Circuit Court for Calvert County
Case No. 04-K-16-000231

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2383

September Term, 2017

SHERMAN HOLLAND

v.

STATE OF MARYLAND

Wright,
Friedman,
Beachley,

JJ.

Opinion by Wright, J.

Filed: June 20, 2019

Following a bench trial in the Circuit Court for Calvert County, Sherman Holland, appellant, was found guilty of one count of theft scheme between $10,000.00 and $100,000.00; ten counts of motor vehicle theft; ten counts of theft; and two counts of attempted theft. On the conviction of theft scheme, Holland was sentenced to a term of ten years' imprisonment, with time served suspended, and five years' probation. All other convictions were merged for sentencing purposes. In this appeal, Holland presents six questions for our review, which we have rephrased and consolidated into five questions. They are:

1. Did the circuit court err in failing to perform an on-the-record "jury trial waiver" colloquy and in failing to make an on-the-record determination that Holland had knowingly and voluntarily waived his right to a jury trial?

2. Was the evidence adduced at trial sufficient to sustain Holland's convictions?

3. Did the circuit court err in denying Holland's motion to exclude expert testimony and related evidence regarding "Real Time Tool" data, a form of cell phone location data, that, according to Holland, had not been established as reliable by the State or the relevant scientific community?

4. Did the circuit court err in denying Holland's motion to dismiss based on a claimed "Hicks" violation?

5. Did the circuit court err in denying Holland's motion to dismiss based on a claimed violation of his constitutional right to a speedy trial?

For the reasons to follow, we answer the first question in the affirmative. As to the remaining questions, we hold that the evidence was sufficient to sustain Holland's

convictions, and that the circuit court did not err in denying Holland's motions.[1] We address Holland's third question as that issue may recur on re-trial. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

BACKGROUND

Holland was arrested and charged, pursuant to an indictment filed on June 24, 2016, in connection with a string of thefts that occurred in Calvert County over a six-week period. Holland made his initial appearance before the circuit court on July 29, 2016, and trial was set for December 6, 2017.

First Postponement

Just prior to trial, the parties requested a joint continuance. The request was related to an "ongoing discovery issue" stemming from the State's obligation "to provide information to the defense regarding DNA samples that had been tested at the scene." The court granted the parties' request, finding "good cause" for the continuance. Trial was reset for January 24, 2017.

Second Postponement – Hicks Date

Just prior to trial, the parties made another joint motion to postpone. In that motion, the parties stated that certain DNA samples taken from some of the crime scenes had been "mistakenly filed" and that the samples had "the potential to provide for both

[1] If the State's evidence against Holland was insufficient for the whole indictment or specific counts, he could not be retried because of double jeopardy, thus we needed to address the issue.

exculpatory and inculpatory evidence." The parties asked the court to find "good cause" to postpone Holland's trial date.

At the hearing on the motion, the circuit court explained to Holland that the State had a duty to bring him to trial within 180 days of his initial appearance, or by January 25, 2017, and that, in order to go beyond that date, the court needed to find "good cause." The court explained that defense counsel had asked to go beyond the 180-day limit because, if the result of the DNA testing was inculpatory, that result could be challenged, and, if the DNA testing was exculpatory, that would show Holland was innocent. The court further explained that the State had similar concerns, most notably the duty to prosecute people that have committed crimes and to not prosecute people if there is evidence showing that someone is not guilty of a crime.

At that point, Holland addressed the circuit court, stating that the State "don't have no fingerprints, evidence, or nothing showing that [he] even committed a crime," and that he was "sitting down in the jail for nothing while they just – they are building a case against [him]." The court granted the parties' postponement request, finding good cause because the State did not intentionally delay the proceedings and because the results of the DNA testing were "important to both sides in order to . . . resolve this case really as expeditiously as possible." Trial was then reset for May 23, 2017.

Third Postponement

On May 15, 2017, the circuit court held a motions hearing, at which defense counsel informed the court that the State had failed to timely disclose "numerous pieces

of evidence," including certain "cell phone evidence," which the State did not disclose until a few weeks before the hearing. Defense counsel argued that, as a result of the State's discovery violation, the court should issue the sanction of exclusion. The court disagreed, finding that the State had not acted in bad faith and that the proper remedy was not to exclude the evidence but to give the Defense additional time to review the evidence. Despite Holland's insistence that he did not want a postponement, defense counsel ultimately agreed to the court's offer of a postponement. The court then found that there was good cause for the postponement, and Holland's trial date was reset for September 12, 2017.

Motion to Exclude Verizon's Real Time Tool Data and Fourth Postponement

Shortly before trial, Holland filed a motion to exclude "tangible evidence and testimony" regarding Verizon's Real Time Tool ("RTT") data which, according to Holland, the State planned to introduce at trial to show the location of his cellphone on the day that some of the thefts occurred. At a hearing on Holland's motion, which was held on September 8, 2017, defense counsel explained that RTT data, a form of cell-phone location data, is "derived solely from round trip delay measurement," which analyzes communications between a cell phone and a cell tower to determine the latitude and longitude of a cell phone at a particular time. Defense counsel further explained that the resulting coordinates, or RTT data, are used by Verizon "to try to determine where the phone is located, not for any real scientific purpose, but to try to figure out where to beef up their tower and their cell phone coverage for those clients." According to defense

counsel, the State's expert witness used the RTT data to make a map of Holland's cell phone activity "to make it appear that that is where Mr. Holland's cell phone [was] at the time."

In arguing that the RTT data was unreliable, defense counsel noted that the RTT reports generated by Verizon came with a disclaimer, which stated:

> The latitude and longitude measurements on the [RTT] report are derived solely from the Round Trip Delay measurement. They are best estimates and are not related to any GPS measurement. Measurements with a high confidence factor may be more accurate than measurements with a low confidence factor, but all measurements contained on this report are the best estimates available rather than precise location.

Defense counsel argued that, based on that disclaimer, the RTT data should be excluded or, at the very least, subjected to a *Frye-Reed*[2] hearing to determine whether the RTT data "is scientifically reliable or accepted in the community." When the circuit court asked defense counsel how the RTT data differed from "cell phone tower data," which had previously been accepted by this Court as reliable, defense counsel responded that, unlike cell phone tower data, which only shows a cell phone's general location, RTT data provides "more precise location information" in the form of longitude and latitude coordinates.

[2] "[T]he standard enunciated in *Frye v. United States*, 293 F. 1013 (D.C.Cir. 1923), and adopted by this Court in *Reed v. State*, 283 Md. 374 (1979), . . . makes evidence emanating from a novel scientific process inadmissible absent a finding that the process is generally accepted by the relevant scientific community." *Clemons v. State*, 392 Md. 339, 343-44 (2006). That standard is sometimes referred to as the "*Frye-Reed* standard." *Id.* at 344.

