Circuit Court for Prince George's County
Case No. CT171248X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2447, September Term, 2018
No. 0194, September Term, 2023

BRIAN TAYLOR

v.

STATE OF MARYLAND

Reed,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 11, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following a three-day jury trial in the Circuit Court for Prince George's County, the Appellant, Brian Taylor ("Taylor") was convicted of first-degree rape, first-degree sex offense, robbery with a dangerous weapon, first-degree assault, use of a handgun in a felony or crime of violence, and lesser included offenses. On July 6, 2018, Taylor was sentenced to life for first-degree rape; life for first-degree sex offense, to run concurrently; 20 years for robbery with a dangerous weapon, to run consecutively; and 20 years for use of a handgun in a felony or crime of violence, to run consecutive. Taylor filed his timely notice of appeal thereafter. The parties mutually consented to stay the appeal to allow pending post-conviction matters to proceed in the circuit court. This Court lifted the stay on April 13, 2023. Taylor presents two questions for our review:

I. Should the circuit court have dismissed the instant indictment for failure to provide a speedy trial, in violation of the Sixth Amendment and Article 21 of the Maryland Declaration of Rights?

II. Should the circuit court have dismissed the instant indictment for violation of CP § 6-103 and Maryland Rule 4-271?

The State filed a Motion to Dismiss in the instant appeal, which was withdrawn at the time of oral argument. For the following reasons, we shall affirm the judgment of the circuit court in part and remand for further proceedings in the circuit court in part.

FACTS AND PROCEEDINGS

By way of relevant background information, on February 21, 2007, Taylor was convicted in a carjacking case (Case No. CT061093X) in the Circuit Court for Prince George's County. A DNA swab was taken pursuant to judicial order. In November 2014, two separate rapes occurred in the confines of Prince George's County, specifically on

November 6 and 26. Later, on March 4, 2015, Taylor was arrested and charged with various handgun offenses in Case No. CT150714X. Pursuant to that arrest, he was swabbed for DNA. The circuit court ultimately granted Taylor's Motion to Suppress in the handgun case and the State entered a nolle prosequi ("nol pros").[1] Shortly thereafter, on May 31, 2016, the Maryland State Police Forensic Sciences Division issued a report that a DNA sample collected in connection to the unsolved November 26, 2014 rape matched Taylor's DNA from his 2007 conviction. On July 15, 2016, Prince George's County Police Department DNA Lab issued a report that linked DNA from the November 26 rape with DNA from the November 6, 2014 rape. The lab offered another report that DNA from the November 6 rape matched DNA collected in connection with the handgun offense on March 4, 2015, and DNA from the November 26 rape.

The State charged Taylor with the November 6 rape in district court on July 27, 2016. He was ultimately arrested on November 16, 2016 and police collected a sample of his DNA on December 8, 2016. On January 12, 2017, Taylor was charged by way of a superseding indictment in the circuit court with the November 6 rape in Case No. CT170045X. The *Hicks* date was calculated as August 8, 2017. On February 21, 2017, the Prince George's County lab reported that the sample taken from Taylor in December 2016

[1] On April 28, 2016, the circuit court granted the Motion to Suppress based on the warrantless arrest of Taylor. The court suppressed the firearm in Taylor's possession as a result of a warrantless illegal search. At the hearing, the arresting officer testified that he pulled Taylor's vehicle over, approached the car, and restrained Taylor's hands. Afterwards, the officer observed what appeared to be a container of alcohol in plain view in the vehicle. The circuit court found that "based on the totality of the circumstances, that the search which followed the accosting was not reasonable" and granted the motion.

was consistent with DNA found in the crotch area of the underwear worn by the victim of the November 6 rape. Taylor filed a memorandum in support of his Motion to Suppress DNA from the March 4, 2015 handgun case.[2]

The Motion to Suppress was scheduled to be litigated on June 27, 2017. However, before the motions hearing, the State nol prossed the charges and Taylor was recharged in district court. Three days later, police executed a new search warrant to obtain Taylor's DNA based on the 2007 DNA sample. On September 11, 2017, Taylor was re-indicted for both the November 6 and 26 rapes in Case No. CT171248X. The corresponding Hicks date was March 11, 2018. The Prince George's County lab submitted the finalized DNA report on January 4, 2018. On January 19, 2018, Taylor moved to dismiss the case for the failure to provide a speedy trial.

