Circuit Court for Baltimore County
Case No.: C-03-CR-21-004243

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1283

September Term, 2023

JUSTON RODNEY CARRINGTON

v.

STATE OF MARYLAND

Friedman,
Shaw,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: January 26, 2026

* 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 Maryland Rule 1-104(a)(2)(B).

On August 4, 2023, a jury in the Circuit Court for Baltimore County found Appellant Juston Rodney Carrington guilty of one count of conspiracy to commit murder, and two counts of theft. Appellant was later sentenced to life imprisonment, with all but fifty years suspended, for conspiracy to commit murder, five consecutive years imprisonment for one count of theft, and six months imprisonment for the other count of theft to be served concurrently to the five-year sentence.[1] Appellant noted this timely appeal, presenting the following questions, which we have slightly modified:

1. Was Appellant deprived of his right to a fair trial when[, during jury selection,] the trial court asked voir dire questions that required [prospective] jurors to assess their own impartiality?
2. Did the court err in admitting unauthenticated Instagram messages purportedly authored by [Appellant]?
3. Was Appellant denied [his 6th Amendment right to] a speedy trial?
4. Was the evidence legally insufficient to sustain the conspiracy conviction?

For reasons set forth below, we answer Appellant's first question in the affirmative, and, consequently, reverse his convictions and remand the case to the circuit court for a new trial. As a result, we need not address Appellant's second question. Because an affirmative answer to questions 3 and 4 would prevent a re-trial on all or some of the charges, we address those questions and answer both in the negative.

BACKGROUND

[1] The court ordered restitution and five years' probation upon his release from imprisonment.

On the night of September 29, 2021, Derrick Ward answered a knock at his basement apartment door and encountered two men wearing black masks, clothes, boots, and gloves. He described them as tall, slim, and dark-skinned. One of them immediately attacked him with a knife, stabbing him repeatedly before pouring bleach in his eyes while he was on the ground. The other man ran past him into the apartment and emerged with Mr. Ward's backpack. It would later be determined that Ward's cell phone and laptop computer were missing from his apartment.

Ward made his way out of the basement apartment to the front of the home and knocked on the door rousting the occupants who rendered aid and called 911. Emergency personnel arrived and took Ward to shock trauma for treatment of his wounds. As a result of the attack, Ward spent approximately three weeks in the hospital, had his spleen removed, pins placed in his left thumb, and was left partially blind. Following an investigation, Appellant was indicted on charges of attempted first-degree murder, attempted second-degree murder, first-degree assault, conspiracy to commit murder, and two theft charges in connection with the incident.

At trial, Ward testified that he and Appellant met while working for "Creative Options," a group home for disabled persons that operated out of a single-family home located on Algiers Road in Randallstown, Maryland. When the attack occurred, neither Ward nor Appellant were employed there. However, Ward was still renting the basement apartment at that address.

Ward testified that, after he lost his job in early August of 2021, he applied for unemployment relief, and he withdrew about $21,000 from his 401K retirement account

with John Hancock investments. When a check from John Hancock did not arrive in the mail after two weeks, Ward contacted them and began his own investigation into the whereabouts of the check.

While awaiting a response from John Hancock, Ward discussed the missing check with "[e]verybody that worked upstairs." Ward said that all of the employees of the group home had access to the mail delivered there. On September 27, 2021, about a week after he initiated his own investigation, Ward received an email from John Hancock with a copy of the check, which had been cashed. He showed the email to the employees of the group home, which included Appellant. Upon reviewing the email and the copy of the cancelled check, Appellant told Ward that it appeared to have been cashed by a "private business account."

Ward continued to perform his investigation. He said he "Googled the name of the company, which took [him] to another website, and then [he] Googled that, and [his] goal was to keep following the trail until it led to an address, a name, a phone number, anything but a registration number." He testified that he kept Appellant informed about his investigation.

Ward also testified that he had received a government stimulus check for $1,400 in July 2021, which he did not immediately cash, but instead put in a drawer "for hard times." In August or September, he tried to cash the check at two different banks and at a check cashing business but was not able to cash it. When interviewed by the police after the stabbing, Ward told them about his checks and his investigation into them.

Detectives Anthony DiPerna and Kyle Feeley of the Baltimore County Police

Department investigated the case. They obtained various banking records from First National Bank related to Appellant's bank account in the name of "Ready Maid Maintenance Services, Inc." Those records showed Appellant as the signer on the account and showed a check deposit of $20,738 on September 15, 2021. The records also included photocopies of a cashed check from John Hancock, made out to Ward, in the amount of $20,738.93. The records showed that Ward's stimulus check was deposited on August 26, 2021, by way of mobile deposit into an account titled "Ready-Maid Maintenance Services Inc. Juston Carrington." The cancelled check was made out to Ward and bore Appellant's signature on the back.

