of the detectives conducting the 2019 interviews.

The interview on June 14 began with a discussion of the 2017 homicide. Detective Windsor presented the Appellant with a charging document, which Detective Windsor said

[9] The June 17 interview was fully recorded, but only part of the June 14 interview was recorded because the iPhone recording the interview died.

was for first-degree murder for the 2017 Homicide. He then told the Appellant that if there was a version of the Appellant's story that did not incriminate him or make him "look as bad as a cold blooded killer" then he would need to change the document. The Appellant responded to that by saying it did not seem like the police were protecting him, even though he helped the police in a prior case.

Detective Windsor told the Appellant about an old case of his to try and convince him to tell the full version of what happened and "to get him to understand why [he] needed [the Appellant] to stop lying." Detective Windsor told a story about a homicide case where before speaking to the police the defendant was going to be charged with murder. Detective Windsor said the defendant told his side of the story about not trying to kill the person he got into an altercation with, which helped the case get moved down from murder to manslaughter. Before the audio recording shut off, Detective Windsor said he was going to charge the Appellant with first degree murder if he did not come out with his version of what happened.

Detective Windsor said that he used an analogy with the Appellant, describing it as "when you get in trouble with mom, you don't continue to lie about being in trouble. . . . You need to stop lying because you're already in trouble. And if you continue to lie, you'll continue to get more and more trouble." After using that analogy, Detective Windsor said the Appellant "totally changed his story about the 2017 homicide and placed himself in the vehicle at the time of the murder" in the present case but denied doing the shooting. Detective Paddy said that the Appellant said he was in the decedent's car and implicated

another person as being the shooter, a male named Jerrell. The Appellant, at some point on June 14, also wrote down his version of events.

Then, three days later on June 17, the Appellant was interviewed again by the same detectives. The interview began with a discussion of the shooting on June 1, 2019. The Appellant described how he was at the music video shoot when one of the victims got into an argument with someone on the phone. The Appellant said he was in the car with two people when another individual got into the backseat of the car with him. The Appellant described how that individual "grabbed for something" and then he heard shots go off and he ran away. The Appellant said the individual who got into the backseat was a male named Jerrell. The Appellant said that he left his phone in the car.

During the interview, the Appellant said, "You talked about last time about this helping me. How is this helping me?" Detective Windsor then described how "the state likes witnesses" and brought the mom analogy back up, stating "[i]f you're truthful with mom, you don't get in much - - as much trouble as if you lied to mom." Detective Windsor said, "your punishment from mom" when you lie about what you did "tends to be more severe because she caught you lying." He continued to say that they were "past that point so you got in trouble with mom now." Detective Windsor then shifted away from the analogy and said "if you didn't help with - - you know what you're dealing with. If you do help, at least the state can say you know, he's not really - - maybe not that bad of a guy, maybe we need to utilize him and not be so hard on him."

Later in this conversation, Detective Windsor brought up the possibility of putting money on his jail account since the Appellant was having difficultly making phone calls.

At the hearing, Detective Windsor said he did not have the ability to do this. After bringing up the money, the Appellant helped identify photos the detectives provided to him. He then detailed his movements before the shooting to the detectives. Detective Windsor later said that the Appellant was not in a great position and asked "what's important to you, covering for everybody else or you and your family? I would think -- all of us here would pick you and your family."

A motions hearing on whether to suppress statements from these two interviews was heard on June 23, 2021, where both detectives testified to their interactions with the Appellant, as described above. Detective Windsor testified that he did not make any threats promises or inducements during either interview. Detective Paddy testified to the same. The Appellant argued that the detectives made improper inducements to the Appellant, including promises of lenience and assistance, specifically that the first-degree murder charge could be reduced to manslaughter and that the detectives offered to put money on his book at the jail. The State argued that there was no reliance on any potential inducements by the detectives because he had already made statements prior to any of the Appellant's alleged inducements. The motions court said it would issue a written ruling on the motion to suppress.

The trial court entered its written order on July 7, 2021. The court did not find that the Appellant "relied on the police officer's statements as to his mother, what constitutes

murder v. manslaughter, or putting money on a phone account in deciding to provide his version of the events in this case." The court denied the Appellant's motion to suppress.[10]

At trial, the contents of the interviews were admitted over the Appellant's objections. The State played the video for the jury. These statements were used to show the Appellant admitting that he was at the scene. Detective Paddy also described to the jury how the Appellant's described direction of flight matched with the firearm that was recovered at the crime scene.