At the hearing on Taylor's Motion to Dismiss, Taylor argued that the State violated his right to a speedy trial and nol prossed the original charges with "the necessary effect or intent" to circumvent *Hicks*. In turn, the State argued that the original case was nol prossed so that the State could ensure admissible DNA evidence for trial, since the available DNA reports at that time used Taylor's DNA samples from the unconstitutional 2015 arrest. The State argues that the nol pros was entered in good faith and that restarted the *Hicks* date from the date of the new indictment. At the hearing, Detectives Patrick Devaney and Ken Evans testified and the lead Assistant State's Attorney on the case, Cerone Anderson.

[2] In this Motion to Suppress, Taylor argued that his DNA sample that was being compared to samples from the November rape were fruit of the poisonous tree because the sample was taken during the pendency of the 2015 handgun case. Taylor argued that when the 2015 handgun case was nol prossed, then his DNA sample should have been expunged.

At the motions hearing, Taylor also argued his Motion to Suppress, which stated that his 2015 DNA sample should have been expunged after the 2015 handgun case was nol prossed. The State responded that the detectives operated in good faith by using the 2015 DNA sample and it should not be excluded. Also, the State countered that the theories of inevitable discovery and independent source supported their use of the 2015 DNA sample.

The motions court brought the parties back on February 7, 2018, to rule on both of the motions. As to the *Hicks* argument, the court ruled that "the prosecutor had a genuine concern that the DNA profile used to compare the evidence in this case would be suppressed, that there was a need to reanalyze the confirmation swab to the evidence in the case." The motions court denied the motion based on *Hicks* because "the Court does not find that the necessary effect was to evade Hicks" and "the prosecutor was not acting in bad faith." The court also denied the motion to dismiss on speedy trial grounds because the "time that had elapse[d] since the second indictment…does not rise to the level of presumptively prejudicial." Finally, the court denied the motion to suppress because there was an independent source of Taylor's DNA and the underlying search warrants were valid.

The case proceeded to trial before a jury. After a three-day trial, the jury found Taylor guilty on March 9, 2018 of first-degree rape, first-degree sex offense, second-degree rape, armed robbery, robbery, first-degree assault, second-degree assault, second-degree sex offense, third-degree sex offense, and use of a handgun in a felony or crime of violence. On July 6, 2018, Taylor was sentenced to life plus 40 years.

On August 21, 2018, Taylor filed a Motion for Leave to File a Belated Appeal in the circuit court, which was granted. Taylor noted a belated appeal on September 27, 2018, which was docketed as No. 2447 of the September Term of 2018. After filing briefs, the parties consented to stay the appeal pending the decision of the circuit court in a post-conviction petition seeking leave to file a belated appeal. The circuit court granted the petition for post-conviction relief and allowed Taylor to file a belated notice of appeal. Taylor filed a second notice of appeal on April 4, 2023, which was docketed as No. 0194 of the September Term of 2023. After a Motion to Lift Stay, we lifted the stay in the instant case on April 13, 2023. On May 2, 2023, we consolidated the two appeals.

DISCUSSION

I. SPEEDY TRIAL

A. Parties' Contentions

Taylor contends that the circuit court violated his right to a speedy trial. He argues that we should employ the four factor *Barker* test to determine if his speedy trial rights have been violated. Taylor asserts that the length of delay factor should begin from the date of the initial indictment, not the subsequent one. He further argues that the rest of the *Barker* factors demonstrate a denial of his speedy trial rights. Namely, that the reason for the delay was the State's failure to use admissible DNA, Taylor asserted his right to a speedy trial, and that Taylor suffered prejudice.

As to the speedy trial argument, the State contends that this Court should affirm the circuit court's decision that the prosecutor acted in good faith. If we conclude that there was good faith, we analyze the claim from the date of the second indictment, which

significantly decreases the delay in this case. The State effectively argues that this case does not rise to a delay of "constitutional dimension" and therefore we do not even have to reach the *Barker* factors.

