Circuit Court for Prince George's County
Case No. CT210190X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 992

September Term, 2021

DANILO RAMIREZ-HERNANDEZ

v.

STATE OF MARYLAND

Reed,
Albright,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: September 12, 2022

On February 9, 2021, the Prince George's County State's Attorney's Office filed a criminal information against Danilo Ramirez-Hernandez ("appellant") that charged him with indecent exposure. His case was tried before a jury in the circuit court for Prince George's County in a trial that commenced on July 27, 2021.

The jury convicted appellant of indecent exposure and he was sentenced to three years imprisonment, with all of that sentence suspended except for sixty days. He was ordered to begin three years of probation once he had served his sixty-day sentence.

Appellant filed a timely appeal to this Court in which he raises two questions:

1. Did the trial court err in denying [a]ppellant's motion for mistrial?

2. Did the trial court err [in] denying [a]ppellant's motion to dismiss for lack of speedy trial?

We shall answer both questions in the negative and affirm appellant's conviction.

I.

BACKGROUND[1]

On February 11, 2020, A. R., an eleven-year-old female, lived in an apartment house in Langley Park, Maryland with her parents and one sibling. A. R.'s neighbor was appellant, who had lived next door to A. R. for at least four years.

At approximately 7:30 a.m. on February 11, 2020, A. R. left her apartment with the intent of going to the elementary school that she attended. But, as she was descending the stairs of her apartment building, heading down to the street, she saw appellant "waiting for [her] on the stairs." According to A. R.'s later testimony, appellant was standing with "his

[1] At trial, appellant called no witnesses and introduced no evidence.

pants down," his penis visible and he was masturbating. In A. R.'s words, "[h]e was moving his hands . . . up and down and he was touching his private part[.]" While masturbating, appellant was looking at A. R. and was "making some sounds like he was enjoying something" and saying "Aah, aah."

A.R.'s mother, Liliana G. ("Mother"), testified that shortly after A. R. left for school, on the morning of February 11, 2020, A. R. returned to the apartment and told her that a man was on the steps and was "showing her that he was naked." A. R. also told Mother that the man who had exposed himself wore yellow shoes and a gray sweater. Mother rushed outside, but did not see anyone. She returned to her apartment and then she and her husband went out on the balcony of the apartment. While on the balcony, Mother saw appellant on the balcony of a nearby apartment. He was wearing yellow shoes and a gray sweater.

Appellant's trial counsel cross-examined Mother by utilizing a statement that Mother had given to the police, in Spanish, shortly after the incident. The point of the cross-examination was to show that in the statement to the police Mother had said that when she first went out on the balcony, appellant was not there, but after a few minutes he did come out. What Mother said in that statement, will be discussed more thoroughly in part II, *infra*.

About two hours after A. R. reported to her parents that appellant had exposed himself to her, A. R.'s father called a 911 operator to report the incident to the police. Prince George's County Police Officer Wilson Maldonado responded to the apartment where A. R. lived with her parents. After Officer Maldonado met with A. R.'s father, he

went next door and spoke with appellant who told him that he was in the stairwell smoking earlier in the day but nothing more.

Additional facts will be set forth in order to answer the questions presented.

II.

DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION FOR MISTRIAL

About two months prior to the date that A. R. alleged that appellant exposed himself to her, appellant had been accused of engaging in similar conduct. With that in mind, appellant's trial counsel made a pre-trial motion *in limine* to prevent the State's witnesses from making any mention of the prior indecent exposure charge. The trial judge granted the motion *in limine* after opining that such evidence was more prejudicial than probative. None of the State's witnesses disobeyed this ruling.

As already mentioned, counsel for appellant wanted to cross-examine Mother about a statement she had made to the police on the date of the incident. Because Mother's statement was written in Spanish, an interpreter was needed to translate the statement for the jury. Defense counsel and the prosecutor agreed as to what portion of the statement should be read by the interpreter. More specifically, they agreed that the words to be read were the ones they had highlighted. The interpreter was instructed to stop reading once she had read the highlighted portion of the statement. This agreement was reached because, in obedience to the *in limine* ruling, counsel did not want the jury to hear the last two sentences of Mother's statement. The last two sentences read: "And it's not the first time that he does it. This is the second time."