B. Parties' Contentions

The Appellant argues that the motions court erred when it denied the motion to suppress. The Appellant contends that the statements made by the detectives improperly induced the Appellant into revealing information about his actions on the night of the homicides. The Appellant argues that little time elapsed between the inducements and the confessions.

The State argues the motions court properly denied the motion to suppress. First, the State argues that the comments made by the detectives to the Appellant did not rise to the level of an improper promise because the detectives did not make any specific promises to help the Appellant. Second, the State argues there was no reliance on the inducements because the inducements were not close in time to the incriminating statements made by the Appellant.

[10] The Court separately granted a request to suppress statements from a different interview on September 4, 2019, because the State did not provide a recording of the statements and there was no testimony about Miranda or the statements made during the interview.

C. Standard of Review

When reviewing a circuit court's denial of a motion to suppress evidence, our review is "limited to the information contained in the record of the suppression hearing and not the record of the trial." *Grant v. State*, 449 Md. 1, 14 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)). "The issue of whether a confession is voluntary presents a mixed question of law and fact, subject to *de novo* review, with deference given to the suppression court's factual findings." *Paige v. State*, 226 Md. App. 93, 106 (2015) (citing *Winder v. State*, 362 Md. 275, 310–11 (2001)). We defer to the motions court's factual findings unless they are clearly erroneous. *Butler v. State*, 255 Md. App. 477, 488 (2022) (quoting *Lee v. State*, 418 Md. 136, 148 (2011)). We must consider the facts in the light most favorable to the State because they prevailed on the motion. *Grant*, 449 Md. at 14 (quoting *Wallace*, 372 Md. at 144). We review any alleged constitutional violations, *de novo*, "by reviewing the relevant law and applying it to the facts and circumstances of this case." *Butler*, 225 Md. App. at 488 (quoting *Lee*, 418 Md. at 148–49).

D. Analysis

The admission of an involuntary confession made during a custodial interrogation violates the common law of Maryland, the Due Process Clause of the Sixth Amendment of the United States Constitution, and Article 22 of the Maryland Declaration of Rights. *Madrid v. State*, 474 Md. 273, 317 (2021). We will first perform the analysis under the common law and then turn to the Constitutional provisions.

"Under the common law of Maryland, a confession is involuntary where 'it is the product of an improper threat, promise, or inducement by the police.'" *Id.* (quoting *Lee*,

418 Md. at 158). To determine whether a confession was voluntary, Maryland courts have established a two-step test, known as the *Hillard* test. *Lee*, 418 Md. at 158 (citing *Hillard v. State*, 286 Md. 145, 153 (1979)). Both steps must be satisfied to deem a confession involuntary. *Madrid*, 474 Md. at 317 (quoting *Lee*, 418 Md. at 161). The State has the burden to prove voluntariness by a preponderance of the evidence. *Id.* (citing *Hill v. State*, 418 Md. 62, 75 (2011).

The first step of the *Hillard* test is whether "any officer or agent of the police promises or implies to the suspect that he will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession." *Id.* (quoting *Lee*, 418 Md. at 161). This first prong is objective, and "a suspect's subjective belief that he or she will be advantaged in some way by confessing will not render the confession involuntary unless the belief was premised upon a statement or action made by an interrogating officer." *Id.* at 317–18; 328 (quoting *Winder v. State*, 362 Md. 275, 311 (2001)). For example, in *Hillard v. State*, the improper inducement at issue was when the officer said, "I will go to bat for you" and promised to go to the State's Attorney's office. 286 Md. 145, 153 (1979). But under this first step, not every promise will be improper under the common law. *See Knight v. State*, 381 Md. 517, 536 (2004) (finding that a promise to inform the prosecutor how an interrogation went was not improper because the officer offered no special advantage or offered to exercise any discretion).

The second step of the *Hillard* test is whether "the suspect makes a confession in apparent reliance on the police officer's explicit or implicit inducement." *Madrid*, 474 Md.

at 317 (quoting *Lee*, 418 Md. at 161). The improper inducement "must have caused the suspect to confess" because if there was no reliance, then the interrogator "induced" nothing. *Winder*, 362 Md. at 309–10 (quoting *Reynolds v. State*, 327 Md. 494, 509 (1992)). For this second, subjective step, we must assess "whether there was a nexus between the promise or inducement and the accused's confession" by examining "the particular facts and circumstances surrounding the confession." *Madrid*, 474 Md. at 318 (quoting *Winder*, 362 Md. at 311–12). These circumstances may include the amount of time between the inducement and the confession. *Id.* (quoting *Winder*, 362 Md. at 311–12).