B. Standard of Review

On appeal, we review a circuit court's judgment on a motion to dismiss for violation of speedy trial without deference. *Howard v. State*, 440 Md. 427, 446-47 (2014). We make "our own independent constitutional analysis" as to whether a violation of the Sixth Amendment or Article 21 of the Maryland Declaration of Rights occurred. *Glover v. State*, 368 Md. 211, 220 (2002). However, "we defer to the circuit court's first level findings of fact unless clearly erroneous." *Henry v. State*, 204 Md. App. 509, 549 (2012).

C. Analysis

Article 21 of the Maryland Declaration of Rights provides:

> That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defense; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and **to a speedy trial** by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Likewise, the Sixth Amendment to the United States Constitution guarantees the right to a speedy trial to a criminal defendant. *See* U.S. Const. amend. VI ("[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy…trial").

The Supreme Court of the United States instituted a four-factor test to analyze whether there has been a speedy trial violation. *Barker v. Wingo*, 407 U.S. 514, 530-32 (1972). In *Barker*, the Supreme Court established the four factors as: "[l]ength of delay;

the reason for the delay; the defendant's assertion of his right, and prejudice to the defendant." *Id.* at 530. A reviewing court employs "a balancing test, in which the conduct of both the prosecution and the defendant are weighed." *Id.* None of the four factors are solely determinative of a speedy trial violation but, instead, they "must be considered together with such other circumstances as may be relevant." *Id.* at 533.

Before we turn to a full *Barker* analysis using the four factors, we must consider whether there was "some delay which is presumptively prejudicial." *Id.* at 530. A presumptively prejudicial delay operates as a "triggering mechanism" and unless a delay rises to the level, "there is no necessity for inquiry into the other factors that go into the balance." *Id.* For the purposes of our analysis, "[t]he arrest of a defendant, or formal charges, whichever first occurs, activates the speedy trial right." *Wheeler v. State*, 88 Md. App. 512, 518 (1991) (internal citations omitted). After determining the length of delay, we consider whether that delay rises to the level of a "delay of constitutional dimension." *Collins v. State*, 192 Md. App. 192, 213 (2010). If the length of delay rises to a constitutional dimension, we continue with our consideration of the rest of the factors, however, if it does not, our speedy trial analysis ends. *Id.* (citing *Barker*, 407 U.S. at 530-31). Another aspect for consideration is the nature of the charges. *Barker*, 407 U.S. at 531. If a case includes less complex charges, then shorter delays may rise to the level of presumptive prejudice. *See Carter v. State*, 77 Md. App. 462, 466 (1988) (holding that a delay of seven months and twenty-five days was presumptively prejudicial when the charges involved uncomplicated credit card misuse).

Taylor asserts that the length of delay in this case was over a year and three months,

spanning from the date of his arrest on November 16, 2016, to the first day of trial on March 7, 2018. The State contends that the length of delay was 254 days or eight months and eight days, commencing on June 27, 2017, when the district court retainer was filed after the nol pros, to March 7, 2018.[3] As stated above, the motions court ruled that the prosecutor acted in good faith "when he nol-prossed the charges" and found that the delay from the second indictment to trial was not "presumptively prejudicial." The circuit court relied on the case of *U.S. v. MacDonald*, 456 U.S. 1 (1982) to conclude that the speedy trial clock began after the date of the second indictment.

In *MacDonald*, the Supreme Court of the United States considered whether "the time between dismissal of military charges and a subsequent indictment on civilian criminal charges" should be included in a speedy trial analysis. 456 U.S. at 3. The Court held that "the Speedy Trial Clause has no application after the Government, acting in good faith, formally drops charges." *Id.* at 7. Maryland has also recognized this principle in the speedy trial context. *See State v. Henson*, 335 Md. 326 (1994). In *Henson*, the Supreme Court of Maryland held "that 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 (emphasis in original). However, if the earlier dismissal of charges was not in

[3] In its original briefing, the State stated that the length of delay should only be six months, from the date of the second indictment, September 7, 2017, to the date of trial. However, at oral argument the State expressed that the delay should not be calculated from the date when Taylor was re-indicted but instead from the date that the district court retainer was filed pursuant to the Supreme Court of Maryland's decision in *State v. Gee*, 298 Md. 565 (1984).

good faith, then "the entire period, counting from the date of arrest or formal charge under the first prosecution, controls." *Id.* at 329.