At about 11:30 p.m. on the night of the stabbing, a neighbor, Ryan Jones, observed from his bedroom window a husky black man with short hair make several walking trips between a parked white Mercedes-AMG and a home on Algiers Road over the course of about thirty to forty minutes. Jones testified at trial, that, during that time, he heard someone open his trashcan which was on the curb for collection. The person then got into the white Mercedes and sat for about ten to fifteen minutes before driving off. About fifteen to twenty minutes later, the police and emergency personnel began to arrive, and Jones decided to go and see what the person had put in his trashcan. He found a pair of black boots, which, he told the police about the next day. It would later be determined that the boots had Appellant's DNA on them.

As part of the police search for Ward's cell phone, they called Ward's phone number hoping to hear it ring in his apartment. When that did not work, they "pinged" it and ultimately recovered it from a cell phone repair shop two days after the stabbing. The cell

phone repair shop had come into possession of the phone after a jogger found it on the street and gave it to the shop.

The police sought and obtained a warrant for Appellant's arrest. They attempted to locate him by searching for his white Mercedes and his cell phone. As part of that search, the police "pinged" his phone and also obtained historical data for it. On October 1, 2021, they discovered that Appellant's cell phone was moving south until it reached the area of Fayetteville, North Carolina. On October 8, 2021, Appellant's cell phone began moving north. Once Appellant returned to Maryland, at around 12:30 p.m., the police arrested him at one of the several addresses they had determined he was associated with, 2719 Liberty Heights Avenue. The police also sought, obtained, and executed warrants to search the home at that address and Appellant's car.

The police recovered a number of items from a Liberty Heights Avenue address to include: (1) a McDonald's bag containing $10,312; **(**2) a business card from an employee of First National Bank ("FNB"); and (3) several $1,000 bill bands from FNB.

From Appellant's Mercedes, the police recovered, among other things: (1) more $1,000 bill bands from FNB; (2) a letter of recommendation for Appellant written on letterhead from "Ready Maid Maintenance Services, Inc."; (3) mail addressed to Ward from an insurance company; and (4) an envelope with a check stub for a $20,738.93 check from John Hancock with Ward's name on it. In addition, the Mercedes had Missouri dealer

license plates on it which belonged to some other car.[2]

From Appellant's arrest and the accompanying searches, the police recovered two cell phones. They sought and obtained a full data extraction from both of them. The location data showed that Appellant's two phones and Ward's phone were in the same area near the crime scene on the day of the stabbing from 10:18 P.M. to 10:35 P.M., and they continued to move in the same direction until about 11:45 P.M. when Ward's phone stopped moving, and Appellant's continued traveling to another part of Baltimore City.

When reviewing the extraction of Appellant's cell phone data, the police discovered an Instagram message exchange on September 25, 2021 between Appellant's account with the username "rodney3717" and someone with the username "vont___".[3] After exchanging greetings, "vont___" wrote, "B… I know you doing ya thing to put me d" and Appellant responded, "Shit I was when I first came home but I'm working a lot now but i just got a lock for 20,000 but now I need to get rid of the N… it's a sticky situation."

The police also obtained the search history from Appellant's phone. That history included a September 15, 2021 search for "can you put a stop payment on a cashed check?" and a September 21, 2021 search for "Derrick C. Ward and Derrick Ward." There were searches in early October 2021 concerning a stabbing in Randallstown. The search history also showed searches for contact information for First National Bank and Fulton Bank,

[2] On September 30, 2021, while driving in Baltimore City, Detective Daniel O'Shea saw Appellant's Mercedes with the correct Maryland license plates on it but, due to heavy traffic, was unable to follow the car. The Maryland license plates that actually belonged to the Mercedes were found in its trunk when the police searched it.

[3] The police were unable to discern the identity of "vont___".

NCIC warrant search, and "[w]arrant search nationwide," "contact John Hancock 401(k)."

On October 8, 2021, the police interviewed Appellant. After the police informed Appellant that he was being charged with attempted murder, Appellant said, *inter alia*, "I was not there at the time he got stabbed[,] 100 percent." Earlier in the interview, Appellant made statements that implied that he had been at the Algiers Road address earlier in the day to pick up his "stuff."

Appellant was found guilty of one count of conspiracy to commit murder, and two counts of theft. He was sentenced to life imprisonment, with all but fifty years suspended, for conspiracy to commit murder, five consecutive years imprisonment for one count of theft, and six months imprisonment for the other count of theft to be served concurrently to the five-year sentence.[4] He noted this timely appeal.

Further facts will be supplied below as they become germane to our discussion.

DISCUSSION

I.

