Circuit Court for Baltimore City
Case No. 119035015

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2383

September Term, 2019

RODNEY LEE HARRIS, JR.,

v.

STATE OF MARYLAND

Graeff,
Arthur,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: June 3, 2021

Appellant was convicted by a jury in the Circuit Court for Baltimore City of manslaughter, first-degree assault and second-degree assault. He was sentenced to ten years' incarceration for the manslaughter charge and a consecutive sentence of twenty-five years' incarceration for the first-degree assault charge. The second-degree assault conviction was merged into the first-degree assault conviction. Appellant timely appealed and presents the following questions for our review:

1. Whether the circuit court erred by not complying with Maryland Rule 4-215(e) in response to Mr. Harris' repeated requests to discharge counsel?

2. Whether the circuit court erred by refusing to ask during *voir dire* whether any prospective jurors are unwilling or unable to comply with the jury instructions on the presumption of innocence, the State's burden of proof, and the defendant's right to testify?

3. Whether the circuit court erred by denying the motion to dismiss the charges on speedy trial grounds?

4. Whether the circuit court erred by denying the motion for judgment of acquittal on Count Three?

The State concedes that, in accordance with *Kazadi v. State*, 467 Md. 1 (2020), this case must be remanded for a new trial. The trial court did not ask the requested *voir dire* questions and while appellant's trial occurred prior to the Court of Appeals' decision in *Kazadi*, his appeal was pending when the opinion was issued. The Court of Appeals determined that its "holding applies to . . . any other cases that are pending on direct appeal . . . where the relevant question has been preserved for appellate review." *Id.* at 54. We agree with the State that appellant's convictions should be reversed and that the case be remanded for a new trial. We shall address appellant's second and third issues, but we

decline to address appellant's first issue, as it is unlikely to reoccur on remand. *See Odum v. State*, 156 Md. App. 184, 212 (2004).

BACKGROUND

On April 5, 2018, Officer Brett Gibson responded to a 911 call for a possible assault. He spoke to Ms. Davis, the victim, following her transport to a nearby hospital. She identified Harris as her boyfriend and her assailant. Ms. Davis was six months pregnant at the time and suffered multiple injuries as a result of the attack. She subsequently lost her baby.

Harris was charged initially on April 6, 2018, with first-degree assault, second-degree assault and reckless endangerment. A grand jury indicted him on May 7, 2018, charging him with attempted first-degree murder, attempted second-degree murder, first-degree assault, and second-degree assault. Appellant filed pretrial motions, including a demand for a speedy trial, on May 24, 2018. His *Hicks* date was November 28, 2018.

On October 4, 2018, the court granted Harris' request for a postponement of the trial date and the State joined, both, stating additional time was needed for investigation. The court found good cause. On December 18, 2018, a second postponement was granted for the same reason and good cause was also found.

A grand jury, on February 4, 2019, again indicted appellant, adding counts relating to the baby's death. The indictment charged appellant with second-degree murder, manslaughter, first-degree assault and second-degree assault. Ten days later, appellant demanded a speedy trial. On March 7, 2019, the State nolle prossed the initial indictment. The *Hicks* date on the new indictment was August 12, 2019.

A third postponement was granted on June 26, 2019, because the defense attorney had been involved in an automobile accident and was unavailable to proceed with the trial. On July 8, 2019, a fourth postponement was granted because of a death in defense counsel's family. On July 15, 2019, a fifth postponement was granted because the case had been repaneled to a new attorney, and no courtrooms were available until October 8, 2019. Two days later, appellant filed another motion demanding a speedy trial.

Following a jury trial held in October 2019, appellant was convicted of manslaughter, first-degree and second-degree assault. He was sentenced to a total of thirty-five years' imprisonment.

DISCUSSION

1. The court did not err in denying appellant's motion to dismiss the charges on speedy trial grounds.

Appellant argues the trial court erred in failing to dismiss the charges on speedy trial grounds and further, the court did not engage in a proper analysis. The State counters the trial court did not err and appellant was not denied his right to a speedy trial.

The Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a defendant in a criminal prosecution, the right to a speedy trial. When appellate courts review "the judgment on a motion to dismiss for violation of the constitutional right to a speedy trial" they make their "own independent constitutional analysis." *Glover v. State*, 368 Md. 211, 220 (2002). "In other words, '[w]e perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand; in so doing, we accept a lower court's findings of fact unless clearly erroneous.'" *Vaise v.*

State, 246 Md. App. 188, 216, *cert. denied*, 471 Md. 86 (2020) (quoting *Glover v. State*, 368 Md. 221).

In *Barker v. Wingo*, the Supreme Court established a four-factor balancing test to determine if there is a constitutional violation of the speedy trial right. Those factors include: "length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." 407 U.S. 514, 530 (1972). "'None of these 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.'" *Phillips v. State*, 246 Md. App. 40, 56 (2020) (quoting *Nottingham v. State*, 227 Md. App. 592, 613 (2016)). "There is no bright-line rule to determine whether a defendant's right to a speedy trial had been violated," rather courts must use "a balancing test" to weigh the actions of the defendant and the prosecution. *Id.* "[T]he Speedy Trial Clause has no application after the Government, acting in good faith, formally drops charges." *State v. Henson*, 335 Md. 326, 336 (1994) (quoting *United States v. MacDonald*, 456 U.S. 1, 7 (1982)). "[T]he period between the good faith termination of a prosecution and the reinstitution of that prosecution . . . will not be considered in the speedy trial analysis." *Id.* "The Maryland rule in such case is that, so long as the State acted in good faith, the *nolle prosequi* terminates the original prosecution, and the speedy trial clock starts anew from the date of the filing of the new charging document." *Nottingham v. State*, 227 Md. App. 592, 614 (2016).

Appellant does not argue that the State acted in bad faith when it *nolle prosequied* the initial charges. Thus, we hold the speedy trial clock, starts with the filing of the

February 4, 2019 indictment. The length of time from that indictment until trial on October 8, 2019, was approximately 8 months. Such a delay "'might' be construed as presumptively prejudicial and of constitutional dimension." *Lloyd v. State*, 207 Md. App. 322, 329 (2012). We will, therefore, analyze the *Barker* factors.

1. *Barker* Analysis

Length of Delay

The Court of Appeals "has noted that the first factor, the length of the delay, is a 'double enquiry,' because a delay of sufficient length is first required to trigger a speedy trial analysis, and the length of the delay is then considered as one of the factors within that analysis." *State v. Kanneh*, 403 Md. 678, 688 (2008). "The length of delay, in and of itself, is not a weighty factor." *Glover v. State*, 368 Md. 211, 225 (2002). "The arrest of a defendant, or formal charges, whichever first occurs, activates the speedy trial right." *Wheeler v. State*, 88 Md. App. 512, 518 (1991). However, the length of the delay must be analyzed in correlation "to the other factors, such as the reasonableness of the State's explanation for the delay, the likelihood that the delay may cause the defendant to more pronouncedly assert his speedy trial right, and the presumption that a longer delay may cause the defendant greater harm." *Id.* "'[T]he length of delay is measured from the date of arrest or filing of indictment, information, or other formal charges to the date of trial.'" *White v. State*, 223 Md. App. 353, 377 (2015) (quoting *Divver v. State*, 356 Md. 379, 388–89 (1999)). "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).

Appellant maintains that his first demand for a speedy trial was made on May 24, 2018, yet his trial did not occur until October 8, 2019, 502 days later. As a result, he argues his right to a speedy trial was violated. As stated above, the re-indictment occurred on February 4, 2019. In either case, there was delay. The State concedes that the "delay was of constitutional dimension but does not weigh significantly in favor of dismissal." We agree.