The circuit court denied defense counsel's request for a *Frye-Reed* hearing, ruling that the technique used by Verizon to plot the location of a cell phone for the RTT data was "not a new or novel scientific technique" but rather a separate technique "that's being already employed." The court did, however, permit the Defense the opportunity to call an expert witness "to bring in counter scientific testimony." At that suggestion, Defense counsel stated that, although the Defense had an expert willing to give such testimony, the expert was unavailable to testify at the upcoming trial. The court then suggested a postponement, and defense counsel agreed, stating that she would "like the expert . . . to be able to counter [the RTT data] and just talk about how it is not reliable." The court found good cause for the postponement and trial was reset for February 12, 2018.

Motion to Dismiss

Just before trial, Holland filed a motion to dismiss all charges. Holland claimed that, pursuant to Maryland law, the State was required to bring him to trial within 180 days of his initial appearance, or by January 25, 2017, and that the State failed to do so. Holland also claimed that the State's failure to bring him to trial earlier had violated his constitutional right to a speedy trial.

Following a hearing, the circuit court denied Holland's motion. The court found that there was good cause to postpone Holland's trial beyond January 25, 2017, given that the parties were awaiting the results of DNA evidence that had the potential to be either inculpatory or exculpatory. The court also found no violation of Holland's right to a

speedy trial, noting that Holland's case was "pretty complicated," that there was "good cause" for the various continuances, and that Holland was not prejudiced by the delay.

Jury Trial Waiver

On February 9, 2018, the parties returned to court for a plea hearing. At that hearing, the circuit court informed Holland that the State had agreed to allow him to plead not guilty to all charges in exchange for an Agreed Statement of Facts that would be presented to the court at a bench trial. The court also stated that Holland could choose one of three options: a jury trial with live witnesses; a bench trial with live witnesses; or, pursuant to the State's plea offer, a bench trial with an Agreed Statement of Facts. After Holland indicated he did not want to proceed by way of an Agreed Statement of Facts, the court engaged in colloquy with Holland, during which Holland stated he wanted a jury trial. At the end of the colloquy, the court found that Holland was freely and voluntarily rejecting the State's plea offer. The court then adjourned.

That same day, the parties returned to the circuit court, albeit in front of a different judge than the one who had presided over the proceedings earlier in the day. Upon their return to court, the parties informed the court they had reached an agreement whereby Holland would plead not guilty and elect a bench trial, at which the parties would present an Agreed Statement of Facts. After the court reviewed the Agreed Statement of Facts, the parties presented opening arguments, and the court paraphrased the Agreed Statement of Facts on the record. At the conclusion of its recitation of the facts, the court found Holland guilty on all but two of the charged counts. The court then proceeded

immediately to sentencing and, following the imposition of Holland's sentence, the proceedings concluded. At no point during the hearing did the court discuss Holland's right to a jury trial or make any inquiry or findings regarding whether Holland, in proceeding by way of a bench trial, was knowingly and voluntarily waiving his right to a jury trial.

Trial Evidence

Holland was charged with 25 counts related to a string of thefts that occurred throughout Calvert County on or between September 19 and November 27, 2015. Those charges were: theft scheme (between $10,000.00 and $100,000.00) (Count 1); theft (less than $1,000.00), motor theft, and the malicious destruction of a 2002 Volvo belonging to Raymond Guinta (Counts 2, 3, and 4); theft (between $1,000.00 and $10,000.00) and motor theft of the same 2002 Volvo on a different date (Counts 5 and 6); theft (between $1,000.00 and $10,000.00) and motor theft of a 2005 Subaru Impreza belonging to Candice Patton (Counts 7 and 8); theft (between $1,000.00 and $10,000.00) and motor theft of a 2004 Chevy Avalanche belonging to Roderick Kibler (Counts 9 and 10); theft (between $1,000.00 and $10,000.00) and motor theft of a 2004 Volkswagen Jetta belonging to Holly Aley (Counts 11 and 12); theft (less than $1,000.00) and motor theft of a 2002 Nissan Maxima belonging to Daniel LePlaca (Counts 13 and 14); theft (between $1,000.00 and $10,000.00) of a 2002 Toyota Tacoma and other property belonging to John Clarke (Count 15); motor theft of Mr. Clarke's 2002 Toyota Tacoma (Count 16); theft (between $1,000.00 and $10,000.00) and motor theft of an Audi A6

belonging to Stephen Nichols (Counts 17 and 18); theft (between $1,000.00 and $10,000.00) and motor theft of a Ford Fiesta belonging to Aarow Electrical Solutions (Counts 19 and 20); theft between $1,000.00 and $10,000.00 and motor theft of a Ford Explorer belonging to Raymond Williams (Counts 21 and 22); theft (less than $100.00) of currency belonging to Jason Ewig (Count 23); attempted theft (between $1,000.00 and $10,000.00) of a 2012 Kia Sorrento belonging to Jason Ewig (Count 24); and attempted theft (between $1,000.00 and $10,000.00) of a 2007 Dodge Ram belonging to Jason Ewig (Count 25).

As noted, the evidence against Holland came by way of an Agreed Statement of Facts, which the circuit court reviewed on the record prior to rendering its verdict. The relevant facts were:

> On September 19, 2015, Deputy Gilmore responded to [Willows Road in Chesapeake Beach] for a report of a suspicious vehicle. She made contact with Margaret Teveras who had located a white 2002 Volvo S40 . . . parked diagonally across their driveway. Deputy Gilmore observed that the driver's side window was half-way down and the key was in the ignition. The engine was cold suggesting that the vehicle had been there for some time. The Deputy was able to locate the owner, Raymond Thomas Guinta. Deputy Gilmore learned that the vehicle had been missing from the owner's driveway sometime after 3 a.m. The key is usually left in the ignition . . . and the door was unlocked. There was damage to the passenger side rear rim. It did not appear that anything had been taken from the vehicle.
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> On September 27, 2015, Deputy Idol responded to [Candlelight Court Owings Mills] for a report [that Mr. Guinta's 2002 Volvo S40] was stolen between the hours of 2 a.m. and 8 a.m. The car had been left unlocked with the key in the ignition.

* * *

On October 8, 2015, Deputy Durner with the Calvert County Sheriff's Office responded to [Matthew Drive in Huntingtown] for the report of a stolen vehicle. He made contact with the owner of the vehicle, Jason Patton. Jason Patton would have testified that on October 7, 2015, at approximately 5:30 p.m. he arrived home and parked his 2005 silver Subaru Impreza[.] He would have testified that he came outside the morning of October 8, 2015, at approximately 6:40 a.m. and found his vehicle missing. The vehicle had been unlocked and the keys were on the driver's side floorboard . . . . The value of the stolen vehicle was approximately five thousand dollars . . . . On October 22, 2015, DFC Kreps responded to [Allnutt Court in Prince Frederick] in reference to a recovered stolen silver 2005 Subaru Impreza[.] The key was in the ignition and the doors were unlocked. It appeared that nothing had been taken from the vehicle and nothing was damaged.

