Circuit Court for Calvert County
Case No.: C-4-CR-17-044

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3248

September Term, 2018

ROBERT PAUL HOLLAND

v.

STATE OF MARYLAND

Friedman,
Gould,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: March 23, 2020

In 2017, Robert Holland led a police officer on a low-speed chase before finally pulling over in the backyard of a home, out of sight of the public eye. The officer, concerned for his safety, handcuffed Mr. Holland before searching his car. In the vehicle, the officer found various weaponry and equipment that suggested Mr. Holland was impersonating a police officer. The police applied for, and were granted, a warrant to search Mr. Holland's home, where they found an assault rifle. Mr. Holland was subsequently convicted of possession of a regulated firearm and ammunition after a disqualifying crime.

He now raises a panoply of objections to the proceedings in the trial court, starting with the charging documents and running all the way through the instructions to the jury. Finding no error, we affirm.

BACKGROUND

On March 6, 2017 at around 2:30 p.m., Deputy Timothy Mohler was patrolling the Prince Frederick area when he witnessed a black Crown Victoria driving without a front license plate, contrary to Maryland law. He activated his emergency lights to initiate a traffic stop. Rather than pull over, the car kept driving. Deputy Mohler then activated his emergency siren and emergency horn, in a continued effort to get the car to pull over. Still the car did not stop. The car continued until it reached the driveway of a residence. It turned into the driveway, continued up the driveway until it reached the residence, and turned into a parking area behind the house. At that point, Deputy Mohler called for back-up.

When the cars stopped, Deputy Mohler saw the driver's hands reach towards the driver's open door window, but because the car's windows had a very dark tint, he could not see if there were other individuals in the vehicle. Deputy Mohler, standing in front of his own vehicle, ordered the driver to place his hands out the window. Deputy Mohler had his service weapon drawn, in the ready position, but not pointed in the driver's direction.

After about two minutes, the backup that Deputy Mohler had requested arrived. Deputy Mohler then ordered the driver out of the vehicle, handcuffed him, and collected his identifying information. During that time, Corporal Richard Wilson arrived on the scene with his certified drug-sniffing dog, Dexter, and conducted a K-9 scan of the vehicle. Corporal Wilson advised Deputy Mohler that Dexter had positively alerted to the presence of drugs in the vehicle, at which time the officers searched the car. Within the car, the officers found many items associated with police work, including red and blue flashing lights, a Toughbook tactical laptop, tactical pouches designed to be worn on a duty belt, an asp baton, and an empty ammunition magazine. They also found a collapsible stock for an AR-15 style rifle loaded with .223 caliber cartridges. Based on these items—as well as the fact that the car in question was a Crown Vic[1]—Deputy Mohler believed that the driver, Mr. Holland, had been impersonating a police officer.

Deputy Mohler contacted the police department's gun unit, which informed him that Mr. Holland was prohibited from possessing firearms or ammunition. Noting the presence of ammunition but not a matching firearm, he drafted a warrant for the search of Mr.

[1] The Ford Crown Victoria was made until 2011 and was frequently used as a police squad car.

Holland's residence, which was granted and executed. At the home, police found many other items associated with police or military work, as well as a Smith and Wesson AR-15 style rifle.

After trial, the jury convicted Mr. Holland of possession of a regulated firearm after a disqualifying crime (Count 1) and possession of ammunition by an individual prohibited from possessing a regulated firearm (Count 2), but acquitted him of possession of a stolen regulated firearm (Count 3). He timely appealed. We will address each of his contentions individually.

DISCUSSION

THE MOTION TO SUPPRESS[2]

Mr. Holland claims error in the court's denial of his motion to suppress the evidence obtained from the searches of his car and home.

The Fourth Amendment protects individuals from unreasonable searches and seizures. "Seizures" fall under two categories: "(1) an arrest—whether formal or de facto—requiring the police to have probable cause to believe that the arrestee has been involved in criminal activity; or (2) a more limited restraint of the person based on the officer's reasonable suspicion that criminal activity is afoot." Barnes v. State, 437 Md. 375, 390 (2014) (cleaned up). The latter category is often referred to as an investigatory or "Terry" stop. See Terry v. Ohio, 392 U.S. 1, 30–31 (1968).

[2] Upon Mr. Holland's motion, the court conducted a suppression hearing on April 26, 2018, at which time it heard testimony and argument related to the traffic stop.

