Circuit Court for Baltimore County
Case No. 03-K-17-005075

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1735

September Term, 2019

LAMONT WILLIAM HUDSON

v.

STATE OF MARYLAND

Kehoe
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 2, 2021

In 2019, appellant Lamont William Hudson ("Hudson") was convicted of robbery with a dangerous weapon.[1] Hudson was sentenced to fifteen years in prison. On appeal, Hudson presents three questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the trial court commit plain error when it permitted certain remarks by the State in the closing argument?

2. Did the trial court abuse its discretion when it failed to inquire into Mr. Hudson's request to discharge his attorney prior to sentencing?

3. Did the trial court err when it denied Mr. Hudson's motion to dismiss on speedy trial grounds?

For the reasons set forth below, we affirm the circuit court.

BACKGROUND & PROCEDURAL HISTORY

On October 2, 2017, Claudia Melendrez withdrew money from a Wells Fargo bank ATM on Eastern Avenue. After returning to her car, a person approached her pointing a gun at her stomach and demanded she give him the money. Ms. Melendrez gave the person both the money she withdrew and her purse. At the time, Ms. Melendrez could only see the person's eyes and mouth as he was wearing a mask that covered his face. After the encounter, Ms. Melendrez left the parking lot and drove away. After making a few turns, she saw a person walking on Dorsey Avenue. She then saw police approximately four minutes later. The police took a statement then drove her to another

[1] Hudson was also charged in connection with an incident that occurred on October 1, 2017. The counts were severed from the counts relating to this case, and were ultimately nol-prossed.

location where she saw the person who robbed her. She recognized the clothes the person was wearing as a black or dark hoodie. Ms. Melendrez also recognized the person who robbed her had braids "sticking out of the hat." After Ms. Melendrez went home that night, the police came to her house and returned her purse.

On October 2, Anna Coates was walking home from the Dollar General when she saw a man and woman at the Wells Fargo. Ms. Coates heard the man demand the woman's purse, and described the woman as upset and frantic. Ms. Coates could not see the man's face, but she saw that he had on a hood and that he was black. She went to the gas station and called 911. Ms. Coates told the operator that no weapons were involved. She described the man as a "young black guy" who was wearing a hoodie and dark pants. After Ms. Coates talked to the police, they took her to see the apprehended person. That person had on the same hoodie that Ms. Coates remembered.

At the same time, Officer Kevin Walter was out on Eastern Avenue. He heard a call for a robbery around 7:35 PM and proceeded to go around the block to the bank. On the way, he heard that the suspect was a black male wearing a hoodie. Officer Walter saw a man matching the description and followed him. As he pulled around an RV that was parked nearby on Dorsey Avenue, he lost sight of the man. Officer Walter parked, got out of his car, drew his weapon, and told the man to put his hands up. The officer then saw a "small object fly out of his right hand." Officer Walter ordered the man to sit on the curb, which he did, but soon after he began running towards Eastern Avenue while the officer was on the radio. When Officer Walter pursued the man, he was detained by another

officer. He was wearing a black jacket and dark pants. He was ultimately identified as Hudson. When Officer Walter returned to Dorsey Avenue, he saw a twenty dollar bill that was balled up on the ground.

That same evening, Angel Green was walking down Dorsey Avenue approximately two car lengths behind a man with "pretty short dreads." She watched as a police car drove by, the man turned around to toss something under an RV, then turned back around and kept walking. After watching the man run from the officer, Ms. Green turned a flashlight on and looked under the RV, where she saw a gun. Ms. Green waved down another officer, Officer Joshua Deems, and showed him the gun.

Officer Deems checked under the RV and saw a purse, a pellet gun, and a mask. A crime scene technician collected the pellet gun and mask. The purse was returned to Ms. Melendrez. The pellet gun and mask were swabbed for DNA. The swab from the mask contained a major contributor, which matched Hudson's DNA. The swab from the gun contained a mixture of DNA and was not suitable for comparison.

Hudson was charged with robbery with a dangerous weapon, robbery, second-degree assault, and theft of goods with a value of at least $100 but less than $1500. Hudson was convicted of robbery with a dangerous weapon and sentenced to fifteen years' incarceration.