In *Dingle v. State*, 361 Md. 1, 21 (2000), Maryland's Supreme Court prohibited a voir dire request during jury selection that "allows, if not requires," a prospective juror "to decide his or her ability to be fair and impartial." The procedure was deemed impermissible as it prevents the trial court from impaneling a fair and impartial jury. *Dingle*, 361 Md. at 21. The trial court, in *Dingle*, asked a series of voir dire questions related to certain

[4] The court ordered restitution and five years' probation upon his release from imprisonment.

experiences or associations of the prospective jurors. *Id*. at 3. By using a two-part question, the court asked first whether the prospective juror had a particular experience or association and then whether that experience or association would affect the juror's ability to be fair and impartial. *Id*. at 3-4. The prospective jurors were asked to stand only if they answered "yes" to both parts of the inquiry. *Id*. at 5. The Supreme Court held that this form of questioning was improper, noting that the trial court, not the prospective juror, must decide whether there is a cause for disqualification of the prospective juror. *Id*. at 14-15. [5] The Court stated:

> Without information bearing on the relevant experiences or associations of the affected individual venire persons who were not required to respond, the court simply does not have the ability, and, therefore, is unable to evaluate whether such persons are capable of conducting themselves impartially. Moreover, the petitioner is deprived of the ability to challenge any of those persons for cause.

Id. at 21. The Court concluded, "Rather than advancing the purpose of voir dire, the form of the challenged inquiries in this case distorts and frustrates it." *Id.; See Pearson v. State*, 437 Md. 350, 362 (2014) (reaffirming that the trial judge has the burden of determining bias and whether a juror can remain impartial).

Appellant contends that the trial court erred during jury selection by asking the

[5] In *Dingle*, among the various voir dire questions the trial court asked the prospective jurors, the court asked:

> Have you or any family member or close personal friend ever been a victim of a crime, and if your answer to that part of the question is yes, would that fact interfere with your ability to be fair and impartial in this case in which the state alleges that the defendants have committed a crime?

Id. at 5.

prospective jurors to self-assess their ability to be fair and impartial after they had affirmatively responded to the following voir dire question: "Have any of you, or any member of your immediate family ever been, number one, charged with or convicted of a crime of violence…; number two, the victim of a crime of violence; or number three, a witness to a crime of violence?"[6]

The State argues that Appellant's claim of error is not preserved because Appellant did not make the same argument below. The State argues that the trial court's voir dire procedure was not erroneous. We disagree. We find that Appellant's argument was properly preserved. As explained below, we hold that the court's method of conducting voir dire of the prospective jurors, erroneously required them to self-assess their ability to remain fair and impartial.

At the outset of jury selection, the court gave prospective jurors an overview of the process. The court explained that it would ask questions to the group, and any jurors who answered affirmatively should stand and give their juror number. The court explained that it would pose the following question to those who stood: "[F]or whatever reason you responded to the first part of my question, would that prevent you or substantially impair you from rendering a fair and impartial verdict if selected as a juror in this case." The court told the jury that:

[6] In *Pearson*, 437 Md. at 359, the Supreme Court decided that "a trial court need not ask during *voir dire* whether any prospective juror has ever been the victim of a crime."

> I will then say, if it would not, have a seat. If you think it might, remain standing.
>
> For those of you who might remain standing, we'll make a special notation, and we may bring you back one-on-one later on and get some additional information from you.

The court questioned the potential jurors in this manner on several occasions. Appellant objected only to the procedure with respect to one question. As noted earlier, in that instance, the trial court asked: "Have any of you, or any member of your immediate family ever been, number one, charged with or convicted of a crime of violence…; number two, the victim of a crime of violence; or number three, a witness to a crime of violence?" Twenty-six jurors stood. The court then said:

> Have a seat. Thanks. Now, to those of you who just responded to that question, whether it's you or a member of your family who has ever been charged with or convicted of a crime of violence, a witness to a crime of violence, or a victim of a crime of violence, if that fact or that experience would prevent you or substantially impair you from rendering a fair and impartial verdict if selected as a juror in this case, I'd like you to stand again.

Of the original twenty-six jurors who responded to the question, thirteen stood and thirteen remained seated. After asking all voir dire questions, the court and parties met outside the presence of the prospective jurors. The court announced that it intended to strike for cause those prospective jurors who indicated that their experience with a crime of violence would prevent them from rendering a fair and impartial verdict.[7] Specifically, the court said:

> With regard to … the three-part question of whether or not any member of their immediate family, themselves, or any member of an immediate family

[7] As indicated earlier, the trial court had previously explained that it might bring those who remained standing "back one-on-one later on" to obtain additional information.

> ever been charged with, convicted of, or victim of a crime of violence? The following individuals stood up: 133, 17, 5, 119, 261, 178, 135, 65, 56, 246, 269, 99, 58, 45, 130, 170, 32, 98, 32, 296, 165, 2, 132, 117, 12, and 101. Of those individuals, my follow-up question, 'Would the fact that you answered the first part of my question affirmative, would that prevent you or substantially impair you from rendering a fair and impartial verdict if selected as a juror in this case?' the following individuals stood back up: 119, 139, 65, 246, 58, 130, 32, 98, 296, 2, 132, 117, and 12. I intend to strike those for cause.