At the motions hearing, the circuit court assessed Taylor's constitutional speedy trial claim using the date of the second indictment, September 7, 2017, as the starting point. Furthermore, the court used the date of the motions hearing for the ending point to analyze the length of delay. This led the court to conclude that 150 days or approximately five months from the date of the second indictment to the motions hearing date "does not rise to the level of presumptively prejudicial." Based on this ruling, the circuit court ended its analysis there.

As the State asserted at oral argument, the length of delay in the instant case should be judged from June 27, 2017, not September 7, 2017. On June 27, 2017, after the State nol prossed the original charges, Officer Patrick Devaney recharged Taylor in district court. Detective Devaney filed new charges and "faxed a copy of the warrant to the Division of Corrections to serve as detainer." The Supreme Court of Maryland has noted that "[i]t is arguable that [a] detainer was the equivalent of an arrest." *State v. Gee*, 298 Md. 565, 577 (1984). In subsequent decisions, this Court has concluded that the filing of a detainer activated the speedy trial clock. *Lee v. State*, 61 Md. App. 169, 177-78 (1985). Therefore, the starting date in the instant case for a speedy trial analysis is June 27, 2017.

Furthermore, trial began on March 7, 2018, which functions as the end point for the length of delay analysis. *See Greene v. State*, 237 Md. App. 502, 519 (2018) ("it is generally the date of trial, not the date of the lower court's ruling on a motion to dismiss, that counts as the end date for speedy trial purposes"). Because we review a constitutional speedy trial

analysis *de novo*, we conclude that trial court erred by analyzing the length of delay using incorrect parameters. *See Glover v. State*, 368 Md. 211, 220 (2002) ("[w]e perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand") (internal citations omitted).

The Supreme Court of Maryland has routinely held that delays over a year are presumptively prejudicial. *See Glover*, 368 Md. at 223-34, *Divver v. State*, 356 Md. 379, 389 (1999); *Brady v. State*, 291 Md. 261, 265-66 (1981). On the other end of the spectrum, delays that are shorter than six months are not "of constitutional dimension". *Singh v. State*, 247 Md. App. 322, 339 (2020) (quoting *State v. Gee*, 298 Md. 565, 578 & n.11 (1984)). On appeal, we view the length of delay of eight months and eight days as potentially rising to the level or presumptively prejudicial. *See White v. State*, 223 Md. App. 353, 384 (2015) (proceeding to analyze the defendant's speedy trial claim under the *Barker* test after a delay of eight months and nineteen days where the defendant was charged with two counts of first-degree rape); *Lloyd v. State*, 207 Md. App. 322, 329 (2012) (holding that a length of delay of eight months and fifteen days "might be construed as presumptively prejudicial and of constitutional dimension" in a first-degree assault case); *Battle v. State*, 287 Md. 675, 686 (1980) (applying the *Barker* factors after a delay of eight months and twenty days where the charges included rape).

In *Singh v. State*, this Court addressed a speedy trial argument when the defendant was tried under a superseding indictment that added new charges. 247 Md. App. 322, 326 (2020). This Court reasoned that unlike many cases where speedy trial is analyzed from the date of the second indictment, there was no time after the original indictment when

Singh was not "an accused, within the meaning of the Sixth Amendment." *Id.* at 342. Similar to the instant case, we concluded that the motions court applied incorrect dates for its speedy trial analysis. *Id.* at 348. We remanded the case back to the motions court to "re-evaluate Singh's motion to dismiss on speedy trial grounds" and apply the *Barker* factors. *Id.*

In the instant case, because the motions court concluded that the delay did not rise to the level of presumptively prejudicial, it ended its analysis there. We remand for the motions court to conduct further proceedings to reevaluate Taylor's motion to dismiss on speedy trial grounds.[4] The total delay in this case was eight months and eight days and the circuit court should analyze this delay using the four-factor test elucidated in *Barker*.