At trial, the interpreter read to the jury the following words in Mother's statement:

> THE INTERPRETER: "And then we went running outside with my husband to see where he was. And when we went outside he was not there anymore. I went outside to see if he wasn't there, but a few minutes later we saw that he came out of a building. And we were watching to see what time he would come out, but he didn't come out. ***And this is not the first time" - -***

As soon as the trial judge heard the interpreter read the words "And this is not the first time," she said: "Wait, wait, wait, wait. I said the yellow [highlighted] part.

Counsel approached the bench and when they did so, defense counsel said:

> I know it was an innocent mistake, but I have to move for a mistrial based on that. The jury heard her saying, "This is not the first time."

Out of the presence of the jury, the trial judge asked the court reporter to read back the last part of what the interpreter had read to the jury. The court reporter complied: "And we were watching to see what time he would come out, but he didn't come out. And this is not the first time[.]" At that point, the trial judge observed that the seven words in question "could be the first time he didn't come out, the first time he . . what is the first time?" Defense counsel responded as follows:

> [DEFENSE COUNSEL]: Well, so, first of all, based on the fact that we all immediately went "Whoa, stop," I think, calls attention to the fact that, you know, the jury is, you know, has its attention drawn to the fact that whatever was about to come out wasn't just . . . wasn't just, like, this isn't the first time ever it rained in that neighborhood, right? I think that it's extremely unlikely that a jury would hear that in a vacuum and think that a woman making a statement in a police station about an incident that just happened saying, "This is not the first time," by far the most logical reading of that would be the first time something like this has happened. Anything else is - - yeah, maybe she also decides to say this is not the first time I've ever written a statement, but that's not the most natural inference. And, you know, especially given our reaction, which was proper, right, like, we had to stop it, there's no doubt about that, but I just think that there is no way that every single juror who heard that, that not a single one of them has now been led

> to believe that there is history of this type of stuff, which, of course, is the exact type of prejudicial propensity evidence that we've already litigated, and that Your Honor[] has already said, obviously, a jury shouldn't hear that. You know, no one did anything wrong, but they heard it with a, you know, fill in the blank, you know, you have to figure out what's coming. But at least one of them - - it would be a little bit of a miracle if 12, 13 jurors who heard all that, not a single one of them thinks, okay, there's more to the story than what we're hearing and he has a history of doing this.
>
> So, I think that there's no curative instruction that can fix that. I think that a mistrial - - obviously, through no fault of anybody, but a mistrial is the only way to safeguard [appellant's] right to a fair trial and due process under the state and federal constitution or - - the Federal Constitution and the Maryland Declaration of Rights.

The prosecutor argued that the incomplete sentence at issue did not convey to the jury the message that appellant had previously engaged in any prior bad act.

The trial judge ruled:

> The jurors had seen us at the bench prior. The jurors knew that we were discussing things. And I've already instructed them to not worry about objections, not worry about bench conferences, so your motion for a mistrial is denied. I believe the [court] and the [d]efense counsel caught it in time, because, as State has indicated, "This is not the first time," only leaves them to speculate, and knew that we wanted to stop. So, "the first time" is not prejudicial to - - the [c]ourt does not find "the first time" to be prejudicial to the [d]efendant.

The trial judge also found that there was no "manifest necessity" that required that the motion be granted. She then asked defense counsel if he would like a curative instruction. Defense counsel replied, "I don't believe that there's any one that could cure it, and I don't want to draw any more attention to it, so my request for a mistrial is the only request that I have with the [c]ourt."

On appeal, appellant argues, as his counsel did below, that the words "'And this is not the first time,' clearly implied 'other crimes' evidence[.]" According to appellant, the

suggestion by the State that it could somehow be interpreted in an innocuous way, is unavailing. Appellant's argument continues, "[t]he clear implication of those words is that [a]ppellant had engaged in the same behavior that led to the charges for which he was on trial on previous occasions. That is inadmissible other crimes evidence that only served to show [a]ppellant's criminal propensity."