Reason for Delay

"Closely related to length of delay is the State's reason justifying a delay with different weights being assigned to different reasons." *Phillips v. State*, 246 Md. App. 40, 59 (2020). The Supreme Court stated in *Barker:*

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

407 U.S. at 531 (footnote omitted). The Court of Appeals has stated:

> a deliberate attempt to hamper the defense would be weighed most heavily against the State, a prolongation due to the negligence of the State would be weighed less heavily against it, a delay caused by a missing witness might be a neutral reason chargeable to neither party, and a delay attributable solely to the defendant himself would not be used to support the conclusion that he was denied a speedy trial.

Jones v. State, 279 Md. 1, 6–7 (1976). "[D]elays must be examined in the context in which they arise and therefore a lengthy uninterrupted period chargeable to one side will generally

be of greater consequence than an identical number of days accumulating in a piecemeal fashion over a long span of time." *Jones*, 279 Md. at 7.

Here, there were five postponements. The first two postponements, occurring on October 4, 2018 and December 18, 2018, were made on behalf of the defense in order to further investigate the case, which the State joined. Both postponements were prior to the February re-indictment.

On June 26, 2019, a third postponement request was granted because defense counsel had been involved in an automobile accident. The fourth postponement, on July 8, 2019, was attributed to the defense because of a death in the attorney's family. On July 15, 2019, a fifth and final postponement was granted because the case had been repaneled to a new attorney and no courtroom was available until October 8, 2019. As we see it, the postponements were primarily defense requests. The final postponement was, at best, neutral as a courtroom was not available. We conclude that the trial delays cannot be attributed, in large part to the State, and there were a variety of reasons that the defense needed additional time to prepare. In our review of the record, we found no attempt by the state to deliberately hinder the defense or to prevent a speedy trial. As such, the reasons for delay do not weigh in favor of dismissal.

Assertion of Right

"The third *Barker* factor is the defendant's responsibility to assert his right. Whether and how a defendant asserts his right is closely related to the other factors." *Phillips*, 246 Md. App. at 66 (cleaned up). "The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then,

is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker v. Wingo*, 407 U.S. at 531–32. The Court further highlighted that a "failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Id.* In *Jules v. State*, our Court previously stated that the "third factor weighs lightly in favor of dismissal." 171 Md. App. 458, 486 (2006).

Here, appellant asserted his right to a speedy trial on three separate occasions. He asserted his right at a May 24, 2018 motions hearing, at a March 7, 2019 bail hearing, and on July 17, 2019, two days after the final postponement was granted. We conclude that appellant did assert his right and his assertion weighs in favor of dismissal.

Prejudice

"Ultimately, 'the most important factor in the *Barker* analysis is whether the defendant has suffered actual prejudice.'" *Phillips*, 246 Md. App. at 67 (quoting *Henry*, 204 Md. App. at 554). When assessing prejudice, courts are to assess "the three interests supporting the right to a speedy trial: preventing an oppressive pretrial incarceration; minimizing the anxiety and concern of the accused; and limiting the possibility that the defense will be impaired." *Id.* "[T]he most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Barker*, 407 U.S. at 532. A defendant's "'possibility of prejudice at trial is not itself sufficient reason to wrench the Sixth Amendment from its proper context.'" *Glover*, 368 Md. at 231 (quoting *United States v. Marion*, 404 U.S. 307, 321–322 (1971)) (emphasis in *Glover* removed).

Appellant argues that because of the delays, he suffered prejudice, while the State argues appellant has not established that he suffered prejudice. We agree. Appellant has provided no specifics as to how his pretrial incarceration was oppressive or whether his defense was possibly impaired. While he did argue at the trial level that certain witnesses had become unavailable, the court concluded that it could not find prejudice to appellant, as a result of the postponements and stated, "you make it seem as if his witnesses were available and all of a sudden they're unavailable now. I don't know whether they were even available then." We find, therefore, that this factor weighs against dismissal.