Looking at the first step, the Appellant alleges three specific promises made by the Detectives. The first is Detective Windsor allegedly promising to decrease the Appellant's first-degree murder conviction down to manslaughter. The second was a promise to put money into the Appellant's account in jail. Lastly, the Appellant expressed concerns about Detective Windsor's "mom" analogy about lying to the State. The Appellant argued that this analogy was being used to try to induce the Appellant to speak so that the State, "mom" in the analogy, will be less hard on the Appellant.

On these first two promises, the Appellant compared this case to *Winder v. State*, 362 Md. 275 (2001). In that case, the defendant was suspected of murdering his fiancé and her grandparents. *Id.* at 283. During a twelve-hour interview, the officers told the defendant that friends of the victims were coming after him for revenge. *Id.* at 284, 316. Officers then told the defendant that if he identified the bodies and showed remorse for murdering the victims they would protect him from any local vigilantes, but could not guarantee his safety if he continued to deny the murders. *Id.* at 316. The officers also told the defendant that

their motivation was not to get a confession for a conviction, but to get information to help him with obtaining psychological assistance and leniency from prosecutors. *Id.* at 314. Near the end of the interrogation, the defendant confessed to murdering the victims. *Id.* at 284.

The Maryland Supreme Court held that the confession was involuntary under the common law of Maryland. *Id.* at 320–321. The first prong of *Hillard* was met because the officers repeatedly said that they would help the defendant in return for a confession, offering him a means to get leniency from prosecutors and protection from an angry mob. *Id.* at 317–18. The second prong was met because the circumstances showed that "he was overwhelmed by the situation unfolding before him" and "was intimidated by his surroundings and impressed by the matters communicated to him by the officers." *Id.* at 318–19. The evidence of the defendant's fear, the closeness in time between the inducements and the confession, and the lack of any intervening factors were sufficient to show that the confession was made in reliance on the officer's statements. *Id.* at 320.

The Appellant argued that the leniency from prosecutors offered in *Winder* was similar to Detective Windsor's statements that he could turn the first-degree murder charge into manslaughter if the Appellant spoke to him. Detective Windsor had told the Appellant he was charged with first-degree murder in the unrelated homicide. The specific language used by Detective Windsor was that if the Appellant's version of events does not reflect a first-degree murder, then Detective Windsor would need to update his charging sheet. This differs from the offers in *Winder* to get the defendant psychological assistance and leniency from prosecutors. 362 Md. at 314. Instead, Detective Windsor was offering to listen to the

Appellant's story and update the charges based on the information he received. The manslaughter story he told also did not involve a promise for special consideration, but instead how a new understanding of the facts reflected a different charge. Further, as discussed in more detail below for the third promise, Detective Windsor never testified that he used this example to go to the prosecutors and guarantee a manslaughter charge had the Appellant told his story. There was no form of assistance offered, rather the Detective informed the Appellant of a possible outcome were he to tell the truth. As a result, we hold that this first promise of murder versus manslaughter was not an improper inducement by the police.

The second comparison to *Winder* applies to Detective Windsor's promise to put money into the Appellant's account in jail. The statement by Detective Windsor was "So we could put money on [your account] for you if that was it." In *Winder*, there was a clear offer of an exchange, where the officers said they would protect the defendant from any vigilantes if he identified the bodies and showed remorse. 474 Md. at 316. This does not rise to the level of *Winder*, but immediately thereafter the Appellant was shown photos and asked to identify individuals. Therefore, there was an implication that in exchange for identifying these individuals, money could be placed into the Appellant's account. As a result, we will move to the second stage of the inquiry with this statement.