The State counters that the trial judge did not abuse her discretion in denying the mistrial motion because "the jury never actually heard any evidence that [appellant] had committed a similar act before." The State points out that all the jury heard was a sentence fragment. The State sums up its position as follows:

> The court also noted that there were possible innocuous ways that the sentence could have ended, especially when considered in the context of the full statement. In the statement, Liliana G. was talking about how they were watching Ramirez-Hernandez. She said: "I went outside to see if he wasn't there, but a few minutes later we saw that he came out of a building. And we were watching to see what time he would come out, but he didn't come out." As the court noted, as far as the jury knew, the next sentence could have been something completely unrelated to a prior bad act. The court explained: "the words, 'And this is not the first time,' could be the first time he didn't come out[.]"
>
> Thus, there was no impermissible evidence elicited. The jury did not learn of any prior bad act that [appellant] had committed. Moreover, in an effort to limit any possible prejudice, the court offered to give a curative instruction, but defense counsel declined the court's offer.

(References to record omitted.)

In *Klauenberg v. State*, 355 Md. 528, 555 (1999), Judge Dale Cathell, speaking for the Court of Appeals, said:

> As this Court has stated time and again, the decision of whether to grant a motion for a mistrial is within the sound discretion of the trial court. The grant of a mistrial is considered an extraordinary remedy and should be

> granted only "if necessary to serve the ends of justice." *Hunt* [*v. State*], 321 Md. [387] at 422 [(1990)] (quoting *Jones* [*v. State*], 310 Md. [569] at 587 [(1987)]. Our review on appeal is limited to whether the trial court abused its discretion in denying the motion for mistrial. Accordingly, a reviewing court will not reverse the trial court unless the defendant clearly was prejudiced by the trial court's abuse of discretion.

(Some citations omitted.)

The Court said in *Pasteur v. Skevofilax*, 396 Md. 405, 415, 418-419 (2007):

> The analytical paradigm by which we assess whether a trial court's actions constitute an abuse of discretion has been stated frequently. In *Wilson v. John Crane, Inc.*, 385 Md 185 (2005), for example, we iterated
>
> > [t]here is an abuse of discretion "where no reasonable person would take the view adopted by the [trial] court [ ]" . . . or when the court acts "without reference to any guiding principles." An abuse of discretion may also be found where the ruling under consideration is "clearly against the logic and effect of facts and inferences before the court[ ]" . . . or when the ruling is "violative of fact and logic."
> >
> > Questions within the discretion of the trial court are "much better decided by the trial judges than by appellate courts, and the decisions of such judges should be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred." In sum, to be reversed "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable."
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> 385 Md. at 198-99 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312-13 (1997)). An abuse of discretion, therefore, "should only be found in the extraordinary, exceptional, or most egregious case." *Wilson*, 385 Md. at 199.

A ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. *Kusi v. State*, 438 Md. 362, 385 (2014) (citation omitted). "Thus, where a trial court's ruling is reasonable, even

if we believe it might have gone the other way, we will not disturb it on appeal." *Fontaine v. State*, 134 Md. App. 275, 288 (2000).

The case of *Jones v. State*, 310 Md. 569 (1987) is somewhat analogous to the one *sub judice*. Gregory Jones was convicted of two counts of first-degree murder, for which he received the death penalty. *Id*. at 575. One of the murder victims was Charles Jordan, whose wife, although shot by Jones, survived the shooting and testified against him. *Id*. at 574. Mrs. Jordan testified that prior to the murder, she knew Jones as an acquaintance of her husband and at trial, she identified Jones as the person who had killed her husband. *Id*. at 575. During direct examination, the prosecutor asked Mrs. Jordan whether she had "ever seen the defendant before" the day of the crime. The witness responded, "I had went to visit him with my husband at Lewisburg." *Id*. at 587. Defense counsel moved for a mistrial claiming that the statement that Jones was "at Lewisburg," would likely be interpreted by the jury to mean that at one time he had been an inmate at the Lewisburg Federal Penitentiary. *Id*. The motion for mistrial was denied. In *Jones*, the Court of Appeals affirmed the trial judge's denial of a mistrial, saying:

> The naked reference to Lewisburg, in the circumstances of this case, did not require the trial judge to grant a mistrial. Although it may be generally known that a federal prison is located at Lewisburg, Pennsylvania, no mention was made of Jones's prior criminal record or that he had been an inmate at the prison. All things considered, we find insufficient evidence of prejudice to Jones and conclude that the trial court did not abuse its discretion in refusing to order a mistrial.

Id. at 588.