This timely appeal follows. We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

Hudson claimed that the circuit court erred in three different ways. First, Hudson alleges the court erred in permitting the State to misstate the law to the jury. Next, he alleges that the court erred by failing to inquire into his request to discharge his counsel prior to the sentencing hearing. Finally, Hudson contends the court erred in denying his motion to dismiss on speedy trial grounds.

I. THE CIRCUIT COURT DID NOT ERR WHEN IT PERMITTED THE REMARKS FROM THE STATE DURING CLOSING ARGUMENT

Hudson claims that the State repeatedly misstated an element of the crime during closing arguments. Recognizing that he failed to object to the State's closing, he contends this mistake is plain error. Hudson was charged with robbery with a dangerous weapon in violation of § 3-403 of the Criminal Law Article. The dangerous weapon in question was a pellet gun. A dangerous weapon is defined as an object that is "immediately useable to inflict serious or deadly harm." *Brooks v. State*, 314 Md. 585, 600 (1989). Hudson takes issue with the following italicized remarks from the State's closing argument:

> What is not required is that the weapon actually be used to strike, hurt, injury [sic] or hit. Simply brandishing an item that can cause an injury is enough. It doesn't have to function, it doesn't have to fire, and, in fact, it doesn't have to be real.
>
> This is a dangerous weapon. It might not shoot somebody and kill them, but you know what you can do with this? You can hit somebody and *you can hurt them with it.* A dangerous weapon can be a baseball bat. A dangerous weapon can be a chair. A dangerous weapon can be a brick or a rock, *anything that can cause injury is a weapon*. Anything. It depends on how it's used. That item is a dangerous weapon legally sufficient to prove armed robbery. (emphasis added).

Hudson also takes issue with the following italicized remarks from the State's rebuttal argument:

> Don't fall down the rabbit hole of that [sic] the weapon actually has to be used to cause an injury for it to be a deadly weapon. That's kind of like the 911 operator waiting to dispatch help until the conclusion of the call. That's counter-intuitive. Maryland law does not require that you actually get hurt by a weapon for it to be a weapon *that's capable of injury*. That's counter-intuitive to common sense. (Emphasis added).

Hudson alleges this constitutes plain error because 1) the weapon was not an actual firearm, but a pellet gun and the evidence of it being a dangerous weapon was not overwhelming; 2) the prosecutor, when describing a "dangerous weapon" remarked that the weapon was capable of causing injury, instead of specifying that it's capable of causing death or serious bodily injury; 3) the prosecutor repeated this definition three times; and 4) because the court did not correct the prosecutor's definition, "the jury was left with the impression that the argument was correct."

Four conditions must be met before this court can exercise our discretion to find plain error:

> (1) There must be an error or defect-some sort of deviation from a legal rule-that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [trial] court proceedings; and (4) the error must serious affect[ ] the fairness, integrity or public reputation of judicial proceedings.

Newton v. State, 455 Md. 341, 364 (2017) (Citations and quotations omitted).

Hudson satisfies the first prong as he did not affirmatively waive or intentionally relinquish the error. We find, however, that the error is not obvious and is subject to reasonable dispute. The State's first statement, that "anything that can cause injury is a weapon" is not misstated. Arguably, the State was explaining that a weapon does not only have to be a handgun or a firearm that is capable of shooting and killing another person. The State did not say "anything that can cause injury is a *dangerous* weapon." (Emphasis added). With respect to the statement that Maryland law does not require a person to actually get hurt for a weapon to be capable of injury, it is a reasonable interpretation that the State was emphasizing that Hudson did not have to actually injure the victim to have committed an armed robbery.

After closing arguments, the court instructed the jury. The court instructed the jury on the reasonable doubt standard of proof and that Hudson was presumed innocent unless and until the State proved every element beyond a reasonable doubt. With respect to the charge of armed robbery, the court instructed that the State "must prove all of the elements of robbery and also must prove that the Defendant committed the robbery by using a dangerous weapon. A dangerous weapon is an object that is capable of causing death or serious bodily injury." The jury is presumed to understand and follow the court's instructions when considering the evidence. *See Williams v. State*, 137 Md. App. 444, 459 (2001) ("[W]e presume that juries follow the instructions of the trial judges.").