In conclusion, we hold the judge acted properly in denying the motion to dismiss on speedy trial grounds. While there were delays and appellant did assert his speedy trial rights, the reasons for the delays and the lack of prejudice to appellant require a finding that his right to a speedy trial was not violated. We also hold that the State acted in good faith in terminating the initial charges and thus, our speedy trial analysis began with the filing of the second charging document.

We further, observe that the trial judge did engage in the proper balancing test, stating:

> I'm going to deny your request, counsel, on the speedy trial issue. The—none of the postponements were maliciously set by the State's attorney. Actually, defense attorneys have joined in every one of the postponement request on behalf of Mr. Harris to investigate the case. No courts were available.
>
> With respect to the superseding indictment, Mr. Panteleakis was in a car accident that made him available. And then his father died which also made him unavailable which the State had no control or the courts didn't have any control over those series of events. It looks as if Judge Phinn, in picking this trial date, with *Hicks* just ending in August 12th of 2019,

explained to Mr. Harris exactly what was happening and tried her best to get him the earliest court date.

With respect to his witnesses, the prejudice to his witnesses, counsel, I mean, you make it seem as if his witnesses were available and all of a sudden they're unavailable now. I don't know whether they were even available then. And so I cannot come to the conclusion that there was prejudice to the defendant by postponing—the postponement of these cases. And once again, they were done on his behalf by his own attorneys.

2. Hicks

In *Hogan v. State*, the Court of Appeals explained the *Hicks* Rule, stating:

time limits for conducting a criminal trial such as those now spelled out in Criminal Procedure Article, Sect. 6-103(a) and Rule 4-271(a) are mandatory and that dismissal of the criminal charges is the appropriate sanction where the State fails to bring the case to trial within the . . . period prescribed by the rule and where 'extraordinary cause' justifying a trial postponement has not been established. What has been since 1979 the 180-Day Rule is also regularly known as the *Hicks* Rule.

240 Md. App. 470, 486, *cert. denied*, 464 Md. 596 (2019). The Criminal Procedure Article of the Maryland Code, § 6-103(a)–(b) specifies:

(a)(1) The date for trial of a criminal matter in the circuit court shall be set within 30 days after the earlier of:

(i) the appearance of counsel; or

(ii) the first appearance of the defendant before the circuit court, as provided in the Maryland Rules.

(2) The trial date may not be later than 180 days after the earlier of those events.

(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:

(i) on motion of a party; or

(ii) on the initiative of the circuit court.

(2) If a circuit court trial date is changed under paragraph (1) of this subsection, any subsequent changes of the trial date may only be made by the county administrative judge or that judge's designee for good cause shown.

Md. Code Ann., Crim. Proc. § 6-103 (a)–(b).[1] Maryland Rule 4-271(1) provides that the date of "trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events."

In the case at bar, the postponements were requested by the defense in order to adequately prepare for trial. While the State joined in those requests, the clear justification for the postponements was to ensure that appellant was properly represented. The reasons for the delays were not a result of action initiated by the State. We note that appellant's *Hicks* date was August 12, 2019 and the final postponement which took the case beyond that date was a defense request and because of courtroom unavailability.[2] Good cause was found and appellant's October 8, 2019 trial date was 57 days beyond his *Hicks* date.

Regarding the establishment of *Hicks* violations, it is appellant's burden to prove that the "delay was excessive, in view of all the circumstances of the case." *Tunnell*, 466 Md. at 589. Here, the delays were necessitated by the need for trial preparation and/or because of unforeseen circumstances, including unavailable courtrooms. In *Tunnell*, the

[1] Section 6-103 of the Maryland Criminal Procedure Article now allows for a judge to extend trial time past the 180 days for a showing of good cause rather than extraordinary causes.

[2] The state *nol prossed* the previous charges, thus, the superseding indictment restarted the speedy trial clock. "'[T]he period between [a] good faith termination of a prosecution and the reinstitution of that prosecution . . . will not be considered in the speedy trial analysis.'" *Singh v. State*, 247 Md. App. 322, 340 (2020) (quoting *State v. Henson*, 335 Md. 326, 336 (1994)).