The reason that appellate courts give trial judges broad discretion in deciding whether to grant a mistrial is that a trial judge is in a far better position than a panel of

appellate judges to weigh and consider the probable effect on the jury of evidence that a party on appeal claims was prejudicial. *Hill v. State*, 355 Md. 206, 221 (1999). Here, as the trial judge pointed out, it is not clear that the jury was likely to have inferred that appellant committed any prior bad act based on the fragment of a sentence that the interpreter inadvertently read to the jury. One would have to speculate to conclude that the jury drew an inference that appellant had previously committed a prior bad act. Importantly, as in *Jones*, *supra*, during the trial, no evidence was introduced that supported a conclusion that appellant had engaged in a prior bad act of any sort. Moreover, this is not an "extraordinary, exceptional, or most egregious case" (*Wilson*, 385 Md. at 199), where an appellate court would be justified in finding an abuse of discretion. And, as in *Jones*, *supra*, we find insufficient evidence of prejudice to appellant and conclude that the trial judge did not abuse her discretion in denying the mistrial motion.

III.

DID THE TRIAL JUDGE ERR IN FAILING TO GRANT APPELLANT'S MOTION TO DISMISS BASED ON HIS CONTENTION THAT HE HAD BEEN DENIED HIS RIGHT TO A SPEEDY TRIAL

The Sixth Amendment to the United States Constitution, and Article 21 of the Maryland Declaration of Rights, guarantee a criminal defendant the right to a speedy trial. In assessing the issue of whether a defendant has been denied this constitutional right, the reviewing court must make its own independent examination of the record to determine whether the right has been denied. *Glover v. State*, 368 Md. 211, 220 (2002); *accord Howard v. State*, 440 Md. 427, 446-47 (2014); *Henry v. State*, 204 Md. App. 509, 548-49 (2012).

Appellant's motion to dismiss was based on the allegation that he was denied his right to a speedy trial. That motion was heard immediately prior to the commencement of trial on July 27, 2021. The facts set forth below were all developed at that hearing.

On the day of the alleged offense, February 11, 2020, appellant was charged in the District Court of Maryland for Prince George's County with a single misdemeanor count of indecent exposure. Appellant was arrested that same day and given a trial date of March 9, 2020. As a condition of his release, he was ordered to have no contact with the victim.

On February 28, 2020, the Office of Public Defender entered its appearance on appellant's behalf and demanded a speedy trial. Prior to the March 9, 2020 trial date, the State made a plea offer to appellant's counsel. On March 9, 2020, appellant's lawyer rejected that offer. The State, even though all its witnesses were present for trial in District Court, *nol prossed* the case.

The State's post-*nol pros* plan was to re-charge appellant, by filing a criminal information, in the Circuit Court for Prince George's County, charging him, once again, with indecent exposure.

The State waited eleven months, until February 9, 2021, to re-charge appellant. Counsel for appellant, on February 23, 2021, entered his appearance for appellant and made a demand for speedy trial. The case was set for trial on July 27, 2021, and, as mentioned earlier, trial commenced on that date.

The reason the original charge was *nol prossed* was because the Prince George's County State's Attorney's office had a policy of not calling young witnesses, such as the eleven-year-old victim in this case, to testify in District Court. The policy was designed to

avoid the possibility that a young witness would be called to testify twice in the event that there was a conviction in the District Court and an appeal to the Circuit Court.

Almost immediately after the case was *nol prossed* on March 9, 2020, the COVID-19 pandemic struck. By several orders signed by Chief Judge Mary Ellen Barbera, all jury trials, in all Maryland courts, were suspended for six months. See n.2, *infra*. Moreover, according to the prosecutor in the case *sub judice*, the Prince George's County State's Attorney's Office was closed and its employees sent home on March 17, 2020 due to the pandemic. When the courts reopened for jury trials in October 2020, jailed defendants were given first priority for trial; next on the list of priority defendants were persons charged with assault. Appellant's case did not fit into either of those categories because appellant was neither jailed nor charged with assault. When the motion to dismiss for lack of speedy trial was heard, there was no issue raised as to why the District Court case was *nol prossed*. The parties agree as to that. The issue that was debated was whether the State acted with good faith when it *nol prossed* the case. As will be seen, that issue was of crucial importance.