Hudson admits that "the evidence was sufficient to support the jury's conclusion that the pellet gun was a dangerous weapon," though he argues that the evidence was not

overwhelming. Hudson fails to make any argument as to how these remarks affected the outcome of the trial. He makes baseless claims that the State "effectively lowered the State's burden of proof," but did not articulate how this impacted the outcome of the trial or influenced the jury. Hudson admitted that the evidence was sufficient to support the conclusion that the pellet gun was a dangerous weapon to be convicted of robbery with a dangerous weapon. We decline to review Hudson's claim for plain error.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN NOT INQUIRING ABOUT HUDSON'S REQUEST TO DISCHARGE COUNSEL

Hudson contends that the court abused its discretion when it failed to inquire into his request to discharge his attorney prior to sentencing. The State asserts that Hudson did not make a statement to the court that conveyed that he wanted to discharge counsel. If a defendant requests to discharge counsel "[a]fter meaningful trial proceedings have commenced, the decision to permit the defendant to [substitute counsel or represent him or herself is] committed to the sound discretion of the trial court." *Hargett v. State*, 248 Md. App. 492, 503 (2020) (quoting *State v. Brown*, 342 Md. 404, 426 (1996)).

In the instant case, the parties dispute whether Hudson appropriately requested to discharge counsel. The defendant must provide a "statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel." *Williams v. State*, 435 Md. 474, 486-87 (2013) (Citations omitted). "A defendant makes such a request even when his or her statement constitutes more a declaration of dissatisfaction with counsel than an explicit request to discharge." *State v. Hardy*, 415 Md. 612, 623 (2010) (Citations omitted). However, expressing dissatisfaction with counsel, without a

present intent to seek new counsel, does not trigger a discharge inquiry. *See Wood v. State*, 209 Md. App. 246, 287-88 (2012) ("Appellant's statement that he had been 'having problems' with [counsel] and his agreement with the circuit court that he did not feel [counsel] was effectively representing him did not rise to the level of mandating a Maryland Rule 4-215(e) inquiry[.]) Appellant's statements must indicate a "present intent to seek a different legal advisor." *State v. Davis*, 415 Md. 22, 33 (2010).

In this case, Hudson did not make a statement from which the court could conclude that he was inclined, and had a present intent, to discharge counsel. After the jury returned a guilty verdict, the parties appeared before the trial judge, Judge Alexander, and the State indicated it was ready for sentencing. Hudson requested a postponement for sentencing to allow a family member to attend and speak on Hudson's behalf. The State did not object, and requested a postponement of the trial on the severed charges as well. The parties agreed that sentencing would be rescheduled to May 6, 2019. The parties went to an administrative judge for postponement of the trial on the severed counts, which was also postponed to May 6.

On May 6, 2019, the parties met before the trial judge for the sentencing hearing. Hudson's counsel was not available, and a substitute attorney was present. The State proposed a new sentencing date of June 25, and the substitute counsel indicated Hudson's counsel was available that date. Hudson's substitute counsel reiterated his motion to dismiss for violation of the *Hicks* rule. The court postponed sentencing to June 25, and

directed the parties to return to the administrative judge for a postponement of the trial date on the severed charges.

On June 25, 2019, the parties appeared before Judge Cahill. Hudson's counsel was unavailable, but he was again represented by substitute counsel. The State explained that the matter scheduled for the day was sentencing for a portion of the counts and for a trial on the remaining counts. Judge Cahill asked if the parties coordinated a rescheduled date, and the State advised that the administrative judge offered August 22 for both matters. Hudson requested to continue that day, explaining, "I wish to ask that we continue with today. I've been waiting four months now for a sentencing and this is delaying my appeal process and I'm, they already at a year and a half over my *Hicks*. And I'd just like to go forward with this today, please." The court advised that it was a matter of both sentencing and his second trial, so in the interests of justice the court postponed the proceedings until August 22. Here, Hudson objected to a further postponement of sentencing. He did not request a discharge of counsel or express dissatisfaction with counsel or an interest in continuing *pro se*. Of note, he made no mention of his counsel whatsoever, but instead discussed a possible *Hicks* violation with respect to his second trial date.