Finally, the Appellant expressed concerns about Detective Windsor's "mom" analogy about lying to the State. The Appellant argued that this analogy was being used to try to induce the Appellant to speak so that the State, "mom" in the analogy, will be less hard on the Appellant. For this analogy, the State draws a comparison to *Knight v. State*,

381 Md. 517 (2004).

In *Knight*, the issue was whether an officer's promise to inform prosecutors of a suspect's cooperation was an improper inducement. *Id.* at 531.The Court held that it was not. *Id.* at 535. The officer's statement about informing prosecutors "was not a promise of help or special consideration because [the officer] had no discretion regarding such matters." *Id.* at 535. The Court reasoned that because officers have a professional duty to inform a prosecutor of the truth surrounding an investigation, then there is no special advantage in performing that duty and informing prosecutors that a suspect did, in fact, cooperate. *Id.* at 535–36. The Court contrasted the case with statements involving "promises by the interrogating officers either to exercise their discretion or to convince the prosecutor to exercise discretion to provide some special advantage to the suspect." *Id.* at 536. In *Knight*, this was shown by a statement to another defendant where the detective said "if down the line, after this case comes to an end, we'll see what the State's Attorney can do for you, with your case, with your charges." *Id.* at 537. The Court held that this was "clearly a promise to exercise advocacy" but held the statement was still admissible because the defendant had given a similar statement prior to the alleged inducement. *Id.* at 537–38.

Applying the reasoning from *Knight* to this case, the detectives fell within the category of actions over which they had no discretion. At no time did either detective promise "to exercise their discretion or to convince the prosecutor to exercise discretion" to benefit the Appellant. *Id.* at 536. In fact, Detective Windsor stated that the charges were "up to the [S]tate to decide." The analogy instead functioned as a way for the detectives to

help the Appellant understand the importance of telling the truth during the interrogation. There was not a promise to "go to bat" for the Appellant with the State's Attorney if he told the truth. *Hillard*, 286 Md. at 153. As a result, we hold that the use of the "mom" analogy was not an improper inducement because it did not promise any specific act of discretion on behalf of the detectives conducting the interrogation.[11]

Turning to the second step, the trial court found that the Appellant did not rely on any of the alleged inducements, including the inducement about the Appellant's account. This is a factual determination, which means we defer to the motions court's findings unless they are clearly erroneous. *Butler*, 255 Md. App. at 488 (quoting *Lee*, 418 Md. 148). The trial court did not clearly err in its conclusion about reliance as there was sufficient evidence on the record showing a lack of reliance.

Based on the detectives' testimony, the Appellant admitted to being present at the scene during the July 14 interrogation. At the beginning of the July 17 interrogation, the Appellant discussed many specific details of the June 1, 2019 shooting with the detectives. This all occurs before the inducement related to the Appellant's account was made. Even when that statement about the account was made, it was never referenced by the Appellant or brought up by the detectives again. Even at the hearing, Detective Windsor said he did

[11] While we do not need to reach the second step on this question, the lack of an improper inducement is further shown by the Appellant's lack of reliance on the "mom" metaphor. When Detective Windsor brings the metaphor up again on June 17, the Appellant said, "You say I lied to mom. What does that mean for real?" Detective Windsor then had to explain the analogy again, after the Appellant had already disclosed many details about his involvement with the shooting at the start of that interview. Based on his lack of understanding, there was clearly no subjective reliance by the Appellant on the metaphor in making his prior statements.

not have the ability to put money in the Appellant's account. As a result, even if Detective Windsor made a statement constituting an improper inducement related to the Appellant's account, there was no evidence of reliance on that statement by the Appellant.

We do not hold that the murder versus manslaughter analogy or "mom" analogy were promises for special consideration and that the offer to put money on the account was not relied upon. As a result, we hold that during the interrogations, there were no improper inducements under Maryland's common law.

We now turn to the Constitutional arguments. The Due Process Clause of the Fourteenth Amendment of the United States Constitution sets out that no State shall "deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend XIV. The Fifth Amendment of the United States Constitution says "No person . . . shall be compelled in any criminal case to be a witness against himself" setting out the right against self-incrimination.[12] U.S. Const. amend V. Similarly, the Maryland Declaration of Rights states that no person "ought to be compelled to give evidence against himself in a criminal case." Md. Decl. of Rts. art. 22. We interpret Article 22 *in pari materia* with the Self-Incrimination Clause. *See Madrid*, 474 Md. at 320 (citing *State v. Rice*, 447 Md. 594, 644 (2016)). Under both the United States Constitution and the Maryland Declaration of Rights, a confession made during a custodial interrogation must be voluntary to be admissible. *Id.* at 320 (citing *Dickerson v. United States*, 530 U.S. 428,

[12] This clause has been incorporated into the Due Process Clause and is therefore applicable to the States. *Dickerson v. United States*, 530 U.S. 428, 434 (2000) (citing *Mally v. Hogan*, 378 U.S. 1, 6–11 (1964)).