In *United States v. MacDonald*, 456 U.S. 1 (1982), the Supreme Court considered the issue of whether the time between the dismissal of one set of murder charges against Army Captain Jeffrey MacDonald and the initiation of a second set of charges, more than four years later, should be considered in evaluating the right to a speedy trial. *Id.* at 3. The *MacDonald* Court recognized that "the Speedy Trial Clause of the Sixth Amendment does not apply to the period before a defendant is indicted, arrested, or otherwise officially accused[.]" *Id*. at 6. "Similarly," the Court held that "the Speedy Trial Clause has no

application after the Government, acting in good faith, formally drops charges." *Id*. at 7. The Court explained:

> Once charges are dismissed, the speedy trial guarantee is no longer applicable. At that point, the formerly accused is, at most, in the same position as any other subject of a criminal investigation. . . . [W]ith no charges outstanding, personal liberty is certainly not impaired to the same degree as it is after arrest while charges are pending. After the charges against him have been dismissed, "a citizen suffers no restraints on his liberty and is [no longer] the subject of public accusation: his situation does not compare with that of a defendant who has been arrested and held to answer." *United States v. Marion*, 404 U.S. [307,] 321 [(1971)]. Following dismissal of charges, any restraint on liberty, disruption of employment, strain on financial resources, and exposure to public obloquy, stress and anxiety is no greater than it is upon anyone openly subject to a criminal investigation.

Id. at 8-9 (footnotes omitted).

In *MacDonald*, the Government initially dismissed charges against MacDonald because, after an investigation, Army investigators did not believe he had committed the murders for which he was initially charged. According to the *MacDonald* Court, there was no indication in the record that the dismissal was made in bad faith. *Id*. at 10-11 n.12.

In *State v. Henson*, 335 Md. 326 (1994), the Court of Appeals followed the holding by the majority in *MacDonald*, and recognized that "the period between [a] good faith termination of a prosecution and the reinstitution of that prosecution . . . will not be considered in the speedy trial analysis." *Id*. at 336. The *Henson* Court also considered whether the period before the dismissal "must be counted" in determining whether a defendant's speedy trial right had been denied. *Id*. at 337. The *Henson* Court said that it did not count. It reasoned: "Just as the speedy trial guarantee ceases to be applicable when charges are dismissed in good faith, if the charges are dismissed in good faith, it is likewise

not applicable to the period preceding the dismissal[.]" *Id*. (citations omitted). The holding in *Henson* was: "where the State terminates a prosecution in good faith, *i.e*., it does not intend to circumvent the speedy trial right, and the termination does not have that effect, the period preceding the earlier dismissal is not counted in the speedy trial analysis." *Id*. at 338.

The case of *Greene v. State*, 237 Md. App. 502 (2018), presents a good illustration of how Maryland courts have implemented the Speedy Trial rule enunciated in *MacDonald* and *Henson*. Anthony Greene was first arrested on July 14, 2015, after the Montgomery County police searched his home and seized, *inter alia*, over 13 grams of cocaine. *Id*. at 514. He was immediately released on bail. Those charges were *nol prossed* on August 14, 2015 because the Montgomery County police "continually uncovered new and ever more serious drug offenses committed by" Greene. *Id*. at 516. Greene was reindicted for the same charges on September 24, 2015. *Id*. at 515. Between September 24, 2015 and January 7, 2016, Greene's car was stopped and, after a K-9 scan, the police found, among other things, cocaine and a digital scale. *Id*. at 517. Greene was again arrested and posted bond but the police continued to receive reports that he was still engaged in drug dealing. *Id*. Then, on December 14, 2015, the police observed Greene engaging in possible drug related activity with another person; that other person was followed and stopped by the police; the individual who the police stopped informed the police that he had just purchased cocaine from Greene. *Id*. at 517-18. Based on that information, the police obtained a warrant to search appellant's home. On January 7, 2016, the State, once again, *nol prossed*, the pending drug charges against Greene. *Id*. at 515. Greene was re-charged with the same

drug offenses plus an additional one on March 17, 2016. His trial commenced on September 6, 2016.