* * *

On October 17, 2015, Cp. M. McCarroll responded to [Fiedler Court in Dunkirk] for the report of a stolen vehicle. He made contact with the owner, Roderick Kibler, who would have testified that between October 16, 2015, at 10:00 p.m. and October 17, 2015, at 6:00 a.m., someone stole his green 2004 Chevrolet Avalanche . . . from his driveway. The keys had been left inside. The truck was valued at approximately twelve thousand dollars . . . . On October 20, 2015, at 3:51 p.m., DFC M. Robshaw responded to [Holbrook Lane in Huntingtown] for the report of . . . [Mr. Kibler's] green Chevrolet Avalanche abandoned in front of [a] residence[.] . . . The keys were still in the ignition.

* * *

On October 19, 2015, at 4:07 a.m., Deputy Gilmore responded to [Queensbury Drive in Huntingtown] for the report of a stolen vehicle. Deputy Gilmore spoke with the vehicle owner, Holly Michele Aley. She would have testified that she owns a 2004 Green Volkswagen Jetta[.] When she went to leave for school in the morning on October 19, 2015, [the] vehicle was not in her driveway. She last saw the vehicle at approximately 8:00 p.m. the night before. The keys had been left in the vehicle. The vehicle is worth approximately five thousand dollars . . . . On October 19, 2015, Deputy Buck was dispatched to the Silverwood

Apartments in Prince Frederick . . . and found the stolen vehicle. The driver's side door was partially closed and the keys were still in the ignition.

* * *

On October 25, 2015, at 1:09 p.m., DFC Migliaccio responded to [Bluegrass Way in Owings Mills] in response to a vehicle stolen from that location. Upon arrival he spoke with the owner of the vehicle, Daniel LaPlaca. He stated that his 2002 Nissan Maxima . . . had been stolen from his driveway. He would have testified that the vehicle was unlocked and the keys were in the center console. He did not know the precise time it was taken but knew that it was in his driveway on the evening of October 24, 2015 . . . . On October 25, 2015, at 2:13 p.m., the victim utilized the [vehicle's] GPS technology to discover that his vehicle was parked in the cul-de-sac of Ponds Wood Drive in Huntingtown. DFC Migliaccio responded to the location and found the vehicle. The doors were unlocked and the key was in the center console.

* * *

On October 29, 2015, DFC Clark responded to [Holland Cliffs Road in Huntingtown] for the report of a stolen vehicle. He made contact with the owner, John Clarke, who advised that his 2002 Toyota Tacoma … had been stolen sometime between 6:15 p.m. on October 28, 2015, and 6:40 a.m. on October 29, 2015 . . . . The keys were in the vehicle and the doors were unlocked. The value of the Toyota Tacoma is three thousand dollars. Mr. Clarke would have testified that there is also a Harrington & Richardson Shotgun and scope on the passenger seat valued at four hundred dollars. While leaving the residence DFC Clark was dispatched to [Fairground Road in Prince Frederick] where he located the abandoned Toyota Tacoma . . . . The keys were inside the vehicle and there did not appear to be any damage. However, the gun was missing.

* * *

On November 16, 2015, DFC Woodfood responded to [Hampton Way in Owings Mills] for the report of a stolen 1999 Audi A6[.] He made contact with the owner Stephen Nichols who advised the deputy that his car had been stolen from his driveway between the hours of 6:30 p.m. on November 15, 2015, and 9:00 a.m. on November 16, 2015. The value of

the car was three thousand, five hundred dollars. He would have testified that the vehicle had been left unlocked and the keys were in the ignition . . . . A short time later, Cpl. Smith located the stolen vehicle on Armory Road near Dares Beach Road, Prince Frederick in a dirt driveway. No property had been taken from the vehicle and there was no damage.

* * *

On November 26, 2015, DFC Clark responded to [Terrace Drive in Prince Frederick] for the report of the theft of a 2013 Ford Fiesta[.] He made contact with the complainant Jennifer Suchter. She stated that the vehicle [belonged] to her husband, Joshua Suchter's employer (Aarow Electrical Solutions). She advised that her husband had left earlier in the day with friends to go camping. At approximately 8:30 p.m., Ms. Suchter advised she saw headlights leave her driveway, but she thought it might have been her husband's friends. At approximately 9:30 p.m., Ms. Suchter looked outside and observed the vehicle to be missing. She made contact with her husband who stated he did not move the vehicle but that the doors were unlocked and the keys were in the ignition. The vehicle was located at the end of the driveway near Terrace Drive. The value of the vehicle was more than one thousand dollars.

On November 27, 2015, at 7:22 a.m., Deputy Callison responded to [Joanna Court in Prince Frederick] for the report of a theft of a 2002 Ford Explorer Sport Trac. Upon arrival he made contact with the owner, Raymond Williams. He would have testified that the last time he and his wife observed the vehicle was at 7:45 p.m. November 26, 2015, in their driveway. At 5:30 a.m. the next morning the vehicle was gone. The keys were left in the car and the doors were unlocked. DFC Kreps located the stolen vehicle at 8:05 a.m. on November 27, 2015 [in Prince Frederick]. The keys were still in the ignition of the vehicle as well as the wallet, credit cards and driver's license of the victim.

* * *

On November 27, 2015, members of the Calvert County Sheriff's Office responded to [Oliver Drive in Prince Frederick] for the report of an attempted theft of a vehicle. The complainant, Jason Ewig, would have testified that an unknown suspect had entered his wife's vehicle that had been parked at the driveway the night before. The vehicle was a 2012 Kia [Sorrento]. It appeared that the vehicle had been entered and approximately

four or five dollars had been taken and that the driver's and passenger's areas had been disturbed. It was discovered that someone had defecated in the victim's yard and discarded a brown in color cotton glove next to it that appeared to have fecal matter on it. Also, next to the glove were pens that had been inside the 2012 Kia . . . . The vehicle stolen from Raymond Williams . . . occurred on November 26, 2015, and is located within a half mile of this theft. Mr. Ewig also advised that on November 28, 2015, between the hours of 10:00 p.m. and 6:00 a.m. November 29, 2015, someone entered his 2007 Dodge Pickup[.] A neighbor alerted Mr. Ewig earlier that morning that the driver's side door to the truck was open.

* * *

The State would have called Andrea Mattia from Verizon. She is a Custodian of Records and would have produced the call data records, the cell phone tower records, the [RTT] data subscriber information, device identification records and text message data related to [Holland's cell phone number] for the relevant time period of this case.

A Sergeant Naughton [his first name is not in the record] would have testified that he got cell phone data from Verizon that related Holland's location near the vehicle and his home on various dates.

* * *

The State and Defense agree that Detective Sarah Jernigan of the Calvert County Sheriff's Office would have been admitted as an expert in the field of cellular telephone forensics and mapping. She would have testified regarding the maps she created that were derived from the Verizon records.