The court then asked the parties if they had any objection to the court's plan. Appellant's counsel stated: "Not for the striking, but I would like to have all of those who have responded to that to come back to be individually voir dire'd." When the court asked Appellant's counsel why he wanted to employ that procedure, counsel responded, "To find out what was the nature of the crime, when was it, and whether they can judge this case completely fairly and impartially."

The court denied counsel's request, reasoning:

> Well, based on my review of the voir dire cases, starting with *Handy* [*v. State*, 101 Md. 39] in 1905 and up to *Cazotti* (phonetic)[8], it's my understanding that the purpose of voir dire is to gain information for strikes for cause, not to develop information to use peremptory strikes. So, those individuals who did not stand up indicated by virtue of the fact that they could render a fair and impartial verdict regardless of whether they or a member of their immediate family fit into one of those three categories, I'm not going to bring them back.[9]

[8] This is an apparent reference to *Kazadi v. State*, 467 Md. 1 (2020), holding that, on request, during jury voir dire, a trial court must ask whether any prospective jurors are unwilling or unable to comply with jury instructions on fundamental principles of presumption of innocence, State's burden of proof, and defendant's right not to testify.

[9] The trial court in *Dingle* offered a similar rationale for its chosen voir dire process suggesting that it would not allow the defense to develop more information for utilization of preemptory challenges:

(continued)

Preservation

The State argues that Appellant's claim of error is not preserved for appeal because, rather than object to the form of the trial court's voir dire questions "or the manner in which they called upon the members of the venire to think about their own answers," Appellant "objected to the judge releasing some members of the venire without interviewing them individually."

"Maryland Rule 4–323 governs the 'manner of objections during jury selection,' including objections made during voir dire." *Smith v. State*, 218 Md. App. 689, 700 (2014). Subsection (c) of the rule provides that in order to preserve an issue for appellate review, "it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." *Id*. "[T]he objector simply needs to make known to the circuit court what is wanted done." *Id*. (citation modified).

In this case, Appellant's counsel made known to the court that he did not object to striking the jurors who indicated that they or their family members had been charged with,

> "The court has asked the questions which the defense has presented in the two-part format I described on many occasions, and on many occasions we've had people stand up in response to those questions and say, Yes, Judge, I can't be fair and impartial, so it would appear to the court that the only reason for calling up the venire men here to the bench for individual voir dire is to allow the defense to develop more information which the defense intends to use in exercising its peremptory challenges, and therefore, the court declines to do so."

Dingle, 361 Md. at 8.

convicted of, or a victim of a crime of violence and that that experience would impair them from rendering a fair and impartial verdict. Counsel also made known that he wanted the court to individually question the jurors who indicated that they could render a fair and impartial verdict notwithstanding that they or their family members had been charged with, convicted of, or a victim of a crime of violence. Specifically, counsel requested the court question them individually to "find out what was the nature of the crime, when was it, and whether they can judge this case completely fairly and impartially."

Based on this record, we believe that Appellant's objection to the court's failure to individually voir dire the subset of prospective jurors described above was sufficient to preserve for appeal the question of whether the court erred in permitting that subset of prospective jurors to self-assess their ability to render a fair and impartial verdict.

In our view, the voir dire method employed by the court in the instant case is indistinct from the method prohibited by *Dingle* and its progeny. In this case, just like in *Dingle*, the court avoided "examination of each affected venire person as to the admittedly relevant matters and allow[ed] each such person to make his or her own call as to his or her qualification to serve." *Dingle*, 361 Md. at 14. The court's failure to have examined, upon request, those prospective jurors who admitted that they had an experience with a crime, made it impossible for the trial court to make a factual finding regarding whether the individual venire person was biased based on their experience with a crime. *Id*. at 17-21.

As *Dingle* explained: "Because [the trial court] did not require an answer to be given to the question as to the existence of the status or experience unless accompanied by a

statement of partiality, the trial judge was precluded from discharging his responsibility, *i.e*. exercising discretion, and, at the same time, the petitioner was denied the opportunity to discover and challenge venire persons who might be biased." *Id*. at 17.

The court's method of conducting voir dire prevented the court from impaneling a fair and impartial jury and consequently deprived Appellant of his right to a fair and impartial jury. We reverse Appellant's convictions.

II.

Appellant next argues that he was denied his Sixth Amendment right to a speedy trial.

When reviewing the denial of a motion to dismiss for lack of a speedy trial, "we make our own independent constitutional analysis." *Glover v. State*, 368 Md. 211, 220 (2002). "In other words, we perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand; in so doing, we accept a lower court's findings of fact unless clearly erroneous." *Vaise v. State*, 246 Md. App. 188, 216 (2020) (citation modified).

To address whether a defendant's right to a speedy trial, as provided by the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights, has been violated, Maryland courts apply the balancing test announced by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972). *Vaise*, 246 Md. App. at 215-16; *see Vermont v. Brillon*, 556 U.S. 81, 89-90 (2009) (reaffirming the analytical framework established by *Barker*).