434 (2000); *Brown v. State*, 452 Md. 196, 209–10 (2017)). The Supreme Court of Maryland "has held that both Federal and State constitutional requirements are satisfied if the defendant's confession is not the product of 'police conduct that overbears the will of the suspect and induces the suspect to confess.'" *Madrid*, 474 Md. at 330 (quoting *Lee*, 418 Md. at 159).

To determine whether a confession is voluntary, we consider the totality of the circumstances. *Id.* (citing *Dickerson*, 530 U.S. at 434). When assessing the totality of the circumstances, the Supreme Court of Maryland has set out several relevant factors, including:

> . . . where the interrogation was conducted; its length; who was present; how it was conducted; its content; whether the defendant was given Miranda warnings; the mental and physical condition of the defendant; the age, background, experience, education, character, and intelligence of the defendant; when the defendant was taken before a court commissioner following arrest[;] and whether the defendant was physically mistreated, physically intimidated[,] or psychologically pressured.

Id. at 321 (quoting *Hof v. State*, 337 Md 581, 596–97 (1995)). We consider any promises, threats, or inducements as a part of the totality of the circumstances. *Lee*, 418 Md. at 160 (quoting *Reynolds v. State*, 327 Md. 494, 505 (1992), *cert. denied*, 506 U.S. 1054 (1993)).

We conclude that under the totality of the circumstances, the Appellant's statement was voluntary under the constitutional standards because the statements were "not the result of police conduct that overbore his will and induced him to confess." *Madrid*, 474 Md. at 330 (quoting *Lee*, 418 Md. at 159). As we analyzed above, there were no improper inducements that would constitute something like psychological pressure. There was no evidence presented that the interrogation was overlong or conducted improperly. There

were three days between the two interrogations. The Appellant was properly Mirandized at the start of the interrogation. The Appellant was an adult and able to verbally respond to all of the detectives questions and showed that he understood his rights. The Appellant had experience dealing with interrogations, and in fact had spoken with one of the same detectives about a different homicide in December of 2017. Based on the totality of these circumstances the Appellant's will was not overborn by the detective's conduct to induce a confession.

We hold that the Appellant's statements were made voluntarily under the common law of Maryland and both the Maryland and federal constitutions, and therefore the circuit court was correct in denying the Appellant's motion to suppress.

III. *Denial of Motion for Speedy Trial Violations*

A. Facts

The Appellant was indicted on October 24, 2019. The trial was initially scheduled for January 21, 2020, but that was continued until May 4, 2020 in December 2019. Due to the COVID-19 Pandemic, that trial date was then pushed back to July 26, 2021.

On July 16, 2021, the State filed a written motion for a continuance because three witnesses were not served with subpoenas: Christina Bentley, Fred Hinton, and Chiffon Watts, and two other experts for the State were unavailable for trial. The Appellant opposed the motion for continuance, arguing that the State had failed to serve the subpoenas despite knowing the witnesses' identities. The Appellant asserted at that time that his right to a speedy trial was violated and listed discovery violations leading up to the trial. The circuit court, without a hearing, continued the case on July 21, 2021.

The parties then had a status hearing on September 17, 2021. At the hearing, the Appellant noted that there was not a hearing on the motion for a continuance. The Appellant said "without an on-the-record finding as far as this cause is concerned, we are – both parties should be heard. So procedurally, I just take major issue with that." The judge noted that the Appellant maintained his motion to dismiss and "also states its objection to not having GOOD CAUSE hearing on continuance." (capitalization in original) After this, the trial was delayed to April 25, 2022.

A pretrial hearing was held on April 21, 2022. At the hearing, the Appellant moved to dismiss at that hearing for failure to provide a speedy trial. The lower court denied that motion, stating "there's been a lot of issues on both sides in terms of getting ready for this trial and I will not grant your motion to dismiss."

B. Parties' Contentions

The Appellant argues that the trial court's July 21, 2021 order was improper because it did not show a finding of good cause and was issued by an improper judge. Regarding the speedy trial issue, the Appellant argues that his Constitutional rights were violated when the State got the trial continued from July 2021 to April 2022 and that his incarceration during that period constituted actual prejudice.

The State argues the issues with the July 21 order were not preserved because the Appellant did not raise them below. The State argues that the delay in bringing the case to trial was proper because the missing witnesses were valid reasons to postpone a trial. Further the State argues that that the Appellant did not make a sufficient showing of prejudice that may have resulted from the delay.

C. 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). "[W]e accept a lower court's findings of fact unless clearly erroneous." *Id.* at 221.