The next alleged request to discharge counsel occurred when Hudson sent a letter to Judge Cox, the Circuit Administrative Judge, dated July 8, 2019. In the letter, Hudson expressed frustration with the various delays in setting a date for trial and his sentencing hearing. He complained that his right to a speedy trial had been violated and pointed out that his attorney was not present for the "second straight time." He asserted that the court

denied his request to represent himself at the June 25 hearing, claiming "[s]o I asked to represent myself and go forth, but was denied the right to represent myself and was postponed again to August 22." Hudson's letter was an attempt to rewrite history. Hudson's intentions at the June 25 hearing were not as portrayed in the letter. As previously described, Hudson stated at the June 25 hearing that he wanted to proceed that day because the postponements were delaying the appeal process and denying his right to a speedy trial. At no point in time did Hudson ask to represent himself at the hearing, thus he was not denied the right to self-representation. In the letter, Hudson then asked Judge Cox to dismiss all indictments for violations of his right to a speedy trial. Judge Cox responded to his letter stating that any issues with the case must be addressed with Judge Alexander, and if he would like to appeal the verdict, he should consult with an attorney. Again, Hudson failed to indicate that he would like to discharge his counsel and proceed to sentencing and his second trial *pro se*. He requested a dismissal of the case due to a violation of his right to a speedy trial, but he made no mention of the desire to discharge his counsel at that time, any dissatisfaction with his counsel, or the present intention to proceed *pro se*.

Next, on August 22, 2019, the parties met before Judge Alexander for the sentencing hearing. Judge Alexander read Hudson's letter into the record. Judge Alexander then permitted Hudson and his counsel to discuss the letter, stating, "[s]ince he's … complaining about his rights and his counsel, let's, let's deal with it." The court gave Hudson ample opportunity to raise his concerns with counsel and begin an inquiry

as to whether counsel should be discharged. When given the opportunity, however, Hudson only articulated that he would like the letter to be a part of the record. He did not request to discuss any issues with his counsel, nor did he make any requests or motions. Though he was given the occasion to address the court and discuss his dissatisfaction with counsel and related complaints, Hudson did not voice any complaints about his counsel, nor did he ask to discharge counsel. He did not request to represent himself during the proceeding.

The court did not abuse its discretion by not making an inquiry into whether Hudson wished to discharge counsel because Hudson's statements did not rise to the level of requiring an inquiry, nor could a court reasonably conclude that Hudson may be inclined to discharge counsel.

III. THE CIRCUIT COURT DID NOT ERR WHEN IT DENIED HUDSON'S MOTION TO DISMISS FOR DENIAL OF A SPEEDY TRIAL

When assessing whether Hudson's right to a speedy trial was violated, "we make our own independent constitutional analysis." *Glover v. State*, 368 Md. 211, 220 (2002). "[W]e accept a lower court's findings of fact unless clearly erroneous." *Id*. at 221. To determine whether Hudson has been deprived of his right to a speedy trial, this Court evaluates the four factors set forth by the Supreme Court in *Barker v. Wingo*: "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." 407 U.S. 514, 530 (1972).

A. Length of Delay

We first analyze the length of the delay. "[A] delay of sufficient length is first required to trigger a speedy trial analysis, and the length of the delay is then considered as one of the factors within that analysis." *State v. Kanneh*, 403 Md. 678, 688 (2008) (Internal citations omitted). The delay from the date of Hudson's arrest to when the trial began on March 4, 2019 was seventeen months. The seventeen-month delay triggers the speedy trial inquiry, however, the length of delay, "is the least determinative of the four factors that we consider." *State v. Kanneh*, 403 Md. 678, 690 (2008).