In *Barker*, the Court identified four factors to be used in determining whether a

defendant's right to a speedy trial has been violated. Those factors are (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant. *Barker*, 407 U.S. at 530.

> None of these factors are either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.

State v. Kanneh, 403 Md. 678, 688 (2008) (citation modified).

The length of the delay factor serves two purposes. First, it acts as a triggering mechanism. "[A] delay of sufficient length is first required to trigger a speedy trial analysis[.]" *Griffin v. State*, 262 Md. App. 103, 159 (2024) (citation modified). Second, the length of the delay is one of the factors within a speedy trial analysis. *Id.* The length of the delay is measured from "[t]he arrest of a defendant, or formal charges, whichever first occurs," until the trial. *Wheeler v. State*, 88 Md. App. 512, 518 (1991).

Appellant was arrested on October 8, 2021 and his trial commenced on August 1, 2023. According to Appellant, the length of the delay in this case is approximately twenty-two months. We note, however, that Appellant's case was scheduled, in part, during the global COVID pandemic, when jury trials had been suspended in Maryland from March 16, 2020 until March 6, 2022. As a result, the time between Appellant's arrest on October 8, 2021 and March 6, 2022 when jury trials resumed (approximately five months) is not computed in a speedy trial analysis. *See Edwards v. State*, 267 Md. App. 392, 447-8 (2025). The twenty-two-month delay was actually a seventeen-month delay, utilizing that analysis.

In either event, a delay of such length is sufficient to trigger a *Barker v. Wingo*

analysis. *Glover*, 368 Md. at 224; *see Vaise*, 246 Md. App. at 223 ("Although there is no numerical measure for when a defendant's right to a speedy trial has been violated, a delay of more than one year typically triggers the balancing analysis required under *Barker*." (citation modified).

> [T]he duration of the delay is closely correlated to the other factors, such as the reasonableness of the State's explanation for the delay, the likelihood that the delay may cause the defendant to more pronouncedly assert his speedy trial right, and the presumption that a longer delay may cause the defendant greater harm. The length of delay ... appears to be significant principally as it affects the legitimacy of the reasons for delay and the likelihood it had prejudicial effects.

Glover, 368 Md. at 225 (citation modified).

> When evaluating the length of a particular delay as a factor in the overall "*Barker* balance," courts must consider the nature of the case. The longer the delay and the less complex the trial, the more the delay will weigh in favor of the defendant. For example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.

Vaise, 246 Md. App. at 223 (citation modified).

The delay in this case, although long enough to trigger a *Barker* inquiry, does not, by itself, require dismissal. The length of the delay "is the least determinative of the four factors that we consider in analyzing whether [a defendant's] right to speedy trial has been violated." *Kanneh*, 403 Md. at 690. This case involved no ordinary street crime. It was a complicated case involving an investigation into the theft of two of the victim's checks, voluminous cell phone extraction and location evidence, DNA evidence, evidence recovered from searches, and an investigation into the stabbing itself. We believe that this factor only slightly tilts toward Appellant.

The U.S. Supreme Court in Barker, stated:

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

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

The timeline of events leading up to the delay in this case is as follows:

October 8, 2021	Appellant is arrested.
October 25, 2021	Appellant is indicted.
November 17, 2021	First appearance of counsel who files a one-sentence boilerplate motion for a speedy trial.
December 27, 2021	Bail review hearing. Trial is set for March 16, 2022.
March 14, 2022	Pre-trial hearing. State requests a postponement to obtain DNA results. Appellant does not object to the State's request. Based on scheduling conflicts, it is determined that the first availability for trial is September 20, 2022. This date was past the *Hicks* date.[10] After a brief discussion with Appellant about whether he would waive *Hicks*, the court denied the State's postponement request. A few hours later, the parties again appeared before the judge and the State again sought a postponement.[11] It was again explained to the court that the parties had agreed on a

[10] Section 6-103 of the Criminal Procedure Article of the Maryland Code and Maryland Rule 4-271 impose a 180-day deadline by which the State must bring a criminal defendant to trial unless the case is postponed for good cause by the administrative judge or its designee. This date is called the *Hicks* date after the case which first enunciated the principle. *State v. Hicks*, 285 Md. 310 (1979). A *Hicks* violation will result in dismissal of all charges.

[11] Apparently, Appellant was not present for this hearing.

	trial date of September 20, 2022. The court then granted the postponement request.
September 20, 2022	The parties appear for trial, but there is no judge or jury available. As a result, the case is postponed until March 9, 2023
March 9, 2023	The parties appear for trial, but there is no judge available. As a result, the case is postponed until August 1, 2023.
August 1, 2023	Trial commences.

Appellant argues that the March 14, 2022 postponement is chargeable against the State because they sought the postponement to obtain DNA results. Appellant argues that the next two postponements, which were required because there were no judges and/or juries available, are also chargeable to the State, but only slightly. As a result, Appellant argues that "all delay in bringing [Appellant] to trial was attributable to the State, even if not all heavily weighted."