* * *

The State would have called Detective Wayne Wells of the Calvert County Sheriff's Office who would have testified regarding his investigation of all of the aforementioned car thefts. He determined that there was a pattern from all of the thefts specifically that the cars were unlocked, keys were inside the vehicle, that the cars were used for a short time, and abandoned in a conspicuous location. Based upon this, he developed a suspect who would have been identified as Sherman Oswald Holland. He would have identified Mr. Holland as the Defendant here today. He learned that Mr. Holland's residences were 3801 Breezy Point Road, Chesapeake Beach …

> and . . . Dares Beach Road, Prince Frederick[.] He would have testified that he knows that officers with the Calvert County Sheriff's Office had done surveillance on Mr. Holland's pattern of travel and had seen him walking at various times and at least on occasion had gardening gloves in his hands. Detective Wells learned that many of the stolen cars had been recovered near one of the two addresses associated with Sherman Holland. Detective Wells obtained a warrant for Sherman Holland's DNA. On March 30, 2016, he executed the warrant on Sherman Holland. Sherman Holland said to him "I'm too smart to leave my DNA anywhere[.]" He also stated that they "will never find his DNA in any stolen cars." . . . At no point prior to Sherman Holland's comments did Detective Wells tell him that they were investigating anything and Sherman Holland had not read the warrant.
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> The State would have called Kathryn Busch who would have been admitted as an expert in the area of forensic serology and DNA analysis. She would have testified that she tested various samples of DNA in this case. The glove with fecal matter was tested. Sherman Holland cannot be excluded as the significant contributor to the DNA profile on the inside cuff seam of the glove. The fecal matter matched Sherman Holland's DNA profile.
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> The Defense would have called William Folson who would have been qualified as an expert in cellphone forensics. Mr. Folson would have testified that in his opinion RTT data is unreliable and not scientifically accepted. Mr. Folson would have also testified that RTT data could not be used to plot a precise longitude and latitude akin to GPS coordinates.

Based on those facts, the circuit court found Holland guilty of theft scheme (Count 1); theft and motor theft of Mr. Guinta's 2002 Volvo (Counts 2 and 3); motor theft of the same 2002 Volvo a week later (Count 6); theft and motor theft of Ms. Patton's 2005 Subaru Impreza (Counts 7 and 8); theft and motor theft of Mr. Kibler's 2004 Chevy Avalanche (Counts 9 and 10); theft and motor theft of Ms. Aley's 2004 Volkswagen Jetta (Counts 11 and 12); theft and motor theft of Ms. LePlaca's 2002 Nissan Maxima (Counts 13 and 14); theft and motor theft of Mr. Clarke's 2002 Toyota Tacoma (Counts 15 and

16); theft and motor theft of Mr. Nichols' Audi A6 (Counts 17 and 18); theft and motor theft of Aarow Electrical Solutions' Ford Fiesta (Counts 19 and 20); theft and motor theft of Mr. Williams' Ford Explorer (Counts 21 and 22); theft of Mr. Ewig's currency (Count 23); attempted theft of Mr. Ewig's 2012 Kia Sorrento (Count 24); and attempted theft of Mr. Ewig's 2007 Dodge Ram (Count 25). The court found Holland not guilty of the malicious destruction of Mr. Guinta's 2002 Volvo (Count 4) and the subsequent theft of Mr. Guinta's Volvo following the first theft (Count 5).

DISCUSSION

I.

Holland contends, and the State agrees, that the circuit court failed to perform an on-the-record "jury trial waiver" colloquy and failed to make an on-the-record determination that Holland had knowingly and voluntarily waived his right to a jury trial. Holland maintains, and again the State agrees, that the court's error mandates reversal.

"As a general matter, a criminal defendant's right to a jury trial is a fundamental right under both the United States and Maryland Constitutions." *Nalls v. State*, 437 Md. 674, 685 (2014). Although that right may be waived only by the defendant, "[s]uch a waiver is valid and effective only if made on the record in open court and if the trial judge determines, after an examination of the defendant on the record and in open court, that it was made 'knowingly and voluntarily.'" *Id.* (citations and quotation omitted). The procedural requirements for a valid jury trial waiver are set forth in Md. Rule 4-246(b), which states that a court may not accept a defendant's waiver unless the court conducts

an examination of the defendant on the record in open court and then determines and announces on the record that the waiver is knowing and voluntary. *Nalls*, 437 Md. at 687. Failure to fully comply with the strictures of Md. Rule 4-246(b) is grounds for reversal. *Id.*

We hold that the circuit court failed to comply with Md. Rule 4-246(b). Although the court engaged in an on-the-record discussion with Holland regarding his right to a jury trial, at the time of the discussion Holland insisted he wanted a jury trial. When the parties returned to court a short time later and Holland stated he had changed his mind and wanted a bench trial, the court did not discuss the matter further. Importantly, at no point did the court conduct an on-the-record examination of Holland regarding a waiver of his right to a jury trial, nor did the court make any finding that Holland had knowingly and voluntarily waived that right. Accordingly, reversal is required.

II.

Holland next contends that the evidence adduced at trial was insufficient to sustain his convictions of theft, theft scheme, and attempted theft.[3] Regarding the theft and theft scheme convictions, Holland maintains that the State failed to establish that he intended to permanently deprive the owners of their vehicles or that he used, concealed, or abandoned the vehicles knowing that it would deprive the owners of their property. Holland notes that the missing vehicles were found shortly after they went missing; that

[3] Holland does not challenge his convictions of motor theft.

they were parked in areas where they were likely to be found; and that the perpetrator left the vehicles in a state that allowed them to be easily recovered without damage. Holland maintains, therefore, that the evidence showed that "the perpetrator wanted the cars to be found and returned to their owners." Finally, Holland asserts that the evidence is insufficient to sustain his conviction of attempted theft of Mr. Ewig's 2012 Kia Sorrento (Count 24) because the State did not establish that he intended to take the vehicle and because the State did not establish that the value of the vehicle was between $1,000.00 and $10,000.00.

The State responds that the circuit court "could infer that Holland's use of the vehicles and failure to return them evidenced an intent to permanently deprive the owners of their vehicles." The State notes Holland abandoned the vehicles with "complete indifference as to whether they were recovered" and that "it was only happenstance and the actions of others that led to their recovery." As for Holland's conviction of attempted theft of Mr. Ewig's 2012 Kia Sorrento, the State asserts Holland's intent to steal could be inferred from the fact that the Kia was located within a half-mile of one of the other thefts; that the Kia, unlike all the others stolen vehicles, did not have keys inside at the time of the attempt;[4] and that another one of Mr. Ewig's vehicles was broken into two days later. The State also asserts that a reasonable fact-finder could conclude that, in the year 2015, a 2012 Kia Sorrento was worth more than $1,000.00.

[4] We could find no support in the record for this assertion by the State.

"The test of appellate review of evidentiary sufficiency is whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Donati v. State*, 215 Md. App. 686, 718 (2014) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations and quotation omitted) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (quoting *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, "'[w]e' defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (citations and quotation omitted). Finally, in assessing legal sufficiency based on an agreed statement of facts, "our evidentiary universe is strictly circumscribed within the four corners of the agreed statement of facts." *Polk v. State*, 183 Md. App. 299, 306 (2008).

In Maryland, theft is proscribed by Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL") § 7-104(a), which states, in relevant part, that a person may not take the property of another if the person: "(1) intends to deprive the owner of the property; (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property." The statute defines "deprive" as withholding the property of another: "(1) permanently; (2) for a period that results in the appropriation of a part of the property's value; (3) with the purpose to restore it only on payment of a reward or other compensation; or (4) to dispose of the property or use or deal with the property in a manner that makes it unlikely that the owner will recover it." CL § 7-101(c).