As Mr. Holland sees it, although the police did not formally arrest him, they subjected him to a de facto arrest without probable cause when Deputy Mohler drew his weapon and handcuffed him. Mr. Holland argues that the unlawful de facto arrest led to the K-9 scan, which in turn led to the search of his vehicle. Had the police not searched his vehicle, they would not have discovered the tactical items, ammunition, and weapons that provided the basis for the search warrant of his home. And without the search of the home, the police would have never found the firearm. Mr. Holland contends that, because the police lacked probable cause for his initial arrest, the items discovered during the search of his car and home should have been suppressed as the "fruits" of the unlawful arrest. See Barnes, 437 Md. at 391 (noting that generally, evidence obtained indirectly from an unlawful seizure must be suppressed).[3]

The State counters that the seizure of Mr. Holland was nothing more than an investigative Terry stop. Under this standard, an officer with reasonable articulable suspicion that criminal activity is occurring "is authorized to detain the person for a reasonable period of time, measured by the particular facts and circumstances at hand, in order to investigate the suspected criminal behavior." Id. at 390. "If, during that time, the officer's suspicion ripens into probable cause to believe the individual has committed or is committing a crime, then an arrest lawfully may ensue." Id. The State argues that because Deputy Mohler, based on Mr. Holland's unusual behavior, had reasonable suspicion that a

[3] Independently, Mr. Holland argues that, even including the evidence ascertained from the traffic stop, the issuing judge lacked a substantial basis to believe that the warrant was supported by probable cause.

crime was occurring, he was authorized to conduct the initial Terry stop, and thus the evidence that eventually resulted therefrom was properly admitted.

Investigatory Stops and De Facto Arrests

Our standard of review of a decision denying a motion to suppress is as follows:

> In reviewing a circuit court's grant or denial of a motion to suppress evidence, we ordinarily consider only the evidence contained in the record of the suppression hearing. The factual findings of the suppression court and its conclusions regarding the credibility of testimony are accepted unless clearly erroneous. We review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party. We undertake our own constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.

Chase v. State, 224 Md. App. 631, 640 (2015) (quotation omitted), aff'd, 449 Md. 283 (2016). "[W]hile a formal arrest occurs when an officer informs the suspect that he or she is under arrest, a *de facto* arrest occurs when the circumstances surrounding a detention are such that a reasonable person would not feel free to leave." Reid v. State, 428 Md. 289, 299-300 (2012).

Citing to several cases from Maryland and elsewhere, Mr. Holland contends that Deputy Mohler's use of his firearm and handcuffs constituted a de facto arrest. See, e.g., Elliott v. State, 417 Md. 413, 430 (2010); Longshore v. State, 399 Md. 486, 514 (2007); see also Bailey v. State, 412 Md. 349, 374 (2010) (holding that the defendant was under de facto arrest when the officer grabbed his hands).

As the State points out, not all incidents involving an officer's use of handcuffs or a firearm transform an otherwise valid investigatory stop into a de facto arrest. See Bailey, 412 Md. at 372 n.8 ("The use of handcuffs in a seizure is not a dispositive factor in

determining whether the seizure was a *Terry* stop or an arrest"). The Court of Appeals has "recognized that society has become more violent, that attacks against law enforcement officers have become more prevalent, that there is a greater need for police to take protective measures to ensure their safety and that of the community that might have been unacceptable in earlier times, and that" the boundaries of a permissible investigative stop have "expanded to accommodate those concerns." Cotton v. State, 386 Md. 249, 265 (2005). Thus, officers may take "reasonable measures to neutralize the risk of physical harm and to determine whether the person in question is armed" without transforming a stop into an arrest. In re David S., 367 Md. 523, 535 (2002) (quotation omitted); see also Bailey, 412 Md. at 372 n.8 (citations omitted) ("even if the officers' physical actions are equivalent to an arrest, the show of force is not considered to be an arrest if the actions were justified by officer safety or permissible to prevent the flight of a suspect").

The Court of Appeals has explained that the reasonableness test is deferential to the officers with boots on the ground:

> A creative judge engaged in *post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But, the fact that the protection of the public might, in the abstract, have been accomplished by less intrusive means does not, itself, render the search unreasonable. The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.

In re David S., 367 Md. at 539 (citing United States v. Sharpe, 470 U.S. 675, 686-87 (1985)). "In determining whether an investigatory stop is in actuality an arrest requiring probable cause, courts consider the totality of the circumstances." Id. at 535 (cleaned up).

Thus, in Lee v. State, 311 Md. 642 (1988), the Court of Appeals found that an encounter in which six officers drew their guns and ordered the suspect to lie on the ground was not an arrest requiring probable cause but merely an investigatory stop. Id. at 651-52, 661-67. The officers were investigating a shooting from the night before and had been told by an informant that the perpetrators would have a handgun in a blue duffel bag, which the officers subsequently saw. Id. at 649, 651. The Court, citing cases from across the country, noted that "[t]he fact that the SAT officers displayed shotguns while they charged toward the basketball court did not per se elevate the seizure here to one then requiring probable cause." Id. at 664. It found that the officers' conduct was reasonable considering that the officers would have had to approach the suspects, who were in a wide-open area, from a distance, giving them time to grab the gun the officers believed was only a few feet away. Id. at 662. Thus, the police reasonably believed that ordering the suspects down with guns drawn minimized the potential risk of them being shot. Id.