Greene filed a motion to dismiss, contending that his right to a speedy trial had been violated. The issue presented was whether the speedy trial clock started on July 14, 2015, when Greene was first arrested on drug charges, or on March 17, 2016, when he was indicted for the third time. *Id*. at 515-16. The answer to that question depended on whether the State had acted in good faith in *nol prossing* the first two indictments. *Id*. The *Greene* Court said:

> Given the two indictments, continuing multiple reports of appellant's ongoing drug dealing, and the impending execution of the search warrant, the State believed that appellant was engaged in the criminal enterprise of drug trafficking, and decided to terminate the two indictments so as to consolidate those cases and any anticipated charges resulting from the yet-to-be executed search warrant. The State argued that terminating the cases would allow the State more time to resolve the ongoing firearm investigation and upgrade the simple possession of hydrocodone on July 13 to possession with the intent to distribute. The State argued that from the ongoing criminal activity they saw a "common pattern or common scheme" that indicated that the State should proceed in a single trial proceeding, to save time and resources. At the time of the motions hearing, the court noted that discovery comprised 13,000 pages.
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> Appellant does not argue that the circuit court's findings that the State had acted in good faith were clearly erroneous, but argues in the context of the second *Barker* inquiry, i.e., discerning the reasons for the delay, to whom the delay should be assigned, and how heavily it should weigh, that the delay was "not legitimate" because there was "no valid reason ... for the State to believe that the charges stemming from entirely separate incidents on separate dates could be tried together." "Therefore the 'reasons for delay' factor should be weighed heavily against the State." Based on the record before the motions court and the clearly erroneous standard of review by which we review the lower court's ruling on questions of fact, we are persuaded that appellant again fails to shoulder his burden of showing that the circuit court's finding of an absence of bad faith was clearly erroneous. Accordingly, this time does not count toward the length of the delay.

> The time between January 7, 2016, when the State *nol prossed* the charges, and March 17, 2016, when the State re[ ]indicted appellant, is not part of a speedy trial analysis for the reason noted above—no charges were pending against appellant. Again, this period is relevant in our due process analysis below.
>
> In sum, we agree with the State that based on the lower court's findings that the State had acted in good faith in *nol prossing* and re[ ]indicting, the triggering date for speedy trial analysis is March 17, 2016.

Id. at 518-19.

In *Clark v. State*, 97 Md. App. 381, 391 (1993), this Court also applied the rule set forth in *MacDonald* and *Henson*. James Clark was indicted on January 9, 1990 for stabbing his girlfriend. *Id*. at 384-85. About four and one-half months later, on May 21, 1990, the State *nol prossed* the indictment because the State's main witness, Clark's girlfriend, refused to cooperate or testify against Clark. *Id*. at 385. The State waited almost twenty-two months, and then indicted Clark again for the same charge. *Id*. In *Clark*, after finding it "apparent that the State acted in good faith" because "the victim and only eyewitness refus[ed] to testify," the victim issued a statement exonerating the defendant, and evidence reflected that the defendant was responsible for the witness' refusal to testify. *Id*. at 391.

The case of *State v. Bailey*, 319 Md. 392 (1990), is illustrative of a case where it was held that the State did not act in good faith when it *nol prossed* an indictment against the defendant. In February 1986, Bailey was arrested and later indicted on several narcotics charges. *Id*. at 397. In June 1986, the indictment was *nol prossed*, *id*., and he was extradited to South Carolina for sentencing on a prior narcotic conviction in that State. *Id*. at 400. When he began serving his sentence in South Carolina, he was reindicted in Maryland on the charges previously dismissed in this State. He was then transferred back

to this State for trial. His trial in Maryland commenced in February 1988, about two years after his initial arrest. *Id*. at 397-98. This Court concluded, in an unreported decision, that the State's purpose in *nol prossing* the indictment was to achieve a tactical delay and therefore the State was required to pay the price by having that time included in the Speedy Trial analysis. *Id*. at 406. The State appealed but the Court of Appeals accepted our conclusion and, without further comment, stated that the speedy trial clock commenced on the date of the first indictment.

In the case *sub judice*, the State maintains that the undisputed facts show that it did not *nol pros* the charge in the District Court with an intent to deprive appellant of his right to a speedy trial. To the contrary, it contends that it acted in good faith with the legitimate goal of protecting a witness of tender years from having to testify twice.

In his brief, appellant adopts the argument his counsel made before the motions judge in support of his contention that the State did not act in good faith when it *nol prossed* the indecent exposure charge on March 9, 2020. The argument made by appellant's counsel before the motions judge was as follows:

> I also want to point out that the reason for the delay here, I do believe to be bad faith in the sense that they have a policy of saying, you know, Maryland has decided to afford people charged with misdemeanors quick and speedy resolution of the cases in the District Court and then a prompt appeal. Their policy is we don't want to put witnesses of certain sensibilities, ages, whatever, through the ordeal of according the Defendants the rights they are entitled to, to have speedy, prompt resolutions of their District Court matters, because, you know, I understand that it's a child, but it's very hard for me to see how we're saying, like, it's so traumatizing to come in to testify that we can't do so twice, so we have to deprive people of their right to a District Court trial[.]