"The requirement of intentional deprivation makes theft a specific intent crime." *State v. Coleman*, 423 Md. 666, 673 (2011). "Intent may be inferred from acts occurring subsequent to the commission of the alleged crime." *Id.* at 674. "Intent is subjective, such that, without the cooperation of the accused, it cannot be directly and objectively proven. Consequently, without a statement from the accused, its presence must be shown by established facts that permit a proper inference of its existence." *Breakfield v. State*, 195 Md. App. 377, 393 (2010) (quoting *Graham v. State*, 117 Md. App. 280, 284 (1997)).

We hold that sufficient evidence was presented to establish that Holland intended to "deprive" the owners of their property. The evidence showed that Holland entered the

vehicles and removed them from their parking spots without the owners' permission and in a manner that avoided detection. After driving away, rather than returning the vehicles to their rightful owners, Holland parked the vehicles in undisclosed locations throughout the area. In each case, Holland left the vehicle unsecured and with the key still inside, such that any passerby could have easily taken the vehicle without Holland's or the owner's knowledge. Although the vehicles were later recovered shortly after they were taken, no evidence was presented to show that Holland took any affirmative action in effectuating the vehicles' discovery or in taking responsibility for his actions so that the vehicles could be recovered by their respective owners. To the contrary, the evidence, including Holland's statement to the police that he was "too smart to leave his DNA anywhere," suggests that Holland was more concerned with not being arrested than ensuring the vehicles could be found and returned to their respective owners. From those facts, a reasonable inference can be drawn that Holland intended to permanently deprive each owner of his or her vehicle. That Holland ultimately left the vehicles in a manner that permitted their recovery can hardly be considered clear evidence of his intent. *See Gibson v. State*, 8 Md. App. 1, 4 (1969) ("The mere fact that a car was abandoned shortly after it was taken does not preclude the possibility that the taker had a larcenous intent.") (citing *Sizemore v. State*, 5 Md. App. 507 (1968)); *see also Cicoria v. State*, 332 Md. 21, 39-40 (1993) ("That a defendant may use property in such a way as to benefit the owner of the property, . . . while relevant, . . . to the defendant's intent, . . . does not exonerate the defendant automatically.").

As noted, Holland maintains that his act of abandoning the vehicles in conspicuous locations with the keys inside shows that he did not intend to permanently deprive the owners of their property. We agree that such an inference is possible. It is not, however, the only inference that can be derived from the evidence. Again, the question here is whether the evidence was legally sufficient to support a reasonable inference that Holland acted with the requisite intent. In that context, the inference "'need only be reasonable and possible; it need not be necessary or inescapable.'" *Neal v. State*, 191 Md. App. at 318 (quoting *State v. Smith*, 374 Md. 527, 539 (2003)). Thus, even though the evidence might support another inference, *i.e.* that Holland wanted the cars to be found and returned to their owners, the existence of such an inference does not render the evidence insufficient. Rather, it simply offers the fact-finder a choice between two reasonable inferences. And, in this case, the court, as the fact-finder, was well within its right to choose one inference over the other. *See Smith v. State*, 415 Md. 174, 183 (2010) (noting that appellate courts "do not second-guess the [fact-finder's] determination where there are competing rational inferences available.").

Holland contends, albeit in a footnote, that the evidence on Count 2 – theft of Mr. Guinta's 2002 Volvo – was insufficient because the State did not present any evidence that the vehicle was valued between $1,000.00 and $10,000.00. Holland is mistaken. Although he was originally indicted for theft between $1,000.00 and $10,000.00, that indictment was apparently amended, as the court's docket makes clear that Holland was convicted on Count 2 of theft less than $1,000.00. Thus, Holland's claim is irrelevant.

As for Holland's claim that the evidence was insufficient to sustain Count 24, attempted theft of Mr. Ewig's 2012 Kia Sorrento, we disagree. "'A person is guilty of an attempt when, with intent to commit a crime, he engages in conduct which constitutes a substantial step toward the commission of that crime[.]'" *Hall v. State*, 233 Md. App. 118, 138 (2017) (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). In other words, attempt "requires a 'specific intent to commit the offense coupled with some overt act in furtherance of the intent which goes beyond mere preparation.'" *Carroll v. State*, 428 Md. 679, 697 (2012) (quoting *Dixon v. State*, 364 Md. 209, 238 (2001)). And, as previously discussed, intent need not be proved by direct evidence but "'may be inferred as a matter of fact from the actor's conduct and the attendant circumstances.'" *In re David P.*, 234 Md. App. 127, 138 (2017) (quoting *Young v. State*, 303 Md. 298, 306 (1985)).

Here, Holland entered Mr. Ewig's Kia Sorrento, "disturbed" the driver and passenger-side areas, and stole four or five dollars from inside the vehicle. The day before, Holland had stolen Mr. Williams' vehicle from outside his home, which was approximately one-half mile from where Mr. Ewig lived. Two days later, Holland returned to Mr. Ewig's property and attempted to steal another of Mr. Ewig's vehicles. In all, Holland stole or attempted to steal ten vehicles from the same general area over a six-week period. In each of those cases, at the time of the theft or attempted theft, the vehicle, like Mr. Ewig's Kia Sorrento, was unsecured and parked outside of the owner's home. Based on that evidence, a reasonable inference can be drawn that Holland

intended to steal Mr. Ewig's Kia Sorrento, and that Holland took a substantial step toward the commission of that crime.

Finally, the evidence was sufficient to establish that Mr. Ewig's 2012 Kia Sorrento was worth more than $1,000.00. Although the agreed statement of facts is silent on that issue, a reasonable fact-finder could conclude that a 2012 Kia Sorrento would, in 2015, be worth more than $1,000.00. *Cf. Angulo-Gil v. State*, 198 Md. App. 124, 152-53 (2011) (noting that, even without direct evidence of value, "a jury reasonably may conclude that, in April 2007, a one-year-old operable Ford Focus was worth more than $500.00").

III.

Holland next contends that the circuit court erred in denying his motion to exclude evidence and testimony regarding Verizon's RTT data. Holland maintains that, before the court could admit the evidence, the court was required to conduct a *Frye-Reed* hearing to determine whether the "RTT data is generally accepted in the scientific community as a reliable method of locating cell phones." Holland asserts the court erred in failing to hold such a hearing. The State responds that a *Frye-Reed* hearing was unnecessary because the technology used by Verizon in gathering the RTT data is no longer "novel."

Md. Rule 5-702 governs the admission of expert testimony. Under that rule:

> 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.