B. Reason for Delay

Next, the reason for delay should be allotted different weights:

> 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.

Id. (citing *Barker v. Wingo*, 407 U.S. 514, 531 (1972)).

In evaluating this factor, we address each postponement of the trial date. March 15, 2018 was the first scheduled trial date. Hudson requested a postponement because he recently received body camera footage that needed to be reviewed. The court granted the request and rescheduled trial for May 10, 2018. This postponement was the result of the defense's request and is not charged against the State.

On May 10, the State requested a postponement because the State's DNA evidence was not ready. Though Hudson opposed the request, the court granted the postponement and rescheduled trial for August 22, 2018. Though this postponement was

requested by the State, there is no indication it was an attempt to stall the trial or harm the defense. Though we construe this reason for delay against the State, it is afforded little weight as it was in an effort to ensure all evidence was available to both parties.

On August 21, both parties requested a postponement. The State's reason was due to the investigating detective's unavailability for six weeks due to a recent cancer diagnosis and surgery. The defense recently received the DNA results and needed an expert to review them. As both parties requested a postponement, this postponement was also neutral and justified. On November 27, the parties appeared for trial. After a jury was selected, it was discovered that there were no available judges. Postponement because a judge is not available "can only be deemed neutral." *Glover v. State*, 368 Md. 211, 227 (2002).

The delays in Hudson's case stem largely from neutral reasons. Both parties requested numerous postponements and there is no indication that the State "failed to act in a diligent manner" or tried to stall the trial.

C. Assertion of Right

In *Barker*, the Supreme Court explained that:

> [t]he defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial."

Barker, 407 U.S. at 531-32. This Court should "weigh the frequency and force of the objections." *Id*. at 529. In this case, Hudson asserted his right to a speedy trial or objected to the trial being postponed on a few occasions. He first demanded a speedy trial in an

omnibus motion filed on October 24, 2017. He opposed the State's request for a postponement on May 10 and objected to the postponement on November 27 when no judge was available. He also filed two *pro se* motions to dismiss. He also sent a letter to Judge Cox on July 8, complaining that his right to a speedy trial had been violated. We believe that this factor does weigh in Hudson's favor.

D. Prejudice

The Supreme Court in *Barker* held that prejudice "should be assessed in the light of the interests of defendants which the speedy trial was designed to protect." *Barker*, 407 U.S. at 532. The Court identifies three interests, including "(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." *Id*.

Hudson asserts he was prejudiced because he suffered from anxiety and concern, and a defense witness had become unavailable. Hudson contends the witness was present on November 27, 2018; however, at the time of the actual trial, the phone number for that witness was "no longer good," and he could not locate the witness. Hudson mentioned this witness for the first time at the hearing on the motion to dismiss on March 4, 2019. He did not alert the court to the availability of this witness at the November 27 hearing. At the March 4, 2019 hearing, Hudson indicated that there were extenuating circumstances as to why the witness was not subpoenaed. The circuit court determined that Hudson did not demonstrate that his defense had been prejudiced by the delays to the trial date, explaining: "Their mere allegation that a witness' phone number is no longer

good does not in and of itself show prejudice, especially when there were no efforts undertaken to secure that witness' attendance for these proceedings today."

We do not find that Hudson suffered actual prejudice with respect to this witness's testimony. In addition, Hudson merely made a general assertion of anxiety. By only providing bare assertions of anxiety without specifying the nature of that anxiety, Hudson failed to prove actual prejudice. *See Wheeler v. State*, 88 Md. App. 512, 525 (1991) (holding that bare assertions of anxiety and concern, without specifying the nature of the anxiety, do not show prejudice). We are unable to find that Hudson suffered actual prejudice.

There is no evidence to suggest the State displayed any improper motive or attempted to purposely delay the trial. The length of the delay may have tipped the scale slightly in Hudson's favor; however, the other three factors collectively weighed against the denial of Hudson's motion. Although Hudson did assert his right to a speedy trial, the reasons for the delay can be charged to both parties and he was not prejudiced by this delay. Having considered each of these factors, the court did not err in denying Hudson's motion to dismiss.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.