We reject appellant's argument that the original dismissal was made in bad faith because it deprived appellant of his right to have "speedy, prompt resolution of . . . District Court matters" by a trial in District Court. Appellant never had a right to a District Court trial. In a misdemeanor case such as this, the State always had the option of filing a criminal information in the circuit court.

In his brief, appellant also contends that the factual situation in this case is closely analogous to that presented to this Court in *Lee v. State*, 61 Md. App. 169 (1985). A bench warrant was issued against Larry Nathan Lee by the Circuit Court for Montgomery County on June 8, 1982, and on June 11, 1982, the detainer was filed with the Division of Correction. *Id*. at 171. Because Lee was serving a sentence for another crime at the time of his indictment, the bench warrant was forwarded to Maryland prison officials on August 25, 1982. *Id*. Mr. Lee, on August 31, 1982, filed a request for disposition under the Intrastate Detainer Act ["IDA"] codified in Maryland Code (1999, 2008 Repl. Vol.), Correctional Services Article [CS], §§ 8-501 to 503. Under the IDA "[a]n inmate shall be brought to trial within 120 days after the inmate has delivered a written request for a final disposition of the indictment, information, warrant, or complaint" to the State's Attorney and the appropriate court. *See* CS § 8-502(b). If an action is not brought to trial within 120 days, "the untried indictment, information, warrant, or complaint . . . has no further force or effect" and "the court, on request of the inmate or the inmate's counsel, shall enter an order dismissing the untried indictment . . . without prejudice." CS § 8-503(e). In *Lee*, although the defendant filed a request for disposition under the IDA, no action was taken until March 8, 1983, which was the date trial was set to begin. 61 Md. App. at 171. That

day, the circuit court dismissed the indictment, without prejudice, due to the violation of the IDA. *Id.* According to the State, the reason it had not taken any action on the IDA request was because it had inadvertently misplaced the request for an IDA disposition. *Id.* Two days later, on March 10, 1983, the State reindicted Lee on the same charges. *Id.* He was tried and convicted approximately nine months later, on December 12, 1983. *Id.*

In *Lee*, the issue presented was whether, for speedy trial purposes, the time between August 5, 1982, and the date the first indictment was dismissed on March 8, 1983, should be counted for speedy trial purposes. *Id*. at 172. In *Lee*, we recognized that the facts before the Court did not involve a voluntary dismissal, such as a *nol pros*, but nevertheless, we found relevant the *MacDonald* standard, as well as the Hicks rule, Maryland Rule 4-271, which provides that unless good cause is shown, all circuit court criminal cases must be tried within 180 days. We concluded that the "speedy trial clock began to tick as of June 11, 1982, the date the detainer was filed" with the Department of Correction in regard to the first indictment. *Id*. at 178. "The period of time between the filing of the detainer and the first trial date was nine months." *Id.* That nine month delay was chargeable against the State. The *Lee* Court explained why:

> Cast upon that office is the solemn duty to effectuate the General Assembly's clear mandate — to bring the case to trial promptly and in accordance with the [IDA] statute. Neglect of that duty is to perpetuate rather than obviate the mischief that the Intrastate Detainer Act sought to remedy. The negligent misplacing of appellant's request for disposition which caused dismissal of the indictment, although not amounting to bad faith, simply is not the same as a good faith dismissal sanctioned by the *MacDonald* court. Consequently, we look to the period of the first indictment to determine when the speedy trial clock began to tick.

Id. at 176-77.

Earlier in *Lee*, the Court said, "Clearly the nine month delay present here and the immediate reindictment is not indicative of any due diligence on the part of the State." *Id.* at 176.

In his brief, appellant contends that the reason that *Lee* is analogous to this case is that after the charges in this case were dismissed on March 9, 2020, the State was negligent by taking no action for eleven months. According to appellant that eleven month delay post-dismissal, is analogous to the nine month period in *Lee* that came before the dismissal. Appellant argues, impliedly at least, that the *Lee* case supports his position that the State acted in bad faith when it dismissed the charges because it did not show due diligence in the eleven months after the initial charges were dismissed. Nothing in *Lee* supports appellant's position. To determine when the speedy trial clock begins to tick, we look at the reason for the dismissal at the time it was entered. If the dismissal was made in good faith, it doesn't matter what transpired between the time of dismissal and the time the new charges were filed. This was made clear in *MacDonald*. 456 U.S. at 8 ("Once charges are dismissed, [in good faith,] the speedy trial guarantee is no longer applicable.").