In some instances, when a trial court is faced with determining the admissibility of scientific evidence and related expert testimony, the court must conduct a *Frye-Reed* analysis before exercising its discretion pursuant to Md. Rule 5-702. *Dixon v. Ford Motor Co.*, 433 Md. 137, 149-50. "Under the *Frye-Reed* test, a party must establish first that any novel scientific method is reliable and accepted generally in the scientific community before the court will admit expert testimony based upon the application of the questioned scientific technique." *Stevenson v. State*, 222 Md. App. 118, 132 (2015) (quoting *Montgomery Mut. Ins. Co. v. Chesson*, 399 Md. 314, 327 (2007)). The determination as to whether a novel scientific technique is reliable and has been accepted in the scientific community may be made by way of judicial notice and/or witness testimony. *Id.* That said, "[a] *Frye-Reed* analysis is required . . . *only* when the proposed expert testimony involves a '*novel* scientific method,' in which event there must be some assurance that the novel method has gained general acceptance within the relevant scientific community and is not just the view of a dissident minority." *Dixon*, 433 Md. 149-50 (emphasis added). Moreover, "'[a] trial judge has wide latitude in determining whether expert testimony is sufficiently reliable to be admitted into evidence, and his sound discretion will not be disturbed on appeal unless the decision to admit the expert

testimony was clearly erroneous or constituted an abuse of discretion.'" *Stevenson*, 222 Md. App. at 132 (quoting *Montgomery Mut. Ins. Co.*, 399 Md. at 327).

In *Stevenson*, this Court decided whether cell tower "ping" evidence was admissible without a *Frye-Reed* hearing. *Stevenson*, 222 Md. App. at 130. In that case, the defendant, Shawn Stevenson, was accused of murdering a woman, whose body was found in the bathtub of a home she owned with Stevenson. *Id.* at 127. At trial, a police officer, who was qualified as an expert, testified that he had reviewed the "call detail records" for cell phones belonging to Stevenson and the victim and had determined that, around the time the victim was killed, the defendant's cell phone had registered with a cell tower in close proximity to the scene of the crime. *Id.* at 130. The officer testified that he was able to determine the cell tower with which Stevenson's phone had registered based on the fact that that tower had "provided the cleanest, strongest available signal." *Id.* at 130-31.

Prior to trial, Stevenson had moved to exclude the officer's testimony and, in so doing, had asked the court to conduct a *Frye-Reed* hearing "to determine whether the technique [the officer] employed to determine the location of his cell phone was generally accepted in the scientific community." *Id.* at 131. The court denied the request and, on appeal, Stevenson argued that the court's refusal to conduct a *Frye-Reed* hearing was erroneous. *Id.*

We disagreed, holding that the court did not err in refusing Stevenson's request because "[t]he cell phone location evidence at issue [was] not *novel* scientific

evidence[.]" *Id.* at 133-34 (emphasis in original). We noted that "'cellular telephone technology has become generally understood [and] the use of telephone company cell phone records for investigative purposes has been noted in Maryland cases.'" *Id.* at 134 (quoting *Wilder v. State*, 191 Md. App. 319, 367 (2010)). We further noted that the better procedure for admitting cell phone location evidence "'is to require the prosecution to offer expert testimony to explain the functions of cell phone towers, derivative tracking, and the techniques of locating and/or plotting the origins of cell phone calls using cell phone records.'" *Id.* (quoting *Wilder*, 191 Md. App. at 365). We concluded that, "[i]n the absence of any evidence that the cell phone location technique employed by [the officer] was not generally accepted in the scientific community, the circuit court did not err in declining to conduct a *Frye-Reed* hearing[.]" *Id.* (internal citations omitted).

We hold, based on our reasoning in *Stevenson*, that the court in the instant case did not err in refusing to conduct a *Frye-Reed* hearing regarding the reliability of the RTT data. *See generally Dixon*, 433 Md. at 150 (noting that, in the context of a *Frye-Reed* analysis, an appellate court "may take judicial notice from [its] own decisions that the scientific community accepts [a novel scientific method]."). As defense counsel admitted when arguing her motion, Verizon derives the RTT data by analyzing communications between a cell phone and a cell tower "to try to determine where the phone is located." Thus, even though RTT data and traditional "cell phone tower data" may have some differences in the resulting data, the underlying process – using cellular telephone

technology and cell phone call records to determine the location of a phone – is more or less the same.

Moreover, the State was prepared to call an "expert in the field of cellular telephone forensics and mapping," who would have "testified regarding the maps she created that were derived from the Verizon records." As a result, the utility and accuracy of the RTT data, along with any issues regarding how that data was derived, could have been explained by the State's expert witness. Conversely, any issues as to the data's reliability could have been explored by the Defense on cross-examination or through the Defense's own expert, who, according to the agreed statement of facts, would have testified at trial that RTT data was unreliable and "could not be used to plot a precise longitude and latitude akin to GPS coordinates."

Finally, Holland presents no compelling evidence that the cell phone location technique at issue is not generally accepted in the scientific community. The disclaimer outlined in the RTT report, on which Holland almost exclusively relies, merely states that the measurements were "best estimates;" that they were "not related to any GPS measurement;" and that, while measurements with a high confidence factor may be more accurate than those with a low confidence factor, all measurements were "the best estimates available rather than precise location." Nothing about that disclaimer speaks to whether the technique used to gather the RTT data is "novel" or "not generally accepted in the scientific community." Rather, the disclaimer simply cautions that the RTT data is a "best estimate" of a cell phone's location and that some measurements are more

accurate than others. In other words, the disclaimer implies that the RTT data is best used when determining a cell phone's general location, a fact that Holland all but concedes when he cites Larry Daniels, *Cell Phone Location Evidence for Professionals* 81 (2012), for the proposition that RTT data is "highly suspect for any kind of use for determining the location of a cell phone *other than a general location*[.]" (Emphasis added). Given that the State's expert used the RTT data for that purpose, we fail to see how the circuit court abused its discretion in refusing to grant Holland's request for a *Frye-Reed* hearing.

IV.

Holland next contends that the circuit court erred in denying his motion to dismiss based on a claimed "Hicks" violation. Holland claims that, absent a showing of good cause, the State was required to bring him to trial within 180 days of his initial appearance, or by January 25, 2017. Holland maintains that the State failed to meet that obligation after his trial date of January 19, 2017, was postponed by the court. Holland argues that the court did not have "good cause" to postpone trial. The State responds that the court had good cause to postpone Holland's case, as the parties were awaiting the results of DNA tests that had the potential to provide both exculpatory and inculpatory evidence.

In Maryland, a criminal trial in the circuit court must be held no later than 180 days after the appearance of counsel or the first appearance of the defendant before the circuit court, whichever is earlier. *E.g.*, Md. Code, (2001, 2008 Repl. Vol.), Criminal

Procedure Article ("CP"), § 6-103(a); Md. Rule 4-271(a)(1). On a motion of a party or the court's own initiative, the county administrative judge or his designee may grant a change of the trial date beyond the 180-day limit "for good cause shown." *E.g.*, CP § 6-103(b)(1); Md. Rule 4-271(a)(1).

In *State v. Hicks*, 285 Md. 310 (1979), the Court of Appeals held that the 180-day rule was mandatory and that, absent good cause, dismissal of the charges was the appropriate sanction. *Id.* at 318. "'The sanction of dismissal, where that sanction is applicable, is not for the purpose of protecting a criminal defendant's right to a speedy trial; instead, it is a prophylactic measure to further society's interest in trying criminal cases within 180 days.'" *Fields v. State*, 172 Md. App. 496, 520-21 (2007) (quoting *State v. Brown*, 307 Md. 651, 658 (1986)).