II. *HICKS*

A. Parties' Contentions

Taylor alternatively argues that the State failed to abide by the strictures of the *Hicks* rule in contravention of Md. Code Ann., Crim. Pro. ("CP") § 6-103 and Md. Rule 4-271(a)(1). He contends that the State's "purpose or necessary effect" was to nol pros the case and recharge to avoid *Hicks*. In summary, he asks this Court to reverse the judgment of the motions court and "remand[] with instructions to grant the motion to dismiss."

The State responds that the circuit court properly denied Taylor's motion to dismiss. The State contends that the charges were nol prossed to ensure admissible evidence and

[4] We will note that the State at oral argument conceded that if the circuit court used an incorrect measure of the length of delay, then the remedy would be to remand the case to the circuit court for a complete *Barker* analysis, pursuant to *Singh*.

not with the intention to circumvent *Hicks*. Neither the necessary effect nor the purpose of the nol pros was to work around *Hicks*.

B. Standard of Review

On appeal, we review the postponement of a criminal trial past the *Hicks* date by considering: "(1) Was there "good cause" for the administrative judge to grant a postponement of the scheduled trial date? (2) Was there an inordinate delay from the scheduled trial date to the new trial date in commencing the trial?" *Tunnell v. State*, 466 Md. 565, 589 (2020) (citing to *Rosenbach v. State*, 314 Md. 473, 479-80 (1989)). The determination of good cause for a continuance is "a discretionary matter, rarely subject to reversal upon review." *Tunnell*, 466 Md. at 589 (quoting *State v. Frazier*, 298 Md. 422, 451 (1984)). The defendant is charged with proving "a clear abuse of discretion or a lack of good cause as a matter of law." *State v. Fisher*, 353 Md. 297, 307 (1999). Whereas an inordinate delay claim is "reviewed under an abuse of discretion standard." *Tunnell*, 466 at 589 (citing *State v. Brown*, 355 Md. 89, 98 (1999)).

C. Discussion

In Maryland, a criminal trial in any of the circuit courts must begin within 180 days of the appearance of counsel or first appearance of the defendant. *Tunnell*, 466 Md. at 570. This principle is encapsulated in both statute and rule. Md. Rule 4-271(a)(1) states:

> The date for 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.
> …
> On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change

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

Md. Code Ann., CP § 6-103 is the corollary of this principle in statutory form. "[D]ismissal of the criminal charges is the appropriate sanction" when the State fails to comply with the 180-day rule. *State v. Hicks*, 285 Md. 310, 318 (1979).

The general rule when criminal charges are nol prossed by the State is the 180-day time period "begins to run anew after the refiling." *State v. Huntley*, 411 Md. 288, 293 (2009) (citing to *Curley v. State*, 299 Md. 449, 458 (1984)). Stated differently, after an initial nol pros and refiling of charges, "the only existing prosecution or case is that begun by the new charging document." *Curley v. State*, 299 Md. 449, 460 (1984). The Supreme Court of Maryland decided in *Curley* that there are two exceptions to this general rule. *Curley*, 299 Md. at 462. The Court held that if "it is shown that the nol pros had the purpose or the [necessary] effect of circumventing the requirements of [CP §6-103 and Rule 4-271], the 180-day period will commence to run with the arraignment or first appearance of counsel under the first prosecution." *Id.* However, these two exceptions "will not apply where the prosecution acts 'in good faith or so as to not "evade" or "circumvent" the requirements of the statute or rule setting a deadline for trial.'" *Huntley*, 411 Md. at 295 (quoting *Curley*, 299 Md. at 459). If either of the *Curley* exceptions apply and trial does not begin within the initial 180-day time period, the indictment must be dismissed. *Id.* at 293-94.

In the majority of cases where Maryland courts have confronted the purpose prong, the State sought a continuance or postponement that was denied by the court, so the State

nol prossed the charges to evade the 180-day time period.[5] *See id.* at 296 (outlining cases where the Court considered the purpose prong). As for the necessary effect prong, the Supreme Court of Maryland has opined that:

> [A] nol pros has the "necessary effect" of an attempt to circumvent the requirements of [CP § 6-103] and Rule 4-271 when the alternative to the nol pros would be a dismissal of the case for failure to commence trial within 180 days. When compliance with the requirements of [CP § 6-103] and Rule 4-271 is, as a practical matter, no longer feasible, then a nol pros and later refiling of the same charges has the "necessary effect" of an attempt to circumvent the requirements of the statute and the rule.

State v. Brown, 341 Md. 609, 618 (1996).

Before turning to the merits of the instant case, we will briefly review the relevant facts. Taylor was indicted in the circuit court for these charges on January 12, 2017, and his counsel entered his appearance on February 14, 2017. The *Hicks* date was calculated as August 9, 2017. On April 25, 2017, Taylor filed a motion to suppress his DNA on

[5] In *Alther*, this Court held that the nol pros "was for the purpose of avoiding the court's order denying consolidation, and its necessary effect, four days before the end of the 180 day period, was to circumvent the 180-day rule." *Alther v. State*, 157 Md. App. 316, 338, *cert. denied*, 383 Md. 213 (2004). In that case, the State added the charge of first-degree rape one week before trial and attempted to postpone the trial date, which the circuit court denied. *Id.* at 319-20.

In *Price*, the State had not received the results of DNA analysis on the eve of trial and moved for a continuance, which the court denied. *State v. Price*, 385 Md. 261, 266 (2005). The State nol prossed the charges and filed a new indictment. *Id.* at 267. On appeal, the Supreme Court of Maryland held that the express purpose of the nol pros "was to circumvent the authority and decision of the administrative judge." *Id.* at 279 (internal citations omitted).

Conversely, in *Baker*, the Court concluded the State's purpose in nol prossing the charges 19 days before the *Hicks* date was not to circumvent the deadline when the prosecutor stated that "the 180 day Rule had never entered into [his] mind." *Baker v. State*, 130 Md. App. 281, 289 (2000). Notably, there was no denial of a postponement before the State nol prossed the charges. *Id.* at 301.

constitutional grounds from his prior 2015 case. At the motions hearing on June 27, 2017, the State entered a nol pros to the charges, 42 days before *Hicks* would run. On the same day, Detective Devaney filed new charges in district court. Taylor was indicted on these new charges on September 11, 2017. The *Hicks* date for the new charges was March 11, 2018.

On the *Hicks* issue, the motions court reviewed the relevant case law relating to Taylor's claims. Ultimately, the circuit court concluded that the case of *State v. Brown*, 341 Md. 609 (1996) "controls the facts and circumstances of this case." The motions court noted that instead of the nol pros, the State could have requested a continuance, which "would likely have been granted." The court denied Taylor's motion to dismiss based on *Hicks* and reasoned:

> The Court does not find that the ASA was acting in bad faith or that his purpose for the nolle prosequi was to evade the 180-day rule but was ensuring he had sufficient, competent evidence. Additionally, the Court does not find that the necessary effect of the nol-pros was to evade Hicks.

Taylor argues that both exceptions as expressed in *Curley* apply in the instant case, specifically, the purpose and necessary effect of the initial nol pros in this case was to circumvent *Hicks*. The primary thrust of Taylor's *Hicks* argument is under the necessary effect prong. He argues that the State realized that the DNA report based on the sample of Taylor's DNA seized pursuant to the problematic 2015 case could not be used at trial. With the *Hicks* deadline closely approaching, according to Taylor, the State was facing a dismissal of the charges or needed to nol pros the charges in order to restart the *Hicks* deadline. He further argues that the State failed to exercise due diligence to analyze

Taylor's prior 2007 DNA sample. In response to the State's arguments, Taylor argues that the State had no alternatives other than a nol pros. In summary, Taylor argues that the necessary effect of the nol pros was to circumvent *Hicks* and the judgment below should be reversed.

The State responds that neither the purpose nor the necessary effect of the nol pros was to circumvent *Hicks*. Instead, the State posits that the purpose of the nol pros was to ensure admissible and accurate DNA evidence for trial. As to the necessary effect exception, the State argues that there were "several alternatives" to the nol pros other than a dismissal of the case with prejudice. The State contends that it could have litigated the motion to suppress, requested a postponement, or acquired a new DNA sample and tested it in time for trial before the *Hicks* deadline.

First, we will briefly address the purpose prong. The State points to the express finding of the circuit court that "the purpose of the nol-pros was to have sufficient evidence." We agree. Despite Taylor's bald assertion that the State's purpose was to circumvent *Hicks*, the record belies that allegation. At the hearing on the motion to dismiss, the lead prosecutor assigned to the case testified that he was solely concerned with admissible evidence at the time of the nol pros. Furthermore, the prosecutor testified that he "wasn't even aware of the *Hicks* date." Finally, as discussed *supra*, in the majority of cases that concluded that the purpose exception applied, the State sought a postponement or continuance that was denied by the court, and then left with no other options, entered the nol pros. In the instant case, the State did not request a postponement before entering

the nol pros. We conclude that the purpose of the nol pros was to ensure admissible evidence.

Next, we will turn to the necessary effect exception. As the Supreme Court of Maryland noted in *Brown*, we will consider whether the State had any feasible alternatives to the nol pros. *See Brown*, 341 Md. at 619. As this Court explained in *Baker*:

> [W]e do not assess the situation by looking back from the arguably adverse effect, searching for a cause. A mere cause and effect relationship is not enough. We look, rather, from a potential cause forward, asking not whether the feared effect is a predictable possibility but whether it is, as of that moment, already a foregone conclusion—a necessary effect, an unavoidable consequence, a virtual inevitability. We assess the situation as of the day the *nol pros* is entered.

Baker v. State, 130 Md. App. 281, 299 (2000).

The State contends that it could have "acquire[d] a new DNA sample from Taylor using the match to the 2007 sample as the basis for probable cause." This alternative "would have required expedited DNA analysis." Testimony from the motions hearing contradicts that this was an available path for the State. Detective Evans testified that in one case, the DNA lab had been able to expedite the analysis and return results within two days. However, Detective Evans further testified that the special circumstances that warranted a two-day turnaround did not exist in the instant case. Therefore, an expedited DNA analysis was not an available alternative in this case. The record shows that the State could not have gotten a new DNA analysis back in time to try Taylor before the *Hicks* date.

The State also argues that it could have chosen to litigate the motion to suppress and contested Taylor's assertion that his 2015 DNA sample was tainted. The State alleges various good faith arguments that it could have advanced, specifically, that the detectives

reasonably relied on the 2015 DNA sample, there was an independent source for Taylor's DNA profile, or that the State would have inevitably obtained another DNA sample. Taylor responds that the State faced "dire prospects" regarding the motion to suppress and that motivated its decision to enter the nol pros. The State could have chosen to litigate the motion to suppress but we stop short of commenting on the likelihood that it would have prevailed.

The final alternative to the nol pros that the State presents was a request for a postponement. Taylor contends that this was not an available channel because a postponement required a finding of good cause and the State had failed to exercise due diligence. However, the motions court stated that a "continuance request would likely have been granted" based on Maryland jurisprudence stating that "the unavailability of DNA results constitutes good cause to continue a case beyond *Hicks*." Although the motions court judge was not the administrative judge that would make the ultimate decision on a postponement, we concur with that reasoning, especially since the motions court was familiar with the entire history of the case.

The record does not support Taylor's argument that the State failed to act in due diligence. Taylor filed his motion to suppress on April 25, 2017 that alerted the State to the problems with the 2015 DNA sample. On June 27, 2017, the State opted to nol pros the charges and recharge Taylor, sixty-three days after the motion was filed. The State did not fail to act for eleven months as Taylor contends.

We hold that on June 27, 2017, when the State entered the nol pros, the State had various options that it could have pursued, specifically, it could have chosen to litigate the

motion to suppress or sought a postponement. A violation of *Hicks* was not a foregone conclusion or a virtual inevitability. The necessary effect of the State's decision to enter the nol pros was not to circumvent *Hicks*.

We conclude that neither the purpose nor necessary effect exceptions apply in this case. Therefore, the 180-day time period began on the entry of counsel after the second indictment and Taylor was tried within *Hicks*. The circuit court properly denied Taylor's motion to dismiss for a *Hicks* violation.

CONCLUSION

Accordingly, we affirm the decision of the circuit court denying the motion to dismiss on *Hicks* grounds. As to the speedy trial argument, we remand for the circuit court to conduct a full hearing on Taylor's motion to dismiss on speedy trial grounds.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED IN PART AND REMANDED IN PART; COSTS TO BE SPLIT BETWEEN THE PARTIES.