To the extent that the March 14, 2022 postponement is chargeable to the State because it was awaiting DNA tests, it is only barely so. *See Glover*, 368 Md. at 226-27 (absent bad faith, a lack of diligence, or a similar failing, a postponement to get the result of a DNA test is, as a speedy trial delay, "both neutral and justified"). The unavailability of a judge "is clearly a neutral reason" for a delay. *Glover*, 368 Md. at 226. Thus, "[w]hile the State will be held accountable for this factor, it will not weigh heavily against the State." *Id*. (cleaned up).

More importantly, at the time of the March 14, 2022 postponement, the courts were only just emerging from a period of intermittent, and lengthy, court closures due to the global pandemic. "At the height of the Covid-19 pandemic, … both the scheduling of trials and the subpoenaing of witnesses were cast into a state of near pandemonium." *Griffin*,

262 Md. App. at 147.

As a result, the reason for the delay factor is only slightly tilted against the State.

In a speedy trial claim, courts recognize that "[t]he more serious the deprivation, the more likely a defendant is to complain." *Barker*, 407 U.S. at 531. For that reason, a "defendant's assertion of his speedy trial right ... is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Id*. at 531-32. Even when a criminal defendant initially asserts the right, their failure to assert it later at critical points can undercut their ability to rely upon their prior assertion of it. *Vaise*, 246 Md. App. at 233.

This Court has distinguished between a timely request for a speedy trial, and a request made for one after the contested delays have already occurred:

> With respect to any speedy trial assertion … it is vitally important to know whether a defendant is genuinely and affirmatively actually requesting a speedy trial or is opportunistically seeking to dismiss charges because of the denial of a speedy trial. "The request, 'Try me today!' is a far cry from that other request, 'Try me never, because you did not try me yesterday!'"

Griffin, 262 Md. App. at 173-74 (citation modified).

Appellant argues that he consistently asserted his right to a speedy trial with increasing intensity as the delay progressed. The record reveals that during the March 14, 2022 hearing where Appellant's trial was postponed until September 20, 2022, Appellant did not assert his right to a speedy trial. During the September 20, 2022 hearing, after the court postponed Appellant's trial until March 9, 2023 because of a lack of an available judge and jurors, Appellant's counsel said, "Your Honor, for the record, can I just voice that [Appellant] objects to going past his *Hicks* date?" After the court pointed out that the

Hicks date had already been passed, counsel for Appellant stated, "But he objected then, and I'm just continuing to voice it." After a short discussion where the court attempted to accommodate an earlier date for trial, March 9, 2023 was selected as a trial date.

During the March 9, 2023 hearing where the court postponed Appellant's trial until August 1, 2023 because of the lack of an available judge to hear the case, Appellant's counsel requested, given the length of time that Appellant had been awaiting trial in custody, that the court consider home detention. Toward the conclusion of the hearing, Appellant personally addressed the court to air his complaint about the pre-trial delay even though he never specifically mentioned his right to a speedy trial.

On June 9, 2023, Appellant, acting *pro se*, filed a motion to dismiss based solely on a perceived *Hicks* violation. On July 14, 2023, the court held a hearing on the motion. During that hearing, for the first time that we can find in the record in this case, Appellant argued that his charges should be dismissed because his Sixth Amendment right to a speedy trial had been violated.[12] Accordingly, this factor only slightly tilts in favor of Appellant.

"Of the four *Barker v. Wingo* factors, by far the most important is prejudice to the defendant." *Griffin*, 262 Md. App. at 174. In *Barker*, the U.S. Supreme Court, explained:

> Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii)

[12] The closest we have seen in the record to a prior assertion of the right to a speedy trial came in Appellant's *pro se* petition for a bail review which was filed on December 30, 2022. In that petition, as a ground for his request for bail, he argued that his "trial has been set beyond [his] [*Hicks*]180 day speedy trial right, which violates his 6th Amendment right to a fair and speedy trial therefore violating the duration of confinement under [the] Bail Reform act of 1984 which is governed by stringent time limitations of the speedy trial act."

> to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past.

Barker, 407 U.S. at 532. In *Glover v. State*, 368 Md. at 230, the Maryland Supreme Court said: "Of the three elements, the most serious is the potential that a delay will impair the ability to present an adequate defense and thus skew the fairness of the entire adversarial system."

During the July 14, 2023 hearing on Appellant's motion to dismiss, he argued how he believed he was prejudiced by the delay in his trial:

> But the prejudice, oppressive pre-trial incarceration, I'm -- I lost everything since I been here. I lost my car. I lost my business. I lost everything due to incarceration. Impairment of defense. I don't have a good -- the jail do[es] not have a good law library system to adequate help me prepare my defense. It's the worst system in the state of Maryland. I never seen this law library ever -- it's the worst one.