"A determination by the administrative judge to extend the trial date beyond 180 days is given 'wide discretion' and carries a 'heavy presumption of validity.'" *Id.* at 521 (citing *Tapscott v. State*, 106 Md. App. 109, 122 (1995)). "'The burden of demonstrating a clear abuse of discretion is on the party challenging the discretionary ruling on the postponement.'" *Id.* (quoting *Brown*, 355 Md. at 98). "Thus, a defendant seeking dismissal on *Hicks* grounds bears the burden of demonstrating either a clear abuse of discretion or a lack of good cause as a matter of law." *Id.* (citations and quotations omitted).

We hold that Holland failed to meet his burden of establishing a clear abuse of discretion or a lack of good cause. The postponement request filed prior to Holland's

trial date of January 19, 2017, the granting of which pushed Holland's trial date beyond the 180-day limit, was a joint request by the State and defense counsel.[5] *See Moody v. State*, 209 Md. App. 366, 374-75 (2013) ("[One] circumstance where it is inappropriate to dismiss the criminal charges is where the defendant, either individually or by his attorney, seeks or expressly consents to a trial date in violation of Md. Rule 4-271(a)(1)."") (citing *Hicks*, 285 Md. at 335). That motion, in which the parties specifically asked the court to make a finding of "good cause," was based on the fact that certain DNA samples taken from some of the crime scenes were "mistakenly filed," and that the samples were "the potential to provide for both exculpatory and inculpatory evidence." When the court granted the parties' request, it found good cause based, in part, on the potential of the DNA evidence to be both inculpatory and exculpatory. *See Id.* at 374-75 (finding that the court properly denied the defendant's motion to dismiss based on a claimed *Hicks* violation where the parties awaited the results of DNA testing and the court determined "that the potential importance of DNA evidence, as it pertain[ed] to conviction or acquittal, warranted a postponement."). The court also found that the State had not intentionally failed to obtain the DNA results but instead had "done what they can to facilitate getting the results back in a more timely fashion." *Cf. State v.*

[5] Although Holland did indicate, at the hearing on the parties' motion, that he was unhappy with the postponement request, it is unclear from the record whether Holland was unhappy with the request itself or with the fact that he was incarcerated awaiting trial. In any event, "[t]he purpose of the 180 day rule is to protect the societal interest in the prompt trial of criminal cases; the benefits that the rule confers upon defendants are incidental." *Marks v. State*, 84 Md. App. 269, 277 (1990).

Huntley, 411 Md. 288, 302 (2009) ("The severe sanction of a *Hicks* dismissal is reserved for situations where the State seeks to circumvent the strictures of CP § 6-103(a) and Md. Rule 4-271(a)(1) and unjustifiably delay a defendant's trial beyond 180 days."). Based on the record before us, we cannot say that the court abused its discretion in extending Holland's trial date beyond the 180-day limit.

V.

Holland's final contention is that the circuit court erred in denying his motion to dismiss based on a claimed violation of his constitutional right to a speedy trial. Holland maintains that, "as a direct result of the State's negligence handling discovery in this case, it took 19 months and 17 days to bring [him] to trial." Holland notes that he "spent 561 of those days incarcerated" and that, in that time, he asserted his right to a speedy trial "no fewer than seven times." Holland also maintains that the 561 days he spent incarcerated prior to trial, the "anxiety" he suffered as a result, and the loss of memory and "potential alibi witnesses," resulted in actual prejudice. Holland contends, based on those circumstances, that his right to a speedy trial was violated and that the appropriate remedy was dismissal.

The State responds that, although the length of the delay was "presumptively prejudicial," the delay itself was "unremarkable" given that the case was "sufficiently complex" in light of the "numerous motions, complex facts, and coordination of experts." The State also contends that none of the postponements were caused by "prosecutorial neglect or a tactical effort to hamper trial" and that the last delay was caused by the

defense, "because it was the lack of the defense's expert's readiness in September that prevented the trial from going forward." Finally, the State asserts that Holland failed to demonstrate actual prejudice and that his argument on that point is "speculative."

A defendant's right to a speedy trial is guaranteed by the Sixth and Fourteenth Amendments to the United States' Constitution and Article 21 of the Maryland Declaration of Rights. *State v. Kanneh*, 403 Md. 678, 687 (2008). "In reviewing a circuit court's denial of a motion to dismiss on the ground of a speedy trial violation, we accept its findings of fact unless clearly erroneous but 'perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand.'" *Hallowell v. State*, 235 Md. App. 484, 513 (2018) (quoting *Glover v. State*, 368 Md. 211, 221 (2002)).

"In addressing a speedy trial claim, we apply the four-factor balancing test articulated by the Supreme Court in [*Barker v. Wingo*, 407 U.S. 514 (1972).]" *Id.* Those factors are: 1) the length of the delay; 2) the reason for the delay; 3) the defendant's assertion of his speedy-trial right; and 4) any prejudice to the defendant. *Peters v. State*, 224 Md. App. 306, 359-60 (2015). "'None of [the *Barker*] factors is, in itself, either necessary or sufficient to find a violation of the speedy trial right; instead they are related factors and must be considered together with such other circumstances as may be relevant.'" *Hallowell*, 235 Md. App. at 513 (citations omitted).

That said, not all delays require a full *Barker* analysis. "[T]he 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." *Kanneh*, 403 Md. at 688. "Unless the delay crosses the line from ordinary delay to presumptively prejudicial delay, 'there is no necessity for inquiry into the other factors that go into the balance.'" *White v. State*, 223 Md. App. 353, 377 (2015) (quoting *Barker*, 407 U.S. at 530). "The Court of Appeals has consistently held . . . that a delay of more than one year and fourteen days is 'presumptively prejudicial' and requires balancing the remaining factors." *Lloyd v. State*, 207 Md. App. 322, 328 (2012) (citing *Glover*, 368 Md. at 223). "For speedy trial purposes the length of delay is measured from the date of arrest or filing of indictment, information, or other formal charges to the date of trial." *Divver v. State*, 356 Md. 379, 388-89.

Here, the length of the delay was sufficient to trigger a speedy trial analysis. Holland was indicted on June 24, 2016, and brought to trial on February 9, 2018, for a total delay of approximately 19 months. Because that delay is presumptively prejudicial, we now apply a full *Barker* analysis.

A. Length of Delay

As previously discussed, the length of the delay is both a triggering mechanism for speedy trial analysis and a factor to be considered. In the latter context, the length of delay "is not necessarily, in and of itself, sufficient to compel dismissal. What may seem, on its face, an outrageous delay may, indeed, be deemed reasonable." *In re Thomas J.*, 372 Md. 50, 73 (2002); *see Brady v. State*, 291 Md. 261, 269-70 (1981) (delay of 14 months held to be violative of defendant's right to speedy trial); *compare to Kanneh*, 403

Md. at 694 (delay of nearly 3 years did not violate defendant's right to speedy trial). Moreover, "the length of the delay is the least determinative of the four factors that we weigh in determining whether a defendant's right to a speedy trial has been violated." *Kanneh*, 403 Md. at 689-90.