Court of Appeals held "that the unavailability of a judge, prosecutor, or courtroom—or general court congestion in a particular jurisdiction—could satisfy the good cause standard for a continuance under the *Hicks* rule." *Tunnell*, 466 Md. at 587. We conclude, here, that the unavailability of a courtroom until October does satisfy that standard.

We also conclude that the court did not abuse its discretion in failing to fully announce its analysis on the record. "It is a well-established principle that "'[t]rial judges are presumed to know the law and to apply it properly.'" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (quoting *State v. Chaney*, 375 Md. 168, 179 (2003)).

2. The trial court did not err in denying the motion for judgment of acquittal on the charge of first-degree assault.

Appellant argues the court erred in denying his motion for judgment of acquittal on the first-degree assault charge. The State counters that appellant did not preserve this issue for appellate review. We agree.

Maryland Rule 4-324 provides:

> (a) Generally. A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment of acquittal shall be necessary. A defendant does not waive the right to make the motion by introducing evidence during the presentation of the State's case.

Md. Rule 4-324(a). "We have explained that, to preserve a claim that the evidence is insufficient to support a conviction, a defendant in a criminal trial must move for judgment of acquittal and '*state with particularity*' why the evidence was insufficient." *Nash v. State*, 191 Md. App. 386, 404 (2010). In *Fraidin v. State*, we previously explained the following:

> [i]n a jury trial, the only way to raise and to preserve for appellate review the issue of the legal sufficiency of the evidence is to move for a judgment of acquittal on that ground. Under Md. Rule 4-324(a), a defendant is further required to argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient.

85 Md. App. 231, 244–45 (1991). "The issue of sufficiency of the evidence is not preserved when [the defendant's] motion for judgment of acquittal is on a ground different than that set forth on appeal." *Hobby v. State*, 436 Md. 526, 540 (2014) (quoting *Anthony v. State*, 117 Md. App. 119, 126, *cert. denied*, 348 Md. 205 (1997)). "A defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal in challenging the denial of a motion for judgment of acquittal." *Tetso v. State*, 205 Md. App. 334, 384 (2012).

Here the defense did not move for a judgment of acquittal on count three. Rather the opposite was occurred.

> THE COURT: Mr. Harris, you have some motions?
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> [DEFENSE COUNSEL]: Yes, Your Honor. I'd make a motion for judgment of acquittal on behalf of Mr. Harris. I Mr. Harris appears before this court, he's charged with murder in the second degree of an unborn fetus. This issue that I have is that it's pretty clear from the testimony that we haven't heard a clear date and time as to when the—when Avion Lee passed in this case.[3]
>
> In terms of the murder charge and the manslaughter charge they raise great concern. I think that even the evidence in the light most favorable to the State puts us at this wishy-washy

[3] Avion Lee was the stillborn child of appellant and his ex-girlfriend.

gray area where there's no evidence telling us . . . Avion Lee passed.

I think also in this case the evidence that's been presented at this time is that—**I think that the State has a case as to the assault first degree.** We have a case as we assault second degree. I don't know that there was an intent to kill Avion Lee shown in this particular case and for those reasons, I would make the motion for the judgment of acquittal as to the second degree murder.

And for the manslaughter charge, that would you, know join in terms of the date of the offense. We don't know that or we don't know the date of his passing. And with that I would submit.

THE COURT: Thank you. I'm going to deny your motion at this—counsel, I think looking at the totalities of the circumstances that one can infer from the actions of the [appellant] that that was the cause of death of the—that a fact finder could find that and I'm going to deny your request.

Would you like to advise your client?

As appellant did not raise the issue of sufficiency of the evidence in the trial court, it is not properly before us. Assuming *arguendo*, the issue was properly preserved, we would hold that the testimony regarding the severity of the injuries as well as appellant's statements provided sufficient evidence to support the jury's first-degree assault conviction.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED AND CASE REMANDED FOR FURTHER

PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.