Likewise, in In re David S., the Court found that an investigatory stop did not rise to the level of an arrest merely because the officers ordered the suspect to the ground, drew their weapons, and placed him in handcuffs. 367 Md. at 530, 539. There, the police, while investigating an open-air drug market, witnessed the suspect place what they believed to be a handgun in his waistband. Id. at 529-530. The Court initially noted that "a police officer's pointing a gun at a suspect does not necessarily convert an investigatory stop into an arrest," nor is an investigatory stop "elevated automatically into an arrest because the officers handcuffed the suspect." Id. at 535 (citations omitted). The Court then concluded that "[c]onsidering the totality of the circumstances, as they appeared to the officers at the

time, in order to maintain their safety, handcuffing respondent and placing him on the ground for a brief time was reasonable and did not convert the investigatory stop into an arrest under the Fourth Amendment." Id. at 539.

Mr. Holland does not appear to challenge the notion that officers may use force when necessary to protect themselves without turning an investigatory stop into an arrest. Instead, he contends that it was not reasonable to believe that he posed a threat to Deputy Mohler in these specific circumstances. To assess the reasonableness of Deputy Mohler's actions, we must look to the facts of the traffic stop as presented to the circuit court.

The Stop of Mr. Holland

At the suppression hearing, Deputy Mohler testified about his concern for his safety as a result of Mr. Holland's actions:

> Q: Okay. Based on your experience as a police officer, based on your observations of the defendant's vehicle and its manner of operating, what, if any, concerns did you have?
>
> A: The vehicle did not immediately stop when I activated my emergency lights. Furthermore, it didn't stop when I activated my emergency siren or air horn. It continued up a driveway out of – away from the roadway wrapping around back behind houses, not extremely visible from the roadway. The vehicle did not slow down other than to make the turn, continued driving, and stopped in the parking area of the residence.
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> ***
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> So when I have a vehicle with dark tinted windows that's not stopping in a reasonable amount of time, I don't know how many people are in the vehicle. We are going up behind a house, I'm not sure who lives at the house. I'm not sure if it's family, or relation, or friends, or whoever it may be that might be associated with the individuals in the car. I'm not sure if there [are] other individuals who are going to come out of the house. I don't know the actions of this driver as it is not a behavior that I have often experienced as a – on the road.

The court was also able to watch a video of the stop from Deputy Mohler's in-car camera.

In evaluating the testimony, the court explained that it was focused on whether Mr. Holland was arrested the moment he exited the vehicle and was handcuffed. When announcing its decision, the court initially noted that it found that Deputy Mohler was credible and was clearly concerned because the vehicle had not stopped when requested. The court then held that, based on the actions of Mr. Holland, the officers' actions were "necessary in order to protect the defendant's safety, their safety, and any of the [] people in the community where this stop actually occur[red]." The court reasoned that:

> [h]ad the defendant's vehicle stopped when the lights came on, or when the siren came on, or stopped at the driveway and gave his license and information . . . that would have been problematic for the Court, but the thing is it's different. The defendant[] didn't stop. He tried to choose where this cause – where this stop occurred and where this incident occurred. He put the officer in a position where he was concerned about why and what was going on.

We agree with the circuit court that Deputy Mohler had a reasonable concern for his safety that justified the protective measures he used in his stop of Mr. Holland. As Deputy Mohler testified, Mr. Holland's actions were out of the ordinary. Mr. Holland refused to stop or even slow down when Deputy Mohler signaled him to pull over, at least suggesting that Mr. Holland had something in the car that he didn't want Deputy Mohler to see. Mr. Holland then drove to a location not visible from the roadway, where he finally stopped behind a house. Although Mr. Holland is correct that Deputy Mohler "did not know" that anything criminal was afoot from his behavior, this misses the point, and turns the reasonableness analysis on its head. Deputy Mohler *knew* that the suspect had fled from him. Deputy Mohler *knew* that the suspect had attempted to control the location of the stop. Deputy Mohler *knew* that Mr. Holland pulled over in a location that could not be

seen from the street. Deputy Mohler *knew* that Mr. Holland stopped at a location where associates of Mr. Holland could have easily been concealed and waiting to ambush him. And he *knew* that the tinted windows could have also concealed potential assailants lurking in the car. With all this in mind, Deputy Mohler's actions were reasonable and did not transform his investigatory stop of Mr. Holland into a de facto arrest. See, e.g., In re David S., 367 Md. at 539.

This case is unlike the cases cited by Mr. Holland in which the use of force transformed an investigatory stop into a de facto arrest. For instance, in Bailey, Longshore, and Elliott, there was nothing to suggest even a whiff of officer danger.[4] In fact, in all three of those cases, the Court acknowledged that in the presence of a potentially dangerous subject, force may be used without transforming the stop to an arrest.[5] As explained above, this is precisely the situation here.

[4] See Bailey, 412 Md. at 374 (officer saw the suspect standing in the shadows and smelled a strong odor of ether, but "the officer had no objective reason to suspect that the petitioner was armed and dangerous"); Elliott, 417 Md. at 423 (defendant, suspected of being involved in drug deal, was arrested while walking in a shopping center parking lot); Longshore, 399 Md. at 495 (suspect was arrested after officers witnessed a potential hand-to-hand drug deal in a mall); see also Chase, 224 Md. App. at 655-57 (distinguishing Longshore and Bailey on the grounds that in neither case was there an articulated concern for officer safety or any indication that the suspect was dangerous).

[5] See Bailey, 412 Md. at 372 n.8 ("Conversely, even if the officers' physical actions are equivalent to an arrest, the show of force is not considered to be an arrest if the actions were justified by officer safety or permissible to prevent the flight of a suspect"); Elliott, 417 Md. at 429 (citation omitted) ("This Court has, however, recognized certain limited circumstances when the use of force will be considered reasonable as part of an investigative detention: where the use of force is used to protect officer safety or to prevent a suspect's flight"); Longshore, 399 Md. at 509 (citations omitted) ("As the Court of Special Appeals noted in its unreported opinion *sub judice*, the permissible scope of a *Terry*

The Search Warrant

Mr. Holland also challenges the sufficiency of the application for the search warrant for Mr. Holland's home, claiming that it lacked probable cause or a "substantial basis to conclude that any evidence of any crime would be found in the defendant's home." When evaluating "whether the issuing judge had a substantial basis to conclude that the warrant was supported by probable cause," we give "great deference" to the determination of the reviewing court. Greenstreet v. State, 392 Md. 652, 667-68 (2006) (quotation omitted). With this in mind, Mr. Holland's arguments leave us unconvinced.

First, Mr. Holland argues that because the initial stop was illegal, the evidence gained in that stop should be excluded from consideration and, without this evidence, there was nothing suggesting that evidence of a crime would be found in his house. As explained above, we reject the predicate notion that the stop was illegal and therefore reject this argument as well.

Mr. Holland also argues that even with the evidence gathered during the stop, the warrant was deficient because there was no "nexus between [his] home and any of the items found within his automobile." Mr. Holland does not explain his reasoning, nor can we divine it from the facts. The affidavit on which the warrant was granted lists the many items seized from Mr. Holland's vehicle that suggested that Mr. Holland had been impersonating a police officer. The affidavit also notes the fact that an AR-15 style rifle

stop has expanded in the past few decades, allowing police officers to neutralize dangerous suspects during an investigative detention using measures of force such as placing handcuffs on suspects, placing the suspect in the back of police cruisers, drawing weapons, and other forms of force typically used during an arrest.").

stock was found, suggesting that Mr. Holland, an individual prohibited from possessing firearms, had an AR-15 somewhere. Deputy Mohler tied this evidence to the house with the commonsense notion that "individuals who commit the crimes specified herein keep and maintain evidence relating to those crimes in locations which are safe and where they have ready access, such as their residences." Thus, we have no difficulty identifying a nexus between the items found in Mr. Holland's car and his home. As such, the search warrant contained sufficient information to establish probable cause to search Mr. Holland's home.

SPEEDY TRIAL AND HICKS

Mr. Holland contends that he was denied a speedy trial when he was tried over 500 days after his initial arrest. Mr. Holland was arrested on March 6, 2017 and charged in the District Court for Calvert County with possession of the gun and ammunition the next day. On March 20, he demanded a speedy trial. One hundred sixty-nine (169) days later, on July 12, the State entered a nolle prosequi ("nol pross") of the cases against Mr. Holland.[6]

The next month, on August 21, 2017, Mr. Holland was re-charged for his crimes in the circuit court, based on a new indictment. On October 12, his counsel entered an appearance in the new case and again demanded a speedy trial. A motions hearing was set for March 5, and trial was set for March 27, 2018.

On January 30, 2018, the State moved to postpone the motions hearing and the trial date because Deputy Mohler was unavailable on March 5. The next day, without providing

[6] Mr. Holland claims that he objected to the cases being nol prossed, but points to no record evidence of this fact.

Mr. Holland any opportunity to respond, the court granted the motion. At the next hearing on March 5th, Mr. Holland strenuously objected to the trial continuance, but to no avail.

On May 9, the State again requested a trial postponement, this time due to the unavailability of the officer who test-fired the weapon found at Mr. Holland's house, Deputy Ryan Kampf. Although the State tried to avoid a continuance by offering to substitute another witness, Mr. Holland, as was his right, objected. The court again found good cause for a postponement.

The trial eventually began on July 24, 2018, 388 days after the indictment in the new case and 507 days after he was initially arrested. On the first day of trial, Mr. Holland moved to dismiss the charges for a violation of both his constitutional right to a speedy trial and his statutory right to a trial within 180 days. The motion was denied. We will address each right individually.

The Right to a Trial Within 180 Days

Mr. Holland argues that the State violated the so-called Hicks rule by holding his trial more than 180 days after his counsel entered his appearance in the second case. "[T]he trial in a circuit court criminal prosecution must commence within 180 days of arraignment or the initial appearance of defense counsel, whichever occurs earlier, unless the time is extended beyond 180 days upon a showing of good cause and by order of the county administrative judge." Curley v. State, 299 Md. 449, 451 (1984); see also Md. Code Ann., Crim. Proc. ("CP") § 6-103(a)(2) (2001, 2018 Repl. Vol.); Md. Rule 4-271. This rule is colloquially known as the Hicks rule. See State v. Hicks, 285 Md. 310 (1979). A violation of the Hicks rule warrants dismissal of all charges. Id. at 318.

While Mr. Holland argues that the Hicks rule was violated when his trial was postponed from March 27, 2018 past April 10 (his Hicks date), he fails to argue that the court lacked good cause for the postponement. In fact, as the State points out, the absence of a necessary witness has been found to be good cause for postponement beyond a Hicks date. See State v. Farinholt, 54 Md. App. 124, 134 (1983), aff'd, 299 Md. 32 (1984).

The circuit court's determination of whether there is good cause for a postponement is a discretionary decision that is "rarely subject to reversal upon review." Marks v. State, 84 Md. App. 269, 277 (1990) (quotation omitted). Here, we have no reason to question the circuit court's determination that Deputy Mohler's absence constituted good cause to postpone the trial, and as such, we perceive no Hicks violation.

The Constitutional Right to a Speedy Trial

Mr. Holland also argues that he was denied his right to a speedy trial in violation of the Sixth Amendment to the Constitution and Article 21 of the Maryland Declaration of Rights. "When reviewing a circuit court's decision regarding a motion to dismiss on speedy trial grounds, an appellate court makes its own, independent constitutional appraisal." Collins v. State, 192 Md. App. 192, 212 (2010) (quotation omitted). "In so doing, we accept the circuit court's factual findings unless clearly erroneous." Id. (citation omitted).

In analyzing a speedy trial claim, we balance four factors: the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." Hogan v. State, 240 Md. App. 470, 500 (2019) (quoting Barker v. Wingo, 407 U.S. 514, 530 (1972) (emphasis removed)). The first factor, length of delay, is both a "triggering

mechanism" and an aspect to be considered in the ultimate disposition of the claim. Id. at 501 (quotation omitted). As a threshold matter, it identifies a length of time that must be crossed before the delay reaches "constitutional dimensions" and thus merits further analysis. Id. at 502. Once that threshold is crossed, it may be considered as one of the factors in determining "whether a particular defendant has been deprived of his right" to a speedy trial. Id. at 500 (citing Barker, 407 U.S. at 530).

Here, assuming (without deciding) that the length of delay in this case is enough to trigger a speedy trial analysis, an analysis of the other relevant factors does not support Mr. Holland's claim.

Length of Delay

The speedy trial clock usually begins to run from "the date of the commencement of a prosecution by way of arrest, warrant, information or indictment," whichever came first. State v. Hunter, 16 Md. App. 306, 311 (1972). When the State, acting in good faith, nol prosses a case, the clock is reset so long as the nol pross was in good faith. Clark v. State, 97 Md. App. 381, 393-94 (1993). On the other hand, when the nol pross results from negligence or a desire for a tactical advantage, the clock runs from the date of arrest on the *initial* charges. See Lee v. State, 61 Md. App. 169, 175 (1985).

Here, the record does not indicate why the State sought to nol pross the first case. Without this evidence, we are constrained to apply the general rule that the nol pross resets the speedy trial clock.

With this in mind, and noting that "the length of the delay is the least determinative of the four factors," State v. Kanneh, 403 Md. 678, 690 (2008), we do not believe that a

delay of slightly less than a year—calculated from the date of the second indictment through the date of trial—is particularly compelling. This is especially true considering the time periods that have been found not to have violated defendants' right to speedy trials. See, e.g., id. at 694 (delay of 35 months was permissible). Thus, this factor weighs against finding a violation of Mr. Holland's speedy trial right.

Reasons for Delay

The weight given to reasons for the delay depends on, well, the reason given:

> 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.

Kanneh, 403 Md. at 690 (quoting Barker, 407 U.S. at 531). Mr. Holland characterizes the reason for the delay in his case as "the State's convenience," but does not dispute that the delay was caused by the absence of a witness crucial to the State's case, which justifies an "appropriate delay." Id. This factor, too, weighs against Mr. Holland's claim that his speedy trial right has been violated.

Defendant's Assertion of the Right

The defendant's assertion of his speedy trial right is accorded significant weight in determining whether the right to a speedy trial has been violated. Id. at 692-93. Here, the State argues that Mr. Holland asserted mostly "pro forma" demands for a speedy trial, and that he "did nothing" to object to the circuit court's original postponement for over a month. We disagree. Mr. Holland asserted his right in multiple filings, beginning when his counsel

entered his appearance and continuing through the first day of trial. Further, Mr. Holland was afforded no time to object to the court's first postponement—which was granted *the day after* the State filed its motion. This is not a situation where Mr. Holland sat on his rights. This factor therefore weighs in favor of Mr. Holland's claim.

Prejudice to the Defendant

"[T]he most important factor in the *Barker* analysis is whether the defendant has suffered actual prejudice." Peters v. State, 224 Md. App. 306, 364 (2015) (citation omitted). When analyzing prejudice, we consider the three interests that are implicated in the speedy trial right: 1) the prevention of "oppressive pretrial incarceration"; 2) the minimization of the "anxiety and concern" of the defendant; and 3) the limitation of any impairment to the defendant's ability to put on his case. Kanneh, 403 Md. at 693 (quoting Barker, 407 U.S. at 532). Of these three interests, the last is the most serious. Id. Mr. Holland does not identify any specific prejudice he suffered from the delay, nor has he explained how a delay of less than a year has affected his ability to mount a defense. Moreover, Mr. Holland was not incarcerated during the pretrial process. Therefore, this factor cuts against Mr. Holland's claim that his right to a speedy trial was violated.

In sum, three of the four factors—including the most important factor, prejudice—weigh against Mr. Holland's assertion that his right to a speedy trial has been violated. As such, we reject Mr. Holland's argument that his constitutional right to a speedy trial was violated.

SCIENTER

Mr. Holland argues that the trial court erred in denying his motion to dismiss the indictment because each count failed to allege the requisite scienter—essentially, that Mr. Holland knew that the firearm in question was regulated.[7] He argues that all crimes generally require a culpable state of mind and thus wants us to conclude that, barring specific allegations of a culpable state of mind in the indictment, the counts should have been dismissed.

The trial court did not err in denying the motion to dismiss[8] because, as it explained, "[t]he indictment tracks the Public Safety Article verbatim." "It is well-established that indictments for statutory offenses are sufficient if laid in the words of the statute, as long as the statutory words are sufficient to meet the practical needs which an indictment is intended to supply." Thomas v. State, 183 Md. App. 152, 185–86 (2008), aff'd, 413 Md. 247 (2010) (cleaned up). Here, the indictment precisely tracked the language of the offenses in question, as demonstrated by this side-by-side comparison:

Md. Code Ann., Public Safety ("PS") 5-133(b)(13) (2003, 2018 Repl. Vol.): "[A] person may not possess a regulated firearm	Indictment, Count 1: Mr. Holland "did possess a regulated firearm, to wit: a Smith & Wesson M&P 5.56 MM AR15, as an

[7] To the extent that Mr. Holland also argues that the indictment was deficient in that it did not state that Mr. Holland knowingly possessed the contraband, we cannot conceive of how this could have possibly worked to his detriment, considering that the jury was instructed on this element.

[8] "Normally, we review a trial court's decision on a motion to dismiss an indictment for abuse of discretion." Kimble v. State, 242 Md. App. 73, 78 (2019) (citation omitted). However, where "the trial court's decision involves an interpretation and application of Maryland constitutional, statutory[,] or case law, we must determine whether the trial court's conclusions are legally correct under a *de novo* standard of review." Id. (cleaned up). Under either standard, the trial court was correct.

if the person . . . [,] if under the age of 30 years at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult."	individual under age 30 and previously adjudicated delinquent for a charge that would be a disqualifying crime if committed by an adult."
PS § 5-133.1(b): "A person may not possess ammunition if the person is prohibited from possessing a regulated firearm under § 5-133 (b) or (c) of this subtitle."	Indictment, Count 2: Mr. Holland "did unlawfully possess ammunition, being prohibited from possessing a regulated firearm under Public Safety Article, Section 5-133."
PS § 5-138: "A person may not possess, sell, transfer, or otherwise dispose of a stolen regulated firearm if the person knows or has reasonable cause to believe that the regulated firearm has been stolen."	Indictment, Count 3: Mr. Holland "did possess a regulated firearm, to wit: a Smith & Wesson M&P 5.56 MM AR15, knowing or having reasonable cause to believe the same to have been stolen."

Accordingly, the language in the indictment was sufficient and the trial court correctly denied Mr. Holland's motion.

MULTIPLICITY

Mr. Holland argues that the trial court erred in failing to dismiss Count 3, which charged him of a violation of PS § 5-138 by possessing a regulated firearm while "knowing or having reasonable cause to believe the same to have been stolen." Mr. Holland contends that the use of the disjunctive term "or" renders the indictment impermissibly "duplicitous" because it charges two offenses in the same count. However, the jury acquitted Mr. Holland of this charge. Any claimed error in the indictment of this count was indisputably harmless, and as such, we need not address the merits of Mr. Holland's objection.

THE CANINE ALERT

Mr. Holland also argues that the trial court made several errors regarding the testimony about the K-9 scan. Corporal Wilson testified that, on the day in question, he

was asked to conduct a scan of Mr. Holland's vehicle, during which time Dexter alerted. Because Dexter alerted to the presence of drugs, Corporal Wilson, as a matter of course, attempted to verify the alert by locating one of the three drugs that Dexter was trained to recognize. In doing so, Corporal Wilson saw "little flakes" in the car which he recognized as marijuana.

Mr. Holland challenges Corporal Wilson's testimony about finding marijuana on the following grounds: 1) the evidence is impermissible "other crimes" evidence; and 2) the evidence constituted expert testimony by an individual who was not properly disclosed as an expert prior to trial. We find no merit to these contentions.

Other Crimes Evidence

Mr. Holland claims that the trial court abused its discretion when it allowed testimony about a positive drug scan because the court failed to employ the test from State v. Faulkner, 314 Md. 630 (1989) when determining whether to admit this "other crime" evidence. At trial, Mr. Holland objected to the evidence of the scan, stating that "any testimony regarding any positive scans or scans at all of the vehicle" would "smear" him as a drug dealer or user. The State explained that evidence that Dexter alerted was necessary to show that there was a basis for the search of Mr. Holland's vehicle. When Mr. Holland refused to stipulate that there was probable cause for the search, the court found that the evidence was relevant and denied Mr. Holland's objection.

The court did not err in admitting this evidence. Under Faulkner and its progeny, the court may admit evidence of another crime if it: 1) is being used for a purpose other

than to prove the bad character of the defendant to show action in conformity therewith;[9] 2) is established by clear and convincing evidence; and 3) is more probative than prejudicial.[10] See Jackson v. State, 230 Md. App. 450, 458-61 (2016).

Here, the sole purpose of the evidence regarding the positive K-9 alert was to explain and justify the subsequent search of the car. See Frobouck v. State, 212 Md. App. 262, 283 (2013) (emphasis in original) (admitting evidence, over a hearsay objection, "to explain briefly what brought the officers to the scene in the first place"). This purpose was established by the uncontradicted testimony of Corporal Wilson. And, because of the relative ubiquity and acceptance of marijuana in today's society, especially in quantities this small, any prejudice resulting from this testimony would be minimal, if it existed at all.[11] See, e.g., Emily Gelmann, Drink A Pint Smoke A Joint: The Importance of Distinguishing Between Substance Use and Substance Abuse in Custody Cases, Md. B.J., November/December 2017, at 18, 23 (discussing the increased social acceptability of marijuana and the need for court decisions to reflect this change); see also Md. Code Ann.,

[9] There is no final exhaustive list of permissible purposes. Cortez v. State, 220 Md. App. 688, 694 (2014). Rather, Md. Rule 5-404(c) defines the list of permissible purposes by what is excluded, not what is included.

[10] In reviewing a trial court's admission of other crimes evidence, each step in the Faulker test is reviewed based on a different standard: 1) whether the evidence is being used for a purpose other than to show bad character is a legal determination; 2) whether the evidence is established clearly and convincingly is reviewed based on its sufficiency; and 3) whether the evidence is more probative than prejudicial is a discretionary decision. See Jackson, 230 Md. App. at 459 (quoting Snyder v. State, 361 Md. 580, 603–04 (2000)).

[11] With this in mind, even if the court erred in admitting such testimony, any error would have been harmless.

Crim. Law § 5-601.1(a)(2) (2002, 2012 Repl. Vol.) (mandating that possession of less than 10 grams of marijuana is a civil, not criminal, offense). As such, the court did not err in admitting the testimony about the positive K-9 alert.

Expert Drug Testimony

Mr. Holland also claims that the court abused its discretion by admitting the testimony of Corporal Wilson that the little flakes found in Mr. Holland's car were marijuana. Mr. Holland characterizes the testimony as drug recognition testimony that required the specialized knowledge and experience of an expert. He goes on to argue that, because the State had not identified Corporal Wilson as a drug recognition expert prior to trial, he should not have been allowed to testify on this subject.

As the State points out, however, prior to trial, it properly identified Corporal Wilson as an expert in the field of K-9 use and handling. It defies credulity for Mr. Holland to now claim unfair surprise based on the notion that he did not expect an expert K-9 handler to be able to identify marijuana on sight. Further, Corporal Wilson specifically testified at trial that his training as a K-9 handler included eight weeks of basic drug detection. Based on this testimony, it was well within the trial court's discretion to allow him to identify the flakes as marijuana at trial. See Gross v. State, 229 Md. App. 24, 32 (2016) (noting that whether a particular item of evidence, particularly expert testimony, should be admitted "is committed to the discretion of the trial court").

THE REGULATED FIREARM

At trial, two officers testified about the firearm in question. Deputy Mohler testified that the rifle found at Mr. Holland's house was a Smith and Wesson M&P .233 rifle,"

which is an "AR-15 style rifle." Deputy Kampf, the officer who tested the firearm, testified that the gun was a "Smith and Wesson AR-15 M&P rifle," and that this gun "is a version of the AR-15."

On appeal, Mr. Holland raises two issues with this testimony: 1) that Deputy Mohler had not been qualified as an expert, and thus could not testify as to the style of the weapons; and 2) that even if the police officers could testify as to the weapon's style, their testimony was not sufficient to prove that the gun was "regulated," as required by Counts 2 and 3. Neither of these arguments are availing.

The Need for Expert Testimony

Mr. Holland claims that Deputy Mohler's testimony identifying the gun's make, model, and, most importantly, "style" constituted expert firearms testimony because it relied on his experience and training. As such, because Deputy Mohler was not disclosed as an expert prior to trial, Mr. Holland contends that his testimony should have been excluded. But Mr. Holland makes no such argument as to Deputy Kampf's testimony to the same effect. Thus, even assuming (without deciding) that the trial court erred by allowing Deputy Mohler's testimony into evidence, that error was harmless. We "will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony [is] established and presented to the jury *without objection* through" other witnesses. Benton v. State, 224 Md. App. 612, 627 (2015) (emphasis supplied) (quotation omitted).

Whether the Firearm was Regulated

Mr. Holland also contends that Counts 1 (possession of a regulated firearm by a disqualified person) and 3 (possession of a stolen regulated firearm) must fail because there was no evidence that the firearm in question was "regulated."

"Regulated firearms" are defined in PS § 5-101(r) and include, in relevant part, the "Colt AR-15, CAR-15, and all imitations except Colt AR-15 Sporter H-BAR rifle," including any of their "copies, regardless of which company produced and manufactured that assault weapon."[12] Mr. Holland reasons that the evidence was insufficient because none of the witnesses testified that the gun in question—a Smith and Wesson M&P AR15 Rifle—was a copy or imitation of the Colt AR-15 or the CAR-15.[13]

We decline Mr. Holland's invitation to elevate the form of the witnesses' testimony over its substance. Deputy Mohler and Deputy Kamp identified the gun in question as an "AR-15 style rifle" and a "version of the AR-15." Moreover, the gun's owner testified that it was an "AR-15 rifle" and that to purchase it originally, he had to fill out a form for regulated weapons. With this evidence, a reasonable jury could have inferred that the gun in question was a one of the regulated weapons listed in PS § 5-101. The evidence

[12] The Fourth Circuit has approved of the use of the term "copies" in this statute in Kolbe v. Hogan, 849 F.3d 114, 148–49 (4th Cir. 2017) (en banc).

[13] In a similar argument, Mr. Holland points out that the indictment stated that the gun in question was a "Smith and Wesson M&P 5.56mm AR15 rifle" and that because the "term '5.56 mm' never crossed the lips of any witness," there was a "fatal variance between the allegata and the probate." Because the caliber of the rifle was not an "essential element" of the crimes charged, we see no reason why the State's failure to prove this very specific detail would render the indictment or proof insufficient. See State v. Ferguson, 218 Md. App. 670, 679-80 (2014).

supporting Counts 1 and 3 was, therefore, sufficient. See Darling v. State, 232 Md. App. 430, 465 (2017) (noting that where appellant challenges the sufficiency of the evidence underlying a conviction, we will affirm so long as there is any evidence from which a rational trier of fact, using inference, could have found the elements of the crime beyond a reasonable doubt).

JURY INSTRUCTIONS REGARDING
POSSESSION OF A STOLEN REGULATED FIREARM

Mr. Holland contends that the trial court erred in its instruction as to Count 3 of his charges. As explained previously, the jury acquitted Mr. Holland of this charge; therefore, we need not address whether the instruction was improper.

JUDGMENTS OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.