It is crystal clear that the charges against appellant were not dismissed in an effort to deprive appellant of his speedy trial rights, nor is there anything in the record that shows that the dismissal of the original charge had the necessary effect of denying his right to a speedy trial. The delay that took place after the dismissal was not due to negligence on

anyone's part; it was due to the world-wide COVID-19 pandemic, which, at the time of the *nol pros*, was unforeseeable.[2]

[2] By order dated March 16, 2020, Chief Judge Mary Ellen Barbera of the Maryland Court of Appeals closed all Maryland Courts. That order was extended on April 3, 2020. The April 3 order read, in material part, as follows:

> WHEREAS, The COVID-19 emergency continues to require comprehensive measures to protect the health and safety of Maryland residents and Judiciary personnel,
>
> NOW, THEREFORE, I, Mary Ellen Barbera, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Maryland Constitution, do hereby order this 3rd day of April 2020, that:
>
> (a) Pursuant to Maryland Rule 16-1003(a)(7), all statutory and rules deadlines related to the initiation of matters required to be filed in a Maryland state court, including statutes of limitations, shall be tolled or suspended, as applicable, effective March 16, 2020, by the number of days that the courts are closed to the public due to the COVID-19 emergency by order of the Chief Judge of the Court of Appeals; and
>
> (b) Pursuant to Maryland Rule 16-1003(a)(7), all statutes and rules deadlines to hear pending matters, including, but not limited to juvenile matters, shall be tolled or suspended, as applicable, effective March 16, 2020, by the number of days that the courts are closed to the public due to the COVID-19 emergency by order of the Chief Judge of the Court of Appeals; and
>
> (c) Such deadlines further shall be extended by a period to be described in an order by the Chief Judge of the Court of Appeals terminating the COVID-19 emergency period; and
>
> (d) Any such filings made within the period to be described in (b) shall relate back to the day before the deadline expired; and
>
> (continued...)

We hold that the one month period between the filing of charges on February 9, 2020, and March 9, 2020, does not count when considering whether appellant's speedy trial rights had been denied. Likewise, the eleven month period between the date the charges were dismissed and the date that the charges were re-filed, does not count under the rule established by *MacDonald* and *Henson*. The time between February 9, 2021, and July 21, 2021, does count. But that period is only five and one-half months. A delay of

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* * *

> (f) This Administrative Order will be revised as circumstances warrant.

On May 22, 2020, Judge Barbera extended her order once again. The May 22 order provided, in relevant part, as follows:

> (d) All criminal jury trials in the Circuit Courts throughout the State of Maryland scheduled to begin on or after March 16, 2020, having been suspended on an emergency basis, are authorized to resume, with trial dates to be scheduled beginning on October 5, 2020, and thereafter. Consistent with Phase V of the *Administrative Order on the Progressive Resumption of Full Function of Judiciary Operations Previously Restricted Due to the COVID-19 Emergency*, filed May 22, 2020, October 5, 2020, having been identified as such date that the summoning of Maryland citizens in sufficient numbers to constitute an adequate jury pool from which a jury venire may be drawn will again be possible[.]

Between October 5, 2020 and November 16, 2020, jury trials resumed in the State of Maryland but, in Prince George's County, only five jury trials were held during that period. Thereafter, between November 16, 2020, and April 5, 2021, jury trials were once again suspended by an order signed by Judge Barbera. The cessation of jury trials has had a lingering and devastating effect on the criminal trial docket in Prince George's County. Prior to the COVID-19 outbreak, each month there were a total of approximately 600 pending criminal trials in Prince George's County. As of June 22, 2022, there were 1,883 pending criminal trials in the County.

five and one-half months is not of constitutional dimensions. *See Singh v. State*, 247 Md. App. 322, 338 (2020) (There is an "overwhelming consensus that delays shorter than six months are not of constitutional dimensions."). That being so, no further analysis is required. *See Barker v. Wingo*, 407 U.S. 514, 530 (1972).

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.