D. Analysis

July 21, 2021 Order

The Appellant first argued that the July 21, 2021, order violated Maryland Rule 4-271. The Rule provides that:

> On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date. If a circuit court trial date is changed, any subsequent changes of the trial date may be made only by the county administrative judge or that judge's designee for good cause shown.

Md. Rule 4-271(a)(1); *see also* Md. Code, Crim. Proc. § 6-103(b)(1) ("For good cause shown, the county administrative judge or a designee of the judge may grant a change of the trial date in a circuit court . . . ."). Rule 4-271 was "intended primarily to carry out the public policy favoring the prompt disposition of criminal cases, independent of a defendant's constitutional right to a speedy trial." *Tunnell v. State*, 466 Md. 565, 571–72 (2020).

The July 21 order was entered by the Honorable Beverly Woodard, an Associate Judge on the Prince George's County Circuit Court. The Appellant argues that there was no evidence Judge Woodard was acting as the designee of the administrative judge in order

to comply with Rule 4-271. Additionally, the order did not specifically mention that the judge had found good cause to postpone the matter.

The Appellant did not specifically raise these issues in the lower court after this ruling was handed down and makes these specific arguments for the first time on this appeal. The Appellant had an opportunity in the days after the ruling before the originally scheduled trial date of July 26, 2021, to assert these issues of noncompliance with Rule 4-271, but the Appellant made no contemporaneous record of his concerns about the postponement of trial from this order. The Appellant did lodge an objection about the lack of a hearing, since there was no on-the-record finding of good cause, but did not make any of the arguments about Judge Woodard not being able to make the finding. Later, when making a motion to dismiss on due process and constitutional grounds on April 21, 2022, this good cause issue and Rule 4-271 were not mentioned.

"The rules for preservation of issues have a salutary purpose of preventing unfairness and requiring that all issues be raised in and decided by the trial court." *Lopez-Villa v. State*, 478 Md. 1, 13 (2022) (quoting *Conyers v. State*, 354 Md. 132, 150 (1999)). "Without a contemporaneous objection or expression of disagreement, the trial court is unable to correct, and the opposing party is unable to respond to, any alleged error in the action of the court." *Id.* Without that contemporaneous expression of disagreement, this issue is not preserved before this court and we decline to review this issue. *See Morgan v. State*, 299 Md. 480, 489–90 (1984) (discussing how the appellant's argument that the judge who found there was good cause had no authority to make the ruling was unpreserved for appellate review when first raised on appeal).

We have no specific findings of fact made by the trial court on whether or not Judge Woodard could properly make the ruling. Additionally, regarding the lack of a specific finding of good cause, "[t]rial judges are presumed to know the law and to apply it properly." *Marquis v. Marquis*, 175 Md. App. 734, 755 (2007) (quoting *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007)). We use this presumption "even in the absence of a verbal indication of having considered it." *Id.* (quoting *Wagner v. Wagner*, 109 Md. App. 1, 50 (1996), *cert. denied*, 343 Md. 334 (1996)). Based on the lack of findings in the trial court and assertions of these issues by the Appellant, we decline to address these issues in more detail. However, the Constitutional right to a speedy trial is a separate, preserved issue which we now address.

Right to a Speedy Trial

The right of an accused to a speedy trial is guaranteed by the Sixth Amendment of the United States Constitution, made applicable to the states through the Fourteenth Amendment, along with Article 21 of the Maryland Declaration of Rights.[13] *See, e.g.*, *Nottingham v. State*, 227 Md. App. 592, 613 (2016) (citing *State v. Kanneh*, 403 Md. 678, 687 (2008)).

The Supreme Court set out a balancing test to determine whether an accused's right to a speedy trial has been violated in *Barker v. Wingo*. 407 U.S. 514 (1972); *see also*

[13] The 6th Amendment of the United States Constitution states: "[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.

Glover, 368 Md. at 221 ("We consistently have applied the *Barker* factors when considering alleged violations of both the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights."). The Court identified 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." *Barker*, 407 U.S. at 530. "[N]one of the four factors" are "either a necessary or sufficient condition to the finding of a deprivation of the right of a speedy trial." *Id.* at 533. Instead, the factors are related and must be considered with any other relevant circumstances. *Id.* In order to apply the balancing test, it must first be shown that the delay must be of a sufficient length to trigger a speedy trial analysis. *Id.*; *see also Kanneh*, 403 Md. at 687.

1. Length of the Delay

The first *Barker* factor is the length of the delay. The length of delay alone "is not a weighty factor" but is significant for its connections to the other factors. *Glover*, 368 Md. at 225. The length is measured from the date of arrest, or the filing of indictment, information, or formal charges, whichever is earlier, until the date of trial. *United States v. Marion*, 404 U.S. 307, 320–21 (1971); *see also* In re *Thomas J.*, 372 Md. 50, 73 (2002).

Here, the Appellant was indicted on October 24, 2019, and his trial began on April 25, 2022. This was a delay of two years, six months, and a day, or 914 days total. A delay of this length will be presumptively prejudicial. *Glover*, 368 Md. at 223 (finding that "a pre-trial delay greater than one year and fourteen days was presumptively prejudicial on several occasions") (internal quotations removed) (collecting cases finding this presumption to apply).

That length alone of thirty months does not necessarily violate the right to a speedy trial by itself without an examination of the other factors. *Id.* at 224–25 (finding that a fourteen-month delay "requires constitutional scrutiny" but is "not so overwhelming . . . as to potentially override the other factors"); *see also Randall v. State*, 223 Md. App. 519, 557–58 (2015) (finding that a twenty-five month delay triggered scrutiny but was not a violation of the speedy trial right when weighed against the other factors); *Hayes v. State*, 247 Md. App. 252, 304–05 (2020) (collecting Maryland cases with delays longer than twenty-five months which were not held to violate the right to a speedy trial). Instead, the length here will be sufficient to trigger the rest of the constitutional analysis.

The other component in this first factor is "the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." *Greene*, 237 Md. App. at 512 (citing *Doggett v. United States*, 505 U.S. 647, 652 (1992)). This requires analyzing whether the delay was proper in light of the charges facing the defendant. *Barker*, 407 U.S. at 531 ("[T]he delay that can be tolerated for an ordinary street crime is considerably less than a serious, complex conspiracy charge."); *see also Glover*, 368 Md. at 224 ("[T]he delay that can be tolerated is dependent, at least to some degree, on the crime for which the defendant has been indicted.").

In *Divver v. State*, the Supreme Court of Maryland held that a delay of twelve months and sixteen days was "uniquely inordinate" for a "run-of-the-mill" case for driving under the influence of alcohol. 356 Md, 379, 390 (1999). By contrast, in *State v. Kanneh*, a thirty-five-month delay was tolerated in part because it was a complicated child abuse case involving the presentation of DNA evidence. 403 Md. 678, 689 (2008); *see also*

Howard v. State, 440 Md. 427, 447–48 (2014) (finding a twenty-eight-month pretrial delay did not violate the speedy trial right in a complex rape case involving DNA evidence).

The Appellant's case was more complex, since it involved two counts of murder. The trial lasted four days with the State calling eighteen witnesses and entering numerous exhibits. This was not a "run-of-the-mill" case like in *Divver*. As a result, a longer delay in this complex case is less likely to be a constitutional violation. The length of the delay will therefore weigh less heavily against the State.

2. Reason for the Delay

The second *Barker* factor is the reason for the delay. The *Barker* court created categories of reasons for delay and how a court should weigh them, where "[a] deliberate attempt to delay the trial" will weigh heavily against the government; more neutral reasons like "negligence or overcrowded courts" weigh less heavily but still weigh against the government because they are the government's responsibility to manage; lastly, valid reasons, like "a missing witness," can justify an appropriate delay. *Barker*, 407 U.S. at 531. Additionally, "reasons for delay attributable to neither party receive neutral weight." *Berryman v. State*, 94 Md. App. 414, 421 (1993) (citing *Jones v. State*, 279 Md. 1, 367 (1976), *cert. denied*, 431 U.S. 915 (1977)). Based on these categories, we will analyze each delay that occurred before Appellant's trial.

The first span of time is from the indictment on October 24, 2019 until the initially scheduled trial on May 4, 2020.[14] This span will be accorded neutral weight because it "is necessary for the orderly administration of justice." *Howard*, 440 Md. at 448 n.16 (quoting *Lloyd v. State*, 207 Md. App. 322, 330 (2012), *cert. denied*, 430 Md. 12 (2013)); *see also Howell v. State*, 87 Md. App. 57, 82 (1991) ("The span of time from charging to the first scheduled trial date is necessary for the orderly administration of justice, and is accorded neutral status.").