After a discussion about the limitations of the law library in the detention center, the court said: "Well, when they talk about a constitutional prejudice, it's often about the prejudice of your case. How is the delay prejudiced your defense?" Appellant responded: "Because it's inordinate. I mean, it's a -- well, I'm not sure. I'm not sure[.]"

The court then asked: "You've indicated it's prejudice, but how has the length of the delay, in terms of *Barker v. Wingo*, prejudiced your defense?"

[APPELLANT]: I can't properly defend myself.

THE COURT: How?

[APPELLANT]: Due to the resources that's provided.

THE COURT: Well, you have an attorney.

[APPELLANT]: How can I properly defend myself with no resources?

THE COURT: You have an attorney for that.

[APPELLANT]: I mean, but, yeah, and I like to do my own research. I mean, he is my attorney, but he's not paid in full. So, he's doing limited stuff in my case, but he is going to -- I think [sic] him for doing my trial for me, but he's not paid in full, so he's only doing the bare minimum to --

THE COURT: Are you alleging that [defense counsel] is not properly representing you?

[APPELLANT]: I'm not doing that. No, I'm not saying that, but he's --

THE COURT: Well, certainly sounds like it.

[APPELLANT]: He's going to do what he needs to do for trial, but I'm doing the extra stuff. I mean --

THE COURT: The man's filed four motion in limine on your behalf.

[APPELLANT]: He did. He did, but --

THE COURT: I've been a trial judge for 19 years. You know how often I see that? Probably 1 in every 100 cases. That may be because there's no reason to do it, but he clearly -- so, you have an attorney representing you.

[APPELLANT]: I get that, but there's --

THE COURT: So, my question remains, it's your *pro se* motion [to dismiss]--

[APPELLANT]: But there's --

THE COURT: How is your defense prejudiced?

[APPELLANT]: All right. My -- I don't know. I'm not sure, so I can't speak on it. I don't know.

THE COURT: Anything else you want to say?

[APPELLANT]: But the inordinate delay in this case is significantly wrong.

THE COURT: That's a factor to be considered.

Thereafter, the parties and the court recounted the procedural history of the postponements of Appellant's trial and the reasons for them. The court then denied Appellant's motion stating: "All right. Well, based on the arguments that you've made so far, your request for dismissal for constitutional speedy trial rights, or constitutional speedy trial issues is denied. Anything else I can do to help move this case along?"

In his brief before this Court, Appellant argues that he suffered prejudice relevant to all three interests: the right to a speedy trial is designed to protect, *i.e.* (i) to prevent oppressive pretrial incarceration, (ii) to minimize anxiety and concern of the accused, and (iii) to limit the possibility that the defense will be impaired. In addition to the concerns he mentioned during the July 14, 2023 hearing outlined above, he claims that in the near two-year delay of his trial, he was imprisoned in an overcrowded and not well-ventilated facility during the pandemic causing him anxiety. From that standpoint, he claims that this factor "should weigh heavily in favor of [Appellant]." We disagree.

During the hearing on his motion to dismiss, the court specifically asked Appellant how his defense was prejudiced by the delay and Appellant had no answer for the court other than to say that the prison library was insufficient. As noted earlier, the question of actual prejudice is the most important question when evaluating the *Barker* prejudice factor. *Griffin*, 262 Md. App. at 174. Moreover, the *Barker* prejudice factor is "by far" the most important of the four factors. *Id.* As for his anxiety brought on being incarcerated during the global pandemic, Appellant has not identified anything specific to him that others affected by the global covid pandemic did not experience. Generalized anxiety is

relatively unimportant compared to the actual impairment of one's defense. *Brown v. State*, 153 Md. App. 544, 564 (2003). Not only does "the burden to show actual prejudice rest[ ] on the defendant[,]" but "the failure to do so weighs against the defendant." *Phillips v. State*, 246 Md. App. 40, 67 (2020).

We believe that this factor weighs against Appellant.

The final step in a court's speedy trial analysis is – assuming the delay is of constitutional dimension – a balancing of the remaining factors. *Barker*, 407 U.S. at 530. We have found that the length of the delay is of constitutional dimension, therefore triggering the *Barker* analysis. We have found that the length of the delay, *i.e.*, seventeen-months, only slightly tilts in favor of Appellant. The reasons for the delay, to include the global covid pandemic, DNA processing, and lack of judges and jurors were all facially neutral, yet, because it is the responsibility of the State to bring a defendant to trial, the reason for the delay factor tilts slightly toward Appellant. Contrary to Appellant's assertions, he did not clearly assert his constitutional right to a speedy trial until the July 14, 2023 hearing on his *pro se* motion to dismiss. As a result, the assertion of the right factor tilts firmly against dismissal. Finally, Appellant failed to demonstrate any specific prejudice from the delay in his trial. The prejudice factor therefore tilts heavily against dismissal.