Here, although the length of the delay was sufficient to trigger a speedy trial analysis, we do not consider the delay to be inordinate under the circumstances. Holland was charged with 25 counts involving 12 separate thefts and attempted thefts of property belonging to approximately ten different victims. *See generally Peters*, 224 Md. App. at 360 ("[T]he length of the delay that can be tolerated depends, to some extent, on the crime charged."). In addition, two of the delays, which totaled approximately six months, were joined by defense counsel, and another delay, which lasted approximately five months, occurred because the Defense's expert witness was unavailable for trial. *See generally Randall v. State*, 223 Md. App. 519, 545 (2015) (noting that weight given to the length of the delay "is heavily influenced by the other *Barker* factors, particularly the 'reason' for the delay; '[i]t may gain weight or it may lose weight because of circumstances that have nothing to do with the mere ticking of the clock.'") (citing *Ratchford v. State*, 141 Md. App. 354, 359 (2001)). Given those circumstances, we give this factor little to no weight.

B. Reasons for Delay

The second factor – the reasons for the delay – is closely related to the length of the delay in that "different weights should be assigned to different reasons." *Peters*, 224 Md. App. at 361 (quoting *Barker*, 407 U.S. at 531). As the Supreme Court explained:

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

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

In the present case, there were five separate delays between Holland's indictment and trial. Because the reasons for the delays vary, we shall discuss them in turn.

The initial delay between Holland's indictment and the first postponement, approximately 165 days, was purely administrative and part of the regular administration of justice. That delay, therefore, "is accorded essentially no weight in the analysis, as that is the time it would have taken for trial preparation in the absence of any of the ensuing postponements." *Hallowell*, 235 Md. App. at 515.

The second delay of approximately 49 days is chargeable to the State, as it was the State who was ultimately responsible for providing information to the defense regarding certain DNA samples, which caused the "discovery issue" that led to the postponement. That said, defense counsel joined in the State's request for a postponement, and there is no evidence that the State acted in bad faith. Consequently, although that delay is

attributable to the State, we accord it essentially no weight given the neutral reason and defense counsel's consent.

The third delay of approximately 119 days is also attributable to the State, as the State had mistakenly mislabeled certain DNA samples and, as a result, the parties were awaiting the results of testing on those samples. Like the prior delay, however, there was no bad faith on the part of the State, and defense counsel joined in the State's request for a postponement. Thus, we accord the third delay essentially no weight.

The fourth delay of approximately 112 days is wholly attributable to the State, given that the State failed to timely disclose all of the cell phone records. As with the other discovery issues, the court found that the State had not acted in bad faith in failing to turn over the records. In so doing, the court refused to exclude the records as a sanction for the State's discovery violation, instead offering the Defense the remedy of a postponement. Defense counsel accepted the court's offer. Under the circumstances, although the State was at fault for the delay, we accord the delay minor weight in favor of Holland given the lack of bad faith and the court's reasonable remedy of a postponement.

The final delay of approximately 150 days is wholly attributable to the Defense. After the court denied the Defense's motion to exclude the RTT data, defense counsel indicated that she was not prepared to go to trial because her expert witness was unavailable. The court then offered to postpone the scheduled trial date to a more amenable time so that the Defense's expert could testify, and defense counsel accepted the court's offer. Thus, the final delay weighs against Holland.

In sum, the first delay was administrative and the next two delays, while attributable to the State, were joined by the Defense and involved no bad faith or deliberate attempts to delay by the State. The fourth delay was also attributable to the State, yet any resulting weight was offset by the weight of the final delay, which was directly attributable to the Defense. We, therefore, assign little to no weight to the second *Barker* factor.

C. Assertion of Right to Speedy Trial

The third factor involves Holland's assertion of his right to a speedy trial. There is no dispute that Holland asserted that right on multiple occasions. Accordingly, this factor weighs in Holland's favor. *See Hallowell*, 235 Md. App. at 517 ("The defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight[.]") (citations and quotations omitted).

D. Prejudice

The final and perhaps most important factor in the *Barker* analysis is whether the defendant suffered actual prejudice as a result of the delay. *Peters*, 224 Md. App. at 364. "Prejudice, in respect to the right to a speedy trial, has been defined to include not merely an 'impairment of defense' but [also] 'any threat to what has been termed an accused's significant stakes, psychological, physical and financial, in the prompt termination of a proceeding which may ultimately deprive him of life, liberty or property.'" *In re Thomas J.*, 372 Md. at 77 (citations and quotations omitted). In addition, any prejudice must be evaluated in light of the three primary interests the right to a speedy trial was designed to

protect, which are: "(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." *Id.* (quoting *Barker*, 407 U.S. at 532). Of those three interests, the "'most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.'" *Hallowell*, 235 Md. App. at 517 (quoting *Barker*, 407 U.S. at 532).

Indeed, Holland suffered some prejudice as a result of the delay. He was incarcerated for 561 days, and his various protestations at his incarceration suggest that he may have suffered some anxiety and concern throughout the process. That said, we see no evidence in the record that Holland's defense was impaired in any way by the delay. To the contrary, many of the postponements were granted to give the Defense additional time to prepare for trial. Moreover, aside from Holland's bald assertion that his "memory" and "the potential for alibi witnesses" had "completely vanished," he provides no specific evidence to show, or even suggest, that his ability to try his case had been hampered by the delays. Therefore, other than the general prejudice inherent in Holland's pretrial incarceration and the natural anxiety caused by facing criminal charges, we conclude that Holland suffered only slight prejudice. *Cf. Hallowell*, 235 Md. App. at 518 ("Oppressive pretrial incarceration with its attendant anxiety and concern to the accused is generally afforded only slight weight.").

E. Conclusion

In sum, the length of the delay, while sufficient to trigger a speedy trial analysis, was not, under the circumstances, inordinate, particularly when compared to other cases in which a court held that the defendant's right to a speedy trial had not been violated. *See, e.g.*, *Barker*, 407 U.S. at 533-36 (five-year delay); *Kanneh*, 403 Md. at 688-89 (three-year delay); *Hallowell*, 235 Md. App. at 518-19 (20-month delay); *Peters*, 224 Md. App. at 365 (19-month delay). Importantly, the reasons for the delay were, in the aggregate, neutral, and there is no evidence that any of the delays attributable to the State were caused by bad faith. Finally, although Holland did make a timely assertion of his right to a speedy trial, the delay caused no apparent prejudice to Holland's defense and any additional prejudice in the form of physical and mental stress weighs only slightly. Accordingly, Holland's right to a speedy trial was not violated, and the circuit court did not err in denying his motion to dismiss. *Cf. Howard v. State*, 440 Md. 427, 449 (2014) (holding that "the lack of actual prejudice and the neutral reasons for the delay outweigh the length of the delay and [the defendant's] assertion of his right to a speedy trial.").

JUDGMENTS OF THE CIRCUIT COURT FOR CALVERT COUNTY REVERSED AND THE CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY CALVERT COUNTY.