The second span is from the May 4, 2020 trial date until the next scheduled trial date of July 26, 2021. This span was attributable to delays caused by the ongoing COVID-19 pandemic. *See Tengeres v. State*, 474 Md. 126, 134–35 (2021) (detailing the postponements in trial courts as a result of the pandemic). The Appellant does not argue that these postponements should be held against the State. The delays caused by the COVID-19 pandemic are the fault of neither party, instead the delays were a necessity to respond to an ongoing public health crisis. Therefore, we find that the delays caused by the COVID-19 pandemic are neutral and not attributable to either party.

The final span is the nine-month delay from July 26, 2021, until the trial date of April 25, 2022. This delay was attributable to the State because the State requested a postponement days before the July 2021 trial. The State asked for a continuance based on multiple circumstances: the State's cell phone expert was in recovery from surgery, the

[14] There was a continuance from January 21, 2020 until May 4, 2020. Neither party argued the reasoning for this initial continuance or that it should be held against either party, so we will include it in this initial span and accord it neutral weight.

State medical examiner had just retired and was on vacation, and three witnesses had not been served. The reason for the State's request for a continuance was missing witnesses. This is the precise example that *Barker* cites as a "valid reason" to delay a trial, as opposed to a deliberate attempt to delay the trial. *Barker*, 407 U.S. at 531. As a result, this delay will not be held against the government.

Looking across the time periods, there were no reasons for delay that should be held against the government. There was the initial delay until trial, a delay caused by a pandemic that was the fault of neither party, and then a "valid reason" to delay the trial for the final span. As a result, this factor will not weigh against the government.

3. Assertion of the Right to a Speedy Trial

The third *Barker* factor examines the defendant's assertion of their right to a speedy trial. The assertion of the right is "entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 531–32. This factor allows a court "to weigh the frequency and force of the objections as opposed to attaching significant weight to a purely *pro forma* objection." *Id.* at 532; *see also State v. Ruben*, 127 Md. App. 430, 443 (1999).

The Appellant maintained his motion to dismiss for a violation for a speedy trial by reraising it in multiple hearings. The Appellant never waived his right and went well beyond a "purely pro forma objection." *Barker*, 407 U.S. at 532. As a result, this factor will weigh in favor of the Appellant.

4. Prejudice to the Defendant

The final *Barker* factor is whether the delay caused any prejudice to the defendant. There are three interests the *Barker* court identified: "(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," with the final factor being the most serious one. *Barker*, 407 U.S. at 532. Maryland courts have emphasized that an impaired defense is the most important factor in the analysis. *Phillips*, 246 Md. App. at 67 (citing *Henry*, 204 Md. App. at 554). The lack of actual prejudice is given great weight in this analysis. *Wilson v. State*, 148 Md. App. 601, 639 (2002) ("[W]e accord great weight to the lack of any significant prejudice resulting from the delay.").

The Appellant argued that his prejudice stemmed from being incarcerated during the proceedings. He did not make any argument before this Court that his defense would be impaired or that he felt anxiety and concern during that period. Looking only at that first element of *Barker*, we recognize that the Appellant was incarcerated in the years leading up to his trial, and specifically the nine months after the State's continuance, and the oppression and anxiety that confinement can create. However, there was minimal prejudice from the Appellant's incarceration on this case because the Appellant was being held in State custody on a separate case for murder charges that was not scheduled to go to trial until February 2022. Even if the trial for this case was not continued, the Appellant still would have been incarcerated on an independent case. As a result, there was no prejudice or oppression from this case in particular because the outcome of the continuance hearing did not impact whether or not the Appellant would have been incarcerated during the relevant period.

Given that the Appellant did not articulate any significant prejudice from the delay, we have to accord great weight to this factor against supporting a violation of the right to a speedy trial. *Wilson*, 148 Md. App. at 639.

5. Balancing of the Factors

Weighing the final factor most heavily, without a clear showing of actual prejudice to Appellant's defense and without any evidence of bad faith on the State's behalf for the delay, we hold that the Appellant's right to a speedy trial was not violated in this case. Accordingly, the trial court properly denied the Appellant's motion to dismiss.

CONCLUSION

We affirm the trial court's rulings on the motion to suppress and motion to dismiss. Because the firearms expert's testimony was inadmissible under *Abruquah* and that error was not harmless, we reverse the judgment of the Circuit Court for Prince George's County and remand for a new trial. Since our holding requires a remand, having addressed the pre-trial claims, we decline to address the Appellant's remaining claims of error at trial.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.