As a result, we hold the court did not err in denying Appellant's motion to dismiss based on speedy trial grounds.

III.

Appellant next argues that the evidence is legally insufficient to support his

conviction for conspiracy to commit murder.

At trial, Appellant moved for judgment of acquittal on the conspiracy counts at the close of the State's case, as follows:

> Your Honor, with regard to a conspiracy, again, there is no indication that Mr. Carrington had any interaction with these two individuals. There's nothing to indicate that he ever suggested in any fashion or form -- or formulate a specific intent to commit a crime in a specific fashion, which was part of a design, in this case, by there being some kind of meeting, some kind of communication.
>
> Your Honor, you have an individual by the name of Vont who was the recipient of a statement from Mr. Carrington. In a light most favorable to the State, that certainly proves an expression of bad intent and ill will. But the question is, moving from the expression to the actual implementation, and participating, and carrying out, moving from the mere expression and -- off of a blackboard into, "now let's put it in action."
>
> I repeatedly had asked the detective what finer point can you put on this with regard to Mr. Carrington's involvement in a conspiracy? In other words, when did they start meeting to discuss when this was going to take place? When did they meet to discuss that this was going to be a stabbing? When did they come to a conclusion that all the rest of the things necessary to make this effective, that they would try to mop up the blood or use bleach to try to change the appearance of the crime scene? None of that took place, none of that is in evidence.
>
> And even though there may be significant evidence with regard to the theft, including contact with John Hancock, including some internet searches about this, that doesn't fill the void with regard to what if anything is by way of evidence as to Mr. Carrington participating in some kind of conspiracy.
>
> And it's complicated by the fact that nobody was able to find out who those two individuals were. There's no evidence of an exchange that could lead to the identity of this individual. There was no investigation as to getting any of the -- any subpoena or information with regard to who Vont is. So that's why there's no further -- I think there's no further information, 'cause it didn't happen. There's nothing that they could produce.
>
> Because given the extent of this -- the investigation as you've seen it, Your Honor, if they could have come up with information that indicated that Mr. Carrington spoke to somebody, outlined a plan, suggested that X, Y, and

> Z happen, they would've produced it. And they haven't. And for that reason, I submit to you it would be just rank speculation that there was in fact some interaction between those two unknown and unknowable individuals and Mr. Carrington.

On appeal, Appellant largely makes the same argument.

In reviewing the sufficiency of the evidence, we review the record to determine whether, "'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Pinheiro v. State*, 244 Md. App. 703, 711 (2020) (quoting *Titus v. State*, 423 Md. 548, 557 (2011) (internal citation omitted)). In doing so, we defer to the jury's evaluations of witness credibility, resolution of evidentiary conflicts, and discretionary weighing of the evidence, by crediting any inferences the jury reasonably could have drawn. *Grimm v. State*, 447 Md. 482, 495 (2016).

Conspiracy is a common law crime that "consists of the combination of two or more persons to accomplish some unlawful purpose," the essence of which is an unlawful agreement. *Mitchell v. State*, 363 Md. 130, 145 (2001). "Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." *Spencer v. State*, 450 Md. 530, 568 (2016) (quoting *Davis v. State*, 204 Md. 44, 51 (1954)).

In the case at bar, the jury heard evidence from which a strong inference could be drawn that, Appellant was, in fact, present at or near the crime scene on the night of the attack. This inference could have been drawn from, among other things, the cell phone

location data, and from the neighbor witnessing a person matching Appellant's description at, or near, the crime scene, putting boots with Appellant's DNA on them in his garbage can on the night of the attack. Moreover, a strong inference could be drawn that Appellant lied to the police when he told them that he was not there on the night of the attack.

From the cell phone location data evidence, the jury could have drawn the inference that Appellant left the scene of the crime shortly after it was committed with the victim's cell phone in his possession. The jury could have inferred that Appellant left the state and drove to North Carolina only to return about a week later with license plates that did not match his car. The jury also could have inferred that Appellant attempted to avoid detection by leaving the State and changing the license plates on his car and from that inference, a consciousness of guilt.

The jury learned about Appellant's search history from shortly after the attack that reflected he had searched the internet for, among other things, a stabbing in Randallstown, and information about searching for open warrants. The jury heard evidence of motive stemming from the theft of the victim's checks, the victim's realization of the theft, his investigation into it, and his disclosure of all of that to Appellant prior to the attack. Finally, the jury heard evidence that Appellant had sent an Instagram message days before the attack stating, "Shit I was when I first came home but I'm working a lot now but i just got a lock for 20,000 but now **I need to get rid of the N…**it's a sticky situation."

In viewing the evidence in the light most favorable to the State, we hold that a rational juror could draw the inference that Appellant conspired with others to attack and steal money from the victim. That the evidence may have also supported some other

inference is of no moment. "Choosing between competing inferences is classic grist for the jury mill." *Cerrato-Molina v. State*, 223 Md. App. 329, 337 (2015).

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLEE.